

Cited as "1 ERA Para. 70,115"

Trunkline LNG Company (ERA Docket No. 82-12-LNG), October 28, 1982.

Joint Order Consolidating FERC Proceedings, Initiating ERA Proceeding, Setting Joint ERA/FERC Hearing, Denying Waivers, Motions, and Petitions, and Granting and Inviting Interventions

I. Introduction

The Administrator of the Economic Regulatory Administration (ERA) and the Federal Energy Regulatory Commission (Commission) have received numerous complaints, petitions, motions, and comments relating to Trunkline LNG Company's (TLC) authorizations to import, transport in interstate commerce, and resell liquefied natural gas (LNG) from Algeria. The agencies have been asked to review the authorizations granted to TLC in 1977 by the Federal Power Commission (FPC) 1/ to import and resell the gas. Certain parties allege that the price is no longer reasonable, that the gas is not now needed, and that the supply is not reliable. Although the ERA and the Commission have jurisdiction over different aspects of this matter, their decisions may rest on a common set of facts.

The importance of these issues to the gas-consuming public and to the companies involved requires an expeditious decision. The issues of need and price are closely intertwined between the Administrator's responsibility under Section 3 of the Natural Gas Act and the Commission's responsibilities under Sections 3, 4, 5, and 7 of the Natural Gas Act. The two agencies have therefore decided that the interests of all parties would be served best by setting for joint hearing the issues designated below. This procedure will create the record necessary for decision by each agency in an expeditious manner without requiring the parties to address these intertwined issues before the two agencies separately. Once a record is compiled, it will be certified to both the ERA and the Commission for such further proceedings and decision as are deemed appropriate by each agency.^{2/}

This order summarizes the history of TLC's 1977 authorization, describes the filings now before the Commission and ERA, and addresses the joint concerns and respective jurisdiction of the two agencies. The order also designates the issues to be addressed in the joint hearing.

II. Background

In 1977, the 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. Opinion 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. Opinion No. 796-A approved a price change mechanism in the gas supply contract between TLC and Sonatrach, the Algerian national oil and gas company, by which the price of LNG, FOB Algeria, would change 10 cents per Mcf equivalent for each \$1.00 change in the weighted average prices of No. 2 and No. 6 fuel oil in New York harbor. Opinion No. 796 fixed April 1, 1980 as the date by which the service was to begin. That date has been extended by the Commission from time to time, most recently on July 27, 1982, when the date was extended to July 1, 1983, based upon TLC's representation that Sonatrach was experiencing technical difficulties with its facilities in Algeria.

On July 1, 1982, TLC filed for arbitration before the International Chamber of Commerce, alleging Sonatrach's refusal to deliver LNG under the gas supply contract. TLC alleged that the Lake Charles terminal had been ready to receive LNG since August 7, 1981, and that the LNG liquefaction facilities in Algeria had been ready since June 21, 1981.

On August 9, 1982, TLC announced that it had reached agreement with Sonatrach on a shipping schedule under which the first ship of LNG would be loaded in September 1982 and that regular deliveries would be achieved shortly thereafter. At the same time TLC announced it had agreed with Sonatrach to amend the price change mechanism of the gas supply contract. TLC states that, in place of the formula based on No. 2 and No. 6 fuel oil, there would be substituted a formula that would change the price of LNG, FOB Algeria, by 17 cents for each \$1.00 change in the average posted prices of five specified foreign crude oils. The amendment is subject to the approval of both the Algerian and U.S. regulatory authorities, which approval would not be sought until regular deliveries under the existing contract had been achieved. The request for arbitration was withdrawn at the same time.

TLC then announced that the projected cost of revaporized LNG delivered to the Trunkline system would be \$7.13 per MMBtu. Part of the increase from the \$3.37 per Mcf approved in Opinion No. 796 is attributable to operation of the original price change mechanism that was approved by the Federal Power Commission in Opinion Nos. 796 and 796-A; the remainder of the increase is attributable to cost overruns on the construction of the Lake Charles terminal and the two U.S. flag ships, which additional costs have not been approved by the appropriate U.S. regulatory authorities.

Following these announcements by TLC, a number of complaints and

protests were filed, both with the Commission and the ERA, as discussed below.

III. Commission Proceedings

A. Cases Filed With the Commission

1. Docket No. CP82-517-000

On August 27, 1982, the Association of Businesses Advocating Tariff Equity (ABATE) filed a complaint with the Commission that requests an expedited order directing TLC and Trunkline to show cause why they should not be required to cease and desist from importing LNG from Algeria under terms and conditions inconsistent with the existing authorization. ABATE, a group of industrial gas customers in the State of Michigan that are served through the Trunkline system, alleges a significant change in circumstances on the Trunkline system since the authorization was granted in 1977. Specifically, ABATE alleges that Trunkline has no present need for the Algerian LNG and that Trunkline has more gas available to it today than it requires to meet the needs of its existing markets. It further alleges that the price of LNG, even under the existing contract, is much higher than was expected when the project was originally proposed.

ABATE also questions the reliability of Algeria as a long-term supplier of gas. ABATE alleges that deliveries by Algeria under the original contract have been withheld for two years, apparently because of Algeria's insistence on a price higher than is permitted under the contract. ABATE also notes that deliveries by Algeria to other U.S. importers have been unilaterally interrupted by Algeria since 1980 because of its demands for higher prices. Finally, ABATE alleges that, because of the agreement to modify the price change mechanism of the gas supply contract, TLC will be importing LNG pursuant to a new contract that differs from the contract that was considered in Opinion Nos. 796 and 796-A.

