Report of The Committee on Certificate and Authorization Regulations Under the Natural Gas Act

This report summarizes major developments during 1980 in the certification and regulation of jurisdictional pipeline companies and regulations covering independent producers of natural gas, pursuant to Section 7 of the Natural Gas Act, 15 U.S.C. § 717.

I. Regulation of Jurisdictional Pipeline Under the Natural Gas Act

A. Certification of New Pipeline Projects

By an Initial Decision issued September 12, 1980 in *Ozark Gas Transmission System,* Docket No. CP78-532, Presiding Administrative Law Judge Burton S. Kolko approved the proposed construction and operation of a 285-mile pipeline system, designed to transport 170,000 Mcf per day from gas supply areas in Arkansas and Oklahoma. In so doing, the Presiding Judge rejected challenges to the adequacy of the project's gas reserves, finding that the areas to be traversed by the proposed pipeline have significant natural gas potential and that the certification of the proposed project would encourage the exploration and development of this potential. Further, the Presiding Judge approved a two-part rate design for the project-financed system, in which all costs, other than return of, and on, equity capital, are recovered through the demand charge. Finally, the Presiding Judge imposed certificate conditions requiring that (i) the design of the commodity rate be based upon an assumed 90% system load factor, and (ii) the system's rates be reviewed on a triennial basis.

B. Commission Policy Regarding Certificate and Abandonment Jurisdiction

1. Certificate Jurisdiction

The major decision in 1980 regarding the jurisdiction of the Commission was *Brooklyn Union Gas Co.* v. *FERC,* 627 F.2d 462 (D.C. Cir. 1980) affirming the Commission's decision in *Transcontinental Gas Pipeline Corporation,* Docket NO. CP77-495, *et al.,* (December 14, 1977). Transco was seeking a certificate authorizing interruptible transportation service to three utility companies purchasing synthetic natural gas (SNG) produced by Brooklyn Union. In turn, Brooklyn Union sought a disclaimer of Commission jurisdiction over its sale of the SNG which was to be transported, by displacement, through reductions in Transco's deliveries to Brooklyn Union and by concomitant increases in Transco's deliveries to the three purchasing utility companies. Rejecting Brooklyn Union's request for disclaimer, the Commission held that Brooklyn Union's proposal was, in fact, a jurisdictional sale of natural gas.

In affirming the Commission's decision, the D.C. Circuit held that the Commission properly found the sale to be a jurisdictional sale requiring a certificate under Section 7(c) of the Natural Gas Act. The Court observed that "the Commission was entitled to conclude, based on the available facts, that the contractual obligation of Brooklyn Union to sell SNG was purely artificial and merely a

device to avoid Commission jurisdiction." This finding was predicated on the fact that, as a result of the displacement nature of the proposed sale and transportation, "Brooklyn Union transferred only natural gas and retained the SNG on its distribution system." Accordingly, the Court found that the SNG produced by Brooklyn Union was "merely the consideration for the sale of natural gas in interstate commerce."

Two other cases decided by the Commission involve the issue of sales jurisdiction. In *Cabot Corporation, et al.*, Docket No. C176-432, *et al.*, issued October 10, 1980, the Commission held a sale of natural gas to be jurisdictional, even though the gas never left the state of New York. Gas produced from a New York well was purchased at the wellhead by National Fuel Gas Supply Corporation and delivered to Columbia Gas Transmission Corporation for Columbia's use in western New York. In exchange, an equal volume of gas was delivered by Columbia to National Fuel in Pennsylvania for resale in Pennsylvania by National. The Commission held that this was a jurisdictional sale requiring a certificate, noting that it was "commerce" and not merely the "flow of gas" between states that was governed. The delivery of an equivalent volume of gas in another state by means of direct flow, exchange, or displacement makes the producer sale jurisdictional. The Commission alleged that its failure to exercise jurisdiction would leave a gap in the regulatory scheme—Pennsylvania would have no jurisdiction in regulating the sale in New York, and New York would have no incentive to regulate it either.

