

File
February 4, 1974

MEMORANDUM

TO: CHAIRMAN STAGGERS
FROM: Daniel J. Manelli, Chief Counsel *dm*
SUBJECT: H. Con. Res. 252, calling for a moratorium on the
increase of natural gas prices

Back in June, when rumors first began to appear that the Federal Power Commission was on the point of a de facto deregulation of the price of natural gas, you introduced the above resolution. The resolution called upon the FPC not to authorize any increases in the regulated prices of natural gas, with certain exceptions for emergency situations (see Enclosure 1.) By arrangements which we made with the staff of Senator Frank Moss, he introduced an identical resolution in the Senate.

The Resolutions called for a moratorium in gas price increases which would have expired on January 1, 1974. There was no action on these resolutions in either the House or the Senate.

Now the FPC has granted another sharp increase in the price of natural gas with sharp dissenting statements from Chairman Nassikas and Commissioner Springer (see Enclosure 2). I suggest that the Concurrent Resolution be reintroduced.

We have redrafted it so as to set forth a new 6-month moratorium period, expiring on August 5, 1974 (Enclosure 3). This would provide a breathing spell during which the Subcommittee might conduct hearings calling

witnesses from the Federal Power Commission and the natural gas producers, as well as other experts in this field, to provide the Congress with more precise information as to the legitimacy and necessity of these increases in the consumer price of natural gas. These increases have reached a point now where they amount to almost de facto deregulation of natural gas, contrary to the intent of the Federal Power Act.

Enclosures

93rd CONGRESS

1st SESSION

H. CON. RES.

ENCLOSURE #1
(Original signature of Member)

IN THE HOUSE OF REPRESENTATIVES

Mr. STAGGERS

submitted the following concurrent resolution; which was

referred to the Committee on Interstate & Foreign Commerce

CONCURRENT RESOLUTION

Resolved by the House of Representatives (the Senate concurring),

Whereas the price of natural gas directly affects the cost of living incurred by all American citizens; and

Whereas the Federal Power Commission is required by the Natural Gas Act to prescribe just and reasonable rates on the basis of cost for natural

gas; and

Whereas the Supreme Court has declared that the Federal Power Commission is obliged to "afford consumers a complete permanent and effective bond of protection from excessive rates and charges"; and

Whereas the Federal Power Commission has recently approved selective increases of 73 percent above previously determined area rate ceilings in the price of natural gas, resulting in an estimated rate of return of 27.5 percent, almost doubling the previously established reasonable rate of return, and adding a severe economic burden on a large number of consumers; and

Whereas the legitimacy of such increases is challenged as tantamount to "deregulation" of producer rates in contravention of law; and
Whereas the Congress has under active review the question of whether or not a legitimate shortage in the available supply of natural gas exists whether or not such shortage is price induced or price curative; and
Whereas the Federal Trade Commission has a similar study in progress; and
Whereas the results of these studies and inquiries are essential to determining what shall constitute just and reasonable prices and rates of return: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring),

That it is the sense of the Congress that, inasmuch as there is at present inadequate information as to the available supply of natural gas, and since such needed information will become available by January 1, 1974, that, prior to January 1, 1974, it will be contrary to the public interest for the Federal Power Commission to permit increases in the price of natural gas above the administratively determined area rate ceilings in effect on June 1, 1973, provided that the Commission may prior to January 1, 1974 consider and approve petitions for special relief from said rates pursuant to Section 154.109(f) of the Commission's Regulations in instances where, based on an evidentiary record, the Commission finds such relief to be cost justified.

News release from the office of

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SECOND DISTRICT
WEST VIRGINIA

FOR IMMEDIATE RELEASE

JUNE 14, 1973

Rep. Harley Staggers (D-W.Va.), Chairman of the House Interstate & Foreign Commerce Committee, today introduced a resolution which would put Congress on record as against any increases in the price of natural gas during the rest of 1973.

Staggers said he hoped the "sense of Congress" resolution would, if passed, convince the Federal Power Commission to postpone consideration of a nationwide increase in the price of natural gas which Staggers charged, "would result in higher heating bills for millions of American families this winter."

Pointing to a recent decision by the FPC which allowed three companies to raise their prices by 73%, Staggers said, "The FPC now has under consideration a new national pricing policy which gives every indication of imposing similar increases on a nationwide basis."

Staggers said that although the companies were granted the rate hike partly because they pointed to a scarcity of gas reserves, two of the firms have refused to earmark their added profits to seek new reserves.

