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NATURAL GAS EMERGENCY ACT OF 1975

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HEARING

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BEFORE THE

COMMITTEE ON COMMERCE

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

S. 2244

TO AMEND THE NATURAL GAS ACT

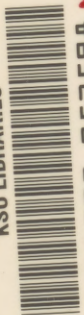
S. 2310

TO ASSURE THE AVAILABILITY OF ADEQUATE SUPPLIES OF NATURAL GAS DURING THE PERIOD ENDING JUNE 30, 1976

S. 2330

TO PROVIDE TEMPORARY AUTHORITY FOR THE PRESIDENT, THE FEDERAL POWER COMMISSION, AND THE FEDERAL ENERGY ADMINISTRATION TO INSTITUTE EMERGENCY MEASURES TO MINIMIZE THE ADVERSE EFFECTS OF NATURAL GAS SHORTAGES, AND FOR OTHER PURPOSES

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SEPTEMBER 15, 1975

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THE NATURAL GAS EMERGENCY ACT OF 1975

MONDAY, SEPTEMBER 15, 1975

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met at 11 a.m. in room 1318 of the Dirksen Senate Office Building; Hon. Ernest F. Hollings, presiding.

OPENING STATEMENT BY SENATOR HOLLINGS

Senator HOLLINGS. The committee will come to order.

From all available evidence, supplies of natural gas will be critically short in many areas of the Nation this winter. In the absence of prompt remedial action, we may be faced with the loss of thousands of jobs resulting from the unavailability of natural gas to essential industrial users.

But these jobs can be saved. Plants need not close this winter due to lack of natural gas. But we must assure that essential users are able to obtain new natural gas supplies. And those users who are now burning natural gas but could use alternative fuels must be encouraged to do so. Legislative actions to achieve these ends should not be viewed with alarm by those regions of the Nation that are not now suffering natural gas curtailments. Any powerplant that loses natural gas under the legislation we are considering today would be fully compensated for any additional costs resulting from using higher price fuels. Producers in the intrastate market will not be required to roll back their prices in order to sell to high-priority intrastate customers. Pipelines that have ample supplies of natural gas will not be penalized. But we must act, and act quickly if we are to avert the drastic economic disruptions and unemployment that will result unless additional supplies of natural gas are made to those few pipelines in real trouble.

Both the administration and the FPC recognize the need for urgent action. Both have submitted legislation, which together with S. 2310, is the subject of these hearings.

S. 2310 as introduced may be summarized as follows: First, the FPC is to designate those interstate pipelines that are in deep curtailment. These are pipelines that are unable to meet the requirements of customers who cannot use alternative fuel, and whose supply requirements of natural gas must be met in order to avoid substantial unemployment. Such "priority" interstate purchasers would be able to compete with the intrastate buyers for the onshore production of new natural gas. No purchaser, in interstate or intrastate commerce, may pay a price for new onshore natural gas that exceeds the current market price in that production area for intrastate contracts.

Staff members assigned to this hearing: David Freeman and Henry Lippek.

Second, in the case of natural gas produced on the Outer Continental Shelf, priority interstate purchasers are provided special assistance in obtaining new natural gas supplies.

Third, essential agricultural users would have special priority in obtaining new natural gas supplies to assure that food production is not curtailed due to natural gas shortages.

Fourth, where electric powerplants can convert to oil or coal, they would be required to do so in order to make additional supplies of natural gas available to essential users. Such users receiving natural gas would pay the powerplants any additional costs for burning alternative fuels.

Fifth, the Secretary of the Interior is required to order the production from designated natural gas fields at the maximum efficient rate or at temporary emergency production levels in order to increase supplies of natural gas to priority interstate purchasers.

I believe prompt action is necessary on emergency natural gas legislation. For this reason, when we introduced S. 2310, we had it placed directly on the Senate calendar ready for immediate consideration. The purpose of these hearings is to carefully examine the bill and assist in the preparation of any amendments prior to the time that this matter is taken up by the Senate.

Because the Senate Interior Committee has certain jurisdictional interests in this bill, we invited members of that committee to these hearings.

[The bills follows:]

[S. 2244 94th Cong., 1st Sess.]

A BILL To amend the Natural Gas Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. The Congress hereby determines that—

(a) domestic supplies of natural gas available for interstate commerce are not sufficient to meet present and anticipated national and regional needs;

(b) shortages of natural gas have created and are likely, in the near future, to continue to create severe economic dislocations and hardships;

(c) such shortages have jeopardized the normal flow of commerce and constitute a supply crisis which is a threat to the public health, safety, and welfare; and

(d) such shortages can, in part, be alleviated by granting the Federal Power Commission emergency authority to exempt temporarily certain activities and operations relating to the sale, transportation, transfer, or exchange in interstate commerce of natural gas or of commingled natural gas and synthetic natural gas, from the provisions of the Natural Gas Act.

SEC. 2. That section 7(c) of the Natural Gas Act is amended by adding at the end of such section the following: "*Provided further, That* within fifteen days after the passage of this amendment, the Commission may by regulation exempt from the provisions of this Act any activities or operations relating to the transportation, sale, transfer, or exchange of natural gas, or of commingled natural and synthetic natural gas, or of liquefied natural gas, from any source other than Federal domain areas, by a producer, an interstate pipeline, intrastate pipeline or distributor, to or with an interstate natural gas pipeline company which does not have a sufficient supply of natural gas to fulfill its firm contractual requirements or interruptible requirements for residential, commercial, or industrial needs for plant protection, feedstock, or process uses for which no alternate fuel is available, and which is curtailing deliveries pursuant to a curtailment plan on file with the Commission, or to or with any purchaser or consumer of natural gas which has been purchased from such a pipeline, directly or indirectly. No exemption granted under this proviso shall exceed one hundred and eighty days in duration."

[S. 2310, 94th Cong., 1st sess.]

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Natural Gas Emergency Act of 1975".

PURPOSES

SEC. 2. The purposes of this Act are to establish temporary 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 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 intrastate 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 Commission 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 proposed contract to sell such gas) with the Commission at least fifteen days prior to sale.

(2) The Commission shall, by rule, prohibit the sale in interstate commerce from lands located on the Outer Continental 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 interstate purchaser offers to purchase such new natural gas under terms and conditions which the Commission determines are substantially similar to or identical with the terms or conditions of such proposal to sell to which the notice prescribed by subparagraph (B) pertains.

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

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

(g) If the Commission determines that natural gas could have been produced or sold, or both, but was not purchased or sold, or both, during the period that this Act is in effect, such natural gas may not at any time thereafter be sold at a price above that permitted under this Act.

(h) A priority interstate purchaser shall obtain priority only to the extent necessary to meet the requirements of essential users and the Commission shall take such steps as are within its authority under the Natural Gas Act to assure that any additional supplies of new natural gas obtained by a priority interstate purchaser are made available to essential users.

(i) The Commission shall encourage voluntary agreements that are not inconsistent with this Act to sell or exchange natural gas or other arrangements that increase the supply of natural gas available to priority interstate purchasers.

AVAILABILITY OF GAS FOR AGRICULTURAL USERS

SEC. 5. (a) (1) Notwithstanding any other provision of law or of any natural gas allocation or curtailment plan in effect under existing law, the Commission shall, by rule, upon petition or upon its own motion prohibit any interruption or curtailment of natural gas supplies, and take such other actions under authority of the National Gas Act and this Act as the Commission determines to be necessary and appropriate, to assure to the maximum extent practicable the availability of sufficient quantities of natural gas for use for any essential agricultural, food processing, or food packaging purposes as determined by the Secretary of Agriculture, for which natural gas is necessary, as determined by the Secretary of Agriculture including, but not limited to, irrigation pumping, crop drying, and use as a feedstock or process fuel in the production of fertilizer and essential agricultural chemicals in existing plants (for present or expanded capacity) and in new plants.

(2) No prohibition pursuant to paragraph (1) of this subsection may be inconsistent with the goals of substantially minimizing unemployment attributable to interruption of natural gas supplies or with maintaining natural gas supplies to residential users, to small users, to hospitals, or for products and services vital to public health and safety.

(b) For purposes of this section, the Secretary of Agriculture shall not determine any use of natural gas to be necessary if such gas is to be used as a boiler fuel to serve (1) expended capacity of existing facilities, (2) an existing facility for which natural gas supply contracts have expired, or (3) new facilities. The Secretary of Agriculture shall certify to the Commission the volumes and identify the users, of natural gas determined to be necessary for essential agricultural, food processing, or food packaging purposes.

PROHIBITION OF USE OF NATURAL GAS AS BOILER FUEL

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

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

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

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

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

A rule under this subsection shall not take effect (A) until a date which the Administrator of the Environmental Protection Agency certifies is the earliest date on which such plant can burn, in compliance with the Clean Air Act (including any applicable implementation plan) and with applicable State environmental protection laws, petroleum products which the Administrator determines, under paragraph (3), are available, or (B) if the Commission certifies to the Administrator that the prohibition under this paragraph will impair the reliability of service in the area served by the 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 amount 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 par-

ties, or (if the parties are unable to agree) in an amount determined by the Commission in accordance with the provisions of this section.

(2) For purposes of this subsection—

(A) The term "curtailed user" means a powerplant to which a rule under this section is applicable.

(B) The term "transferred natural gas" means natural gas which a curtailed user does not consume by reason of a rule under this section and which is made available to another person.

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

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

(h) For purposes of this section, the terms "powerplant" and "petroleum product" have the same meanings as such terms have under section 2 of the Energy Supply and Environmental Coordination Act of 1974.

(i) Section 2(f)(1) of the Energy Supply and Environmental Coordination Act of 1974 is amended by striking out "June 30, 1975" and inserting in lieu thereof "June 30, 1976".

(j) This section (other than subsection (i)) does not affect any authority under the Energy Supply and Environmental Coordination Act of 1974.

PRODUCTION OF GAS AT THE MAXIMUM EFFICIENT RATE AND TEMPORARY
EMERGENCY PRODUCTION RATE

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

(b) (1) Within forty-five days after the date of enactment of this Act, the Secretary of the Interior, by rule, shall determine the maximum efficient rate of production and, if any, the temporary emergency production rate, for each field on Federal lands which such Secretary determines produces, or has the capacity to produce, significant quantities of natural gas.

(2) Each State or the appropriate agency thereof may determine the maximum efficient rate of production and, if any, the temporary emergency production rate for each field (other than a field on Federal land) within such State which the State or appropriate agency determines produces, or has the capacity to produce, significant quantities of natural gas.

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

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

(2) If loss of ultimate recovery of crude oil or natural gas, or both, occurs or will occur as the result of an order to produce at the temporary emergency production rate, such loss shall be deemed a taking by condemnation, and the owner of any property right diminished by such taking may bring an action in an appropriate United States district court to recover just compensation from the United States or any person obligated to indemnify the United States.

(3) The Administrator shall require that any priority purchaser who purchases natural gas supplies made available through the exercise of authority under subsection (a) to require production in any field at such field's temporary emergency production rate, provide adequate assurance of indemnification of the United States for any liability which the United States may incur by reason of action taken pursuant to the authority of subsection (a) and such

order may, in addition, require the posting of bond by such purchaser as assurance of indemnification.

(d) For purposes of this section—

(1) The term "maximum efficient rate of production" means the maximum rate of production of natural gas which may be sustained without loss of ultimate recovery of crude oil or natural gas, or both, under sound engineering principles.

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

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

(B) which may be maintained for a temporary period of less than ninety days without reservoir damage and without significant loss of ultimate recovery 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 violated 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 under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

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

ENFORCEMENT

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

(b) The district courts of the United States shall have jurisdiction with respect to any civil action brought under subsection (a). The court shall have the

power to grant such equitable relief as is necessary to prevent, restrain, or remedy the effect of such violation, including declaratory judgment, mandatory or prohibitive injunctive relief, and interim equitable relief, and the courts shall further have the power to award (A) compensatory damages to any injured person or class of persons, (B) costs of litigation including reasonable attorney and expert witness fees, and (C) whenever and to the extent deemed necessary or appropriate to defer future violations, punitive damages.

(c) A rule or order prescribed under this Act is subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, except that (A) the second sentence of section 705 thereof is not applicable, and (B) the appropriate court shall only hold unlawful and set aside such a rule or order on a ground specified in subparagraph (A), (B), (C), or (D) of section 706(2) thereof.

RULEMAKING

SEC. 11. The Commission, the Administrator, or the Secretary, in addition to the authorities specifically granted herein, shall have authority to issue rules and orders applicable to any person which the Commission, the Administrator, or the Secretary (as the case may be) determines are necessary or appropriate to carry out the purposes of this Act.

EXPIRATION

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

[S. 2330, 94th Cong., 1st sess.]

A BILL To provide temporary authority for the President, the Federal Power Commission, and the Federal Energy Administration to institute emergency measures to minimize the adverse effects of natural gas shortages, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Natural Gas Emergency Standby Act of 1975".

TITLE I

SEC. 101. (a) The Congress hereby finds that—

(1) inadequate domestic production of natural gas has resulted in serious natural gas shortages which threaten severe economic dislocations and hardships, including loss of jobs, closing of factories and businesses, reduction of agricultural production, and curtailment of vital public services;

(2) such shortages constitute a threat to the public health, safety, and welfare and to national defense;

(3) such shortages have created an unreasonable burden on certain areas of the country and on certain sectors of the economy;

(4) such shortages affect interstate and foreign commerce by jeopardizing the normal flow of commerce;

(5) while deregulation of wellhead prices of new natural gas is urgently needed to minimize such shortages in the future, serious shortages during the next two winters cannot be averted; and

(6) the adverse effects of such shortages can be minimized most efficiently and effectively by providing emergency authority to permit prompt further action by the Federal Government to supplement existing Federal, State, and local government efforts to deal with such shortages.

(b) The purpose of this Act is to authorize the President or his delegate, the Federal Power Commission, and the Federal Energy Administration to deal with existing and imminent shortages and dislocations of natural gas in the national distribution system which jeopardize the public health, safety, and welfare; and to provide protection of natural gas service to customers who use natural gas for high priority end uses during periods of curtailed deliveries by natural gas companies. The authority granted under this Act shall be exercised for the purpose of minimizing the adverse impacts of shortages or dislocations on the American people and the domestic economy.

SEC. 102. This Act shall expire at midnight June 30, 1977.

TITLE II

SEC. 201. This title may be cited as the "Interstate Pipeline Emergency Natural Gas Purchases Act of 1975".

SEC. 202. The purpose of this title is to grant the Federal Power Commission authority to allow interstate pipeline companies with insufficient natural gas for their high priority consumers of natural gas to acquire natural gas from intrastate sources and other interstate pipeline companies on an emergency basis free from the provisions of the Natural Gas Act.

SEC. 203. Section 2 of the Natural Gas Act (15 U.S.C. 717a) is amended by inserting immediately after subsection (9) thereof the following new subsections:

"(10) 'Gas distributing company' means a person involved in the distribution or transportation of natural gas for ultimate public consumption for domestic, commercial, industrial, or any other use but does not include a natural gas company as defined in subsection (6) of this section.

"(11) 'High priority consumer of natural gas' means a person so defined by the Commission by rules and regulations."

SEC. 204. Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) is amended by designating the two unnumbered paragraphs thereof as paragraphs (1) and (2) and by adding at the end of paragraph (2) as designated hereby the following: "Provided further, That within fifteen days after the enactment of this amendment, the Commission may by regulation exempt from the provisions of this Act the transportation, sale, transfer or exchange of natural gas from any source, other than any land or subsurface area within the Outer Continental Shelf as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)), by a producer, an interstate pipeline company, an intrastate pipeline company or gas distributing company, to or with an interstate pipeline company which does not have a sufficient supply of natural gas to fulfill the requirements of its high priority consumers of natural gas, and which is curtailing deliveries pursuant to a curtailment plan on file with the Commission. No exemption granted under this proviso shall exceed one hundred and eighty days in duration."

TITLE III

SEC. 301. This title may be cited as the "Curtailed Consumers Emergency Natural Gas Purchasers Act of 1975".

SEC. 302. The purpose of this title is to allow curtailed high priority consumers of natural gas to purchase natural gas from the intrastate market by enabling them to arrange for the transportation of such gas by regulated interstate pipeline companies.

SEC. 303. Section 2 of the Natural Gas Act (15 U.S.C. 717a), as amended by section 203 of this Act, is amended further by inserting immediately after subsection (11) thereof, the following new subsection:

"(12) 'Independent producer' means a person, as determined by the Commission, who is engaged in the production of natural gas and who is not (i) an interstate pipeline company or (ii) affiliated with an interstate pipeline company."

SEC. 304. (a) Section 1 of the Natural Gas Act (15 U.S.C. 717) is amended by adding at the end thereof the following new subsection:

"(d) The provisions of this Act shall not apply to the use of the facilities of a gas distributing company for the transportation of natural gas produced by an independent producer from lands, other than any land or subsurface area within the Outer Continental Shelf as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)), and sold by such a producer directly to a high priority consumer of natural gas: *Provided*, That the rates applicable to the use of such facilities for the transportation of natural gas described in this subsection are subject to regulation by a State commission. The transportation of natural gas exempted from the provisions of this Act by this subsection is hereby declared to be a matter primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction."

(b) Subsection (c) of section 7 of the Natural Gas Act (15 U.S.C. 717f(c)), as amended by section 204 of this Act, is amended further by inserting therein the following new paragraph:

"(3) Pursuant to the substantive and procedural provisions of this section the Commission may in its discretion issue a certificate of public convenience and necessity upon filing of an application by a natural gas company to transport natural gas produced by independent producers from lands, other than any

land or subsurface area within the Outer Continental Shelf as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)), and sold by such producers directly to existing high priority consumers of natural gas whose current supply of natural gas is curtailed due to natural gas company curtailment plans on file with the Commission: *Provided, however*, That in issuing a certificate pursuant to this paragraph, the Commission need not review or approve the price paid by a high priority consumer of natural gas directly to an independent producer."

TITLE IV

SEC. 401. This title may be cited as the "Emergency Energy Supply and Environmental Coordination Act Amendments of 1975".

SEC. 402. The purpose of this title is to continue the conservation of natural gas and petroleum products by fostering the use of coal by powerplants and major fuel burning installations, and if coal cannot be utilized, to provide authority to prohibit the use of natural gas when petroleum products can be substituted.

SEC. 403. Section 2 of the Energy Supply and Environmental Coordination Act of 1974 is amended by:

(a) redesignating subsections (e) and (f) as subsections (f) and (g), respectively;

(b) amending redesignated subsection (g) (1) to read as follows:

"(g) (1) Authority to issue orders or rules under subsections (a), (b), (d), and (e) of this section shall expire at midnight, June 30, 1977. Authority to issue orders under subsection (c) shall expire at midnight, June 30, 1975. Any rule or order issued under subsections (a) through (e) may take effect at any time before January 1, 1979."

(3) inserting after subsection (d) the following new subsection (e):

"(e) (1) The Federal Energy Administrator may, by order, prohibit any powerplant or major fuel burning installation from burning natural gas if—

"(A) the Administrator determines that—

"(i) such powerplant or installation had on June 30, 1975 (or at any time thereafter) the capability and necessary plant equipment to burn petroleum products,

"(ii) an order under subsection (a) may not be issued with respect to such powerplant or installation,

"(iii) the burning of petroleum products by such powerplant or installation in lieu of natural gas is practicable,

"(iv) petroleum products will be available during the period the order is in effect,

"(v) with respect to powerplants, the prohibition under this subsection will not impair the reliability of service in the area served by the plant, and

"(B) the Administrator of the Environmental Protection Agency has certified that such powerplant or installation will be able to burn the petroleum products which the Federal Energy Administrator has determined under subparagraph (A) (iv) will be available to it and will be able to comply with the Clean Air Act (including applicable implementation plans).

"(2) An order under this subsection shall not take effect until the earliest date the Administrator of the Environmental Protection Agency has certified that the powerplant or installation can burn petroleum products and can comply with the Clean Air Act (including applicable implementation plans).

"(3) The Federal Energy Administrator may specify in any order issued under this subsection the periods of time during which the order will be in effect and the quantity (or rate of use) of natural gas that may be burned by a powerplant or major fuel burning installation during such periods, including the burning of natural gas by a powerplant to meet peaking load requirements."

SEC. 404. Section 11(g) (2) of the Energy Supply and Environmental Coordination Act of 1974 is amended by striking out "June 30, 1975" wherever it appears and inserting in lieu thereof "June 30, 1977".

TITLE V

SEC. 501. This title may be cited as the "Propane Standby Allocation Act of 1975".

SEC. 502. The purpose of this title is to provide standby authority for the President to allocate propane during periods of actual or threatened severe shortages of natural gas.

Sec. 503. For purposes of this title, the following terms shall have the following meanings:

(a) "Propane" means propane derived from natural gas streams or crude oil, and mixtures containing propane.

(b) "United States" means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

Sec. 504. Upon finding that shortages of natural gas exist or are imminent and upon finding that such shortages or potential shortages constitute a threat to the public health, safety or welfare, the President is authorized to issue orders and regulations as he deems appropriate to provide, consistent with section 507 of this title, for the establishment of priorities of use and for systematic allocation and pricing of propane in order to meet the essential needs of various sections of the United States and to lessen anticompetitive effects resulting from shortages of natural gas.

Sec. 505. (a) Whoever willfully violates any order or regulation under this title shall be fined not more than \$5,000 for each violation.

(b) Whoever violates any order or regulation under this title shall be subject to a civil penalty of not more than \$2,500 for each violation.

(c) Any person or agency to whom the President has delegated his authority pursuant to section 513 of this title may issue such orders and notices as are deemed necessary to insure compliance with any order or regulation issued pursuant to section 504 of this title, or to remedy the effects of violations of any such orders or regulations.

Sec. 506. There shall be available as a defense to any action brought under the antitrust laws, or for breach of contract in any Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange any product covered by this title that such delay or failure was caused solely by compliance with the provisions of this title or with any regulations or any orders issued pursuant to this title.

Sec. 507. (a) Subject to subsections (b), (c), and (d) of this section, which shall apply to any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551(4) of title 5, United States Code, and issued pursuant to this title the functions exercised under this title are excluded from the operation of subchapter II of chapter 5, and chapter 7 of title 5, United States Code, except as to the requirements of sections 552, 553, and 555(e) of title 5, United States Code.

(b) Notice of any proposed rule, regulation, or order described in subsection (a) shall be given by publication of such proposed rule, regulation, or order in the Federal Register. In each case, a minimum of ten days following such publication shall be provided for opportunity to comment; except that the requirements of this paragraph as to time of notice and opportunity to comment may be waived where strict compliance is found to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order.

(c) In addition to the requirements of subsection (b), if any rule, regulation, or order described in subsection (a) is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be afforded. To the maximum extent practicable, such opportunity shall be afforded prior to the issuance of such rule, regulation, or order, but in all cases such opportunity shall be afforded no later than forty-five days after the issuance of any such rule, regulation, or order. A transcript shall be kept of any oral presentation.

(d) The President or any officer or agency authorized to issue the rules, regulations, or orders described in subsection (a) shall provide for the making of such adjustments, consistent with the other purposes of this title, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens shall, by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, rescission of, exception to, or exemption from such rules, regulations, and orders. If such person is aggrieved or adversely affected by the denial of a request for such action under the preceding sentence, he may request a review of such denial by the President or the officer or agency to whom he has delegated his authority pursuant to section 513 of this title and may obtain judicial review in accordance with section 508 of this title when such denial becomes final. The President or the officer or agency shall, by rule, establish appropriate procedures, including a hearing where deemed advisable, for considering such requests for action under this paragraph.

SEC. 508. (a) The district courts of the United States shall have exclusive original jurisdiction of cases or controversies arising under this title or under regulations or orders issued thereunder, notwithstanding the amount in controversy; except that nothing in this subsection or in subsection (h) of this section affects the power of any court of competent jurisdiction to consider, hear, and determine any issue by way of defense (other than a defense based on the constitutionality of this title or the validity of action taken by any agency under this title) raised in any proceeding before such court. If in any such proceeding an issue by way of defense is raised based on the constitutionality of this title or the validity of actions under this title, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28, United States Code.

(b) Except as otherwise provided in this section, exclusive appellate jurisdiction is vested in the temporary emergency court of appeals, a court which is currently in existence, but which is independently authorized by this section. The court, a court of the United States, shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. The Chief Justice of the United States shall designate one of such judges as chief of the temporary emergency court of appeals, and may, from time to time, designate additional judges for such court and revoke previous designations. The chief judge may, from time to time, divide the court into divisions of three or more members, and any such division may render judgment as the judgment of the court. Except as provided in subsection (e) (2) of this section, the court shall not have power to issue any interlocutory decree staying or restraining in whole or in part any provision of this title, or the effectiveness of any regulation or order issued thereunder. In all other respects, the court shall have the powers of a circuit court of appeals with respect to the jurisdiction conferred on it by this title. The court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases over which it has jurisdiction under this title. The court shall have a seal, hold sessions at such places as it may specify, and appoint a clerk and such other employees as it deems necessary or proper.

(c) Appeals from the district courts of the United States in cases and controversies arising under regulations or orders issued under this title shall be taken by the filing of a notice of appeal with the temporary emergency court of appeals within thirty days of the entry of judgment by the district court.

(d) In any action commenced under this title in any district court of the United States in which the court determines that a substantial constitutional issue exists, the court shall certify such issue to the temporary emergency court of appeals. Upon such certification, the temporary emergency court of appeals shall determine the appropriate manner of disposition which may include a determination that the entire action be sent to it for consideration or it may, on the issues certified, give binding instructions and remand the action to the certifying court for further disposition.

(e) (1) Subject to paragraph (2) no regulation of any agency exercising authority under this title shall be enjoined or set aside, in whole or in part, unless a final judgment determines that the issuance of such regulation was in excess of the agency's authority, was arbitrary or capricious, or was otherwise unlawful under the criteria set forth in section 706(2) of title 5, United States Code, and no order of such agency shall be enjoined or set aside, in whole or in part, unless a final judgment determines that such order is in excess of the agency's authority, or is based upon findings which are not supported by substantial evidence.

(2) A district court of the United States or the temporary emergency court of appeals may enjoin temporarily or permanently the application of a particular regulation or order issued under this title to a person who is a party to litigation before it. Except as provided in this subsection, no interlocutory or permanent injunction restraining the enforcement, operation, or execution of this title, or any regulation or order issued thereunder, shall be granted by any district court of the United States or judge thereof. Any such court shall have jurisdiction to declare (i) that a regulation of an agency exercising authority under this title is in excess of the agency's authority, is arbitrary or capricious, or is otherwise unlawful under the criteria set forth in section 706(2) of title 5, United States Code, or (ii) that an order or such agency is invalid upon a determination that the order is in excess of the agency's authority, or is based upon findings which are not supported by substantial evidence. Appeals from interlocutory decisions

by a district court of the United States under this paragraph may be taken in accordance with the provisions of section 1292 of title 28, United States Code; except that reference in such section to the courts of appeals shall be deemed to refer to the temporary emergency courts of appeals.

(f) The effectiveness of a final judgment of the temporary emergency court of appeals enjoining or setting aside in whole or in part any provision of this title, or any regulations or order issued thereunder shall be postponed until the expiration of time for filing a writ of certiorari with the Supreme Court under subsection (g). If such petition is filed, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such petition becomes final, or until other final disposition of the action by the Supreme Court.

(g) Within thirty days after entry of any judgment or order by the temporary emergency court of appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a United States court of appeals as provided in section 1254 of title 28, United States Code. The temporary emergency court of appeals, and the Supreme Court upon review of judgments and orders of the temporary emergency court of appeals, shall have exclusive jurisdiction to determine the constitutional validity of any provision of this title or of any regulation or order issued under this title. Except as provided in this section, no court, Federal or State, shall have jurisdiction or power to consider the constitutional validity of any provision of this title or of any such regulation or order, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this title authorizing the issuance of such regulations or orders, or any provision of any such regulation or order, or to restrain or enjoin the enforcement of any such provision.

