

[COMMITTEE PRINT]

95TH CONGRESS }
1st Session }

HOUSE OF REPRESENTATIVES {

REPORT
No. 95—

EMERGENCY NATURAL GAS ACT OF 1977

-----Ordered to be printed

Mr. -----, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 474]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 474), to authorize the President of the United States to order emergency deliveries and transportation of natural gas to deal with existing or imminent shortages by providing assistance in meeting requirements for high-priority uses; to provide authority for short-term emergency purchases of natural gas; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

That this Act may be cited as the "Emergency Natural Gas Act of 1977".

DEFINITIONS

SEC. 2. As used in this Act:

(1) The term "high-priority use" means—

(A) use of natural gas in a residence;

(B) use of natural gas in a commercial establishment in amounts of less than 50 Mcf on a peak day; or

(C) any other use of natural gas the termination of which the President determines would endanger life, health, or maintenance of physical property.

(2) The term "interstate pipeline" means any natural-gas company, as defined in section 2(6) of the Natural Gas Act, which is engaged in the transportation by pipeline of natural gas.

(3) The term "intrastate pipeline" means any person (other than an interstate pipeline) engaged in the transportation by pipeline of natural gas.

(4) The term "interstate natural gas" means natural gas (other than natural gas transported pursuant to a transportation certificate issued under 18 C.F.R. 2.79) transported by an interstate pipeline in a facility which is certificated under the Natural Gas Act or which would be required to be so certificated but for section 1(c) of such Act.

(5) The term "local distribution company" means any person (including a governmental entity) which receives natural gas for local distribution and resale to natural gas users.

(6) The term "antitrust laws" means the Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (15 U.S.C. 12, 13, 14-19, 20, 21, 22-27), the Federal Trade Commission Act (15 U.S.C. 41 et seq.), sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8-9), and the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a), and similar State laws.

(7) The term "State" means any State of the United States and the District of Columbia.

PRESIDENTIAL DECLARATION

SEC. 3. The President may declare a natural gas emergency if he finds that a severe natural gas shortage endangering the supply of natural gas for high-priority uses exists or is imminent in the United States or in any region thereof and that the exercise of his authorities under section 4 is reasonably necessary, having exhausted other remedies to the maximum extent practicable, to assist in meeting requirements for such uses. Such emergency shall be terminated when the President finds that such shortages no longer exist and are no longer imminent.

EMERGENCY DELIVERIES AND TRANSPORTATION OF NATURAL GAS

SEC. 4. (a) (1) If the President finds it necessary to assist in meeting the requirements for high-priority uses of natural gas (including short-term storage replenishment or injection for protection of high-priority uses), on the basis of a notification by the Governor of any State pursuant to subsection (c) or on the basis of other information available to the President, the President may, during a natural gas emergency declared under section 3, by order, require—

(A) any interstate pipeline to make emergency deliveries of, or to transport, interstate natural gas to any other interstate pipeline or to any local distribution company served by an interstate pipeline for purposes of meeting such requirements;

(B) any intrastate pipeline to transport interstate natural gas from any interstate pipeline to another interstate pipeline or to any local distribution company served by an interstate pipeline for purposes of meeting such requirements; or

(C) the construction and operation by any pipeline of any facilities necessary to effect such deliveries or transportation.

No such delivery or transportation may continue after April 30, 1977, or after the President terminates the emergency declared under section 3, whichever is earlier.

(2) No order may be issued under this subsection unless the President determines that such order will not—

(A) create for the interstate pipeline delivering interstate natural gas a supply shortage which will cause such pipeline to be

unable to meet the requirements for high-priority uses served, directly or indirectly, by such pipeline;

(B) result in a disproportionate share of deliveries or curtailments of natural gas experienced by such interstate pipeline when compared to deliveries and resulting curtailments which are experienced as a result of orders applicable to other interstate pipelines (as determined by the President); and

(C) require transportation of natural gas by any pipeline in excess of its available transportation capacity.

(3) In issuing such order the President shall also consider the relative availability of alternative fuel to users of the interstate pipeline ordered to make deliveries pursuant to this section.

(b) Compliance by any pipeline with an order issued under subsection (a) shall not subject such pipeline to regulation under the Natural Gas Act (15 U.S.C. 717 et seq.) or to regulation as a common carrier under any provision of State or Federal law. No action required to be taken under an order issued under subsection (a) shall be subject to any provision of the Natural Gas Act and any such order shall supersede any provision of a certification, or other requirement, under the Natural Gas Act which is inconsistent with such order.

