

JAN 27 1977

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Section-By-Section Analysis of  
Emergency Natural Gas Legislation

Section 1 states that the bill may be cited as the "Emergency Natural Gas Act of 1977."

Section 2. Definitions

"High priority use" means (1) use of natural gas in a residence; (2) use of natural gas in a commercial establishment in amounts of less than 50 Mcf on a peak day; or (3) any other use the termination of which the President determines would endanger life, health, or maintenance of physical property.

"Interstate pipeline" means any person engaged in the transportation by pipeline of natural gas in interstate commerce.

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

"Local distribution company" is defined as any person (including a governmental entity) which receives natural gas for local distribution and resale to natural gas users.

"Antitrust laws" means the Sherman Act, the Clayton Act, the Federal Trade Commission Act, the Wilson Tariff Act, and the Act of June 19, 1936, chapter 592 and similar State laws.

"State" means any State of the United States and the District of Columbia.

Section 3. Presidential Authority

Section 3 would authorize the President to declare a national or regional natural gas emergency. This would allow him to exercise the allocation authorities granted him under section 4. In order to declare such an emergency, the President would be required to find that (1) a severe natural gas shortage endangering the supply of natural gas for high priority uses exists or is imminent in the United States (or any region thereof), and (2) the exercise of his authorities under section 4 is reasonably necessary to

assist in meeting requirements for such uses. An emergency would be terminated when the President finds that such shortages no longer exist and are no longer imminent.

#### Section 4. Emergency Deliveries and Transportation of Natural Gas

Section 4(a) would authorize the President during a natural gas emergency to take certain actions to assist in meeting the requirements for high priority uses of natural gas. These uses would include storage injection limited to maintenance of line pressure, but not storage for the purpose of return deliveries. He would take upon the request of a State Governor or on the basis of other information available to him.

If these criteria were met, the President could, by order, require an interstate pipeline to make emergency deliveries of, or to transport, interstate natural gas to another interstate pipeline or to any local distribution company which is served by an interstate pipeline. In addition, the President could, by order, require an intrastate pipeline to transport interstate natural gas allocated from an interstate pipeline to another interstate pipeline or to a local distribution company which is served by an interstate pipeline. Finally, the President could, by order, require the construction and operation by any pipeline of any necessary facilities to effect deliveries or transportation of natural gas to be delivered or transported pursuant to this section. No delivery or transportation could continue after April 30, 1977 or after the President terminates the emergency, whichever is earlier.

No allocation order, however, could be issued if the President determined that the order would create a situation whereby an interstate pipeline would be unable to meet its requirements for high priority uses or would result in deliveries of natural gas from such pipeline which are excessive in relation to deliveries which are required under orders applicable to other interstate pipelines. No order could require transportation of natural gas by such pipeline in excess of its transportation capacity.

Subsection (b) makes it clear that compliance with this section will not subject a pipeline to regulation under the Natural Gas Act. Additionally, orders under this section would be outside the reach of the Natural Gas Act and would override existing inconsistent Natural Gas Act certifications.

Subsection (c) would allow any Governor to notify the President that a natural gas shortage exists or is imminent within the State which will endanger supply to high priority users, and that the State has exercised its authority to the fullest extent practicable and reasonable to overcome the shortage. With this notification, a Governor would submit the information upon which he reached his decision to notify the President.

Subsection (d) of section 4 would allow the President to request that pipeline companies, local distribution companies, and other persons meet with and assist him in carrying out the authority under section 4. Subsection (e) would provide the President subpoena and other information gathering authorities for the purpose of carrying out the substantive authorities of the bill.

Subsection (f) is designed to insure that disagreement as to terms of compensation relating to an order under section 4 will not result in an inability to deliver or transport the natural gas which is the subject of such order. This subsection provides, in the event the parties to an allocation order fail to agree upon terms of compensation, that the President shall prescribe after a hearing the compensation and any other expenses incurred in delivering or transporting the natural gas. Presidentially-set compensation for delivery of natural gas would be based upon reasonable replacement cost, plus not more than 5% of such replacement cost. Transportation and other expenses would be based upon reasonable costs.