SEC. 509. Whenever it appears to any person or agency authorized by the President pursuant to section 513 of this title that any individual or organization has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any order or regulation under this title, such person or agency may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with any such order or regulation. In addition to such injunctive relief, the court may also order restitution of moneys received in violation of any such order or regulation.

SEC. 510. (a) An agency or person exercising authority pursuant to section 513 of this title shall have authority, for any purpose related to this title, to sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, papers, and other documents, and to administer oaths.

(b) Upon presenting appropriate credentials and a written notice to the owner, operator, or agency in charge, any agency or person exercising authority pursuant to section 513 of this title may enter, at reasonable times, any business premise or facility and inspect at reasonable times and in a reasonable manner, any such premise or facility, inventory and sample any stock of energy resources therein, and examine and copy books, records, papers, or other documents, in order to obtain information as necessary or appropriate for the proper exercise of functions under this title and to verify the accuracy of any such information.

(c) Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of refusal to obey a subpoena served upon any person under the provisions of this section, the agency or person authorizing such subpoena may request the Attorney General to seek the aid of the district court of the United States for any district in which such person is found to compel such person, after notice, to appear and give testimony, or to appear and produce documents before the agency or person.

SEC. 511. Any person suffering legal wrong because of any act or practice arising out of this title, or any order or regulation issued pursuant thereto, may bring an action in a district court of the United States, without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment, writ of injunction (subject to the limitations in section 508 of this title), and/or damages.

SEC. 512. Section 5 of the Federal Energy Administration Act of 1974 (15 U.S.C. 761) is amended in subsection (b) by adding the word "and" after the semicolon in paragraph 10; by deleting paragraph 11; and by redesignating paragraph 12 as paragraph 11.

SEC. 513. The President may delegate the performance of any function under this title to such offices, departments, and agencies of the United States as he deems appropriate.

SEC. 514. (a) No law, rule, regulation, order or ordinance of any State or municipality in effect on the date of enactment of this title, or which may become effective thereafter, shall be superseded by any provision of this title or any rule, regulation or order issued pursuant to this title except insofar as such law, rule, regulation, order or ordinance is inconsistent with the provisions of this title or any rule, regulation or order issued thereunder.

TITLE VI

SEC. 601. Termination of this Act or the authorities granted under this Act shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to such date.

SEC. 602. If any provision of this Act, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Senator HOLLINGS. I am pleased Senator Glenn is here with us today, representing the Interior Committee, along with another distinguished Member, Senator Hansen.

We have as our witness, of course, the distinguished Administrator of the FEA, Mr. Frank Zarb and the Chairman of the FPC.

OPENING STATEMENT BY SENATOR GLENN

Senator GLENN. Mr. Chairman, I thank you very much, and I am glad to welcome the expert witnesses back today.

Mr. Chairman, it has been a pleasure working with you in developing the provisions of S. 2310, and I am grateful to you and your committee for holding these hearings on the bill and other competing proposals.

It is my belief that S. 2310 offers the best possible hope for alleviating projected gas supply shortages for the coming winter.

Without emergency action on the part of Congress, widespread industrial and agricultural unemployment in areas supplied by the interstate pipeline system is inevitable.

In my State of Ohio, which experienced the largest firm curtailments in the country in the first quarter of 1975, as many as 40,000 to 100,000 jobs may be lost.

S. 2310 is directed solely at this winter's problem and does not address long-term pricing policies for natural gas.

This is an emergency act to cover a specific emergency period, effective only from enactment through June 1976.

It does recognize, however, that present pricing disparities between the interstate and intrastate markets are largely responsible for the current shortages within the interstate system.

After FPC determination that cutbacks in a particular area will create an emergency situation this winter, pipelines servicing that area will be authorized to purchase new onshore gas and gas made available as a result of expiring contracts at the price now prevailing in the intrastate market.

That price, in turn, would constitute a ceiling price for all purchases of such gas, interstate and intrastate.

It should be emphasized that S. 2310 is not an allocation bill. Sellers of onshore gas would still be permitted to choose among competing purchasers.

Price considerations, however, would no longer pressure this gas to flow intrastate.

Under the conditions of price parity created by the bill, spokesmen for the Interstate Natural Gas Association believe that a significant amount of the available natural gas could be bought by the interstate lines.

S. 2310 would also provide the Federal Energy Administration with the authority to require conversion of gas-burning powerplants to coal and oil wherever practicable when such conversions can be carried out consistent with environmental standards.

In addition, the bill would require production of certain designated gas-producing fields at the maximum efficient rate of production and, under certain conditions, at higher rates.

Finally, the bill would give a higher priority to the natural gas needs of the agricultural community where the gas is essential to production of the Nation's food supply.

The administration and the Federal Power Commission have offered similar proposals which would also permit distressed interstate consumers to buy intrastate onshore gas.

Under those proposals, however, no price ceilings would be established, and gas would simply flow to the highest bidder.

Given the emergency conditions prevailing this winter, I can foresee this approach resulting in price auctions and drastic price increases at a time when we can least afford them.

Administration spokesmen I have talked to have not argued that these prices will get us more gas or dispense it more equitably than S. 2310.

Rather, they contend that their approach is easier to administer.

While conceding that, I strongly believe that the administrative requirements of S. 2310 are workable and more than justified by the benefits which would result from the bill's enactment, particularly at a time of budding economic recovery.

Thank you, Mr. Chairman.

Senator HOLLINGS. Senator Hansen?

Senator HANSEN. I have no statement to make now.

I appreciate the invitation to be here, and to listen to the testimony. I will perhaps ask questions later.

OPENING STATEMENT BY SENATOR TUNNEY

Senator TUNNEY. Mr. Chairman, I am interested in the testimony of the witnesses. I have not had opportunity to read the legislation. I might point out that we would not be in the position of discussing the allocation of shortages if we adopted a natural gas policy that would increase supply. Namely, if we had deregulation of new gas.

I am very deeply concerned about the States that have this prospective shortage this winter. I think there are many of us here in favor of deregulating new gas at the wellhead that have been saying precisely that, that we would have shortages this winter and in future years if we don't adopt a policy encouraging the finding of more gas so we would have an adequate supply.

The thing that deeply concerns me about what we are considering today and what we will be considering on the floor is the fact that the shortages will not go away this winter nor next summer.

When this act expires next June the Congress will be meeting again perhaps in a hearing like this to talk about extending the allocation for another year and another year and another year. This will continue until we have greater supply.

I can think of nothing more inimicable to the free enterprise system than to have 30 percent of our energy, namely natural gas, under a permanent allocation scheme in which the regulators sitting in Washington, D.C. determine which businesses, which enterprises, which parts of the country, get what available supplies.

That is going to destroy the free enterprise system.

We will go to a planned economy such as we find in other countries of the world.

When that occurs in my view we will see the destruction of the permanent political freedoms that we have come to enjoy in this country.

Senator HOLLINGS. Senator Ford?

Senator FORD. I pass.

Senator HOLLINGS. Mr. Zarb has to make another appointment and I don't want to debate with my colleague from California, but the regulation of the natural gas industry is an American success story.

We have heard the bunk of deregulation for many, many years. Mr. Truman had to veto it. Mr. Eisenhower had to veto it. And Mr. Johnson, from a natural gas area, did not have the audacity to recommend deregulation because he knew regulation was a success story.

In 1954 before regulation production was 9 trillion and to 1974 production has come to 22 trillion feet.

We have always produced more than we consumed until 1968.

Then we had inordinate switching with the Clean Air Act, and declines in discoveries.

There is an incentive. In fact, they are drilling more in 1973. They did it more than they did in 1972. They drilled more in 1974 than they did in 1973 and we are drilling more now.

Regulation is working.

We are not trying to take away freedoms of America. We have the long-term bill to come up after this one, and that is the forum for continuing this debate.

Mr. Zarb, we would be glad to hear from you, sir.

STATEMENT OF HON. FRANK G. ZARB, ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION; ACCOMPANIED BY ERIC R. ZAUSNER, DEPUTY ADMINISTRATOR; AND ERIC J. FYGI, DEPUTY GENERAL COUNSEL

Mr. ZARB. I request permission to submit my testimony for the record.

Senator HOLLINGS. The statement will be included in the record.

Mr. ZARB. I would like to make a summary statement and then answer your questions.

I must, Mr. Chairman, associate myself with the remarks of Senator Tunney.

I am concerned, after looking at the history of these hearings which go back some years now, that the administration and the Congress examine just how serious the next 4 months are going to be.

Looking at each of the last three winters, we see more curtailment in percent of total demand than we have in the previous year. I hope we share the same objective in putting together the necessary national policy to maximize production of American natural gas at reasonable prices to Americans.

I express my concern because I find that often we are substituting a short natural gas supply with an expensive imported oil supply.

This policy seems to irritate our import situation and results in increasing our dependence and vulnerability on foreign nations.

I won't go into the ramifications of that situation. I believe we shall see real life demonstrations of what that means between now and the end of September.

I do hope we can continue to concentrate on solving the long term problem and not just think in terms of only emergency steps in the next 4 months.

If history has been any indication, I can assure you, that a year from today we will be looking at more serious conditions which would require more serious emergency steps.

With respect to the interim period and emergency policies proposed by the President and the Congress, we seem to be reasonably close. We both want the best possible methods to equalize to the extent we can supply and demand, while minimizing economic disruption.

I would like to make some comments at the outset, however.

First, I don't believe we should overpromise. It is my view that even with the emergency measures we will experience disruption this winter, particularly in five or six of the most serious States affected.

We shouldn't indicate that we will be able to eliminate all economic disruption.

If we have a serious winter, the outcome will be considerable, particularly for those employees of the more severely curtailed States.

Secondly, I do worry about getting into some new areas of so-called price equalization. I spent time this weekend trying to understand the difficulties of arriving at an average price, how such a system would work, and how much time it would take for the Federal Power Commission or another agency to put together the data base to have it work effectively. Does it mean licensing term contract prices along with the spot market? I wonder if we are perhaps putting in steps which administratively cannot be achieved and which will only hurt the ability to put this emergency program into place.

I raise that question, Mr. Chairman, because I believe that the approach we used in 1973, which did not attempt to equalize prices, seemed to work well. Why not go with what has been tried and true, instead of experimenting with calculations that might prove to be obstacles to the process and which would certainly slow it up?

Finally, the Congress, along with the President, has recognized the need to stabilize the primary substitute markets. Unfortunately, we will have stresses on propane markets. It is our view that we ought to have the necessary authority to assure that appropriate allocation and price control authorities are available to stabilize those markets.

In brief, Mr. Chairman, we do need emergency steps. We are fairly close in most of the areas proposed. However, we have greater problems with the average price mechanism and we want to explore these more fully with you.

As we address this issue, I would like to stress again that we should pay maximum attention to the long-range solution. The problem is

growing more seriously each winter. We will witness it by virtue of unemployment this winter no matter what we do in terms of national policy.

Senator HOLLINGS. I hope we can limit the comments and suggestions to the emergency bill. We could spend a day debating the proposals for the long range. But FEA states there was a long leadtime necessary—that immediate decontrol would not add to the supply this winter.

Mr. ZARB. No question about that.

Senator HOLLINGS. You and I and Senator Tunney agree we need some kind of emergency measure right now for the particular problem of curtailment this winter.

Mr. Zarb, do you have any idea—we have been asked and we have tried to learn—how much gas we would be short and how much would be supplied if the administration's emergency bill were enacted or the Hollings Glenn bill—if either or both were enacted, will we be able to supply that shortage.

How much is being curtailed and how much is expected to be supplied under the emergency measure?

Mr. ZARB. The anticipated shortage, Mr. Chairman, for the winter period is 1.3 trillion cubic feet.

Senator HOLLINGS. We have been using 1.7.

Mr. ZARB. 1.3 trillion. Our statements are an average. We could have a more serious condition in the event of a more serious winter. Another variable is the growth factor, Mr. Chairman. We got by last year with a lot of scrambling and substituting alternate fuels. In some areas we were not able to find substitute alternate fuels. That will cause the disruption and unemployment.

Senator HOLLINGS. How much do you think the 1.3 trillion could be provided by the administration's bill?

Mr. ZAUSNER. We have not looked at the 1.3 total, but the increase over last winter. Last winter we did a reasonably good job of finding alternate fuels. The 180-day emergency provision implemented by the FPC resulted in 200 BCF of natural gas moving into the interstate market under that provision.

At least that much and possibly more could be forthcoming if it were implemented this winter.

Senator HOLLINGS. If we enact the emergency measure we will not satisfy all the curtailments, but hold it at the level of last year.

Mr. ZAUSNER. The 180-day sales provision is only one of our proposals.

The other measures we propose include having high-priority users who will be curtailed purchase gas from the intrastate market, which could make available perhaps another 50, 75, or 100 Bcf.

The President has encouraged the FEA to take actions to encourage voluntary measures. The President's legislation plus the administrative action we are taking this winter will total somewhere between 0.3 and 0.6 trillion cubic feet total.

Senator HOLLINGS. With respect to price and average equalization, they freeze within the areas involved. We provide a ceiling price in S. 2310 because of the large amount of shortage chasing the small amount of supply all running in the intrastate market. This is just an emergency measure to expire next July. If we put this 300 billion cubic feet to 1.3 trillion cubic feet demand on the intrastate market

with the prices averaging—Louisiana is right now at \$1.80; Oklahoma, just below \$1.

Mr. ZAUSNER. I think the \$1.80 number you are talking about is what the spot price is.

Senator HOLLINGS. What would be the average now in the Louisiana market?

Mr. ZAUSNER. We don't have an accurate data system.

Chairman Nassikas may be able to estimate that. The average price may be \$1 or lower.

Senator HOLLINGS. We think it is a little higher. It will average to \$1.30. Obviously, it will go up to \$2 and above with the tremendous demand going in and bidding each other up.

The bill would average the cost during the month of August. It is a present-day market price. It is not a rollback. They can take the number of suppliers, gas contracts, in a particular area and divide by the amounts of these contracts, divide by the number and determine the average.

Don't you think there is a need to protect against inflation?

Mr. ZARB. What we can do to hold down inflation is positive in any area. In this case, we worry about the average numbers being simply laid out here in Washington and then find on the ground that they will not induce the desired reaction.

When you talk about average price and take into consideration the price of the long-term contracts, you bring your average down considerably.

Two things can occur, in our view. One, it can take so long to get the thing administratively laid out that we will be well into the winter before we have a viable system. While the price may arithmetically be correct in the marketplace, it may not achieve the desired result.

When we look at the FPC experience during the embargo, we find that we didn't have the kind of price disruption that the chairman seems to be concerned with. Why not use the system that has proven to be successful?

We are only talking about a 4-month period in which we want to allow priority users to obtain gas from the nonpriority users who are not using it.

Senator HOLLINGS. Knowing the FPC process, do you think the 15-day is too small an amount of time to work out the average price for the month of August?

Mr. ZARB. Having been involved in the data business with respect to the overall industry, that is woefully inadequate if we are going to do a good job.

Senator HOLLINGS. Let's do the best job we can under the circumstances. It is not impossible to take that in the area of contracts.

If you find the average price, I will take a—

Mr. ZARB. I would like to make a comment on that issue.

It has happened in the past where an executive branch agency has been pushed into a tight timetable with respect to administrative actions to do the best they can. "The best they can" results in a product which fouls up the market worse than it was before they began.

I would ask and urge that the chairman be given a full hearing on the extent of the endeavor to put the correct numbers together.

Finally, more attention should be given to what the final result would be. It may result that we won't be able to get the extra natural gas which is needed.

Senator HOLLINGS. We can tell from the applications pending before the FPC that different companies have already asked for approval of purchases in the intrastate market through the interstate line of \$1.75.

We passed a law in November 1973 the present Emergency Allocation Act. Within 30 days, the FEA administrator upped the price on old oil to \$5.35. It didn't take you 30 days or months and months to find the justification for that.

Many small industries don't have expertise, gas purchasing divisions. General Motors and Du Ponts are ready, willing and able to buy up the gas. We want the pipelines that have the expertise to know what is available, how to buy and how to negotiate to make the purchases and average it out over their needs and demands.

What is wrong with that provision? I understand you have misgivings about it in S. 2310.

Mr. ZAUSNER. Our criticism was addressed to the absence of this other methodology provided in our bill, rather than to the concept of permitting the pipelines to do buying. Our bill provides similar authority, in addition to permitting consumers to make intrastate purchases.

Senator HOLLINGS. There are approximately 3 trillion cubic feet being used under electric utility boilers. What percentage is burned by plants today that are readily able to transfer or convert for coal or oil?

Mr. ZARB. I would like to submit that number for the record. We have a fair amount of data on switching from oil to coal, as you know. We were actively engaged in that transaction until our authority expired in June. We will give you our best estimate for the record.¹

Senator HOLLINGS. I will yield to Senator Hansen.

Mr. ZARB. Mr. Chairman, I would like to make one point for the record: the FEA back in those days, as you were correct, made a \$1 adjustment in the price of old oil.

Since that time, our domestic production declined a million barrels a day.

Senator HOLLINGS. Do you want to go into why? Do you attribute that as a reason?

Mr. ZARB. I attribute it to policy in the energy business.

Senator HOLLINGS. Do you think the major oil companies have the same interest as the United States in this energy crisis? Don't you think they have widely differing concerns in protecting the interests of their stockholders than you and I to protect them and the public in general?

Mr. ZARB. We should correct that if that is so. If we have a problem with the organization of domestic industry, we have laws on the books to attend to that and we should get on with that job. We shouldn't set up a national energy policy which gives up whatever control we have on our own marketplace.

Senator HOLLINGS. Is it your policy to discourage and break the OPEC power?

Mr. ZARB. It is my policy to give the American people a sure supply of oil at the best possible prices and to the extent the cartel works against that, then, it is my policy to work in our best interests and not theirs.

¹ See p. 97.

Senator HOLLINGS. They are going up arbitrarily. The present price levels have no relationship to supply and demand. It is arbitrary fixing.

It is our duty to keep the price as low as we can with objective economic judgment, to make incentive to produce and sell our oil.

Senator HANSEN. Thank you, Mr. Chairman.

Mr. Zarb, coming from the West and having watched the way natural gas deregulation has worked insofar as the producing State goes, I don't share the enthusiasm of the chairman with it being an unmitigated success story.

I say it has been unmitigated failure. It has done two things wrong. No. 1, by keeping the price of this best of all fuels unreasonably low, we have encouraged overuse of it. We have encouraged wanton waste and overuse, instead of encouraging conservation.

Secondly, insofar as supplies go, because the last couple of years of full gas deregulation out in the field, it was costing a third more to find and to produce natural gas than the FPC's earlier implemented regulations permitted the seller to receive and that did provide, in my opinion, a disincentive to exploration and discovery.

I recall one instance of a well in Oklahoma that was a high producer. It costs about \$4 million to drill, all of the costs in this particular well. At the rate that could be received by putting that gas into an interstate pipeline, there was no way it could pay out.

My question to you is: do you think that the continuance of this sort of policy makes sense either in the short-term emergency or in the long-range view that we must take to try to reduce our dependency on foreign sources of supply and generate jobs here at home?

That was a short question. I hope a get a short answer.

Mr. ZARB. Yes.

To say some regulation isn't required to protect the interests of the consumer is wrong. Regulation in areas such as this is essential, particularly in a year of shortfall.

It should be made clear what happened in the last 5 to 10 years. We talk about the threat of OPEC, which is meeting this month.

We have been under oil control since 1971. During that time our imports have gone from 3 million barrels a day to 6 million barrels a day. The price has gone from \$3 billion to \$25 billion.

If they meet this month and the best possible outcome that has been predicted by a number of people is that \$2 billion of American money is going out of the country. I can't subscribe to an ongoing policy that supports that.

Trying to set arbitrary prices in Washington continually has worked in the worst interest of the American people. An even-handed regulatory process which at the same time allows the American free enterprise system to work seems to have worked in our best interest.

I think we can and we ought to pursue that course. This next wave of OPEC increases is probably only a prelude to what may come sometime during the course of next year.

Senator HANSEN. Mr. Zarb, reference is made to alternate fuels and what we can do to replace gas. I subscribe certainly, to the objectives shared by our chairman in believing that we need to make every conceivable gas in this area that we can.

We were lucky last year to have had the mild winter we had. Had

it not worked out that way, there would have been far greater unemployment than we had.

The problem isn't as simple as some people think it is. The State of Oklahoma, where maybe 25 percent of our natural gas comes from insofar as domestic supply goes, experienced the unbelievable situation of having to close down schools when there wasn't enough gas to meet all of the demands that were in firm contracts.

Here was the State of Oklahoma with schools closed in order to send the fuel up to the middle northern region of the United States around Chicago, Detroit, and through that area.

Isn't it a fact that the circuit court of appeals here in Washington has had a ruling in *Sierra v. Morton* and they have held that a regional impact statement must be filed, not alone before we can build any coal gasification for coal liquefaction plants in the West, but even before any new leases can be granted.

If we believe that coal may be instantly available and conversion from natural gas to coal can take place in 15 or 30 days, we are only deluding ourselves.

Do you believe we can, with the cloud of this title hanging over America, now saying you can't do anything out there for perhaps not less than 3 years time unless that action by the court is overturned, that we don't have the alternative sources of anything available that some may believe we have?

MR. ZARB. Without getting into the merits of the case before the courts, Senators, I think that it is pretty near the time that we ought to be getting together on our environmental objectives and our energy objectives, so that we can get the necessary energy requirements and not hamper the environmental goals of our society.

This is best worked out at the table with reasonable people and not in the courts or in the press.

Senator HANSEN. Mr. Chairman, I will yield.

Senator HOLLINGS. Senator Glenn.

Senator GLENN. Thank you very much.

At the—when we started putting this legislation together, we very specifically kept the long-term and short-term implications of it specifically separated.

We did that so we would not come under the criticism of this bill that Senator Tunney mentioned in his statement. This is an emergency time period for this winter. We didn't try to address the long-term aspects of natural gas, but being fully aware of the great necessity to get the long-term aspects taken care of, we do have a commitment from leadership to bring up S. 692 which brings up the long-term aspect right after this bill, with the idea of keeping the long- and short-term aspect separate.

Some of the figures for Senator Tunney's State is they have 165 billion cubic feet curtailment for this year. It is 88 billion curtailment from last winter. They have 972,000 jobs partially connected to the supplies of natural gas.

Senator Tunney has good reason to be concerned. Our unemployment potential for this coming winter in Ohio are a little higher. We shouldn't get into the long-term aspect in this discussion where we are discussing an emergency bill for a short period of time.

Mr. Nassikas comments that he feels any one of the bills would give him valuable tools to help him do the job for this coming winter. Do

you feel this same way, Mr. Zarb, that the bills give you tools to cope with the shortage this winter?

Mr. ZARB. In principle, I agree, Senator. However, one or more provisions could have counterproductive results. I worry about that.

When the consuming State Governors came to Washington and saw the President and outlined an appropriate proposal, they kept it simple and direct so it could be done quickly. They asked for a reinstatement of the 180-day methodology that has worked before and not try to interject anything that was new and that would cause difficulties.

Similarly, they associated their plan with a longer term solution. They worry about next winter which is only a year away. They asked for a step toward deregulation and had their own formula for achieving it. They specifically said they would like to see these issues joined in a way that we solve them both at one time.

I would say the first is probably more important than the second, although they are both critical. We could be facing a bigger gap next winter.

Senator GLENN. You would agree. Would you agree that we should bring the emergency pricing bill up first, because of the time criticality of it and consider as long as we have a uniformity to consider the long-term aspects thereafter.

Mr. ZARB. I have two reactions to that.

That is a matter for the Congress. I would say it is always easier to take on a solution to an emergency. I worry that we don't take on the more difficult and controversial issue as a matter of priority.

Senator GLENN. We will take up longer term consideration after this is considered.

Mr. ZARB. If they are taken up in close juxtaposition, what is the difference?

Senator GLENN. If we delay 2 or more weeks on emergency legislation, we may as well draw the bill and not do anything, because there won't be time then to do anything helpful for this winter.

Mr. ZARB. I must say I'm concerned with the general posture which says let's hold off getting into this tough issue. Why can't they be done together? Is it so difficult to do them jointly?

We have 2 years of testimony in the record concerning deregulation of natural gas. We have what seems to be a broad base of bipartisan support to get on with these issues, both within the Congress and at the Governor's level.

Why can't we take them on simultaneously?

Senator GLENN. Your letter to Senator Mansfield of last week had great concern that we not put up this emergency bill with other legislation.

Mr. ZARB. As I recall, I asked that it not be joined to the 45-day extension of the Emergency Petroleum Allocation Act because that indeed was a controversial issue.

Senator GLENN. Controversial, but much, possibly a shorter term reaction time in the Senate.

Mr. ZARB. I'm not sure, Senator. I don't know what happened last Friday.

Mr. ZAUSNER. The key provision in our bill and yours is to assure there is a flow of new supplies to the interstate market.

Our concern is over the average price provision. The problem today, as your bill recognizes, is that interstate pipelines cannot bid and receive intrastate gas inasmuch as their prices are above the regulated price.

As Chairman Hollings indicated by his statement in Louisiana, the spot price may be as high as \$1.80, but he estimated the average price at \$1.30. That is the reason why I don't think any, or much gas will move into the interstate market.

S. 2310 would set the price which the interstate pipeline can purchase gas at the average price, yet in that same areas today, gas is moving at the spot price.

That is what the spot price means. It means that sales can be accomplished at the \$1.80 or higher prices. We have set under S. 2310 a ceiling on the price which interstate pipelines can pay which is substantially below the price that gas is sold in that region.

While some gas may move if you used the average price, the basic incentive we have under the 180-day provision is that all needed gas could be purchased at the spot price. It is our major concern with that provision.

Senator GLENN. In conversation with FEA as late as last Friday morning, we discussed this thing of priority. At that time, I was under the impression that the preference of keeping these things separate, which I am for, was shared by you regardless of whether it was the Emergency Oil Allocation Act or natural gas longer term aspects or whatever. I am for that.

Let me pinpoint the areas I think we are in difference.

Our previous discussions, personally and among our staffs, have indicated only two real positive areas of disagreement. One is obviously the pricing mechanism. The other one is in making—letting end users and pipelines go into the areas trying to get gas and setting off—I think the gold rush of 1949 will look like child's play compared to the oil rush of 1975.

Those are the two areas that we are in disagreement with. The OCS priority, maximum efficient rate of production, et cetera, things that won't really affect it as much as the pricing mechanism and how we go about that, we are in a little disagreement.

Let me get into one other thing.

Let's switch to the discussion of oil to make a point.

I think you know what point is coming. We have the oil not being desired to be regulated by the administration for a temporary period while we work out the longer term aspects of pricing. This is to fill a particular time period. It is said we don't want to regulate this for a temporary time period so we won't create huge aberrations in the market here.

We can get existing supplies at existing prices. Why go higher and impact our budding economic recovery? Why are we making a different judgment when it comes to natural gas that can have such a tremendous impact on our budding economic recovery this winter.

This is a temporary bill to work out the longer term aspects of natural gas. I am committed to supporting getting that long-term legislation on the floor as fast as we can after the emergency legislation that will cover a stopgap period exactly the same as you are trying to do in oil.

Why are the two things so different?

Mr. ZARB. They are considerably different.

Let me get back to one of your opening comments. You indicated the administration was seeking an extension of existing oil controls. I have heard that comment. I heard it on the radio coming in this morning, coming from the Congress.

I would like to remind you that you were inquiring how we got where we are. In talking about pricing of oil as being as necessary element of an overall national energy program, we proposed deregulation early this year.

