Cited as "1 ERA Para. 70,717"

Granite State Gas Transmission, Inc. (ERA Docket No. 86-43-NG), August 5, 1987.

DOE/ERA Opinion and Order No. 187

Order Granting Authorization to Import Natural Gas from Canada and Denying Request for Additional Procedures

I. Background

On July 18, 1986, Granite State Gas Transmission, Inc. (Granite State), applied to the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for authority to import Canadian natural gas from Shell Canada Limited (Shell). Granite State owns and operates a 55-mile interstate natural gas pipeline system extending from the Massachusetts-New Hampshire border northeast through the New Hampshire coastal area to a terminus at Elliot, Maine. It resells the gas it purchases to only two distributors, Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities), and one non-jurisdictional customer, Pease Air Force Base. Bay State, the corporate parent of both Granite State and Northern Utilities, is a natural gas distributor operating in the State of Massachusetts. Northern Utilities operates distribution divisions in both Maine and New Hampshire. As proposed, Granite State would use the imported volumes to supplement its existing long-term gas supplies.

By its application, Granite State seeks approval to import up to 25,000 Mcf of natural gas per day on an interruptible, best-efforts basis for a period from November 1, 1987, through October 31, 1988. Beginning on November 1, 1988, and extending through March 31, 1999, Granite State seeks to import up to 25,000 Mcf per day on a firm basis and an additional daily quantity of up to 15,000 Mcf on an interruptible basis. In order to accomplish the delivery of this supply, Granite State intends to lease from Portland Pipeline Corporation (Portland) a 166-mile crude oil pipeline that extends from the city of Portland, Maine, to the U.S./Canadian border near North Troy, Vermont, and convert it to natural gas service. In addition, Granite State intends to purchase 48 miles of natural gas pipeline facilities owned by Northern Utilities which extend from Portland to Elliot, Maine.

Granite State cites several reasons for requesting the authority to import natural gas from Canada. Granite State maintains that the proposed import arrangement would increase its ability to meet the growing firm requirements of its two jurisdictional customers, Bay State and Northern Utilities, with secure, competitively-priced natural gas supplies and that the gas purchase contract with Shell contains price adjustment provisions that guarantee that the supply will remain competitive for the duration of the import arrangement. In addition, the applicant states that the proposed new, firm supply and delivery system would be environmentally beneficial, increase the reliability of service, improve the energy supply mix in the New England region, and displace expensive supplemental gas supplies in the winter months. On the basis of the above, Granite State concludes that its import proposal is not inconsistent with the public interest.

II. Procedural History

On August 1, 1986, the ERA issued a notice of the filing of the Granite State application and invited comments, protests, and motions to intervene.1/ The ERA received a total of 11 motions to intervene in this proceeding.2/ Of the 11 intervenors, three parties supported the import proposal while seven parties took no position.

One intervenor, the New England Fuel Institute (NEFI), protested the application and requested a trial-type hearing. NEFI, an association of small and independent home heating oil distributors in the six-state New England region, maintains that its members are in direct competition with the distribution company customers of Granite State. NEFI argues that the proposed import project would not be competitive in all markets proposed to be served by this supply, is not needed, and would provide Canadian gas suppliers with an unfair competitive advantage over domestic gas suppliers because of the proposed two-part demand/commodity rate structure contained in its gas purchase contract.

On September 12, 1986, Granite State submitted a motion, pursuant to 10 CFR 590.302 of the ERA's procedural rules, requesting an extension of time from September 23, 1986, to October 7, 1986, to file answers to motions to intervene in this proceeding. On September 23, 1986, the ERA issued a procedural order granting Granite State the requested extension of time to answer motions to intervene. On October 7, 1986, Granite State filed with the ERA its answer to the motion to intervene, protest, and request for hearing filed by NEFI. In its answer, Granite State urges the ERA to deny NEFI's request for a trial-type hearing and argues that all the evidence provided in its application indicates that its markets require additional supplies of competitively-priced gas and that gas purchased from Shell will be competitive with alternative fuels, including domestic gas supplies.

