

94TH CONGRESS
1ST SESSION

[Report No. 94-732]

SEPTEMBER 9, 1975

DECEMBER 15, 1975

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

To assure the availability of adequate supplies of natural gas during the period ending June 30, 1976.

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 "Natural Gas Emergency~~
4 ~~Act of 1975":~~

PURPOSES

~~SEC. 2. The purposes of this Act are to establish tempo-~~
~~rary emergency authorities for minimizing the detrimental~~
~~effects on employment, food production, and public health,~~
~~safety, and welfare caused by natural gas supply shortages.~~

DEFINITIONS

~~SEC. 3. As used in this Act—~~

~~(1) The term "Administrator" means the Administrator of the Federal Energy Administration.~~

~~(2) The term "Commission" means the Federal Power Commission;~~

~~(3) The term "essential user" means a user or class of user who satisfies criteria to be established by the Commission, by rule, as indicative of a user for which no alternative fuel is reasonably available and whose supply requirements must be met in order to avoid substantial unemployment or impairment of food production or the public health, safety, or welfare.~~

~~(4) The term "Federal lands" means any land or subsurface area within the United States which is owned or controlled by the Federal Government or with respect to which the Federal Government has authority, directly or indirectly, to explore for, develop, and produce natural gas, including any land or subsurface area located on the Outer Continental Shelf.~~

~~(5) The term "intrastate commerce" means commerce between points within the same State not through any place outside thereof.~~

~~(6) The term "interstate commerce" has the same meaning as such term has in section 2 (7) of the Natural Gas Act (15 U.S.C. 717a (7)).~~

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

~~(8) The term "new natural gas" means natural gas which was not, prior to September 9, 1975, committed by contract to interstate or intrastate commerce and any natural gas committed by contract to intrastate commerce which contract, on or after September 9, 1975, terminates and is not renewed.~~

~~(9) The term "person" includes any governmental entity.~~

~~(10) The term "pipeline" means a person engaged in the transportation by pipeline of natural gas.~~

~~(11) The term "priority interstate purchaser" means any interstate pipeline (or a person acting on behalf of an interstate pipeline) which the Commission, taking into account any existing curtailment plan of such pipeline and the natural gas supplies available to such pipeline, determines is, to a significant extent, unlikely to obtain supplies of natural gas adequate to meet the requirements of essential users under any agreement (without regard to whether such agreement is for interruptible or firm service) to supply natural gas to such user by:~~

~~(A) such pipeline; or~~

~~(B) a person to which such pipeline supplies
natural gas for purposes of resale.~~

~~(12) The term "supply emergency period"
means the period, or any part thereof, which begins on
the date of enactment of this Act and ends on July 1,
1976.~~

~~ACCESS BY PRIORITY INTERSTATE PURCHASERS TO
NATURAL GAS~~

~~SEC. 4. (a) (1) The Commission shall, not later than the
end of the fifteen-day period which begins on the date of
enactment of this Act, and shall as necessary throughout the
supply emergency period, upon petition or upon its own
motion, designate priority interstate purchasers.~~

~~(b) The Commission shall, by rule, not later than the
end of the fifteen-day period which begins on the date of
enactment of this Act, establish an area ceiling price
applicable to any first sale of new natural gas (except first
sales of new natural gas produced from lands located on the
Outer Continental Shelf) for each area in the United States
in which natural gas is produced. The Commission shall
designate areas to which such ceiling prices shall apply.
Such ceiling price shall, to the maximum extent practicable,
approximate the average sales price, as determined by the
Commission, for contracts entered into or renewed during the~~

~~period from August 1, 1975, through August 31, 1975, for
natural gas produced in the area and sold in interstate
commerce.~~

~~(c) No producer may charge and no purchaser may pay
a price for the first sale of new natural gas occurring after
September 8, 1975, which price exceeds the applicable area
ceiling price established by the Commission.~~

~~(d) Any new natural gas produced from lands located
on the Outer Continental Shelf shall be sold in interstate
commerce.~~

~~(e) (1) No new natural gas produced from lands located
on the Outer Continental Shelf may be sold in interstate
commerce unless—~~

~~(A) the purchaser has been designated by the Com-
mission as a priority interstate purchaser; or~~

~~(B) the producer has filed a notice of a proposal to
sell new natural gas (whether in the form of an offer to
sell or a proposed contract to sell such gas) with the
Commission at least fifteen days prior to the sale.~~

~~(2) The Commission shall, by rule, prohibit the sale in
interstate commerce from lands located on the Outer Conti-
nental Shelf of any new natural gas to any person other
than a priority interstate purchaser if, within the fifteen-
day period specified in paragraph (1) (B), a priority in-
terstate purchaser offers to purchase such new natural gas~~

~~1 under terms and conditions which the Commission determines
2 are substantially similar to or identical with the terms or
3 conditions of such proposal to sell to which the notice pre-
4 scribed by subparagraph (B) pertains.~~

~~5 (3) Paragraph (2) of this subsection shall not apply to
6 sales of new natural gas by a producer to a pipeline in the
7 case of an advance payment financing arrangement between
8 such producer and such pipeline entered into prior to Sep-
9 tember 9, 1975, whereby such pipeline has been granted a
10 right of first refusal, option, or other priority claim to natural
11 gas produced from a property as consideration for advance
12 payments made to such producer to finance exploration or
13 development.~~

