IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 83, Original

STATE OF MARYLAND, STATE OF ILLINOIS, STATE OF INDIANA, COMMONWEALTH OF MASSACHUSETTS, STATE OF MICHIGAN, STATE OF NEW YORK, STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, AND STATE OF WISCONSIN,

Plaintiffs,

vs.

STATE OF LOUISIANA,

Defendant.

MOTION ON BEHALF OF THE STATE OF NEW JERSEY FOR LEAVE TO INTERVENE AND FOR LEAVE TO FILE COMPLAINT, COMPLAINT AND BRIEF IN SUPPORT THEREOF

STATE OF NEW JERSEY
JOHN J. DEGNAN
Attorney General

STEPHEN SKILLMAN
Assistant Attorney General
State House Annex
Trenton, New Jersey 08625

BERTRAM P. GOLTZ, JR.
Deputy Attorney General
(201) 648-4738

CLAUDE E. SALOMON
Deputy Attorney General
1100 Raymond Boulevard
Newark, New Jersey 07102

October 19, 1979

Adams Press Corp., 5 Commerce Street, Newark, N. J. 07102—(201) 623-8611

TABLE OF CONTENTS

Cases Cited

United States Constitution Cited

Statutes Cited

Rules Cited

Other Authorities Cited

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 83, Original

STATE OF MARYLAND, STATE OF ILLINOIS, STATE OF INDIANA, COMMONWEALTH OF MASSACHUSETTS, STATE OF MICHIGAN, STATE OF NEW YORK, STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, AND STATE OF WISCONSIN,

Plaintiffs,

vs.

STATE OF LOUISIANA,

Defendant.

MOTION ON BEHALF OF THE STATE OF NEW JERSEY FOR LEAVE TO INTERVENE AND FOR LEAVE TO FILE COMPLAINT

Pursuant to Rule 9 and Rule 35 of the Rules of the Supreme Court, the State of New Jersey, by its attorneys, ask leave of this Court to intervene as a party plaintiff and to file the Complaint against the State of Louisiana submitted herewith.

Motion

As is more fully set forth in the accompanying Brief in Support of Motion for Leave to Intervene and File Complaint, the State of New Jersey respectfully submits:

1. The State of Louisiana has imposed a "First Use Tax" on natural gas from the Outer Continental Shelf and on natural gas from other countries and other states, in transit in interstate commerce to the State of New Jersey.

2. The State of New Jersey has, in recent years, imported almost all of its natural gas from the State of Louisiana. The bulk of that natural gas emanated from the Outer Continental Shelf and therefore would be subject to the "First Use Tax."

3. The economic impact of the "First Use Tax" on the State of New Jersey as a consumer would exceed 20 thousand dollars annually, and the economic impact on the general welfare of the State of New Jersey would exceed 17 million dollars annually.

4. The economic impact on the State and the position of the State of New Jersey with regard to the imposition of the "First Use Tax" is the same as the Plaintiff States whose complaint is presently before the Court.

5. The contentions in the Proposed Complaint attached to the Motion as to the unconstitutionality and invalidity of the Louisiana "First Use Tax" are identical to those made in the Complaint of Plaintiffs, presently before the Court.

6. The Louisiana "First Use Tax" violates the rights and protections guaranteed to the State of New Jersey and its citizens by article I, section 8, clause 3 ("the commerce clause") and other provisions of the United States Constitution.

Respectfully submitted,

STATE OF NEW JERSEY
JOHN J. DEGNAN
Attorney General of New Jersey

STEPHEN SKILLMAN
Assistant Attorney General
State House Annex
Trenton, New Jersey 08625

BERTRAM P. GOLTZ, JR.
Deputy Attorney General

CLAUDE E. SALOMON
Deputy Attorney General
1100 Raymond Boulevard
Newark, New Jersey 07102

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 83, Original

STATE OF MARYLAND, STATE OF ILLINOIS, STATE OF INDIANA, COMMONWEALTH OF MASSACHUSETTS, STATE OF MICHIGAN, STATE OF NEW YORK, STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, AND STATE OF WISCONSIN,

Plaintiffs,

vs.

STATE OF LOUISIANA,

Defendant.

Complaint

New Jersey by its attorneys, bring this civil action to obtain declaratory and injunctive relief against Louisiana, and complains and alleges as follows:

Jurisdiction and Standing

I.

The exclusive original jurisdiction of this Court is invoked under the Constitution of the United States, article III, section 2, clauses 1 and 2 ("Controversies between two or more States"), and 28 U.S.C. § 1251(a)(1) (1976). Plaintiffs have no other plain, speedy or adequate remedy at law and have no remedy whatsoever in any other federal court.

II.

This action seeks a declaratory judgment, pursuant to 28 U.S.C. §§2201-2202 (1976), that the State of Louisiana's First Use Tax on Natural Gas, La. Rev. Stat. Ann. §§47:1301-1307 (West Supp. 1979) (hereinafter referred to as "First Use Tax," a copy of which is attached hereto as Exhibit A and incorporated herein by reference), violates the rights and protections afforded to plaintiffs by the United States Constitution under article I, section 8, clause 3 (commerce clause); article I, section 10, clause 1 (impairment of contracts clause) and clause 2 (import-export clause); and article VI, clause 2 (supremacy clause), and denies to plaintiffs the equal protection of the laws guaranteed by the fourteenth amendment. This suit also seeks to enjoin permanently the enforcement of the First Use Tax and to compel Louisiana to refund all revenues collected during the pendency of this action with all interest earned on such revenues.

III.

The plaintiff is the sovereign State of New Jersey with its capitol located at Trenton, New Jersey. Plaintiff brings this action in its proprietary capacity as a substantial direct purchaser of natural gas upon which the First Use Tax will be imposed, and in that capacity will sustain substantial monetary damages as a result of the First Use Tax. Plaintiff also brings this action in its *parens patriae,* or quasi-sovereign capacity, as guardian of the health, welfare and prosperity of the citizens of New Jersey.

IV.

The defendant is the sovereign State of Louisiana, with its capitol located at Baton Rouge, Louisiana.

LOUISIANA FIRST USE TAX

V.

The First Use Tax will be imposed, at a rate of seven cents per thousand cubic feet ("Mcf") (§47:1303B) "upon the first occurrence within [Louisiana] of any use . . . of any natural gas upon which no severance tax or tax upon the volume of production has been paid, or is legally due to be paid, to this state or any other state or territory of the United States, or which is not subject to the levy of any import tax or tariff by the United States as an import from a foreign country." §47:1303A. The tax, however, "shall not apply to natural gas otherwise subject thereto when such gas is used or consumed in the drilling for or production of oil, natural gas, sulphur, or in the processing of natural gas for liquids extraction within the state; nor shall it apply to gas shrinkage volumes attributable to the extraction of ethane, propane, butanes, natural or casinghead gasoline or other liquefied hydrocarbons . . . [;] nor shall it apply to natural gas used or consumed in the manufacture of fertilizer and anhydrous ammonia within the state." *Id.*

VI.