"The scarcity of natural gas may not be as great as some would have the nation believe," Staggers remarked, "investigations now underway will reveal the truth regarding a scarcity. There should be no price increase until all the facts are in," he declared.

Rep. Torbert MacDonald (D-Mass.) Chairman of the Subcommittee on Communications and Power, joined with Staggers in introducing the resolution. Sen. Frank Moss (D-Utah) is introducing a similar measure in the Senate.

FEDERAL POWER COMMISSION

NEWS RELEASE

WASHINGTON, D.C. 20426



IMMEDIATE RELEASE

FEBRUARY 1, 1974

No. 20029

Docket No. CP73-154, et al.

Southern Natural Gas Company

Opinion No. 686

FPC AUTHORIZES GAS SALES TO SOUTHERN NATURAL

AT 55 CENTS UNDER OPTIONAL PROCEDURE

The Federal Power Commission today authorized four independent producers to sell natural gas produced from a field in Alabama to Southern Natural Gas Company, of Birmingham, Ala., at an initial rate of 55 cents per million Btu's under the FPC's optional procedure.

The Commission said that the 55 cent rate is just and reasonable based upon the cost evidence presented. It said certification is required by the present and future public convenience and necessity. The Commission also said that the rate is just and reasonable based upon non-cost evidence.

The Commission said that its determination will not be precedential in other rate proceedings. The Commission in August of 1972 issued a policy statement establishing an optional procedure for authorizing new natural gas sales by producers at prices in excess of established area ceiling rates if found to be in the public interest.

Today's opinion was by Commissioner Rush Moody, Jr., joined by Commissioners Albert B. Brooke, Jr., and Don S. Smith. Chairman John N. Nassikas and Commissioner William L. Springer dissented with a separate opinion. Commissioner Brooke, joined by Commissioner Moody, also filed a concurring statement.

The opinion adopts, with modifications a December 27 initial decision by FPC Administrative Law Judge Michel Levant, which would have authorized the sale at 50 cents.

The producers requested 55 cents.

(OVER)

The gas will be sold from the Big Escambia Creek Field in southwestern Alabama. Sales will total about 571,900,000 cubic feet monthly. The contracts provide for a one cent per million Btu escalation every two years and tax reimbursements for 87.5 percent of new or additional taxes. The FPC concluded that these provisions are in the public interest.

The producers are: Mallard Exploration, Inc.; Devon Corporation; Eason Oil Company; and Escuhbia Oil Company.

The Commission said that its optional procedure order provided that each contract filed must be considered on the merits of its terms and provisions. It also provides that there must be some evidentiary basis upon which the Commission can judge whether the contract rate is just and reasonable, and that the FPC would, absent a showing of special circumstances, accept as conclusive the cost findings embodied in its area rate decisions.

The Commission said that while Judge Levant did not make a finding of special circumstances, he did accept in evidence cost testimony and computations by one producer's witness. However, the FPC said such a finding is implied in his decision. The FPC noted that there is no area rate applicable to Escambia County.

In declaring that its determinations today will not be precedential, the Commission said that this follows because the optional procedure provides advantages and disadvantages to the producers that differ from those under certificates as ordinarily issued under the Natural Gas Act.

The Commission reviewed the cost evidence which was introduced by one of the producers, Mallard, and which the FPC today affirmed. Mallard set forth cost estimates on a national basis comparable to those used in the Belco proceeding, both on a "predictive" basis and a "test year" basis. Using the former, Mallard showed a low cost of 48.09 cents and a high cost of 68.48 cents; using the test year method the witness showed a low of 51.76 cents and a high of 69.08 cents.

(Continued)

In each estimate, the Commission said, the most important figure is the amount used for "productivity," which is determined by the nationwide gas reserves added during a given period divided by the nationwide number of feet drilled.

The FPC staff argued that the initial rate should be 35 cents, which with adjustment and taxes would become 37.98 cents. However, the Commission said the staff offered no evidence to support its position.

Judge Levant's determination of a 42.88 - 51.13 cent cost range was derived solely from his finding that negative revisions in the annual reserve additions should be eliminated in determining productivity. The producers demonstrated, however, the Commission concluded, that even when such an elimination is made, their cost evidence fully supports the rate applied for.

Chairman Nassikas and Commissioner Springer in their dissent said they would reject the proposed 55 cent price and issue a certificate limiting the price to 41 cents.

The dissenting opinion notes that the Commission received a telegram from Southern Natural yesterday indicating that unless Mallard, which controls 50 percent of the field, receives authorization by February 1 "we have every reason to believe we will lose this supply and this project will abort."