I must have a hundred statements from individual members of Congress indicating they were prepared to move in that direction, but felt that the administration's plans were too quick. This resulted in the 30-month program.

So in an attempt to compromise so that we could move ahead together, we thought we were answering the concerns of Congress when we proposed the 39-month plan.

When we talk about 45 days and opportunity to work out a phase-out of oil controls method, we are not talking about an administration initiative, but we are talking about a program that seems to answer the essence of what the Congress and administration want to occur.

Senator GLENN. Change the word from "oil" to "gas" and you have made the same statement.

Mr. ZARB. I would urge you to explore this more fully with the chairman who is more familiar with the gas market than I am. But, it occurs to us, we just run the risk with this kind of setting average prices for this emergency 4-month period that we may preclude the available supply of gas we may otherwise obtain.

We must look at the possible reactions and counterreactions.

I ask careful consideration as to how long it takes to put that kind of program that will work well.

Senator GLENN. I have gone over my time, but I have one more comment. Is it possible that you could submit the details on how much natural gas used as boiler fuel—how much of that can be diverted?

Could your statements be submitted by tomorrow evening?

Mr. ZARB. That would be fine.

Mr. FRGI. To some extent, the quantity that can be converted depends on the legal mechanism that is adopted to accomplish the conversions. That can have a serious impact on the rapidity with which these conversions can occur. We found that out before, with the program under the Energy Supply and Environmental Coordination Act.

Mr. ZARB. I would like to add that there is one point we are together on. That authority expired in June and we desperately need even a simple extension of it so we can get on with the job of converting from use of gas in boilers when there are alternative fuels available to us.

Senator GLENN. We share the idea it is an emergency this winter. We stand to have tremendous unemployment, particularly in certain parts of the country. Our major difference, and I hope we focus in on this, is the pricing difference.

We take a control-it-at-the-existing-price position. We think that is fair. You go solely to a pricing mechanism. That is our main difference.

Senator HOLLINGS. Mr. Zarb, you can do that by tomorrow evening?

Mr. ZARB. Yes, sir.

Senator HOLLINGS. If you can give us that answer by tomorrow night, would you say it takes more than 2 weeks to get the top price for August? We are trying to get the regular market price for August.

Mr. Zarb, you made the answer—

Mr. ZARB. Are you excluding—when you say average, are you excluding existing contract prices from your average?

Senator HOLLINGS. Yes; we are just trying to get the top price. If you don't think the price is going up, why object to the August ceiling? We are not trying to get economic advantage. We are trying to offset further inflationary forces and really not be able to get the gas. The prices may go up for that smaller person.

Mr. ZARB. I guess one thing we ought to do is get clear for the record the intent of this bill—undoubtedly there are several interpretations as to what it means. It is clear that the committee intended to have only new gas contracts in the month of August in that average and no way intended for prior contract levels to be included in the average?

Senator HOLLINGS. New contracts of August. We don't want to get to a lower increment and start rolling prices back. We do not want to roll it back. If the law is not explicit or the proposed bill is not explicit, this is the value of the hearing. We can clarify that.

Mr. ZARB. We will comment on that when we submit the numbers with respect to conversion, Mr. Chairman.

Senator HOLLINGS. Senator Tunney.

Senator TUNNEY. Thank you, Mr. Chairman.

Mr. Zarb, you indicate in your statement that we will have a 15-percent shortfall in natural gas in 1975.

What do you anticipate the percent of the shortfall will be for the winter months of 1975-1976?

Mr. ZARB. About the same, Senator; 15 percent. It is proportionate, as you know.

Senator TUNNEY. Have you made any analysis as to the number of jobs that will be lost if emergency allocation legislation is not passed and contrasted that with the number of jobs that will be lost if the emergency allocation legislation passes?

Mr. ZARB. When you talk about the emergency allocation legislation, are you talking about the two bills?

Senator TUNNEY. There are two bills, your bill, administration bill, and the Hollings-Glenn bill.

Assuming you have some kind of allocation forgetting about price mechanisms, assuming you have allocations on an emergency basis, have you made a determination as to the number of jobs that would be saved by the bill as contrasted to those that would be lost if the legislation does not pass?

Mr. ZARB. The bills envision a different kind of emergency measure, not allocation system. The best we can do in that regard is to demonstrate the extent to which we will be able to increase the supply of gas to those States affected and within those States we can tell you how many jobs are tied to the natural gas fueled energy.

If we go beyond that then we get tied into the effects of economic recovery and the state of economy.

Senator TUNNEY. When you say there is not an allocation you are forgetting about when you have a priority purchase, that assumes that somebody is going to lose gas he has been purchasing if he is not in the priority right.

Mr. ZARB. Either lose it or give it up, Senator, because he has an alternative fuel supply.

Senator TUNNEY. But, for instance, let's say that a utility in California which is receiving interstate gas at the regulated price of 51 cents a thousand cubic feet is not given a priority because it is using that gas for boiler fuel.

A priority purchaser purchases that gas out of State and the utility in California must then go on to the market and buy \$16, \$18, \$20, maybe even \$25 sweet crude in order to fire its boilers.

For that particular utility, it is the same as an allocation because they don't have the priority to make the purchase and the gas is lost.

Mr. ZARB. That is correct.

Senator HOLLINGS. But the priority and purchase is different.

We want to move along because Mr. Zarb has another commitment.

Senator TUNNEY. I won't spend too long.

I want to find out what the impact will be for a State like mine.

As I understood it as far as priority purchasing, it would mean then that a use such as boiler fuel usage in a State such as California would not receive the priority and that a purchase by a priority user could remove gas from a State that was using it for a nonpriority use.

Mr. ZARB. That is an accurate statement and it isolates our problem. We have tough, tough tradeoffs to make between people's jobs, and some cases, whether or not the cost of generating electricity will go up. The question is can we put people back to work by using the gas and at the same time have a transition to oil?

What steps do we have to take to help cushion that effect on whomever is on the wrong end of such a transaction?

That brings us to the core of our problem. We must reallocate a shrinking supply and make up the difference with imported oil. As long as we put the Nation in that position we continue to have the tough tradeoffs, both of which will be bad.

Senator TUNNEY. California has experienced an allocation of natural gas away from our borders to other States. We lost 21-percent regulated gas in the early 1970's and are now buying \$16 a barrel oil.

We are paying substantially more, several hundred percent in some areas, more on utility rates than we were 5 years ago.

There are a lot of people suffering seriously for that, senior citizens and others.

Mr. ZARB. That is true and the first order of business ought to be to bring on additional supplies.

Senator TUNNEY. I have one more question. I want to make sure that I understand what is feasible here.

You're opposed to the area average. What about a total amount that could be paid during the emergency period? What about \$1.75, or \$1.86, which would be a cap on what could be paid, assuming that was all we could expect to get out of Congress and not have a free market price?

Mr. ZARB. I would want to see where that was set, Senator. I agree with the principle that you are stating. Nobody should be able to profit unduly because of what we are doing here. I would like to limit that extra profiteering when it doesn't result in any additional supplies. What does worry me is that when we get into the discussions on setting averages in Washington, I can see too many examples of how that results in hardening of the arteries of the production system.

We were hoping to preclude such a result with some of the other measures. If protection could be devised without limiting additional gas supplies, I would be for it.

Senator TUNNEY. A cap would be one such method if you could come up with a cap price that was fair.

Mr. ZARB. If that were achievable and would induce that kind of reaction in all cases for a 4-month period, I would think that would be a proper direction to head in.

Senator TUNNEY. I would like to have your additional thinking on that because you know full well what my position is on new gas, that it should be deregulated, but if we—on this emergency bill for a period of 4 to 5 months, if we can only get agreement by having something other than the market price that the administration suggests or the average price that Senator Hollings suggests, perhaps a compromise price would be a cap.

Mr. ZARB. That would prevail only for a 4-month period.

Senator TUNNEY. Absolutely. That is my position; I'm sure it is not Senator Hollings' position.

Senator STEVENSON. The administration has recognized without a cap on oil, the new oil price raises to the OPEC level. Consequently, it has agreed to an \$11.50 ceiling for 39 months for oil.

On the same principle—namely, that natural gas, if uncontrolled, would rise to an OPEC level higher than an OPEC level because it is in short supply, the premium fuel—would you accept the principle of not a 4-month, but a longer term, ceiling cap on new natural gas prices?

Mr. ZARB. Senator, when you're talking in those forms and generalities, I have to say, in principle, that I don't think I could find a long-term cap acceptable.

In looking at all of our experiences with any commodity, I have found that our ability to set caps in a way that won't be counter-productive in what we are trying to achieve is minimal.

Stated as a general principle, I would have great problems of putting these arbitrary caps into place.

Senator STEVENSON. Are you suggesting that OPEC cap is not arbitrary?

Mr. ZARB. Let's focus on what we intended to achieve there with respect to a cap on oil. We agreed to a cap after I had discussions with Members of both parties in Congress, and had a general feeling that that would be an important element in obtaining a compromise.

Originally, I had hoped we were going to price our oil at its real replacement value. Like it or not, we have gotten the Nation into a position that part of the real replacement value is the import price.

What I asked is that when the price of new oil increased \$1 as a result of a tariff increase of \$1, that the Congress impose an excise tax to take the dollar away and return it to the American people. This would reflect the principle of pricing a product at its real replacement value and insuring that there would be no excess profits to domestic producers.

I would like to more thoroughly think through the notion of a capping mechanism for the 4-month emergency period.

Senator STEVENSON. How about a 39-month period for the natural gas? Would you not consider a ceiling for 39 months?

Mr. ZARB. I would like to think about that. It is a new motion.

Senator STEVENSON. There is nothing new about it.

Mr. ZARB. It is in the context of these hearings.

Senator STEVENSON. Give a recent range of spot prices for natural gas.

Mr. ZARB. Well, for the record—

Mr. ZAUSNER. The FPC is trying to find that information. It is an average of \$1.80 to \$1.90. We have some areas, spot prices at 60 and 70 cents even today.

The range of spot market prices divergent over a factor of three. The average prices I indicated before, in my mind, is probably in the 90 cents to \$1.20 range in terms of the average spot price.

I would have to provide more accurate information for the record.

Senator STEVENSON. Spot sales are declining. They bunch close to the \$2 level in times recently. Before the Congress acts on your proposal, don't you think it would be helpful to have your estimate of what the effect of burdening the enormous interstate demand for natural gas on the intrastate supply of natural gas would be if spot sales are as high as \$1.80, to \$1.90, what happens if instead of the demand of three or four States, you unburdened on that demand and supply the demand of 50 States?

Mr. ZAUSNER. I won't overstate that problem. We expect the shortage this year to be at least as large as it was in 1973 when the same 180-day provision we are proposing here was in effect and 200 BCF moved.

I think Chairman Nassikas is in agreement that all we expect to move this year is 200 to 300 BCF. That 300 BCF is only 1½ percent of the national total supply. It is 3, or 4 percent at the outside, of intrastate sale supply.

Senator STEVENSON. What is the price?

Mr. ZAUSNER. If the amount we expect to move is only 3 or 4 percent even of the total intrastate supply, it won't have a very big effect on the intrastate market. Your indication that the intrastate spot prices have weakened of late is the best indication we have that there is a surplus there.

Senator STEVENSON. I'm sure you are not suggesting if the intrastate market was open to the interstate demand, that there would be a surplus of natural gas. If there would be, we may not be here today.

There is a gas shortage in the country. That demand from the 50 States will have an effect on the price.

Before asking the Congress to deregulate on the short period of time in the terms you suggest, you ought to give us an estimate of what the price would be. You started to answer the second part of my question which I have asked before.

I have asked it of the chairman here after having and during the course of 2 years presiding over the hearings on natural gas regulation—we have run through about seven energy czars before you, Mr. Zarb—the question is, What is the short-term, the immediate effect of decontrol?

Does it free up any additional supplies of gas, or does it, in fact, mean reallocation of existing supplies?

The answer in the past, from the chairman, I know from Rogers Morton and others, including such representatives of this administration, is that there is no significance—no short-term effect on the supply.

It takes a long time for price to have an effect on supply. At the most, some witnesses say that gas is being unreasonably curtailed now in anticipation of higher prices, and you may free up a little of that gas. Industry denies there is any such gas being curtailed.

Are we talking about restructuring the shortages for the short term, winter, increasing natural gas supplies?

Mr. ZARB. If we had taken this step seven Administrators ago, I might be able to say by now we are beginning to see the induced effect of additional gas.

I have to add as my predecessors must have said in the past that if we are talking about alleviating the problem this winter, immediate decontrol is not going to have an effect. However, whoever is testifying a year from now on this subject will say as I have today, that had we taken the step a year ago, perhaps we would have moved down that road to increasing supplies.

If we are going to focus on the short term, we should do that. Is it your suggestion that we accomplish deregulation along with the emergency measure?

Senator STEVENSON. I feel strongly there is a relationship between oil and gas pricing. We ought to face up not only to emergency pricing formal gas, long-term pricing should be included and flow in oil, too.

We should do the job or not do it, concede failure. I think we could resolve that quickly. That is my own opinion. It is not shared by everybody else. I just hope that we can get to it soon not only in substance, but also procedure. Time is running out.

Thank you, Mr. Zarb.

Senator HARTKE. You make a statement that the principal reason for the present state of natural gas shortage is the current system of regulation which inhibits production and should be removed from the interstate market and extended to the intrastate market.

What hard evidence have you had that that is true?

But basically, if you look back to the past, that has not been the history of the United States. Do you have any hard evidence, or is this just an assumption?

Mr. ZARB. I ask Mr. Zausner to comment on hard economic evidence.

Senator HARTKE. Hard economic evidence or hard evidence?

Mr. ZARB. I think it is clear and our history indicates that if you don't allow the enterprise to be economic so that it can pay for itself you don't get production.

Senator HARTKE. I hear you, but if you want to go back to studying a course in economics, some of those economic thoughts are not important.

What hard evidence—I'm not interested in theory. I want hard evidence. I don't want to go back to Samuelson's book, the seventeenth edition.

Mr. ZARB. If we look at the producing States and natural gas consumption, we can find examples and submit them to you—

Senator HARTKE. You make this statement. I am interested in what hard evidence you have to say that it is unwise and unacceptable and the number one reason you say the bill here—you say it is the principal reason—you say the principal reason for the present state of natural gas shortages is the current system of regulation which inhibits production and should be removed from the interstate market instead of extended to the intrastate market.

What hard evidence do you have that that is a true statement? If it is true, that is one thing. If it is based on assumption, we have the right to make assumptions as much as you do.

Mr. ZARB. We are entering our fourth winter where there will be people who will probably be unemployed because their facilities could not get enough natural gas fuel. The Senator on your right can give you a few examples of companies.

Senator HARTKE. I want to save the committee's time. I'm not interested in the fact there is a shortage of natural gas. I think there is a basic understanding that that is true.

I want to know what is the principal reason for the present state of natural gas shortages. Is it the current system of regulation? What evidence do you have that that is true?

Mr. ZARB. The clearest evidence, Senator, is the fact that States where gas is produced and not controlled have ample supplies and often more than ample supplies as some facilities are oftentimes wasting their fuel.

Senator HARTKE. Is that true, or is it that in the States where it is not controlled, those happen to be States with natural gas? Is there a showing that there has been an expansion there?

I do not want to get the answer that there is a present state of natural gas shortage. I want to know what the principal reason for that statement is.

Mr. ZAUSNER. I think there are two reasons, Senator. One is our engineering estimates, and they are only estimates, indicating there are substantial quantities of gas that could be produced above today's regulated price.

Clearly people don't find or produce gas that they estimate is in depths or formations, or due to any other reason, that will have a cost substantially above the price they can get for it.

The fact that something like this is happening is clear from the trend we have been seeing in production, consumption and reserves. Our reserves are at the lowest they have been since the early fifties.

The difference in prices between the intrastate and interstate market have resulted in almost all of the new gas now being found being dedicated solely to the intrastate market.

I can give you hard evidence on that. I would like to because I think it is a clear point with respect to what happens when you set interstate prices at 50 cents while intrastate prices are at \$1.50.

Between 1964 and 1969, we added 17 trillion cubic feet of reserves every year.

Of that 17 trillion cubic feet, 12 was new gas dedicated to the interstate market. In the last 3 years where we have had the widespread price differential, the total yearly increase in reserves has fallen from 17 trillion cubic feet to 9 and rather than 60 or 70 percent being dedicated to the interstate pipelines, only 10 percent has been dedicated to the interstate pipelines.

Senator HARTKE. What you are saying is there is a reduction in gas supply. What kind of evidence is that? Can you show me as a result of the increase in oil, new oil prices that there has been a tremendously new deduction? That may be some evidence. Can you show that?

Mr. ZAUSNER. Let me clarify my other statement first.

Senator HARTKE. Can you show that?

Mr. ZAUSNER. I would like to clarify the other statement.

While I said the total additions to supplies dropped in half, rather than dedicating half of that amount to the States that have shortages because of regulated system, we have kept almost all of that in the intrastate market, thereby making the shortage worse.

Senator HARTKE. Can you demonstrate in the field of oil that there is no control when the prices have skyrocketed and there has been substantial increase in new discoveries?

Mr. ZAUSNER. Higher prices have indicated massive increases in drilling and exploration for new oil.

Senator HARTKE. How much more massive exploration is occurring?

Mr. ZAUSNER. They are at all-time highs now from a low dip. We will provide that information.

Senator HARTKE. What you are telling me is there is now some gas being withheld from the interstate market.

Mr. ZAUSNER. No, sir, not withheld. We have set up the economics so it is in everybody's interest to find that gas and sell it intrastate because we can get 3 to 4 times as much money for it.

Senator HARTKE. You say at the present time the new gas being discovered is being withheld from interstate?

Mr. ZAUSNER. That is correct.

Senator HARTKE. Is it being used on the local level or stored?

Mr. ZAUSNER. Produced and consumed.

Mr. HARTKE. You are going to increase that amount by going ahead and taking off the regulation.

Mr. ZAUSNER. There is no doubt about the fact that that surplus would flow to the interstate market. There is an indication there are more than adequate supplies because the spot market prices have been dropping over the last several months.

Senator HARTKE. They are withholding it.

Mr. ZAUSNER. The question is rather is it economic to produce it and sell it intrastate at \$1.90 and uneconomic to produce it and sell it interstate at 50 cents.

Senator HARTKE. They feel they can make a ripoff if they hold onto it.

Mr. ZAUSNER. No, they would lose their shirt by selling gas at 50 cents when it costs \$1 to produce.

Senator HOLLINGS. You made one key phrase. None should profit unduly. That is the intent of S. 2310.

On page 11 we have the proviso that the person to whom the sale is made shall compensate fully. There is no equipment cost in here because under definition it must have the availability of plant equipment available. It is the increased cost of fuel.

Then there is one more thing about the pricing. It is on page 4, line 23. We talk about contracts entered into or renewed during that period, August 1 through August 31. No one should profit unduly.

We do thank you for your indulgence.

Senator Glenn has one more question.

Senator GLENN. Do we have the average—could the average prices that we discussed over here at some length, could they be made available by tomorrow night?

Mr. ZARB. Yes, sir.

Senator GLENN. In considering the oil—in consideration of oil pricing, we go into some elaborate thing on elasticities and demand and helping induced conservation.

These things apply to gas. I haven't seen figures on gas. If you have those available, I would like to have those.

Mr. ZARB. We have them, yes, sir.

Senator STEVENS. I have one question about S. 2310.

There is a provision in that bill that requires that new natural gas from the Outer Continental Shelf be subject to another ceiling price.

Sixty-five percent of that Outer Continental Shelf is off my State. Have you had any studies or has there been anything done to indicate that there is a requirement for another ceiling price concept to be established for the Outer Continental Shelf?

Mr. ZARB. I said in principle I was against the notion of us trying to set arbitrary prices from Washington. In my experience they have always worked against us and hurt the American consumer in the long run.

Senator STEVENS. Has your organization done anything that would indicate there are different requirements in the Outer Continental Shelf than exists onshore?

Mr. ZARB. No, sir.

Senator STEVENS. Outer Continental Shelf activity would be more expensive in terms of general application and development procedures, would it not?

Mr. ZARB. The answer to that question is "yes."

Senator STEVENS. I have got to oppose that section strenuously.

I don't see a reason for separating the onshore and offshore concept. If that happens, we will have a serious impediment to the exploration and development of one of the greatest areas we have to explore—the Outer Continental Shelf off my State.

Mr. ZARB. I would like to get back to what Senator Hollings said before he left. We are in agreement that whatever program we have, no one should unduly profit from it.

I think we can do so without placing arbitrary limits and price controls in the system. And I say that because it is clear for everyone to see that what has happened over the past 4 to 5 years is that our present system has worked against the interest of the United States in obtaining adequate energy supplies.

If we are worried about profitability and ripoffs, let us approach the problem. Let us not deal with it at the same time we are limiting our capability of producing American supplies.

Senator STEVENS. In Outer Continental Shelf development the risks and costs involved are much greater than offshore development. You will see more onshore explorations and the Outer Continental Shelf will be left until such time as our arbitrary pricing policy is not in effect.

The Outer Continental Shelf should be subject to the same type of procedures as the onshore areas. Onshore areas should not be singled out for special treatment.

Thank you, Mr. Chairman.

Senator STEVENSON. Thank you very much. You have been patient.

[The statement follows:]

STATEMENT OF HON. FRANK G. ZARB, ADMINISTRATOR, FEDERAL ENERGY
ADMINISTRATION

Mr. Chairman, Members of the Committee, it is a pleasure for me to be with you today to discuss legislation which is necessary to minimize the adverse effects of natural gas shortages this winter. The Committee has before it S. 2330, the

Administration's Natural Gas Emergency Standby Act of 1975 which was introduced by Senator Pearson, and S. 2310, a bill introduced by Senators Hollings, Glenn and Talmadge.

Let me state at the outset that the measures before us today are temporary in nature and are intended to deal only with possible emergencies this winter and next year. While development of frontier areas, such as the Atlantic Outer Continental Shelf and Alaska, and a major synthetic fuels program can increase long-term gas supplies, the only effective long-term solution to the worsening natural gas situation is the deregulation of wellhead prices of new natural gas. Deregulation will provide the necessary incentive for industry to explore for and produce more gas.

Enactment of the Administration's short-term emergency legislation, however, combined with complementary administrative actions, will help significantly in coping with the immediate problem. These actions, together with State and local initiatives such as conservation, should give us the tools necessary to help alleviate the impact of expected natural gas curtailments this winter.

The administration's recommendations are based on an analysis of the problem prepared by the Energy Resources Council's Natural Gas Task Force, which was released in August. I would like to summarize briefly the results of that study.

Natural gas consumption has grown dramatically since World War II, and now supplies about 30% of total U.S. energy requirements, including 40% of our non-transportation energy needs. Of the approximately 22 trillion cubic feet (Tcf) consumed yearly, almost half is used in industrial processes.

There are over 100 interstate pipeline companies delivering gas from producer states. These companies cannot compete for new supplies of natural gas because the field price of gas for sale to interstate pipelines is regulated by the Federal Power Commission at levels dramatically below the current prices for unregulated gas sold to intrastate pipelines. As a consequence, since 1970 new reserves of gas are primarily going to the intrastate market.

At the same time, natural gas requirements have exceeded deliveries by an increasing margin, resulting in growing curtailments of service over the last few years. In 1970, curtailments were 0.1 Tcf, or less than one percent of consumption. By 1974, curtailment increased to 2.0 Tcf, or 10% of consumption. For 1975, they are forecast to increase to 2.9 Tcf or about 15% of consumption, which represents a 45% increase over 1974 curtailments.

With normal temperatures, winter curtailments are expected to be 1.3 Tcf, up from 1.0 Tcf last winter. A very cold winter could raise the demand for natural gas by about 150 Bcf. Shortages can be expected to grow in each succeeding winter for several years.

Economic impacts of the natural gas shortage last winter were very scattered geographically and not significant on a nationwide basis, because alternate fuels were available and many gas consumers switched to propane and oil. Furthermore, the economic slowdown and a mild winter reduced demand, while effective conservation programs were implemented in some local areas. Finally, some emergency natural gas deliveries were allowed under existing Federal Power Commission (FPC) authorities. This year, we anticipate that the areas likely to experience the greatest economic impact are the Mid-Atlantic States (from southern New York to South Carolina) and several Middle Western States (Ohio, West Virginia, and Kentucky).

Economic impacts this winter within a State will again depend upon the severity of the natural gas shortage there and other variables, such as the availability to industry of alternate fuels, the weather, and the level of economic activity. As a result of natural gas curtailments, some industries will switch to alternate fuels, paying higher prices for the alternate fuel. Those plants that cannot remain competitive at higher fuel costs could close. Those that cannot convert because of process of feedstock requirements for gas may also have to shut down.

THE ADMINISTRATION'S PROPOSALS

I would like now to turn to the legislation which the Administration has proposed to minimize the adverse effects of natural gas curtailments in the next two heating seasons. The Administration has submitted S. 2330, the Natural Gas Emergency Standby Act of 1975, containing the following major titles:

Title II—Interstate Pipeline Emergency Natural Gas Purchases Act of 1975

This title would amend the Natural Gas Act to provide explicit authority for interstate pipelines with insufficient natural gas to meet the requirements of their high priority consumers by giving them the opportunity to purchase natural

gas at market prices from intrastate sources, from gas distributing companies, or from other interstate pipelines, on an emergency basis for a period up to 180 days. This would allow interstate pipelines to compete effectively for available supplies of natural gas to meet requirements of residential and commercial customers, and of industrial users who need natural gas for feedstock processes or other high priority uses.

Estimates are that as much as 200-250 billion cubic feet of natural gas could be made available to the interstate market if such emergency sales were permitted.

Title III—Curtailed Consumers Emergency Natural Gas Purchases Act of 1975

This Title would amend the Natural Gas Act to allow high priority consumers of natural gas who are experiencing curtailments to purchase natural gas directly from intrastate sources at market prices and to arrange for its transportation through interstate pipeline systems. This authority would expire June 30, 1977.

The purpose of this Title is to allow curtailed end users in certain high priority use categories to locate and bid for available supplies of natural gas in the intrastate market. While they may have to pay more than the regulated interstate gas price to obtain additional quantities, it would provide an alternative to a shut down due to lack of natural gas.

The Federal Power Commission has recently issued an order (Order Number 533, Docket Number RM 75-25, August 28, 1975) indicating that it would consider issuing certificates of public convenience and necessity to pipeline companies to permit transmission of such purchased gas over the interstate pipeline system. However, as the FPC acknowledges in its order, legal objections may be raised with respect to the FPC's action. This Title would provide an explicit statutory base for this action, which could provide as much as 50-75 BCF to high priority end users.

I have heard some concern expressed that big industrial end users would bid high, thereby tying up all of the available gas and raising the price to an inordinately high level. Experience under other FPC emergency procedures demonstrates that this will not occur but that, instead, purchasers will pay for a commodity only what it is worth.

Title IV—Emergency Energy Supply and Environmental Coordination Act (ESECA) Amendments of 1975

This Title extends the recently expired authority to allow the Federal Energy Administration to require electric utility and industrial boiler conversions from natural gas or oil to coal. The Title also provides additional standby authority to require conversion from gas to oil where coal conversion is not feasible.

This would permit freeing up of natural gas for such uses as residential consumption and industrial process and feedstock use when other fuel is available for boiler fuel use. Approximately one-third of the natural gas consumed in the United States is for boiler fuel use, and this use is about equally divided between industrial boilers and electric utility generating stations. By converting these boilers from natural gas to other fuels where practicable, natural gas can be freed up for higher priority uses where no alternate fuels are available.

