

95TH CONGRESS
1ST SESSION

H. R. 2500

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 1977

Mr. STAGGERS (by request) (for himself, Mr. DEVINE, Mr. DINGELL, Mr. SHARP, Mr. OTTINGER, Mr. MOFFETT, Mr. MAGUIRE, and Mr. MOORHEAD of California) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Emergency Natural Gas
4 Act of 1977".

5 DEFINITIONS

6 SEC. 2. As used in this Act:

7 (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 request 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

1 any other interstate pipeline or to any local distribution
 2 company served by an interstate pipeline for purposes
 3 of meeting such requirements;

4 (B) any intrastate pipeline to transport interstate
 5 natural gas from any interstate pipeline to another
 6 interstate pipeline or to any local distribution company
 7 served by an interstate pipeline for purposes of meet-
 8 ing such requirements; or

9 (C) the construction and operation by any pipe-
 10 line of any facilities necessary to effect such deliveries
 11 or transportation.

12 No such delivery or transportation may continue after April
 13 30, 1977, or after the President terminates the emergency
 14 declared under section 3, whichever is earlier.

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

17 (A) create for the interstate pipeline delivering
 18 interstate natural gas a supply shortage which will cause
 19 such pipeline to be unable to meet the requirements for
 20 high-priority uses served, directly or indirectly, by such
 21 pipeline;

22 (B) result in deliveries of natural gas from such
 23 pipeline which are excessive (as determined by the Pres-
 24 ident) in relation to deliveries which are required under
 25 orders applicable to other interstate pipelines; and

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

3 (b) Compliance by any pipeline with an order issued
 4 under subsection (a) shall not subject such pipeline to reg-
 5 ulation under the Natural Gas Act or to regulation as a
 6 common carrier under any provision of State or Federal law.

7 No action required to be taken under an order issued under
 8 subsection (a) shall be subject to any provision of the
 9 Natural Gas Act and any such order shall supersede any
 10 provision of a certification, or other requirement, under the
 11 Natural Gas Act which is inconsistent with such order.

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

20 (2) The Governor shall submit, together with any noti-
 21 fication under paragraph (1), information upon which he
 22 has based his finding under such paragraph, including—

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

25 (B) information received from persons in the busi-

1 ness of producing, selling, transporting, or delivering
2 natural gas in such State as to the volumes of natural
3 gas available in such State; and

4 (C) such other information as the Governor deter-
5 mines appropriate to apprise the President of emergency
6 deliveries and transportation of interstate natural gas
7 needed in such State.

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

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

14 (A) sign and issue subpoenas for the attendance and
15 testimony of witnesses and the production of books, rec-
16 ords, papers, and other documents;

17 (B) require any person, by general or special
18 order, to submit answers in writing to interrogatories,
19 requests for reports or for other information, and such
20 answers shall be made within such reasonable period,

21 and under oath or otherwise, as the President may deter-
22 mine; and

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

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

8 (f) (1) If the parties to any order issued under sub-
9 section (a) fail to agree upon the terms of compensation for
10 deliveries (which may include compensation in kind) or
11 transportation required pursuant to such order, the Presi-
12 dent, after a hearing held either before or after such order
13 takes effect, shall, by supplemental order, prescribe the
14 amount of compensation to be paid for such deliveries or
15 transportation and for any other expenses incurred in deliver-
16 ing or transporting such gas.

17 (2) For purposes of paragraph (1), the President shall
18 calculate the amount of compensation—

19 (A) for deliveries of natural gas, based upon the
20 reasonable replacement cost of such gas, as determined
21 by the President, plus not more than 5 per centum of
22 such cost; and

23 (B) for transportation and other expenses, based
24 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

1 connection with any such sale if such transportation
2 would not otherwise be subject to such Act; or
3 (B) to any natural gas company (within the mean-
4 ing of the Natural Gas Act) solely by reason of any such
5 sale or transportation.

6 (2) In exercising its authority under the Natural Gas
7 Act, the Federal Power Commission shall not disallow, in
8 whole or in part, recovery by any interstate pipeline, through
9 the rates and charges made, demanded, or received by such
10 pipeline, the amounts actually paid by it for natural gas
11 purchased pursuant to subsection (a).

