Cited as "1 ERA Para. 70,744"

Texas Eastern Transmission Corporation (ERA Docket No. 87-37-NG), December 30, 1987.

DOE/ERA Opinion and Order No. 202-A

Order Denying Rehearing and Request for Stay of Order

I. Background

On October 30, 1987, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued DOE/ERA Opinion and Order No. 202 (Order 202),1/ in ERA Docket No. 87-37-NG, extending Texas Eastern Transmission Corporation's (Texas Eastern) authority to import natural gas from October 31, 1987, to October 31, 2000. Under Order 202, Texas Eastern is authorized to continue to import up to 75,000 Mcf per day of natural gas from ProGas Limited (ProGas). Order 202 amended DOE/ERA Opinion and Order No. 32,2/ as previously amended by DOE/ERA Opinion and Order No. 112, in ERA Docket No. 85-13-NG.3/ Within the limits of the authorization granted, Order 202 also permits Texas Eastern to release imported gas not needed to meet system supply contract demand as "Special Purchase Gas" for purchase and sale by ProGas' and/or Texas Eastern's marketer on the spot market for a period of two years.

A joint motion to intervene by 11 producer associations (Producers) 4/ opposed the application,5/ requesting summary dismissal, or alternatively, requesting that the ERA either hold a trial-type hearing or impose conditions on the authorization that would require any gas imported under the authorization to be transported through pipelines providing open access transportation under the Federal Energy Regulatory Commission's (FERC) Order No. 436 (now Order No. 500) program,6/ elimination of ProGas' two-part rate, and issuance of a certificate authorization by the FERC to Texas Eastern for transportation services, with service to commence by a date certain. Producers also requested the ERA to authorize the conduct of discovery, alleging that additional information was needed regarding: (1) the identity of the parties to Texas Eastern's import proposal; (2) the competitive effects of the proposed import on domestic producers; and (3) data as to the reasonableness of Texas Eastern's claim that the imported gas is needed and cannot be supplied more economically from domestic sources. Order 202 denied Producers' requests for summary dismissal of the application, a trial-type hearing, imposition of conditions on the authorization, and for discovery, and approved Texas Eastern's application for extension of its import authorization.

Producers filed an application for rehearing of Order 202 on November 30, 1987. The application also seeks a stay of the order "pending rehearing and the outcome of judicial review of any ERA order on rehearing." Attached to the Producers' application are two lists of questions, one addressed to the ERA and the other to Texas Eastern, seeking discovery of information which Producers contend they must have to comment fully on Texas Eastern's import application and to complete Producer's request for rehearing. Answers to Producers' request for a stay were filed by ProGas on December 15, 1987, and by Texas Eastern on December 16, 1987. Although Texas Eastern's answer was filed one day late, the ERA has determined that the late filing will not adversely effect any party, and therefore, it is accepted into the record.

In support of their request for rehearing, Producers argue that the ERA erred in: (1) relying on the DOE natural gas policy guidelines7/ in making its determination; (2) assigning the burden of proof to the Producers; (3) failing to assess the need for the imported gas; (4) failing to conform to the Secretary's recent findings regarding the lack of competitive domestic markets;8/ (5) approving ProGas' anti-competitive border price formula; (6) failing to assess the anti-competitive effects of the order and to provide for conditions to protect against long-term harm to domestic supplies; (7) failing to follow its own regulations during the proceedings regarding the information required in the record to permit adequate discussion of the applicant's proposal; (8) failing to conduct the trial-type hearing requested by Producers; (9) failing to permit discovery of facts central to the ERA determinations; and (10) failing to conduct an environmental assessment, or to otherwise meet the requirements of the National Environmental Policy Act of 1969 (NEPA).9/

In support of their request for a stay, Producers argue that the ERA may grant a stay upon a finding that "justice so requires" and that if a stay is not granted, Texas Eastern will continue to import natural gas to the detriment of continued exploration and development of domestic reserves. Producers also argue that Texas Eastern will incur substantial take-or-pay obligations, and fixed costs, which will have to be borne by Texas Eastern's "captive" customers who have no alternative supplier, or will have to be netbacked to domestic producers. In addition, Producers contend that a stay should be granted to the extent that the FERC grants a stay of the transportation order issued on November 12, 1987, with respect to the rates charged for movement of the gas to Texas Eastern's facilities.10/

