

94TH CONGRESS
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H. R. 10480

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 31, 1975

Mr. KRUEGER (for himself, Mr. BROYHILL, Mr. BROWN of California, Mr. BROWN of Ohio, Mr. COUGHLIN, Mr. DERRICK, Mr. FLOWERS, Mr. HORTON, Mr. McCLOSKEY, Mr. MCKINNEY, Mr. MOSHER, Mr. PREYER, Mr. PRITCHARD, Mr. RUNNELS, Mr. SATTERFIELD, and Mr. CHARLES WILSON of Texas) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To provide authority to institute emergency measures to minimize the adverse effects of natural gas shortages, to provide authority to allocate propane, to regulate commerce to assure increased supplies of natural gas at reasonable prices for consumers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—EMERGENCY NATURAL GAS

AUTHORITY

SHORT TITLE

SEC. 101. This title may be cited as the "Natural Gas Emergency Standby Act of 1975".

1 SEC. 102. (a) The Congress finds and declares that
 2 the Nation will suffer severe shortages of natural gas during
 3 the heating season from November 1975 through March
 4 1976. The Congress further finds and declares that such im-
 5 minent shortages in our Nation's natural-gas supply con-
 6 stitute an emergency which can be alleviated by providing for
 7 limited exemptions from regulation of natural gas and for the
 8 prohibition of the use of natural gas as boiler fuel.

9 (b) The purpose of this title is to grant the Federal
 10 Power Commission authority to allow natural-gas companies
 11 which transport natural gas in interstate commerce with in-
 12 adequate quantities of natural gas to meet the requirements
 13 of their high priority consumers of natural gas to purchase
 14 natural gas from sources not in interstate commerce and from
 15 other such companies on an emergency basis free from the
 16 provisions of the Natural Gas Act (15 U.S.C. 717 et seq.),
 17 except for the reporting requirements of such Act; to grant
 18 the Federal Energy Administration authority to prohibit the
 19 use of natural gas as boiler fuel; and to provide the President
 20 with standby authority to allocate propane during periods
 21 of actual or threatened severe shortages of natural gas.

22 DEFINITIONS

23 SEC. 103. For the purposes of this title—

24 (1) "Natural-gas distributing company" means a per-
 25 son involved in the distribution or transportation of natural

1 gas for ultimate public consumption for domestic, commer-
 2 cial, industrial, or any other use, but such term does not
 3 include a natural-gas company as defined in section 2 (6)
 4 of the Natural Gas Act (15 U.S.C. 717a (6)).

5 (2) "High priority consumer of natural gas" means a
 6 person so defined by the Commission by rules and regula-
 7 tions.

8 (3) "Independent producer" means a person, as deter-
 9 mined by the Commission, (A) who is not affiliated with a
 10 person engaged in the transportation of natural gas in inter-
 11 state commerce, and (B) who is not a producing division of
 12 such a person engaged in the transportation of natural gas
 13 in interstate commerce.

14 (4) "Propane" means (A) the chemical C_3H_8 in its
 15 commercial form whether recovered from natural-gas streams
 16 or crude oil refining, (B) the C_3H_8 component of raw
 17 domestic mixtures containing more than 10 percent of such
 18 component by weights, and (C) commercial propane-butane
 19 mixes containing by weight more than 10 percent of propane
 20 and not more than 5 percent of constituents other than pro-
 21 pane or butane.

22 (5) "United States" means the States, the District of
 23 Columbia, Puerto Rico, and the territories and possessions of
 24 the United States.

1 (6) "Administrator" means the Administrator of the
2 Federal Energy Administration.

3 (7) "Commission" means the Federal Power Com-
4 mission.

5 EMERGENCY EXEMPTIONS

6 SEC. 104. Section 7(c) of the Natural Gas Act (15
7 U.S.C. 717f(c)) is amended by designating the two un-
8 numbered paragraphs thereof as paragraphs (1) and (2),
9 by deleting the period at the end of paragraph (2) as des-
10 ignated hereby, and inserting in lieu thereof the following:
11 "*Provided further*, That within 15 days after the enactment
12 of the Natural Gas Emergency Standby Act of 1975, the
13 Commission shall by regulation exempt from the provisions
14 of this Act, except for reporting requirements, any activi-
15 ties, operations, facilities, or services relating to the trans-
16 portation, sale and delivery, transfer, or exchange of natural
17 gas from any source, other than any offshore Federal lands,
18 by an independent producer, a natural-gas company which
19 transports natural gas in interstate commerce, a person who
20 transports natural gas in other than interstate commerce, or a
21 natural-gas distributing company to or with a natural-
22 gas company which transports natural gas in interstate
23 commerce which does not have or which under reasonably
24 foreseeable circumstances may not have, a sufficient supply
25 of natural gas to meet the requirements of its high priority

1 consumers of natural gas and which is curtailing during the
2 heating season from November 1975 through March 1976
3 pursuant to a curtailment plan on file with the Commission.
4 Exemptions granted pursuant to this proviso shall be for
5 periods of no more than 180 consecutive days. Persons who
6 are exempt under section 1 (b) or (c) of this Act shall not
7 have their exempt status affected in any way by making the
8 sales or deliveries contemplated by this subsection: *Provided*
9 *further*, That the Commission shall have no power to deny,
10 in whole or in part, recovery by any natural-gas company in
11 its jurisdictional rates of the amount paid by it for natural gas
12 delivered to it pursuant to sales and contracts as described
13 herein, except to the extent that an interstate transporter pur-
14 chases natural gas from an affiliate at a rate in excess of the
15 price paid by the transporter to nonaffiliated sellers in com-
16 parable sales transactions: *Provided further*, That natural gas
17 sold and delivered or transported pursuant to any exemption
18 granted under section 104 of the Natural Gas Emergency
19 Standby Act of 1975 shall not be or become subject to the
20 jurisdiction of the Commission because of such sale and deliv-
21 ery or transportation whether or not such sale is a sale for
22 resale in interstate commerce or such transportation is in
23 interstate commerce."