A different fact pattern produced a contrary result in *Columbia Gas Transmission Corporation, et al.*, Docket No. CP77-363 (February 8, 1980). UGI Development was producing gas from its field in northwest Pennsylvania. The gas was transported by Columbia and National Fuel to UGI Corporation, an intrastate gas distribution company in Pennsylvania. Here, no certificate was required even though the gas was commingled in the interstate stream because the natural gas in question was not committed or dedicated to interstate commerce under Sections 2(18) and 601 of the NGPA. Transportation of the gas under § 311 was authorized. This decision reversed a prior order finding the sale jurisdictional.

Finally, the Commission refused to exercise jurisdiction over the production, transportation and sale of SNG produced from landfills. *Natural Gas Pipeline Company of America*, Docket No. CP80-437 (November 25, 1980). In so deciding, the Commission was following the stated policy of Congress that methane produced from landfills should not be subject to jurisdiction. Only when this SNG was mixed with jurisdictional gas would the Commission exert its jurisdiction.

2. Abandonment Issues

On December 4, 1980, an Initial Decision was issued by Judge Grossman recommending the granting of an application by Florida Gas Transmission Company in Docket No. CP74-192 to abandon 889 miles of 24-inch natural gas pipeline between Baton Rouge, Louisiana and Port Everglades, Florida and to transfer these facilities to an affiliate for conversion to transportation of light petroleum products. The Judge also recommended approval of Florida Gas Transmission Company's proposal to construct new facilities to restore its gas transmission system to its present capacity. The Judge conditioned his order upon the reduction of Florida Gas Transmission's estimated transfer price for the aban-

doned line to reflect the disallowance of a deferred tax liability claimed by Florida Gas Transmission. The proceeding, which commenced in 1974, was remanded by the FERC last October for further evidence on whether the existing record was adequate to support a decision approving the abandonment application.

II. THE GREAT PLAINS COAL GASIFICATION PROJECT

In *Office of Consumers' Counsel* v. *FERC*, decided on December 8, 1980, the United States Court of Appeals for the District of Columbia Circuit set aside and remanded Commission orders that would have permitted the construction and financing of the first commercial-size high-Btu coal gasification project in the United States—the Great Plains Coal Gasification Project in Mercer County, North Dakota.

In the orders that were invalidated by the Court, the Commission granted Great Plains Gasification Association (Great Plains) a certificate to sell commingled natural gas and synthetic coal gas to five affiliated pipeline companies in quantities that would be equivalent on a Btu basis to the output of Great Plains' proposed coal gasification plant. In addition, the Commission approved a number of rate and tariff proposals that permitted the recovery of project costs in the pipelines' jurisdictional rates. Specifically, the Commission authorized (a) a surcharge during construction to recover interest on debt and a return on equity, (b) a cost-of-service tariff during operations, (c) the recovery of debt capital in the event of project failure, (d) the recovery of equity investments in the event of a project failure if the "prudent investment" test were met, and (e) the recovery of all such costs in the pipelines' rates on a rolled-in basis through separate tracking provisions in each of the pipelines' tariffs. *Great Plains Gasification Associates, et al.*, Opinion No. 69, Docket Nos. CP78-391, *et al.* (November 21, 1979), *rehearing denied* by Opinion No. 69-A (January 21, 1980), *modified and clarified* by Opinion No. 69-B (June 27, 1980).

In an opinion written by Circuit Judge Wald, the Court held that the Commission lacked jurisdiction to issue the certificate to Great Plains. The Court based its jurisdictional determination on three separate grounds.

First, the Court held that the Commission had no authority under the Natural Gas Act to approve a "ratepayer-based financing package" for the construction of synthetic gas production facilities that would not be subject to the Commission's jurisdiction under the Act (*slip op.* at 30-31). In support of this conclusion, the Court stated that the Natural Gas Act does not expressly authorize the Commission to arrange financing for coal gasification plants and that the legislative history of the Act suggests that Congress did not provide the Commission with its certificate and ratemaking powers for the purpose of facilitating the financing of such nonjurisdictional facilities (*slip op.* at 25-27).

Second, the Court held that the Commission also exceeded its jurisdiction by imposing certificate conditions that would permit an ongoing Commission review of project costs and would require Great Plains to proceed with the project under the proposed partnership arrangement. While the Court recognized that these certificate conditions were imposed for the beneficient purpose of protecting ratepayers, the Court found that these conditions constituted regulation of the nonjurisdictional coal gasification facilities (*slip op.* at 23-24, 31). In the Court's

view, its prior decision in *Henry* v. *FPC*, 513 F.2d 395 (D.C. Cir. 1975) permits the Commission "simply to '*consider*'" all public interest factors in determining whether or not to issue a certificate in connection with a non-jurisdictional coal gasification project, but does not permit the Commission to "*establish and regulate*" those factors (*slip op.* at 29).

