Cited as "1 FE Para. 70,285"

Brooklyn Union Gas Company, et al. (ERA Docket Nos. 86-44-NG, 86-45-NG, 86-46-NG, 86-48-NG, 87-02-NG) January 11, 1990.

DOE/FE Opinion and Order No. 368, as amended by Order No. 368-D, November 11, 1991

Conditional Order Granting Authorization to Import Natural Gas from Canada and Granting Intervention

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## I. Summary

The Department of Energy (DOE) is issuing an order under section 3 of the Natural Gas Act (NGA) conditionally authorizing 18 Northeastern local distribution companies (LDCs) to import up to 397,100 Mcf per day of natural gas from Canada. The DOE has made a preliminary determination that these gas imports will not be inconsistent with the public interest. In particular, the DOE preliminarily finds that the import arrangements will provide long-term, reliable supplies of needed natural gas on market-responsive terms. In addition, the imports will enhance the energy mix and diversify the sources of energy supplies available in the Northeast, thereby stimulating yearly competition and promoting energy security.

The DOE has conditioned the import authorization upon completion of a review of the environmental impacts of the new facilities proposed to import and transport the natural gas. After completion of that review the DOE will reexamine the import arrangements and issue a final opinion and order.

By issuing this conditional order the DOE is not dictating that these import arrangements must proceed, nor does this conditional approval indicate that the DOE favors a particular import project to supply natural gas to the

Northeast. Rather, the conditional order recognizes that freely negotiated, flexible arrangements between market participants will enhance efficiency and promote competition in the North American natural gas market.

## II. Background

### A. Original Filings

On August 1, 1986, a total of 18 LDCs (the Repurchasers) filed four joint applications with the Economic Regulatory Administration (ERA) of the DOE, pursuant to section 3 of the NGA, to import a combined total of 359,000 Mcf per day of natural gas from Canada.1/ The dockets, ERA Docket Nos. 86-44-NG, 86-45-NG, 86-46-NG, and 86-48-NG, were collectively referred to as Brooklyn Union Gas Company et al. (Brooklyn Union), after the lead applicant in each docket, and a joint Federal Register notice was issued by the ERA on September 10, 1986.2/

Each of the applications called for the natural gas to be imported from Canada and sold to the Repurchasers by Alberta Northeast Gas, Ltd. (ANE), a Canadian corporation established by the Repurchasers. Except for 41,500 Mcf per day, all of the gas would be transported to the Repurchasers through the proposed Iroquois Gas Transmission System (IGTS), which would extend from a yet-to-be established import point on the international border near Iroquois, Ontario, through the States of New York and Connecticut. The remaining 41,500 Mcf per day, a portion of the 200,000 Mcf per day requested in ERA Docket No. 86-48-NG, would be transported to the Repurchasers by IGTS or by Tennessee Gas Transmission System (TGTS) from TGTS' existing Niagara import point.

The original applicants in ERA Docket Nos. 86-44-NG, 86-45-NG, and 86-46-NG were the following companies: The Brooklyn Union Gas Company (BUG), Connecticut Light and Power Company (CL&P), Connecticut Natural Gas Corporation (CNG), Southern Connecticut Gas Company (Southern Connecticut), Long Island Lighting Company (LILCO), Consolidated Edison Company of New York, Inc. (Consolidated Edison), New Jersey Natural Gas Company (New Jersey Natural), and South Jersey Gas Company (South Jersey). In addition to the above named companies, ERA Docket No. 86-48-NG applicants also included National Fuel Gas Supply Corporation (National Fuel), Colonial Gas Company (Colonial), Elizabethtown Gas Company (Elizabethtown), Essex County Gas Company (Essex), Gas Service, Inc. (GSI), Manchester Gas Company (Manchester), Valley Gas Company (Valley), Fitchburg Gas and Electric Light Company (Fitchburg), Public Service Electric and Gas Company (PSE&G), and Boston Gas Company (Boston Gas).

In ERA Docket No. 86-44-NG the applicants requested authorization to import 75,000 Mcf per day which ANE would purchase from TransCanada Pipelines Limited (TCPL). In ERA Docket No. 86-48-NG the applicants requested authorization to import 200,000 Mcf per day, also to be purchased by ANE from TCPL. The terms of the above two authorization requests were to be for 15 years from November 1, 1988, through November 1, 2003.

In ERA Docket No. 86-45-NG the requested authorization was for 66,000 Mcf per day to be sold to ANE by ProGas Limited (ProGas). In ERA Docket No. 86-46-NG the requested authorization was for 18,000 Mcf per day to be sold to ANE by ATCOR Limited (ATCOR). The terms of the above two authorizations were to run until the first November 1st occurring 15 years after the conclusion of the first contract year.

Other than the variations in the volumes and the length of the terms of the four applications, the contracts between ANE and the various Repurchasers, and ANE and the Canadian sellers are virtually identical. The border price, as established in the gas purchase agreements between ANE and its Canadian sellers, would be determined by indexing a base price ($3.90 per MMBtu for the months of November through March; $3.30 per MMBtu for the months of April through October) to the weighted average prices for natural gas, No. 2 fuel oil and No. 6 fuel oil in New York City. The border price would be adjusted whenever the indexing formula indicates more than a five percent change. The border price would include both demand and commodity charges. The monthly demand charge would consist of the respective seller's allowable demand rate for transportation of the gas on the seller's system to the export point, and the demand toll as billed to the individual seller by its supplier. The commodity charge would be determined by subtracting the demand charge from the adjusted border price. The applicants stated that through the operation of the indexing provisions, the border price as of August 1, 1986, would have been $2.21 per MMBtu on an average annual basis. Either party could require that the price and contract reduction provisions for any contract year be determined by renegotiation, or failing agreement, by arbitration. The minimum bill would be the monthly demand charge and there would be no take-or-pay requirements. Under ANE's gas sale agreements with the individual Repurchasers, the demand and commodity charges would be passed through as-billed, on a pro rata basis, to the Repurchasers.

B. First Amendments and the Fifth Application

On January 14, 1987, the Repurchasers filed amendments to the Brooklyn Union applications and a fifth application, ERA Docket No. 87-02-NG. The Repurchasers also requested that the five applications be consolidated for

procedural purposes. The consolidation request was granted, and a Federal Register notice of the fifth application and of the amendments was issued on February 19, 1987.3/

(1) Fifth Application

The applicants in the fifth application included BUG, CL&P, CNG, Southern Connecticut, LILCO, Consolidated Edison, New Jersey Natural, South Jersey, and New York State Electric and Gas Corporation (NYSEG), which were the same as the applicants in Docket Nos. 86-44-NG, 86-45-NG and 86-46-NG, with the addition of NYSEG. These nine LDCs asked for authority to import 17,500 Mcf per day of natural gas from Canada over a period of 15 years. The natural gas would be exported from Canada and sold to the Repurchasers by ANE. The gas would be supplied to ANE by Alberta Energy Corporation (AEC) and transported to the Repurchasers through the IGTS. As in the already filed Brooklyn Union applications, the purchase contract between ANE and AEC provided that the border price of the natural gas would be indexed to the price of competing fuels and would include both a demand and a commodity charge which would be passed through as-billed to the Repurchasers. The applicants stated that, through the operation of the indexing provisions, the price as of January 1, 1987, would have been $2.56 per MMBtu. Also, the contract provided that the Repurchasers could purchase natural gas not taken by other applicants.

In addition, in order to provide assurance to ANE that it would meet its gas supply obligations, AEC entered into a backstop agreement with ATCOR. The backstop agreement provided that, if AEC were unable to supply gas as required under its purchase contract with ANE, ATCOR would make up the deficiency. Additionally, if in two consecutive years AEC failed to deliver more than ten percent of the gas required under the purchase contract, then either ATCOR or AEC could elect to transfer, from AEC to ATCOR, AEC's rights and obligations under the purchase contract up to the amount of the deficiency.

(2) First Amendments

After the original four Brooklyn Union applications were filed on August 1, 1986, NYSEG decided to become a repurchaser from ANE, electing to take 17,000 Mcf per day of natural gas. As a consequence, ANE and ATCOR agreed to increase the daily contract quantity under the ANE/ATCOR purchase contract from 18,000 Mcf per day to 35,000 Mcf per day. The authorization to import gas pursuant to the ANE/ATCOR purchase contract was requested in the application filed in ERA Docket No. 86-46-NG. The amendments added NYSEG as a Repurchaser to the applications filed in ERA Docket Nos. 86-44-NG, 86-45-NG, and 86-46-NG,

and increased the authorization sought in ERA Docket No. 86-46-NG from 18,000 Mcf per day to 35,000 Mcf per day.

Also, pursuant to the backstop agreement between AEC and ATCOR, the application filed in ERA Docket No. 86-46-NG was further amended to allow the authorization to increase if, and to the extent that, AEC did not meet its natural gas supply obligations to ANE and ATCOR undertook to supply the gas to ANE according to the terms of the backstop agreement. At no point would the natural gas imported pursuant to the applications filed in ERA Docket No. 86-46-NG and in the fifth application, ERA Docket No. 87-02-NG, exceed the 52,500 Mcf per day total authorization sought in the two applications.

C. The May 1987 Amendments

On May 22, 1987, the Repurchasers filed with the ERA additional amendments to the five Brooklyn Union applications. The amendments to the applications deleted one of the applicants, South Jersey, from all of the applications, and added a new applicant, Central Hudson Gas and Electric Corporation (Central Hudson), to all of the applications. South Jersey was to have purchased 25,000 Mcf per day of natural gas from ANE. Central Hudson proposed to purchase 10,000 Mcf per day of natural gas from ANE. Two other applicants, New Jersey Natural and LILCO, would increase their proposed purchases from ANE by 5,000 Mcf per day and 10,000 Mcf per day respectively. There was no change in the total volumes of natural gas requested to be imported in the applications. The ERA issued a Federal Register notice of the amendments on June 15, 1987.4/

D. Initial Interventions and Comments

Seventeen parties intervened in response to the notices published in this consolidated proceeding. Ten of the interveners protested the granting of the authorization or filed comments questioning aspects of the applications. These ten interveners were: Tennessee Gas Pipeline Company (Tennessee); the State of Connecticut, Connecticut's Office of Policy and Management, the (Connecticut) Department of Public Utility Control, in a joint filing; the (Connecticut) Division of Consumer Counsel; Foothills Pipe Line (Yukon) Ltd. (Foothills); the Public Service Commission of the State of New York (NYPSC); the New England Fuel Institute (NEFI) and the Empire State Petroleum Association (ESPA), in a joint filing; and the Northern Valley Environmental Council, Inc. (Environmental Council).

