Cited as "1 ERA Para. 70,117"

Trunkline LNG Company (ERA Docket No. 82-12-LNG), February 25, 1983

DOE/ERA Opinion and Order No. 50

Order Deferring a Decision on the Issue of Price, Denying Certain Relief, and Imposing Certain Conditions on the Authorization

I. Introduction and Project Description

A. Introduction

The Administrator of the Economic Regulatory Administration (ERA) and the Federal Energy Regulatory Commission (FERC) have received numerous complaints, petitions, motions, and protests relating to Trunkline LNG Company's (TLC) authorizations to import, transport in interstate commerce, and resell liquefied natural gas (LNG) from Algeria. The agencies have been asked to review the authorizations that were granted to TLC in 1977 by the Federal Power Commission (FPC).1/ Certain parties allege that the price is no longer reasonable, that the gas is not now needed, and that the supply is not reliable.

In the interest of expediting the review and to avoid procedural duplication, the Administrator and the Commission decided to hold a consolidated ERA/FERC hearing. Accordingly, on October 28, 1982, the ERA and the FERC issued a joint order consolidating the FERC proceedings, initiating an ERA proceeding, setting a joint ERA/FERC hearing, denying waivers, motions, and petitions, and granting and inviting interventions. 47 FR 49439, (November 1, 1982). The joint order specified the issues that were to be addressed in the hearing. The joint hearing concluded on December 14, 1982; proposed findings of fact were filed on December 20, 1982; and reply briefs were submitted on January 3, 1983.

This opinion and order summarizes the history of TLC's 1977 import authorization, describes the procedural history of this proceeding, discusses the ERA's jurisdiction and authority to act, addresses the substantive issues of the case, declines to revoke TLC's authorization, but defers the decision with respect to the reasonableness of price, stipulates certain conditions, and makes certain recommendations to the FERC and TLC.

B. Project Description

In 1977, the FPC authorized TLC to import from Algeria approximately 165 Bcf equivalent of LNG annually, for a period of twenty years, and to construct and operate the necessary terminal facilities at Lake Charles, Louisiana.2/ Opinion Nos. 796 and 796-A approved a price for the revaporized LNG delivered to the system of Trunkline Gas Company (Trunkline) of $3.37 per Mcf. Opinion No. 796-A approved a price adjustment mechanism in the gas supply contract between TLC and Sonatrach, the Algerian national oil and gas company, by which the price of LNG, FOB Algeria, would change semiannually based on the Btu equivalent for the weighted average prices of No. 2 and No. 6 fuel oil in New York harbor (approximately 10 cents for every $1.00 change in the average price of the designated fuel oils). Opinion No. 796 fixed April 1, 1980, as the date by which deliveries were to begin. That date has been extended by the Commission from time to time, most recently on July 27, 1982, when the date was extended to July 1, 1983, based upon TLC's representation that Sonatrach was experiencing technical difficulties with its facilities in Algeria.

On July 1, 1982, TLC filed for arbitration before the International Chamber of Commerce, alleging that the Lake Charles terminal had been ready to receive LNG since August 7, 1981, that the LNG liquefaction facilities in Algeria had been ready since June 21, 1981, and that Sonatrach had refused to deliver LNG under the gas supply contract.

On August 9, 1982, TLC announced that it had reached agreement with Sonatrach on a shipping schedule under which the first shipment of LNG would be loaded in September 1982, and that regular deliveries would start shortly thereafter. TLC also announced that it had agreed with Sonatrach to amend the price change mechanism of the gas supply contract whereby the formula based on No. 2 and No. 6 fuel oil would be replaced by a formula that would change the price of LNG, FOB Algeria, quarterly, based on the Btu equivalent of the average posted prices of five specified foreign crude oils (approximately 17 cents for each $1.00 change in the basket of crudes). This amendment is subject to the approval of both the Algerian and U.S. regulatory authorities, but stipulated that TLC would not seek approval until regular deliveries under the existing contract had been achieved. Upon reaching this agreement, TLC withdrew its request for arbitration before the International Chamber of Commerce. TLC has subsequently indicated it does not intend to submit the amendment for approval in the near future.

TLC also announced that the projected cost of revaporized LNG delivered to the Trunkline System based on the formula of the original authorization would be $7.16 per MMBtu ($6.85 as of January 1983).3/ Part of the increase from the $3.37 per MMBtu approved in Opinion Nos. 796 and 796-A is attributable to operation of the original price change mechanism, and the rest

of the increase is attributable to cost overruns on the construction of the Lake Charles terminal and the two U.S. flag ships.4/

II. Procedural History

Following the August 9, 1982 announcements by TLC, a number of complaints, petitions, and protests were filed with the ERA and the FERC. Those that were filed with the ERA are listed below, and are described in the joint ERA/FERC order issued October 28, 1982, which is incorporated herein by reference.

A. Filings Before the ERA

1. State of Michigan and Michigan Public Service Commission (Michigan)

2. Michigan Consolidated Gas Company (Michigan Consolidated)

3. Association of Businesses Advocating Tariff Equity (ABATE)

4. Consumers Power Company (Consumers Power)

5. Laclede Gas Company (Laclede)

6. Illinois Power Company (Illinois Power)

7. Representatives Robert H. Michel and Paul Findley, the Illinois Commerce Commission, Associated Natural Gas Company, Battle Creek Gas Company, Central Illinois Light Company, Central Illinois Public Service Company, Citizens Gas Fuel Company, Michigan Gas Utilities Company, Missouri Utilities Company, Ohio Gas Company, Richmond Gas Corporation, Southeastern Michigan Gas Company, and Toledo Edison Company (the General Service Customer Group)

8. Central Illinois Public Service Company (CIPS)

9. State of Illinois, the People of the State of Illinois, the Attorney General of the State of Illinois (Illinois)

B. TLC's Responses to Complaints and Petitions

On September 25, 1982, TLC filed a response to the complaints filed by Michigan Consolidated, ABATE, and Laclede. On October 12, 1982, TLC filed a response to the petitions of Illinois Power, the General Service Customer

Group, and CIPS. TLC's responses are described in the October 28, 1982 joint ERA/FERC order.

C. ERA's Public Conferences

The ERA held public conferences in Peoria and Springfield, Illinois, on October 14 and October 15, 1982, respectively. The purpose of the conferences was to permit interested persons to comment on the various complaints and petitions filed with the ERA regarding TLC's import authorization and TLC's subsequent response to the complaints. The ERA received views on whether it should initiate a proceeding to review TLC's import authorization and, if so, what issues it should address, what kind of evidence it should gather, and what kind of procedures and timetable for action it should adopt.

D. ERA/FERC Consolidated Hearing

As indicated above, on October 28, 1982, the ERA and the FERC issued a joint order that, among other things, initiated an ERA proceeding, granted intervention to numerous parties, and prescribed a consolidated ERA/FERC hearing 5/ and expedited procedures. The joint order specified 19 issues to be addressed in the hearing and on brief.

