Cited as "1 ERA Para. 70,761"

EnTrade Corporation (ERA Docket No. 87-43-NG), March 3, 1988.

DOE/ERA Opinion and Order No. 227

Order Granting Blanket Authorization to Import Natural Gas from Canada and Granting Interventions

I. Background

On July 29, 1987, EnTrade Corporation (EnTrade) of Louisville, Kentucky, a marketer of natural gas, filed an application with the Economic Regulatory Administration (ERA), pursuant to Section 3 of the Natural Gas Act (NGA), for blanket authority to import for short-term and spot market sales to customers in the United States up to 175 Bcf of natural gas over a period of two years beginning on the date of the first delivery. The imported gas would be purchased by EnTrade from a variety of Canadian suppliers for resale to distribution companies, pipelines, and commercial and industrial end-users. EnTrade may also serve as an agent both in negotiating for imported gas supplies on behalf of American buyers and in marketing natural gas for Canadian producers. No contracts have been executed and therefore the application does not identify the specific suppliers, buyers, or prices. EnTrade asks that it be given the flexibility to import this gas at any U.S.-Canadian pipeline interconnection along the international border. As proposed, gas imported under the requested authorization would be transported over existing pipeline facilities. EnTrade intends to submit quarterly reports to the ERA describing the import transactions into which it has entered.

In support of its application, EnTrade asserts that the proposed import will enhance competition in the marketplace. It expects that the gas generally would be used to displace higher-priced energy supplies. EnTrade states that the provisions of the individual supply and resale contracts negotiated by the participants would reflect prevailing market conditions. According to EnTrade, this assures that the gas would be competitive and is therefore consistent with the DOE's policy guidelines on the regulation of imported natural gas.1/ EnTrade maintains that it needs a blanket-type authorization to compete in the dynamic spot market because many short-term sales could be frustrated by regulatory delays if EnTrade is required to obtain prior ERA approval of each transaction.

II. Interventions and Comments

The ERA issued a notice of the application on August 10, 1987, inviting protests, motions to intervene, notices of intervention, and comments to be filed by September 18, 1987.2/ Motions to intervene without comment or request for additional procedures were filed by Northwest Pipeline Corporation, El Paso Natural Gas Company, and Northwest Alaskan Pipeline Company.

A late motion to intervene was filed jointly by 11 producer associations (hereafter referred to collectively as Producers) whose membership is comprised of several thousand independent producers, royalty owners, and marketers of natural gas in California, Kansas, New Mexico, New York, Oklahoma, Texas, and the Rocky Mountain States.3/ Producers request summary denial of EnTrade's application or, in the alternative, a trial-type hearing, or the imposition by the ERA of four specified conditions. They also request the opportunity to conduct discovery.

On October 5, 1987, EnTrade filed an answer, arguing that Producers' motion to intervene should be denied because they fail to demonstrate good cause for lateness. EnTrade disputed Producers' substantive arguments and challenged Producers' various requests, including their discovery request which EnTrade claims should be rejected.

By motion filed October 15, 1987, Producers sought an order from the ERA under 10 CFR Sec. 590.305 compelling EnTrade to respond to an October 2, 1987, data request served by Producers on EnTrade. In addition, they requested authority to depose EnTrade employees. Finally, Producers denied the lateness of their motion to intervene.4/ On October 30, 1987, EnTrade submitted an answer in opposition to Producers' October 15 filing.

In determining if good cause exists to permit a late intervention, the ERA considers the impact on the proceeding of granting a late motion and such other factors deemed to be appropriate by the Administrator under the particular circumstances of each proceeding. The ERA finds that Producers' concerns and interests are not represented by other parties in this proceeding, and that the proceeding will not be disrupted by allowing their intervention. Producers' late motion to intervene is accepted and this order grants intervention to all movants.

III. Decision

The ERA has evaluated EnTrade's application under Section 3 of the NGA. Section 3 requires approval of this application unless the ERA finds the proposed arrangement "will not be consistent with the public interest," 5/ thereby establishing a statutory presumption in favor of authorizing this

import of natural gas.

