Cited as "1 ERA Para. 70,634"

Texas Eastern Transmission Corporation (ERA Docket No. 85-13-NG), March 21, 1986

DOE/ERA Opinion and Order No. 112

Order Approving an Amendment to an Authorization to Import Natural Gas from Canada

I. Background

On July 15, 1985, Texas Eastern Transmission Corporation (Texas Eastern) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act (NGA), to amend an existing natural gas import authorization granted by the ERA on April 24, 1981, to Texas Eastern, Natural Gas Pipeline Company of America (Natural), Michigan Wisconsin Pipe Line Company (now ANR Pipeline Company) (ANR), and Tennessee Gas Pipeline Company (Tennessee) in DOE/ERA Opinion and Order No. 32 (Order No. 32).1/ Order No. 32 authorized the firms to import jointly up to 300,000 Mcf of natural gas per day from ProGas Limited (ProGas) of Calgary, Alberta, Canada, under a May 17, 1979, agreement. Deliveries were authorized through October 31, 1987. Natural, ANR, and Tennessee are not parties to this application. This application deals solely with the volumes imported by Texas Eastern and does not affect the other three ProGas customers.

Under the 1979 agreement, ProGas agreed to supply Texas Eastern a maximum daily quantity of 75,000 Mcf, with an effective annual take-or-pay obligation ranging downward over the contract term from 85 percent to 75 percent. The contract set the price at the rate prescribed by the Canadian government for gas exported to the U.S. Order No. 32 authorized an import price not to exceed $4.94 (U.S.) per MMBtu, the border price at that time. The volumes purchased by Texas Eastern currently enter the U.S. at Emerson, Manitoba, through pipeline facilities of Great Lakes Gas Transmission Company (Great Lakes). Great Lakes delivers the gas to ANR's pipeline system at an existing delivery point near Farwell, Michigan. ANR then delivers the gas to Texas Eastern at an interconnecting delivery point.

On May 30, 1985, Texas Eastern and ProGas agreed to contract changes which would (1) extend the term of the import from October 31, 1987, to October 31, 1989; and, effective immediately, (2) reduce Texas Eastern's minimum annual take-or-pay obligation from 75 percent to 60 percent of the

contract quantities; (3) replace the $4.94 import price with a two-part demand/commodity pricing formula subject to adjustment based on ProGas' fixed costs for processing and transportation and on changes in the prices of Nos. 2 and 6 fuel oils in New York Harbor as listed in Platt's Oilgram Price Report; and (4) provide for periodic price reviews. The agreement provides for annual price renegotiations, if necessary, to adjust the price of the gas to a price comparable to that of major energy sources competing in Texas Eastern's market. In addition, the price may be renegotiated in the event Texas Eastern makes a new purchased gas adjustment filing whereby its average gas purchase cost varies upward or downward by more than five percent.

The amendment establishes a base commodity price as of April 1, 1985, of $2.61 per MMBtu, from which future adjustments will be calculated. According to Texas Eastern, at a 100 percent load factor, the commodity price plus the demand charges would yield a cost at the international border of $3.11 per MMBtu. At the time the base commodity price was agreed upon, the total delivered price in Texas Eastern's east coast markets was $3.97 per MMBtu. According to Texas Eastern's letter of agreement with ProGas dated January 28, 1986, the current adjusted commodity charge is $2.43 per MMBtu, a charge which has been reduced to $1.99 per MMBtu for a 60-day period beginning February 1, 1986.

In support of its application, Texas Eastern submits that the Canadian gas is an integral part of its system supplies and continuation of the imports under the amended sales agreement is essential to meet its future market requirements.

In addition, Texas Eastern asserts that the proposed amendment meets the DOE's natural gas import policy guidelines 2/ because it (1) provides sufficient flexibility to permit pricing and volume adjustments required by market conditions and available competing fuels including domestic natural gas; (2) contains provisions that will ensure the imported gas remains competitive in Texas Eastern's markets over the life of the amended sales agreement; and (3) contains price renegotiation provisions that will permit contractual price adjustments in the event of changed circumstances.