Third, the Court concluded that the emerging legislative framework regarding synthetic fuels projects supported its holding that the Natural Gas Act did not vest the Commission with authority to regulate or facilitate the financing of the Great Plains project (*slip op.* at 33). In particular, the Court construed the enactment of the Energy Security Act in 1980 to evidence a Congressional intent specifically to authorize the Synthetic Fuels Corporation to undertake the tasks which the Commission sought to perform in Opinion No. 69 (*slip op.* at 35, 42). In addition, the Court noted that Congress had declined to extend Commission jurisdiction to synthetic gas under either the Natural Gas Act or the Natural Gas Policy Act (*slip op.* at 35).

While these three determinations formed the basis for the Court's dispositive jurisdictional conclusions, the Court's opinion also contains potentially significant *dicta* regarding the scope of the Commission's ratemaking authority with respect to synthetic gas activities. According to the Court, its decision does not deny the Commission any authority it may have (1) to consider the costs of production of synthetic gas in rate proceedings under Section 4 of the Natural Gas Act, (2) to give advance assurance of rate treatment in accordance with the RD&D policy it established in Order No. 566, or (3) to permit recovery of costs from current ratepayers in some situations (*slip op.* at 31 & n. 32). However, the Court suggested that current ratepayers may not be required to bear any costs of constructing "non-jurisdictional facilities *before* those facilities participate in activities properly regulated by the Commission" (*slip op.* at 31).

III. Certificate of LNG Imports

A. The Algerian LNG Impasse

On April 1, 1980, as a result of a failure to agree on price, Sonatrach, the Algerian state oil and gas company, suspended LNG sales to El Paso Algeria. Meetings between United States and Algerian officials have not broken the deadlock over price and other issues. As a result, El Paso Algeria is still not receiving any shipments of LNG from Sonatrach. The LNG transportation by El Paso Algeria is imported by Columbia LNG Corporation (Columbia), Consolidated System LNG Company (Consolidated) and Southern Energy Company (Southern).

On August 29, 1980, in response to various complaints, the Commission instituted an investigation into possible violations of the Natural Gas Act due to the failure of Columbia, Consolidated and Southern to invoke minimum bill provisions in their respective tariffs following the termination of LNG deliveries from Algeria and a series of prehearing conferences and settlement discussions have been held.

B. Current LNG Projects

In a one-page order issued April 17, 1980, the United States Court of Appeals for the District of Columbia Circuit remanded Commission orders which issued certificates in *Pacific Alaska LNG Company, et al.*, Docket Nos. CP75-140, *et al.* The stated purpose of such remand was "to provide the Commission the opportunity to consider in the first instance new evidence presented by the U.S. Geological Survey Report and any other relevant new information."

IV. The Alaskan Natural Gas Transportation System (ANGTS)

During the calendar year 1980 substantial progress was made toward the ultimate certification of the full ANGTS system. Portions of the western and eastern legs of this system in the lower 48 states were certificated and authorization was granted to import new volumes of gas from Canada over these "prebuilt" sections of the ANGTS. An application to construct and operate the Alaskan segment of the ANGTS was filed and docketed at CP80-435. The Commission shortly thereafter established a series of technical conferences to assist in its evaluation of this application. Additionally, during the year certain general certificate conditions were established for the ANGTS system including those portions which will be prebuilt. An amendment to the Alaskan partnership agreement was approved, a right-of-way grant was issued for Federal lands in Alaska and certain FERC functions were delegated to the Office of the Federal Inspector.

