

PAN AMERICAN PETROLEUM CORPORATION

*Mr. Louis C. Ross, after
reviewing the transcript,
believes that these attached
sheets will more accurately
reflect the testimony.*
LMR

SECURITY LIFE BUILDING
DENVER, COLORADO 80202
December 30, 1968

Re: Case No. 3834
Application of El Paso Natural
Gas Company for Suspension of
Rules, held August 14, 1968

State of New Mexico
Oil Conservation Commission
State Land Office Building
P. O. Box 2088
Santa Fe, New Mexico 87501

Attention: Mr. George M. Hatch, Attorney

Dear George:

Thank you for your letter of December 20, 1968.

Since the corrected pages have been attached to the record, I thought that perhaps they should be neater and have therefore prepared new typed copies of pages 41, 42, and 59.

You may want to substitute these pages for the ones heretofore furnished.

Seasons Greetings to you.

Yours very truly,

Louis C. Ross
Louis C. Ross
Attorney

LCR:ga

if they consider it is in their best interest to enter into an agreement, to enable them to dispose of their excess allowable and I'm sure if they find it's to their advantage to do so, that such can be accomplished through the mechanism currently available to El Paso and Southern Union for accomplishing this.

Q Has anyone ever worked up a figure showing the percentage of underage that is cancelled with Southern Union compared to the cancellation of El Paso; would there be a possibility of coming up with the solution where the wells will be equally produced?

A Yes, it's a possibility.

Q Does Southern Union have enough wells to offset your underproduction, the gas that you need to produce?

A I'm not sure I understand your question. Are you asking me whether we would be able to meet our needs were we to have full access to Southern Union Company's gas wells?

Q That is correct.

A Let me first say that we're able to fill our needs with the wells currently tied to our system, so we would be better able to do so if we had this additional gas available to us.

LOUIS C. ROSS: Louis C. Ross, I haven't any

(Corrected Page)

questions of the witness. I came prepared to appear and with local counsel, I have a statement to make after the witness is excused.

MR. PORTER: Does anyone else have a question of the witness? Mr. Utz,

CROSS EXAMINATION

BY MR. UTZ:

Q I have one after thought. Do you have any figures that would show the amount of cancellation due to the classification?

A Due to classification of wells from non-marginal to marginal?

Q That's right.

A No, I don't.

Q This difference in these figures that you showed to overproduced wells on your Exhibit 8, that doesn't include any cancellations due to classification from non-marginal to marginal?

A It would not include the underproduction accumulated to wells that would be classified as marginal that was accumulated during the period February 1st, 1968 through July 1968. Since under normal circumstances that underage accumulated to a prorated well would still be available to be made up during the next proration period.

(Corrected Page)

MR. PORTER: Does that conclude your testimony?

MR. MEYER: Yes, sir, that concludes the testimony of El Paso Natural Gas. Thank you very much.

MR. ROSS: Louis C. Ross, Pan American Petroleum Corporation. First of all, I would like to say we are somewhat sympathetic with the El Paso F. P. C. problem. On the other hand, we hate to see this come up if it is an opening wedge to destruction of prorationing in the San Juan Basin. Nextly, we would like to reinforce the cross examination of Tenneco and say that they brought out the two principal points that we see here which are that there is a partial solution available by increasing the purchases of gas, and secondly that there probably could be considerably more done toward, perhaps, a change in their mechanical facilities so as to enable them to take more gas. Our principal point is, my company would not like to see an Order of this type become a permanent type order that would be a precedent in other areas. We feel that while temporary relief is probably in order, that it ought to be a continuing matter for the Commission extending throughout the period of time in question.

MR. PORTER: You don't oppose a temporary order of the nature that El Paso has applied for?

MR. ROSS: No, we do not oppose it because we can

(Corrected Page)

GOVERNOR
DAVID F. CARGO
CHAIRMAN

State of New Mexico
Oil Conservation Commission



LAND COMMISSIONER
GUYTON B. HAYS
MEMBER

STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

P. O. BOX 2088
SANTA FE

August 20, 1968

Mr. Richard S. Morris
Montgomery, Federici, Andrews,
Hannahs and Morris
Attorneys at Law
Post Office Box 2307
Santa Fe, New Mexico

Re: Case No. 3834
Order No. R-3479
Applicant:
El Paso Natural Gas Co.

DOCKET MAILED

Dear Sir:

Date 2-10-69

Enclosed herewith are two copies of the above-referenced Commission order recently entered in the subject case.

Very truly yours,

A. L. PORTER, Jr.
Secretary-Director

ALP/ir

Carbon copy of order also sent to:

Hobbs OCC x

Artesia OCC

Aztec OCC x

Other F. Norman Woodruff, Booker Kelly, Don Fieldsted, Louis C. Ross,
Henry F. Straw, Charles Ramsey, Al Wiederkehr, Jay E. Morgan
Robert Meyer

El Paso Natural Gas Company

El Paso, Texas 79999

November 6, 1968

MAIN OFFICE
NOV 13 PM 1 06

New Mexico Oil Conservation Commission
Post Office Box 2088
Santa Fe, New Mexico 87501

Attention: Mr. A. L. Porter, Jr.

Gentlemen:

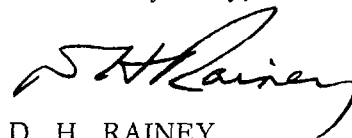
At the hearing concerning the suspension of balancing provisions in the San Juan Basin in Case 3834, August 14, 1968, El Paso was requested to keep the Commission informed as to the progress in our 310 M²CF/D case.

This is to advise you that El Paso Natural Gas Company received a Certificate in Case CP67-217 et al. for the facilities applicable to moving gas from the Delaware Basin area which would have the result of helping to relieve the overbalanced condition which exists in the San Juan Basin area.

For your information, there is attached a copy of the order issued by the Federal Power Commission in Case CP67-217 et al.

If there is any further information which you need or any way in which we may be helpful concerning this matter between now and the time of the show-cause hearing provided in Order R-3479, please advise me.

Yours very truly,



D. H. RAINEY
Assistant Manager
Gas Proration Department

DHR:ps
Attachment

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

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		<u>Docket Nos.</u>
Pacific Gas Transmission Company)	CP67-187
)	CP67-188
El Paso Natural Gas Company)	CP67-217

OPINION NO. 549

OPINION AND ORDER ISSUING CERTIFICATES
OF PUBLIC CONVENIENCE AND NECESSITY
AND AUTHORIZING IMPORTATION OF NATURAL GAS

Issued: October 30, 1968)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

	<u>Docket Nos.</u>
Pacific Gas Transmission Company)	CP67-187
)	CP67-188
El Paso Natural Gas Company)	CP67-217

OPINION NO. 549

APPEARANCES

Richard H. Peterson, Malcolm H. Furbush, John A. Sproul,
Raymond N. Shibley, and William LeBuhn for Pacific Gas
Transmission Company

Richard H. Peterson, F. T. Searls, Malcolm H. Furbush, and
William LeBuhn for Pacific Gas and Electric Company

John Ormasa, K. R. Edsall, and Eric W. Martens for Southern
California Gas Company and Southern Counties Gas Company
of California

G. Scott Cuming, Walter G. Henderson, E. G. Najaiko, Allen R.
Grambling, Charles V. Shannon, and Louis Flax for El Paso
Natural Gas Company

Charles E. McGee, and John T. Ketcham for Cascade Natural Gas
Corporation

Justin R. Wolf, Eugene E. Threadgill, and David B. Ward for
Northwest Natural Gas Company

Stanley Jewell, Sherman Chickering, C. Hayden Ames, and
Donald J. Richardson, Jr. for San Diego Gas & Electric
Company

Thomas F. Brosnan, and George J. Meiburger for Washington
Natural Gas Company

Richard M. Merriman, Peyton G. Bowman, III, and N. H. Powell
for Arizona Public Service Company

William I. Powell for Independent Petroleum Association of America

Henry F. Lippitt, II for Independent Oil and Gas Producers
of California and California Gas Producers Association

Roger Arnebergh, and Robert W. Russell for City of Los Angeles

Mary Moran Pajalich, J. Calvin Simpson, and Sheldon Rosenthal
for the People of the State of California, and Public
Utilities Commission of State of California

Richard W. Sabin, and John H. Socolofsky for Public Utility
Commissioner of Oregon

Crawford C. Martin, Linward Shivers, and C. Daniel Jones, Jr.
for the State of Texas

Robert E. Simpson for Washington Utilities & Transportation
Commission

James W. McCartney for Transwestern Pipeline Company

R. Clyde Hargrove for Southern California Edison Company

Dean Zinn for New Mexico Public Service Commission

Iver E. Skjeie for State of California

Gary Nelson for State of Arizona

James N. Horwood, Robert L. Russell, David H. Schwartz, and John
Joseph Keating, Jr. for the Staff of the Federal Power
Commission

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Certificates (Pipeline) - Importation of Natural Gas -
Pipelines (Construction)

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr.,
Carl E. Bagge, and John A. Carver, Jr.