12 (c) (1) The President may, by order, require any pipe-
13 line to transport such natural gas, and to construct and
14 operate such facilities for transportation of natural gas, as
15 may be necessary to carry out contracts authorized under
16 subsection (a). No such order shall require any pipeline to
17 transport any natural gas in excess of such pipeline's avail-
18 able capacity.

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

23 (d) As used in this section, the term "Outer Continental
24 Shelf" has the same meaning as such term has under sec-

1 tion 2 of the Outer Continental Shelf Lands Act (43 U.S.C.
2 1331).

3 PURCHASED GAS ADJUSTMENT CLAUSES

4 SEC. 7. In the case of any interstate pipeline receiving
5 compensation under section 4 with respect to deliveries
6 ordered pursuant to such section, such compensation shall be
7 reflected as a reduction in the cost of purchased gas for pur-
8 poses of any purchased gas adjustment clause applicable to
9 such pipeline. In the case of any interstate pipeline paying
10 compensation with respect to deliveries or contracts for sup-
11 plies of natural gas under section 4 or section 6, such com-
12 pensation shall be reflected as an increase in the cost of pur-
13 chased gas for such purpose.

14 RELATIONSHIP TO NATURAL GAS ACT

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

20 EFFECT ON CERTAIN CONTRACTUAL OBLIGATIONS

21 SEC. 9. (a) There shall be available as a defense to any
22 action brought for breach of contract under Federal or State
23 law arising out of any act or omission that such act was

1 taken or that such omission occurred for purposes of com-
 2 plying with any order issued under section 4 (a).

3 (b) Any contractual provision—

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

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

9 is hereby declared against public policy and unenforceable
 10 with respect to such natural gas if an order under section
 11 4 (a) or an authorization under section 6 (a) applies to the
 12 delivery, transportation, or contract for supplies of such
 13 natural gas.

14 (c) The amounts and prices of any natural gas purchases
 15 pursuant to an order under section 4 (a) or an authorization
 16 under section 6 (a) shall not be taken into account for
 17 purposes of any contractual provision which determines the
 18 price of any natural gas (or terminates the contract for the
 19 sale of natural gas) on the basis of sales of other natural
 20 gas.

21 ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

22 SEC. 10. (a) Subchapter II of chapter 5 of title 5 of
 23 the United States Code (other than sections 554, 556, and
 24 557 thereof) shall apply to orders and other actions under
 25 this Act.

1 (b) Except with respect to enforcement of orders or
 2 subpoenas under section 4 (e), the Temporary Emergency
 3 Court of Appeals shall have exclusive original jurisdiction to
 4 review any order issued, or other action taken, under this
 5 Act.

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

10 ENFORCEMENT

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

16 (b) Any person who willfully violates an order or sup-
 17 plemental order issued under section 4 or an order under
 18 section 6 (c) shall be fined not more than \$50,000 for each
 19 violation of such order. Each day of violation shall con-
 20 stitute a separate violation.

21 (c) Whenever it appears to the President that any
 22 individual or organization has engaged, is engaged, or is
 23 about to engage in acts or practices constituting a violation
 24 of any order issued under section 4 (a), any supplemental
 25 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.

1st Session
89th Congress
H. R. 5200

V B I T

To authorize the President of the United States
to exercise the authority of the President of the United States
in meeting requirements for high-priority
transportation of natural gas to deal with existing or
other purposes.

other purposes.

Mr. [Name] and Mr. [Name] of California
Mr. [Name] Mr. [Name] Mr. [Name] Mr. [Name]
Mr. [Name] Mr. [Name] Mr. [Name] Mr. [Name]

Referred to the Committee on Interstate and Foreign
Commerce
January 26, 1966

H. R. 2500

A BILL

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.

By Mr. STAGGERS, Mr. DEVINE, Mr. DINGELL,
Mr. SHARP, Mr. OTTINGER, Mr. MOFFETT, Mr.
MAGUIRE, and Mr. MOORHEAD of California

JANUARY 26, 1977

Referred to the Committee on Interstate and Foreign
Commerce

Union Calendar No.