The Chief Administrative Law Judge (ALJ) of the FERC presided over this joint hearing. Prehearing conferences were held on November 4, 1982, November 9, 1982, and November 11, 1982. The hearing commenced November 15, 1982, and concluded December 14, 1982. The hearing produced a record of 4,478 pages of transcript and 228 exhibits. Proposed findings of fact were filed on December 20, 1982, by joint complainants and petitioners,6/ Indiana Gas Company, Inc., TLC, Lachmar, The Chase Manhattan Bank, N.A., and the FERC staff. Oral argument in lieu of initial briefs was held on December 20, and 21, 1982. Oral argument was presented before the ALJ by joint complainants and petitioners, the State of Illinois, TLC, Citizens Gas & Coke Utility, Indiana Gas Company, Lachmar, The Chase Manhattan Bank, N.A., Interstate Natural Gas Association of America, and the FERC staff. Reply briefs were filed on January 3, 1983, by joint complainants and petitioners, the Association of Businesses Advocating Tariff Equity, the Indiana Industrial Energy Consumers Group, the Process Gas Consumers Group, Laclede Gas Company, Missouri Public Service Commission, Mississippi River Transmission Corporation, Northern Illinois Gas Company, Bay State Gas Company, et al., Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., the People of the State of Illinois and the State of Illinois, the Illinois Commerce Commission, the Public Service Commission of the State of New York, Interstate Natural Gas Association of America, TLC, Lachmar, and the FERC staff.

The ERA received an unsolicited memorandum dated December 24, 1982, from the Algerian government to the ERA, in which the Algerian government maintains that it is a reliable trading partner. This memorandum was received after the record was certified to the ERA and thus copies of the memorandum were not distributed to all parties involved in the hearing. As a result, the memorandum did not become a part of the record at that time. The ERA has not relied upon this memorandum in making this decision. However, the memorandum has been placed in the public file of this proceeding.

E. ALJ's Recommended Decision

In the October 28, 1982 joint ERA/FERC order, the FERC ALJ was granted authority to compile and certify a record to both the ERA and the FERC. In a subsequent FERC order, dated November 15, 1982, the ALJ was given authority to render a non-binding recommended decision to the Commission on those matters within its jurisdiction. With respect to matters within the ERA's jurisdiction, the ALJ's authority remained solely to compile and certify a record to the ERA.

The ALJ, in his January 28, 1983 recommended decision to the Commission, recommended that the complaints and requests for a show cause order be dismissed based upon his findings that: (1) the ERA and the FERC do not have the authority to revoke, suspend, or adversely modify TLC's authorization and certification; (2) TLC has not violated the terms and conditions of its existing authorization; (3) Algeria has lot proved to be an unreliable supplier of LNG to TLC; (4) the LNG project is necessary to meet Trunkline and Panhandle system requirements; and (5) the Algerian LNG is marketable under the terms of the existing authorization.

III. Summary of the Decision

In making a decision in this proceeding, we fully examined the record in the context of our responsibilities under section 3 of the NGA and the fundamental criteria set forth in Delegation Order 0204-54, as well as additional factors raised by the parties in the evidentiary hearing. After reviewing the record as described in detail below, we find that it does not provide sufficient evidence to warrant this agency suspending, rescinding, or revoking TLC's import authorization at this time.

We have felt a particularly heavy burden of responsibility in considering this opinion and order. Issues of great significance to the energy security of the nation are involved, affecting, among others, the energy industry, the consumer, financial institutions, and the government. In

considering the evidence, we have recognized the importance of weighing the facts with the responsibility we have of crafting dependable but responsive public policy. We are not anxious to breed uncertainty into existing or future import authorizations, as their reliability is basic to the development of large-scale energy projects dependent upon such licenses. On the other hand, we cannot ignore the impact on the consumer and on the viability of these LNG projects of significant changes in our energy economy. Our decision, we believe, has to balance these concerns.

We are not suspending, rescinding or revoking TLC's authorization with this order, but we are not deciding at this time whether this authorization should be modified. We are deferring out decision on the issue of the reasonableness of the price of this LNG. We are also concerned about the future reliability of this supply and are imposing certain conditions on TLC in this regard. We are mindful that this project, in a free gas market, would probably be uneconomical. The decision in this opinion and order reflects this concern and provides us the further opportunity to supplement the record and address these questions within six months.

Our deferral of the price issue rests on several considerations. There are a myriad of uncertainties in the U.S. gas market today. These, it is hoped, will be clarified during the current session of Congress, when the existing natural gas regulatory laws may be modified or repealed. The Executive Branch is likely to propose legislation to this effect. Many other bills on this subject have been introduced by members of Congress. In addition, the Department of Energy is reviewing the policies that bear on gas import authorizations, the U.S.-Canadian bilateral discussions are being held on this issue. Also, world prices of oil are undergoing significant change, with uncertain consequences for gas pricing. We believe that at least six months is necessary to allow clarification of these uncertainties.

Additionally, we have deferred our decision on price as a result of careful consideration of the views presented in the record concerning the reasonableness of price. The record shows that the price of this LNG, even when rolled-in with other supplies, is at the high end of the price range of alternative energy supplies marketable today. Further, we anticipate that the LNG may not be marketable in the months ahead as the "old gas" price cushion under the Natural Gas Policy Act (NGPA) erodes. Thus, the price of this gas is rapidly approaching a level at which it may not be considered reasonable.

Further, in six months, we expect to have changes in our import pricing policies in place that will be more flexible and sensitive to market changes and will result in prices more in line with domestic market clearing

levels than the present system. Deferral of a decision on the issue of price will give time for the U.S. to complete its discussions with Canada, and to develop a new imported natural gas pricing policy, thus enabling us to treat Algerian LNG in a manner consistent with the new policy and the record.

Because of these changes that are already occurring in U.S. markets, and the prospects that this LNG may be unmarketable in these changed conditions, we recommend that TLC, during the period of our deferral, enter into discussions with Sonatrach on the price of the LNG. The discussions should seek to achieve a more flexible pricing agreement through a renegotiated base price and price escalator to adjust to changing conditions in the U.S. gas market, or to obtain a more flexible take-or-pay arrangement that would result in a more market responsive inclusion of this gas into U.S. markets.

We are hopeful that private negotiations between the two parties involved would result in mutually acceptable terms more appropriate to today's market, as we recognize the concern that our unilateral modification of the original pricing arrangements could threaten the viability of this project. In view of the support in the record for some repayment of the investment in this project if it were not to go forward, we would be willing to recommend to the FERC repayment of TLC's capital investments, as well as a portion of its anticipated return on investment, if the project were to be terminated as a result of such negotiations.

Finally, also within the context of the pricing issue, we hereby recommend to the FERC that, in the event it allows Panhandle/Trunkline the requested purchased gas adjustment (PGA), it grant the PGA subject to refund after consideration of the ERA's final decision on price. This will ensure that consumers will ultimately obtain the benefits of any reductions in price that may be required by the ERA or achieved by TLC.

The record does not contain sufficient evidence to support the contention that Algeria has been, to date, an unreliable supplier in the TLC project. However, there is evidence that indicates that Algeria's record with respect to other contracts and trading partners has been mixed. Because the potential exists for a supply interruption in the future, we have concluded that it is appropriate to impose a condition on the authorization requiring that TLC develop and maintain a comprehensive contingency plan to ensure that, to the extent practicable, its gas customers' needs are met in the event of a sudden interruption of the Algerian supply. Further, we are requiring TLC to submit periodic reports of any information it might acquire that could relate to the future security of this Algerian LNG supply.