Title V—Propane Standby Allocation Act of 1975

This title provides authority to allocate and establish reasonable prices for propane during periods of actual and threatened severe shortages of natural gas. It is intended to assure an equitable distribution of propane among historical users at reasonable prices (such as farmers who use propane for essential agricultural purposes, and industrial users who need propane for feedstock), as well as to customers experiencing natural gas curtailments.

Because of the natural gas shortage, large utility and industrial gas users who are curtailed may switch to propane merely diverting large quantities of propane from historical users, or causing large price increases. The standby authority to allocate and establish reasonable prices for propane will assure fair distribution of available propane at equitable prices.

ADMINISTRATIVE ACTIONS

The President has directed that certain actions be taken to supplement the legislative proposals which I have just discussed. These administrative actions include the following:

Establishment of a Natural Gas Task Force in the Federal Energy Administration to provide a continuing liaison with Government officials and the public and to coordinate legislative and contingency planning activities. The work which the

Task Force must do is so important that I have asked my Deputy Administrator, John Hill, to head it. This Task Force has been meeting with representatives of other agencies and will be a focal point for the Administration's response to curtailment problems at all levels of Government.

An intensive public education program explaining the need for conservation and how to reduce natural gas use. This program is being coordinated by the Federal Energy Administration in conjunction with the Department of Commerce, the Federal Power Commission, and other agencies of the Government.

The FEA, FPC, and the Department of the Interior will encourage all producers to produce as much natural gas as possible, even from marginally economic wells.

The Federal Power Commission will take action to assure that significant amounts of natural gas are stored for winter peak use.

The FEA and the FPC will undertake a review of certain electric utility practices which result in unnecessary consumption of natural gas.

Through the Task Force, we will increase coordination between Federal agencies and State energy officials.

Administrative actions taken by the FPC, FEA, State energy offices and others to expedite the certification and construction of new pipelines, to reduce inefficient natural gas use, to alter inefficient electric utility practices, and to encourage production from wells could result in an additional 100-200 Bcf of natural gas for essential uses.

THE EFFECTS ON SUPPLIES AND PRICES

If Congress amends the Natural Gas Act to allow 180-day emergency sales of natural gas by producers to interstate pipelines and also permitting end user purchases of natural gas from producers, it is expected that some 200-350 Bcf of natural gas could be made available to supplement current interstate supplies. Since this winter's curtailments are expected to increase by some 300 Bcf over last year's curtailments, the additional natural gas available for interstate use under these proposals could prevent this winter's curtailments from being substantially worse than last winter's.

The 180-day emergency sales to interstate pipelines at unregulated prices would have little cost impact on all consumers of natural gas. The pipelines would be allowed to average the higher cost gas with the regulated volumes they have purchased under long-term contracts. Since the additional volumes are small in relation to the total gas carried, end users are not expected to experience significant increases in the prices that they now pay for natural gas.

Fuel costs to end users permitted to purchase gas in the intrastate market will vary according to how much they need to buy and what prices they can negotiate. While intrastate prices may be considerably higher in some instances than the regulated interstate price, they are lower than the price of alternate petroleum fuels. More importantly, access to the intrastate gas in many instances will mean the difference between shutting down operations or keeping them open. This is especially true for those who, regardless of its price, must have natural gas as a feedstock or in their industrial process.

The administration's bill will give us the authorities which we need without unreasonable or unnecessary regulation of the natural gas industry, and I urge its immediate passage.

S. 2310

I would like now to turn to S. 2310, the legislation sponsored by Senators Hollings, Glenn and Talmadge. The bill would address the same immediate problem as does the Administration's bill, and it contains some provision of real merit. However, the bill includes several unacceptable provisions and raises major issues that warrant further examination as the Congress and the Administration work to develop effective and mutually acceptable legislation to deal with this winter's natural gas shortage.

ACCESS BY PRIORITY INTERSTATE PURCHASERS TO NATURAL GAS

Section 4 of S. 2310 would require the Federal Power Commission to designate interstate pipelines which are unlikely to have sufficient supply for essential users and enable these pipelines to buy gas from any on-shore source at prices set by the FPC. This section would also allow designated interstate pipelines to receive priority to purchase Outer Continental Shelf natural gas at regulated prices in amounts sufficient for the requirements of their essential users.

A most disturbing feature of S. 2310 is section 4(c) which would regulate the wellhead price of all gas, including presently unregulated intrastate gas. Such intrastate regulation is both unwise and unacceptable for several substantial reasons:

The principal reason for the present state of natural gas shortages is the current system of regulation, which inhibits production and should be removed from the interstate market instead of extended to the intrastate market.

An artificially controlled, low-price (relative to alternative fuels) encourages excessive consumption of natural gas.

Continued excessive consumption exacerbates shortages, and
Requires bureaucratic decisions as to what industries and other users will receive priority.

Since the amount of natural gas available over the short term is limited, the setting of priorities amounts to taking natural gas from some and giving it to others.

Regulation of intrastate prices will be an immense administrative burden.

It will be difficult to establish regulated rates within the bill's time requirements, thereby making it ineffective for this winter.

The uncertainties stemming from probable law suits challenging rates required to be established by this bill will very likely impede the flow of additional intrastate gas into the interstate pipeline system.

While the objective of making more gas available to the interstate market is similar to Title II of the Administration's bill, the Administration's approach is much preferable in that it avoids the problems which I have just discussed that are inherent in setting ceiling prices on intrastate natural gas. The Administration's bill would provide for emergency sales at the market price for up to 180 days. As I have already mentioned, this approach—due to the ability of the pipeline to roll in the new prices into its rate base—is not expected to cause much increase in natural gas prices. Furthermore, this approach is demonstrably workable in emergency situations, being based as it is on regulatory programs of the Federal Power Commission for 180-day emergency sales and for such sales of shorter duration (60 days).

Section 4 also does not expressly provide for emergency purchases at unregulated prices between interstate pipelines or between interstate pipelines and distributors, as provided for in the Administration's bill. Such provisions could provide opportunities for sale of natural gas from companies with a temporary surplus to interstate companies with a temporary surplus to interstate companies that are short of supply.

Section 4(g) of the bill states that gas which could have been produced during the period that this Act is in effect, but was not produced or sold, may not at any time thereafter be sold at a price above that permitted under this Act. This provision would create an enormous administrative problem and would certainly lead to extensive litigation.

AGRICULTURAL PRIORITY

Section 5 of S. 2310 establishes a priority for agricultural, food processing and food packaging uses. This Administration is strongly committed to agricultural priorities. However, essential agricultural needs have been recognized and are being met by the present curtailment priorities of the Federal Power Commission. Furthermore, Section 5 allows the Secretary of Agriculture to allocate natural gas, even between pipelines. I feel that the present priority system is sufficient to meet essential agricultural needs and should not be tampered with to the extent found in Section 5.

PROHIBITION OF USE OF NATURAL GAS AS BOILER FUEL

Section 6 of S. 2310 would extend until June 30, 1976 the recently expired authority under ESECA to require electric utility and major industrial boiler conversions from natural gas or oil to coal. This section would also prohibit natural gas use by electric generating systems, if such powerplants have the capability to convert to petroleum products.

This section fails adequately to integrate the "oil conversion" authority in subsection (a) with the ESECA program, leaving it unclear whether coal or oil conversion is to be ordered where both would be possible. A number of other important technical discrepancies between the oil conversion authority in Section

6(a) and ESECA should be eliminated so as to avoid unnecessary implementation problems.

The Administration has proposed broader conversion authorities including conversion of major fuel burning installations to oil if coal conversion is not feasible. Section 6 should be expanded to include the major fuel burning installations, and revised technically to complement the prior law as does the Administration's proposal.

I question whether the one-year life of the provisions in Section 6 is long enough to be effective. As I have already discussed, we do not think that authority to mandate boiler fuel conversion from natural gas to alternate fuels is expected to have a significant effect this winter, but could be extremely useful to meet next year's situation.

PRODUCTION OF GAS AT THE MAXIMUM EFFICIENT RATE

Section 7 of S. 2310 would require that production from designated natural gas fields occur at the maximum efficient rate, and would provide authority to order production above this level on a temporary emergency basis. While we are now studying the merits of this provision, we question whether this authority would provide any increased production during the eight-month duration of the bill.

PIPELINE INTERCONNECTIONS

Section 8 of the S. 2310 authorizes the Federal Power Commission to direct any pipeline to establish a physical interconnection between any specified facility of any other pipeline and to apportion equitably the costs of any such interconnections to the pipeline and/or to priority purchases. This section appears unnecessary to implement the short-term purposes of the provisions of this Act.

In summation, Mr. Chairman, I believe that, on the merits, the Administration's bill will provide needed authorities while S. 2310 is objectionable in its present form. My staff has already been working with yours, and I suggest that we make it of a highest priority to continue to work together so that we may see this urgently needed legislation enacted into law.

Mr. Chairman, that concludes my prepared remarks. I would be happy to respond to any questions which you or members of the Committee might have.

Senator STEVENSON. The next witness is the Chairman of the Federal Power Commission, Mr. John Nassikas.

We welcome you, Mr. Nassikas, you have been before this committee many times in the past. You have a rather lengthy statement, including appendixes. If you prefer, we can enter the full statement in the record. Perhaps you would like to summarize it. I have a feeling some of it has been said before.

Senator STEVENS. I don't know when Mr. Nassikas will leave Government, but as you mentioned, he has been before the committee many times.

STATEMENT OF HON. JOHN N. NASSIKAS, CHAIRMAN, FEDERAL POWER COMMISSION; ACCOMPANIED BY STEPHEN E. MCGREGOR, STAFF ATTORNEY, OFFICE OF THE GENERAL COUNSEL; JOSEPH J. SOLTERS, ASSISTANT TO THE CHIEF, BUREAU OF NATURAL GAS; AND FRANK E. BAKER, GEOLOGIST, PLANNING AND DEVELOPMENT DIVISION

Mr. NASSIKAS. As soon as the Senate confirms my successor.

Senator STEVENS. Although we haven't always agreed I would like the record to show that I think Mr. Nassikas has done a tremendous job. I think even those who may have disagreed with you would say we thank you for your contribution to the attempt to work out this problem.

Senator STEVENSON. I concur in those sentiments. Sorry this long series of hearings and appearances has come to an end. You have been helpful in the past.

Mr. NASSIKAS. I would like to offer my complete statement and appendices and will summarize briefly.

Senator STEVENSON. The full statement will be entered in the record.

Mr. NASSIKAS. There is almost universal recognition in the Congress and among those people in the United States who are informed about those matters, that there is a pervasive natural gas shortage in this country. I outlined the emerging natural gas crises as early as November 1969, before the Senate Interior Committee and at that time Senator Hansen was a member of that committee, as he is now. Regrettably, everything I outlined 6 years ago has come true in relation to the gas shortage, so we have to take emergency measures, and I believe there is a consensus on that score also.

Where there is no consensus as to whether we should have long-range deregulation of new natural gas supply and also for the interstate market and also, if we do have long-range deregulation, the manner in which such deregulation would be accomplished in order to prevent consumers from paying excessive prices and in order to preclude producers from making extravagant or excessive profits.

These are the public policy considerations in a nutshell. I have outlined in my statement what the curtailment is. It is 30-percent greater as we outline it in 1975 to 1976 winter. In my statement I show in 1971 we estimated that there were about 286 billion cubic feet of historical curtailment. By 1974 this figure had grown to 1,679 billion cubic feet and estimated for the next year through March 1976 at 2,917 billion cubic feet. This may be somewhat high, only because I don't think that the turnaround in the recession will be as rapid perhaps as we would all hope it would be. Therefore, overall demand for gas and other energy would be somewhat less than projected. Therefore, the shortfall will not be quite as large as I have expressed in this statement, but it is accurate to a degree. I would also like to point out that we are conducting massive in-depth investigations of various pipeline systems in this country.

We have assigned considerable staff resources to these investigations and we are trying to determine to what extent we may increase the deliverability of pipelines for committed supplies of gas under certificates which we have issued.

It may be that in the course of these investigations, we will be able to increase the deliverability of natural gas under those contracts. However, this will not be to the degree that will take care of curtailment this coming winter of some 1,327 billion cubic feet (Bcf) in round figures.

Those investigations, however, may result in increasing deliveries of natural gas to meet priority use, which is what the subject is, of course, of your Senate bill.

We have taken many emergency actions and this is a preface to getting into the precise analysis of the bills you have before you. During the height of the Arab embargo, we took the extraordinary expedient under the statute, Natural Gas Act, of releasing ceilings subject to indirect price regulation by the FPC, through our pipeline regulation,

any natural gas that was committed to the interstate market for a period of 180 days.

As a result of that emergency measure, almost 200 billion cubic feet of natural gas was delivered to the interstate market. These commitments were made even though at the outset of the experiment in October of 1973, there was a stay granted by the Circuit Court of Appeals for the District of Columbia Circuit, which was not quashed by the Supreme Court until some time later.

This was not a fair indication of the amount of gas which could have been attracted to the interstate market, because of the uncertainty created by the court of appeals.

Second, some pipeline companies were deterred from making the commitments because through indirect price regulation they might not be able to recover in rates. Nevertheless, 200 billion cubic feet of gas was committed to the interstate market. There was about as much gas committed by that emergency measure of 180 days than all the gas under the 60-day emergency procedures for the preceding 2 years.

The merits of our 180-day emergency procedures are currently on appeal to the U.S. Supreme Court. The stay allowed gas to flow. The merits would be decided later. This is now 1975. We are almost into 1976. Two years later we don't have a decision by the U.S. Supreme Court. So that we will not get a decision, I believe, from the U.S. Supreme Court on the most expeditious basis that will do us any good for this coming year. We need emergency legislation now as to the 180-day policies of the Commission. I say this, not because I believe that our experiment of 2 years ago was not legal. I say this, not because I believe that our experiment of 2 years ago was not legal. I say this because by passing this legislation this committee and the Congress will eliminate the uncertainty of appeals and enable gas to be committed to the interstate market.

Under the 180-day emergency legislation as drafted by the FPC, we submitted our bill in July and it is substantially the same as the FEA bill which we also support that was submitted several weeks later. Under the FPC bill and the FEA bill, there is no express indication that gas purchased by a pipeline shall not be reviewed by the Commission to determine whether the rate was just and reasonable. The FPC would be implicitly empowered to review the price to determine whether that price was a so-called just and reasonable price under section 4 of the Natural Gas Act and served the public convenience and necessity under section 7, or if we instituted an investigation on our own motion for a just and reasonable rate under section 5 of the Natural Gas Act. I therefore would suggest that for emergency purposes that there be written into the Federal Power Commission legislation and the FEA recommended legislation on 180-day emergencies, that the purchase price of natural gas committed to the interstate market under the term of the bill will not be subject to review as to justness and reasonableness by the Federal Power Commission on that basis.

I want to distinguish, Mr. Chairman, that on new gas on a long-range basis for gas deregulation, I do not personally endorse the Administration's position. I have my own independent position that I have maintained here for almost 6 years on this issue, that the Federal Power Commission should be empowered to review in pipeline rates

whether or not the price paid for new gas was a just and reasonable price.

At the same time I say that, I would urge that the Congress again on the longer-range situation give the FPC authority to determine that just and reasonable rate on the basis of economic and market factors and not just on costs as projected.

The bill that is before us, the National Gas Emergency Act of 1975 introduced in the Senate by Senators Hollings and Glenn, is S. 2310, I endorse the objectives of the bill.

I don't think anybody can disagree about taking care of shortages and unemployment. The hard choice has to be made by yourselves as Congress. These emergency relief measures envisioned by the act, I would think, as I say on page 11, could be efficiently exercised by stating that the price of gas is legislatively deemed to be just and reasonable and not subject to further review, rather than the concept of establishing a price based on the average intrastate price in August of 1975. I don't think that the Congress should legislatively establish a price ceiling, although by establishing such a price ceiling there are many advantages in the sense that it is the price above which neither intrastate nor interstate gas could exceed, as I understand the legislation.

Second, the advantage of setting a price like that is that it is theoretically short range. Therefore, it should not be a particular deterrent, if the Congress chooses to regulate the gas at a later date, to further exploration and investment commitment, to assure more overall natural gas supply.

The other advantage of setting a price like you have recommended is that producers cannot charge a higher price than you have legislatively deemed to be a just and reasonable rate. The difficulty with setting the price lies in a later section. That section says that over a period—if it is found by the Federal Power Commission that gas could have been produced or sold, at the average interstate price level prescribed in the statute, and if such gas was not committed to production or sale, as I read it in either the intrastate or interstate market or both, then that price applies, in effect, to all gas that is subject to those parameters. The price for such gas would remain frozen at the August 1975 intrastate level.

This will result, I'm sure of it, Gentlemen—I urge you to reconsider that section—this will result in interminable litigation. Why? Because whether gas could be produced or sold is a question of fact which involves thousands of natural gas producers who would be subject to that particular provision.

We vary anywhere from 5,000 to 15,000 gas producers in this country, depending on the size you want to include. If you include the larger ones, there are about 4,000 natural gas producers in this country.

I'm very much concerned if you include that provision in your legislation that it will be counterproductive first from the standpoint of litigation. Second, not only the increased litigation, but in the price itself, you may find that some producers, and I'm not saying this is legal or illegal, but some producers will decide not to commit funds to further exploration and development, because if they do, they might make certain gas eligible that could be produced or sold and, there-

fore, they say, "Let's wait until the emergency expires, and therefore, we won't commit." That is another counterproductive effect.

The average price intrastate, in July 1975, by some 18 gas producers producing about 20 percent of the natural gas in this country was about \$1.26. The difficulty with the figure I give you is that this is based on our form 45 analysis which is applicable solely to jurisdictional producers selling in the intrastate market.

We do not have jurisdiction. We have requested this from the Congress, since I have been Chairman, but, also by predecessor commissions for 20 years, and the Congress has not given us the authority to collect information under section 14 of the Natural Gas Act involving prices of intrastate producers.

I, therefore, would urge you in passing this legislation to have a specific provision enabling the FPC to collect intrastate prices from both jurisdictional producers that are defined as natural gas companies under the National Gas Act and nonjurisdictional producers. If the Commission is granted that authority, I believe the Commission staff could do this in 45 days and maybe earlier. It is also conceivable, although I don't like this kind of practice, it is also conceivable you could write into the act that an in-line price to be established by the Commission, based on jurisdictional sales is acceptable but could be revised at a later date after the prices of all companies both jurisdictional and nonjurisdictional are analyzed.

The \$1.26, we believe, is the price, on the average, based on the analysis of 18 natural gas producers. I will not spend any time as to agricultural priorities. We have to have food.

I don't believe you ought to set legislatively priorities for agricultural users. There are other industries that provide us with clothing and shelter that are equally important. I think you ought to revise that section and grant the FPC authority to set these priorities under your definition of essential users for all sectors of the economy.

It would make it very simple for the FPC, I hasten to add again, if you decide to establish that agricultural priority—we could say as a Commission that Congress did this. There is no gas available for other priority industries, because it is flowing to fertilizer industries. Much of that may be exported for other reasons to other countries. I know you know more about these trade offs and these critical choices than I do, but they occur to me as a matter of first impression that this should not be done.

As to boiler fuel, this is a minor observation, but I think it is important. Under the FEA bill, under your bill, you probably recognize that the FPC—

Senator STEVENSON. May I interrupt you at that point. I'm not a sponsor of the emergency legislation. I want to make sure what legislation you are referring to.

Mr. NASSIKAS. S. 2310. I want to point out that that bill, which is not your bill, Mr. Chairman, suggests that before a powerplant converts from natural gas to another form of fuel, that the FPC file a certificate with the FEA so that the reliability of systems will not be impaired. This is our job. It has been so for over 30 years. We have an expert staff. Anything the FEA does will partially be, if not largely, dependent on what we do anyway.

If the administration bill should be passed, I would think that the deficiency in the administration's bill, sponsored by the FEA, which does not require a certificate by the FPC on reliability, be cured. Why don't you, once and for all, give the authority to the FPC as an independent regulatory agency, to determine electric power matters in this country? I think this has been a very important defect, administratively, of the method by which, and the way the responsibilities are delegated. The FPC should be responsible for the conversion program, not the FEA, even though we cooperate and coordinate.

Accountability should be placed in our agency.

That concludes my statement. I have tried to be brief.

Senator HANSEN. Did Mr. Nassikas say he recommended the FPC be given the authority on power management?

Senator STEVENSON. We both missed the same word.

Mr. NASSIKAS. On powerplant, electric generating powerplant conversions. In other words, it is a function both of cost and reliability of systems as to whether or not you should convert in addition to environmental considerations.

I believe that you have a fractured assignment of responsibility which cannot function effectively. On propane allocation the FPC should be granted that authority and the necessary appropriations to carry that out because the production of propane or its regulation is intertwined indelibly with the regulation of natural gas.

Senator STEVENSON. Thank you, Mr. Chairman.

Your statement has been helpful and concise. However, that was a sacrilegious comment about the agricultural priority. I have been faced by the comments on decontrol. I have heard it before, time and again, that you and many others support decontrol.

When we first began the natural gas hearings some 2 years ago, some economists, some witnesses did support decontrol through natural gas prices. But their expectations about the ability of OPEC to hold the line on oil have been disappointing. Many of those witnesses have changed their views. Not long ago we held a hearing at which some of the most prominent economists, leading authorities on oil and gas, testified. They said, "We support decontrol."

I went back and said, "Could you really mean that, or do you mean decontrol but subject to some protection from the U.S. Government against arbitrary pricing against foreign producers?"

They said, "Yes, of course, there has to be some protection."

Mr. Zarb said he was against arbitrary Washington prices. We are all against arbitrary Washington prices. We don't like arbitrary prices by terror.

The committee should make it clear we support decontrol if it is subject to authority and this, in your view, should be in the FPC, to protect the committee. Your standard says we should include consideration of market values, as well as costs. You recognize the need for some protection.

What price for natural gas would your just and reasonable standard now produce?

Mr. NASSIKAS. There are several just and reasonable standards. There is the just and reasonable standard under our national rate, which allows expired contracts for old gas to receive a higher price at

51 cents plus the taxes. The realistic price, as best I can determine through an economic analysis that we are currently allowing by attributing a value to expired contracts receiving the higher price ranges someplace around 65 to 70 cents.

This is at the wellhead. This is not at the point of consumption.

There are other kinds of just and reasonable prices which we do establish not as a uniform national ceiling, but as exceptions to that rule, our prices, some of which have been allowed, even though the certificate was refused, have brought 65 to 70 cents. I will correct that if I'm wrong in my recollection. We have allowed emergency sales, 60-day emergency sales and some others at higher prices than the national rate.

Finally, we have been reviewing under a rulemaking for approximately 8 months now, our so-called biennial review of the national gas prices.

Here if gas was committed under a contract and it was certificated at the 52-cent level and we should find on the evidence we now have that the price should be 75 to 80 cents, simply to select a figure, then from the unexpired portion of that newly dedicated contract, the price would be 75 to 80 cents.

If, on the next biennial review, it happened to be at a dollar, that is what it would be for the unexpired remainder of the term. If the contract is a contract that expired after January 1, 1973, and there is more gas to be delivered, and a new contract is entered into, the gas to be delivered would receive the 52-cent-plus price even though the flowing gas price may have been 10 cents or 20 cents.

I would like to add—and this is not your addition, Mr. Chairman—to your group of capitalists, the different views of those other economists who state what may influence the price of oil and gas.

Senator STEVENSON. My list of capitalists was not intended to be all-inclusive. I'm not sure what your just and reasonable standard would produce.

Mr. NASSIKAS. On the evidence, our staff has submitted in the biennial review, as well as 50 to 80 respondents, varying price estimates. I have prices from the 52-cent level up to \$1.75 to \$2. That is the range we are dealing with. As to whether all prices can be supported by the evidence, I will not answer.

Senator STEVENSON. What is the effect of short-term emergency, decontrol, as proposed by Senator Hollings and Senator Glenn on the one hand and the administration's on the other, would be on the intrastate price of gas and the gas that was allocated as a result of such decontrol to the interstate market?

I beg your pardon. Take the ceiling off. Let's make it the administration's assumption. Forget I mentioned Senator Hollings' bill.

Mr. NASSIKAS. With no ceiling I would say that a price level ranging some place between \$1 to \$1.50, some place in there, would induce a rather substantial supply of gas to the interstate market. I can't tell you what the elasticities are. I will say if we induced 200 billion cubic feet at an average price of 56 cents, some of that was induced in March of 1974 and not fall of 1973, I would say that with a price of \$1 to \$1.50, knowing what I know about the intrastate market and about uncommitted gas supplies that we will receive some substantial commitments to the interstate market at that range.

I also recognize, and I have said it in my statement, that if we permit under the administration's bill and FPC bills the 180-day emergency legislation to go into effect, to enable industrial users that are essential users to buy gas from the producers and use pipelines as common carriers if we find that, that by virtue of that competition for uncommitted gas supplies which is what we are talking about for our short term, uncommitted gas supplies, that there is bound to be an escalation in price. At the same time, the cost to the economy of, shall we say, an arbitrary low price that is not the economic price to commit the gas, I think, far outweighs the disadvantages of a higher price because we are not talking of committing to the interstate market a trillion cubic feet of gas this winter.

We are talking some place in between 200 to 300 billion cubic feet. I'm conservative about the amount of gas we will be getting. There isn't that much gas in my judgment that will be available to meet the emergency this winter; 200 to 300 billion cubic feet, in terms of overall gas flowing, counting interstate and intrastate—as you know, taking 22 trillion cubic feet, is a small amount and it could not possibly have a tremendous influence on the volatility of gas prices.

Senator STEVENSON. That was the question, Mr. Chairman. How high would the uncontrolled, no-ceiling price go under the 180 days?

Mr. NASSIKAS. There could be spot prices under the 180-day legislation, which relates to pipeline purchasing. This is not industrial users as such. There could be spot prices under that, I would say in excess of \$2. I would say on average some place between \$1 to \$1.50 would be a rational projection. Based on our own experience that would be possible.

Based on our other bill, which we introduced, H.R. 9409, we don't have a Senate title for it, although it is basically FEA title III of S. 2330, that bill follows our concept on the curtailed end uses. When industries requiring gas for essential use such as feed stock, fertilizer, glass processing, essential direct flame applications for gas, when these industries start competing and, as somebody said, these would be the larger, well-organized industries, it is entirely conceivable that the price on the spot market by these industries could exceed \$3 Mcf.

