

Report of the Committee on Natural Gas Rate and Accounting Regulations

The Committee's report highlights the important natural gas rate and accounting developments at the Federal Energy Regulatory Commission (FERC or Commission) and in the courts for 1986.

I. COMMISSION ACTION ON PIPELINE ISSUES

A. *Abandonment*

On February 28, 1986, in Opinion No. 245-A, the Commission reaffirmed its policy of granting limited-term abandonments to producers of shut-in gas.¹ Opinion No. 245 constituted the Commission's first application of its policy, signalled in Order No. 436, of authorizing releases of lower-priced, shut-in reserves, thereby increasing competitive pressure on higher price supplies.² On rehearing, the Commission rejected a number of challenges to Opinion No. 245, and (1) reaffirmed that it had properly looked beyond the impact on Transcontinental Gas Pipe Line Company (Transco) and its customers to consider the beneficial effects of the abandonment on the overall market; (2) dismissed as speculative arguments that the abandonment would increase Transco's take-or-pay liability; and (3) rejected various proposed conditions, including one which would have required the producers to allocate the gas among Transco's customers on a *pro rata* basis.

Relying on *Felmont*, the Commission in *Shell Western E&P, Inc.*³ deleted a price condition which it had applied to a pipeline's gas release program under an earlier 1984 settlement. In its orders approving the 1984 settlement, the Commission granted blanket, limited-term abandonment authorization to producers of shut-in gas dedicated to Williston Basin Interstate Pipeline Company. However, relying on its policy developed in pipeline Special Marketing Program (SMP) cases, the Commission conditioned its approval to exclude any gas subject to a maximum lawful price at or below the level prescribed by section 109 of the Natural Gas Policy Act (NGPA). The Commission in *Shell*, acting on a petition filed by one of Williston's suppliers, waived the section 109 condition because it ran counter to the current policy of encouraging development of a unified national gas market in which competitive conditions are the primary factor in the price and allocation of gas supplies. The Commission noted that waiver of the condition would enhance producer flexibility and make available more lower-cost gas. Similarly, in *Cities Service Oil and Gas Corp.*⁴ the Commission approved, over objections from the pipeline's

1. *Felmont Oil Corp. and Essex Offshore, Inc.*, 34 F.E.R.C. ¶ 61,296 (1986) [hereinafter Opinion No. 245-A].

2. *Felmont Oil Corp. and Essex Offshore, Inc.*, 33 F.E.R.C. ¶ 61,333 (1985) [hereinafter Opinion No. 245].

3. *Shell Western E&P, Inc.*, 34 F.E.R.C. ¶ 61,304 (1986).

4. *Cities Serv. Oil and Gas Corp.*, 34 F.E.R.C. ¶ 61,180 (1986).

customers, a producer's blanket, limited-term abandonment proposal without limitation as to the price category.

On March 28 and 31, in *Columbia Gas Transmission Corp.*⁵ and *Marathon Oil Co.*⁶ respectively, the Commission issued orders granting extensions, or in some cases, first-time approvals, of blanket, limited-term abandonment and sales authorizations for a period of at least one year beginning April 1, 1986. The two orders addressed thirty-one applications of producers, marketers and interstate pipelines, most of which sought to retain limited-term abandonment authority for spot sales scheduled to expire on March 31, 1986. In granting these requests, the Commission concluded that limited-term abandonment authority is consistent with the goals of Order No. 436, that it will provide important benefits during the transition to Order No. 436, and that any diminishment of the vitality of the spot market at that time would serve no useful purpose.

B. Accounting

On May 6, 1986, the Securities and Exchange Commission (SEC) unanimously rejected a FERC Staff proposal which would enable the majority of oil and gas producing companies using full cost accounting methods to avoid an immediate writedown of reserves, valued above current market levels, until at least the end of their fiscal years. The SEC rejected this Staff proposal and opted instead for a revised accounting rule which the Staff was asked to prepare and complete by mid-summer, 1987.

The Staff favored suspension of accounting rules which would result in a temporary aversion of the recording of significant losses in assets by some companies. This would have allowed producers, under certain circumstances, to use prices higher than prevailing market prices determined March 31, 1986, in calculating their reserves. The SEC decided against the suspension of current rules because no major price increase is expected.

C. Cash Working Capital Allowance

In *Jupiter Energy Corp.*,⁷ the Commission accepted for filing, suspended tariff sheets subject to refund and denied a request for hearing on a cash working capital allowance. The Commission noted that Jupiter's filing removed any issue of cash working capital by its election to eliminate the allowance from its rates instead of filing a lead-lag study in support of such allowance. The Commission, therefore, denied the company any cash working capital allowance relying upon its decision in *Texas Gas Transmission Corp.*⁸

D. Cost Allocation and Rate Design

In *Great Lakes Gas Transmission Co.*,⁹ the Commission decided the mer-

5. *Columbia Gas Transmission Corp.*, 34 F.E.R.C. ¶ 61,407 (1986).

6. *Marathon Oil Co.*, 34 F.E.R.C. ¶ 61,417 (1986).

7. *Jupiter Energy Corp.*, 36 F.E.R.C. ¶ 61,244 (1986).

8. *Texas Gas Transmission Corp.*, 31 F.E.R.C. ¶ 61,236 (1985).

9. *Great Lakes Gas Transmission Co.*, 34 F.E.R.C. ¶ 61,005 (1986).

its of issues remanded in *ANR Pipeline Co. v. FERC*.¹⁰ At issue was the proper allocation of costs to long-term transportation services rendered ANR by Great Lakes. In Opinion Nos. 179¹¹ and 179-A,¹² the Commission had affirmed an initial decision holding that ANR should bear an allocation of mainline system costs and the incremental costs of the facilities installed to render the particular transportation services. The United States Court of Appeals for the District of Columbia Circuit held that the record could sustain either a rolled-in allocation or an incremental allocation, but not both. On remand, the Commission found that the facilities and services for ANR were sufficiently integrated with the rest of the Great Lakes system, and that Great Lakes received sufficient operational benefits therefrom so as to make rolled-in allocation, and not incremental allocation, appropriate.

In Opinion No. 241-A, *Public Service Co. v. Colorado Interstate Gas Co.*,¹³ the Commission denied rehearing of Opinion No. 241,¹⁴ which held that Colorado Interstate Gas Company's (CIG) field sales should not be allocated costs associated with CIG's systemwide storage and transmission facilities because the field sales receive a benefit from such facilities only on isolated occasions. It was argued on rehearing that, but for the systemwide facilities, field sale customers would not be able to exercise their entitlement to systemwide supplies. The Commission disagreed, finding that while development of new supplies had extended the life of field supplies, such extension was not the primary purpose of the development. Since "cost allocation must bear some proximate, measurable relationship to cost incurrence," the ancillary benefit to field sales customers from the development did not warrant an allocation of systemwide storage and transmission costs.

On July 22, 1986, the FERC in *Tennessee Gas Pipeline Co.*,¹⁵ directed Tennessee Gas Pipeline Co. (Tennessee Gas) to adopt a modified fixed-variable (MFV) methodology for cost allocation and rate design, and to eliminate a 66 $\frac{2}{3}$ % monthly minimum commodity bill. The Commission found that this MFV method with a two-part demand charge properly reflects cost incurrence on Tennessee's system and properly recognizes the significance of both peak day requirements and annual requirements.

On December 19, 1986, the Commission addressed several issues dealing with ANR Pipeline's rate structure.¹⁶ The Commission affirmed the administrative law judge's (ALJ) decision and approved an MFV rate design, which the Commission stated aids marketability, achieves equity in the allocation of fixed costs and results in just, reasonable and non-discriminatory rates. The Commission also found that ANR customers should be allowed a one-time renomination of their annual contract quantity levels corresponding to usage

10. *ANR Pipeline Co. v. FERC*, 771 F.2d 507 (D.C. Cir. 1985).

11. *Great Lakes Gas Transmission Co.*, 24 F.E.R.C. ¶ 61,014 (1983) [hereinafter Opinion No. 179].

12. *Great Lakes Gas Transmission Co.*, 25 F.E.R.C. ¶ 61,319 (1983) [hereinafter Opinion No. 179-A].

13. *Public Serv. Co. v. Colorado Interstate Gas Co.*, 34 F.E.R.C. ¶ 61,069 (1986) [hereinafter Opinion No. 241-A].

14. *Public Serv. Co. v. Colorado Interstate Gas Co.*, 32 F.E.R.C. ¶ 61,250 (1985) [hereinafter Opinion No. 241].

15. *Tennessee Gas Pipeline Co.*, 36 F.E.R.C. ¶ 61,071 (1986).

16. *ANR Pipeline Co.*, 36 F.E.R.C. ¶ 61,263 (1986).

on ANR's system. Substantial overrun payments were required so as to prevent the undernomination of annual requirements.

On December 30, 1986, the Commission issued Opinion No. 260, *Transcontinental Gas Pipe Line Corp.*¹⁷ The Commission therein rejected the *Atlantic Seaboard* methodology used by the ALJ and adopted the modified fixed variable method of cost classification, allocation and rate design on the Transco system. Additionally, with respect to zone differentials the Commission affirmed the ALJ's application of an Mcf-mile method of allocation for the Transco system for all costs except A&G, transmission and compression of gas by others, and certain production area expenses, which are allocated on a volumetric basis.