~~14 (f) (1) Any priority interstate purchaser may pur-
15 chase new natural gas produced from lands located other
16 than on the Outer Continental Shelf, provided the price of
17 the first sale of such new natural gas does not exceed the
18 applicable area ceiling price established by the Commission
19 pursuant to subsection (b) of this section. Any such first
20 sale price shall be deemed just and reasonable for purposes
21 of section 4 of the Natural Gas Act and any such sale to a
22 priority interstate purchaser shall not require certification
23 under section 7 of such Act.~~

~~24 (g) If the Commission determines that natural gas
25 could have been produced or sold, or both, but was not~~

~~1 purchased or sold, or both, during the period that this Act
2 is in effect, such natural gas may not at any time thereafter
3 be sold at a price above that permitted under this Act.~~

~~4 (h) A priority interstate purchaser shall obtain priority
5 only to the extent necessary to meet the requirements of
6 essential users and the Commission shall take such steps
7 as are within its authority under the Natural Gas Act to
8 assure that any additional supplies of new natural gas ob-
9 tained by a priority interstate purchaser are made available
10 to essential users.~~

~~11 (i) The Commission shall encourage voluntary agree-
12 ments that are not inconsistent with this Act to sell or ex-
13 change natural gas or other arrangements that increase the
14 supply of natural gas available to priority interstate pur-
15 chasers.~~

~~16 AVAILABILITY OF GAS FOR AGRICULTURAL USERS~~

~~17 SEC. 5. (a) (1) Notwithstanding any other provision of
18 law or of any natural gas allocation or curtailment plan in
19 effect under existing law, the Commission shall, by rule, upon
20 petition or upon its own motion prohibit any interruption or
21 curtailment of natural gas supplies, and take such other ac-
22 tions under authority of the Natural Gas Act and this Act
23 as the Commission determines to be necessary and appropri-
24 ate, to assure to the maximum extent practicable the avail-~~

~~1 ability of sufficient quantities of natural gas for use for any~~
~~2 essential agricultural, food processing or food packaging pur-~~
~~3 poses as determined by the Secretary of Agriculture, for~~
~~4 which natural gas is necessary, as determined by the Secre-~~
~~5 tary of Agriculture including, but not limited to, irrigation~~
~~6 pumping, crop drying and use as a feedstock or process fuel~~
~~7 in the production of fertilizer and essential agricultural chemi-~~
~~8 cals in existing plants (for present or expanded capacity)~~
~~9 and in new plants.~~

~~10 (2) No prohibition pursuant to paragraph (1) of this~~
~~11 subsection may be inconsistent with the goals of substantially~~
~~12 minimizing unemployment attributable to interruption of~~
~~13 natural gas supplies or with maintaining natural gas supplies~~
~~14 to residential users, to small users, to hospitals, or for prod-~~
~~15 ucts and services vital to public health and safety.~~

~~16 (b) For purposes of this section, the Secretary of Agri-~~
~~17 culture shall not determine any use of natural gas to be neces-~~
~~18 sary if such gas is to be used as a boiler fuel to serve (1) ex-~~
~~19 panded capacity of existing facilities, (2) an existing facility~~
~~20 for which natural gas supply contracts have expired, or (3)~~
~~21 new facilities. The Secretary of Agriculture shall certify to~~
~~22 the Commission the volumes and identify the users, of nat-~~
~~23 ural gas determined to be necessary for essential agricultural,~~
~~24 food processing, or food packaging purposes.~~

~~1 PROHIBITION OF USE OF NATURAL GAS AS BOILER FUEL~~

~~2 SEC. 6. (a) The Administrator shall, by rule, prohibit~~
~~3 any powerplant from burning natural gas if he determines~~
~~4 that—~~

~~5 (1) such powerplant had, on September 1, 1975~~
~~6 (or at any time thereafter), the capability and necessary~~
~~7 plant equipment to burn petroleum products;~~

~~8 (2) the burning of petroleum products by such~~
~~9 plant in lieu of natural gas is practicable;~~

~~10 (3) petroleum products will be available during the~~
~~11 period the order is in effect; and~~

~~12 (4) natural gas made available as the result of such~~
~~13 prohibition could be available, directly or indirectly, to a~~
~~14 priority interstate purchaser.~~

~~15 A rule under this subsection shall not take effect (A) until~~
~~16 a date which the Administrator of the Environmental Pro-~~
~~17 tection Agency certifies is the earliest date on which such~~
~~18 plant can burn, in compliance with the Clean Air Act (in-~~
~~19 cluding any applicable implementation plan) and with ap-~~
~~20 plicable State environmental protection laws, petroleum prod-~~
~~21 ucts which the Administrator determines, under paragraph~~
~~22 (3), are available, or (B) if the Commission certifies to the~~
~~23 Administrator that the prohibition under this paragraph will~~
~~24 impair the reliability of service in the area served by the~~
~~25 plant.~~

~~(b) (1) The Administrator shall, by rule, prohibit the use of natural gas by any powerplant if the Administrator determines—~~

~~(A) that alternative supplies of electric power are available to the electric power system of which such powerplant is a part;~~

~~(B) that the generation of such alternative supply of electric power will not result in an overall increase in consumption of natural gas; and~~

~~(C) natural gas made available as the result of such prohibition could be made available, directly or indirectly, to a priority interstate purchaser.~~

~~(2) A rule under this subsection shall not take effect if the Commission certifies to the Administrator that the prohibition would impair the reliability of service in any area served by those affected electric power systems.~~

~~(c) (1) The Administrator shall exempt from any rule under this section the burning of natural gas for the necessary processes of ignition, startup, testing, and flame stabilization by powerplants.~~