[The following information was subsequently received for the record:]

WORK SHEET—FORM 45

NEW NONJURISDICTIONAL SALES OF NATURAL GAS, JULY 1975

Seller	Annual volume (thousands of cubic feet)	Total price (Cents per thousand cubic feet)	Volume X, total price
1. Kerr-McGee.....	157,133	96.2526	\$151,245
2. Union Oil.....	88,695	185.0	164,086
	160,000	1.2432	198,912
	68,255	80.50	54,945
	233,965	80.00	187,172
	15,878	81.00	12,861
	112,055	68.50	76,758
	271,560	71.0	192,808
	97,035	69.0	66,954
	2,190,000	75.0	1,642,500
3. Texaco.....	5,355	127.40	6,822
	508,225	208.33	1,058,785
	24,500	175.54	43,007
	294,000	175.54	516,088

WORK SHEET—FORM 45—Continued

NEW NONJURISDICTIONAL SALES OF NATURAL GAS, JULY 1975—Continued

Seller	Annual volume (thousands of cubic feet)	Total price (cents per thousand cubic feet)	Volume X, total price
3. Texaco—Continued	26,827	175.54	\$47,092
	1,285,200	117.60	\$1,511,395
	558,450	31.36	175,130
	2,500	13.51	338
	2,500	13.51	338
	14,600	29.6	4,322
	109,500	126.7	138,736
4. Tenneco	5,026,198	122.5463	6,159,420
	28,465	115.6325	32,915
	21,137	139.7947	29,548
	90,633	65.3575	59,235
5. Sun Oil	1,452,070	150.8192	2,190,000
	20,692	108.9216	22,538
	290,414	47.2567	137,240
	7,260	35.2791	2,561
	248,331	98.0366	243,455
	68,505	95.5857	65,481
	363,018	140.7645	511,000
	113,988	50.2731	57,305
	614,311	117.6439	722,699
	2,643,400	117.6439	3,109,799
6. Sohio	75,000	83.33	62,498
	20,000	2.05	41,000
7. Mobil	365,000	193.0	704,450
	730,000	150.7	1,100,110
	320,000	55.2	176,640
	310,000	110.3	341,930
	290,000	131.95	382,655
	3,400,000	75.0	2,550,000
	850,000	74.0	629,000
	1,350,000	75.0	1,012,500
	1,230,000	75.0	922,500
	9,000	61.5	5,535
8. Mesa Petroleum	294,555	96.7655	285,028
9. Gulf Oil	4,429,000	98.65	4,369,209
	1,190,000	162.88	1,938,272
	199,800	140.76	281,238
	5,082,000	103.06	5,237,509
10. General American	327,600	128.19	419,950
	60	56.0	34
	14,600	48.9	7,139
11. Exxon Corp	144,687	110.19	159,431
	323,812	116.63	377,662
	108,905	190.87	207,867
	170,618	85.46	145,810
	2,884,253	193.04	5,510,077
12. Emerald Gas Co	25,000	85.46	21,365
	21,000	85.46	17,947
	3,000	85.46	2,564
	182,500	140.20	396,065
13. Cities Service	38,254	150.82	57,695
	427,272	143.26	612,110
	363,618	83.50	303,120
	626,760	212.91	1,321,660
	182,500	38.45	70,171
	18,430	25.90	4,773
	1,957,756	161.71	3,165,887
	98,550	112.74	111,105
14. Coastal States	1,190,000	201.8212	2,401,672
	1,300,000	235.1673	3,057,175
	278,000	191.0376	531,685
15. Amoco	11,000	111.9	12,309
	40,000	118.3	47,320
	24,000	57.3	13,752
	288,000	154.6	445,248
	60,000	57.8	34,680
16. Atlantic Richfield	365,000	1.00	365,000
17. Appalachian Exploration	67,000	49.981	33,487
	40,000	54.7869	21,915
	40,000	75.0	30,000
	60,000	75.0	45,000
18. Cimmaron	16,000	49.73	7,957
	7,717,040		13,131,062
19. Diamond Shamrock	3,000	85.46	2,064
	15,200	85.46	12,990
	30,000	65.35	19,365

WORK SHEET—FORM 45—Continued

NEW NONJURISDICTIONAL SALES OF NATURAL GAS, JULY 1975—Continued

Seller	Annual volume (thousands of cubic feet)	Total price (cents per thousand cubic feet)	Volume X, total price
20. Samdan Oil Corp.-----	4, 015, 000	190. 00	\$7, 628, 504
	1, 978, 105	115. 00	2, 274, 821
	131, 528	100. 00	131, 528
	152, 083	76. 50	116, 343
Grand total-----	55, 375, 501	-----	69, 778, 707

NOTES

July 1975 average, 126.01 cents per thousand cubic feet.
 108 major producers (10 bcf or more annually).
 5,642 small producers.
 These 20 companies sell approximately 1/3 of total gas annually.

Mr. NASSIKAS. Here again I would say on average the price could be well under \$2 and this is where I would estimate it would be. In other words, it would be comparable to the price that is being paid today for natural gas in the Houston industrial complex and what is paid for gas in the Houston industrial complex cannot be considered as the price on average that would be paid by temporary emergency measures. That is a special situation with industries being there, with the gas supply being available to them and there are some other erratic surpluses that have developed.

I don't think the surplus amounts to as much as people make it up to be.

Senator STEVENSON. Mr. Chairman, you said industrial users could run up spot sales over \$3.

Mr. NASSIKAS. Yes.

Senator STEVENSON. Are you saying more than 100 competing interstate pipelines for a limited supply would not run up the present price of that limited supply, intrastate price?

Mr. NASSIKAS. As I understood your question, if we were to have no price ceiling the industrial user purchasing gas under our rulemaking would be subject to some price review i.e. under a standard of public convenience and necessity. Under the legislation as it has been proposed there is not even a standard for public convenience and necessity imposed on the industrial users. Under the 180-day emergency legislation authorizing pipelines to purchase gas there is a standard of public convenience and necessity as well as a standard of a just and reasonable rate so that the industrial user under the structure of those two bills has more freedom to bid than the pipeline. If these are the same standards and 100 pipelines are bidding for gas out there probably the price in that case would be quite comparable so that the rate would not be subject to review under either a just and reasonable or public convenience and necessity standard to the industrial user. Although here again, the pipelines do have in some part of the country, even today, a bargaining position because it is not totally a seller's market. The Rocky Mountain region is a case in point. You can hear that there are not many pipelines that serve that area or single pipelines that serve it. There are other areas in which only pipelines could

take care of the surplus, rather than seller's charging more than the market will bear.

There is some competition that does exist today, although I don't want to overemphasize it.

Senator STEVENSON. I don't want to impose on my colleagues but I will try to wind it up with one last question. The industrial user price will in some cases exceed \$3. You indicate in certain circumstances the interstate pipeline price might reach the same level. What do we get from these very high prices for the short term? Are we, in fact, increasing natural gas supplies, production for the short term or are we, as a result of equalization of interstate and intrastate prices reallocating the supply?

Mr. NASSIKAS. I believe that passage of this emergency legislation will not only reallocate a shortage but will also in the short term increase gas supply to some degree. There will be wells developed.

Senator STEVENSON. You are talking about this winter.

Mr. NASSIKAS. This winter there will be some. Part of our investigation we mentioned earlier is to determine partially the answer to the question of what wells could be developed—

Senator STEVENSON. You say developed. You mean drilled or wells which are presently curtailed, construction of which is presently being curtailed.

Mr. NASSIKAS. Some wells may be curtailed and curtailed legally. Some may be curtailed illegally. That I don't know yet. I say that overall certainly there will be some additional production this winter to increase the overall quantity of natural gas than that we could not expect if you didn't pass any legislation. I also want to say—I think this is a good point—the question was asked earlier. Will deregulation of new gas increase the supply of gas this coming winter? I think that Mr. Zarb's answer to that question was, "No."

This is my own recollection of the record. I say, "Yes; it will increase the overall supply of gas for this winter." If the price goes up, there will be some wells that will be developed. There will be additional compression added, and other steps to increase recovery and deliverability.

There will be some additional short-term drilling, where there are prospects available and possibly next February there may be some additional gas that may be flowing.

Still the advantages of a decontrolled price are not short term. They are long term. That has been my position throughout.

Senator STEVENSON. I will move on. I agree with you. I believe there would be marginal or slight increase in production, too. Why, because production is being withheld.

Mr. NASSIKAS. Some.

Senator STEVENSON. If it isn't unlawful withholding of production, it ought to be made unlawful. We are asked to pay the blackmail. If that is how to get increased production for the winter, far from paying the blackmail, extortionate price, \$3, it would be better and more faithful to the public trust to insist on production of the leaseholds, especially offshore leaseholds in the public domain.

Mr. NASSIKAS. It has been suggested that it is the FPC regulation on the basis of cost that causes these large shortages. That is partially true, I believe. It is true we set cost because the courts say we must set

prices on the basis of cost. Each time we try to use economic factors, we get reversed by the courts. Nevertheless, in fairness this committee knows, and everybody should know, the FPC does have several rates. If a gas producer can show costs of \$1.10 or \$1.25, he can come in and show the cost of a project, and if the cost is supportable on the evidence, he would get \$1.25 gas.

We should have economic authority if you don't deregulate—I cite it for the short term, too. I prefer the economic authority granted to a regulatory agency. For emergency purposes, a J and R price may be established based on the consideration of the prices paid on the intrastate market over the course of the past 6 months. That should be stated in the legislation. I don't think the Congress should set prices in a complex area like this. This is tampering with the economy.

Senator HANSEN. Mr. Chairman, just a rule of thumb is that 6,000 feet of natural gas roughly is the energy equivalent of a barrel of oil. I recognize the Btu ranges in natural gas vary as they do in oil. If we were to assume for purposes of discussion that that relationship has some accuracy in the overall market, would you feel that in trying to arrive at a just and reasonable rate for pricing natural gas, equivalent cost of that same amount of energy being produced by the use of oil, is significant in the equation?

Mr. NASSIKAS. Significant in what?

Senator HANSEN. In the equation. Yes.

Mr. NASSIKAS. Yes; I think we should consider the price of oil. We should also consider whether you should have a straight Btu comparison or weighted Btu comparison. More importantly, it is more significant in the equation to be sure that the prices set for natural gas in various markets in the United States are not significantly less than the price of fuels. There is a much bigger disparity, Senator Hansen, as you know, between the prices on a Btu basis for gas versus oil than there is between the price of No. 2 oil that heats homes and natural gas in various markets of the country.

Senator HANSEN. If one fuel for other reasons were desired above others, won't it be fair, or may I ask you do you not believe it may be fair, to assume that natural gas can equal it to bring more on a Btu basis than other sources of energy on a Btu basis?

Mr. NASSIKAS. I happen to believe that gas on a Btu basis is a premium fuel. It should command a higher price in the market for certain applications. I want to emphasize there is great disagreement among economists—that may be like when the doctor disagrees, the patient dies—economists disagree on this point.

Senator STEVENS. Mr. Chairman, I have been requested to ask that the statement of the National Council of Farmers Cooperatives be inserted in the record.

Senator STEVENSON. Without objection, it will be done.

Senator HANSEN. Mr. Chairman, is it your opinion that the control of natural gas prices in interstate pipelines has tended to discourage the development of alternate sources of fuel or not?

Mr. NASSIKAS. No question about it. It has tended to discourage the development of alternate sources. I wish there was an easy way. There is none. But to allow the market forces to take over, you would try to have profit control.

Senator GLENN. Mr. Nassikas, your testimony is excellent. I welcome the opportunity to meet you. The chairman was concerned about what gas would be released on this. The objective we talked about during formation of this legislation was along the lines of the gas that comes into interstate pipelines would come from conversion of other facilities and from maximum-efficient rate production out of fields where that is not the case. These are areas where we felt there could be substantial increase of natural gas into the interstate pipeline system.

There may be additional new gas, as you mentioned. This is a special situation type of legislation, and I think we need to remind ourselves of that. This was for a limited time period, and our objective here was to make sure we didn't set up a condition where there was just going to be a terrible price rise of some kind. We felt if it was fair that intrastate markets settled where they were by whatever market forces that impose this new interstate requirement on that local intrastate market when we weren't sure what effect this would have and whether the elasticities were not that well known, might have a tremendous impact on local areas, particularly where three pipelines that service the Northeast come together and would be bidding competitively and competition, the end user bidding competitively, and this could be devastating.

This potential for \$3 spot gas, that would be a fantastic price, of course. We are just trying for the limited period of this winter to set it up so we won't roll prices back, but put a lid on so they won't go sky high. That was the objective of the legislation.

Mr. NASSIKAS. I support what you say there. We have applications now under the new rule of up to \$1.95 by industrial users. But there is a most-favored-nation clause in this contract. Under gas regulation, we prohibit favored nation clauses. If industrial users go out and they get into favored nation clauses, the price of gas will rise to the highest level paid by any purchaser in that area. There is an escalating effect. I am supporting your idea that there has to be some kind of ceiling.

I think you ought to have the FPC set the price level with some kind of economic standard rather than freezing it and then consider striking that clause that relates to whether gas should have been produced or sold but was not.

Senator GLENN. The reason for that was obvious. It was so that under the maximum efficient rate of production we would not have people waiting for a higher price down the road and holding us short this winter where we may meet economic disaster. Now, you asked—your word was you thought we should reconsider this idea of if the gas was not produced it would have that lid put on. That was the vexing part of this whole thing for me, too.

We felt to have gas capped in and sitting there—because we haven't got even to long-term aspects of considering gas a natural resource—to have gas capped in while other parts of the country were going down the tube is not right.

Mr. NASSIKAS. I am not sure that my idea is better than the idea expressed in this legislation. My idea, good or bad, is: (1) that I think it will be better not to have a specific price ceiling based on the average of an earlier month that will control all intrastate gas, and (2) if you

eliminate the provision about gas that could have been produced and sold, this legislation becomes far better than the way it is currently set.

Because you are setting a ceiling on gas put into the interstate market. I prefer to have the Federal Power Commission establish through a certificate of public convenience and necessity whether or not that gas should be committed to the interstate market at that price. We consider in certificating all factors: unemployment, effect on prices, comparable intrastate levels, whether there were alternate supplies available, whether the gas can be delivered in that span of time. I am saying the beauty of your suggestion in the bill of setting specific prices—the Congress is empowered to do this—is that an appeal from that price would not stand up because you have congressionally determined that is the price.

That is an advantage of what you have.

On the other hand, I say if you give us broad enough authority to set a price considering intrastate levels, we will be sustained by the courts.

Senator GLENN. This antiwithholding provision we had is the real area you disagree with in our bill.

Mr. NASSIKAS. That was a fundamental area; yes, sir.

Senator GLENN. The 45-day time period to get the pricing period set up as opposed to the 15-day was tied. If we look at this now we can get this through the Congress in the next 2 weeks, by the first of October. Then it is 45 days to get the pricing.

All at once we are getting close to the first of December when the cold weather hits.

I think it emphasizes once again the emergency nature of this bill and the fact we are under time constraints that are critical if the legislation is to do anything but give false hopes to people this winter.

Mr. NASSIKAS. If we were granted authority to review intrastate prices by economic factors we could come out with an intrastate price level that would be reasonably accurate.

Senator GLENN. I know you don't go on speculative legislation. Is there a possibility you could have people putting together this pricing in the interim period while we get something through here, we hope?

Mr. NASSIKAS. Yes, Senator Glenn. We already have the staff taking all contracts as of the very latest date, July 1975. That was my 20 companies. That showed that the price was 126.01 cents.

Yes, we will continue doing that.

Senator GLENN. Thank you very much.

Thank you, Mr. Chairman.

Senator STEVENSON. Mr. Chairman, I have one last question.

In response to questions by Senator Hansen you have accepted the notion of comparability in pricing value of oil and natural gas.

Then you have supported again FPC ceiling pricing for new natural gas.

Are you suggesting that the FPC should have jurisdiction with respect to natural gas and that the FEA or FPC should have jurisdiction with respect to oil?

How do you recognize that comparability if different agencies are pricing oil on the one hand and gas on the other by different standards?

Mr. NASSIKAS. The way the FEA prices oil under the statute is by no means as inflexible as the Natural Gas Act in a manner in which we set prices.

I think definitely FEA and FPC must coordinate in setting prices without conspiring to set prices. It must be done on an independent basis, by comment on rulemaking, through conferences, and this kind of thing, that establish the price.

I was quite attracted by the idea—I think this was your idea—I was quite attracted by the idea of establishing a price for natural gas that would have that significant part of the equation, if I remember some of the words set by a congressional formula, where gas would be on a Btu basis priced like oil except that this would not be 1 for 1, I don't believe.

I am not sure.

Senator STEVENSON. If you are referring to my suggestion, it would be close to 1 to 1. But instead of letting natural gas go all the way up to oil, I would bring down oil slightly.

Natural gas could go way up. But it would not go up to \$2.20 or whatever the Btu equivalent for new natural gas. It would be geared to an average oil price that would gradually phase out at the oil controls and new lower ceiling for new oil, about \$9, so that over a period of time you would end up with a single-tier pricing system for natural gas and oil.

Mr. NASSIKAS. The concept was attractive to me and still is an attractive to me and still is an attractive concept.

As you know, I do think that it would be better to have legislation that will enable the marketplace to take over and still protect against excessive profits.

This does not have to be through price control by the Congress but may be on a short-term basis and phasing out price controls at the end of that time.

Those 16 Governors came up independently with the idea; 180-day emergency legislation.

The second point they raised was to phase out regulation of natural gas, have decontrol for a period of 5 years and see how it worked.

That was reminiscent of an idea I thought was sound. I recommended that to the National Press Club 3 years ago. I said nobody knows what the results will be with decontrol.

You have to do it empirically.

Some economists say elasticity is point 1 and others saw it is one-to-one that is 1,000 percent different.

Senator STEVENSON. I am sorry I did not see Senator Hartke.

Senator HARTKE. Let me ask you, John, what in your judgment would be the total cost to the public of S. 2310?

Mr. NASSIKAS. I really—

Senator HARTKE. I understand all your propensities to be very cautious.

Mr. NASSIKAS. Could I supply something for the record for you?

I am trying to compute here and I am afraid that time doesn't permit it.

The amount of natural gas, the increments that might be secured by virtue of S. 2310 over the short term. If that was—and I may have the answer for you in a second here.

If that happened to be 250—

Senator HARTKE. Would that be the mean?

Mr. NASSIKAS. I can't give you the answer. I am sorry.

It is not because of caution. It is because I want to be accurate.

Senator HARTKE. How long would that take?

Mr. NASSIKAS. I could submit something for the record tomorrow, but it will have reservations.

Senator HARTKE. We will act on this. I want the American people to be alert to what they will have to pay. I listen to the conversations of what we will have to pay in reduction of increased unemployment. I have sympathy for that.

My judgment is I think the people who are in control of this operation have got the American people in a squeeze and I don't think there is any way they will let us out of it. They have got us and we will have to pay the price if we are going to continue to operate.

That seems like a ridiculous situation. That is in effect what you are saying, isn't it?

What you are saying if I listen to you carefully—and I have listened to you over the years carefully—what you are saying is you think generally speaking that if we move into more and more into a market economy and the market pricing, that you are going to have increase in the availability of gas sufficient to take up the difficulty.

But you also say on the other hand immediately, "But no one knows."

Mr. NASSIKAS. That is true.

Senator HARTKE. There is no hard evidence either way.

Mr. NASSIKAS. Well, no hard evidence either way as to what the incremental quantity of gas that would be attracted. That is true.

Senator HARTKE. You are dealing with an item that has finite qualities. It is not infinite in supply. The shortage has not necessarily been caused by regulation, not necessarily.

Mr. NASSIKAS. It has been partially caused by regulation consistent with a statute passed by the Congress.

Senator HARTKE. Partially caused and partially by the fact that you are dealing with a diminishing natural resource.

Mr. NASSIKAS. No question about that.

Senator HARTKE. No one speaks about that anymore.

Mr. NASSIKAS. My staff issued an excellent report on that. We are continuing to study it.

Senator HARTKE. Let me ask you if there is any hope in S. 2310 of increasing beyond 300 million cubic feet.

Mr. NASSIKAS. Yes; but marginally.

Senator HARTKE. If that is true, is that sufficient to avert this threatened economic crisis that Senator Glenn is talking about?

Mr. NASSIKAS. It will go a long way—what we have already done—in addition to granting petitions for improved relief, in addition to that, that plus the measures we have taken—they go a long way toward averting deepening unemployment.

I am confining my answer to your question to those industries that must have natural gas in order to avoid unemployment.

Senator HARTKE. Now, wait a minute. Let me give you a caveat.

What about the small guy? Will he be thrown to the wind in this operation?

Mr. NASSIKAS. No; I certainly hope not.

Senator HARTKE. You hope not, but won't he? Isn't that the effect of S. 2310? It would leave him to the mercy of the marketplace?

Mr. NASSIKAS. We have priorities we have established for some of the major users of gas also. If they fit in this category, and they do, priority 2 and 3, small users are essential users. For example, there are thousands of agricultural users that have extraordinary relief from the El Paso system.

Senator GLENN. Will the Senator yield for comment?

This is a major difference between the bill the administration sent up and S. 2310 in this respect. Under our bill, when the FPC determines that an area is impacted and it would be an emergency area this winter, then the pipeline can go buy the gas and bring it back and serve the smallest customers, one-man store or shop.

The administration's bill says the pipeline can go down and buy, but the end user could also buy.

General Motors, big people, would buy and the little people would suffer. The little guy won't have the capital to fight for gas like the big users do.

Senator HARTKE. See if I understand this.

As far as the area is concerned—that that gas only goes to that area. Why couldn't the big users run that price up to the extent that the little user is at their mercy in that area?

Mr. NASSIKAS. I believe the pipelines themselves, with expertise in this business and industry for 30 years, will succeed in securing some additional commitments that the industrial users will not be able to get.

I believe they have secured some under our own emergency actions that we have taken.

Senator HARTKE. Won't the small guy be out there at the mercy of the pipeline?

Mr. NASSIKAS. Small user.

Senator HARTKE. Small business?

Mr. NASSIKAS. Pipelines must serve small and large users consistent with our priority.

Mr. HARTKE. I have no question about that. The price will be bid up. But I don't think it would be bid up beyond the average of somewhere from \$1.25 to \$1.50.

Senator GLENN. On our bill it couldn't be bid up. We put the average for that area where they are buying the gas.

Senator HARTKE. If you come to virtue, would you say the virtue as an approach would be to—if you had to cast your lot today, you would say let's move S. 2310 on the emergency basis?

Mr. NASSIKAS. Between all three bills.

Senator HARTKE. Yes.

Mr. NASSIKAS. I wish I could agree with you.

My belief is our 180-day emergency bill with some revision and the administration's 180-day emergency bill with some revision should be adopted, and the industrial user bill should be adopted.

The revision would be that for emergency purposes the J. & R. rate is not subject to the review of the FPC—or that the FPC on broad economic authority sets the J. & R. rate.

I will hasten to add that I think the staff and this committee, the Senators have done an excellent job in putting this bill together on a crash basis.

I think you can see from the tone of my prepared statement which I prepared Friday, largely prepared by myself, that I don't take great issue with the bill.

If I took great issue you would have heard it.

I am saying you can pass your bill. Please pass the 180-day industrial user bill, also. Pass these bills and you have made a real contribution.

Senator HARTKE. Would you be kind enough to accelerate that cost estimate to me?

Mr. NASSIKAS. Like when?

Senator HARTKE. This afternoon.

Mr. NASSIKAS. If I can get somebody on it, I will.¹

Senator HARTKE. Tell them I will be available at midnight in the office and after midnight at home.

Mr. NASSIKAS. OK. Fine.

Senator STEVENSON. Thank you, Mr. Chairman. No further questions.

[The statement follows:]

STATEMENT OF HON. JOHN N. NASSIKAS, CHAIRMAN, FEDERAL POWER COMMISSION*

Mr. Chairman and Members of the Committee, I welcome this opportunity to discuss with you the subject areas of natural gas shortages, resulting curtailments and possible legislative alternatives to deal with these issues. I will address these matters in that order.

I have come before you today with a lengthy prepared statement containing numerous appendixes and detailing the myriad causes and effects of the pervasive and deeping natural gas shortage faced by the nation. As early as November of 1969,² three months after I became Chairman of the Federal Power Commission, and frequently thereafter, I have reported to Congressional Committees about the seriousness of the natural gas situation and about the actions which the Commission has taken and which the Congress might take to alleviate and ultimately to resolve the natural gas supply crisis which has impacted so severely on the interstate market.³

THE NATURAL GAS SHORTAGE

Since my appearances before those House Subcommittees, I have detected no evidence to rebut the Commission's ominous prediction that, without further legislation and/or administrative relief, the shortfall in firm service this winter will be approximately 1,327 billion cubic feet (Bcf) compared to a shortfall last winter of 1,019 Bcf. This estimated shortfall will be 307 billion cubic feet or 30 percent greater during the 1975-1976 winter as compared to the previous winter period. Anticipated supply deficiencies for the April 1975 through March 1976 period are estimated to be 2,917 billion cubic feet compared to 2,013 billion cubic feet in the like period last year. Projected curtailments this year therefore exceed actual curtailments of firm service for the preceding year by 904 billion cubic feet or about 45 percent.⁴

¹ See p. 99.

*A prepared statement, identical in substance to this document, will be presented to the Subcommittee on Energy and Power, House Committee on Interstate and Foreign Commerce, on September 18, 1975.

² See statement presented by John N. Nassikas, at Hearings Before the Subcommittee on Minerals, Materials and Fuels, Senate Committee on Interior and Insular Affairs, November 13, 1969.

³ Most recently, at hearings held on June 12, 1975 before the Subcommittee on Conservation, Energy and Natural Resources of the House Government Operations Committee and at hearings conducted on July 14 and July 21, 1975 by the Subcommittee on Oversight and Investigations of the House Interstate and Foreign Commerce Committee, I discussed many of the natural gas supply and curtailment problems which hopefully can be alleviated by expeditious Congressional action.

⁴ See FPC Staff Report on Interstate Natural Gas Pipeline Curtailments issued June 6, 1975.

A Commission Staff Report on Historical Curtailment on an actual basis, issued on August 20, 1975, shows the following trend in actual curtailed deliveries of firm contract quantities of natural gas by interstate pipeline companies:

Year:	<i>Volume (billions of cubic feet)</i>
1971 -----	286
1972 -----	649
1973 -----	1,131
1974 -----	1,679

Compounding the effects of firm requirement curtailments are interruptible curtailments which mainly affect industry. For the coming winter season, net total interruptible curtailments are projected at about 140 billion cubic feet compared to 101 billion cubic feet last winter, or an increase of over 38 percent. For the entire year April 1975-March 1976, net curtailments of interruptible load are expected to amount to over 283 billion cubic feet, or an increase of over 44 percent over the 196 billion cubic feet curtailment of interruptible load during the April 1974-March 1975 period.

There is no indication that the current trend will change for the better in the near future. In fact, on June 6, 1975, the FPC released a preliminary staff study which shows that natural gas reserves committed to interstate pipeline companies declined in 1974 for the seventh consecutive year. Gas reserve data filed by 61 interstate pipeline companies show that committed domestic gas reserves declined by 14 trillion cubic feet in 1974, from 134.4 trillion to 120.4 trillion cubic feet. The information is based on annual reports (Form 15) filed with the FPC by interstate pipeline companies. The reserve-production ratio for the interstate reserves has declined from 16.8 at the end of 1967 to 9.3 at the end of 1974.⁴

The impact of curtailment has been felt by all segments of the consuming public through higher natural gas prices, but the major economic impact has been absorbed primarily by existing large volume industrial consumers who have switched to more costly alternate fuels such as propane and fuel oil.

FPC ACTIONS TO ALLEVIATE THE NATURAL GAS SHORTAGE

The FPC has taken a series of actions over the past six years, within limits of its authority as interpreted by the Courts,⁵ to stimulate badly needed increased production of natural gas. It has also taken action to limit attachment of new natural gas consumers in applications where alternate fuels can do the job; it has stressed the need for maximized conservation efforts with respect to consumption of both natural gas and electricity. Nevertheless, acceleration of the shortage has persisted, and the FPC has been required to devote a greater proportion of its regulatory activities to problems of allocating the shortfall between existing customers of interstate pipelines.

As you know, the Commission has established policy guidelines to be followed by jurisdictional pipeline companies during periods of curtailment.⁶ Basically, these policy statements instituted the order by which interstate pipeline companies should initially effectuate natural gas curtailment to their customers. Procedures have also been implemented for the filing of requests for relief from curtailment by customers of interstate pipeline companies.

In a recent expression of its position on curtailments and allocation in Chapter 1 of the National Gas Survey⁷ the Commission stated:

"When supply is insufficient to meet the needs of all those who desire gas, some very difficult decisions must be made with respect to those consumers who must be curtailed. The decision to curtail a specific customer is, simultaneously, an allocation of the available supply to other users. This curtailment-allocation decision should balance a number of factors:

- "(1) Safety considerations
- "(2) Efficiency of gas use

⁴ Staff Report on Annual Declines in Pipeline Gas Reserves issued June 6, 1975.

⁵ I have discussed these limitations, which are primarily the requirement that jurisdictional rates be extensively cost-based, in a letter to Chairman Dingell dated August 28, 1975 attached hereto as Appendix A.