Furthermore, based upon the historic reliability of Canada as a supplier, and in light of ProGas' record of providing a reliable gas supply under the existing import authorization, Texas Eastern contends the import is secure. Finally, under the new pricing provisions, the applicant claims the gas will be competitive in Texas Eastern's markets.

II. Procedural History

The ERA issued a notice of the application on July 25, 1985, inviting protests, motions to intervene, or comments to be filed by September 3, 1985.3/ The ERA received nine motions to intervene and one notice of intervention.4/

Several intervenors made substantive comments. Panhandle Producers and Royalty Owners Association (PPROA), a trade association of approximately 800 producers, royalty owners, and service companies in Texas, New Mexico, Oklahoma, and Kansas, opposed the proposed extension to 1989 and asked that it and the two-part rate be denied or, in the alternative, that a trial-type hearing be held. Philadelphia Gas Works (PGW) protested the application contending that the pricing provisions negotiated between Texas Eastern and ProGas were not competitive, but did not request further procedures. The Public Service Commission of the State of New York (PSCNY) protested the application and requested proceedings of an unspecified nature on the grounds that the proposed two-part demand/commodity rate structure is the subject of considerable jurisdictional uncertainty between the ERA and the Federal Energy Regulatory Commission (FERC). ProGas filed in support of the application. The remaining six movants stated neither support for nor opposition to the proposed arrangement.5/

On September 18, 1985, Texas Eastern filed its answer to PSCNY, PPROA and PGW. Also on September 18, 1985, ProGas filed reply comments in response to PGW, PSCNY and PPROA, in support of Texas Eastern. On September 20, 1985, PSCNY filed supplemental comments reiterating its earlier request that the ERA establish appropriate procedures to solicit further comment from the parties regarding the jurisdictional question between the ERA and the FERC.

On October 8, 1985, the ERA issued an order granting all interventions and providing opportunity for additional comment on the issues raised by the intervenors.6/ The parties were asked to explain their opposition to the extension and the two-part pricing provision and to comment on PGW's contention that the pricing provisions are not competitive. The ERA received additional comments from seven parties 7/ including one new, late intervenor, the Municipal Defense Group (MDG).8/ No delay in the proceeding nor prejudice to any party will result from granting the late intervention motion by MDG. Accordingly, the late filing is accepted and this order grants MDG's motion to intervene.

MDG and Philadelphia Electric Company (PECO) opposed the application along with PPROA, PGW, and PSCNY, who reiterated and expanded upon their previously stated opposition. PSCNY stated that its comments were directed only to Texas Eastern's request for a two-year extension. PPROA questioned the

ERA's reliance on the policy guidelines to shift the burden of proof from the applicants to the intervenors. PPROA and PGW questioned the need for the gas. PGW questioned the security of supply. PGW and PECO asserted that, in the light of the new Canadian government accords on natural gas pricing and the announced TransCanada Pipeline rate increase, Texas Eastern should be required to refile its application. PPROA, PGW, PSCNY, and PECO requested a trial-type hearing to resolve the issues raised.

PECO also requested the ERA to defer consideration of the as-billed passthrough issue, or, if not, to institute additional procedures, including (1) a new notice stating its intention to assert jurisdiction over the passthrough of the two-part rate; (2) a briefing by the parties on the ERA's authority over the as-billed issue; and (3) time for informal discovery. Texas Eastern responded to intervenor allegations, denying that the two-part pricing provisions are non-competitive. ProGas again responded in support of the application to comments previously made by PGW, PSCNY and PPROA.

On November 22, 1985, reply comments were filed by PSCNY, PECO, ProGas, and Texas Eastern. PSCNY and PECO reiterated their opposition to the application. PSCNY again requested a trial-type hearing and PECO repeated its request for the same additional procedures as in its initial additional comments. ProGas and Texas Eastern responded to the additional comments submitted by the five opponents, again denying the validity of opposing arguments.