On March 17, 1987, the ERA issued a procedural order requesting additional information from the applicant, providing NEFI the opportunity to present evidence to support its allegations, providing opportunity for further comment from all parties, and granting intervention to all movants. The procedural order requested submission of initial comments by April 8, 1987, and answers to these comments by April 23, 1987. The ERA received comments on April 8, 1987, from the applicant, NEFI and the Public Advocate of the State of Maine. On April 23, 1987, answers to the earlier comments were filed by the applicant, NEFI, and the Maine Public Utilities Commission (MPUC). The parties' comments and reply comments focused specifically on the issues raised in the procedural order and are discussed in section III of this opinion.

On April 1, 1987, and May 8, 1987, Granite State filed with the ERA and served on all parties to this proceeding, copies of its responses to certain information requests by the staff of the Federal Energy Regulatory Commission (FERC) in its related application for a certificate of public convenience and necessity and for an order authorizing pregranted abandonment in Docket CP87-39-000. This order incorporates these filings into the record of this proceeding.

III. Comments Received

A. Position of NEFI in opposition to application

In its September 8, 1986, motion to intervene and protest of this application, NEFI states that its member companies are in direct competition with Granite State's distribution customers, Bay State and Northern Utilities, and that the applicant ". . . will supply a competitive fuel to the area served by NEFI's members and Granite State's customers may seek to convert customers of NEFI's members to gas in order to use the imported supplies, which NEFI believes is contrary to sound energy policy and inconsistent with the public interest." 3/ NEFI further asserts that the applicant has not demonstrated that the import supply would be competitive in all markets served, is not needed, and that the pricing provisions of the proposed agreement give this supply an unfair competitive advantage over domestic gas supplies. NEFI believes that the ERA should convene a trial-type hearing to resolve these alleged issues of material fact in order to determine whether the proposed project is not inconsistent with the public interest.

In asserting that Granite State has failed to prove that the supply will be competitive and needed in all relevant markets, NEFI argues, for example, that the import supply may be competitive in the residential and commercial sectors, but not in the industrial and utility sectors, where the competition is primarily residual fuel oil. The protestor further asserts that Granite State relies heavily on expanded markets in these two sectors to support its need for this supply and that it has not sufficiently documented a finding of need or competitiveness in either of these market sectors.

In its initial filing and protest of this application, as well as in subsequent submissions, NEFI contends that the proposed import arrangement, with its two-part demand/commodity rate structure, gives this Canadian gas supply an unfair market advantage over domestic suppliers. NEFI argues that the demand charge in the proposed pricing agreement is inordinately large and that the commodity component is below market level, thus making ". . . marginal imports more attractive than marginal domestic supplies." 4/ Therefore, NEFI reasons that if additional markets do not materialize, this import supply will undoubtedly displace domestic gas supplies now serving this market. In conclusion, NEFI requests additional opportunity to provide further evidence that approval of this import would have ". . . depressing effects on the domestic industry if the gas imports are approved on the terms proposed." 5/

In its April 8, 1987, response to the ERA's March 17, 1987, procedural order requesting material facts to support its assertions that the proposed import is neither needed nor competitive, NEFI continues to argue that the ERA should conduct a trial-type hearing in order to properly assess whether the imported supplies would be competitive over the term of the proposed project. NEFI's submission contains several exhibits comparing 1986 oil and gas price data obtained from the Energy Information Administration (EIA) of DOE, the Massachusetts Department of Public Utilities (MDPU), and the MPUC. NEFI states that the data clearly illustrate that natural gas was not competitive in the residential and industrial markets of Massachusetts and Maine during the past year and that the data are the best indicators of future price trends. Given these price relationships, NEFI contends that the proposed import would ". . . merely increase the availability of a fuel source that is uncompetitive at retail." 6/

NEFI concludes its April 8, 1987, comments by addressing the alleged advantage the price of the proposed import would have over domestic gas suppliers resulting from its two-part demand/commodity rate structure. With reference to recent FERC decisions,7/ NEFI argues that the proposed contractual arrangement ". . . is not permissible by domestic suppliers and a virtually identical contractual arrangement has been preliminarily rejected by the Federal Energy Regulatory Commission ("FERC") as an unfair competitive advantage." In summary, NEFI concludes that while it ". . . may not be injured as a direct result of the two-part structure of the import price, its members will be injured if these imports are approved by the ERA." 8/

In its April 23, 1987, reply comments, NEFI reiterates its earlier concerns regarding need, competitiveness of the proposed import, and the adverse effects that would result from the two-part demand/commodity formula contained in the Granite State gas purchase contract with Shell. In addition to these issues, NEFI argues for the first time that Granite State's contingency plans in the event of early termination of the pipeline lease by Portland ". . . consist of a blind reliance on obtaining gas supplies from speculative and uncertified future import expansion projects." 9/ NEFI concludes by maintaining that the ERA must have further procedures examining the reasonableness of the contingency plans, and if found to lack credibility, the ERA should seek to identify alternative supplies that will be needed to replace the proposed import.