~~(2) Subject to paragraph (1), of this section the Administrator may make a rule under subsection (a) or (b) of this section apply to all natural gas burned by the powerplant to which such rule applies or may specify the periods and amounts of natural gas to which such rule shall apply.~~

~~(d) Nothing in this section shall impair any State or Federal requirement relating to health, safety, or environmental protection.~~

~~(e) The Administrator shall, by rule, prohibit the sale, directly or indirectly, to any person other than a priority interstate purchaser of natural gas made available as a result of rules under subsections (a) and (b) of this section.~~

~~(f) (1) If the application of a rule under this section results in a sale of transferred gas by a curtailed user or a supplier of a curtailed user to a person other than such curtailed user or a supplier of such user, such seller may not charge an amount for such transferred gas which exceeds the amounts he would have charged such user or supplier (as the case may be). In addition, the person to whom such sale is made shall compensate the curtailed user, and any supplier of such curtailed user, in an amount which is equal to any net increase in such user's reasonable costs for replacement fuel or replacement power, and any net increase in such supplier's reasonable costs and any other losses which are incurred by such supplier, as a result of the application of the order issued under this section. Such compensation shall be in an amount agreed upon by the parties, or (if the parties are unable to agree) in an amount determined by the Commission in accordance with the provisions of this section.~~

1 ~~(2) For purposes of this subsection—~~

2 ~~(A) The term “curtailed user” means a powerplant~~
3 ~~to which a rule under this section is applicable.~~

4 ~~(B) The term “transferred natural gas” means natu-~~
5 ~~ral gas which a curtailed user does not consume by rea-~~
6 ~~son of a rule under this section and which is made avail-~~
7 ~~able to another person.~~

8 ~~(C) A person is a supplier of a curtailed user if he~~
9 ~~sold natural gas to such user, or sold natural gas to any~~
10 ~~person for resale (directly or indirectly) to such user.~~

11 ~~(g) This section shall not apply to any powerplant of~~
12 ~~which the maximum daily use of natural gas does not exceed~~
13 ~~fifty thousand cubic feet.~~

14 ~~(h) For purposes of this section, the terms “power-~~
15 ~~plant” and “petroleum product” have the same meanings as~~
16 ~~such terms have under section 2 of the Energy Supply and~~
17 ~~Environmental Coordination Act of 1974.~~

18 ~~(i) Section 2 (f) (1) of the Energy Supply and Envi-~~
19 ~~ronmental Coordination Act of 1974 is amended by striking~~
20 ~~out “June 30, 1975” and inserting in lieu thereof “June 30,~~
21 ~~1976”.~~

22 ~~(j) This section (other than subsection (i)) does not~~
23 ~~affect any authority under the Energy Supply and Environ-~~
24 ~~mental Coordination Act of 1974.~~

1 ~~PRODUCTION OF GAS AT THE MAXIMUM EFFICIENT RATE~~
2 ~~AND TEMPORARY EMERGENCY PRODUCTION RATE~~

3 ~~SEC. 7. (a) Except as provided in subsection (c) of this~~
4 ~~section, the Secretary of Interior shall, by rule, require nat-~~
5 ~~ural gas to be produced from fields, designated by such~~
6 ~~Secretary, at the maximum efficient rate of production, or at~~
7 ~~the temporary emergency production rate determined for~~
8 ~~such field. The Commission shall, by rule, prohibit the sale~~
9 ~~of quantities of natural gas, in excess of that which would~~
10 ~~be produced at the maximum efficient rate, produced from~~
11 ~~a field, pursuant to a rule or order to produce at such field's~~
12 ~~temporary emergency production rate, to any person other~~
13 ~~than a priority interstate purchaser.~~

14 ~~(b) (1) Within forty five days after the date of enact-~~
15 ~~ment of this Act, the Secretary of the Interior, by rule, shall~~
16 ~~determine the maximum efficient rate of production and, if~~
17 ~~any, the temporary emergency production rate, for each~~
18 ~~field on Federal lands which such Secretary determines pro-~~
19 ~~duces, or has the capacity to produce, significant quantities~~
20 ~~of natural gas.~~

21 ~~(2) Each State or the appropriate agency thereof may~~
22 ~~determine the maximum efficient rate of production and, if~~
23 ~~any, the temporary emergency production rate, for each field~~
24 ~~(other than a field on Federal land) within such State which~~
25 ~~the State or appropriate agency determines produces, or~~

1 ~~has the capacity to produce, significant quantities of natural~~
2 ~~gas.~~

3 ~~(3) If, at the end of the forty five day period which~~
4 ~~begins on the date of enactment of this Act, a State or the~~
5 ~~appropriate agency thereof has not determined the maximum~~
6 ~~efficient rate of production or the temporary emergency pro-~~
7 ~~duction rate for any field (other than a field on Federal~~
8 ~~land) within such State, which field the Secretary of the~~
9 ~~Interior determines produces, or has the capacity to produce,~~
10 ~~significant quantities of natural gas, the Secretary of the In-~~
11 ~~terior may, by rule, specify the maximum efficient rate of~~
12 ~~production or the temporary emergency production rate for~~
13 ~~any such field.~~

14 ~~(c) (1) The authority under subsection (a) to require~~
15 ~~production from any field at such field's temporary emergency~~
16 ~~production rate may be exercised only if natural gas made~~
17 ~~available as a result of the exercise of such authority could~~
18 ~~be made available, directly or indirectly, to a priority inter-~~
19 ~~state purchaser.~~