We conclude that there will be a national and regional need for supplemental supplies of gas over the 20-year period of its authorization. Even though, over the short term, supplies of gas have increased and domestic consumption has decreased, we find that over the next 20 years there will be a need for supplemental gas supplies from a variety of sources. Despite ample opportunity, no party demonstrated that there will not be a need for the volume of gas at issue in this proceeding over the period of the TLC authorization.

We further conclude that the effect on the U.S. balance of payments of this import is slight and is no greater than that anticipated when the authorization was originally granted in 1977.

Finally, we have determined that the ERA does have authority under the NGA to review this existing authorization at any time in the future and to make any change or modifications, including revocation or suspension, necessary to ensure that the continued importation of this LNG meets the statutory standard.

IV. Jurisdiction

Section 301 and 402(f) of the DOE Organization Act 7/ gave the Secretary of Energy jurisdiction over imports and exports of natural gas pursuant to section 3 of the NGA. This responsibility was delegated to the Administrator of the ERA on October 1, 1977.8/ On October 2, 1979, the Secretary issued two delegation orders delineating the areas of authority between the ERA and the FERC with respect to section 3 matters and setting forth certain criteria to aid the ERA in executing its responsibilities.9/

Section 3 of the NGA reads as follows:

> After six months from the date on which this act takes effect no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Administrator] authorizing it to do so. The [Administrator] shall issue such order upon application, unless, after opportunity for hearing, [he] finds that the proposed exportation or importation will not be consistent with the public interest. The [Administrator] may by [his] order grant such application, in whole or in part, with such modification and upon such terms and conditions as the [Administrator] may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as [he] may find necessary or

appropriate.

The NGA thus establishes a presumption in favor of authorizing an import of natural gas.10/ The ERA must authorize an import unless it determines that it would not be consistent with the public interest. To deny an import application, the ERA must determine that granting the application will not be consistent with the public interest. In challenging an existing authorization, a complainant bears a heavy burden of proof to demonstrate that the import is now inconsistent with the public interest, as is discussed further in section V.A. below.

The ERA's determination is based on its evaluation of the relevant information in the record of a particular case or in the public domain in light of certain criteria described in Delegation Order 0204-54: (1) the security of the gas supply; (2) the effect on the U.S. balance of payments; (3) the price proposed to be charged at the point of importation; (4) the national need for the gas; and (5) consistency with any relevant DOE regulations or statements of policy. In addition, Delegation Order 0204-54 reserves to the Administrator the discretion to consider any other factors relevant to a particular case, including (but not limited to) regional need for the gas and the eligibility of purchasers and participants and their respective shares. These criteria concern issues that are at the heart of the development of policy concerning imported natural gas in the context of total national energy policies.

In evaluating the specific criteria set forth in Delegation Order 2204-54, as well as other factors that the Administrator considers relevant to a particular case, the ERA is required to weigh various advantages or disadvantages in determining, on balance, whether a particular import as a whole will meet the standard set forth in section 3. Evidence bearing on one factor may bear on another. Some of these factors, because of their judgmental nature, are not susceptible to quantification. No one factor is necessarily determinative, but is weighed in consideration with all other factors. The ERA assesses the facts of a particular situation and makes judgments about the relative importance mf those facts and their relationship to relevant DOE policies.

V. Discussion of the Issues and Opinion

A. Modification, Suspension, Rescission or Revocation of TLC's Authorization

The complainants have asked the ERA to suspend, revoke, or rescind TLC's authorization to import LNG from Algeria. They assert that the ERA has this

authority under sections 3 and 16 of the NGA. Section 3 authorizes the agency "from time to time, after opportunity for hearing, and for good cause shown, [to] make such supplemental order in the premises [of the original authorization] as it may find necessary or appropriate." Section 16 grants the agency the "power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders . ..@ it may find necessary or appropriate to carry out the provisions of this Act."

The question of the ERA's authority was raised in issues one, three, five, seven, sixteen, and seventeen of the October 28 joint ERA/FERC procedural order. We asked whether the Administrator has authority to alter, amend. modify, suspend, rescind or revoke TLC's existing authorization; whether any changes have occurred with respect to price and need since 1977 to warrant amendment or rescission of the authorization; whether the import or any of its terms is inconsistent with the public interest; and whether TLC has violated the terms of its authorization. Other issues in this proceeding are also related to the fundamental questions of the ERA's authority to suspend, revoke, rescind or modify TLC's authorization and whether, if this authority exists, the record supports the ERA taking this action.

TLC and other parties supporting the existing authorization contend that the ERA lacks the authority to suspend, revoke, rescind or "adversely modify" TLC's import authorization since the FPC did not reserve this power in applicable conditions of its authorization. TLC argues that a "supplemental order" under section 3 of the NGA cannot diminish the original authorization but can only add to it, as when an importer requests its modification, and that section 16 of the NGA is merely a housekeeping provision that does not confer substantive powers on the agency that Congress withheld in other provisions of the Act.

We conclude that ERA does have the authority to suspend, revoke, rescind or modify TLC's authorization to import LNG from Algeria pursuant to sections 3 and 16 of the NGA. The ERA may exercise this authority on the basis of a fundamental change in circumstance since the grant of the original authorization or if there is a violation of the terms and conditions of the authorization. This authority is necessary to fulfill the basic purposes of the NGA, to protect consumers from exploitation by natural gas companies and to foster a health natural gas industry in the United States. In asking the agency to take such action, however, complainants bear a heavy burden of proof to demonstrate that the import and existing authorization are now inconsistent with this public interest. As discussed below, complainants have failed to meet this burden of proof in the record certified to us insofar as they seek the suspension, revocation or rescission of TLC's authorization.

We agree with the complainants that the powers conferred on the agency by section 3 of the NGA are "plenary and elastic," Distrigas Corp. v. FPC, 495 F. 2d 1057, 1064 (1974), and must be construed to grant the administrative flexibility necessary to protect the public interest. The NGA was passed to protect the consumer from exploitation by natural gas companies, FPC v. Hope Natural Gas Co., 120 U.S. 591 (1944), to foster healthy natural gas industry and to balance these sometimes conflicting interests. Permian Basin Area Rate Cases, 390 U.S. 747 (1968).

The language in section 3 authorizing the Administrator to issue a "supplemental order," when coupled with the broad administrative powers conferred by section 16, is sufficient to enable the ERA to suspend, revoke, rescind or modify an existing authorization under appropriate circumstances. This conclusion is supported by the terms of the DOE Organization Act, sections 301 and 403(f), which contemplate a foreign policy input into NGA section 3 decisions by the Executive Branch. A supplemental order may not only add to an original authorization but may change it in any respect supported by the record assembled.11/ TLC's assertions to the contrary are not persuasive. The cases it cites do not restrict the scope of the agency's authority under section 3 of the NGA and deal with other powers under the NGA or with other statutes that are not at issue here.12/

The foregoing description of the scope of the ERA's general authority does not settle the question of whether and how it may be exercised in this case. Any action the ERA takes must be based on substantial evidence in the record. West Virginia Public Service Commission v. DOE, 681 F. 2d 847 (D.C. Cir. 1982). The record in this instance does not support the complainants' allegations that TLC has violated the terms of its existing authorization or that fundamental changes have occurrence 1977 that would warrant suspension, revocation or rescission of TLC's authority to import LNG from Algeria. The record does support our decision to defer a decision on price to ensure that the price of this import meets the section 3 public interest standard in the face of rapidly changing natural gas markets in the United States.