1 PROHIBITION OF USE OF NATURAL GAS AS BOILER FUEL

2 SEC. 105. (a) The purpose of this section is to continue
3 the conservation of natural gas and petroleum products by
4 fostering the use of coal by powerplants and major fuel burn-
5 ing installations, and if coal cannot be utilized, to provide
6 authority to prohibit the use of natural gas when petroleum
7 products can be substituted.

8 (b) Section 2 of the Energy Supply and Environmental
9 Coordination Act of 1974 is amended by—

10 (1) redesignating subsections (e) and (f) as sub-
11 sections (f) and (g), respectively;

12 (2) amending redesignated subsection (g) (1) to
13 read as follows:

14 “(g) (1) Authority to issue orders or rules under
15 subsections (a), (b), (d), and (e) of this section shall
16 expire at midnight June 30, 1976. Authority to issue orders
17 under subsection (c) shall expire at midnight June 30,
18 1976. Any rule or order issued under subsections (a)
19 through (e) may take effect at any time before January 1,
20 1979.”.

21 (c) Inserting after subsection (d) the following new
22 subsection (e) :

23 “(e) (1) The Administrator may, by order, prohibit
24 any powerplant or major fuel burning installation from burn-
25 ing natural gas if—

1 “(A) the Administrator determines that:

2 “(i) such powerplant or installation had on
3 June 30, 1975 (or any time thereafter) the capabil-
4 ity and necessary plant equipment to burn petroleum
5 products,

6 “(ii) an order under subsection (a) may not be
7 issued, with respect to such powerplant or installa-
8 tion,

9 “(iii) the burning of petroleum products by
10 such powerplant or installation in lieu of natural gas
11 is practicable,

12 “(iv) petroleum products will be available dur-
13 ing the period the order is in effect,

14 “(v) with respect to powerplants, the prohibi-
15 tion under this subsection will not impair the relia-
16 bility of service in the area served by the plant.

17 “(vi) the prohibition under this subsection will
18 result in making natural gas available for sale to a
19 natural-gas company which transports natural gas in
20 interstate commerce and which does not have ade-
21 quate quantities of natural gas to meet the require-
22 ments of its high priority consumers and which is
23 curtailing pursuant to a curtailment plan on file with
24 the Commission, and

25 “(B) the Administrator of the Environmental Pro-

1 tection Agency has certified that such powerplant or
 2 installation will be able to burn the petroleum products
 3 which the Administrator has determined under subpara-
 4 graph (A) (iv) will be available to it and will be able
 5 to comply with the Clean Air Act (including applicable
 6 implementation plans).

7 “(2) An order under this subsection shall not take effect
 8 until the earliest date the Administrator of the Environ-
 9 mental Protection Agency has certified that the powerplant
 10 or installation can burn petroleum products and can comply
 11 with the Clean Air Act (including applicable implementa-
 12 tion plans).

13 “(3) The Administrator may specify in any order is-
 14 sued under this subsection the periods of time during which
 15 the order will be in effect and the quantity (or rate of use)
 16 of natural gas that may be burned by a powerplant or major
 17 fuel burning installation during such periods, including the
 18 burning of natural gas by a powerplant to meet peaking load
 19 requirements.

20 “(4) Conversion to petroleum products pursuant to an
 21 order issued under this subsection shall not be deemed to be
 22 a modification for the purposes of paragraphs (2) and (4)
 23 of subsection 111 (a) of the Clean Air Act, as amended.

24 “(5) The Administrator shall exempt from any order
 25 issued pursuant to this subsection the burning of natural

1 gas for the necessary processes of ignition, startup, testing,
 2 and flame stabilization by a facility.

3 “(6) The Administrator shall also exempt from any rule
 4 under this section the burning of natural gas by powerplants
 5 for the purpose of operating pollution abatement systems.

6 “(7) The Administrator shall modify or suspend any
 7 order issued pursuant to this subsection to the extent neces-
 8 sary to alleviate short-term air quality emergencies or other
 9 danger to the public health, safety, or welfare.”.

10 (d) (1) Any order issued pursuant to this subsection
 11 shall provide for just compensation of the facility and trans-
 12 porter affected by such order. Such compensation is (A) to
 13 be measured by the increased costs, if any, incurred by a
 14 facility and the loss of revenue, if any, incurred by a trans-
 15 porter as a result of such order, and (B) to be paid ulti-
 16 mately through increased rates and charges by those users,
 17 in proportion to the volumes of natural gas consumed by
 18 such users, who are determined by the Commission to bene-
 19 fit as a result of such order: *Provided, however,* That nothing
 20 contained in this subsection shall be construed to extend the
 21 jurisdiction of the Commission to any rates and charges not
 22 otherwise subject to the jurisdiction of the Commission under
 23 section 1 of the Natural Gas Act (15 U.S.C. 717).

24 (2) For the purposes of this subsection, the term
 25 “users” means high priority consumers of natural gas who

1 consume natural gas transported by that natural-gas com-
 2 pany which obtains the natural gas supplies made available
 3 for nonboiler fuel use by an order issued pursuant to this
 4 subsection.

5 (e) Section 11(g)(2) of the Energy Supply and
 6 Environmental Coordination Act of 1974 is amended by
 7 striking out "June 30, 1975", wherever it appears and in-
 8 serting in lieu thereof "June 30, 1976".

9 (f) Notwithstanding any other provision of this section
 10 the Administrator shall not issue any order under this section
 11 which applies to any powerplant, which was in existence on
 12 June 30, 1975, which during the 12-month period preceding
 13 such date did not burn petroleum products and which the
 14 Administrator determines will be operated on natural gas
 15 only for the purpose of providing electric power which would
 16 otherwise be provided by one or more of the base-load power-
 17 plants of the same electric power system, but cannot be
 18 operated because of an air pollution emergency, an unantici-
 19 pated equipment outage, or act of God.