Use is defined as "[1] the sale; [2] the transportation in [Louisiana] to the point of delivery at the inlet of any processing plant; [3] the transportation in [Louisiana] of unprocessed natural gas to the point of delivery at the inlet of any measurement or storage facility; [4] transfer of possession or relinquishment of control at a delivery point in [Louisiana]; [5] processing for the extraction of liquefiable component products or waste materials; [6] use in manufacturing; [7] treatment; or [8] other ascertainable action at a point within [Louisiana]." §47:1302(8).

VII.

The First Use Tax is characterized by Louisiana as "a cost associated with uses made by the owner in preparation of marketing of the natural gas." §47:1303C. The term "owner" is defined as "the person or person [*sic*] having title to and the right to alienate the natural gas subject to the tax at the time a use occurs in [Louisiana]." §47:1302(9). Any contract providing that the owner shall have "a right to reimbursement or refund of such taxes from any other party in interest, other than a purchaser of such natural gas, is . . . declared to be against public policy and unenforceable to that extent." §47:1303C. The statute recites that the First Use Tax shall not be imposed upon "the production, severance, or ownership of natural gas produced outside of the boundaries of the state of Louisiana . . . [and] that the incidence of this tax shall not be upon the natural gas nor upon the property or rights from which it is produced, but rather shall be only upon the privilege of performance or allowing the performance, by the owner, of the enumerated actions comprising first use within [Louisiana]." §47:1303E.

VIII.

The purpose of the First Use Tax is stated to be "the exaction of fair and reasonable compensation to the citizens of [Louisiana] for the costs incurred and paid with public funds, which costs enure solely to the benefit of the owners of natural gas produced beyond the boundaries of Louisiana, although introduced into [Louisiana], and to provide some measure of reimbursement to the citizens for damages to [Louisiana's] waterbottoms, barrier reefs, and sensitive shorelines as a direct consequence of activity within the state associated with such natural gas by the owners thereof." §47:1301C. Louisiana asserts that the tax is imposed because "the imposition of a tax upon the severance of [oil and natural gas] from the soil and water of [Louisiana] fail[s] to prevent the economic waste of these Louisiana natural resources and will unfairly tax [Louisiana] producers in a discriminatory fashion, unless [Louisiana] equally and uniformly taxes the introduction for the first time into the economy of [Louisiana] natural gas which has not been otherwise or elsewhere subject to taxation by or within the United States." §47:1301A.

IX.

The First Use Tax is due and payable "monthly on or before the last day of the month following the month to which the tax is applicable." §47:1305B. If the tax is not paid in a timely manner the owner is "subject to the addition of interest, penalties, and costs." §47:1306A. If the tax is not paid "within ninety days, . . . the natural gas shall be deemed illegal gas . . . and, as such, shall be treated as contraband and shall be seized and sold." §47:1306B.

National Impact of the First Use Tax

X.

The First Use Tax will be required to be paid by interstate natural gas pipeline companies who transport through Louisana natural gas produced outside the boundaries of that State. Each of these pipeline companies is a "natural gas company" as defined in Section 2 of the Natural Gas Act, 52 Stat. 821, 15 U.S.C. § 717a(6) (1976), and is regulated by the Federal Energy Regulatory Commission ("FERC") as successor to the Federal Power Commission.

XI.

The interstate pipelines upon whom the tax will be imposed purchase substantial quantities of natural gas produced from the Outer Continental Shelf ("OCS"), a federal domain defined and delineated in the Outer Continental Shelf Lands Act, 67 Stat. 462-70, 43 U.S.C. §§ 1331-1343 (1976), outside the seaward boundaries of the State of Louisiana. Each interstate pipeline purchases said gas from producers pursuant to certificates of public convenience and necessity issued by FERC, and transports or has such gas transported through pipelines, into and through the State of Louisiana, for sale to, *inter alia,* gas distributing companies and muincipalities for resale, under certificates of public convenience and necessity issued by FERC, and under rate schedules or tariffs on file with and approved by FERC.

XII.

It is estimated by FERC that the First Use Tax will be imposed on approximately 3,190 million Mcf of natural gas entering Louisiana in interstate commerce from the OCS annually. This volume is based on total OCS production entering Louisiana in 1977 of 3,647,513,674 Mcf, less 220 million Mcf in shrinkage during processing; less 100 million Mcf owned by the producer of the gas reserved for the producer's own use or direct industrial sales and not subject to FERC's rate jurisdiction; less 140 million Mcf consumed in the production of fertilizer and anhydrous ammonia in Louisiana. In addition, the First Use Tax will be imposed on all volumes of natural gas imported into the United States from foreign countries which are transported through Louisiana in the foreign and interstate commerce of the United States.

XIII.

In Docket No. RM78-23 (*State of Louisiana First Use Tax in Pipeline Rate Cases*), Order No. 10 ("Order Establishing Procedures Governing Pipeline Recovery of the State of Louisiana First Use Tax," issued August 28, 1978, 43 Fed. Reg. 45,553 (Oct. 3, 1978)); Order No. 10-A ("Order on Rehearing, Modifying Prior Order, Amending Regulation and Requesting Comments" issued December 20, 1978, 43 Fed. Reg. 60,438 (Dec. 28, 1978)), *appeal docketed, Tennessee Gas Pipe Line Co.* v. *Federal Energy Regulatory Commission,* No. 78-3813, *et al.* (5th Cir. Dec. 26, 1978)), and Order No. 10-B ("Order on Rehearing, Modifying Prior Order and Amending Regulations," issued March 2, 1979, 44 Fed. Reg. 13,460 (Mar. 12, 1979)), FERC has adopted procedures which, under the conditions specified in those orders, permit the pipelines required to pay the First Use Tax to collect the amount of such tax from their customers pursuant to an automatic tracking mechanism. Those charges remain subject to refund with interest, pending a final judicial determination of the constitutionality of the First Use Tax.

XIV.

Based on the OCS volumes entering Louisiana in interstate commerce in 1977, the imposition of the First Use Tax will cost interstate consumers approximately 225 million dollars per annum.

Impact of the First Use Tax Upon the Plaintiff State and Its Citizens

XV.

On April 1, 1979, the effective date of the First Use Tax, the plaintiff state and its citizens were impacted by the First Use Tax, with resulting economic burdens and hardship. The natural gas supplies of the plaintiff state and of the citizens of the plaintiff state are delivered by interstate natural gas pipeline companies who are subject to the tax and who will collect such tax from plaintiff state and its citizens.

XVI.

New Jersey's current annual usage of gas is approximately 295 billion cubic feet. Based on a current estimate that 203 billion cubic feet of that natural gas is subject to the First Use Tax, the tax will cost the State of New Jersey approximately 20 thousand dollars annually. The State of New Jersey also purchases quantities of natural gas through local instrumentalities.

XVII.

The total economic cost of the First Use Tax on the State of New Jersey, its instrumentalities and its citizens will be approximately 17 million dollars a year.