A. Competitiveness of Import Proposed by EnTrade

The Administrator is guided in making the Section 3 determination by the DOE's natural gas import policy guidelines.6/ Under these guidelines, the competitiveness of an import in the markets served is the primary consideration for meeting the public interest test. If a gas import arrangement is sufficiently flexible to allow the buyer to respond to changes in the marketplace throughout the contract term, the gas is deemed to be competitive. This marketability in turn gives rise to a presumption of need for the gas in the markets served.

The import authorization sought by EnTrade would provide it with blanket approval, within prescribed limits, to negotiate and transact individual, short-term import arrangements without further regulatory action. EnTrade proposes an arrangement where each sale would be voluntarily negotiated, short-term, and market-responsive, providing assurance that the transactions will be competitive and will not take place if the gas is not marketable. This arrangement, as set forth in the application, and like other blanket imports authorized by the ERA, is inherently competitive. The ERA believes that the enhanced competition such short-term sales bring to the marketplace is beneficial to the public interest because it increases the range of choices available to firms desiring to purchase gas and places downward pressure on prices for consumers.7/

B. Request for Summary Denial

In asserting that this import should be denied or conditioned, Producers must persuade the ERA that the arrangement, without the conditions Producers request, would not be competitive or otherwise would not be in the public interest. Producers do not make this demonstration.

All of the numerous claims made by Producers in opposition to EnTrade's proposal have been raised by Producers, or a member Association, Panhandle Producers and Royalty Owners Association (Panhandle), in earlier ERA proceedings and before the D.C. Circuit Court of Appeals and have been rejected.8/ We do not intend to respond repeatedly to the same basic claims. This Opinion therefore does not identify individually Producers' many arguments and instead will focus on those the ERA considers Producers' primary arguments and those the ERA considers important to emphasize again.

To support their request for summary denial of EnTrade's application,

and as the principal, underlying substantive basis for their alternative requests, Producers argue as they have previously that EnTrade has failed to meet its burden of proof to demonstrate, with probative and reliable evidence, a need for the gas to be imported under the requested authorization, and, therefore, the ERA does not have sufficient information to make a Section 3 determination.9/ This argument ignores both the statutory burden of proof and the presumptions in the current DOE policy guidelines.

Producers claim the policy guidelines cannot lawfully be relied upon in reviewing EnTrade's application because they are invalid and because they do not have the effect of a substantive rule.10/ As we have emphasized before, 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 making a Section 3 "public interest" determination in each case. They do not require a particular finding and each case ultimately is decided on the facts and record of the individual proceeding. The general policy established by the guidelines is made up of certain rebuttable presumptions and the associated burden of proof. Contrary to Producers' assertion and as the court in Panhandle v. ERA11/ emphasized, to say the policy guidelines are not binding is not to say they do not or cannot have substantive effect. The ERA can rely on the policy guidelines, including the presumptions, so long as the guidelines are non-binding and the presumptions rebuttable.12/ 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.

As additional support for their argument, and to "rebut any possible presumption" of need if the policy presumptions are assumed valid,13/ Producers attached to their motion to intervene a statement by David W. Wilson, president of Gas Acquisition Services Inc. and former president of the Independent Petroleum Association of Mountain States. Mr. Wilson argues, and on the basis of his statement Producers argue, that the domestic gas market is not competitive, and since need is deemed a function of competitiveness under the guidelines, need cannot be presumed.

The ERA has examined Mr. Wilson's statement and found that it does not offer relevant information to support Producers' argument. Producers have not rebutted the presumptions nor presented substantial evidence that would provide the Administrator with a basis to find that EnTrade's proposal is not competitive or that the gas would not be needed. Therefore, Producers' request for summary denial of the application is rejected.

B. Request for Conditions

If the ERA does not deny EnTrade's application or schedule a trial-type hearing, Producers request imposition of four conditions on a grant of import authority. For the reasons discussed below, we deny this request.

