Cited as "1 ERA Para. 70,108"

PAC Indonesia LNG Company, Western LNG Terminal Associates
ERA Dkt. No. 77-001-LNG), September 26, 1979.

Opinion on Rehearing and Final Order

I. Introduction

A. Summary of Proceedings

This opinion completes action by the Economic Regulatory Administration of the Department of Energy (DOE/ERA) on various Pacific Indonesia LNG Company (Pac Indonesia) and Western LNG Terminal Associates (Terminal Associates) applications to import liquefied natural gas (LNG) from Indonesia into the United States and to construct and operate a receiving terminal and regasification facility at Oxnard, California.

The proceeding 1/ was initiated on November 30, 1973, when Pac Indonesia filed an application with the Federal Power Commission (FPC) pursuant to Section 3 of the Natural Gas Act (NGA) for authority to import LNG into the United States. In early 1974, Western Terminal LNG Company (Terminal Associates' predecessor) filed an application with the FPC pursuant to Section 7 of the NGA for approval to construct and operate LNG receiving terminals at Oxnard, Point Conception and Los Angeles, California. The Oxnard terminal was to be used for the Pac Indonesia project, and the Point Conception and Los Angeles sites were to receive Alaskan LNG.

On July 22, 1977, the Pac Indonesia project with a receiving terminal at Oxnard was conditionally approved by the presiding FPC Administrative Law Judge (ALJ) in his Initial Decision and, on December 30, 1977, by the Administrator of the Economic Regulatory Administration in DOE/ERA Opinion Number One.2/ In the interim between the issuance of the Initial Decision and DOE/ERA Opinion Number One, the State of California, on September 15, 1977, enacted the Liquefied Natural Gas Terminal Act of 1977 (Terminal Act). The Terminal Act required that the first California LNG terminal be located in an area of very low population density.3/ Because this criterion could not be met by the Oxnard site, the California Public Utilities Commission was required under the Terminal Act to forego consideration of Oxnard as a potential LNG terminal location.

Consequently, Terminal Associates on November 11, 1977, filed an amendment to its Pac Indonesia application then pending before the Administrator of ERA, which sought to substitute a site at Little Cojo, some three and one-half miles east of Point Conception, for the terminal facilities. A similar amendment was filed with the Federal Energy Regulatory

Commission (FERC) with regard to the already pending Pac Alaska project application, which sought approval to land Alaskan LNG at the Point Conception site.4/

On December 30, 1977, DOE/ERA in Opinion Number One accepted the Applicants' application to construct terminal facilities at the alternative Point Conception site. However, because a record on the appropriateness of Point Conception as a site for the terminal had never been developed, DOE/ERA deferred ruling on Point Conception until a later time. Opinion Number One specifically stated that approval of the Oxnard site should not be construed as a rejection of Point Conception or any other potential alternate site. Point Conception and Oxnard are the only two proposed sites pending before either DOE/ERA or the FERC.

On May 10, 1978, the Secretary of Energy and the FERC agreed to a joint rule transferring the Point Conception amendment to the Commission for development of a joint evidentiary record on the Point Conception site. The rule provided that after the filing of briefs on exceptions to the FERC Administrative Law Judge's Initial Decision, a copy of the record would be forwarded to DOE/ERA for a final decision on matters within the Administrator's jurisdiction.

The Pac Indonesia and Pac Alaska amendments were consolidated and a joint evidentiary proceeding was held before a FERC administrative law judge. He issued his Initial Decision on August 13, 1979, which conditionally approved construction and operation of a LNG facility at Point Conception. Briefs on exceptions to the Initial Decision were filed on September 4, 1979, and jurisdiction over the proposed facilities, to the extent they would be used to receive Indonesian LNG, automatically reverted to DOE/ERA. The FERC retained jurisdiction over the use of the facilities for Alaskan gas.

Subsequently, on September 24, 1979, the Secretary of Energy delegated to the FERC final decisional responsibility on applications to construct and operate terminal facilities at locations other than at Oxnard to receive Indonesian LNG. DOE/ERA retained the full scope of the Secretary's authority to approve imports through a facility at Oxnard, including construction and operation of the facility itself, and retained authority to approve all aspects of the import except construction and operation of facilities at locations other than Oxnard. Section II of this Opinion provides a more detailed discussion of this delegation and ERA's resulting responsibilities.

B. Summary of DOE/ERA Decisions

In Opinion Number One, issued December 30, 1977, DOE/ERA conditionally approved a proposed importation of LNG from Indonesia to California, including conditional approval of the proposed LNG terminal facilities at Oxnard,

California.