(c) (1) The Governor of any State may notify the President of any finding by such Governor that a shortage of natural gas within such State, endangering the supply of natural gas for high-priority uses, exists or is imminent and that the State, and agencies and instrumentalities thereof, have exercised their authority to the fullest extent practicable and reasonable under the circumstances to overcome such shortage.

(2) The Governor shall submit, together with any notification under paragraph (1), information upon which he has based his finding under such paragraph, including—

(A) volumes of natural gas required to meet the requirements for high-priority uses in such state;

(B) information received from persons in the business of producing, selling, transporting, or delivering natural gas in such State as to the volumes of natural gas available in such State; and

(C) such other information as the Governor determines appropriate to apprise the President of emergency deliveries and transportation of interstate natural gas needed in such State.

(d) The President may request that representatives of interstate pipelines, intrastate pipelines, local distribution companies, and other persons meet and provide assistance to the President in carrying out his authority under this section.

(e) (1) In order to obtain information to carry out his authority under this Act, the President may—

(A) sign and issue subpoenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(B) require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information, and such answers shall be made within such reasonable period, and under oath or otherwise, as the President may determine; and

(C) secure, upon request, any information from any Federal department or executive agency.

(2) The appropriate United States district court may, upon petition of the Attorney General at the request of the President, in the case of refusal to obey a subpoena or order of the President issued under this subsection, issue an order requiring compliance therewith, and any failure to obey an order of the court may be punished by the court as a contempt thereof.

(f) (1) If the parties to any order issued under subsection (a) fail to agree upon the terms of compensation for deliveries (which may include compensation in kind) or transportation required pursuant to such order, the President, after a hearing held either before or after such order takes effect, shall, by supplemental order, prescribe the amount of compensation (which may include compensation in kind) to be paid for such deliveries or transportation and for any other expenses incurred in delivering or transporting such gas.

(2) If, for the purpose of a supplemental order pursuant to paragraph (1), the party making emergency deliveries pursuant to subsection (a)—

(A) indicates a preference for compensation in kind, the President shall direct that compensation in kind be provided by August 1, 1977, to the maximum extent practicable,

(B) indicates a preference for compensation, or the President determines pursuant to paragraph (A) of this subsection that any portion thereof cannot practicably be compensated in kind, the President shall calculate the amount of compensation for deliveries of natural gas, based upon the amount required to make the interstate pipeline delivering such natural gas and its local distribution companies whole for loss of sales resulting therefrom; including the actual amount paid by such interstate pipeline or any of its local distribution companies for the volumes of natural gas or higher cost gas such as synthetic natural gas which were needed to replace natural gas delivered pursuant to an order under subsection (a); and for transportation, storage, and other expenses, based upon reasonable costs, as determined by the President.

(g) In order to effect the purposes of this Act, the President shall monitor the operation of any order made pursuant to this section to assure that natural gas delivered pursuant to this section is applied to high-priority uses only.

ANTITRUST PROTECTIONS

SEC. 5. (a) There shall be available as a defense for any person to civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any action taken or meeting held pursuant to a request or order of the President under section 4 (a) or (d) of this Act, if—

(1) such action was taken or meeting held solely for the purpose of complying with the President's request or order;

(2) such action was not taken for the purpose of injuring competition; and

(3) such person complied with the requirements of subsection (b) of this section.

Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(b) A meeting held pursuant to a request by the President under section 4(d) or pursuant to an order under section 4(a) complies with the requirements of subsection (a) if—

(1) there is present at such meeting a full-time Federal employee designated for such purposes by the Attorney General;

(2) a full and complete record of such meeting is taken and deposited, together with any agreements resulting therefrom, with the Attorney General, who shall make it available for public inspection and copying;

(3) the Attorney General and the Federal Trade Commission have the opportunity to participate from the beginning in the development and carrying out of agreements and actions under sections 4(a) and 4(d), in order to propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this Act; and

(4) such other procedures as may be specified in such request or order are complied with.

EMERGENCY PURCHASES

SEC. 6. (a) The President may authorize any interstate pipeline or local distribution company served by an interstate pipeline (or class or category of such pipelines or companies) to contract, upon such terms and conditions as the President determines to be appropriate (including provisions respecting fair and equitable prices), for emergency supplies of natural gas for delivery before August 1, 1977—

(1) from any producer of natural gas (other than a producer who is affiliated with the purchaser as determined by the President) if (A) such natural gas is not produced from the Outer Continental Shelf and (B) the sale or transportation of such gas was not, immediately before the date on which such contract was entered into, certificated under the Natural Gas Act, or

(2) from any intrastate pipeline, local distribution company, or other person (other than in interstate pipeline or a producer of natural gas).

