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Fifth Circuit Affirms FERC Ruling that Certificate Jurisdiction Under Natural Gas Act Applies to Sales from Old OCS Leases from Which No Gas Was Produced, Sold or Certificate Prior to Enactment of NGPA

On 7/30/80 the U.S. Court of Appeals for the Fifth Circuit affirmed FERC orders issued 6/12/79 and 9/14/79 which denied petitions by Continental Oil Co. (CI79-415) and Exxon Corp. (CI79-532) for declaratory rulings that certificates under Section 7(c) of the Natural Gas Act are not required for producer sales from old OCS leases from which no gas was produced, sold, contracted to be sold, or the subject of a certificate application prior to enactment of the NGPA. Conoco, Inc. et al. v. FERC, No. 79-3419.

Continental and Exxon contended that sales from such leases were not subject to FERC certificate jurisdiction in view of NGPA Section 601(a)(1)(A) providing that, effective 12/1/78, FERC jurisdiction under the Natural Gas Act "shall not apply to natural gas which was not committed or dedicated to interstate commerce as of the day before the date of the enactment of this Act [NGPA] solely by reason of any first sale of such natural gas." For purposes of determining whether gas was "committed or dedicated to interstate commerce" on the day prior to NGPA enactment, the producers asserted that the Commission should rely on the definition applied under the Natural Gas Act, namely, that natural gas became "committed or dedicated to interstate commerce" only upon commencement of interstate deliveries. (See REPORT NOS. 1213, p29; 1227, pp28-29.)

The Fifth Circuit agreed with the FERC that the definition of the term "committed or dedicated to interstate commerce" contained in Section 2(18)(A) of the NGPA is controlling. That definition expressly includes all OCS gas. The general rule requiring reliance on the definition supplied by the legislature is applicable here, the Court stated, and the FERC's construction "is fully consistent with Congress' intent." In this last connection, the Court particularly noted a statement by Rep. Dingell (D-Mich.) during debate on the NGPA conference bill that "'new reservoirs' on 'old OCS leases' ... would not be deregulated [under the Natural Gas Policy Act] for pricing or nonpricing purposes," whereas gas produced from new OCS leases (entered into after 4/20/77) would be deregulated for pricing purposes under NGPA Section 121(a)(1) as of 1/1/85 and deregulated for nonpricing purposes under NGPA Section 601(a)(1)(B)(ii) as of the first day of the first month after the date of enactment.

The Court rejected the producer argument that Congress could not have intended the Section 2(18) definition of "committed or dedicated to interstate commerce" to apply to Section 601(a)(1)(A) since this definition was not in existence on the day before NGPA enactment. The Court noted that the phrase "committed or dedicated to interstate commerce" is used several times in the NGPA and apparently never without reference either to "the day before the date of enactment" (11/8/78) or to 4/20/77. "It is thus quite clear that Congress intended to rely on antecedent facts in determining whether gas was 'committed or dedicated to interstate commerce' under NGPA, and intended for the definition to be applicable as if it were in force prior to the effective date of the Act."

Nor was the Court persuaded by the argument that the Commission's use of the Section 2(18) definition created an "obvious incongruity" by rendering the "day before the date of enactment" test date meaningless and by frustrating one of the major purposes of the legislation, namely, to free gas not committed or dedicated to interstate commerce on the day before enactment from FERC jurisdiction under the Natural Gas Act. The Court said the FERC's construction did not render the test date meaningless since this date -- although having little effect on the dedication status of OCS gas, all of which is included in the Section 2(18) definition -- can have a significant impact on whether non-OCS gas will or will not be subject to FERC jurisdiction under the Natural Gas Act by reason of a first sale. Also,
the Court declared, Section 601 of the NGPA makes clear that Congress intended to free certain natural gas from FERC jurisdiction while leaving other gas subject to that jurisdiction. "In deciding that certain gas is subject to its jurisdiction, FERC does not thwart any of the Act's major purposes."

Senate Passes DOE Authorization Bill for Fiscal 1981, Including $76.4 Million for FERC; House Passes Interior Authorization Bill, Including Funds for ERA and EIA

On 7/31/80 the Senate passed S. 2332 authorizing some $9.4 billion for fiscal 1981 civilian programs of the Department of Energy, including $76,374,000 for the FERC. The day before, the House passed H.R. 7724, providing total fiscal 1981 appropriations of $4.05 billion for the Department of Interior, 1/ $3.57 billion for DOE and other appropriations for related agencies. The DOE appropriations include $141,999,000 for ERA and DOE's Office of Hearings and Appeals and $106,812,000 for EIA.

The Administration's federal budget for fiscal 1981 released in January requested a total DOE authorization of $12.7 billion, including $76.4 million for the FERC. The FERC budget reflected increases for all of the Commission's major programs, including $39.7 million for natural gas regulation compared to $38.4 million requested for fiscal 1980. In subsequent Congressional testimony supporting the budget request, FERC Chairman Curtis noted that the $76.4 million figure entailed only a 5% increase over the Commission's appropriations for fiscal 1980, adjusted to include supplemental requests. In real terms, he stated, the requested amount -- which reflects no increase in personnel -- represents not merely a level budget "but actually a significant tightening of the belt." Mr. Curtis emphasized the need to maintain the Commission's current personnel ceiling in order to continue execution of its functions under the NGPA and the PURPA in a timely manner. (See REPORT NOS. 1246, pp10-11; 1257, pp19-20.)

At the outset of debate on S. 2332, Senator Bennett Johnson (D-La.) noted that the Senate has not passed an annual authorization bill for the civilian programs of DOE for several years because of "the irresistible attraction this bill seems to hold for controversial policy amendments . . . . We simply must put an end to this free for all." Second, Senator Johnson continued, in previous years the Senate Energy Committee has reported authorization bills predicated upon detailed line-item consideration of all activities and programs of the Department. This procedure, he emphasized, "has proven to be excessively time-consuming in view of the Committee's other workload in the early months of the session, and it has been impossible to comply with the deadline established in the Congressional budget process for reporting the bill." In the formative years of DOE, Senator Johnson said, there may have been some value in a detailed oversight of the balance among individual subprograms and project line-items which was afforded by authorization hearings and business meetings. However, as the ongoing programs and activities have reached a relatively stable state, the general policy content in an examination of each line-item annually is greatly diminished.

1/ This amount includes $194 million for exploration of the National Petroleum Reserve in Alaska (see elsewhere in this REPORT).
Accordingly, Senator Johnson said, the Energy Committee established a new approach to annual authorizations of appropriations for DOE's civilian programs which will include (1) continuing review of long-term direction and objectives of a program's activities; (2) approval of a major new program initiative and redirection of existing programs which are proposed for the fiscal year involved; (3) approval of the initiation of new projects with particular attention to the overall justification thereof and total fiscal commitment over the life of a project; and (4) special investigation or oversight of specific matters that are thought to have special priority or unusual problems.

In considering DOE's fiscal 1981 authorization, Senator Johnson continued, the Senate Energy Committee amended the bill as originally proposed to establish the above new approach. First, the bill establishes a basis for determining the total cost currently authorized for construction projects which were initiated in prior fiscal years and authorizes several new construction projects which may be initiated in fiscal year 1980 or future years -- and then establishes a total cost ceiling for each such project. The fiscal year 1981 appropriations are authorized on the basis of appropriations account numbers which were used in the fiscal year 1980 appropriations, along with an additional 10% of each such account to permit some increase in total funding of the programs contained therein. The Committee agreed to make an exception to the general formula for the appropriations accounts in the case of the FERC, and voted to authorize the Administration's revised budget request of $76,374,000.

In addition, the bill authorizes funds for major new program initiatives proposed in fiscal 1981. These amounts will be in addition to the base amounts provided for the relevant appropriations account. New construction projects are authorized to be initiated in fiscal year 1981 within the amounts authorized for relevant appropriations account numbers, and total cost limits are established for each such project. Finally, appropriations are authorized for fiscal 1982 and later years for each appropriations account number if the amount of the actual appropriation which was made in the prior year, plus 10%.
House Appropriations Bill Establishes Competitive Oil and Gas Leasing Program for National Petroleum Reserve in Alaska

On 7/30/80 the House of Representatives passed H.R. 7724 appropriating funds for the Department of Interior and certain other agencies for fiscal year 1981. The total Interior Department appropriations ($4.05 billion) provides $194 million for exploration of the National Petroleum Reserve in Alaska (NPRA), including funds to permit the Secretary of Interior to conduct a program of competitive leasing of oil and gas pursuant to certain conditions set forth in the bill. Rep. Morris Udall (D-Ariz.), Chairman of the Committee on Interior and Insular Affairs, attempted without success to delete language providing for competitive leasing of the NPRA in Alaska (and funds therefor) on the ground that any such program should be established through a legislative proposal, not an appropriations bill.

The provision in the appropriations bill establishing a leasing program for the Alaskan NPRA was added by the Subcommittee on Interior Appropriations. The program calls for a first sale within 20 months of enactment -- but only after publication of a final environmental statement, if one is deemed necessary by the provisions of the National Environmental Policy Act. The leases may be sold under a number of bidding systems, as set forth in the Outer Continental Shelf Lands Act Amendments of 1978, and be issued for an initial period up to 10 years. Lease tracts may be up to 60,000 acres and may also encompass identified geological structures. Further, the appropriations bill requires sharing federal lease revenues 50% with the State of Alaska, which would plan, conduct, maintain and operate essential public facilities and allocate funds to areas most directly or seriously affected by the development of oil and gas resulting from the NPRA leasing program.