The complainants' allegation that TLC has violated the terms of its existing import authorization is unsubstantiated. The mere renegotiation of new contract terms that may be presented for approval by the appropriate regulatory authorities does not represent abrogation of the existing contract or violation of the existing authorization. The import in this case has experienced certain delays,e cause of which is not entirely clear. Nevertheless, whatever the cause, the delays appropriately were brought to the attention of FERC.13/

The initiation of this proceeding, and our decision today, should not be interpreted by industry, financial institutions, or our international trading partners as indicating that we take lightly any governmental action adversely affecting an existing import authorization. On the contrary we consider it essential to uphold the integrity of an import authorization and will consider revoking, suspending or rescinding an authorization only on the basis of compelling and extraordinary circumstances. Projects such as TLC's involve large capital outlays and long-term financing which must rest, in part, on the certainty of an import license. We are well aware that our decision can influence future projects of this nature, and we are anxious that our actions not jeopardize the financial future of other energy projects. On the other hand, more is at stake than this authorization, as important as it may be, and under section 3 of the NGA we cannot responsibly overlook other considerations that bear on the public interest. The fact that substantial capital has been committed to an authorized import project, which later in changed conditions proves uneconomical and a burden to the public, does not cause this authorization to be sacrosanct.

In this case, the record does not support a finding that there has been a violation of the original authorization, or a fundamental change in circumstances since 1977, or other public interest reasons sufficient to warrant suspending, revoking or rescinding TLC's authorization.

B. Need

1. Introduction

The question of need was the subject of issues three, six, and ten of the October 08 joint ERA/FERC procedural order. We asked whether there had been any dramatic change in the need for this LNG import since the 1977 FPC authorization that would warrant the amendment or rescission of TLC's current import authorization under section 3 of the NGA. More specifically, we asked whether there is still a national and a regional need for this import and what other gas supplies would be available, at what prices, during the term of this project to meet these needs.

The issues of national and regional need for the TLC gas volumes have been contested in this proceeding. Certain parties have argued that there is no longer a need for this gas supply because of the increase in domestic supplies and a corresponding decline in demand. They maintained that both of these trends are expected to continue in the foreseeable future. TLC and its supporters argued that there continues to be a need for this LNG over the twenty-year term of the project, and that the surplus domestic supply and

slackened demand situation are short-term phenomena.

In evaluating the issue of need in this proceeding, the ERA took several important factors into consideration. First, we focused primarily on long-term supply and demand trends, and were not unduly influenced `y the frequent short-term supply, demand, and price fluctuations inherent in the natural gas and petroleum markets. Second, as long as a substantial portion of our energy supplies depends on imports, we believe that diversity in the sources and types of these supplies is desirable. Finally, as the October 28 procedural order issued in this proceeding makes clear, we assessed both national and regional need. A conclusion that there is a need for the gas may be based on either of these factors separately, or on a combination of both. The discussion and analysis that follow, accordingly, address both of these need issues.

2. Position of the Complainants

The opening statement given on behalf of the complainants and petitioners at the beginning of the evidentiary hearing on the issue of need stated that they intended to show that:

> ".. . national, domestic and continental supplies will be adequate to meet projected demand over the next 20 years, assuming a free market for gas post-1985, as well as normal conditions in world trade and absent other inherently unpredictable contingencies." 14/

The complainants and petitioners, through the presentations of several witnesses, cited three principal reasons to support their contention that there is no longer a national need for this LNG supply: (1) the current surplus of gas; 15/ (2) the existence of an adequate resource base in North America to supply U.S. markets well into the future; 16/ and (3) the passage of the Natural Gas Policy Act of 1978 (NGPA) (P.L. 95-621), which will create a price for future gas supplies that will balance supply and demand.17/

With respect to regional need, it was the opinion of the complainants and petitioners that there is currently a wide range of gas supplies now quantifiable that could be available in the region supplied by Panhandle and Trunkline to meet their customers needs in lieu of the Algerian LNG. Among the supply sources cited that could be used to meet their requirements were: (1) the unused committed reserves of the Panhandle/Trunkline system; 18/ (2) supplies to be found if the Panhandle/Trunkline system renewed its gas acquisition program; 19/ (3) surplus supplies of the Consolidated LNG and Oklahoma Natural Gas Companies; 20/ (4) supplies from Consumers Power

Company's retired SNG plant; 21/ (5) gas available due to other pipeline companies' exercise of contract market-out provisions; 22/ and (6) gas available from Mexico and Canada.23/

3. Position of TLC

TLC, in its reply brief, argued that in order for the complainants to prevail in this issue, they would have to show that:

> ". . . a substitute source of supply is not only in the ground, but deliverable in equivalent volumes to the LNG Project for the life of the Project. This they have failed to do, even in a qualitative sense." 24/

With respect to the national need for this LNG supply, a TLC witness surveyed more than a dozen natural gas supply and demand forecasts prepared by a variety of natural gas experts. Although their projections varied, they demonstrated that domestic supply cannot satisfy demand from now until the year 2000.25/ In addition, TLC cited several problems in the complainants' use of the "single market clearing price" concept in which supply and demand will be balanced in 1985 and thereafter. TLC maintained that a "single market clearing price" will not exist for the entire term of the project; a majority of domestic gas will remain regulated after 1985 under the NGPA; approximately 70 percent of the Panhandle/Trunkline system gas supply will remain regulated after 1985; 26/ and finally, supply and demand historically have not reached a balance, but instead the industry has experienced cyclical supply and demand trends that are likely to continue.27/

With respect to the issue of regional need, TLC maintained that the Panhandle/Trunkline system's currently committed supplies, including the LNG, will fall short of meeting the requirements of its customers beyond 1985.28/ TLC argued that the Panhandle/Trunkline Gas system currently has more deliverability available to it than is necessary to meet its requirements, but this was largely due to two new supply sources that coincidentally became available at the same time--the Canadian and Algerian supplies--totalling 580,000 Mcf per day.29/ TLC pointed out that during the past eight years the Panhandle/Trunkline system's reserve life index dropped from 8.6 years to 6.3 years before these two new sources became available.30/

4. Analysis and Opinion

Our decision on this issue follows a thorough review of the extensive record and data submitted by all of the parties. The ERA believes that the record indicates that gas demand on both a national and regional basis is

expected to decline gradually during the remainder of the decade due largely to the anticipated increases in gas prices relative to other fuels (which has resulted in fuel switching) and conservation efforts. However, during the 1990's, gas demand is expected to gradually increase so that by the year 2000 demand will return to approximately the current level. We find that the projections for future gas requirements do not differ significantly among the parties; the area of dispute centers on the future availability of other gas supplies.

Although it is undisputed that there currently exists a surplus of gas nationally and on the Panhandle/Trunkline system, the record indicates that there will likely be a need for additional supplies of supplemental gas (imports, Alaskan, Devonian shale, tight sands) within ten years to replace the projected decline of conventional gas supplies in the lower 48 states. More specifically, the record indicates that the Panhandle/Trunkline system, without this LNG supply, will need new supplemental supplies within three to four years, depending on the success of its domestic supply acquisitions.