III. Decision

Texas Eastern's application has been reviewed to determine if it conforms with Section 3 of the NGA. Under Section 3, an import is to be authorized unless there has been a finding that the import "will not be consistent with the public interest." 9/ In making this finding, the ERA Administrator is guided by the DOE's natural gas import policy guidelines.10/ Under this policy, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

The policy guidelines distinguish renegotiations of previously authorized import arrangements from "new" arrangements not currently authorized. To avoid undermining already authorized import arrangements, especially ones involving flowing gas such as the Texas Eastern/ProGas agreement, the guidelines provide that renegotiated contracts will be presumed to be in the public interest if they result in a more competitive import arrangement. Specifically, the policy guidelines state:

U.S. companies that import natural gas under arrangements that are not fully consistent with these policies and the provisions of Delegation Order No. 0204-111 are encouraged to negotiate changes to such arrangements to bring them into conformity with these policies and provisions. . . . To the extent that such amendments bring an import arrangement more into conformity with these guidelines, they will benefit from the presumption that they are in the public interest, and opposing parties will bear the burden to rebut the presumption.11/

Texas Eastern's application involves amendment of the pricing and related provisions of the underlying gas sales contract as they apply both to (1) the currently authorized arrangement and (2) to the proposed two-year extension of the import authorization. While the amendment of the currently authorized arrangement benefits from the presumption cited above, the extension is considered the equivalent of a new arrangement for new gas not now authorized and must be shown to be "competitive," not just a better deal. The proposed extension will not meet the public interest test unless the applicant can demonstrate that the proposal will provide a supply of gas that will be competitive in Texas Eastern's markets over the extended term.12/ We have concluded there is insufficient evidence in the record as it now stands, particularly in light of the highly contested nature of this case, to make this determination and the decision in this opinion is therefore limited to the renegotiated terms as they apply to the currently authorized arrangement expiring October 31, 1987. The request for a two-year extension of the authorization is the subject of a procedural order being issued concurrently with this order to solicit further comments concerning all of Texas Eastern's new and similar contracts in ERA Docket Nos. 82-05-NG, 82-07-NG and 85-19-NG, and this docket--85-13-NG.13/ The purpose of the procedural order will be to obtain additional information to further illuminate the substantive issues raised by the parties, which will enable the ERA to make a determination regarding those issues.

The principal issue to be addressed in this proceeding is whether the existing, currently authorized import arrangement will be more competitive and market responsive under the renegotiated contract terms; and if so, whether the opposing parties have rebutted the presumption that the revised arrangement is in the public interest.

Texas Eastern asserts that as of November 1, 1985, Transcontinental Gas Corporation's 60 percent load factor rate for deliveries to PGW or PECO was $3.99 per MMBtu, which is higher than the ProGas rate for purchases at a 60 percent load factor with U.S. transportation costs added. Texas Eastern points out that in its July 1985 purchased gas adjustment filing with the

FERC, the annualized cost of ProGas volumes was $3.36 per MMBtu, which is significantly below prior approved price levels and $.71 per MMBtu less than under the old pricing terms and volumes.14/ Texas Eastern notes in the table accompanying its response of November 22, 1985, that the average rate of $3.36 per MMBtu for ProGas supplies is in the mid-range of the average costs paid by Texas Eastern for its various available gas supplies.15/ Further, prices at the border applicable under the existing arrangement ($4.40 to $4.07 per MMBtu) are significantly higher than the border price which would be produced by price provisions under the new arrangement (initially $3.11 per MMBtu and, as of July 1, 1985, $2.71 per MMBtu at a 100 percent load factor).16/

The reduced border price, together with the reduced take-or-pay requirements and the added flexibility provided by price adjustment and renegotiation provisions that take into account the price of competing fuels, result in an arrangement that as a whole appears to be more competitive than the existing arrangement. The ERA notes in this regard that the only customers to object to the amended arrangement are low load customers representing less than 7.4 percent of Texas Eastern's annual sales, and that the majority of Texas Eastern's customers do not oppose the new arrangement. As pointed out by Texas Eastern, at a 100 percent load factor on an annualized basis, Texas Eastern will save $23 million due to the renegotiated pricing provisions which will be passed on to its customers.17/ Rejection of the revised arrangement would result in reversion to the arrangement authorized by the ERA in Order No. 32, with its attendant higher prices, to the detriment of Texas Eastern and all of its customers.