2. Docket No CP82-519-000

On August 27, 1982, the State of Michigan and the Michigan Public Service Commission (Michigan) filed a petition for an order to show cause and for expedited declaratory relief. In all material respects, Michigan raises the same issues as does ABATE. Michigan places special emphasis on its view that, but for the agreement to revise the price change mechanism, Sonatrach would not have begun shipments of LNG to the Lake Charles terminal. Michigan requests that the Commission issue an order declaring that the importation of LNG is without lawful authority because of the "supersession and abrogation of

the previous contract and certificate of public convenience and necessity by the new agreement," and ordering that TLC and Trunkline cease and desist from the importation of LNG under the new contract.

3. Docket No. CP82-533-000

On September 15, 1982, Consumers Power Company (Consumers), a public utility rendering natural gas service to more than one million residential, commercial, and industrial customers in the State of Michigan, filed a complaint and request for expedited interim relief. Consumers is a substantial customer of Trunkline, accounting for approximately 35 percent of Trunkline's revenues. As do ABATE and Michigan, Consumers alleges that there has been a major change in the pricing formula under the contract and that circumstances concerning the need for the gas and the security of the supply from Algeria have changed significantly since entry of the FPC's 1977 order authorizing the import. Consumers requests the Commission to suspend the import authorization and certificate immediately and then to determine whether to vacate the import license and certificate on the ground that importation of this LNG is inconsistent with the public interest.

Consumers also states that it recognizes that the relief it seeks places at issue the recoupment by TLC and Trunkline of their investment in the facilities constructed for the project. Consumers states the facilities were constructed in good faith on the basis of the certificates issued by the FPC. It requests that the Commission determine the extent and methodology upon which the proper costs of the project may be recouped from Trunkline's customers. Consumers suggests the possibility of holding the facilities on standby, pending the determination requested.

4. Docket No. CP82-541-000

On September 17, 1982, Laclede Gas Company (Laclede) filed a complaint and request for an order directing Trunkline to show cause why the certificate issued authorizing the sale of revaporized LNG from Algeria should not be amended or rescinded, due to TLC's alleged violation of its certificate and the drastic change in circumstances that has occurred since the project was originally certificated. Laclede, like ABATE, Michigan, and Consumers, raises questions concerning the amended price change mechanism, the reliability of LNG from Algeria, and the changed gas supply situation.

5. Docket No. RP81-85-000

On July 1, 1981, TLC filed a general rate change, pursuant to Section 4

of the Natural Gas Act, that proposed a change from the fixed rate approved in Opinion Nos. 796 and 796-A to a cost-of-service tariff. The filing also seeks an increase in the level of the rate approved in Opinion Nos. 796 and 796-A to reflect the cost overruns experienced on the ship and terminal construction. On July 31, 1981, the Commission accepted the proposed tariff sheets for filing and suspended them for one day after the date of initial delivery by TLC. The question of the justness and reasonableness of the proposed tariff changes, including the cost-of-service tariff and the cost increases, was set for hearing. (16 FERC Para. 61,102). No decision has been reached in that case; hearings in the case are scheduled to commence on January 17, 1983.

6. Docket No. RP82-127-000

On August 12, 1982, Michigan Consolidated Gas Company (Michigan Consolidated) filed a complaint against TLC, Trunkline, Panhandle Eastern Pipe Line Company (Panhandle) and Sonatrach that seeks to bar the passthrough to customers of Trunkline and Panhandle the costs of the Algerian LNG. In all material respects, Michigan Consolidated raises the same issues as are raised in the various complaints discussed above.

7. Docket No. TA83-1-30-000 (PGA83-1)

On September 16, 1982, Trunkline filed a "limited revision in the [purchased gas adjustment (PGA)] rate which became effective September 1, 1982, designed to reflect only the inclusion of gas from the new supply from TLC." The proposed effective date of the revised tariff sheet is November 1, 1982. Trunkline requests waiver of Sec. 154.38(d)(4)(iv) of the Commission's regulations, which allows only semiannual filing for PGA rate adjustments. The effect of including the cost of the revaporized LNG in Trunkline's PGA increases Trunkline's projected unit cost of purchased gas from 270.73 cents per dekatherm to 347.32 cents per dekatherm.

8. Docket No. TA83-1-28-000 (PGA83-1)

On September 16, 1982, Panhandle also filed a "limited revision" in its PGA which became effective September 1, 1982, designed to reflect only the effect of the purchase by Trunkline from TLC in Panhandle's own rates. The proposed effective date is November 1, 1982. Panhandle also requests waiver of Sec. 154.38(d)(4)(iv) of the Commission's regulations. The effect of including the cost of the revaporized LNG in Trunkline's PGA increases Panhandle's estimated unit cost of gas from 254.6 cents per MCF to 282.63 cents per Mcf.

