Cited as "1 ERA Para. 70,106"

PAC Indonesia LNG Company and Western LNG Terminal Associates
(ERA Dkt. No. 77-001-LNG)
April 24, 1979.

Rehearing--Issues Related to Treatment of Costs, Safety and Siting

[Opinion and Order]

TABLE OF CONTENTS

I. Introduction

II. Discussion

A. Treatment of Shipping Costs

1. Flow-through of Ship Construction Costs

2. Determination of Capitalized Pre-Startup Charter Payments Due the Foreign Shipowners

3. Project Failure

4. Post Startup Operating and Maintenance Costs

B. One Day Suspension, Minimum Bill and Cost-of-Service Tariff

1. One Day Suspension

2. Minimum Bill

3. Cost-of-Service Tariff

C. Conditioning Authorization of Oxnard on State Actions

D. Other Safety, Siting and Environmental Issues

1. Design and Construction Safety Review

2. Offshore Siting

3. Ordering Paragraphs G(10) and G(18) of the DOE/ERA Opinion No. One

E. Supplemental Orders

III. Conclusion

I. Introduction

In Opinion Number One, issued December 30, 1977, the Department of Energy, through the Economic Regulatory Administration (DOE/ERA) conditionally approved a proposed importation of liquefied natural gas (LNG) from Indonesia to California, specifically Oxnard, California. Applications for rehearing of Opinion No. One were filed by El Paso Natural Gas Company (El Paso), Hollister Ranch Owners' Association and the Santa Barbara Citizens for Environmental Defense (Hollister), Interstate Natural Gas Association of America (INGAA), Mobil Oil Indonesia Inc. (Mobil), Odyssey Trading Company Limited (Odyssey), Zodiac Shipping Company, N.V. (Zodiac), Ogden Marine Indonesia, Inc. (Ogden), Pacific Indonesia LNG Company and Western LNG Terminal Associates (respectively, Pac Indonesia and Western LNG, or collectively, the Applicants), Southern California Gas Company (Southern California), Pacific Gas and Electric Company (Pacific), Persusahaan Pertambangan Minyak dan Gas Bumi Negara (Pertamina), San Diego Gas & Electric Company (San Diego), the Sierra Club, Tennessee Pipeline Company (Tennessee), United Gas Pipeline Company (United), and Zapata Western LNG, Inc. (Zapata).

The Administrator of the Economic Regulatory Administration formally conferred with the parties to consider applications for rehearing on February 22, 1978. (See Order for Conference to Consider Applications for Rehearing, February 10, 1978). Participants at the conference included El Paso, Sierra Club, INGAA, Tennessee, Mobil, Pertamina, Ogden, California Public Utilities Commission (CPUC), United, Bixby Ranch Corporation (Bixby), Federal Energy Regulatory Commission Staff (Commission staff), San Diego, Asiatic Petroleum Corporation, Hollister, Odyssey and Zodiac, Southern California, General Motors Corporation (GM), and Pacific. On February 28, 1978, ERA issued an order granting rehearing of Opinion No. One for purposes of further consideration. (See Order Granting Applications for Rehearing for the Purpose of Further Consideration). The order set forth a schedule for submitting answers and rebuttal responses to the petitions for rehearing. Answers and rebuttals to answers were filed by the Applicants, Ogden, GM, CPUC, Zapata, Odyssey and Zodiac, Hollister, Bixby, San Diego and the Commission staff.

The parties were also requested in the order to submit comments on the procedures to be followed should the State of California determine that neither Oxnard nor Point Conception is an acceptable site for an LNG terminal under California law. Comments on this issue were filed by CPUC, Applicants, Sierra Club, and Bixby. The Applicants, as further requested, filed analyses in response to the City of Oxnard's recommendations that the proposed LNG storage vessels and offshore transfer piping be recessed so that the cryogenic liquids be stored below grade.

