Cited as "1 ERA Para. 70,721"

Minnegasco, Inc. (ERA Docket No. 86-61-NG), September 21, 1987.

DOE/ERA Opinion and Order No. 191

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

I. Background

On November 17, 1986, Minnegasco, Inc., a Company of Diversified Energies, Inc. (Minnegasco), 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), for authority to import up to 160,000 Mcf per day of Canadian natural gas over a ten-year period, beginning November 1, 1987, or on such later date as the necessary regulatory approvals and required facilities are made available to Minnegasco. Minnegasco, a Minnesota corporation, is a local distribution company serving residential, commercial, and industrial customers in the States of Minnesota, Nebraska, and South Dakota. Minnegasco proposes to import up to 50,000 Mcf per day of the Canadian natural gas on a firm basis and up to 110,000 Mcf per day on an interruptible basis, to the extent that such volumes are both needed and available for Minnegasco's Minneapolis, Minnesota, service area.

By its application, Minnegasco is seeking authorization to import Canadian gas directly as a second source of supply which would compete with its primary supplier, Northern Natural Gas Company, a Division of Enron Corporation (Northern). Minnegasco currently gets all of its firm, long-term gas supplies from Northern.

Under the import proposal, the natural gas would be purchased from TransCanada Pipelines Limited (TransCanada) and imported via the point of interconnection between the pipelines of TransCanada and Midwestern Gas Transmission Company (Midwestern) near Emerson, Manitoba. From there, the gas would be transported through Midwestern's pipeline and a new 32-mile long intrastate connecting pipeline to be built between Midwestern's facilities at Cambridge, Minnesota, and Minnegasco's facilities near Coon Rapids, Minnesota.

TransCanada, by its marketing agent, Western Gas Marketing, Ltd. (WGML), signed a precedent agreement with Minnegasco dated September 10, 1986, in which both parties agreed to execute a gas purchase contract providing for an automatic price adjustment mechanism. According to Minnegasco's application,

this pricing mechanism automatically sets TransCanada's commodity charge at a level of seven percent below the Northern commodity rate for equivalent firm service in the Minneapolis area and, in addition, prevents the demand charge which Minnegasco must pay for service provided by TransCanada and Midwestern from exceeding Northern's demand charges for comparable service. To accomplish this, the monthly commodity charge would be computed under a formula starting with a base price of $2.65 per MMBtu which is adjusted monthly by multiplying it by a fraction, the numerator of which is the then-current Northern commodity charge and the denominator of which is $2.85. The adjusted base commodity price is then reduced by an amount equal to the variable charges incurred by Minnegasco for transportation of gas through Midwestern's system and the yet-to-be-built intrastate connecting pipeline. Minnegasco states in its application, filed November 17, 1986, that if the gas were now flowing, this would result in a monthly commodity charge of $1.75 per MMBtu.

The monthly demand charge that Minnegasco must pay TransCanada would be the lesser of: (1) TransCanada's monthly demand charge plus the monthly demand charge of NOVA, an Alberta Corporation (NOVA), for transportation of the gas to the international border, or (2) the amount by which 99 percent of Northern's monthly demand charge exceeds Midwestern's monthly demand charge (which for purposes of the pricing formula includes any minimum commodity bill) for comparable firm transportation service. Minnegasco states that computation of TransCanada's demand charge under the first method would now result in a demand charge of $.406 per Mcf and that a precise calculation of the demand charge under the second method is not possible until transportation of the imported gas through Midwestern's pipeline has begun. Minnegasco asserts that it would not be obligated to take or pay for any gas.

In addition to the automatic price adjustment mechanism, the proposed gas purchase contract provides for negotiation at any time of reductions (but not increases) in the commodity charge to enable Minnegasco to purchase more gas. It also provides for annual renegotiation of all of the pricing terms upon written notice by either party in order to achieve a price that is competitive with the price of competing energy sources in Minnegasco's market area. Minnegasco asserts that the immediate and annual renegotiation provisions of the contract would provide two avenues of relief in the event that the automatic price adjustment mechanism fails to accurately reflect competition.

In support of its application, Minnegasco asserts that the proposed import arrangement is flexible enough to remain competitive over the term of the authorization, as evidenced by the price adjustment and renegotiation provisions, no take-or-pay requirement, and a demand charge structured to

remain competitive with the demand charge of Northern, Minnegasco's only alternate supplier. Minnegasco also asserts that its Minnesota facilities are now interconnected with only one interstate pipeline, Northern's. Minnegasco therefore maintains that the proposed new firm supply of gas, and the new delivery system linking Minnegasco to Midwestern's interstate pipeline, would diversify Minnegasco's sources of supply and enhance competition in Minnegasco's Minnesota markets.

Minnegasco states that the contract demand volume it currently is obligated to purchase from Northern does not exceed firm demand on peak days in its markets. Minnegasco indicates that when volumes contracted for with Northern are reduced pursuant to a permanent Federal Energy Regulatory Commission (FERC) Order No. 436 open access program,1/ it intends to replace the contract volumes given up with gas imported under the proposed arrangement. It also intends to use the gas imported from TransCanada to meet the additional demand that Minnegasco asserts will be placed on its total system supply throughout the year.2/ According to Minnegasco, the proposed import would comprise only about 12 percent of Minnegasco's total firm supplies in Minnesota and would not make Minnegasco overly dependent upon foreign sources of supply.

II. Procedural History

On January 31, 1987, the ERA issued a notice of Minnegasco's application and invited comments, protests, and motions to intervene.3/ The ERA received a total of seven motions or notices to intervene in this proceeding.4/ Of the seven intervenors, three intervenors supported the import proposal, two took no position, and two opposed it. Answers to the comments received were filed by Minnegasco and by WGML.

The comments indicated confusion about how Minnegasco's price adjustment mechanism would work. The commenters apparently interpreted Minnegasco's statement in its application that the price adjustment mechanism would automatically set the commodity charge for the imported gas at a level seven percent below the equivalent Northern rate as meaning that the price of the imported gas would always be a flat seven percent below whatever commodity rate Northern was charging its customers. To clarify how the pricing formula would work, Minnegasco stated in its answer to the comments received that the commodity charge would be set seven percent below Northern's tariffed full margin commodity rate for firm gas service to customers in the Minneapolis area and would permit Northern to compete in Minnegasco's markets if Northern was willing to lower its full margin rates. In view of Minnegasco's clarification of the pricing formula, the ERA issued a procedural order on

June 26, 1987, granting interventions and affording all parties the opportunity to file additional comments on the competitiveness of the proposed import arrangement, including the price adjustment mechanism, by July 13, 1987, with answers to be filed by July 20, 1987.