Rep. Sidney R. Yates (D-Ill.), Chairman of the House Subcommittee on Interior Appropriations and floor manager of H.R. 7724, explained that language permitting the Secretary of Interior to lease the NPRA-Alaska for private exploration was included because of the promising potential of that area and the fact that bills presently pending in the House and Senate to establish a competitive leasing program had not yet passed either body.

The presently pending bills include legislation introduced earlier this year, at the request of the Administration, by Rep. Udall (H.R. 6630) and by Senator Jackson (S. 2524) to, among other things, establish a program for accelerated leasing of the National Petroleum Reserve in Alaska to private industry for oil and gas exploration. Similar to the above-described appropriation bill, these proposals would require the first lease sale within 20 months from enactment, authorize use of several different bidding systems, and permit issuance of leases for tracts up to 60,000 acres and for initial terms up to 10 years. The Administration bills would also require sharing 50% of federal lease revenues with the State of Alaska. They additionally include a number of other provisions relating to leasing of other minerals, protection of Alaskan native interests, and coordination with state, local and native representatives to assist in land use planning and development.

Senator Jackson also introduced a second bill (S. 2525) which differed from the Administration proposal mainly in allowing only one instead of several bidding systems, requiring payment of essentially only 2% of federal leasing and production revenues to Alaska and the remaining 98% to the U.S. Treasury, and providing for development and production of the Umiat Field by an independent, federally owned corporation. (See REPORT NOS. 1255, pp23-25; 1257, pp27-29.)

To date, Rep. Udall has scheduled no hearings on H.R. 6630 by the House Interior Committee, awaiting Senate action on the Alaska Lands bill (H.R. 39). The House-passed version of H.R. 39 includes a provision to establish a leasing program for the NPRA-Alaska. The Senate commenced to debate another version of H.R. 39 (which
does not provide for leasing of the NPRA) on 7/21/80, but progress thus far has been largely blocked by a filibuster of Senator Gravel (D-Alaska) to amendments proposing to increase the extent of lands protected from any mineral or other development. 1/

During floor debate on H.R. 7724, Rep. Udall introduced an amendment to delete the provision in the appropriations bill for establishment and funding of a competitive leasing program for the Alaska NPRA. Any such program, he argued, should be drafted by a legislative committee rather than an appropriations committee. While "we are all for getting the Government drilling program ended and getting the private oil companies active in the National Petroleum Reserve," Mr. Udall stated, this must be done in an orderly way through a legislative committee. He stressed that despite similarities between the leasing program established in the appropriations bill and the program proposed in the bill pending before the House Interior Committee (H.R. 6630), the latter bill includes provisions omitted from the appropriations bill. Among other things, H.R. 6630 provides for the creation of four areas of high environmental sensitivity, for the leasing of minerals other than oil and gas, and for the protection of Alaskan native interests. (Similar provisions are contained in the Alaska Lands Act passed by the House in May 1979.)

If the amendment to delete the NPRA leasing provision from the appropriations bill were passed, Rep. Udall and Rep. Seiberling (D-Ohio), Chairman of the Subcommittee on Public Lands, pledged to promptly hold hearings on H.R. 6630 in the event the Alaska Lands bill did not emerge from the Senate in "the next few weeks" or if it did so without the language in the House-passed version providing for the leasing program.

Opponents of Mr. Udall's amendment stressed the importance of implementing a private leasing program as soon as possible due to the current energy situation. If the amendment were to pass, opponents claimed that it could be four, five or six years before private oil companies could begin actual exploration. Rep. Young of Alaska and others noted the U.S. Geological Survey's estimate of a minimum of 10 billion barrels of potential oil reserves on the Alaska NPRA and the need to get these reserves on line because of their "close proximity to the pipelines in existence today."

There was also discussion of the leasing condition in the appropriations bill that would allocate one-half of the oil revenues from the Alaskan National Petroleum Reserve to the State of Alaska. Mr. Seiberling attacked this provision, characterizing it as "nothing less than obscene." He claimed that the State of Alaska had no right to receive any of the revenue, as it is already "wallowing in money." Mr. Young countered that the oil production is needed for the benefit of the Americans, to "get off the yoke of the OPEC nations." The amendment proposed by Rep. Udall was defeated by a voice vote.

Also defeated was an amendment proposed by Rep. Dicks (D-Wash.) to cut NPRA spending from $194 million to $69 million. His amendment would provide funds only for close-out costs of the federal exploratory drilling program and for seismic work. It would have eliminated funding for drilling four additional wells under a continuation of the present federal drilling program. This program is being conducted by Husky Oil Co. pursuant to a five-year contract due to expire next month. (No commercial finds have been reported.) Mr. Dicks contended that enough federal money had been spent on the government's drilling program and that the area should be opened to competitive leasing and exploration by private companies as soon as possible.

1/ A vote to invoke cloture is scheduled for 8/18/80 after the end of the Congressional recess for the Democratic Party Convention.
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FERC Invites Comments on Appropriate "Discount" Provisions for Prospective New Partners in Alaskan Northwest Consortium

On 8/11/80 the FERC issued notice of a filing last February by Northwest Alaskan Pipeline Co. (CP78-123) advising that American Natural Alaska Co., a subsidiary of American Natural Resources Co., had been admitted to the Alaskan Northwest Natural Gas Transportation Co. Partnership, which was initially formed in January 1978 to construct the Alaskan segment of the ANGTS. According to Northwest Alaskan’s filing, the Partnership agreement had been amended to admit American Natural Alaska without application of the "discount" provision (requiring deductions from allocation of the Partnership's profits, losses and credits) pertaining to companies joining the Partnership after January 1978. In addition, the filing set forth an offer by the Partnership to admit other new members on the same terms as American Natural Alaska, i.e., without discount, for a period of 30 days after Commission issuance of notice of the instant filing.

The Commission invited comments on the above filing and on the "discount" provisions and levels which should apply to prospective new members admitted into the Alaskan Northwest Partnership. Initial comments are due by 8/22/80 and reply comments by 9/5/80.

The Alaskan Northwest Partnership agreement, which became effective 1/31/78, included a "discount" arrangement intended to recognize that early participation of the original partners constituted a greater risk than participation commencing at a later date by any additional partner. Accordingly, the agreement specified that partners joining after 3/17/78 would be subject to a discount with respect to profits, losses and credits from their otherwise percentage share on the basis of ownership -- with such discount increasing the later the partner joined after 3/17/78. The discounts set forth in the agreement (as amended in May 1978) were 1% for partners admitted between 3/18/78 and 6/30/78, 2% for partners admitted between 7/1/78 and 12/31/78, 4% for those admitted between 1/1/79 and 6/30/79, 6% for those admitted between 7/1/79 and 12/31/79, 10% for those admitted between 1/1/80 and the commitment date, and 15% for those admitted after the commitment date. In a 6/30/78 order generally approving the terms of the Partnership agreement, the FERC endorsed the discount principle as a means for giving effect to the varying degrees of risks assumed by the partners dependent on the date of membership, but requested further information to support the discount schedule and its relationship to the risks of participation and motivation of others to become partners. Pending receipt of such information, the Commission directed that the discount remain at 2%. (See REPORT NO. 1164, pp5-6.)

As noted, the Partnership recently agreed to admit American Natural Alaskan without a discount. Specifically, for purposes of applying the discount provision, American Natural Alaskan will be deemed to have been a partner on or before 3/17/78. In addition, the present partners agreed to waive any discount for a further period of 30 days (following FERC notice) with respect to other qualified entities desiring to join the Partnership. After the 30-day period, however, the Partnership contended that continued relaxation of the discount terms would no longer be justified in light of the financial commitments already made by the present partners. Specifically, the existing partners have spent over $118 million.

1/ Prior to the admission of the American Natural subsidiary, the Partnership included Northwest Alaskan Pipeline Co. as general partner, plus affiliates of Northern Natural Gas Co., Panhandle Eastern Pipe Line Co., Pacific Gas & Electric Co., Pacific Interstate Transmission Co. and United Gas Pipe Line Co.
to date, have borne all the risks and have shouldered the entire burden of seeking to fulfill the multitude of regulatory requirements. In addition, the Commission has decided many of the most "vexing" problems facing ANGTS, including problems that probably deterred some companies from joining the Partnership. Thus, "the point has been reached where a hopeful participant should not get a free ride by simply making up past payments."

Accordingly, the Partnership proposed reinstitution of the discount schedule following the 30-day period, thereby effecting a 10% discount until the commitment date when the discount will increase to 15%. In light of all the circumstances, the Partnership contended that these 10% and 15% discount rates are "an accurate reflection of the risks and expenditures undertaken by the Partnership to date, and provide an equitable balance between the recognition of those sacrifices and the maintenance of an opportunity for others to join the project at a time when the chance of failure has been reduced considerably." (See REPORT NO. 1247, pp21-22.)

In the instant order, the FERC stated its "inclination" to approve waiver of the discount provision in the Partnership agreement for American Natural Alaskan "as a product of negotiation among the parties," and also to accept the 30-day "grace period" offered by the Partnership for waiver of the discount for other prospective partners "as a product of negotiations between the Partnership and American Natural, on the one hand, and between the Partnership and the producers and the State of Alaska on the other." However, the Commission invited comments on both matters before making a final determination.