B. Order To Show Cause (Docket Nos. CP74-138, 139 and 140)

Based upon the protests and complaints received by the Commission as well as the Commission's own concerns with respect to the cost of the revaporized LNG delivered to Trunkline and the circumstances surrounding the commencement of deliveries by Sonatrach, the Commission, on September 24, 1982, issued an order directing Trunkline and TLC to show cause:

(1) why the proposed deliveries of LNG are not pursuant to what amounts to a new contract, (2) why Trunkline and TLC should not be required to seek authorization to import LNG under the contract (as amended, modified or superseded) prior to any shipments of LNG from Algeria, (3) why the proposed delivery will not be in violation of the Natural Gas Act or other applicable statutes, and (4) why the operation of the Lake Charles facilities should not be found to be no longer in the public convenience and necessity.

The September 24 order directed Trunkline and TLC to file information with respect to the August 6, 1982 agreement with Sonatrach and the arbitration proceedings. The September 24 order also requested interested parties to submit legal memoranda with respect to the basis for revision of the certificates issued to TLC and the rate implications of such an action.

Trunkline and TLC filed their response to the order to show cause on October 1, 1982. The companies assert that the importation and revaporization are being conducted strictly in accordance with the authorization and certificates issued by the FPC in 1977 and pursuant to the gas supply contract approved in Opinion No. 796. The Trunkline companies assert that the August 6, 1982, modification to the contract is not relevant to present purposes because it is subject to regulatory approvals and regulatory approvals have not yet been sought (and will not be until regular deliveries under the existing contract are accomplished). The companies assert that the Commission lacks the authority to revoke or suspend TLC's authorization to import Algerian LNG and its certificate of public convenience and necessity to operate its facilities. The companies further assert that the state commissions and customers who are now seeking to stop the project strongly supported it in 1977, and those persons should not now be heard to oppose the project. The companies emphasize that the Algerian LNG project is a long-term gas supply project and that the opponents of the project are reacting only to a short-term market situation. The companies acknowledge that the LNG is not needed for the next year or two, but stress that in future years, this LNG will play a crucial role in enabling Trunkline and Panhandle to serve their market requirements. The companies caution the Commission against periodic reviews of the authorizations for major energy projects lest the incentive to embark on such projects be destroyed by the risk that once substantial dollars have been spent, the

government may change its mind and the investment may be jeopardized. Finally, the companies request an evidentiary hearing to consider the issues in the event that the Commission does not dismiss the complaints.

Those who now object to the importation of the Algerian LNG make four basic points in response. First, they assert that, because Algeria did not agree to begin shipments of LNG until TLC agreed to revise the price change mechanism in the contract, there is in effect a new contract for the sale of the LNG that has not received the appropriate regulatory approvals. Second, they assert that circumstances have changed substantially since the project was authorized in 1977, both in terms of gas supply and marketability of the revaporized LNG. Third, they assert that, in view of Algeria's action in terminating deliveries to Cove Point and Elba Island because of pricing disagreements, Algeria cannot be relied upon as a secure, long-term source of supply. Finally, certain of the opponents recognize that TLC's investment in the project should not necessarily be placed at risk, even if the project were to be suspended. The project was undertaken and substantial dollars expended in good faith, pursuant to valid authorization and certificates from the FPC. These persons indicate a willingness to explore appropriate rate mechanisms so as not to penalize the companies because of whatever decisions may be made as to the future of the project.

IV. ERA Proceedings

A. Filings Before the ERA

1. State of Michigan and Michigan Public Service Commission (Michigan)

On August 27, 1982, Michigan filed a petition requesting the ERA to issue an order to Panhandle, Trunkline, and TLC to show cause why the scheduled LNG import should not be considered unlawful. Additionally or alternatively, Michigan requested the ERA to issue an order granting the declaratory relief sought by finding the importation unlawful and unauthorized and subject to refunds, penalties and appropriate enforcement actions.

Michigan cited two basic reasons in support of its petition. First, Michigan alleges that TLC violated Article 24 of its existing gas purchase contract with Sonatrach by renegotiating a change in the price escalation formula during a time in which it was strictly prohibited by the contract that was approved by the FPC in 1977. As a consequence, neither Trunkline nor Panhandle can lawfully pass LNG costs through to their customers until TLC has obtained the requisite governmental approval of the new contract. Second, Michigan contends that conditions have changed since the import authorization

was granted by the FPC in 1977, that the gas is neither currently needed nor marketable at the prices provided for in the existing contract, and that Algeria is an unreliable long-term supplier of natural gas.

On October 19, 1982, Michigan filed a memorandum in further support of its August 27, 1982 petition citing the factual basis and legal arguments for the ERA to take such proposed action. Moreover, Michigan maintains that the ERA has full power and authority, in the circumstances of this case, to suspend or, revoke the existing authorization.

2. Michigan Consolidated Gas Company (Michigan Consolidated)

On August 27, 1982, Michigan Consolidated filed with the ERA a complaint, request for hearing, and petition for the issuance of a declaratory order on an expedited basis or, alternatively, an order to show cause why this LNG import is not unlawful and unnecessary.

In support of its filing, Michigan Consolidated reiterated many of the same arguments stated in Michigan's August 27 petition. Michigan Consolidated states that renegotiation of the price escalation formula was inconsistent with Article 24 of the gas purchase contract. Furthermore, the company alleges that Sonatrach's failure to begin deliveries of gas as stipulated in the old sales contract terminated that contract and requires TLC to obtain new governmental authorization to import the LNG and to pass through those costs to its customers. Like Michigan, Michigan Consolidated also alleges that conditions have changed and that the gas is not currently needed, that the gas is unmarketable because of the price, and that Sonatrach has been proven to be an unreliable supplier of gas.

