Cited as "ERA Para. 70,118"

Trunkline LNG Company (ERA Docket Nos. 82-12-LNG and 83-04-LNG), September 23, 1983

Order Reopening the Proceeding, Noticing Application of the Company to Amend Its Authorization, Consolidating ERA Docket Lo. 83-04-LNG with 82-12-LNG, Requesting Further Intervention, Requesting Comments on Remedies, and Requesting Other Comments and Information

I. Summary of the Order

This order reopens that portion of the proceeding that was deferred in Opinion and Order No. 50 (Order 50) issued on February 25, 1983, to Trunkline LNG Company (TLC) in ERA Docket No. 82-12-LNG. Order 50 decided a number of issues relating to TLC's authorization to import liquefied natural gas (LNG) from Algeria, but deferred a decision on those issues relating to the LNG price. Comments are now requested on the present and proposed pricing arrangements for this import by TLC and on whether these arrangements respond to the concerns expressed in Order 50 regarding contract flexibility and the reasonableness of the price. Comments are also requested on appropriate action if the record from this proceeding demonstrates that either the existing or the proposed import arrangement is inconsistent with the public interest. The fact that these comments are being requested does not suggest that the issues in question in this proceeding have been prejudged. Additional information is requested from TLC and all other parties to supplement the record.

This order notices that TLC on July 25, 1983, filed in ERA Docket No. 83-04-LNG an application pursuant to section 3 mf the Natural Gas Act to amend its existing authorization to import LNG from Algeria. The proposed amendment would make several modifications to the September 17, 1975, gas purchase agreement between TLC and Sonatrach.1/ This order also consolidates the docket under which TLC filed its July 25, 1983, proposed amendment to its authorization (ERA Docket No. 83-04-LNG) with the ongoing TLC proceeding (ERA Docket No. 82-12-LNG).

II. Background

Order 50 was issued to TLC regarding a 1977 authorization to import LNG from Algeria over a 20-year contract period.2/ This order followed a joint evidentiary proceeding held by the Economic Regulatory Administration (ERA) and the Federal Energy Regulatory Commission (FERC) in response to numerous

petitions and complaints filed with both agencies opposing the continued importation of this LNG. Requests that TLC's authorization be immediately suspended, rescinded or revoked were denied; however, the decision on whether to take action for reasons relating to the regasified price of the LNG was deferred for a period of at least six months.

A decision on the pricing issues was deferred for several reasons, which were set forth as follows in Order 50:

> Our deferral of the price issue rests on several considerations. There are a myriad of uncertainties in the U.S. gas market today. These, it is hoped, will be clarified during the current session of Congress, when the existing natural gas regulatory laws may be modified or repealed. The Executive Branch is likely to propose legislation to this effect. Many other bills on this subject have been introduced by members of Congress. In addition, the Department of Energy is reviewing the policies that bear on gas import authorizations, and U.S.-Canadian bilateral discussions are being held on this issue. Also, world prices of oil are undergoing significant change, with uncertain consequences for gas pricing. We believe that at least six months is necessary to allow clarification of these uncertainties.3/

In Order 50, the Administrator recommended that TLC, during this deferral period, initiate discussions with its Algerian supplier, Sonatrach, to achieve a more flexible pricing and take-or-pay arrangement that "would result in a more market responsive inclusion of this gas into U.S. markets." 4/

Since the issuance of Order 50, a number of events have occurred affecting the uncertainties referred to in the order. Oil prices have appeared to stabilize, with the prospect that they will remain relatively stable in the foreseeable future. The U.S. energy marketplace continues to have a surplus of natural gas. The domestic natural gas industry has responded to the changing energy supply and demand situation with contract renegotiations, plans to retain or regain industrial customers, and use of market-out and force majeure clauses in contracts. In many instances, pricing and volume requirements of gas contracts have been modified to meet the requirements of the markets served.