The Commission added that the 30-day "grace" period will commence running with the date of this order (8/1/80); that such immediate commencement does not constitute advance approval of any waiver that the Partnership might grant in response to its 30-day invitation; and that no determination has been made at this time as to what discount rate (or grace periods) might prevail in the future. Specifically, "prospective partners who defer decision have no assurance as to whether the Partnership will be willing to waive the discount at any point in time in the future after the expiration of the 30 days, nor whether the Commission would approve such future waiver if offered. Nor is there any assurance as to what discount rates and schedules the Commission might approve in response to the comments received."

The FERC also requested comment on the appropriate level of discount to be put into effect at the end of the grace period (assuming that the grace period is approved). 1/ In this regard the Commission noted that events since its 6/30/78 order (which approved a discount of only 2% pending submission of further data) had sufficiently altered project risks to warrant an additional discount. With certification of prebuild portions of the project and the signing of an agreement providing for participation by producers with the Partnership and the State of Alaska in design and engineering work for the Alaskan segment, the FERC stated, much risk in the venture has been obviated. The Commission indicated that a discount rate of 10% may now be appropriate in view of this progress, "although a discount of 5% might well be more appropriate."

1/ The Commission suggested that parties desiring to comment on an appropriate discount schedule refer to discussion in Order No. 31 (RM78-12), issued 6/8/79, respecting calculation of allowances for risk exposure.
Finally, the FERC noted its anticipation that certain future events -- such as final Commission certification, and final design and cost estimate approval by the Federal Inspector -- would bring about material changes in the risk exposure of the Alaskan Northwest partners and justify further changes in the discount level. Hence, the Commission invited comment on the appropriateness of using particular events for purposes of determining trigger points on the discount schedule.

ERA Provides for Written Submissions and Possible Hearings on Issues Involved in Short-Term Import of Canadian Gas by Transco and Tennessee, Including Overdependence

On 8/12/80 the ERA issued a prehearing order in proceedings involving an application -- approved in ERA Opinion No. 17 on 7/7/80 -- by Transcontinental Gas Pipe Line Corp. and Tennessee Gas Pipeline Co. (79-08-NG) for Section 3 authority to import, for the limited term ending 3/31/82 (with an option for an extension to 11/1/82), up to 75,000 Mcf/d (22 Bcf per year) by means of existing facilities of Tennessee located at the International Boundary near Niagara Falls, New York. The ERA approved the import at the current Canadian import price of $4.47/MMBtu, subject to further proceedings to determine whether its approval should be conditioned to prevent unnecessary and uneconomic reliance by the applicants on such high priced Canadian supplies. Earlier, on 8/6/80, Transco filed an application for rehearing of that portion of Opinion No. 17 which expressed ERA's expectation that if the need for this imported gas is reduced, then the pipelines should "employ prudent management" of their gas supplies and not take costly imports beyond the amount required by take-or-pay provisions.

The gas involved will be purchased from Sulpetro Ltd. at the rate of $3,000 Mcf/d yearround on a firm basis and up to a maximum level of 75,000 Mcf/d on a best-efforts basis during the five winter months. Tennessee will receive the Canadian gas directly into its system at the import point. However, Transco is dependent on transportation arrangements to receive its contract quantities into its system. Hence, Transco arranged with Tennessee to use its best-efforts to receive at the proposed import point all volumes Transco would make available up to 37,500 Mcf/d and transport such volumes (less fuel use requirements) for the account of Transco. Consolidated Gas Supply Corp. also agreed to transport Transco's share of the Canadian volumes which Tennessee delivers to it for the account of Transco.

In Opinion No. 17, the ERA observed at the outset that it previously determined that the present $4.47/MMBtu border price for Canadian gas is reasonable, based on a comparison with average selected alternative fuel prices in the U.S. between 4/8 and 5/8/80. However, the ERA also ordered further proceedings regarding all flowing gas (80-01-NG et al.) to examine the question of U.S. dependence on imported Canadian gas and, in particular, means of conditioning import authorization to discourage uneconomic and unnecessary reliance thereon. At that time, the ERA continued, it expressed special interest in developing a full record on take-or-pay obligations in contracts with Canadian suppliers which may operate to force U.S. pipelines to purchase imported gas when less expensive domestic supplies may be available. Similarly, ERA noted, in recent decisions involving the Eastern Leg portion of the Alaskan gas pipeline system, the FERC has limited take-or-pay obligations and commended the issue to the ERA for further consideration in cases involving other imports.

The policy and precedent emerging from these onging ERA and FERC proceedings in Canadian import cases, the ERA asserted, are likely to bear on the instant case. Therefore, the decision approving the instant import was made subject to further hearings and possible imposition of conditions necessary to conform with the policy and precedent flowing from the ongoing proceedings. Specifically, the ERA approved the import but ordered further proceedings to parallel the proceedings in
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80-01-NG et al. to determine whether the approval should be conditioned so as to prevent unnecessary and uneconomic reliance by the applicants on high priced Canadian gas. "The parties are hereby placed on notice that conditions subsequently adopted to limit operation of the take-or-pay provisions may be applied retroactively to the date of approval of the import if necessary and appropriate in the circumstances." Furthermore, the ERA added, if prevailing market conditions indicate that the need for Transco or Tennessee for the imported gas is reduced, they will be expected to "employ prudent management of their gas supplies," and avoid taking costly Canadian imports beyond required by the take-or-pay provisions as they currently exist in the contracts or as subsequently modified.

On 7/18/80, the FERC granted the joint application of Transco and Tennessee (CP79-242 et al.) to import this gas and related applications by Consolidated (CP80-44) and Tennessee (CP80-100) to transport the gas for Transco. (See REPORT NOS. 1202, p17; 1248, pp19-20; 1269, ppl-5; 1271, pp4-5.)

In the instant prehearing order, the ERA requested the parties to submit written materials, including exhibits, prepared testimony, briefs and other materials with respect to certain specific issues. First, the ERA questioned whether the Canadian imports here involved are a secure and economic source of energy for the regions using the imported gas. A second issue, the ERA continued, is whether it should require the applicants to obtain approval of a contingency plan under which the applicants would take appropriate steps to obtain supplemental domestic supplies to lessen dependence on Canadian gas and, during a period of Canadian gas curtailment, take appropriate action to ensure continued service to high priority customers. Third, the ERA requested comments on whether it should require other means to reduce uneconomic reliance on Canadian imports, such as a condition requiring distributors or other end users to contract directly with the importers "to send clearer price signals regarding the true cost of Canadian imports." Also, the ERA added, it could recommend to FERC that a new separate rate schedule reflecting actual costs of imported gas be applied to those customers of the applicants which elect to purchase imported Canadian gas, again to reflect the true cost of the imports.

Finally, the ERA requested comments on whether it should limit an applicant's take-or-pay obligation to a fixed dollar amount, determined by multiplying the minimum take required under the contract by the border price in effect when the contract was signed (with no escalation for inflation). In this connection, the ERA requested information as to the purpose of the applicant's take-or-pay obligation; whether such obligation has been legally abrogated by subsequent border price increases; whether the applicants have foregone takes of domestic gas to take imported Canadian gas and are likely to do so in the future; and whether the minimum revenue requirements of the applicants' suppliers would be met if the import authorization is conditioned as described above.

The parties were also asked to demonstrate why the ERA should not follow the policy and precedent established by the FERC in its recent decisions approving the Eastern Leg of the Alaskan gas pipeline project where it modified the take-or-pay provision so as to prevent U.S. purchasers from having to take a very large proportion of the gas made available without regard to the price relationship to other sources of fuel supply, and commending this issue to the ERA for consideration in other proceedings involving Canadian gas imports.

The ERA directed that initial submissions be served by 9/3/80 and rebuttal submissions by 9/24/80. Upon ERA's own motion or at the request of the parties, it may be determined that an evidentiary hearing or an oral argument will be required. Any party making a request for hearing or oral argument must provide specific reasons, including factual issues in dispute, and suggest a procedural schedule.
In its application for rehearing and clarification of Opinion No. 17, Transco objected to ERA's language that if prevailing market conditions indicate the need for the imported gas is reduced, the applicants would be expected to employ "prudent management" of the gas supplies, and avoid taking the costly Canadian imports beyond what is required by take-or-pay provisions. This apparent establishment of an "inflexible standard of 'prudent management'" is objectionable, Transco declared, because it is unsupported and may prevent management from providing for long-term supplies which will be needed in the future. Furthermore, the question of prudent management of gas supplies depends on facts and circumstances existing at the time of deliveries and cannot properly be determined by application of an inflexible standard. Also, Transco added, a determination of prudence is the responsibility of the FERC, not ERA, in connection with review of rates under Sections 4 and 5 of the Natural Gas Act. Consideration of these issues, Transco concluded, is more properly a matter to be addressed in the context of the broad inquiry into Canadian import policy pending in the ERA proceedings (80-01-NG et al.) regarding all flowing gas from Canada.

**ERA Extends Deadlines for Written Submissions in Proceeding Involving Overdependence on Mexican Gas Imports**

On 8/11/80 the ERA granted a motion by Border Gas, Inc. (79-31-NG) for a two-week extension of the filing dates for written submissions in the proceeding involving the question whether terms and conditions should be imposed in connection with the proposal by Border Gas to import 300,000 Mcf/d at $4.47/MMBtu -- which was authorized by ERA in Opinion Nos. 12, 15, 16 and 16-A -- so as to reduce overreliance on Mexican imports.