3. Association of Businesses Advocating Tariff Equity (ABATE)

On August 30, 1982, ABATE filed with the ERA a complaint and request for the issuance of an order to TLC to show cause why it should ". . . not be required to cease and desist from importing LNG from Algeria under terms and conditions inconsistent with its existing authorization." ABATE, like Michigan and Michigan Consolidated, argues that TLC and Sonatrach have altered significantly their gas sales contract and that the alteration has never been subject to governmental review. ABATE also contends that there is no current need for the gas, its price is higher than anticipated when the import authorization was granted in 1977, and events subsequent to the FPC approval have raised questions concerning the reliability of Algeria as a gas supplier.

4. Consumers Power Company (Consumers Power)

On September 2, 1982, Consumers Power petitioned the ERA to issue an order requiring TLC to show cause why the existing authority to import LNG should not be vacated. Additionally, Consumers Power requested the ERA to issue an order suspending TLC's import license pending an expedited hearing. The reasons cited in support of the requested actions were identical to those given by other parties in earlier filings. Consumers Power alleges that TLC had violated its existing sales contract and that "changed circumstances" since the 1977 FPC approval make this import no longer desirable. The company also maintains that the renegotiated pricing formula would result in higher priced gas which, in turn, would drive industrial customers off its system.

5. Laclede Gas Company (Laclede)

On September 10, 1982, Laclede filed with the ERA a complaint and request for immediate suspension of TLC's import authorization pending an expedited hearing. Laclede states that the ERA should have a hearing to determine whether TLC's import authorization should be amended or rescinded due to the ". . . drastic change in circumstances which has occurred since the authorization originally was issued." Laclede maintains that changes in the need for and price of the gas, as well as in the reliability of the supply, cause this project no longer to be in the public interest. The company further asserts that "ex post facto review of the renegotiated contract cannot and will not adequately protect the public interest."

6. Illinois Power Company (Illinois Power)

On September 10, 1982, Illinois Power filed with the ERA a petition to issue an order requiring TLC to file an application requesting approval of modification to its gas purchase contract with Sonatrach. Illinois Power also requested immediate suspension of the authorization pending an expedited hearing. Illinois Power, like the other persons filing with the ERA, maintains that TLC has violated its existing contract and that circumstances have changed causing this project to be no longer in the public interest.

7. Congressmen Robert H. Michel and Paul Findley, the Illinois Commerce Commission, Associated Natural Gas Company, Battle Creek Gas Company, Central Illinois Light Company, Central Illinois Public Service Company, Citizens Gas Fuel Company, Michigan Gas Utilities Company, Missouri Utilities Company, Ohio Gas Company, Richmond Gas Corporation, Southeastern Michigan Gas Company, and Toledo Edison Company (the General Service Customer Group)

On September 10, 1982, these joint petitioners filed with the ERA a petition to reopen the proceedings that resulted in the issuance of FPC

Opinion No. 796 authorizing TLC to import LNG from Algeria. They also want the ERA to issue a supplemental order revoking TLC's current import authorization on the basis of significant "changed circumstances." The General Service Customer Group alleges that since the 1977 FPC authorization, there have been dramatic changes in the factual circumstances and applicable law concerning security of supply, need for the gas, and the price of this LNG import. They also maintain in their petition that continuation of this import project will have an adverse impact on the U.S. balance of payments.

On September 21, 1982, the General Service Customer Group, ABATE, and Consumers Power filed with the ERA a joint motion on behalf of all those that filed petitions, complaints or motions with the ERA, to consolidate the proceedings and establish expedited procedures. On October 8, 1982, The General Service Customer Group, ABATE, Consumers Power, Laclede and Michigan Consolidated filed a joint motion requesting the ERA to comply with the requirements of the Natural Gas Act and applicable rules of practice and procedure by acting on all the filings before it on this matter.

8. Central Illinois Public Service Company (CIPS)

On September 21, 1982, CIPS filed a petition with the ERA requesting the reopening and revocation of TLC's import authorization on the grounds of "changed circumstances" with respect to security of the supply, the price of the gas and need for this LNG import. The firm also requested that the ERA temporarily suspend TLC's current authorization pending the outcome of an evidentiary proceeding.

9. State of Illinois, the People of the State of Illinois, the Attorney General of the State of Illinois (Illinois)

On September 24, 1982, Illinois filed a petition with the ERA to reopen and revoke TLC's import authorization and a motion for temporary suspension of the authorization pending the outcome of the proceeding. The bases for these requested actions were identical to those cited by other petitioners and complainants: "changed circumstances" and violation of TLC's sales contract.

10. TLC's Responses to Complaints and Petitions

On September 27, 1982, TLC filed a response to the complaints filed by Michigan Consolidated, ABATE, and Laclede. On October 12, 1982, TLC filed a response to the petitions of Illinois Power, the General Service Customer Group, and CIPS.

In response to the petitioners' and complainants' request that the ERA revoke, rescind, or suspend TLC's import authorization, TLC contends that there is no statutory, policy, or legal basis for the requested action. TLC asserts that the complainants have not addressed the statutory authority, legal precedent, or judicial pronouncement that would allow the ERA to terminate an existing import authorization.