We are not persuaded by the complainants' arguments that there are numerous sources of gas supplies that could replace this LNG supply. The availability of these gas supplies is either only for the short-term (certain domestic supplies) or is highly speculative (additional imports from Canada and Mexico), and there is no evidence that these volumes would be delivered in sufficient quantity to replace this LNG supply during the entire term of the project. Furthermore, the ERA agrees with the consensus of the supply and demand forecasts cited by TLC that domestic gas supplies will be inadequate to meet national demand during the term of TLC's import project. As TLC pointed out, another indicator of the projected decline in domestic supplies is the continuing steady decline in the proved reserve or reserve-to-production ratio for natural gas in the lower 48 states.

In summary, the ERA finds that the record evidence does not support the petitioners' and complainants' assertions that there is no national or regional need for this LNG supply.

C. Price

1. Introduction

Under the terms of the contract approved by the FPC in 1977, it was estimated that the initial price of this LNG supply would be $3.37 per MMBtu regasified and delivered to Trunkline. The delivered price of this LNG is comprised of four components: (1) the cost of the gas, FOB Algeria; (2) the

shipping costs; (3) the cost of revaporizing the gas; and (4) the automatic escalation clause. The escalation provision in the contract is applied semiannually and is based on the arithmetic average of prices for No. 2 and No. 6 fuel oils published by Platts Oilgram for the New York Harbor District. In Opinion 796-A, the FPC allowed the price of this LNG to be rolled-in with other supplies. This decision was based on the finding that the LNG would not be marketable if sold incrementally, and TLC would not be able to obtain financing for the project without it being rolled-in. As a result of the escalation provision and cost overruns in the shipping and regasification plant, the delivered price was $7.16 per MMBtu as of July, 1982 ($6.85 as of January 1983).31/

The October 28 joint ERA/FERC procedural order contained six questions (seven, eight, eleven, twelve, thirteen and fourteen) pertaining to the price of this LNG import. The principal purpose of the ERA's inquiry into this issue was to determine whether this LNG, when rolled-in with other supplies, is now marketable and will continue to be marketable over the term of this import. The procedural order also addressed a number of other price related issues that were ancillary to the central issue of marketability, such as TLC's customers' potential load loss that could be attributable to this LNG supply, a price comparison of this gas with alternative fuels, and the cost impact on end-users if the project were not to continue but TLC was allowed to recover its investment in the project.

2. Positions of the Complainants

The complainants argued that events subsequent to the 1977 FPC decision make the price of this LNG supply no longer reasonable. The significant changes or events discussed by the complainants include the following: (1) due to increased purchased gas costs and other cost overruns, the price of this LNG far exceeded that which was anticipated in 1977; (2) the entire domestic gas market has been altered dramatically due to the passage of the NGPA in 1978 and the resultant erosion of the old gas price cushion; (3) Algeria has become a less reliable trading partner and is more apt to demand price increases, irrespective of contract terms; (4) the ERA has changed its policy with respect to oil-based price escalators in contracts; and (5) the cost of importing this LNG far exceeds the cost of purchasing alternative supplies and repaying TLC its capital investment in the project.

Although the complainants discussed the various changes that have occurred since 1977 which allegedly make the price of the LNE no longer reasonable, the focal point of their presentation on this issue was the enactment of the NGPA in 1978 and its major effect on the domestic gas

market.32/ The complainants maintain that the NGPA undermined the major premise for granting this import authorization in 1977, viz., the belief that the LNG would be marketable if rolled-in with less expensive domestic gas supplies.33/ They argued that this LNG, even when rolled-in with other supplies, may not be marketable over the next twenty years.34/ The reason given by the complainants is that domestic wellhead prices and markets have dramatically changed since the enactment of the NGPA.35/

In assessing the current effect of the price of this LNG, when rolled-in with other supplies, on the gas sales of the Panhandle/Trunkline system, the complainants relied on testimony from three distributors and an official of the Illinois Commerce Commission (ICC). The witnesses maintained that inclusion of this LNG supply and other high-cost gas imported from Canada will cause a dramatic rise in the price of the gas resold by the Panhandle/Trunkline system. They predicted that both Panhandle and Trunkline, traditionally the lowest cost suppliers of gas in the North Central states, will now become two of the highest cost pipeline gas suppliers in the area, as well as in the country.36/ In their reply brief, the complainants and petitioners discussed the NGPA and its effect on the viability of this project.

> "The NGPA provides for phased deregulation of substantial quantities of so-called new natural gas and for phased escalation of old gas prices based on the rate of inflation. The combination of higher deregulated prices for new gas and the dwindling supply of old price-regulated gas results in a much smaller `cushion' of lower-priced gas with which to roll-in the high-priced LNG . . . This erosion of the gas price cushion, moreover, will continue in the future." 37/

The complainants concluded that the NGPA has caused radical changes in the domestic gas market and makes any 1977 FPC findings on marketability of this gas null and void.

Apart from the NGPA, the complainants also contended that the ERA has significantly altered its policy with regard to oil-based price escalators in gas purchase contracts since 1977. The complainants attempted to show that the pricing provisions contained in TLC's contract with Sonatrach have been subsequently rejected by the ERA in other import cases 38/ because they were deemed inconsistent with the public interest. The complainants noted that the ERA in these decisions was concerned with a formula that was solely commodity-based rather than cost-based and that the escalator could result in consumers paying prices over the true value of the commodity. The complainants concluded that the pricing formula under the 1975 contract has

become ". . . unjust and unreasonable, and should be amended or rejected." 39/

3. Position of TLC

TLC maintained that the LNG supply is marketable when rolled-in with other supplies. In its reply brief, TLC defended this position by stating the following:

> "The reason Trunkline and Panhandle can accommodate relatively large quantities of LNG without any significant impact on projected sales, is that these pipelines have--and for the foreseeable future, they will continue to have--even larger quantities of low-cost, price-regulated gas up to approximately 70 percent." 40/

TLC argued that a number of circumstances other than the price of this LNG gave rise to this proceeding. TLC maintained that the complainants' dissatisfaction over the price of this LNG is more a function mf the recession, plant closings and the high level of unemployment in the Panhandle/Trunkline gas market area; the increased competition from alternative fuels; the rate increases due to the NGPA and new volumes of Canadian gas; and the general trend in conservation. However, TLC asserted that the economy will make a recovery, which in turn, will increase the sales of gas in this area.

TLC, in rebuttal of the complainants' market presentation, made the following arguments. First, there were no industrial customers and only two out of more than 100 distributors that made any evidentiary showing in this proceeding; second, the witnesses on this issue were unable to demonstrate any material loss of load that could be attributed to this LNG supply; and finally, the complainants' claims contrast significantly with their own recent market projections used by their companies.

