Cited as "1 ERA Para. 70,774"

EnTrade Corporation, ERA Docket No. 87-43-NG (May 5, 1988).

DOE/ERA Opinion and Order No. 227-A.

Order Denying Rehearing and Stay of Order.

I. Background

On March 3, 1988, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued DOE/ERA Opinion and Order No. 227 (Order 227) 1/ granting EnTrade Corporation (EnTrade) blanket authorization to import up to 175 Bcf of Canadian natural gas over a two-year period, beginning on the date of the first delivery, for short-term and spot sales in the U.S. market. The terms of transactions occurring under the authorization would be negotiated by EnTrade on its own behalf or as agent on behalf of both suppliers and purchasers, in response to prevailing market conditions and would be reported to the ERA on a quarterly basis. The authorization would allow EnTrade to import gas under competitive short-term and spot arrangements without having to file separate applications with the ERA for each individual transaction.

A joint motion to intervene by the Producer Associations opposed EnTrade's application. The Producer Associations consist of 11 separate groups representing several thousand independent producers, royalty owners, and marketers of domestic natural gas.2/ They requested summary denial of the application, or alternatively, requested that the ERA either hold a trial-type hearing or impose conditions on the authorization that would (1) 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 (as amended by Order No. 500) program,3/ (2) require EnTrade to obtain from the FERC a certificate to make sales for resale in interstate commerce, (3) prohibit EnTrade from using a two-part rate structure, and (4) set a date certain to begin the two-year term. The Producer Associations also requested the ERA to authorize the conduct of discovery, alleging that additional information was needed to determine (1) the identity of the parties to EnTrade's import proposal, (2) the competitive effects of the proposed import on domestic producers, and (3) data confirming the reasonableness of EnTrade's claim that the imported gas is needed and cannot be supplied more economically from domestic sources.

Order No. 227 denied the Producer Associations' request for summary

denial of the application, a trial-type hearing, imposition of conditions on the authorization, and discovery, and approved EnTrade's request for blanket import authority over a two-year term.

The Producer Associations filed an application for rehearing of Order 227 on April 5, 1988. The application also seeks a stay of the order pending judicial review.

II. The Producers Associations' Allegations of Error

In support of their request for rehearing, the Producer Associations argue that the ERA erred by: (1) relying on the DOE natural gas policy guidelines4/ in making its determination; (2) assigning the burden of proof to the Producer Associations; (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; 5/ (5) failing to condition the authorization in a manner which would protect the public interest; (6) failing to consider the anti-competitive effects of issuing the order without adequate conditions to protect against long-term harm to domestic supplies; (7) failing to evaluate Canada's historic role as a trading partner which conducts trade in a nationalistic manner; (8) failing to follow its own regulations regarding the information that must be disclosed to permit adequate public discussion of EnTrade's proposal; (9) issuing import authorizations to unnamed others; (10) failing to conduct the trial-type hearing requested by the Producer Associations; (11) failing to permit discovery of facts central to the ERA's determinations; (12) failing to consider the cumulative effects of EnTrade's blanket import authority and other blanket authorizations already granted by the ERA; (13) failing to conduct an environmental assessment, or to otherwise meet the requirements of the National Environmental Policy Act of 1969 (NEPA) and the DOE's implementing regulations and guidelines; 6/ (14) finding the Producer Associations' motion to intervene was filed out-of-time; (15) finding implicitly that pipelines which buy gas imported by EnTrade at undisclosed prices are making "prudent" purchasing decisions.

III. Discussion of Issues

Most of the Producer Associations' arguments made to support the alleged errors identified above incorporate arguments made previously in this proceeding, in other ERA proceedings, and before a federal court.7/ Therefore, with certain exceptions, we will focus only on the new issues which they raised.