In opposing Producers' request for a stay, ProGas points out that Producers have not addressed the "applicable legal standards" for a stay, namely: (1) that Producers are likely to prevail on appeal; (2) that Producers

will suffer irreparable harm if a stay is not granted, and (3) that other parties will not suffer substantial harm by issuance of the stay. Further, ProGas states that many of the arguments made by Producers in support of their request for a stay rest on unsubstantiated allegations that long-term "detriment" to domestic gas producers and Texas Eastern's customers will occur if the stay is not granted.

Texas Eastern, in opposing Producers' request for a stay, adopted ProGas' answer and noted that the proposed import was a continuation of flowing gas, was needed to meet the gas requirements of Texas Eastern's system supply customers, and that Producers had not shown that a stay would not substantially harm other parties. In arguing that Producers are unlikely to prevail on appeal in this case, Texas Eastern also denied that the pricing formula would operate in an anti-competitive fashion or that ProGas' gas commodity charge recovers non-gas commodity charges by definition, as contended by Producers. Texas Eastern states that the reduction in ProGas' demand charges (the "MDR adjustment") made pursuant to FERC Order No. 256 has not been included in ProGas' gas commodity charge and that the gas commodity charges and non-gas commodity charges payable to ProGas are equal to the commodity charge in Texas Eastern's Rate Schedule DCQ for Zone C for firm gas supplies.

On December 23, 1987, Producers filed a motion to strike Texas Eastern's and ProGas' answers to Producers' request for a stay of Order 202, alleging that these answers are really answers to Producers' application for rehearing which are not allowed by the ERA's administrative procedures.

II. Decision

All of the issues which Producers identify in their request for rehearing have been raised previously in one form or another in this proceeding, or by Producers, or a member association, Panhandle Producers and Royalty Owners Association, in earlier proceedings.11/ Producers have submitted no new information which would compel the ERA to reconsider the positions it took in Order 202, as well as in prior proceedings. With the exception of certain aspects of these issues, discussed below, we do not intend to revisit Producers' arguments in this order.

A. Discussion of Issues

1. The ERA can rely on the Secretary's Guidelines

Producers contend that the DOE guidelines are a legal nullity and cannot

be relied upon either as a substantive rule or as a statement of policy. They have made this same basic argument in previous ERA proceedings, and before the D.C. Circuit Court of Appeals,12/ and earlier in this proceeding. They present no new information which would cause the ERA to reconsider its rejection of this argument in issuing Order 202 or to distinguish it in any significant respect from previous cases in which this argument was rejected.

The policy guidelines were never intended to be promulgated as a substantive rule by which the ERA would automatically be bound. They were intended to provide the public with a clear indication of those factors that would guide the Administrator of the ERA in exercising his discretion in making a Section 3 "public interest" determination. The ERA can rely on the policy guidelines, including the presumptions set forth therein, so long as the guidelines are non-binding and the presumptions rebuttable. Any intervenor is free to submit any facts or arguments in support of his position to rebut the presumptions and persuade the Administrator to come to a different conclusion. Producers have had this opportunity during the course of this and other proceedings 13/ and they have not rebutted the presumptions nor presented substantial evidence that would provide the Administrator with a basis to find that the requested import authorization is not in the public interest.

As part of their challenge to the ERA's reliance on the policy guidelines, Producers claim that the ERA failed to comply with Section 404 of the Department of Energy Organization Act (DOE Act) 14/ in promulgating the Secretary's guidelines. Specifically, Producers allege that the FERC never formally voted to accept or deny referral of the guidelines to the FERC for consultation and have filed affidavits from J. David Hughes and Kenneth F. Plumb 15/ attesting to the lack of a formal commission vote. Section 404 provides for mutual consultation between the ERA and the FERC on certain Secretarial actions of inter-agency concern. The specific mechanisms agreed to by the ERA and the FERC to carry out this consultation process were never intended to be second guessed by private parties. Further, as we stated in Order 202, the FERC was an active participant in developing the guidelines and has expressly acknowledged and followed them since their issuance. Producers' challenge to the validity of the DOE guidelines therefore fails.