XVIII.

Over 1,800,000 New Jersey consumers who use natural gas will be directly economically affected by the imposition of the First Use Tax. In addition, New Jersey consumers are increasingly converting their fuel consumption mechanisms from oil to gas.

First Cause of Action

XIX.

Plaintiffs reallege, as though set forth in full, the allegations contained in Paragraphs I through XVIII.

XX.

The First Use Tax constitutes an unreasonable, unlawful, and prohibited burden on interstate commerce, in contravention of article 1, section 8, clause 3 of the United States Constitution (commerce clause) which provides, in pervides, in pertinent part, that:

> The Congress shall have Power . . . [to] regulate . . . Commerce . . . among the several States. . . .

The First Use Tax violates the commerce clause in that it burdens natural gas moving in interstate commerce, it is not applied to activities with a substantial nexus with Louisiana, it is not fairly apportioned, it discriminates against interstate and foreign commerce, and it is not fairly related to the asserted cost burdens imposed upon Louisiana by the interstate commerce subject to the tax, or to the value of the services and benefits provided by the State.

A. The First Use Tax Burdens Natural Gas Moving In Interstate Commerce.

XXI.

Entry of natural gas into Louisiana from the OCS or from a sister state or foreign country constitutes movement in interstate commerce, as does the subsequent transportation of this gas out of Louisiana to consumers in other states. This continuous movement is not interrupted by the alleged "uses" defined in Paragraph VI, *supra,* because the activities described therein are integral to the movement of such gas from the point of production to the point of ultimate consumption in Louisiana or other states. Insofar as the First Use Tax is deemed to apply to natural gas produced from the OCS, or imported from a foreign country, which is transported into and through Louisiana, it is a tax on natural gas moving in interstate commerce. Thus, the effect of the First Use Tax is to tax directly the privilege of transporting natural gas in interstate commerce and not to tax the use of such gas.

B. The Uses Taxed By The First Use Tax Do Not Have A Sufficient Nexus With Louisiana To Justify Imposition Of The Tax.

XXII.

The uses described in § 47:1302(8) do not have a sufficient nexus with Louisiana to justify the imposition of the First Use Tax, computed on the basis of the total volume of natural gas produced from the OCS or imported into the United States, which is transported through Louisiana pursuant to certificates of public convenience and necessity issued by FERC. In particular, the transportation of natural gas through Louisiana does not establish a sufficient nexus to justify a tax on the total volume of OCS and imported gas moving through the State. Moreover, the imposition of the First Use Tax on such gas on the basis of "other ascertainable action at a point within [Louisiana]" (§ 47:1302(8)) fails to establish a sufficient nexus with Louisiana. The phrase is unreasonably vague, and fails to establish the nexus required to justify the tax.

C. The First Use Tax Is Not Fairly Apportioned.

XXIII.

The First Use Tax is not fairly apportioned. The tax is applied to the total volume of imported gas, and gas from the OCS, transported into Louisiana, without limitation to the volumes of such gas consumed in Louisiana. The tax is not related to investment in facilities, actual business activities, payroll, or other indicia of a concrete nexus with Louisiana. The tax is a tax on the gas, not on local activities.

XXIV.

In addition, this lack of apportionment exposes OCS and imported gas to multiple tax burdens because, if Louisiana is permitted to impose such a tax, every state through which such gas passes may also do so. There are measurement and storage facilities in many of the states through which natural gas passes between Louisiana and the plaintiff states, and gas is frequently processed, exchanged, or subjected to analogous "uses" in such states.

D. The First Use Tax Unduly Discriminates Against Interstate Commerce.

XXV.

The First Use Tax, sometimes in conjunction with other Louisiana statutes, unfairly, unreasonably, and unduly discriminates against interstate commerce, as is described in paragraphs XVI to XXVIII.

XXVI.

The First Use Tax discriminates against interstate commerce because it is imposed only on gas produced from the OCS and from other states and gas imported into the United States. Such gas is moving in interstate or foreign commerce at the time it is transported into Louisiana, and continues in interstate commerce, without interruption, until it is transported out of Louisiana or sold at wholesale for ultimate consumption within Louisiana. An equivalent tax is not imposed on gas produced in Louisiana and sold in interstate or intrastate commerce, which is permitted to enter interstate commerce without bearing the burden of the First Use Tax. Thus, the statute gives discriminatory tax advantages to owners of gas produced within the boundaries of the State of Louisiana, in comparison to owners of gas produced elsewhere.

XXVII.

The Louisiana First Use Tax on Natural Gas—Severance Tax Credit, La. Rev. Stat. Ann. §§ 47:647 (West Supp. 1979) (a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference), permits an in-state producer of natural gas who is liable for the First Use Tax and who does not have an enforceable right of reimbursement to credit that liability, dollar-for-dollar, against its liability for the Louisiana severance tax (La. Rev. Stat. Ann. §§ 47:631-646) (West 1970 and Supp. 1979) up to the amount of such liability. The First Use Tax, applied in conjunction with the Severance Tax Credit, discriminates against interstate commerce because it favors taxpayers who own gas subject to the Louisiana severance tax, *i.e.*, taxpayers who are engaged in in-state production of natural resources, and burdens taxpayers who do not own such gas, *i.e.*, taxpayers who are not engaged in in-state production. The ultimate impact of this discrimination will fall on plaintiff states and their citizens, because under FERC Orders Nos. 10, 10-A, and 10-B the interstate pipeline companies will be allowed to pass through to consumers the amount of First Use Tax paid, and because other costs suffered by the pipelines, such as incomplete recovery of interest in the event the First Use Tax is ruled unconstitutional, may ultimately be found by FERC to be just and reasonable costs that are chargeable to the ratepayers under the Natural Gas Act.

XXVIII.

The First Use Tax discriminates against interstate commerce because it exempts from liability for the tax volumes of natural gas, otherwise subject to the tax, consumed in specified uses in Louisiana, such as the manufacture of sulphur, fertilizer, and anhydrous ammonia. § 47:1303A. Volumes of natural gas subject to the tax consumed in similar uses in other states are not given a similar exemption. Louisiana has, therefore, favored certain in-state uses to the disadvantage of similar out-of-state uses.

E. The First Use Tax Is Not Fairly Related To Services Provided By Louisiana.

XXIX.

The First Use Tax is not fairly related to the express purpose of the statute, i.e., compensating the citizens of Louisiana for damage to Louisiana's "waterbottoms, barrier reefs, and sensitive shorelines" because of the movement of OCS or imported gas through the state. § 47:1301C. The disproportionate amount of the tax in relation to its avowed purpose demonstrates that the primary purpose of the tax is to raise revenue rather than to protect the environment. An equivalent tax is not imposed on natural gas produced in Louisiana, or on gas produced in any other state that imposes a severance or production tax on gas. Substantial volumes of natural gas produced in Louisiana and other states are transported into and through Louisiana in the same facilities used to transport OCS and imported gas. These volumes of gas traverse Louisiana's waterbottoms, barrier reefs, and shorelines, but are not subject to the First Use Tax. In addition, Louisiana has not imposed a similar tax on other forms of transportation, *i.e.,* barges and shipping, which also "damage" Louisiana's waterbottoms, barrier reefs, and shorelines.