Subsequently, DOE/ERA received various petitions for rehearing of that order. On February 28, 1978, DOE/ERA issued an order granting rehearing for the purpose of further consideration. DOE/ERA considered most of the issues raised on rehearing in its Opinions Number Two and Number Six, issued respectively on September 29, 1978 and April 24, 1979. Opinion Number Two discussed issues related to the price escalator and currency adjuster contract provisions, while Opinion Number Six considered the treatment in Pac Indonesia LNG Company's tariff of shipping and other costs and certain environmental and safety issues.

In Opinion Number Six, DOE/ERA also requested additional comments on whether paragraph Q of the December 30, 1977 Order, conditioning authorization of Oxnard on receipt of all necessary federal, state and local authorizations, could and should be deleted. Comments on this issue were to be filed by June 15, 1979 and rebuttal comments by July 13, 1979.

Comments on this issue were submitted by Western LNG Terminal Associates (the Applicants), the FERC staff, the CPUC, the Fred H. Bixby Ranch Company (Bixby), the Hollister Ranch Owner's Association and the Santa Barbara Citizens for Environmental Defense (Hollister), the Sierra Club, and San Diego Gas & Electric Company (San Diego). Reply comments were filed by all of the above, except San Diego.

This Opinion and Order sets forth the final DOE/ERA decisions on matters in this docket on which it chooses to exercise its jurisdiction, including issues raised on rehearing of Opinion Number One. In addition, it reaffirms the earlier DOE/ERA decision that the importation of Indonesian LNG into the United States is not inconsistent with the public interest, at least insofar as such decision concerns (1) security of supply and effect on U.S. balance of payments, (2) the price to be charged at the point of importation, (3) consistency with regulations and statements of policy of the DOE, (4) regional need for the gas, and (5) the eligibility of the participating distribution utilities. This decision is applicable regardless whether the port of entry is at Oxnard or Point Conception. Conditions and requirements ordered or decided in Opinion Numbers One, Two, and Six, as they relate to the importation itself and the terminal facilities at Oxnard are also reaffirmed. The Opinion further amends the December 30, 1977 Order to conform with the decisions reached in Opinion Numbers Two and Six, and this opinion. This final order on rehearing is a justifiable order under Section 19(b) of the Natural Gas Act.

II. Responsibilities

On October 17, 1978, the Secretary issued delegation orders to the Administrator and FERC dividing his jurisdiction between the two agencies on

all cases on the import or export of natural gas, except this case.

Under the delegation orders, Numbers 0204-25 and 0204-26, the Administrator was delegated the authority to determine whether a proposed import or export is not inconsistent with the public interest within the meaning of Section 3 of the Natural Gas Act, based on the considerations of (1) the security of gas supply and effect on U.S. balance of payments, (2) the price proposed to be charged at the point of importation or exportation, (3) consistency with the Department's regulations or statements of policy specifically applicable to natural gas imports and exports, and (4) national need for the natural gas to be imported or exported. In addition, the Administrator could, if he chose, consider such other factors within Section 3 of the NGA as he may determine are applicable to the circumstances of a particular case, including but not limited to considering the regional need for the gas and, in the case of imported gas, the eligibility of purchasers and participants and their respective shares. The Administrator was limited to considering the siting, construction and operation of particular facilities or selecting a place of entry only on the basis of considerations of the implementation of Departmental regulations or statements of general policy, the security of supply or the effect of the import on U.S. balance of payments.

The Secretary's delegation order to the FERC authorized it to exercise, with respect to imports and exports of natural gas, all other functions under Section 3 of the NGA which were not delegated exclusively to the Administrator and which were not previously exercised by him, as well as all functions under Sections 4, 5 and 7 of the NGA which may otherwise have been vested in the Secretary. Thus, among other things, the FERC generally had the authority to approve or disapprove the siting, construction, and operation of particular facilities and the place of entry of imported natural gas.

Even though in the delegation orders the Administrator did not have general authority to determine the site of the receiving terminal facilities, an exception to this general scheme of delegation was made in this case, where the Administrator had already approved one of the two requested sites. The Administrator's delegation order specifically granted him final decisional authority over all aspects of the import case, including construction and operation of the proposed facilities at Oxnard, Point Conception or any other site.

At the same time, FERC had jurisdiction over the Pac Alaska case. Because it involved interstate rather than imported LNG, FERC's jurisdiction over that case was based on Section 402(a)(1) of the DOE Organization Act rather than on a delegation of the Secretary's authority. Since the Applicants requested that Point Conception be authorized to receive both the Indonesian and Alaskan gas volumes, ERA, under its delegation, and FERC had concurrent jurisdiction over the same site and proposed facilities.