First, Producers argue, as they have in previous proceedings,14/ that pipelines will not make transportation available to domestic producers in a way that would allow them to compete with Canadian imports. Producers request the ERA to condition the authorization to require that gas imported under the authorization be transported only by pipelines that have adopted the open-access provisions of Federal Energy Regulatory Commission (FERC) Order No. 500 for the duration of the authorization.15/ As part of this condition, Producers also request that the ERA impose on Canadian gas the take-or-pay crediting provisions of Order No. 500.16/

In previous proceedings,17/ the ERA concluded, after careful review, that no evidence was presented that domestic producers are more disadvantaged than Canadian producers by the absence of open-access transportation. The ERA concluded that domestic and Canadian suppliers are experiencing similar marketing and transportation difficulties. The ERA found that the condition requested by Producers would disturb what the ERA described in those proceedings as the "current equal footing" of U.S. and Canadian participants in the gas market, that it would be discriminatory to impose such a requirement on imported but not domestic supplies, and would therefore lessen competition in the marketplace, and that such a condition is inconsistent with the ERA's commitment to equal treatment and free negotiation embodied in current U.S. gas import policy. Producers have submitted no new evidence or arguments in this proceeding to compel the ERA to change its position on this issue.

Further, we note that Order 500 does not distinguish between Canadian and domestic gas producers with respect to the take-or-pay crediting mechanism and requires all producers to make offers of crediting to U.S. pipelines for any gas transported for a third party. Some producers, however, including both domestic and Canadian producers, will not have any take-or-pay obligations to which the credits can apply if there is no contractual relationship with the interstate pipeline, or if they have already settled their take-or-pay obligations.

For the reasons described above, the ERA is denying Producers' request that an authorization granted to EnTrade be conditioned to require that any pipeline transporting this gas be an open-access pipeline for the duration of

the authorization and to require that the take-or-pay crediting mechanism apply to the volumes imported.

Second, Producers seek a condition requiring EnTrade to obtain from the FERC a certificate of public convenience and necessity to make sales for resale in interstate commerce. Producers contend that such a condition would show that the ERA is not attempting to usurp the certificate jurisdiction of the FERC. The ERA is not willing to impose such a condition. There is no need for the condition requested by Producers since it is clear that gas would not flow in interstate commerce without appropriate certification. Neither the NGA nor the ERA's regulations limit the ERA's authority to approve import applications to those where the FERC already has certificated downstream transportation or sales arrangements. Producers' argument that the ERA impose such a certificate condition on the import authorization is not persuasive and the request for the condition is denied.

Third, Producers ask for a condition to prohibit EnTrade from using a two-part rate structure and to require that the price charged under the arrangement be a single one-part commodity border price. In support of this condition, Producers suggest that two-part rates for imported gas supplies create a competitive disadvantage for domestic producers who are subject to one-part commodity ceiling prices under the Natural Gas Policy Act.18/

The ERA disagrees. Domestic and Canadian gas supplies compete in the marketplace the same way. Spot gas, whether domestic or imported, competes with other spot gas and with system supply gas. In the spot and short-term market, gas and transportation costs are separate and gas competes directly on the basis of price. Any distinction between one- and two-part rates for gas costs relates to the services rendered by pipelines, not to the source of the gas supply. The ERA has consistently approved two-part rate structures for import arrangements on the basis that such rate structures are used by domestic pipelines for comparable domestic gas supply arrangements. Producers provide no evidence that even if two-part rates were used, they would discriminate against U.S. producers. Accordingly, the ERA is denying Producers' request for a condition to limit the rate to a commodity-only border price.

Fourth, Producers request that the import authorization commence on a date certain. They argue that a two-year term beginning on a date in the indefinite future is tantamount to imposing no term at all on the authorization. Producers argue that, where the ERA grants a two-year term to begin on the date of the first delivery of gas, it cannot determine whether such gas is needed in the indefinite future and accordingly should not issue

authorizations with an indefinite time duration.