E. Curtailment

In Opinion No. 248, *Transcontinental Gas Pipe Line Corp.*,¹⁸ issued on April 7, 1986, the Commission affirmed that portion of an Initial Decision which held that the Commission retains primary jurisdiction over breach of contract claims directly resulting from the Commission's curtailment rules, orders or plans and that any resulting liabilities are nullified by such rules, orders or plans. However, the Commission reversed that part of the Initial Decision in which the ALJ concluded that negligence claims in connection with curtailment damage suits constitute "collateral attacks" on Commission actions and should not be presented to the courts prior to Commission consideration. The Commission held that judicial consideration of legal claims based on negligence and fraud "do not constitute collateral attacks on any commission orders, nor are they barred by any Commission regulations, orders, tariffs, or by any provision of the Natural Gas Act." The Commission's decision arose out of a suit brought by operators of a South Carolina fertilizer plant claiming actual and punitive damages for disruption of the plant caused by Transco's natural gas delivery curtailments. After a jury trial, the operators were awarded damages for Transco's breach of its service agreement and negligence in failing to take reasonable steps to meet its contract obligations. Transco then petitioned the Commission to, among other things, institute a proceeding to address the causes of the gas shortage on Transco's system and to issue a declaratory order that any judicial award of damages for curtailment injuries would interfere with the Commission's jurisdiction and result in undue discrimination under the Natural Gas Act.

On June 16, 1986, requests for rehearing of Opinion No. 248 were denied in Opinion No. 248-A, *Transcontinental Gas Pipe Line Corp.*¹⁹ The Commission therein declined to adopt a uniform prudence standard for measuring pipeline curtailment practices, thus, rejecting the "good faith" standard urged by those requesting rehearing, as well as any other standard for determining

17. *Transcontinental Gas Pipe Line Corp.*, 37 F.E.R.C. ¶ 61,328 (1986) [hereinafter Opinion No. 260].

18. *Transcontinental Gas Pipe Line Corp.*, 35 F.E.R.C. ¶ 61,043 (1986) [hereinafter Opinion No. 248].

19. *Transcontinental Gas Pipe Line Corp.*, 35 F.E.R.C. ¶ 61,340 (1986) [hereinafter Opinion No. 248-A].

whether a pipeline should be held liable for civil damages as a result of curtailment. Instead, the Commission re-emphasized that claims of negligence or breach of contract are beyond its jurisdiction, and that suits seeking civil penalties under these causes of action are not collateral attacks on the underlying certificates.

F. Discounted Sales Rates

On June 3, 1986, the Commission approved a discount sales program while attaching conditions to distinguish the arrangement from previously denounced SMPs. In *Southern Natural Gas Co.*,²⁰ Southern Natural was given permission to offer discount rates to sales customers who had purchased volumes above certain threshold levels. The Commission, in order to avoid a parallel with SMPs, imposed conditions which permitted off-system producers to provide discount gas; imposed rates reflecting the weighted average commodity cost of gas on the system; and imposed nonarbitrary threshold purchase levels for determining eligibility for the discount.

In *El Paso Natural Gas Co.*,²¹ the Commission rejected a proposal which would have authorized El Paso to discount its sales rate to customers on a selective basis. El Paso's tariff already included provisions permitting the company to discount its sales rates (down to its variable cost component) to customers purchasing gas above specified volumetric thresholds, but El Paso was required to offer the same discount to every qualifying customer. In this proceeding, El Paso proposed to modify its tariff to give it the authority to adjust the thresholds on a customer-by-customer basis thereby permitting it to discount selectively among customers. However, the Commission concluded that the proposal could result in unjustified discrimination, therefore, it required El Paso to continue to offer discounts on a uniform basis to all customers. By contrast, in *United Gas Pipe Line Co.*,²² the Commission approved the extension of a discount program finding that, since the discount was available to all jurisdictional customers meeting pre-established volumetric thresholds, the program was not discriminatory.

On August 4, 1986, the Commission denied an application for a blanket certificate to establish a discount rate sales program because it found the program to be unduly discriminatory against existing customers.²³ The Commission found that, due to the flexible pricing mechanism under three rate schedules, higher prices could be charged to Western's existing customers who do not have access to other gas suppliers than to new customers. Moreover, the Commission found that a proposed seventy-five percent of the contract volumes threshold requirement for receiving the discount rate would discriminate against existing customers because they would have to increase their purchases to qualify.

20. *Southern Natural Gas Co.*, 35 F.E.R.C. ¶ 61,283 (1986).

21. *El Paso Natural Gas Co.*, 34 F.E.R.C. ¶ 61,316 (1986).

22. *United Gas Pipe Line Co.*, 34 F.E.R.C. ¶ 61,282 (1986).

23. *Western Gas Interstate Co.*, 36 F.E.R.C. ¶ 61,172 (1986).

G. *Enforcement*

On April 2, 1986, the Commission approved consent agreements between its enforcement staff and four producers (Amoco Production Co., Chevron Oil Corp., Placid Oil Co. and Gulf Oil Co.) concerning reimbursement to various pipelines for gas volumes lost during processing in plants owned by the four producers.²⁴ The four producers were among several respondents in a private investigation initiated in 1982 to determine whether pipelines were uncompensated for plant volume reductions due to shrinkage, use of gas as fuel, and other incidental losses in gas processing operations. The four consent agreements, among other things, specified civil penalties that, once paid, relieved the producers from further liabilities or claims connected with the investigation. The four parties had been reimbursing pipelines for plant loss volumes in cash, based on the price of the least expensive gas in the stream entering the processing plants instead of the weighted average price of all gas vintages included in the stream. The enforcement staff took the position that the producers' valuation of plant loss volumes at a price less than they received from the pipelines at the wellhead violated section 4 of the Natural Gas Act (NGA) and section 504 of the Natural Gas Policy Act (NGPA). The violations occurred because the volumes delivered to the pipelines at the plant tailgates after processing, cost the pipelines more than the maximum allowable price. None of the producers admitted or denied violations of the NGA or NGPA. All agreed to use, from then on, not less than the weighted average price of gas delivered by a purchaser before processing for purposes of reimbursing plant loss volumes.

On August 1, 1986, in *Champlin Petroleum Co.*,²⁵ the Commission denied a request for rehearing of its April 21, 1986, order approving a settlement between the enforcement staff and four natural gas producers calling for a refund of \$32,568.91 by each of the four settling parties to Colorado Interstate Gas Company (CIG), for flowthrough to CIG's jurisdictional customers. In its request for rehearing, Stauffer Chemical Co., which had entered into an intrastate contract with producers to purchase gas from certain acreage for which no abandonment authority had been received, argued it should receive the refunds instead of CIG's customers. The Commission reaffirmed its earlier decision that equitable principles support the conclusion that CIG's customers are the proper recipients of the refunds.

H. *Exchange Imbalances in PGA Filings*

In *Mid Louisiana Gas Co.*²⁶ and *United Gas Pipe Line Co.*,²⁷ the Commission established a new accounting methodology for concurrent exchange imbalances in Purchased Gas Adjustment (PGA) filings. The new methodology was designed to correct rate distortions that occur when exchanges are not balanced in a PGA period, resulting in sales volumes either greater or less

24. Various Producer-Owned Natural Gas Processing Plants, 35 F.E.R.C. ¶ 61,071 (1986).

25. *Champlin Petroleum Co.*, 36 F.E.R.C. ¶ 61,158 (1986).

26. *Mid Louisiana Gas Co.*, 34 F.E.R.C. ¶ 61,051 (1986).

27. *United Gas Pipe Line Co.*, 34 F.E.R.C. ¶ 61,052 (1986).

than purchase volumes. The new methodology assigns a proxy cost to monthly imbalances based on the pipeline's weighted average cost of gas.

I. Flexible PGA Filings

On March 28, 1986, the Commission issued orders in *Transwestern Pipeline Co.*²⁸ and *Florida Gas Transmission Co.*²⁹ allowing both pipelines to increase or decrease PGA rates on one day's notice, but not above the level shown in each company's immediately preceding semi-annual PGA filing. The orders require each pipeline (1) to insure that the adjustments will be used only to track "known and measurable" changes in gas costs and (2) to provide supporting information in subsequent PGA filings for underrecovered gas costs to the extent that they exceed three percent of their actual purchased gas costs during the six-month period. The Commission placed each pipeline at risk for any undercollections that may result from its failure to track known changes in gas costs that exceed the three percent margin. Because the Commission was concerned that the three percent margin may be too high, this three percent margin was limited to a one-year interim period, after which the Commission will review the margin to determine if that level should be revised in subsequent PGA filings.

On April 11, 1986, the Commission issued two orders, *Midwestern Gas Transmission Co.*³⁰ and *East Tennessee Natural Gas Co.*,³¹ authorizing implementation of flexible PGA procedures. The procedures allow the companies to adjust their gas rates at each company's own discretion in order to track "known and measurable costs." Any upward adjustment was limited, however, to the level shown in each company's immediately preceding semi-annual PGA filing. The Commission also ordered that each pipeline provide supporting information in a subsequent PGA filing for any underrecovered gas costs, to the extent such underrecoveries exceed three percent of actual purchased gas costs during the six-month period covered by the filing. This three percent margin will be reviewed by the Commission after a one-year interim period. Both companies are at risk for undercollections that may result from their failure to track known changes in their gas costs. Finally, the Commission denied both companies' requests to exclude minimum bill payments to their suppliers from their determination of actual gas costs. The Commission also made clear its intention to review requests for flexible PGA procedures on a case-by-case basis, rejecting a request by Natural Gas Pipeline Co. that the matter be handled on a generic basis.