On September 24, 1979, the Secretary of DOE issued two new delegation orders to the Administrator and FERC (Delegation Orders No. 0204-54 and 0204-55). These orders in effect delegated his jurisdiction over all issues related to the Point Conception site (or any other site that may subsequently be sought by the Applicants other than Oxnard) to the FERC. Under the delegations, ERA retains full decisional authority over the proposed Oxnard site and facilities. In addition, ERA retains final authority to determine whether or not the importation itself of Indonesian LNG at either the Point Conception or the Oxnard site is not inconsistent with the public interest. Stated differently, with regard to the importation of Indonesian natural gas through a facility at Oxnard, ERA has exclusive jurisdiction over all aspects of the case cognizable under Section 3 of the NGA. With regard to the importation of Indonesian gas through a facility located at any other site, the general scheme for the division of responsibility between ERA and the FERC set forth in Delegation Orders 0204-25 and 0204-26 will obtain.

Opinions One, Two and Six resolve all the issues which are generally the responsibility of the Administrator under the new delegation order. In summary, those issues were resolved as follows. In Opinion Number One a find was made that the source of gas supply in Indonesia is reliable (See Opinion Number One it was also found that these additional volumes of gas are needed regionally in California to serve high-priority users (See Opinion Number One, page 20). In Opinions Number One and Two, it was determined that the price of the LNG at the point of importation was reasonable. (See Opinion Number One, page 6; Opinion Number Two, page 10). While Opinions Number One and Six ordered a flat volumetric delivered rate for the regasified LNG at Oxnard, that portion of the flat volumetric rate attributable to the price of the LNG itself and shipping to the point of importation can be determined from the record. This pate, subject to allowable adjustments, would apply to the LNG whether it is landed at Oxnard or at another terminal on the West Coast with similar ocean shipping distances, such as Point Conception.

In this opinion, DOE/ERA reaffirms that the importation of Indonesian LNG into the United States is, in and of itself, not inconsistent with the public interest, within the meaning of Section 3 of the NGA, insofar as each of the foregoing considerations are concerned. This determination is not altered by the fact that the port of entry of the LNG may well be some location other than Oxnard.

III. Discussion

A. Price of the LNG

The landed price of the imported LNG for this project is comprised primarily of the base price of LNG at the point of export in Indonesia plus the costs associated with shipment to the point of entry in the United States.

The base price, consisting of $1.25 per MMBtu for the Indonesian LNG plus adjustments for currency fluctuation and cost escalation, has been previously approved by DOE/ERA in its Opinion Number Two.5/ (We have estimated that if the LNG were delivered today, the operation of the escalator alone would result in a total price for the gas at the point of exportation from Indonesia of about $2.12 per MMBtu.)

Shipping costs to the point of entry in the United States have previously been determined only for an Oxnard facility. In Opinions Number One and Six, DOE/ERA found that shipping costs to Oxnard would be $1.23 per MMBtu and approved that amount for inclusion in Pac Indonesia's initial delivered rate.6/ In addition, incidental expenses such as taxes add another $.12 per MMBtu to the landed price. In sum, our previous decisions found that the landed cost at Oxnard would be $2.60 per MMBtu before the escalation of the base price or other adjustments.

When the applicant Terminal Associates amended its application to seek approval of a facility at Point Conception rather than Oxnard, the applicant Pac Indonesia did not similarly amend its application to seek approval of a different tariff reflecting a different shipping cost than the $1.23 per MMBtu approved for Oxnard. Therefore, the applicants have implicitly indicated that the shipping costs will be the same to Point Conception, which is located only about 50 miles to the west and north of Oxnard.7/ Several parties have contended that system reliability will be decreased (and presumably shipping costs on a per unit basis will be increased) because wind and wave activity at Point Conception will make berthing and unloading more difficult and will increase demurrage time. The ALJ found that this was not likely to be the case. (See Initial Decision at 180). For purposes of approving the landed price, this issue does not have to `e resolved by DOE/ERA, since the applicants are not claiming any additional costs related to wind and wave activity and are willing to settle for the $1.23 shipping costs approved for Oxnard. That amount is found to be the cost of ocean shipping, regardless whether the terminal is located at Oxnard or Point Conception.

In addition to having the authority to decide whether the landed price is not inconsistent with the public interest, the recent delegations by the Secretary give ERA authority to determine all other issues related to the importation through Oxnard, including the costs that will be allowed for terminaling and regasification of the LNG at Oxnard. In Opinion Number One, we determined that the cost of terminaling and regasification and delivery to SoCal and Pacific Gas and Electric Company (PG&E) at La Vista, California was $.82 per MMBtu.8/ Therefore, the total cost of delivered gas was determined to be $3.42 per MMBtu, and this amount was approved as the flat volumetric delivered rate, subject to certain approved adjustments.