In addition to actions by private contracting parties, the United States Congress began considering legislation on natural gas. A legislative proposal to reform the natural gas regulatory laws was made by the President, and this and other proposals were considered by committees of the Senate and the House of Representatives. The House Fossil and Synthetic Fuels Subcommittee has

reported out a natural gas bill that would revoke all existing import authorizations unless they are made market responsive within nine months.5/ The Senate Energy and Natural Resources Committee has reported out an amendment to be offered on the Senate floor with its natural gas bill if there are not significant changes in the pricing of gas imports.6/ The amendment would phase down prices of imported gas to a "free market price indicator" and subject import contracts to a maximum 50 percent take-or-pay level.7/ Additionally, Senators Charles Percy and Alan Dixon have introduced legislation to limit the price of imported LNG,8/ and 40 Representatives have introduced a bill that would require renegotiations of gas import contracts.9/

Also during the period since Order 50 was issued, the Department of Energy completed its review of gas import policy. The result has been the development of a policy emphasizing gas import arrangements that are market-responsive and based on buyer-seller negotiations. While procedural details of this new import policy are still being formulated, numerous U.S. gas importers are, in effect, following the new policy through renegotiation of gas purchase arrangements with their Canadian suppliers.

Finally, in response to the Administrator's request in Order 50, TLC and Sonatrach entered into additional negotiations and reached agreement July 3, 1983, on proposed modifications to their contract.

In view of these developments, along with the necessity of removing the uncertainty that presently exists concerning the future of this import arrangement, it is appropriate to reopen the TLC proceeding and to make a determination in the issues deferred in Order 50. More specifically, it is timely to review the proposed amendments to the TLC import contract from the standpoint of their responsiveness to the concerns expressed in Order 50 about the regasified price mf the LNG and the contract's flexibility and ability to respond to the markets served. Should this import arrangement be deemed not consistent with the public interest pursuant to section 3 of the Natural Gas Act, the import cannot continue without modification. Thus, it is also appropriate in this proceeding to examine the nature of possible action by the government in the event that the continuance of the existing import arrangement and approval of the proposed amendment are contrary to the public interest. However, the fact that this examination is being undertaken does not suggest that the issues in question in this proceeding have been prejudged.

The Natural Gas Act requires, in the authorization of gas imports, that a balance be achieved in determining the public interest, as the basic purpose of the Act is to protect consumers from exploitation by natural gas companies and to foster a healthy natural gas industry in the United States.10/ Order 50

affirmed this purpose when stating:

> We are not anxious to breed uncertainty into existing or future import authorizations, as their reliability is basic to the development of large-scale energy projects dependent upon such licenses. On the other hand, we cannot ignore the impact on the consumer. . . 11/

A number of considerations must be balanced in this proceeding which have important domestic and international dimensions. These considerations include international contractual obligations; energy security and supplies for the United States; future investment in capital-intensive energy projects; the future economic viability of imported LNG; and, the protection of the American gas consumer.

The Natural Gas Act establishes a presumption in favor of authorizing natural gas imports and thus requires a negative determination for disapproval.12/ Consequently, action to alter, suspend, or terminate an existing import authorization can only be taken when the record clearly supports a determination that the import is no longer consistent with the public interest. If a significant change in the authorization is contemplated, particularly where parties have invested large sums in the project in reliance on the authorization, such a record must factually demonstrate significantly changed circumstances since the time of the original authorization. Public and political sentiment, however widespread, without supporting factual evidence cannot be considered sufficient to overturn an authorization. Record evidence, combined with policy considerations, must join to override the presumption favoring continuation of the import.

III. The Existing Import Arrangement

In 1977, the Federal Power Commission (FPC) authorized TLC to import from Algeria approximately 165 Bcf equivalent of LNG annually, for a period of twenty years, and to construct and operate the necessary terminal facilities at Lake Charles, Louisiana.13/ Opinions Nos. 796 and 796-A approved a price for the revaporized LNG delivered to the system of Trunkline Gas Company (Trunkline) of $3.37 per Mcf.14/ Opinion No. 796-A approved a price adjustment mechanism in the gas supply contract between TLC and Sonatrach, in which the price of LNG, f.o.b. Algeria, would change semiannually based on the Btu equivalent for the weighted average prices of No. 2 and No. 6 fuel oil in New York harbor. The contract also included a 100 percent take-or-pay provision and a provision for Sonatrach to furnish three cryogenic tankers and TLC to arrange for two other tankers.15/ Deliveries began in September 1982.16/

IV. The Proposed Amendment

Order 50, specifically requested that TLC and Sonatrach renegotiate a more flexible and market responsive contract by changing the base price, altering the price adjustment clause, or obtaining a more flexible take-or-pay arrangement.