A. Lower 48 Prebuilt Facilities and Related Imports

By Commission orders issued January 11, 1980, January 31, 1980, and June 13, 1980, the Commission approved the early construction by Pacific Gas Transmission Company of a portion of the western leg of the ANGTS, consisting of approximately 160 miles of 42-inch pipeline looping from Kingsgate, British Columbia to Standfield, Oregon. These orders further provided authorization (1) for the importation of up to an average daily volume of 300,000 Mcf of natural gas from Canada at a purchase price of $4.47 per MMBtu for a period ending in 1987, (2) the transportation of these imported gas volumes through this new pipeline and the facilities of Northwest Pipeline Company (Northwest) and El Paso Natural Gas Company and (3) the construction of related facilities by Northwest, all so that this imported gas would ultimately be sold for resale to Southern California Gas Company. The Commission specified that PGT would transport such gas under an incremental type tariff and that the take-or-pay obligation for the purchase of this Canadian gas would be limited to a dollar amount determined by multiplying the volumes of gas specified in the take-or-pay provisions of the import sales contract by $3.45 (U.S.) per MMBtu.

By Commission orders issued April 28, 1980 and June 20, 1980, the Commission issued a certificate of public convenience and necessity to Northern Border Pipeline Company to prebuild and operate approximately 809 miles of 42-inch pipeline of the ANGTS from a point near Monchy, Saskatchewan, to Ventura,

Iowa, and to transport and deliver approximately 800,000 Mcf of gas purchased by Northern Natural Gas Company, United Gas Pipe Line Company and Panhandle Eastern Pipe Line Company from Northwest Alaskan Pipeline Company (Northwest Alaskan). These orders granted authorization to Northwest Alaskan to import this 800,000 Mcf of natural gas per day from Canada subject to the same type of take-or-pay conditions and a $4.47 per MMBtu import price limitation as the Commission imposed upon the western leg prebuilt imports. These orders also approved Northern Border's and its related shippers' proposed tariff arrangements, which require all charges paid to Northern Border to be classified in the demand component of the shippers' rates. This aspect of the decision was appealed to the D.C. Circuit and was affirmed without opinion. *General Service Customer Group vs. FERC*, No. 80-1803, Order issued October 3, 1980. Finally, the April 28 and June 20 orders also established Northern Border's Certificate Cost and Schedule Estimate and Center Point to be utilized in the variable or incentive rate of return mechanism previously established in Docket No. RP78-12.

On June 27, 1980, in Docket No. CP80-22, the FERC authorized Northern Natural Gas Company to import an additional 200,000 Mcf of Canadian natural gas per day. Up to one half of this gas will be transported through the Northern Border pipeline system. On September 18, Northern Border filed its Second Supplemental Application seeking authorization to construct one 16,000 horsepower compression station and to transport 100,000 Mcf per day for Northern and 75,000 Mcf per day of Canadian gas for Natural Gas Pipeline Company of America.

B. Alaska Segment

On December 1, 1980, Northwest Alaskan Pipeline Company and the U.S Department of the Interior executed a Right-of-Way Grant pursuant to the Alaskan Natural Gas Transportation Act of 1976 and Section 28 of the Mineral Leasing Act of 1920 giving Alaskan Northwest certain land use rights on Federal lands in Alaska and imposing certain requirements upon Alaskan Northwest in the use of such grant. Among other things, it specifies a minimum separation distance of 200 feet from the Trans-Alaska (oil) Pipeline System throughout most of the right-of-way where the lines will be parallel.

On August 1, 1980, the FERC noticed Alaskan Northwest Natural Gas Transportation Company's application for a certificate of public convenience and necessity in Docket No. CP80-435 to construct and operate the Alaskan segment of the ANGTS and instituted a series of technical conferences to be presided over by the Commission's Alaskan Delegate in conjunction with the Office of the Federal Inspector "to consider the Certificate Cost and Schedule Estimate and Center Point Values proposed by Alaskan Northwest and to consider all related Alaska segment incentive rate-of-return issues not previously decided by the Commission that are now ripe for decision and fall within the Commission's jurisdiction to decide" (mimeo at 12).

By Orders issued December 15, 1980, the Commission approved amendments to the Alaskan Northwest Partnership Agreement which admitted to the partnership on an equal basis to the then existing partners the following additional new partners: American Natural Alaskan Company, a subsidiary of American Natural Resources Company; Columbia Alaskan Gas Transmission Corporation, an affil-

iate of Columbia Gas Transmission Corporation; Texas Four, Inc., an affiliate of Texas Eastern Transmission Corporation and Transwestern Pipeline Company; Texas Gas Alaskan Corporation, an affiliate of Texas Gas Transmission Corporation; and TransCanada Pipeline Alaskan Ltd., an affiliate of TransCanada Pipelines Limited.