The February 28, 1978 Order granting rehearing allowed the Applicants until May 1, 1978, to supplement their application for rehearing regarding the escalator and currency adjustment clauses in the contract between Pac-Indonesia and Pertamina. After requesting and being granted four extensions of time in which to respond, the Applicants submitted on July 28, 1978, an amendment to their application for rehearing which contained a revised escalator clause. Responses were filed by Hollister, Commission staff and San Diego. A limited response to Hollister's comments was filed by the Applicants. On September 29, 1978, DOE/ERA issued Opinion No. Two, which concluded that we would approve the revised escalator clause in the Pertamina contract, would conditionally approve the currency adjustment clause as originally proposed, and would allow the flow-through of cost increases from these two contract provisions. Opinion No. Two stated that the remaining matters raised by the applications for rehearing would be addressed and a justiciable order under Section 19(b) of the Natural Gas Act issued at a later time.

II. Discussion

A. Treatment of Shipping Costs

Four major issues were raised in the petitions for rehearing and subsequent filings concerning the treatment in Pac Indonesia's tariff of shipping costs, as follows: (1) flow-through of increases in construction costs of the American-built ships, (2) determination of the costs of the capitalized pre-gas-flow charter payments owed the owners of the foreign ships, (3) flow-through of charter payments in the event of project failure either before or after project startup, and (4) flow-through of increases in operating and maintenance expenses after project startup.

1. Flow-through of Ship Construction Costs

The American shipowners have taken the position that increases in ship construction costs and any ship operating expenses incurred prior to startup should be automatically passed on to rate payers by Pac Indonesia after gas begins to flow and should not be subject to a separate tariff filing. More specifically, Zapata and Ogden maintain, in their Supplements to Applications for Rehearing, that the requirements of the Merchant Marine Act of 1936, 46 U.S.C. 1271-1280, (Merchant Marine Act) and Maritime Administration (MarAd) regulations and procedures provide safeguards to ensure that construction costs would not escalate unreasonably. Under the shipowners' proposals, Pac Indonesia's recovery from consumers of increases in the cost of construction of the American ships would be allowed automatically, without the need for a Section 4-type filing, on the basis of MarAd-approved escalator clauses and general industry indices. Ogden requests that the fair and reasonable test used by MarAd be found to satisfy the prudent cost incurrence test required by

DOE/ERA in Opinion No. One, allowing Pac Indonesia to recover construction costs as deemed fair and reasonable by MarAd. In opposition to the domestic shipowners' position, the CPUC stated that any capital costs over $155 million per domestic vessel should be treated as cost overruns with recovery subject to a separate Section 4-type proceeding to determine prudency.

Opinion No. One affirmed the Administrative Law Judge's decision to subject all construction costs exceeding $155 million per ship to Section 4-type filings utilizing the "prudent cost incurrence test," and we find no reason to modify our initial determination. Furthermore, the record does not contain sufficient evidence regarding the review procedures of MarAd to justify, at this time, total reliance on MarAd to review and approve increases in the construction costs of the MarAd-financed ships, in lieu of our own review. We would, of course, give evidence by MarAd on this point due weight in any subsequent proceedings regarding the flowing through of ship construction cost escalations.

2. Determination of Capitalized Pre-Startup Charter Payments Due the Foreign Shipowners

The foreign shipowners, Odyssey and Zodiac, requested a modification of Opinion No. One to state that the costs of the capitalized pre-startup charter payments would be determined by a recommended formula. Opinion No. One required that any charter payments owed by Pac Indonesia to the shipowners prior to start of operations be capitalized and flowed through to consumers in Pac Indonesia's rates after gas begins to flow. However, we reserved the right to review the prudency of the costs under a separate Section 4-type proceeding at the time they are proposed to be passed on to consumers. (Opinion No. One, p. 28).

Odyssey and Zodiac have agreed to forego their contractual right to receive pre-gas-flow charter payments from Pac Indonesia prior to project startup and are not challenging capitalization of the payments. However, they argue that, in order to provide certainty concerning the revenues that will be available to them from Pac Indonesia after project startup, the costs related to capitalization should be flowed through automatically to consumers via Pac Indonesia's tariff, subject only to a limited review by DOE/ERA, at the time of flow-through, to determine whether such costs comply with a stated formula. The recommended formula calls for a three-year amortization period, a capitalization rate at the prime rate of Chase Manhattan Bank plus 1.75 percent, and an adjustment for interim hire during the time prior to startup. The CPUC was silent on the merits of the recommended formula, but stated that any DOE/ERA approval now would be premature since the applicants must amend their time charters to conform to the orders issued in this proceeding.