In response to this request for contract renegotiation, TLC and Sonatrach met several times during the past six months; the product of these and previous negotiations in 1982 is TLC's application for amendment. In its application, TLC states that the changes in its gas sales agreement with Sonatrach "respond favorably to each of the outstanding concerns or uncertainties of the Commission and ERA and will better serve the public interest through a considerable price reduction and a rescheduling of deliveries to better fit the short-term excess and long-term absence of supply." 17/

On July 25, 1983, TLC filed with the ERA the amendment to its authorization to import LNG from Sonatrach. The basis for this amendment was established in Amendment No. 1 dated August 6, 1982, as revised by a letter of agreement between TLC and Sonatrach dated July 3, 1983. Although the proposed amendment would not change the contractual requirement that TLC take the full contract quantity of LNG, it would provide for five principal changes to the gas purchase contract: modification of the delivery schedule; extension of the general gas make-up provision; revision of the price adjustment clause; changes in the terms of transporting the LNG in Sonatrach vessels; and the retroactive effect of any future revisions of the pricing terms made pursuant to Article XXIV of the contract, following governmental approvals.

A. Modification of Delivery Schedule

In the proposed modification of the delivery schedule, TLC's annual contract quantities would be reduced by 40 percent during the 20-month period from April 1, 1983, through November 30, 1984. The proposed volume reductions during this 20-month period are estimated to total 119 trillion Btus. The quantities not delivered during this 20-month period would have to be taken between the third and eleventh contract years. If TLC is unable to take these volumes by the end of the tenth contract year as scheduled, it nevertheless has to pay for these volumes at that time. Although TLC would be required to pay for the gas by the end of the tenth contract year, the changes to the general make-up provision would extend the period during which TLC could make up these reduced takes through the fifteenth contract year (November 30, 1997). TLC maintains that its savings in f.o.b. costs over this 20-month

period will approximate $425 million under the existing contract and $490 million under the proposed amendment.

B. Extension of the General Make-up Period

TLC is also proposing changes to the general make-up provision in its contract. First, the make-up period would be extended from three to five years from the time the contract quantities were scheduled to be taken, i.e., from 1986 to 1988 for quantities scheduled to be taken in 1983. Additionally, Sonatrach would agree to "use its best efforts" to supply any make-up quantities. Finally, the parties would agree to meet regularly or upon the request of either party and "use their best efforts to agree" on similar volume adjustments and make-up provisions, if needed.

C. Revision of the Price Adjustment Clause

The proposed change to the price adjustment provision would tie the f.o.b. Algeria price to direct changes in posted prices of a basket of five foreign crude oils18/ to be recalculated quarterly. The f.o.b. price of $3.92 per MMBtu that was in effect on December 1, 1982, would be adjusted quarterly to reflect, dollar for dollar, any change in the average daily posted price of this basket of crude oils from the third quarter in 1982. This proposed pricing formula would yield an f.o.b. price change of 17 cents per MMBtu for each dollar change in the posted price of crude oil. The existing formula produces a change of ten cents for each dollar change in the average price of No. 2 and No. 6 fuel oils.

D. Changes in the Transportation Terms

The TLC amendment proposes two changes in the terms for transporting the LNG in Sonatrach vessels. Although TLC would have the responsibility for furnishing the marine transportation for the make-up quantities, priority consideration is to be given to the use of other Algerian vessels if available under "competitive conditions." In addition, Sonatrach agrees to an apparent reduction of its shipping charges by changing the date for termination of the accrual of "unavoidable costs," to November 1, 1981, from December 1, 1982. Under the existing contract, Sonatrach could apparently make claims to TLC for operating and lay-up costs, debt service, and a capital carrying charge attributed to Sonatrach's marine vessels from the time they were ready for use to the time of the "First Regular Delivery" of this LNG supply (December 1, 1982).