C. General ANGTS Conditions

The Commission adopted certain general conditions which were incorporated into the conditional certificates of public convenience and necessity issued for the ANGTS system in its Order of December 16, 1977 in Docket No. CP78-123, *et al.* By Order issued February 26, 1980, rehearing denied April 28, 1980, the Commission established conditions implementing a stop-work order mechanism to be implemented by the Federal Inspector and directed that ANGTS certificate holders must comply with the environmental conditions of Section 2.69 of the Commission's Statements of General Policy and Interpretations (18 CFR 2.69). By Orders issued May 8, 1980 and June 20, 1980, the Commission attached as conditions to the related ANGTS certificate certain rules implementing Section 17 of the Alaska Natural Gas Transportation Act and Condition 11 of the President's Decision and Report to Congress on the Alaska Natural Gas Transportation System respecting a requirement for equal opportunity during the construction and operation of the ANGTS.

On December 19, 1980, the Commission issued an "Order Proposing Conditions" in Docket Nos. CP78-123, *et al.* Comments were solicited on a proposal to condition all ANGTS certifies by requiring adherence to Paragraph 7 of the U.S./Canadian Agreement On Principles, which was signed on September 20, 1977, and which commits each government to endeavor to ensure that the supply of goods and services to the project will be on generally competitive terms.

D. Audit of Partnership Expenditures

On December 15, 1980, the Commission issued an Order to Show Cause in Docket Nos. CP78-123, *et al.* providing an opportunity for comments on three reports from the Office of Chief Accountant respecting expenditures of the Alaskan Northwest partners which have been proposed for inclusion in Alaskan Northwest's rate base.

E. Delegations

The Commission during the past year delegated certain of its functions related to the ANGTS to the Office of the Federal Inspector (the Inspector). On March 31, 1980, specifically citing its conditioned power under Section 7(e) of the Natural Gas Act, the Commission delegated to the Inspector authorization to attach terms and conditions to ANGTS certificates of public convenience and necessity in order to implement the requirements of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470, et seq.) and the Preservation of Historical and Archaeological Data Act Amendments of 1974 (16 U.S.C. 469, et. seq.). On December 17 1980, the Commission delegated to the Inspector its author-

ity under Section 4, 5, 7, and 8 of Natural Gas Act and related regulations to review and approve costs incurred on and after Janaury 1, 1980 for inclusion in the ANGTS sponsors' rate base.

V. Storage Certificate Activities

Montana-Dakota Utilities Company has organized an affiliate Frontier Gas Storage Company to finance storage injections. Frontier will own the gas in storage, purchasing it from Montana-Dakota when delivered to fields in Montana and Wyoming and selling it back on withdrawal. Montana-Dakota, which will continue to operate the storage fields, will reimburse Frontier all costs involved in financing the inventory. At the time of this report, the matter was before the Commission in Docket Nos. CP80-570, CP80-571 and CP80-572 for approval.

By order issued May 7, 1980, the Commission approved the application in *Southwest Gas Storage Company and Panhandle Eastern Pipeline Company*, Docket No. CP79-490, authorizing Southwest to develop a new $73 million underground storage reservoir with 30 Bcf top storage capacity at the Brochers North Field located in Meade County, Kansas, and authorizing Panhandle to provide a proportional part of the cushion gas. The storage will help to offset Panhandle's declining production in Kansas, Oklahoma and Texas.

VI. Rate Conditions Imposed in Certificate Proceedings

The Commission has continued to impose certificate conditions with rate consequences, although the *Great Plain Coal Gasification* case, discussed elsewhere in this report, may reflect a significant limitation on the Commission's authority to reach otherwise non-jurisdictional activities by the use of conditions on certificates.

