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UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

PROGAS U.S.A., INC.

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F.E Docket No. 99-26-NG

REC'D DOE/FE
1999/03/11-4 P 2:23

APPLICATION OF PROGAS U.S.A., INC. FOR LONG-TERM
AUTHORIZATION TO IMPORT NATURAL GAS FROM CANADA

Pursuant to Section 3 of the Natural Gas Act ("NGA"), 15 U.S.C. Section 717b, as amended by section 201 of the Energy Policy Act of 1992 ("Energy Policy Act")(P.L. 102-486), ProGas U.S.A., Inc. ("ProGas U.S.A.") submits this application for long-term authorization to import natural gas from Canada. In support of this application, ProGas U.S.A. respectfully shows as follows:

I.
GENERAL

The exact legal name of ProGas U.S.A. is ProGas U.S.A., Inc. Correspondence and communications concerning this application should be directed to:

Charles H. Shoneman
Bracewell & Patterson, L.L.P.
Attorneys at Law
2000 K Street NW Ste 500
Washington, DC 20006-1872
Phone: (202) 828-5800

Michelle Voinorosky
ProGas U.S.A., Inc.
3300, 400 Third Avenue S.W.
Calgary, Alberta
T2P 4H2
Phone: (403) 296-0606

II.
BACKGROUND

ProGas U.S.A. is a corporation incorporated under the laws of the State of Delaware, with its principal place of business at 400, Third Avenue S.W., Suite 3300, Calgary, Alberta, Canada.

ProGas U.S.A. is beneficially owned by ProGas Limited, a private corporation organized under the laws of the Province of Alberta, Canada, with its principal place of business in Calgary, Alberta, Canada. ProGas U.S.A. is actively engaged in the business of purchasing and reselling natural gas throughout the United States. ProGas U.S.A. purchases natural gas primarily from ProGas Limited and resells such supplies directly to end-users and others. ProGas Limited is engaged in the business of buying and selling natural gas in Canada, and buying, selling and exporting natural gas produced in Canada to purchasers located in the United States, including ProGas U.S.A..

III. AUTHORIZATION REQUESTED

ProGas U.S.A. requests authorization to import up to 65,000 Mcf per day of natural gas, plus fuel, shrinkage and line loss, on a long term basis for a fifteen year period to commence on October 1, 2000 or such later date as Alliance Pipeline Limited Partnership ("Canadian Alliance") and Alliance Pipeline L.P. ("U.S. Alliance") commence service. As confirmed in the attached Exhibit "A", importation of natural gas from Canada is within ProGas U.S.A.'s corporate powers.

The natural gas to be imported will become part of ProGas U.S.A.'s supplies to be sold to markets off the U.S. Alliance pipeline system. The sales off U.S. Alliance will be made at market-based prices, which will be negotiated at the time of the sale. The Office of Fossil Energy ("OFE") has previously approved natural gas imports for similar sales by ProGas U.S.A. See *ProGas U.S.A., Inc.* 1 FE P 71,311 (1996). In aid of its marketing efforts for the gas to be imported, ProGas U.S.A. has agreed to take firm capacity on U.S. Alliance for a term of fifteen (15) years to commence October 1, 2000 or such later date as Canadian and U.S. Alliance commence service.

ProGas U.S.A. will purchase the gas to be sold to the markets off Alliance from ProGas Limited at a point on the U.S./Canada international boundary. ProGas U.S.A. and ProGas Limited

are parties to a natural gas agreement dated July 1, 1990, as amended July 2, 1990, which permits ProGas U.S.A. and ProGas Limited to enter into gas sales arrangements that are documented by schedules to the agreement. This agreement, as amended, is attached hereto as Exhibit "B".

ProGas Limited will ship the gas through Canada on the Canadian Alliance pipeline system to the point of interconnection between Canadian Alliance and U.S. Alliance at or near a point on the Canadian/U.S. international border. At the border, ProGas Limited will sell the gas to ProGas U.S.A. and ProGas U.S.A. will import the gas into the United States. ProGas U.S.A. will ship the gas from the border using capacity on the U.S. Alliance pipeline system.