		<u>Docket Nos.</u>
Pacific Gas Transmission Company)	CP67-187
)	CP67-188
El Paso Natural Gas Company)	CP67-217

OPINION NO. 549

OPINION AND ORDER ISSUING CERTIFICATES
OF PUBLIC CONVENIENCE AND NECESSITY
AND AUTHORIZING IMPORTATION OF NATURAL GAS

(Issued October 30, 1968)

BAGGE, Commissioner:

This proceeding originated with applications filed in Docket Nos. CP67-187 and CP67-188 by Pacific Gas Transmission Company (PGT) requesting authorization to import from Canada an additional 200,000 Mcf ^{1/} of gas per day for sale to its affiliate Pacific Gas & Electric Company (PG&E) for resale in the latter's northern California distribution area. At present, PGT is authorized to import 615,000 Mcf per day. It proposes to import an additional 100,000 Mcf per day in 1968, increased by another 100,000 Mcf per day in 1969. PGT will transport these additional increments to PG&E at the California border through its existing 36-inch pipeline, but will require installation of additional compression at an estimated cost of approximately \$21 million.

^{1/} All quantities of natural gas are expressed at a pressure base of 14.73 psia and at a temperature of 60° F.

On January 30, 1967, El Paso Natural Gas Company (El Paso) filed an application in Docket No. CP67-217 requesting authorization to increase by a total of 310,000 Mcf per day its gas deliveries from the Delaware Basin in Texas to its customers in New Mexico, Arizona, and California. Of this total, 103,000 Mcf would be delivered to PG&E for resale in northern California, 154,000 Mcf to Southern California Gas Company and Southern Counties Gas Company of California (Southern Companies) for resale in southern California, and 53,000 Mcf to distributors in Arizona and New Mexico. To deliver the gas, El Paso will be required to loop sections of its southern transmission line with 36-inch, 30-inch, and 24-inch pipeline plus necessary compression at an estimated cost of approximately \$94 million plus approximately \$24 million for gathering facilities.

Not a part of this consolidated proceeding, but of which the Examiner has taken official notice, is the application (Docket No. CP68-181) of Transwestern Pipeline Company (Transwestern) to deliver an additional 110,000 Mcf per day from the Delaware Basin to southern California. Transwestern proposes to construct a 30-inch pipeline at an estimated cost of approximately \$51.5 million.

On March 10, 1967, the California Gas Producers Association and the Independent Oil and Gas Producers of California (California Producers) filed a motion to consolidate the applications of PGT and El Paso for hearing, which motion we granted on July 26, 1967. A prehearing conference in the consolidated proceedings was held September 6, 1967. Formal hearings commenced October 16, 1967, and concluded February 16, 1968.

In the course of the hearings Staff proposed that neither PGT's nor El Paso's application be granted, but rather that consideration be given to certifying a 42-inch pipeline from the Delaware Basin to the California border at an estimated initial cost of approximately \$200 million. This proposed pipeline would be in lieu of PGT's proposal for 200,000 Mcf, El Paso's proposal for 310,000 Mcf, and Transwestern's proposal for 110,000 Mcf per day. It could immediately transport 650,000 Mcf per day and ultimately 1,500,000 Mcf per day with allegedly small additional costs.

Presiding Examiner Seymour Wenner, in his Initial Decision issued April 19, 1968, found that Staff's proposal

contained some inherent risks relating to need and gas supply which were unlikely to be resolved in the near future and which were too great to warrant the large initial commitment involved. Accordingly, he adopted an approach which he characterized the "minimax" solution, seeking to minimize the risks and maximize the advantages of the Staff's proposal. He proposed to accomplish this objective by ordering the certification of PGT's proposals upon the condition that the imported gas be divided at reasonable rates between northern and southern California consumers, and deferring a decision on the application of El Paso by reopening the proceedings to permit comparative consideration of the minimax solution with the applications of El Paso and Transwestern. Briefs on exceptions were filed May 8, 1968, replies thereto were filed May 23, 1968, and oral argument before this Commission was heard on June 5, 1968.

HOLDING

For the reasons set forth below, we grant the applications of PGT and El Paso. We do not adopt the Examiner's minimax solution or the Staff's 42-inch pipeline proposal.

PACIFIC GAS TRANSMISSION COMPANY

PGT received its original certificate from this Commission on August 5, 1960, in Docket No. G-17350, et al., 24 FPC 134 (1960). It was authorized to construct and operate its portion of a larger proposal which connected the Alberta, Canada, reserves to serve the expanding California markets. PGT's project consisted of 614 miles of 36-inch diameter pipeline extending from the international boundary near Kingsgate, British Columbia, to the Oregon-California border, and was designed to transport an average of 415,000 Mcf per day to PG&E.

In Opinion No. 495, issued June 15, 1966, in Docket Nos. CP65-213 and CP65-214, we authorized PGT to expand its facilities and import additional volumes of gas from Canada to enable it to deliver an additional 200,000 Mcf of gas per day to PG&E. In so doing, we stated:

We are concerned here with already existing pipeline facilities which are not yet being utilized to their fullest capacity. The increased use of the existing pipeline facilities will reduce the unit cost of the gas supplied to California and will also reduce the unit cost of transportation of gas transported for El Paso and destined for the consumers in Washington, Oregon and Idaho. To refuse to issue certificates authorizing the importation, transportation, and sale of this additional gas would mean that some of the capacity of presently existing facilities would remain unused with resultant higher costs to the consumers in four states. 35 FPC 1003, 1006 (1966).

In this proceeding PGT seeks authorization for the second expansion of the Alberta-California project, premised again upon the availability of additional transmission capacity (i.e., cheap expansibility) to bring gas to PG&E at a low incremental cost.

Among other intervenors, 2/ the California Producers were permitted to intervene in support of the

2/ The following parties were granted leave to intervene in this proceeding: Texas Independent Producers & Royalty Owners Association, Permian Basin Petroleum Association, West Central Texas Oil & Gas Association, Northwest Pipeline Corporation, Cascade Natural Gas Corporation, El Paso Natural Gas Company, California Gas Producers Association, Pacific Gas & Electric Company, Independent Petroleum Association of America, Washington Natural Gas Company, Transwestern Pipeline Company, City & County of San Francisco, Independent Oil & Gas Producers of California, Southern California Gas Company & Southern Counties Gas Company of California, Arizona Public Service Company, San Diego Gas & Electric Company, City of Los Angeles, Public Utility Commissioner of Oregon, The People of The State of California and The Public Utilities Commission of the State of California, State of Texas and The Railroad Commission of Texas, Idaho Public Utilities Commission, Washington Utilities and Transportation Commission.

interests of northern and southern California gas producers. The California Producers contend that while a market exists for the volumes of gas proposed to be transported and sold in southern California, this is not true with respect to PGT's proposed deliveries to PG&E in northern California. Accordingly, they argue that PG&E's requested purchases of El Paso gas should be authorized on the basis of receiving not more than 50,000 Mcf per day during the initial year and 50,000 Mcf per day during the second year -- in conformance with the projected future annual increase in PG&E's demand for natural gas and its historical growth. Moreover, they argue that PG&E's request to import additional supplies of natural gas from Canada either should be denied or spread over the four years after 1969 at the rate of 50,000 Mcf per day for each of those years.

The California Producers argue that PG&E should include as part of its gas supply available for steam plants 1968 through 1972 estimates of deliverability from reserves which may be discovered in California in those years. The deliverability of gas from reserves yet undiscovered is at best a dubious matter. But even assuming that sufficient additional California reserves were discovered to meet PG&E's growing needs, the price PG&E pays to the California Producers is approximately 30 cents per Mcf whereas the record in this proceeding shows that the delivered price in the San Francisco area of the Canadian gas will be 26.74 cents per Mcf.

PG&E's contracts with California Producers require that the Producers be able to deliver, for a five day period on demand, three times the daily deliverability. Thus, in spite of the relatively high price per Mcf paid the Producers under these non-regulated contracts, PG&E and its customers benefit from the peaking capacity provided. The California Producers would have us require that PG&E satisfy its growing needs from their expensive gas, necessarily losing the peaking benefits which alone could justify the price charged. We are not prepared to sacrifice the interests of the California consumers for that purpose.

Counsel for the California Producers, subsequent to the closing of the record and the oral argument in this proceeding, submitted to this Commission three letters concerning matters in issue. The substance of these letters did not enter into our determination herein. In

view of this incident, however, we are compelled to remind counsel for the California Producers and the bar of this Commission that such correspondence relating to contested issues of fact submitted after the closing of the record is contrary to section 1.20(k) of the Commission's Rules of Practice and Procedure.

The Public Utility Commissioner of Oregon (Oregon) takes the position that the Commission should issue a certificate of public convenience and necessity authorizing El Paso to construct and operate facilities as requested in its application. Similarly, Oregon asserts, the applications of PGT should be granted, subject, however, to a condition providing that PGT shall offer to sell 100,000 Mcf per day to El Paso (or to the successor in interest to El Paso's Northwest Division) to meet the market requirements of the Pacific Northwest. Delivery of that gas would be near Stanfield, Oregon, where the transmission lines of the two companies interconnect. The rate for such sale would be predicated upon the average cost of gas to PGT at the Canadian border plus PGT's cost of transportation to the point of interchange.

Oregon asserts that the growing gas markets of the Pacific Northwest are such that the imported gas should be utilized for the benefit of consumers in that area, and that the Examiner ignored the Commission's Order of July 26, 1967, which requires a finding of whether provision should be made for those markets. Oregon supports El Paso's application in order that PGT's capacity may be kept available to serve the Pacific Northwest.