Additional comments on the competitiveness of the proposed import were received from Northern, Producers, WGML, and Minnegasco. Answers to the additional comments were filed by WGML, Minnegasco, Producers and The Energy Issues Intervention Office of the Minnesota Department of Public Service (EIIO).

III. Comments Received

A. Position of Northern and Producers in Opposition to the Application

In its motion to intervene and in comments filed in response to the ERA's June 26, 1987, procedural order, Northern states that it has agreed to a permanent FERC Order No. 436 open access program 5/ that allows Minnegasco to reduce its contract demand with Northern and to buy Canadian gas directly in place of supplies from Northern.6/ However, Northern states that it is opposed to the import arrangement described in Minnegasco's application because the pricing formula is anti-competitive in that the commodity charge for the imported gas would always be seven percent below Northern's, no matter what Northern's commodity rate might be, while the demand charge would be maintained at or below Northern's regardless of what Northern's demand rate might be for comparable service. According to Northern, this flat seven percent "undercutting" of Northern's commodity rate, in combination with a 75 percent minimum commodity bill which Minnegasco must pay to Midwestern on the transportation of the imported gas, effectively precludes Northern from competing either as a merchant or as a transporter of natural gas in Minnegasco's Minneapolis market. Northern also alleges that the pricing formula may result in "predatory" pricing since it contains no floor to assure recovery of TransCanada's costs of providing gas service to Minnegasco. Thus, Northern contends that even assuming that it could lower its commodity rate to the point where it could compete with TransCanada, Minnegasco would still have an incentive to purchase Canadian gas and transport it on Midwestern's system because of Minnegasco's liability for Midwestern's 75 percent minimum bill.

Further, Northern contends that it is placed at an unfair disadvantage by FERC Opinion No. 256 7/ which denies U.S. pipelines the ability to pass through Canadian demand and commodity costs on an as-billed basis while the Minnegasco/TransCanada arrangement potentially would allow TransCanada to charge a lower commodity rate than Northern by "artificial" means. Therefore,

Northern requests that any authorization issued be conditioned upon the FERC's elimination of Midwestern's 75 percent minimum bill and the ERA's setting the contract demand and commodity rates which Minnegasco must pay consistent with FERC Order No. 256.

Producers representing the interests of independent producers and royalty owners in California, Kansas, New Mexico, New York, Oklahoma, Texas and the Rocky Mountain area also oppose the application. Producers state that their members are dependent upon gas sales to Northern, Minnegasco's current supplier. Producers allege that: (1) there is great unrest and turmoil in the natural gas market and as a result, it is impossible for the ERA to determine the national need for the blanket import of the gas through 1997; (2) Midwestern has not become a voluntary transporter under FERC Order No. 436, and therefore will not make transportation capacity available to domestic producers willing to sell gas at lower prices; (3) in relying upon the DOE's natural gas import policy guidelines,8/ the ERA must follow its position in DOE/ERA Opinion and Order No. 88A 9/ that the policy guidelines do not have the effect of a substantive rule, a position which would require the applicant to develop evidence in this proceeding "as if the policy statement had never issued;" 10/ (4) that the ERA must consider the dampening effect of the proposed import upon domestic drilling and upon the domestic gas industry: and (5) that an environmental impact statement (EIS) with respect to the import proposal must be prepared because it entails the construction of new facilities.

Producers further contend that Minnegasco's application is deficient and should be rejected because the applicant has failed to demonstrate a need for the gas as required by 10 CFR Sec. 590.202(b)(3) and (6). If the application is not rejected, then Producers request a trial-type hearing to address the following alleged issues of fact: (1) whether "blanket" import authorizations are inconsistent with the national security objectives that Section 3 is designed to protect; (2) the identity and security of Minnegasco's Canadian sources of supply; (3) whether the initial proposed import price and subsequent redetermined prices are consistent with the public interest; (4) whether Minnegasco's proposed import would hinder competition by forestalling Midwestern's ultimate need to become an Order No. 436 transporter; (5) how available capacity at border facilities should be allocated between this authorization and other approved and proposed import volumes; (6) whether domestic gas is available on Northern's system at lower prices than those proposed in this application for imported gas; and (7) whether TransCanada's proposed demand charge is anti-competitive and could result in higher prices being paid for Canadian gas than for gas available from Northern.

If the application is not rejected as deficient and if a trial-type hearing is not granted, then Producers request that any authorization issued be conditioned upon Midwestern and any other pipeline transporter of the imported gas becoming an open access pipeline under FERC Order No. 436, and upon elimination of TransCanada's two-part demand/commodity rate or modification of the components to eliminate or significantly reduce TransCanada's excessive demand charge following the logic in FERC Opinion No. 256.11/

In initial comments and in reply comments made in response to the ERA's procedural order of June 26, 1987, the Producers contend that the pricing formula in the Minnegasco/TransCanada gas purchase contract is anti-competitive and gives an unfair competitive advantage to Canadian gas. Specifically, Producers contend that: (1) Minnegasco has not shown that the Canadian gas will be less expensive than Northern's, that the price of the gas is not cost based, that Minnegasco can be expected to amortize the expensive new facilities to be constructed, and that the ERA cannot rely upon market forces to resolve the question of whether the import will help or hurt consumers; (2) the pricing formula permits underrecovery of fixed Canadian gas costs and hence dumping of Canadian gas into the U.S. at prices subsidized by Canadian pipelines; (3) the demand/commodity charges for the Canadian gas are "gerrymandered" to always result in a rate below domestic supply rates; (4) the loss of 12 percent of Minnegasco's gas purchases will cause Northern to incur substantial take-or-pay liabilities and result in a "perverse feedback loop" under which such take-or-pay costs would be passed on to Northern's captive customers; and (5) the minimum bill that Minnegasco must pay Midwestern has anti-competitive consequences which the ERA should consider.