TLC also expressed concern about the effect such action would have on ". . . a long-term project created by private industry, supported by these petitioners, complainants and their allies, and sanctioned and fostered by the United States government, merely because of temporary economic conditions which are affecting the availability of energy today." TLC includes an appendix of statements made by many of the complainants and petitioners during the earlier authorization proceedings before the FPC supporting the project to import Algerian LNG.

TLC claims that the petitioners and complainants have made erroneous assertions with respect to alleged violations of TLC's sales agreement with Sonatrach and that the current LNG shipments are being delivered under the 1975 contract, and in accordance with its existing import authorization. TLC asserts that the amended pricing clause would only become effective ". . . following achievement of full deliveries and upon the obtaining of government approvals, the timing of which cannot now be predicted."

In response to the claims that there is no longer a need for this gas supply because of "changed circumstances," TLC argues that such allegations are both self-serving and wrong. In addition, TLC states that any review of the petitioners' and complainants' assertions would require the ERA to grant the opportunity for discovery, submission of market data, and cross-examination at an evidentiary hearing.

B. ERA Conferences

The ERA held public conferences in Peoria and Springfield, Illinois, on October 14 and October 15, 1982, respectively. The purpose of the conferences was to permit interested persons to comment on various complaints and petitioners recently filed with the ERA regarding TLC's import authorization and TLC's subsequent response to the complaints. The ERA received views on whether it should initiate a "proceeding" to review TLC's import authorization and, if so, what issues it should address, what kind of evidence it should gather, and what kind of procedures and timetable for action it should adopt.

C. Initiation of Proceedings and Solicitation of Petitions To Intervene In

ERA Docket No. 82-12-LNG

Issuance of this order constitutes the commencement of an ERA proceeding to determine whether the petitioners' and complainants' allegations of "changed circumstances" since the 1977 FPC import authorization would warrant the ERA taking steps to amend or revoke TLC's current import authorization issued pursuant to Section 3 of the Natural Gas Act.

Although the ERA did not have a proceeding on TLC's import authorization until issuance of this order, many persons have filed petitions to intervene and notices of intervention in any proceeding the ERA might conduct on this subject matter. All of these petitioners are granted intervention status and will be able to participate in this joint FERC/ERA hearing, as well as any further proceeding the ERA may conduct on this matter. A list of these parties is contained in Appendix A of this order. Additionally, all persons that have made filings before the Commission on this subject are also granted intervention in this ERA proceeding. A list of these parties is contained in Appendix B of this order.

The ERA invites protests or petitions to intervene in the proceeding. Until the conclusion of this hearing, all such protests or petitions are to be filed with the Secretary of the Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Such protests or petitions will be accepted for consideration if filed no later than 4:30 p.m., on November 5, 1982. Answers to petitions to intervene must be filed by November 8, 1982.

D. Procedural Requests

By initiating a proceeding in this docket and setting the matter for hearing, this order grants various parties' requests that the ERA address the issue of whether, under Section 3 of the Natural Gas Act, TLC's existing import authorization currently is not consistent with the public interest.

With respect to several persons' requests that the ERA temporarily suspend TLC's import authorization pending further hearing, the ERA has determined that such action is not warranted at this time. The Commission's action in this order denying Trunkline's and Panhandle's requests for waiver of Sec. 154.38(d)(4)(iv) of its regulations effectively precludes any immediate pass-through to their customers of any charges attributable to the importation of LNG purchased from Sonatrach. Further, none of the complainants and petitioners has asserted any basis other than the possibility of immediate cost increases in support of their assertions that they will be irreparably injured if TLC's current import authorization is not suspended immediately.

See, e.g., *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921 (D.C. Cir. 1958). For these reasons, by this order ERA denies all pending requests for temporary suspension of TLC's import authorization, without prejudice to refile at a later date.

A number of requests for other types of procedural relief have also been filed with the ERA. Many of the concerns expressed in these requests overlap with those expressed by persons requesting the ERA to initiate evidentiary hearings. The ERA believes that the procedures we are adopting by this order will provide all parties an opportunity to present relevant evidence and their concerns. This order therefore denies all pending requests for procedural relief not specifically addressed above, without prejudice to refile.

V. Jurisdiction

TLC's importation of Algerian LNG and construction and operation of the necessary facilities were authorized by the FPC in 1977 prior to the creation of the Department of Energy. The Department of Energy Organization Act (DOE Act) transferred jurisdiction under Section 3 of the Natural Gas Act with respect to the importation of natural gas to the Secretary of Energy. DOE Act, Sections 301 and 402. Through a series of delegation orders, the Secretary assigned primary responsibility for imports to the ERA, and assigned to the Commission import jurisdiction over certain ancillary matters. DOE Delegation Order Nos. 0204-54 and 0204-55, 1 FERC Stat. & Reg. Para. 9908 and 9909. The Commission has jurisdiction with respect to matters arising under Sections 4, 5 and 7 of the Natural Gas Act.

VI. Hearing Required

The Commission and the Administrator recognize that TLC's importation of Algerian LNG and construction and operation of the facilities necessary in order to accomplish the importation were approved by the FPC in 1977, based upon the circumstances that then existed and that were anticipated to occur in the future. The pleadings filed in these several dockets allege a number of changes from the circumstances that existed in 1977. Whether the changes are sufficient to warrant action by the Commission or the Administrator cannot be determined at this time. Material issues of fact are raised by the pleadings in these cases that cannot be answered on the basis of the records before the two agencies. Because these pleadings raise common issues of fact and law, they will be consolidated for hearing. The basic issues to be addressed in the hearing and in the briefs are the following:

- (1) Whether the Administrator can alter, amend, modify, suspend, rescind

or revoke the existing authorization of TLC to import natural gas from Algeria issued by the FPC in Opinion Nos. 796 and 796-A pursuant to Section 3 of the Natural Gas Act? If so, under what circumstances?