With regard to imports through Point Conception, under the Secretary's

recent delegations the FERC will have ultimate decisional authority over the terminaling costs and tariff treatment of such costs. DOE/ERA does have the responsibility, however, to consider such costs (and other, downstream costs, for that matter) as they bear upon the reasonableness of the price of the LNG charged at the point of importation, an issue which is exclusively within the jurisdiction of DOE/ERA.

The ALJ's Initial Decision of August 13, 1979, relating to the siting of terminal facilities at Point Conception, indicates that estimated terminaling costs at Point Conception, if approved by the FERC, would exceed those approved by DOE/ERA in 1977 for Oxnard.9/ The ALJ estimated the terminaling costs at Point Conception to be $1.58 per MMBtu. We recognize that terminaling costs incurred at Point Conception might increase somewhat above these estimates resulting from the requirement of new or mitigating conditions by the FERC in its deliberations. For our purposes, however, a total price of $4.18 per MMBtu for delivery of the regasified gas is a reasonable estimate at least of the order of magnitude of the total cost of regasified LNG shipped through a Point Conception Terminal. (If shipped today, the total price with operation of the escalation provision would be approximately $5.05 per MMBtu.) The issue to be decided here, therefore, is whether the landed price of $2.60 per MMBtu, plus approved adjustments, at Point Conception is reasonable, in light of the fact that it would result in a total regasified price, after addition of terminaling costs, of $4.18, plus approved adjustments.

In previous LNG import decisions, DOE/ERA has assessed the reasonableness of proposed regasified LNG prices by comparing them with the prices of alternative fuels to determine whether the regasified LNG is cost competitive.10/ Imported LNG projects will generally be approved only if the regasified price is competitive with that of alternative fuels and will not jeopardize the development of more proximate sources of energy. Thus in Opinion Number One, we said in a case involving "prices that exceed the cost of equivalent energy supplies, the DOE may give more careful scrutiny to whether the project is in effect being inappropriately subsidized by being rolled in with low cost domestic gas, at the expense of future domestic gaseous fuel projects." (page 5)

More recently, we noted that:

> "The Department of Energy has been guided by two principles: (a) that at the burner-tip price-controlled, domestic fuels should not subsidize imported fuels; (b) that imported LNG should be priced low enough to be able to compete with residual fuel oil on its own merits (without regard to rolled-in pricing). LNG competes with residual fuel oil; many facilities actually have dual fuel capability so that they can switch back and forth between natural gas and residual fuel oil, depending upon the price." 11/

In the instant case, the price of the LNG after regasification at Oxnard or Point Conception will be higher, at least in the initial phase of the project, than that of low sulfur residual oils sold in California, but lower than the cost of electricity, which in Opinion Number One we found to be an alternative form of energy for high priority users. The price is about the same as for stove oil, a form of middle distillate.12/ We recognized in Opinion Number One the relatively high price level for this LNG as compared with the oil prices then prevailing. Yet we approved the import, as unique, given the extraordinary procedural delays and changes of law and policy which had thwarted the development of mutual trade relations 13/ and in consideration of the special environmental problems impacting California's fuel patterns.

In most cases the alternate fuel used for determining cost competitiveness is residual fuel oil. The unique circumstances surrounding California's energy needs renders comparison to residual fuel oil inappropriate in this case. The use of residual fuel oil is not a viable alternative for satisfying the energy needs of the high-priority consumers of the regasified LNG. In addition, the existence of stringent air quality standards in California virtually mandates the use of a clean burning fuel for the foreseeable future.14/ As we stated in Opinion Number One:

> "Given California's persistent air quality problems, clean-burning gas has a unique commodity value in California that is not reflected in strict comparison of Btu equivalency. In part because of these air quality problems, the residential, rural and commercial sectors of the California economy are heavily reliant upon natural gas, and the infrastructure presently exists to deliver it to many California homes and business establishments." (page 21)

Thus, due to limited flexibility in the California market to switch to other energy types because of its unique air quality problems, the delivered price of Indonesian LNG may be roughly equivalent to or even lower than the incremental costs of true alternative sources for residential space heating purposes available within the timeframe associated with this project.

In addition, the peculiar procedural history of this case, including the fact that it has been pending since 1973, warrants the use of a test unique to these circumstances. The applicants and their foreign supplier have long awaited the decision in this case, during which time the DOE's policy on determining the reasonableness of the landed cost has been developed. The cost comparison test applicable to LNG projects should not be applied as stringently here as it might be in other cases because of the considerable commitment to this project made by the applicants and their supplier before the policy was announced.