Producers also complain that: (1) the pricing formula incorrectly assumes that Minnegasco can reduce its contract demand with Northern under the contract reduction rights contained in FERC Order No. 436, an order that has been vacated by the D.C. Circuit Court.12/ This, in turn may cause Minnegasco to have to pay for pipeline service from Midwestern that is not needed; (2) the pricing formula is ambiguous in that the terms "full margin" rates and "Minneapolis service area" have not been defined; (3) the FERC may not permit Northern to discount tariffed jurisdictional sales rates to compete for Minnegasco's business; (4) the pricing formula may result in a double recovery by TransCanada of TransCanada's demand-related costs unless the pricing formula is changed or unless a condition is imposed in any authorization issued to conform the Canadian demand/commodity charge split with FERC Opinion No. 256; (5) unintended results will arise under the pricing formula if the FERC should order retroactive commodity rate refunds or if Northern should implement a direct billing/demand surcharge mechanism to recover its

take-or-pay costs; and (6) any ERA approval of the pricing formula should be limited to the formula presented in the application and any subsequent revisions should be subject to ERA approval.

Producers also have made two requests for discovery. In the first request, filed March 20, 1987, Producers argue that discovery is necessary to obtain additional data to determine the cost basis of TransCanada's demand charge, the competitive effect of the proposed authorization on domestic producers, and the need for the imported gas supplies. In their second request filed July 2, 1987, Producers argue that they need access to "relevant contracts with WGML and the transporters" in order to prepare meaningful comments on Minnegasco's proposed Canadian gas pricing formula. Producers renewed this discovery request in their initial and reply comments submitted in response to the ERA's June 26, 1987, procedural order.

B. Position of Minnegasco, WGML, Midwestern, ANR and EIIO Supporting the Import Proposal

Minnegasco's proposed import is supported by WGML, the marketing agent of TransCanada; Midwestern, whose pipeline system would be used to transport the Canadian gas from the international border to the proposed intrastate connecting pipeline; and ANR, a sales and transportation customer of Midwestern, who has agreed to release 50,000 Mcf per day of firm capacity on Midwestern's pipeline system in order to enable Midwestern to transport the imported gas on behalf of Minnegasco. In addition, EIIO, after intervening without comment, filed an answer to the comments received in response to the ERA's procedural order, supporting the application.

In its answer, additional comments, and reply comments, Minnegasco urges the ERA to reject the contentions made by Northern and Producers that the pricing formula is anti-competitive. Minnegasco reasons that the pricing mechanism promotes, not inhibits, competition by providing incentives for Northern to reduce its full margin commodity rates and its transportation rates in order to compete for Minnegasco's business. Minnegasco states that the pricing formula does not automatically set the commodity rate for the Canadian gas seven percent below the rate charged by Northern for equivalent service. Rather, the pricing mechanism sets TransCanada's commodity charge at a level seven percent below Northern's tariffed full commodity rate for firm gas service in the Minneapolis area. This allows Northern to compete by reducing or discounting its full margin rates since TransCanada's commodity charge to Minnegasco is tied to Northern's full margin rate and would not automatically be reset under the pricing formula. According to Minnegasco, in order to compete, Northern can aggressively seek authorization from the FERC

to reduce the margin for its jurisdictional sales or it can arrange non-jurisdictional sales to Minnegasco through its marketing agent at lower prices.

Minnegasco notes that there is some conflict among the parties as to what constitutes a competitive pricing formula. On the one hand, Northern asserts that there must be no guarantee that Canadian prices will always be lower than Northern's, which would preclude Northern from competing. On the other hand, Producers argue that Minnegasco has not demonstrated that the price of the Canadian gas delivered to Minnegasco's system will be less expensive then Northern's rates. In this regard, Minnegasco argues that the pricing formula does not guarantee that the price of the Canadian gas will be lower than the price of competing gas supplies; rather, it merely establishes a benchmark against which Northern or other domestic suppliers can compete. Minnegasco states that the pricing mechanism ensures that TransCanada's demand charge will be essentially equal to Northern's (cannot exceed 99 percent of Northern's) thereby preventing the demand charge from being loaded up to "artificially" lower the commodity charge. Furthermore, Minnegasco also argues that none of the protesters to the application has shown why FERC Order No. 256 should apply to their rates since it is not an interstate pipeline and is not making sales for resale in interstate commerce.

In addition, Minnegasco insists that there is no basis for the suggestion by those opposing the import that Canadian gas will be dumped into the U.S. at prices subsidized by Canadian pipelines and ratepayers as part of a predatory pricing scheme. TransCanada's pricing arrangements are based on a wellhead netback arrangement which assures recovery of Canadian transportation costs and should create the purest form of gas-to-gas competition with competing suppliers. Moreover, Minnegasco contends that TransCanada lacks the ability to impose a predatory pricing scheme in Minnegasco's markets vis-a-vis Northern since Northern is part of the largest interstate pipeline system in the U.S. and could not be significantly affected by losses arising from such a small portion of its total business.

With respect to Northern's complaint that Midwestern's 75 percent minimum commodity bill for transportation of the Canadian gas would preclude Northern from competing as a transporter, Minnegasco contends that the potentially negative effect on competition of Midwestern's minimum bill is nullified by the fact that, under the pricing formula, the demand charges that Minnegasco must pay TransCanada are reduced by the amount of Midwestern's minimum bill. Furthermore, Northern has authority under the FERC Order No. 436 program to reduce its transportation rates in order to compete. Minnegasco also suggests that the FERC, not the ERA, is the appropriate forum for

evaluating the appropriateness of Midwestern's minimum bill.13/

Minnegasco urges the ERA to reject Producers' contention that Minnegasco has not demonstrated that there is a need for the Canadian gas on the grounds that Producers have presented no analysis of the gas supply studies attached to the application and offer no reasoning for their conclusion. Minnegasco also urges the ERA to reject Producers' request for a trial-type hearing to resolve seven alleged issues of fact on the grounds that the issues enumerated by Producers are not real issues of fact. Moreover, Minnegasco believes that the questions of whether Minnegasco's import proposal hinders competition by forestalling Midwestern's need to become a FERC Order No. 436 transporter and how available pipeline transportation capacity should be allocated are matters that fall within the FERC's jurisdiction rather than the ERA's.