A. The ERA Properly Relied on the Secretary's Guidelines.

The Producer Associations' threshold issue in this proceeding and an argument made many times over is that the Secretary's policy guidelines are a legal nullity, were not properly promulgated, and should carry no weight. This argument has already been rejected by the ERA and the U.S. Court of Appeals for the D.C. Circuit. In Panhandle Producers and Royalty Owners Association v. ERA (Panhandle Producers), a suit brought by a member of the Producer Associations, the Court reviewed the DOE policy guidelines as applied by the ERA in a particular case, a review that encompassed most of the major material issues raised by the Producer Associations in this docket, and upheld the guidelines and the ERA's reliance on the rebuttable presumptions which the guidelines established.8/ The Producer Associations have presented no new information which would cause the ERA to reconsider the position it has taken.

The Producer Associations allege that the ERA failed to comply with Section 404 of the Department of Energy Organization Act (DOE Act) 9/ in promulgating the guidelines. Specifically, they contend 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 10/ attesting to the lack of a formal Commission vote. Section 404 provides that in cases in which the Secretary proposes "rules, regulations, and statements of policy of general applicability" in areas of DOE's jurisdiction, "[h]e shall notify the [FERC] of the proposed action." If the FERC, "in its discretion," determines that the "proposed action may significantly affect any function within" its jurisdiction, the Secretary "shall immediately refer the matter to the [FERC], which shall provide an opportunity for public comment." The provision establishes a general mechanism for consultation between the agencies. The specific mechanisms agreed to by the ERA and the FERC to carry out this consultative process were not intended to be second-guessed by private parties. As we indicated in Order 227, the FERC participated in developing the guidelines. We note that the FERC stated in its amicus brief 11/ filed pursuant to an order of the court in Panhandle Producers with respect to whether the complainant had standing to assert an alleged violation of Section 404:

> Before adopting its policy statement and associated Secretarial delegation orders, DOE circulated drafts to the FERC and engaged in a process of informal coordination with the Commission. The Commission was thus aware that the policy was under consideration and took no action at the time under Section 404. Moreover, since the issuance of the guidelines, the Commission has consistently and expressly acknowledged and followed the guidelines in the relevant cases before it. See, e.g., Natural Gas Pipeline Company of America, 37 FERC Para. 61,215 (1986); Northwest Alaskan Pipeline Company, 29 FERC Para. 61,302 (1984).

B. The Proposed Import Will Provide a Competitive, Needed and Secure Supply of Gas.

Other major contentions of the Producer Associations are that EnTrade's proposed imports are neither needed nor will be priced competitively. As part of their arguments challenging the ERA's finding of need for the imported gas, the Producer Associations furnished a statement by David W. Wilson attached to their motion to intervene. They attached a revised statement by Mr. Wilson to their rehearing request. This revised statement adds nothing of substance to the arguments previously rejected in Order 227 on the issues of need and competitiveness. 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 enhances competitive pressure on market participants. It does not focus on the competitive effect of an arrangement upon domestic producers, nor on whether the gas can be supplied more economically by domestic or other suppliers in a particular instance.

The Producer Associations in related arguments claim that the Administrative Procedure Act 12/ and Sections 3 and 7 of the NGA place the burden of proof on the applicant in ERA import application proceedings and that EnTrade's application fails to comply with the ERA's administrative procedures by supplying insufficient information regarding the details of its potential transactions. Their arguments ignore the explicit finding by the Court of Appeals in Panhandle Producers 13/ that in Section 3 import proceedings the statute created a presumption in favor of authorization. In addition, we emphasize that Section 590.202 of the ERA's administrative procedures is not inflexible. It permits the ERA to determine the applicability of the various filing requirements to a particular import or export proposal and the information that the Administrator needs to make a public interest determination. Since this gas would be sold on the spot market, the specifics of each arrangement cannot be identified in advance. Customers may change on a monthly or even a daily basis, the volumes of gas sold may vary on a monthly or daily basis depending on demands of the spot market customers, and the price for the gas will fluctuate based on the price of competing energy sources. Many spot sales would be frustrated because of the time delay in obtaining individual import authorizations for each transaction. The reporting requirements that the ERA imposes on blanket authorizations ensure that interested parties may review these transactions and notify the ERA if they find that the reports indicate that the existing blanket authorization conflicts with the public interest.