Seven parties intervened in support of, or without comment on, the joint applications. These were: Western Gas Marketing Limited (WGML), the marketing

affiliate of TCPL; ProGas Limited; Texas Eastern Transmission Corporation; Northwest Alaskan Pipeline Company; Algonquin Gas Transmission Company; and ATCOR. In addition, one of the applicants, LILCO, made separate filings in support of the applications, and a non-intervening letter of support was received from Universal Wire Products, Inc. Timely responses to the interventions were filed by the Brooklyn Union applicants and by WGML.

E. Procedural Orders

On September 17, 1987, the ERA issued a procedural order providing an opportunity for further comments and granting interventions in the Brooklyn Union dockets. Additional filings were received from Tennessee, NYPSC, the State of Connecticut, NEFI/ESPA, ProGas and WGML. Responses to the additional filings were submitted by the applicants and by WGML.

In its response, Brooklyn Union referred to a proceeding conducted by the Connecticut Department of Public Utility Control (DPUC) on the methodologies used by Connecticut distribution companies for forecasting supply and demand. Brooklyn Union's response referred further to a NYPSC proceeding on IGTS' application for a Certificate of Environmental Compatibility and Public Need pursuant to the Public Service Law of New York.

The ERA decided to supplement the record with certain materials from those two state proceedings and on May 6, 1988, issued another procedural order requesting Brooklyn Union to submit the following: (1) the DPUC's final decision, (2) copies of the market data submitted by the prospective IGTS shippers in the NYPSC certificate proceeding, and (3) other information developed by the applicants that might assist the ERA in making a finding on the marketability and need for the proposed natural gas imports.

Brooklyn Union submitted the requested information on May 20, 1988. Tennessee filed comments on the information submitted by the applicants.

F. February 1989 Amendment

On February 21, 1989, the Repurchasers filed an amendment to the five joint Brooklyn Union applications. The amendment deleted one of the original applicants, Fitchburg, from the proceeding, and decreased the proposed natural gas imports of two other applicants, PSE&G and Colonial, by 10,000 Mcf per day and 5,000 Mcf per day, respectively.

Further, CL&P requested authority to import an additional 9,000 Mcf per day of gas, Central Hudson proposed to import an additional 10,000 Mcf per

day, and Boston Gas proposed to import an additional 100 Mcf per day. The net volumetric result of the amendment increased the total amount of natural gas for which all applicants sought import authorization in the consolidated proceeding from 393,500 Mcf per day to 397,100 Mcf per day.

In addition, six of the applicants, BUG, CL&P, CNG, Southern Connecticut, Central Hudson and NYSEG requested that their proposed imports be phased in over a two-year period. The total volume to be phased in would be 100,000 Mcf per day, so that the total requested import authority for the initial contract year would be 297,100 Mcf per day, rising to the full contract volumes of 397,100 Mcf per day in the second contract year and for all subsequent contract years.

A Federal Register notice of the February 1989 amendment was issued on March 31, 1989.5/ In response to that notice, NEFI/ESPA filed a motion for additional procedures and the Independent Petroleum Association of America (IPAA) filed a motion to intervene in protest of the applications and requested a formal hearing. This order grants intervention to the movant, IPAA. The Brooklyn Union applicants, BUG, WGML, and ProGas filed responses to NEFI/ESPA's and IPAA's submissions.

G. Current Status of the Applications

The total import authorization requested in the consolidated dockets is 297,100 Mcf per day of Canadian natural gas during the first contract year, increasing to the full 397,100 Mcf per day in the second and all subsequent contract years. The requested volumes remain the same as originally requested in Docket Nos. 86-44-NG, 86-45-NG and 86-48-NG. In Docket Nos. 86-46-NG and 87-02-NG the amounts of the import authorizations requested have increased from 18,000 to 37,300 Mcf per day, and from 17,500 to 18,800 Mcf per day, respectively.

There are a total of 18 applicants in the consolidated dockets: the original 18 in Docket No. 86-48-NG, minus South Jersey and Fitchburg, and with the addition of Central Hudson; nine in Docket Nos. 86-44-NG, 86-45-NG and 86-46-NG, the original eight, minus South Jersey and with the addition of Central Hudson and NYSEG; and nine in Docket No. 87-02-NG, the original nine, minus South Jersey and with the addition of Central Hudson.6/ The amendments have not altered the pricing provisions, length of term, or any other substantive provision of the applications as originally filed.

H. Additional Comments and Motions

After the filing of the February 19, 1989, amendment, letters in support of the Brooklyn Union applications were received from the State of Rhode Island, the Massachusetts Department of Public Utilities, the New Jersey Board of Public Utilities, and the New York Open-Season Task Force, representing the New York State Energy Office and the New York State Departments of Public Service, Environmental Conservation, Agriculture and Markets, and Economic Development.

Also, as a result of settlements filed in related proceedings at the Federal Energy Regulatory Commission (FERC),7/ discussed briefly below, Tennessee withdrew its opposition to the Brooklyn Union applications and endorsed the proposed import arrangements.

## III. Related Proceedings

### A. FERC "Open Season" Proceeding

On July 24, 1987, the FERC issued a Notice Inviting Applications to Provide New Gas Service to the Northeast U.S., the so-called "open season" proceedings.8/ In response, numerous applications were filed for certificate authorization to serve the Northeast market. On March 17, 1988, the FERC issued an order consolidating the various related applications into 31 distinct projects, of which 20 appeared to be competitive or mutually exclusive and therefore entitled to consideration in a comparative hearing.9/ On June 28, 1988, the FERC found additional projects to be discrete, or non-mutually exclusive,10/ and on July 27, 1988, issued an order appointing a settlement judge whose task was to try to eliminate competitive issues, facilitate settlement proposals, identify additional discrete projects and bring into focus any remaining competitive issues that might ultimately require comparative hearings.11/ A Final Report of the Chief Judge and Certificate of Settlement was issued by the settlement judge on November 30, 1988, stating that all the applications referred to the settlement judge by the FERC had been settled and containing a principles of settlement agreement by the remaining applicants, including IGTS and Tennessee.12/ The FERC affirmed the settlement judge's certification in an order issued on January 12, 1989,13/ and denied rehearing and terminated the "open season" dockets on May 2, 1989.14/

On January 17, 1989, IGTS and Tennessee filed with the FERC a Joint Offer of Settlement pursuant to FERC's Northeast "open season" proceeding. The joint offer was accompanied by two certificate applications from IGTS and Tennessee seeking approval to construct facilities identified in the joint offer, which include all the facilities necessary to transport the ANE volumes

in the United States. IGTS' certificate application to the FERC, a copy of which was filed in the Brooklyn Union dockets, expanded IGTS's proposed capacity from the 353 MMcf per day originally proposed to 534 MMcf per day. IGTS's proposed route remains basically the same, although adjustments have been made to reflect environmental concerns as well as changes to IGTS's customers.

B. NYPSC Proceeding

As noted above, the NYPSC held, under Article VII of the Public Service Law of New York, a proceeding, in Case No. 70363, on the issuance of a Certificate of Environmental Compatibility and Public Need to IGTS. Pursuant to its review, the NYPSC conducted an extensive inquiry into the need of the IGTS shippers for the supplies of gas to be transported by IGTS. The major parties in the NYPSC proceeding, including the staff of the NYPSC, stipulated that there is a need for the proposed gas supplies and that the proposed pipeline route is generally environmentally acceptable. That agreement has been entered into the record of these proceedings. The hearing officers recommended NYPSC approval of the project and, on December 8, 1989, the NYPSC issued a Certificate of Environmental Compatibility and Public Need to IGTS in NYPSC Opinion No. 89-42.

IV. Comments Received

A. General Organization and Information

The DOE in making a decision on an import application is guided by its natural gas policy guidelines.15/ Under the policy guidelines, the competitiveness of the import arrangements in the markets served, as well as the need for the gas and the security of the supply, are the primary considerations in making a determination regarding a proposed import arrangement. The intervenors, as well as the applicants, addressed the issues of competitiveness, need and security of supply in their filings, and, therefore, this section and sections V, Responses to Comments Received, and VI, Decision, will be organized to address the policy guideline considerations.

Since many of the comments received from those intervenors protesting or otherwise questioning the proposed import arrangements raised essentially the same issues, we will address those common concerns jointly under the appropriate subsections, naming the parties who raised them at the beginning of each discussion and subsequently referring to them as the intervenors or protestors. Also, several of the intervenors made more than one filing during the course of this proceeding in response to the various notices and

procedural orders. For purposes of this section, multiple filings by a single intervenor have been integrated but individual filings will be referenced as appropriate.

Some brief comments regarding some of the intervenors: NEFI/ESPA are two associations representing the interests of fuel oil dealers in competition with the repurchasers; the Environmental Council is a non-profit corporation organized, in part, to prevent damage to or degradation of the environment in northwestern Connecticut; and the IPAA is an association which represents the interests of independent petroleum producers. Also, since the State of Connecticut, Connecticut's Office of Policy and Management, and the (Connecticut) Department of Utility Control filed jointly, and the (Connecticut) Division of Consumer Counsel's filing was identical to the joint filing, these intervenors will be referred to hereinafter as Connecticut.

B. Competitiveness

(1) Two-Part Rate

Protesting intervenors argued that the Brooklyn Union import arrangements are not competitive, principally because the demand component of the two-part demand/commodity rate used in the proposed import arrangements contains costs that the FERC would require domestic pipelines to assign to their commodity components. NEFI/ESPA, the Environmental Council, Connecticut, NYPSC and the IPAA all asserted that the resulting lower commodity rate would give Canadian supplies an unfair competitive advantage over domestic supplies.

