Cited as "1 ERA Para. 70,748"

ANR Pipeline Company (ERA Docket No. 86-63-NG), January 22, 1988.

DOE/ERA Opinion and Order No. 216

Order Amending and Extending Authorization to Import Natural Gas from Canada and Authorizing Spot Sales

I. Background

On November 19, 1986, ANR Pipeline Company (ANR) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act (NGA), to amend and extend an existing natural gas import authorization granted by the ERA on April 24, 1981, to Michigan Wisconsin Pipe Line Company (now ANR), Natural Gas Pipeline Company of America (Natural), Tennessee Gas Pipeline Company (Tennessee) and Texas Eastern Transmission Corporation (Texas Eastern) in DOE/ERA Opinion and Order No. 32 (Order 32).1/ Order 32 authorized the firms to import jointly up to 300,000 Mcf of natural gas per day through October 31, 1987, from ProGas Limited (ProGas) of Calgary, Alberta, Canada, under a May 17, 1979, agreement. Natural, Tennessee, and Texas Eastern are not parties to this application. This application deals solely with the volumes imported by ANR and does not affect the other three ProGas customers.

Under the 1979 agreement, ProGas agreed to supply ANR a maximum daily quantity of 75,000 Mcf of natural gas, with a 75 percent take-or-pay obligation. The contract set the price at the rate prescribed by the Canadian government for gas exported to the U.S. Order 32 authorized an import price not to exceed $4.94 (U.S.) per MMBtu, the border price at the time. The volumes purchased by ANR currently enter the U.S. at Emerson, Manitoba, through pipeline facilities of Great Lakes Transmission Company (Great Lakes). Great Lakes delivers the gas to ANR at an existing delivery point.

On November 14, 1986, ANR and ProGas agreed to contract changes that would (1) extend the term of the import from October 31, 1987, through October 31, 1994; (2) reduce ANR's take-or-pay obligation to 2.75 percent of ANR's sales that, based on sales in the year ending October 31, 1986, would be approximately 10 Bcf compared to about 21 Bcf under the present agreement; (3) effective November 1, 1986, reduce the price, and provide for a demand charge of $12.17 per MMBtu and a commodity charge of $1.16 per MMBtu or a 100 percent load factor price of $1.56 per MMBtu; (4) allow a one-year grace period to make up deficiencies before any take-or-pay payments are due; (5) provide for

annual price renegotiation; and (6) allow ANR to use its authorization to import gas for others. The last provision would cover gas ProGas agrees to make available at a "special commodity charge" and provides a vehicle for spot purchases by ANR for itself or on behalf of third parties. Gas purchased under the purchase for others provision would count towards ANR's take-or-pay requirements. ANR asserts that the proposed amendment to import for others is consistent with previously issued orders for authorization for the import of spot gas.

ANR requests that the ERA find, pursuant to Section 3 of the NGA, that the continued import of natural gas under the terms of ANR's agreement, as amended, with ProGas is consistent with the public interest, and authorize the extension of ANR's import authorization, through October 31, 1994, on the terms and conditions set forth in the amendment, including ANR's request for authorization to import gas on behalf of third parties.

II. Intervention and Comments

The ERA issued a notice of the application on December 18, 1986, inviting protests, motions to intervene, or comments to be filed by January 28, 1987.2/ The ERA received eight motions to intervene.3/ A group of producer associations filing jointly (Producers) 4/ requested that the ANR application be (1) summarily denied, or, in the alternative, (2) set for evidentiary hearing, or (3) conditioned on ANR and any other pipeline transporting the proposed imported gas adopting the open access provision of the Federal Energy Regulatory Commission (FERC) Order 436, as amended, and on elimination of the two-part rate. Western Gas Marketing Limited (WGML) did not protest the ANR application but suggested a clarification regarding which pipeline would carry the gas in the United States.5/ ProGas commented in support of the application. All other parties had no comments. ANR and ProGas filed responses to the Producers' comments on February 12, 1987. The filings are accepted and this order grants intervention to all movants.