95TH CONGRESS
1ST SESSION

H. R. 2500

[Report No. 95-]

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JANUARY 26, 1977

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JANUARY , 1977

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

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- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 ~~That this Act may be cited as the "Emergency Natural Gas~~
4 ~~Act of 1977".~~

5 ~~DEFINITIONS~~

6 ~~SEC. 2. As used in this Act:~~

7 ~~(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 request 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—~~

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1 ~~any other interstate pipeline or to any local distribution~~
 2 ~~company served by an interstate pipeline for purposes~~
 3 ~~of meeting such requirements;~~

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 5 ~~natural gas from any interstate pipeline to another~~
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9 ~~(C) the construction and operation by any pipe-~~
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12 ~~No such delivery or transportation may continue after April~~
 13 ~~30, 1977, or after the President terminates the emergency~~
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17 ~~(A) create for the interstate pipeline delivering~~
 18 ~~interstate natural gas a supply shortage which will cause~~
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~~(d) The President may request that representatives of
interstate pipelines, intrastate pipelines, local distribution
companies, and other persons meet and provide assistance to
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~~(e) (1) In order to obtain information to carry out his
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~~(A) sign and issue subpoenas for the attendance and
testimony of witnesses and the production of books, rec-
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~~(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
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~~(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 con-
tempt thereof.~~

~~(f) (1) If the parties to any order issued under sub-
section (a) fail to agree upon the terms of compensation for
deliveries (which may include compensation in kind) or
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dent, after a hearing held either before or after such order
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ing or transporting such gas.~~

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calculate the amount of compensation~~

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reasonable replacement cost of such gas, as determined
by the President, plus not more than 5 per centum of
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~~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~~

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~~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).~~

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1 ~~tion 2 of the Outer Continental Shelf Lands Act (43 U.S.C.~~
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3 ~~PURCHASED GAS ADJUSTMENT CLAUSES~~

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 19 ~~pursuant to the provisions of the Natural Gas Act.~~

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 22 ~~action brought for breach of contract under Federal or State~~
 23 ~~law arising out of any act or omission that such act was~~

1 ~~taken or that such omission occurred for purposes of com-~~
 2 ~~plying with any order issued under section 4(a).~~

3 ~~(b) Any contractual provision—~~

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

7 ~~(2) terminating any obligation under any such~~
 8 ~~contract as a result of such sale or commingling.~~

9 ~~is hereby declared against public policy and unenforceable~~
 10 ~~with respect to such natural gas if an order under section~~
 11 ~~4(a) or an authorization under section 6(a) applies to the~~
 12 ~~delivery, transportation, or contract for supplies of such~~
 13 ~~natural gas.~~

14 ~~(c) The amounts and prices of any natural gas purchases~~
 15 ~~pursuant to an order under section 4(a) or an authorization~~
 16 ~~under section 6(a) shall not be taken into account for~~
 17 ~~purposes of any contractual provision which determines the~~
 18 ~~price of any natural gas (or terminates the contract for the~~
 19 ~~sale of natural gas) on the basis of sales of other natural~~
 20 ~~gas.~~

~~ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW~~

21 ~~SEC. 10. (a) Subchapter II of chapter 5 of title 5 of~~
 22 ~~the United States Code (other than sections 554, 556, and~~
 23 ~~557 thereof) shall apply to orders and other actions under~~
 24 ~~this Act.~~
 25

1 ~~(b) Except with respect to enforcement of orders or~~
 2 ~~subpenas under section 4(e), the Temporary Emergency~~
 3 ~~Court of Appeals shall have exclusive original jurisdiction to~~
 4 ~~review any order issued, or other action taken, under this~~
 5 ~~Act.~~

6 ~~(c) Prior to a final judgment, no court shall have juris-~~
 7 ~~isdiction to grant any injunctive relief to stay or defer the~~
 8 ~~implementation of any order issued, or action taken, by the~~
 9 ~~President under this Act.~~

~~ENFORCEMENT~~

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

16 ~~(b) Any person who willfully violates an order or sup-~~
 17 ~~plemental order issued under section 4 or an order under~~
 18 ~~section 6(c) shall be fined not more than \$50,000 for each~~
 19 ~~violation of such order. Each day of violation shall con-~~
 20 ~~stitute a separate violation.~~

21 ~~(c) Whenever it appears to the President that any~~
 22 ~~individual or organization has engaged, is engaged, or is~~
 23 ~~about to engage in acts or practices constituting a violation~~
 24 ~~of any order issued under section 4(a), any supplemental~~
 25 ~~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.~~

SHORT TITLE

SECTION 1. 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 or health, or result in physical harm to plant or other facilities (including material in process).