20 ~~(2) If loss of ultimate recovery of crude oil or natural~~
21 ~~gas, or both, occurs or will occur as the result of an order to~~
22 ~~produce at the temporary emergency production rate, such~~
23 ~~loss shall be deemed a taking by condemnation, and the~~
24 ~~owner of any property right diminished by such taking may~~
25 ~~bring an action in an appropriate United States District~~

1 ~~Court to recover just compensation from the United States~~
2 ~~or any person obligated to indemnify the United States.~~

3 ~~(3) The Administrator shall require that any priority~~
4 ~~purchaser who purchases natural gas supplies made available~~
5 ~~through the exercise of authority under subsection (a) to~~
6 ~~require production in any field at such field's temporary~~
7 ~~emergency production rate, provide adequate assurance of~~
8 ~~indemnification of the United States for any liability which~~
9 ~~the United States may incur by reason of action taken pur-~~
10 ~~suant to the authority of subsection (a) and such order may,~~
11 ~~in addition, require the posting of bond by such purchaser~~
12 ~~as assurance of indemnification.~~

13 ~~(d) For purposes of this section—~~

14 ~~(1) The term "maximum efficient rate of produc-~~
15 ~~tion" means the maximum rate of production of natural~~
16 ~~gas which may be sustained without loss of ultimate re-~~
17 ~~covery of crude oil or natural gas, or both, under sound~~
18 ~~engineering principles.~~

19 ~~(2) The term "temporary emergency production~~
20 ~~rate" means the maximum rate of production for a field—~~

21 ~~(A) which rate is above the maximum rate of~~
22 ~~production established for such field; and~~

23 ~~(B) which may be maintained for a temporary~~
24 ~~period of less than ninety days without reservoir~~
25 ~~damage and without significant loss of ultimate re-~~

covery of crude oil or natural gas, or both, from such field.

~~(e) Nothing in this section shall be construed to authorize the production from any naval petroleum reserve subject to the provisions of chapter 641 of title 10, United States Code.~~

~~(f) Natural gas produced from a field in excess of that quantity which would have been produced at the maximum efficient rate of production (as defined in subsection (d) (1)) of such field, pursuant to a rule or order issued under the authority of subsection (a), may be sold for a price equal to the area ceiling price for the applicable area pursuant to section 4 of this Act as if it were new natural gas.~~

~~PIPELINE INTERCONNECTIONS~~

~~SEC. 8. To carry out the purposes of this Act, the Commission may, by rule, direct any pipeline to establish a physical interconnection between any specified facility of any other such pipeline. The Commission shall apportion equitably the costs of any such interconnection to the pipeline, to priority interstate purchasers initially benefiting therefrom, or to both.~~

~~PENALTIES~~

~~SEC. 9. (a) (1) Any person who is determined by the Commission, Administrator, or Secretary, after notice and an opportunity for a presentation of views, to have vio-~~

~~lated a provision of this Act or any rule or order under this Act (for which such Commission, the Administrator, or the Secretary has responsibility), shall be liable to the United States for a civil penalty of not more than \$10,000 for each violation; and if any such violation is a continuing one, each day of violation constitutes a separate offense. The amount of any such penalty shall be assessed by the Commission, the Administrator or the Secretary by written notice. In determining the amount of such penalty, the Commission, the Administrator, or the Secretary (as the case may be) shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.~~

~~(2) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or prior to referral to the Attorney General, such civil penalty may be compromised by the Commission, the Administrator, or the Secretary, as may be applicable. The amount of such penalty, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged. All penalties collected~~

1 under this subsection shall be deposited in the Treasury of the
2 United States as miscellaneous receipts.

3 ~~(b) A person is guilty of an offense if he willfully~~
4 ~~violates a provision of this Act or rule or order under~~
5 ~~this Act. Upon conviction, such person shall be subject, for~~
6 ~~each offense, to a fine or not more than \$25,000, imprison-~~
7 ~~ment for a term not to exceed five years, or both.~~

8 ENFORCEMENT

9 ~~SEC. 10. (a) The Attorney General, at the request of~~
10 ~~the Commission, the Administrator, or the Secretary (as the~~
11 ~~case may be), may bring an action for equitable relief to~~
12 ~~redress a violation by any person of a provision of this~~
13 ~~Act, or a rule or order under this Act. Any other person may~~
14 ~~bring a civil action alleging a violation of a provision of this~~
15 ~~Act or rule or order under this Act.~~

16 ~~(b) The district courts of the United States shall have~~
17 ~~jurisdiction with respect to any civil action brought under~~
18 ~~subsection (a). The court shall have the power to grant such~~
19 ~~equitable relief as is necessary to prevent, restrain, or remedy~~
20 ~~the effect of such violation, including declaratory judgment,~~
21 ~~mandatory or prohibitive injunctive relief, and interim equi-~~
22 ~~table relief, and the courts shall further have the power to~~
23 ~~award (A) compensatory damages to any injured person~~
24 ~~or class of persons, (B) costs of litigation including reason-~~
25 ~~able attorney and expert witness fees, and (C) whenever~~

1 ~~and to the extent deemed necessary or appropriate to defer~~
2 ~~future violations, punitive damages.~~