B. Position of the project sponsors and other parties supporting the import proposal.

Of the 11 parties participating in this proceeding, only the NEFI opposed the import proposal. Seven parties, comprised principally of active or prospective importers and exporters of Canadian natural gas into the U.S. Northeast, neither supported nor opposed the project, while two intervenors representing the interests of the states being served by the proposed project indicated their support. No parties, other than NEFI, requested additional procedures.

Other than the two sponsors of the proposed import, the two parties indicating support for the project were the New England Conference of Public Utilities Commissioners, Inc. (NECPUC), and the Public Advocate of the State of Maine (Public Advocate). NECPUC is an organization comprised of the public utility commissioners in the six New England states, which was created to promote effective regulation of public utilities serving consumers in their jurisdiction and to provide a means of expressing their joint position on utility matters affecting the public interest of New England. The Public Advocate, who represents the interests of Maine consumers, intervenes in Federal regulatory proceedings that may have an impact on consumers of any utility doing business in the State of Maine. Both of these intervenors think the proposed import project would be in the public interest because they maintain that the new supply would reduce the need for expensive supplemental gas supplies during the winter months, the price adjustment formula in the gas purchase agreement ensures that the price will remain competitive for the duration of the project, and the use of the converted crude oil pipeline will add additional flexibility to the natural gas transportation system serving

New England, thus providing additional reliability for natural gas service in the market area.

In support of its application, Granite State contends that its proposed import arrangement is consistent with the DOE policy guidelines and Delegation Orders of the Secretary of Energy relating to the regulation of imported natural gas.10/ Granite State maintains that its project meets the three principal criteria established in the DOE Policy Guidelines and Delegation Order No. 0204-111 to the ERA and considered in determining whether to approve an import authorization request: (1) competitiveness of the supply; (2) the need for the gas; and (3) the security of the supply.

With respect to the competitive criterion, Granite State maintains that its gas purchase contract with Shell ensures that this gas supply will remain competitive for the life of the project. During the proposed initial year of operation (November 1, 1987-October 31, 1988), Granite State would purchase up to 25,000 Mcf per day of natural gas supplies priced at a one-part commodity charge and made available on an interruptible, best-efforts basis. Beginning with firm deliveries on November 1, 1988, the gas purchase contract establishes a two-part demand/commodity pricing structure, and Granite State intends to pass through these costs in its rates on an as-billed basis. A base border price of $3.31 per MMBtu was established in its contract with Shell. The base border price was determined by indexing it to No. 2 and No. 6 fuel oils and the weighted average price of Granite State's other firm gas supplies. Granite State maintains that the border price will remain competitive for the entire term of the project because it will be subject to monthly adjustments based on the application of a formula that compares the price of the same petroleum products and gas supplies that were used to determine the base border price. The applicant reports that recent application of this formula to current data produced a border price for February 1987 of $2.15 per MMBtu.11/ The demand charge component under this import arrangement as of March 1987, is $0.78 per MMBtu or $23.75 per MMBtu of contract demand on a monthly basis at 100 percent load factor.12/ Under the contract terms, the demand and commodity charges are interrelated; consequently, future increases in demand charges will result in reductions in the commodity component and vice versa. The commodity cost of the supply is derived by subtracting the demand charge from the adjusted border price. Thus, for example, subtracting the $0.78 demand charge from the February border price of $2.15 results in a commodity cost of $1.37 per MMBtu for that particular month.