Minnegasco responded to several other contentions made by Producers. First, Minnegasco argues that Producers' assertion that the price of the imported gas is not cost based is irrelevant since the criterion used by the ERA in evaluating the pricing of the gas is the competitiveness of the gas, not cost. Second, Minnegasco urges the ERA to reject as meritless Producers' assertion that the ERA must look at the total economic impact of the proposed import and cannot rely upon competitive forces to protect consumers because of the expensive new facilities to be amortized and because the proposed import will increase Northern's take-or-pay liabilities, thereby increasing the price of gas to Northern's captive customers, under a "perverse feedback loop." Minnegasco states that the new intrastate pipeline facilities will not be amortized by Minnegasco because they will be owned by a joint venture unaffiliated with Minnegasco. Minnegasco also states that it is inappropriate to speculate on how take-or-pay costs might affect other customers since such costs may not be incurred and, in any event, the FERC is the appropriate forum for addressing this matter.14/

Minnegasco also responded to Producers' allegation that Minnegasco may have to pay for pipeline service from Midwestern that is not needed because Minnegasco's reduction in contract demand with Northern may be eliminated under the final provisions of FERC Order No. 436.15/ Minnegasco states that even if this occurs, a reduction in contract demand may nevertheless be worked out in the settlement of Northern's ratemaking case now pending before the FERC.16/ Furthermore, the gas studies attached to Minnegasco's application show that there is demand for additional gas over and above Minnegasco's current contract level.

As for Producers' suggestion that the pricing mechanism is anti-competitive because it does not specifically address timing factors such

as retroactive changes in Northern's rates or the impact of possible future take-or-pay cost recovery mechanisms, Minnegasco contends that failure to address every possible future contingency does not impair the flexibility and competitiveness of the pricing formula.

Finally, Minnegasco urges rejection of Producers' several requests for discovery because the record contains all the information required by the ERA's administrative rules. Further, Minnegasco points out that Producers have not made any requests for discovery to any of the parties since the application was filed with the ERA more than seven months ago.

In its answer, additional comments, and reply comments submitted in this proceeding, WGML makes many of the same arguments that Minnegasco has made. WGML points out that the proposed gas purchase contract provides for negotiation of prices competitive with the price of competing energy sources in the markets served by Minnegasco; that TransCanada's netback pricing arrangement with its producers requires recovery of all of the variable costs of transporting the gas; and that under the gas purchase contract, Minnegasco can initiate negotiations for a lower price at any time while TransCanada can only initiate price renegotiations once per year. Moreover, the gas purchase contract contains an arbitration provision directing the arbitrators to determine a competitive price in resolving disputes. Therefore, "predatory" pricing is virtually impossible, according to WGML, even if TransCanada had the monopoly power to engage in such tactics successfully. In this regard, WGML notes that no party has contended that the current price is predatory, only that the price structure could result in predatory pricing in the future.

WGML also argues that Midwestern's minimum bill does not create an unfair economic incentive for Minnegasco to purchase Canadian gas as contended by Northern. The minimum bill is negated as a purchase incentive, according to WGML, by the gas purchase contract provisions which require that the minimum bill be subtracted from the demand charge that Minnegasco would pay TransCanada.

WGML contends that Northern can compete as a seller through a marketing affiliate because the price adjustment mechanism is tied to Northern's tariffed commodity rate, and is unaffected by the commodity prices that may be offered to Minnegasco by a Northern marketing affiliate. WGML states that Minnegasco is now totally dependent on Northern as the only interstate pipeline providing service to its major Minnesota markets. Therefore, the proposed import arrangement would increase competition by providing Minnegasco access to another interstate pipeline through which both domestic and Canadian suppliers could compete in Minnesota's markets.

With respect to Producers' comments, WGML states that most of Producers' comments are essentially a recitation of arguments made to the ERA many times in other cases and consistently rejected by the ERA. WGML urges that the competitiveness of Minnegasco's application establishes the required need for the imported gas in Minnegasco's markets; that allocation of pipeline capacity lies within the FERC's jurisdiction; that conditioning of the authorization upon pipelines transporting the gas becoming open access pipelines would discriminate against foreign supplies; that most of the issues which the producers want considered in a trial-type hearing are issues of policy, not fact, and do not provide a basis for requiring a trial-type hearing; that FERC Order No. 256 has no application to a contract between a Canadian supplier and a local distribution company; and that the ERA has previously determined that a two-part demand/commodity price structure like TransCanada's is consistent with the public interest.

Two other parties, Midwestern and ANR, state that they supported granting the authorization which Minnegasco has requested without further comment. EIIO filed in support of the application, stating that as a state regulator and representative of Minnesota residents and businesses, it represents the interests of consumers who may be affected by the outcome of this proceeding. EIIO argues that the entire plan would enhance competition in Minnesota by adding a new source of supply to an area in which Northern now supplies well over 90 percent of the gas consumed. EIIO also argues that TransCanada could not overcome cost barriers and economies of scale to engage in predatory pricing. EIIO observes that the Minnesota Public Utilities Commission has approved the proposed intrastate pipeline.

IV. Decision

Minnegasco's application has been evaluated to determine if it conforms to Section 3 of the NGA. Under Section 3, an import must be authorized unless there is a finding that the import "will not be consistent with the public interest." 17/ In making this finding, the ERA Administrator is guided by the DOE's natural gas import policy guidelines.18/ Under this policy, the competitiveness of the import arrangement in the markets served is the primary consideration for meeting the public interest test. Under a long-term import proposal, need for the gas supply and security of supply are also important considerations.

A. Substantive Issues

(1) Competitiveness of the Import

The DOE guidelines state that the competitiveness of an import arrangement will be assessed by a consideration of the whole fabric of the arrangement. They contemplate that the contract arrangements should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions and availability of competing fuels, including domestic natural gas.

Under Minnegasco's import proposal, the Canadian gas would be imported and sold directly to Minnegasco, a local distribution company, under a proposed gas purchase agreement containing several provisions that provide flexibility to the import arrangement and help ensure that it will be market responsive. Specifically, the contract contains no take-or-pay requirements, but does include a two-part demand/commodity pricing structure, and an automatic price adjustment mechanism tied to the gas prices of Northern, Minnegasco's only alternate pipeline supplier for the market to be served by the imported gas. It also contains immediate and annual price renegotiation provisions and an arbitration clause that are also designed to ensure that the imported gas will be competitive in Minnegasco's Minnesota markets throughout the ten-year term of the import proposal.