TLC concluded its arguments on this issue in its reply brief by stating the following:

> ". . . although the progressive increases in rates have produced understandable concern to the distributors and their state regulatory agencies--concern which is shared by Trunkline and Panhandle since they have historically been extremely low-cost suppliers--the increased costs are attributable to markedly higher domestic gas prices under NGPA and the sharp impact of higher cost Canadian supplies in 1982. Even so, the LNG is clearly marketable when rolled-in with existing supplies." 41/

4. Analysis and Opinion

As indicated earlier, the ERA has decided to defer its decision on the issue of price for a period of at least six months. We are concerned, based on the record, that the price may be rapidly approaching a level which is neither reasonable nor marketable. Furthermore, major changes are anticipated in the U.S. gas market during the next six months--legislation revising the NGPA, unstable oil prices, development of new U.S. policy on import pricing, and current U.S.-Canadian discussions. These factors create such uncertainties as to make a decision on price at this time premature.

We agree with the complainants that the U.S. gas market has undergone substantial changes in recent years, largely due to the passage of the NGPA and its phased decontrol of domestic natural gas prices. Although the price escalator contained in the purchase contract for this LNG has functioned as originally envisioned, the increased average domestic gas prices and the purchase of other high-cost gas supplies have resulted in the depletion since 1977 of the Panhandle/Trunkline systems' "cushion" which permitted Panhandle and Trunkline to absorb this high-priced LNG without significant adverse impact on their ultimate customers. Evidence of this change is the fact that the Trunkline system wide cost of gas has increased by 287 percent since 1977.42/ Furthermore, overland imports have also significantly increased in price during the same period.43/ Consumers in the North Central States are bearing the brunt of the coincidental introduction of Canadian and Algerian imports on top of new, high-priced supplies of domestic gas.

The price of this LNG, even when rolled-in with other supplies, is at the high range of natural gas prices today, and there are indications that it may not be marketable in the months ahead as the "old gas" price cushion erodes further. The NGPA's impact on domestic gas production and prices has been large, but its future impact in the gas market is uncertain and difficult to assess at this time. This is particularly true when evaluated in conjunction with other possible future events, such as a further decline in crude oil prices, various legislative actions that may affect domestic gas prices, the outcome of our consultations with Canada, and the development of a new natural gas import pricing policy.

A sign of the Panhandle/Trunkline system's difficulties in absorbing the newly acquired high-priced supplies from Algeria and Canada is the recent load loss experienced `y some of its customers and projections for further losses if its gas prices continue to rise. It is unclear from the record how much additional load loss may occur in the coming months as a result of this LNG import. In particular, the record does not adequately address the price of

alternative energy sources and their potential for capturing some of the existing gas market of the Panhandle/Trunkline system.

Another price-related matter that concerns the ERA about this import, as well as many other imports,44/ is the high take-or-pay provision. We believe that declining demand may force the Panhandle/Trunkline system to take high-priced imported gas while turning away less expensive domestic gas. This would, in turn, result in higher overall gas prices to its customers and in further load loss. We think this type of contract provision is particularly onerous whenever the price of the gas is not sensitive to current market conditions.

Another unexpected impact on the domestic gas market has been the gradual decline in oil prices over the past two years, and the resultant increasing competitiveness of this fuel with certain portions of the gas market. Members of the Organization of Petroleum Exporting Countries (OPEC) are in dispute over a uniform price for their oil, with indications that these producing countries will significantly cut crude oil prices. This places oil in a much more favorable competitive position with the gas market. We are convinced that the gas industry will have to adopt a more market-oriented pricing system to retain its present share of the market. Most of the natural gas purchase contracts, for both domestic and imported gas, contain inflexible provisions that do not accommodate rapid changes in the marketplace.

As discussed earlier in our "Decision Summary," the Department of Energy currently is reevaluating import pricing policies, with the goal of establishing import pricing arrangements that are more flexible and responsive to market changes and more in line with domestic market clearing levels. Whether as a result of bilateral discussions with Canada and other gas exporting countries, or as a result of U.S. Government policy changes, we expect there will be a new policy on gas imports within the next six months. Therefore, deferring the decision in this proceeding on whether the price is reasonable will ensure that the ultimate decision relative to this import project is supported by an adequate record and is consistent with our treatment of all imports.

Moreover, the ERA is cognizant of a number of legislative proposals concerning regulation of natural gas prices. There are proposals aimed at eliminating or making less onerous various contractual provisions, such as take-or-pay clauses and price-escalators. There are also proposals that would suspend all existing imports, prevent new imports, or establish a lower price for all imports. The prospect of legislative change contributes to the difficulty of properly assessing the reasonableness of TLC's price at this

time.

Given all of these uncertainties, the ERA has concluded that it would be premature at this time to make a decision on whether the price of this import is reasonable. Within six months the ERA believes that the market situation will be much clearer, which will allow the record to be supplemented and a decision to be made that will be fairer to all parties, including the consumer, and more certain mf protecting the public interest. Consequently, we are deferring our decision with respect to the issue of price for at least six months.

D. Security of Supply

1. Positions of Complainants

The complainants and petitioners contended that Sonatrach is no longer a secure supplier of natural gas. They argued that the management and policies of Sonatrach have radically changed since 1977 and that Sonatrach has routinely disregarded its contractual obligations to U.S. and West European customers and that it will continue to seek contract price concessions.

The complainants asserted that Algeria is an unreliable supplier and that it is highly probable that the LNG supply would not be available at a marketable price when needed in the future. They alleged that Sonatrach previously has ignored contractual pricing terms with other trading partners and has refused to perform under existing contracts until the buyers agree to pay higher prices.

Citing the testimonies given by witnesses for the joint complainants and the FERC staff on this issue, the complainants and petitioners stated that there was conclusive, irrefutable evidence that Algeria has become an unreliable supplier of gas since the 1977 FPC decision authorizing this import.45/ The complainants argued that the alleged facts or developments during the past five years that indicate Algeria's unreliability include: (1) the change in Algerian gas export policy which now concentrates on gas to Europe rather than LNG to the U.S. because mf a greater yield in net-backs and less capital investment; (2) Algerian gas export policy statements that indicate its near-term goal is to link natural gas prices with crude oil prices and suggest that its ultimate goal is to attain parity with synthetic gas from coal; (3) the frequent contract and price disputes between Sonatrach and a number of West European and U.S. trading partners (Gaz de France, El Paso Algerian corporation, SNAM of Italy, Distrigas of Belgium, Ruhrgas of West Germany, and Gaz Uni of the Netherlands); (4) the unspecified technical

problems cited by Sonatrach as reasons for failing to deliver gas to TLC prior to September 1982; (5) excerpts of notes concerning the 1980-82 discussions between TLC and Sonatrach regarding Amendment No. 1; (6) TLC's July 1982 filing for arbitration with the International Chamber of Commerce in Paris; and (7) Sonatrach's breach of at least six provisions of its contract with TLC, particularly with respect to renegotiating the price before authorized to do so under Article 24 of the contract.

The complainants concluded that Algeria's proven disregard for contractual obligations would subject the Midwestern consumer to supply interruptions and unilateral price increases, and that Algeria's proven unreliability in the past should be a strong omen for future behavior.

2. Positions of TLC

In response to the allegations that Algeria is an unreliable source of supply, TLC offered the following arguments and evidence to the contrary: (1) the LNE is being imported under the original contract with Sonatrach; (2) the question is not whether Algeria is a reliable source of supply but whether the U.S. government will remain a reliable partner in international energy trade; and (3) this LNG project is proceeding exactly as envisioned in 1975.