E. Retroactive Effect of Future Provisions

The proposed amendment would also establish a permanent mechanism to give retroactive effect, after governmental approvals, to any revisions made to the pricing terms of the contract in accordance with Article XXIV of the existing contract.19/ Under this proposal, a retroactive payment would be collected that would equal the "difference between the revenues collected under the to-be-changed provisions and those which would have been charged under the pending revision, plus simple interest at the prime rate." 20/ TLC stated that these procedures for retroactive adjustment would not apply to any refunds by Sonatrach resulting from approval of the instant proposed amendment.

V. Remedy

This order is intended to establish the record upon which a decision on this import arrangement can be based. A determination must be made as to whether the existing arrangement or the proposed amendment is not inconsistent with the public interest. The concerns and questions posed throughout this order are designed to assist in reaching an expeditious decision on this matter.

The need to resolve the issue expeditiously warrants the examination of available remedies in the eventuality of a record which would support a decision to modify, suspend or terminate the authorization, as well as the appropriateness of these remedies. A number of actions are available in this eventuality, ranging from permanent revocation of the import authorization, to requesting modifications to the arrangement, to suspension of authority to import until such time as the parties present an import arrangement that the government can determine to be not inconsistent with the public interest.

However, as a matter of policy, this agency does not favor government imposed changes or modifications to contracts between private parties and thus prefers that the contracting parties assume this responsibility. The parties are far more capable than the government of balancing their commercial needs with the various options available to make the arrangement sufficiently market-responsive and competitive. It is the government's responsibility to ensure that the results are aligned with the public interest, but not to propose or impose that alignment.

Comments are thus solicited from all parties on appropriate remedial action, should the record demonstrate the existing arrangement and/or the proposed amendment are contrary to section 3 of the Natural Gas Act.

VI. Request for Comments and Information

A. Questions on the Proposed Amendment

Comments from all parties are invited on whether the proposed amendment responds to the concerns expressed in Order 50, and whether approval of the amendment would not be inconsistent with the public interest. In addition, comments are solicited in response to the following questions:

1. All parties

a. Would the proposed amendment result in an arrangement that is market-responsive and market-competitive? Would this arrangement benefit the consumers in Panhandle/Trunkline's system? Would it be in the public interest? If it would lot, what changes are required to make it so?

b. Would the index for the price adjustment clause in the proposed amendment (foreign crude oils) be responsive to the markets served by this import? Would it be responsive to Article XXIV of the contract?

c. How would the f.o.b. price for Algerian LNG have varied from July 1975 to the present if the proposed price adjustment clause had been in effect compared with the current price adjustment mechanism?

d. Over the life of the contract, how would the f.o.b. prices resulting from the proposed adjustment clause compare with f.o.b. prices resulting from the current price adjustment clause?

e. The volumes were approved in the original TLC authorization on the basis of need. The reduced takes for the 20-month period suggest a revision of this need. To what extent is the LNG needed during the 20-month deferral period? Will there be a need for this LNG following this 20-month period? If so, what will the need be?

f. During the 20-month period of reduced takes, what cost savings would result to the consumer on an average MMBtu basis? Would this vary by type of consumer? How?

g. Would additional costs to the consumer on an average MMBtu basis result from importing this LNG after the 20-month deferral period? If so, how much would it be? What are the assumptions used in making this estimate?

h. If the Panhandle/Trunkline system were to take all the domestic gas supplies available to it during the 20-month deferral period, how much LNG would be needed to meet its requirements? If all available current and

projected domestic supplies were taken by the Panhandle/Trunkline system over the life of the contract, how much LNG would be needed?