The President may not authorize any emergency purchase contract under this subsection for emergency supplies of natural gas for sale and delivery from any intrastate pipeline which is operating under court supervision as of January 1, 1977, unless the court approves.

(b) (1) The provisions of the Natural Gas Act shall not apply—

(A) to any sale of natural gas to an interstate pipeline or local distribution company under the authority of subsection (a) or to any transportation by an intrastate pipeline in connection with any such sale; or

(B) to any natural gas company (within the meaning of the Natural Gas Act) solely by reason of any such sale or transportation.

(2) In exercising its authority under the Natural Gas Act, the Federal Power Commission shall not disallow, in whole or in part, recov-

ery by any interstate pipeline, through the rates and charges made, demanded, or received by such pipeline, the amounts actually paid by it for natural gas purchased, transported, or other costs incurred pursuant to subsection (a).

(c) (1) The President may, by order, require any pipeline to transport such natural gas, and to construct and operate such facilities for transportation of natural gas, as may be necessary to carry out contracts authorized under subsection (a). The costs of any such required construction shall be paid by the party receiving such natural gas. No such order shall require any pipeline to transport any natural gas in excess of such pipeline's available capacity.

(2) Compliance by any pipeline with any order under this subsection shall not subject such pipeline to regulation under the Natural Gas Act or to regulation as a common carrier under any provision of State law.

(d) As used in this section, the term "Outer Continental Shelf" has the same meaning as such term has under section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

ADJUSTMENT IN CHARGES FOR LOCAL DISTRIBUTION COMPANIES

SEC. 7. Compensation received by an interstate pipeline pursuant to section 4 in excess of the amount such pipeline would have charged its local distribution companies shall be credited to such local distribution companies in proportion to their share of any natural gas not delivered together with credits necessary to make whole any local distribution company which replaced such natural gas with higher cost gas such as synthetic natural gas as prescribed in section 4(f)(2)(B). Compensation paid by an interstate pipeline for deliveries or emergency purchases of natural gas pursuant to section 4 or section 6 shall be charged to such interstate pipeline's local distribution companies in proportion to their share of such natural gas deliveries or purchases.

RELATIONSHIP TO NATURAL GAS ACT

SEC. 8. Except as expressly provided in this Act, nothing contained in this Act shall be interpreted to change, modify, or otherwise affect rules, regulations, or other regulatory requirements or procedures of the Federal Power Commission pursuant to the provisions of the Natural Gas Act.

EFFECT OF CERTAIN CONTRACTUAL OBLIGATIONS

SEC. 9. (a) There shall be available as a defense to any action brought for breach of contract under Federal or State law arising out of any act or omission that such act was taken or that such omission occurred for purposes of complying with any order issued under section 4(a).

(b) Any contractual provision—

(1) prohibiting the sale or commingling of natural gas subject to such contract with natural gas subject to the provisions of the Natural Gas Act, or

(2) terminating any obligation under any such contract as a result of such sale or commingling,

is hereby declared against public policy and unenforceable with respect to such natural gas if an order under section 4(a) or an authorization under section 6(a) applies to the delivery, transportation, or contract for supplies of such natural gas.

(c) The amounts and prices of any natural gas purchases pursuant to an order, under section (4), an authorization under section 6(a), or a contract entered into pursuant to 18 C.F.R. 2.68 after the date of the enactment of this Act and before August 1, 1977, shall not be taken into account for purposes of any contractual provision which determines the price of any natural gas (or terminates the contract for the sale of natural gas) on the basis of sales of other natural gas.

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 10. (a) Subchapter II of chapter 5 of title 5 of the United States Code (other than sections 554, 556, and 557 thereof) shall apply to orders and other actions under this Act.

(b) Except with respect to enforcement of orders or subpoenas under section 4(e), the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended, shall have exclusive original jurisdiction to review all cases and controversies under this Act, including any order issued, or other action taken, under this Act. The Temporary Emergency Court of Appeals shall have exclusive jurisdiction of all appeals from the district courts of the United States in cases and controversies arising under section 4(e) of this Act; such appeals shall be taken by the filing of a notice of appeal with the Temporary Emergency Court of Appeals within thirty days of the entry of judgment by the district court.