#### Section 5. Antitrust Protection

The bill would make available as a defense to any anti-trust action the fact that the activity which is the subject of the action was necessary to carry out an allocation order or occurred during a meeting conducted pursuant to a request of the President to carry out this emergency program.

Subsection (b) would establish the conditions upon which the antitrust defense would apply to any meeting held to carry out the purposes of certain sections of the bill. This subsection would require the presence of a representative of the Federal Government designated by the Attorney General to attend the meeting. Also, a complete record of the meeting, together with any agreement resulting from the meeting, would be submitted to the Attorney General who would make it available for public inspection. In addition, no meeting could be held unless such other procedures specified in any request or order under the Act were complied with.

## Section 6. Emergency Purchases

This section is designed to help insure that any interstate pipeline or local distribution company served by an interstate pipeline will meet its needs for emergency supplies of natural gas through July 31, 1977. The President may authorize any such pipeline or local distribution company to contract (upon such terms and conditions as the President determines to be appropriate) for emergency supplies of natural gas for delivery before this date. These purchases could be delivered from any producer of natural gas not affiliated with an interstate pipeline unless such natural gas was produced from the Outer Continental Shelf, and the sale or transportation of the gas was not, immediately prior to the date of the contract for purchase of the gas, certificated under the National Gas Act. In addition, the supplier could be any intrastate pipeline, local distribution company or other person (other than a producer or an interstate pipeline). There is no restriction on the use to which this gas should be put and the price is left to the parties, free from Federal Power Commission jurisdiction, but subject to review by the President for fairness and equity.

Subsection (b) would provide that the Natural Gas Act shall not apply to any emergency sale to an interstate pipeline or local distribution company made under the authority of the bill or to transportation in connection with the sale if such transportation would not otherwise be subject to the Natural Gas Act.

That Act also would not apply to any natural gas company solely by reason of a sale made under this section. This subsection is also designed to prohibit the Federal Power Commission from disallowing the recovery by an interstate pipeline of the amounts paid by it for natural gas pursuant to an emergency purchase under this section.

Subsection (c) would authorize the President to require, by order, any interstate or intrastate pipeline to transport gas and operate facilities necessary to carry out emergency purchase contracts. However, no order under this subsection could require any pipeline to transport natural gas in excess of its available capacity, nor would compliance by a

pipeline with an order under this subsection subject the pipeline to regulation under the Natural Gas Act or as a common carrier.

#### Section 7. Purchased Gas Adjustment Clauses

This section would require an interstate pipeline receiving compensation in an allocation transaction to pass the benefits through to its customers pursuant to its Federal Power Commission purchased gas adjustment clause. The pipeline paying compensation in an allocation transaction or an emergency purchase would otherwise be able to use its PGA clause to pass through the costs of the gas it obtained.

#### Section 8. Relationship to Natural Gas Act

This provision makes clear that, except as provided in this Act, nothing in the bill would affect any rules, regulations, or other regulatory requirements or procedures of the Federal Power Commission carried out pursuant to the Natural Gas Act.

#### Section 9. Effect on Certain Contractual Obligations

This section would allow a party to raise as a defense to any breach of contract action the fact that the conduct or action taken was taken to comply with this bill.

Section 9 also would render unenforceable as against public policy any contractual provisions, prohibiting the commingling of intrastate natural gas with interstate gas or terminating any contractual obligation as a result of the commingling. Additionally, the amounts and prices of natural gas purchases made pursuant to the bill could not be taken into account for purposes of any contractual arrangement which determines the price on the basis of sales of other natural gas.