In principle, we do not object to the use of a formula to calculate the

costs related to capitalization of pre-startup charter payments. However, we do not necessarily agree with the formula proposed by Odyssey and Zodiac,1/ which should be one negotiated between the shipowners and the Applicants. Since the charter agreements will have to be amended to reflect other changes required by Opinion No. One and submitted to DOE/ERA under Paragraph C of the December 30, 1977 Order, we will review the specifics of a formula at that time, with opportunity for the other parties to comment. In any event, DOE/ERA reserves the right to review costs related to capitalization when they are proposed to be passed on to consumers to assure that they are calculated properly and are reduced by any interim hire performed by Odyssey and Zodiac. Furthermore, the shipowners will be required to document at that time all efforts to mitigate costs accumulating during any delays in project startup.

3. Project Failure

All the shipowners argued in the applications for rehearing that Opinion No. One should be modified to allow automatic recovery of termination costs by Pac Indonesia from its customers in the event of project failure. Odyssey and Zodiac argued the need for provisions in the minimum bill which would allow Pac Indonesia to flow-through to its customers certain termination costs owed by Pac Indonesia to Odyssey and Zodiac in the event of project failure. They proposed a compromise allowing an automatic flow-through of one-half of the amount set out at Clause 44 of the charters with Pac Indonesia. This would equal the lesser of one-half the amount of termination costs set forth at Appendix A to the charters or two years' charter hire at the rate in force at the date of such cancellation. Recovery of any costs in excess of this amount would be subject to a Section 4-type filing.

Zapata requested assurance that, in the event of project failure either before or after startup, it receive a base level of compensation and recover both debt and equity through Pac Indonesia's minimum bill. Zapata asked for assurance of recovery of the amount of the guarantee required by MarAd and its capitalized equity investment. Ogden further argued that an assured flow-through of termination costs in Pac Indonesia's tariff is necessary to obtain financing for the vessels under Title XI of the Merchant Marine Act. Zapata, Odyssey, Zodiac and Pac Indonesia similarly argued that Opinion No. One failed adequately to protect their financial investment and, therefore, resulted in excessive risks to the shipowners.

The positions outlined above are generally restatements of arguments made prior to the issuance of Opinion No. One. The shipowners have maintained throughout the proceedings that minimum bill provisions must assure Pac Indonesia sufficient revenues from its ratepayers to meet its charter payment obligations in the event of project failure and that, absent such provisions, MarAd Title financing will not be available.

The record in the case does not provide sufficient evidence to support a claim that MarAd financing will not be available absent such minimum bill provisions. Similarly, the record does not support claims that the ships could not be diverted to alternate service, and costs recouped, in the event of project failure subsequent to startup. Since no adequate justification to warrant approval of automatic recovery of shipping costs in the event of permanent project failure prior to or subsequent to project completion and gas flow has been advanced, recovery of such payments will remain subject to a separate Section 4-type filing. This does not mean that recovery is precluded; rather, the extent to which shipping costs may be recouped and the manner in which they may be flowed through to Pac Indonesia's customers must be determined based on the facts surrounding actual project noncompletion or abandonment.

4. Post Startup Operating and Maintenance Costs

Zapata, Odyssey, and Zodiac argued that any increases in operating and maintenance costs should automatically be flowed through by Pac Indonesia to consumers by means of an all events cost-of-service tariff, Specifically, Xapata stated that its contract with Pac Indonesia defining the permissible escalations in such costs meets the prudent cost incurrence test.