2. The Record Shows That The Proposed Import Is Needed

In addition to the arguments previously rejected in Order 202 on the issue of need for the imported gas, Producers attach to their rehearing application a statement by David W. Wilson 16/ to "further develop the need issue." The thrust of Mr. Wilson's statement is that the imported gas cannot

be presumed to be needed based on its competitiveness because the pricing formula for the gas is not cost based, i.e., the gas commodity charge is tied to Texas Eastern's commodity charge in its Rate Zone C and therefore will exceed Texas Eastern's average gas costs by the amount of non-gas costs included the Zone C rate. According to Mr. Wilson, the resulting price which Texas Eastern must pay for the gas to ProGas is higher than the price of gas available from domestic suppliers. However, Producers allege that domestic suppliers cannot compete with ProGas for market share because Texas Eastern's minimum bill obligations guarantee ProGas a specific share of Texas Eastern's system supply market.

The public interest inquiry into the competitiveness of an import, and resulting presumption of need if an import is found to be competitive, focuses on whether the negotiated arrangement, taken as a whole, provides the importer with the ability to compete in the marketplace, and with the flexibility to respond to market changes and thereby enhance competitive pressure on market participants. It does not focus on the competitive effect of an arrangement upon domestic producers, or on whether the gas can be supplied more economically by domestic or other suppliers in a particular instance. In this case, as noted in Order 202, the import arrangement contains no rigid minimum bill requirement but rather provides that Texas Eastern's minimum take obligations will be automatically and proportionately reduced if Texas Eastern's overall system demand needs are reduced. In addition, the Texas Eastern/ProGas gas sales contract provides for price adjustments to reflect competitive conditions in Texas Eastern's markets and for renegotiation of the pricing formula when changes occur in market-responsive prices for Texas Eastern's system supply. Therefore, as we indicated in Order 202, taken as a whole, neither the pricing formula nor the minimum bill provisions are likely to significantly restrict the competitiveness of the import. Accordingly, the ERA concludes that Producers have provided no new information that would convince the ERA to reconsider its finding in Order 202 that the imported gas is competitive and is needed to meet Texas Eastern's obligations to its system supply customers.

3. Order 202 Is Not Inconsistent With The Secretary of Energy's Statement On Lack Of Open Access Transportation

Producers argue that Order 202 fails to conform to recent findings by the Secretary of Energy regarding the lack of a competitive domestic market and allege that the lack of competitiveness is aggravated by preferential treatment for available pipeline transportation arising from affiliated relationships with Canadian suppliers. Producers have taken the Secretary's statement out of context. Producers' quote is from the Secretary's report on

energy security 17/ which expresses concern that willing buyers and sellers cannot always deal directly with each other because of lack of open access to transportation. We agree that lack of open access transportation is a problem affecting both domestic and Canadian suppliers. For this reason, the DOE has supported the voluntary open access transportation program established by FERC Order No. 436 (now Order No. 500),18/ and has proposed legislation authorizing the FERC to mandate transportation. Order 202 is not inconsistent with the Secretary's statement.

Further, the Energy Security report specifically addresses the role imported gas plays in enhancing our energy security by stating:

> Imports from reliable sources can provide a stable and secure addition to domestic resources. Although imports make up only about 5 percent of U.S. consumption, they have contributed to a decline in the average prices U.S. consumers pay for natural gas. Eliminating the remaining barriers to trade will ensure that the lowest cost supplies of natural gas are brought to consumers.19/

With respect to Producers' contention that affiliated relationships with Canadian suppliers unfairly restrict the availability of open access pipeline transportation, the ERA notes that affiliate relationships also exist between domestic suppliers and transporters. Moreover, this problem, if it exists, is subject to an ongoing FERC proceeding in which discrimination charges involving affiliated relationships are being examined.20/