We note also that world oil prices have risen precipitously since we decided Opinion Number One so that the gap between the estimated escalation-adjusted regasified costs and the world crude oil price is proportionately smaller. Indeed, for the moment, world spot market crude oil prices even exceed such estimated costs of regasified LNG. More important, in the long run, rapidly raising crude oil costs are liable to reduce further or reverse that gap, given the large proportion of capital costs in the LNG project which will become fixed once ships and terminals have been built.

B. Reconsideration of Paragraph Q

A remaining issue under consideration is whether DOE/ERA can and should delete or modify ordering Paragraph Q in the Order of December 30, 1977.

Paragraph Q provides in part that:

> "The authorizations granted herein will not take effect as to any facility, or operation of any part of any facility, until all necessary Federal, state and local authorizations as to that part of the facility, or operation thereof, have been secured, including the appropriate authorization from the California Public Utility Commission under the State's Liquefied Natural Gas Terminal Act of 1977."

In Opinion Number One, DOE-ERA conditionally approved Oxnard, California, as a site for the receiving terminal and regasification facilities associated with the Pac Indonesia LNG import project. At that time we indicated that by conditionally approving the Oxnard site, we were neither rejecting any alternative sites nor precluding the applicants from requesting approval of other sites.

Since the issuance of Opinion Number One, California state agencies have determined that Oxnard is not an acceptable site under the Terminal Act. In addition, the CPUC has stated that Point Conception, California, is the only onshore site which is acceptable under the terms of the Terminal Act.15/ Since the CPUC decision in combination with Paragraph Q effectively prevents the Applicants from any further consideration of the Oxnard site,16/ we are reconsidering the impact of Paragraph Q.

The comments filed by the interested parties were useful and were carefully considered in reaching a decision. None of those commenting disputed DOE/ERA's authority to modify or delete Paragraph Q. The Applicants, San Diego, and the CPUC argued in favor of retaining Paragraph Q, while the FERC staff, Bixby, Hollister and the Sierra Club recommended modification or deletion.

The Applicants contend that Paragraph Q should not be changed because ".

. . if as a result of final decisions from both of the jurisdictions, different sites are chosen, the Pac Indonesia project will be aborted and therefore the questions of whether there can or should be preemption become academic. . . ." They also state that "[i]f both jurisdictions agree upon the site the issue will be moot."

The FERC staff favors deletion of Paragraph Q and argues that ". . . deletion of the objectional language could in no way be seen as prejudging the suitability nor precluding a decision to certificate the Point Conception site."

The comments of the CPUC were focused on their tentative approval of Point Conception and their desire for the Federal agencies to make a similar finding. They see no impediments, including unresolved seismic issues, to ultimate approval by all agencies. They agree with the Applicants that failure to approve Point Conception will stop the entire project because no other site could be approved under the Terminal Act within the same time frame.

Bixby, Hollister, and the Sierra Club reiterated their earlier arguments that the Terminal Act is unconstitutional and that in any event Federal authorities over gas imports preempt state law. They also contend that DOE/ERA has no authority to delegate to the state an effective veto power over terminal site selection as provided by Paragraph Q.

DOE/ERA has already approved the importation of LNG into California. We have agreed with the need for the project and we have approved a terminal site. In reaching our earlier decisions, we have consistently attempted to reach a consensus with the state on those areas of mutual interest, particularly facility siting.

While consultation with the state is appropriate, giving the state an absolute veto is another matter. Congress can and often does write legislation in such a way that the states can effectively block a project that has been approved at the federal level. But where, as here, the Congress has given responsibility for approval of the LNG site exclusively to a federal agency, that agency should only reluctantly and in the most unique circumstances give to the state what is in effect an absolute veto over the exercise of its statutory authority and responsibility. We do not find any such unique circumstances to be present here and, therefore, have decided to modify Paragraph Q to delete reference to state or local approval.

This modification of Paragraph Q is not intended to indicate DOE/ERA preference for Oxnard over Point Conception. Nor is it intended to express a view as to whether Congress intended to preempt any state law inconsistent with the approval of a particular site by DOE/ERA. Its only effect is to provide federal approval of the Oxnard site, if the Applicants should

ultimately decide to utilize that site.

C. Review of Paragraph J

Paragraph J of the DOE/ERA Order dated December 30,1977 provides with respect to the Oxnard site, that:

> "The Applicant will construct underground storage tanks and underwater LNG transfer piping, unless it demonstrates to DOE that there are significant advantages to above-ground construction and includes in such demonstrations data on the comparative safety, engineering and environmental consequences."

On February 22, 1978 at a formal conference with the parties, the Administrator of ERA requested that the Applicants submit a report concerning the undergrounding of LNG tanks and use of a subaqueous LNG transfer system at Oxnard. A submission by the Applicants was made on March 31, 1978 with service to all parties. No comments from the other parties were received.