At the conference of the parties on February 22, 1978, we stated that ERA was inclined to allow an automatic flow-through of actual ship operating and maintenance costs. The CPUC agreed with that position, citing the fact that the operating costs are based on specific escalators or actual contract costs, such as for fuel or labor, and recognizing DOE/ERA's authority to audit the costs. We conclude that such costs may be flowed through in Pac Indonesia's tariff, subject to reservation of the right to review these costs when they are proposed to be passed on to consumers to assure that the costs are contractually justified and calculated correctly.

B. One Day Suspension, Minimum Bill and Cost-of-Service Tariff

1. One Day Suspension

The Applicants stated in their application for rehearing that DOE/ERA's imposition of a fixed-rate tariff necessitates adding a permanent one day suspension period on any rate increases in order to assure recovery of legitimate costs without regulatory lag. Hollister opposed allowing a one-day suspension condition; the CPUC agreed with the proposal.

After reviewing the filing, we conclude that a one-day suspension period on Pac Indonesia's recovery of any rate increases, subject to refund, is appropriate, at least in the initial years of operation. However, any increased costs passed through to consumers and later disallowed must be

adjusted so that rebates to consumers reflect the time value to the Applicants of the funds already collected.

2. Minimum Bill

Opinion No. One adopted the Administrative Law Judge's Minimum Bill provision for the Applicant's tariffs which, among other things, precludes recovery on nondelivered volumes of both equity and a return on equity during periods of delivery interruptions below 90 percent of contract volumes. Any such costs, however, can be recovered by means of a subsequent Section 4-type proceeding, but only on a showing of extraordinary circumstances.

The Applicants stated in their application for rehearing that they are willing to accept DOE/ERA's order and place their return on their investment at risk during project interruptions. However, they object to the need to show extraordinary circumstances and argue that such a requirement imposes a more onerous standard on this LNG project than on interstate natural gas pipeline projects, which they allege are lower-risk ventures. Tennessee also questioned the need to show extraordinary circumstances in order to recover equity costs.

Both the CPUC and GM urged that the Minimum Bill provision not be modified since, in its present form, it equitably apportions the risk of service interruption between customers and stockholders. The CPUC also advocated that the "extraordinary circumstances" standard not be weakened on rehearing, in order to protect California ratepayers from the automatic assumption of risk resulting from interruptions due to activities outside the Applicants' control.

We again conclude that the Minimum Bill as it now stands is fair when weighed against the apportionment of risks involved with this project between the Applicants and consumers and when viewed in combination with our treatment of the other cost elements in the project. We also reaffirm that the Applicants will be required to demonstrate extraordinary circumstances in order to recover equity costs for undelivered volumes during periods in which deliveries are below 90 percent of contract volumes.

As discussed further in the section of this opinion on the cost-of-service tariff, this international, long-haul ocean-shipping project involves risks which are not present in conventional, overland, continuous-flowing gas pipeline projects. Moreover, the marginal nature of LNG imports from abroad in terms of our preferred order of gas supplies, as stated in Opinions No. Two, Three, and Four, means that there are no countervailing national reasons for forcing consumers automatically to bear the risks of substantial project interruptions. In these circumstances, the rate of return which the applicants will have an opportunity to earn should, of course,

reflect the risks they bear, but we cannot automatically transfer from the investors to consumers inevitable responsibility for the recovery of equity costs during periods, if any, of extensive curtailment of deliveries.

This does not place an unfair burden on the project sponsors in the case of recovery of equity, any more than in the case of return on equity to which the Applicants have not objected. Furthermore, recovery is not necessarily prevented by DOE/ERA's adopting the "extraordinary circumstances" standard. There may well be situations where it is fair and prudent to interrupt deliveries below 90 percent of contract volumes, and we do not interpret the "extraordinary circumstances" standard as necessarily precluding either recovery of equity, or even a return on equity, in such cases. Rather than limiting recovery to a few extreme situations, the standard shifts the burden of justifying recovery of equity costs to the project sponsors. Indeed, the standard we have prescribed is more liberal to the investors than that adopted by the Federal Power Commission in previous LNG import cases, where recovery of equity costs during interruptions was absolutely precluded.2/

3. Cost-of-Service Tariff

In Opinion No. One, the Applicants' proposed all-events cost-of-service tariff was found not to be in the public interest. Rather than allowing the automatic flow-through of all costs, as the Applicants requested, a volumetric fixed tariff rate of $3.42 per MMBtu for regasified LNG was ordered, subject to certain adjustments related to operation of the minimum bill and any renegotiated and approved price escalation provisions. The fixed tariff included a shipping cost component of $1.23 per MMBtu, a gas purchase price component of $1.25 per MMBtu and a terminating cost component of $.82 per MMBtu.