On 8/1/80, the ERA issued a prehearing order setting forth a list of specific issues to be addressed by the parties and directing that initial submissions be served by 8/25/80 and rebuttal submissions by 9/15/80. Border Gas' motion sought a two-week extension of these filing dates -- to 9/8/80 and 9/29/80, respectively -- because it does not have sufficient time to address fully the issues delineated in the prehearing order.

In the prehearing order, the ERA asked for specific discussion on (1) the economic and supply security considerations associated with current and prospective Mexican imports in regions served by Border Gas; (2) whether Border Gas' take-or-pay obligation should be limited to a fixed dollar amount, determined by multiplying the minimum take required under the contract by the border price in effect when it was signed (with no escalation for inflation); (3) whether Border Gas should obtain ERA approval for a contingency plan under which it would take appropriate steps to obtain supplemental domestic gas supplies and take appropriate action to ensure continued service to high priority customers if Mexican imports are curtailed; and (4) other means to ensure that use of Mexican imports is economic and in the public interest.

After written submissions, the ERA, upon its own motion or at the request of the parties, may determine that an evidentiary hearing or an oral argument will be required. Any party making a request for hearing or oral argument in either the initial or rebuttal submissions must include factual issues in dispute, and suggest a procedural schedule. (See REPORT NO. 1273, pp20-22.)
FERC Adopts Final Rule Determining Residual Fuel Oil and Coal To Be Reasonably Available and Economically Practicable Alternative Fuels to Essential Agricultural Users

On 8/11/80 the FERC issued Order No. 55-B (RM79-40) adopting final regulations to implement Section 401(b) of the NGPA which provides that the Section 401 prohibition against interstate pipeline curtailment of natural gas deliveries for essential agricultural uses (unless the gas is needed to meet requirements of higher priority users) shall not apply if the FERC determines that an alternative fuel is reasonably available and economically practicable for any such essential use. In Order No. 55-B, the Commission concluded that coal and residual fuel oil are economically practicable and reasonably available within the meaning of Section 401(b).

The final regulations apply only to existing facilities with installed alternative fuel capability and requirements exceeding 300 Mcf/d. New boilers with a capacity greater than 300 Mcf/d are presumed to have alternative fuel capability.

Subject to certain minor changes, Order No. 55-B adopted a rulemaking proposal issued 6/3/80, which essentially provided for extension on a permanent basis of an interim rule promulgated in Order No. 55 dated 10/26/79. In Order No. 55, the Commission determined that coal and residual fuel oil were reasonably available and economically practicable alternative fuels during the 1979-1980 winter heating season. Noting little dispute over these determinations with respect to coal, the Commission found residual fuel oil to be readily available because of "reasonably comfortable" stocks and to be economically practicable, despite a cost some 30% higher in general than natural gas. With respect to distillate fuel oil and propane, however, the Commission was unable to make a finding of reasonable availability within the meaning of Section 401(b). (See REPORT NOS. 1233, pp16-18; 1250, pp21-23; 1264, pp25-26.)

In Order No. 55-B, the FERC rejected the position of agricultural interests that any fuel more expensive than natural gas should be construed as not "economically practicable." Since liquid fuel prices were higher than natural gas prices when the NGPA was passed and are still higher, the Commission stated, this position would mean that no liquid fuel would qualify as an alternative fuel and that, except for a few uses of coal, the alternative fuel exemption in Section 401(b) would be "largely meaningless." The Commission concluded that Congress did not intend the alternative fuel rule to be "so limited as to be illusory." Also, "if the intent of the Congress was to limit alternative fuels to those that cost less than gas, it could have reached the result with simpler and clearer language." Moreover, the Commission added, language in the Statement of Managers that use of an alternative fuel should not cause "unnecessary increases in the cost of food in this country" should be read in the context of the curtailments being experienced by all natural gas customers, including essential agricultural users, at the time of NGPA enactment.

The Commission similarly rejected the "economically practicable" standard urged by industrial process and feedstock users, i.e., exclusion of all essential agricultural users with installed alternative fuel capability from Priority 2. Such a test, the Commission said, would render Section 401 virtually meaningless.

The FERC asserted that the "economically practicable" test must consider the extent to which agricultural users of natural gas are likely to be curtailed. Based on current projections indicating approximately 8% curtailment for the 1980-1981 winter heating season, the Commission foresaw little loss of Priority 2 classification for essential agricultural users because of the alternative fuel exemption and no significant curtailment of process and feedstock users because of supply shortages. Therefore, the question here reduces to one of whether
agricultural boilers should be given a preference over other industrial boilers. The FERC concluded that a preference should be accorded to agricultural users which are limited to No. 2 oil and propane as alternative fuels. No. 2 oil is the most expensive liquid fuel and almost doubled in price in 1979, the Commission noted. Under the circumstances, "the risk of additional increases in No. 2 oil prices is an unnecessary one to impose upon essential agricultural users." Similarly, propane cannot be found to be an economically practicable fuel since propane prices are generally higher than those of No. 2 oil. On the other hand, low sulfur No. 6 oil has not increased in price as rapidly as No. 2 oil, and the gap between the prices of No. 2 and low sulfur No. 6 is widening. Hence, treating low sulfur No. 6 as an alternative fuel would impose a lesser economic risk on essential agricultural users. Accordingly, it follows that both low sulfur and high sulfur No. 6 are economically practicable.

In regard to the "reasonable availability" test, the Commission noted that residual and distillate fuel oil stocks are currently well above the level usually considered acceptable, and that there is no debate over the availability of coal on a national level. Hence, the Commission found coal and residual fuel oil to be reasonably available fuels for purposes of Section 401(b).

The Commission declined to attempt determinations of economic practicability or reasonable availability for regions or particular industries because of the difficulties of collecting adequate data, but noted that adjustments to avoid undue hardship may be requested under Section 502(c).

In addition, the Commission adhered to nameplate rating and 16 hours usage per day for purposes of determining the capacity of new boilers (above or below 300 Mcf/d). However, the Commission modified its proposal to exempt small users with peak day requirements less than 300 Mcf/d so as to delete the word "peak." By this change, the Commission intends that the 300 Mcf/d limitation be implemented in the same manner as during the past year.

Finally, the FERC indicated that it will reconsider the final rule adopted herein "as changed circumstances may require," and will attempt to implement any changes in time to allow adequate planning for future heating seasons. No change is anticipated before the end of the 1980-1981 heating season.

The Commission made clear that the instant rule does not implement NGPA Section 206(b)(2) which exempts from incremental pricing those essential agricultural users which do not have an economically practicable and reasonably available alternative fuel. The Commission expects to initiate a separate rulemaking proposal in the near future on the appropriate alternative fuel test for purposes of incremental pricing. Nor can the instant rule be construed as an alternative fuel test for purposes of Section 402 pertaining to essential process and feedstock users.

1/ Since distillate fuel oil and propane could not be found economically practicable, the Commission said it was unnecessary to determine whether they are reasonably available.
Senator Introduces Pro Forma Resolution to Disapprove FERC Rule Extending Small Industrial Boiler Fuel Exemption from Incremental Pricing

On August 6, 1980, Senator Jackson (D-Wash.) introduced a resolution (S. Res. 499) to disapprove an FERC rule submitted to Congress on July 29, 1980, that would extend the small industrial boiler fuel exemption from incremental pricing to "new" small boiler fuel facilities which were not in existence on the date of enactment of the NGPA and to boiler facilities which reduced average daily natural gas usage to 300 Mcf/d or less after that date. Senator Jackson made clear that the resolution of disapproval was pro forma only. 1/

The FERC rule here involved -- adopted by Order No. 96 (RM79-48) issued 7/29/80 -- serves to exempt from NGPA incremental pricing provisions all small industrial boiler fuel facilities which consume not more than 300 Mcf/d in any month over a 12-month consecutive period.

Earlier, in Order No. 85 (RM80-24) issued 5/8/80, the Commission adopted final regulations to implement Section 206(a)(2) of the NGPA by establishing a permanent exemption from incremental pricing for small industrial boiler fuel facilities in existence on 11/9/78 whose average day use of gas as boiler fuel during the month of peak usage in 1977 did not exceed 300 Mcf/d. In order to avoid potential inequities resulting from exemption of industrial boiler fuel facilities which met the 300 Mcf/d threshold in 1977 only because of curtailments (but then resumed greater use of natural gas as curtailments abated), the Commission added a definition of "average day use of natural gas as a boiler fuel during the month of peak use during calendar year 1977," which requires calculation of "average per day use" through dividing the total boiler fuel use of natural gas in the month of peak use by the number of days of service at 100% of "normal delivery level" plus the number of days of service at less than 100% "normal delivery level" (computed by multiplying the number of days at each lesser level times the percentage of delivery level experienced on those days).

The Commission concluded in Order No. 96 that extension of the small boiler fuel facility exemption mandated in Section 206(a)(2) to all small boiler fuel facilities using 300 Mcf/d or less in any month over a 12-month period, including facilities constructed after 11/9/78 and facilities reducing their usage to the cutoff level after that date, would be both equitable and consistent with the purposes of the incremental pricing program. (See REPORT NOS 1273, pp13-16; 1274, p13.)

