

94TH CONGRESS
1ST SESSION

H. R. 9464

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 1975

MR. DINGELL (for himself and Mr. STAGGERS) introduced the following bill;
which was referred to the Committee on Interstate and Foreign Commerce

A BILL

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".

5 PURPOSES

6 SEC. 2. The purposes of this Act are to establish tempo-
7 rary emergency authorities for minimizing the detrimental
8 effects on employment, food production, and public health,
9 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:

1 (A) such pipeline; or

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

4 (12) The term "supply emergency period"
5 means the period, or any part thereof, which begins on
6 the date of enactment of this Act and ends on July 1,
7 1976.

8 ACCESS BY PRIORITY INTERSTATE PURCHASERS TO

9 NATURAL GAS

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

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

1 period from August 1, 1975, through August 31, 1975, for
2 natural gas produced in the area and sold in intrastate
3 commerce.

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

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

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

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

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

20 (2) The Commission shall, by rule, prohibit the sale in
21 interstate commerce from lands located on the Outer Conti-
22 nental Shelf of any new natural gas to any person other
23 than a priority interstate purchase if, within the fifteen-
24 day period specified in paragraph (1) (B), a priority in-
25 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.

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

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

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

10 (C) natural gas made available as the result of such
11 prohibition could be made available, directly or indi-
12 rectly, to a priority interstate purchaser.

13 (2) A rule under this subsection shall not take effect if
14 the Commission certifies to the Administrator that the pro-
15 hibition would impair the reliability of service in any area
16 served by those affected electric power systems.

17 (c) (1) The Administrator shall exempt from any rule
18 under this section the burning of natural gas for the neces-
19 sary processes of ignition, startup, testing, and flame stabili-
20 zation by powerplants.

21 (2) Subject to paragraph (1), of this section the Ad-
22 ministrator may make a rule under subsection (a) or (b)
23 of this section apply to all natural gas burned by the power-
24 plant to which such rule applies or may specify the periods
25 and amounts of natural gas to which such rule shall apply.

1 (d) Nothing in this section shall impair any State or
2 Federal requirement relating to health, safety, or environ-
3 mental protection.

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

8 (f) (1) If the application of a rule under this section
9 results in a sale of transferred gas by a curtailed user or a
10 supplier of a curtailed user to a person other than such cur-
11 tailed user or a supplier of such user, such seller may not
12 charge an amount for such transferred gas which exceeds the
13 amounts he would have charged such user or supplier (as the
14 case may be). In addition, the person to whom such sale is
15 made shall compensate the curtailed user, and any supplier
16 of such curtailed user, in an amount which is equal to any
17 net increase in such user's reasonable costs for replacement
18 fuel or replacement power, and any net increase in such
19 supplier's reasonable costs and any other losses which are in-
20 curred by such supplier, as a result of the application of the
21 order issued under this section. Such compensation shall be
22 in an amount agreed upon by the parties, or (if the parties
23 are unable to agree) in an amount determined by the Com-
24 mission 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-

1 recovery of crude oil or natural gas, or both, from such
2 field.

3 (e) Nothing in this section shall be construed to au-
4 thorize the production from any naval petroleum reserve
5 subject to the provisions of chapter 641 of title 10, United
6 States Code.

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

14 PIPELINE INTERCONNECTIONS

15 SEC. 8. To carry out the purposes of this Act, the Com-
16 mission may, by rule, direct any pipeline to establish a
17 physical interconnection between any specified facility of
18 any other such pipeline. The Commission shall apportion
19 equitably the costs of any such interconnection to the pipe-
20 line, to priority interstate purchasers initially benefiting
21 therefrom, or to both.

22 PENALTIES

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

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

17 (2) Such civil penalty may be recovered in an action
18 brought by the Attorney General on behalf of the United
19 States in the appropriate district court of the United States or
20 prior to referral to the Attorney General, such civil penalty
21 may be compromised by the Commission, the Administrator,
22 or the Secretary, as may be applicable. The amount of such
23 penalty, when finally determined (or agreed upon in com-
24 promise), may be deducted from any sums owed by the
25 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.

94TH CONGRESS
1ST SESSION

H. R. 9464

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