By virtue of Mr. Wilson's revised statement, the Producer Associations for the first time in this proceeding raise the issue of security of supply. The Producer Associations assert that Canadian suppliers are not reliable because of their historical nationalistic approach to energy sales including the Canadian Government's previous regulation of natural gas export prices and the establishment, from time to time, of high national reserve requirements applicable to its natural gas export policy. However, past governmental trade barriers described in the statement do not constitute evidence that Canadian suppliers of gas are unreliable. The ERA considers Canadian natural gas to be a secure and reliable source of supply, particularly in light of the short-term nature of the import authorized by Order 227 and because of the large proven natural gas reserves in Canada, the availability of gas pipeline transportation to the U.S. border, and the reasons discussed in Section III.C. of this order.

The revised Wilson statement also raises the question of whether the ERA's import authorizations, which the statement suggests give Canadian imports an unfair competitive advantage over domestic gas, are consistent with the U.S.-Canada Free Trade Agreement signed by the President on January 2, 1988, and now awaiting Congressional approval. The ERA believes that its import and export policies have and will continue to facilitate free and open natural gas trade between the U.S. and Canada and, in keeping with the Free Trade Agreement's energy provisions, provide the basis for the private sector to make decisions about energy trade without fear of undue government interference. Further, the present ERA policies coincide with the DOE's energy policy objectives to provide consumers with a greater choice among dependable energy sources and to assure domestic producers greater certainty about investment decisions. The government's objective and belief is that a secure and competitive supply of gas supplemental to domestic production will contribute to market expansion, enhance opportunities for all gas market participants, and contribute to the long-term stability of the national economy. Mr. Wilson's revised statement presents no evidence to convince the ERA that it has erred. It merely disagrees with the ERA's, DOE's and the Administration's policies on imported natural gas.

C. Order 227 Is Not Inconsistent With The Secretary Of Energy's Statement On Lack Of Open Access Transportation.

The Producer Associations argue that Order 227 fails to conform to a finding by the Secretary of Energy in early 1987 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. The Producer

Associations have raised this issue in previous proceedings.14/ In this case, as in the past, they have taken the Secretary's statement out of context. The Producer Associations are referring to the Secretary's report on energy security15/ 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 to transportation inhibits competition, but it is a problem that affects both domestic and Canadian suppliers. For this reason, the DOE has supported the open access transportation program established by FERC Order No. 436/500,16/ which does not differentiate based on source of supply, and has proposed legislation authorizing the FERC to mandate transportation. Order 227 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.17/

With respect to the Producer Associations' 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, the Producer Associations offer no evidence to support their allegation and, further, we note that problems resulting from affiliate relationships in the gas industry, to the extent they exist, are the subject of an ongoing FERC proceeding in which charges of discrimination are being examined.18/

D. The ERA Is Not Issuing Import Authorizations To "Unnamed Others."

The Producer Associations' bases of error include an ambiguous argument that the ERA is issuing import authorizations to "unnamed others." We assume that the Producer Associations are claiming as they have in earlier proceedings19/ that the ERA is not permitted under the NGA to delegate Section 3 authority by granting authorizations which permit importers to act as agents. 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

whether title to the gas has been taken. We note that EnTrade is the importer of record and has sole responsibility for the reporting requirements imposed by Order 227 whether it purchases Canadian gas on its own behalf for resale or serves as an agent for the buyer or supplier.

E. Conditioning Of Order 227 Is Not Needed.

In their petition for rehearing, the Producer Associations repeat their request for imposition of the four conditions listed in Section I of this order. The Producer Associations, however, provide no information to convince the ERA that it should reconsider its decision to deny these conditions.

First, the proposed condition that would require imported gas to be transported only over open-access pipelines would discriminate by requiring mandatory compliance with the voluntary FERC Order Nos. 436/500 program for importers but not for domestic suppliers. This is contrary to DOE and Administration policy. Of the 23 major domestic pipeline companies that account for 80 percent of all gas carried by interstate lines, 19 are providing some form of open-access transportation. Furthermore, two of the six interstate pipelines which interconnect with Canadian pipeline systems at the international border are completely open and a third is providing open-access transportation on an interim basis.20/

Second, the Producer Associations are concerned that the two-year blanket authorization may be held for up to 20 years, at which time EnTrade would use the authorization to compete with domestic producers. The ERA believes that the flexibility built into the commencement date simply acknowledges that the holder of short-term, blanket authority cannot predict spot market opportunities and must have authority in place to participate successfully in the spot and short-term market. Regardless of when the two-year term begins, however, it will begin, presumptively, because the importer has negotiated a competitive market-responsive arrangement. Further, the two-year term, once triggered, is sufficiently short to ensure that no one is locked into an arrangement that cannot respond to unanticipated market changes.