4. The Pricing Formula Is Not Anti-Competitive

Producers argue that the pricing formula in the Texas Eastern/ProGas sales contract is anti-competitive in that Texas Eastern will pay a commodity rate to ProGas that is higher than Texas Eastern's average cost of gas for its system supply and that cheaper domestic gas will not be bought because of Texas Eastern's obligation to purchase a minimum annual quantity from ProGas. Producers also argue that the demand portion of the pricing formula is anti-competitive because it does not conform to FERC Opinion Nos. 256 and 256-A.21/

As indicated in Section II A 2 of this opinion, and in Order 202, the ERA evaluates the competitiveness of an import arrangement in terms of its overall responsiveness to competitive conditions in the markets served. The ERA's public interest inquiry does not focus on whether the gas could be more economically supplied by other suppliers in a particular instance. In this case, the ERA concluded that the Texas Eastern's minimum annual purchase

obligations under its gas sales contract with ProGas did not unreasonably restrict the ability of the parties to respond to market conditions. Such obligations would automatically and proportionately be reduced when Texas Eastern's overall system demand for gas declined. Moreover, credit would be given against the minimum annual purchase requirement for any gas sold on the spot market that was imported for but not needed to meet Texas Eastern's system supply demand. This flexibility, combined with the price adjustment and market-driven renegotiation of the pricing provisions in the Texas Eastern/ProGas sales contract, should ensure the competitiveness of the import over the term of the authorization granted by Order 202. If, as Producers contend, the specific allocation of costs between the demand and commodity rates which Texas Eastern proposes to use when passing through ProGas' costs is not consistent with the FERC's rules, or with FERC Opinion Nos. 256 and 256-A, the FERC is the proper forum to request appropriate action. Therefore, the ERA sees no reason to reconsider the conclusion reached in Order 202 that the pricing formula is not anti-competitive.

5. Producers' Request For Discovery Was Properly Denied

Producers argue that the ERA should permit discovery of facts which Producers allege are central to the ERA's determination. Producers contend that the ERA erred in failing to permit discovery of such facts by Order 202 and attached two lists of questions to the rehearing request, one addressed to the ERA and the other to Texas Eastern. These same questions were filed with the ERA as part of a new discovery request made by Producers after Order 202 had been issued. By these lists of questions, Producers seek discovery of information from the ERA as to the basis on which Order 202 was issued and from Texas Eastern as to: (1) the competitive effects of the proposed import on domestic producers; (2) whether the imported gas is needed and cannot be supplied more economically from domestic sources; (3) the availability of open access transportation; and (4) the cost-of-service justification for the Texas Eastern-ProGas two-part demand/commodity rate. Producers claim that this information is needed to be able to comment on the pricing formula in the Texas Eastern/ProGas sales contract and to be able to complete their rehearing request.

The ERA's decision in Order 202 was based upon the entire record in this proceeding which is available to all parties. The ERA has concluded that the record is adequate to support its decision and will not entertain Producers' request for discovery. If Producers believe that the record is inadequate, they have the right to seek judicial review of the ERA's decisionmaking process.

Producers' request for discovery of information from Texas Eastern either relates to matters adequately ventilated in this proceeding or to matters not relevant to a public interest determination under the DOE policy guidelines. The first and second categories of information which Producers seek to discover from Texas Eastern relate to matters that reflect Producers' differing policy perspective rather than to undisclosed and relevant facts. As previously stated in this order in Sections II A 2 and II A 4, the public interest inquiry into the competitiveness of an import proposal does not focus on the competitive effect of an arrangement on domestic producers nor on whether the gas can be supplied more economically by another supplier in a particular instance. Rather, it focuses on the responsiveness of the overall arrangement to market changes. Need is presumed in an import arrangement found to be competitive. Categories three and four of Producers' questions seek information more appropriately addressed to the FERC which has jurisdiction over interstate pipeline transportation and over the specific allocation of costs in an importer's two-part demand/commodity rate.