The intervenors cited FERC Opinion and Order No. 256 (Order 256),16/ which they asserted was issued in order to ensure that domestic consumers and producers were not disadvantaged by the differences between domestic and Canadian pipeline rate design policies. The FERC, in Order 256, ruled that interstate pipeline importers of Canadian natural gas may not pass through as-billed various "production and gathering and take-or-pay carrying charges" 17/ in their demand charges.

NEFI/ESPA stated that the Brooklyn Union applications appear to include all charges related to production, gathering and take-or-pay costs in the demand charge, and, therefore, the requested import authorizations should be denied.

The IPAA claimed that the applicants, knowing that a sale for resale by a domestic pipeline might result in a restructuring of their proposed two-part rate by the FERC in accordance with Order 256, deliberately structured their

import sales and transportation arrangements to avoid FERC jurisdiction. The IPAA requested the DOE to impose one of two proposed alternative conditions on any authorizations it might issue in the Brooklyn Union proceeding. The first proposed condition would require the two-part border price to be adjusted at least once every six months so that the demand component does not recover any costs which the FERC does not allow domestic pipelines serving the Northeast markets to recover. Moreover, the IPAA contended that Canada's fixed-variable ratemaking design is preferable to FERC's modified fixed-variable design and that FERC should adopt the fixed-variable design. To encourage this end, IPAA proposed an alternative condition, requesting that the DOE condition any authorization in the Brooklyn Union dockets on FERC approval of fixed-variable tariffs for domestic pipelines. Finally, IPAA requested that if the record in these proceedings does not support its proposed conditions, that the DOE hold a formal hearing to examine the anti-competitive impacts of the two-part demand/commodity rate.

The NYPSC asserted that it generally supports efforts by natural gas pipelines and distributors in the state to include in their gas mix a reasonable portion of Canadian natural gas purchased under long-term contracts which incorporate pricing terms that ensure that the price paid for the gas will be competitive with alternative fuels and domestic natural gas. It indicated, however, that it was concerned about the particular assignment of fixed costs between the demand and the commodity rates. NYPSC stated that this issue had been raised by it in other DOE import applications filed by Texas Eastern Transmission Corporation (Texas Eastern) in ERA Docket Nos. 85-13-NG, 82-05-NG and 82-07-NG, and by Tennessee in ERA Docket Nos. 81-24-NG and 82-10-NG, and that while the terms of the gas purchase agreements in the Brooklyn Union dockets are significant improvements over the Texas Eastern and Tennessee contracts, those improvements have not allayed NYPSC's concerns regarding the two-part rate structure. As a result of these concerns, NYPSC requested the DOE to develop and initiate appropriate procedures to ensure that the costs included in demand charges are comparable in import and domestic gas sales arrangements.

(2) Other Competitiveness Issues

Connecticut, the Environmental Council, and the NYPSC urged the DOE to consider the effect the ownership interest of some of the applicants in the IGTS might have on the competitiveness of the proposed import arrangements, particularly in view of the fact that the applicants are LDCs with "captive" retail markets. The protestors asserted that the Repurchasers may take uneconomic Canadian supplies in order to ensure the profitability of the IGTS. Also, the NYPSC contended that the ANE gas purchase rates cannot be regarded

as having been freely negotiated because each party had an incentive to place more fixed costs in the demand charge in order to minimize risk of recovery, and, in the case of the Repurchasers, ensure that the IGTS, in which they have an ownership interest, is utilized to the fullest possible extent.

Another competitiveness issue raised by Connecticut, the Environmental Council, and NEFI/ESPA was whether the pricing formula used to establish the border price would necessarily result in a competitive delivered price to the repurchasers. Finally, Connecticut argued that both the gas purchase contracts and the IGTS transportation agreements must be considered by the DOE in making a determination on the competitiveness of the proposed import arrangements.

C. Need

NEFI/ESPA, the Environmental Council, and Connecticut contended that no evidence of the need for the imported natural gas has been presented and that, since the Repurchasers have not demonstrated that the proposed import arrangements are competitive, they cannot rely on the presumption of need under the DOE policy guidelines. Connecticut argued that the use of the guidelines' presumption of need may disadvantage the Repurchasers' firm gas customers if they are required to absorb the payment of the high demand charges and reservation fees. In order to prevent the Repurchasers' interruptible customers from benefiting at the expense of firm sales customers, Connecticut requested that the DOE, if it applies the presumption of need set forth in the guidelines, specifically state that its decision does not preclude State public utility authorities from denying the Repurchasers' the ability to recover their costs on an as-billed basis from their customers.

NEFI/ESPA argued that the projections and judgments of the repurchasers regarding their future gas needs are not a sufficient basis, absent documentary data, for the DOE to make a finding that there is a need for the proposed gas imports. NEFI/ESPA further asserted that the repurchasers have failed to prove that the gas supply will be competitive and needed in all relevant markets, inasmuch as they have provided no information concerning the ultimate markets sectors where the proposed imported gas will be distributed. NEFI/ESPA argued, for example, that the imported supply may be competitive in the residential and commercial sectors, where the competition is principally No. 2 heating oil, but not in the industrial and utility sectors, where the competition is primarily residual fuel oil.

In their October 16, 1987, filing, NEFI/ESPA asserted that the need for the proposed imports had been debated between proponents and opponents of the IGTS, and that the debate revealed that the proposed imports are not needed,

or that, at least, an evidentiary hearing on the issue of need is warranted. In support of their assertion, NEFI/ESPA referred to four reports which dealt with the issue of need for natural gas in the States of Connecticut and New York which NEFI/ESPA claim reach contradictory conclusions.

The four reports are: (1) "Natural Gas and Connecticut's Energy Future," R.J. Rudden Associates, Inc., undated (Rudden Report); (2) "Iroquois Gas Transmission System--Is There a Demand In Connecticut?," Congressional Research Service, April 21, 1987 (CRS Connecticut Report); (3) "The Economic Impact of the Iroquois Pipeline on Connecticut," QED Research, Inc., February 5, 1987 (QED Report); and (4) "Natural Gas and New York's Energy Future," R.J. Rudden Associates, Inc., undated (N.Y. Rudden Report).

According to NEFI/ESPA, the Rudden Report predicted an optimistic future for natural gas in Connecticut. In response, the Congressional Research Service prepared a memorandum on January 6, 1989 (CRS Memorandum), questioning the conclusions of the Rudden Report. The CRS Memorandum found that the Rudden Report's natural gas forecast was based on a spurious correlation between Gross State Product and gas demand. The CRS memorandum also found that the Rudden Report had not given sufficient consideration to the reasons why gas is under-utilized in Connecticut (other than unavailability), had not taken into account the reluctance of Connecticut LDCs to invest in new distribution facilities, and had given too much credence to speculative demand sources, such as new cogeneration projects.

According to NEFI/ESPA, the QED Report, prepared for the Energy Division of the Connecticut Office of Policy and Management, also questioned the forecasting methodology of the Rudden Report and concluded that the IGTS imports could not be absorbed without displacing some existing energy supplies. In addition, the QED report pointed out that the IGTS supplies could be provided by competing projects. The CRS Connecticut Report, according to NEFI/ESPA, questioned the future demand projections of the IGTS sponsors and the financial viability of the IGTS project.

In a final comment regarding the debate for the need for additional gas supplies in Connecticut, NEFI/ESPA cited the Connecticut DPUC proceeding on forecasting methodologies (the results of which were the subject of the May 6, 1988, procedural order) in which the DPUC concluded that the methodologies used by CL&P and CNG may tend to overestimate forecasts of firm demand.

Concerning the NY Rudden Report, which concluded that there was a need for additional gas supplies in New York, NEFI/ESPA referred to the then ongoing NYPSC proceeding regarding the IGTS, discussed briefly above in

Section III-B, as evidence that the conclusion of the NY Rudden Report was subject to debate.

D. Security of Supply

NEFI/ESPA were the only intervenors to question the security of the proposed Canadian gas supply. They contended that the expansion and construction costs for Canadian and U.S. pipeline facilities needed to bring the gas to Northeastern markets, which could result in Canadian producers receiving low netback prices for their gas, raises serious questions about the economic security of the import arrangements. NEFI/ESPA also submitted an assessment by Dr. Thomas Stauffer (Stauffer Study) which concludes that there will not be a sufficient supply of Canadian gas to fulfill the long-term ANE contracts unless there is a significant increase in both Canadian production and reserves.

E. Additional Issues

NEFI/ESPA argued that, if incremental markets for the Canadian gas do not materialize, the imports will replace domestic gas and oil sales, and that a hearing is needed to evaluate the potential adverse effects on the domestic oil and gas industry. Connecticut asked the DOE when making its determination to consider that the Hydro-Quebec project will deliver Canadian generated electricity to the same region to be served by the proposed imports, and that the DOE supported a nuclear generating plant in Connecticut on the grounds that it would reduce the Northeast's dependency on foreign sources of energy.

Foothills, a Canadian corporation, filed a Motion to Intervene and Comments on October 20, 1986. Foothills did not oppose the issuance of import authority to the Repurchasers but did request that the DOE carefully word any import authorization to ensure that it does not favor the IGTS proposal over other proposals pending before the FERC to build new facilities to import Canadian gas. Foothills noted that FERC has exclusive initial jurisdiction to initially determine places of entry for imported natural gas.