The Applicants' submission consisted of several studies of existing and hypothetical designs for inground storage tanks and subaqueous transfer piping. In addition, the Applicants neither indicated a preference for a particular design, nor requested that Paragraph J be amended or deleted.

The data submitted cast doubt on the appropriateness of requiring underground tanks and, particularly, subaqueous piping at Oxnard. However, a DOE staff review of the documents found the material provided was insufficient for a detailed engineering or safety review of the various alternative designs and their possible impacts. In particular, there does not appear to be sufficient operating data for inground storage facilities and the subaqueous piping of the types proposed for Oxnard to warrant such a design being unequivocally recommended for use at that site.

Since the Applicants have not demonstrated that there are significant advantages to above ground storage tanks and a trestle transfer line, Paragraph J will not be modified. However, due to the fact that technological questions concerning the appropriateness of the inground tanks and subaqueous piping remain, the Applicants and other parties will not be precluded from requesting further reconsideration of this issue. DOE/ERA is willing to consider further evaluation of these issues should the Applicants eventually decide to build the terminal facilities at Oxnard.

IV. Summary

In summary, DOE/ERA reaffirms that Pac Indonesia's application to import Indonesian LNG into the United States, is not inconsistent with the public

interest based on the following findings. With regard to those considerations under section 3 of the NGA which are within the Administrator's responsibility under Paragraph a(1) through a(5) of the Delegation Order signed September 24, 1979, DOE/ERA, in Opinions Number One, Two and Six, and in this opinion, has found that:

1. This case involves a reliable and relatively secure source of gas supply;

2. The direct balance of payments impact of this import may prove less harmful than the import of an equivalent amount of oil;

3. The price of $2.60 per MMBtu plus allowable adjustments proposed to be charged at the point of importation into the United States at either Oxnard or Point Conception is reasonable;

4. There is a regional need for this additional source of supply of natural gas in California; and

5. The structure of this import, whereby the regasified LNG is bought directly and at its full cost by the individual state-regulated gas distribution utilities, is not inconsistent with the public interest.

With respect to Western Terminal Associates' application to construct and operate receiving terminal facilities at Oxnard, California, and to deliver the regasified volumes to SoCal and PG&E at LaVista, California, DOE/ERA finds that the proposed site, facilities and delivery arrangements are acceptable and not inconsistent with public interest, provided that the Applicants meet the safety and environmental requirements specified in this Order and in Opinion and Order Number One.

DOE/ERA reaffirms the tariff determinations affecting Western Terminal Associates made in Opinion Number One and Six to the extent the Indonesian LNG is delivered to the proposed Oxnard facilities. We make no determinations as to terminaling costs or treatment of such costs in Western Terminal Associates' tariff for any receiving facilities which are located at sites other than Oxnard.

V. Order On Rehearing

For the reasons stated above and in Opinion Number Two and Six, the DOE/ERA December 30, 1977 Order is amended as follows:

Paragraphs D, G(10), G(18), O, Q and R are modified to read as follows:

"(D)(1) Insofar as they reflect the price of the liquefied

natural gas at the point of importation into Oxnard, California, the construction, ownership and operation of facilities at Oxnard, and the sale of the liquefied natural gas, the tariffs, rate schedules and service agreements submitted pursuant to ordering paragraph (C) shall reflect a flat volumetric delivered rate of $3.42 per MMBtu for the regasified LNG, subject to the following adjustments. Said delivered rate shall govern sales of the resultant gas by Pac Indonesia to SoCal and PG&E at La Vista, California as outlined herein. Adjustments are permitted for:

"(a) Changes in the LNG base purchase price pursuant to the Indonesian crude oil export price and the Wholesale Price Index escalator proposed by the Applicants on July 28, 1978, and approved in DOE/ERA Opinion Number 2;

"(b) Currency revaluations as permitted by the Pac Indonesia--Pertamina contract unless the export price of Indonesian crude oil, as used in the base price escalator, has already been adjusted to compensate for currency value changes, in which case adjustments resulting from application of the currency revaluation factor would lot be permitted;

"(c) Flow-through of actual increased ship operating and maintenance costs incurred after start-up of the LNG deliveries, subject to the reservation of DOE/ERA's right to review those costs to assure that they are contractually justified and correctly calculated when they are proposed to be passed through to Pac Indonesia's customers; and

"(d) The minimum bill provisions for Pac Indonesia and Terminal Associates as set forth in Paragraph D of the December 30, 1977 Order."