Subparagraph (C) does not include uses for maintenance of plant production.

(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

1 (other than an interstate pipeline) engaged in the trans-
2 portation by pipeline of natural gas.

3 (4) The term "interstate natural gas" means natural
4 gas (other than natural gas transported pursuant to a trans-
5 portation certificate issued under 18 C.F.R. 2.79) trans-
6 ported by an interstate pipeline in a facility certificated under
7 the Natural Gas Act.

8 (5) The term "local distribution company" means any
9 person (including a State or instrumentality thereof) which
10 receives natural gas for local distribution and resale to
11 natural gas users.

12 (6) The term "antitrust laws" means the Sherman Act,
13 the Clayton Act, the Federal Trade Commission Act, the
14 Wilson Tariff Act, and the Act of June 19, 1936, chapter
15 592 (15 U.S.C. 13, 13a, 13b, and 21a), and similar State
16 laws.

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

19 (8) The term "natural gas" has the same meaning as
20 when used in the Natural Gas Act.

21 PRESIDENTIAL DECLARATION

22 SEC. 3. The President may declare a natural gas emer-
23 gency for purposes of section 4 if he finds that a severe
24 natural gas shortage endangering the supply of natural gas
25 for high-priority uses exists or is imminent in the United

1 States or any part thereof and that the exercise of his
2 authorities under section 4 is reasonably necessary to assist
3 in meeting requirements for such uses. Such emergency shall
4 be terminated when the President finds that the exercise of
5 his authority under section 4 is no longer reasonably neces-
6 sary to assist in meeting such requirements, or on April 30,
7 1977, whichever first occurs.

8 EMERGENCY DELIVERIES AND TRANSPORTATION OF 9 NATURAL GAS

10 SEC. 4. (a)(1) If the President finds it necessary to
11 assist in meeting the requirements for high-priority uses of
12 natural gas (including storage replenishment or injection
13 for such uses) during the period of the natural gas emer-
14 gency declared under section 3, on the basis of a request by
15 the Governor of any State pursuant to subsection (c) or
16 on the basis of other information available to the Presi-
17 dent, the President may, during such emergency, by order,
18 require—

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

24 (B) any intrastate pipeline to transport interstate
25 natural gas from any interstate pipeline to another

1 interstate pipeline or to any local distribution company
 2 served by an interstate pipeline for purposes of meet-
 3 ing such requirements; or

4 (C) the construction and operation by any pipe-
 5 line of any facilities necessary to effect such deliveries
 6 or transportation.

7 No such delivery or transportation may continue after
 8 April 30, 1977, or after the President terminates the emer-
 9 gency declared under section 3, whichever first occurs.

10 (2) In ordering any delivery from, or transportation
 11 by, any pipeline under this subsection, the President, to the
 12 maximum extent practicable, shall order deliveries or trans-
 13 portation of natural gas on the basis of the categories of use
 14 specified in the regulation contained in section 2.78(a)(1)
 15 of title 18, Code of Federal Regulations, as in effect on the
 16 date of enactment of this Act. To the maximum extent prac-
 17 ticable, deliveries or transportation of natural gas which
 18 would otherwise be expected to be used in the categories first
 19 to be curtailed under such regulation shall be ordered under
 20 subsection (a) before ordering any other pipeline to make
 21 deliveries or transportation of natural gas which would
 22 otherwise be expected to be used in categories to be later
 23 curtailed according to the priorities established in such
 24 regulation. For purposes of this paragraph and for purposes
 25 of paragraph (3)(B), categories (iv) through (ix) (as

1 specified in 18 C.F.R. 2.78(a)(1)) shall be treated as one
 2 category.

3 (3) No order may be issued under this subsection unless
 4 the President, after consultation, to the maximum extent
 5 practicable, with the Governor of any State served by the
 6 pipeline which will be required to deliver or transport natural
 7 gas under such order, determines that such order will not—

8 (A) create, for the interstate pipeline delivering
 9 interstate natural gas, a supply shortage which will cause
 10 such pipeline to be unable to meet the requirements for
 11 high-priority uses served, directly or indirectly, by such
 12 pipeline;

13 (B) result in deliveries from any interstate pipeline
 14 which are excessive (as determined by the President) in
 15 relation to deliveries required under such orders from
 16 other such pipelines which are curtailing within the same
 17 category of use established in section 2.78(a)(1) of title
 18 18, Code of Federal Regulations; or

19 (C) require transportation of natural gas by an
 20 intrastate pipeline except to the extent that it has unuti-
 21 lized transportation capacity.