Parties opposing the application direct their arguments not to the limited issue set for decision in this order but to the revised arrangement as a whole. Opponents of the revised arrangement, PGW, PECO, PPROA and MDW, contend that the border price of $3.11 per MMBtu and the delivered price of $3.97 per MMBtu are not competitive and are based on an unrealistic load factor of 100 percent, and they argue that the delivered price far exceeds Texas Eastern's recent market-out price of $2.50 per MMBtu in contracts with domestic sellers of natural gas.18/ However, they provide no meaningful comparable border price or delivered price or volumetric data to support their contentions and to dispute Texas Eastern's data on comparative costs provided above.

PGW, PECO, PPROA, and MDW focus primarily on the two-part pricing structure, contending that the proposal to split the former one-part commodity charge for Canadian gas into a two-part, demand and commodity charge, and any passthrough of such charges as billed, is unfair, uncompetitive, and anti-competitive for the following reasons:19/ (1) ProGas gains an unfair

advantage over domestic companies by being able to recover costs, whether or not any gas is taken, by virtue of both the demand charge and the take-or-pay clause; and that the price structure could result in the use of higher-priced Canadian gas at the expense of domestic gas; (2) the demand charge includes a high percentage of fixed costs, and certain processing costs normally in the commodity charge in domestic gas tariffs; (3) the take-or-pay provision, which operates like a typical minimum bill, does not exclude variable costs not incurred and gives ProGas another advantage over domestic pipelines which must conform their minimum bills to FERC Order No. 380;20/ and (4) domestic producers are not allowed to use demand charges to recover costs. The opponents also contend that the arrangement does not take into count a recent rate increase by TransCanada PipeLines Limited (TransCanada) and the new regional pricing system adopted by Canada, effective November 1, 1985, and that therefore Texas Eastern's import arrangement should be renegotiated and its application refiled.

First, this arrangement is similar to domestic pipeline arrangements that utilize two-part rates and reflect the cost of providing transportation over long distances. Texas Eastern is utilizing pipeline facilities in Canada for this gas supply much as it utilizes domestic pipeline facilities in transporting domestically produced gas. Further, ProGas clearly is not acting as a gas producer selling gas at wellhead prices as the opponents to Texas Eastern's two-part rate would characterize the transaction. Instead ProGas is operating much like a gas pipeline since it purchases gas in Canada and then arranges and pays for transporting it to the U.S. for resale. Accordingly, the ERA sees no basis for not approving the two-part rate when it is used in arrangements comparable to domestic gas supply arrangements. It is the ERA's position, and the policy of the DOE, that since U.S. pipelines utilize and pass through two-part demand/commodity rates as billed, to avoid discrimination, Canadian natural gas should be afforded the same opportunity to compete in U.S. markets.21/

Second, the 60 percent take-or-pay provision, coupled with the two-part rate, does not, as alleged by the opponents of the new arrangement, give ProGas any special advantage over domestic pipelines because ProGas is not subject to FERC Order No. 380. Texas Eastern is bound by the restrictions of FERC Order No. 380 whether purchasing gas from a Canadian seller or from a domestic supplier.

The further contention which the opponents have made that the arrangement should be renegotiated and the application refiled with the ERA because of the recent TransCanada rate increase or because Canada has adopted a new regional pricing system is a decision that Texas Eastern and ProGas

should make, not the ERA. The potential always exists that changes in conditions might require a future contract change but that provides no basis for requiring Texas Eastern to refile its application with respect to flowing gas. The ERA does, however, agree that the new Canadian accord may have significant impact on the proposed extension of the existing arrangement. For this reason, as well as because of the issues raised, the proposed extension is the subject of a procedural order issued concurrently with this order soliciting comments about the effect of the accord.

The ERA therefore finds that the renegotiated contract terms, when applied to the existing, currently authorized import, will result in a more competitive and market-responsive arrangement. The two-part, demand/commodity price structure is reasonable and is therefore consistent with the public interest. As previously noted, the DOE takes the position that the two-part rate design utilized in Canadian import arrangements is largely analogous to two-part rates in domestic tariffs, and should be approved as such.