F. Procedural Requests

NEFI/ESPA contended that no analysis of competitiveness, need, or security of supply can be made by the DOE without specific information regarding, among others: (1) the netbacks to be received by the Canadian suppliers of the proposed imports, (2) the cost of Canadian expansion and the transportation rates based thereon, (3) the ultimate delivered price of the proposed natural gas imports, (4) the costs of alternative natural gas and

energy supplies, (5) the costs of transportation on IGTS, and (6) the specific market sectors each Repurchaser will be supplying. In particular, NEFI/ESPA requested detailed information from the Repurchasers, including: each Repurchaser's projected natural gas requirements; their current suppliers and details of each supply arrangement, as well as other information regarding purchase decisions; their average cost of gas; and a list of any cogeneration customers each Repurchaser expects to serve. In support of their request, NEFI/ESPA submitted an analysis by Technical Associates, Inc. (TAI Report), as well as the Stauffer Study, to demonstrate that there are issues of material fact in dispute which require discovery. The Environmental council also requested that discovery procedures be instituted, but did not specify what information it was seeking to obtain through discovery.

NEFI/ESPA also requested an evidentiary hearing to resolve alleged disputed factual issues including: (1) the competitiveness of the import arrangements, (2) the need for the proposed imports, (3) the effects of the imports on the domestic oil and gas industries, (4) the anti-competitive effects of the two-part rate, (5) the market sectors where the gas would be sold, (6) the delivered price of the gas, and (7) the environmental effect of the IGTS. The Environmental Council also requested a trial-type hearing on the issues of the anti-competitiveness of the two-part demand/commodity components and of the need for the proposed import, and the IPAA requested a hearing on the two-part rate if its request for the imposition of a condition was denied.

## V. Responses to Comments Received

### A. Competitiveness

In response to the general claim by various intervenors that the proposed import arrangements are not competitive, the Repurchasers asserted that the import arrangements were formulated to be consistent with the DOE's natural gas policy guidelines in that they (1) index the border price to price of competing fuels in the Repurchasers' markets, (2) have no take-or-pay requirements, and (3) are subject to renegotiation and arbitration. Thus, they argue that the proposed import arrangements are competitive and sufficiently flexible to respond to changing market conditions.

#### (1) Two-Part Rate

Regarding objections to the allocation of costs between the demand and commodity components of the proposed purchase agreements' two-part rates, the Repurchasers asserted that the purchase agreements are virtually identical to arrangements approved by the DOE in previous proceedings, including Boundary

Gas, Inc. (Boundary),18/ and Granite State Gas Transmission, Inc. (Granite State).19/

The Repurchasers acknowledged that the Canadian National Energy Board (NEB) and the FERC use different rate methodologies in regulating their respective jurisdictional pipelines but insisted that domestic suppliers operate under a system substantially similar to the Canadian system and are thus not disadvantaged by the proposed import arrangements' two-part rate structure. The Repurchasers submitted that the protestors have provided no basis for concluding that the two-part demand commodity rate used in the proposed import arrangements results in an unfair competitive advantage for the substantially identical Boundary transaction, the purchase arrangements for the proposed imports assure that the Canadian gas supplies would have a reasonable and competitive place in the supply mix of the applicants, and would have neither an unfair competitive advantage or disadvantage vis-a-vis domestic natural gas.

WGML responded to the contention that the rate design components would give the proposed imports an unfair competitive advantage by stating that the DOE has already considered and rejected that argument when it authorized a similar import arrangement by Minnegasco, Inc. (Minnegasco), in DOE/ERA Order No. 191 (Order 191).20/ WGML asserted that the intervenors have presented no few facts or arguments that would support a departure from Order 191.

WGML responded to the protestors' request that the DOE restructure the demand/commodity components of the proposed import arrangements to conform with FERC Order 256 by pointing out that the gas purchase arrangements at issue in Order 256 were between a Canadian supplier and a U.S. interstate pipeline, and that therefore, the FERC was concerned with the impact of allowing "as-billed" treatment of those arrangements on LDCs who were not parties to the import agreements. WGML contended that the same concerns do not apply in the Brooklyn Union proceeding where the LDCs themselves are the entities contracting for the proposed imports. Also, WGML stated that the import arrangements are negotiated contracts that reflect compromises on various issues, and should be considered on their merits as integrated wholes. WGML asserted that attempting to restructure individual components of the arrangements by regulatory fiat could destroy the negotiated balance of the arrangements and is antithetical to the DOE policy of encouraging the development of a competitive natural gas market through freely negotiated transactions.

Regarding the two conditions that IPAA asked to be imposed on the proposed import arrangements, the Repurchasers contended that the proposal to

require periodic readjustment of the border price to ensure that the demand component does not recover costs that the FERC would not allow a domestic pipeline to recover would be commercially infeasible to administer as well as a direct intrusion into Canadian jurisdiction over Canadian pipelines. WGML asserted that imposing the proposed condition would be a departure from DOE's policy guidelines which emphasize focusing on the competitiveness of the entire arrangement and not on isolated components of that arrangement.

As to the second proposed condition, that the DOE condition the authorizations on the FERC adopting a straight fixed-variable rate structure for domestic pipelines, the Repurchasers stated that the issue of whether the FERC should modify their ratemaking methodology is an extremely complex one in which the entire gas industry should participate, and that for the DOE to address that issue in the context of the Brooklyn Union proceeding would be an unwarranted intrusion into the FERC's jurisdiction and processes. WGML asserted that imposition of the condition would have the effect of putting needed Canadian gas supplies on hold pending resolution of what is a domestic gas issue, with the danger that those supplies may not be available when they are needed.

(2) Other Competitiveness Issues

The Repurchasers stated that although DOE's policy guidelines presume that importers will develop competitive arrangements, the protestors question that assumption because: (1) as investors in IGTS, the Repurchasers allegedly will try to maximize throughput in order to maximize their return on equity, and (2) the Repurchasers have a "captive" retail market on which they would force uneconomic gas supplies. The Repurchasers responded by saying that eight of the Repurchasers do not intend to ship on IGTS and that five of the IGTS shippers are not investors in IGTS, so that the contention that the Repurchasers as a group have reason for maximizing throughput on IGTS is not true. Also, as to the concern that those applicants that do not have an equity interest in IGTS will have an incentive to maximize throughput on IGTS even if it means displacing less costly gas, the Repurchasers contended that even if it is a legitimate issue, it is not one for the DOE to resolve in the context of the Brooklyn Union proceeding. The repurchasers claimed that any generic problem with distribution companies owning interests in interstate pipelines is a matter within the jurisdiction of the FERC, while any specific problem can be addressed by state authorities in the exercise of their jurisdiction over LDC rates and purchasing practices.

As to the contention that they have "captive" markets, the Repurchasers stated that their large accounts have the ability to switch to altenative

fuels, and that they are, as LDCs, subject to a least cost purchasing policy enforced by strict state regulation.

The Repurchasers also addressed the intervenors' questions on whether the delivered price of proposed imports would be competitive in the markets to be served and will remain so throughout the duration of the contract. The Repurchasers claimed that the suggestion that the flexible border pricing formula may not necessarily result in a delivered price that is market responsive has no basis in fact. The Repurchasers stated that the border pricing formula was specifically negotiated to result in a delivered price that would be competitive in the applicants' markets. The Repurchasers stated further that the pricing index employed in the proposed gas supply arrangements is identical to the one used for the Boundary Gas imports and Boundary's close to 100 percent load factor is evidence that the pricing formula produces competitively priced delivered gas. WGML argued that the DOE policy guidelines, in determining competitiveness, emphasize the flexibility of pricing arrangements, and that the proposed import arrangements provide substantial flexibility for renegotiating the price of the natural gas in response to changing market conditions.

B. Need

In response to the protestors' contention that no need for the proposed imports has been demonstrated, the Repurchasers stated that, because the import arrangements are competitive, the policy guidelines presume they are needed unless otherwise demonstrated, and that the protestors have not made such a demonstration.

Regarding requests by the intervenors for additional procedures on the issue of need, WGML stated that there is no reason to allow for discovery procedures because the DOE policy guidelines make clear that need is a function of competitiveness, and the proposed imports, taken as a whole, are competitive. Furthermore, the Repurchasers asserted that, having met the competitiveness requirement of the policy guidelines, the introduction of studies, such as the reports cited by NEFI/ESPA, that debate the magnitude of need for additional gas supplies in the general markets served by the Repurchasers is not sufficient to establish the right to an evidentiary hearing, and, even if it were, the reports relied on by NEFI/ESPA fall short of whatever standard of sufficiency may exist for such studies. The Repurchasers criticized the analytical methodology and conclusions of the QED report and the CRS Memorandum which NEFI/ESPA claimed refuted the Rudden Report, and noted further that they were not relying on the Rudden Report to justify the need for the proposed imports.

Regarding the Connecticut DPUC and the NYPSC proceedings, which were claimed as evidence of disputes over the need for the proposed imports, the Repurchasers asserted that both proceedings are exercises of state authority over LDC's. It was the Repurchasers' assertion that the DOE encourages LDC's to contract directly for gas imports, in part because LDC's are subject to state regulation, and therefore DOE should not take the occasion of the exercise of that state oversight to declare the need for evidentiary hearings in order to look behind the LDC's decisions to contract directly for imported gas.

### C. Security of Supply

The Repurchasers stated in their joint applications that Canada has been a secure and stable source of supply which has never curtailed deliveries to the United States, and that there are sufficient proven and potential reserves in Alberta, Canada, to supply gas over the length of the proposed import arrangements.

In response to NEFI/ESPA's arguments contending that the lack of adequate reserves or alleged low net-backs to the Canadian producers signifies a lack of security of supply for the proposed imports, WGML asserted that the applications make a persuasive showing of adequate reserves and that the right of producer approval of the purchase arrangements ensures that only those arrangements that provide acceptable net-backs will be approved.

### D. Procedural Requests

The Repurchasers stated that the protestors' requests for a trial-type hearing should be denied because they made no showing of a genuine issue of material fact to be resolved in connection with the applications, and that the requests for discovery should be rejected because the protestors had not shown an interest or raised an issue that warrants the burdens and expense of complying with their discovery requests.