On May 2, 1986, a flexible PGA was approved for *Tennessee Gas Pipeline Co.*³² and on April 25, 1986, for *Northwest Pipeline Corp.*³³ authorizing them to implement flexible PGA procedures and allowing them to adjust rates on either a one- or two-day notice to track "known and measurable" costs. Any

28. *Transwestern Pipeline Co.*, 34 F.E.R.C. ¶ 61,409 (1986).

29. *Florida Gas Transmission Co.*, 34 F.E.R.C. ¶ 61,406 (1986).

30. *Midwestern Gas Transmission Co.*, 35 F.E.R.C. ¶ 61,046 (1986).

31. *East Tenn. Natural Gas Co.*, 35 F.E.R.C. ¶ 61,047 (1986).

32. *Tennessee Gas Pipeline Co.*, 35 F.E.R.C. ¶ 61,148 (1986).

33. *Northwest Pipeline Corp.*, 35 F.E.R.C. ¶ 61,128 (1986).

upward adjustment by Tennessee Gas is limited to the level shown in the immediately preceeding filed semi-annual PGA. The pipelines are placed at risk for any undercollections resulting from poor tracking. Both pipelines were ordered to revise language to provide only for prospective rate changes. Waiver of filing fees for interim adjustments was denied for both pipelines.

On August 29, 1986, the Commission in *Trunkline Gas Co.*³⁴ accepted and suspended, subject to refund and conditions, tariff sheets filed in connection with Trunkline's annual PGA, reflecting a commodity charge decrease of 20.76 cents per Dth. Among the concerns expressed by the Commission in its order was that Trunkline's flexible PGA proposal, similar to proposals filed by Tennessee Gas and Northern Natural, requested greater flexibility within its established framework for PGAs and might lead to possible manipulation of the PGA mechanism. In order to reduce any improper use of the flexible PGA, the Commission imposed numerous conditions including: a requirement that the proposed adjustment only reflect known and measurable changes in gas costs; placing the company at risk for undercollections resulting from failure to reflect an adjustment; and denial of passthrough of undercollections exceeding three percent of actual gas cost during the PGA period, absent prior Commission approval. Moreover, the Commission noted that its approval of a three percent margin would not insulate Trunkline from scrutiny under the fraud and abuse standard of the NGPA or the prudence standard of the NGA. Additionally, the Commission required Trunkline to justify the three percent margin after one year, and directed the company to exclude storage activity from its actual cost of gas. The Commission also directed Trunkline to file revised rates and information concerning a special three-year Account No. 191 amortization of almost \$18 million in deferred account carrying charges.³⁵

J. Fees

In *Tennessee Gas Pipeline Co.*,³⁶ the Commission held that an application to amend a prior order to change the delivery point for previously certificated service would require the certificate application filing fee. The Commission distinguished between applications to amend certificates, which require the filing fee, and amendments to pending applications, of which only amendments that are "substantial" require the filing fee.

On August 4, 1986, the Commission denied rehearing in *Natural Gas Pipeline Co.*³⁷ of its prior determination that denied a waiver of filing fees applicable to general rate changes for NGPL's monthly filings under its Interruptible Optional Service (IOS) discount sales program. NGPL argued that the Commission erred in requiring it to pay the \$3,400 filing fee for pipeline tariff filings for general changes in rates for each monthly filing. NGPL

34. *Trunkline Gas Co.*, 36 F.E.R.C. ¶ 61,254 (1986).

35. See also *Panhandle E. Pipe Line Co.*, 36 F.E.R.C. ¶ 61,255 (1986); *Natural Gas Pipeline Co.*, 36 F.E.R.C. ¶ 61,236 (1986) (The Commission imposed similar conditions including the three percent margin for the same reasons as stated in *Trunkline*.).

36. *Tennessee Gas Pipeline Co.*, 34 F.E.R.C. ¶ 61,058 (1986).

37. *Natural Gas Pipeline Co.*, 36 F.E.R.C. ¶ 61,169 (1986).

asserted that: (1) such fee constituted a penalty since the IOS rates are discount rates at NGPL's expense; and (2) the monthly IOS filings do not receive the level of analysis of a general rate change and allow the Commission double compensation. The Commission rejected all of NGPL's arguments noting that pursuant to Order No. 361, each time an applicant files revised tariff sheets, it is considered a separate filing for purposes of the filing fee regulations. Further, NGPL made no showing to warrant an exemption based upon financial hardship.

On August 4, 1986, the Commission denied a request for waiver or clarification of filing fee rules regarding PGA filings in *West Texas Gas, Inc.*³⁸ West Texas argued that it was unfair for the Commission to charge an additional filing fee for a compliance filing made pursuant to a Commission directive related to a West Texas out-of-cycle PGA filing. In denying West Texas' request, the Commission noted that pursuant to Order No. 361 a fee applies to filings that track costs. Moreover, West Texas did not make any severe economic hardship showing to warrant a waiver. Further, the Commission stated that it consistently applied the fee to compliance filings.³⁹ Finally, the Commission rejected an argument that the Independent Offices Appropriation Act⁴⁰ precluded the fee because the Commission ordered the filing and, thus, the filing was not made to assist the beneficiary (the filing company) to comply with a statute. The Commission concluded that in analyzing the compliance filing it assisted West Texas in complying with the NGA. Moreover, it distinguished *Alabama-Tennessee* on the grounds that in that case the Commission's ministerial error resulted in the filing being made.⁴¹

K. Interim Authority

A "TF" prefix was created to be used for interim rate adjustments by an order issued May 7, 1986.⁴² This will apply only to those pipelines which have received approval to make interim rate adjustments.

L. Investment Tax Credit

On October 2, 1986, in *Ratemaking Treatment of Investment Tax Credits for Natural Gas Pipeline Companies*,⁴³ the FERC denied rehearing of Order No. 440 which revoked the Commission's 1972 determination of a gas supply shortage for purposes of section 46(f) of the Internal Revenue Code. This 1972 determination had permitted regulated natural gas pipelines to retain the full benefits of the investment tax credit for ratemaking purposes. By revoking

38. *West Texas Gas, Inc.*, 36 F.E.R.C. ¶ 61,170 (1986).

39. *See, e.g., Alabama-Tennessee Natural Gas Co.*, 29 F.E.R.C. ¶ 61,396 (1984).

40. 31 U.S.C.A. § 9701 (West Supp. 1987).

41. *See also Raton Gas Transmission Co.*, 36 F.E.R.C. ¶ 61,185 (1986) (The Commission followed similar reasoning to uphold a fee and also denied an offset to a cost decrease in the PGA filing for the fee amount.). *But see Great Lakes Transmission Co.*, 36 F.E.R.C. ¶ 61,210 (1986) (The Commission waived a fee due to a ministerial mistake.).

42. 36 F.E.R.C. ¶ 61,210 (1986).

43. Order No. 440-A, *Ratemaking Treatment of Investment Tax Credits for Natural Gas Pipeline Companies*, 37 F.E.R.C. ¶ 61,002 (1986).

its determination, the FERC forces pipelines to share these tax benefits with ratepayers.

M. Gathering Rates

On April 2, 1986, the Commission conditionally accepted tariff sheets, filed by Northwest Pipeline Corporation, establishing minimum and maximum gathering rates for all gathering areas served by Northwest's system.⁴⁴ The Commission agreed with Northwest's contention that additional pricing flexibility is needed to make presently connected gas more competitive with off-system spot supplies. Under the proposed tariff sheets, the minimum gathering rate would be the rate currently in effect (ranging from \$0.31 to \$0.50 per MMBtu), and the minimum rate would be \$0.10 per MMBtu in each gathering area. The discounted rate would be charged only when a need to do so was clearly demonstrated. The Commission's acceptance was conditioned upon submission of revised tariff sheets reflecting uniform rates to all similarly situated customers so that no undue discrimination between Northwest's customers could occur. On July 24, 1986, Northwest's request for rehearing was denied.⁴⁵ The Commission granted, however, Northwest's request for clarification and reiterated that the April 2 order permits Northwest to have flexible gathering rates but the company must provide uniform rate treatment to all customers within any one of Northwest's five gathering areas. "[I]f Northwest offers a discounted rate to one customer in a specific area, it must offer the same rate to all customers in that area."⁴⁶

N. Minimum Bills

On April 30, 1986, the Commission suspended, for five months, an \$88 million annual rate increase filed by Southern Natural Gas Co. (Southern) and rejected an alternate tariff filing which included a minimum commodity bill and resulted in a smaller rate increase of \$65 million.⁴⁷ Southern's proposed rates reflected the modified fixed-variable method of cost classification and rate design for the first time. The alternate tariff sheets included a minimum commodity bill reducing the requested increase by an estimated \$23 million. The proposal sought to establish a minimum purchase obligation to ninety-five percent of each customer's actual purchases from Southern (excluding interruptible purchases) during the five-year period of 1980-1984. The Commission rejected Southern's minimum commodity bill because it did not meet presently controlling tests. The Commission held that Southern did not need a minimum bill to recover fixed costs since all fixed costs other than return on equity and related taxes are recovered through demand rates under the MFV method. The Commission further held that the recent decline in total throughput on Southern's system was not significant enough to warrant imposition of a minimum bill, and that no direct correlation between the proposed

44. Northwest Pipeline Corp., 35 F.E.R.C. ¶ 61,019 (1986).

45. Northwest Pipeline Corp., 36 F.E.R.C. ¶ 61,118 (1986).

46. *Id.* at 61,287.