2. TLC, Panhandle/Trunkline, Lachmar

a. During the 20-month period of reduced takes, what will the supply requirements be on the Panhandle/Trunkline system? What percentage of the supply is projected to come from LNG? Will this LNG displace available domestic gas? If so, what supplies (price, source, location) will be displaced?

b. From the end of the 20-month deferral period through the end of the tenth contract year (make-up period), what will the supply requirements be on the Panhandle/Trunkline system? What percentage of this supply is projected to come from LNG? Would this LNG displace available domestic gas? If so, what supplies would be displaced?

c. What data, assumptions and methodology were used in calculating the estimated dollar savings that would result from the proposed 20-month reduction in takes, i.e., $490 million under the amendment and $425 million under the original contract?

d. What are the increased shipping and regasification costs that can be attributed to the proposed reduced takes during this 20-month period, both on an aggregate and per unit basis (MMBtu)?

e. What are the anticipated impacts on shipping and regasification costs when TLC begins to make up these reduced takes between the third and the eleventh contract years?

f. The proposed amendment states that Sonatrach has agreed to reduce shipping charges to TLC by altering the date for accruing "unavoidable costs." Why have these charges not been totally eliminated?

g. What does the term "competitive conditions" mean as used in the proposed amendment where it states that priority consideration will be given in the use of other Algerian vessels in transporting make-up volumes, if available on "competitive conditions?"

B. Questions to Supplement the Record

The decision on the pricing issues was deferred in Order 50 because the record was inadequate and required supplementation. The petitions and complaints filed in the proceeding decided by Order 50, and the evidentiary

record compiled by the FERC Administrative Law Judge, did not provide the factual information needed to support the remedies sought by the petitioning parties. Specifically, the record requires more data on the take-or-pay requirement in TLC's contract with Sonatrach and its likely effects, the shipping charges being passed through by TLC, including rates of return for the shipping and ship-or-pay penalties, the price of alternative energy sources in the gas markets served by the TLC import, and the load loss that could be attributable to this import. This record should further be supplemented with information and data on whether this LNG, when rolled in with other gas supplies on the Panhandle/Trunkline system,21/ is currently market competitive and will likely remain market competitive through the duration of the import arrangement. Comments are also invited pertaining to any other matters which might assist in making the decision.

Information is requested from TLC and other parties, as follows:

1. All Parties

a. From September 1982 to the present, what has been the monthly effect of this LNG import on the aggregate price of supplies to individual distributors and direct industrial customers? What has the monthly effect been on the price of gas to the consumer?

b. What quantities and prices of alternative fuels, including domestic natural gas, are currently available in the markets served and are projected to be available over the life of this contract?

c. Would there be adequate sources of gas available to the Panhandle/Trunkline system to meet customers' needs if this LNG supply were not available? What would these sources and volumes be over the short-term? Over the long-term?

d. What contract renegotiations have occurred during the past year among producers and pipelines serving the North Central region, whether for domestic or imported gas, to reduce the price and/or takes of high-priced gas supplies?

e. What load loss has been experienced since September 1982 and is projected for at least the next 12 months on the Panhandle/Trunkline system? Are other pipelines serving the North Central region experiencing similar load loss?

f. What fuel switching and conservation has occurred in the North

Central region since September 1982? What potential for additional fuel switching and conservation exists?

g. What would be the adverse financial effects on the various parties to this import arrangement if it were to be suspended or terminated?

h. Would a decision to terminate, suspend or modify this existing import arrangement have an adverse effect on the financing of other gas import projects? If so, what would the nature and extent of such effects be?

i. What investments have Sonatrach and other foreign parties made to facilitate this project?

j. Are the costs being incurred by TLC under the transportation agreements with Lachmar and Sonatrach excessive? If so, how might these costs be reduced?

k. What is the rate of return for Lachmar for this project? Is this rate of return appropriate under the circumstances?

2. TLC, Panhandle/Trunkline, Lachmar

a. What are Panhandle Eastern and Trunkline Gas companies' current (most recent six-month period) and projected gas supplies (next twelve months) by source, location, price, volume and NGPA price category, identifying those supplies purchased from producer affiliates? What are the contract levels for these supplies?

b. From September 1982 to the present, what has been the monthly effect of the importation of the LNG on the price (on an MMBtu basis) of gas supplies on both the Panhandle Eastern and Trunkline Gas systems? What increased take-or-pay obligations have there been during this period as a result of this import? What has been the effect on the aggregate price of the supply?