⁶ See Commission Orders No. 467, 38 FR 1503; No. 467-A, 38 FR 2170; No. 467-B, 38 FR 6384; No. 467-C, 39 FR 12984; and No. 493-A, 38 FR 30432.

⁷ Federal Power Commission, National Gas Survey, Volume I, Chapter 1, "A Time for Decision and Action," February 1975, pages 39-41.

- "(3) Consumer reliance on gas for its unique characteristics
- "(4) Availability and practicality of alternate fuel substitution
- "(5) Environmental significance of continued use as opposed to curtailment
- "(6) Volumetric impact of the gas use on total gas supply
- "(7) Economic factors
- "(8) Relationship of gas use to human needs requirements

"The most prudent curtailment actions are those which must judiciously balance the above factors in the specific circumstances. This need to balance the relevant considerations is the very reason that complex, detailed, tightly structured priority systems must be avoided. The administering authority must have the flexibility necessary to be able to balance these factors and must further have available to it those administrative powers necessary to consider applications for special treatment or relief in detail.

"It appears that the best allocation and curtailment program for the immediate future, and it is the immediate future which most urgently requires a curtailment program, must be one which establishes basic principles, but leaves the administrator(s) of the program with the freedom necessary to provide extraordinary relief in special cases, and allows orders of priority to be changed when situations change."

Other Commission actions relative to curtailment and to initiatives for encouraging natural gas conservation may be reviewed at pages 14 to 31 of my June 12, 1975 prepared statement presented at hearings before the House Subcommittee on Conservation, Energy and Natural Resources, *supra*. Commission undertakings subsequent to June 12, including interagency attempts to alleviate the natural gas shortage and Commission initiated investigations into the producing segment of the gas industry, are discussed in an August 28, 1975 letter and enclosure which I transmitted to Chairman William Moorehead of the House Conservation, Energy and Natural Resources Subcommittee (attached hereto as appendix B).

On August 28, 1975, the Commission issued Order No. 533 (40 FR 41760) which involves a policy statement encouraging the direct purchase of natural gas from independent producers by high priority consumers of jurisdictional pipelines and of distribution companies undergoing curtailment. While the direct sale transaction would not be subject to the Commission's rate jurisdiction, the transportation by jurisdictional pipeline of the gas purchased would require Commission certification.

The Commission would not have issued this policy proposal in Order No. 533, had we not believed we have authority to grant such transportation certificates under the present Natural Gas Act. However, there is a strong possibility of protracted litigation in the courts due to opposition to Order No. 533. The Commission has thus transmitted a legislative proposal to Congress that would codify Order No. 533 and thereby provide our policy statement with a Congressional mandate. I will discuss this legislative proposal shortly.

DEREGULATION OF NEW NATURAL GAS AND RELATED PROPOSALS

At hearings this past March before this Committee, I restated my belief that deregulation of new natural gas at the wellhead with protective covenants for the public interest is the single most effective measure that can be taken to alleviate the Nation's severe supply-demand imbalance. I still adhere to that viewpoint. In addition, the following alternative measures should produce some relief:

(1) A Congressional grant of authority to the FPC to deregulate various field markets or the national market in order to serve the public convenience and necessity;

(2) A grant of authority to the FPC to regulate in accordance with broad economic and market criteria rather than on the basis of cost under public utility concepts; or

(3) Adoption of the rational solution recommended by Senator Pearson and 18 other Senators to deregulate onshore gas production in order that the interstate market may compete with the intrastate market and to phase out offshore regulation of natural gas production within a six-year period, authorizing during the transition the prescription by the FPC of price ceilings on the basis of broad economic criteria.

These proposals would be effective to mitigate the shortage for the upcoming winter heating season if adopted this fall by the Congress, since they would divert from intrastate to interstate presently available supplies of natural gas which

otherwise would not be sold in interstate commerce. In addition, there would be accelerated production of natural gas reserves which presently cannot be economically produced to serve the interstate market. Eventually, any of these proposals, if enacted, would produce a substantial increase in the total domestic producible gas supply.

LEGISLATIVE RELIEF OF AN INTERIM NATURE

Congress is currently considering appropriate enabling legislation that would provide interim relief to the interstate market for the upcoming winter heating season while the "long-term" natural gas pricing issue is debated. I urge serious consideration by this Committee and the Congress as a whole of these emergency relief measures which would assist in averting a deepening natural gas crisis.

THE NATURAL GAS EMERGENCY ACT OF 1975

The proposed Natural Gas Emergency Act of 1975 (hereafter referred to as Emergency Act) has been introduced in the Senate by Senators Hollings, Glenn and Talmadge as S. 2310 and in the House by Congressmen Staggers and Dingell as H.R. 9464.

The stated purpose of this bill is to establish temporary emergency authorities for minimizing the detrimental effects on employment, food production, and public health, safety and welfare caused by natural gas supply shortages. The bill would designate as priority purchasers those interstate pipelines which cannot meet the requirements of essential natural gas users who do not have access to alternative fuels and whose supply requirements must be met in order to avoid substantial unemployment or impairment of food production or impairment of the public health, safety or welfare. Essential users may be either direct customers of the pipeline or customers of distribution companies supplied by the curtailing pipeline.

The Emergency Act should accomplish the purpose of eliciting new supplies of natural gas for the interstate market by freezing the market price for new natural gas produced in the intrastate market and making such gas available to interstate pipelines that are priority purchasers. While this bill varies somewhat in approach from several Commission bills which I will discuss shortly, the effect is the same. The natural gas shortages being experienced in the interstate market can be alleviated by this type of proposal on a temporary basis. I endorse this concept of temporary relief.

I believe that administration of emergency relief measures such as those envisioned by the Emergency Act or our own legislative proposals could be most efficiently exercised by expressly stating that the price of gas which is the subject of an emergency transaction is legislatively deemed to be just and reasonable. Unless this mandate accompanies emergency relief legislative proposals, it would be difficult to make commitments of gas since a purchase would be subject to a just and reasonable review after the fact. A subsequent determination that a lower just and reasonable rate should have been applied to a transaction would discourage bargaining for emergency relief transactions. Section 4(f) of the Emergency Act accomplishes this purpose. However, there should be authority granted to the FPC to require reports of volumes, prices and contracts by jurisdictional pipelines so that we may assure compliance with the area ceiling prices established by the Commission under the Act.

The provisions making new natural gas purchased from the Outer Continental Shelf available to curtailing interstate pipelines on a priority basis will alleviate shortages for curtailing pipelines while creating future shortages for pipelines which currently are meeting their deliverability commitments. There should be clear discretion vested in the Federal Power Commission to determine whether jurisdictional pipelines, whether or not in curtailment, should become "priority interstate purchasers" so as to avoid imminent curtailment. Perhaps a clarification of the definitional Section (3) (11) would address this point.

I do not believe it is feasible for the Commission to establish intrastate rates for new onshore gas at the average intrastate contract price for August 1975 within 15 days after date of enactment as provided in Section 4(b). While we are collecting intrastate pricing data from jurisdictional natural gas companies pursuant to Commission Order 521 in Docket No RM74-12 issued on January 9, 1975, the information collected is not complete. We have requested authority from Congress for 20 years to expand our informational gathering authority

under Section 14 of the Natural Gas Act, including the collection of intrastate price data.

Moreover, the Commission's Order No. 521 requires the large producers (those selling 10 million Mcf or more per year in interstate commerce) to file the data for the reported month by the 15th of the following month and the smaller producers (those selling between 1 million Mcf and 10 million Mcf per year jurisdictional) are to file their data on a quarterly basis; the reported quarter data to be filed by the 20th of the month following the reported quarter. Thus, the month of August 1975 will be reported by the large producers by the 15th of September, 1975 and by the smaller producers by the 20th of October, 1975.

It is noted also that Order No. 521 exempts from the filing requirement all interstate producers selling less than 1 million Mcf per year in interstate commerce. This provides another gap in obtaining complete intrastate data with which to fix the area ceilings required under Section 4(b) of the bill.

While I believe the information collected under our present authority might be utilized as a stop gap to determine August 1975 price levels, I would prefer express authority be granted to the Commission to enable the Commission to collect intrastate price data on a comprehensive basis from all pipelines and producers, whether or not jurisdictional and then to utilize such information to determine the price levels mandated by the Act. This process would require a minimum of 45 days.

I again emphasize that the predictable effectiveness of Section 4 of the Emergency Act is due to its temporary nature. The bill would expire on June 30, 1976, except for the provision in Section 4(g) that gas, which the Commission determines could have been produced or sold during the period the Emergency Act was in effect, but was not produced or sold, may never exceed in price the area rate established under Section 4. The effect of this provision is to freeze both interstate and intrastate natural gas prices at the August 1975 intrastate price levels indefinitely if the Commission finds that gas "could have been produced or sold." I believe this provision could lead to protracted litigation and controversy because the question of what gas "could have been produced or sold" during the period the Act is in effect—i.e. a period of six to eight months depending on date of enactment—would perforce be the subject of exhaustive investigation by the Commission requiring hearings relating to controverted facts and numerous court appeals from whatever findings may be made. While some gas might be produced and committed to the interstate market during the effective period of this Act as a result of this drastic sanction, the counterproductive effect of this section may be that the commitment of exploratory and developmental funds could be deferred until after June 30, 1976, so as to avoid the imposition of the sanction.

A number of bills have been introduced in the current Congress which provide various allocation, transportation, or purchasing mechanisms to assure that supplies of natural gas are available to meet statutorily defined agricultural requirements. Among these proposals are Section 210 of S. 692, S. 187, S. 319, S. 320, Section 208 of S. 701, and Section 26 of S. 269. Section 5(a)(1) of the Emergency Act directs the Commission to prohibit any interruption or curtailment of natural gas supplies, and to take whatever other actions under its authority that it deems necessary or appropriate, to assure to the maximum extent practicable the availability of sufficient natural gas supplies for any essential agricultural, food processing or food packaging purpose. The determination as to what essential agricultural uses require natural gas would be made by the Secretary of Agriculture, who would certify the necessary volumes to the Commission.

I recognize both the importance of a strong agricultural sector to the well-being of the Nation, and the dependence of certain agricultural operations upon natural gas. Fertilizer production, of course, currently depends heavily upon natural gas, particularly as feedstock (although the use of other materials is becoming more and more feasible and should be encouraged). In a number of instances, the Commission has acted favorably on petitions by fertilizer manufacturers for curtailment relief filed pursuant to our emergency procedures. While there is no guarantee that every such petition will be granted, I believe that the relief mechanism currently in place is the most effective means by which curtailment problems can be remedied, since it allows the Commission to bring its expertise to bear upon the particular facts in each case. If Congress imposes a blanket curtailment priority in favor of agricultural requirements, the likely

result would be distortions in the interstate gas supply situation that would affect adversely not only those uses with a lower priority, but residential and small commercial services as well.

Another concern with a legislated agricultural curtailment priority is the strong likelihood that other classes of gas consumers, seeing that Congress has intervened directly in favor of one group, will press for similar treatment on their own behalf. It may be that some of these claims will be equal in merit to those advanced by the agricultural sector, but in any case it seems that the Nation's approach to the curtailment situation should not rest upon judgments based primarily on the needs of particular groups considered in isolation. The gas supply crisis is a nationwide problem that affects virtually every segment of our society, and I recommend that the Commission be allowed to make its decisions on curtailment priorities based on the demonstrated needs of all gas consumers, not just those of a particular class or classes, I therefore oppose the enactment of legislation that would impose an automatic curtailment priority in favor of agricultural uses.

Section 6 of the Emergency Act provides for prohibition on the use of natural gas by power plants as boiler fuel upon certain determinations made by the Administrator of the Federal Energy Administration. The purpose of this section is primarily to encourage the substitution of petroleum products as power-plant boiler fuel for natural gas when feasible and practicable. I endorse this concept.

In summary Section 6 directs the Administrator of FEA to prohibit any power plant from burning natural gas if on September 1, 1975, or later, it had the capability and necessary plant equipment to burn petroleum products, if such burning in lieu of natural gas is practicable, if petroleum products will be available during the period the order is in effect, and if the natural gas released as a result of such a prohibition could be available, directly or indirectly, to a priority interstate purchaser. However, the prohibition order would not be effective until a date which the EPA Administrator certifies is the earliest at which petroleum burning can comply with the Clean Air Act and all applicable State environmental protection laws, and would not be effective if the Federal Power Commission certifies that the prohibition would impair the reliability of service in the area served by the plant.

Also, the Administrator of FEA is to prohibit the burning of natural gas by any power plant if alternative supplies of electric power are available to the electric power system of which such power plant is a part and the generation of such alternative electric power supply would not increase the overall consumption of natural gas, provided the natural gas released could be made available to a priority interstate purchaser and the FPC certifies that electric reliability is not impaired.

I favor the language in Section 6 which requires the Commission to certificate to FEA that a prohibition order would not impair the reliability of service in any area served by an affected electric power system. I also agree with the provisions of Section 6 that would make the released natural gas available to priority interstate pipelines and that such pipelines must compensate affected utilities that suffer increased costs due to a prohibition order.

Although Section 6 recognizes the potential for replacement of gas by electric energy transfers, it has no provision for abrogating existing transmission contracts or forcing other electric utilities to burn down their coal stockpiles to send electric energy to gas burning utilities. Such a provision would strengthen the overall affect of this section.

I believe the Committee should place this boiler conversion authority under the regulatory jurisdiction of the FPC. Such authority would be compatible with our public interest duties under both the Federal Power Act and the Natural Gas Act.

Section 7 of the Emergency Act would authorize the Secretary of the Interior to order the production of natural gas at maximum efficient rates and, in certain instances, at temporary emergency production rates. The result of Section 7 would be: (1) an indeterminate additional amount of natural gas could be made available on a temporary basis to help deal with the natural gas shortage and (2) the Nation's natural gas supply would be depleted at a rate faster than would otherwise occur. A memorandum dated September 12, 1975, to me from the Commission's Bureau of Natural Gas, which I have attached as Appendix C hereto, discusses the implications of Section 7 in greater detail.

I favor the pipeline interconnection authority that would be delegated to this agency upon enactment of Section 8 of the Emergency Act. This new authority would facilitate the Commission in its attempt to assure that adequate volumes of gas are made available to essential end-users.

FPC LEGISLATIVE PROPOSALS

The Commission bill, introduced as H.R. 9409 and 9424 in the House and S. _____ in the Senate, would codify our policy statement adopted in Order No. 533 and discussed, *supra*. This bill, which authorizes Commission certification (when appropriate) of the transportation of natural gas by curtailing pipelines where such gas is purchased by a high priority consumer directly from an independent producer, would merely be declaratory of present Commission authority under the Natural Gas Act. Legislative enactment, however, will very likely expedite the attainment in the shortest amount of time, of the similar goals sought in this bill and in Order No. 533.

The above proposal is directed at high priority customers of curtailing pipelines and distribution companies. In the alternative, the Commission has sent a bill to Congress, introduced as H.R. 9334, H.R. 9410 and H.R. 9423 in the House and S. 2244 in the Senate, which would provide immediate relief to jurisdictional pipelines undergoing curtailment. Under the bill's terms, the Commission could grant exemptions from the provisions of the Natural Gas Act, not to exceed one hundred and eighty days in duration, to activities and operations relating to certain transportation, sales, transfers or exchanges of natural gas in interstate commerce. Exemptions could be granted for transactions between producers, interstate or intrastate pipelines, or distributors, to or with an interstate pipeline which does not have a sufficient supply of natural gas to fulfill its firm contractual requirements or interruptible requirements for residential, commercial or industrial needs for plant protection, feedstock and process uses for which no alternate fuel is available, and which is curtailing deliveries pursuant to a curtailment plan on file with the Commission.

Enactment of S. 2244 would give interstate pipelines in curtailment a better opportunity to compete effectively for gas supplies not currently dedicated to the interstate market, thereby increasing the likelihood that the severity of near-term gas supply shortages can be reduced on a nationwide basis. Expansion of the interstate gas supply would further the objectives of full employment by preventing industrial shutdowns and commercial interruptions resulting from temporarily insufficient gas supplies, and would also reduce the growing dependence of industrial and commercial users upon high-priced supplemental and alternate fuels, which has had a significant inflationary impact.

I would like to reemphasize my view that Section 4 of the Natural Gas Emergency Act of 1975 and our two legislative proposals seek to attain the same goal: an increased supply of natural gas to the critical interstate market to avoid unemployment and serve the national welfare. Viewed as temporary emergency relief measures, any of these proposals would alleviate in the near term natural gas shortages now faced by the Nation.

FEA LEGISLATIVE PROPOSAL

The Federal Energy Administration has introduced in the Senate as S. 2330 its legislative proposal, entitled the "Natural Gas Emergency Standby Act." Titles II and III of this multifaceted bill are basically the same in substance as the Commission's two legislative proposals. I favor enactment of these measures.

I recognize the possible impact on prices that might be caused by concurrent enactment of both FEA titles (or both of the Commission's bills). That is, enactment of both proposals would place interstate pipelines and high priority consumers in a competitive bargaining position against one another in some field markets for the same intrastate gas. This could result in a higher end-price for the ultimate natural gas user or consumer. Overriding this possibility, however, is the fact that more gas should be committed to the interstate market if both proposals are enacted since industrial users may be able to compete for natural gas supplies with the intrastate market under circumstances where the interstate pipelines could not since they would be subject to an ultimate review of the purchased gas price in the Commission's determination of a just and reasonable rate. If, however, Title II (the 180-day bill) or S. 2244 (the FPC bill) were to clearly

provide that the purchased gas cost of a natural gas pipeline shall not be subject to the provisions of Section 4, 5, and 7 of the Natural Gas Act, the competitive position of the pipelines in securing commitments for their overall needs would be considerably enhanced.

I would like to discuss briefly Title IV (boiler fuel conversion) and Title V (propane allocation) of the FEA bill. As you know, the Commission has encouraged the phasing out of boiler fuel use of natural gas by electric powerplants when feasible and practicable. It is imperative that one standard for ordering natural gas boiler fuel conversion to petroleum products or coal be a finding by the FPC that reliability and adequacy of electric service will not be impaired. The Commission is already charged with this duty under Section 202 of the Federal Power Act. The same responsibility should be delegated to the Commission if specific natural gas boiler fuel conversion legislation is enacted. Section 6 of the Energy Act recognizes this point, the FEA bill does not.

Title V of S. 2330 delegates propane pricing and allocation authority to the President. This authority may be exercised upon a finding by the President or his delegatee that shortages of natural gas exist or are imminent and that such shortages or potential shortages constitute a threat to the public health, safety or welfare. This Commission has a developed expertise in the analysis and treatment of natural gas shortages. I believe it would be in the public interest to delegate the "finding" responsibility under Title V directly in the Commission. Since propane is generally substitutable with natural gas, is largely the product of the economic regulation of natural gas, is necessary for peakshaving to assure reliable service to consumers in the severest part of the winter, and must be considered in determining emergency allocations of natural gas to fulfill the critical need of high priority natural gas users, it seems to me that propane pricing and allocation authority should be the responsibility of the FPC as an important adjunct to its developed expertise and regulatory responsibilities in regulating natural gas.

I believe Congress should place all responsibilities listed in Titles IV and V of S. 2330 under FPC regulatory authority. Such delegation would be consistent with our public interest duties under both the Natural Gas Act and Federal Power Act and would avoid further regulatory fragmentation, delay and confusion.

CONCLUSION

Since 1969, the Commission has taken numerous actions in an attempt to create an appropriate economic and operational climate to elicit adequate and reliable natural gas supplies at reasonable prices to consumers. These actions include the establishment through rulemaking proceedings of a nationwide rate for new gas to replace the complex area rate structure. These procedures will enable prompt Commission response to changing costs and conditions and should increase the capital commitment to exploration and development of natural gas to serve the requirements of the interstate market at reasonable prices to consumers. The ratemaking methodology has been adjusted and refined with the goal of insuring that producer can earn fully the allowed rate of return—a step essential to capital attraction. An optional procedure for certificating high cost projects has been provided. Limited-term sales are granted where it is established that the gas is available to the interstate market only for the term and at the price requested. Other short-term procedures have been utilized to give the interstate pipelines in curtailment an opportunity to compete with the aggressive intrastate markets for gas. Small producers have been relieved of the burdens of the sale certification process. Through these actions and others, the Commission has fully used the powers delegated to it by Congress, but these actions, while constructive and helpful, have not resulted in a reversal of the deepening gas shortage.

The burden is now upon Congress to enact legislation that will adequately cope with the natural gas crisis. Interim emergency relief is a temporary solution to a long-term problem. It will assist but it will not resolve. Measures must be passed in the none-too-distant future that stimulate natural gas exploration and development and produce an increase in natural gas supply. It is my opinion that we require a return to an economic environment in which the impersonal forces of a competitive market, appropriately monitored as to price trends, will determine the supply-demand relationships of gas and other primary energy sources in a competitive energy market.

APPENDIX A

FEDERAL POWER COMMISSION,
Washington, D.C., August 28, 1975.

HON. JOHN D. DINGELL,
Chairman, Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, Room 1430, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing in response to your letter of August 19, 1975 in which you have requested certain natural gas pricing analyses formulated by the Commission's Bureau of Natural Gas (BNG) and Office of Economics (OEC). Your letter also stated that "the FPC is empowered to charge higher rates than it is presently doing." In addition you "would appreciate knowing (my) reaction to this opinion and being advised when the Commission decides what action it is going to take on this matter."

With respect to the BNG and OEC analyses that you have requested, I am enclosing a copy of the Commission's August 4, 1975 Order issued in our Rulemaking Docket No. RM75-14, "Order Issuing Staff Rate Recommendations and Prescribing Further Procedures", 40 *Fed. Reg.* 33998. Docket No. RM75-14 involves our biennial review of the Commission's national rate for sales for resale of new natural gas subject to our jurisdiction. The national rate for new natural gas was established upon issuance of Commission Opinion No. 699-H on December 4, 1974, Docket No. R-389-B, 39 *Fed. Reg.* 43199. It is the Commission's intent in Docket RM75-14 to prescribe rules and regulations for establishing just and reasonable rates for jurisdictional sales of natural gas dedicated to interstate commerce on or after January 1, 1973 for the biennium from January 1, 1975 to and including December 31, 1976.

Our August 4, 1975 Order in Docket No. RM75-14 issued the comments of BNG (Appendix A) and OEC (Appendix B) regarding the cost of finding and producing new supplies of natural gas for sale in interstate commerce for resale. The appendices contained in the August 4 order also include BNG and OEC's "supporting information upon which these analyses were performed."

As this rulemaking docket is still before the Commission, I am not permitted to discuss the merits of the proceeding.

However, I would note that our August 4, 1975 order requests public comments on the BNG and OEC analyses which comments must be filed with the Secretary of the Commission on or before September 5, 1975. You are certainly at liberty to file such comments on these analyses or any other facets of Docket RM75-14 as you deem appropriate. Any comments which you might file will be placed in the Commission's public files and will be available for inspection by the public. In addition, your letter of August 19, 1975 will be placed in the public file.

In the third paragraph of your August 19, 1975 letter you have stated:

"I might add for the record, that my reading of the *Phillips Petroleum* case has been consistently that the FPC is empowered to charge higher rates than it is presently doing. I gather that the recent decision in the Court of Appeals for the District of Columbia appears to support this point of view."

You have solicited my reaction to your opinion and have requested to be advised when the Commission decides what action it is going to take on this matter.

Your letter does not indicate the grounds upon which the Commission is empowered to charge higher rates than it is presently doing except for reference to the *Phillips Petroleum* case¹ and a recent decision by the D. C. Circuit Court of Appeals. I will assume that this latter D. C. Circuit Court opinion to which you refer is that Court's holding in *Public Service Commission for the State of New York v. Federal Power Commission*, 516 F.2d 746 (D.C. Cir. 1975).

I am enclosing for your review a Memorandum dated April 18, 1975 transmitted from Drexel Journey, the Commission's General Counsel, to me. This Memorandum is a detailed analysis of court interpretations of FPC Natural Gas Pricing Authority under the Natural Gas Act, 15 U.S.C. 717 *et seq.* The Memorandum concludes that:

¹ Presumably *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954), in which the Supreme Court held that the FPC had jurisdiction over wellhead sales of natural gas by independent producers.

"In summary, the courts have consistently adopted the view that . . . (FPC) regulation of prices without cost support would be inconsistent with the Natural Gas Act and contrary to law. (April 1 Memorandum at 10)."

It is precisely this scheme of cost-based natural gas pricing which has resulted in the great disparity in prices between intrastate and interstate natural gas sold in interstate commerce for resale that is subject to this agency's rate jurisdiction. This natural gas sold in the interstate market for resale, is sold at substantially lower prices than producer sales in the unregulated intrastate market.

The Commission does believe that some non-cost criteria may be taken into account in our determination of just and reasonable rates for jurisdictional natural gas. But the reliance, to a certain extent, on non-cost criteria (i.e. factors other than the concept of a utility's cost of service plus a reasonable rate of return) in establishing jurisdictional rates must be accompanied by a record indicating extensive reliance upon cost supporting evidence. The Supreme Court arrived at this determination in its holding in *Mobil Oil Corporation v. F.P.C.*, 417 U.S. 283 (1974). The attached April 18 Memorandum from Mr. Journey discusses the Supreme Court's decision in *Mobil*:

"The Court (in *Mobil*) . . . approved consideration of non-cost incentives to encourage additional gas exploration and development but in the context of employing prices functionally for such purposes only where their rates are within the zone of reasonableness. Significantly, the Court did not suggest that the rate need not be cost based nor did it suggest the rate could stray from the zone of reasonableness in meeting non-cost considerations. Most emphatically it did not suggest that the FPC may regulate in accordance with market clearing levels or that it could deregulate altogether. (April 18 Memorandum at 3 and 4)".

The recent D. C. Circuit Court holding in *Public Service Commission of New York v. E.P.C.*, *supra*, which I believe you are referring to in your letter, follows the *Mobil* doctrine. In fact, the D.C. Circuit's recent decision was a decision on remand from the Supreme Court in light of the latter Court's determination in *Mobil*. Thus, Judge Leventhal in his July 24, 1975 opinion for the D.C. Circuit Court states:

An increase in the base rate made in order to encourage exploration by producers in a time of extreme supply shortages may be valid, assuming the ultimate rate is within the zone of cost data, even though the amount of increased supply available to the rate increase cannot be precisely quantified (*Public Service Commission of New York v. E.P.C. supra*, at 749).

The Commission believes that an allowance for higher than present prices for gas dedicated to the interstate market and subject to our jurisdiction would greatly assist in alleviating the deepening and pervasive natural gas supply crisis being experienced by jurisdictional pipelines and their customers. As far back as September of 1971 at hearings before the Subcommittee on Communications and Power, I supported departure from strict reliance on cost factors. However, as my previous discussion indicates, the Commission is severely bound by established case law precedent in determining just and reasonable rates for jurisdictional gas sales.

The Commission has attempted in the past to use novel approaches to assist in resolving the natural gas supply emergency that is being experienced in the interstate market. Pursuant to its interpretation of its authority under Section 7(c) of the Natural Gas Act. to exempt "temporary acts or operations" from the certificate requirements of the Act "in the public interest", the Commission for purposes of alleviating critical gas shortages in the 1973-74 winter heating season adopted certain amendments to its regulations. By order No. 491-B (38 F.R. 31289), the Commission extended from 60 to 180 days the allowable duration of temporary emergency sales of natural gas without Commission certification to jurisdictional pipelines operating under filed curtailment plans. This policy resulted in the introduction of 200 billion cubic feet of gas into the interstate gas stream. However, the U.S. Court of Appeals for the District of Columbia, by its March 13, 1975 decision in the case of *Consumer Federation of America, et al. v. F.P.C.* (No. 73-2009), held that the Commission had exceeded its statutory authority by allowing 180-day emergency sales without certification. Another significant problem is posed by the recent holding of the U.S. Court of Appeals for the District of Columbia in the case of *John E. Moss, et al. v. F.P.C.*, 502 F.2d 461 (1974), that the Commission may not authorize abandonment of certain producer gas sales at the time it certifies the sales. Although the Commission has received permission from the Solicitor General to seek a writ of certiorari in the *Consumer Federation* case, and the U.S. Supreme Court has

granted *certiorari* in the *Moss* case, these decisions raise serious questions regarding the nature and scope of the Commission's jurisdiction to take prompt action to alleviate the nation's critical natural gas supply shortage.