The opponents of the new arrangement also question the need for the gas, and the reliability of Texas Eastern's source of supply in that ProGas has not committed any reserves to the Texas Eastern contract. Texas Eastern has demonstrated that the revised arrangement would improve the competitiveness of the existing arrangement over the term of the import currently authorized. Therefore, a rebuttable presumption arises that the gas is needed in Texas Eastern's market area. With respect to security of supply, we note that dedication of reserves is not a requirement under the DOE policy guidelines and that security of supply may be demonstrated by the historical reliability of the supplier and referenced to any gas reserves committed to the import arrangement.22/ Gas has been flowing under this ProGas import arrangement since 1981 without curtailment and ProGas has contracted for a total of 2.2 Tcf of reserves with Alberta producers to meet its delivery obligations for imports including those of Texas Eastern.23/ Accordingly, we do not find that the arguments made with respect to considerations of need and security of supply refute our findings that the renegotiated terms as they apply to the currently authorized arrangement are in the public interest.

The remaining concerns relate to collateral legal matters.24/ Although Texas Eastern did not specifically request the ERA to approve the as-billed passthrough of the two-part rate in this application, nearly all parties to this proceeding discuss whether they believe the ERA has jurisdiction to approve this pricing structure. The ERA has addressed this question of jurisdiction and the relationship between the import authorities of the ERA and the FERC at length in prior decisions. In its final decision and rehearing in the Northwest case, the ERA stated,

[o]nly the ERA Administrator may review international contracts and authorize imports. Once the Administrator has approved an import arrangement, the FERC, while exercising its Section 4 and 5 authorities, cannot act in a manner inconsistent with the actions taken by the Administrator. Thus, it could not significantly alter or overturn the arrangements upon which the Administrator's actions are based.25/

The ERA sustained its decision on rehearing.26/

The ERA endorses in principle the passthrough of the two-part structure of the arrangement, but as we noted earlier in this opinion, not necessarily of every single cost element exactly as proposed. It is up to the FERC to exercise its authority under Sections 4 and 5 of the NGA, while acting in a manner consistent with the ERA's decisions and the DOE's policies. Clearly if there are components of a demand charge, such as production-related costs that the FERC would not permit to be treated as fixed costs, the Canadian import should be treated no differently. However, if the international contract, freely negotiated by commercial parties and approved by the ERA, includes cost recovery provisions that achieve reasonable results and are in compliance with applicable laws, the ERA urges regulatory restraint from any unnecessary intrusion into private contract matters.

PECO has requested unspecified additional procedures if the ERA exercises jurisdiction over the as-billed treatment issue. The legal and policy questions associated with this issue have been addressed fully in prior decisions and in the preceding section, and the ERA does not believe additional procedures on this same matter in this proceeding are warranted. Accordingly, PECO's request for additional procedures is denied.

PPROA, PECO, and PGW have requested a trial-type hearing in this proceeding on the grounds that such a hearing is required to resolve certain factual, policy and legal issues including: (1) whether Texas Eastern's gas supply is competitively priced; (2) whether Texas Eastern's proposed rate structure is anticompetitive and based on misleading assumptions; (3) whether the amended arrangement gives ProGas an unfair advantage over domestic suppliers; (4) generally the impact of and justification for the two-part rate; and (5) ERA/FERC jurisdiction over the two-part rate. Section 590.313 of the ERA's administrative procedures requires a party requesting a trial-type hearing to demonstrate the existence of relevant and material issue(s) of fact genuinely in dispute. This demonstration has not been made.27/ Arguments regarding the competitiveness of the two-part rate relate to policy issues surrounding the rate's implementation and application. The jurisdictional question is a question of law not fact. Those who challenge the border and

delivered price, despite ample opportunity to comment in response to the Federal Register notice of the application and the subsequent procedural order issued in this docket,28/ do not dispute facts which are relevant and material to the limited scope of this decision. Accordingly, the requests for a trial-type hearing by PPROA, PECO, and PGW, as they relate to this phase of the proceeding, are hereby denied.