The information necessary to determine whether Texas Eastern's import proposal, including the pricing formula contained therein, is inconsistent with the public interest is in the record. Accordingly, since Producers have made no showing that there is information necessary and relevant to a decision in this proceeding that granting discovery would disclose, their request for discovery is denied.

6. The ERA Has Complied With The National Environmental Policy Act (NEPA)

Producers argue that an environmental impact assessment (EIS) must be prepared to meet NEPA requirements. Producers state that: "the subject order entails a very substantial environmental impact with the authorization of up to 160,000 Mcf per day for 10 years and the construction of a 32-mile facility." 22/

Contrary to what Producers' statement would suggest, this case does not involve new construction nor an import of up to 160,000 Mcf per day of natural gas. Rather, Order 202 authorized continuation of an existing import of up to 75,000 Mcf per day of natural gas over a 13-year period using existing facilities.

However, Producers also contend that DOE environmental regulations specify that an environmental assessment (EA) normally must be conducted in cases which do not involve new construction. Among the factors that Producers contend the ERA must consider in performing its environmental evaluation are the secondary socio-economic effects of the proposed import. The ERA has

considered this argument previously 23/ and concluded, on the basis of facts not significantly different from the facts involved in Order 202, that the argument is without merit. DOE guidelines for NEPA compliance 24/ provide for three possible levels of analysis, depending on the potential for environmental impact. In cases where there is clearly a potential for significant impact, an EIS is prepared. In uncertain cases, an EA is prepared to determine if an EIS is needed. In situations when clearly no significant impacts will occur which could necessitate the preparation of an EIS, a memorandum to the file is prepared to document this fact. A memorandum of this type was prepared in this instance. The analysis contained therein supports the conclusion that, because existing pipeline facilities will be used, clearly there should be no significant impact to the physical environment. Moreover, it is well established by both case law and by regulation that socio-economic impacts, alone, do not establish a basis for requiring an EIS.25/ Therefore, a memorandum to the file is the appropriate level of NEPA compliance when no other concerns involving the physical environment are at issue.

7. Producers' Motion To Strike Texas Eastern's and ProGas' Answers To Request For Stay Should Not Be Granted

Producers argue that Texas Eastern's and ProGas' answers to Producers' request for stay are in effect answers to Producers' application for rehearing not allowed under the ERA's administrative procedures. Section 590.505 of the ERA's administrative procedures provides that the ERA will not entertain answers to applications for rehearing. However, no similar prohibition applies to answers to a request for a stay during the rehearing process. The ERA accepts Texas Eastern's and ProGas' answers to Producers' request for a stay noting that, as a practical matter, an appropriate answer necessarily would address substantive issues raised in the proceeding and specifically referenced by Producers to support their request for a stay. The ERA concludes that neither Texas Eastern's nor ProGas' answers exceed the boundary of reasonableness in their discussion of the merits of this proceeding. Accordingly, Producers' motion to strike is denied.

8. Producers' Request For A Stay Should Not Be Granted

Producers argue that a stay of Order 202 should be granted pending rehearing and the outcome of judicial review of any ERA order on rehearing on the grounds that harm for various reasons will accrue to Producers and third party interests. Producers also contend that a stay should be granted to the extent that the FERC grants a stay of its transportation order with respect to the rates charged to move the gas to Texas Eastern's facilities. However,

Producers present no credible evidence that such harm will in fact accrue as a result of Order 202. Moreover, in issuing Order 202, the ERA made the determination that continuation of Texas Eastern's existing import arrangement under revised contractual provisions with ProGas was not inconsistent with the public interest. Neither the NGA nor the ERA's administrative procedures limit agency authority to approve import applications until after the FERC has approved downstream transportation arrangements. Issuance of a stay would have the effect of cutting off flowing gas to customers served by Texas Eastern for six years since, absent issuance of Order 202, Texas Eastern's import authorization would have expired on October 31, 1987. Producers therefore have provided no new information in their rehearing request that would persuade the ERA that continuation of Texas Eastern's import authorization should not proceed as planned.