VII. Consolidation of ERA Dockets

In this order the docket under which TLC filed its July 25, 1983, amendment to its authorization (ERA Docket No. 83-04-LNG) is consolidated with the ongoing TLC proceeding (ERA Docket No. 82-12-LNG). The decision to consolidate these two dockets is based on the substantial similarity of the issues in both proceedings and TLC's contention that the recently filed proposed changes to its authorization "respond favorably to each of the outstanding concerns or uncertainties" of the ERA in Docket No. 82-12-LNG and

of the FERC in Docket CP74-138, et al. Protests or petitions for intervention in this consolidated proceeding are invited. Those who are currently parties to the proceeding in ERA Docket No. 82-12-LNG are parties in this consolidated proceeding.

VIII. Procedural Schedule

A. Intervention

Protests or petitions for intervention in this consolidated proceeding are invited. All persons who are parties to the proceeding in ERA Docket No. 82-12-LNG will automatically become parties to this consolidated proceeding. All protests or petitions should be filed in accordance with the requirements of the rules of practice and procedure [18 CFR Secs. 1.8 and 1.10]. Such protests or petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m., e.d.t., October 26, 1983.

A copy of TLC's proposed amendment to its import authorization is available for public inspection and copying in the Natural Gas Division Docket Room, Room GA-007, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

B. Comments

Comments are requested from all parties on whether the proposed amendment is responsive to the concerns expressed in Order 50, and on whether approving the amendment would not be inconsistent with the public interest. Further, comments are requested from all parties on the appropriate remedies available if the determination is made that the present and proposed import arrangements are inconsistent with the public interest. Finally, comments and information are requested from all parties to supplement the record and provide the information necessary to reach a decision in this proceeding.

All comments should be filed no later than 4:30 p.m., e.d.t., October 26, 1983.

All replies to the written submissions of other parties should be submitted by no later than 4:30 p.m., e.s.t., November 14, 1983.

IX. Order

For reasons set forth above, pursuant to section 3 of the Natural Gas

Act,

The ERA Administrator Orders:

A. Trunkline LNG Company (TLC) shall serve, by mail or personal delivery, within seven days after issuance of this order, all parties in ERA Docket No. 82-12-LNG with a copy of its July 25, 1983, filing with the ERA entitled "Application For Amendment of Authorization to Import Liquefied Natural Gas."

B. All parties in the proceeding, including TLC, who wish to comment on TLC's July 25, 1983, proposed amendment to its authorization, shall file no later than 4:30 p.m., e.d.t., October 26, 1983.

C. All parties, including TLC, who wish to comment on the appropriate remedies available if the record demonstrates that the present and proposed import arrangements are inconsistent with the public interest shall file no later than 4:30 p.m., e.d.t., October 26, 1983.

D. All parties, including TLC, who wish to provide the information requested to supplement the record or to comment on the price issue for the consolidated proceeding shall file no later than 4:30 p.m., e.d.t., October 26, 1983.

E. Any party, including TLC, who wishes to submit replies to the written submissions of other parties shall file such replies by no later than 4:30 p.m., e.s.t., November 14, 1983.

F. ERA Docket No. 83-04-LNG is hereby consolidated with ERA Docket No. 82-12-LNG. Parties to the latter proceeding are parties to this consolidated proceeding. All persons seeking to intervene in this consolidated proceeding must file a motion to intervene with ERA no later than 4:30 p.m., e.d.t., October 24, 1983.

G. All responses to this order shall be filed with the ERA and all parties to the proceeding. Service shall be by mail or by personal delivery to all parties. Responses served upon the ERA shall be delivered to the Economic Regulatory Administration, Natural Gas Division Docket Room, Room GA-007, RG-43, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Issued at Washington, D.C., on September 23, 1983.

--Footnotes--

1/ Sonatrach is the acronym for Algeria's state-owned oil and gas company, Societe Nationale pour la Recherche, la Production, le Transport, et la Commercialization des Hydrocarbures.