1/ Senator Jackson has introduced similar resolutions of disapproval with respect to certain earlier FERC incremental pricing rules required to be transmitted to Congress for review and possible veto under NGPA Section 206(d). The resolutions are intended merely as a procedural mechanism for bringing an FERC rule to a floor vote, should any Senator request such a vote.
FERC Issues Policy Decision Ruling that Compensation Provisions Should Not Be Included in Pipeline Curtailment Plans; Compensation Issues Resolved in Several Individual Cases

On 8/4/80 the FERC issued Opinion No. 92 determining the policy question of whether compensation provisions should be included in interstate pipeline curtailment plans. The Commission concluded that compensation surcharges to customers bearing greater than a pro rata share of pipeline system curtailments would defeat the purposes of end-use allocation. The end-use allocation mechanism, the Commission declared, "minimizes the total cost to society of conversion to alternative fuels and generally reflects the incrementally higher value of natural gas, as measured by the cost of alternatives, to each class of end users as one ascends the curtailment hierarchy. To shift these costs and public benefits between classes of end users by engrafting compensation provisions onto existing curtailment plans would frustrate the very goals of end-use allocation." In short, the Commission added, "the result produced by the end-use allocation system is both sensible and, in the context of the Natural Gas Act, fair."

Applying the above views, the FERC terminated consideration or otherwise disposed of compensation issues still pending in five pipeline curtailment cases: Texas Eastern Transmission Corp. (RP71-130 et al.); Columbia Gas Transmission Corp. (RP72-89); El Paso Natural Gas Co. (RP72-6); Transcontinental Gas Pipe Line Corp. (RP72-99 and TC79-6); and Northwest Pipeline Corp. (RP74-49 and RP76-34). Compensation aspects of the first two cases were treated in Opinion No. 92, while the last three cases were the subject of separate orders issued the same date.

In addition, Opinion No. 92 terminated a rulemaking proceeding (RM78-4) instituted in November 1977 for the purpose of prescribing a compensation scheme of general applicability for possible inclusion in natural gas pipeline curtailment plans. (See REPORT NOS. 1133, pp15-16; 1146, App. pp1-14.)

The compensation issue arose in connection with end-use curtailment schemes proposed and/or approved during the 1970's. In general, certain customers bearing greater than pro rata average curtailment by a pipeline supplier claimed they were entitled to compensation from customers bearing less than a pro rata share of curtailment for the additional cost of replacement fuels. Beginning in 1974, the Commission ruled in a series of cases that it lacked jurisdiction to consider compensation provisions in curtailment plans and that such provisions violated the Natural Gas Act because, among other things, they resulted in rates which were not cost justified and hence unreasonable and unduly discriminatory under Section 4 thereof. The Commission's disclaimer of jurisdiction, however, was overturned first by the Fifth Circuit which held that the Commission had authority to consider compensation provisions in curtailment plans and that such provisions violated the Natural Gas Act because, among other things, they resulted in rates which were not cost justified and hence unreasonable and unduly discriminatory under Section 4 thereof. The Commission's disclaimer of jurisdiction, however, was overturned first by the Fifth Circuit which held that the Commission had authority to consider and, if appropriate, approve compensation plans based on its Section 1(b) transportation jurisdiction as well as powers granted by Section 16 of the Act. Subsequently, the D.C. Circuit remanded two curtailment cases with instructions that the Commission determine whether or not compensation features should be included as a matter of fairness.

The following summarizes the policy considerations respecting the compensation issue set forth in Opinion No. 92, and reviews the particular disposition of compensation questions in each of the five separate cases.

Policy Considerations

The FERC advanced the following factors as the basis for its decision that compensation provisions should not be included in curtailment plans:
(1) The underlying predicate of compensation claims -- the assumption that pro rata curtailment of contract demand is the proper basis for allocating supply -- is inconsistent with end-use factors historically considered by the Commission in certificating service by interstate pipelines.

(2) By requiring consideration of pro rata factors in developing the overall curtailment plan, "compensation undercuts the rationale and the public benefits derived from utilizing end use as the basic allocation mechanism."

(3) Compensation provisions would not advance Congressional policies reflected in the NGPA which, among other things, established an essential agricultural use priority, subject to relaxation only where alternative fuels are determined to be both economically practicable and reasonably available so as (in the words of the Conference Report) "to prevent unnecessary increases in the cost of food." While the NGPA is silent regarding a charge to offset the agricultural use preference, the Commission considered it unlikely that Congress intended that "this newly elevated group should be burdened with such a self-defeating levy as a consequence of this change." Moreover, the Commission added, "it would be ironical if, through a compensation levy, those in an even higher priority as to their natural gas requirements should now have to bear an additional financial burden for their preference. Both foodstuffs and energy for household and similar uses are necessities for the high-priority user. We see no reason to treat them differently."

(4) Given the significant cost benefits received by pipeline customers with high load factors achieved through low priority interruptible industrial sales in the past, it would be inequitable to now require that compensation be paid to those customers as a result of their load attachment policies.

(5) Under cost-based regulation, curtailed customers receive a proper measure of compensation through avoidance of commodity costs for gas unable to be purchased because of curtailment. Highly curtailed pipeline customers also receive a "valid measure" of compensation from less curtailed customers through the grant of demand charge credits and the shift in pipeline recovery of such credits to the commodity component of rates as a surcharge.

(6) Because of the variety of alternative sources of supply, any attempt to measure the economic value of natural gas on a per Mcf basis relative to alternative fuels or supplemental supplies of gas would be "exceedingly difficult and burdensome" as well as "inherently imprecise." Moreover, to the extent that the proposed measures of economic value failed to reflect conservation initiatives at lower per unit costs, "the economic value of natural gas is overstated."

The Commission also discussed two types of compensation claims -- by large, low priority industrial consumers (principally electric utilities) and by distributor customers suffering relatively high losses of industrial load in times of curtailment.

In the case of low priority users, the FERC conceded that some electric utilities have incurred higher fuel costs under end-use curtailment than if natural gas had continued to be available. However, the Commission said, compensation proposals seeking to require that such higher fuel costs be borne by natural gas consumers continuing to receive service have no merit. These proposals "would merely shift the cost of replacement fuel to other consumers -- and high priority ones at that. The high priority consumer did not bring about the shortage nor, more importantly, does he have anywhere near the capability of dealing with it that these large users have. It would be the height of irony if the residential consumer, saved
from scrapping his furnace by end-use curtailment, would now, through compensation, be burdened with financial impacts approaching those that would have attended such abandonment." In sum, it would not be "even or equitable treatment" to require consumers with no alternatives to natural gas to contribute to consumers with other options.

Some distributor customers, the Commission continued, have claimed compensation to mitigate the impact of increased fixed cost burdens on residential users due to the shrinkage of industrial load. However, the Commission declared, while residential consumers of heavily curtailed distribution systems obviously will bear a greater share of system fixed costs "than in the halcyon days when industrials contributed to those costs," this provides no basis for shifting such costs to residential and other high priority consumers of other, less heavily curtailed distributors.

In short, the Commission opposed the making of adjustments to perpetuate the former benefits of industrial markets. "Any correction based on the theory of lessening the impact of curtailment on one set of residential customers would merely be at the expense of an equally deserving, blameless residential consumer elsewhere on the pipeline's system. Each distributor will have to account for its own costs and -- obviously -- profitability."

Also, the Commission added, a measure of compensation has already been received by distribution customers with curtailed industrial load through avoidance of commodity charges for gas not delivered as a result of curtailment, through demand charge credit provisions shifting unrecovered demand costs to the commodity portion of a pipeline's rates, and through adoption of the United cost classification and rate design formula (which has the effect of reducing the cost differential between high and low load factor customers).

Individual Pipeline Curtailment Cases

As noted, the FERC -- in Opinion No. 92 or in separate orders issued the same date -- disposed of compensation issues in five pipeline curtailment cases, as follows:

(1) In Texas Eastern Transmission Corp. (RP71-130 et al.), the Commission affirmed an initial decision issued 8/10/78 by Administrative Law Judge Samuel Gordon recommending adoption of a then effective interim curtailment plan as a permanent curtailment scheme, and rejecting compensation proposals urged by Elizabethtown Gas Co. and Consolidated Edison Co. of New York. (See REPORT NO. 1170, pp21-23.)

The Commission concluded that Elizabethtown's proposal -- which essentially would require compensation to the extent that pipeline customers, curtailed more than a pro rata amount, elected to replace the pipeline volumes with supplemental gas supplies in order to maintain higher priority service -- was objectionable on two grounds. First, it would be unfair to shift the cost of higher priced supplemental supplies from Elizabethtown's own residential and commercial customers to high priority customers of other distributors. Any such shift would mean that high priority customers of distributors required to pay compensation would incur double supplemental supply costs -- those of their own distributor plus those of Elizabethtown. "Fairness does not require mitigation of Elizabethtown's impacts, voluntarily incurred through use of supplemental supplies, at the expense of other and higher priority users elsewhere on the system who have also been impacted by the shortages." Secondly, the Commission noted, the compensation price proposed by Elizabethtown -- the cost of replacement supplies, beginning with the most expensive supplemental source -- would undoubtedly increase the production or purchase of supplemental supplies by a substantial margin, to the detriment of high priority users, and would be inequitable.
The Commission rejected ConEd's proposal -- which would require compensation for the difference between pro rata curtailment allocations and actually curtailed volumes at the price of No. 6 residual fuel oil (less the commodity cost of gas) -- because high priority users should not be saddled with additional payments stemming from curtailment of low priority boiler fuel uses. For these curtailed uses, "compensation will have to come through counting the benefits of service received in the past, together with that provided in the future, where supplies permit." This conclusion, the Commission noted, is completely consistent with the statutory elevation of high priority uses contemplated by Title IV of the NGPA, as well as the limitations on boiler fuel uses imposed by the Powerplant and Industrial Fuel Use Act of 1978. Moreover, the Commission added, the measure of compensation proposed by ConEd -- the spread between oil and natural gas prices -- would only be accurate with any degree of certainty for ConEd's own use. It is also questionable whether the ultimate user who was actually curtailed (and actually incurred the alternate fuel cost) "will ever see anything approaching the full amount of the credit received by its distributor," especially where the end user has converted to another fuel or gone out of business.