22 (4) To the extent consistent with the provisions of para-
 23 graphs (2) and (3), in issuing orders under this section,
 24 the President shall, to the maximum extent practicable, con-
 25 sider the existing relative economic conditions of areas from

1 which interstate natural gas can be delivered and shall, where
 2 practicable, order the delivery of natural gas under subsec-
 3 tion (a) from interstate pipelines serving areas where exist-
 4 ing economic conditions are more favorable. In assessing
 5 economic conditions, the President shall utilize current unem-
 6 ployment statistics and such other economic indicators as he
 7 deems relevant.

8 (b) Compliance by any pipeline with an order issued
 9 under subsection (a) shall not subject such pipeline to reg-
 10 ulation under the Natural Gas Act or to regulation as a
 11 common carrier under any provision of State or Federal law.
 12 No action required to be taken under an order issued under
 13 subsection (a) shall be subject to any provision of the
 14 Natural Gas Act and any such order shall supersede any
 15 provision of a certification, or other requirement, under the
 16 Natural Gas Act which is inconsistent with such order.

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

25 (2) The Governor shall submit, together with any noti-

1 fication under paragraph (1), information upon which he
 2 has based his finding under such paragraph, including—

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

5 (B) information received from persons in the busi-
 6 ness of producing, selling, transporting, or delivering
 7 natural gas in such State as to the volumes of natural
 8 gas available in such State; and

9 (C) such other information as the Governor deter-
 10 mines appropriate to apprise the President of emergency
 11 deliveries and transportation of interstate natural gas
 12 needed in such State.

13 (d) The President shall monitor the implementation of
 14 orders issued under this section to assure that natural gas de-
 15 livered pursuant to such orders is applied only to assist in
 16 meeting the needs of high-priority uses for which deliveries
 17 were ordered under this section.

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

22 (f)(1) In order to obtain information necessary or
 23 appropriate to carry out his authority under this Act, the
 24 President may, before August 1, 1977—

25 (A) sign and issue subpoenas for the attendance and

1 testimony of witnesses and the production of books,
2 records, papers, and other documents;

3 (B) require any person (including any State or
4 instrumentality thereof), by general or special order, to
5 submit answers in writing to written questions and to
6 submit reports or other information, and such answers,
7 reports, and other information shall be made within such
8 reasonable period, and under oath or otherwise, as the
9 President may determine; and

10 (C) secure, upon request, any information from any
11 executive agency (as defined in section 105 of title 5 of
12 the United States Code).

13 Failure to comply with any order under subparagraph (B)
14 shall be treated as a violation of section 11 of the Energy
15 Supply and Environmental Coordination Act of 1974 and
16 shall be enforced under section 12 of such Act. Section 11(d)
17 of such Act shall apply with respect to information obtained
18 under this paragraph. In applying such sections to any
19 failure to comply with any such order or to any such informa-
20 tion so obtained, all references therein to the Federal Energy
21 Administrator shall be treated as references to the President.

22 (2) The appropriate United States district court may,
23 upon petition of the Attorney General at the request of the
24 President, in the case of refusal to obey a subpoena or order
25 of the President issued under this subsection, issue an order

1 requiring compliance therewith, and any failure to obey an
2 order of the court may be punished by the court as a con-
3 tempt thereof.

4 (g)(1) Each order under subsection (a) shall specify
5 the persons required to pay compensation for the deliveries,
6 transportation, construction, operation, or other expenses,
7 the President, after an opportunity for a hearing on the
8 record (either before or after such order takes effect), shall,
9 by supplemental order, prescribe the amount of such com-
10 pensation to be paid.