XXX.

The rate of First Use Tax is the same as the rate of the severance tax on gas produced within Louisiana, but the economic impact resulting from any first use as defined in the statute within the State of Louisiana is wholly disproportionate to the economic impact resulting from severance.

XXXI.

The impact of the First Use Tax on the pipelines upon whom it will be imposed varies without any rational relationship to: (1) the activities of the pipelines in the State; (2) the adverse impact of such activities on the State; or (3) the benefits received from the State by the pipelines.

SECOND CAUSE OF ACTION

XXXII.

Plaintiff realleges, as though set forth in full, the allegations contained in Paragraphs I through XVIII.

XXXIII.

The First Use Tax is in conflict with and repugnant to federal statutes and is accordingly void under the supremacy clause, article VI of the United States Constitution, as is described in paragraphs XXXIV to XXXVII.

XXXIV.

The First Use Tax is in effect an attempt to regulate gas dedicated to interstate markets by contracts and/or FERC certificates of public convenience and necessity issued pursuant to the Natural Gas Act, 52 Stat. 821-33, 15 U.S.C. §§717-717w (1976), which is a matter within the exclusive jurisdiction of the Department of Energy and FERC.

XXXV.

The First Use Tax conflicts with and is repugnant to federal statutes, including the Natural Gas Act (52 Stat. 821-33, 15 U.S.C. §717-717w (1976)), the Natural Gas Policy Act of 1978 (92 Stat. 3350, Pub. L. No. 95-621 (1978)), and the Outer Continental Shelf Lands Act (67 Stat. 462-70, 43 U.S.C. §§1331-1343 (1976)), which constitute a comprehensive scheme duly adopted by Congress for the regulation, enforcement and promotion of the production of natural gas and the sale, transportation and pricing of interstate gas.

XXXVI.

Section 7(c) of the Natural Gas Act (56 Stat. 83, 15 U.S.C. §717f(c)) provides that no person may sell or transport natural gas in interstate commerce for resale without first obtaining a certificate of public convenience and necessity from FERC. These certificates are made in full recognition of, and generally incorporate, the terms and conditions of the underlying contract for the sale of natural gas. Numerous contracts contain provisions requiring the producer or gatherer selling natural gas to an interstate pipeline to reimburse the pipeline for all costs (including any taxes) incurred as a result of extracting natural gas liquids or other treatment of the gas. The First Use Tax declares such contracts and the existing clauses requiring reimbursement "to be against public policy and unenforceable to that extent." §47:1303C.

XXXVII.

Section 4 of the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. § 1333(a)(2) (1976), provides that "[s]tate taxation laws shall not apply to the outer Continental Shelf." Notwithstanding the label given to it by Louisiana, the First Use Tax is in economic effect a tax on gas produced from the OCS.

Third Cause of Action

XXXVIII.

Plaintiff realleges, as though set forth in full, the allegations contained in Paragraphs I through XVIII.

XXXIX.

The First Use Tax contravenes and violates article I section 10, clause 2 (import-export clause), of the United States Constitution, which provides, in pertinent part, that:

> No State shall . . . lay any Imposts or Duties on Imports . . . except what may be absolutely necessary for executing its inspection Laws. . . .

Insofar as the First Use Tax applies to gas imported into Louisiana from a foreign country, it violates this provision of the Constitution.

XL.

The First Use Tax clearly applies to the first use in Louisiana of gas imported into Louisiana from a foreign country, "which is not subject to the levy of any import tax or tariff by the United States as an import from a foreign country." §47:1303A. The United States does not now impose "any import tax or tariff" on natural gas imported into the United States. Natural gas may be imported into the United States free of any customs duties, 76 Stat. 72, 19 U.S.C. § 1202, Schedule 4, Part 10, Item 475.15 (1976).

XLI.

The First Use Tax is imposed upon, *inter alia,* the sale, transportation, transfer of possession or control, "or other ascertainable action at a point within the state." §47:1302(8). Insofar as it attempts to tax imported natural gas before it passes into the local distribution system for delivery to ultimate consumers, the First Use Tax is an illegal duty on imports.

XLII.

The First Use Tax complicates the Federal Government's foreign trade policy because it creates special preferences for certain domestic goods and because it will discourage importation of a product governed by federal regulation in a manner inconsistent with that regulation.

XLIII.

The First Use Tax will disturb the harmony among the states. It does not fall only upon activities with a reasonable nexus to the state; it is not fairly apportioned; it is discriminatory; and it does not fairly relate to services provided by the State of Louisiana.

XLIV.

The First Use Tax is a direct tax on imports in transit.

FOURTH CAUSE OF ACTION

XLV.

Plaintiff realleges as though set forth in full, the allegations contained in Paragraphs I through XVIII.

XLVI.

The First Use Tax contravenes and violates article I, section 10, clause 1, of the United States Constitution, which provides that "No State shall . . . pass any . . .

Law impairing the Obligation of Contracts . . ." Section 47:1303C states, in pertinent part:

> Any agreement or contract by which an owner of nautral gas at the time a taxable first use occurs claims a right to reimbursement or refund of such taxes from any other party in interest, other than a purchaser of such natural gas, is hereby declared to be against public policy and unenforceable to that extent.

Section 47:1303C will effectively void provisions in existing contracts for the sale of natural gas in interstate commerce that would otherwise require that owners of nautral gas subject to the First Use Tax be reimbursed by persons other than purchasers of the gas. This will in turn cause plaintiff state and their citizens to bear increased costs for natural gas.

Fifth Cause of Action

XLVII.

Plaintiff realleges, as though set forth in full, the allegations contained in Paragraphs I through XVIII.

XLVIII.

The First Use Tax deprives plaintiff state and its citizens of the equal protection of the law guaranteed under the fourteenth amendment of the Constitution of the United States.

XLIX.

By its Severance Tax Credit (Exhibit B hereto) Lousiana permits any taxpayer directly liable for the payment of the First Use Tax, and any taxpayer liable for the First Use Tax as a consequence of a reimbursement contract provision "applied in disregard" of section 1303C of the First Use Tax, to credit such payments against any severance taxes owed by the taxpayer to Louisiana. § 47:647A.

L.

The Severance Tax Credit further provides that the credit against severance taxes is not allowed if the taxpayer "has an enforceable right to reimbursement from a third party." § 47:647B.

LI.

Accordingly, under the Severance Tax Credit, the First Use Tax only applies to those taxpayers who have no liability from Louisiana's severance tax. A taxpayer otherwise liable under the First Use Tax may escape such tax liability by crediting such liability against severance taxes owed on its Louisiana production of natural resources.

LII.