47. Southern Natural Gas Co., 35 F.E.R.C. ¶ 61,141 (1986).

minimum commodity bill and the carrying charges associated with Southern's take-or-pay liabilities had been proved. The Commission also pointed out that, given present spot market prices, there is no assurance that a minimum bill will guarantee purchase of minimum bill volumes.

On June 24, 1986, the Commission, in Order No. 380-E,⁴⁸ responded to the remand of the District of Columbia Circuit Court of Appeals in *Wisconsin Gas Co. v. FERC*.⁴⁹ On remand the Commission explained its policy of requiring downstream pipelines to treat minimum bills paid to upstream pipelines as purchased gas costs rather than recovering these payments through their own minimum bills. The Commission found that although minimum bill receipts represent a recovery of fixed costs by the upstream pipeline, minimum bill liabilities are denominated by volume and hence are variable costs to the downstream pipeline. Consequently, the Commission stated that there is no inconsistency in treating the variable costs associated with minimum bill payments in the same manner used to treat any other purchased gas cost.

On August 4, 1986, the Commission issued *Transwestern Pipeline Co.*, Opinion No. 238-A,⁵⁰ reaffirming its earlier opinion that the different minimum commodity bills imposed upon Transwestern's two partial requirements customers were unjust, unreasonable, and unduly discriminatory.⁵¹ Upon rehearing, the Commission first noted that undue discrimination is an unjustified difference in the treatment of similarly situated customers, and then found that Transwestern's two partial requirements customers were similarly situated, and that the difference in the minimum bills between such customers was not justified. Even though different contractual provisions constitute a relevant factor in determining whether such differences are justified, the Commission noted that choice of different contracts is only significant if both customers are offered the same provisions and one rejects them, the differences are temporary, or no harm is caused by the difference.⁵²

Second, the Commission rejected Transwestern's argument that if the two minimum bills were discriminatory, the Commission should not have eliminated them, but instead should have eradicated the discrimination by making both the same. The Commission noted that this would be true if they were merely unduly discriminatory; however, because they were also found to be unjust and unreasonable, the Commission rejected both minimum bill provisions. The Commission reiterated that Transwestern's minimum bill restrained trade and found that none of the economic factors which would justify such restraint were evidenced.⁵³

The Commission also eliminated Tennessee Gas Pipeline's 66 $\frac{2}{3}$ % monthly minimum commodity bill in *Tennessee Gas Pipeline Co.*, Opinion No.

48. Order No. 380-E, *Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions*, 35 F.E.R.C. ¶ 61,384 (1986).

49. *Wisconsin Gas Co. v. FERC*, 770 F.2d 1144 (D.C. Cir. 1985).

50. *Transwestern Pipeline Co.*, 36 F.E.R.C. ¶ 61,175 (1986) [hereinafter Opinion No. 238-A].

51. See *Transwestern Pipeline Co.*, 32 F.E.R.C. ¶ 61,009 (1985) [hereinafter Opinion No. 238].

52. Opinion No. 238-A, 36 F.E.R.C. at 61,436.

53. *Id.* at 61,442.

249.⁵⁴ The Commission affirmed the ALJ's finding that none of the three *Atlantic Seaboard* criteria were met.

On December 18, 1986, the Commission rejected ANR Pipeline's fixed-cost minimum bill, finding that it is not necessary under the approved modified fixed-variable rate design.⁵⁵ The Commission also stated that the fixed-cost minimum bill guarantees too large a percentage of fixed-cost recovery to ANR; has adverse anticompetitive effects on ANR's system; and unfairly discriminates against several customers by forcing them to shoulder a disproportionate share of fixed costs.

In Opinion No. 260, *Transcontinental Gas Pipeline Corp.*,⁵⁶ the Commission on December 30, 1986, rejected Transco's fixed-cost minimum bill. The Commission held that Transco's minimum commodity bills were not justified by any of the three *Atlantic Seaboard* criteria.

O. *New Sales Authority*

On June 3, 1986, the Commission rejected tandem settlements and dismissed an application for a blanket sales and transportation certificate for failure to comply with the requirements of section 7(c) of the NGA, or alternatively, the standards of Order No. 436. In *Algonquin Gas Transmission Co.*,⁵⁷ the applicant sought blanket, limited-term authority to provide interruptible transportation and sales service to unidentified customers. Given the failure to identify the recipients of the proposed service, the Commission found that the proposal did not meet the standards for consideration as a section 7(c) application. Similarly, the failure to identify customers rendered it impossible to determine whether the authorization would result in undue discrimination in contravention of Order No. 436. Although the discussion focused on the transportation aspects of the proposed service, the Commission found no practical distinction between the interruptible transportation and the interruptible spot sales proposals. As a consequence, the Commission dismissed both aspects of the application and rejected the underlying transportation and sales offers of settlement.

On October 21, 1986, in *Texas Gas Transmission Corp.*,⁵⁸ the FERC issued a certificate permitting Texas Gas to sell up to 50,885 MMBtu/day on a firm basis to Cincinnati Gas & Electric Co. The Commission determined that the proposal would provide Cincinnati Gas with a second major pipeline supplier and, therefore, would ensure it greater supply reliability as well as competitive prices. Columbia Gas Transmission Corp. is Cincinnati Gas' primary long-term pipeline supplier.

P. *Order No. 436 and Related Issues*

On June 23, 1987, the United States Court of Appeals for the District of

54. *Tennessee Gas Pipeline Co.*, 36 F.E.R.C. ¶ 61,071 (1986) [hereinafter Opinion No. 249].

55. *ANR Pipeline Co.*, 37 F.E.R.C. ¶ 61,263 (1986) [hereinafter Opinion No. 258].

56. *Transcontinental Gas Pipeline Corp.*, 37 F.E.R.C. ¶ 61,328 (1986) [hereinafter Opinion No. 260].

57. *Algonquin Gas Transmission Co.*, 35 F.E.R.C. ¶ 61,273 (1986).

58. *Texas Gas Transmission Corp.*, 37 F.E.R.C. ¶ 61,038 (1986).

Columbia Circuit in *Associated Gas Distributors v. FERC*⁵⁹ reversed and remanded the Commission's Order No. 436.⁶⁰ The court generally upheld the substance and procedures of Order No. 436 but vacated and remanded on certain issues, *i.e.*, the contract demand (CD) conversion and reduction provision, the lack of action on take-or-pay, and the grandfathering of certain transactions. The court found that there were only a few flaws, but because the components of Order No. 436 were so intertwined, the court vacated and remanded the entire order.

In Order No. 436, the Commission permitted firm sales customers of pipelines which have accepted the nondiscriminatory, open-access condition to reduce or convert to firm transportation their contract demand (CD) quantities by specified annual percentage amounts. Under Order No. 436-A,⁶¹ such CD reduction and conversion rights were triggered only if a pipeline, having initiated open-access transportation, continued to provide it after February 15, 1986. On February 14, 1986, the Commission postponed the CD reduction and conversion right trigger date to July 1, 1986.

On March 28, 1986, the Commission issued Order Nos. 436-C,⁶² 436-D,⁶³ and 436-E.⁶⁴ Those orders denied rehearing or reconsideration of Order Nos. 436-B,⁶⁵ 436-A, and 436. Order No. 436-C denied rehearing of Order No. 436-A and (1) reaffirmed the cumulative feature of the CD reduction/conversion option as being consistent with NGPA regulatory structure and permitting market forces to regulate the supply and demand of natural gas, (2) reaffirmed that a customer's "place in line" under the "first-come, first-served" concept is determined by the date the customer requests the service rather than the date the contract was executed, and (3) rejected a request to allow the establishment of tariff mechanisms enabling pipeline passthrough to customers of take-or-pay costs incurred as a result of contract reductions or conversions.

In Order No. 436-D, the Commission denied rehearing of Order No. 436-B which had extended the effective date of the CD reduction/conversion rights established in Order No. 436-B from February 15 to July 1, 1986. Finally, in Order No. 436-E, the Commission denied a petition by the state of Louisiana for reconsideration of the Order No. 436 "first-come, first-served" requirement for open-access transportation as it applies to intrastate pipelines. Louisiana had contended that service to local communities might suffer if the available capacity on intrastate pipelines was preempted by interstate shippers. The Commission noted that this issue had already been addressed in Order No. 436-A and made it clear that it did not intend to intrude on a state's

59. *Associated Gas Distrib. v. FERC*, 824 F.2d 981 (D.C. Cir. 1987).

60. Order No. 436, *Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol*, [1982-1985 Regs. Preambles] F.E.R.C. Stats. & Regs. ¶ 30,665, 50 Fed. Reg. 42,408 (1985).

61. Order No. 436-A, [1982-1985 Regs. Preambles] F.E.R.C. Stats. & Regs. ¶ 30,675 (1985).

62. Order No. 436-C, 34 F.E.R.C. ¶ 61,404 (1986).

63. Order No. 436-D, 34 F.E.R.C. ¶ 61,405 (1986).

64. Order No. 436-E, 34 F.E.R.C. ¶ 61,403 (1986).

65. Order No. 436-B, 34 F.E.R.C. ¶ 61,204 (1986).

discretion to regulate strictly intrastate transactions nor to impair intrastate pipelines' ability to provide reliable service to their intrastate customers.