(2) Whether the Commission has the legal authority to alter, amend, or rescind the certificate of public convenience and necessity issued to TLC pursuant to Section 7 of the Natural Gas Act? If so, under what circumstances?

(3) What changes, if any, have occurred with respect to price and need since the 1977 FPC import authorization that would warrant the amendment or rescission of TLC's current authorization under Section 3 of the Natural Gas Act?

(4) Whether the Lake Charles LNG facility should be permitted to operate at this time?

(5) Whether the import of LNG from Algeria by TLC at this time is inconsistent with the public interest and whether the sale of revaporized LNG from the Lake Charles facility by TLC to Trunkline at this time would be inconsistent with the public convenience and necessity?

(6) Is there a national need for this LNG over the near term and the life of the project? What other sources of energy supply at what prices will be available during these periods to meet such needs?

(7) Whether any pricing terms of the existing authorization of TLC to import natural gas from Algeria are inconsistent with the public interest and should be modified? If so, in what respect?

(8) Is the price of this LNG import, when revaporized, reasonable compared to alternate fuel prices in the U.S. market?

(9) What is the effect of this LNG import on the U.S. balance of payments? Has this materially changed since 1977?

(10) What is the projected need for this LNG import to serve the market requirements of Trunkline and its customers currently over the near term, and over the life of the project? What other sources of energy supply may be available to meet future market requirements and at what prices over the near term and the life of the project?

(11) Is the revaporized LNG marketable at the rates proposed by TLC currently, over the near term, and over the life of the project? If not, at

what lower rate would the gas be marketable?

(12) What impact would inclusion in Trunkline's rates of the cost of the revaporized LNG have on Trunkline's customers currently, over the near term, and over the life of the project?

(13) To what extent, if any, would Trunkline or its customers lose load if the costs of the revaporized LNG are included in Trunkline's rates? If so, what alternative fuel would replace gas, and at what price?

(14) What would be the impact on end-user prices per MMBtu given the sunk costs invested in the project if the project were not to go forward at this time?

(15) What rate methodologies or mechanisms might be available so as not to penalize TLC if the Lake Charles facility does not go into service at this time?

(a) Should TLC's minimum bill be placed in effect?

(b) Should the project be treated as abandoned, with the investment being amortized by ratepayers?

(c) Should the project be "mothballed" or treated as being held for future use, with a return of equity-related components? If so, to what extent?

(16) Has TLC violated the terms of the authorizations granted pursuant to Opinion Nos. 796 and 796-A?

(17) Have the actions of TLC and Sonatrach in amending the gas supply contract served to void the contract that was considered in Opinion Nos. 796 and 796-A? Do such actions require that TLC secure appropriate regulatory approvals of the amended contract prior to any importation of LNG from Algeria?

(18) Should Trunkline and Panhandle be permitted to make effective an out-of-cycle PGA filing?

(19) To what extent should the cost increases included in FERC Docket No. RP81-85 (other than increases in the cost of LNG FOB Algeria pursuant to the priced change mechanism of the contract approved by Opinion Nos. 796 and 796-A) be permitted to be reflected in TLC's rates?

In order to assist the Administrator and the Commission in understanding

the historical background and current context of the above-enumerated issues, a full factual record should also be developed with respect to the circumstances surrounding the renegotiation of the price change mechanism of the gas supply contract between TLC and Sonatrach, and with respect to the effect of the August 1982 amendment to the price change mechanism on the contract that served as a basis for the authorization issued by the FPC in 1977.

Because it appears that TLC has already begun to incur substantial costs for LNG shipped from Algeria, the Commission directs the administrative law judge to expedite this proceeding so that the record may be certified to the Commission and the Administrator of the ERA not later than December 14, 1982. After certification of the record, Commission and ERA participants shall have ten days to file simultaneous briefs with the Commission and ERA. The administrative law judge is directed to modify the procedural schedule already established for Docket No. RP81-85-000 to the extent necessary to meet the requirements established herein. The rate issues identified in item 19 may be deferred, if necessary, in order to complete the record on the remaining items in a timely manner.

VII. Decisions and Orders

A. Economic Regulatory Administration

Based on the ERA's review of the filings in ERA Docket No. 82-12-LNG, we have decided to initiate a proceeding in this docket. Accordingly, the Secretary of Energy and the Administrator have transferred jurisdiction in this docket to the Commission (see DOE Delegation Order No. 0204-104 and ERA Delegation Order No. 0204-104A) for the sole purpose of developing a record on the issues discussed above, and in accordance with the hearing procedures specified by the Commission. All motions and requests for procedural relief or action not specifically granted by this order are denied.

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

The ERA orders:

(A) Pursuant to DOE Delegation Order No. 0204-104 and the ERA Delegation Order No. 0204-104A, a hearing shall be held in this proceeding and shall be conducted in accordance with the procedures specified by the Commission.