One final procedural issue remains to be resolved, and that is the admissibility of the testimony of the FERC staff in the related FERC proceeding as an exhibit in this proceeding.29/ Texas Eastern objects to the admission of this testimony into evidence and asks that it be struck from the record on the grounds that the FERC has not intervened in this proceeding and that the FERC staff position does not represent the FERC position. ProGas contends that the testimony shows that no harm results to PGW or PECO from the as-billed passthrough of the two-part rate and that, in fact, the cost impact on PGW and PECO is less under the as-billed passthrough than under the methodology advocated by PGW and PECO.30/

The ERA finds this testimony and attached exhibits, which are part of the record in the related FERC proceeding, to be admissible in this proceeding. Their content is pertinent to this proceeding, no prejudice to any party results from introducing this material into this record, and parties of record in this proceeding are afforded considerable latitude under the ERA's procedures to introduce transcripts and other documents into evidence that they believe are relevant and material. Accordingly, Texas Eastern's request to strike this testimony from the record is denied.

After taking into consideration all of the information in the record of this proceeding, I find that the amended authorization requested by Texas Eastern, only as it relates to gas currently authorized for import through October 31, 1987, is not inconsistent with the public interest and should be granted.31/

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. The import authorization granted to Texas Eastern Transmission Corporation (Texas Eastern) in DOE/ERA Opinion and Order No. 32, issued April 24, 1981, in ERA Docket No. 79-15-NG is hereby amended to allow Texas Eastern to import Canadian natural gas through October 31, 1987, in accordance with the provisions of the May 30, 1985, amending agreement between Texas Eastern

and its Canadian supplier, ProGas Limited, submitted as a part of the application filed by Texas Eastern on July 15, 1985.

B. That portion of Texas Eastern's application filed July 15, 1985, relating to its request to extend the term of its authorization from November 1, 1987, through October 31, 1989, is hereby separated for administrative purposes from this proceeding. It has been consolidated with ERA Docket Nos. 82-05-NG, 82-07-NG, and 85-19-NG in the procedural order issued March 21, 1986, for purposes of requesting additional comments concerning Texas Eastern's new contracts for natural gas.

C. Texas Eastern shall file with the ERA, for all gas imported under this authorization, in the month following each calendar quarter, quarterly reports showing by month, the quantities of natural gas imported under this authorization, and the price paid for those volumes. The price data shall show both the demand and commodity charge paid.

D. The requests for a trial-type hearing filed by Panhandle Producers and Royalty Owners Association, Philadelphia Gas Works, Public Service Commission of the State of New York, and Philadelphia Electric Company are hereby denied. The separate request of the Philadelphia Electric Company for additional procedures if the ERA exercises jurisdiction over the passthrough of the two-part rate is also denied. In addition, Texas Eastern's motion to strike the FERC staff testimony filed by the Philadelphia Gas Works from the record is denied.

E. The motion to intervene filed by the Municipal Defense Group is hereby granted, provided that participation of the intervenor shall be limited to matters specifically set forth in its motion to intervene, and not herein specifically denied, and that its admission shall not be construed as recognition that it might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C. on March 21, 1986.

--Footnotes--

1/ 1 ERA Para. 70,530.

2/ 49 FR 6684, February 22, 1984.

3/ 50 FR 31224, August 1, 1985.

4/ The intervenors are:

(1) The Brooklyn Union Gas Company

(2) Public Service Electric and Gas Company

(3) Northern Natural Gas Company, Division of InterNorth, Inc.

(4) Washington Gas Light Company, Frederick Gas Company, Inc. and Shenandoah Gas Company (joint motion)

(5) Transcontinental Gas Pipe Line Corporation

(6) Philadelphia Electric Company

(7) ProGas Limited

(8) Panhandle Producers and Royalty Owners Association

(9) Philadelphia Gas Works

(10) Public Service Commission of the State of New York

5/ In addition, Representative Beau Boulter from Texas, who did not intervene in this proceeding, submitted a letter opposing the applications. We have considered his views, which are similar to those expressed by the Panhandle Producers and Royalty Owners Association, for the limited purpose of determining the appropriate procedural action to be taken on Texas Eastern's application.

6/ Texas Eastern Transmission Corporation, Order Providing Opportunity For Additional Comment, ERA Docket No. 85-13-NG, unpublished (October 8, 1985).