On March 31, 1986, the Commission granted the Staff's interlocutory appeal from an ALJ decision and summarily dismissed a self-implementing transportation program proposed by Southern Natural Gas Co. (Southern) under terms that deviated from those set out in Order No. 436.⁶⁶ The transportation program contemplated by Southern's proposal deviated from Order No. 436 in several respects: (1) no provision for firm transportation; (2) the absence of CD reduction-conversion option for firm sales customers; (3) the imposition of a take-or-pay surcharge of 34 cents per MMBtu on shippers in situations where producers will not give the pipeline take-or-pay credit for volumes transported; (4) no cost-based, fully allocated rates; and (5) no provision for downwardly flexible or seasonally differentiated rates as required by Order No. 436. The Staff, noting that the Commission had recently conditioned approval of a Texas Gas rate settlement to preclude self-implementing transportation except under Order No. 436 conditions, contended that summary dismissal would save everyone from the unnecessary exercise of going through a hearing, but being told by the Commission that the transportation program must conform to Order No. 436. This position was adopted by the Commission.

On June 13, 1986, the Commission affirmed and expanded its earlier approval of the interpretation of "first-come, first-served" which was given in a settlement permitting Order No. 436 open-access transportation. In *Columbia Gulf Transmission Co.*,⁶⁷ the Commission denied rehearing of its March 28, 1986, order approving, with modifications, a settlement offer which allocated capacity on Columbia Gulf Transmission Co. (Columbia Gulf) for open-access transportation by customers of Columbia Gas Transmission.⁶⁸ While generally affirming the March 28th order, the June 13th order clarified that Columbia Gas could establish the queue for firm transportation based in part upon requests which predated the Commission's approval of the settlement. In making this clarification, the Commission reiterated its preference for using queues rather than pro rata allocations to implement the "first-come, first-served" standard for obtaining access to service.

On June 27, 1986, the Commission approved a settlement under which El Paso Natural Gas Co. (El Paso) would perform nondiscriminatory open-access transportation pursuant to Order No. 436.⁶⁹ The Commission therein resolved "many questions of first impression" regarding undue discrimination, unbundling transportation and sales services and rates, minimum and maximum transportation rates, reservation charges for firm transportation service, and rights to reduce firm sales entitlements or to convert those entitlements to firm transportation. The significance of the decision largely rests on the Commission's willingness to entertain and approve settlements which provide for

66. Southern Natural Gas Co., 34 F.E.R.C. ¶ 61,410 (1986).

67. Columbia Gulf Transmission Co., 35 F.E.R.C. ¶ 61,338 (1986).

68. Columbia Gas Transmission Corp., 34 F.E.R.C. ¶ 61,408 (1986).

69. El Paso Natural Gas Co., 35 F.E.R.C. ¶ 61,440 (1986).

open-access transportation but which do not meet every specification set out in Order No. 436.

On June 27, 1986, the Commission also granted the first of a series of waiver extensions allowing pipelines to continue or initiate new transportation pursuant to section 311 of the NGPA without exposing the transporters to the reduction and conversion rights contained in Order No. 436. In *Texas Eastern Transmission Corp.*,⁷⁰ the Commission established three tests for determining whether a pipeline was eligible for a waiver extension: (1) the pipeline had to demonstrate a willingness to participate in Order No. 436 by filing an Order No. 436 settlement or a blanket certificate application by June 25, 1986; (2) the pipeline had to be actually providing new section 311 service by June 25, 1986; and (3) the pipeline itself had to request the waiver extension. On the same day the Commission granted waiver extensions to eight other pipelines that met the *Texas Eastern* standards,⁷¹ and three days later yet another pipeline was given a waiver extension in *Consolidated Gas Transmission Corp.*⁷² In each of these cases the Commission delayed the date for exercising conversion and reduction rights from July 1, 1986, until the earlier of January 1, 1987, or thirty days after the Commission approved the pending settlements.

On August 1, 1986, the Commission issued an order granting clarification concerning a pipeline's right to withdraw from the Order No. 436 program.⁷³ The Commission agreed with ANR's request for clarification that the CD reduction/conversion requirement in section 284.10 no longer applies after a pipeline withdraws from the Order No. 436 program. The Commission, however, added that any CD reduction/conversion that took effect during the period that the pipeline operated under Order No. 436 would not be affected by the pipeline's withdrawal.

On August 4, 1986, in *ANR Pipeline Co.*,⁷⁴ the Commission issued an order accepting tariff sheets subject to refund and conditions and denying rehearing. The Commission accepted ANR's compliance filing which, consistent with a prior Commission order issued on June 27, 1986, eliminated a gathering area reservation charge and the gathering component of the firm commodity rate included in ANR's rate schedules for firm transportation under Order No. 436. The Commission reiterated that inclusion of the gathering area reservation charge was against long-standing Commission policy. However, the Commission noted that ANR was not required to remove the gathering component of the firm commodity rate and allowed ANR to refile to include the gathering component.

On August 5, 1986, in *Northwest Central Pipeline Corp.*,⁷⁵ the Commission denied rehearing of a prior order⁷⁶ and restated its policy on transporta-

70. *Texas E. Transmission Corp.*, 35 F.E.R.C. ¶ 61,405 (1986).

71. *United Gas Pipe Line Co.*, 35 F.E.R.C. ¶ 61,424 (1986).

72. *Consolidated Gas Transmission Corp.*, 35 F.E.R.C. ¶ 61,441 (1986).

73. *Order Granting Clarification*, 36 F.E.R.C. ¶ 61,149 (1986).

74. *ANR Pipeline Co.*, 36 F.E.R.C. ¶ 61,165 (1986).

75. *Northwest Cent. Pipeline Corp.*, 36 F.E.R.C. ¶ 61,181 (1986).

76. *Northwest Cent. Pipeline Corp. and Zenith Natural Gas Co.*, 34 F.E.R.C. ¶ 61,285 (1986).

tion rates. Such rates must be based upon the fully allocated, separately established cost of providing the service, and may not include costs, such as gathering and storage, that are not incurred.

In *Northwest Pipeline Corp.*,⁷⁷ issued August 8, 1986, the Commission issued its Order Denying Clarification and Rehearing and Accepting and Suspending Proposed Tariff Sheets Subject to Refund and Conditions. Northwest proposed interim rates for Order No. 436 transportation services to be performed during the "waiver period."⁷⁸ Northwest proposed alternative tariff sheets. The Commission rejected the primary tariff sheets, noting that section 284.7 precludes different maximum rates for the same transportation services and also prohibits different rates for new and transitional transportation. Instead, Order No. 436 provides that transportation services must be provided on the same basis for all shippers, under the same tariffs and conditions of service.

On October 3, 1986, the FERC issued a letter order accepting an uncontested settlement offer in *Valero Interstate Transmission Co.*,⁷⁹ which established the terms and conditions of Valero's non-discriminatory firm and interruptible transportation service under Order No. 436. The Commission ordered Valero to delete a "use-it-or-lose-it" provision for firm transportation. This provision would have permitted Valero to reduce the maximum transportation quantity of any shipper transporting less than a stated amount over a twelve-month period. The Commission, however, did not require Valero to remove a similar provision for interruptible transportation service.

On November 5, 1986, the Commission announced that it would no longer entertain requests for clarification of Order No. 436 unless the party makes a strong showing that a major element of the rule had been completely overlooked or that an immediate resolution of the problem posed was essential.⁸⁰ The Commission then dismissed, without prejudice, twelve remaining requests for clarification. The Commission said that in the future, parties could file a complaint or request a declaratory or interpretative order from the Office of the General Counsel, in lieu of a request for clarification of Order No. 436.

Q. Order No. 451

On June 6, 1986, the Commission issued Order No. 451.⁸¹ The order eliminated vintage-based pricing for old gas by establishing a maximum price at the highest current ceiling price for old gas. Under Order No. 451, producers can collect the ceiling price (which is equal to the price for post-1974 vintage gas) only to the extent permitted by their contracts. Even where a contract contains an indefinite price escalation clause, the producer must

77. *Northwest Pipeline Corp.*, 36 F.E.R.C. ¶ 61,214 (1986).

78. *See United Gas Pipe Line Co.*, 35 F.E.R.C. ¶ 61,424 (1986).

79. *Valero Interstate Transmission Co.*, 37 F.E.R.C. ¶ 61,004 (1986).

80. *Order Dismissing Petitions for Clarification and Motion to Require Filing*, 37 F.E.R.C. ¶ 61,090 (1986).

81. *Order No. 451, Ceiling Prices: Old Gas Pricing Structure*, III F.E.R.C. Stats. & Regs. ¶ 30,701, 51 Fed. Reg. 22,168 (1986).

undertake "good faith negotiation," as defined in the order, before collecting a higher price. Once a producer initiates renegotiation of any contract, the purchaser can expand the negotiations to include the price of any gas purchased under any other contracts with that producer, provided that the additional contracts at least in part cover old gas. In the event the parties cannot reach agreement on a renegotiated price, the purchaser is released from any further purchase obligations under the contracts and the producer is correspondingly authorized to abandon the sales. If the producer elects to abandon the ratio, the purchaser's customers are given a right of first refusal to obtain the released gas directly from the producer and to have such gas transported through the released pipeline pursuant to a blanket certificate issued under section 7 of the NGA.

On December 15, 1986, the Commission issued Order No. 451-A which granted partial rehearing and clarified Order No. 451. The revised order modified the regulations governing the rates charged by releasing pipelines for transportation of the gas in order to ensure that these rates are the same as those for comparable transportation under Order No. 436. The Commission also authorized upstream interstate pipelines that provided for the transportation of gas immediately prior to its release to continue transporting gas on behalf of any shipper. The Commission also clarified the mechanics and operation of the good faith negotiation rule in several respects and made a limited number of minor modifications in the regulations implementing the rule.