IV. PUBLIC INTEREST

The Energy Policy Act provides that the importation of natural gas from a nation with which there is in effect a free trade agreement shall be deemed to be within the public interest, and that applications for such importation shall be granted without modification or delay.¹ Because ProGas U.S.A.'s application is for the importation of natural gas from Canada, a nation with which the United States has a free trade agreement, ProGas U.S.A. submits that its application is within the public interest.

V. REPORTING REQUIREMENTS

With respect to the imports made pursuant to the long-term authorization requested herein, within two weeks after deliveries begin under the long-term authorization, ProGas U.S.A. will notify the Office of Fuels Programs ("OFP") in writing of the date that the first import of natural gas

¹*Energy Policy Act of 1992, Title II - Natural Gas, Pub. L. No. 102-486 (1992).*

occurred. Additionally, ProGas U.S.A. will file with the OFP within thirty (30) days following each calendar quarter, a quarterly report showing by month the total volume imported and the average purchase price per MMBtu of gas paid at the international border. The price information for a particular month will include such information as OFE may require to be filed.

VI.
CONCLUSION

WHEREFORE, for the foregoing reasons, ProGas U.S.A. respectfully requests that the OFE expeditiously consider the instant application and pursuant to section 3 of the NGA, as amended by section 201 of the Energy Policy Act, grant the requested long-term import authorization. ProGas U.S.A. submits that a grant of such authorization would be consistent with the public interest.

Respectfully submitted:



Charles H. Shoneman, Esq.
Bracewell & Patterson, L.L.P.
Attorneys at Law
2000 K Street NW Ste 500
Washington, DC 20006-1872
Phone: (202) 828-5800

ATTORNEY FOR PROGAS U.S.A., INC.

April 9, 1999

106434.01

EXHIBIT "A"



ProGas U.S.A., Inc.

3300, 400 Third Avenue S.W.
Calgary, Alberta
Canada T2P 4H2
Telephone: (403) 296-0600
Telecopier: (403) 266-0354

April 1, 1999

Mr. John Glynn
U.S. Department of Energy
Office of Natural Gas and Petroleum Importing
1000 Independence Avenue S.W.
Room 3F056
Washington, DC 20001
U.S.A.

Dear Mr. Glynn:

Re: Application of ProGas U.S.A., Inc. for
Authorization to Import Natural Gas from Canada
FE Docket No. 99 - _____ - NG

As counsel for ProGas U.S.A. Inc., (the "Company"), in the above-referenced proceeding, I have reviewed the Certificate of Incorporation and Bylaws of the Company, and such other documents as I have deemed necessary in order to advise you that:

1. The Company is a corporation duly incorporated and validly existing in good standing under the laws of the State of Delaware, and has all requisite corporate power and authority to own and operate its properties and to carry on its business; and
2. The Company has the requisite corporate authority to import natural gas from Canada.

Yours truly,

ProGas U.S.A., Inc.

Michelle L. Voinorosky
Legal Counsel

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EXHIBIT "B"

THIS AMENDING AGREEMENT made as of the 2nd day of July, 1990

BETWEEN:

PROGAS LIMITED,
a body corporate, having an office in the
City of Calgary, in the Province of Alberta
(hereinafter referred to as "Seller")

- and -

PROGAS U.S.A. Inc.,
a Delaware corporation, having an office in the
City of Calgary, in the Province of Alberta
(hereinafter referred to as "Buyer")

WHEREAS, Seller and Buyer have entered into a Gas Purchase Contract made as of the 1st day of July, 1990 ("Gas Purchase Contract") and Seller and Buyer wish to amend certain provisions of Article IV of the Gas Purchase Contract;

In consideration of the covenant and agreements herein contained the parties hereto agree to as follows:

1. Section 4.01 of the Gas Purchase Contract shall be deleted and substituted with the following:

"(a) "Subject to the other provisions of this Article IV, Buyer shall pay Seller monthly during such period a unit price resulting from the total monthly gas sales revenue, expressed in United States dollars, received by Buyer from its customers, less the sum of the items listed in Sub-

Subsections (i) through (iii), with the difference divided by the total quantity of gas delivered by Seller to Buyer. The unit price as determined herein, shall hereinafter be referred to as the "netback price".