3 ~~(c) A rule or order prescribed under this Act is sub-~~
4 ~~ject to judicial review to the extent authorized by, and in ac-~~
5 ~~cordance with, chapter 7 of title 5, United States Code, ex-~~
6 ~~cept that (A) the second sentence of section 705 thereof is~~
7 ~~not applicable, and (B) the appropriate court shall only~~
8 ~~hold unlawful and set aside such a rule or order on a ground~~
9 ~~specified in subparagraphs (A), (B), (C), or (D) of sec-~~
10 ~~tion 706(2) thereof.~~

11 RULEMAKING

12 ~~SEC. 11. The Commission, the Administrator or the Sec-~~
13 ~~retary, in addition to the authorities specifically granted~~
14 ~~herein, shall have authority to issue rules and orders appli-~~
15 ~~cable to any person which the Commission, the Administra-~~
16 ~~tor or the Secretary (as the case may be) determines are~~
17 ~~necessary or appropriate to carry out the purposes of this~~
18 ~~Act.~~

19 EXPIRATION

20 ~~SEC. 12. Sections 4 (except subsection (g) thereof),~~
21 ~~5, 6, 7, 8, and 11 of this Act shall expire on midnight June~~
22 ~~30, 1976.~~

23 *That this Act may be cited as the "Natural Gas Emergency*
24 *Act of 1975".*

PURPOSE

1
2 *SEC. 2. The purpose of this Act is to establish tem-*
3 *porary emergency authorities for minimizing the detrimental*
4 *effects on employment, food production, and public health,*
5 *safety, and welfare caused by natural gas supply shortages.*

DEFINITIONS

6
7 *SEC. 3. As used in this Act:*

8 (1) *The term "Commission" means the Federal Power*
9 *Commission.*

10 (2) *The term "essential user" means any existing user*
11 *or class of existing users which user or class of users satisfies*
12 *criteria which the Commission determines carry out the pur-*
13 *poses of this Act. In establishing such criteria, the Commis-*
14 *sion shall consider—*

15 (A) (i) *the availability of alternative fuels, on rea-*
16 *sonable terms and at reasonable prices, to such user or*
17 *class of users as a substitute for curtailed supplies of*
18 *natural gas, and*

19 (ii) *the extent to which conversion to such alternative*
20 *fuel would require such user or class of users to incur*
21 *unreasonable capital costs; and*

22 (B) *the significant impacts of curtailment of natural*
23 *gas supplies to such user or class of users, taking into*
24 *account the capability of such user or class of users to*

1 *utilize alternative fuels and the costs associated with such*
2 *conversion, upon—*

3 (i) *unemployment,*

4 (ii) *domestic food production, and*

5 (iii) *public health, safety, and welfare.*

6 (3) *The term "interstate commerce" has the same*
7 *meaning as such term has in section 2(7) of the Natural*
8 *Gas Act.*

9 (4) *The term "Outer Continental Shelf" has the same*
10 *meaning as such term has in section 2(a) of the Outer*
11 *Continental Shelf Lands Act (43 U.S.C. 1331(a)).*

12 (5) (A) *The term "new natural gas" means natural gas*
13 *which—*

14 (i) *was not committed to interstate commerce on*
15 *September 9, 1975, and*

16 (ii) *is not produced from lands located on the Outer*
17 *Continental Shelf.*

18 (B) *Natural gas shall be considered to have been com-*
19 *mitted to interstate commerce on September 9, 1975, if—*

20 (i) *such natural gas was contractually obligated*
21 *to an interstate pipeline on September 9, 1975, or*

22 (ii) *such natural gas is produced from a reserve—*

23 (I) *which reserve was subject to a dedicated*
24 *reserve contract on September 9, 1975, or*

1 (II) production from which reserve during a
2 fixed term was subject to a dedicated production con-
3 tract on September 9, 1975,

4 termination of deliveries of production was subject to the
5 provisions of section 7 of the Natural Gas Act.

6 (6) The term "pipeline" means any person engaged in
7 the transportation, by pipeline, of natural gas.

8 (7) The term "interstate pipeline" means any person
9 engaged in the transportation by pipeline of natural gas in
10 interstate commerce and subject to the jurisdiction of the
11 Commission under the Natural Gas Act.

12 (8) The term "distressed interstate pipeline" means
13 any interstate pipeline (or a person acting on behalf of
14 such a pipeline) which the Commission, taking into account
15 any existing curtailment plan of such pipeline and the natural
16 gas supplies projected to be available to such pipeline, deter-
17 mines is, to a significant extent, unlikely to obtain supplies
18 of natural gas adequate to meet the projected requirements of
19 essential users supplied directly by such pipeline or by any
20 person to which such pipeline supplies natural gas for pur-
21 poses of resale.

22 (9) The term "supply emergency period" means the
23 period which begins on the date of enactment of this Act and
24 ends on April 15, 1977.

25 (10) The term "national rate" means the maximum

1 rate or charge for natural gas sales established pursuant
2 to the provisions of section 2.56(a) of title 18, Code of Fed-
3 eral Regulations.

4 (11) The term "local distribution company" means any
5 person (including any governmental entity) which purchases
6 natural gas from an interstate pipeline for transportation,
7 local distribution, and resale to natural gas users.

8 (12) The term "small commercial user" means any
9 user of natural gas, for other than residential purposes, who
10 uses less than 50 Mcf of natural gas per day on a peak
11 day.

12 (13) The term "natural gas" has the same meaning
13 as such term has in section 2(5) of the Natural Gas Act
14 (15 U.S.C. 717(a)(5)).

15 (14) The term "base volume", with respect to a cus-
16 tomer of a distressed interstate pipeline, means the volume of
17 natural gas which such pipeline certifies, pursuant to section
18 5(b)(1)(B), would be available to such customer.