III. Decision

This proceeding involves an amendment of the pricing and related provisions of an existing arrangement between ANR and ProGas and a seven-year extension of the authorization for that renegotiated arrangement. ANR's application has been reviewed to determine if it conforms with Section 3 of the NGA. Under Section 3, an import is to be authorized unless there has been a finding that the import "will not be consistent with the public interest."6/ In making this finding, the ERA Administrator is guided by the DOE's natural gas import policy guidelines.7/ Under this policy, the competitiveness of an

import arrangement in the markets served is the primary consideration for meeting the public interest test. In the case of long-term proposals such as this, need for the gas supply and security of supply are also important considerations.

As a general matter Producers argue that the import policy guidelines cannot be relied upon either as a substantive rule or as a statement of policy.8/ This argument or characterization of the ERA's decision-making process, and the results, expressed or implied, which flow from its acceptance, have been made in varying forms in previous ERA proceedings and before the D.C. Circuit Court of Appeals and rejected there.9/ The ERA emphasizes again here that the guidelines are discretionary guidance for the Administrator, not a rule, and do not bind the Administrator in deciding cases. Each case ultimately is decided on the facts and record of the individual proceeding.

A. Competitiveness

The principal issue for the ERA to decide is whether the import arrangement will be competitive and market-responsive under the renegotiated contract terms over the proposed seven-year extension. Under the policy guidelines an import will generally be deemed to be competitive if the terms and conditions of the gas purchase contract provide a supply of gas that the importer can market competitively over the term of the contract. Moreover, the policy guidelines provide that the competitiveness of an import arrangement will not be assessed by a narrow inquiry into individual contract terms but rather by consideration of the whole fabric of the arrangement. Where the applicant makes a prima facie showing of competitiveness, those opposing the import have the burden of demonstrating that the arrangement, as a whole, is not sufficiently flexible to respond to changing market conditions.10/

The November 1986 amendment establishes commodity and demand charges that result in a substantially lower price than under the 1979 agreement, and it significantly reduces ANR's take-or-pay obligations to ProGas. The amendment makes both the demand and the commodity components subject to automatic adjustment based on changes in the marketplace. In addition, the amendment provides for annual renegotiation of the minimum annual quantity and of the pricing provisions in response to changes in the market or regulatory conditions. The amendment also contains a special marketing provision that allows ANR to import and make spot purchases from ProGas both for itself and for the account of others. Purchases made under this special marketing arrangement are credited against ANR's take-or-pay obligations. Together these terms provide for a market-responsive arrangement that affords ANR substantial

flexibility throughout the term requested.

Producers contend that the two-part rate will "work a competitive disadvantage upon domestic producers that are subject to one-part commodity ceiling prices under the NGPA." 11/ However, they present no convincing evidence that domestic suppliers would be discriminated against or significantly disadvantaged by ProGas' two-part rate. The ERA consistently has approved two-part rates for imported gas since they are analogous to the rates used by domestic pipeline suppliers of gas. Producers are comparing apples and oranges by equating a "one-part" wellhead commodity price with a two-part rate at the border that recovers the cost of gas in the commodity charge and the cost of pipeline transportation of that gas in a pipeline's demand charge.

Producers also suggest that the proposed take-or-pay provision will have an anticompetitive effect because the obligation "reserves unto ProGas a fixed portion of ANR's system supply sales." 12/ The amended take-or-pay provision is part of a freely negotiated import package and will reduce ANR's take-or-pay obligations significantly. This provision is consistent with the public interest so long as it does not unreasonably or arbitrarily restrict the ability of the parties to respond to changes in market conditions. Producers do not demonstrate that the take-or-pay provision will so impact ANR's flexibility to respond to its market. Taken together, the provisions of ANR's renegotiated import arrangement should ensure its market-responsiveness. The ERA finds that the proposed import is competitive and is likely to remain so in the market(s) served over the extended term.