(2) In Columbia Gas Transmission Corp. (RP72-89), the Commission addressed the D.C. Circuit's remand in 1978 (Elizabethtown-Gas Co. v. FERC, 575 F.2d 885) of an FPC decision holding that it lacked power to require compensation provisions as part of a curtailment plan. The D.C. Circuit concluded that the Commission had legal authority to consider compensation features and that it should proceed to determine whether fairness required the inclusion of such features in an interim curtailment plan approved by Columbia. (See REPORT NO. 1142, p297-29.)

The Commission declared that further consideration of the compensation issue in the above case is unnecessary both because of indications that Elizabethtown's allocations did not vary significantly from those which would have resulted under a pro rata curtailment plan, and because of a substantial improvement in the supply situation of Columbia and other pipelines. For example, compared with total available supplies of 23.6 Bcf in 1976, Elizabethtown currently projects 32.3 Bcf to be available in 1980. The Commission also noted its approval in September 1979 of a settlement agreement permitting Columbia (TC79-127) to eliminate seasonal curtailment procedures because of no further projected curtailments, subject to annual submission to the Commission and all interested parties of five-year forecasts of requirements and available gas.

(3) In El Paso Natural Gas Co. (RP72-6), the Commission denied a request by Arizona Electric Power Cooperative to consider a proposed compensation plan in further hearings on El Paso's curtailment procedures. Previously, by order dated 1/13/78, the Commission deferred action on AEPCO's request pending developments in the RM78-4 rulemaking proceeding. (See REPORT NO. 1140, pp20-22.) In the instant order, the Commission concluded that AEPCO's compensation plan -- which would require customers receiving volumes in excess of a pro rata allocation to pay compensation surcharges equal to the alternative fuel cost of customers receiving less than a pro rata allocation -- should be rejected at this time, without the need for any consideration thereof in a hearing. In addition to its objections outlined above to any such proposal, the Commission indicated that AEPCO's scheme was further defective in suggesting that compensation be paid only to firm customers and that payments be made by interruptible customers, regardless of priority. The firm/interruptible distinction was rejected several years ago as a meaningful basis for allocating supplies on El Paso's system, the Commission noted, and there is no reason to reach any different conclusion in regard to compensation. Also, the Commission added, AEPCO can no longer rest its claim merely on the alleged discriminatory effects of an end-use plan since El Paso has fully implemented
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Section 401 of the NGPA — resulting in a Congressionally mandated priority plan "producing quite similar effects, for present purposes, as the plan which has been in existence since 1972."

(4) In Transcontinental Gas Pipe Line Corp. (RP72-99 and TC79-6), the Commission discussed the issue of compensation involved in three Transco curtailment plans.

The first was an interim settlement curtailment plan (intended to be effective for a one-year period commencing 11/15/74), which was rejected by the FPC on 11/12/74 because of the inclusion of compensation features providing for reimbursement to customers experiencing greater than average system curtailment by those sustaining less than average system curtailment. The Commission held that this compensation provision was "patently unlawful," in part because it would require high priority jurisdictional customers to pay increased rates unrelated to pipeline cost of service. The 11/12/74 order was appealed to the D.C. Circuit which permitted the disputed plan to go into effect, but ordered that compensation payments be placed in escrow pending a determination as to their lawfulness. The Court, however, deferred review of the merits of the plan's compensation features until completion of a Commission inquiry into reasons for Transco's reduced gas supplies. Since that time, the D.C. Circuit has twice more remanded this case to the Commission (once in response to a Supreme Court decision reversing the D.C. Circuit for exceeding its authority in dictating the method for conducting the required supply inquiry) to consider Transco's supply situation. In February 1979, the Commission instituted a separate investigation into causes of Transco's gas supply shortage (TC79-6) in response to a D.C. Circuit remand order issued 11/29/76 holding that evidence provided by the Commission as to diminished deliverability on Transco's system was not sufficient to determine the legality of the compensation provisions. In this investigation, Chief Administrative Law Judge Curtis Wagner submitted a report on 8/16/79 concluding, among other things, that Transco's gas shortage had in fact been "real," that the record indicated no withholding of gas from the market either by Transco or its producer-suppliers, and that Transco had initiated a "strong and aggressive" program since 1974 to reverse the decline in its gas supply. 1/ (See REPORT NOS. 1224, pp13-15; 1231, pp25-27.)

Given the above history, the Commission expressed the view that the interim settlement curtailment plan -- while initially rejected in 1974 -- should now be approved, including its compensation provision. "While clearly not compelled to do so, we are inclined to honor the transaction as originally proposed. Further litigation relative to this matter involving funds which are now in their fifth year of escrow would not appear . . . to be in the public interest." The Commission added that its approval of the subject interim settlement will have no precedential value. Transco was ordered to disburse the escrowed funds in accordance with the terms of the settlement.

The above interim plan was superseded by a permanent curtailment plan, approved by FPC Opinion Nos. 778 and 778-A, which was in effect for the period 11/1/76 -

1/ In the instant order dated 8/4/80, the Commission approved Judge Wagner's report dated 8/16/79 in the Transco supply investigation (TC79-6). Additionally, the FERC affirmed an initial decision issued 6/21/79 by Judge Wagner in another investigation (RP75-51) into the causes of Transco's curtailments above the levels projected in 1974. This decision, similar to the 8/16/79 report, concluded that Transco's gas shortage was not contrived and that deliverable gas had not been withheld by Transco's producer suppliers. (See REPORT NOS. 1110, pp21-22; 1231, pp27-28.)
10/31/78. Opinion Nos. 778 and 778-A were remanded by the D.C. Circuit (State of North Carolina v. FERC, 584 F.2d 1003) in July 1978 because of the Commission’s failure to assess the actual impact of the prescribed plan on ultimate consumers and to fully consider the issue of compensation. The Court, however, did not vacate these opinions, but rather provided that the prescribed curtailment plan could remain in effect as an interim plan for a reasonable time pending a Commission decision on the remanded questions. Following this remand, Transco and its customers entered into negotiations resulting in a settlement plan which replaced the Opinion No. 778 plan, effective 11/1/78. The settlement plan, approved by the Commission on 1/19/79, specified an allocation of supply for each of Transco’s customers at varying levels which will continue in effect so long as annual supplies available to so-called large volume customers remain above 636,440 Mtd. The settlement resolved virtually all curtailment controversies on Transco’s system with the exception of the issue of compensation, which was reserved for later disposition either in a general rulemaking or an individual company proceeding. (See REPORT NOS. 1074, pp.12-19; 1166, pp4-8; 1193, pp33-34; 1222, pp17-20.)

The Commission took the position that there is no longer any need to consider compensation as a feature of Transco’s curtailment programs since 11/1/76. Whatever defects were perceived by the D.C. Circuit with respect to Transco’s permanent plan approved in Opinion No. 778, the Commission said, these defects were remedied by the subsequent Transco settlement plan. The latter plan provided the “best form of compensation possible,” namely, “inexpensive natural gas from pipeline system supply.” Moreover, Transco’s supplies are presently at substantially higher levels than in the recent past. Specifically, the Commission observed, compared with available gas supply of 539.6 Bcf in 1976-1977, Transco projected 807.3 Bcf for 1979-1980.

(5) In Northwest Pipeline Corp. (RP74-49, RP76-34), the Commission provided for termination of pending proceedings if Northwest withdraws certain tariff filings which were rejected because of the inclusion of compensation features. Specifically, on 1/23/75, the Commission rejected an interim settlement curtailment plan (RP74-49) including a provision for compensation to customers relinquishing certain exemption gas, with corresponding surcharge payments by customers receiving such gas. Subsequently, on 12/22/75, the Commission rejected a revised tariff filing which provided for a charge of 25¢ per therm for takes in excess of 3% of a buyer’s “entitlement” up to a 5% overage, and a 50¢ per therm charge for takes above 5%. The Commission concluded that this revised filing was essentially an attempt to reinstitute the previously rejected settlement plan with its illegal compensation feature. The 12/22/75 order was appealed to the D.C. Circuit which, in 1978, granted a Commission request for remand. Northwest has not moved to place its tariff filing in RP76-34 into effect.