The items to be deducted are:

- (i) the monthly transportation charges of United States transporters applicable to Buyers' sales, in addition to any cost of pipeline fuel and losses, taxes on the use of fuel, the carrying cost of line pack in such systems, and other transportation related charges as they apply to the subject sales;
- (ii) Buyer's monthly cost of service which shall consist of:
 - (A) any general and administrative costs incurred directly by or allocated to Buyer as they apply to the subject sales;
 - (B) an amount determined by multiplying Seller's return on rate base for the month by a fraction, the numerator of which is the project of Buyer's accounts receivable times the average noon spot foreign exchange rate for the month, and the denominator of which is the sum of consolidated accounts receivable of Buyer and Seller plus the consolidated rate base of Buyer and Seller, all

divided by the average noon spot foreign exchange rate for the month;

(C) the tax adjustment factor;

(D) such adjustments to the amounts calculated in subparagraphs (ii)(A), (ii)(B), and (ii)(C) for previous months in the fiscal year as are necessary due to revisions, adjustments or charges determined subsequent to the month end; and

(iii) any taxes, levies, or charges prescribed by law, or any government body, in respect of the subject sales. To the extent that any new taxes are recoverable from Buyer's customers or are eligible for refund on the gas purchases hereunder from Canada, Buyer shall use its best efforts to recover such taxes, or apply for such refund, as the case may be, so as to minimize the effect of such new taxes on the netback price hereunder as far as reasonable possible.

(b) For purposes of determining the netback price, the following terms shall have the meanings set out below:

(i) "Seller's return on rate base for the month" shall be ProGas Limited's monthly allowable amount of return on regulated

activities, as approved by the Alberta Petroleum Marketing Commission;

- (ii) "Buyer's accounts receivable" shall be the sum of Buyer's accounts receivable determined as at the month end;
- (iii) "Consolidated accounts receivable of Buyer and Seller" shall be the sum of Buyer's accounts receivable determined as at the month end times the average noon spot foreign exchange rate for month and the Seller's accounts receivable associated with regulated natural gas marketing activities, excluding G.S.T. receivables, determined as at the month end;
- (iv) "Consolidated rate base of Buyer and Seller" shall be the sum of Buyer's rate base determined as at the month end times the average noon spot foreign exchange rate for the month and Seller's rate base determined as at the month end;
- (v) "Average noon spot foreign exchange rate" shall be the monthly average noon spot foreign exchange rate as quoted by the Bank of Canada; and
- (vi) "Tax adjustment factor" shall be the amount of United States taxes which Buyer is subject to on account of its regulated

activities within the U.S., divided by the result of one minus the Buyer's effective tax rate."

2. Lines 4 and 5 of Section 4.03 (c) shall be amended by substituting the words "main branch of the Canadian Imperial Bank of Calgary, Alberta" with "the main branch of the Bank of Montreal, Calgary, Alberta".
3. This Amending Agreement shall be effective as of July 1st, 1990.
4. The Gas Purchase Contract as herein amended is ratified and confirmed.

IN WITNESS WHEREOF this Amending Agreement has been executed by the duly authorized representatives of each of the parties hereto.

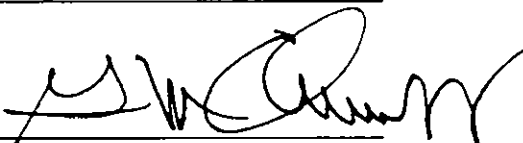
PROGAS LIMITED (Seller)

Per: 

Per: 

PROGAS U.S.A., Inc. (Buyer)

Per: 

Per: 

THIS GAS PURCHASE CONTRACT made as of the 1st day of July, 1990

BETWEEN:

PROGAS LIMITED,
a body corporate, having an office in the
City of Calgary, in the Province of Alberta
(hereinafter referred to as "Seller")

OF THE FIRST PART

- and -

PROGAS U.S.A. Inc.,
a Delaware corporation, having an office in the
City of Calgary, in the Province of Alberta
(hereinafter referred to as "Buyer")