The principal contention made by the parties opposing the proposed import arrangement is that it is anti-competitive and precludes Northern from competing with the proposed imports. First, they contend that automatic adjustment of the commodity charge Minnegasco must pay to TransCanada so that it will always be seven percent below Northern's tariffed full commodity rate for firm service in Minnegasco's Minnesota markets precludes Northern's gas from competing with TransCanada's direct sale of gas to Minnegasco. Second, they argue that since Minnegasco must pay a 75 percent minimum commodity bill to Midwestern for transportation of gas over its pipeline system, whether any gas is actually transported or not, Minnegasco is thereby given a financial incentive to purchase Canadian gas even though the overall cost of competing domestic supplies may be less expensive.

Northern, however, has not disputed assertions by both Minnegasco and WGML that Northern can compete with the Canadian gas either by getting authority from the FERC to reduce the margin for its jurisdictional sales or by arranging non-jurisdictional sales at lower prices through its marketing affiliate. Since the price adjustment mechanism is tied to Northern's tariffed full margin rates, Northern could thereby avoid triggering the automatic price adjustment mechanism applicable to the imported gas.

As to whether Midwestern's minimum bill places Northern at an unfair competitive advantage, an analysis of the pricing mechanism in the proposed

gas purchase contract reveals that any potential unfair advantage is essentially negated by the price adjustment formula. The pricing formula provides that Minnegasco must pay a demand charge for transportation of the gas to TransCanada equal to the lesser of:

> (a) TransCanada's plus NOVA's demand charges; or (b) the amount by which ninety-nine percent of Northern's monthly demand charge exceeds that of Midwestern (which includes minimum bill charges).

This means that the demand charges that Minnegasco must pay under the proposed arrangement cannot exceed Northern's demand charge for comparable service. Further, since the demand charges that Minnegasco must pay to TransCanada for firm gas service are reduced by the amount of Midwestern's minimum bill, the minimum bill cannot become a financial disincentive to purchase gas from another source.

Northern and Producers advance two additional arguments in support of their contention that the proposed import arrangement is anti-competitive. First, since the price adjustment mechanism contains no floor or minimum price level to assure recovery of the costs of transporting the imported gas to Minnegasco, it could result in predatory pricing and the dumping of Canadian gas into the U.S. at subsidized prices. Second, the proposed import arrangement provides for recovery of more cost elements in the demand charge than Northern would be able to pass through in its demand charge as a result of FERC Opinion Nos. 256 and 256-A which require U.S. pipelines to pass through Canadian demand and commodity charges in accordance with FERC ratemaking principles.

The ERA, however, finds little merit in either of these arguments. There is nothing in the proposed gas purchase contract to suggest that TransCanada would be authorized to subsidize the costs of transporting the imported gas either in the U.S. or Canada. Moreover, under the Canadian netback pricing system, TransCanada must recover its costs of transporting the gas, which means that any price reductions would be borne by Canadian producers. Price reductions by producers reflect the purest transmission of market signals back to the wellhead, and are exactly the kind of competition this Administration encourages in its gas deregulation proposals. The predatory pricing contention made by the opponents, i.e., the pricing of gas below cost, even if theoretically possible under the pricing formula, presumes that the parties would act contrary to U.S. and Canadian gas policies which emphasize market-responsive and flexible gas pricing of imports and exports respectively. It also presumes that TransCanada could effectively engage in a predatory pricing scheme, while controlling only 12 percent of the market,

which is not likely in a market area dominated by Northern. Further, the ERA notes that no party has contended that the current adjusted commodity charge for the imported gas of $1.75 per MMBtu and demand charge of $.406 per Mcf are predatory, merely that such practices may occur in some speculative future.

The opponents contend that TransCanada has an unfair competitive advantage if its two-part rate is passed through as billed because it is selling directly to a distribution company and therefore, unlike Northern, is not affected by FERC Opinion Nos. 256 and 256-A. The proposed import would constitute a direct first sale to a local distribution company (Minnegasco), so the FERC does not have jurisdiction over the rates paid for the imported gas. FERC Opinion Nos. 256 and 256-A are therefore not applicable. The allocation of cost among Minnegasco's downstream customers fall instead under the jurisdiction of Minnesota's public utility commission. The ERA observes, however, that the pricing mechanism in the proposed gas purchase contract prevents the demand charge paid by Minnegasco to TransCanada from exceeding that of Northern, and therefore the alleged inequities which FERC Opinion No. 256 was designed to correct do not exist here. Moreover, no party has presented any convincing evidence that such inequities exist or that the pricing mechanism would not eliminate any alleged inequities.

Thus, the ERA finds that the arrangement is competitive in the markets served and is likely to remain competitive during the term of the arrangement.

(2) Need

Although Producers have questioned the need for the imported gas and have requested discovery to obtain additional data on this question, it is clear from the record in this proceeding that the applicant has established need for the gas. Under the DOE guidelines, need is viewed as a function of competitiveness, and gas is presumed to be needed if it is found to be competitive in the proposed market. In this case, the proposed import arrangement was freely negotiated between Minnegasco and TransCanada. No minimum volume levels are imposed on Minnegasco. Accordingly, the imported gas would not be sold if it were not needed.

In rebuttal to the presumption of need, Producers contend that Minnegasco's contract demand with Northern may not, in fact, be reduced under the proposed settlement because FERC Order No. 436 has been vacated by court action. However, Northern has at no point in this proceeding indicated that it does not still intend to work out a settlement with Minnegasco for release of the contract demand gas. Producers' arguments, therefore, do not rebut the presumption of need and do not persuade the ERA that the proposed import is

not needed.

Moreover, two gas supply studies submitted with Minnegasco's application indicate that additional gas supplies are needed to meet Minnegasco's total system supply requirements. No party has disputed the increase in gas demand projected in the studies attached to Minnegasco's application. Thus, based on the evidence in the record and Producers' failure to rebut the presumption of need, the ERA finds that there is need for the proposed import.

(3) Security of Supply

In light of TransCanada's historical reliability as a supplier spanning many years, without any curtailments, TransCanada's commitment to add new gas reserves to its system as required,19/ and the absence of any showing that TransCanada's reserves are not secure, the ERA concludes that security of supply has been established, and is not a fact genuinely in dispute as suggested by Producers. In addition, the ERA notes that the proposed import would add a new source of supply for the Minnesota markets to be served and that this added diversity would enhance energy security.