The third condition that the Producer Associations seek would require EnTrade and any spot-market customer for whom EnTrade would serve as an agent in importing gas to obtain from the FERC a certificate of public convenience and necessity to make sales for resale in interstate commerce. We adhere to our opinion in Order 227 that, because it is clear that gas will not flow in interstate commerce under this import authorization without appropriate certification, there is no need for the condition proposed by the Producer

Associations.

Finally, the Producer Associations ask for a condition to require EnTrade to use a one-part rate in its sales transactions. The Producer Associations suggest that when two-part demand/commodity rates are applied to import gas supplies the rates create a competitive disadvantage for domestic producers who are subject to one-part commodity ceiling prices under the Natural Gas Policy Act.

The purpose of blanket authorization is to allow importers to participate in the spot and short-term market. It is up to the buyers and sellers in spot market transactions to determine how the commodity should be priced. Canadian gas participates in the short-term and spot market no differently than domestically produced gas. The Producer Associations' argument is misleading because they equate a "one-part" wellhead commodity price with two-part rates at the border that recover the cost of gas in the commodity charge and the cost of pipeline transportation of that gas in the demand charge. Two-part rates, to the extent they are used in spot market transactions, are applied no differently to imported gas than they would be to domestically produced gas. Distinctions between rate structures relate to many factors, including services rendered by the pipelines, but not to the source of the gas supply. The ERA will not discriminate against Canadian gas by imposing conditions requiring different rate treatment from domestic gas. The California sequencing rule example of a pipeline's incremental purchasing decisions used by the Producer Associations to support their proposed one-part rate condition request is not relevant.

The California Public Utility Commission appropriately regulates purchases of gas made by local distribution companies in that State. The ERA has not been convinced that it should intervene in the jurisdiction of another regulatory body.

F. The Producer Associations' Request For Discovery Was Properly Denied.

The Producer Associations contend that the ERA erred in failing to follow its regulations in seeking more detailed information concerning the proposed import and failing to permit discovery of such facts by the Producers. The ERA's decision in Order 227 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 the Producer Associations' request for discovery. If the Producer Associations believe that the record is inadequate, they have the right to seek judicial review of the ERA's decisionmaking process.

In essence, the information which the Producer Associations seek to discover from EnTrade relates to matters that reflect their differing policy perspective rather than undisclosed and relevant facts. As previously stated in Section III.B. of this order, 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 whether the arrangement is competitive in the marketplace and on its responsiveness to market changes. Need for the gas is presumed if an import arrangement is found to be competitive. The information necessary to determine whether EnTrade's import proposal is inconsistent with the public interest is in the record, and the ERA is not persuaded that it should reconsider its position on the Producer Associations' discovery request.

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

The Producer Associations again argue that an environmental impact assessment must be prepared to meet NEPA requirements and comply with the DOE's implementing environmental regulations even though the import authorized by Order 227 does not involve construction of new facilities. The Producer Associations state that the volumes authorized entail a substantial environmental impact. In performing an environmental evaluation, the Producer Associations contend that the ERA must consider the secondary socio-economic effects of the proposed import.

The ERA has considered the Producer Associations' arguments previously21/ and concluded, on the basis of facts not significantly different from the facts involved in Order 227, that the argument is without merit. The DOE guidelines for NEPA compliance22/ 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 would be used without the need for new construction, approving EnTrade's import proposal would have no significant impact on 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.23/

H. An ERA Authorization Subsumes A Finding That The Import/Export Is Not Imprudent.

The Producer Associations request that, in approving EnTrade's application, the ERA should disclaim that its decision includes a finding that purchasing gas covered by the authorization is prudent and declare that jurisdiction to evaluate the prudence of purchasing imported gas rests with the FERC and/or any applicable state regulatory agency. Although the ERA has not made an explicit prudency finding in approving imports under Section 3 of the NGA, a determination that an import arrangement is not inconsistent with the public interest reflects consideration of matters relevant to the prudency of that arrangement and necessarily subsumes a finding that an import is not imprudent.