11 (2) A supplemental order under paragraph (1) shall
12 provide that the compensation to be paid for deliveries,
13 transportation, and other expenses shall be the amount which
14 the President determines is necessary to provide full com-
15 pensation. In determining compensation under this para-
16 graph, the President shall consider—

17 (A) in the case of an order for deliveries to the
18 interstate pipeline or local distribution company whose
19 natural gas is subject to an order under subsection (a)—

20 (i) current prices for such deliveries; and
21 (ii) reasonable replacement costs for such
22 natural gas;

23 (B) in the case of an order for deliveries of natural
24 gas owned by any person, other than an interstate pipe-

1 line or local distribution company, the reasonable costs
2 of alternative fuels to replace such natural gas; and

3 (C) other costs, including costs of operation, main-
4 tenance, capital amortization, and taxes.

5 (3) Any terms of compensation agreed to by the persons
6 affected by any order under subsection (a) may be reviewed
7 by the President and if the President finds that such com-
8 pensation is excessive, he shall, after an opportunity for a
9 hearing on the record, prescribe, by supplemental order, the
10 amount of such compensation in accordance with para-
11 graph (2).

12 ANTITRUST PROTECTIONS

13 SEC. 5. (a) There shall be available as a defense to
14 any action brought under the antitrust laws (1) that the
15 activity which is the subject of such action was taken pursuant
16 to a request of the President under section 4(e) or was neces-
17 sary to carry out an order under section 4(a), and (2)
18 in the case of any meeting, that such meeting was held pur-
19 suant to such a request or was necessary to carry out such
20 an order and complied with the requirements of subsection
21 (b). This defense shall not apply if the activity or meeting
22 was taken or held for the purpose of injuring competition.
23 Persons interposing the defense provided by this subsection
24 shall have the burden of proving such defense, except that
25 the burden shall be on the person against whom the defense

1 is asserted with respect to whether the activities or meetings
2 were taken or held for the purpose of injuring competition.

3 (b) A meeting held pursuant to a request by the Presi-
4 dent under section 4(e) or pursuant to an order under sec-
5 tion 4(a) complies with the requirements of this subsection
6 if—

7 (1) there is present at such meeting a regular
8 full-time Federal employee designated for such pur-
9 poses by the Attorney General;

10 (2) a full and complete record of such meeting is
11 taken and deposited, together with any agreement result-
12 ing therefrom, with the Attorney General, who shall
13 make it available for public inspection; and

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

16 (c) The Attorney General and the Federal Trade Com-
17 mission shall, when practicable, participate from the begin-
18 ning in the development and carrying out of agreements and
19 actions under section 4(a) or 4(e). Each may propose any
20 alternative which would avoid or overcome, to the greatest
21 extent practicable, possible anticompetitive effects while
22 achieving substantially the purposes of this Act.

23 (d) An order under section 4(a) shall describe the
24 types of substantive actions (if any) which may be taken
25 under the order, and shall be as specific in its description of

1 proposed substantive actions as is reasonable in light of
2 known circumstances.

3 EMERGENCY PURCHASES

4 SEC. 6. (a) The President may authorize any inter-
5 state pipeline or local distribution company served by an
6 interstate pipeline (or class or category of such pipelines or
7 companies) to contract, at reasonable prices (as defined in
8 subsection (d)(1)), and on such other terms and conditions
9 as the President determines to be appropriate, for emergency
10 supplies of natural gas for delivery before August 1, 1977—

11 (1) from any producer of natural gas if (A) such
12 natural gas is not produced from the Outer Continental
13 Shelf and (B) the sale or transportation of such gas
14 was not, immediately before the date on which such
15 contract was entered into, certificated under the Natural
16 Gas Act, or

17 (2) from any intrastate pipeline (other than a
18 pipeline operating under court supervision unless such
19 court grants its approval), local distribution company,
20 or other person (other than an interstate pipeline or a
21 producer of natural gas).

22 In the case of a contract for emergency supplies of natural
23 gas between an interstate pipeline and a producer of natural
24 gas who is an affiliate (as determined by the President) of

1 such pipeline, the President shall not authorize such con-
2 tract unless he determines that the price at which such
3 natural gas is to be sold does not exceed the price at which
4 such natural gas would be sold if the producer were not an
5 affiliate of such pipeline.

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

8 (A) to (i) any sale of natural gas to an interstate
9 pipeline or local distribution company under the authority
10 of subsection (a), or (ii) any transportation by an
11 intrastate pipeline in connection with any such sale; or
12 (B) to any natural gas company (within the mean-
13 ing of the Natural Gas Act) solely by reason of any such
14 sale or transportation.