Most recently, the Commission has adopted policy guidelines in our Order No. 533 issue on August 28, 1975, in Docket No. RM75-25 which guidelines will encourage curtailed high priority customers of jurisdictional pipelines or local distribution companies undergoing curtailment to purchase non-Outer Continental Shelf gas directly from independence producers. Such sales would not be subject to our regulatory jurisdiction, as they are not "for resale." However, the transportation of this gas by jurisdictional pipelines in interstate commerce would require a certification from the Commission. It is the purpose of these policy guidelines to indicate that we will consider certifying the transportation of such "direct sales" gas although that gas may well exceed prevailing jurisdictional rates. While the Commission believes that this rulemaking is merely declaratory of our present authority under the Natural Gas Act, we are anticipating possible extended litigation in the Federal Courts similar to that encountered in our 180 day emergency relief and pre-granted abandonment rulemakings.

Because of the difficulties encountered in eliciting a higher and justified price for natural gas, the Commission has turned to the Congress for legislative action that will assist in alleviating the natural gas supply situation. We have forwarded two draft bills to Congress that would, if enacted, codify our 180 day emergency relief procedure and our policy guidelines with respect to the transportation of natural gas sold by independent producers directly to high priority consumers undergoing curtailment. The former draft bill has been introduced by Senator Magnuson upon request as S. 2244. The latter draft bill was sent to the Speaker of the House and the President of the Senate on July 31, 1975. I am enclosing copies of these draft measures with "Speaker" letters for your reference.

As you know, I testified before your Subcommittee on Energy and Power on March 17, 1975. At that time I endorsed enactment of the Administration's so-called deregulation bill with protective covenants for the public interest. I still believe deregulation of natural gas will bring, over the long-term, extensive relief to the present natural gas shortage. As an alternative to deregulation, a Congressional grant of authority to the FPC to deregulate various field markets or the national market in order to serve the public convenience and necessity; or a grant of authority to the Commission to regulate in accordance with broad economic and market criteria rather than on the basis of cost under public utility concepts should produce some alleviation from the natural gas shortage. Adoption of the rational solution recommended by Senator Pearson and 18 other Senators to deregulate onshore gas production in order that the interstate market may compete with the intrastate market and to phase out offshore regulation of natural gas production within a six-year period, authorizing during the transition the prescription by the FPC of price ceilings on the basis of broad economic criteria, would also result in substantial relief.

Although none of these proposals would produce a substantial immediate increase in the total domestic producible natural gas supply, due to lead times involved between the prescription of public policy and the delivery of gas resources to market, nevertheless these proposals would be effective if adopted this fall by the Congress, since they would divert from intrastate to interstate presently available supplies which otherwise would not be sold in interstate commerce. In addition, there would be accelerated production of natural gas reserves which presently cannot be economically produced to serve the interstate market. I urge prompt Congressional action to avert the deepening impact upon our national economy, and security objectives caused by the pervasive natural gas shortage.

Sincerely,

JOHN N. NASSIKAS,
Chairman.

APRIL 18, 1975.

Memorandum to: Chairman.

From: General Counsel.

Subject: Commission authority to deregulate natural gas producer contract prices

This memorandum responds to your request for a General Counsel opinion as to whether the FPC has authority to deregulate new natural gas contract

prices at the wellhead. The question arises because of Professor Paul W. MacAvoy's statement in his prepared testimony on Natural Gas Policy Problems Before the House Committee on Ways and Means.¹ In that testimony Professor MacAvoy states: "The FPC has stopped short of deregulating new contract prices at the wellhead and, as long as it does, the shortage will persist."

In addition, Professors MacAvoy and Stephen Breyer in their recent book on Energy Regulation by the Federal Power Commission similarly suggest:

"A gradual return to market-clearing prices after an investigation and finding of competitive market conditions would be consistent with the commission's legal obligations as determined in the *Phillips* case. Nothing in that decision requires the commission to set prices; the decision simply gives the commission jurisdiction to do so."²

The Professors also suggest, in their work that, "Unless the evidence strongly suggests that producers possess monopoly power, the Commission should allow new gas prices to approach market-clearing levels."³

They also recite the view that in a workably competitive context, the market-set producer wellhead price will satisfy the twofold purpose of the Natural Gas Act to assure gas sales will be, 1. at the lowest possible reasonable rate; 2. consistent with the maintenance of adequate service in the public interest. *Atlantic Refining Co. v. Public Service Commission*, 360 U.S. 378, 388.⁴

CONCLUSION

Analysis of recent opinions of the Supreme Court and the United States Courts of Appeals involving natural gas producer price regulation by the Federal Power Commission indicates the view of the Professors to be inconsistent with the law as viewed by those courts long familiar with addressing issues of FPC producer rate regulation.⁵ In summary, the Courts have held in those cases where the issue has squarely presented itself that the Commission is under a statutory mandate to regulate producer prices and that the regulation may not be based either solely or primarily on market force prices but rather they must in the final analysis be cost based and that the Commission must determine just and reasonable rates which may not be based only upon market forces.

DISCUSSION

The *Permian Basin* decision,⁶ the landmark case of FPC producer area rate regulation, and other cases do provide, as the Professors say in their book, that the FPC has broad discretion over the methods used to achieve the regulatory objectives of the Natural Gas Act. Nevertheless, other cases indicate that the broad discretion available to the FPC does not reach to the complete deregulation of interstate gas prices, either for new or old vintage gas sales. The Supreme Court has so stated in affirming two decisions of the FPC. Other recent Court Decisions have held as precluded by statute certain innovative FPC regulatory methods which the Court believed might place undue emphasis upon market price levels rather than producer costs. The Courts have also objected to recent FPC rules and regulations which the Court feared would permit market forces to set prices for a limited period of time in certain circumstances or would permit market forces to set prices where particular contractual relationships existed, or where a particular class of small producers is involved.

The current state of the law in this matter may be demonstrated without an exhaustive rendition of Court decisions holding contrary to Professor MacAvoy's

¹ Committee Print entitled, *The Energy Crisis and Proposed Solutions*. Committee on Ways and Means, U.S. House of Representatives, 94th Cong., 1st Sess., March 11, 1975, pp. 52 *et seq.*

D.C. The Brookings Institution, c1974, p. 88.

² *Energy Regulation by the Federal Power Commission*, Breyer & MacAvoy, Washington.

³ *Ibid.*

⁴ *Ibid.*

⁵ On August 7, 1947, the Commission adopted Order No. 139 as a statement of policy to construe the Section 1(b) exemption of production and gathering to include "arms-length" sales made by producers during the course of or upon completion of production and gathering. Subsequently, on July 11, 1950, the Commission issued Order No. 154 rescinding Order No. 139 because it found: "That the provisions of Order No. 139 were inconsistent with the requirements of the Natural Gas Act." Simultaneous with the issuance of Order No. 154 the Commission issued on July 11, 1950, a statement of policy in which it stated that the Commission had stated: "Upon conclusion of further studies of the operation of producers and gatherers and of the administration involved in their regulation the Commission plans to promulgate rules and regulations specifically applicable to them."

⁶ *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).

position. The Supreme Court in *Mobil Oil Corporation v. F.P.C.*, 417 U.S. 283 (1974), for a second time affirmed the FPC's producer area rate methods. The Court's historical analysis noted the Natural Gas Act was patterned after earlier regulatory statutes that provided for setting rates equal to utilities' cost of service plus a reasonable rate of return, 417 U.S. at 301. The Court went on to state the Act is not, however, limited only to the concept of cost plus a reasonable rate of return. 417 U.S. at 316. The Court noted that in *Permian* it had approved rates even though the FPC had not "adhered rigidly to a cost based determination of rates," 417 U.S. at 308, but in affirming the FPC decision where non-cost data had been relied upon to a certain extent, the Court found extensive supporting cost evidence was in the record to sustain the FPC's final cost range, 417 U.S. at 315. The Court also discussed *Permian* at length, approved consideration of non-cost incentives to encourage additional gas exploration and development but in the context of employing prices functionally for such purposes only where the rates are within the zone of reasonableness. Significantly, the Court did not suggest that the rate need not be cost based nor did it suggest the rate could stray from the zone of reasonableness in meeting non-cost considerations. Most emphatically it did not suggest the FPC may regulate in accordance with market clearing levels or that it could deregulate altogether. The Court of Appeals in *Consumers Union of U.S. v. F.P.C.*, D.C. Cir No. 731, 1792, decided October 7, 1974, later stated:

Even after *Permian* and *Mobil Oil*, it is doubtful that non-cost factors can sustain a decision by the FPC which is unsupported by sound cost data. In *Mobil Oil* for instance, where great deference was paid to non-cost elements in upholding the Commission's decision, the Court began with the premise that 'appellant's attack on the Commission's evidence of costs is clearly frivolous.' And even if non-cost factors could, under certain circumstances, overcome problems in cost analysis of the sort apparent here, these factors are not entitled to overriding weight in the particular circumstances of this case" (Mimeo, p. 8).

The *Consumer Union* case involved the first FPC application, with Chairman Nassikas dissenting in part, of an innovative Rule (18 CFR 2.75) of the Commission permitting a special procedure for certifying new sales notwithstanding that the contract rate might exceed the applicable area rate. The Rule had been earlier approved in *Moss v. F.P.C.*, 502 F.2d 461 (D.C. Cir. 1974). The Court in *Consumers Union* concluded the FPC had not provided the *necessary* cost analysis to sustain its decision. The Court in remanding reflected upon the *Moss* decision, *supra*, as recognizing the purpose of the optional procedure to stimulate new production but cautioning that the new procedure could not be administered by the Commission "to substitute contract prices negotiated between producers and pipelines for established just and reasonable rates." *Consumers Union v. F.P.C.*, D.C. Cir. No. 73-1792, decided October 7, 1974, mimeo, p. 10. Thus the Court was very skeptical about any Commission decisions not supported by sound cost data ever being sustained in any circumstances. That Court language clearly would preclude any general policy of deregulation of producer prices in favor of market prices which Professor MacAvoy claims is statutorily permissible.

In *Moss v. F.P.C.*, 502 F.2d 461 (1974), petition for cert. pending No. 74-883 (Sup. Ct. Oct. Term 1974) ⁷ the Court approved the optional procedure but even more explicitly than in *Consumers Union* indicated the setting of producer prices at market price levels would be inadequate regulation. There all but one petitioner for review contended the optional procedure invalid because it "is a method of deregulating natural gas by certifying contract rates, without regard to the standards of Sections 4 and 5 of the Act." (502 F.2d at 464-5) The Court responded, "If this were the meaning and effect of the Commission's Order it would of course be invalid, for just and reasonable rates may not be determined solely and conclusively upon the basis of market or contract prices. *F.P.C. v. Teacoco, Inc.*, 417 U.S. 380 (1974); *F.P.C. v. Sunray DX Oil Co.*, 391 U.S. 9, 25 (1968)", 502 F.2d at 466. The Court went on to state that the market price of gas may be taken into account along with other non-cost factors in setting just and reasonable rates but noted with satisfaction that the FPC had assured its review would include a consideration of costs, and the Court's affirmance of the optional procedure was specifically grounded upon its recognition of Commission assurances it was not abandoning the substantive standards of, *inter alia*,

⁷ The FPC's petition for certiorari is based on grounds unrelated to the present question.

Section 4 of the Natural Gas Act and was not therefore engaged in decontrol, 502 F.2d 466-7.

In another recent Court of Appeals decision, *Torbert H. MacDonald v. F.P.C.*, 505 F.2d 355 (D.C. Cir. 1974), petition for cert. pending No. 74-960 (Sup. Ct., Oct. Term 1974), the Court considered a producer's request for special relief from the FPC price ceilings upon certain conditions. In remanding, the Court recognized the broad discretion of the Commission to reconcile diverse and conflicting interests, citing *Mobil Oil Corp. v. F.P.C.*, *supra*, but also noted the Supreme Court's decision in that case and *F.P.C. v. Texaco, Inc.*, *supra*, had reaffirmed a purpose of the Act to be "that of protecting consumers from prices which are forced above a just and reasonable level by the market power of natural gas suppliers," which imposes limits upon the FPC's discretion. Here again the Court recognized the market forces may not be permitted to raise prices above a just and reasonable level which level, as indicated above, must be cost based and which range may not be distorted by the use of functional market prices. In remanding the Court was particularly concerned that there was not a sufficient record to determine the producer's past costs and past and future profit margins in justification of rates in excess of the applicable area rate. Again reiterating much of what has been previously said, the court stated:

"The courts have also made it clear that the Commission cannot fulfill its 'responsibility to maintain adequate supplies at the lowest reasonable rate,' *Mobil Oil Corp. v. F.P.C.*, *supra*, — U.S. at —, 42 U.S. L. WEEK at 4853, by assuming without consideration of producers' costs that the market price of gas in unregulated markets is a 'just and reasonable' one. As recently as this term the Supreme Court spelled out to the Commission that in 'subjecting producers to regulation because of anti-competitive conditions in the industry, Congress could not have assumed that 'just and reasonable' rates could conclusively be determined by reference to market price.' *FPC v. Texaco, Inc.*, *supra*, — U.S. at —, 42 U.S. L. WEEK at 4873.⁸ In this case the Commission could not base a determination that Mitchell's 30.25¢ per Mcf rate for new and old gas was just and reasonable solely on a comparison of this rate with alternative gas prices such as those in the unregulated intrastate gas market. Such a 'what the market will bear' approach is simply inconsistent with the Commission's regulatory trust, 505 F.2d at 364."

Thus, here again a Court has recently made plain the view that deregulation or indeed even regulation without a deference to costs is contrary to the mandate of Congress.

Another area of Commission regulation which has recently come to be weighed in light of the FPC's duties and regulatory requirements under the Natural Gas Act is small producer regulation. The 1971 FPC Order No. 428 (45 FPC 454) provided for a blanket certificate procedure for small producers relieving them of almost all filing requirements and provided for indirect regulation of their rates through review of the purchased gas costs of pipelines. On review in *F.P.C. v. Texaco, Inc.* the Supreme Court considered in depth the obligation of the FPC to regulate producer rates and several times specifically rejected the notions of several economists including Professor MacAvoy that deregulation via a reliance on market forces for any sector of producers would be wholly contrary to the Natural Gas Act and that even if the economists are correct in their market analysis, the Court is powerless to permit it. Though several times explicit in stating all producers are subject to rate regulation and that market forces alone may not be relied upon, the language of that Opinion most devastating to Professor MacAvoy's thesis is the following:

"In concluding that the Commission lacks the authority to place exclusive reliance on market prices, we bow to our perception of legislative intent. It may be, as some economists have persuasively argued,⁹ that the assumptions of the 1930's about the competitive structure of the natural gas industry, if true then, are no longer true today. It may also be that control of prices in this industry, in a time of shortage, if such there be, is counterproductive to the interests of the consumer in increasing the production of natural gas. It is not the Court's

⁸ See also *City of Chicago v. FPC*, 147 U.S. App. D.C. 312, 349-350, 458 F. 2d 731, 768-769, cert. denied, 405 U.S. 1074 (1971); *United Gas Improvement Co. v. FPC*, 5 Cir., 290 F. 2d 133, 135-136, cert. denied, 368 U.S. 823 (1961).

⁹ See C. Hawkins, *Structure of the Natural Gas Producing Industry*, and P. W. MacAvoy, *The Regulation-Induced Shortage of Natural Gas, in Regulation of the Natural Gas Producing Industry 137-191* (1972) (K. Brown, ed.) See also Statement of John N. Nassikas, Chairman, Federal Power Commission, Hearing on the Natural Gas Industry before the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee, 93d Cong., 1st Sess., 43-72 (1973).

role, however, to overturn congressional assumptions embedded into the framework of regulation established by the Act. This is a proper task for the legislature where the public interest may be considered from the multifaceted points of view of the representational process. 417 U.S. at 400."

The Court also stated, "we should also stress that in our view the prevailing price in the market place cannot be the final measure of "just and reasonable" rates mandated by the Act", 417 U.S. 397. It cited its statement in *F.P.C. v. Sunray DX Oil Co.*, 391 U.S. 25 (1968) that if producer contract prices were set at the market price, it, "would necessarily be based on a belief that the current contract prices in an area approximate closely the 'true' market price—the just and reasonable rate. Although there is doubtless some relationship, and some economists have urged that it is intimate, such a belief would contradict the basic assumption that has caused natural gas production to be subjected to regulation (Footnote omitted.), 417 U.S. at 398."

The Supreme Court also touched upon the Breyer-MacAvoy thesis that the market price in a workably competitive context will satisfy the objectives of the Natural Gas Act interpreted by the *CATCO* case, *Atlantic Refining Co. v. Public Service Commission* 360 U.S. 378, 388. It said, "This does not mean that the market price of gas would never, in an individual case, coincide with just and reasonable rates or not be a relevant consideration in the setting of area rates, see *Permian Basin Area Rate Cases*, *supra*, 390 U.S. at 793-795; they may certainly be taken into account along with other factors, *Austral Oil Co. v. FPC*, 428 F.2d 407, 441 (CA5), *cert. denied*, 400 U.S. 950 (1970). It does require, however, the conclusion that Congress rejected the identity between the true market and the actual market price. 417 U.S. at 399."

Recently in reviewing another innovation by which the FPC has encouraged the dedication of new natural gas reserves the Court of Appeals has invoked *Texaco*, *supra*, as authority for prohibiting deregulation. In *Consumer Federation of America v. F.P.C.*, No. 73-2009 (D.C. Cir., March 13, 1975), the Court reviewed the FPC's Order No. 491, 50 FPC 742 (1973) and subsequent amendments, which exempted from the certification requirements of Section 7 for 180 days, sales to pipelines, under or threatened by curtailment of service. The Court's interpretation of the breadth of Section 7 is not here significant; however, it also considered the FPC's concomitant proposed method of indirect regulation of producer rates for sales exempted thereby. In concluding, the court said:

"[we] find that the Commission has neglected its rate control responsibilities under the Act. Congress has yet to embrace proposals for deregulation of new gas supplies.¹⁰ Until it acts to alter the present "system of regulation by an agency subject to court review, the courts may not abandon their responsibility by acquiescing in a charade or a rubber stamping of nonregulation in agency trappings."¹¹ (Slip Op., p. 26).

In *Public Service Commission of New York v. F.P.C.*, 487 F. 2d 1043 (1973), *cert. granted vacated and remanded, sub nom. Shell Oil Co. v. Public Service Commission of New York*, 417 U.S. 964 (1974), cited last above in footnote by the court in *Consumer Federation*, the court reviewed the FPC's Texas Gulf Coast area rate decision.¹² Judge Leventhal there considered the option of setting the price of natural gas at the market price or of allowing the market price to govern the "just and reasonable price" of natural gas. He nevertheless concluded, "However, so long as the legislature has assigned the agency the function of regulation of rates, it cannot legitimately execute that function in a fashion which, in fact, is tantamount to total disregulation or non-regulation. "Congress did not provide for agency action and court review as a charade, 487 F. 2d at 1057."

Other cases of older vintage could no doubt be cited to the same effect as those above but these cases represent the most recent statements on the issue by the nation's highest Courts and significantly do so without exception or qualifying language on the points discussed.

In summary, the courts have consistently adopted the view that unilateral FPC deregulation of producer price, regulation of producer prices solely on the

¹⁰ See *FPC v. Texaco, Inc.*, 417 U.S. 380, 400-01 (1974). The natural gas deregulation bills introduced in the 93d Congress, S. 2048 and H.R. 7507, did not receive committee approval in either chamber despite President Ford's September 12, 1974, message to Congress placing priority on natural gas deregulation.

¹¹ *Public Service Comm'n v. F.P.C.*, No. 73-1338, slip op. at 33 (D.C. Cir. Jan. 14, 1975).

¹² The Supreme Court remanded for further consideration in light of its *Mobil Oil Corp. v. F.P.C.*, *supra*, opinion. That action is not inconsistent with the circuit court's comments on deregulation, noted below.

basis of market price, or regulation of prices without cost support would be inconsistent with the Natural Gas Act and contrary to law.

DREXEL D. JOURNEY.

APPENDIX B

FEDERAL POWER COMMISSION,
Washington, D.C., August 28, 1975.

HON. WILLIAM S. MOORHEAD,
Chairman, Conservation, Energy and Natural Resources Subcommittee of the
Committee on Government Operations, House of Representatives, Wash-
ington, D.C.

DEAR MR. CHAIRMAN: Thank you for your August 13, 1975, invitation to advise the Subcommittee of the Federal Power Commission's actions, taken or planned, on the recommendations appearing in the Committee's report transmitted to the Speaker on July 25, 1975.

I have appended hereto a report discussing each of the Committee's recommendations, together with documentation as appropriate in the form of Commission orders, reports, summaries of actions, and legislative proposals. You will note that the Commission is active on many fronts in coping with the deepening interstate natural gas supply shortage situation. These activities embrace virtually all the areas cited by the Committee's report as needing improvement. The Commission has this summer taken an unprecedented number of definitive actions to enable an improved governmental response to the deteriorating interstate natural gas supply problem. These include much improved data collection systems for natural gas utilization and alternative fuel capability and availability in conjunction with the Federal Energy Administration which should permit a meaningful evaluation before the winter season; a greatly expanded system for determining the size of the proven resource base on a continuing basis; proceedings to search for ways to mitigate the potentially drastic impact on employment and industrial activity of natural gas curtailments; an in-depth study of the gas supply management practices of interstate natural gas pipelines and numerous producers; and several legislative proposals.

I urge that what must be done, and the sooner the better, is to get on with the business of getting more gas moving in interstate commerce. For the immediate future, two Commission-sponsored bills, discussed under Recommendation 1 and appearing as Appendix F, would be of immediate assistance this winter.

Similarly, the following proposals should produce some immediate relief:

1. Enactment of the Administration's so-called deregulation bill with protective covenants for the public interest;
2. In the alternative, Congressional grant of authority to the FPC to deregulate various field markets or the national market in order to serve the public convenience and necessity;
3. Grant of authority to the FPC to regulate in accordance with broad economic and market criteria rather than on the basis of cost under public utility concepts;
4. Adoption of the rational solution recommended by Senator Pearson and 18 other Senators to deregulate onshore gas production in order that the interstate market may compete with the intrastate market and to phase out offshore regulation of natural gas production within a six-year period, authorizing during the transition the prescription by the FPC of price ceilings on the basis of broad economic criteria. Although none of these proposals would produce a substantial immediate increase in the total domestic producible natural gas supply, due to lead times involved between the prescription of public policy and the delivery of gas resources to market, nevertheless these proposals would be effective if adopted this fall by the Congress, since they would divert from intrastate to interstate presently available supplies which otherwise would not be sold in interstate commerce. In addition, there would be accelerated production of natural gas reserves which presently cannot be economically produced to serve the interstate market.

I urge prompt Congressional action to avert the deepening impact upon our national economy, and security objectives caused by the pervasive natural gas shortage.

Respectfully,

JOHN N. NASSTKAS,
Chairman.

Recommendation 1.—(Report, p. 27) All cognizant Federal departments and agencies should move immediately on a top-priority basis to take whatever steps

are necessary within the scope of their legal authority to prevent or alleviate the impact of this coming winter's natural gas shortage on those States and areas expected to suffer most. If necessary, the President should take preventive action under the criteria of the Defense Production Act and other legal authorities to declare certain regions as potential economic disaster areas before the fact and marshal the Federal Government's resources accordingly.

Comment.—The Federal Power Commission has been and continues to be in the forefront of Federal agencies in recognizing the developing natural gas shortage, and in taking steps to mitigate its impact, in terms both of improving supply and, within the ambit of its legal authority, assuring that the limited supplies are used most effectively; or stated differently, that curtailments are borne to the extent possible by those best able to sustain a loss or diminution of natural gas supply. A summary of Commission actions from 1970 through early 1975 is attached as Appendix A. As indicated therein, it is important to recognize the limitations in the Commission's jurisdiction.

The vast majority of natural gas consumed by industry which is transported by the interstate pipelines is physically sold and delivered to the user by a local distribution utility, which (unless it is municipally owned) is regulated by a state utility commission. Given the fact of a limited supply of natural gas available to the distributor, it is the state commission which decides which customers will be served and which will be curtailed. Similarly, the distributors and industrial users are free of FPC regulation in the development and utilization of independent energy supplies which may be used to offset curtailment, such as local production and/or underground storage, propane or butane supplemental or replacement supply, or manufactured gas, including but not limited to gasified coal and synthetic natural gas.

With respect to the seven states highlighted in the Committee's report, it is particularly significant that of the two pipelines whose supply situations contribute so greatly to the natural gas shortage, Columbia Gas Transmission Company and Transcontinental Gas Pipeline Corporation, neither makes any sales directly to industrial consumers. Rather, they sell natural gas to distributors, who in turn resell it to the industrial users.

In addition to considering what the Federal Power Commission cannot do, it is equally important to understand what it must do. Under the Natural Gas Act, particularly Sections 4, 5 and 7, the Commission is obliged to prescribe just and reasonable rates and service. Undue discrimination or preference are proscribed. Accordingly, the Commission must continually attempt to insure that similarly situated customers are treated even-handedly. Additionally, the Administrative Procedure Act guarantees the rights of interested parties to notice and opportunity for hearing. Moreover, any Commission order is subject to appeal and adjudication by the courts. Summarily directing the interstate pipelines to deliver additional gas to particular distributors or industrial consumers without allowing for consideration of the consequences to other distributors or industrial users who necessarily would suffer heavier curtailment would be poor public policy as well as proscribed under existing law.

Chairman Nassikas' June 12, 1975, prepared statement to the Committee discussed (pp. 14-19) a number of actions undertaken by the Commission relative to curtailment. Since that time further efforts have commenced and progress made on previously reported programs. Form 69, and its counterpart FEA form, have been promulgated. Order Nos. 531 and 531-A, dated June 25 and July 9, 1975, respectively; copies attached as Appendix B. Form 69 will elicit on a continuing basis data concerning the fuel needs of individual industrial users, including the capability to use and the availability of fuel alternatives to natural gas. FEA presently is collating and analyzing these data.

The Commission has instituted an investigation of the supplies and principal suppliers of Transcontinental Gas Pipe Line Corporation, which impacts heavily in several of the seven states cited by the Committee's report. See orders dated January 8 and July 1, 1975, Docket No. RP75-51, attached as Appendix C. We anticipated that the investigation will disclose whether supplies dedicated to Transco are being withheld, or deliberately under-produced. Additionally, the Commission has subpoenaed Transco's gas supply records and is undertaking an independent evaluation of the company's supply estimates which necessarily underly its Form 16 projected curtailments for next winter.

The proceeding at Docket No. RI75-112, which is investigating reserves reported in the pipelines' Form 15's as contained in non-producing reservoirs, is going forward. Order dated August 19, 1975, attached as Appendix D. Cross-

examination of producer witnesses currently is in progress. This proceeding will determine the feasibility of opening additional potentially productive horizons to production.