"(D)(2) Insofar as they reflect the price of the liquefied natural gas at the point of importation into Point Conception, California, the tariffs, rate schedules and service agreements submitted pursuant to ordering paragraph (C) shall reflect a flat volumetric delivered rate of $2.60 per MMBtu for the LNG at the point of importation, subject to the following adjustments. Said delivered rate shall govern sales of the LNG by Pac Indonesia to its customers. Adjustments are permitted for:

"(a) Changes in the LNG base purchase price pursuant to the Indonesian crude oil export price and the Wholesale Price Index escalator proposed by the Applicants on July 28, 1978, and approved in DOE/ERA Opinion Number 2;

"(b) Currency revaluations as permitted by the Pac

Indonesia--Pertamina contract unless the export price of Indonesian crude oil, as used in the base price escalator, has already been adjusted to compensate for currency value changes, in which case adjustments resulting from application of the currency revaluation factor would not be permitted;

"(c) Flow-through of actual increased ship operating and maintenance costs incurred after start-up of the LNG deliveries, subject to the reservation of DOE/ERA's right to review those costs to assure that they are contractually justified and correctly calculated when they are proposed to be passed through to Pac Indonesia's customers; and

"(d) The minimum bill provisions for Pac Indonesia as set forth in Paragraph D of the December 30, 1977 Order, but only to the extent that Pac Indonesia's inability to deliver the LNG is caused by interruptions in the LNG supply prior to delivery from the ship's flange at Point Conception."

"(G)(10) The marine facilities will be designed to minimize interference with longshore sediment transport, and the Applicant will consult with the California Coastal Zone Conservation Commission on the design of the facilities."

"(G)(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."

"(O) Reports on the status of this LNG import program, outlining the progress of the various components of this project, the cost of any construction authorized herein in contrast to projected costs, the effect of any changes in the cost of LNG at the point of importation, the effect of any changes in the cost to gas users of regasified LNG at facilities located at Oxnard, California and other substantive information outlining the effectiveness of this program, shall be submitted by the Applicants to DOE/ERA semiannually, 45 days after each period ending June 30 and December 31."

"(Q) The authorizations granted herein will not take effect as to any facility located at Oxnard, California, or operation of any part of any such facility, until all necessary Federal authorizations as to that part of the facility, or operation thereof, have been secured."

"(R) Within 90 days of the issuance of this Order on Rehearing, Applicants will file with DOE/ERA proposed detailed procedures

and schedules for the conduct of a Design and Construction Safety Review (DCSR) of the facilities authorized to be located at Oxnard, California. The other parties may file comments on the Applicants proposal within 45 days thereafter. Applicants will not commence operation of the facilities authorized herein until (1) a schedule and procedures for the conduct of a DCSR have been approved by DOE/ERA, (2) a DCSR complying with the approved schedule and procedures has been conducted, and (3) a report describing the actual review process is submitted to DOE/ERA."

New Paragraphs X and Y are added as follows:

"(X) Pac Indonesia's recovery of any increases in the rates allowed in Paragraph D from its customers, will be suspended for one day. The amount of any such rate increases already collected which are later disallowed by DOE/ERA, as well as an amount reflecting the time value of the disallowed funds, will be refunded by Pac Indonesia to its customers."

"(Y) The provisions of this Order constitute the only requirements imposed by DOE/ERA with respect to Terminal Associates' and Pac Indonesia's tariffs, rate schedules and service agreements governing the construction, ownership and operation of facilities at Point Conception, California, and the sale of the natural gas from these facilities."

In addition, Paragraphs G, H, I, J, K and N shall be applicable only to facilities to receive, store and regasify LNG which are authorized to be located at Oxnard, California.

Except as herein granted, all applications for rehearing are hereby denied. This Order is a final justiciable order under Section 19(b) of the Natural Gas Act.

Issued in Washington, D.C. 26 September 1979.

--Footnotes--

1/ A detailed review of the proceedings can be found in the FPC Initial Decision of July 22, 1977 for Dockets CP74-160, CP74-207, and CP75-83-3, DOE/ERA Opinions Number One, Two, and Six issued December 30, 1977, September 29, 1978, and April 24, 1979 respectively (1 ERA Paras. 71,101, 71,102 and 71,106, Federal Energy Guidelines); and FERC Initial Decision of August 13, 1979 for Dockets CP75-140, CP74-160, CI78-453, and CI78-452.

2/ On October 1, 1977, the Department of Energy (DOE) was activated pursuant to Executive Order No. 12009, September 1977 (42 F.R. 46267) and the

authority to approve the importation and exportation of natural gas under Section 3 of the Natural Gas Act was transferred to the Secretary of Energy pursuant to Sections 301 and 402(f) of the Department of Energy Organization Act (Pub L. 95-91) (the Act). The Secretary's authority was delegated on October 1, 1977, to the Administrator of the Economic Regulatory Commission (DOE Delegation Order No. 0204-4, paragraph 4). On October 5, 1977, after completion of the evidentiary record and the issuance of an initial decision by ALJ, the record of the Pac Indonesia case was forwarded to ERA for a final decision.