The First Use Tax as amended by the Severance Tax Credit establishes a classification based on the question of whether the taxpayer is solely engaged in interstate OCS natural gas activity as distinct from the taxpayer who is engaged in both interstate commerce and instate production. This classification is unreasonable and irrelevant to the purported purposes of the First Use Tax and it results in a denial of equal protection of the law in contravention of fourteenth amendment to the United States Constitution.

Wherefore, Plaintiff Respectfully Prays That This Court:

(a) Declare and adjudge, pursuant to 28 U.S.C. § 2201 (1976), that the Louisana First Use Tax is unconstitutional and unenforceable with respect to natural gas transported or sold in interstate or foreign commerce;

(b) Issue a permanent injunction prohibiting defendant and its agents and employees from collecting the First Use Tax with respect to natural gas transported or sold in interstate or foreign commerce;

(c) Issue a preliminary injunction, pending the final determination of this case, prohibiting defendant and its agents and employees from collecting the First Use Tax with respect to natural gas transported or sold in interstate or foreign commerce;

(d) Order that any and all revenues collected pursuant to the First Use Tax with respect to natural gas transported or sold in interstate or foreign commerce be refunded to the taxpayers together with interest thereon; and

(e) Grant plaintiff its costs herein expended and such other further relief as the Court may deem just and proper.

Respectfully submitted,

State of New Jersey
John J. Degnan
Attorney General

Stephen Skillman
Assistant Attorney General
State House Annex
Trenton, New Jersey 08625

Bertram P. Goltz, Jr.
Deputy Attorney General

Claude E. Salomon
Deputy Attorney General
1100 Raymond Boulevard
Newark, New Jersey 07102

EXHIBIT A

First Use Tax On Natural Gas

Act No. 294

House Bill No. 768

An Act to amend Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950 by adding thereto a new Chapter to be designated as Chapter 16 thereof to contain a Part I comprising Sections 1301 through 1307, providing for the levy and collection of a tax on the first use in the state of Louisiana, of natural gas produced outside of the territorial limits of the state of Louisiana, which is not subject to the levy of an import tax or customs duty by the United States as an import from a foreign country, and upon which no severance tax or tax upon the volume of production has been paid to any state or territory of the United States; providing a definition of first use and for other definitions; providing for exclusions from the tax; providing for the imposition and rate of the tax; declaring certain contractual agreements unenforceable; providing for the point at which the gas is measured and the tax assessed; providing for the reporting and collection thereof and promulgation of regulations; providing for commingling; providing penalties; providing for the disposition of the collections of the tax; and providing otherwise both generally and specifically with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 16 of Subtitle II of Title 17 of the Louisiana Revised Statutes of 1950 containing a Part I and comprising Sections 1301 through 1307 of Title 47 is hereby enacted to read as follows:

Chapter 16. First Use Tax

Part I. First Use Tax On Natural Gas

§ 1301. State policy

A. The conservation of natural resources is of vital concern to the present and future welfare of our state and nation, and it is the policy of the state of Louisiana, in the exercise of its police and taxing power, to prevent the physical and economic waste of its natural resources. It is recognized that other existing laws providing limitations upon the production of oil and gas are allowed within the state, and the impositon of a tax upon the severance of these natural resources from the soil and water of the state fail to prevent the economic waste of these Louisiana natural resources and will unfairly tax Louisiana producers in a discriminatory fashion, unless the state equally and uniformly taxes the introduction for the first time into the economy of the state natural gas which has not been otherwise or elsewhere subject to taxation by or within the United States.

B. The waterbottoms, barrier islands and coastal areas within this state are also valuable natural resources, as they provide essential habitat for many forms of wildlife and aquatic life in Louisiana, help protect our coastline from erosion, and are of aesthetic, commercial and recreational value to the citizens of our state and nation. It is further recognized that while other existing laws, applicable to the production of oil and natural gas, provide recompense in the form of taxes to the people of the state of Louisiana for adverse effects on the natural resources, barrier islands, waterbottoms, and shorelands of this state, these laws fail to provide protection for such valuable natural resources or compensation to the people of Louisiana for the necessary adverse effects caused by entry for use for the first time in Louisiana, under the protection of the state's laws, of natural gas which has not been subject to taxation otherwise or elsewhere by or within the United States unless the state levies an equitable tax thereon.

C. It is one of the express purposes of this tax to require the exaction of fair and reasonable compensation to the citizens of this state for the costs incurred and paid with public funds, which costs enure solely to the benefit of the owners of natural gas produced beyond the boundaries of Louisiana, although introduced into the state, and to provide some measure of reimbursement to the citizens for damages to the State's waterbottoms, barrier reefs, and sensitive shorelands as a direct consequence of activity within the state associated with such natural gas by the owners thereof.

§ 1302. Definitions

The definitions hereinafter set forth shall have the meanings ascribed to them unless the context of use clearly indicates otherwise:

(1) "Oil, condensate, distillate or similar hydrocarbons" are liquid hydrocarbons remaining in a liquid state at 15.025 pounds per square inch absolute and sixty degrees Fahrenheit.

(2) "Natural gas" is natural or casinghead gaseous phase hydrocarbons remaining after separation from either oil, condensate, or distillate and measured at a pressure base of 15.025 pounds per square inch absolute at a temperature base of sixty degrees Fahrenheit.

(3) "Processing" is the scrubbing of a natural gas stream by specifically applied mechanical processes of absorption, adsorption, compression, cooling, cryogenics, refrigeration or any combination thereof for the purpose of extracting natural or casinghead gasoline, methane, ethane, propane, butane and other liquefiable hydrocarbons.

(4) "Refining" is the process by which crude oil, distillate and condensate are separated or fractionated into the various component parts or purified.

(5) "Storage" means and includes any keeping or retention in this state of oil and natural gas.

(6) "Measurement" is any process by which the volume of natural gas affected by this Part is determined.

(7) "Sale" is the transfer of ownership of and title to natural gas from one person to another for valuable consideration.

(8) "Use" is: the sale; the transportation in the state to the point of delivery at the inlet of any processing plant; the transportation in the state of unprocessed natural gas to the point of delivery at the inlet of any measurement or storage facility; transfer of possession or relinquishment of control at a delivery point in the state; processing for the extraction of liquefiable compo-

nent products or waste materials; use in manufacturing; treatment; or other ascertainable action at a point within the state.

(9) "Owner" is the person or person having title to and the right to alienate the natural gas subject to the tax at the time a use occurs in the state. It shall not include any person to whom temporary possession or control has been transferred. In the event of a sale the purchaser shall be deemed the owner.