20 PROPANE STANDBY ALLOCATION AUTHORITY

21 SEC. 106. (a) Upon finding that shortages of natural
 22 gas exist or are imminent and upon finding that such short-
 23 ages or potential shortages constitute a threat to the public
 24 health, safety, or welfare, the President is authorized to issue
 25 such orders and regulations as he deems appropriate to pro-

1 vide, consistent with subsection (d) of this section, for the
 2 establishment of priorities of use and for equitable allocation
 3 and distribution of propane to classes of consumers, who are
 4 historical users of propane, and where energy and feedstock
 5 needs have historically been met through the use of propane,
 6 and equitable pricing of propane, in order to meet the essen-
 7 tial needs of various sections of the United States, to lessen
 8 anticompetitive effects resulting from shortages of natural
 9 gas and to provide sufficient incentive to maximize the extrac-
 10 tion and production of propane. Such orders and regulations
 11 shall be consistent with the allocation provisions of section 4
 12 of the Emergency Petroleum Allocation Act of 1973, as
 13 amended (15 U.S.C. 753).

14 (b) (1) Whoever violates any order or regulation
 15 under this section shall be subject to civil penalty of not
 16 more than \$2,500 for each violation.

17 (2) Whoever willfully violates any order or regula-
 18 tion under this section shall be fined not more than \$5,000
 19 for each violation.

20 (3) Any person or agency to whom the President has
 21 delegated his authority pursuant to subsection (j) of this
 22 section may issue such orders and notices as are deemed
 23 necessary to insure compliance with any order or regulation
 24 issued pursuant to subsection (a) of this section or to remedy
 25 the effects of violations of any such orders or regulations.

(c) There shall be available as a defense to any action brought under the antitrust laws, or for breach of contract in any Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange any product covered by this section that such delay or failure was caused solely by compliance with the provisions of this section or with any regulations or any orders issued pursuant to this section.

(d) (1) Subject to paragraphs (2), (3), and (4) of this subsection, which shall apply to any rule, regulation, or order having the applicability and effect of a rule as defined in section 551 (4) of title 5, United States Code, and issued pursuant to this section, the functions exercised under this section are excluded from the operation of subchapter II of chapter 5, and chapter 7 of title 5, United States Code, except as to the requirements of sections 552, 553, and 555 (e) of title, United States Code.

(2) Notice of any proposed rule, regulation, or order described in paragraph (1) of this subsection shall be given by publication of such proposed rule, regulation, or order in the Federal Register. In each case, a minimum of 10 days following such publication shall be provided for opportunity to comment; except that the requirements of this paragraph as to time of notice and opportunity to comment may be waived where strict compliance is found to cause serious harm

or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order.

(3) In addition to the requirements of paragraph (2) of this subsection, if any rule, regulation, or order described in paragraph (1) of this subsection is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be afforded. To the maximum extent practicable, such opportunity shall be afforded prior to the issuance of such rule, regulation, or order, but in all cases such opportunity shall be afforded no later than 45 days after the issuance of any such rule, regulation, or order. A transcript shall be kept of any oral presentation.

(4) The President or any officer or agency authorized to issue the rules, regulations, or orders described in paragraph (1) of this subsection shall provide for the making of such adjustments, consistent with the other purposes of this section, as may be necessary to prevent particular hardship, inequity, or unfair distribution of burdens and shall, by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, rescission of, exception to, or exemption from such rules, regulations, and orders. If such person is aggrieved or adversely affected by the denial of a request for such action under the preceding sentence, he may request a review of such denial

1 by the President or the officer or agency to whom he has
 2 delegated his authority pursuant to subsection (j) of this
 3 section and may obtain judicial review in accordance with
 4 subsection (e) of this section when such denial becomes final.

5 The President or such officer or agency shall, by rule, estab-
 6 lish appropriate procedures, including a hearing where
 7 deemed advisable, for considering such requests for action
 8 under this paragraph.

9 (e) (1) The district courts of the United States shall
 10 have exclusive original jurisdiction of cases or controversies
 11 arising under this section or under regulations or orders is-
 12 sued thereunder, notwithstanding the amount in controversy;
 13 except that nothing in this paragraph or in paragraph (7)
 14 of this subsection shall affect the power of any court of com-
 15 petent jurisdiction to consider, hear, and determine any issue
 16 by way of defense (other than a defense based on the consti-
 17 tutionality of this section or the validity of action taken by
 18 any agency under this section) raised in any proceeding be-
 19 fore such court. If in any such proceeding an issue by way of
 20 defense is raised based on the constitutionality of this section
 21 or the validity of actions under this section, the case shall be
 22 subject to removal by either party to a district court of the
 23 United States in accordance with the applicable provisions
 24 of chapter 89 of title 28, United States Code.

25 (2) Except as otherwise provided in this section,

1 exclusive appellate jurisdiction is vested in the Temporary
 2 Emergency Court of Appeals, a court which is currently
 3 in existence, but which is independently authorized by this
 4 section. The court, a court of the United States, shall consist
 5 of three or more judges to be designated by the Chief Jus-
 6 tice of the United States from judges of the United States
 7 districts courts and circuit courts of appeals. The Chief Justice
 8 of the United States shall designate one of such designated
 9 judges as chief judge of the Temporary Emergency Court of
 10 Appeals, and may, from time to time, designate additional
 11 judges for such court and revoke previous designations. The
 12 chief judge may, from time to time, divide the court into divi-
 13 sions of three or more members, and any such division may
 14 render judgment as the judgment of the court. Except as pro-
 15 vided in subparagraph (B) of paragraph (5) of this subsec-
 16 tion, the court shall not have power to issue any interlocutory
 17 decree staying or restraining in whole or in part any provi-
 18 sion of this section, or the effectiveness of any regulation or
 19 order issued thereunder. In all other respects, the court shall
 20 have the powers of a circuit court of appeals with respect to
 21 the jurisdiction conferred on it by this section. The court shall
 22 exercise its powers and prescribe rules governing its proce-
 23 dure in such manner as to expedite the determination of
 24 cases over which it has jurisdiction under this section. The
 25 court shall have a seal, hold sessions at such places as it

1 may specify, and appoint a clerk and such other employees
2 as it deems necessary or proper.