OF THE SECOND PART

WHEREAS, Seller has contracted to purchase natural gas from producers in the Province of Alberta and desires to sell certain quantities of such gas on behalf of such producers on a firm or interruptible basis to buyers in the United States and Canada; and

WHEREAS, Buyer is a wholly-owned subsidiary of Seller incorporated for the purpose of increasing the ability of Seller to access natural gas markets in the United States; and

WHEREAS, it is anticipated that, from time to time, occasions may arise in which Seller can access interruptible gas markets in the United States by selling gas to Buyer for resale into such markets; and

MICROFILMED

WHEREAS, pursuant to the terms of this Agreement, Seller wishes to sell to Buyer and Buyer wishes to purchase from Seller volumes of gas on an interruptible basis as herein provided;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of the covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

QUANTITY

1.01 Subject to the conditions herein contained, Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, all on an interruptible basis, such volumes of natural gas as Buyer from time to time requests out of the volumes of gas made available by Seller, up to a daily volume of gas as agreed upon from time to time pursuant to Schedule "A" attached hereto. Neither Seller nor Buyer have any firm obligation to sell and deliver or purchase any specific minimum quantity of gas on any day or during any month.

ARTICLE II

POINT OF DELIVERY AND TITLE

2.01 The Point of Delivery for all gas delivered and purchased under this Agreement shall be as agreed upon from time to time pursuant to Schedule "A" attached hereto. Seller

shall be responsible for ensuring that all necessary Canadian regulatory authorizations are in effect to enable Seller to sell and deliver to Buyer the volumes hereunder. Buyer shall be responsible for ensuring that all necessary United States regulatory authorizations are in effect to enable Buyer to purchase and receive the volumes hereunder.

2.02 Possession of and title to all gas delivered hereunder shall pass from Seller to Buyer at the Point of Delivery. Until title to the gas is passed to Buyer, Seller shall be deemed to be in control and possession of, and be responsible for such gas, and thereafter Buyer shall be deemed to be in control and possession of, and be responsible for such gas.

2.03 Seller agrees to indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses, liabilities and expenses arising from or out of claims of any or all persons to said gas or other charges thereon which attach while title remains with Buyer.

ARTICLE III

QUALITY, PRESSURE, TEMPERATURE AND MEASUREMENT

3.01 The quality, pressure and temperature shall be of the quality, pressure and temperature standards utilized by the First Transporter (the initial pipeline transporting gas hereunder from Seller at the point of delivery). The gas to be delivered hereunder shall be measured at the Point of Delivery in compliance with the provisions contained in the First Transporter's tariff. The parties acknowledge that the standards respecting quality, pressure, temperature, measurement, corrections of metering errors and remedies respecting same set

by the First Transporter may change from time to time. In that event, the standards, as changed, shall be incorporated in this contract, as same become effective in the First Transporter's tariff.

ARTICLE IV

PRICE, BILLINGS AND PAYMENTS

4.01 Subject to the other provisions of this Article IV, Buyer shall pay Seller monthly during such period a unit price resulting from the total monthly gas sales revenue, expressed in United States dollars, received by Buyer from its customers, less the sum of the items listed in Sub-Subsections (i), (ii) and (iii) below, with the difference divided by the total quantity of gas delivered by Seller to Buyer. The unit price as determined herein, shall hereinafter be referred to as the "netback price".

The items to be deducted are:

- (i) the monthly transportation charges of United States transporters applicable to Buyers' sales, in addition to any cost of pipeline fuel and losses, taxes on the use of fuel, the carrying cost of line pack in such systems, and other transportation related charges as they apply to the subject sales; and
- (ii) Buyer's monthly cost of service which shall consist of any general and administrative costs incurred directly by Buyer; and

- (iii) any taxes, levies, or charges prescribed by law, or any government body, in respect of the subject sales. To the extent that any new taxes are recoverable from Buyer's customers or are eligible for refund on the export of gas purchases hereunder from Canada, Buyer shall use its best efforts to recover such taxes, or apply for such refund, as the case may be, so as to minimize the effect of such new taxes on the netback price hereunder as far as reasonably possible.

- 4.02 The monthly gas sales revenue received by Buyer from its customers shall be as a result of each of its sales arrangements downstream of the Point of Delivery. Each downstream sales arrangement shall be identified on the Schedule "A" attached hereto.