The Commission noted that Northwest presently does not have a "full-fledged" end-use curtailment plan, and that the compensation issue has been in limbo in RP76-34 for nearly five years. Current circumstances, however, "do not appear to warrant pursuit of a complete end-use plan." Accordingly, if Northwest will withdraw its filings in RP74-49 and RP76-34, the Commission will close both dockets. Alternatively, if Northwest would prefer some other course of action, it should submit the details of an alternative proposal to the Commission within 30 days.
FERC Votes to Raise Incentive Price Ceiling for Tight Sands Gas to 200 Percent of Section 103 Price for New Onshore Wells

During its open meeting on 8/14/80, the FERC voted to raise the maximum incentive price to be permitted for new tight formation gas (produced from wells commenced to be drilled into designated tight formations after 7/16/79) to 200% of the Section 103 maximum lawful price for new onshore production wells. Previously, on 2/20/80, the Commission issued an interim rule (RM79-76) establishing an incentive ceiling price at 150% of the Section 103 level. However, the Commission indicated that this ceiling level would be revised upward if further information were to show the need for a higher price to encourage development of tight formations.

As of August 1980, the Commission's revised ceiling will produce a maximum incentive price of $4.55/MMBtu for tight sands gas. Buyers of such gas, however, are free to negotiate lower prices.

Comments filed on the Commission's interim rule mostly took the position that an incentive price no higher than 150% of the Section 103 ceiling would be completely inadequate to stimulate production of tight formation gas, and urged instead a pricing standard tied to imported oil, domestic decontrolled oil or imported natural gas. On the other hand, Northwest Pipeline Corp. and Southern California Gas Co. supported the Commission's interim ceiling as a "reasonable first step approach," while the New York PSC questioned the appropriateness of any single incentive price level for enhanced tight formation gas production and instead suggested filings by producers or pipelines on an area-by-area basis (or on a formation-by-formation basis) under special relief procedures currently under Commission consideration. Numerous issues respecting the establishment of price incentives for production of tight sands gas were extensively discussed during an FERC hearing held on 6/10/80. (See REPORT NOS: 1250, pp1-4; 1257, pp5-10; 1263, pp10-14; 1265, pp8-13.)

According to an FERC press release, the Commission decided to increase the tight sands incentive price for the following reasons. First, since most of the gas affected by the rule will be deregulated in 1985 or 1987 under the terms of Title I of the NGPA, Commission action at this time will provide an incentive for producers to begin development of tight sands gas now, rather than awaiting decontrol. Second, the Commission found the record in this proceeding supports a conclusion that increasing the price of tight sands gas now can result in a substantial increase in the amount of tight sands natural gas that will be developed between now and 1985.

Third, the Commission noted various comments suggesting that the total cost of drilling and completing a tight formation well is roughly twice the cost of completing a comparably deep conventional well. While this two-fold ratio will not hold for every tight formation well, the Commission said that such gas must necessarily be afforded a relatively higher price in order to represent a comparably attractive investment opportunity to producers.

Finally, the Commission looked to various measures of the commodity value of additional tight sands gas production -- including $4.78/MMBtu based on the price paid by large industrial and electric utilities for No. 2 fuel oil, and $4.47/MMBtu based on the current border price for natural gas imported from Canada and Mexico.

The revised rule is expected to be issued next week.
API Report Shows Substantial Increase in Oil Well Drilling During First Six Months of 1980, with Lesser Increase in Gas Well Drilling

During the first week of August, the American Petroleum Institute released its "Quarterly Review of Drilling Statistics" for the second quarter of 1980.

Compared with the last two quarters, the report shows a continuing drop in gas well drilling but, for the most part, a rise in oil well drilling. Compared with the second quarter of 1979, however, there was an increase in both gas well and oil well drilling, particularly the latter. Specifically, the number of developmental oil wells drilled in the second quarter of 1980 was nearly 48% higher than in the second quarter of 1979 and the number of exploratory oil wells was 35% higher. Exploratory gas wells increased about 10% and development gas wells about 4% in the second quarter of 1980 compared with the second quarter of 1979. The figures for each of these quarters are tabulated below.

<table>
<thead>
<tr>
<th></th>
<th>Fourth Quarter 1979</th>
<th>First Quarter 1980</th>
<th>Second Quarter 1980</th>
<th>Second Quarter 1979</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gas Wells</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exploratory</td>
<td>487</td>
<td>475</td>
<td>426</td>
<td>388</td>
</tr>
<tr>
<td>Developmental</td>
<td>3,657</td>
<td>3,161</td>
<td>3,044</td>
<td>2,920</td>
</tr>
<tr>
<td>Total</td>
<td>4,144</td>
<td>3,636</td>
<td>3,470</td>
<td>3,308</td>
</tr>
<tr>
<td><strong>Oil Wells</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exploratory</td>
<td>397</td>
<td>365</td>
<td>359</td>
<td>266</td>
</tr>
<tr>
<td>Developmental</td>
<td>5,509</td>
<td>5,112</td>
<td>5,761</td>
<td>3,900</td>
</tr>
<tr>
<td>Total</td>
<td>5,906</td>
<td>5,477</td>
<td>6,120</td>
<td>4,166</td>
</tr>
<tr>
<td><strong>Total Wells</strong>/</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exploratory</td>
<td>3,082</td>
<td>2,795</td>
<td>2,556</td>
<td>2,211</td>
</tr>
<tr>
<td>Developmental</td>
<td>11,677</td>
<td>10,422</td>
<td>10,852</td>
<td>8,607</td>
</tr>
<tr>
<td>Total</td>
<td>14,759</td>
<td>13,217</td>
<td>13,408</td>
<td>10,818</td>
</tr>
</tbody>
</table>

\[a/\text{Includes dry holes, but excludes stratigraphic and core tests, and service wells.}\]

For the first six months of 1980, the API statistics reflect a substantial increase in oil well completions -- approximately 35% with respect to both exploratory and developmental wells -- compared with the first half of 1979. Gas well drilling was also up, but by a lesser percentage.

<table>
<thead>
<tr>
<th></th>
<th>First Six Months 1980</th>
<th>First Six Months 1979</th>
<th>Increase in 1980 (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gas Wells</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exploratory</td>
<td>897</td>
<td>783</td>
<td>14.6%</td>
</tr>
<tr>
<td>Developmental</td>
<td>6,188</td>
<td>6,036</td>
<td>2.3</td>
</tr>
<tr>
<td>Total</td>
<td>7,085</td>
<td>6,819</td>
<td>3.9</td>
</tr>
<tr>
<td><strong>Oil Wells</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exploratory</td>
<td>719</td>
<td>538</td>
<td>33.6%</td>
</tr>
<tr>
<td>Developmental</td>
<td>10,859</td>
<td>8,044</td>
<td>35.0</td>
</tr>
<tr>
<td>Total</td>
<td>11,578</td>
<td>8,582</td>
<td>34.9</td>
</tr>
<tr>
<td><strong>Total Wells</strong>/</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exploratory</td>
<td>5,331</td>
<td>4,698</td>
<td>13.5%</td>
</tr>
<tr>
<td>Developmental</td>
<td>21,238</td>
<td>17,826</td>
<td>19.1</td>
</tr>
<tr>
<td>Total</td>
<td>26,569</td>
<td>22,524</td>
<td>18.0</td>
</tr>
</tbody>
</table>

\[a/\text{Includes dry holes, but excludes stratigraphic and core test, and service wells.}\]
On 8/12/80, the FERC Staff, the Brick People et al. and other parties submitted comments requested by Administrative Law Judge Burton S. Kolko on issues and other matters to be taken up at a prehearing conference set for 8/13/80 in the proceeding involving a proposal by Northern Natural Gas Co. (CP80-135 et al.) to increase wintertime peak service to contract demand customers by 256,646 Mcf/d during the 1980-1981 heating season. On 8/1/80, the Commission scheduled a hearing in this proceeding to consider issues raised by the Brick People -- the only parties opposing the project -- concerning the adequacy of Northern's gas supply and the possible detriment to existing customers due to decreased reliability of service.

In its application, Northern cited "a dramatically improved supply situation" on its system due to success in acquiring new supplies in the Lower 48 States and addition of significant natural gas reserves recently contracted for in Alaska and Canada. As a result of these developments, Northern stated that it expects to add approximately 500 Bcf of new natural gas reserves in 1979 and to continue this level of acquisitions for several years in the future. The application stated that Northern's customers have not had any increase in peak day entitlements since 1971. The proposed increase in winter season service will assist Northern's CD customers in meeting peak day requirements and/or peak day growth requirements of high priority markets. Northern added that the increased volumes will enable some small volume customers from interruptible to firm deliveries. To effectuate deliveries of the increased volumes, Northern requested Commission approval for construction and operation of three compressor stations, some 65 miles of 4- and 8-inch branchline loops, and other related facilities, all estimated to cost $15.3 million. (See REPORT NO. 1242, p23.)

On 7/27/80, Northern filed a request in the Commission for a temporary certificate to construct and operate a portion of the total proposed facilities -- i.e., a 1,140 horsepower compressor near Wakefield, Michigan and related facilities at a cost of some $2.3 million -- so as to serve 102,958 Mcf/d of the proposed volumes to meet certain high priority market requirements during the 1980-1981 heating season. Northern explained that since its customers have not had an increase in peak day entitlements since 1971, there has developed a pent-up demand for natural gas service. In response to indications by customers of a need for at least some relief during the upcoming heating season, Northern said it requested its customers to advise as to the minimum volumes required to serve their high priority market requirements. Of the total requested, Northern said it could serve 102,958 Mcf/d with the additional horsepower compressor. However, Northern made clear that if that unit is to be installed and ready for the coming heating season, construction must begin immediately.