(c) Prior to a final judgment, no court shall have jurisdiction to grant any injunctive relief to stay or defer the implementation of any order issued, or action taken, by the President under this Act.

ENFORCEMENT

SEC. 11. (a) Any person who violates an order or supplemental order issued under section 4 or an order under section 6(c) shall be subject to a civil penalty of not more than \$25,000 for each violation of such order. Each day of violation shall constitute a separate offense.

(b) Any person who willfully violates an order or supplemental order issued under section 4 or an order under section 6(c) shall be fined not more than \$50,000 for each violation of such order. Each day of violation shall constitute a separate violation.

(c) Whenever it appears to the President that any individual or organization has engaged, is engaged, or is about to engage in acts or practices constituting a violation of any order issued under section 4(a), any supplemental order issued under section 4(f), or any order under section 6(c), the President may request the Attorney General to bring a civil action to enjoin such acts or practices and, upon showing, a temporary restraining order or preliminary or permanent injunction shall be granted without bond. In any such action, the court may also issue mandatory injunctions commanding any person to comply with any such order or supplemental order.

REPORTING

SEC. 12. (a) In issuing any order under section 4(a) or granting any authorization under section 6, the President shall require that the prices and volumes of natural gas delivered, transported, or contracted for pursuant to such order or authorization shall be reported to him on a weekly basis and such reports shall be made available to the Congress.

(b) The President shall report to Congress not later than October 1, 1977, respecting his actions under this Act.

DELEGATION OF AUTHORITIES

SEC. 13. The President may delegate all or any portion of the authority granted to him under this Act to such executive agencies (within the meaning of 5 U.S.C. 105) or officers of the United States as he determines appropriate, and may authorize such redelegation as may be appropriate. Except with respect to section 552 of title 5 of the United States Code, any officer or executive agency of the United States to which authority is delegated or redelegated under this Act shall be subject only to such procedural requirements respecting the exercise of such authority as the President would be subject to if such authority were not so delegated.

PREEMPTION OF INCONSISTENT STATE OR LOCAL ACTION

SEC. 14. Any order issued pursuant to this Act shall preempt any provision of any program for the allocation, emergency delivery, transportation, or purchase of natural gas established by any State or local government if such program is in conflict with any such order.

And the House agree to the same.

HARLEY O. STAGGERS,
JOHN D. DINGELL,
BOB ECKHARDT,
PHILIP R. SHARP,
ANTHONY TOBY MOFFETT,
JAMES T. BROYHILL,
CLARENCE J. BROWN.

Managers on the Part of the House.

ADLAI E. STEVENSON, III,
J. BENNETT JOHNSTON,
JAMES B. PEARSON,
TED STEVENS,
ERNEST F. HOLLINGS.

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 474) to authorize the President of the United States to order emergency deliveries and transportation of natural gas to deal with existing or imminent shortages by providing assistance in meeting requirements for high-priority uses; to provide authority for short-term emergency purchases of natural gas; and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendments struck out all of the Senate bill after the enacting clause and inserted a substitute text, and the Senate disagreed to the House amendment.

The committee of conference recommends that the Senate recede from the disagreement to the amendment of the House, with an amendment which is a substitute for both the text of the Senate bill and the House amendment to the text of the Senate bill.

The text of the conference substitute is the same as the text of the Senate bill with three changes described below.

Section 2(2) of the Senate bill defines the term "interstate pipeline" as any person engaged in the transportation of interstate natural gas.

The conference substitute adopts the House language which defines the term "interstate pipeline" as any natural-gas company, as defined in section 2(6) of the Natural Gas Act, which is engaged in the transportation by pipeline of natural gas.

Section 2(4) of the Senate bill defines "interstate natural gas" as natural gas which, but for this Act, is subject to the Natural Gas Act.

Section 2(4) of the conference substitute adopts the House language which defines "interstate natural gas" as natural gas (other than natural gas transported pursuant to a transportation certificate issued under 18 C.F.R. 2.79) transported by an interstate pipeline in a facility certificated under the Natural Gas Act and adds at the end of the House language the following: "or which would be required to be so certificated but for section 1(c) of such Act".

Section 9(c) of the Senate bill provides that the amounts and prices of any natural gas purchased pursuant to an order under section 4(a) or an authorization under section 6(a) will not be taken into account for purposes of any contractual provision which determines the price of any natural gas (or terminates the contract for the sale of natural gas) on the basis of sales of other natural gas.