In *Phillips Petroleum Corporation*, Docket No. C177-412, Opinion No. 90, issued July 25, 1980, the Commission deleted the condition imposed in numerous producer proceedings requiring interstate pipeline companies to demonstrate that the costs of compressing, processing, treating, or gathering natural gas have not been compensated for in the nationwide rates. In its place, the Commission substituted a condition requiring pipelines, in their rate cases, to prove the prudency of incurring such production-related costs. In determining the prudency of these activities, the Commission stated that it would apply the statement of policy contained in Section 2.102 of its Regulations. Under Section 2.102, prescribed by Order No. 94, on July 25, 1980, in Docket No. RM80-47, production-related costs incurred by interstate pipelines are deemed prudent if the producer could have collected an allowance for such costs pursuant to Section 110 of the NGPA. Both Opinion No. 90 and Order No. 94 are pending before the Commission on rehearing.

VII. Regulation of Independent Producers Under Section 7 of the Natural Gas Act

A. Scope of the Commission's Authority Under Section 7(c)

In *Conoco, Inc.* v. *FERC*, 622 F.2d 796 (5th Cir. 1980), the Fifth Circuit affirmed the Commission's determination that a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act was required for sales of natural gas produced from old Outer Continental Shelf leases (leases entered into prior to April 20, 1977) even though deliveries from such leases had not commented flowing in interstate commerce prior to the enactment of the Natural Gas Policy Act of 1978 (NGPA). Conoco contended that, pursuant to Section 601(a)(1)(A) of the NGPA, its gas was not "committed or dedicated to interstate commerce" and, therefore, was exempt from the Commission's jurisdiction under the Natural Gas Act. The Court, however, stated that Section 2(18) of the NGPA provides that gas from the Outer Continental Shelf is "committed or dedicated to interstate commerce" and, thus, Section 601(a)(1)(A) was inapplicable.

By order dated September 25, 1980, in *El Paso Natural Gas Company, et al.*, Docket No. CP74-314, *et al.*, the Commission adopted an Initial Decision which found that a series of lease-sale agreements transferring ownership of leases and underlying natural gas reserves in the San Juan Basin to El Paso Natural Gas Company and Northwest Pipeline Corporation constituted sales of natural gas for resale in interstate commerce within the meaning of the Natural Gas Act. Relying upon *United Gas Improvement Co.* v. *Continental Oil Co.* ("Rayne Field"), 381 U.S. 392 (1965), the Commission emphasized that the lease sales were virtually identical to conventional wellhead sales. The Commission noted that the overriding royalties paid by El Paso and Northwest were equivalent to the payments that would have been made in a conventional wellhead sale. A further hearing was ordered on the question of remedies for past and future periods.

On October 10, 1980, in *Cabot Corporation, et al.*, Docket No. C176-432, *et al.*, the Commission held that a producer sale of natural gas which cannot physically leave the state of production still requires certification under the Natural Gas Act if the gas is delivered by means of displacement to another state. The case involves the purchase by National Fuel Gas Supply Corporation of gas produced in New York and the delivery of equivalent volumes by Columbia Gas Transportation Corporation to National Fuel in Pennsylvania. The Commission asserted that displacement in pipeline flow between two states is a type of interstate commerce within the ambit of the Natural Gas Act comparable to the direct flow of gas across state lines.

By order dated February 8, 1980, in *Columbia Gas Transmission Corporation, et al.*, Docket No. CP77-363, the Commission rescinded earlier orders issued in this docket and revoked the condition that UGI Development Company apply for a Section 7(c) certificate for the sale of gas produced in Pennsylvania and sold to UGI Corporation, a distribution company making sales solely in Pennsylvania. In disavowing its previous reliance upon certain Supreme Court decisions involving the commingling of natural gas (e.g., *California* v. *Lo/'aca Gathering Company*, 379 U.S. 366 (1965)), the Commission concluded that the producer sale was not jurisdictional under the terms of the Natural Gas Act.

B. Serivce Obligations and Abandonments

In *McCombs* v. *FERC*, F.2d , No. 75-1829 (10th Cir. 1980), the Tenth Circuit determined that the Commission lacks authority under the Natural Gas Act to order a payback of volumes of natural gas that were unlawfully diverted from the interstate market. The case was on remand from the Supreme Court's decision in *United Gas Pipe Line Co.* v. *McCombs*, 442 U.S. 529 (1979), wherein the Supreme Court reversed a previous Tenth Circuit opinion and ruled that interstate service to United Gas Pipe Line Company could not be abandoned without the express prior approval of the Commission pursuant to Section 7(b) of the Natural Gas Act. Disagreeing with prior decisions rendered by the Third, Fifth and D.C. Circuits, the Tenth Circuit in *McCombs* concluded that Section 16 does not authorize the Commission to issue orders remedying past violations of the Natural Gas Act. The matter is pending before the Court on rehearing.