In consideration of the Oregon contention we note that at the time El Paso's and PGT's applications were filed there was pending El Paso's proposal in Docket Nos. G-8932 and CP66-315 to import an additional 200,000 Mcf per day of Canadian gas at Sumas to meet the increased requirements of El Paso's Northwest Division market. The Sumas proceeding has since been concluded. El Paso's settlement proposal was approved by the Commission's Order of February 13, 1968, and by the Canadian National Energy Board and the Governor in Council of Canada on February 16, 1968.

El Paso is currently supplying approximately 150,000 Mcf of gas per day to the Pacific Northwest from the PGT pipeline at 16 separate delivery points. It also has the right, in accordance with the service agreement between it and PGT, to increase the volume of gas transported for it by PGT to delivery points in the Pacific Northwest to 300,000 Mcf of gas per day. El Paso states that "it remains acutely aware of the needs of the Northwest markets for additional gas supplies in the 1969-70 heating season and will timely file an appropriate application to satisfy those needs." 3/

The basic contention of Oregon is that the PGT gas is cheaper than that furnished and likely to be furnished Oregon by El Paso, either from domestic or Canadian sources, and that Oregon rather than California should get the benefits of the Canadian contracts which PGT has negotiated for its California customers. We find nothing in the record, however, to demonstrate that Oregon's immediate need is any greater than California's need.

We are of the opinion that the availability at minimal cost of additional transmission capacity to bring needed Canadian gas to northern California at a low incremental cost, coupled with the fact that there probably will not be sufficient northern California produced gas available, warrant our authorizing PGT to import an additional 200,000 Mcf of gas per day and to certify the facilities thereby required.

3/ El Paso Brief on Exceptions, page 4.

EL PASO NATURAL GAS COMPANY

All parties agree that, absent a better alternative, El Paso's project meets all of the public convenience and necessity criteria. Staff's opposition is based not on El Paso's failure to meet these criteria, but on the premise that a better alternative exists, thereby precluding certification of the El Paso application.

El Paso's project was prompted by the needs of its Southern Division customers for additional natural gas supplies. At the western terminus, the Southern Division serves PG&E at the Arizona-California boundary near Topock, Arizona, and Southern Companies at the Topock delivery point as well as south of Topock at the Arizona-California boundary near Blythe, California. Along its mainline route, the Southern Division serves forty-eight distributor and direct sale customers situated east of California in Texas, New Mexico, Arizona, and Nevada.

In early 1966, PG&E advised El Paso of its need to acquire additional firm gas supplies of 100,000 Mcf per day by November 1, 1967. El Paso was also advised by Southern Companies that the gas needs of the latter's customers would require additional firm supplies. Southern Companies expressed the need for an aggregate additional firm quantity from El Paso of 150,000 Mcf per day to be delivered by November 1, 1967. In the fall of 1966, forecasts of the east-of-California markets also reflected growth in requirements which indicated that they too would require additional deliveries in the near future approximating 50,000 Mcf per day.

Thereafter, commitments were made with PG&E and Southern Companies and El Paso's application was filed with the Commission on January 30, 1967. The proposed addition of facilities to the Southern Division mainline will increase El Paso's present daily design capacity of 3,229,800 Mcf by 310,200 Mcf, to 3,540,000 Mcf. With the proposed additional capacity the Southern Division daily design capacity utilized for El Paso's customers will be as follows: PG&E at the Topock delivery point, 1,140,000 Mcf per day; Southern Companies at the Topock and Blythe delivery points, an aggregate of 1,550,000 Mcf per day; east-of-California customers, 850,000 Mcf per day.

The El Paso project was reviewed by Staff to compare the cost of service for reinforcing the existing system, rather than employing the new route hypotenuse concept which El Paso used. The Staff concluded that although reinforcement would result in a lower cost of service for deliveries of 310,000 Mcf per day, El Paso's proposal would permit future expansibility at lower incremental cost.

At this time, El Paso proposes additional east-of-California (New Mexico and Arizona) capacity of 53,000 Mcf per day. This will represent the first east-of-California expansion since that approved in July 1964 in Docket No. CP63-296. El Paso claims that the additional increment is necessary to satisfy the requirements of resale customers and to continue service to direct sale customers in a manner in keeping with past service to them. Staff agrees that the level of service to the east-of-California customers that would be achieved by the expansion proposed by El Paso is reasonable. The proposed additional increment was designed to meet only market needs projected through 1968. There has been no issue raised with respect to the ability of PG&E and Southern Companies to absorb the amounts of gas specified in their commitments with El Paso.

Gas Supply

El Paso proposes to utilize its general system sources of supply for the additional sales proposed by it in these proceedings, as augmented by new and additional reserves committed to El Paso in the Delaware Basin area. The additional reserves consist of Ellenburger reserves in the Gomez, West Waha, Lockridge, Hamon, and Toro Fields which are being attached by means of facilities proposed in this proceeding. Temporary certificates were issued to El Paso on August 18, 1967, and on October 19, 1967, authorizing construction and operation of facilities necessary to attach the Lockridge, Hamon, and Toro Fields. Gas is now flowing from the Hamon and Toro Fields, and on the date the record in this proceeding was closed the facilities for the Lockridge Field were nearly complete. Facilities necessary to attach the J. M. Field are the subject of El Paso's application pending in Docket No. CP66-306, and a temporary certificate was issued in that docket on April 20, 1967. Gas is now flowing from the J. M. Field.

El Paso's system relies on gas sources throughout the western United States and Canada. In addition to the

Permian Basin area, which encompasses the new, prolific Delaware-Val Verde Basin area, and the San Juan Basin area, El Paso's system draws upon the Texas-Oklahoma Panhandle area, various sources situated throughout the Rocky Mountain area north of San Juan, and, through connection with Canadian suppliers, sources in western Canada.

As of January 1, 1966, El Paso's proven dedicated reserves from these sources aggregated 42.4 trillion cubic feet. The reserve life index, or reserve production ratio, is 28.2 years. As such, it exceeds, by some 10.6 years, the reserve life index of all proven reserves in the United States. Measured by the deliverability life standard, such reserves permit satisfaction of El Paso's contractual sales obligations, including the additional sales proposed in this proceeding, for a period of 12 years from January 1, 1966.

Staff agrees that El Paso has maintained reserves at a level most recently found appropriate. ^{4/} As of January 1, 1968, the deliverability life of El Paso's reserves was 10 years. ^{5/} Staff agrees that El Paso has an adequate gas supply to meet the requirements of the current project.

Economic Feasibility

El Paso presented cost-of-service studies which establish the present and future economic feasibility of the facilities now proposed and as expanded to their ultimate economic level of deliveries of 775,000 Mcf per day.

At the initial capacity level of 310,000 Mcf per day, and based upon annual deliveries of the quantities now required by the Southern Division markets, the total cost of service for the project would average 27.61¢ per Mcf for the first year; 27.50¢ per Mcf for the second year; and 27.61¢ for the third year. The comparison with average revenues

^{4/} See Transwestern Pipeline Company, et al., Opinion No. 500, 36 FPC 176 (1966).

^{5/} Even with divestiture to the successor of El Paso's Northwest Division of 1 trillion cubic feet of reserves additional to that contemplated at the time of filing El Paso's application, the deliverability life will not be reduced by more than one year.

attributable to the additional sales to be made by means of the proposed facilities is favorable: 27.04¢ per Mcf for the first year; 28.75¢ per Mcf the second year; and 28.68¢ per Mcf for the third year. At its initial stage of deliveries, the project revenues therefore more than recover the project costs. 6/

The record thus supports the conclusion that El Paso's proposed project is economically feasible. Additionally, the project offers the prospect of substantially increased economic benefits in the form of cheap expansibility as markets expand in the future. The record shows the facilities and costs required to expand El Paso's project in steps of 100,000 Mcf per day from its level of 310,000 Mcf per day proposed herein to its optimum level, which is 775,000 Mcf per day. Such an expansion of the project would result in a declining incremental unit cost of transportation from 9.18¢ per Mcf at the 310,000 Mcf per day level to 7.16¢ at a 775,000 Mcf per day level.

In his Initial Decision, the Examiner pointed out that there are certain problems relating to the advance payments and prepayments made by El Paso to its producer-suppliers.

El Paso's advance payments result from take-or-pay provisions in gas purchase contracts which El Paso has with some of its producer-suppliers and constitute payments made prior to commencement of initial deliveries. A major portion of the advance payments that have been made for new sources of Delaware Basin gas were made to Shell Oil Company. Shell and El Paso have received temporary certificates respecting these new sources and deliveries have been initiated by Shell. 7/ Subsequent to the commencement of these deliveries, El Paso has been making prepayments to Shell because it has been unable to take the contract minimums. Advance payments and prepayments have also been made to other producers in the Delaware Basin area.

6/ While not passing upon the merits thereof, we note that on September 6, 1968, El Paso filed a rate increase application proposing an increase of 10 percent or 2.9¢ per Mcf in its rates.

7/ El Paso's temporary certificates were issued in Docket No. CP66-306 on April 20, 1967 (J. M. Field) and in Docket No. CP67-217 on August 18, 1967 (Hamon and Toro Fields) and on October 19, 1967 (Lockridge Field). Shell's temporary certificates were issued in Docket No. CI67-897 on April 20, 1967 (J. M. Field); in Docket Nos. CI67-1095 and CI67-1084 on August 18, 1967 (Hamon and Toro Fields); and in Docket No. CI67-1096 on October 19, 1967 (Lockridge Field).