3 (3) Appeals from the district courts of the United
4 States in cases and controversies arising under regulations or
5 orders issued under this section shall be taken by the filing
6 of a notice of appeal with the Temporary Emergency Court
7 of Appeals within 30 days of the entry of judgment by the
8 district court.

9 (4) In any action commenced under this section in
10 any district court of the United States in which the court
11 determines that a substantial constitutional issue exists, the
12 court shall certify such issue to the Temporary Emergency
13 Court of Appeals. Upon such certification, the Temporary
14 Emergency Court of Appeals shall determine the appropriate
15 manner of disposition which may include a determination
16 that the entire action be sent to it for consideration or it
17 may, on the issues certified, give binding instructions and
18 remand the action to the certifying court for further
19 disposition.

20 (5) (A) Subject to subparagraph (B) of this para-
21 graph, no regulation of any agency exercising authority
22 under this section shall be enjoined or set aside, in whole or
23 in part, unless a final judgment determines that the issuance
24 of such regulation was in excess of the agency's authority,
25 was arbitrary or capricious, or was otherwise unlawful

1 under the criteria set forth in section 706 (2) of title 5,
2 United States Code, and no order of such agency shall be
3 enjoined or set aside, in whole or in part, unless a final
4 judgment determines that such order is in excess of the
5 agency's authority, or is arbitrary or capricious, or is based
6 upon findings which are not supported by substantial
7 evidence.

8 (B) A district court of the United States or the Tem-
9 porary Emergency Court of Appeals may enjoin temporarily
10 or permanently the application of a particular regulation or
11 order issued under this section to a person who is a party to
12 litigation before it. Except as provided in this paragraph,
13 no interlocutory or permanent injunction restraining the en-
14 forcement, operation, or execution of this section, or any reg-
15 ulation or order issued thereunder, shall be granted by any
16 district court of the United States or judge thereof. Any such
17 court shall have jurisdiction to declare (i) that a regulation
18 of an agency exercising authority under this section is in
19 excess of the agency's authority, is arbitrary or capricious, or
20 is otherwise unlawful under the criteria set forth in section
21 706 (2) of title 5, United States Code, or (ii) that an order
22 of such agency is invalid upon a determination that the order
23 is in excess of the agency's authority, or is arbitrary or capri-
24 cious, or is based upon findings which are not supported by
25 substantial evidence. Appeals from interlocutory decisions by

1 a district court of the United States under this subparagraph
2 may be taken in accordance with the provisions of section
3 1292 of title 28, United States Code; except that reference
4 in such section to the courts of appeals shall be deemed to
5 refer to the Temporary Emergency Court of Appeals.

6 (6) The effectiveness of a final judgment of the Tem-
7 porary Emergency Court of Appeals enjoining or setting
8 aside in whole or in part any provision of this section, or any
9 regulation or order issued thereunder shall be postponed until
10 the expiration of time for filing a writ of certiorari with the
11 Supreme Court under paragraph (7) of this subsection. If
12 such petition is filed, the effectiveness of such judgment shall
13 be postponed until an order of the Supreme Court denying
14 such petition becomes final, or until other final disposition of
15 the action by the Supreme Court.

16 (7) Within 30 days after entry of any judgment or
17 order by the Temporary Emergency Court of Appeals, a
18 petition for a writ of certiorari may be filed in the Supreme
19 Court of the United States, and thereupon the judgment or
20 order shall be subject to review by the Supreme Court in
21 the same manner as a judgment of a United States court of
22 appeals as provided in section 1254 of title 28, United
23 States Code. The Temporary Emergency Court of Appeals,
24 and the Supreme Court upon review of judgments and others
25 of the Temporary Emergency Court of Appeals, shall have

1 exclusive jurisdiction to determine the constitutional validity
2 of any provision of this section or of any regulation or order
3 issued under this section. Except as provided in this para-
4 graph, no Federal or State court shall have jurisdiction or
5 power to consider the constitutional validity of any provision
6 of this section or of any such regulation or order, or to stay,
7 restrain, enjoin, or set aside, in whole or in part, any pro-
8 vision of this section authorizing the issuance of such regula-
9 tions or orders, or any provision of any such regulation or
10 order, or to restrain or enjoin the enforcement of any such
11 provision.

12 (f) Whenever it appears to any person or agency
13 authorized by the President pursuant to subsection (j) of
14 this section that any individual or organization has engaged,
15 is engaged, or is about to engage in any acts or practices
16 constituting a violation of any order or regulation under this
17 section, such person or agency may request the Attorney
18 General to bring an action in the appropriate district court
19 of the United States to enjoin such acts or practices, and upon
20 a proper showing, a temporary restraining order or a pre-
21 liminary or permanent injunction shall be granted without
22 bond. Any such court may also issue mandatory injunctions
23 commanding any person to comply with any such order or
24 regulation. In addition to such injunctive relief, the court

1 may also order restitution of moneys received in violation
2 of any such order or regulation.

3 (g) (1) An agency or person exercising authority
4 pursuant to subsection (j) of this section shall have author-
5 ity, for any purpose related to this section, to sign and issue
6 subpoenas for the attendance and testimony of witnesses and
7 the production of relevant books, papers, and other docu-
8 ments, and to administer oaths.

9 (2) Upon presenting appropriate credentials and a
10 written notice to the owner, operator, or agency in charge,
11 any agency or person exercising authority pursuant to sub-
12 section (j) of this section may enter any business premise or
13 facility and inspect, at reasonable times and in a reasonable
14 manner, any such premise or facility, inventory and sample
15 any stock of energy resources therein, and examine and copy
16 books, records, papers, or other documents in order to obtain
17 information as necessary or appropriate for the proper exer-
18 cise of functions under this section and to verify the accuracy
19 of any such information.