## VI. Decision

The Brooklyn Union applications have been reviewed to determine if they conform with section 3 of the NGA. Under section 3, an import must be authorized unless there has been a finding that the import "will not be consistent with the public interest," 21/ and, therefore, "a presumption favoring import authorization . . . is completely consistent with, if not mandated by, the statutory directive." 22/ With regard to import authorizations, the section 3 determination is guided by the DOE's natural gas

policy guidelines.23/ Under the policy guidelines, the competitiveness of the import arrangements in the markets served is the primary consideration for meeting the public interest test and those opposing an import have to show that the arrangement, taken as a whole, is not competitive or sufficiently flexible to respond to changing market conditions. For long-term import proposals, need for the gas supply and security of the supply are also important considerations.

A. Competitiveness of the Proposed Imports

The DOE guidelines state that the terms and conditions of an import arrangement, taken together, must provide a supply of gas that the importer can market competitively over the term of the contract. They contemplate that the contract arrangements should be sufficiently flexible to permit pricing and volume adjustments as required by market conditions and availability of competing fuels, including domestic natural gas.

Under the Brooklyn Union import proposals, the Canadian gas would be imported and sold directly to the Repurchasers under gas purchase agreements containing several provisions that provide flexibility with respect to both volume and price, thus assuring that the gas supply can be marketed competitively over the term of the purchase contract. Specifically, the gas purchase agreements contain no take-or-pay requirements, but do include two-part demand/commodity structures, provide for price adjustments based on the price of alternative fuels in the markets to be served by the imported gas, and provide for yearly renegotiation and arbitration of the quantity and pricing provisions. The gas purchase agreements also contain provisions that allow ANE to offer volumes not taken by one Repurchaser to another Repurchaser, thus furthering the flexibility of the proposed arrangements.

DOE's policy requires the authorization of import arrangements if they are sufficiently flexible to respond to changing market conditions. This policy approach presumes that buyers and sellers of natural gas will construct competitive import arrangements that will be responsive to market forces over time. Parties opposing a proposed import arrangement bear the burden of overcoming this presumption.

(1) Two-Part Rate

The protesting intervenors claim that the demand component of the two-part demand/commodity rate used in the proposed import arrangements contains costs that the FERC would require domestic pipelines to assign to the commodity component and that the resulting lower commodity rates resulting

from this allocation would give the Canadian supplies an unfair competitive advantage over domestic supplies. The intervenors urge that the DOE deny the requested authorizations or condition them to require that the two-part, demand/commodity rate be adjusted pursuant to FERC ratemaking policy and in accordance with the "as-billed" decision in FERC Order 256.

The DOE has consistently approved import arrangements that use two-part, demand/commodity rate structures on the basis "that they are used by domestic pipeline suppliers of gas and reflect and serve legitimate ratemaking concerns." 24/ No evidence has been presented in this proceeding to convince the DOE to change or reexamine the issue of two-part rates in general, or to require the applicants to restructure their demand/commodity rates to comply with FERC rate-making policy and Order 256.25/

Order 256 concerned the question of whether a domestic interstate pipeline should be able to pass through to its customers the costs of its Canadian gas on an as-billed basis. That concern is not applicable here because the proposed imports would constitute direct sales to LDC purchasers who have freely negotiated the terms of the gas purchase agreements and who would only pay the demand and the commodity costs solely related to their own purchases. In Boundary Gas, Inc.,26/ the FERC emphasized that its concerns in Order 256 regarding as-billed passthrough of costs were not applicable because the arrangements involved direct purchases by an LDCs. Since the Brooklyn Union import arrangements would constitute direct first sales to LDC's, the passing through of costs on an as-billed basis is not an issue in this proceeding and Order 256 is not applicable. However, even if Order 256 is not directly applicable, the issue of whether the disparity between Canadian and U.S. pipeline rate regulation makes the proposed import arrangements uncompetitive remains.

The policy guidelines state that the competitiveness of an import arrangement will be assessed by consideration of the whole fabric of the arrangement. The guidelines state further that the specific commercial terms and conditions of a particular arrangement should be negotiated by the parties and that the government's role in authorizing such an arrangement should be limited to ascertaining whether, as a whole, it is competitive. The guidelines specifically warn against governmental action which unilaterally renegotiates gas import contracts. The intervenors have offered no reason to support DOE's departure from this policy admonition.

First, various intervenors have raised the two-part rate issue in a number of previous proceedings concerning import arrangements containing essentially the same demand/commodity components as the ANE gas purchase

contracts.27/ These arrangements have been approved by the DOE, and sustained by the federal courts, as being competitive and not inconsistent with the public interest.28/ The DOE has found "that the two-part rate design utilized in Canadian import arrangements is largely analogous to two-part rates found in domestic tariffs." 29/ In particular, the Boundary import arrangement is virtually identical to those proposed in the Brooklyn Union applications. Boundary has been importing Canadian gas for direct sales to its LDC purchasers using a two-part demand commodity rate since 1985, yet none of the intervenors have even alleged, much less presented evidence, that the Boundary gas has enjoyed an unfair competitive advantage over domestic supplies.

Second, we note that, while not determinative of competitiveness under DOE policy, many of the demand charge components that were objected to in previous import applications because they would not be allowed by the FERC have been eliminated from the ANE gas purchase contracts' demand charge. The producers' fixed costs have been eliminated from the demand component and NOVA's transportation charge, which was derived from NOVA's volumetric rate, has been replaced by a regulatorily approved demand/commodity rate. In addition, on May 30, 1989, the FERC issued a policy statement on rate design, in which it emphasized that efficient functioning of natural gas markets is the principle objective of rate design.30/ The FERC expressed concern that the modified fixed variable method may be outdated because interstate pipelines' primary function has shifted to gas transportation. The FERC stated that in order to promote efficient allocation of pipeline capacity it may be necessary to shift certain costs from the commodity charge to the demand charge, including fixed storage costs and some portion of return on equity. The combined effect of both Canadian and U.S. regulatory reconsideration of rate design methodology is that rates on both sides of the border are moving to more closely resemble each other.

Third, the policy guidelines recognize that gas import arrangements and international commercial agreements are subject to the policies and laws of both the buyer's and seller's governments. U.S. trade policy strongly supports contract sanctity as an important factor in international commercial transactions. Unilateral administrative action by the DOE to change the ANE gas purchase agreements would undermine this policy. Further, we are cognizant of the fact that the demand component of the two-part rate was not arbitrarily selected by the sellers and buyers in the Brooklyn Union applications but consists of regulatorily approved Canadian transportation rates.

In other words, the Repurchasers have contracted to pay Canadian approved rates for transporting the proposed imports on Canadian pipelines. No party has claimed that the rates set by the NEB are not supported by

legitimate policy considerations or that they will be discriminatorily applied to gas destined for the U.S. The Repurchasers were fully aware of the Canadian rate structure at the time they negotiated their purchase contracts and it was one of the factors considered in fashioning mutually acceptable import agreements between the Repurchasers and their Canadian suppliers. The intervenors are asking that the DOE unilaterally renegotiate a particular term of the freely negotiated import agreements without having rebutted the presumption of competitiveness which attaches to such arrangements. Compliance with this request conflicts with principles of international comity and violates DOE's policy that the market and not the government should determine contract terms.

Finally, the intervenors have not demonstrated that the two-part demand/commodity rate proposed in the Brooklyn Union import arrangements would discriminate unfairly against domestic gas suppliers or affect the competitiveness of the overall arrangements.

(2) Other Competitiveness Issues

The protesting intervenors claimed that the competitiveness of the import arrangements might be affected by the fact that Repurchasers are LDC's with "captive" customers on whom they can foist non-competitive gas supplies. First, the pertinent issue is whether the gas purchase contract terms produce competitively priced gas over the length of the contract; if they do, the question of the importers supplying the gas to "captive" or "non-captive" markets is irrelevant. Second, it is precisely the unbundling of gas supply and transportation services, with end-users, notably LDCs, making their own gas purchasing decisions, that the DOE believes will enhance the development of a competitive gas market. Local purchasers of gas, under the jurisdiction of state and local regulatory authorities, are in the best position to determine their gas needs and the means of fulfilling those needs.

The intervenors also raised the issue of the equity interest that some of the Repurchasers have in the IGTS. The DOE finds persuasive the arguments of the Repurchasers that applicants who do not have any interest in the IGTS would have no incentive to agree to uncompetitive gas purchase contracts. In addition, the bare assertion that certain of the Repurchasers, having an interest in the IGTS, will purchase ANE gas for that reason, when more economical supplies are available, does not demonstrate that the import arrangements are not competitive. Furthermore, individual purchase decisions can be reviewed by state regulatory authorities. Finally, the DOE believes that the argument that the Brooklyn Union import arrangements were not negotiated at arm's length because of the IGTS ownership interests of some of

the Repurchasers (and TCPL) is founded on a basic misconception of the overall import arrangements: the purchase agreements were not negotiated between the parties in order to provide a supply of gas to be transported on IGTS; rather, IGTS was conceived and proposed to effectuate the parties' desires to enter into competitive import arrangements for the purpose of obtaining alternative sources of supply for the Repurchasers and opening new markets for the suppliers.

The protestors claimed that the pricing formula used to establish the border price for the proposed imports will not necessarily result in a competitive delivered price to the Repurchasers. First of all, the pricing formula indexes or adjusts the border price for the proposed imports to the price of alternative fuels delivered in New York City; it does not establish the border price at the New York City price. In fact, the border price will always be somewhat less than the delivered price of alternative fuels in New York City (13/15 of the NYC price in the winter and 11/15 of the NYC price in the summer). Second, since the proposed imports would be sold by various Canadian suppliers to the Repurchasers (via ANE) at the border, it is necessary to establish a sales price at that point. The Repurchasers have stated that the border pricing formula was specifically negotiated to result in a delivered price that would be competitive in the applicants' markets. None of the protesting intervenors have offered any evidence to the contrary and, therefore, have not rebutted the presumption that these freely negotiated agreements are competitive. The pricing formula is indexed to the price of competing fuels so that it will remain market responsive over the 15-year contract period. Moreover, if the formula does not continue over time to allow the Repurchasers the flexibility to purchase the gas at competitive prices the parties can exercise the price renegotiation provisions of the gas purchase contracts.