B. Need

Producers argue that ANR has not met the burden of proof for showing that the gas is needed. Producers argue also that need for the gas cannot be determined because of "unrest and turmoil" in the natural gas market. These arguments constitute the primary basis for Producers' request that the ERA summarily reject ANR's application.

Under the DOE guidelines, need is viewed as a function of competitiveness, and the gas is presumed to be needed if it is found to be competitive in the proposed market. Opponents must rebut this presumption to have the ERA find that the gas is not needed. In this case, the proposed gas import has been found to be competitive and therefore the gas is presumed to be needed. ANR is required to supply its customers with certain contracted volumes and asserts that the public interest is served by continuing a mix of gas supplies, including these competitively priced supplies under contract with ProGas. ANR further asserts that these supplies of Canadian gas will

enhance the reliability of service to its Wisconsin markets. No customer of ANR has challenged these assertions. We find no support for Producers' argument that need cannot be determined because of "unrest and turmoil" in the market. If accepted and applied without discrimination, this argument would preclude the authorization of imports and domestic gas sales alike whenever the market is in transition. Moreover, this argument does not address need in terms of the guidelines and offers neither fact nor theory to undermine the current policy. Based on the record in this proceeding, the ERA finds that the Producers have failed to rebut the presumption of need and that there is need for the proposed import.

C. Security of Supply

Producers suggest there may be security of supply issues related to the blanket, special marketing aspect of this renegotiated import arrangement. However, neither Producers, nor any party to this proceeding, have provided any evidence to refute ANR's assertion that the gas supply supporting its import proposal is not secure, particularly in light of ProGas' historical reliability as a supplier. Accordingly, the ERA concludes that security of supply has been established.

D. Special Purchase Gas

As part of its application, ANR has requested that it be allowed to import gas that, if not needed for system supply, could be sold on the spot market at a special commodity price.

Producers contend that authorization of such gas would allow ANR to sell to "undisclosed" markets and that the ERA therefore should dismiss the application as deficient. Producers' objections have been raised and discussed in previous ERA proceedings.13/ Producers provide no information in this docket to show that granting ANR authority to act on behalf of other potential purchasers presents any issue significantly different than in those cases where the issues were previously raised or that would lead us to change our position on these issues. We therefore discuss their objections only briefly. Producers claim that approval of the import would give ANR the right to sell or broker its Section 3 authorization, and that this is not permissible under the statute. As the ERA has stated previously, an import arrangement where the importer is a broker does not constitute a delegation of Section 3 authority but rather is a determination that the public interest does not rely on gas being taken.14/

Producers complain, also in connection with the blanket request, that

ANR has not made transportation available to domestic producers in a way that would allow them to compete with Canadian imports, and requests the ERA either to deny the application or condition it to require that gas imported under the authorization be transported only by pipelines that have become open-access transporters under FERC Order 436.15/ Producers introduce no evidence in this proceeding that expands upon the relevant record. In previous proceedings where similar conditions have been requested, the ERA concluded, after careful review, that no evidence was presented that domestic and Canadian suppliers are not in comparable positions with respect to transportation and sales opportunities.16/ The ERA found that conditions Producers propose would disturb the competitive positions of U.S. and Canadian participants in the gas market, that it would be discriminatory to impose a requirement applying to imported gas but not to domestic supplies and would therefore lessen competition in the marketplace, and that the condition is inconsistent with the commitment to equal treatment and free negotiation embodied in current U.S. gas import policy. Producers have failed to present evidence to convince the ERA to change its position.

The special marketing arrangement is a functional part of the proposed long-term import arrangement. The ERA believes ANR's proposal for the sale of gas imported for but not taken by system supply customers will enhance the overall competitiveness of the import arrangement and provide firm customers some measure of protection from having to absorb demand and minimum take costs that might arise if system supply takes decline for any reason. Nevertheless, the practical effect of ANR's request for approval of this arrangement is that of a long-term blanket import authorization. Therefore, as we did in DOE/ERA Opinion and Order special marketing Nos. 131 and 202 17/ with respect to analogous proposals by Tennessee Gas Pipeline Company, and Texas Eastern Transmission Corp., we are imposing a two-year limit on the term of such sales to safeguard the public against unanticipated and unintended results from a blanket-type authorization. The ERA still considers this to be an important arrangement. The ERA believes ANR's proposal for the sale of gas imported that changing market conditions may make it appropriate to revisit the two-year limit on blanket authorizations at a future time.