In its supplemental filings with the ERA, Granite State contends that there is no basis for NEFI's assertions that the success of the project is premised on making interruptible sales to the industrial and electric utility sectors. The applicant states that the project is solely intended for the benefit of Bay State's and Northern Utilities' firm customers. Granite State adds further that:

> . . . The Massachusetts Department of Public Utilities, the New Hampshire Public Utilities Commission and the Maine Public Commission have directed that all demand charges associated with such dedicated supplies should be allocated to the customers classes for whom the gas is being purchased, the marketability of the gas supply to interruptible customers is solely a function of the competitiveness of the commodity cost of the gas as it relates to the alternate fuel costs of interruptible customers.13/

Although the applicant states that the project is dedicated to the needs of high-priority firm customers, Granite State emphasized the potential for increased interruptible sales beyond present levels, benefits from which would flow back to firm customers.14/ Granite State also indicates that the proposed import supply will be less expensive that its existing long-term supplies and will reduce [Bay States' and Northern Utilities'] average cost of gas by approximately $0.11 per MMBtu and $0.26 per MMBtu, respectively.15/

Both Granite State and the MPUC assert that the data provided by NEFI in comparing 1986 oil and gas price data were inaccurate and misleading. Among the reasons cited by Granite State in arguing that NEFI's price comparison was inaccurate include its commingling of spot and full service oil prices, overstating gas prices, utilizing price ranges, and not taking into account the real incremental cost of a non-heating gas customer switching to gas for space heating use. The applicant provided its own analysis of oil and gas prices for residential customers and concludes that when all the proper factors are taken into account

> . . . the cost of heating a house in 1986 utilizing gas purchased from Bay State and Northern Utilities compared to the cost of heating the same house with oil utilizing NEFI's oil prices would have been only slightly greater . . .16/

Granite State indicates that its analysis also does not take into account important non-cost factors that often determine the choice in fuel, i.e., reliability of supply, cleanliness, maintenance, and cost of heating equipment. Granite State argues that evidence that these factors are important considerations is supported by the reported addition during the past three years of 17,814 heating customers to Bay State's and Northern Utilities' market, 39 percent of them added in 1986. Fifty-five percent of the 1986 additions were oil to gas conversions, a fact the applicant points out contradicts NEFI's claim that gas was not marketable in 1986.17/

Granite State concludes by pointing out that the proposed import will lower the cost of supplies to Bay State and Northern Utilities, thus making their gas supplies even more competitive.

Granite State asserts that its gas purchase contract with Shell ensures that the gas supply will be competitive over the term of the arrangement, and that this showing together with the market study furnished by Granite State demonstrate need for the project. The applicant submitted various tables illustrating the growing requirements of its customers and their ability to absorb this new supply along with their existing supplies. Granite State stressed that these new supplies could displace expensive supplemental winter supplies, such as LNG and LPGs, and that additional evidence of need is reflected by the fact that during the 1986-87 winter season Bay State and Northern Utilities drew down 94.6 percent of their underground storage inventory and purchased two supplemental gas supplies ". . . equivalent to 53.6 percent of the winter volume . . ." 18/ under the proposed project. Granite State also notes that the 1986 load additions by its two gas distribution customers in the residential and commercial sectors equaled ". . . 22.1 percent of the annual volume which these two companies will receive . . ." from the project.19/

Granite State insists that the proposed import will add an important new supply source and delivery system that will enhance the reliability of gas service to the New England region. In support of its position that the proposed import arrangement will provide the region with a long-term, secure supply of natural gas, Granite State cites the long-standing commercial relations between the U.S. and Canada, and the fact that Shell, the seller of gas in this project, has reserves in excess of its present contractual commitments that are sufficient to meet its contractual obligations under this project.

Granite State is currently in the process of developing gas supply alternatives in the event that Portland elects to terminate the pipeline lease before March 31, 1997. Granite State contends that the earliest optional termination date under the lease is March 31, 1996, and that it would be premature to have selected a specific alternative supply at this time. However, the applicant states that it recently has had discussions with Tennessee Gas Pipeline Company and Algonquin Gas Transmission Company regarding future system expansion and measures to increase flexibility in moving gas between Bay State's operating divisions. In conclusion, Granite

State maintains that in the event of early termination it will have adequate lead time to arrange for an alternate supply for continuous service to its customers.

Granite State also responded to NEFI's assertion that its two-part demand/commodity rate structure was unfair to domestic gas producers. In response to NEFI's statement that its gas purchase contract is identical to one that has been rejected by the FERC in the Natural Gas Pipeline case, the applicant argues that the FERC did not reject the rate structure in the gas purchase contract, but prohibited the pass through of certain fixed costs of imported gas on an "as billed" basis. Although Granite State disagrees with the FERC reasoning behind this Natural Gas Pipeline decision, it indicates that it will comply with its requirements and that these changes would not have an impact on the unit price of the gas at the border, purchased at 100 percent load factor. Granite State maintains that its forecasted market requirements contained in various filings before the ERA and the FERC clearly demonstrate that it can absorb this new supply at a 100 percent load factor without displacing its other long-term, firm supplies of natural gas.