The Applicants, INGAA, AGA, Tennessee and El Paso argued in their applications for rehearing that disapproving the automatic flow-through of all costs would jeopardize financing for this and other projects by not guaranteeing full recovery of costs in a timely fashion. In addition, Odyssey, Zodiac and Zapata stated that a cost of service tariff is needed to assure the participating shipowners that Pac Indonesia can meet its obligations and to secure MarAd Title XI financing.

In their responsive filings, Hollister and GM opposed the modifications requested by the Applicants. They argued that such changes would shift the risks of the project from the sponsors to the consumers, without providing any compensating benefit to consumers, such as a decrease in the rate of return allowed Pac Indonesia. The CPUC did not comment on the Applicants' position.

DOE/ERA continues to believe that automatic pass-through of all costs of the project without any prior administrative review to ensure the prudency of

those costs would be inconsistent with the public interest. Moreover, the petitioners have not brought forward any new reason to warrant reversing our earlier decision. Hence, recovery by Pac Indonesia of any project costs above the volumetric fixed rate, except for the allowable adjustments, will be subject to subsequent Section 4-type proceedings to determine to what extent, if any, and how they may be passed through to consumers. The allowable adjustments, of which we reserve the right to review the accuracy of the calculations, are the minimum bill provision, the escalator and currency adjustment provisions approved in Opinion No. Two, which amount to an automatic flow-through of certain of the cost increases associated with the purchase price of the gas, and changes in the shipowners' operating and maintenance costs after project startup.

This treatment of risk is required by the nature of the type of project involved. Traditionally, in financing pipelines, prudently incurred debt and equity costs have been amortized and automatically passed through, along with operating expenses, to the users over time. But the cost of such projects are minor compared to those of an LNG project like the one at issue here. Moreover, the risk of substantial cost overruns, project interruption or even project failure in building overland pipelines is far less. To the extent that these risks are not borne by project sponsors and lenders, they must be borne by consumers. Hence, scrutiny of the shipping and terminaling costs above a certain level, as an incentive to mitigate overruns for projects with the capitol-intensiveness and long term duration of Pac Indonesia, is necessary to ensure that consumers are adequately protected.

In our intervention and testimony in the current FERC proceeding concerning the construction and operation of a commercial scale coal gasification plant (Great Plains Gasification Associates, et al., FERC Docket No. CP78-391 et al.), DOE has supported an automatic flow-through of costs through a cost-of-service tariff. However, our decision to support such a tariff was considered necessary to stimulate development of this country's first commercial-scale coal gasification project, which is of the utmost national importance. Moreover, DOE has made no general commitment to support similar tariff mechanisms for future high Btu coal gasification projects. Hence, certain regulatory and financial arrangements which ordinarily would not be acceptable, such as a cost-of-service tariff and the assumption by consumers of substantial force majeure risks, may be necessary in those circumstances to enable the sponsors to obtain financing and, thereby, to assure the financial success of the project. At the same time, DOE expects that the increased security to lenders and investors resulting from a cost-of-service tariff in the coal gasification project will be reflected in lower financing costs and a lower rate of return on equity than might apply absent this tariff mechanism.

The same overriding national interest does not apply to the LNG import

project at issue in this case. As stated in Opinions No. Two, Three and Four, LNG imported from abroad is marginal in terms of this nation's preferred order of gas supplies. In addition, the technology of shipping LNG over long distances is not only proven, but the United States already is importing LNG into three other locations, one of which has been in operation for a number of years. We do not anticipate that the requirement of a fixed volumetric rate in this case will abort the project, particularly since some of the objectives sought by the Applicants in requesting a cost-of-service tariff will be met by allowing a one-day maximum suspension of rate increases.