Although we are limiting this portion of the authorization granted to a two-year period, ANR may request an extension of the two-year authorization for sale of gas on the spot market under the special marketing agreement.

E. Other Matters

(1) Request for Summary Dismissal

Producers request that the ERA reject ANR's application as deficient on the grounds that the applicant has failed to meet its burden of proof to show need for the authorization requested. As previously concluded in Section III B of this Opinion, the competitiveness of the proposed import arrangement gives rise to a presumption of need which Producers have failed to rebut. Their request for summary dismissal of the application is therefore denied.

(2) Request For Conditions

Producers request that the ERA attach two conditions to any import authorization granted to ANR. First, Producers request that any import authorization granted be conditioned upon ANR and any other pipeline transporting the imported gas becoming open-access transporters under FERC Order No. 436 (amended by FERC Order No. 500) for the duration of the import. As discussed above in Section III D of this Opinion, 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 elimination of ProGas' two-part rate. As previously noted in this Opinion in Section III A the ERA has consistently approved two-part, demand/commodity rate structures for imported gas since they are used by domestic pipeline suppliers of gas serving system supply. Moreover, Producers have provided no convincing evidence that domestic producers would be discriminated against or significantly disadvantaged by ProGas' two-part rate. Accordingly, Producers' request is denied.

(3) Requests For Additional Procedures

(a) Trial-type hearing

In the event ANR's application is not denied or Producers' conditions are not granted, Producers have requested a trial-type hearing to address allegedly disputed issues of fact. These issues include: (1) the effect of the proposed import upon domestic drilling, and the domestic natural gas industry generally; (2) whether an environmental assessment of the import's long-term effects is necessary; (3) security of supply concerns; (4) the identity of ANR's prospective assignees under the special marketing proposal; (5) the competitive effect of the proposed pricing and take-or-pay provisions; (6) whether the proposed import will hinder competition by forestalling the need for transporting pipelines to become Order No. 500 transporters; (7) how available capacity at border facilities should be allocated between this

authorization and other approved and proposed import volumes; and (8) whether domestic gas is available at lower prices.

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 concluded that, however characterized by Producers, their concerns are predominantly policy, not factual in nature. Their concerns reflect a different policy perspective departing fundamentally from DOE's policy to promote competition in the public interest, and do not represent factual disputes regarding competitiveness.

The ERA does not believe that Producers have demonstrated that further illumination of the issues would be aided materially by a trial-type hearing nor that such a hearing is necessary to assure the adequacy of the record or the fairness of this proceeding. All parties, including Producers, have had sufficient opportunity to comment on the proposed arrangement and the parties' positions on the issues. 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, the ERA has determined that it would not be in the public interest to hold a trial-type hearing, and Producers' request is therefore denied.

(b) Requests for discovery

Producers also request the ERA to authorize the conduct of discovery to obtain information from the parties to this proceeding regarding: (1) the cost basis of ProGas' demand charge; (2) the competitive effects of the proposed import on domestic producers; and (3) to develop data as to the reasonableness of ANR's claim that the imported gas is needed through 1994 and cannot be supplied more economically from domestic sources.

Producers have made no showing that there is relevant information in the possession of the parties, not already available to them in the record or from other public sources, that granting of discovery could uncover. The ERA also notes that Producers have not identified any specific item in the possession of a party that Producers wish to obtain by discovery relating to competitiveness or need, nor have they asked any party to voluntarily provide

information which Producers may desire to have. Accordingly, Producers' request for discovery is denied.