IV. Decision

Granite State's application has been reviewed to determine if it conforms with Section 3 of the Natural Gas Act (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." 20/ In making this finding, the ERA Administrator is guided by the DOE's natural gas import policy guidelines.21/ Under this policy, the competitiveness of the import arrangement in the markets served is primary consideration for meeting the public interest test; however, under any long-term import proposal, such as this one, need for the supply and security of the supply are also important considerations.

A. Substantive Issues

1. Competitiveness of the Import

The primary basis for the NEFI's opposition to this import proposal appears to be its belief that the proposed project may be too competitive in the market, largely because the import threatens to displace current and future sales by its members. NEFI argues this competition would be contrary to a sound energy policy.

However, the ERA considers that the competitiveness that this new supply of gas will bring to the market represents sound energy policy and will ultimately lower consumer energy prices. The ERA believes that the contract terms of this import arrangement are very flexible and will result in a supply of natural gas that will reflect market conditions over the life of the project. Specifically the contract includes no take-or-pay clauses, but does contain a two-part, demand/commodity pricing structure, a monthly price adjustment provision, an annual price renegotiation clause, and an arbitration provision.

The import proposal is dedicated to high-priority, firm customers and the evidence on the record indicates that the new supply will be the least expensive of Granite State's firm gas supplies, and will have the effect of lowering the cost of gas supplies to Granite State's customers, Bay State and Northern Utilities, by replacing high-cost, winter supplemental supplies, such as LNG and propane. Consumers in the New England states historically have paid the highest average prices in the U.S. for natural gas due to their distance from major gas producing areas and position at the end of the gas distribution system.22/ Evidence on the record indicates that the proposed import will have the effect of increasing competition among suppliers of natural gas to this market.

This project competes with oil to the extent that the availability of this new, lower cost gas supply to Granite State and its distribution customers may enable them to expand their markets at the expense of oil. Although evidence provided by both the NEFI and Granite State indicate that oil, in some instances, may have a price advantage over natural gas in certain markets, we find that in general the proposed project will improve the competitive position of natural gas in New England and, in turn, will foster more competition and expand fuel options in the area. Granite State has provided evidence, uncontested by the NEFI, that both of its distribution customers have already experienced substantial growth in demand over the past several years in the proposed markets to be served by this project, partially at the expense of the oil markets. Inasmuch as this new supply will lower the aggregate cost of gas supplies to these distribution companies, the competitive position of natural gas vis-a-vis oil should be further strengthened by this import.

Apart from the potential displacement of oil markets, NEFI is concerned that the proposed two-part demand/commodity rate formula is unfair to domestic gas suppliers competing with imports. We find these concerns to be without foundation. This arrangement is similar to domestic pipeline arrangements that utilize two-part rates and reflect the cost of providing transportation over long distances and will be subject to similar rate treatment. NEFI does not demonstrate that the proposed two-part rate will have an unfair and discriminatory effect, nor, we note, has any domestic gas supplier intervened to protest the proposed arrangement on this basis. The ERA has considered the proposed arrangement in its entirety, including the two-part rate, and finds that it will provide for a supply of gas that will be competitive and responsive to changes in the market over the life of the project, and this competition necessarily will apply downward pressure on prices to the benefit of consumers.

2. Need

Despite NEFI's claims to the contrary, the record evidence indicates that there is a need for a long-term, secure, competitively-priced supply of natural gas in the New England region. A balanced energy mix and a greater diversity of supply sources permit consumers to choose freely among all the practical and competitive energy options. The New England region is particularly vulnerable to supply disruptions because of its undue dependence on imported oil supplies. Consequently, DOE policy continues to favor the displacement of oil imports with competitive alternatives, including gas supplies from historically reliable Canadian sources. Granite State has shown in its various submissions the growth in the gas requirements of its customers and its current inability to obtain additional firm supplies from its domestic pipeline suppliers. The Office of Public Advocate of the State of Maine also states that ". . . the additional Portland Pipeline volumes will have the immediate beneficial effect of reducing the need for costly supplemental gas send-out during winter months." 23/

The ERA finds the supply and demand forecasts submitted by Granite State to be persuasive. Most natural gas supply and demand forecasts indicate generally a decline in domestic natural gas production over the term of the proposed project, 24/ and in recognition of Granite State's growing gas supply requirements, we find that there is a need for supplemental import volumes from secure sources that are competitively priced.