By Order issued December 21, 1966, we consolidated the application of El Paso in Docket No. CP66-306 and the application of Shell in Docket No. CI66-897 with regard to El Paso's purchase and Shell's sale of the J. M. Field gas. With reference to the advance payment provisions in the El Paso-Shell contract, we stated:

. . . The Commission feels that a provision in a contract of this nature requiring such advance payments warrants a strong examination by it. Hence, it will afford Shell a full opportunity to demonstrate on the record to be developed in the formal hearings scheduled to be conducted in connection with the above styled proceedings the justification for the inclusion of such a provision. (Order, page 3)

Subsequently, El Paso and Shell were granted temporary certificates for the J. M. Field production. These temporary certificate orders reserve the issues of the propriety and, if improper, the disposition, of the advance payments. The same issues have been preserved in temporary certificates issued to Shell and El Paso respecting the other new Delaware Basin sources proposed in these proceedings.

The Public Utilities Commission of California has requested that we condition the certificate issued to El Paso in this proceeding by preserving the advance payments and prepayments issues. El Paso stated that it does not oppose this request. Accordingly, the certificate we issue to El Paso herein will be conditioned appropriately.

THE STAFF PROPOSAL AND THE EXAMINER'S
MINIMAX ALTERNATIVE

The PGT and El Paso applications consolidated herein, and the Transwestern application which is pending in Docket No. CP68-181, have each been put forward as separate propositions for meeting discrete needs for gas service. They are, however, interrelated; the PGT application and part of the El Paso application are directed to the needs of

northern California for additional gas in the 1968-69 and 1969-70 heating season, and the Transwestern and part of the El Paso applications are directed to the needs of the southern California market for these years. Moreover, as Staff and the Examiner both point out, the El Paso and Transwestern proposals both seek to transport gas from the same general area of the Permian Basin of West Texas and New Mexico to the California border by means of facilities of a relatively small size, which, though least costly for the increments of service presently sought, could be considerably more costly over a period of time, assuming additional increments of gas needed for the California market can and will be secured from producers in the Permian area.

Staff has proposed, in answer to the proposals mentioned, a new 42-inch pipeline from the Delaware Basin to the California border. It is Staff's contention that, assuming only the market growth postulated by PG&E and Southern Companies (and accepted by the Examiner) through 1972 -- with no additional growth -- utilization of the 42-inch line could result in savings of \$4,346,000 through 1972, and \$23,570,000 over the ten-year period ending in 1978. This figure, however, which is based upon denial of the PGT application and eventual substitute of Delaware Basin gas therefor, is a composite one in which even larger savings for southern California are offset by increased costs to northern California (over the proposals set forth in the application) of \$5,248,000 through 1972, and about \$12,000,000 over the entire ten-year period. This results from the admitted fact that by far the cheapest increment of gas to California, irrespective of design improvements, is that proposed in the PGT application. The Examiner found that there were additional reasons for immediately granting the PGT application in a somewhat modified form -- namely, the need for additional gas to California during the necessary interim while the possibilities of constructing 42-inch facilities from the Delaware Basin area were canvassed. As indicated above, we agree with this assessment. But even if we did not, we would not be inclined to certificate any facilities in which the prospect of saving large sums to consumers in southern California over the ensuing five or ten years was at the expense of the large indicated additional costs to northern California consumers.

Staff argues that even if for one or both of these reasons the Commission deems it advisable to certificate the PGT proposal, its 42-inch line would still be the cheapest long-range method of bringing Delaware Basin gas to California, with savings over the ten-year period to 1978 -- still assuming no market growth after 1972 -- of \$18,713,000, though only \$1,091,000 would accrue through 1972. These savings are strongly disputed by some of the parties, the principal areas of contention being the proper evaluation of gathering costs in the Delaware Basin, the additional costs, if any, in getting additional supplies of gas to PG&E at its Topack terminus, and the extent of the increased costs to the distributors (in alternative fuel costs or sales lost) from the delay in effectuating any 42-inch line proposal.

The Examiner did not find it necessary to resolve these conflicts, since he found that, while the Staff's 42-inch line proposal "could offer many benefits over the long run" it "involves risks related to need and supply that are unlikely to be resolved in the immediate future and which are too great to warrant the large, initial commitment it would require" (Slip Op., p. 11). Specifically, he stated that the rate of expansion of the California gas market might diminish with the increasing availability of nuclear power, that there were real, if presently unmeasurable, prospects for large supplies of offshore gas coming on the California market within the next decade, and that while there was a reasonable basis for assuming considerable additional volumes of gas in the Delaware and Val Verde valleys of Permian near the eastern terminus of the proposed 42-inch line, "committing so much capacity without further detailed assurances on supply would be risky" (ibid.).

The Examiner, however, did not believe that these deficiencies he found in the basic Staff proposal should end all consideration of the possibilities of savings inherent in the use of large-diameter pipe. Instead, in his "minimax" proposal he proposed immediately to grant the PGT application, upon condition that the gas be shared, at least initially, with southern California. At the same time he would remand for further limited hearing the question of whether authorizing 42-inch looping by either El Paso or Transwestern in an amount sufficient to encompass the 420 MMcf increased capacity contemplated by the separate proposals, "plus such additional amounts as appears appropriate," would be more in the public interest than

the grant of the separate proposals. He thought that this approach, though it might be more costly and less efficient than the Staff's 42-inch line proposal, assuming both were eventually built to full capacity, would retain the central advantage of the opportunity for economy from the use of large diameter pipe, while at the same time reducing the initial commitment of capital and retaining far greater flexibility to adjust to changes in supply and demand factors as they occur.

The Examiner's proposal rests on the assumption that grant of the PGT application alone will be adequate to meet the needs of California (and El Paso's east-of-California customers) until the new phase of this proceeding is completed. For, admittedly, there is no evidence in the record of 42-inch looping by El Paso -- to say nothing of Transwestern. The Examiner was of the belief that a new hearing devoted to the best way of bringing gas from Permian to California, even though it would involve potentially conflicting interests of the two pipelines which ran between the two points (and possibly additional pipeline groups as well), could be completed in time for operation of the certificated line in the 1969-70 heating season when additional gas admittedly would be required.

We cannot agree. Everything which has happened so far indicates that a further proceeding would not be limited to the single 42-inch looping alternative suggested by the Examiner, and that, even if it could and should, there would be no real prospect of completing the proceeding in time to permit the necessary construction for the 1969-70 heating season. In short, the minimax proposal is virtually certain to result in a serious gas shortage for at least one heating season. The Staff proposal now has become impracticable for the same reason. The comparative hearing which would be necessary would, if anything, be more complex than that which would be required for the consideration of the minimax proposal. The substantial costs and adverse impact of such delay are simply prohibitive in this case.

We wish to make clear that our rejection of the Staff's 42-inch line and the Examiner's minimax alternative does not indicate our approval of any practice by El Paso and Transwestern of seeking to meet the growing needs of the California market through relatively small scale facility

increments to meet immediate market needs, which though initially less costly cannot hope to achieve available long range economies of scale. To the extent that any such tendency may reflect past actions of this Commission, the Staff's actions herein have forcefully brought to our attention the limitations of such a policy in providing optimum service to the growing California market. This proceeding has also demonstrated, however, that such considerations cannot usefully be brought into the proceedings at later stages thereof, and that it is imperative for the pipeline applicants themselves to explore the possibilities of economies of scale prior to filing their applications and to be prepared to demonstrate why the public interest would be served by utilization of comparatively small diameter pipe, if such is incorporated into their proposals.

The Dissent's Modification of El Paso's Proposal

The dissent argues that we should require El Paso to modify its proposal by substituting 36-inch pipe for all 30-inch pipe included in the design of its project, and should condition the certificate we issue to El Paso so as to permit us in the future to order El Paso to transport through its facilities the gas of another pipeline. Alternatively, the dissent argues that even if we authorize El Paso's project as proposed, we should annex this condition to El Paso's certificate. We are unable to agree with the dissent because these arguments are predicated upon a fundamental error in logic and upon errors of fact.

For the purpose of exposing the illogic of the dissenting view, we will assume, arguendo, that the statements and conclusions set forth in the dissent are correct. Accordingly, the dissent states that approval of either the 36-inch modification or El Paso's proposal "could have a substantial impact on the competitive situation, primarily with respect to Transwestern" (page 10). It continues, "appropriate steps" must be taken to preserve competition or else El Paso will be "in a superior position to bargain for future growth increments, thus tending to further enhance El Paso's already dominant position in California" (page 10). The "appropriate step" which the dissent proposes is the imposition of a novel condition on El Paso's certificate. Thus, the dissent finds, "considering El Paso's already dominant position in the market, its further expansion at this time must be conditioned to preserve competition and keep its competitors viable" (pages 10-11). The dissent concludes that this could be accomplished by a condition providing:

that, if the public interest is found to so require any other person certificated to transport gas from the Delaware-Val Verde Basins to California will be able to utilize El Paso's cheap expansibility, and that any additional looping or other construction on the El Paso facilities necessary to transport such gas as we may certificate will be installed. (page 11)

Thus, with respect to the 36-inch modification and the issue of competition the dissent makes two points. First, it proclaims that the certification of the 36-inch modification would be anti-competitive vis-a-vis Transwestern. Second, it concludes that to prevent this anti-competitive consequence a condition must be annexed to El Paso's certificate; but this condition would be exercised by the Commission in a future proceeding only "if the public interest is found to so require." On its face, therefore, the dissent appears objective, and purports simply to provide the Commission with an option it otherwise would not have. But, upon analysis this is not true.