(c) Environmental determination

Producers allege that the ERA must prepare an environmental assessment with respect to the import proposal even though the proposal does not involve the construction of new facilities. The National Environmental Policy Act of 1969 (NEPA) 18/ requires the EPA to give appropriate consideration to the environmental effects of the proposed action such as an authorization to import gas; it does not require the ERA to prepare an environmental impact statement (EIS). The ERA has considered this argument previously19/ and concluded, in the context of factual circumstances not materially distinguishable from the facts in this proceeding, that the argument is without merit. DOE guidelines for NEPA compliance20/ 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 environmental assessment 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 case. The analysis contained therein supports the conclusion that, because existing pipelines will be used, clearly there should be no significant impact to the physical environment. Indeed, the intervenors have alleged only that the ERA should analyze a potential for significant long-term socio-economic impacts. However, it is well established by both case law and by regulation that socio-economic impacts alone do not establish a basis for requiring an appropriate EIS.21/ Therefore, a memorandum to the file is the appropriate level of NEPA compliance when no other issues which involve the physical environment are at issue.

IV. Conclusion

After taking into consideration all of the information in the record of this proceeding, I conclude that the extension of the long-term authorization requested by ANR for its system supply under the terms renegotiated with ProGas would serve consumer interests in providing natural gas supplies at market-responsive prices. Therefore, I find that an extension of the renegotiated long-term import arrangement is not inconsistent with the public interest and should be granted.

However, I am denying ANR's request for blanket authorization to import the special purchase gas over a term that coincides with the related long-term

extension granted above. Authorization to import natural gas for sale on the spot market under the special marketing agreement is granted for a two-year term without prejudice to any subsequent request(s) for extension of such authorization that ANR may wish to file. To be consistent with previous authorizations, the term of the blanket authorization will commence on date of first delivery rather than on approval of the application.

ORDER

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

A. DOE/ERA Opinion and Order No. 32, issued to Michigan Wisconsin Pipe Line Company, the predecessor of ANR Pipeline Company (ANR), on April 24, 1981, is hereby amended to extend its term until October 31, 1994, in accordance with the application filed by ANR on November 19, 1986, and with the provisions of the November 14, 1986, agreement between ANR and its Canadian supplier, ProGas Limited (ProGas), submitted as a part of the application, except as provided in Ordering Paragraph B.

B. ANR may import up to 75,000 Mcf per day of natural gas designated as "Special Purchase Gas" in the November 14, 1986, agreement between ANR and ProGas for a period limited to two years beginning on the date of first delivery. Special Purchase Gas may be imported for ANR's own behalf or on behalf of others. The volume of natural gas authorized for long-term import under Ordering Paragraph A shall be reduced by the volume of "Special Purchase Gas" imported under this paragraph.

C. ANR shall notify the ERA in writing of the date of first delivery of natural gas imported under Ordering Paragraph B above within two weeks after the date of such delivery.

D. With respect to the imports authorized by this Order, ANR shall file with the ERA within 30 days following each calendar quarter, quarterly reports indicating: (1) for purchases made under the ANR/ProGas sales contract, by month, the quantities of the gas in MMcf imported by ANR 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, and (2) separately for transactions under the "Special Purchase Gas" provision: whether purchases and sales of imported gas have been made, and if so, giving, by month, the total MMcf of the imports and the average purchase price per MMBtu at the border. These second reports shall also provide the details of each transaction, including the names of the sellers and purchasers, estimated

or actual duration of the agreements, transporters, points of entry, markets served, and, if applicable, any demand/commodity charge breakdown of the contract price, any special contract price adjustment clauses, or any take-or-pay make-up provisions.

E. For the reasons set forth above, requests by the California Independent Producers Association, East Texas Producers & Royalty Owners Association, Energy Consumers and Producers Association, Independent Petroleum Association of America, Independent Petroleum Association of Mountain States, Independent Petroleum Association of New Mexico, North Texas Oil and Gas Association, Panhandle Producers and Royalty Owners Association, and West Texas Oil and Gas Association that the application be summarily denied, be set for evidentiary hearing, be conditioned on open access acceptance by any carrying pipelines and elimination of the two-part rate, and for discovery are denied.