Subsequently, on 8/1/80, the Commission initiated a hearing on Northern's application and scheduled the prehearing conference for 8/13/80. In its order, the Commission observed that the Brick People requested a formal hearing on four specific issues. First, they challenged the adequacy of Northern's gas supply over the short- and long-term to permit the proposed increase in winter season entitlements. In this connection, they cited a decline in Northern's net reserves, which is projected to continue in the future and Northern's increased reliance on short-term Canadian imports. Second the Brick People noted a possible detriment to existing high priority and other customers caused by the attachment of new customers under Northern's proposal. Third, they questioned whether it is economically preferable
for high priority customers to use alternate fuel rather than natural gas. In certain areas of the country, they noted, electric utility companies have facilities designed to provide peak service in the summer and may be able to provide additional winter season service using existing facilities. Fourth, the Brick People challenged Northern's contention that approval of the new service would reduce dependence on imported oil. The attachment of new high priority customers may, in fact, result in curtailment of existing industrial gas users who may be forced to shift to imported oil.

The Commission decided to order a formal hearing to consider the first two issues -- the adequacy of Northern's gas supply and the possible detriment to existing customers due to decreased reliability of service -- so that it may obtain a factual basis before deciding to permit a substantial increase in Northern's winter season service. However, the FERC declined to set the third and fourth issues for hearing. First, the Commission said, the issue of alternate use of electric power is primarily one of state commission concern. Second, the Commission referred to a previous similar situation where it held that any certificate issued for increased gas service would, in fact, reduce fuel oil imports.

The Commission also consolidated an application by Lloyd V. Crum (CP 79-423), for an order directing Northern to deliver an additional 200 Mcf/d to serve residential and a few small commercial customers in the Towns of Racine and Grand Meadow, Minnesota; and an application by the City of Tipton, Iowa (CP 79-492) for an order directing Northern to deliver an additional 80 Mcf/d to serve residential and small commercial customer requirements. Northern has agreed to both deliveries.

Thereafter, on 8/5/80, the Administrative Law Judge directed the parties to submit, in advance of the prehearing conference on 8/13/80, a list of issues to be heard, among other things. In its response, the FERC Staff stated that within the scope of the two issues specified by the Commission, it is particularly concerned as to (1) the reasonableness of Northern's estimates of gas supply and market demand for the time period 1980-1990, and its estimates of new gas reserve acquisitions in its traditional onshore and more recent offshore (Gulf Coast) areas of gas reserves, and the rate of deliverability thereof; (2) the reliability of gas reserves projected to be available from Northern's Canadian and Alaskan supply projects as affected by conditions in contracts with the involved producers or transporters and conditions in existing decisions of the Canadian Government, the ERA and the FERC; and (3) the effect on Northern's Canadian gas supply projects of the proceeding pending in the ERA on dependence on Canadian gas imports.

The Brick People emphasized that the issue involving the adequacy of Northern's short- and long-term supply will require an examination of the validity of its supply and demand projects, the possibility that Northern will be required to turn to expensive and unreliable supplemental gas supplies, and whether Northern should be permitted to firm up peak day service predicated on imported gas. The second issue involving detriment to existing high priority and other customers will require examination of potential curtailment, increased prices caused by the need to import additional Canadian supplies and the availability of adequate distributor peak shaving capability to offset Northern's curtailments.

Other parties submitting comments included the Minnesota Public Utilities Commission, Wisconsin Power & Light Co., Wisconsin Gas Co., Allied Chemical Corp. and Northern States Power Co. The Minnesota PUC emphasized its support of Northern's proposal in light of the acute need by consumers in that state for firm gas supplies during the 1980-1981 winter season. The other parties generally agreed with the FERC's determination of the issues to be considered in this proceeding.
Senate Passes Regulatory Flexibility Act

On 8/6/80, the Senate passed S. 299 directing federal agencies "to fit regulatory and information requirements to the scale of the businesses, organizations and governmental jurisdictions subject to regulation." In order to achieve this principle, the bill orders agencies "to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration."

On 1/31/79, Senator John Culver (D-Iowa) introduced S. 299 for himself and eight other co-sponsors. Similar legislation had been introduced by Senator Culver in 1977. As introduced, S. 299 would have required federal independent agencies, when proposing new rules, to invite public comment on ways to reduce the burden on individuals, small businesses, small organizations and small government units. The agencies would have to justify the final form of new regulations in light of these comments and alternative proposals submitted by the public. Also, S. 299 would have required periodic review of the appropriateness and effectiveness of all existing rules and regulations in order to eliminate unnecessary burdens created for individuals and small entities. Among other things, the bill would have permitted federal agencies to issue different regulations and reporting and recordkeeping requirements for different sized businesses, organizations and government units. On 7/30/80, S. 299 was formally reported to the Senate by the Senate Judiciary Committee.

At the outset of debate on S. 299, Majority Leader Robert Byrd (D-W.Va.) introduced an amendment in the form of a substitute to S. 299 which was subsequently approved by the Senate.

As passed, S. 299 first requires federal agencies to publish in the Federal Register in October and April of each year a regulatory flexibility agenda containing a brief description of the subject area of any rules the agency expects to propose or promulgate during the next 12 months which are likely to have a significant economic impact on a substantial number of small entities. The agency must also summarize the rule or area of regulation under consideration for each subject area appearing on the agenda, along with objectives and legal basis for the rule. The agenda must include an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking.

The agencies must endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication thereof in publications likely to be obtained by the small entities, and to invite comments thereon.

Next, S. 299 provides that whenever an agency is required to publish a general notice of proposed rulemaking, it must also prepare an initial regulatory flexibility analysis of the proposed rule. Such analysis must be a preliminary agency assessment of the impact of the proposed rule on small businesses, small organizations and small governmental jurisdictions. The initial analysis in summary form must be published in the Federal Register at the time the general notice of proposed rulemaking is published. Five items must appear in the initial regulatory flexibility analysis: (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of and legal basis for the proposed rule; (3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which
will be subject to the requirements, and the type of professional skills necessary for preparation of the reports or records; and (5) an identification to the extent practicable of all relevant federal rules which may duplicate, overlap or conflict with the proposed rule.

Furthermore, the initial regulatory flexibility analysis must contain a description of any significant alternatives to the proposed rule which would accomplish the stated objectives of applicable statutes and which may minimize any significant economic effect thereof on small entities. Alternative approaches would include (1) differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation or simplification of compliance and reporting requirements under the proposed rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule for such small entities.

The bill also requires an agency to prepare a final regulatory flexibility analysis when it publishes a final rule which was subject to a legal requirement to publish a general notice of proposed rulemaking. This analysis must contain a statement of the need for and objectives of the rule; a summary of the significant issues raised by the public and the agency's assessment of those issues; and an explanation of any changes made in the rule in response to public comments. Also, the agency will have to describe each of the significant alternatives to the rule designed to minimize any significant economic impact on small entities which the agency considered. For each such alternative which the agency rejected, it must state its reasons. Copies of the final regulatory flexibility analysis are to be made available to the public.

S. 299 further provides that the head of an agency may waive or delay completion of an initial regulatory flexibility analysis by publishing a statement in the Federal Register that an emergency makes compliance impracticable. Such publication must be made not later than the date of publication of the final rule and include reasons for the waiver or delay. However, a waiver of the final regulatory flexibility analysis is precluded under the bill, although it may be delayed for not more than 90 days after the date of publication of the final rule due to an emergency which makes timely compliance impracticable.

Another provision directs that within 180 days after enactment, each agency must publish a plan for periodic review of its rules which have or will have a significant economic impact on a substantial number of small entities. The purpose of this review is to determine whether such rule should be continued without change or should be amended or rescinded consistent with the stated objectives of applicable statutes in order to minimize any significant impact upon a substantial number of small entities. The plan must provide for the review of all such agency rules existing on the date of enactment within 10 years thereafter, and for a review of rules adopted after enactment within 10 years after such adoption. These completion dates may be extended for one-year periods totaling not more than five years.

In reviewing the rules, the agency will have to consider the continued need therefor; the nature of complaints or comments received from the public; the complexity of the rule; the extent to which it overlaps, duplicates or conflicts with other federal rules and, to the extent feasible, state and local governmental rules; and the length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the affected area. Also, agencies must publish in the Federal Register each year a list of rules that have a significant economic impact on a substantial number of small entities and are to be reviewed during the next 12 months.
During debate, Senator Culver emphasized that pursuant to this bill, the Senate was finally addressing one of the most pressing problems facing our nation's small businesses, local governments, and small organizations -- the problem of complying with hundreds of thousands of complex regulations which apply across the board to every business, government or other organization without regard to differences in size or resources. The "suffering of small businesses from burdensome federal regulations" is not the result of "the willful intent of regulators to single out small businesses to comply with costly regulations," Senator Culver declared, but "is more often the failure of federal regulatory agencies to apply common sense when drafting complex or conflicting rules" and not giving adequate consideration to the resources or the ability of small entities to comply with them. Senator Culver stressed that it is not the intent of this legislation to undermine the great strides the country has made in providing safer places to work, cleaner air to breathe and water to drink, and to ensure the manufacture of safer products. Rather, it is a recognition that we can do better in implementing these laws. In our effort to secure benefits for the public at large, we often have created conflicting standards or needlessly complex reporting or compliance requirements for small businesses: This legislation requires agencies to address that problem squarely and directly."