15 (2) In exercising its authority under the Natural Gas
16 Act, the Federal Power Commission shall not disallow, in
17 whole or in part, recovery by any interstate pipeline, through
18 the rates and charges made, demanded, or received by such
19 pipeline, the amounts actually paid by it for natural gas
20 purchased pursuant to subsection (a).

21 (c)(1) The President may, by order, require any pipe-
22 line to transport such natural gas, and to construct and
23 operate such facilities for transportation of natural gas, as
24 may be necessary to carry out contracts authorized under

1 subsection (a). No such order shall require any pipeline to
2 transport any natural gas except to the extent that it has
3 unutilized transportation capacity.

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

8 (3)(A) Each order under paragraph (1) shall specify
9 the persons, if any, required to pay compensation for the
10 construction or operation required under such order or for
11 transportation by an intrastate pipeline required under such
12 order and for other expenses incurred in connection with
13 such construction, operation, or transportation. If the per-
14 sons affected by any such order fail to agree upon the terms
15 of such compensation, the President, after an opportunity
16 for a hearing on the record (either before or after such order
17 takes effect), shall, by supplemental order, prescribe the
18 amount of such compensation to be paid.

19 (B) A supplemental order under subparagraph (A)
20 shall provide that the compensation to be paid for construc-
21 tion, operation, transportation, or other expenses shall be an
22 amount which the President determines necessary to pro-
23 vide full compensation.

24 (C) Any terms of compensation agreed to by the persons
25 specified in any order under paragraph (1) may be received

1 by the President and if the President finds that such com-
2 pensation is excessive, he shall, after an opportunity for a
3 hearing on the record, prescribe, by supplemental order, the
4 amount of compensation in accordance with paragraph (2).

5 (d) As used in this section—

6 (1) The term "reasonable prices" means—

7 (A) in the case of a wellhead or field sale (as
8 defined by the President) of natural gas produced in
9 a State, any price per Mcf which does not exceed
10 115 per centum of the average price per Mcf for
11 new contracts for the sale of natural gas produced
12 in such State which contracts were entered into in
13 the second quarter of 1976 and which were required
14 to be reported by Federal Power Commission Order
15 521 (which average price shall be determined by
16 the President); and

17 (B) in the case of any other sale of such gas,
18 at a price not in excess of 110 per centum of the
19 amount determined under clause (i) with respect to
20 the State in which such gas was produced;

21 except that the President may permit a price or prices
22 higher than determined under clause (i) or (ii) if he
23 determines such higher price or prices are necessary to
24 permit interstate pipelines and local distribution com-
25 panies served by such pipelines to compete effectively

1 with other purchasers for available supplies of natural
 2 gas. The President shall, by rule or order, prescribe the
 3 manner in which a reasonable price shall be determined
 4 in the case of natural gas the State of production of
 5 which cannot be identified.

6 (2) The term "Outer Continental Shelf" has the
 7 same meaning as such term has under section 2 of the
 8 Outer Continental Shelf Lands Act (43 U.S.C. 1331).

9 PURCHASED GAS ADJUSTMENT CLAUSES

10 SEC. 7. In the case of any interstate pipeline receiving
 11 compensation under section 4 with respect to deliveries
 12 ordered pursuant to such section, such compensation shall be
 13 reflected as a reduction in the cost of purchased gas for pur-
 14 poses of any purchased gas adjustment clause applicable to
 15 such pipeline. In the case of any interstate pipeline paying
 16 compensation with respect to deliveries or contracts for sup-
 17 plies of natural gas under section 4 or section 6, such com-
 18 pensation shall be part of such pipeline's cost of purchased
 19 gas for such purpose.

20 RELATIONSHIP TO NATURAL GAS ACT

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

1 EFFECT ON CERTAIN CONTRACTUAL OBLIGATIONS

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

7 (b) Any contractual provision—

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

11 (2) terminating any obligation under any such
 12 contract as a result of such sale or commingling,
 13 is hereby declared against public policy and unenforceable
 14 with respect to such natural gas during the period for which
 15 an order under section 4(a) or an authorization under sec-
 16 tion 6(a) applies to the delivery, transportation, or contract
 17 for supplies of such natural gas.