The intervenors further contended that the DOE could not make a decision on the proposed imports without considering the cost of transportation on the IGTS as well. The border pricing formula is flexible and market-responsive and the Repurchasers have stated that it was designed to bring competitively priced gas to their markets. The renegotiation provisions can be utilized if the formula does not achieve this end. We believe this is sufficient for the DOE to make its public interest finding.

The DOE has considered the proposed import arrangements and has preliminarily determined, on the basis of the record before it at this time, that their terms and conditions, taken together, provide competitively priced supplies of gas over the terms of the contracts. The intervenors have not demonstrated that the proposed import arrangements, taken as a whole, are not

competitive or not sufficiently flexible to respond to changing market conditions.

B. Need

Under the DOE import guidelines, need for proposed imports is viewed as a function of marketability and gas is presumed to be needed if it is found to be competitive. We have found that the proposed import arrangements are competitive. The gas purchase agreements were freely negotiated between the buyers and the sellers and contain market-responsive, flexible pricing terms, renegotiation and arbitration clauses, and do not have any minimum take provisions. Accordingly, the proposed imports are presumed to be needed. The intervenors have not made any arguments or submitted any evidence sufficient to rebut the presumption of need.

NEFI/ESPA disputed the need for the proposed imports by first alleging that the Repurchasers' projections and judgments regarding their future needs could not be relied upon, and subsequently submitting various studies which they claimed showed that there is no need for the gas. NEFI/ESPA also cited the DPUC and NYPSC proceedings as evidence that the need for the proposed imports was subject to debate.

We note that the NYPSC proceeding has been concluded, as discussed in section III-B of this order, and that the NYPSC found that the additional gas to be supplied by IGTS is needed. The DOE does not feel it is necessary or an appropriate use of limited government resources to enmesh itself in the merits of the Rudden Report and the NY Rudden Report versus the CRS Memorandum, the CRS Connecticut Report and the QED report or to schedule a Federal round of the DPUC forecasting methodology proceedings. What the DPUC hearings and the sundry studies ultimately show is that predicting future demands for natural gas is not an exact science and that, by applying different assumptions to varying situations, different conclusions as to need can be reached. The DOE does not believe that it can do a better job of prognosticating demand than the Repurchasers, which is the primary reason that the energy guidelines presume that a flexible, competitively-priced, freely negotiated sales agreement is the best way to ensure that the proposed gas supply will be needed. The parties to the arrangements are in a much better position than the DOE to make appropriate market decisions.31/

In addition, although the long-term marketability and competitiveness of the proposed imports is determinative as to the need for the Canadian natural gas, we believe that the record indicates that there is a need for long-term, secure and competitively-priced supply of natural gas in the Repurchasers'

markets. As we stated in Granite State:

> "A balanced energy mix and a greater diversity of supply sources permit consumers to choose freely among all the practical and competitive energy options. The New England region is particularly vulnerable to supply disruptions because of its undue dependence on imported oil supplies. Consequently, the DOE policy continues to favor the displacement of oil imports with competitive alternatives, including gas supplies from historically reliable Canadian sources".32/

Further, the public utility commissions of Rhode Island, Massachusetts, and New Jersey, have all filed letters in support of the Brooklyn Union project and have stated that the need for new supplies of natural gas in the Northeast in general, and their states specifically, is critical. Also, the NYPSC has concluded after extensive hearings that there is a need for the additional gas supplies proposed by the applicants. These public utility commissions are the responsible stated agencies whose mandates are to ensure that the energy needs of their respective states are anticipated and met, and the DOE puts great weight on their declarations of need. Accordingly, the competitiveness of the proposed import arrangements and the evidence in the record of this proceeding fully support a preliminary finding of need.

Connecticut requested that the DOE, if it relies on the presumption of need as set forth in the energy guidelines, specifically state that its decision does not constitute a decision on the prudency of the gas purchase agreements. A DOE finding that an import is not inconsistent with the public interest subsumes a finding of prudence. However, this finding is not meant to preclude state agencies from setting appropriate rates for entities they regulate. DOE emphasizes that no state regulatory body has claimed in this proceeding that the purchasing practices engaged in here are inconsistent with state regulatory policies.

C. Security of Supply

Natural gas has been imported from Canada for many years and there have been no instances of a major natural gas supply interruption that would call into question Canada's future reliability as a supplier of natural gas to this country. The Repurchasers stated that total proven Canadian reserves are estimated at 77 Tcf and that potential marketable Canadian reserves are estimated at 191 Tcf. NEFI/ESPA attempted to question the security of supply on the grounds that the Canadian producers netback price may be so low that they would refuse to sell the gas. This contention is speculative and is not supported by the actions of the producers themselves who have voted in support

of the two TCPL and the ProGas gas purchase agreements with ANE.33/ These agreements represent 341,000 Mcf of the 397,100 Mcf per day requested in this proceeding. The remaining volumes are being supplied by ATCOR and AEC who are themselves producers selling directly into the market. Further, the backstop agreement between ANE, AEC, and ATCOR provides additional security for the Repurchasers under the AEC purchase agreement.

In addition, the DOE notes that the Northeast has traditionally been at the end of the domestic pipeline distribution system and that the proposed import arrangements would enhance energy security in the region by adding to the diversity of energy sources.

D. Additional Issues

NEFI/ESPA argued that the DOE must consider the possibility that the proposed imports, rather then filling the incremental needs of the Repurchasers, will displace oil and domestic natural gas in the Repurchasers markets. DOE's policy is to encourage competition in the energy marketplace. The oil and domestic gas industry cannot expect to be protected from open competition with other energy sources.

Connecticut also asked us, in making our determination of these applications, to consider DOE's support of nuclear generating plants in the Northeast in order to reduce dependence on foreign energy supplies, and the fact that Canada already supplies hydropower to the Northeast. The policy of the DOE is to obtain a balanced energy mix in the Northeast and elsewhere based on competitive, commercial arrangements. The proposed import arrangements are consistent with that policy.

In response to Foothills' concern, DOE authorization of the Brooklyn Union import proposals should not be viewed as indicating that the DOE favors the IGTS proposal over other proposals to build new facilities to receive and transport Canadian gas supplies. The jurisdiction for the siting and certification of new import facilities lies with the FERC.

E. Request for Conditions

The IPAA requested that one of two conditions be imposed on any authorizations issued in this proceeding in order to prevent the Canadian suppliers from gaining an unfair competitive advantage over domestic supplies due to the discrepancy between Canadian and FERC rate design methodologies. The first condition suppested by the IPAA was that the DOE require that the demand/commodity components of the import arrangements conform to FERC rate

design methodology. The second, and preferred, condition was that DOE condition its approval of the proposed imports on the FERC changing its rate making methodology and adapting "something like fixed variable rates."

The cornerstone of DOE's natural gas import policy is competitiveness, and we are sympathetic to concerns that the North American gas market be allowed to operate on a competitive basis without regulatory distortions. Moreover, we recognize that the FERC shares those concerns. Although we have already addressed the effects of the two-part rate in section VI-B(1) of this order, we recognize that by issuing its rate design policy statement the FERC has indicated a willingness to reconsider the modified-fixed variable rate in order to promote economic efficiency in natural gas markets. The DOE supports FERC's efforts to develop rate methodologies which will enhance efficiency and further the goal of competitive gas markets, and notes that FERC's rate design policy statement appears to be considering the IPAA's concerns in requesting the imposition of a condition.

Pursuant to the above, the alternative conditions requested by the IPAA are either inconsistent with import policy or inappropriate in light of FERC's ongoing review of pipeline rate design. Therefore, IPAA's request for conditions is denied.

F. Requests for Additional Procedures

NEFI/ESPA requested discovery procedures regarding the competitiveness and need for the proposed import as well as specific information including, among others: (1) the netbacks to be received by the Canadian suppliers of the proposed imports, (2) the cost of Canadian expansion and the transportation rates based thereon, (3) the ultimate delivered price of the proposed natural gas imports, (4) the costs of alternative natural gas and energy supplies, (5) the costs of transportation on IGTS, (6) and the specific market sectors each Repurchaser will be supplying. In particular, NEFI/ESPA requested detailed information from the Repurchasers, including: each Repurchasers' projected natural gas requirements; their current suppliers and details of each supply arrangement, as well as other imformation regarding purchase decisions; their average cost of gas; and a list of any cogeneration customers each Repurchaser expects to serve. The Environmental Council also requested that discovery procedures be instituted, but did not specify what information it was seeking to obtain through discovery.

NEFI/ESPA's and the Environmental Council's requests were previously denied by operation of law pursuant to Para. 590.302 of the DOE's administrative procedures because they were not acted on within 30 days after

the requests were filed with the DOE. We note that the record in these proceedings was sufficient for the DOE to make its NGA section 3 finding, and no evidence was presented by any party that additional information was required. The Environmental Council asked for discovery regarding the issues it had raised without specifying what additional information was needed to address those issues. NEFI/ESPA, while specific in their requests, did not demonstrate that the information they sought to obtain was not already available from public sources, was denied to them by the Repurchasers, or was required for the DOE to make its determination.34/

NEFI/ESPA also requested a trial-type hearing to resolve alleged disputed factual issues including: (1) the competitiveness of the import arrangements, (2) the need for the proposed imports, (3) the effects of the imports on the domestic oil and gas industries, (4) the anti-competitive effects of the two-part rate, (5) the market sectors where the gas would be sold, (6) the delivered price of the gas, and (7) the environmental effect of the IGTS. The Environmental Council also requested a trial-type hearing on the issues of the anti-competitiveness of the two-part demand/commodity components and of the need for the proposed import, and the IPAA requested a trial-type hearing on the two-part rate if its request for the imposition of a condition was denied.

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 genuinely in dispute that are 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 on policy or legal issues.