R. PGAs

On August 1, 1986, in *Panhandle Eastern Pipe Line Co.*,⁸² the Commission set forth the results of a technical conference concerning protests over Panhandle's PGA rate increase of approximately \$17.6 million semi-annually, to be effective March 1, 1986. First, the Commission employed the methodology it established in *United Gas Pipe Line Co.*⁸³ to determine whether a company has met an "at risk" condition, and found that Panhandle had met its "at risk" requirement. Second, the Commission determined that Panhandle's unusually low adjusted unit cost of its August 1985 gas purchases, of approximately 37 cents/Mcf, was the consequence of several acceptable factors based upon Commission regulations and that Panhandle's storage accounting practices were acceptable. The Commission noted: (a) the lack of any purchases of high-cost volumes from Trunkline; (b) the reduced cost of producer-supplier gas resulting from price renegotiations applied retroactively; and (c) the fact that under Panhandle's practice of accounting, the cost of injections to storage are subtracted from Panhandle's monthly purchases in calculating the unit cost of gas. Third, the Commission found that Panhandle's sales projections were reasonable, and that Panhandle's decision not to project cost savings resulting from ongoing contract renegotiations was within its discretion.

In *Northern Natural Gas Co.*,⁸⁴ Northern filed primary and alternative

82. *Panhandle E. Pipe Line Co.*, 36 F.E.R.C. ¶ 61,156 (1986).

83. *United Gas Pipe Line Co.*, 35 F.E.R.C. ¶ 61,247 (1986).

84. *Northern Natural Gas Co.*, 36 F.E.R.C. ¶ 61,228 (1986).

tariff sheets containing an out-of-cycle PGA adjustment reflecting the shifting of \$43,117,983 in purchased gas costs from the commodity portion of Northern's rates to the demand portion in order to reflect its costs from Canadian suppliers on an "as-billed" basis. As noted by the Commission, the main difference between the two sets of tariff sheets is that one reflected a two-part demand rate and the other reflected a one-part demand rate. The Commission accepted the one-part demand rate currently effective in Northern's rates, but without prejudice to filing a two-part demand rate if accepted by the Commission in conjunction with a settlement in Docket No. RP85-206.

On December 8, 1986, in *Natural Gas Pipeline Co.*,⁸⁵ the Commission addressed the question of whether a pipeline may flow through in its rates a proposed two-part demand/commodity rate on an as-billed basis in lieu of the previously employed one-part commodity rate. Pursuant to the as-billed principle, costs are classified to the pipeline's demand and commodity components in the same manner as the pipeline was billed and paid for then. The Commission concluded that "imported and domestic gas should be afforded the same treatment *vis-a-vis* the assignment of costs to the demand charge."⁸⁶ Accordingly, the Commission ordered Natural to recompute the demand charge to exclude certain items including production and gathering and take-or-pay carrying charges, and all fixed costs associated with return on equity and related taxes. The Commission concluded that the above measures would carry out the policy that Canadian imports be treated no differently from American supplies.

S. Pipeline Marketing Affiliates

On November 14, 1986, the Commission issued a Notice of Inquiry (NOI) addressing the relationship between interstate pipelines and their marketing affiliates. The NOI requested information about numerous instances of alleged undue discrimination by interstate pipelines, in favor of their marketing affiliates, including access to inside information, favorable transportation rates, and preferential capacity allocations. In addition, it requested comments on possible remedies if such allegations were substantiated. These remedies included mandatory divestiture or merger of the affiliate into the pipeline; FERC regulation of such marketing affiliates; and reliance on market forces, perhaps with additional reporting requirements, to prevent potential abuses of the pipeline-marketing affiliate relationship.

These and similar issues had also been raised in numerous other cases involving specific pipelines (*Panhandle Eastern Pipe Line Co.*, CP86-584; *Mountain Fuel Resources, Inc.*, RP86-87; *ANR Pipeline Co.*, RP86-105; and *Northern Natural Gas Co.*, RP82-71). The Commission stated in the NOI that it would proceed in all cases still pending, except in the mammoth *Tenngasco* proceeding (CI86-168), which had become the "lead" case involving marketing affiliates. The Commission specifically stayed the *Tenngasco* proceeding.

85. *Natural Gas Pipeline Co.*, 37 F.E.R.C. ¶ 61,125 (1986).

86. *Id.* at 61,544.

T. Pipeline Purchasing Practices

On December 10, 1986, the FERC dismissed a complaint by Tennessee Gas against a number of producers who had filed suit in federal and state courts against Tennessee Gas for breach of contract and other related actions.⁸⁷ The contract suits were initiated respecting implementation by Tennessee Gas of an Emergency Gas Purchase Policy (EGPP). The Commission dismissed the complaint primarily because the Commission's jurisdiction and expertise on contract interpretation are limited. Tennessee Gas was found to be requesting two types of relief: (1) an endorsement of the EGPP as a prudent purchasing practice; and (2) a declaration by the Commission that the EGPP is just and reasonable under the NGA. The Commission rejected both of these requests for relief on policy grounds and stated that it has only deferred to the courts the resolution of the *contractual* disputes between Tennessee Gas and its suppliers, which disputes are properly the court's responsibility.

U. Settlement Policy

In *Texas Eastern Transmission Corp.*,⁸⁸ the Commission rejected a proposed cost-of-service settlement that was supported by numerous intervenors and opposed by the Commission Staff and three intervenors. The Commission held that in the absence of underlying cost-of-service record evidence in support of the proposed settlement rates, there were material issues of fact in dispute that went to the heart of the settlement, and, therefore approval of the settlement was impossible.

V. Suspension Period

In *Texas Eastern Transmission Corp.*,⁸⁹ the Commission denied rehearing of its prior order⁹⁰ suspending a general rate case filing for one day, on grounds that the proposed rates were less than currently effective rates. The Commission rejected the rehearing argument, stating that since the new rates were greater than proposed settlement rates, a five-month suspension period should be imposed, citing its concurrent rejection of that settlement.

II. COURT ACTION ON PIPELINE ISSUES

A. Abandonment

In *Panhandle Eastern Pipe Line Co. v. FERC*,⁹¹ the Court reversed and remanded a FERC determination that Mississippi River Transmission Corp. was not required to seek Commission approval prior to its abandonment of gas purchases from Trunkline Gas. The Court reasoned that the Commission's

87. *Tennessee Gas Pipeline Co. v. Pan-Canadian Petroleum Co.*, 37 F.E.R.C. ¶ 61,236 (1986).

88. *Texas E. Transmission Corp.*, 34 F.E.R.C. ¶ 61,048 (1986).

89. *Texas E. Transmission Corp.*, 34 F.E.R.C. ¶ 61,053 (1986).

90. *Texas E. Transmission Corp.*, 32 F.E.R.C. ¶ 61,315 (1985).

91. *Panhandle E. Pipe Line Co. v. FERC*, 803 F.2d 726 (D.C. Cir. 1986).

decision that it did not have jurisdiction was not reasonable since the cessation of purchases clearly requires abandonment under the Natural Gas Act.

On December 4, 1986, the Fifth Circuit in *Valero Interstate Transmission Co. v. FERC*⁹² similarly stated that an interstate pipeline company's abandonment of purchases requires NGA section 7(b) authority. The court held that the cessation of purchases by Transco of gas in this instance fit within the NGA meaning of "any service" under section 7(b).

On March 11, 1986, the D.C. Circuit in *Northern Natural Gas Co. v. FERC*⁹³ vacated and remanded to the Commission an order that denied Northern Natural's request to retroactively approve reductions in contract demand volumes transported by Panhandle Eastern Pipeline Co. (Panhandle) and Trunkline Gas Co. (Trunkline). The contracts between Northern Natural and Panhandle and Trunkline permitted Northern Natural unilaterally, upon six months notice, to reduce the daily contract demand quantity after five years of service. Although Northern Natural had given such notice, Panhandle insisted upon a formal contract amendment which caused some delays. Furthermore, Panhandle's initial tariff filing was rejected by the Commission on the grounds that the amendments involved an abandonment of service and had to be approved under section 7(b) of the NGA. The Commission authorized the reductions but did so effective on the date of its order, rather than the requested dates. In response to a request for rehearing, the Commission further declared that section 7(b) did not provide for retroactive abandonment authorizations. The D.C. Circuit, however, after noting that the Commission's two orders were "remarkable for their incoherence," vacated and remanded the orders to the Commission, holding that the Commission had statutory authority to grant retroactive abandonment authorization pursuant to section 16 of the NGA and that such authority was not barred by section 7(b) of the NGA. The Court also found that the Commission had abused its discretion by failing to grant retroactive relief to Northern Natural in this case.

B. Civil Liability Under Take-or-Pay

On June 6, 1986, the Fifth Circuit added another decision to the growing list of take-or-pay opinions unfavorable to pipeline purchasers. In *PGC Pipeline v. Louisiana Intrastate Gas*,⁹⁴ the Court affirmed a partial summary judgment in favor of producer PGC for money damages arising from Louisiana Intrastate Gas' (LIG) failure to take or pay for gas under a purchase contract. The Fifth Circuit reversed the lower court only to the extent that the opinion below removed LIG's option to take or pay for future deliveries under the contract.

On June 10, 1986, the Louisiana Civil District Court for the parish of New Orleans rejected a force majeure defense and granted a preliminary injunction to prohibit a pipeline from taking less than the minimum contract

92. *Valero Interstate Transmission Co. v. FERC*, 804 F.2d 1406 (5th Cir. 1986).

93. *Northern Natural Gas Co. v. FERC*, 785 F.2d 338 (D.C. Cir. 1986).