The condition proposed in the dissent makes possible only two acts: namely, that in a future proceeding the Commission will exercise the condition or that it will not. If the Commission should choose the latter and should not exercise the condition, then according to the logic of the dissent El Paso would operate its 36-inch pipeline without the very condition which the dissent declares is indispensable in order to preserve competition. And thus, if we follow the logic of the dissent, by not exercising the condition the Commission would necessarily create the identical situation which the dissent has found to be anti-competitive (i.e., El Paso operating the 36-inch pipeline without the dissent's condition attached).

Because of its unequivocal tenor, we must conclude that the dissent would consider the anti-competitive consequences of not exercising the condition to be intolerable. Thus, we must further conclude that in order to avoid these consequences the thrust of the dissent would afford the Commission no choice but to exercise the condition in the future proceeding. What this means to the Commission is profound. For it means that if we were to accept the dissenting views as sound and accordingly to attach the condition,

we would not create an additional option for the Commission as the dissent contends; but instead, we would eliminate future regulatory flexibility with respect to the California market and would, in fact, force the Commission to exercise the condition in the future proceeding. This, of course, would simply be imprudent regulatory policy.

In addition, the dissent would concurrently force upon us, through the instrumentality of the condition, the adoption of a new substantive principle of natural gas regulation. Thus, if we adhere to the logic of the dissenting opinion, the Commission would be compelled to exercise the condition and thus to create either a jointly owned and operated natural gas pipeline, a common carrier natural gas pipeline, or some other new phenomenon without the benefit of even a scintilla of evidence in this record or argument in briefs or oral argument with respect to the legality, feasibility, practicability, or desirability of any of these new concepts. We are indeed aware of the necessity to apprise ourselves of new philosophies of regulation, novel economic theories, and creative alternatives to existing regulatory methods. But, we are equally aware of the necessity to stand by legal principles and not decide issues without the benefit of an adequate record before us.

Aside from the foregoing illogic which would burden us if we were to accept the views and assume the validity of the dissenting opinion, the dissent has predicated itself upon errors of fact and conjecture. One error of the dissent is the conclusion that El Paso's proposal is anti-competitive. Many pages of transcript and briefs, and many hours of argument recorded before the Examiner and the Commission do not include even a remote suggestion that El Paso's proposal is anti-competitive. Moreover, the State of California, the Public Utilities Commission of California, and the Southern California Edison Company, all of whom are known for their persistent efforts over the years to establish and maintain competition for the California gas markets, have not argued that El Paso's proposal is anti-competitive. Neither has Transwestern, the company which competes directly with El Paso. On the contrary, each of these parties vigorously supports El Paso's proposal as the project which will best preserve competition for the California market.

There are but two references in the record with respect to the question of the competitiveness of El Paso's proposal. (Tr. 3499; Tr. 3735) Each relates to the proposition that competition for the California market must be encouraged. And, each was set forth by witnesses who supported El Paso's proposal. No evidence to the contrary exists on this record or in our reading of the principles articulated in the court decisions which have considered the issue of natural gas competition in California. Indeed, the only citation we can find for the proposition that El Paso's proposal is anti-competitive is such a statement in the dissent.

Another error of the dissent is the conclusion that the 36-inch modification of El Paso's project should, on the basis of this record, be required by the Commission. Although Exhibit 73, which relates to the 36-inch modification, is a matter of record properly before us, the dissent has taken that Exhibit out of perspective and has attributed to it significance which the record does not permit. The data in Exhibit 73 were submitted by El Paso in response to an informal request made by the Staff several weeks prior to the commencement of hearings. However, these data were ignored from the moment Exhibit 73 was received in evidence onward throughout the hearings, the briefs to the Examiner, the briefs on exceptions and replies thereto, and the oral argument. Indeed, no one, including the Staff, has suggested on the record or briefs properly before us that the 36-inch modification of El Paso's project is desirable. Moreover, it is clear on the record that we have not received evidence on financial and competitive matters which must be adduced and explored before we could conclude that the impact of requiring the 36-inch modification of El Paso's proposal is in the public interest.

On the other hand, what we know on the basis of this record is that El Paso's project satisfies the requirements of the public convenience and necessity. It is viable in all pertinent respects and will be of benefit to gas consumers in California and east of California.

The Commission further finds:

(1) Pacific Gas Transmission Company is a "natural gas company" within the meaning of the Natural Gas Act.

(2) The additional facilities proposed by Pacific Gas Transmission Company and more fully described in the Pacific Gas Transmission Company applications and the evidence herein, will be used in the transportation and sale of the additional quantities of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such additional facilities, together with the construction and operation thereof, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Pacific Gas Transmission has an adequate supply of natural gas committed to it which will enable it to render the service herein authorized.

(4) The additional facilities proposed by Pacific Gas Transmission Company are adequate to render the service herein proposed.

(5) Pacific Gas Transmission Company is financially able to construct and operate the proposed additional facilities.

(6) A market exists for the proposed additional sales of natural gas by Pacific Gas Transmission Company to Pacific Gas and Electric Company.

(7) Pacific Gas Transmission Company is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(8) The construction and operation of the facilities proposed by Pacific Gas Transmission Company and its sales and transportation of the additional quantities of natural gas, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the present and future public convenience and necessity, and a certificate of public convenience and necessity should be issued therefor.

(9) The proposed importation of the additional quantities of natural gas proposed by Pacific Gas Transmission Company is subject to the jurisdiction of the Commission under the provisions of Section 3 of the Natural Gas Act.

(10) The importation of the additional quantities of natural gas proposed by Pacific Gas Transmission Company in its application is appropriate and consistent with the public interest and should be authorized.

(11) El Paso Natural Gas Company is a "natural gas company" within the meaning of the Natural Gas Act.

(12) The additional facilities proposed by El Paso Natural Gas Company and more fully described in the El Paso Natural Gas Company application and the evidence herein, will be used in the transportation and sale of the additional quantities of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such additional facilities, together with the construction and operation thereof, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(13) El Paso Natural Gas Company has an adequate supply of natural gas committed to it which will enable it to render the service herein authorized.

(14) The additional facilities proposed by El Paso Natural Gas Company are adequate to render the service herein proposed.

(15) El Paso Natural Gas Company is financially able to construct and operate the proposed additional facilities.

(16) A market exists for the proposed additional sales of natural gas by El Paso Natural Gas Company.

(17) El Paso Natural Gas Company is able and willing properly to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission promulgated thereunder.

(18) The construction and operation of the facilities proposed by El Paso Natural Gas Company, as herein conditioned, and its sales and transportation of the additional quantities of natural gas, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the present and future public convenience and necessity, for the purpose and subject to the conditions described in the attached certificate, and a certificate of public convenience and necessity should be issued therefor.

The Commission orders:

(A) Pacific Gas Transmission Company is hereby authorized to import from Canada an additional 100,000 Mcf of natural gas per day commencing on or about November 1, 1968, and an additional 100,000 Mcf of natural gas per day commencing on or about June 1, 1969, and a certificate of public convenience and necessity is hereby issued to Pacific Gas Transmission Company authorizing the transportation and sale of such natural gas to the Pacific Gas and Electric Company and the construction and operation of the facilities necessary for such importation, transportation, and sale, all as more fully described in the applications filed herein and the evidence received in this proceeding.

(B) The authorizations granted to Pacific Gas Transmission Company under paragraph (A) hereof are subject to the terms and conditions imposed upon the authorizations granted to Pacific Gas Transmission Company, et al., by the Order of the Commission issued August 5, 1960, 24 FPC 134, insofar as said terms and conditions are applicable, and the said terms and conditions shall apply with respect to the additional gas imported, transported and sold under the authorizations here granted.

(C) A certificate of public convenience and necessity is issued to El Paso Natural Gas Company authorizing the construction and operation of the facilities as more fully described in its application for increasing the capacity of its present system in order to effect the sale of additional natural gas upon the terms and conditions of this order.

(D) The certificates issued in paragraphs (A) and (C) and the rights granted thereunder are conditioned upon compliance by Pacific Gas Transmission Company and El Paso Natural Gas Company with all applicable Commission Regulations under the Natural Gas Act.

(E) The certificate issued to El Paso Natural Gas Company in paragraph (C) is on the following condition:

The advance payments included by El Paso in its rate increase application of September 6, 1968, and any advance payments hereinafter included in any filing made with the Commission prior to the determination of the propriety thereof are included by El Paso at its own risk as to the proper treatment for ratemaking purposes. The granting of a certificate of public convenience and necessity to El Paso in this proceeding shall not prejudice the issue of the propriety of advance payments or the appropriate level of prepaid gas purchases in any future proceedings and shall not constitute waiver of any rights of any party to dispute the propriety of advance payments or to justify a different level of prepaid gas purchases in any future proceeding.

(F) The certificates issued to Pacific Gas Transmission Company and El Paso Natural Gas Company shall be void and without force and effect unless accepted in writing within thirty (30) days from the issuance date of the order issuing such certificate.