Section 9(c) of the conference substitute closely follows the Senate bill and the House amendment and provides that the amounts and prices of any natural gas purchases pursuant to an order under sec-

tion 4(a), an authorization under section 6(a), or a contract entered into pursuant to 18 C.F.R. 2.68 after the date of enactment of this Act and before August 1, 1977, shall not be taken into account for purposes of any contractual provision which determines the price of any natural gas (or terminates the contract for the sale of natural gas) on the basis of sales of other natural gas.

The House conferees receded from the House position on the Eckhardt amendment, which appeared in section 6(a) and (d) (1) of the House amendment (relating to reasonable prices), on the basis of the representations made by Dr. Schlesinger in his letter of January 31, 1977, to Senator Stevenson. The letter reads as follows:

THE WHITE HOUSE,
Washington, D.C., January 31, 1977.

HON. ADLAI E. STEVENSON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STEVENSON: This is in response to your inquiry about the implementation of the "Fair and Equitable" price standard in Section VI of S474, the Emergency Natural Gas Act of 1977.

It is our intention to provide price certainty so that once a specific transaction has been authorized by the President, there would be no risk of a price roll-back for that transaction.

We believe a fair amount of flexibility is desirable to assure the maximum flow of natural gas to areas of shortage. Toward that end, we would expect to establish a threshold level, such as, for example, the price at which natural gas has recently been sold in intra-state commerce at which sales would be authorized by general rule and not subject to roll-back. Sales above that level might be subject to specific review. In any event, there would be no roll-back of the price for a specific transaction once it had been authorized by the President.

Sincerely,

JAMES R. SCHLESINGER,
Assistant to the President.

Similarly, the House conferees receded from the House position on the Broyhill amendment, which appeared in section 4(a) (2) and (a) (3) (B) of the House substitute, on the basis of the representations made by Dr. Schlesinger at the hearings before the Ad Hoc Subcommittee on Energy and Power of the Committee on the Interstate and Foreign Commerce on January 28, 1977 in the following colloquy:

Mr. BROYHILL. I have been concerned that perhaps there are not enough guidelines in this bill to give some Congressional intent and direction as to how you would carry out this allocation authority. It had been my purpose to offer an amendment that would tend to spell this out.

Briefly, it would go like this: That your order, first, would be limited to the natural gas which would be expected to be burned as boiler fuel by users served by those interstate pipelines or distributing companies.

If no more fuel gas is available on any of these interstate pipelines, then the President could order the diversion of

gas that would be going for priority number three and then if all gas in priority number three has been diverted, then the President can order the diversion of priority gas number two.

I wonder if you would give your comment as to a plan of this kind for the orderly diversion of gas that might be available?

Mr. SCHLESINGER. It will be the judgment of the Congress with regard to the specific powers given to the President. We intend to follow such orderly procedures as you have indicated in diverting gas from lower priority users and those pipelines still serving such uses where the supplies are relatively abundant to those that are beginning to cut in or threaten to cut into priority one users.

It would be my immediate reaction, since we are intending to follow such procedures, that if the Congress includes in the law those procedures in a rigorous way, that it might tie our hands in circumstances that it would not be the desire of the Congress to do.

Mr. BROYHILL. Would you say that it is your intent to divert that gas that would ordinarily be burned as boiler fuel as your first order of diversion?

Mr. SCHLESINGER. That would seem to be the appropriate thing to do. I would put it in a more general way, that throughout the East, we are down to priority two users at most, overall. In some places, in the West, priorities three, four, five and even higher, are being served by interstate pipelines.

So, quite naturally, the conclusion to be drawn is one that we need not spell out.

The conferees were of the view that, because the fact that the bill was an emergency measure requested by the Administration, it should not be regarded as a precedent for subsequent Congressional action on matters to which the bill relates.

HARLEY O. STAGGERS,
JOHN D. DINGELL,
BOB ECKHARDT,
PHILIP R. SHARP,
ANTHONY TOBY MOFFETT,
JAMES T. BROYHILL,
CLARENCE J. BROWN,
Managers on the Part of the House.

ADLAI E. STEVENSON, III,
J. BENNETT JOHNSTON,
JAMES B. PEARSON,
TED STEVENS,
ERNEST F. HOLLINGS,
Managers on the Part of the Senate.