I. The Producer Associations Are Not Entitled To A Trial-Type Hearing.

The Producer Associations argue that, in addition to the issues listed in their intervention, they are entitled to a trial-type hearing on the basis of four new "unresolved facts" regarding (1) the actual price EnTrade will be paying for the imported gas, (2) whether domestic producers will have access to EnTrade's markets throughout the authorization term, (3) referral of the 1984 policy guidelines under Section 404 of the DOE Act, and (4) the impact of EnTrade's import on the cross-crediting policies under FERC Order No. 500.24/

Section 590.313 of the ERA's administrative procedures provides for a trial-type hearing when a party has demonstrated there are factual issues in dispute, relevant and material to a 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 additional issues raised by the Producer Associations in their rehearing motion and concludes that, although the concerns are presented as factual issues and all but issue (3) can be construed as relating to the competitiveness of EnTrade's import proposal, the Producer Associations have not met the requirements of Section 590.313. The Producer Associations challenge the import from the perspective of their own policy goals, not in terms of the policy framework established by the ERA, and for this reason the issues are less factual than policy in nature. In addition, all issues but issue (3) not only request factual responses that are impossible to provide at this time but, more important, their resolution is not material to the ERA's public interest decision in this proceeding. The pricing terms for gas imported under this blanket authorization (issue (1)) will not be arrived at until EnTrade negotiates the arrangement and then they

will be based on mutual agreement between the parties. Issue (2)--access to markets--cannot be answered. The Producer Associations' access to markets, like EnTrade's, depends upon the availability of transportation and the competitiveness of their supplies in the marketplace. Availability of transportation is encompassed by the FERC's voluntary open-access program. The DOE endorses open access to transportation, as noted in Section III.C. of this order. But since neither the FERC or the DOE can now predict when open access will be complete, a trial-type hearing will not provide enlightenment.
Finally, regarding issue (4)--cross-crediting--, the Producer Associations speculate vaguely and without support that EnTrade's import would have some negative impact on the cross-crediting mechanism adopted in FERC No. 500. The Producer Associations offer no evidence of a material factual issue genuinely in dispute and, moreover, fail to demonstrate its relevance to the ERA's public interest inquiry. We also note that FERC Order No. 500 does not distinguish between imported and domestic supplies of gas in the application of the cross-crediting mechanism.

Issue (3) reflects the Producer Associations' different interpretation of Section 404 of the DOE Act. This is a matter of law and policy, not fact. This concern has been discussed above in Section III.A. and the ERA does not believe that the Producer Associations have demonstrated that further illumination of this issue or the other three 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 the Producer Associations, 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 to provide the ERA with a sufficient basis on which to make a decision. Accordingly, the ERA has determined that a trial-type hearing would not be in the public interest and this alleged basis of error also is without merit.

J. The Producer Associations' Request For A Stay Should Not Be Granted.

The Producer Associations request that a stay of Order 227 should be granted pending judicial review. The Producer Associations present no reason other than to infer that they may file a law suit in this matter and therefore have provided no information in their rehearing request that would persuade the ERA that a stay of EnTrade's import authorization at this time is necessary or appropriate.

IV. Conclusion

The ERA has determined that the Producer Associations' application for

rehearing presents no information that would merit reconsideration of our findings in Order 227. Accordingly, this order denies the Producer Associations' request for rehearing and request for stay of the subject order.

Order

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

The application for rehearing and request for stay of DOE/ERA Opinion and Order No. 227 filed by the Producer Associations, including the Independent Petroleum Association of America, the California Independent Producer Association, the Energy Consumers and Producer 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 are hereby denied.

Issued in Washington, D.C., on May 5, 1988.

--Footnotes--

1/ EnTrade Corporation, 1 ERA Para. 70,761.

2/ The Producer Associations include 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.

