

restoring infrastructure in the event of a security-related delivery disruption; and (iii) the need to anticipate, to the extent possible, potential emergency reallocation issues before any crisis occurs.

Beyond these general principles, all participants appeared to acknowledge that the necessary dialog on delivery reallocation issues is just beginning. As NGSA noted at the conference:

The members of the Natural Gas Supply Association hope that the conferences we've had over the last two days can serve as really the first step of a larger collaborative process. [It is] clear after the last few days that the issues that have been presented are complex, that the industry itself is complex, and that the notion that any one solution or set of solutions can be developed, implemented and rolled out in five minutes or less is not realistic.²

NGSA urges the Commission and DOE to facilitate further discussions between government and industry participants to address the issues identified at the public conferences.

B. What Principles Should Be Applied In Further Analyses of Potential Emergency Reallocation Issues?

1. Identify the Core Issue Clearly.

In the event of a security-related disruption of the natural gas pipeline infrastructure, the core problem is not the unavailability of gas supplies, but the inability to bring those supplies to market. The problem will not be a lack of natural gas, or a lack of willing sellers. There are abundant supplies of domestic and imported natural gas and

² Tr. 108.

many merchants operating in a competitive market. It is the inability to bring gas supplies to market that raises grave concerns.

As INGAA noted in the conference, our first priority must be to safeguard the integrity of the natural gas pipeline infrastructure. If that infrastructure is damaged nonetheless, the highest regulatory priority should be set on the prompt restoration of damaged pipelines.

2. Recognize the Flexibility of Existing Laws and Regulations.

Many participants noted in the conference that the structure of the natural gas industry has changed profoundly since the advent of wellhead decontrol, and the implementation of open-access transportation services by the Commission. This is undeniable; however, as NGSA noted in the conference, existing statutes vest in the Commission's and in the states' plenary authority, subject only to constitutional limitations over interstate and intrastate pipeline delivery systems. This authority is fully adequate to address any potential crises.

The challenges that government and industry will face in the event of a disruption of the natural gas pipeline delivery system will not be because of a lack of power, but rather will be because of the need to exercise authority in a clear, cogent, effective and fair manner under conditions of extreme stress. Planning, discussion and coordination are key, while new regulations are not.

3. Minimize Market Intervention.

In all but the most catastrophic incidents of pipeline damage, market forces can and should be relied upon to address and correct delivery disruptions. The Commission's

reforms under Order Nos. 636 and 637 have created a vibrant, responsive, real-time market for natural gas, and a high degree of communication between industry participants. This structure is sufficiently responsive to adapt to all but the most severe disruptions.

4. If Market Intervention Cannot Be Avoided, Act Under Clear, Limited Standards and Contain Market Disruption.

In the event of the loss of a large-scale pipeline facility used to meet key human needs, NGSA recognizes that some type of market intervention may be unavoidable. In these circumstances, NGSA urges the Commission and the DOE to act under clear and limited standards and to contain the scope of the market distortion associated with government intervention.

All government and industry participants should be on notice through a central authority that emergency conditions are in effect, and should have clear knowledge of the basis for an emergency declaration. The duration of any emergency declaration should be narrowly limited, rather than open-ended. If existing emergency sales authorizations are ever invoked, parties should be on notice as to the standards that will be applied to determine “fair and equitable” rates for emergency sales before any such sales are ordered. Further, payment issues should be identified and resolved in advance, to the extent feasible.

Government intervention itself can create additional market distortions that can act to exacerbate the consequences of a loss of a pipeline delivery system. If an emergency declaration is required, the Commission and DOE should act to ensure that

the declaration does not disrupt other unaffected, regional, physical or financial natural gas markets.

5. Those Acting To Ameliorate an Emergency Should Not Assume New Legal Liabilities.

Prompt action by all industry sectors will be necessary to adjust to large-scale delivery disruptions. No industry participant and no industry segment should face new or expanded antitrust liability as a result of acting to mitigate a delivery disruption. In this regard, it may be advisable to create, potentially through new federal legislation, an express antitrust exemption for coordinated action taken under a declared state of emergency, in order to respond to delivery disruptions.

III. Conclusion.

All industry participants recognize the paramount importance of the issues addressed during the conference on April 22-23, 2002. The stakes are high, and our work is just beginning. NGSA welcomes the opportunity to participate in further discussions regarding the issues raised in the conference.