20 (3) Witnesses summoned under the provisions of
21 this section shall be paid the same fees and mileage as are
22 paid to witnesses in the courts of the United States. In case
23 of refusal to obey a subpoena served upon any person under
24 the provisions of this subsection, the agency or person
25 authorizing such subpoena may request the Attorney General

1 to seek the aid of the district court of the United States for
2 any district in which such person is found to compel such
3 person, after notice, to appear and give testimony, or to
4 appear and produce documents before the agency or person.

5 (h) Any person suffering legal wrong because of any
6 act or practice arising out of this section, or any order or
7 regulation issued pursuant thereto, may bring an action in
8 a district court of the United States, without regard to
9 the amount in controversy, for appropriate relief, including
10 an action for a declaratory judgment, writ of injunction (sub-
11 ject to the limitations in subsection (e) of this section),
12 or damages.

13 (i) Section 5 (b) of the Federal Energy Administra-
14 tion Act of 1974 (15 U.S.C. 763 (b)) is amended by add-
15 ing the word 'and' after the semicolon in paragraph 10; by
16 deleting paragraph 11; and by redesignating paragraph 12
17 as paragraph 11.

18 (j) The President may delegate the performance of
19 any function under this section to such offices, departments,
20 and agencies of the United States as he deems appropriate.

21 (k) No law, rule, regulation, order, or ordinance of
22 any State or municipality in effect on the date of enactment
23 of this title, or which may become effective thereafter, shall
24 be superseded by any provision of this section or any rule,

1 regulation, or order issued pursuant to this section except
2 insofar as such law, rule, regulation, order, or ordinance is
3 inconsistent with the provisions of this section, or any rule,
4 regulation, or order issued thereunder.

5 EXPIRATION DATE

6 SEC. 107. (a) This title shall expire on midnight
7 April 4, 1976.

8 (b) The expiration of this title and the authority
9 granted under this title shall not affect any action or pending
10 proceedings not finally determined on the date of such ex-
11 piration, or any action or proceeding based upon any act
12 committed prior to such date.

13 TITLE II—NATURAL GAS ACT AMENDMENTS

14 SEC. 201. This title may be cited as the "Natural Gas
15 Act Amendments of 1975".

16 SEC. 202. The Natural Gas Act (15 U.S.C. 717 et
17 seq.) is amended by (1) striking out section 24 thereof
18 (15 U.S.C. 717w); and (2) amending section 1 thereof
19 by redesignating subsections (a), (b), and (c) as sub-
20 sections (b), (c), and (d), respectively, and inserting
21 therein the following new subsection:

22 " (a) This Act may be cited as the 'Natural Gas Act'."

23 SEC. 203. Section 1 (c) of the Natural Gas Act, as
24 redesignated by this title (15 U.S.C. 717 (b)), is amended
25 (1) by deleting "The" at the beginning thereof and by

1 inserting in lieu thereof immediately after "(c)" the follow-
2 ing: "(1) Except as provided in paragraph (2) of this
3 subsection, the"; and (2) by inserting at the end thereof
4 the following new paragraph:

5 " (2) Subject only to the provisions of section 24 of this
6 Act, after the effective date of the National Gas Act Amend-
7 ments of 1975, the authority of the Commission to regulate
8 the sale of natural gas to a natural-gas company for resale
9 in interstate commerce pursuant to this Act shall cease to
10 exist with respect to, and shall not apply to, new natural
11 gas: *Provided, however,* That nothing contained in the
12 Natural Gas Act Amendments of 1975 shall modify or
13 affect the authority of the Commission in effect prior to the
14 date of enactment of such amendments to (A) regulate the
15 transportation in interstate commerce of natural gas or the
16 sale in interstate commerce for resale of old natural gas, or
17 (B) regulate sales for resale of natural gas by any natural-
18 gas company which transports natural gas in interstate com-
19 merce or by an affiliate thereof which transports natural gas
20 in interstate commerce."

21 SEC. 204. (a) Section 2 of the Natural Gas Act (15
22 U.S.C. 717a) is amended by redesignating paragraphs (7)
23 through (9) as paragraphs (12) through (14), and by in-
24 serting the following new paragraphs:

25 " (7) 'Boiler fuel use of natural gas' means the

1 use of natural gas as the source of fuel in a generating
 2 unit of more than 25 megawatts rated net generating
 3 capacity or in any unit which is part of an electric
 4 utilities system with a total net generating capacity of
 5 more than 150 megawatts for the purpose of generating
 6 electricity for distribution.

7 “(8) ‘New natural gas’ means natural gas sold or
 8 delivered in interstate commerce (A) which is dedi-
 9 cated to interstate commerce for the first time on or
 10 after January 1, 1975, (B) which is continued in inter-
 11 state commerce after the expiration of a contract by its
 12 own terms (and not through the exercise of any power
 13 to terminate or renegotiate contained therein) for the
 14 sale or delivery of such natural gas existing as of such
 15 date, or (C) which is produced from wells commenced
 16 on or after such date.

17 “(9) ‘Old natural gas’ means natural gas other
 18 than new natural gas.

19 “(10) ‘Affiliate’ means any person directly or in-
 20 directly controlling, controlled by, or under common
 21 control or ownership with any other person, as deter-
 22 mined by the Commission pursuant to its rulemaking
 23 authority.

24 “(11) ‘Offshore Federal lands’ means any land or
 25 subsurface area within the Outer Continental Shelf, as

1 defined in section 2 (a) of the Outer Continental Shelf
 2 Lands Act (43 U.S.C. 1331 (a)).”.