§ 1303. Imposition; exclusions; commingling

A. Pursuant to the exercise of the police and taxing powers of the state for the purpose of preventing economic and physical waste of our natural resources and for protecting and providing compensation for adverse effects upon the state's shorelands, waterbottoms and barrier islands, there is hereby levied and imposed a tax upon the first occurrence within this state of any use, as defined in this Part, of any natural gas upon which no severance tax or tax upon the volume of production has been paid, or is legally due to be paid, to this state or any other state or territory of the United States, or which is not subject to the levy of any import tax or tariff by the United States as an import from a foreign country. The tax levied herein shall not apply to natural gas otherwise subject thereto when such gas is used or consumed in the drilling for or production of oil, natural gas, sulphur, or in the processing of natural gas for liquids extraction within the state; nor shall it apply to gas shrinkage volumes attributable to the extraction of ethane, propane, butanes, natural or casinghead gasoline or other liquefied hydrocarbons, provided shrinkage volumes shall not exceed equivalent gas volumes of the extracted liquids computed by recognized conversion factors used by the Gas Processors Association nor shall it apply to natural gas used or consumed in the manufacture of fertilizer and anhydrous ammonia within the state.

B. The tax imposed by Subsection A of this Section shall be computed at a rate of seven cents on each unit of natural gas as to which a use first occurs within the state. For the purposes of this tax a unit shall be one thousand cubic feet of natural gas as measured at a pressure base of 15.025 pounds per square inch absolute and at a temperature base of sixty degrees Fahrenheit.

C. In furtherance of the public policy and purpose set forth in Section 1301 of this part, and particularly Subsection C of said Section, this tax shall be deemed a cost associated with uses made by the owner in preparation of marketing of the natural gas. Any agreement or contract by which an owner of natural gas at the time a taxable use first occurs claims a right to reimbursement or refund of such taxes from any other party in interest, other than a purchaser of such natural gas, is hereby declared to be against public policy and unenforceable to that extent. Notwithstanding any such agreement or contract, such an owner shall not have an enforceable right to any reimbursement or refund on the basis that this tax constitutes a cost incurred by such owner by virtue of the separation or processing of natural gas for extraction of liquid or liquefiable hydrocarbons, or that this tax constitutes any other grounds for reimbursement or refund under such agreement or contract, unless there has been a final and unappealable judicial determination that such owner is entitled to such reimbursement or refund, notwithstanding the public policy and purpose of this part and the foregoing provisions of this Subsection C. In any legal action pursuant to this Subsection, the state shall be an indispensable party in interest.

D. When natural gas subject to the tax levied in this Part is commingled with oil and/or natural gas not subject to the tax levied herein, it shall be presumed that the volumes withdrawn from the commingled mass by the first use shall be in the same ratio as the ratio of the resources entering the commingled mass.

E. Nothing in this Part shall be construed as imposing any tax on the production, severance, or ownership of natural gas produced outside of the boundaries of the state of Louisiana, it being the intention of this Part that the incidence of this tax shall not be upon the natural gas nor upon the property or rights from which it is produced, but rather shall be only upon the privilege of performance or allowing the performance, by the owner, of the enumerated actions comprising first use within the state.

F. If any use as defined in this Part and first occurring is determined not to be a constitutionally taxable incident, the tax shall be imposed upon the use first occurring thereafter.

§1304. Authority of the collector of revenue to promulgate rules and regulations

The collector of revenue is authorized to promulgate rules and regulations necessary to effect the intent and purpose of this Part, including regulations concerning the measurement of products associated with the incidents taxed herein.

§1305. Reports and payments; reimbursement limitations

A. The owner or owners of the natural gas at the time a use first occurs in this state shall file with the Department of Revenue and Taxation on or before the last day of each month following the month of first use, statements on forms procured from the department, showing the volumes, values, owners and such other information as the department may require by law or regulation for computing and assessing the amount of tax due under this Part.

B. The taxes levied by this Part shall be due and payable to the Department of Revenue and Taxation monthly on or before the last day of the month following the month to which the tax is applicable by the owner or owners of the natural gas stream at the time any use, as defined herein, first occurs within the state.

§1306. Delinquent tax; failure to report or pay

A. The tax provided by this Part shall become delinquent after the date fixed for each monthly report to be filed in the office of the collector, and from such time shall be subject to the addition of interest, penalties, and costs as provided in Chapter 18, Subtitle II of this Title.

B. The failure to report or pay, within ninety days, in the manner and at the time required herein, the tax imposed by this Part on the first use of natural gas is unlawful, and the natural gas shall be deemed illegal gas subject to the provisions of R.S. 30:19 and, as such, shall be treated as contraband and shall be seized and sold as provided by R.S. 30:20.

§ 1307. Disposition of collections

The secretary shall remit all collections of taxes provided by this Part each month to the state treasurer, not later than the tenth day of the month following the month in which collections are made. The state treasurer shall credit all such collections to the state treasury.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

This Act shall become effective immediately upon signature by the governor and the adoption by the legislature of House Bill 140 of the 1978 Regular Session; provided however that taxes shall not begin to accrue on natural gas subject to the tax levied by this Part until 7:00 A.M. on April 1, 1979.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

Section 4. Notwithstanding the provisions of Section 2 of this Act, in the event that a final and unappealable judicial decision is rendered upholding the right of an owner to enforce a contract or agreement otherwise rendered unenforceable by R.S. 47:1303(C) of this Act, the following consequences shall ensue:

(1) If the right upheld arises from the provisions of a contract or agreement requiring any other party to reimburse or refund to an owner taxes incurred by such owner by virtue of the separation or processing of natural gas for extraction of liquid or liquefiable hydrocarbons, then the tax levied in this Act shall not be due in respect to natural gas previously and thereafter sold pursuant to any contract or agreement containing such requirement, and the secretary of the Department of Revenue and Taxation shall forthwith return to each taxpayer all taxes previously paid in respect to such natural gas, together with interest at the rate of six percent per annum from the date the taxes were paid; or

(2) If the right upheld arises from the provisions of a contract or agreement requiring any other party to reimburse or refund to an owner costs or expenses incurred by such owner by virtue of separation or processing of natural gas for extraction of liquid or liquefiable hydrocarbons, then this Act shall be null and void and the secretary shall forthwith return to each taxpayer all taxes previously paid, together with interest at the rate of six percent per annum from the date of payment.

All taxpayers receiving refunds and interest pursuant to this Section shall in turn remit such refunds and interest to all other parties from whom they have received payments pursuant to the aforesaid provisions of such contracts.

Approved July 6, 1978.

EXHIBIT B

First Use Tax On Natural Gas—

Severance Tax Credit

Act No. 436

House Bill No. 1187

An Act to amend Chapter 6 of Title 47 of the Louisiana Revised Statutes of 1950 by adding thereto a new Part I-B, to be comprised of R.S. 47:647; to provide a severance tax credit to persons liable for the payment of the first use tax levied in R.S. 47:1301 through R.S. 47:1307; to provide for the amount of the tax credit; to provide for parish allocations; to provide for regulations; and otherwise to provide with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Part 1-B of Chapter 6 of Title 47 of the Louisiana Revised Statutes of 1950, consisting of R.S. 47:647 is hereby enacted to read as follows:

Part I-B. Severance Tax Credit

§ 647. Severance tax credit.