#### Section 10. Administrative Procedure and Judicial Review

This section would provide that the Administrative Procedure Act (other than formal adjudication procedures) would apply to action taken under the bill. With the exception of

enforcement of orders or subpoenas under section 4(e), the Temporary Emergency Court of Appeals would be granted exclusive original jurisdiction to review actions taken under the Act. In addition, prior to final TECA judgment, no injunctive relief to stay or defer the implementation of any order issued or action taken under the Act could be granted.

#### Section 11. Enforcement

Violation of an order issued under section 4 or section 6(c) would subject the violator to a civil penalty of up to \$25,000. A willful violation would subject the violator to a fine of up to \$50,000. Each day of violation would constitute a separate violation.

This section would also authorize the President to request the Attorney General to seek injunctive relief against any individual or organization which is engaged in, or is about to engage in, acts which constitute a violation of any order under section 4(a), section 4(f) or section 6(c).

#### Section 12. Reporting

The President, in issuing any order under section 4(a) or granting any authorization under section 6, would require that the prices and volumes of gas which are delivered, transported, or contracted for pursuant to the order or authorization be reported to him on a weekly basis. These reports will be made available to the Congress. In addition, the President would be required to report to Congress by October 1, 1977, concerning actions taken under the Act.

#### Section 13. Delegation of Authorities

This section would clarify the fact that the President may delegate any authorities granted him under this Act to appropriate Federal Agencies or officers of the United States. If the authority were delegated, the officer or executive agency carrying out the functions under the Act would be subject only to such procedural requirements as the President would, had the authority not been delegated. The Freedom of Information Act, however, would apply to the delegate.

## A B I L L

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, 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 person engaged in the transportation by pipeline of interstate 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 which, but for this Act, is subject to the Natural Gas 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, the Clayton Act, the Federal Trade Commission Act, the Wilson Tariff Act, 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 any region thereof and that the exercise of his authorities under section 4 is reasonably necessary 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 storage replenishment or injection), 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 deliveries of natural gas from such pipeline which are excessive (as determined by the President) in relation to deliveries which are required under orders applicable to other interstate pipelines; and

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

(b) Compliance by any pipeline with an order issued under subsection (a) shall not subject such pipeline to regulation under the Natural Gas Act 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 section, 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 to be paid for such deliveries or transportation and for any other expenses incurred in delivering or transporting such gas.

(2) For purposes of paragraph (1), the President shall calculate the amount of compensation --

(A) for deliveries of natural gas, based upon the reasonable replacement cost of such gas, as determined by the President, plus not more than 5 percent of such cost; and

(B) for transportation and other expenses, based upon reasonable costs, as determined by the President.

#### Antitrust Protections

Sec. 5(a) There shall be available as a defense to any action brought under the antitrust laws (1) that the activity which is the subject of such action was pursuant to a request of the President under section 4(d) or was necessary to carry out an order under section 4(a), and (2) in the case of any meeting, that such meeting was pursuant to such a request or necessary to carry out such an order and was in compliance with the requirements of subsection (b).

(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 this subsection 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 agreement resulting therefrom, with the Attorney General, who shall make it available for public inspection; and
- (3) 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 an interstate pipeline 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 an interstate pipeline or a producer of natural gas).

(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 in connection with any such sale if such transportation would not otherwise be subject to such Act; 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, recovery 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 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). 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).

#### Purchased Gas Adjustment Clauses

Sec. 7. In the case of any interstate pipeline receiving compensation under section 4 with respect to deliveries ordered pursuant to such section, such compensation shall be reflected as a reduction in the cost of purchased gas for purposes of any purchased gas adjustment clause applicable to such pipeline. In the case of any interstate pipeline paying compensation with respect to deliveries or contracts for supplies of natural gas under section 4 or section 6, such compensation shall be reflected as an increase in the cost of purchased gas for such purpose.

#### 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 on 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(a) or an authorization under section 6(a) 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 shall have exclusive original jurisdiction to review any order issued, or other action taken, under this Act.

(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.