3 SEC. 205. (a) Section 4 (a) of the Natural Gas Act (15
 4 U.S.C. 717c (a)) is amended by adding at the end thereof
 5 the following new sentence: “The rates and charges made,
 6 demanded, or received by any natural-gas company for, or in
 7 connection with, a contract for the sale of new natural gas
 8 produced from offshore Federal lands shall be deemed to be
 9 just and reasonable, if they do not exceed the applicable
 10 national ceiling, established by regulation of the Commission
 11 or subsequently modified by the Commission pursuant to sec-
 12 tion 24 of this Act, in effect at the time when such new nat-
 13 ural gas is either first sold or first transferred under such con-
 14 tract to a natural-gas company: *Provided, however,* That
 15 rates and charges in excess of such national ceiling may be
 16 authorized by the Commission to provide special relief to
 17 meet extraordinary expenses that could not be anticipated at
 18 the time the national ceiling was established or modified.”.

19 (b) Section 4 (e) of the Natural Gas Act (15 U.S.C.
 20 717c (e)) is amended by adding at the end thereof the fol-
 21 lowing new sentence: “Notwithstanding the foregoing, the
 22 Commission shall have no power (1) to deny, in whole or in
 23 part, any rate or charge made, demanded, or received by
 24 any natural-gas company for, or in connection with, the pur-
 25 chase or sale of new natural gas, or that portion of the rates

1 and charges of such company which relates to such purchase
 2 or sale, except (A) to the extent that such rates or charges,
 3 or such portion thereof, for new natural gas produced from
 4 offshore Federal lands exceed the national ceiling, established
 5 or modified by regulation of the Commission pursuant to sec-
 6 tion 24 of this Act, or (B) in any case where a natural gas
 7 company purchases natural gas from an affiliate or produces
 8 natural gas from its own properties, to the extent that the
 9 Commission determines that the rates and charges therefor
 10 exceed the current rates and charges, or portion thereof,
 11 made, demanded, or received for comparable sales by any
 12 person who is not affiliated with any natural-gas company;
 13 or (2) to order a decrease in the rate or charge made, de-
 14 manded, or received for the sale or transfer of old natural
 15 gas by a natural-gas company if such rate or charge shall
 16 have been previously determined or deemed to be just and
 17 reasonable pursuant to this Act.”.

18 SEC. 206. Section 5(a) of the Natural Gas Act (15
 19 U.S.C. 717d(a)) is amended by striking the period at
 20 the end thereof and by adding the following: “: *Provided*
 21 *further*, That the Commission shall have no power (1) to
 22 deny, in whole or in part, any rate or charge made, de-
 23 manded, or received by any natural-gas company for, or
 24 in connection with, the purchase or sale of new natural gas,
 25 or that portion of the rates and charges of such company

1 which relates to such purchase or sale, except (A) to
 2 the extent that such rates or charges, or such portion
 3 thereof, for new natural gas produced from offshore Fed-
 4 eral lands exceed the national ceiling, established or modi-
 5 fied by regulation of the Commission pursuant to section 25
 6 of this Act, or (B) in any case where a natural-gas com-
 7 pany purchases natural gas from an affiliate or produces
 8 natural gas from its own properties, to the extent that the
 9 Commission determines that the rates and charges therefor
 10 exceed the current rates and charges, or portion thereof,
 11 made, demanded, or received for comparable sales by any
 12 person who is not affiliated with any natural-gas company;
 13 or (2) to order a decrease in the rate or charge made,
 14 demanded, or received for the sale or transfer of old natural
 15 gas by a natural-gas company if such rate or charge shall
 16 have been previously determined or deemed to be just and
 17 reasonable pursuant to this Act.”.

18 SEC. 207. Section 14 of the Natural Gas Act (15
 19 U.S.C. 717m) is amended by adding at the end thereof the
 20 following new subsection:

21 “(h) (1) The Commission is further authorized and
 22 directed to conduct studies of the production, gathering, stor-
 23 age, transportation, distribution, and sale of natural, artificial,
 24 or synthetic gas, however produced, throughout the United
 25 States and its possessions whether or not otherwise subject

1 to the jurisdiction of the Commission, including the produc-
 2 tion, gathering, storage, transportation, distribution, and sale
 3 of natural, artificial or synthetic gas by any agency, author-
 4 ity, or instrumentality of the United States, or of any State
 5 or municipality or political subdivision of a State. It shall,
 6 insofar as practicable, secure and keep current information
 7 regarding the ownership, operation, management, and con-
 8 trol of all facilities for production, gathering, storage, trans-
 9 portation, distribution, and sale; the total estimated natural
 10 gas reserves of fields or reservoirs and the current utilization
 11 of natural gas and the relationship between the two; the cost
 12 of production, gathering, storage transportation, distribution,
 13 and sale; the rates, charges, and contracts in respect to the
 14 sale of natural gas and its service to residential, rural, and
 15 commercial and industrial consumers, and other purchasers
 16 by private and public agencies; and the relation of any and
 17 all such facts to the development of conservation, industry,
 18 commerce, and the national defense. The Commission shall
 19 report to the Congress and may publish and make available
 20 the results of studies made under the authority of this sub-
 21 section.

22 “(2) In making studies, investigations, and reports
 23 under this section, the Commission shall utilize, insofar as
 24 practicable, the services, studies, reports, information, and
 25 programs of existing departments, bureaus, offices, agencies,

1 and other entities of the United States, of the several States,
 2 and of the natural-gas industry, but such studies, investiga-
 3 tions, and reports shall be based on information developed,
 4 or completely reviewed for accuracy, after the date of enact-
 5 ment of this subsection. Nothing in this section shall be
 6 construed as modifying, reassignment, or otherwise affecting
 7 the investigative and reporting activities, duties, powers, and
 8 functions of any other department, bureau, office, or agency
 9 in the Federal Government.