By the Commission. Chairman White dissenting in part filed
a separate statement appended hereto.

(S E A L)

Gordon M. Grant,
Secretary.

		<u>Docket Nos.</u>
Pacific Gas Transmission Co.)	CP67-187
)	CP67-188
El Paso Natural Gas Co.)	CP67-217

WHITE, Chairman, dissenting in part:

I must dissent from the Commission's opinion and order insofar as it certifies El Paso's application in Docket No. CP67-217.

In an early order in this proceeding ^{1/} the Commission directed the parties to address themselves, inter alia, to the question whether there were preferable "alternative means available to meet the requirements of the customers proposed to be served." Consistent with this directive, staff introduced evidence on the 42-inch project which the Commission has found cannot be certificated on this record. With this I fully agree. But also in this record, in response to the Commission's directive, is evidence relating to a modification of El Paso's proposal which would substitute 36-inch-diameter pipe for the part of the project designed as 30 inch. This modified project is clearly superior to the project as applied for. Yet the Commission opinion fails to consider this modification on its merits.

One might reasonably ask, therefore, why the Commission has reached the result it has: Because it is the best way to meet the needs of the California market? Because it believes its hands are tied, thus preventing it from ordering the desired modifications? Or simply because it is the easiest solution to an obviously complex problem.

Having considered the record in its entirety, I cannot find, that the project as proposed by El Paso is the best way to meet the needs of California consumers.

Specifically, I find the Commission's decision deficient in at least three respects. First, it saddles California

^{1/} The order of July 26, 1967, consolidating the Pacific Gas Transmission Co. application in Docket No. CP67-188, CP67-187 and the El Paso Natural Gas Co. application in Docket No. CP67-217.

consumers with a project which is considerably less desirable than an alternative project which would be far cheaper in the long run (over \$2 million per year cheaper) and which could be certificated on the present record. Second, it completely ignores that even the inadequate project it is certificating has anti-competitive consequences which will further establish El Paso, presently the dominant supplier in the market, in the commanding competitive position condemned by the courts. And finally, the majority decision could well condemn Transwestern and any new competitor for the California market to a position of perpetual competitive subservience.

The Alternative Proposal

While it appears that El Paso's 30-36 inch proposal is a viable project, the record indicates that it is not the most economical way to meet the growth of the California market. This evidence relates to a modification of the 30-36 inch proposal which would result in lower cost and benefit the long-run interest of California consumers, as well as meet the deficiencies projected for the California market over the next few years. The Commission should be well aware that, as the examiner stated,

" . . . The big opportunities for cost savings to consumers do not lie in the disallowing of particular costs in a rate case. Underlying costs are determined in the certificate case where the project is licensed." (Mimeo. page 21)

First, it should be clearly indicated what El Paso's 30-36 inch proposal is intended to do--to meet the incremental needs of its California and east-of-California market. If the El Paso market grows significantly beyond the 310 MMcf/d, additional facilities would be needed to be added to El Paso's system. In short, consistent with the Commission's holding in Gulf Pacific, El Paso has tailored its proposal to provide only the facilities needed for its next increment of growth. The holding in that case, however, was not a direction to El Paso or any other pipeline to abdicate its responsibility to look ahead to the future needs of its market and to plan to meet those needs in a most economical manner. Indeed, as said in support of the tailored supply program in the Gulf Pacific case, "It is precisely an objective review of the long-term market which leads us to this conclusion" (mimeo. page 26). Therefore, if the record supports a more economical way of meeting the prospective growth of the California market,

and if the market evidence indicates that such a proposal would be viable, certification of the proposed 30-36 inch project would be inconsistent with the dictates of the Natural Gas Act to provide for an adequate supply of gas at the lowest reasonable rates.

Exhibit 73, introduced early in the proceeding by El Paso at the request of staff, contains evidence as to the consequences of modifying El Paso's proposal to provide that the portion of the proposal designated "Hypotenuse II" (toward the California end of the system) like "Hypotenuse I" be constructed with 36-inch pipe and that the specified portions of the existing system being "reenforced", i.e., "looped", utilizing 36-inch pipe rather than the 30-inch pipe El Paso had proposed. This modification would not increase the capacity of 310 MMcf/d proposed in El Paso's application; it would, however, provide substantially cheaper expansibility should market growth necessitate the addition of further capacity in the future.

Exhibit 73 compares service under El Paso's 30-36 inch proposal at various levels up to its optimum capacity of 775,000 Mcf, with the 36-inch modification at the same levels of service. At the initial level of service (310 MMcf/d under either project) the 36-inch modification would increase the costs from 9.18 cents to 9.83 cents; but this differential in favor of the smaller project rapidly decreases and then becomes markedly in favor of the larger line. The applicant's figures show that at throughput of 510 MMcf per day there is only 0.06 cents per Mcf difference in favor of the smaller project and that at 775 MMcf the balance has strongly tipped to the larger project, 7.15 cents for the smaller versus 6.39 cents for the 36-inch modification.

Table 1

Average Transportation Costs

	Mcf		
	310,000	510,000	775,000
El Paso's 30-36 inch proposal (¢/Mcf)	9.18¢	7.18¢	7.15¢
El Paso's 36-inch modification (¢/Mcf)	9.83¢	7.24¢	6.39¢

In order to arrive at these costs, Exhibit 73 assumes that starting from the initial capacity of 310,000 Mcf under either proposal, capacity additions of 100,000 Mcf would be added in the first and second years; no capacity additions in

the third year and 265,000 Mcf added in the fourth year. ^{2/} On this basis, the total cost of service of operating the 36-inch modification through the fourth year when it is being operated at 775,000 Mcf would be approximately \$541,000 lower than under the 30-36 inch proposal. When operated at 775,000 Mcf, the cost of operating the 36-inch modification would be in excess of \$2,000,000 per year less than the 30-36 inch proposal and every year thereafter, the annual cost of service would remain significantly less than the 30-36 proposal.

While these savings are not in themselves insubstantial, they do not constitute the entirety of savings associated with the 36-inch modification. This is due to the constraining factors built into the Exhibit 73 comparison. First, the comparison stops at 775,000 Mcf, the maximum throughput of the 30-36 inch proposal, while additional savings would be associated with the greater throughput of the 36-inch modification, which is in the order of 1,000,000 Mcf per day. Although the incremental costs of this greater throughput are not contained in this record, it is a well-established engineering fact that the unit costs of providing equivalent volumes of capacity decline substantially toward the end of a looping program relative to those which would be incurred at the start of the looping program.

The second constraining factor to be considered is the pattern of the capacity additions in Exhibit 73. Advancing the incremental capacity addition of 265,000 Mcf/d (775,000 - 510,000) by one year, for example, would increase the savings from the 36-inch modification to a minimum of \$1.2 million, at the same level of capacity, namely, 775,000 Mcf/d. More importantly, as noted above, the 36-inch modification would still provide for cheap expansibility since at least another 200,000 Mcf/d or 26 percent more capacity would still be available from the 36-inch line at very low incremental costs. The 30-36 inch proposal on the other hand, would require the start of a new high cost looping project at the 775,000 Mcf/d level. The critical considerations, therefore, in arriving at a decision whether El Paso's project as proposed should be certificated or the 36-inch modification

^{2/} Exhibit 73 does not relate additional investment to specific years, but relates all increment investment and associated costs to the first year's operation of the initial 310,000 Mcf of capacity.

with its substantial potential savings is approved, is how much additional capacity will be required to meet the future demand for gas in the California market over and above the volumes of gas we are herein certificating and when such additional capacity will be required.

Both staff and the various parties presented market projections in this proceeding; the examiner accepted both Pacific Lighting's and Pacific Gas and Electric's. Pacific Lighting also estimated the volumes of gas to be purchased from California sources to meet part of its market requirements and staff estimated the volumes of gas to be purchased from California sources to meet part of PG&E's market requirements. Further, the volumes of gas identified as GX-2 available to both the Pacific Lighting and PG&E companies from El Paso, are shown in staff Exhibit 155. On the basis of these estimates, it appears that over and above the volumes now being certificated the California market will have annual deficiencies for each of the years 1969 through 1972 as follows: 3/

	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
	(Millions of Mcf)			
Annual Deficiency with Interruptible Curtailment	26	87	170	225
Interruptible Curtailment	<u>111</u>	<u>114</u>	<u>120</u>	<u>132</u>
	137	201	290	357

In order to meet the above deficiencies by means of pipeline capacity, the following additional capacity operating at 100 percent capacity factor, at January 1 of each year, would be required:

3/ Interruptible curtailment for the Pacific Lighting market is based on serving 90 percent of the total interruptible market, consistent with the Commission's findings in Gulf Pacific. As the charts indicate, the interruptible curtailment is substantial.

	January 1			
	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
Additional Pipeline Capacity				
With Interruptible Curtailment	71,233	238,356	465,753	616,438
Without Interruptible Curtailment	375,342	550,685	794,520	978,082

Thus, even with certification of El Paso at the 310 MMcf/d level, additional pipeline capacity would be required in the near future to meet the growing California market demand. The need for additional capacity would grow year by year and as of January 1, 1972, hardly 3 years from now, a full 616,000 Mcf per day or 150,000 Mcf more capacity per day than that achievable from El Paso's 30-36 inch proposal would be required. Further, the volumes of gas curtailed of the interruptible market demand would continue to grow so that in 1972 even with an increase in pipeline capacity of 615,000 Mcf, the interruptible market would be curtailed by 132,000,000 Mcf, the equivalent of 361,644 Mcf of pipeline capacity.