DOE policy advocates less regulation in an effort to bring greater competition to the international gas market. Blanket authorizations are by their nature flexible and market-responsive vehicles which the ERA believes will accommodate the natural gas industry's needs in these times of change and uncertainty. The marketing flexibility inherent in granting blanket authority facilitates and encourages participation in the spot and short-term market and enhances competition to the ultimate benefit of all parties. The flexibility built into the commencement date simply acknowledges that holders of blanket authority cannot predict spot market opportunities and, to participate fully, must have authority in place. The two-year limitation is sufficiently short to ensure that no one is locked into arrangements that cannot respond to changing market conditions, regardless of when the two-year term begins.

Approximately 100 blanket import authorizations were granted in the past three years; one-third have begun delivery of gas, and thus have started the term of their authorization. The ERA monitors each import arrangement in quarterly reports filed by blanket importers to ensure that the transactions operate as they have been proposed and the provisions are flexible. Producers offer no plausible support for their requested condition and, based upon available data and experience to date, the ERA sees no benefit in changing the terms of authorization. The two-year term limitation and reporting requirements are adequate to safeguard the public interest. Accordingly, the request for a condition to begin this import on a certain date is also denied.

C. Request for Trial-Type Hearing

In the event the ERA does not reject EnTrade's application or denies the requested conditions, Producers contend they are entitled to a trial-type hearing on the basis of numerous, allegedly disputed issues of fact. These issues include the environmental effects of the proposed arrangement (discussed below in section III.E.2 of this order), security of supply and national security concerns, issues related to the allocation of border facilities, the impact of competition on the domestic gas industry generally, and concerns regarding whether the gas is needed and whether domestic gas is available at lower prices.

Section 590.313 of the ERA's administrative procedures requires any party filing a motion for a trial-type hearing to demonstrate that there are factual issues 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. Producers, or any party, are not 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 relate to matters which are primarily policy, not factual, in nature, and which are not material to the ERA's public interest assessment under the policy guidelines. Producers' concerns reflect a view of energy policy that departs significantly from DOE's policy to promote competition, including competition from imported gas, for the ultimate benefit of the consuming public and the energy industry.

Producers do not demonstrate that further illumination of the issues or the development of the facts would be aided materially by a trial-type hearing or 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 opportunities to comment on the proposed arrangement and the parties' positions on the issues, and any facts presented and necessary to support those positions are adequately represented in the record and provide the 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 additional procedures and Producers' request for a trial-type hearing is therefore denied.

D. Other Matters

1. Request for Discovery

Producers request an opportunity to conduct discovery of information allegedly needed to (1) determine the identity of the parties to this proposal; (2) determine the competitive effects of the proposed authorization on domestic producers; and (3) develop data to test the reasonableness of the applicant's claim that these gas supplies are needed and cannot be supplied more economically from domestic sources.19/

The ERA has examined Producers' request for authorization to conduct discovery to obtain additional information from EnTrade. The information requested would not lead to factual evidence that is relevant and material to the issues in this proceeding. Contrary to Producers' contention, the information supplied by EnTrade's application substantially complies with our filing requirements and is sufficient for us to make a public interest determination under DOE import policy and precedent for these kinds of short-term, market-responsive arrangements. The public interest inquiry into the competitiveness of an import proposal focuses on whether a freely

negotiated arrangement, as proposed and taken as a whole, provides an importer the flexibility to respond to market changes and thereby enhances competitive pressure on market participants. It does not focus on the competitive effect of an arrangement on domestic producers, nor for that matter on any competitor, nor on whether in a particular instance the gas can be supplied more economically by domestic or other suppliers. Accordingly, Producers' request for discovery is denied.