TLC also maintained that the complainants failed to show that Algeria is an unreliable source of supply for the following reasons: (1) there is unrebutted evidence of record that technical problems encountered by Sonatrach during 1981-82 prevented it from taking deliveries according to contract; (2) charges that Algeria is unreliable are more directly linked to Algeria's aim to price its LNG more closely to crude oil prices than to the formula in the original TLC contract; 46/ (3) the complainants are confused in comparing the "reliability" of foreign suppliers with the obvious security of U.S. suppliers; 47/ (4) Canada and Mexico, with their own unilateral price increases, have engaged in the very practices that complainants seek to condemn Sonatrach for exercising; 48/ and (5) as long as Sonatrach performs under the original contract, the ERA must see that the U.S. government does nothing to call into question its own reliability.49/

3. Position of the U.S. Department of State

In response to an inquiry made by the FERC staff, the State Department, in a letter dated December 13, 1982, provided an updated assessment of the reliability of Algeria as a supplier of LNG.

While acknowledging that there have been a number of instances where

Algeria has either delayed or interrupted deliveries of LNG and pipeline gas to various parties since 1973, particularly in the 1980-82 period, the State Department indicated that it was unable to identify the cause of these delays, interruptions and delivery shortfalls. The State Department further observed that Sonatrach has been a relatively consistent supplier of LNG to Distrigas, Inc. Overall, the State Department concluded that ". .. Algeria's record must be considered mixed."

4. Analysis and Opinion

Based on the testimony presented on behalf of the complainants and the FERC staff, as well as the letter submitted by the State Department assessing Algeria's reliability, we find that the record does not support a conclusion that Algeria is an unreliable supplier under this contract. We note, however, that Algeria's record with respect to other contracts and trading partners has been mixed, and thus believe that the potential exists for supply interruptions in the future.

The record shows that Sonatrach and TLC may have acted inconsistently with the terms of their contract with regard to delivery schedules and renegotiation of price. Although it is arguable that Sonatrach and TLC should not have commenced price discussions prior to the "first regular delivery" as contemplated by their contract, the product of these negotiations (Amendment No. 1) has not been implemented, nor submitted for approval to the U.S. and Algerian governments. Consequently, this action has not violated the TLC's existing import authorization, which is our primary concern.

This LNG import project was intended to supply gas for high-priority base load use.50/ Because of our concern over the future reliability of this supply, we are requiring that TLC develop and maintain a comprehensive contingency plan to ensure that its customers' needs are met, to the extent practicable, in the event of a sudden disruption or significant reduction in delivery of this LNG supply. In addition to this contingency plan, we are requiring TLC to update on a quarterly basis the information it supplied on Algerian gas reserves in connection with the 1977 import authorization, to provide quarterly projections of Algerian LNG output over the period of this authorization, and to provide quarterly any information TLC might acquire relating to the security or reliability of this supply.

The ERA wants to state unequivocally that any future unexplained and significant interruptions or reductions of this supply by Sonatrach will be deemed sufficient reason to reopen the question of Algeria's reliability as a supplier. Specifically, justification of such interruptions labeled "technical

problems" will be closely scrutinized.

E. Effect on U.S. Balance of Payments

1. Introduction

This question corresponds with issue nine of the October 28 joint ERA/FERC procedural order, which requests the parties to address the effect this LNG import will have on the U.S. balance of payments and the extent to which this impact may have changed since 1977.

2. Positions of Complainants

The complainants maintained that TLC's importation of Algerian LNG at full contract volumes will cause an outflow of approximately $851 million 51/ per year from the United States. This outflow will, in turn, probably cause an increase in U.S. exports equivalent to $200 million 52/ and a reduction of other imports of about $119 million.53/ Consequently, the net outflow or trade balance decrease will approximate $532 million.54/

They further argued that this $532 million net outflow will cause the dollar to depreciate, resulting in an

> ". . . estimated 0.0233 percent increase in the U.S. inflation [which] would damage the domestic economy `y approximately . . . $234 million per year." 55/

3. Positions of TLC

TLC's witness on this issue argued that the cost of this LNG import (the price of the gas, FOB Algeria at $691 million and shipping fees to Sonatrach of $129 million) 56/ will be approximately $820 million, and can be contrasted with total U.S. oil and gas imports of $82.1 billion.57/ The total 1981 U.S. import bill was approximately $261.3 billion.58/ Therefore, this project represents approximately three tenths of one percent of the total U.S. imports and represents a one percent increase in the U.S. energy bill.59/

TLC also stated that any depreciation of the value of the dollar that results from this import would also have certain positive effects because the dollar is currently overvalued. Many U.S. industries, TLC argued, are being harmed by the currently overvalued dollar. Therefore, if the dollar depreciates, U.S. manufacturing exports should increase.60/

4. Analysis and Opinion

On the basis of the record, we conclude that the TLC project will likely have a slight adverse impact on the U.S. balance of payments. We agree with TLC's analysis that any adverse impact resulting from this import on the U.S. balance of payments would be minor, particularly when compared with our total expenses for energy imports, and that the complainants have probably underestimated the benefits derived from this project in the form of additional U.S. exports. Furthermore, there is no evidence in the record that would indicate that this impact has significantly changed since the 1977 FPC import authorization.

VI. Order

For the reasons set forth above, pursuant to section 3 of the Natural Gas Act,

The ERA orders:

(A) All requests in this proceeding to suspend, rescind or revoke the authorization of Trunkline LNG Company (TLC) to import liquefied natural gas (LNG) from Algeria pursuant to FPC Opinion Nos. 796 and 796-A are hereby denied.

(B) Decision in this proceeding with regard to the reasonableness of the price and related pricing provisions is hereby deferred.

(C) TLC shall file with the ERA by July 1, 1983, an updated comprehensive contingency plan to ensure that its gas customers' needs are met, to the extent practicable, in the event of an interruption or significant reduction mf this imported LNG supply. This plan shall contain all the information required to be in the present plan by Opinion No. 796, as well as any other information that could assist TLC, Panhandle, Trunkline, their customers and ultimate consumers of this gas in preparing for a possible interruption of this LNG supply.

(D) Each quarter, beginning on April 1, 1983, TLC shall provide to the ERA: updated information on Algerian gas reserves supplied in connection with the 1977 import authorization; projections of Algerian LNG output over the period of this authorization; and any information TLC acquires relating to the security or reliability of this LNG supply.

(E) All reply briefs filed after January 2, 1983, are hereby accepted.

(F) The January 27, 1983, motion of ABATE, the Process Gas Consumers Group, and the Indiana Industrial Energy Consumers Group for the purpose of accepting late-filed exhibits is hereby granted.

(G) All motions and requests for relief or action not specifically granted by this order, except with respect to modifying the price, are denied.

Issued in Washington, D.C. on February 25, 1983.

--Footnotes--

1/ Opinion No. 796, issued April 29, 1977 (58 FPC 726); Opinion No. 796-A, issued June 30, 1977 (58 FPC 2935). The import authorization was issued pursuant to section 3 of the Natural Gas Act. The construction and operation of the terminal facility was authorized in a certificate of public convenience and necessity issued pursuant to section 7(c) of the Natural Gas Act.