94. *PGC Pipeline v. Louisiana Interstate Gas*, 791 F.2d 338 (5th Cir. 1986).

quantity of gas.⁹⁵ Similar injunctive relief was granted by the same court eight days later in *Pogo Producing Co. v. United Gas Pipe Line Co.*⁹⁶ In each case the producer plaintiff successfully maintained that the purchaser's continued failure to take the minimum contract quantity of gas would cause irreparable harm.

On June 17, 1986, a federal district court withdrew referral of take-or-pay issues to the Commission and prepared to hear the case on its merits. The court superceded its earlier decision referring take-or-pay issues to the Commission for preliminary resolution.⁹⁷ The court cited prolonged inaction by the Commission as the primary factor favoring withdrawal of the referral.

C. Cost Allocation and Rate Design

In *Northern Indiana Public Service Co. v. FERC*,⁹⁸ the court substantially affirmed Commission orders instituting a modified fixed-variable rate design for the Natural Gas Pipeline Company system. Substantial evidence existed for allocating half the demand costs on the basis of daily entitlements and half on the basis of annual entitlements. Reducing commodity charges without substantially increasing the burden on low-load factor customers was found to be a proper exercise of Commission discretion. However, the court remanded to the Commission for investigation of allegedly abusive undernominations of entitlements, finding that incentives existed for undernomination and that the Commission gave an inadequate rationale for not investigating potential abuses.

On July 15, 1986, the U.S. Court of Appeals for the D.C. Circuit reversed and remanded FERC Opinion No. 227-A,⁹⁹ declaring that the FERC Staff failed to meet its burden of proof that Sea Robin Pipeline Co. (Sea Robin) charged an unjust and unreasonable rate to Gulf Oil Corp.¹⁰⁰ The court also reversed and remanded a FERC order involving a subsequent Sea Robin filing¹⁰¹ which proposed an overall rate decrease but continued the company's previous practice for calculating the Gulf rate. Sea Robin was ordered by the Commission to file revised rates reflecting the cost allocation methodology required by Opinion No. 227-A.

D. Filing Fees

In *Phillips Petroleum Co. v. FERC*,¹⁰² the Tenth Circuit affirmed FERC Order Nos. 360, 361, 394, and 395 that established fees at a level to reimburse the Commission for the cost of providing various services to both producers

95. *Amoco Prod. Co. v. United Gas Pipe Line Co.*, No. 86-7425 (La. Civ. Dist.—New Orleans, June 10, 1986).

96. *Pogo Producing Co. v. United Gas Pipe Line Co.*, No. 86-7627 (La. Civ. Dist.—New Orleans, June 18, 1986).

97. *Post v. Perry Gas Transmission*, 616 F. Supp. 1 (N.D. Tex. 1983).

98. *Northern Ind. Pub. Serv. Co. v. FERC*, 782 F.2d 730 (7th Cir. 1986).

99. *Sea Robin Pipeline Co.*, 31 F.E.R.C. ¶ 61,188 (1985) [hereinafter Opinion No. 227-A].

100. *Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182 (D.C. Cir. 1986).

101. *Sea Robin Pipeline Co.*, 32 F.E.R.C. ¶ 61,119 (1985).

102. *Phillips Petroleum Co. v. FERC*, 786 F.2d 370 (10th Cir. 1986), *cert. denied*, 107 S. Ct. 92 (1987).

and pipelines. Rejecting the petitioners' argument that the filings covered by the Commission's orders under the NGA and NGPA provided special benefits to the public at large, rather than to the regulated entities, the court held that the Commission has authority to recover the full cost of providing services to identifiable beneficiaries under the Independent Offices Appropriation Act, even though the public at large may also benefit from these services. The court also held that the Commission did not act arbitrarily or capriciously in establishing the filing fees at the amounts established in the orders.

E. GRI Charges

On May 9, 1986, the District of Columbia Court of Appeals vacated a rule adopted by the Public Service Commission of the District of Columbia which prevented utilities from fully recovering Gas Research Institute (GRI) surcharges. In *Washington Gas Light Co. v. Public Service Commission*,¹⁰³ the court overturned a rule setting a "policy and presumption" that only twenty-five percent of the cost associated with GRI directly or indirectly benefitted District of Columbia ratepayers. The court referred to an unpublished 1982 opinion which established GRI surcharges as reasonable operating expenses, and held that such reasonable operating expenses must be passed through to ratepayers in their entirety.

F. Minimum Bills

On May 19, 1986, the Tenth Circuit determined that the Commission may retroactively modify a minimum bill provision under section 4 of the NGA, even though the pipeline did not propose to modify that provision when it made its section 4 filing.¹⁰⁴ The Commission had ordered CIG to modify its minimum bill provision retroactive to the date the filed rates became effective. In response to CIG's appeal, the court held that by filing a rate increase the pipeline assumed the burden of justifying its entire rate structure, including any integral provisions of the rate structure which it does not seek to change. This exposure, combined with the Commission's section 4 authority to order refunds, justified the Commission's retroactive modification of any integral provisions of CIG's rate structure. The court noted that both the ALJ and the Commission found CIG's minimum bill to be an integral provision, and the court found substantial evidence to support that conclusion. The court observed that the parties had executed a new agreement with the old minimum bill provisions and had applied for and received a section 7 certificate to perform service according to the new agreement. The court found that while the certification of the service with the offending minimum bill was based on whether the agreement was required by the public convenience and necessity, this ruling did not obviate the section 4 question of whether the rates resulting from the minimum bill were just and reasonable. As a consequence, the sec-

103. *Washington Gas Light Co. v. Public Serv. Comm'n*, 508 A.2d 930 (D.C. 1986).

104. *Colorado Interstate Gas Co. v. FERC*, 791 F.2d 803 (10th Cir. 1986), *cert. denied*, 107 S. Ct. 907 (1987).

tion 7 proceeding was held to have no bearing on the Commission's ruling in the section 4 proceeding.

G. Order No. 451

On August 19, 1986, the Eighth Circuit denied KN Energy's petition for a writ of prohibition or mandamus ordering the FERC to vacate order No. 451.¹⁰⁵ The court observed that the requests for rehearing of the order were still pending before the Commission and that KN failed to demonstrate any immediate irreparable harm. Thus, the normal administrative and judicial review process were adequate to protect KN's interest.

H. Pipeline Purchasing Practices

In *Office of Consumers' Counsel v. FERC*,¹⁰⁶ the court reviewed and partially rejected the Commission's interpretation of the phrase "fraud, abuse, and similar grounds" set forth in section 601(c)(2) of the NGPA. Under this provision, the Commission may disallow recovery by a pipeline of amounts paid in first sales, which are otherwise subject to "guaranteed passthrough," to the extent the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds.

In a proceeding to consider objections to a purchased gas cost rate filing by Columbia Gas Transmission Corp., the Commission adopted a two-part test for determining the existence of abuse: (1) "circumstances where a pipeline's gas acquisition policies and practices evidence a reckless disregard of a pipeline's fundamental duty to provide services at the lowest reasonable cost and (2) such policies have significant, adverse consequences."¹⁰⁷ On review, the court held that the first prong of the test was "well within the range of reasonable interpretations of the term."¹⁰⁸ The court rejected the second prong, however, on the ground that it added a factor ("significant, adverse consequences") not authorized by the statute. The court then went on to consider the Commission's decision respecting numerous substantive challenges to Columbia's purchasing practices. These challenges included claims that Columbia improperly failed to consider competition from No. 6 fuel oil, that the company purchased excessive quantities of section 107 gas, that it improperly acceded to various onerous contract terms and that Columbia's cut-back policies were imprudent or abusive. In general, the court affirmed the Commission's finding that some of the challenged practices were imprudent and abusive but held that the Commission lacked substantial evidence to exonerate Columbia from certain other claims. Finally, the court rejected the Commission's proposed remedy—adoption of a contested rate settlement submitted in another unrelated proceeding covering a different time period—because the settlement expressly reserved for Commission decision the very matters at issue in the PGA proceeding. The court accordingly remanded the entire case

105. *In re KN Energy*, No. 86-1806 (8th Cir. Aug. 19, 1986).

106. *Office of Consumers' Counsel v. FERC*, 783 F.2d 206 (D.C. Cir. 1986).

107. *Columbia Gas Transmission Corp.*, 26 F.E.R.C. ¶ 61,034, at 61,100 (1984).

108. *Consumers' Counsel*, 783 F.2d at 212.

to the Commission for reconsideration of the abuse standard and reevaluation of Columbia's challenged conduct in light of the revised test of abuse.

I. Pipeline Tariff Provisions

In *Southern Natural Gas Co. v. FERC*,¹⁰⁹ the court affirmed Opinion Nos. 222,¹¹⁰ and 222-A,¹¹¹ which held that Southern Energy Co., petitioner's subsidiary, should have invoked the minimum bill provision in its tariff shortly after Algerian liquefied natural gas deliveries ceased, rather than two years later. The minimum bill took effect when Southern Energy was "unable to deliver gas." The court agreed with the Commission that delivery by Southern Energy of minimal boil-off volumes did not forestall the minimum bill, as the intent of the minimum bill had been to apportion risk between shareholders and ratepayers. Forestalling the minimum bill by delivering minimal volumes was inconsistent with that intent.