- 4.03 (a) On or before the twentieth (20th) day of each month following a month in which deliveries have been made pursuant to this Agreement, Seller shall render to Buyer a statement setting forth the quantity of gas delivered by Seller for the immediately preceding month, the heat content thereof and the amount payable by Buyer to Seller.

(b) Buyer shall make payment to Seller, according to the aforementioned invoice, in United States dollars, by wire transfer, to Seller's bank as designated by Seller from time to time. Buyer shall pay to Seller any amounts received by Buyer for gas sales to Buyer's customers, less the items specified in paragraph 4.01 (i), (ii), and (iii), within one (1) business day of Buyer's receipt of such payments.

- (c) Without prejudice to any remedies available to Seller for nonpayment of monies due hereunder, should Buyer fail to pay any amount due to Seller by the due date, then interest thereon shall accrue at an annual rate of interest equal to the U.S. Base Lending Rate then charged by the main branch of the Canadian Imperial Bank of Calgary, Alberta, plus one percent (1%) per annum from the due date until the date of payment.
- (d) Unless objected to by either party within one hundred and twenty (120) days after the receipt by Buyer of the said invoice, the said invoice shall be accepted by both parties as correct. In the event either party takes objection to the said invoice within the said one hundred and twenty (120) day period, any adjustment required as a result of the settlement of the matter or matters giving rise to such objection shall be made in the month next following the month in which such settlement is made. Any unresolved disputes shall be referred by the parties to arbitration, unless otherwise mutually agreed.

ARTICLE V

TERM OF AGREEMENT

5.01 The term of this Agreement shall be from July 1, 1990 to October 31, 1990, and shall continue on a month by month basis thereafter, unless terminated by either party upon thirty (30) days prior written notice.

ARTICLE VI

MISCELLANEOUS PROVISIONS

6.01 This Agreement shall be conditional on both parties receiving, and the continuing existence of, any authorizations required to permit the sale and delivery of the volumes of gas hereunder.

6.02 Seller shall not be obligated to deliver gas hereunder where such delivery would cause Seller to be in breach of any of the obligations of Seller to its firm customers.

6.03 Except with respect to the obligation to pay amounts due hereunder, failure of either party to perform any obligation herein imposed upon it shall be deemed not to be a breach of such obligation if performance thereof is rendered impossible by a cause, other than lack of funds or inability to pay money when due, beyond the control of the party so failing to perform.

6.04 This Agreement and the rights and obligations of the parties hereto are subject to all present and future laws, rules, regulations and orders of any legislative body or duly constituted authority now or hereafter having jurisdiction.

6.05 This Agreement and the rights and obligations of the parties hereto shall be interpreted and construed according to the laws of Alberta.

- 6.06 (a) Every notice, statement or bill provided for in this Agreement shall be in writing directed to the party to whom given, made or delivered at such party's address as follows:

Seller: ProGas Limited
4100, 400 Third Avenue S.W.
Calgary, Alberta
T2P 4H2

Telephone: (403) 266-0300
Telecopier: (403) 266-0354

Buyer: ProGas U.S.A., Inc.
4100, 400 Third Avenue S.W.
Calgary, Alberta
T2P 4H2

Telephone: (403) 266-0300
Telecopier: (403) 266-0354

- (b) All notices, statements or bills provided for herein shall be delivered in person or by telecopier or similar type of telecommunication, to the recipient party at its most recent address. Any such notice, statement, bill or other document delivered by hand or by telecommunication to the addressee shall be deemed to have been received at the time of delivery or at the time of transmission in the case of telecommunication, during normal office hours of the recipient party. All notices, statements, bills or other documents delivered by telecommunication shall be followed by delivery of same by mail.

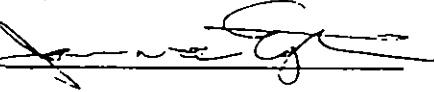
- (c) In the event that any such notices, statements or bills cannot be delivered by telecommunication then same shall be delivered by means of mail and same shall be deemed to have been received at the end of the third (3rd) business day after such notice has been deposited in a post office with requisite postage thereon, excluding Saturdays, Sundays and statutory holidays. Either party may change its address by giving notice to the other party.