Any delays in the timing of capacity additions, of course, would affect the savings from the 36-inch alternative, since it would postpone the crossover date at which the larger proposal becomes cheaper. While the record does not provide evidence for the specific crossover point between the 30-36 inch proposal and the 36-inch alternative, it appears that such point would occur somewhere between 510,000 and 775,000 Mcf; a straight extrapolation of the market growth would place the crossover point at between 510,000 and 540,000 Mcf. In any event, whatever the time period in which the incremental growth takes place, unless it is assumed that the market will stop growing at the crossover point, it is clear that the long-range savings associated with the 36-inch modification, due to its greater expansibility, will result in savings over and above those realized under the 30-36 inch proposal.

While the market evidence suggests that the growth to be expected is more than adequate to support the 36 inch modification, its feasibility does not depend upon its future expansion. Even though the full economic savings

associated with the 36-inch modification are not realized at the lower levels of service, the fact is that it is economically viable right from the start, since the average revenues attributable to the additional sales to be made by means of the proposed facilities are greater than the project costs even at the 310 MMcf/d level. Thus the average revenues per Mcf are: 29.04¢ for 1968, 28.75¢ for 1967 and 28.68¢ for 1970. Total cost of service per Mcf, however, would only be 28.40¢ for 1968, 28.15¢ for 1969 and 28.28¢ for 1970. The project, therefore, more than recovers its costs even at the initial level of service.

On the basis of the foregoing, it must be concluded that the future requirements of the California markets would be more economically served by the substitution of 36-inch pipe for the mainline facilities in lieu of the 30-36-inch line proposed.

The Procedural Question

Since it has been established on this record that the 36-inch modification is superior to the proposed project, the Commission should not certificate the lesser project. The courts have made it clear that the Commission must investigate alternatives, Scenic Hudson Preservation Conference, et al., v. F.P.C., et al. 354 F.2d 608 (CA 2 1965) cert. denied sub nom, Consolidated Edison Co. v. Scenic Hudson Preservation Conference, 384 U.S. 941 (1966), and that it must reject an application if a better alternative is available, even if the better alternative cannot be required by the Commission. In such a case, however, the Commission does have the authority to offer a certificate for the better alternative, although not require it. Sunray Oil Co. v. F.P.C., 364 U.S. 137 (1960); City of Pittsburgh v. F.P.C., 237 F.2d 741 (CA DC 1956). See also, F.P.C. v. Transcontinental Gas Corp., 365 U.S. 1 (1960). This assumes, of course, that the alternative has sufficient support in the record, as it does here. As indicated above, the Commission's order of July 26, 1967, directed the parties to address themselves to alternatives to the proposed project. Transwestern had intervened in the case several months earlier, and was necessarily aware of the order. Indeed staff subsequently requested studies from both El Paso and Transwestern, and in its August 10, 1967, letter to Transwestern set forth its intention to conduct a "full

and complete analysis of all alternatives." As noted in the Transwestern Brief on Exceptions the requested studies were submitted:

"El Paso offered evidence regarding alternatives it had considered (Tr. 2:199). Both Transwestern and El Paso introduced evidence regarding the cost of looping their respective systems to higher levels--El Paso to 3,155 M²cf per day, Transwestern to 1,270 M²cf per day. . . Staff offered extensive studies relating to both 36-inch and 42-inch pipeline alternatives. These were examined in detail." (pp. 3-4)

Later in its brief, recognizing the Commission's continuing responsibility to consider alternatives, Transwestern said, "In this proceeding alternatives to the pending applications were, in fact, exhaustively reviewed." (p. 9)

Exhibit 73, which sets out the 36-inch modification, was introduced early in the record by El Paso at staff's request. This is, of course, different from staff's 42-inch proposal which was not introduced until long after all other parties had put in their evidence. Exhibit 73 was available for cross-examination and rebuttal since there was no limiting ruling by the examiner with respect to it. However, no party chose to attack the alterations in the project set out therein. While the reason for this lack of interest by El Paso's competitors in an obviously superior proposal is not apparent in this record, one possibility is that Transwestern's upcoming step in the "minuet" noted by the Examiner did not call for a challenge to a proposal which El Paso, in its current step, was not seeking. The Commission's reluctance to certificate the clearly superior project envisioned by Exhibit 73 unfortunately will be to the long-range detriment of the California consumers.

On the basis of the foregoing, it is evident that the parties, including El Paso's competitors, ^{4/} were fully aware that alternatives to the proposal would be considered by the Commission and that they were specifically aware of the 36-inch modification contained in Exhibit 73. It seems clear that the Commission has the authority, if the application of the standards of the Natural Gas Act require it, to issue a certificate providing for such reasonable variations from the

^{4/} Transwestern, of course, intervened in the proceeding.
Other potential competitors had notice that alternatives would be considered but did not seek to intervene.

parties proposals as may be said to be fairly within their contemplation and are necessary and appropriate to carry out the provisions of the Act. As the Commission said in Natural Gas Pipeline Company of America, 17 FPC 85, 87, "A contrary holding would exalt mere procedural incidents above substantial public interest."

Effect on Competition

Transwestern, at present the only competitor of El Paso in the rich Permian Basin to California market, is afflicted with all of the ills which face any comparatively small company competing with a giant in an industry where economies of scale are important. The market in California, while substantial, is controlled in effect, by very few buyers. While it is in the interest of those buyers to maintain some competition by keeping Transwestern alive, it is not in their interest to give Transwestern large contracts until it can sell gas as cheaply as El Paso, something it is presently not able to do. But this results in a vicious circle, for low unit gas transportation costs cannot be achieved without large pipelines, and large pipelines cannot be economically built or utilized without large contracts. The action of the majority today condemns Transwestern, or any new competitor, to a repetition of the same dreary cycle--a compromise by building a pipeline which, while too small for eventual use in reducing unit costs low enough really to compete, is initially too large for the small amounts of gas Transwestern will furnish. I cannot understand why the majority would permit this to occur.

Having determined that the 36-inch modification should be certificated, it is necessary to consider whether such a project would have an adverse effect on the balance of competition in the California market. In this regard, official notice can be taken of Transwestern Pipeline Company's application in Docket No. CP68-181 for a 30-inch pipeline with an initial capacity of 110 MMcf/d. Additionally, as the Commission said in Opinion No. 399 (30 FPC 77), "antitrust considerations are relevant to the issue of public convenience and necessity."

The Commission's casual treatment of antitrust considerations with respect to its certification of the El Paso project is a serious deficiency since its immediate competitive impact will be virtually the same as the 36-inch modification. Both projects are designed at initial capacity levels of 310 MMcf/d and in either case additional facilities would need to be added to accommodate future growth. Similarly, both projects would be expansible up to 775 MMcf/d.

This means that, so far as capacity is concerned, both would be equally expansible to meet the incremental market growth for the next few years. In addition, the 36-inch modification would thereafter be expansible up to an ultimate capacity of about 1 million Mcf. It is in this additional increment of expansibility and the fact that at these higher levels of service the costs associated with the 36-inch modification are substantially cheaper than the 30-36 inch proposal that the essential differences between the projects lie. Nevertheless, either alternative could have a substantial impact on the competitive situation, primarily with respect to Transwestern. In either case, unless appropriate steps are taken to preserve competition the cheap expansibility will definitely put El Paso in a superior position to bargain for future growth increments, thus tending to further enhance El Paso's already dominant position in California.

In considering the effect on competition of either the project as certificated by the Commission or the 36-inch modification, it should be noted that El Paso also introduced evidence (Exhibit 9) which shows that the cheapest way to transport the 310 MMcf/d to California is with a straight 30-inch project (as contrasted with the 30-36 inch project here certificated), but that project would have left no room for future expansion. Thus, implicit in opting for either the proposed project or the 36-inch modification, is the desirability of having cheap expansibility in a growing market. The majority, of course, conveniently overlooks this ramification of its decision.

The dilemma facing the Commission is a real one. On the one hand, any rational decision in this proceeding, considering the projected growth in the California market, must provide for expansibility at the lowest cost; on the other hand, provision of such expansibility can act to the detriment of El Paso's competitors. Stated differently, the problem is whether there is a way to preserve the fruits of competition and at the same time optimize the construction of pipeline facilities so as to achieve the benefits of scale. I am convinced there is.

While competition in the California market in the past has been less than perfect, it has been beneficial on occasion (see, e.g., El Paso Natural Gas Company, et al. ("Rock Springs"), 30 FPC 77, 85, et seq.) and may be beneficial in the future. Therefore, considering El Paso's already dominant position in the market, its further expansion at this time must be conditioned to preserve

competition and keep its competitors viable. Such a condition should, I believe, make it clear that should it develop in some future proceeding that utilization by some other person of the excess capacity or expansibility of the facilities which are the subject of this proceeding is required to ensure that optimum service is not at the expense of competition, such facilities will be available. This can be accomplished by a condition providing that, if the public interest is found to so require any other person certificated to transport gas from the Delaware-Val Verde Basins to California will be able to utilize El Paso's cheap expansibility, and that any additional looping or other construction on the El Paso facilities necessary to transport such gas as we may certificate will be installed.