(B) All petitioners for leave to intervene, complainants, and

petitioners for procedural relief listed in Appendices A and B are hereby granted status as parties, subject to such rules of practice and procedures as may be in effect.

(C) All motions and requests for procedural relief or action not specifically granted by this order are denied.

B. Commission

In view of the foregoing procedures and the serious issues raised, the Commission will deny, at this time, Trunkline's and Panhandle's requests for waiver of Sec. 154.38(d)(4)(iv) to permit the filing of a PGA adjustment more frequently than semi-annually. We expect the hearing in these matters to consider whether good cause exists to grant waiver of Sec. 154.38(d)(4)(iv). We deny such waiver at this time, because we expect to decide expeditiously the question of whether the Lake Charles facility should be permitted to go into service. If resolution of that issue becomes unduly prolonged, Trunkline and Panhandle are free to renew their motions for waiver.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the proceedings in Docket Nos. CP74-138-003, CP74-139-001, CP74-140-001, CP82-517-000, CP82-519-000, CP82-533-000, CP82-541-000, RP81-85-000, RP82-127-000, TA83-1-28-000, and TA83-1-30-000 be consolidated and set for hearing.

(2) Good cause has not been shown to exist for waiver of the provisions of Sec. 154.38(d)(4)(iv) of the Commission's regulations.

The Commission orders:

(A) The proceedings in Docket Nos. CP74-138-003, CP74-139-001, CP74-140-001, CP82-517-000, CP82-519-000, CP82-533-000, CP82-541-000, RP81-85-000, RP82-127-000, TA83-1-28-000, and TA83-1-30-000 are consolidated for hearing.

(B) Pursuant to the authority of the Natural Gas Act, particularly Sections 3, 4, 5, 7, 15 and 16, and DOE Delegation Order No. 0204-55, a hearing shall be held in the proceedings consolidated in ordering paragraph (A). The consolidated hearing shall also consider ERA Docket No. 82-12-LNG, which has been delegated to the Commission by ERA for the sole purpose of compiling a record.

(C) An administrative law judge to be designated by the Chief Administrative Law Judge shall preside at a prehearing conference and subsequent hearings in this proceeding. The administrative law judge shall have full authority to establish all procedural dates and to phase the consideration of issues so that the record is certified to the Commission and the Administrator of the ERA consistent with the text of this order.

(D) Pursuant to Rule 709 of the Commission's Revised Rules of Practice and Procedure, the initial decision shall be waived and the record certified for decision by the Commission and the Administrator of the ERA.

(E) Panhandle's and Trunkline's requests in Docket Nos. TA83-1-28-000 and TA83-1-30-000 for a waiver of Sec. 154.38(d)(4)(iv) of the Commission's regulations are denied, and their respective tariff filings in those dockets are rejected.

By the Commission.

Rayburn Hanzlik
Administrator
Economic Regulatory Administration

Kenneth F. Plumb
Secretary
Federal Energy Regulatory Commission

--Footnotes--

1/ Opinion No. 796, issued April 29, 1977 (58 FPC 726); Opinion No. 796-A, issued June 30, 1977 (58 FPC 2935). The import authorization was issued pursuant to Section 3 of the Natural Gas Act. The construction and operation of the terminal facility was authorized in a certificate of public convenience and necessity issued pursuant to Section 7(c) of the Natural Gas Act.

2/ See Department of Energy Delegation Order No. 0204-104 to the Administrator of ERA and ERA Delegation Order No. 0204-104A to the Commission.

Appendix A

List of Parties

ERA Docket No. 82-12-LNG

1. Trunkline LNG Company
2. State of Michigan and Michigan Public Service Commission
3. National Hydrocarbons, Inc.
4. Public Utilities Commission of Ohio
5. Missouri Public Service Commission
6. Indiana Gas Company, Inc.
7. Lachmar
8. Northern Illinois Gas Company
9. Kansas State Corporation Commission
10. Boston Gas Company
11. Honorable Tom Corcoran, M.C.
12. Honorable Dan Coats, M.C.
13. Honorable Clarence Brown, M.C.
14. Panhandle Eastern Pipe Line Company
15. Northern Indiana Public Service Company
16. Mississippi River Transmission Corporation
17. Glass Packaging Institute
18. Industrial Gas Users Conference Companies
19. The Process Gas Consumers Group
20. Indiana Industrial Energy Consumers Group
21. Consumers Power Company
22. Honorable Robert H. Michel

23. Honorable Paul Findley
24. Central Illinois Public Service Company
25. Associated Natural Gas Company
26. Battle Creek Gas Company
27. Central Illinois Light Company
28. Citizens Gas Fuel Company
29. Michigan Gas Utilities Company
30. Missouri Utilities Company
31. The Illinois Commerce Commission
32. Ohio Gas Company
33. Richmond Gas Corporation
34. Southeastern Michigan Gas Company
35. Toledo Edison Company
36. State of Illinois and The People of Illinois
37. Illinois Power Company
38. Michigan Consolidated Gas Company
39. Association of Businesses Advocating Tariff Equity
40. Laclede Gas Company