(4) Additional Issues

Producers raise several other issues that relate to the competitiveness of or need for the proposed import. These issues are being addressed separately because they are either irrelevant, factually incorrect, speculative in nature, or of little consequence in determining whether the proposed import should be authorized. Producers' argument that the price of the gas to be imported is not cost based, that Minnegasco will be amortizing the new intrastate pipeline facilities, and therefore market forces cannot be relied upon to protect consumers is a convoluted argument at best. The primary factor that the ERA considers in determining whether to authorize the import is the competitiveness of the import, not the cost of the gas. Minnegasco will not own the new pipeline facilities and therefore could not amortize them. Accordingly, the ERA concludes that no rational basis has been presented for Producers' assertion that market forces will not operate to protect consumer interests.

Producers also complain that cost shifting will occur among Northern "captive" customers if Northern loses the 12 percent of Minnegasco's business involved here through increased take-or-pay liabilities or simply because there are fewer sales from which to recover costs. This is a speculative complaint which presumes loss of this small portion of Northern's business will cause take-or-pay problems and that Northern has no option to offset the

lost sales. Northern is free to find other customers for the volumes Minnegasco is releasing. Furthermore, neither Northern nor any of its customers have suggested that cost shifting may become a problem.

Producers' complaint that Minnegasco may have to pay for gas service from Midwestern that is not needed if Minnegasco's contract demand is not reduced because FERC Order No. 436 was vacated is likewise speculative in nature. As previously indicated in this opinion, Minnegasco reasonably expects its contract demand to be reduced in a settlement with Northern and to need the additional gas service for its total system supply based on projected increases in demand for gas shown in two gas supply studies.

With respect to Producers' arguments that the pricing formula is ambiguous because the terms "full margin" and "Minneapolis service area" were not defined, the ERA notes that no other party has suggested that the formula is ambiguous for this reason, nor any other reason. Producers' concern that problems may rise in the operation of the price adjustment formula in the event of retroactive commodity rate refunds from Northern or from a possible direct billing/demand surcharge by Northern to recover take-or-pay costs is based on speculation and is unsupported by any evidence that these problems, if they should occur at all, would significantly affect the competitiveness of the import arrangement.

Producers raise several other objections that have been raised in previous ERA proceedings and before the D.C. Circuit of the Court of Appeals and denied there.20/ We therefore discuss them only briefly. These objections are: (1) there is great unrest and turmoil in the natural gas market and therefore it is impossible for the ERA to determine national need for the blanket import of the gas through 1997; (2) the ERA should require the imported gas to be transported over open access pipelines; (3) the ERA must develop evidence in this proceeding as if the DOE policy guidelines had never been issued; (4) the import will forestall the need for pipelines to become open access transporters under FERC Order 436; and (5) the ERA must consider the dampening effect of the proposed import on domestic drilling and the domestic gas industry.

As concluded in previous cases, Producers' argument that need cannot be determined because of unrest and turmoil in the natural gas market, if accepted, could stop the ERA from authorizing any imports whenever the market is in transition. We believe that the market will determine need if allowed to function free of unnecessary government interference.21/ The ERA notes further that Minnegasco's application is for a long-term authorization not a blanket authorization as Producers' argument would suggest.

With respect to the open-access pipeline issue, as in previous cases, the ERA concludes that to require imported gas to be transported over open access pipelines would unfairly discriminate against foreign gas supplies and lessen competition.22/ As in prior cases, the ERA emphasizes that the DOE policy guidelines are discretionary guidance for the Administrator, not a rule, and do not bind the Administrator in deciding cases.23/ Further, since the FERC Order No. 436 open access program is entirely voluntary, the ERA concludes that it should not deny an import application in order to force pipelines to participate in a voluntary program.24/ With respect to the alleged dampening effect, Producers have submitted no evidence demonstrating how the proposed import would adversely affect domestic drilling and the gas industry.25/ No new information has been presented in this docket to show that any of these issues should be treated differently here. Accordingly, the ERA denies these objections without further discussion.

B. Other Matters

(1) Request for Summary Dismissal

Producers request that the ERA reject Minnegasco's application as deficient on the grounds that the applicant has failed to meet its burden of proof to show a need for the authorization requested. As previously concluded in Section IV.A(2), it is clear from the record in this proceeding that the applicant has established a need for the gas. Producers request for summary dismissal of the application is therefore denied.

(2) Request for Conditions

Producers request that the ERA attach several conditions to any import authorization granted to Minnegasco. First, Producers request that any import authorization granted be conditioned upon Midwestern and any other pipelines transporting the imported gas becoming a FERC Order No. 436 open-access transporter. As discussed in several previous cases26/ in which the open-access condition has been requested, such a condition would discriminate against foreign gas supplies vis-a-vis domestic gas and lessen competition, and is therefore inconsistent with the public interest. Accordingly, Producers' request is denied.

Second, Producers request that any import authorization granted be conditioned upon either elimination of TransCanada's two-part rate or significant reduction in TransCanada's demand charge based upon FERC Opinion Nos. 256 and 256-A. As previously noted in this opinion, the two-part rate has been freely negotiated by the parties as an integral part of the import

arrangement. The ERA has consistently approved two-part rate structures for imported gas since they are used by domestic pipeline suppliers of gas and reflect and serve legitimate ratemaking concerns. Moreover, no convincing evidence has been presented that domestic producers would be discriminated against or significantly disadvantaged by TransCanada's two-part rate. Further, and also previously noted in this opinion, although FERC Opinions Nos. 256 and 256-A are not applicable to the proposed direct sale of gas by TransCanada to Minnegasco, any competitive disadvantage that allegedly would arise from the demand charge paid by Minnegasco to TransCanada would be eliminated by the pricing formula which provides that such demand charge cannot exceed that of Northern, the only competing pipeline supplier. Accordingly, Producers' request is denied.

Producers also request that the ERA limit any ERA approval of the pricing formula to the formula as presented in Minnegasco's application, and to condition any subsequent revisions of the pricing formula on prior ERA approval and opportunity for public comment before they could go into effect. The ERA views such a condition as unnecessary and as an obstacle to maintaining a market responsive import arrangement. The DOE guidelines encourage buyers and sellers to negotiate flexible contracts for natural gas imports. Accordingly the ERA does not intend to intervene in the negotiation of contract adjustments so long as the results achieved are consistent with the terms and conditions of the import arrangement as proposed in Minnegasco's application and approved in Ordering Paragraph A.