It is neither necessary nor advisable in any such condition to prescribe the exact means by which such joint utilization or additional construction would be accomplished. The total additional construction might be undertaken by El Paso, with the other party paying an appropriate transportation charge (which might well be on an incremental basis). Or the other party might itself wish to finance any necessary additional construction, or even acquire a proportionate interest in the facilities. It is not necessary to attempt to determine which of these institutional arrangements or methods of calculating charges for services performed, or other possible alternatives, would be most appropriate under circumstances which cannot now be fully foreseen. Instead, such considerations are more appropriately left initially to negotiation between the parties, in the event the condition comes into play, with the Commission only retaining authority to accept or reject the terms or decide the matter if the parties cannot agree.

Imposition of such a condition would not guarantee that Transwestern, or some other party other than El Paso, would in fact be certificated to provide some of the additional service to California from Permian; in any future proceeding the applicant, be it El Paso, Transwestern, or some third party, would have to demonstrate that the public convenience and necessity requires certification of its proposal. Similarly, such a condition would not mean that until the certificated line is fully loaded Transwestern, or some other party, could only be certificated upon their willingness to utilize the line. In any future proceeding it will be open to such parties to show that certification of separate facilities will best serve the public interest. The condition would act only to preclude a denial of an application by a party other than El Paso, if the record in such proceedings were

to show that it would be more in the public interest to transport the gas through El Paso's lines. In short, it would reserve to the Commission an option which would not otherwise be available to it in its future consideration of competition in the California market.

While I favor certification of the 36-inch modification appropriately conditioned to preserve competition, I believe the Commission is in error in not attaching the condition to the grant of the 30-36 inch project as applied for. One need not accept the proposition that the competitive impact of either alternative is virtually the same in order to understand the need for such a condition; rather, it is sufficient simply to recognize that even the proposed project provides El Paso with very substantial cheap expansibility--enough to carry the projected increments to the California markets for the next several years, quite possibly at incremental costs cheaper than any other viable alternative. Thus, the Commission's failure to impose an appropriate condition on the grant of its certificate to El Paso may well seriously unbalance the competitive positions of the California suppliers for many years to come, if not permanently. Whether or not El Paso would, in the course of the "minuet" oppose future applications by Transwestern or others to transport Permian gas to California, we would, I am sure, expect the staff to adduce evidence in any future certificate proceeding in which Transwestern or some other party sought to make a sale to California to demonstrate the cost of furnishing such gas through El Paso's line as one of the obvious alternatives, so long as cheap expansibility remains. Indeed, the majority order appears to anticipate that the parties themselves will address themselves to this question. If, as one can properly anticipate will be the case, it turns out that the use of the cheap expansibility of El Paso's line will be significantly cheaper than the new construction of the applicant, what will the Commission then do? It will at this stage not be able to require El Paso to make available the excess capacity on its facilities. Only two unsatisfactory alternatives will be available. The Commission may be forced to ignore the cost savings involved, and certificate another duplicative and expensive pipeline, thus burdening the California consumers with not one but two uneconomic pipelines, both uneconomically utilized for several years, or it will have to deny the application because the use of El Paso's expansibility would be cheaper, thus strengthening El Paso's competitive position even further. These are, in my view, simply intolerable alternatives.

El Paso's dominance in the California market has been called to the Commission's attention in a series of court cases, e.g., California v. FPC, 369 U.S. 482 (1962); Cascade v. El Paso, 386 U.S. 129 (1967). That this Commission has an affirmative duty to protect competition among pipelines and that the antitrust laws are plainly to be applied in reaching its result, I should not have supposed would be necessary to point out again. See, e.g., Northern Natural Gas Pipeline Co. v. FPC (Great Lakes), F. 2d (CADC, June 21, 1968); City of Pittsburgh v. FPC, 237 F.2d 741, 751 (CADC 1956).

It is regrettable that the majority's failure to adopt the proposed competitive condition is based on what it believes is a logical inconsistency which would leave it no alternative in future proceedings but to implement the condition. No one, of course, wants to be on the other side of "logic" but sound regulatory experience indicates that it is not necessarily a substitute for record evidence. Thus, while it is clear on this record that the cheap expansibility in El Paso's project will further strengthen El Paso's already dominant competitive position in the California market, its future effect cannot be precisely delineated at this time, nor can we at this time know precisely what regulatory actions will need to be taken in the future to maintain viable competitors in that market. It is for this very reason that the proposed condition maintains the Commission's flexibility by reserving the question of whether the expansibility in the El Paso line, now being certificated, should in a future proceeding be utilized to carry gas for others. The majority's refusal to adopt this condition here may preclude us from effective consideration of the impact of cheap expansibility on competition for the California market, at least for the foreseeable future. However, there may be other circumstances in which such a condition or a variant thereof would be appropriate and I would then expect that the Commission would consider adopting such a provision. Moreover, I would hope that, even considering the California market, today's action may not prove controlling.

I would emphasize that I am not proposing a boiler-plate condition to be incorporated in all future pipeline certificates for it clearly would not be appropriate in most situations, although it may be adaptable in a number of other circumstances, perhaps in modified form. Most pipelines which serve competitive market areas also serve other major markets along their route, have multiple purchasers even in the competitive market, and different sources of supply. Southern California, on the other hand, is unique in many respects. Both principal pipeline suppliers serve primarily the same market at the end of their line, sell to the same customers and get their gas in the same area. Moreover, the differences in their relative share of the market, their costs, rates and potential for sharing in future market growth necessitate special consideration.

Conclusion

In summary, I believe the Commission should certificate the 36-inch modification set out in Exhibit 73 rather than the 30-36 inch project proposed by El Paso. The record is complete with respect to the modification and all interested parties have had adequate notice that it would be considered. Moreover, there is no question that the growing California market will require, in the next few years, more gas than the presently certificated line expanded completely can supply. It is inconsistent with our responsibilities to certificate this line, to do the job which the 36-inch modification could do better and far more cheaply. Even if the Commission was acting properly in certificating the project as applied for, it is in error in not taking appropriate steps to mitigate the obvious adverse effect it will have on the competitive balance in the California market.

Certification of the 36-inch modification, conditioned as I proposed above, would permit El Paso's line to be built large enough to give the California consumer the benefits of the demonstrated economies of scale. The line would, moreover, if it turned out to be in the interests of the consumers to do so, be filled to an economically desirable capacity more rapidly than it would be without the condition, thus cutting down on the excess costs which the consumers must otherwise bear. And the use by Transwestern, or others,

of the El Paso line, if found to be desirable, on a less than fully distributed cost basis, would allow El Paso's competitors to offer a lower price for their gas than they could otherwise do. This, in turn, could lead to their obtaining larger contracts. To the extent these competitors might obtain contracts for substantial blocks of gas, these blocks could provide the basis for a pipeline of their own large enough to be economically sound, when the expansibility of the El Paso line was fully utilized. Thus, the proposed condition would resolve much of the anti-competitive problem, allow Transwestern or other potential competitors in this market to compete meaningfully with El Paso, and would ensure all parties and the consumers the benefits of the economies of scale of which the majority talks but in the end ignores.



Lee C. White
Chairman



OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO

P. O. BOX 2088 - SANTA FE

87801

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LAND COMMISSIONER
ALEX J. ARMIJO
MEMBER

STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

March 3, 1969

Mr. Richard S. Morris
Montgomery, Federici, Andrews,
Hannahs & Morris
Attorneys at Law
Post Office Box 2307
Santa Fe, New Mexico

Re: Case No. 3834
Order No. R-3479-A
Applicant:
El Paso Natural Gas Company

Dear Sir:

Enclosed herewith are two copies of the above-referenced Commission order recently entered in the subject case.

Very truly yours,

A. L. PORTER, Jr.
Secretary-Director

ALP/ir

Copy of order also sent to:

Hobbs OCC x

Artesia OCC

Aztec OCC x

Other Mr. Charles White, Mr. Jason Kellahin & Mr. Louis C. Ross

ATWOOD & MALONE
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ROBERT E. SABIN

AUGUST
12th
1968

Mr. A. L. Porter, Jr.
Oil Conservation Commission
State Land Office Building
Santa Fe, New Mexico

Case 3834

Re: Application of El Paso Natural Gas Company for
Suspension of Certain Provisions of Order No.
R-1670

Dear Mr. Porter:

In behalf of Pan American Petroleum Corporation, we enclose
our Entry of Appearance in the above captioned case, to be
heard August 14, 1968.

With best regards, I am,

Very truly yours,

[Signature]
for ATWOOD & MALONE

R
D
M

*

v

Encls.

Cc: J. K. Smith, Esquire (w/encl.)
Louis C. Ross, Esquire (W/encl.)

BEFORE THE OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO


IN THE MATTER OF THE APPLICATION)
OF EL PASO NATURAL GAS COMPANY)
FOR SUSPENSION OF CERTAIN PROVISIONS) No. 3834
OF ORDER NO. R-1670.)

ENTRY OF APPEARANCE

The undersigned, Atwood & Malone, licensed to practice law
in New Mexico, hereby enter their appearance herein as co-counsel
with Louis C. Ross, Esquire of Denver, Colorado, in behalf of Pan
American Petroleum Corporation.

DATED at Roswell, New Mexico this 12th day of August, 1968.

ATWOOD & MALONE

By 
Post Office Drawer 700
Roswell, New Mexico