10 “(3) In order to assist in determining necessary
 11 actions to eliminate the national emergency which exists
 12 with respect to natural gas supplies the Commission shall
 13 carry out and complete, not later than 90 days after the date
 14 of enactment of this subsection, an initial such study with
 15 respect to the total estimated natural gas reserves of fields
 16 and reservoirs and the current utilization of natural gas and
 17 the relationship between the two. Such study shall include
 18 specific estimates for individual fields and reservoirs but shall
 19 not include reserves controlled by small producers. On
 20 January 1, 1977, and at the beginning of each calendar year
 21 thereafter, the Commission shall, within the following 90-day
 22 period, complete a review of the previous study and revise
 23 the results thereof to the extent necessary. A report of such
 24 initial study and each such review shall be made, within the

1 time provided for the completion thereof, to the President
2 and the Congress.”.

3 SEC. 208. The Natural Gas Act, as amended by this
4 title, is further amended by adding at the end thereof the
5 following three new sections:

6 “NATIONAL CEILING FOR RATES AND CHARGES

7 “SEC. 24. (a) The Commission shall, as soon as prac-
8 ticable after the date of enactment of the Natural Gas Act
9 Amendments of 1975, and pursuant to rulemaking proce-
10 dures under section 553 of title 5, United States Code, estab-
11 lish by regulation, and may from time to time modify, a
12 national ceiling for rates and charges for the sale or transfer
13 in interstate commerce by any person of new natural gas
14 produced from offshore Federal lands on or after January 1,
15 1975, through December 31, 1980. In establishing such
16 national ceiling the Commission shall consider the following
17 factors and only these factors:

18 “(1) the prospective costs attributable to the ex-
19 ploration, development, production, gathering, and sale
20 of natural gas;

21 “(2) the rates and charges necessary to encour-
22 age the optimum levels of (A) the exploration for
23 natural gas, (B) the development, production, and
24 gathering of natural gas, and (C) the maintenance of
25 proved reserves of natural gas;

1 “(3) the promotion of sound conservation prac-
2 tices in natural-gas consumption necessary to contribute
3 to the maintenance of a supply of energy resources at
4 reasonable prices to consumers; and

5 “(4) the rates and charges that will protect con-
6 sumers of natural gas from price increases that would,
7 in the absence of a national ceiling during periods of
8 actual or anticipated shortages, exceed the rates and
9 charges necessary to achieve the objectives of para-
10 graphs (1) through (3) of this subsection.

11 “(b) The Commission shall monitor the national
12 ceiling for rates and charges for the sale or transfer in
13 interstate commerce by any person of new natural gas, and
14 during the period such ceiling is in effect, commencing on
15 July 1, 1976, the Commission shall report to the Congress
16 not less than annually on the effectiveness of such national
17 ceiling in meeting the factors set forth in subsection (a) of
18 this section.

19 “(c) The Commission may authorize a person to
20 charge an amount in excess of such national ceiling for new
21 natural gas produced from offshore Federal lands from any
22 high cost production area or vertical drilling depth as des-
23 ignated by the Commission pursuant to its rulemaking au-
24 thority. In establishing such amount in excess of such na-

1 tional ceiling, the Commission shall consider the factors set
2 forth in subsection (a) of this section and only those factors.

3 “(d) Any contract entered into after the date of
4 enactment of the Natural Gas Act Amendments of 1975
5 for the sale of new natural gas for resale which involves the
6 receipt by the seller of funds in advance of production of
7 the natural gas covered by such contract shall be filed with
8 the Commission at least 60 days in advance of deliveries
9 thereunder. The Commission may thereafter require, after
10 notice and opportunity for hearing, that the sales rate spec-
11 ified in such contract be reduced or modified as necessary
12 to repay in full to the advancing party the principal of the
13 advance and any interest thereon, upon such terms and con-
14 ditions as the Commission may determine proper in the
15 public interest.

16 “(e) Within 30 days after the enactment of the
17 Natural Gas Act Amendments of 1975 and on January
18 first of each year thereafter until the establishment of the
19 national ceiling pursuant to subsection (a) of this section by
20 a final Commission order which is no longer subject to judi-
21 cial review, the Commission shall establish an interim na-
22 tional ceiling for rates and charges for the sale or transfer
23 in interstate commerce by any person of new natural gas
24 produced from offshore Federal lands which shall be equiva-
25 lent to the average dollar valuation per barrel of crude oil

1 used by the United States Geological Survey or its successor
2 in computing the royalties due the United States on account
3 of crude oil produced from all Federal lands during the
4 calendar month ending 30 days prior to such computation.
5 Such interim national ceiling shall be expressed in one mil-
6 lion British thermal unit, and shall be determined by divid-
7 ing such average dollar valuation per barrel of crude oil
8 by 5.8. Such interim national ceiling shall cease to have
9 effect on the date of the establishment of the national ceiling
10 pursuant to subsection (a) of this section by final Commis-
11 sion order which is no longer subject to judicial review or on
12 January 1, 1981, whichever is earlier. After the establish-
13 ment of the national ceiling pursuant to subsection (a) of
14 this section by final Commission order which is no longer
15 subject to judicial review, such national ceiling shall apply
16 to the sale or transfer in interstate commerce of all new
17 natural gas produced from offshore Federal lands whether
18 or not contracted for prior to the date of such establish-
19 ment: *Provided, however,* That the Commission shall have
20 no power to order a reduction in the rates and charges
21 for the sale of new natural gas produced from offshore
22 Federal lands and contracted for prior to the date of
23 the establishment of such national ceiling below the interim
24 ceiling price in effect on such date.