3/ The FERC's Order No. 436 established a voluntary program under which a pipeline agrees to provide non-discriminatory transportation for all customers in return for blanket certificate authority. 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. FERC Statutes and Regulations Para. 30,761. Order No. 500 became effective September 15, 1987. Interim rules adopted in FERC Order Nos. 500-B and 500-C issued October 16, and December 23, 1987, respectively, made minor modifications to the take-or-pay crediting mechanism. The FERC held a public hearing on April 11 and 12, 1988, for oral presentation of views on Order No. 500.

4/ 49 FR 6684, February 22, 1984.

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

6/ 42 U.S.C. 4321, et seq.

7/ See, e.g., 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), rehearing denied, 1 ERA Para. 70,760 (March 7, 1988); Texaco Gas Marketing, Inc., 1 ERA Para. 70,740 (December 11, 1987), rehearing denied, 1 ERA Para. 70,756 (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); and Bonus Energy, Inc., 1 ERA Para. 70,691 (March 24, 1987), rehearing denied, 1 ERA Para. 70,702 (May 26, 1987).

8/ 822 F.2d at 1110.

9/ 42 U.S.C. 7174.

10/ 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.

11/ Supplemental Brief Of The Federal Energy Regulatory Commission As Amicus Curiae, February 5, 1987, at 7-8.

12/ 5 U.S.C. 556.

13/ 822 F.2d at 1111.

14/ See Mobil Gas Company Inc., Order Denying Rehearing, 1 ERA Para. 70,760 (March 7, 1988); Texaco Gas Marketing, Inc., Order Denying Rehearing, 1 ERA Para. 70,756 (February 10, 1988); Texas Eastern Transmission Corporation, Order Denying Rehearing, 1 ERA Para. 70,744 (December 30, 1987); and Minnegasco, Inc., Order Denying Rehearing, 1 ERA Para. 70,738 (November 20, 1987).

15/ See supra note 5.

16/ See supra note 3.

17/ See supra note 5, at 126.

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

19/ See Tennessee Gas Pipeline Company, 1 ERA Para. 70,674 (November 6, 1986); Northridge Petroleum Marketing U.S. Inc., 1 ERA Para. 70,605 (September 27, 1985); and Natural Gas Clearinghouse, Ltd., 1 ERA Para. 70,602 (July 5, 1985).

20/ Northern Border Pipeline Company and Tennessee Gas Pipeline Company have accepted blanket open-access transportation certificates. Northwest Pipeline Corporation is providing interim open-access service under NGPA Section 311. Great Lakes Gas Transmission Company, Midwestern Gas Transmission Company and Pacific Gas Transmission Company remain closed.

21/ See Mobil Gas Company Inc., Order Denying Rehearing, 1 ERA Para. 70,760 (March 7, 1988); Texaco Gas Marketing, Inc., Order Denying Rehearing, 1 ERA Para. 70,756 (February 10, 1988); Texas Eastern Transmission Corporation, Order Denying Rehearing, 1 ERA Para. 70,744 (December 30, 1987); Bonus Energy, Inc., Order Denying Rehearing, 1 ERA Para. 70,702 (May 26, 1987); and Tennessee Gas Pipeline Company, Western Gas Marketing, U.S.A., and Enron Gas Marketing, Inc., Order Denying Rehearing, 1 ERA Para. 70,684 (January 5, 1987).

22/ Department of Energy Compliance With the National Environmental Policy Act (NEPA); Amendments to the DOE NEPA Guidelines (52 FR 47662, December 15, 1987).

23/ National Association of Government Employees v. Rumsfeld, 418 F.

Supp. 1302 (Ed Pa. 1976); and 40 CFR Sec. 1508.14.

24/ Under FERC Order No. 500 (FERC Statutes and Regulations Para. 30,761), as subsequently amended in Order No. 500-B (FERC Statutes and Regulations Para. 30,772) and Order No. 500-C (FERC Statutes and Regulations Para. 30,786), natural gas producers must submit a signed offer of take-or-pay credits to an open access pipeline in order to make the producer's gas eligible for transportation, unless the pipeline agrees to transport the gas without an offer of credits.