C. Conditioning Authorization of Oxnard on State Actions

Opinion No. One conditionally approved Oxnard, California, as a site for the receiving terminal and regasification facilities for the Pac Indonesia project. At the same time, DOE/ERA specifically stated that it was not rejecting any alternative site and that the applicants (as well as sponsors of other potential projects) were lot precluded from requesting approval of other sites, such as Point Conception, California.

DOE/ERA also said that it would exercise its discretion to take into account the procedures established by the California legislature in the Liquefied Natural Gas Terminal Act of 1977 (Terminal Act) to consider the appropriateness of LNG terminal sites within the state. Opinion No. One stated that,

> . . . California should have an opportunity to decide whether or not the operation of an LNG facility at Oxnard is acceptable to it as a means of facilitating the import and distribution of that gas to its citizens. Thus, pursuant to the Terminal Act, as well as any other applicable California legislation (present or future), California will have the opportunity to weigh and evaluate the safety and environmental characteristics of LNG site, taking into account the projected need for gas and supply thereof. (Page 40)

DOE/ERA did not, however, determine whether this department has exclusive jurisdiction over the siting of a LNG terminal in California by virtue of Section 3 of the Natural Gas Act (NGA), and if so, whether such authority should be exercised. Rather, Opinion No. One stated that,

> We can, of course, reconsider at a later date whether Federal jurisdiction should be exercised exclusively, in the event that the public interest then requires such a decision. (Page 40)

Three of the parties discussed the relationship between Federal and state siting authority on rehearing. Both the Sierra Club and Hollister, in their petitions for rehearing, agreed that DOE/ERA has the authority to defer

a siting decision concerning Oxnard to the state, but argued that such discretion should not be exercised in light mf the circumstances of this case. Bixby, in its answer to petitions for rehearing, argued that the Federal government's authority under the NGA is exclusive and that DOE/ERA not only should not, but cannot, abdicate siting responsibility to the state.

Since the time of Opinion No. One and the petitions for rehearing and other filings, California state agencies have determined that Oxnard is not an acceptable site under the Terminal Act. As the first step in the California procedure, the Coastal Commission ranked in order of desirability four sites for the first LNG terminal in the state. Oxnard was specifically excluded on the basis of not meeting the Terminal Act's population density criteria. The CPUC, after previewing the Coastal Commission's four recommended sites, granted conditional approval on July 31, 1978 for the construction and operation of a LNG terminal at Point Conception, subject to further consideration of evidence on several major environmental and safety issues. After later denying rehearing of its July 31 decision, the CPUC specifically rejected the other locations recommended by the Coastal Commission and stated that Point Conception is the only onshore site in California which meets the requirements of the Terminal Act.

In Opinion No. One, based on our record before us and the standard set forth in Section 3 of the NGA, we determined Oxnard is an appropriate site for LNG receiving and regasification facilities. At the same time, we held that other sites might also prove acceptable and declared a policy in favor of seeking a site acceptable under both Federal and California processes. We see no reason to reverse any of the foregoing conclusions.

In Opinion No. One, however, we went beyond avoidance of unnecessary confrontations between Federal and State law and policy and imposed a restriction upon the scope of the Federal permit issued. In ordering Paragraph Q, we prescribed that "the authorizations granted herein will not take effect . . . until all necessary Federal, state and local authorizations . . . have been secured, including the appropriate authorization from the California Public Utility Commission under the State's Liquefied Natural Gas Terminal Act of 1977." The foregoing restriction effectively prevents the Applicants from considering the Oxnard site, since it exercises federal discretion to grant the state the independent right to reject that site, even if the Federal statute could preempt the State's legal authority to reject. In view of the time it has taken California to approve finally an alternate site under the Terminal Act, and without diminishing our readiness to consider such an alternative, the question now arises whether ERA may delete the restrictive language from Paragraph Q of the Order dated December 10, 1977, and, if so, whether ERA should exercise that authority, for what reasons and subject to what terms.