B. Conclusion

The ERA has determined that the Producers' application for rehearing presents no information that would merit reconsideration of our findings in Order No. 202. Accordingly, this order denies Producers' request for rehearing, request for stay of the subject order, and motion to strike.

ORDER

For the reasons set forth above, pursuant to Sections 3 and 19 of the National Gas Act, it is ordered that:

The application for rehearing, request for stay of DOE/ERA Opinion and Order No. 202, and motion to strike submitted jointly 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, East Texas Producers & Royalty Owners Association, and Permian Basin Petroleum Association are hereby denied.

Issued in Washington, D.C., on December 30, 1987.

--Footnotes--

1/ Texas Eastern Transmission Corporation, 1 ERA Para. 70,733.

2/ 1 ERA Para. 70,530 (April 24, 1981).

3/ 1 ERA Para. 70,634 (March 21, 1986).

4/ Producers represent the interests of independent producers and royalty owners in California, Kansas, New Mexico, New York, Oklahoma, Texas, and the Rocky Mountain area. The 11 associations are: 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, East Texas Producers & Royalty Owners Association, and Permian Basin Petroleum Association.

5/ Northridge Petroleum Marketing, Inc., also opposed the application.

6/ FERC's Order No. 436 established a voluntary program under which a pipeline agrees to provide non-discriminatory transportation for all customers. 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 Para. 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.

7/ 49 FR 6684, February 22, 1984.

8/ Energy Security, A Report To The President of the United States, DOE/S-0057 (March 1987) at 124-125.

9/ 42 U.S.C. 4321, et seq.

10/ Great Lakes Gas Transmission Company and ANR Pipeline Company, FERC Docket Nos. CP87-467-000, 002.

11/ 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); Enron Gas Marketing Inc., 1 ERA Para. 70,676 (November 6, 1986); Minnegasco, Inc., 1 ERA Para. 70,721 (September 21, 1987); Minnegasco, Inc., Rehearing Denied, 1 ERA Para. 70,738

(November 20, 1987); and Texas Eastern Transmission Corporation, 1 ERA Para. 70,733 (October 30, 1987).

12/ Id.

13/ Id.

14/ 42 U.S.C. 7174.

15/ Mr. Hughes was a member of the Federal Energy Regulatory Commission from September 8, 1980, to July 13, 1984. Mr. Plumb served as Secretary of the Commission from its inception on October 1, 1977, until his retirement in 1987.

16/ Mr. Wilson is President of Gas Acquisition Services, Inc. Prior to issuance of Order 202, Producers attached a statement by Mr. Wilson to their motion to intervene in which he expresses his opinion that in general additional imports of Canadian gas are not needed in U.S. markets.

17/ See supra note 8.

18/ See supra note 6.

19/ See supra note 8, at 126.

20/ Hadson Gas Systems, Inc., FERC Docket No. RM86-19-000. In August 1986, the FERC initiated a generic rulemaking proceeding in this FERC Docket to examine the potential anti-competitive impact on natural gas markets of interrelationships between non-jurisdictional marketing affiliates and the pipelines.

21/ FERC Opinion Nos. 256 and 256-A approved a two-part rate for passthrough of Canadian gas costs but required the importing pipeline to reallocate 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).

22/ Request of the Producers Associations for Rehearing and Stay, at 13.

23/ See Tennessee Gas Pipeline Company, Western Gas Marketing U.S.A., Ltd., and Enron Gas Marketing, Inc., 1 ERA Para. 70,684 (January 5, 1987); Bonus Energy, Inc., 1 ERA Para. 70,702 (May 26, 1987); and Texaco Gas Marketing Inc., DOE/ERA Opinion and Order No. 209, ERA Docket No. 87-22-NG,

December 11, 1987.

24/ Department of Energy Guidelines for Compliance with the National Environmental Policy Act, (45 FR 20694, March 28, 1980; as amended at 47 FR 7976, February 23, 1982; 48 FR 685, January 6, 1983; and 50 FR 7629, February 25, 1985).

25/ National Association of Government Employees v. Rumsfield, 418 F. Supp. 1302 (ED Pa. 1976); and 40 CFR Sec. 1508.14.