Chairman Nassikas and Commissioner Springer said that in response to this "take it or leave it" telegram, the majority has "capitulated to the prescription of a industry established price of 55 cents . . . rather than prescribing a just and reasonable rate by regulatory review."

The dissent says that to support the industry's demand for a 55-cent price the majority used the so-called cost evidence to justify the preordained price set by the producers and not by the evidentiary record in this proceeding.

Chairman Nassikas and Commissioner Springer also said that the majority action adds 14 cents of non-cost factors to a cost base price of 41 cents -- "an unjustified

(OVER)

increase of 25 percent above the just and reasonable rate level warranted by the evidence in this case." They noted that the 55 cent price is more than double the price prescribed in the Other Southwest Area Rate proceeding and 36 percent above the level prescribed in the Permian Basin Area rate opinion in August of 1973.

They said further that since the majority decision is not supported by substantial evidence, it should be reversed on appeal to a U. S. Circuit Court. Regrettably, they added, because the FPC staff is the only party in opposition to the 55 cent rate, in the absence of intervention by other parties on rehearing, no court appeal may be taken to reverse "the majority's travesty of regulatory justice."

The Chairman and Commissioner Springer noted that the Commission's optional procedure order provides that each contract must be considered on the merits of its terms and provisions. They pointed out that it also provides that there must be some evidentiary basis upon which the Commission can judge whether the contract rate is just and reasonable. It provides further that the Commission would, absent a showing of a special circumstance, accept as conclusive the cost findings embodied in its area rate decision. While the judge did not make a finding of special circumstances, he did accept in evidence cost testimony and computations by one of the producer's witnesses. However, they said, such a finding is implied in his decision, and they agreed with him in admitting this evidence.

The dissent notes that there is no area rate applicable to Escambia County. They therefore rejected the FPC staff's argument that the FPC's most recent determination of a nationwide cost of new gas in the Permian Basin case is in any way binding here. However, they noted that the Commission in that case substantially adopted the Administrative Law Judge's findings, determining after a comprehensive analysis of the cost that 35 cents was the just and reasonable rate under contracts dated after October 1, 1968, and before October 1, 1975. The dissent also observes that in the Other Southwest area rate case, the Commission determined that the rate for gas to be sold in those counties of Alabama to which the proceeding was applicable should be 25 cents per thousand cubic feet until

(continued)

September 30, 1974 and 26 cents thereafter.

Chairman Nassikas and Commissioner Springer said that while intrastate prices have some relevancy, they cannot be used as an excuse to ignore the mandate of the Natural Gas Act that the Commission must regulate interstate sales of gas. Also, they said, there is evidence that if Southern does not get this gas it will be purchased by resale customers of Southern. Thus, the dissent states, it would in effect, end up benefitting the same users.

The concurring statement by Commissioner Brooke, joined by Commissioner Moody, said that the Commission has responded before at the Chairman's request to notice of impending changes in cases awaiting decision. The statement points to the FPC's December 28, 1973, action on the Eascogas case and the potential shut-off of Canadian gas to El Paso on January 24, 1974. The Southern case was placed on the agenda by the Chairman for a special meeting which he called today, the statement says. The concurring statement also said it is unfortunate that the dissent "substitutes passion for an honest recognition that reasonable men may differ in a case such as this."

- FPC -

For further information
call 386-6102 (Area Code 202)

DC-114

MEMORANDUM

July 27, 1973

JUL 30 1973

TO: CHAIRMAN STAGGERS

FROM: Daniel J. Manelli, Chief Counsel *dm*

SUBJECT: Threatened Increase in the Price of Natural Gas.

On June 14, 1973 you introduced House Concurrent Resolution No. 252 which would express the sense of Congress to the effect that it would not be in the public interest for the Federal Power Commission to allow any increases in the price of natural gas until January 1, 1974, except in hardship or emergency situations pursuant to existing law.

In drafting this resolution, we were in contact with Senator Moss' staff and, at their request, supplied them with a draft of the resolution. The identical resolution was then introduced in the Senate by Senator Moss (Senate Con. Res. 30).

Our information is that Senator Moss plans to push for enactment of the Concurrent Resolution in the Senate before the recess. I suggest that you might wish to take steps to speed up consideration and approval of the Concurrent Resolution which you introduced. If you concur, I would suggest that you might ask Mr. Macdonald to bring this matter up before his Subcommittee as soon as possible.