2. Environmental Determination

Producers' claim that the merits of the application cannot be addressed unless the ERA evaluates and documents the environmental effects of granting the proposed import in compliance with NEPA and the DOE's environmental regulations, 10 CFR Part 1021. They argue that the DOE's environmental regulations characterize this application as one that "normally requires an environmental assessment" because, although it does not entail the construction of new facilities, it is beyond the scope of a categorical exclusion.

The ERA has considered this argument previously 20/ 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 compliance 21/ 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 environmental impact statement (EIS) is prepared. In uncertain cases, an environmental assessment (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 was written in this instance supporting the conclusion that, because existing pipeline facilities will be used without the need for new construction, approving EnTrade's import proposal would have no significant impact to the physical environment. Producers have inferred only that the ERA should analyze a potential for significant socioeconomic impacts. However, it is well established by both case law and by regulation that socioeconomic impacts, alone, do not establish a basis for requiring an EIS.22/ Therefore, a memorandum to the file is the appropriate level of NEPA compliance when no other concerns involving the physical environment are at issue.

E. Conclusion

EnTrade's arrangement, as set forth in the application, will permit gas to be imported on a market-responsive basis, thus assuring the competitiveness

of the gas over the term of the authorization. Therefore, I find that granting EnTrade blanket authority to import up to 175 Bcf of Canadian natural gas over a term of two years is not inconsistent with the public interest and that the application should be granted.

Order

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

A. EnTrade Corporation (EnTrade) is authorized to import up to 175 Bcf of Canadian natural gas over a two-year period beginning on the date of the first delivery.

B. This natural gas may be imported at any point on the international border where existing pipeline facilities are located.

C. EnTrade shall notify the Economic Regulatory Administration (ERA) in writing of the date of the first delivery of natural gas imported under Ordering Paragraph A above within two weeks after the date of such delivery.

D. With respect to the imports authorized by this Order, EnTrade shall file with the ERA, within 30 days following each calendar quarter, quarterly reports indicating whether sales of imported gas have been made and, if so, giving by month, the total volume of the imports in MMcf and the average purchase and sales price per MMBtu at the international border. The report shall also provide the details of each transaction, including the names of the seller(s) and purchaser(s), including those other than EnTrade, estimated or actual duration of the agreement(s), transporter(s), points of entry, market(s) served, and, if applicable, the per unit (MMBtu) demand/commodity charge breakdown of the contract price, any special contract price adjustment clauses, and any take-or-pay or make-up provisions.

E. The requests by the Independent Petroleum Association of America, the California Independent Producers Association, the Energy Consumers and Producers Association, the Independent Oil and Gas Association of New York, Inc., the Independent Petroleum Association of Mountain States, the North Texas Oil and Gas Association, the Panhandle Producers and Royalty Owners Association, the Permian Basin Petroleum Association, the West Central Texas Oil and Gas Association, the Independent Petroleum Association of New Mexico, and the East Texas Producers and Royalty Owners Association for dismissal of EnTrade's application, a trial-type hearing, a discovery opportunity, and imposition of each of the requested conditions 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 March 3, 1988.

--Footnotes--

1/ 49 FR 6684, February 22, 1984.

2/ 52 FR 31068, August 19, 1987.

3/ The producer associations are the Independent Petroleum Association of America, the California Independent Producers Association, the Energy Consumers and Producers Association, the Independent Oil and Gas Association of New York, Inc., the Independent Petroleum Association of Mountain States, the North Texas Oil and Gas Association, the Panhandle Producers and Royalty Owners Association, the Permian Basin Petroleum Association, the West Central Texas Oil and Gas Association, the Independent Petroleum Association of New Mexico, and the East Texas Producers and Royalty Owners Association.

4/ Producers had asserted in their October 15, 1987 filing that the ERA's regular business hours are not defined in its regulations. This is not the case; 10 CFR Sec. 590.104 specifically indicates that all hand delivered documents are to be filed with the Natural Gas Division Docket Room during business days between the hours of 8:00 a.m. and 4:30 p.m. Documents received after regular business hours are deemed to be filed in the next regular business day.

5/ 15 U.S.C. Sec. 717B.