In order to help us resolve these issues, comments from the parties are requested by June 15, 1979. Rebuttal comments may be filed by July 13, 1979. Until we have had further opportunity to consider the legal and policy questions involved and the comments filed, a final decision on whether to modify Paragraph Q will be postponed.3/

D. Other Safety, Siting and Environmental Issues

1. Design and Construction Safety Review

The Applicants, San Diego and the AGA, have argued that the Final Safety Analysis Report (FSAR) as outlined in Opinion No. One is unnecessary and too costly. The parties expressed concern that the FSAR would delay the startup of the LNG project, and requested further clarification assuring the Applicants that the FSAR will not be used as a vehicle to halt project start-up once the terminal has been completed. The CPUC expressed concern that the above comments in the applications for rehearing could be construed as attempting to limit the scope of the inspection program and the rights of interested parties to resolve safety concerns, and urged that no further limitation on the FSAR concept be granted by the DOE/ERA on rehearing.

DOE/ERA believes that during the design and construction phases of terminal facilities, there is a need for independent technical expertise (1) to judge the quality of the design of the LNG facilities and the extent to which it has faced up to known and potential risks, (2) to assure that all reasonable avenues have been taken to minimize those risks, and (3) to assure during the construction phase that what is built measures up to the design that was approved. The DOE/ERA views this procedure as a vehicle for assuring professional work and for ventilating complaints and problems before the appropriate Federal and state agencies before and, as appropriate, during construction--but not after construction--to assure the safety of the project. Its purpose is not to require further adjudicatory hearings or a second operating certificate similar to that required by the Nuclear Regulatory Commission. To clarify that point, we are changing the name of the procedure to the Design and Construction Safety Review (DCSR) in order to eliminate the connotations of an operating license attached to the term FSAR.

The petitioners have not presented any compelling evidence to convince us that there is a reason for eliminating the need for such a review. Hence, the order on rehearing will be modified to require (1) that the Applicants file with DOE/ERA detailed procedures and schedules for a DCSR, and (2) that they submit a report describing the actual review process prior to initial operation of the facilities.

By letter dated March 28, 1978, the Applicants stated that it was their understanding, based on the February 22, 1978 Conference held by the

Administrator, that the time requirements specified in Paragraph R of the December 30, 1977 Order have been tolled pending DOE/ERA's order on rehearing. The Applicants are correct in this assumption, and procedures and schedules for a DCSR will be required to be submitted to DOE/ERA within 90 days of the final order on rehearing. The other parties will have an opportunity to comment on the plan at that time and request that ERA modify the submitted plan.

2. Offshore Siting

The Sierra Club argued in its petition for rehearing that DOE/ERA did not fulfill its responsibilities under the National Environmental Policy Act (NEPA) by its failure to assess adequately the use of offshore sites for the terminal and regasification facilities. They further objected to DOE/ERA's refusal to reopen the record to consider additional evidence offered by the Sierra Club concerning the feasibility of an offshore terminal.

The decision to deny the Sierra Club's motion to reopen the record was based primarily upon a conclusion that our obligation under NEPA to consider all reasonable alternatives to our proposed action had been met and that the Sierra Club had made no showing that this conclusion was in error. There is no obligation under NEPA to examine, in great detail, every conceivable alternative to a proposed Federal action and every piece of evidence relating to those alternatives; there is an obligation to consider carefully all reasonable alternatives.

Offshore siting was considered in the FEIS in this proceeding and was determined not to be a reasonable alternative because the time required to implement an offshore LNG terminal was excessive in view of California's future gas requirements. That finding reflected a reasoned consideration of the offshore alternative based on the facts in evidence. The Sierra Club has offered nothing, either in its original motion or in this petition for rehearing, which tends to refute those facts, or the finding which rests upon them. Furthermore, as the Supreme Court stated,

> "Administrative consideration of evidence . . . always creates a gap between the time the record is closed and the time the administrative decision is promulgated [and, we might add, the time the decision is judicially reviewed] . . . . If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening." I.C.C. v. Jersey City, 322 U.S. 501, 514-515 (1944), as cited in Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., et al., 435 U.S. 519, 554-555 (1978).