Further, need is viewed under the ERA's policy guidelines as a function of competitiveness, and imported gas shown to be competitive in the proposed market, which is the case here, gives rise to a rebuttable presumption of need. Despite ample opportunity, NEFI's data and arguments have not rebutted the presumption and do not persuade the ERA that the proposed import is not needed.

3. Security of Supply

Natural gas has been imported from Canada for many years, and there has been no instance of a major natural gas supply interruption that would call into question Canada's future reliability as a supplier of natural gas to this country. It was also noted by Granite State that its Canadian supplier, Shell, has natural gas reserves that are in excess of its obligations under this proposed import arrangement. These facts are uncontested in this proceeding.

The pipeline lease agreement between Granite State and Portland is for an initial term of ten and one-half years (November 1988, through March 1999); however, the agreement permits Portland to terminate the lease in its sole discretion after seven and one-half years (March 1996) and every year thereafter, if it provides Granite State with a 29-month notice of its optional termination decision. In view of this inherent possibility and our concern with security of supply, the ERA in its March 17 procedural order requested Granite State to describe what kind of contingency plans it had developed in case of this eventuality.

In response to the ERA's inquiry, Granite State submitted as an exhibit a section of its application with the FERC in Docket No. CP87-39-000 entitled, "Pregranted Abandonment of the Leased Line in Natural Gas Service". This section briefly described several successful projects for gas procurement by Granite State, Bay State, and Northern Utilities during the past five years and the addition of certain underground storage capabilities. Granite State maintains that the foregoing provides evidence that all three companies have "established a record for aggressive and continuing gas supply procurement programs for their integrated systems."25/ Granite State also states that it has had recent discussions with Tennessee Gas Pipeline Company (Tennessee) regarding future system expansion and that Tennessee has indicated a willingness to take the necessary steps to ensure that the market will be served.

In NEFI's reply comments to the ERA's March 17 procedural order, it argues that Granite State's contingency plans in the event of a pipeline lease termination ". . . consist of a blind reliance on obtaining gas supplies from speculative future import projects or unannounced and uncertified future pipeline expansion projects."26/ NEFI concludes that a further inquiry or hearing should be held to investigate ". . . the reasonableness of Granite State's contingency plans in the event Portland terminates its lease with Granite State. . . ."27/

In its procedural order issued on March 17, 1987, the ERA stated that it was particularly interested in comments from state agencies on the issues discussed in its procedural order, including the possible early termination of

Granite State's pipeline lease. The ERA was interested in whether the states, representing the consumers of the proposed import, were concerned about the possible termination of the delivery system of this natural gas supply and whether the contingency plans outlined by Granite State seemed adequate. However, no state expressed any concern about a possible early pipeline lease termination. Comments were supportive. The Executive Office of Energy Resources (EOER) of the Commonwealth of Massachusetts stated in a December 9, 1986, letter to the FERC that, "[t]he pipeline delivery system . . . will provide a new supply option and enhanced security for Massachusetts consumers."28/ The NECPUC, in its motion to intervene, also stated that the proposed project would enhance the energy security of the New England region. The NECPUC stated that,

> The proposed connection of the northernmost gas markets in New England to a supply of natural gas in Canada through the conversion of the crude oil pipeline will permit backfeeding of the New England system and thus provide additional reliability for natural gas service to New England consumers, . . .29/

The ERA has carefully considered the issue of whether the possible early termination of Granite State's pipeline lease represents an unreasonable risk to the security of the supply and to the high-priority consumers that the project is intended to serve. The ERA recognizes that the transportation is only one aspect of the security of supply issue, but it is nonetheless important. The ERA also realizes that the proposed project would enhance energy security in the New England states by improving the pipeline distribution system and by adding to the diversity of energy sources. In a recent energy security report to the President, the DOE stressed that diversity in the mix and source of energy fuels was an important element to this country's energy security and "using more natural gas from secure sources could effectively reduce the demand for oil and thereby reduce vulnerability to oil supply disruptions."30/ The ERA finds that this strategy is all the more appropriate in the New England States, with their high level of dependence on imported petroleum.