6/ See supra, note 1.

7/ In Increasing Competition in the Natural Gas Market; Second Report Required by Section 123 of the Natural Gas Policy Act of 1978, submitted in January 1985, the DOE observed that an active spot market will allow the natural gas market to allocate risks efficiently and will help minimize price and supply fluctuations as the market moves from a tightly regulated environment towards fully competitive market conditions. See Summary, at s-1, s-5, and Ch. 6, at 75.

8/ Panhandle Producers and Royalty Owners Association v. ERA, 822 F.2d 1105 (D.C. Cir., June 30, 1987); ANR Pipeline Company, 1 ERA Para. 70,748 (January 22, 1988); Mobil Gas Company Inc., 1 ERA Para. 70,745 (January 6, 1988); Texaco Gas Marketing, Inc., 1 ERA Para. 70,740 (December 11, 1987), rehearing denied, unpublished (February 10, 1988); Texas Eastern Transmission Corporation, 1 ERA Para. 70,733 (October 30, 1987), rehearing denied, 1 ERA Para. 70,744 (December 30, 1987); Minnegasco, Inc., 1 ERA Para. 70,721 (September 12, 1987), rehearing denied, 1 ERA Para. 70,738 (November 20, 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).

9/ Comments And Petition For Leave To Intervene Of Producer Associations (September 18, 1987), at 4.

10/ 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 Department of Energy Organization Act (42 U.S.C. 7174) in promulgating the Secretary's policy guidelines. Section 404 provides for mutual consultation between the ERA and the Federal Energy Regulatory Commission (FERC) on certain Secretarial matters of intra-agency concern. The specific mechanisms agreed to by the ERA and the FERC to carry out this consultative process in developing the policy guidelines were not intended to be second guessed by private parties. The FERC was an active participant in the development of the guidelines and, since their issuance, has consistently and expressly acknowledged and followed them as promulgated by the Secretary.

11/ See supra note 8, Panhandle, 822 F.2d, at 1110.

12/ Id.

13/ See supra note 9, at 5.

14/ See e.g., ANR Pipeline Company, 1 ERA Para. 70,748 (January 22, 1988); Mobil Gas Company Inc., 1 ERA Para. 70,745 (January 6, 1988); Texaco Gas Marketing, Inc., 1 ERA Para. 70,740 (December 11, 1987); Texas Eastern Transmission Corporation, 1 ERA Para. 70,733 (October 30, 1987); Bonus Energy, Inc., 1 ERA Para. 70,691 (March 24, 1987); Northwest Marketing Company, 1 ERA Para. 70,677 (November 7, 1986); and Tennessee Gas Pipeline Company, 1 ERA Para. 70,674 (November 6, 1986).

15/ The 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 No. 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 readopting the open-access provisions of Order No. 436 and modifying or adopting certain other provisions, including a take-or-pay crediting mechanism. Order No. 500 became effective September 15, 1987. Interim rules adopted in FERC Order Nos. 500-A, 500-B, and 500-C issued October 14, October 16, and December 23, 1987, made minor modifications to the take-or-pay crediting mechanism. The FERC anticipates issuing a final rule in this proceeding in April 1988.

16/ In order for a producer's gas to be eligible for transportation on an open-access pipeline, Order No. 500 requires producers, subject to certain exceptions and conditions, to offer volume-for-volume credits against the pipeline's obligation to take other gas owned by the same producer under a take-or-pay or take-and-pay contract executed before June 23, 1987. Pipelines may agree to transport the gas without an offer of credits.

17/ See supra note 14.

18/ 15 U.S.C. 3301 et seq.

19/ See supra note 9, at 11.

20/ 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); Texaco Gas Marketing Inc., 1 ERA Para. 74,740 (December 11, 1987); Mobil Gas Company Inc., 1 ERA Para. 70,745 (January 6, 1988) and ANR Pipeline Company, 1 ERA Para. 70,748 (January 22, 1988).

21/ 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).

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