18 (c) The amounts and prices of any natural gas pur-
 19 chases pursuant to an order under section 4(a) or an au-
 20 thorization under section 6(a) shall not be taken into account
 21 for purposes of any contractual provision which determines
 22 the price of any natural gas (or terminates the contract for
 23 the sale of natural gas) on the basis of sales of other natural
 24 gas.

1 ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

2 SEC. 10. (a) Subchapter II of chapter 5 of title 5 of
3 the United States Code (other than sections 554, 556, and
4 557 thereof) shall apply to orders and other actions under
5 this Act, except that in the case of supplemental orders under
6 section 4(g), and section 6(c)(3), and section 11(a)(2)
7 such subchapter II, including such sections 554, 556, and
8 557, shall apply.

9 (b) Except with respect to enforcement of orders or
10 subpoenas under section 4(f), the Temporary Emergency
11 Court of Appeals shall have exclusive original jurisdiction
12 to review any order issued, or other action taken, under this
13 Act.

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

18 ENFORCEMENT

19 SEC. 11. (a) Any person who violates an order or sup-
20 plemental order issued under section 4 (other than subsection
21 (f) thereof) or the terms and conditions of an authorization
22 under section 6 shall be subject to a civil penalty of not more
23 than \$25,000 for each violation of such order. Each day of
24 violation shall constitute a separate violation.

25 (b) Any person who willfully violates an order or sup-

1 plemental order under section 4 (other than subsection (f)
2 thereof) or the terms and conditions of an authorization under
3 section 6 shall be fined not more than \$50,000 for each viola-
4 tion of such order. Each day of violation shall constitute a
5 separate violation.

6 (c) Whenever it appears to the President that any indi-
7 vidual or organization has engaged, is engaged, or is about
8 to engage in acts or practices constituting a violation of any
9 order issued under section 4(a), any supplemental order
10 issued under section 4(g), or the terms or conditions of any
11 order under section 6, the President may request the Attorney
12 General to bring a civil action to enjoin such acts or prac-
13 tices and, upon a proper showing, a temporary restraining
14 order or preliminary or permanent injunction shall be granted
15 without bond. In any such action, the court may also issue
16 mandatory injunctions commanding any person to comply
17 with any such order or supplemental order.

18 REPORTING

19 SEC. 12. (a) In issuing any order under section (4) or
20 granting any authorization under section 6, the President
21 shall require from persons subject to the order that the prices
22 and volumes of natural gas delivered, transported, or con-
23 tracted for pursuant to such order or authorization and such
24 other information as the President determines appropriate
25 shall be reported to him on a weekly basis and such reports

1 shall be made available to any duly authorized committee
2 of Congress upon the request of the chairman.

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

6 (c) The provisions of chapter 35 of title 44 shall not
7 apply to section 4(f) or this section.

8 DELEGATION OF AUTHORITIES

9 SEC. 13. The President may delegate all or any por-
10 tion of the authority granted to him under this Act to such
11 Executive agencies (as defined in section 105 of title 5,
12 United States Code) or officers of the United States as he
13 determines appropriate, and may authorize such redelega-
14 tion as may be appropriate. Any action taken by the Ad-
15 ministrator of the Federal Energy Administration (or his
16 delegate) under a delegation of authority pursuant to this
17 Act shall not be subject to section 7(i) of the Federal Energy
18 Administration Act of 1974. Any action taken by the Fed-
19 eral Power Commission (or its delegate) pursuant to a
20 delegation under this Act shall not be subject to any proce-
21 dural requirements applicable to such Commission under
22 any other Act, except as specifically provided in this Act.

Union Calendar No.

95TH CONGRESS
1ST SESSION

H. R. 2500

[Report No. 95-]

A BILL

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.

By Mr. STAGGERS, Mr. DEVINE, Mr. DINGELL,
Mr. SHARP, Mr. OTTINGER, Mr. MOFFETT, Mr.
MAGUIRE, and Mr. MOORHEAD of California

JANUARY 26, 1977

Referred to the Committee on Interstate and Foreign
Commerce

JANUARY , 1977

Reported with an amendment, committed to the Com-
mittee of the Whole House on the State of the
Union, and ordered to be printed