In weighing the various advantages and disadvantages of the proposed project with respect to the security of supply issue, the ERA concludes that, on balance, the project will enhance the region's energy security by improving the area's fuel diversity and adding flexibility to the natural gas distribution system. Based on the success of Granite State and its two gas distribution customers in procuring gas supplies during the past five years, as well as the 29-month notice period prior to any termination date, the ERA is reasonably assured that these gas suppliers will be able to find sufficient alternative supplies to continue service to the consumers this project is intended to serve.

B. Other Matters

1. Request for Additional Procedures

The NEFI has requested further inquiry into the issues in this proceeding and, specifically, has requested a trial-type hearing to resolve disputed factual issues. NEFI's concerns include (1) whether Granite State's gas supply is needed and competitive in the specific markets to be served; (2) whether Granite State's proposed two-part demand/commodity rate structure is anti-competitive and would adversely affect domestic gas producers; and (3) whether Granite State's supply contingency plans are reasonable in light of the possible early termination of its pipeline lease with Portland. NEFI's concerns are predominately policy in nature and not factual.

Section 590.313 of the ERA's administrative procedures requires any party filing a motion for a trial-type hearing to demonstrate that there are factual issues genuinely in dispute, relevant and material to the decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. NEFI, or any party, is not entitled as a matter of right to a trial-type hearing for policy or legal issues.

NEFI's concerns revolve around the issue of competitiveness and reflect a view of energy policy that would seek to protect its oil markets from direct competition with imported gas. This view departs fundamentally from established DOE policy to promote competition within the energy industry and to work towards a reduction in this nation's reliance on imported foreign oil.

The ERA does not believe that additional procedures in this proceeding are warranted or necessary. All parties, including NEFI, have had sufficient opportunities to comment on the proposed arrangement and the parties' positions on the issues, and any facts presented to support those positions, are adequately represented in the record. Although there was disagreement over some of the facts, they have been fully developed by the pleadings which provide ERA with a sufficient basis on which to make a decision.

The ERA does not believe that NEFI has demonstrated that further illumination of the issues would be aided materially by additional procedures nor that a trial-type hearing would be necessary to further develop the facts. Accordingly, ERA has determined that it would not be in the public interest to hold additional procedures and NEFI's motion is therefore denied.

2. Environmental Determination

The National Environmental Policy Act of 1969 (NEPA)31/ requires the ERA to give appropriate consideration to the environmental effects of its proposed actions such as an authorization to import natural gas.

The FERC conducted an environmental review of the Granite State project and issued an Environmental Assessment (EA) on June 29, 1987.32/ The FERC evaluated the environmental impacts associated with the project's lease, conversion, and operation of a 166-mile pipeline that extends from the city of Portland, Maine, to the U.S./Canadian border near North Troy, Vermont. In the EA, the FERC concluded that the impact on the environment from construction connected with the proposed project would not be significant and therefore approval of Granite State's proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

Based on a review of the EA prepared by the FERC and our independent evaluation of the effect of the ERA's approval of the requested import authorization, it is concluded that such approval clearly would not constitute a major 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 no environmental impact statement or additional EA is required.

C. Conclusion

After reviewing the comprehensive record as described in detail above, I conclude that this import serves the consumers' interests in obtaining a long-term reliable supply of natural gas at competitive, market-responsive prices. As discussed above, this import will help fill the projected increase in consumer demand that cannot be met at this time by supplies from domestic sources. Additionally, this import will enhance the energy mix and diversity of natural gas suppliers improve the natural gas distribution system of the area. Our decision also carefully considered the strong support for this project from the region's public utility commissioners and the state government agencies, and the fact that no potential consumers of this proposed import opposed Granite State's application. The only opposition has come from an association representing petroleum marketers that are in competition with the distribution customers of Granite State. For these reasons, I conclude that granting this import will not be inconsistent with the public interest. Therefore, I am approving Granite State's application.

V. Order

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

A. Granite State Transmission, Inc. (Granite State), is authorized to import up to 25,000 Mcf per day of Canadian natural gas on an interruptible, best-efforts basis during the period of November 1, 1987 through October 31, 1988. Beginning November 1, 1988, and extending through March 31, 1999, Granite State is authorized to import up to 25,000 Mcf per day of Canadian natural gas on a firm basis and an additional daily quantity of up to 15,000 Mcf on an interruptible basis. The imports by Granite State shall be made in accordance with the provisions contained in its gas sales contract with Shell Canada Limited, dated June 25, 1986.