6.07 This Agreement shall not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

IN WITNESS WHEREOF this Agreement has been executed by the duly authorized representatives of each of the parties hereto.


PROGAS LIMITED (Seller)

Per: 

Per: 

PROGAS U.S.A., Inc. (Buyer)

Per: 

Per: 

SCHEDULE "A"

Schedule "A" to the Agreement Between
ProGas U.S.A., Inc. and ProGas Limited
Dated the 1st day of July, 1990

<u>Term</u>	<u>Volume (Mcf/d)</u>	<u>Delivery Point</u>	<u>Special Terms and Conditions</u>
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Accepted and Agreed to this
___ day of _____, 1990.

Accepted and Agreed to this
___ day of _____, 1990.

PROGAS U.S.A., Inc.

PROGAS LIMITED

Per: _____

Per: _____

Per: _____

Per: _____

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

REG'D DOE/FE
1999 MAY -5 P 2:20

PROGAS U.S.A., INC.)
_____)

FE DOCKET NO. 99-26-NG

ORDER GRANTING LONG-TERM AUTHORIZATION
TO IMPORT NATURAL GAS FROM CANADA

DOE/FE ORDER NO. 1479

MAY 5, 1999

I. DESCRIPTION OF REQUEST

On April 4, 1999, ProGas U.S.A., Inc. (ProGas U.S.A.) filed an application with the Office of Fossil Energy of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA)^{1/} and DOE Delegation Order Nos. 0204-111 and 0204-127. ProGas requests authorization to import from Canada up to 65,000 thousand cubic feet of natural gas per day, plus gas required for fuel, shrinkage and line loss, for a 15 year period beginning on October 1, 2000, or such later date as Alliance Pipeline Limited Partnership (Canadian Alliance) and Alliance Pipeline L.P. (U.S. Alliance) commence service. ProGas U.S.A., a Delaware corporation with its principal place of business in Calgary, Alberta, is beneficially owned by ProGas Limited, a private corporation organized under the laws of the Province of Alberta, Canada.

Pursuant to the terms of a natural gas purchase contract dated July 1, 1990, as amended July 2, 1990, ProGas U.S.A. will purchase the natural gas to be imported from ProGas Limited under a netback arrangement, and resell the supplies directly to end-users and others in "first sale" transactions. ProGas U.S.A. states that the imported gas will enter the United States at the interconnection of Canadian Alliance and U.S. Alliance at or near a point on the United States/Canada border near Sherwood, North Dakota, for sale and delivery to markets off the U.S. Alliance pipeline system. The price of the natural gas sold off the U.S. Alliance pipeline system will be a market-based price negotiated at the time of the sale.

II. FINDING

The application filed by ProGas U.S.A. has been evaluated to determine if the proposed import arrangement meets the public interest requirements of section 3 of the NGA, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486). Under section 3(c), the

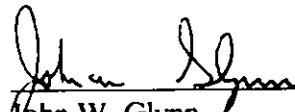
^{1/} 15 U.S.C. § 717b.

activity" for that calendar quarter must be filed. If imports have occurred, ProGas U.S.A. must report total monthly volumes in Mcf and the average purchase price of gas in U.S. dollars per MMBtu delivered at the international border, and paid to ProGas Limited. The monthly price information shall itemize separately the monthly demand and commodity charges, fuel charges, and, if applicable, reservation fees. ProGas shall provide, to the extent possible, a breakdown of the import volumes showing the amount sold in each State and to each of its customers.

D. The first quarterly report required by Ordering Paragraph C of this Order is due not later than January 30, 2001, and should cover the period from October 1, 2000, until the end of the fourth calendar quarter, December 31, 2000.

E. The notification and reports required by Ordering Paragraphs B and C of this Order shall be filed with the Office of Natural Gas & Petroleum Import & Export Activities, Fossil Energy, Room 3E-042, FE-34, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., 20585.

Issued in Washington, D.C., on May 5, 1999.



John W. Glynn
Manager, Natural Gas Regulations
Office of Natural Gas & Petroleum
Import & Export Activities
Office of Fossil Energy