Should any contract amendments be made at a future date affecting the facts and circumstances upon which any authorization issued to Minnegasco would be based, Minnegasco has a continuing obligation, under Sec. 590.407 of the ERA's administrative procedures, to report such amendments to the ERA for review. Whenever such future changes are contrary to or otherwise not permitted by the authorization issued, an application to amend the authorization issued must be filed. Accordingly, the condition requested by Producers is unnecessary, and their request is denied.

Finally, Northern requests that the ERA condition any authorization granted upon elimination by the FERC of Midwestern's minimum bill "to insure a level playing field for all parties." We conclude that this condition is not necessary since, under the pricing formula, Midwestern's minimum bill charges are subtracted from the demand charge that Minnegasco must pay to TransCanada, which should eliminate any alleged unfair competitive disadvantage. Accordingly, Northern's request is denied.

(3) Requests for Additional Procedures

1. Trial-Type Hearing

Producers request a trial-type hearing to address their list of allegedly disputed issues of fact. These issues include: (1) whether blanket import authorizations are inconsistent with national security interest objectives; (2) security of supply; (3) how available pipeline capacity should be allocated at the border; (4) whether the proposed import would hinder competition by forestalling Midwestern's need to become an open access transporter under FERC Order No. 436; (5) whether the proposed import price(s) are consistent with the public interest; (6) whether domestic gas is available at lower prices; and (7) whether the proposed demand charge is anti-competitive and could result in higher prices being paid for the imported gas.

Section 509.313 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. No party is entitled as a matter of right to a trial-type hearing for policy or legal issues.

The ERA has examined the issues raised by Producers in requesting a trial-type hearing and concludes that however characterized by Producers, their concerns revolve primarily around the issue of competitiveness. Their concerns reflect a different policy prospective, not a factual dispute regarding competitiveness and depart fundamentally from established DOE policy to promote competition in the public interest.

The ERA does not believe that Producers have demonstrated that further illumination of the issues would be aided materially by additional procedures nor that a trial-type hearing is necessary to assure the adequacy of the record or the fairness of this proceeding. All parties, including Producers, 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 and provide ERA with a sufficient basis on which to make a decision. Accordingly, ERA has determined that it would not be in the public interest to hold additional procedures including a trial-type hearing, and Producers' motion is therefore denied.

2. Requests for Discovery

Producers also make two requests for ERA authorization to conduct

discovery to obtain additional information from the parties to this proceeding. In their first request, Producers allege that they need additional information regarding: (1) the cost basis of TransCanada's demand charge; (2) the competitive effects of the proposed import on domestic producers; and (3) whether the imported gas supplies are needed. In the second request, Producers allege that they need access to relevant contracts with WGML and the transporters in order to be able to prepare meaningful comments on Minnegasco's proposed gas pricing formula.

Producers' requests were previously denied by operation of law pursuant to Sec. 590.302 of the ERA's administrative procedures because they were not acted on within 30 days after the request was filed with the ERA. The ERA notes with respect to the first discovery request that Producers had made no showing that there was relevant information in the possession of the parties, not already available in the record or from other public sources, that discovery would uncover. The ERA further notes in this regard that Producers have made no attempt to provide evidence for the record concerning the competitive effects of the proposed import on domestic producers, or to analyze the information in the record on the question of need for the gas contained in two gas supply studies submitted by Minnegasco.

Producers' request for "relevant contracts with WGML and the transporters" presented no convincing evidence that such documents are needed to evaluate the competitiveness of Minnegasco's proposed pricing formula. While reference is made to the costs of transporting the imported gas in the gas pricing formula, the cost of transportation is a constant factor in the pricing formula.

The pricing formula ensures that the combined Canadian and Midwestern transportation costs that Minnegasco must pay with respect to the Canadian gas cannot exceed Minnegasco's costs for transportation of gas purchased from Northern for comparable service, regardless of what the Midwestern charges might be (including the 75 percent minimum bill). Accordingly, the details contained in such contracts are not needed to evaluate the pricing formula nor to assure the adequacy of the record in this proceeding. As an additional point, the ERA notes that Producers have not asked any party to voluntarily provide copies of such contracts as Producers may desire and have not identified any specific contract not already available to them in related FERC and State of Minnesota Public Utilities Commission proceedings.27/

(4) Environmental Determination

Producers allege that the ERA must prepare an EIS with respect to the

import proposal because it entails the construction of new facilities. The National Environmental Policy Act of 1969 (NEPA) 28/ requires the ERA to give appropriate consideration to the environmental effects of its proposed actions such as an authorization to import natural gas; it does not require the ERA to prepare an EIS.

The FERC conducted an environmental review of the Minnegasco project and issued an Environmental Assessment (EA) on August 25, 1987.29/ The FERC evaluated the environmental impacts associated with the project's construction and operation of a new connecting pipeline of about 32 miles in length that would extend from Midwestern's facilities at Cambridge, Minnesota, and Minnegasco's facilities near Coon Rapids, Minnesota. In the EA, the FERC concluded that the impact on the environment from the construction connected with the proposed project and the transport of the imported gas over the new pipeline and Midwestern's existing facilities would not be significant. Therefore, the FERC concluded that approval of Minnegasco's proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

Based on the DOE's 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, we have concluded that such approval clearly would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and therefore no EIS nor additional EA is required.

C. Conclusion

After reviewing the entire record described in detail in this opinion, I conclude that this import will serve the consumers' interests in obtaining a second long-term reliable source of natural gas supplies at market-responsive prices in an area now served by only one pipeline system. As concluded herein, the import will help fill current needs and projected future increases in consumer demand. This import will also enhance the diversity of natural gas suppliers, both domestic and foreign, who will be able to serve the Minnesota market area via the new pipeline system to be established. It is noted that the only opposition to the import comes from current and potential future suppliers in competition for customers in the markets to be served. For these reasons, I conclude that granting this import will not be inconsistent with the public interest, and I therefore am approving Minnegasco's application.

ORDER

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

A. Minnegasco, Inc., a Company of Diversified Energies, Inc. (Minnegasco), is authorized to import up to 50,000 Mcf per day of Canadian natural gas on a firm basis and up to 110,000 Mcf per day on an interruptible basis during a ten-year period beginning November 1, 1987, or such later date as the necessary regulatory approvals and required facilities are made available to Minnegasco. The authorization granted in this Ordering Paragraph A is solely for natural gas which Minnegasco imports pursuant to the terms of the draft gas purchase contract between Minnegasco and TransCanada Pipelines, Limited filed with the ERA on November 17, 1986, as part of Minnegasco's import application.