The DOE has examined the issues raised by the parties in requesting trial-type hearings and concludes that their concerns revolve primarily around the issues of the competitive effect of the two-part rate and the need for the proposed gas imports. Regarding the competitive effect of the two-part rate, we have already concluded, based on the record in this proceeding and consistent with previous determinations by the DOE, that the proposed arrangements are not anticompetitive. We do not believe that the intervenors have demonstrated that a trial-type hearing would materially aid the DOE in making its determination or is necessary to ensure the adequacy of the record or the fairness of this proceeding. On the issue of the need for the natural gas, the intervenors basically requested the DOE to abandon its policy of relying on commercial parties to negotiate competitive arrangements from which, if not rebutted, need is presumed. Their concerns do not reflect a factual dispute, but rather a different policy prespective that departs

substantially from established DOE policy to promote competition in the public interest.

Finally, all parties have had sufficient opportunities to comment on the proposed arrangements and on the parties' positions on the issues. Any facts presented to support those positions are adequately represented in the record and provide the DOE with a sufficient basis on which to make a decision. Accordingly, we have determined that it would not be in the public interest to hold additional procedures including a trial-type hearing, and NEFI/ESPA, the Environmental Council and the IPAA's motions are therefore denied.

G. Other Matters

(1) Phased In Volumes

The Repurchasers stated in their February 1989 amendment that six of the applicants intended to phase in their nominated volumes over a two-year period. In order to allow the Repurchasers the maximum amount of flexibility, and because the applicants are seeking import authorizations for volumes "up to" their maximum volumes, this order will grant the total maximum volumes which of course permits the applicants to exercise phased nominations under their contracts.

(2) National Fuel's Early Commencement of Purchases

Also in their February 1989 amendment, the Repurchasers stated that they intended to commence purchases of the ANE volumes on or before October 31, 1991, except that National Fuel, pursuant to its application filed in Docket No. 86-48-NG, is seeking to commence purchases of its 10,000 Mcf per day as of November 1, 1990. They stated further that the term of National Fuel's entitlement to purchase gas will be calculated from the date National Fuel commences purchases, but the initial contract year will nonetheless be deemed to be the year in which the other Repurchasers commence purchases. Since the ANE/TCPL gas purchase contract, under which National Fuel would purchase its natural gas, ends on a date certain, November 1, 2003, as opposed to the ProGas, ATCOR and AEC contracts which run for 15 years from the end of the first contract year, there is no need for any action on the part of the DOE regarding National Fuel's intention to commence purchases prior to the other applicants.

(3) Backstop Agreement

In their January 12, 1989, first amendment, the Repurchasers requested

that their application filed in Docket No. 86-46-NG be conditioned to allow ATCOR to import additional gas in the event the backstop agreement between ANE, ATCOR and AEC was exercised. Rather than condition any authorization issued under Docket No. 86-46-NG, the same purpose can be accomplished by authorizing ATCOR-supplied gas to be imported pursuant to the authorization requested in Docket No. 87-02-NG.

H. Environmental Determination

The National Environmental Policy Act of 1969 (NEPA) 35/ requires federal agencies to give appropriate consideration to the environmental effect of their proposed actions. The Brooklyn Union import proposals require issuance of several major permits and authorizations before the project can proceed, including FE's import authorization under section 3 of the NGA and FERC's authorization under section 7 of the NGA for IGTS and Tennessee to construct the facilities necessary to transport the imported gas requested in this proceeding. The FERC has the lead in preparing an Environmental Impact Statement (EIS) in order to assess the impacts of the new facilities related to the import project. On November 14, 1989, the FERC issued a Draft Environmental Impact Statement for the Proposed Iroquois/Tennessee Pipeline Project. The DOE is a cooperating agency36/ with the FERC and will assist the FERC in its preparation of a Final Environmental Impact Statement.

The approval of these imports of natural gas is therefore being conditioned on completion of the environmental review of the new facilities and DOE's responsibilities under NEPA. When the EIS is completed by the FERC, the DOE will issue a Record of Decision.37/ The DOE will then reconsider this conditional order and issue an appropriate final opinion and order.

This conditional order makes preliminary findings and indicates to the parties the DOE's determination at this time on all but the environmental issue in this proceeding. All parties are advised that the issues addressed herein regarding the import of natural gas will be reexamined at the time of the DOE's review of the FERC's NEPA analysis. The results of that reexamination will be reflected in the final opinion and order.

I. Conclusion

After reviewing the comprehensive record as described in detail above, I conclude that these imports will serve the consumers' interests in obtaining long-term, reliable supplies of natural gas at competitive, market-responsive prices. The imports will help fill current needs and projected future increases in consumer demand. Additionally, these imports will enhance the

energy mix and diversity of natural gas supplies available to the Northeast and improve the natural gas distribution system. My decision also carefully considered the support for these imports from most of the region's public utility commissions and public officials, and the fact that no potential consumers of the proposed imports opposed the Brooklyn Union applications. The principle opposition has come from associations representing petroleum marketers and domestic natural gas producers that are in competition with the proposed Canadian gas supplies, and from an environmental group whose major concern is with the environmental impact of the proposed IGTS, a matter still under consideration both by the DOE and the FERC. For these reasons, I conclude that conditionally granting the Brooklyn Union applications will not be inconsistent with the public interest.

## ORDER

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

A. The Brooklyn Union Gas Company (BUG), the Connecticut Light and Power Company (CL&P), Connecticut Natural Gas Corporation (CNG), Southern Connecticut Gas Company (Southern Connecticut), New Long Island Lighting Company (LILCO), Consolidated Edison Company of New York, Inc. (Consolidated Edison), New Jersey Natural Gas Company (New Jersey Natural), New York State Electric and Gas Corporation (NYSEG), and Central Hudson Gas and Electric Corporation (Central Hudson) (herein called the Repurchasers) are authorized to import up to 75,000 Mcf per day of Canadian natural gas, pursuant to their joint application filed in ERA Docket No. 86-44-NG, in which the natural gas will be supplied by TransCanada PipeLines Limited (TCPL) and sold to the Repurchasers by Alberta Northeast Gas, Limited (ANE). The term of the authorization will commence on the date of first delivery and run until November 1, 2003. The natural gas is to be imported at the Iroquois Gas Transportation System's (IGTS) yet to be established import point on the international border near Iroquois, Ontario.

B. Each Repurchaser in Ordering Paragraph A above is authorized to import its pro rata portion of the total authorization as stipulated in the gas purchase contract between ANE and TCPL, and in the gas sales agreements between the Repurchasers and ANE, as follows:

| Company | Mcf/d |
|---|---|
| BUG | 18,000 |

| | |
|---|---|
| CL&P | 11,250 |
| CNG | 5,250 |
| New Jersey Natural | 5,250 |
| Southern Connecticut | 7,500 |
| LILCO | 13,500 |
| Central Hudson | 1,500 |
| Consolidated Edison | 6,000 |
| NYSEG | 6,750 |

However, each Repurchaser is hereby authorized to import additional volumes, up to the total authorized amount, if others of the Repurchasers do not utilize their full authorization. At no time may the amount of natural gas imported exceed the total authorization granted in Ordering Paragraph A.

C. The Repurchasers, as named in Ordering Paragraph A above, are authorized to import up to 66,000 Mcf per day of Canadian natural gas, pursuant to their joint application filed in ERA Docket No. 86-45-NG, in which the natural gas will be supplied by ProGas Limited (ProGas) and sold to the Repurchasers by ANE. The authorization will commence on the date that the first deliveries of gas are made pursuant to the gas purchase contract between ANE and ProGas, and will terminate 15 years after the first November 1st following that initial delivery date. The natural gas is to be imported at IGTS' yet to be established import point on the international border near Iroquois, Ontario.

D. Each Repurchaser in Ordering Paragraph C above is authorized to import its pro rata portion of the total authorization as stipulated in the gas purchase contract between ANE and ProGas, and in the gas sales agreements between the Repurchasers and ANE, as follows:

| Company | Mcf/d |
|---|---|
| BUG | 15,840 |
| CL&P | 9,900 |

| | |
|---|---|
| CNG | 4,620 |
| New Jersey Natural | 4,620 |
| Southern Connecticut | 6,600 |
| LILCO | 11,880 |
| Central Hudson | 1,320 |
| Consolidated Edison | 5,280 |
| NYSEG | 5,940 |

However, each Repurchaser is hereby authorized to import additional volumes, up to the total authorized amount, if others of the Repurchasers do not utilize their full authorization. At no time may the amount of natural gas imported exceed the total authorization granted in Ordering Paragraph C.

E. The Repurchasers, as named in Ordering Paragraph A above, are authorized to import up to 37,300 Mcf per day of Canadian natural gas, pursuant to their joint application filed in ERA Docket No. 86-46-NG, in which the natural gas will be supplied by ATCOR Ltd. (ATCOR) and sold to the Repurchasers by ANE. The authorization will commence on the date that the first deliveries of gas are made pursuant to the gas purchase contract between ANE and ATCOR, and will terminate 15 years after the first November 1st following that initial delivery date. The natural gas is to be imported at IGTS' yet to be established import point on the international border near Iroquois, Ontario.

F. Each Repurchaser in Ordering Paragraph E above is authorized to import its pro rata portion of the total authorization as stipulated in the gas purchase contract between ANE and ATCOR, and in the gas sales agreements between the Repurchasers and ANE, as follows:

| Company | Mcf/d |
|---|---|
| BUG | 8,206 |
| CL&P | 5,222 |
| CNG | 2,425 |

| | |
|---|---|
| New Jersey Natural | 2,984 |
| Southern Connecticut | 3,730 |
| LILCO | 6,154 |
| Central Hudson | 2,984 |
| Consolidated Edison | 2,611 |
| NYSEG | 2,984 |

However, each Repurchaser is hereby authorized to import additional volumes, up to the total authorized amount, if others of the Repurchasers do not utilize their full authorization. At no time may the amount of natural gas imported exceed the total authorization granted in Ordering Paragraph E.

G. The Repurchasers, as named in Ordering Paragraph A above, are authorized to import up to 18,800 Mcf per day of Canadian natural gas, pursuant to their joint application filed in ERA Docket No. 87-02-NG, in which the natural gas will be supplied by Alberta Energy Corporation (AEC) and sold to the Repurchasers by ANE. The authorization will commence on the date that the first deliveries of gas are made pursuant to the gas purchase contract between ANE and AEC, and will terminate 15 years after the first November 1st following that initial delivery date. The natural gas is to be imported at IGTS' yet to be established import point on the international border near Iroquois, Ontario.