19 ACCESS BY DISTRESSED INTERSTATE PIPELINES TO
20 NEW NATURAL GAS

21 SEC. 4. (a)(1) Within 15 days after the date of en-
22 actment of this Act, the Commission shall, by order, designate
23 distressed interstate pipelines. Thereafter, by order, through-
24 out the supply emergency period, the Commission shall, as

1 it determines to be necessary, upon petition or upon its own
2 motion, designate distressed interstate pipelines.

3 (2) Within 21 days after filing of any petition by an in-
4 terstate pipeline requesting designation as a distressed inter-
5 state pipeline, the Commission shall grant such pipeline
6 designation as a distressed interstate pipeline or deny such
7 pipeline such designation. Failure by the Commission to act
8 on any such petition within such 21-day period shall be
9 deemed a denial of such designation. Any grant or denial
10 of such designation shall be deemed final agency action for
11 purposes of judicial review authorized by chapter 7 of title
12 5, United States Code.

13 (b) Any petition filed with the Commission by any inter-
14 state pipeline, which petition requests the Commission to
15 designate such pipeline as a distressed interstate pipeline,
16 shall include a statement by such pipeline detailing—

17 (1) the efforts such pipeline is pursuing and will
18 pursue, throughout the duration of the supply emergency
19 period, to utilize administrative and judicial remedies
20 available to it to assure compliance by any natural gas
21 supplier of such pipeline with the terms of any contractual
22 or certification obligation of such supplier to deliver nat-
23 ural gas to such pipeline at a prescribed or minimum
24 rate;

25 (2) the efforts such pipeline is making and will

1 make, throughout the duration of the supply emergency
2 period, to secure additional supplies of natural gas from
3 sources, which have previously supplied the interstate
4 market, under rules and procedures of the Commission
5 in existence on the date of enactment of this Act; and

6 (3) certifying that such pipeline is not in violation of
7 the terms of any certificate of public convenience and
8 necessity issued by the Commission to such pipeline.

9 (c) During the supply emergency period, sales of new
10 natural gas for delivery during such period for resale in
11 interstate commerce may be made to any distressed interstate
12 pipeline at a rate or charge in excess of the national rate.
13 Any such rate or charge shall be deemed a just and reason-
14 able rate or charge and shall not be subject to so much of the
15 provisions of section 4(a) of the Natural Gas Act which
16 would otherwise pertain to the justness and reasonableness
17 of such rate or charge.

18 TREATMENT OF RATES OR CHARGES IN EXCESS OF THE 19 NATIONAL RATE

20 SEC. 5. (a) (1) The excess of any rate or charge made
21 pursuant to a sale authorized by section 4(c) of this Act
22 over the national rate shall not be included in the general
23 expenses of a distressed interstate pipeline for purposes of
24 establishing or revising such pipeline's general schedule of
25 rates or tariffs.

1 (2) Such excess shall be treated by such pipeline as a
 2 special operating expense and may be passed through only as
 3 a special surcharge schedule of rates or tariffs, which sur-
 4 charge schedule of rates or tariffs shall be applicable to ac-
 5 counts, other than those of residential and small commercial
 6 users, of customers which receive natural gas in volume
 7 amounts in excess of such customer's base volume.

8 (b) (1) During the supply emergency period, each dis-
 9 tressed interstate pipeline shall report to the Commission
 10 on a weekly basis—

11 (A) an estimate of the daily volumes of natural gas
 12 (excluding any volumes of natural gas available by
 13 reason of the purchase of such gas by such pipeline
 14 pursuant to the provisions of this Act) such pipeline
 15 is likely to have available for delivery to its customers;

16 (B) an estimate, by customer, of the daily volumes
 17 of natural gas such pipeline is likely to have available
 18 for delivery to each customer through application of such
 19 pipeline's curtailment plan to the daily volume of natural
 20 gas (excluding any volumes of natural gas available by
 21 reason of the purchase of such gas by such pipeline
 22 pursuant to the provisions of this Act) such pipeline
 23 estimates it is likely to have available for delivery to each
 24 customer; and

25 (C) the daily volumes of natural gas delivered by

1 such pipeline to each customer during the preceding
 2 week.

3 (2) The Commission shall establish procedures by
 4 which distressed interstate pipelines shall comply with the
 5 requirements of this subsection.

6 (3) If the curtailment plan of any distressed interstate
 7 pipeline results in or provides for establishment of a seasonal,
 8 rather than a daily, entitlement for any customer, the
 9 estimate required by paragraph (1)(B) shall be calculated
 10 by—

11 (A) dividing the remainder of—

12 (i) such seasonal entitlement, less

13 (ii) the cumulative volume of natural gas de-
 14 livered to such customer by such pipeline during the
 15 period to which such seasonal entitlement applies,
 16 by the number of days remaining in the period to which
 17 such seasonal entitlement applies; or

18 (B) such method as the Commission may prescribe.

19 (c) Except as provided in subsection (d), natural gas
 20 in volume amounts in excess of a local distribution company's
 21 base volume may not—

22 (1) be delivered by a distressed interstate pipeline
 23 to such local distribution company unless such pipeline
 24 obtains an agreement from such local distribution com-
 25 pany to treat as a surcharge applicable to accounts, other

1 than those of residential and small commercial users,
2 any surcharge rate or tariff charged such local distribu-
3 tion company by such pipeline pursuant to the require-
4 ments of subsection (a)(2); and

5 (2) be accepted by a local distribution company
6 unless such local distribution company treats as a sur-
7 charge applicable to accounts, other than those of resi-
8 dential and small commercial users, any surcharge rate
9 or tariff charged to such local distribution company
10 by such pipeline pursuant to the requirements of subsec-
11 tion (a)(2).