A. Every taxpayer liable for and remitting taxes levied and collected pursuant to R.S. 47:1301 through 1307 and each taxpayer who bears such taxes as a direct result of contractual terms or agreements applied in disregard of R.S. 47:1303C, shall be allowed a direct tax credit, at any time following payment of such tax, but, not in excess of the amount which must be borne by such taxpayer, against severance taxes owed by such taxpayer to the state, the amount of which credit shall not exceed the amount of severance taxes for which such taxpayer is liable to the state as a direct consequence of the privilege of severing natural resources from the surface of the soil or water of the state. A taxpayer who bears any portion of the tax levied pursuant to R.S. 47:1301 through 1307 as a direct result of contractual terms or agreements applied in disregard of R.S. 47:1303C, shall be entitled to a credit under this Section only after there has been a determination by the Louisiana Supreme Court or the appropriate United States District Court that such taxpayer must bear the tax, provided that if the taxpayer or the state has sought and been denied a preliminary injunction enjoining the application of such contractual terms or agreements sought to be rendered inapplicable by R.S. 47:1303 (C), then such taxpayer shall be entitled to a credit under this Section from the date of denial of the preliminary injunction.

B. No tax credit pursuant to this Section shall be allowed for any taxes remitted pursuant to R.S. 47:1301 through 1307 for which a taxpayer has an enforceable right to reimbursement from a third party. A taxpayer claiming any credit under this Section shall furnish to the secretary of the Department of Revenue and Taxation all applicable contracts and other information requested by the secretary, which relate to such taxpayer's possible right to reimbursement. If the secretary determines that the taxpayer has an enforceable right to reimbursement, which the taxpayer is not actually receiving, the secretary shall so rule. Within thirty days of receipt of notice of such ruling the taxpayer shall have the right to appeal such ruling to the Louisiana Board of

Tax Appeals which board shall determine in open meeting whether there is sufficient evidence to support the ruling of the secretary. If the board determines that there is not sufficient evidence it shall overrule the secretary and the taxpayer shall not be required to take any other action in order to receive the tax credit provided by this Section. If the board determines that there is sufficient evidence, the taxpayer shall thereafter have a period of ninety days within which to institute any administrative or judicial proceedings necessary to assert such right to reimbursement. The taxpayer shall pursue such administrative or judicial proceedings with due diligence. At all times prior to commencement of such administrative or judicial proceedings and during the pendency thereof, and during any appeals therefrom, the taxpayer shall continue to be entitled to the credit provided in this Section; provided that if no action is taken by the taxpayer to assert the right to reimbursement within ninety days no further credit shall be granted and the state shall have the right to recover from the taxpayer any credits granted prior to the expiration of such time. If it is determined in any administrative proceedings that a taxpayer has no right to such reimbursement, then the taxpayer shall not be entitled to continue receiving the credit allowed by this Section, unless the taxpayer within the time allowed by applicable law seeks judicial review of such administrative determination and pursues such judicial review to a final and unappealable judgment. If the administrative or judicial determination establishes that the taxpayer has an enforceable right to reimbursement of the taxes levied pursuant to R.S. 47:1301 through 1307, and if the taxpayer is so reimbursed, then such taxpayer shall be liable to the state for additional severance taxes equivalent to the amount of taxes levied under R.S. 47:1301 through 1307 for which such taxpayer has received reimbursement. The taxpayer shall also pay to the state interest on such taxes at the rate prescribed in R.S. 47:-1601, accruing from the date on which the credit attributable to such taxes was taken to the date of final payment but only to the extent of any interest which the taxpayer has itself received on the amount of reimbursement.

C. The credit allowed by this Section shall not affect the percentage allocation of severance tax proceeds otherwise due to any parish, and the secretary of the Department of Revenue and Taxation, with the concurrence of the state treasurer shall, by regulation, establish such procedures as may be deemed necessary to provide therefor.

D. The secretary of the Department of Revenue and Taxation shall promulgate rules and regulations necessary for the implementation and administration of the tax credit provided for herein.

Section 2. Notwithstanding the provisions of R.S. 47:-1351, the treasurer shall, after any funds have first been deposited to the credit of the Bond Security and Redemption Fund, pay into the general fund, from the total proceeds of the first use tax authorized by R.S. 47:1301 through 1307, such amounts as are necessary to fully reimburse said general fund for tax credits granted pursuant to this Act.

Section 3. Tax credits authorized by this Act shall not be granted until there has been a final decision upholding the validity of the first use tax authorized and levied pursuant to R.S. 47:1301 through 1307, except to the extent that taxes levied pursuant to said Part are collected without either protest or suit for recovery filed directly by the person claiming the credit. In the event that tax credits authorized under this Act are granted, the recipient thereof shall be deemed to have waived his right to recovery of any taxes paid and collected pursuant to R.S. 47:1301 through 1307 to the extent of the tax credit granted.

Section 4. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

Section 5. All laws or parts of laws in conflict herewith are hereby repealed.

Section 6. The provisions of this Act shall become effective upon the enactment into law of House Bill 768 of the 1978 Regular Session of the Louisiana Legislature.

Approved July 10, 1978.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 83, Original

STATE OF MARYLAND, STATE OF ILLINOIS, STATE OF INDIANA, COMMONWEALTH OF MASSACHUSETTS, STATE OF MICHIGAN, STATE OF NEW YORK, STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, AND STATE OF WISCONSIN,

Plaintiffs,

vs.

STATE OF LOUISIANA,

Defendant.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE AND FOR LEAVE TO FILE COMPLAINT

Jurisdiction

This is a suit between sovereign States, and is within the exclusive original jurisdiction of this Court under article III, section 2, clauses 1 and 2 of the United States Constitution and 28 U.S.C. §1251(a)(1). The State of New Jersey brings its motion pursuant to Rules 9 and 35 of the Rules of the Supreme Court and Rule 24(b) of the Federal Rules of Civil Procedure for leave to intervene and to file a complaint in this Court.

Question Presented

Whether the State of New Jersey has sufficient interest in the subject matter of this suit so as to permit it to intervene as a party?

Argument

This action presents questions of law which are of great concern to the country. In essence, the matter before this Court deals with the attempt of one State, in the guise of a tax, to exploit the energy needs and concerns of other States in violation of the United States Constitution. Plaintiffs herein are challenging the constitutionality of the Louisiana First Use Tax on Natural Gas ("the First Use Tax")[1] and have invoked the original jurisdiction of this Court. New Jersey, as a sovereign State, moves to intervene as a party plaintiff.

Intervention by sovereign governmental bodies should be allowed where declaratory and injunctive relief is sought from actions which affect them. *State of Illinois ex rel. Scott* v. *Butterfield,* 396 F. Supp. 632, 636 (N.D. Ill. 1975). Intervention by a sovereign State is particularly appropriate in circumstances where the threatened in-

[1] La. Rev. Stat. Ann. §§47:1301-1307 (West Supp. 1979).

vasion of the State's rights and the effect upon the State's economy is of serious magnitude. Not only do these rights come into play when a boundary or navigation channel is disputed, but energy needs as well are a high priority in this age of shortage. When the issues in the litigation are so related to the interests of a state that the "just, orderly and effective determination of such issues" requires that all interested parties appear before the Court, *U.S.* v. *Louisiana,* 354 U.S. 515, 516 (1957), the Court should exercise its general equity powers and grant leave pursuant to Rule 24 of the Federal Rules of Civil Procedure for such an interested party to intervene.