2/ As of October, 1982, the cost of these facilities totaled $577 million. See Ex. 87. In addition, $337.8 million was spent in the construction of two LNG vessels, of that $80 million was a subsidy from the U.S. Maritime Administration. Lachmar, the builder of the ships, also received loan guarantees in the amount of $197.5 million from the Maritime Administration. See Hahn, Tr. 1759-64, Ex. 71.

3/ Mr. Shibley, Tr. 4300.

4/ In 1977, the FPC estimated that the price for the regasified LNG in the first quarter of 1980 would be $3.37 per MMBtu. This was derived by adding the cost of the gas, FOB Algeria, $1.47, shipping $1.27 and regasification $.63. FPC Opinion No. 796 at 19. However, in July, 1982, the price was $7.16 per MMBtu, in which the cost of the gas, FOB Algeria was $3.92, shipping was $1.70, and regasification was $1.30. Exhibits 15, 112, 113, 114.

5/ See Department of Energy Delegation Order No. 0204-104 to the Administrator of ERA and ERA Delegation Order No. 0204-104A to the Commission.

6/ The joint complainants and petitioners are Representatives Robert H. Michel and Paul Findley, the Illinois Commerce Commission, Associated Natural Gas Company, Battle Creek Gas Company, Central Illinois Light Company, Central Illinois Public Service Company, Citizens Gas Fuel Company, Michigan Gas Utilities Company, Missouri Utilities Company, Ohio Gas Company, Richmond Gas Corporation, Southeastern Michigan Gas Company, and Toledo Edison Company (the General Service Customer Group), Consumers Power Company, Michigan

Consolidated Gas Company, ABATE, Process Gas Consumer Group and Indiana Industrial Energy Users Group, Illinois Power Company, National Hydrocarbons, Inc., the State of Michigan and Michigan Public Service Commission, and the Kansas Corporation Commission. The term complainants, when used in this opinion, refers to all parties challenging TLC's authorization.

7/ Pub. L. 95-91 (1977), 42 U.S.C. Secs. 7151 and 7172(f).

8/ DOE Delegation Order No. 0204-4, 42 FR 60725 (November 29, 1977).

9/ DOE Delegation Order Nos. 0204-54 and 0204-55 (44 FR 56735, October 2, 1979). These superseded DOE Delegation Order Nos. 0204-25 (to ERA) and 0204-26 (to FERC) (43 FR 47769, October 17, 1978).

10/ Compare the public interest standard in section 7 of the NGA, e.g., Cia. Mexicana de Gas, S.A. v. F.P.C., 167 F.2d 804 (5th Cir. 1948).

11/ The contrary conclusions of the ALJ presiding at the joint hearing, in his recommended decision, are entitled to no weight since the FERC was not delegated any power to construe the scope of the Administrator's authority in section 3 cases. The ALJ cites no direct support for his sweeping claims that the courts have settled the scope of the Administrator's authority to suspend, revoke, rescind or modify existing import authorizations.

12/ E.g., United States v. Seatrain Lines, 329 U.S. 424 (1947) (ICC could not revoke a certificate to transport cargo by water under the Interstate Commerce Act); C.A.B. v. Delta Airlines, 367 U.S. 316 (1961) (CAB could not alter an airline's certificate under the Federal Aviation Act without notice and hearing); FPC v. Texaco, 417 U.S. 380 (1974) (FPC could lot use a blanket certificate procedure for small producers).

13/ Ex. 100 and Item H by Reference, the August 13, 1982, semiannual report by TLC.

14/ Mr. Ross, Tr. 146.

15/ See footnotes 17 thru 22.

16/ Dr. Netschert, Tr. 559-625, Tr. 762-869, Ex. 22-24.

17/ Mr. Guth, Tr. 407-408; Dr. Netschert, Tr. 611-6129 Dr. Lemon, Tr. 1189-1223.

18/ Mr. Dixon, Tr. 3432, Ex. 154 and 155.

19/ Mr. Dixon, Tr. 3475-76, Ex. 158.

20/ Item by Reference C, Ex. W; Tr. 4324; Mr. Dixon, Tr. 3399-3400.

21/ Mr. Biek, Tr. 908, 971.

22/ Mr. Dixon, Tr. 3502, Ex. 160.

23/ Mr. Dixon, Tr. 3428-30, 3500-01, Ex. 41; Mr. Shibley, Tr. 4320.

24/ Reply brief for TLC, at 32.

25/ Dr. Foster, Tr. 2571-2643, Ex. 115.

26/ Mr. Dixon, Tr. 3447.

27/ Dr. Schantz, Tr. 2648-51, Ex. 116.

28/ Mr. Dixon, Tr. 3370-76, Ex. 146, 147, 354, 155.

29/ Id., Tr. 3368-9.

30/ Id., Tr. 3365.

31/ See footnote 2.

32/ Mr. Guth, Tr. 535-7, 546-7; Mr. Biek, Tr. 903-4, 909-10; Mr. Slone, Tr. 1062-5, 1076; Dr. Lemon, Tr. 1331; Mr. Liberman (Laclede Gas.), Tr. 1364-1384.

33/ FPC Opinion No. 796-A issued June 30, 1977 (58 FPC 2935), at 8-9; Mr. Biek, Tr. 1003.

34/ Mr. Uhler, Tr. 477-558, Ex. 10-21.

35/ Mr. Uhler, Tr. 804-813; Dr. Lemon, Tr. 1219, Ex. 38; Recommended Findings of Fact of FERC Staff at 3(a).

36/ Exhibit 36.

37/ Reply Brief for the Complainants and Petitioners, at 78.

38/ See Tenneco Atlantic Pipeline Co., 1 ERA Para. 70,103 (Dec. 18, 1978), El Paso Eastern Co., 1 ERA Para. 70,104 (Dec. 01, 1978), Columbia LNG Corp., 1 ERA Para. 70,110 (Dec. 29, 1979).

39/ Reply Brief for the Complainants and Petitioners, at 85.

40/ Reply Brief for TLC, at 51 (Mr. Dixon, Tr. 3447).

41/ Id. at 52 (Mr. Langenkamp, Tr. 3329-30).

42/ Recommended Findings of Fact of FERC Staff, at 3(a).

43/ Ex. 168.

44/ See ERA Conference on Canadian and Mexican Natural Gas Imports, 47 FR 57756, December 28, 1982.

45/ Mr. Stern on behalf of the joint complainants, Tr. 1479-1727, Ex. 51-67, 173-217, Items by reference A-E; Mr. Hadad on behalf of the FERC staff, Tr. 3687-3910, Ex. 172.

46/ Reply Brief for TLC, at 45.

47/ Id., at 47.

48/ Id., at 45.

49/ Id., at 47.

50/ FPC Opinion No. 796-A, at 8.

51/ Dr. Lemon, Tr. 1295-1300, Ex 37.

52/ Ibid.

53/ Ibid.

54/ Ibid.

55/ Reply Brief for the Complainants and Petitioners, at 116; Dr. Lemon, Tr. 1297, 1299, Ex. 37.

56/ Ex. 120.

57/ Mr. Leftwich, Tr. 2783, Ex. 120.

58/ Id. at 2783-4, Ex. 120.

59/ Id. at 2783-4, Ex. 120.

60/ Id. at 2788-95, Ex. 121.