1 "NATURAL GAS FOR ESSENTIAL AGRICULTURAL PURPOSES
 2 "SEC. 25. (a) Except to the extent that natural-gas
 3 supplies are required to maintain natural-gas service to
 4 residential users, small users, hospitals, and similar services
 5 vital to public health and safety, and notwithstanding any
 6 other provision of law or of any natural-gas allocation or
 7 curtailment plan in effect under existing law, the Commis-
 8 sion shall, by rule, prohibit any interruption or curtailment
 9 of natural gas and take such other steps as are necessary to
 10 assure as soon as practicable the availability in interstate
 11 commerce of sufficient quantities of natural gas for use for
 12 any essential agricultural, food processing, or food packaging
 13 purpose for which natural gas is essential, including but not
 14 limited to irrigation pumping, crop drying, use as a raw
 15 material feedstock, or process fuel in the production of
 16 fertilizer and essential agricultural chemicals in existing
 17 plants (for present or expanded capacity) and in new plants.
 18 The Secretary of Agriculture shall determine by rule the
 19 agricultural, food processing, or food packaging purposes for
 20 which natural gas is essential. The Secretary of Agriculture
 21 shall also certify to the Commission the amount of natural
 22 gas which is necessary for such essential uses to meet re-
 23 quirement for full food and fiber production.
 24 "(b) ESSENTIAL INDUSTRIAL PURPOSES.—Except to
 25 the extent that natural gas supplies are required to maintain

1 natural-gas service to users specified under subsection (a),
 2 the Commission shall exercise its authority under this title to
 3 assure, to the maximum extent feasible, the continuance of
 4 natural gas service to users using natural gas as a raw ma-
 5 terial and uses other than boiler fuel for which there is no
 6 substitute regardless of whether such users purchase natural
 7 gas under firm or interruptible contracts.

8 "NATURAL GAS CONSERVATION

9 "SEC. 26. (a) Except as provided in subsection (d)
 10 of this section, the Commission shall by rule prohibit boiler
 11 fuel use of natural gas affecting commerce not contracted
 12 for prior to January 1, 1975, unless, upon petition by the
 13 user, the Commission determines that—

14 "(1) alternative fuels, other than crude oil or
 15 products refined therefrom and propane, are not avail-
 16 able to such user; or

17 "(2) it is not feasible or practicable to utilize such
 18 alternative fuels at the time of such Commission deter-
 19 mination.

20 "(b) Except as provided in subsection (d) of this
 21 section, boiler fuel use of natural gas contracted for prior
 22 to January 1, 1975, shall be terminated by the user of such
 23 natural gas as the expiration of such contract or 12 years
 24 after the date of enactment of the Natural Gas Act Amend-
 25 ments of 1975, whichever is earlier, unless, upon petition of

1 such user, the Commission determines that (1) alternative
 2 fuels, other than crude oil or products refined therefrom and
 3 propane, are not available to such user, or (2) it is not
 4 feasible or practicable to utilize such alternative fuels at the
 5 time of such Commission determination. The Commission
 6 shall modify or terminate certificates of public convenience
 7 and necessity relating to such contracts to the extent neces-
 8 sary to carry out the purpose of this subsection.

9 “(c) Except as expressly provided in subsection (b)
 10 of this section, the Commission shall not (1) modify,
 11 amend, or abrogate contracts entered into prior to January 1,
 12 1975, for the sale or transportation of natural gas for boiler
 13 fuel use; (2) modify, amend, or abrogate certificates of
 14 public convenience and necessity authorizing the sale or
 15 transportation of natural gas under such contracts, except
 16 upon application duly made by the holder of a certificate
 17 under section 7 of this Act; or (3) prevent, impair, or
 18 limit, either directly or indirectly, the performance of any
 19 such contract or certificate: *Provided, however,* That the
 20 provisions of this subsection shall not otherwise modify or
 21 affect the authority of the Commission under this Act.

22 “(d) The Commission shall also exempt from any rule
 23 under this section the burning of natural gas by powerplants
 24 for the purpose of operating pollution abatement systems.

25 “(e) The Commission shall not prohibit the boiler
 26 fuel use of natural gas for the necessary processes of ignition,

1 startup, testing, and flame stabilization by a facility, or for
 2 the purpose of alleviating short-term air quality emergencies
 3 or any other danger to the public health, safety, or welfare.

4 “(f) In implementing the provisions of this section,
 5 the Commission shall, to the extent necessary, apply the
 6 provisions of section 17 of this Act.

7 “(g) Nothing in this section shall impair any require-
 8 ment in any State or Federal law pertaining to safety or
 9 environmental protection. The Commission, in determining
 10 feasibility or practicability where required by this section,
 11 shall not assume that there will be any lessening in any
 12 safety or environmental requirement established pursuant to
 13 State or Federal law.”.

14 SEC. 209. Section 2 of the Natural Gas Act, as desig-
 15 nated by this Act (15 U.S.C. 717), is amended by inserting
 16 at the end thereof a new subsection as follows:

17 “(d) Nothing in this Act shall prevent the intrastate
 18 transportation of natural gas first sold in commerce after the
 19 date of enactment of this subsection in an interstate pipeline
 20 as long as such intrastate transportation does not prevent
 21 service necessary to meet the requirements of interstate
 22 consumers and the rates for such transportation reflect the
 23 fully distributive costs of the interstate facilities used therein,
 24 and the provisions of this Act shall not apply to any such
 25 intrastate transportation or the facilities utilized in such
 26 service.”.

94TH CONGRESS
1ST SESSION

H. R. 10480

A BILL

To provide authority to institute emergency measures to minimize the adverse effects of natural gas shortages, to provide authority to allocate propane, to regulate commerce to assure increased supplies of natural gas at reasonable prices for consumers, and for other purposes.

By Mr. KRUEGER, Mr. BROYHILL, Mr. BROWN of California, Mr. BROWN of Ohio, Mr. COUGHLIN, Mr. DERRICK, Mr. FLOWERS, Mr. HORTON, Mr. McCLOSKEY, Mr. MCKINNEY, Mr. MOSHER, Mr. PREYER, Mr. PRITCHARD, Mr. RUNNELS, Mr. SATTERFIELD, and Mr. CHARLES WILSON of Texas

OCTOBER 31, 1975

Referred to the Committee on Interstate and Foreign
Commerce