F. The motions to intervene, as set forth in this Opinion and Order, are hereby granted, provided that participation of the intervenors shall be limited to matters specifically set forth in their motions to intervene and not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., on January 22, 1988.

--Footnotes--

1/ 1 ERA Para. 70,530.

2/ 51 FR 46913, December 29, 1986.

3/ Intervenors are:

(1) Northwest Alaskan Pipeline Company (2) Producers Associations (3) ProGas Limited (4) Western Gas Marketing Limited (5) El Paso Natural Gas Company (6) Iowa Public Service Company and its division North Central Public Service Co. (7) Texas Eastern Transmission Corporation (8) Madison Gas and Electric Company.

4/ The consortium includes the California Independent Producers Association, East Texas Producers & Royalty Owners Association, Energy Consumers and Producers Association, Independent Oil & Gas Association of New York Inc., Independent Petroleum Association of America, Independent Petroleum

Association of Mountain States, Independent Petroleum Association of New Mexico, North Texas Oil & Gas Association, Panhandle Producers and Royalty Owners Association, and West Central Texas Oil and Gas Association.

5/ WGML asserts that, at some time in the future, Midwestern Gas Transmission Co. may replace Great Lakes as the pipeline carrier in the United States for some or all of the gas purchased by ANR from ProGas. We find that this possibility is not relevant to the decision in this docket of whether to approve the amendments to ANR's import authorization. If at some future time ANR proposes to use a different transporter pipeline, ANR can amend its authorization at that time.

6/ 15 U.S.C. Sec. 717(b).

7/ 49 FR 6684, February 22, 1984.

8/ As part of their challenge to the ERA's reliance on the policy guidelines, Producers also claim the ERA failed in some way to comply with Section 404 of the DOE Act in promulgating the Secretary's policy guidelines. Section 404 provides for mutual consultation between the ERA and the FERC on certain Secretarial matters of intra-agency concern. The specific mechanisms agreed to by the ERA and FERC on policy guidelines are not intended to be second-guessed by private parties. The FERC was an active participant in the development of the guidelines and, in fact, since their issuance has consistently and expressly acknowledged and followed them as promulgated by the Secretary.

9/ 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); and Minnegasco, Inc., 1 ERA Para. 70,721 (September 21, 1987); Texas Eastern Transmission Corp., 1 ERA Para. 70,733 (October 30, 1987); Texaco Gas Marketing Inc., ERA Para. 70,740 (December 11, 1987); and Mobil Gas Company Inc., unpublished January 6, 1988).

10/ See supra note 7.

11/ Producers' filing of January 28, 1987, at 8.

12/ Id., at 7.

13/ See, e.g., Tennessee Gas Pipeline Company, 1 ERA Para. 70,674 (November 6, 1986); Western Gas Marketing U.S.A., Ltd., Inc., 1 ERA Para. 70,676 (November 6, 1986); Northwest Marketing Company, 1 ERA Para. 70,677 (November 7, 1986); and Bonus Energy, Inc., 1 ERA Para. 79,691 (March 24, 1987); and Texas Eastern Transmission Corp., 1 ERA Para. 70,733 (October 30, 1987).

14/ Northridge Petroleum Marketing U.S. Inc., 1 ERA Para. 70,605 (September 27, 1985), rehearing denied, 1 ERA Para. 70,610 (November 21, 1985), aff'd sub nom., Panhandle Producers and Royalty Owners Association v. Economic Regulatory Administration, 822 F.2d 1105 (D.C. Cir., June 30, 1987).

15/ 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.

16/ Supra note 9.

17/ Tennessee Gas Pipeline Company, 1 ERA Para. 70,654 (June 19, 1986); Texas Eastern Transmission Corp., 1 ERA Para. 70,733 (October 30, 1987).

18/ 42 U.S.C. 4321, et seq.

19/ 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); Texas Eastern Transmission Corp., 1 ERA Para. 70,733 (October 30, 1987).

20/ 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).

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