H. Each Repurchaser in Ordering Paragraph G above is authorized to import its pro rata portion of the total authorization as stipulated in the gas purchase contract between ANE and AEC, and in the gas sales agreements between the Repurchasers and ANE, as follows:

| Company | Mcf/d |
|---|---|
| BUG | 3,954 |
| CL&P | 3,928 |
| CNG | 1,205 |
| New Jersey Natural | 1,946 |

| | |
|---|---|
| Southern Connecticut | 2,170 |
| LILCO | 3,066 |
| Central Hudson | 96 |
| Consolidated Edison | 1,109 |
| NYSEG | 1,326 |

However, each Repurchaser is hereby authorized to import additional volumes, up to the total authorized amount, if others of the Repurchasers do not utilize their full authorization. At no time may the amount of gas imported exceed the total authorization granted in Ordering Paragraph G.

I. The natural gas imports authorized in Ordering Paragraph G above may be supplied, in whole or in part, by ATCOR in accordance with the backstop agreement between ANE, AEC and ATCOR.

J. BUG, CL&P, CNG, Southern Connecticut, LILCO, Consolidated Edison, New Jersey Natural, Central Hudson, Boston Gas Company (Boston Gas), Public Service Electric and Gas Company (PSE&G), National Fuel Gas Supply Corporation (National Fuel), Elizabethtown Gas Company (Elizabethtown), Gas Service, Inc. (GSI), Manchester Gas Company (Manchester), Essex County Gas Company (Essex), Colonial Gas Company (Colonial), and Valley Gas Company (Valley) (herein called the Repurchasers) are authorized to import up to 200,000 Mcf per day of Canadian natural gas, pursuant to their joint application filed in ERA Docket No. 86-48-NG, in which the natural gas will be supplied by TCPL and sold to the Repurchasers by ANE. The term of the authorization will commence on the date of first delivery and run until November 1, 2003. The natural gas is to be imported at IGTS' yet to be established import point on the international border near Iroquois, Ontario, or at Tennessee Gas Transmission System's existing Niagara import point.

K. Each Repurchaser in Ordering Paragraph J above is authorized to import its pro rata portion of the total authorization as stipulated in the gas purchase contract between ANE and TCPL, and in the gas sales agreement between the Repurchasers and ANE, as follows:

| Company | Mcf/d |
|---|---|
| BUG | 24,000 |

| | |
|---|---|
| CL&P | 28,700 |
| CNG | 11,500 |
| New Jersey Natural | 25,200 |
| Southern Connecticut | 15,000 |
| LILCO | 30,400 |
| Central Hudson | 14,100 |
| Consolidated Edison | 5,000 |
| Boston Gas | 13,100 |
| PSE&G | 10,000 |
| National Fuel | 10,000 |
| Elizabethtown | 5,000 |
| GSI | 2,000 |
| Manchester | 2,000 |
| Essex | 2,000 |
| Colonial | 6,000 |
| Valley | 1,000 |

However, each Repurchaser is hereby authorized to import additional volumes, up to the total authorized amount, if others of the Repurchasers do not utilize their full authorization. At no time may the amount of natural gas imported exceed the total authorization granted in Ordering Paragraph J.

L. The Repurchasers, either jointly or separately, shall notify the Office of Fuels Programs (OFP) of the Department of Energy (DOE) in writing of the date of first delivery of natural gas imported under Ordering Paragraphs A, C, E, G and J above within two weeks after the date of such delivery, and shall, at that time, identify the person(s) responsible for the reporting requirements contained in Ordering Paragraph M.

M. With respect to the imports authorized by this Order, the Repurchasers, either jointly or separately, shall file with the OFP within 30 days following each calendar quarter, quarterly reports indicating, by month, the quantities of gas in Mcf imported by each Repurchaser under Ordering Paragraphs A, C, E, G and J above, and the average price, showing the demand/commodity charge breakdown on a monthly, per unit (MMBtu) basis paid for those volumes at the international border. The total amount of gas imported pursuant to each of the joint authorizations should also be included. For natural gas imported pursuant to Ordering Paragraph G above, the quarterly reports must show what, if any, gas was supplied by ATCOR in accordance with the Backstop Agreement. Also, the Repurchasers shall notify the OFP if ATCOR assumes any of AEC's supply obligations on a permanent basis as provided in the Backstop Agreement within two weeks of ATCOR's assumption of those obligations.

N. The authorizations in Ordering Paragraphs A, C, E, G and J above are conditioned upon entry of a final opinion and order by the OFP after review by the DOE of the final Environmental Impact Statement (EIS) on the proposed IGTS/Tennessee Gas Pipeline Company project currently being prepared by the Federal Energy Regulatory Commission, and the completion by the DOE of its responsibilities under the National Environmental Policy Act. All parties are advised that the issues addressed in this order regarding the importation of natural gas will be reexamined at the time of the DOE's review of the final EIS and that the results of that reexamination will be reflected in the final opinion and order. No natural gas may be imported pursuant to the authorizations issued in this order until such time as a final opinion and order is issued by the OFP. The resolution of the condition stated in this Ordering Paragraph may result in further conditions imposed in subsequent proceedings in this case. The Repurchasers and intervenors in this proceeding shall be bound by any opinion and order issued in such subsequent proceedings.

O. The requests of the Independent Petroleum Producers Association (IPAA) for imposition of a condition and for a trial-type hearing are denied. The requests of the New England Fuel Institute/Empire State Petroleum Association and the Environmental Council for trial-type hearings and discovery procedures are denied.

P. The motion of the IPAA to intervene, as set forth in this Opinion and Order, is hereby granted, provided that participation of such intervenor shall be limited to matters specifically set forth in its motion to intervene and not specifically denied, and that the admission of such intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in this proceeding.

Issued in Washington, D.C., on January 11, 1990 [amended by Order No. 368-D, November 11, 1991].

--Footnotes--

1/ On January 6, 1989, the authority to regulate natural gas imports and exports was transferred from the ERA to the Assistant Secretary of Fossil Energy (FE). DOE Delegation Order No. 0204-127 specifies the transferred functions (54 FR 11436, March 20, 1989).

2/ 51 FR 33108, September 18, 1986.

3/ 52 FR 5817, February 26, 1987.

4/ 52 FR 23583, June 23, 1987.

5/ 54 FR 14132, April 7, 1989.

6/ The total daily volumes in Mcf that each Repurchaser has requested authority to import are as follows:

| Company | Mc/d |
| --- | --- |
| BUG | 70,000 |
| CL&P | 59,000 |
| CNG | 50,000 |
| New Jersey Natural | 40,000 |
| Southern Connecticut | 35,000 |
| LILCO | 35,000 |
| Central Hudson | 20,000 |
| Consolidated Edison | 20,000 |
| Boston Gas | 17,100 |
| NYSEG | 17,000 |

| | |
|---|---|
| PSE&G | 10,000 |
| National Fuel | 10,000 |
| Elizabethtown | 5,000 |
| GSI | 2,000 |
| Manchester | 2,000 |
| Essex | 2,000 |
| Colonial | 2,000 |
| Valley | 1,000 |
| | ------- |
| | 397,100 |

7/ See Northeast U.S. Pipeline Projects, 46 FERC Para. 61,012 (1989).

8/ 40 FERC Para. 61,087.

9/ 42 FERC Para. 61,332.

10/ 43 FERC Para. 61,555.

11/ 44 FERC Para. 61,150.

12/ 45 FERC Para. 63,019.

13/ 46 FERC Para. 61,012.

14/ 47 FERC Para. 61,172.

15/ 49 FR 6684, February 22, 1984.

16/ Natural Gas Pipeline of America, 37 FERC Para. 61,215 (December 8, 1986).

17/ Id., at 61,545.

18/ 1 ERA Para. 70,539 (August 9, 1982), ERA Docket No. 81-04-NG. The purchase agreements referred to were submitted as informational filings and

accepted by the DOE as being consistent with Boundary's import authority.

19/ 1 ERA Para. 70,717 (August 5, 1987).

20/ 1 ERA Para. 70,721 (September 21, 1987).

21/ 15 U.S.C. Sec. 717b.

22/ See, Panhandle Producers and Royalty Owners Association v. Economic Regulatory Administration, 822 F.2d 1105, at 1111 (D.C. Circuit 1987).

23/ See supra note 15.

24/ See, Texas Eastern Transmission Corporation, 1 ERA Para. 70,733 (October 30, 1987), at 72,762.

25/ We note that the contention that the Repurchasers deliberately constructed their import arrangements to avoid compliance with Order 256 is unfounded inasmuch as the precedent agreements and pro forma gas purchase contracts (except for the fifth application), pursuant to which the Repurchasers propose to import natural gas, were entered into in June and July of 1986, while Order 256 was not issued until December of 1986.

26/ 40 FERC Para. 61,047 (July 20, 1987).

27/ See, e.g., Natural Gas Pipeline of America, 1 ERA Para. 70,645 (May 15, 1986); Boundary, supra note 18; Granite State, supra note 19, affirmed, NEFI v. ERA, 875 F2d 822 (D.C. Circuit 1989); Minnegasco, supra note 20, petition for review denied, IPAA v. ERA, 886 F2d 1338 (D.C. Circuit 1989).

28/ Id.

29/ Natural, id., at 72,533.

30/ 47 FERC Para. 61,295.

31/ See, the April 18, 1988, comments of Public Service Electric and Gas Company in the FERC "Open Season" docket (CP87-451-000).

32/ See supra note 19, at 72,713.

33/ See, August 24, 1989, letter filed by the applicants in these consolidated dockets.

34/ Certain, if not all, of the information requested by NEFI/ESPA, according to the Repurchasers' May 23, 1989, filing, was made available during the course of the NYPSC proceeding.

35/ 42 U.S.C. 4321, et seq.

36/ 40 CFR Para. 1501.6.

37/ 40 CFR Para. 1505.2.