12 (d) Natural gas in volume amounts in excess of a local
13 distribution company's base volume may—

14 (1) be delivered by a distressed interstate pipeline to
15 such local distribution company; and

16 (2) be accepted by a local distribution company;
17 without regard to the requirements of subsection (c), if a
18 State or local agency exercising regulatory authority over the
19 rates or charges of such local distribution company finds that
20 acceptance of such volume amounts in excess of such local
21 distribution company's base volume would displace volumes
22 of higher priced synthetic natural gas or liquefied natural gas
23 and thereby reduce the rates which such local distribution
24 company would otherwise charge residential and small com-
25 mercial users.

RELATIONSHIP TO THE NATURAL GAS ACT

1
2 SEC. 6. (a)(1) The provisions of section 7 of the
3 Natural Gas Act relating to abandonment of facilities or
4 service shall not apply to any sale of new natural gas to a
5 distressed interstate pipeline delivery of which new natural
6 gas to such distressed interstate pipeline occurs only during
7 the supply emergency period.

8 (2) Natural gas reserves, from which new natural gas
9 subject to any such sale is produced, shall not be deemed dedi-
10 cated to interstate commerce by reason of such sale and the
11 provisions relating to abandonment of facilities or services
12 of section 7 of the Natural Gas Act shall not apply to any
13 such reserves solely by reason of such sale.

14 (b) Except as otherwise provided in this Act, provi-
15 sions of the Natural Gas Act shall apply to the transporta-
16 tion or sale of new natural gas subject to the provisions of
17 this Act to the extent that the provisions of the Natural Gas
18 Act are applicable otherwise to such transportation and sale
19 under the terms of such Act.

PUBLIC POLICY—UNENFORCEABLE CONTRACT PROVISIONS

20
21 SEC. 7. (a) It is hereby declared to be the public policy
22 of the United States to facilitate during the supply emergency
23 period the resale of quantities of natural gas, in excess of a
24 purchaser's requirements or the requirements of such pur-
25 chaser's normal customers, to distressed interstate pipelines.

1 (b) Contractual provisions prohibiting the commingling
 2 of natural gas subject to such contract with natural gas sub-
 3 ject to the jurisdiction of the Federal Power Commission are
 4 hereby declared against public policy and unenforceable with
 5 respect to natural gas delivered to a distressed interstate
 6 pipeline, during the supply emergency period, pursuant to
 7 the provisions of this Act.

8 PRODUCTION OBLIGATIONS OF NATURAL GAS PRODUCERS

9 SEC. 8. During the supply emergency period, the fail-
 10 ure by any producer of natural gas to comply with the terms
 11 of any contractual or certification obligation of such pro-
 12 ducer to deliver quantities of natural gas to any interstate
 13 pipeline at a prescribed or minimum rate shall be a viola-
 14 tion of this Act which shall be subject to the provisions of
 15 section 11, but not the provisions of section 10, of this Act.

16 PIPELINE INTERCONNECTIONS

17 SEC. 9. (a) To carry out the purposes of this Act, dur-
 18 ing the supply emergency period the Commission may, by
 19 rule, direct any pipeline to establish a physical interconnec-
 20 tion between any specified facility of any such pipeline
 21 and any specified facility of any other pipeline. The
 22 Commission may apportion the costs of any such inter-
 23 connection and any such apportionment shall be equitable.

24 (b) The Commission may order any pipeline to trans-

1 port new natural gas purchased by a distressed interstate
 2 pipeline pursuant to the provisions of this Act.

3 (c) Compliance by any pipeline with any rule or order
 4 issued pursuant to the authority of this section shall not sub-
 5 ject such pipeline to regulation as a common carrier under
 6 any provision of State or Federal law. Compliance by any
 7 pipeline with any such rule or order shall not subject such
 8 pipeline to regulation under the Natural Gas Act if such
 9 pipeline is not otherwise subject to such regulation.

10 CIVIL AND CRIMINAL PENALTIES

11 SEC. 10. (a) (1) Any person determined by the Com-
 12 mission, after notice and an opportunity for a presentation
 13 of views, to have violated—

14 (A) any provision of this Act, or

15 (B) any rule or order issued pursuant to the au-
 16 thority of this Act,

17 shall be liable to the United States for a civil penalty of not
 18 more \$10,000 for each violation; and if any such violation
 19 is a continuing one, each day of violation shall constitute a
 20 separate offense.

21 (2) (A) The amount of any such penalty shall be
 22 assessed by the Commission by written notice and may be
 23 compromised by the Commission prior to referral of the
 24 Attorney General under paragraph (3).

1 (B) In determining or compromising the amount of such
2 civil penalty, the Commission shall take into account the na-
3 ture, circumstances, extent, and gravity of the violation com-
4 mitted and, with respect to the person found to have committed
5 such violation, the degree of culpability, any history of prior
6 offenses, ability to pay, effect on ability to continue to do
7 business, and such other matters as justice may require.

8 (3) Such civil penalty may be recovered in an action
9 brought by the Attorney General on behalf of the United
10 States in the appropriate district court of the United States.
11 The amount of such penalty, when finally determined (or
12 agreed upon in compromise), may be deducted from any
13 sums owed by the United States to the person charged. All
14 penalties collected under this subsection shall be deposited in
15 the General Fund of the Treasury of the United States.