The Sierra Club further argued that the DOE/ERA should reconsider its "decision" to ignore an October 24, 1977 motion by Santa Barbara to reopen the record to admit into evidence a report on gas supply requirements, the implication being that the proposed imported gas will begin to flow at a point far enough in the future to make an offshore siting option feasible. At the February 22, 1978 conference on rehearing, the participants were informed that DOE/ERA had no record of receiving Santa Barbara's October 24, 1977 motion, and an invitation was issued to resubmit the motion. (Conference transcript at 72). No party has since come forward with a copy of that motion, or the report it purportedly offered, to supplement the record.

3. Ordering Paragraphs G(10) and G(18) of the DOE/ERA Opinion Lo. One

The Applicants, Southern California, and Pacific requested a modification of paragraphs G(10) and G(18) of the December 30, 1977 Order to eliminate the requirement of obtaining State approvals that are no longer required by the Terminal Act.

The final order will be modified to reflect that these paragraphs only direct the applicants to consult with the respective state agencies; they do not require that formal approvals from the two agencies be obtained before the Applicants can proceed. Therefore, Paragraph G(10) of the December 30, 1977 Order will be modified to read

> "10. The marine facilities will be designed to minimize interference with long-shore sediment transport, and the Applicant will consult with the California Coastal Zone Conservation Commission on the design of the facilities."

Paragraph G(18) of the December 30, 1977 Order will be modified to read,

> "18. The Applicant will consult with the California Department of Fish and Game in order to coordinate the location of access roads or areas along the ultimate development route where it would diverge from existing right-of-way in mountainous areas and to select the most environmentally sound routes."

E. Supplemental Orders

In their petitions for rehearing, Pertamina, Tennessee Odyssey, Zodiac, and Zapata, requested a modification of the December 30, 1977 Order, paragraph W, to clarify that the stated right to issue supplemental orders is limited to issuing either an order on rehearing or subsequent orders necessary to implement the order on rehearing.

Section 3 of the NGA states that DOE/ERA "may from time to time after

opportunity for hearing, and for good cause shown, make such supplemental orders as it finds necessary or appropriate." The DOE/ERA was merely restating the law in the December 30, 1977 Order and we have not waived the right to issue any supplemental orders found necessary or appropriate. Hence, the order will not be modified.

III. Conclusion

The DOE/ERA finds that good cause exists to modify Opinion No. One as described in the body of this document. Upon completion of DOE/ERA's further consideration of the appropriateness of conditioning approval of Oxnard on all state authorizations, an appropriate final order on rehearing under Section 19(b) of the NGA will be issued, reflecting DOE/ERA's findings with respect to the siting issue and the issues discussed herein in Opinion No. Two.

Comments on the issues involved in ERA's conditional approval of Oxnard as the terminal site should be submitted by June 15, 1979. Any rebuttal comments should be filed by July 13, 1979.

Issued in Washington, D.C., April 24, 1979.

--Footnotes--

1/ For example, spreading the payments out over five years may be more equitable to Pac Indonesia's ratepayers than the three-year amortization period requested. Also, a more cost-based formula, such as the weighted average cost of each shipowner's cost of debt and equity capital, might be considered, instead of a formula using a bank prime rate plus some fixed percentage.

2/ Trunkline LNG Co., et al., FPC Dockets Nos. CP74-138 et al., Opinion No. 796 (slip opinion, p. 22) and Opinion No. 796-A (slip opinion, p. 13); Columbia LNG Corp., et al., FPC Dockets Nos. CP 71-68 et al., Opinion No. 620-A (slip opinion, p. 10).

3/ We, likewise, are withholding a final decision on the issue of requiring the placement at Oxnard of the LNG storage tanks below ground and the transfer piping below water until the issues concerning the scope of Paragraph Q are resolved.