7/ Comments were received from:

(1) Philadelphia Electric Company

(2) Philadelphia Gas Works

(3) Panhandle Producers and Royalty Owners Association

(4) Public Service Commission of the State of New York

(5) Municipal Defense Group

(6) Texas Eastern Transmission Corporation

(7) ProGas Limited

8/ MDG is an organization of ten distributor customers of Texas Eastern consisting of municipalities in the Midwest and South.

9/ 15 U.S.C. Sec. 717(b).

10/ See supra note 2.

11/ Id., at 6689.

12/ Id.

13/ Texas Eastern Transmission Corporation, Order Requesting Certain Information From The Applicant, Providing Opportunity For Further Comment From All Intervenors, and Granting Interventions, ERA Docket Nos. 82-05-NG, et al., unpublished (March 21, 1986).

14/ Response of Texas Eastern Transmission Corporation in Support of Application for Amended Import Authority, November 22, 1985, at 9-10.

15/ Id., at Appendix A.

16/ In Order No. 32, the ERA authorized a border price not to exceed $4.94 per MMBtu. The border price was subsequently reduced by the Canadian Government to $4.40 per MMBtu. Under Canada's Volume Related Incentive Pricing Program (VRIP), Texas Eastern states that the price would be $4.07 per MMBtu at a 75 percent load factor. See supra note 14, at 7.

17/ See supra note 14, at 10.

18/ See Additional Comments of Philadelphia Gas Works, November 7, 1985, at 4-5; Initial Additional Comments of Philadelphia Electric Company, November 7, 1985, at 5; Comments and Petition for Leave to Intervene of Panhandle Producers and Royalty Owners Association, August 30, 1985, at 3.

19/ The competitiveness and fairness of the two-part rate and the as-billed flow-through of the demand charges are the subject of a related proceeding at the FERC in Docket No. TA 85-4-17-00 et al.

20/ Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Bill Provisions, Order No. 380, 27 FERC Para. 61,318.

21/ As stated in Comments of the United States Department of Energy, FERC Docket No. RM 85-1-000 (Part D), November 18, 1985, at 7: "The Department wants to reiterate its previous position that there should be no regulatory distinction between the treatment of domestic and imported gas supplies. If the `as-billed' principle is to be preserved, as stated in the Commission's Notice, it should be applied to imported gas as well. The Department believes the two-part rate design utilized in these new import arrangements is largely analogous to two-part rates that are accepted in domestic tariffs that recognize the costs in providing transportation over long distances. We see no rationale for denying imported gas the same treatment with regard to as-billed passthrough that is available to domestic pipelines. If the Commission has concerns about the allocation of imported gas costs between demand and commodity charges, it has sufficient authority to take the appropriate action. However, as long as the result of international contracts freely negotiated between commercial parties is reasonable and is approved by the Economic Regulatory Administration, we urge regulatory restraint in any unnecessary intrusion into private contractual matters."

22/ See supra note 2, at 6687.

23/ See supra note 14, at 19.

24/ PPROA also asserted that the policy guidelines do not have the effect of a substantive DOE rule since substantive rules can only be issued pursuant to a rulemaking proceeding. This collateral issue was addressed fully in Northridge Petroleum Marketing U.S., Inc., DOE/ERA Opinion and Order No. 88A, 1 ERA Para. 70,610 (rehearing denied November 27, 1985), and need not be addressed again here.

25/ Northwest Pipeline Corporation, DOE/ERA Opinion and Order No. 87, 1 ERA Para. 70,604 (September 10, 1985), at 17.

26/ Northwest Pipeline Corporation, DOE/ERA Opinion and Order No. 87A, 1 ERA Para. 70,609 (November 8, 1985).

27/ See 10 CFR Sec. 590.313.

28/ Id., note 13.

29/ In its comments of November 7, 1985, PGW attached as Exhibit 1 to

its filing the testimony of FERC staff in the ongoing proceeding at the FERC, Texas Eastern Transmission Corporation, FERC Docket No. TA 85-4-17.

30/ Additional Reply Comments of ProGas Limited, November 22, 1985, at 2-3.

31/ The DOE has determined that because existing pipeline facilities will be used and no new construction is being undertaken for this import, granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, et seq.) and therefore an environmental impact statement or environmental assessment is not required.