2/ Opinion No. 796, issued April 09, 1977 (58 FPC 726) and Opinion No. 796-A, issued June 30, 1977 (58 FPC 2935), issued by the Federal Power Commission (FPC).

3/ DOE/ERA Opinion and Order No. 50, issued February 25, 1983 (ERC Docket No. 82-12-LNG) at 7.

4/ Id. at 8.

5/ Shelby-Corcoran Amendment to Committee Print of May 23, 1983, as adopted by the Subcommittee on July 29, 1983, (as amended, August 5, 1983) Title VI.

6/ Committee Amendment Regarding Natural Gas Imports, Senate Report No. 98-205, 98th Cong., 1st Sess. 19 (1983).

7/ Id. Sec. XXX(a)(3) and (b).

8/ S. 370, 98th Cong., 1st Sess., Feb. 1, 1983 ("Imported Liquefied Natural Gas Policy Act of 1983").

9/ H.R. 1441, 98th Cong., 1st Sess., Feb. 15, 1983 ("Natural Gas Import Policy Act of 1983").

10/ FPC v. Hope Natural Gas Co., 320 U.S. 591 (1944); Permian Basin Area Rate Cases, 390 U.S. 747 (1968).

11/ Order 50, at 7.

12/ Cia Mexicana de Gas, S.A. v. FPC, 167 F.2d 804 (5th Cir. 1948).

13/ According to the record in ERA Docket No. 82-12-LNG, as of October 1982, the cost of these facilities totaled $577 million. Ex. 87. In addition, $377.8 million was spent in the construction of two LNG vessels; of that amount $80 million was a grant from the U.S. Maritime Administration. Lachmar, the builder of the ships, also received loan guarantees in the amount of $197.5 million from the Maritime Administration. Hahn, Tr. 1759-64, Ex. 71.

Sonatrach supplied three LNG vessels to transport this LNG and invested substantial sums in liquefaction and other facilities in Algeria that are used in this trade. Item by Reference D; Trunkline LNG Co., Initial Decision, 58 FRC 750, 780 (1977).

14/ See footnote 2.

15/ On May 7, 1976, TLC signed an agreement with Lachmar (a partnership in which Panhandle Eastern Pipeline Co., under common control with TLC, indirectly owns a 40 percent interest for the transportation of 40 percent of the LNG to be purchased pursuant to its gas sales agreement with Sonatrach). The agreement contains a provision that requires TLC to pay Lachmar for the transportation of this LNG regardless of whether the vessels are being used (ship-or-pay obligation). A similar transportation agreement, signed on January 8, 1977, also with ship-or-pay penalties, requires Sonatrach to arrange for the transportation of the remaining 60 percent of the LNG.

16/ The FPC estimated that the regasified price in the first quarter of 1980 would be $3.37 per Mcf. Due to the large increases in the price of the indexed fuels, substantial overruns on shipping charges, and the cost of constructing the U.S. facilities, the regasified price was $7.09 per Mcf as of July 1983, based on 100 percent throughput of the contracted volumes, or $8.48 per Mcf assuming only 60 percent of the contracted volumes are delivered. See ERA Docket No. 83-04-LNG, "Application for Amendment of Authorization to Import Liquefied Natural Gas," filed July 25, 1983, at Exhibit H.

17/ Id. at 16.

18/ Saudi Arabian Arab Light, Mexican Isthmus, North Seas Forties, Algerian Saharan Blend, Nigerian Bonny Light.

19/ Article XXIV states that any revisions to the price of the LNG must incorporate "the current economic conditions of the market in the East Coast and Gulf Coast Regions of the United States of America for imported natural gas and other imported forms of energy competitive with natural gas which are sold pursuant to long-term contracts. The parties will take into account all the characteristics of each of the above mentioned products (in particular quality, continuity of deliveries, cost of production and transportation, etc.)."

20/ TLC's Application for Amendment, at 12.

21/ The LNG import authorization was originally granted on the

premise that the LNG would be a high-cost gas supply rolled in with lower cost supplies to be marketable.