In Order No. 98, issued on August 4, 1980, in Docket No. RM80-6, the Commission promulgated regulations under the Natural Gas Act governing the pricing of pipeline production. In that regard, the Commission noted its concern that pipelines might attempt to transfer properties now valued on a cost-of-service basis to their production affiliates in order to obtain NGPA price treatment. The Commission declared that any abandonment of such developed or undeveloped leases would require prior Commission approval under Section 7(b). Rehearing of Order No. 98 was denied on October 3, 1980, in Order No. 102. Order No. 98 is presently on appeal before the Fifth Circuit in *Consolidated Gas Supply Corporation* v. *FERC*, No. 80-4010.

VIII. Special Certificate Issues

On March 24, 1980, the Commission issued an order in *Natural Gas Pipeline Company of America, et al.*; Docket Nos. CP77-71, *et al.* which affirmed in part and reversed in part an initial decision issued March 1, 1979. In this proceeding four interstate pipelines filed applications pursuant to Section 7(c) of the Natural Gas Act seeking authorization to transport gas reserves for General Electric Company to three of its plants to offset high priority curtailment for a ten year period. The proceeding was viewed as a vehicle for establishing a precedent concerning whether, and under what conditions, the Commission would authorize long-term transportation arrangements for industries which purchased, developed or otherwise acquired gas supplies.

On March 1, 1979, Judge Lewnes issued the initial decision which granted certificates for the unexpired portion of the ten-year term authorizing the transportation of gas for Priority 2 and 3 uses to the extent the volumes do not exceed contract demand. The certificates were conditioned by Order No. 2 provisions and GE was required to file an annual report of the conservation measures implemented and gas saved.

The Commission refrained from addressing the broad policy issues posited in its notice scheduling an oral argument. Rather, it issued a decision restricted to the facts of the case.

Nevertheless, the Commission affirmed the Presiding Judge's decision to grant pipeline applicants certificates under Section 7 of the Natural Gas Act for

the unexpired portion of the ten-year term. It also stated it would entertain applications for transportation certificates for up to ten years where similar in-place acquisitions were consummated prior to enactment of the Natural Gas Policy Act of 1978. However, the Commission declined to express an opinion on the impact of the NPGA on such transactions.

The Commission reversed a condition imposed by the Presiding Judge which gave priority to pipeline and distributor owned volumes to offset curtailment below existing customers' contract entitlements. It agreed with the pipeline applicants that such a provision would alter their existing practices concerning interruption of service for user owned volumes and with the Commission Staff that interruption of direct sale gas deliveries should be left to contractual negotiation between the parties.

On December 19, 1980, the Commission issued a certificate in Docket No. CP80-473 to Equitable Gas Company authorizing an off-system limited term sale of 4,015,000 Mcf per year of natural gas on a firm basis and 985,000 Mcf per year of natural gas on an optional basis to New Jersey Natural Gas Company. The authorized arrangement provides for an initial term of two years with an option to continue the sale for an additional two years if Equitable's gas supply is adequate. Pre-granted abandonment was also authorized.

New Jersey Natural will, in turn, use the gas to satisfy an expansion in its annual sales to new residential, commercial and industrial customers as well as for load balancing, storage injection and to maintain the level of supply reserve required by the New Jersey Board of Public Utilities. The Commission noted it "would generally discourage the attachment of high priority customers on the basis of a short-term supply of gas" (mimeo at 7). However, this case is an exception because New Jersey Natural views the purchase from Equitable as a transitional supply and anticipates replacing it with self-help gas and Canadian imports. In any event, the Commission stated if these efforts don't materialize, New Jersey Natural has the capability to shift gas from low priority to high priority uses.

In assessing Equitable's ability to provide the service without jeopardizing its existing customers, the Commission found Equitable is currently in a favorable supply-demand position, and if the sale is not approved, it may incur take-or-pay penalties under contracts with its suppliers.

This report is respectfully submitted by the Chairman, Vice Chairman, and members of the committee on Natural Gas Certificate and Authorization Regulations.

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