16 (b) Any person who willfully violates—

17 (1) any provision of this Act, or

18 (2) any rule or order issued pursuant to the au-
19 thority of this Act,

20 shall be fined not more than \$25,000, or imprisoned for
21 not more than 5 years, or both, for each such willful
22 violation.

23 **EQUITABLE ENFORCEMENT**

24 **SEC. 11.** (a) The Attorney General may, upon his own
25 motion, and shall, at the request of the Commission, bring

1 an action against any person to redress any violation of a
2 provision of this Act, or any rule or order issued pursuant
3 to the authority of this Act. Any person may bring an action
4 against any other person to prevent, restrain, or redress a
5 violation of any provision of this Act or any rule or order
6 issued pursuant to the authority of this Act.

7 (b) The district courts of the United States shall have
8 jurisdiction with respect to any action brought under sub-
9 section (a). The court shall have the power to grant such
10 equitable relief as is necessary to prevent, restrain, or redress
11 the effect of such violation, including declaratory judgment,
12 mandatory or prohibitive injunctive relief, and interim equi-
13 table relief, and the courts shall further have the power to
14 award (1) compensatory damages to any injured person or
15 class of persons, (2) costs of litigation including reasonable
16 attorney and expert witness fees, and (3), whenever and to
17 the extent deemed necessary or appropriate to deter future
18 violations, punitive damages.

19 (c) (1) A rule or order issued pursuant to the authority
20 of this Act or any determination or designation made by the
21 Commission pursuant to the authority of this Act shall be
22 subject to judicial review only to the extent authorized by, and
23 in accordance with, chapter 7 of title 5, United States Code,
24 except that (A) the second sentence of section 705 thereof
25 is not applicable, and (B) the appropriate court shall only

1 hold unlawful and set aside such a rule, order, determination,
2 or designation on a ground specified in subparagraph (A),
3 (B), (C), or (D) of section 706(2) thereof.

4 (2) In the case of any appeal by any interstate pipeline
5 from any denial of designation of such pipeline as a distressed
6 interstate pipeline, the reviewing court shall have jurisdiction
7 to grant such equitable relief, including mandamus to the
8 Commission, as such court deems necessary, except that
9 such court shall not have jurisdiction—

10 (A) to issue an *ex parte* temporary restraining
11 order, or

12 (B) to restrain or enjoin any Commission action
13 other than the denial of designation of such pipeline as
14 a distressed interstate pipeline.

15 RULES AND ORDERS

16 SEC. 12. The Commission is authorized to issue rules
17 and orders which the Commission determines are necessary or
18 appropriate to carry out the purposes of this Act.

19 EFFECT ON STATE LAW

20 SEC. 13. No law or regulation of any State or political
21 subdivision thereof, or of any agency or instrumentality there-
22 of, may prohibit a local distribution company from agreeing
23 to treat, or from treating, any surcharge rate or tariff charged
24 to such local distribution company by a distressed interstate
25 pipeline pursuant to the requirements of section 5(a)(2)

1 as a surcharge applicable to accounts other than those of
2 residential and small commercial users. Nothing in this
3 Act shall affect the authority of any State, political subdivi-
4 sion thereof, or of any agency or instrumentality thereof, to
5 regulate the application of any such surcharge rate or tariff
6 to accounts other than those of residential and small com-
7 mercial users.

8 REPORT

9 SEC. 14. Not later than June 15, 1976, and June 15,
10 1977, the Commission shall report to the President and the
11 Congress with respect to:

12 (1) the volumes of new natural gas purchased or
13 acquired by distressed interstate pipelines during the
14 supply emergency period;

15 (2) the prices at which such gas was purchased or
16 acquired by such pipelines;

17 (3) the extent of curtailments experienced by each
18 such pipeline during such period;

19 (4) compliance by producers of natural gas with
20 the terms of any contractual or certification obligation
21 to deliver natural gas to interstate pipelines at prescribed
22 or minimum rates;

23 (5) the extent to which interstate pipelines have
24 pursued administrative and judicial remedies to compel
25 compliance by natural gas producers with the terms of

1 any contractual or certification obligation of such pro-
 2 ducers to deliver quantities of natural gas to interstate
 3 pipelines at prescribed or minimum rates;

4 (6) the efforts of interstate pipelines to secure addi-
 5 tional supplies of natural gas under the rules and pro-
 6 cedures of the Commission in existence on the date of
 7 enactment of this Act; and

8 (7) the effectiveness of this Act in reducing levels
 9 of curtailments and in reducing the adverse economic
 10 and employment consequences of curtailments which
 11 would have occurred if supplies of new natural gas had
 12 not become available to interstate pipelines pursuant to
 13 the provisions of this Act.

14 Amend the title so as to read: "A bill to grant the Fed-
 15 eral Power Commission certain temporary standby authori-
 16 ties to respond to potential natural gas supply dislocations
 17 so as to assure the continuing availability of natural gas to
 18 certain interstate pipelines."

Union Calendar No. 362

94TH CONGRESS
1ST SESSION

H. R. 9464

[Report No. 94-732]

A BILL

To assure the availability of adequate supplies
of natural gas during the period ending
June 30, 1976.

By Mr. DINGELL and Mr. STAGGERS

SEPTEMBER 9, 1975

Referred to the Committee on Interstate and Foreign
Commerce

DECEMBER 15, 1975

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