J. RICO

On August 15, 1986, the U.S. District Court for the Eastern District of Louisiana held in *Louisiana Power & Light Co. v. United Gas Pipeline Co.*¹¹² (United Gas) violated the Racketeer Influenced and Corrupt Organizations Act (RICO).¹¹³ The court ruled that United Gas was liable for overcharges on natural gas sales pursuant to a contract with Louisiana Power & Light Co. (LP&L) during the curtailment period. The violation of RICO was based fundamentally upon the fact that United Gas ignored a Fifth Circuit decision in *Mississippi Power & Light v. United Gas Pipe Line*,¹¹⁴ which found that United Gas should be enjoined from purchasing gas priced above the weighted average purchase price of gas under an analogous contract with LP&L. The court ordered treble damages because the actions amounted to a series of ongoing criminal episodes in violation of RICO.

K. Take-or-Pay Provisions

In *United States v. Great Plains Gasification Associates*,¹¹⁵ the court held on plaintiffs' motion for summary judgment that gas purchase and transportation agreements regarding the sale of synthetic gas from the Great Plains Coal Gasification plant were enforceable. Rejected defenses included the claim of mutual mistake of the parties as to future economic conditions.

L. Treatment of Expenditures in Abandoned Coal Gasification Project

On March 7, 1986, the Fifth Circuit in *Transwestern Pipeline Co. v.*

109. *Southern Natural Gas Co. v. FERC*, 780 F.2d 1552 (11th Cir. 1986).

110. *Southern Natural Gas Co.*, 27 F.E.R.C. ¶ 61,322 (1984) [hereinafter Opinion No. 222].

111. *Southern Natural Gas Co.*, 28 F.E.R.C. ¶ 61,240 (1984) [hereinafter Opinion No. 222-A].

112. *Louisiana Power & Light Co. v. United Gas Pipe Line Co.*, 642 F. Supp. 781 (E.D. La. 1986).

113. RICO, 18 U.S.C. §§ 1961-1968 (1982).

114. *Mississippi Power & Light v. United Gas Pipe Line*, 760 F.2d 618 (1985).

115. *United States v. Great Plains Gasification Assocs.*, No. A1-85-237 (D.N.D. Jan. 14, 1986).

*FERC*¹¹⁶ affirmed a Commission order denying a request by Transwestern to amortize \$13.7 million of expenditures incurred in connection with an abandoned coal gasification project on Navajo lands in northwestern New Mexico. The Commission had initially denied the amortization request based on the affirmance of Opinion No. 218 (which disallowed recovery by Natural Gas Pipeline Co. of costs associated with three unsuccessful gas supply projects) by the D.C. Circuit.¹¹⁷ On appeal to the Fifth Circuit, Transwestern argued that the Commission's decision was both confiscatory (in that it did not allow a public utility to recover all reasonable and prudent expenses) and arbitrary and discriminatory (in that a natural gas company was treated differently from electric utilities). Transwestern also relied upon the certificate that it had received prior to commencing the project. The Fifth Circuit, however, finding that Transwestern understood that the Commission placed the risk of non-completion on the project participants and that Transwestern accepted the risk as part of the downside of a project for which it was to earn a fifteen percent rate of return, concluded that Transwestern was barred from recovery of the costs involved by the terms of the certificate authorizing the project.

III. COURT ACTION ON NGPA ISSUES

A. Pipeline-Owned Production

In *Kentucky-West Virginia Gas Co. v. FERC*¹¹⁸ and *Mid Louisiana Gas Co. v. FERC*,¹¹⁹ the court held that cost-of-service settlements silent on the pricing of pipeline-owned production did not preclude the pipelines from retroactive collection of NGPA maximum lawful prices in the wake of *Public Service Commission v. Mid Louisiana Gas Co.*¹²⁰

B. Pricing

On June 13, 1986, the D.C. Circuit remanded regulations promulgated by the Commission pursuant to section 104 of the NGPA, because those regulations were premised solely upon an incorrect interpretation of U.S. Supreme Court precedent. In *Phillips Petroleum Co. v. FERC*,¹²¹ Phillips challenged regulations equating the section 104 ceiling price for independently produced gas with that for gas produced by pipelines or their affiliates. The Commission claimed that such parity was mandated by the U.S. Supreme Court's opinion in *Mid Louisiana*.¹²² The *Phillips* court found that the *Mid Louisiana* case did not mandate parity, and, in the absence of any other rationale for the regulations, the court remanded the proceedings to the Commission so that it could reconsider its interpretation of section 104.

On May 19, 1986, the U.S. Supreme Court refused to review the Fifth

116. *Transwestern Pipeline Co. v. FERC*, 784 F.2d 609 (5th Cir. 1986).

117. *Natural Gas Pipeline Co. v. FERC*, 765 F.2d 1155 (D.C. Cir. 1985).

118. *Kentucky W. Va. Gas Co. v. FERC*, 780 F.2d 1231 (5th Cir. 1986).

119. *Mid Louisiana Gas Co. v. FERC*, 780 F.2d 1238 (5th Cir. 1986).

120. *Public Serv. Comm'n v. Mid Louisiana Gas Co.*, 463 U.S. 319 (1983).

121. *Phillips Petroleum Co. v. FERC*, 792 F.2d 1165 (D.C. Cir. 1986).

122. *Mid Louisiana*, 463 U.S. 319 (1983).

Circuit decision in *Texas Eastern Transmission Corp. v. FERC*,¹²³ upholding a FERC declaratory order. The Fifth Circuit stated that maximum lawful prices under Title I of the NGPA do not include the value received by producers in the form of pipeline transportation of producer-owned liquids or liquefiable hydrocarbons. The Commission's declaratory order described the Title I controversy as a "close question," but found with regard to statutory intent that Congress had enacted Title I in the context of prevailing practices under the NGA regarding transportation and consideration of removed substances. Serious administrative and policy considerations were also emphasized by the Commission if the price for the removed substances were construed to be other than monetary. The court sustained the order because of the Commission's long-standing policy of prohibiting pipelines from allocating the costs of transportation of these removed substances to the consumers in rate proceedings.

On August 21, 1986, the U.S. District Court for the District of Colorado granted Northwest Central Pipeline Corporation's motion in *Northwest Central Pipeline Corp. v. Mesa Petroleum Co.*¹²⁴ for partial summary judgment in a dispute involving the NGPA pricing category of 114 wells from which Northwest Central purchased gas. In this case, the producers-defendants argued that the wells qualified as section 107 gas under a determination by the Colorado Oil and Gas Conservation Commission (COGCC). The court rejected that interpretation of the COGCC ruling, and noted that pursuant to FERC Order No. 406, when gas qualifies for two deregulation categories, the category with the earlier deregulation date is the determining factor. Based upon these findings, the court held that the gas was new section 102 gas deregulated on January 1, 1985.

C. Rates and Overriding Royalties

On August 7, 1986, the Texas Court of Appeals for the First Supreme Judicial District held in *El Paso v. American Petrofina Co.*¹²⁵ that El Paso was entitled to reassign gas-bearing properties in the San Juan Basin area to the royalty owners involved, pursuant to its gas lease sale agreements (GLSA). Under the GLSA, El Paso had a contractual right to reassign unprofitable properties and the cost of overriding royalties could be considered in determining "profitability," according to the court. Moreover, the court noted that El Paso attempted to reassign the properties when it repriced its gas under the NGPA, and agreed with the company that under the GLSA, El Paso had to pay more for gas produced from such wells than it could legally charge its customers.

123. *Texas E. Transmission Corp. v. FERC*, 769 F.2d 1053 (5th Cir. 1985), *cert. denied*, 106 S. Ct. 1967 (1986).

124. *Northwest Cent. Pipeline Corp. v. Mesa Petroleum Co.*, 643 F. Supp. 280 (D. Colo. 1986).

125. *El Paso v. American Petrofina Co.*, No. 01-84-350-CV (Tex. Civ. App. Aug. 7, 1986).

D. State Regulation

In *Transcontinental Gas Pipe Line Corp. v. State Oil & Gas Board*¹²⁶ the U.S. Supreme Court struck down the Mississippi Board's order directing Transco to purchase deregulated deep gas ratably from all producers in a common pool. This order was prompted by Transco's cessation of purchases from nonsignatory working interest owners who did not accept Transco's price offer. The Court held that the NGPA's withdrawal of FERC authority to regulate deep gas did not create a regulatory vacuum that the states could occupy. The Court stated that Congress intended the supply, demand, and price of deep gas to be determined by market forces, and that state regulation threatened to distort market forces by artificially increasing supply and price. Natural gas regulation remains "a subject of deep federal concern." For these reasons, the Mississippi Board's order was preempted by the federal regulatory scheme.

On September 4, 1986, in *ANR Pipeline Co. v. Corporation Commission*¹²⁷ the district court declared an Oklahoma ratable take statute to be unconstitutional as applied to interstate pipeline purchasers. The Oklahoma statute required ratable takes by common purchasers from each producer within reach of its system. Due to Oklahoma's serious supply/demand imbalance the Oklahoma Corporation Commission promulgated a new rule (Rule 1-305) which established a priority schedule of takes. This rule required first purchasers to take gas according to the priorities schedule when production from a common source of supply exceeded reasonable market demand. The district court judge held that the above enactments contravened the Supremacy Clause of the U.S. Constitution and were preempted by the NGA and NGPA. Such regulation allows the state "to skew the free market for gas" which contravenes federal policy that the gas market price "be determined by the free flow of commerce on a national scale among the separate states."¹²⁸

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126. *Transcontinental Gas Pipeline Corp. v. State Oil & Gas Bd.*, 106 S. Ct. 709 (1986).

127. *ANR Pipeline Co. v. Corporation Comm'n*, 643 F. Supp. 419 (W.D. Okla. 1986).

128. *Id.* at 423.