B. Granite State shall notify the ERA in writing of the date of first delivery of gas authorized in Ordering Paragraph A within two weeks after deliveries begin.

C. Granite State shall file with the ERA within 30 days following each calendar quarter, quarterly reports showing by month, the quantities of natural gas in MMcf imported under this authorization, and the average price per MMBtu paid for those volumes at the international border. The volume and price information should distinguish between firm and interruptible sales, and all price information should include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis, whenever applicable.

D. Granite State's April 1, 1987, response and May 8, 1987, revised response to an information request of Staff of the Federal Energy Regulatory Commission (FERC) in its proceeding involving its request for a certificate of public convenience and necessity and for an order authorizing pregranted abandonment (FERC Docket No. CP87-37-000) are hereby incorporated into the record of this proceeding.

E. The request by the New England Fuel Institute for a trial-type hearing or summary dismissal of Granite State's application is hereby denied.

Issued in Washington, D.C., on August 5, 1987.

--Footnotes--

1/ 51 FR 28414, August 7, 1986.

2/ Motions or notices to intervene were received from: The Public Advocate of the State of Maine; Shell Canada Limited; Alberta Northeast Gas, Limited; Vermont Gas Systems, Inc.; Texas Eastern Transmission Corporation; Tennessee Gas Pipeline Company, A Division of Tenneco Inc.; Western Gas Marketing Limited; Foothills PipeLines (Yukon) Ltd.; New England Conference of Public Utilities Commissioners, Inc.; Maine Public Utilities Commission; and the New England Fuel Institute.

3/ Motion to Intervene, Protest and Request for Hearing of NEFI (September 8, 1986), at 3.

4/ Id., at 7.

5/ Id.

6/ Response of NEFI to Order Requesting Additional Information (April 8, 1987), at 4.

7/ Natural Gas Pipeline Company of America, Opinion 256, 37 FERC Para. 61,215 (December 8, 1986); Natural Gas Pipeline Company of America, Opinion 256-A, 39 FERC Para. 61,218 (May 27, 1987).

8/ See supra note 6, at 5.

9/ Reply Comments of NEFI to Additional Information Provided by Applicant (April 23, 1987), at 1.

10/ 49 FR 6684, February 22, 1984.

11/ Additional Information Requested of Granite State Gas Transmission, Inc., in ERA's Order of March 17, 1987 (Granite State Response to 3/17/87 Order), Response #ERA-1-6, (April 8, 1987), at 3.

12/ Response of Granite State to Information Request of the Federal Energy Regulatory Commission Staff (April 1, 1987), at 6.

13/ See supra note 11, Response #ERA-1-3, at 6-7.

14/ Id., Exhibit 2 (transcript from a recent hearing conducted by the Massachusetts Department of Public Utilities (Docket No. DPU 86-268), at 1.

15/ Comments of Granite State on the Response of NEFI to ERA's Request for Additional Information (April 23, 1987), at 9.

16/ Id., at 8.

17/ Id., at 10.

18/ See supra note 11, Response #ERA-1-3, at 3.

19/ Id.

20/ 15 U.S.C. Sec. 717(b).

21/ See supra note 10.

22/ Energy Information Administration, "Natural Gas Annual 1985", DOE/EIA-031 (85), (November 24, 1986), Figures 8 and 9, at 44-45; Table 38 at 216-225.

23/ Response of the Office of Public Advocate of the State of Maine to 3/17/87 Order, (April 8, 1987), at 1-2.

24/ Energy Information Administration, "Annual Energy Outlook 1986", DOE/EIA-0383 (86), (February 11, 1987), Table 7: Comparison of Base Case Energy Supply and Disposition Projections for 1995 and 2000, at 23.

25/ See supra note 11, Exhibit to Response #ERA-1-2.

26/ See supra note 9, at 1.

27/ Id., at 5.

28/ See supra note 11, Response #ERA-1-1, at 6.

29/ Motion to Intervene of the NEPUC, (September 9, 1986), at 3.

30/ DOE, "Energy Security, A Report to the President of the United States", DOE/S-0057 (March 1987), at 40.

31/ 42 U.S.C. 4321, et seq.

32/ Environmental Assessment, FERC Docket CP87-39-000, Granite State Gas Transmission, Inc. (June 29, 1987).