B. Minnegasco shall provide the ERA with a copy of the gas purchase agreement upon execution and notify the ERA in writing of the date of first delivery of gas authorized in Ordering Paragraph A within two weeks after delivery.

C. Minnegasco 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 showing the demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis paid for those volumes at the international border. The volume and price information shall distinguish between firm and interruptible sales, and all price information shall include a demand/commodity charge breakdown on a monthly and per unit (MMBtu) basis.

D. The requests by Independent Petroleum Association of America, California Independent Producers Association, Energy Consumers and Producers Association, Independent Oil & Gas Association of New York, Inc., Independent Petroleum Association of Mountain States, North Texas Oil and Gas Association, Panhandle Producers and Royalty Owners Association, West Central Texas Oil and Gas Association, Independent Petroleum Association of New Mexico, and East Texas Producers & Royalty Owners Association for dismissal of Minnegasco's application, a trial-type hearing, imposition of a condition requiring all gas imported under this authorization to be transported only by open-access transporters under the Federal Energy Regulatory Commission's (FERC) Order No. 436, elimination of TransCanada Pipelines Limited's two-part rate consistent with FERC Opinion Nos. 256 and 256-A, and limiting the authorization to approval of the pricing mechanism presented in the application with subsequent revisions to be subject to prior ERA approval are denied.

E. The request by Northern Natural Gas Company, a Division of Enron Corporation, that the ERA condition any authorization granted upon elimination by the FERC of Midwestern's 75 percent minimum bill is denied.

Issued in Washington, D.C., September 21, 1987.

--Footnotes--

1/ The proposed reduction of Minnegasco's contract volumes with Northern under Order No. 436 is pending before the FERC in Northern Natural Gas Company, et al., FERC Docket No. RP85-206-000. FERC's Order No. 436 established a voluntary program under which a pipeline agrees to provide non-discriminatory transportation for all customers on a first-come, first-served basis. Open-access would allow non-traditional suppliers, such as independent producers, to ship their gas to any market where they could find customers. FERC Statutes and Regulations Sec. 30,665. On June 23, 1987, the U.S. Court of Appeals for the District of Columbia Circuit, vacated Order 436 and remanded it to the FERC. Associated Gas Distributors v. FERC, No. 85-1811, slip op. (D.C. Cir. June 23, 1987). On August 7, 1987, the FERC issued Order No. 500 establishing an interim rule and statement of policy in response to the court's remand; it became effective September 15, 1987.

2/ The additional demand projected by Minnegasco was based on two gas studies attached to its import application entitled "Minnesota Firm Peak Day Requirement and Supplies" and "Minnegasco Total Requirement and Supplies (Minneapolis)."

3/ 52 FR 4931, February 18, 1987.

4/ Motions or notices to intervene were received from Wisconsin Gas Company (Wisconsin Gas), Energy Issues Intervention Office of the Minnesota Department of Public Service, ANR Pipeline Company (ANR), Northern, Midwestern, WGML, and jointly from ten producer associations (hereinafter called Producers): Independent Petroleum Association of America, California Independent Producers Association, Energy Consumers and Producers Association, Independent Oil & Gas Association of New York, Inc., Independent Petroleum Association of Mountain States, North Texas Oil and Gas Association, Panhandle Producers and Royalty Owners Association, West Central Texas Oil and Gas Association, Independent Petroleum Association of New Mexico, and East Texas Producers & Royalty Owners Association.

5/ See supra note 1.

6/ See Northern Natural Gas Company, et al., FERC Docket No. RP85-206-000.

7/ FERC Opinion Nos. 256 and 256-A denied as-billed passthrough of Canadian gas costs by the importing pipelines on the grounds the charges included in the demand charges of Canadian suppliers were unjust and unreasonable. The opinion retained the two-part rate structure, but reallocated some costs from the demand charge to the commodity charge. Natural Gas Pipeline Company of America, (Opinion No. 256), 37 FERC Para. 61,215 (December 8, 1986) and Natural Gas Pipeline Company of America, (Opinion No. 256-A), 39 FERC Para. 61,218 (May 27, 1987).

8/ 49 FR 6684, February 22, 1984.

9/ See Northridge Petroleum Marketing U.S., Inc., 1 ERA Para. 70,610 (November 27, 1985).

10/ As authority for this statement, Producers cite Pacific Gas and Electric v. F.P.C., 506 F. 2d 33 (D.C. Cir. 1974).

11/ See supra note 7.

12/ See supra note 1.

13/ Midwestern's application for authority to transport the Canadian gas for Minnegasco under the proposed transportation rates is currently pending before the FERC. Midwestern Gas Transmission Company, FERC Docket No. CP87-106-000.

14/ See supra note 6. The take-or-pay liabilities that Northern might incur as a result of becoming an open access transporter under FERC Order No. 436 are among the issues involved in a case now pending before the FERC.

15/ See supra note 1.

16/ See supra note 6.

17/ 15 U.S.C. Sec. 717(b).

18/ See supra note 8.

19/ See Section 3, Article II of the proposed gas purchase agreement.

20/ Panhandle Producers and Royalty Owners Association v. Economic Regulatory Administration, 822 F.2d 1105 (D.C. Cir., June 30, 1987); Bonus Energy, Inc., 1 ERA Para. 70,691 (March 24, 1987); Tennessee Gas Pipeline Company, 1 ERA Para. 70,674 (November 6, 1986); Western Gas Marketing U.S.A., Ltd., 1 ERA Para. 70,675 (November 6, 1986); and Enron Gas Marketing Inc., 1 ERA Para. 70,676 (November 6, 1986).

21/ Id.

22/ Id.

23/ Id.

24/ Id.

25/ Id.

26/ Id.

27/ See supra note 12, regarding related FERC proceeding; see also In the Matter of Petition of Tennegasco Corporation and ANR Gathering Company for Approval of Gas Sale and Transportation Agreement with Minnegasco, Inc., Minnesota Public Utilities Commission Docket No. G-008/M-87-73 (June 19, 1987).

28/ 42 U.S.C. 4321, et seq.

29/ Environmental Assessment, Midwestern Gas Transmission Company FERC Docket CP87-106-000 (August 25, 1987).