The issues at bar severely affect the State of New Jersey. As a Northeastern State, New Jersey produces no natural gas itself and is forced to purchase this vital natural resource from gas-producing states such as Louisiana. In an age of rapidly rising oil costs New Jersey and its citizens turn more and more to natural gas as a cost-efficient method of fueling industry and residences. New Jersey has, in recent years, imported 90 per cent of its natural gas supplies from Louisiana.[2] Preliminary figures available show that 68.8 per cent of this gas comes from the Outer Continental Shelf, and will be subject to the First Use Tax. The most recent estimate of the total volume of pipeline gas purchased in New Jersey is 295 billion cubic feet; of that volume, approximately 203 billion cubic feet will be subject to the First Use Tax, affecting over 1,800,000 citizens of the State who are gas-using customers and ratepayers. In addition, New Jersey citizens have been at an ever-increasing rate

---

[2] *1975 Gas Flow Patterns,* Federal Energy Regulatory Commission (1977).

converting their heating systems from oil to gas in an effort to lower their utility bills and conserve energy.

New Jersey purchases natural gas as well for its own uses and those of its instrumentalities. In fiscal year 1979, the total amount paid by the State of New Jersey for natural gas was 29 thousand dollars. Approximately 20 thousand dollars of that sum can be attributed to gas which is presently subject to the First Use Tax. The total estimated cost to New Jersey, its instrumentalities and its citizens of the First Use Tax is 17 million dollars annually. Such a direct and indirect economic impact alone justifies New Jersey's application for leave to intervene in the case at bar, which will determine whether a substantial portion of the State's financial resources, and that of its citizens, must be committed in the future to paying the State of Louisiana and perhaps other states for the privilege of having gas transported to its borders.

New Jersey's claim involves questions of law and fact identical to those presented by plaintiffs herein. Numerous cases have permitted intervention under Rule 24 of the Federal Rules of Civil Procedure where such common questions have been of similar or lesser importance than those presented herein. *See,* e.g., *Natural Resources Defense Council, Inc.* v. *TVA,* 240 F. Supp. 400, 408 (1971), rev'd on other grounds 459 F.2d 255 (2d Cir. 1972) (allowing the Audobon Society to intervene in a strip mining case); *Doe* v. *Scott,* 310 F. Supp. 688, 689 (N.D. Ill. 1970) (allowing a pregnant student to intervene in a constitutional challenge to Illinois abortion statute); *see also* 7A Wright & Miller, Federal Practice and Procedure: Civil §1911.

Additionally, the motion presented herein is timely, even though the issue has been joined by Louisiana's answer. The granting of the motion would not unduly delay or prejudice the rights of the original parties. New Jersey's interests are substantially the same as the other plaintiffs and no additional issues of law will be presented for the Court's consideration. The complaint proposed herein is substantially identical than that which the Court has approved for filing by the present plaintiffs. The issues are well-known to all parties and neither the plaintiffs nor the defendant would be unfairly surprised by the complaint. As well, any other action which New Jersey would seek as a means of resolving these questions would most likely be stayed pending a decision in this case. *See FERC* v. *McNamara* (Civil Action No. 78-384, U.S.D.C., M.D. La., Appeal docketed No. 79-1403 (5th Cir. 1979), dealing with the same issues.

CONCLUSION

The State of New Jersey, both in its individual capacity and on behalf of its citizen, has a demonstratable and pressing interest in the litigation pending before this Court. The allegations stated in the proposed complaint are substantially similar and raise common questions of law and/or fact with those presented by plaintiffs. Therefore, the Court should grant New Jersey's motion for leave to intervene and for leave to file its complaint.

Respectfully submitted,

State of New Jersey
John J. Degnan
Attorney General of New Jersey

Stephen Skillman
Assistant Attorney General

Bertram P. Goltz, Jr.
Deputy Attorney General

Claude E. Salomon
Deputy Attorney General

Certificate of Service

Bertram P. Goltz, Deputy Attorney General representing the State of New Jersey, being a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 19th day of October, I served copies of the Motion for Leave to Intervene and File Complaint, Complaint and Brief in support of said Motion by mailing three copies thereof in duly addressed envelopes, with postage prepaid to:

Hon. Harry R. Hughes
State House
Annapolis, Maryland 21404
Stephen H. Sachs
Attorney General of Maryland
1400 One South Calvert Boulevard
Baltimore, Maryland 21202

Hon. James Thompson
State House
Springfield, Illinois 62706
William J. Scott
Attorney General of Illinois
500 South Second
Springfield, Illinois 62706

Hon. Otis R. Bowen
State House
Indianapolis, Indiana 46204
Theodore L. Sendak
Attorney General of Indiana
219 State House
Indianapolis, Indiana 46204

Hon. Edward King
State House
Boston, Massachusetts 02108
Francis X. Bellotti
Attorney General of Massachusetts
One Ashburton Place
Boston, Massachusetts 02108

Hon. William G. Milliken
State House
Lansing, Michigan 48913
Frank J. Kelly
Attorney General of Michigan
525 West Ottawa Street
Lansing, Michigan 48913

Hon. Hugh Carey
State House
Albany, New York 12224
Robert Abrams
Attorney General of New York
#2 World Trade Center
New York, New York 10047

Hon. J. Joseph Garrahy
State House
Providence, Rhode Island 02903
Dennis J. Roberts II
Attorney General of Rhode Island
Providence County Court House
Providence, Rhode Island 02903

HON. LEE S. DREYFUS
State House
Madison, Wisconsin 53702
BRONSON LA FOLLETTE
Attorney General of Wisconsin
114E State Capitol
Madison, Wisconsin 53702

HON. EDWIN EDWARDS
State House
Baton Rouge, Louisiana 70804
WILLIAM J. GUSTE, JR.
Attorney General of Louisiana
234 Loyola Avenue, 7th Floor
New Orleans, Louisiana 71102

HON. WADE H. MCCRAY
Solicitor General
Department of Justice
Washington, D.C. 20530

EDWARD BERLIN
FRED W. GELDON
Leva, Hawes, Symington, Mario, & Oppenheimer
815 Connecticut Avenue N.W.
Washington, D.C. 20006

FREDERICK MORING
HAROLD J. HELTZER
Wendy Munyon
Crowell and Moring
1100 Connecticut Avenue N.W.
Washington, D.C. 20036

Arthur S. Waechter, Jr.
Herschel Abbott, Jr.
Steven Durio
Jones, Walker, Waechter, Poitevent,
Carrere and Denegre
225 Baronne Street
New Orleans, Louisiana 70112

All parties required to be served have been served.

Bertram P. Goltz, Jr.
Deputy Attorney General