

5.8 ENERGY

The energy chapter of the FTA and the subsequent amendments to the *National Energy Board Act* had as their driving credo the desirability of limiting the power of the authorities, on either side, to interfere in private energy markets. The limits imposed involve three main features:

- exports cannot be restricted except in a period of restraint and then subject to proportionality;
- export taxes are forbidden; and
- prices are to be determined by market forces. The imposition of minimum prices is forbidden.

As well, a further amendment to the *NEB Act* declares that the FTA is preeminent if the NEB "in exercising its powers and performing its duties" finds that its "powers and duties" as otherwise defined are in conflict with the FTA.

Nonetheless, the NEB, under its market procedures for licencing new applications for the export of natural gas, in November, 1989, found insufficient benefit to Canada in four applications to export gas through eastern Canadian outlets to the north-east U.S. market and denied the licences. Given the transport costs to eastern Canada, and given the extremely competitive struggle for the north-eastern market, the net price being charged to American contractors was too low, in the NEB's view, to afford any net benefit to Canada. The applicants were quick to charge that the NEB had violated the proscription against minimum prices in the FTA.

In response to the storm which its decisions have raised, the NEB has called for public hearings in the spring to hear testimony on its application of cost/benefit analysis to the assessment of the export applications. Whether or not net benefits to Canada can or cannot be demonstrated, one of the central questions to be answered concerns whether the NEB any longer has the right to deny a licence essentially on price grounds.