Appendix B

Name	Date Filed
CP-74-138, et al.	
Honorable Charles H.	9/29/82

Percy, United States
Senate

Lachmar 10/01/82

Laclede Gas Company 10/01/82

Process Gas Consumers
Group 10/01/82

National Hydrocarbons
Inc. 10/01/82

Kansas State Corporation
Commission 10/04/82

Northern Illinois Gas
Company 10/13/82

General Service Customer
Group 10/13/82

Panhandle Eastern Pipe
Line Company 10/15/82

Indiana Industrial Energy
Consumers Group 10/20/82

John D. Dingell, Member of
Congress, Washington, D.C. 10/20/82

CP82-517-000

Indiana Gas Company, Inc. 9/23/82

Great River Gas Company 10/12/82

Mississippi River Trans-
mission Corporation 10/12/82

Consumers Power Company 10/13/82

Michigan Consolidated Gas 10/13/82

Company

East Ohio Gas Company 10/13/82

CP82-517-000

Industrial Gas Users 10/13/82
Conference Companies

Glass Packaging Institute 10/13/82

CP82-519-000

Indiana Gas Company, Inc. 9/23/82

Boston Gas Company 10/18/82

Consumers Power 10/21/82

CP82-533-000

Indiana Gas Company, Inc. 9/27/82

Glass Packaging Institute 10/13/82

Industrial Gas Users 10/13/82
Conference Companies

Mississippi River Trans-
mission Corporation 10/13/82

Panhandle Eastern Pipe
Line Company 10/15/82

Lachmar 10/20/82

Boston Gas Company 10/20/82

East Ohio Gas Company 10/22/82

National Hydrocarbons, Inc. 10/22/82

CP82-541-000

Northern Indiana Public Service Company 10/06/82

Indiana Gas Company, Inc. 10/07/82

Mississippi River Transmission Corporation 10/13/82

Glass Packaging Institute 10/13/82

Industrial Gas Users Conference Companies 10/13/82

Panhandle Eastern Pipe Line Company 10/15/82

The Missouri Public Service Commission 10/19/82

CP82-541-000

Lachmar 10/20/82

Boston Gas Company 10/20/82

National Hydrocarbons, Inc. 10/22/82

TA83-1-28-000

Tom Corcoran, Dan Coats, and Clarence J. Brown, Members of Congress 9/24/82

Columbia Gas Transmission Corporation 9/29/82

Charles H. Percy 9/29/82

Citizens Gas and Coke Utility 9/29/82

Illinois Power Company 9/30/82

Consumers Power Company	10/1/82
Associated Natural Gas Company, et al.	10/1/82
Michigan Gas Utilities Company	10/1/82
The East Ohio Gas Company	10/1/82
Illinois Power Company	10/1/82
Association of Businesses Advocating Tariff Equity and the Process Gas Consumers Group	10/1/82
Michigan Consolidated Gas Company	10/1/82
Indiana Gas Company, Inc.	10/1/82
Great River Gas Company	10/1/82
National Hydrocarbons, Inc.	10/1/82
Frank J. Kelley, State of Michigan, Public Service Commission	10/1/82
TA82-1-28-000	
Central Illinois Public Service Company	10/01/82
Northern Illinois Gas Company	10/01/82
Northern Indiana Public Service Company	10/01/82
Robert R. Michel and Paul Findley	10/04/82

Missouri Utilities Company	10/05/82
Illinois Commerce Commission	10/06/82
Missouri Power and Light Company	10/07/82
Missouri Edison Company	10/07/82
The People of the State of Illinois	10/12/82
Southeastern Michigan Gas Company	10/18/82
TA82-1-30-000	
Tom Corcoran, Dan Coats, and Clarence J. Brown, Members of Congress	9/24/82
United Cities Gas Company	9/29/82
Charles H. Percy	9/29/82
Columbia Gas Transmission Corporation	9/29/82
Illinois Power Company	9/30/82
Michigan Gas Utilities Company	10/01/82
General Service Customer Group	10/01/82
TA82-1-30-000	
Consumers Power Company and Michigan Gas Storage Company	10/1/82

The East Ohio Gas Company	10/1/82
National Hydrocarbons, Inc.	10/1/82
Illinois Power Company	10/1/82
Indiana Gas Company, Inc.	10/1/82
Mississippi River Transmission Corporation	10/1/82
Association of Businesses Advocating Tariff Equity and the Process Gas Consumers Group	10/1/82
Michigan Consolidated Gas Company	10/1/82
Laclede Gas Company	10/1/82
Central Illinois Public Service Company	10/1/82
State of Michigan and Michigan Public Service Commission	10/1/82
Robert H. Michel and Paul Findley	10/4/82
Illinois Commerce Commission	10/6/82
Missouri Utilities Company	10/5/82
Northern Indiana Public Service Company	10/4/82
Missouri Edison Company	10/7/82

Missouri Power and Light Company	10/7/82
TA83-1-30-000	
The People of the State of Illinois	10/18/82
RP81-85-000	
National Hydrocarbons, Inc.	9/10/82
RP82-127-000	
Indiana Gas Company, Inc.	9/07/82
The Association of Businesses Advocating Tariff Equity	9/08/82
Tom Corcoran, Dan Coats and Clarence J. Brown, Members of the U.S. Congress	9/10/82
Illinois Power Company	9/14/82
Columbia Gas Transmission Corporation	9/14/82
General Service Customer Group	9/15/82
Consumers Power Company	9/15/82
State of Michigan and Michigan Public Service Commission	9/15/82
Mississippi River Transmission Corporation	9/15/82
East Ohio Gas Company	9/15/82

Boston Gas Company

9/16/82