3/ The Terminal Act also sought to simplify the state regulatory process by, among other things, vesting in the California Public Utilities Commission (CPUC) the sole authority to issue a state license for the LNG terminal and dispensing with the necessity to obtain various other state and local permits, such as a permit from the California Coastal Commission (section 5581).

4/ For purposes of this opinion, the term "Point Conception" will be used to refer to the site known as Little Cojo.

5/ See DOE/ERA Opinion Number Two, pages 7-15.

6/ See DOE/ERA Opinion Number One pp. 26-28 and opinion Number Six pp. 4-11 for a detailed discussion of the shipping issues. The $1.23 value was derived from Exhibit 74 pg. 1 of CP 74-160 (Pac Indonesia/Oxnard) dividing the total cost of shipping (line 2) for year 1 (Item F), $114,743,000, by the volume delivered to Southern California Gas Company (SoCal) (line 9) in year 1 (Item F), 93,621 MMBtu, to arrive at $1.23 per MMBtu.

7/ A substantial portion of the overall shipping cost is generated by the capitalization of the American built ships and the foreign ship charter payments. The total capital costs of those vessels and charter payments will not be any different if the terminal is at Point Conception rather than at Oxnard.

8/ That finding did not provide, however, for any extra costs which might be incurred if an Oxnard facility were built with further DOE/ERA ordered design criteria, such as underground storage tanks and placing the transfer piping under water.

9/ See Initial Decision at pp. 107-112 for detailed description of estimated terminaling costs.

10/ See DOE/ERA's Opinion Number 3, dated December 18, 1978, in Tenneco Atlantic Pipeline Company, et al., (ERA Docket No. 77-010 LNE).

11/ Columbia LNG Corp., ERA Docket No. 79-14-LNG (Order Approving in Part an Application for Amendments to Import Authorization and for Interim Relief, August 22, 1979; DOE/ERA Opinion and Order Number Seven, 1 ERA Para. 70,107, at p. 70,623, Federal Energy Guidelines).

12/ The projected first year cost in 1977 dollars of the regasified LNG is $3.42 per MMBtu at Oxnard and $4.18 per MMBtu at Pt. Conception ($2.60 landed cost plus $1.58 first year terminaling cost). If the LNG was actually being delivered today, we estimate that the cost of the regasified LNG would be approximately $4.29 per MMBtu at Oxnard and $5.05 per MMBtu at Pt. Conception, based solely on the operation of the base price escalation provision approved in Opinion No. Two. Recent EIA Form 423 shows that purchases (July 1979) of .25 percent sulphur residual fuel oil by California electric utilities averaged $3.06 per MMBtu. The spot market price of stove oil (PS 100) at Los Angeles as reported by the Oil Buyers' Guide on September 17, 1979, was between 69 cents and 75 cents per gallon, or $4.98 and $5.41 per MMBtu respectively. The price of electricity in California at the present time is generally in excess of $10.00 per MMBtu. (For purposes of comparison, the recently concluded agreement to import pipeline gas from Mexico approved a January 1980 border price of $3.625 per MMBtu.)

13/ See Opinion Number Two, p. 8.

14/ Even low priority uses demand clean-burning fuels under California's standards and conditions. To the extent natural gas is not required for high priority uses, the availability of imported LNG may qualify powerplants, which would otherwise be prohibited from burning gas in the future under the Powerplant and Industrial Fuel Use Act of 1978, for an exemption under Section 312(i) of the Act.

15/ On September 20, 1979, the Office of Coastal Zone Management (OCZM) of the National Oceanic and Atmospheric Administration approved an amendment to the California Coastal Management Plan (CCMP) incorporating the Terminal Act into the CCMP. The Coastal Zone Management Act provides that Federal actions must be consistent with Federally-approved coastal zone management plans. However, the OCZM regulations, 15 C.F.R. 930, provide that the federal consistency requirement applies only for projects for which application was made after approval of the plan. Therefore, the CCMP does not apply to the California LNG applications pending before ERA and FERC, and neither ERA or FERC would be bound to conform their decisions to the requirements of the Terminal Act. DOE/ERA's approval of the Oxnard terminal site thus is unaffected by the CCMP.

16/ Opinion Number Six stated that: "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 30, 1977, and, if so, whether ERA should exercise that authority, for what reasons and subject to what terms." (DOE/ERA Opinion Number 6, page 21).