By orders issued June 11 and August 8, 1975, the Commission reopened 14 pipeline curtailment proceedings relating to companies which appeared, on the basis of a staff review of their Form 16 submittals, to be in a particularly weak supply situation for this coming winter. The order calls for conferences with the companies, their customers, interested state public utility commissions, and other interested parties and provides for hearings to determine the magnitude and impact of impending winter curtailment, plans to deal with the shortage, alternatives available to the pipelines and their customers and measures needed to eliminate the most serious effects. Customers that are parties to the proceedings were required to submit to the Commission, the FEA and their state commissions data showing their anticipated curtailment by their priority of service category, the average and peak day capability to maximize supplies from field purchases, storage withdrawals, and LNG or SNG supply sources.

The pipelines are required to supply for each of their individual industrial customers extensive data concerning the type of contract (firm or interruptible), alternate fuel capability, requirements after natural gas curtailments, availability, indicated deficiency, and operating options if adequate natural gas and/or alternate fuels are not forthcoming. The pipelines also are obliged to exert their best efforts to obtain and file data similar to the above for all their distributor customers and their individual industrial customers. Additionally, in response to a questionnaire the pipelines (except Transco, which is subject to separate proceedings) are required to furnish data concerning their gas supplies. Subjects covered include: supplier performance data; remaining reserves and reserve re-determinations; suppliers' contractual obligations; the companies' organization and management practices relative to natural gas availability and capability; field and well maintenance and development; contract monitoring and enforcement; capital formation to acquire supplies; and limiting of supplies by conservation agencies.

Most of the conferences called for have been held and many of the Presiding Administrative Law Judges' reports have issued. As a result of efforts to date, staff has tentatively concluded that except for possibly four pipelines, the vast majority of distributors and industrial users served by the pipelines should get through the winter without undue hardship. Additional conferences and/or hearings will be held as needed to determine the most suitable course of action for these companies.

Copies of the Commission's June 11 and August 8, 1975, orders, and the Presiding Administrative Law Judges' reports issued to date are attached as Appendix E.

As indicated in the Judges' reports, serious gas deliverability problems exist for customers of Panhandle Eastern Pipeline Company, Texas Eastern Transmission Corporation, and Transcontinental Gas Pipe Line Corporation. The fourth pipeline confronted with a critical supply problem to serve the heavy industrial market is Columbia Gas Transmission.

As to Panhandle, one of the potential actions cited as having significant potential for reducing curtailment, Commission approval of an offshore supply attachment by Panhandle's principal pipeline supplier has been accomplished. The same is true with respect to an offshore supply which is under contract to Texas Eastern.

With respect to the Judge's suggestion in Panhandle that this agency seek to have FEA relax its policy prohibiting additional supplies of propane to distributors, numerous meetings between the agency staffs have been held, and the problem discussed in correspondence between the agencies. This subject is discussed further below.

The other avenues indicated in the Judges' reports involve matters pending before the Commission, the courts or within the province of other agencies or the Congress. Another possible means of avoiding loss of employment and economic dislocation stemming from natural gas curtailments this winter is through the Commission's existing regulations providing for the filing of petitions for special relief from curtailment. Order No. 467-C sets forth the minimum filing requirements for such a petition. Last year nearly 100 such petitions were filed and acted upon by the Commission on either a temporary or permanent basis. In many cases temporary relief was granted pending hearing, and subject to possible payback of relief volumes. The possibility of granting special relief to industrial users is diminished as supplies of natural gas become increasingly tight on some pipelines,

possibly threatening service to residential and small commercial users with the problems of public health and safety that attend shutting down distribution systems.

Some of the fuel supply problems of industrial users for the coming winter, as well as for the long-term future, undoubtedly are related to the fact that many pipelines are operating under short-term, or interim curtailment plans. Long-term planning and economic decisions are preferably made on the long-term curtailment outlook.

The Commission will move as expeditiously as possible to act on permanent curtailment plan cases when they are presented for decision in the due course of the administrative process. As indicated elsewhere, such Commission decisions are subject to court appeals, which are virtual certainties.

Other courses of action having the potential to mitigate natural gas supply shortages next winter require legislation. Here too the Commission is moving forward. On July 28, 1975, the Commission transmitted to the Speaker of the House legislation which would exempt from the Natural Gas Act for up to 180 days certain transportation, sales, transfers and exchanges of natural gas in interstate commerce, involving pipelines unable to fulfill their firm or interruptible requirements for residential and commercial use and industrial use for plant protection, feedstock and process use. The exemption also would extend to transactions among direct and indirect customers of the pipelines. Gas produced from the Federal domain would not be eligible for exemption. A similar Commission-granted exemption secured about 200 billion cubic feet of natural gas for the interstate pipelines in 1973-74. However, on March 13, 1975, the U.S. Court of Appeals for the District of Columbia struck down the Commission's enabling regulation.

On July 31, 1975, by letters to the Speaker of the House and President of the Senate, the Commission proposed legislation which would codify the proposals involved in the Commission's proposed rulemaking at Docket No. RM75-25, and would exempt from jurisdiction certain distributor facilities used for the transportation of the natural gas involved in the rulemaking and legislation. As contemplated, industrial consumers of natural gas for high priority uses could contract directly with producers in non-Federal domain areas for the purchase of gas at unregulated prices (since no sale-for-resale would be involved). Transportation would be accomplished by the interstate pipelines and where necessary, by the distributors subject to Commission approval. The Commission may already have the authority to approve such transportation of natural gas, but believes that the proposed legislation would remove a cloak of uncertainty and eliminate likely court appeals.

The above noted legislative proposals are attached as Appendix F.

Regarding the recommendation that the President take preventative action under the Defense Production Act, the Federal Power Commission has met with the Department of Defense, Energy Research and Development Agency, Federal Energy Administration, and the Office of Preparedness, GSA to develop plans to meet the needs of defense-related activities during the natural gas shortfall. Using the Defense Production Act as the vehicle, regulations were developed that would require the Defense Department or ERDA to utilize this Commission's Order No. 467-C procedures to seek relief from anticipated curtailment of natural gas deliveries. When a request for relief is filed, DOD or ERDA will insure the Commission of the essential defense needs of the petitioner and the Commission's procedures will be used to obtain relief *pendente lite*, if needed, and an expedited evidentiary proceeding to determine the permanent request for relief.

If DOD or ERDA disagrees with the Commission's determination, the proposed regulation will permit them to bypass the appeal procedures under the Natural Gas Act and allow them to seek relief from Interior. Interior will then obtain advice from the FEA, FPC, and others to determine the appeal.

At the last meeting of the group, the regulations were finalized and Federal Register Notice was to be made by Interior during August 1975. FEA had requested a delay of the FR notice pending its review of the proposed regulation. To date, the notice has not been issued.

Although actions under the Defense Production Act may assist defense-related industries, we do not believe they will be helpful in aiding non-defense-related industry. Additionally, it must be borne in mind that any relief from pipeline curtailment, whether under the Defense Production Act or any other authority, can only be achieved at the expense of still greater curtailment to other natural gas users.

Recommendation 2.—Emergency preparedness authorities should be clarified as they relate to future natural gas emergencies.

Comment.—Clarification between the FPC and other agencies of emergency preparedness for this coming winter is moving forward on three fronts. Coordination between FPC, Interior, ERDA and DOD is set forth above. Additionally, FPC and EPA are coordinating in drafting regulations to implement natural gas aspects of the Safe Drinking Water Act. Under Section 1441 of the Safe Drinking Water Act, P.L. 93-523, enacted December 16, 1974, the Administrator of the Environmental Protection Agency is granted authority to issue a certificate of need for any chemical or substance in short supply needed for the purpose of treating water in any public water system. Natural gas is a "substance" needed for such treatment. Staff met with EPA and other interested state and Federal agencies for the purpose of drafting implementing regulations for obtaining, *inter alia*, sufficient natural gas supplies to meet water treatment requirements. Staff initially agreed to aid in the drafting of regulations comparable to those proposed to implement DPA.

Further, FPC is assisting GSA in the development of a contingency plan to cope with expected natural gas shortages this winter. This plan is to be coordinated by GSA with FEA as part of the latter's Natural Gas Policy and Contingency Planning Task Force effort, and will be available as a policy option to the Energy Resources Council.

Recommendation 3.—Departments and agencies with major responsibilities relating to natural gas should prepare memorandums of understanding or other documents delineating their respective duties which bear on natural gas emergencies.

Comment.—As indicated in our comments on the Committee's Recommendation No. 2, the FPC is actively involve dwith other agencies in developing natural gas emergency programs. A September 14, 1972, Memorandum of Agreement between FPC and Interior provides that FPC will assist the Secretary of Interior in discharging his emergency preparedness duties under Executive Order 11490 as to electric power and natural gas.

Hopefully, the on-going activities with other agencies will result in agreements and/or operating accords which may be even more effective on a day-to-day basis than a memorandum of understanding. The current FPC-FEA coordination in the collection of Form 69 data on industrial end-use of natural gas and alternative fuel capability and availability is an example of such effective cooperation. Additionally, the FPC is a member of the Interagency Fertilizer Task Force, chaired by a representative from the Department of Agriculture. That group is preparing an analysis of the outlook for fertilizer for the 1976 crop year, which will include the impact of natural gas curtailments.

The FPC has invited the FEA to participate in FPC curtailment proceedings and provide data and expert testimony on the regional availability of fuels other than natural gas to enable the Commission, the states and the consuming public to meaningfully assess the overall impact of curtailments. To date the FEA has agreed to attend conferences and participate as observers at FPC hearings, but has not yet agreed to provide the evidence and expert testimony requested.

Recommendation 4.—Collection of data on natural gas supply and demand, availability of alternative fuels, and capability to use alternative fuels, together with assessment to impact of natural gas curtailments, should be accomplished on a continuing coordinated systematic and timely basis.

Comment.—A number of the FPC data collection efforts have been described above in responses to other Committee recommendations, including Form 16, Form 69, and the reopened proceedings on 14 pipeline companies, Docket No. RP74-42, *et al.* Another important continuing data series is derived from the Form 17 reports filed by the pipelines, of actual curtailments.

On the supply side, the General Accounting Office has recently approved the collection of data by Form 40. By order dated February 25, 1975, the Commission prescribed Form 40 providing for the filing of natural gas reserves data by most natural gas companies, including independent producers, by field and reservoir. Companies (including affiliates) selling less than 250,000 Mcf annually in interstate commerce need not file.

Similarly, pipeline companies need not duplicate reports of reserves included in their Form 15. Following GAO approval, Form 40 was made effective August 18, 1975, with reserves in the offshore Federal domain to be reported on September 17, 1975, and other areas to be reported on October 2, 1975. Thereafter, the reports are to be made regularly each April 1. Copies of Orders No. 526 and 526-A promulgating Form 40 are attached as Appendix G.

Recommendation 5.—Because the natural gas emergency of 1975-76 will be a recurring problem, and because no effective emergency planning or coordinating

mechanisms exist, and because neither the FPC nor the FEA or any other Federal agency has authority to take full necessary action in the face of a natural gas emergency, the President should propose and the Congress should give immediate consideration to legislation which would:

(a) Establish clear responsibility for preparing contingency plans for natural gas shortages and other natural gas emergencies;

(b) Establish clear responsibility for the coordination and focus of national efforts to deal with immediate and long-term shortages of natural gas; and

(c) Establish authorities to control the production, shipment, and distribution of natural gas on a coordinated national basis as necessary to deal with natural gas shortages.

Comment.—We believe the objectives sought in the suggested Presidentially-sponsored legislation are already pending before the Congress in a host of bills proposed by the Administration, numerous Senators and Congressmen, and various agencies. Appendix H lists those bills which include the FPC as a principal agency, or which involve matters directly related to FPC functions. The listed bills include both allocation and curtailment-oriented proposals, and supply-eliciting proposals. Several FPC proposed bills are discussed above in conjunction with other Committee recommendations.

Recommendation 6.—The Federal Power Commission and the Federal Energy Administration should take appropriate action consistent with their emergency preparedness responsibilities, including litigation in Federal courts, if necessary, to compel natural gas producers to comply with the Natural Gas Act and regulations to deliver natural gas to consumers.

Comment.—The Federal Power Commission is taking action to the limit of its statutory authority to insure that natural gas producers comply with the terms of their contracts, certificates issued by the Commission, the Natural Gas Act and the Commission's Regulations thereunder. Concrete examples are cited above: the Transco investigation, Docket No. RP75-51; the 14-company re-opened proceedings, Docket No. RP74-42, *et al.*; and the non-producing reservoir case, Docket No. RI75-112.

Whether court litigation will result obviously depends on facts brought to light, and conclusions of law drawn therefrom. The desirability of diligent enforcement of the Department of the Interior's power to regulate oil and gas lessees and their operations on Federal domain lands is not covered by the Committee's Recommendation.

Attachments: Appendixes A-H.

APPENDIX C

SEPTEMBER 12, 1975.

Memorandum to: Chairman Nassikas.

From: Frank E. Baker, Bureau of Natural Gas.

Subject: Comments regarding section 7 of the proposed Natural Gas Emergency Act of 1975.

On September 9, 1975, Congressman John D. Dingell introduced a bill entitled "The Natural Gas Emergency Act of 1975." The purpose of the bill is to deal with the critical shortages of natural gas in many sections of the Nation served by the interstate pipeline system. Section 7 of the bill proposed the production of gas at the Maximum Efficient Rate (MER) or at a rate termed the Temporary Emergency Production Rate (TEPR). As defined in the bill the term MER means the maximum rate of production of natural gas which may be sustained without loss of ultimate recovery of crude oil or natural gas, or both, under sound engineering principles. TEPR means the maximum rate of production for a field: (A) which maximum rate is above the maximum efficient rate of production established for such a field and (B) which may be maintained for a temporary period of less than ninety days without reservoir damage and without significant loss of ultimate recovery of crude oil or natural gas, or both, from such field.

In order to estimate the possible impact of Section 7 of the proposed bill on production from the offshore Federal domain, the terms MER and TEPR should be compared to the rates of production designations used by the United States Geological Survey (USGS), which supervises production from fields in the offshore Federal domain.¹ The technical and administrative procedures used by the

¹ On December 4, 1970, President Nixon directed the Interior Department to assume complete regulating responsibility for conservation and production of oil and gas on all undisputed Federal offshore lands. These responsibilities are outlined in a notice on page 18559 in the Federal Register dated December 5, 1970.

USGS to govern the rates of production are detailed in OCS Order No. 11. The maximum rates of production for each field are determined by the Maximum Efficient Rate (MER) established for each reservoir and by the Maximum Production Rate (MPR) established for each well.

The term MER, as used by the USGS, is more specific than the one defined in the proposed bill. As outlined in OCS Order No. 11 the meaning of the term MER is as follows:

"The maximum sustainable daily oil or gas withdrawal rate from a reservoir which will permit economic development and depletion of that reservoir without detriment to ultimate recovery." (emphasis added)

The primary difference between the MER as defined by the USGS, and that set forth in the bill, is that the USGS term relates to an individual reservoir. Upon discovery of a reservoir, the operator establishes an MER for the reservoir based on sound engineering and economic principles subject to subsequent approval by the USGS. After this rate is approved it shall not be exceeded except for normal variations or fluctuations. It should be noted that the MER is the maximum rate at which the operator believes a reservoir could be produced irrespective of whether the number of well completions and other related producing and transportation facilities necessary to attain that rate are available. The MER for a given reservoir governs the maximum rate of production withdrawal which is permitted from such a reservoir and serves as a ceiling for production. Provision is made in OCS Order No. 11 for revision of established MER's as necessary and for periodic review.

The MPR as defined by the USGS relates to individual wells and is defined as follows:

"The approved maximum daily rate at which oil may be produced from a specified oil well completion or the maximum approved daily rate at which gas may be produced from a *specified gas well completion*." (emphasis added)

The operator proposes an MPR for each well which, after approval, may not be exceeded except for normal variations or fluctuations. The MPR serves as a ceiling on the permitted rate of production for a given well. The MPR is based on actual well tests and considers relevant mechanical, safety and geological factors in addition to reservoir engineering considerations. MPR's are monitored through a requirement for periodic tests (semiannual tests are required for gas well completions) to demonstrate the propriety of a continuation of MPR's after establishment of initial rates. It is possible for the summation of individual MPR's to exceed the MER established for a reservoir (this would be an exception rather than the rule) but reservoir withdrawal may not exceed the MER. The MER for a reservoir may be produced, however, from any combination of well completions subject to the limitations of the MPR established for each well.

In the offshore Federal domain of the Gulf of Mexico, it is common for the MER of a given reservoir to substantially exceed the summation of the MPR's of the well completions in that reservoir. This is because the MER is an estimate of what the reservoir could produce under optimum conditions which may require wells and other related facilities which are not available. On the other hand, the MPR's are based on the in-fact capabilities of the actual well completions. For all practical purposes, the summation of the MPR's for a given reservoir is a close approximation of the practical MER for what reservoir. To produce substantially more than this amount from a given reservoir would require the USGS to alter its present criteria for establishing MPR's. This probably could be done in some reservoirs in order to establish a "temporary emergency production rate" as suggested by the proposed bill. However, only the USGS can estimate the additional quantities of gas that could be produced in this manner from the Outer Continental Shelf.²

The effect of Section 7 of the proposed bill on natural gas production from onshore reservoirs cannot be ascertained. Although most of the fields in the onshore area are producing at or near capacity, there are undoubtedly some fields or reservoirs which could be produced at higher rates, at least temporarily, without damaging the reservoir. One of the primary problems of trying to determine the possible impact of Section 7 on onshore gas production is caused by

² The most recent list published by the USGS of approved MER's and MPR's which is effective for the quarter beginning July 1, 1975, for the Federal domain of the Gulf of Mexico, indicated that MPR's for producing gas wells declined by 891.1 MMcf per day from the previous quarter. For the July 1, 1975, to October 1, 1975, period the combined MPR's for the Gulf of Mexico's OCS gas completions is 8.63 billion cubic feet per day.

the variety of ways in which the various states regulate the production of oil and gas. The Interstate Oil Compact Commission in a publication entitled *General Rules and Regulations for the Conservation of Oil and Gas* which was published in 1969 stated:

"State statutes adopted for the purpose of conserving natural resources, including oil and gas, are not 'self-executing,' that is such statutes enunciate public policy for the prevention of waste and protection of correlative rights and delineate broad guidelines which are followed in carrying out the policy. The authority conveyed by statute (to a state agency) is generally so broad that in order to cope with the exigencies of day to day supervision and enforcement, more detailed guidelines must be adopted by the agency. These detailed guidelines are known as rules and regulations which are adopted usually after hearings at which all interested parties are given an opportunity to express their views. Subsequently, the agency issues an official order adopting the rules and regulations."

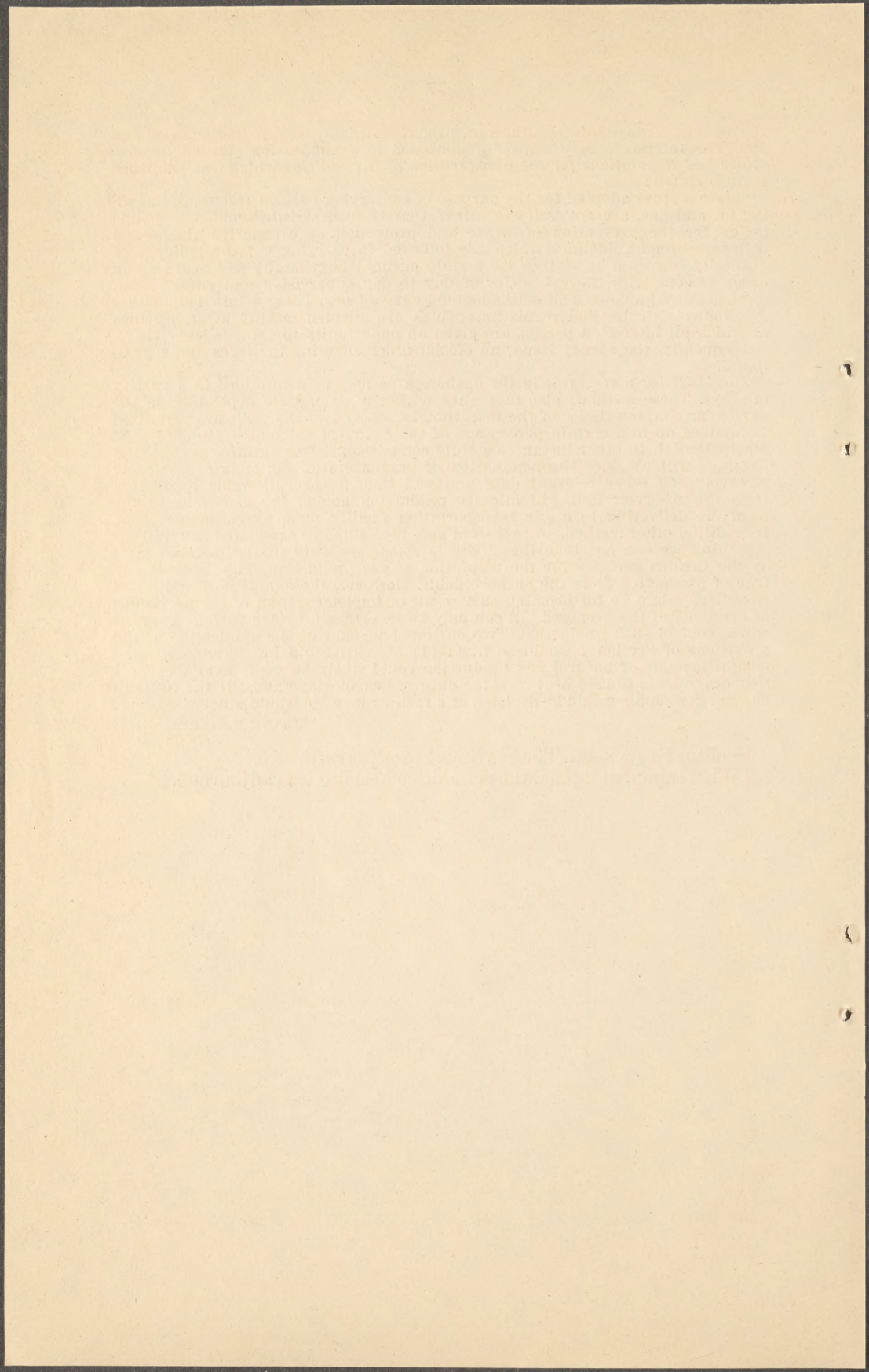
The MER for a reservoir in the onshore area may be determined in a variety of ways. These methods also may vary within a given state depending on the particular characteristics of the reservoir. In some cases gas wells are permitted to produce up to a certain percentage of their current calculated absolute open flow potential. In other instances a state commission, after granting notices and hearings will consider the nomination of purchasers of gas from a particular reservoir and other relevant data and will then fix the allowable production from the reservoir and will allocate production among the gas wells in the reservoir delivering to a gas transportation facility upon a reasonable basis. In addition other methods of proration may be applied to associated gas wells.

I think we can conclude that there is some flexibility in the methods used by the various agencies for the regulation of gas production. This is especially true of production from the onshore fields. However, the quantity of additional gas which might be forthcoming as a result of implementation of the provisions of Section 7 of the proposed bill can only be ascertained by the various agencies which control such production. Two obvious outcomes of the application of the provisions of Section 7 would be that: (1) a positive but indeterminate incremental amount of natural gas production could likely be made available on a temporary basis to help deal with the natural gas shortage and (2) the Nation's natural gas supply would be depleted at a faster rate than would otherwise occur.

FRANK E. BAKER,
Geologist.

Senator STEVENSON. The hearings are adjourned.

[Whereupon, at 2 p.m., the committee hearing was adjourned.]



ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. JESSE HELMS, U.S. SENATOR FROM NORTH CAROLINA

Mr. Chairman, I appreciate the opportunity to present testimony to this Committee regarding pending natural gas legislation. It goes without saying that everyone is greatly disappointed that the Congress has not acted in a positive manner in order to avoid the very serious situation that is rapidly approaching as the winter heating season grows nearer. And, since no action has been taken regarding legislation that addresses the broader issues implicit in the natural gas question, proposals are coming forth from various quarters advocating a temporary, emergency solution. Of course, it is not the purpose of this hearing to address the broader question or the course that our country's natural gas policy will take in the coming years. Rather, it is our purpose today to address certain specific emergency measures. Therefore, I will, of course, limit my remarks to such measures.

I would, however, like to reiterate that very soon natural gas pipeline transmission companies will be going deeper and deeper into curtailment. Some pipelines will undoubtedly be curtailing more than others because their supplies will go down faster; some of the local distribution companies which buy their gas from the transmission companies will be curtailed more than others because of the end use to which the gas they sell is ultimately put. Instead of curtailing all users on a pro rata basis, the Federal Power Commission requires curtailment according to a set of priorities based on the end use and the availability of other forms of energy.

The situation of last winter provides a mild illustration of what we can expect this coming fall and winter. At that time North Carolina, which is served solely by the Transcontinental Pipeline Corporation—Transco—was suffering a curtailment of 42.95 percent. That created an energy shortage which went far beyond anything that alternate fuels or energetic conservation programs could correct. And, since North Carolina's industrial base has been created in the past 20 years around Transco's pipeline, there was an imminent danger of plant closings, a stoppage in production, and the like. A very important fertilizer plant at Tunis, North Carolina, was actually forced to close for a while. This plant produces vital fertilizer for agriculture throughout the Southeastern United States. Thus, people in other states who depend on North Carolina products were also threatened with shutdowns. More importantly, payrolls were threatened by plant layoffs.

Of course, North Carolina was not the only state that was sharply affected by curtailment. On the Transco pipeline alone, the following curtailments were in effect for part of last winter in addition to North Carolina's 42.95 percent:

Alabama—54.70 percent; Georgia—32.85 percent; South Carolina—48.19 percent; New York—21.49 percent; Virginia—31.68 percent; Maryland—31.85 percent; Delaware—31.85 percent; New Jersey—25.90 percent; and Pennsylvania—26.84 percent.

Unlike North Carolina, some of these states are served by additional pipelines, but in most cases those pipelines were also in curtailment.

Now, by all projections, the situation this coming winter will be much worse. All estimates indicate that curtailments in North Carolina for this coming winter may exceed 60 percent. This will affect virtually every commercial or manufacturing use of natural gas in the state. Only residential use is considered to be secure. The large scale unemployment that will result from the inevitable plant closings, due to lack of natural gas, is obvious. Thousands upon thousands of employees will be out of work. Of course, the emergency in North Carolina will be repeated, in varying degrees, in other states. We cannot stand idly by while this happens.

Now, I am advised that this hearing is for the specific purpose of considering the merits of two alternative, emergency bills designed especially to meet our natural gas needs this winter. One bill is S. 2310, the Natural Gas Emergency

Act. The other is S. 2330, the Natural Gas Emergency Standby Act. The first was introduced by the distinguished Senator from South Carolina, Senator Hollings. The latter was transmitted to the Congress by the Administration and introduced on behalf of the Administration by the distinguished Senator from Kansas, Senator Pearson.

Since both bills are temporary in nature and intended only as emergency measures for the coming winter, I believe that we should carefully analyze each proposal and select the one that will best address the impending crisis. Therefore, let me turn to S. 2310 introduced by the distinguished Senator from South Carolina. After careful study, I am convinced that this bill will not meet our needs this winter. It will not bring the vitally needed natural gas to the interstate market. Let me explain why.

First, S. 2310 provides for the Federal Power Commission to designate certain interstate natural gas pipelines as "priority interstate purchasers." Of course, I do not know which pipelines will be labeled "priority." No one else knows either, but under the bill some will be so designated. These "priority pipelines" will be allowed to go into the intrastate market and bid for intrastate natural gas. However, they will not be allowed to bid in a free market on an unregulated basis. Rather, that amendment will set up ceiling prices within the area, and the so-called "priority interstate pipelines" will not be allowed to pay more than the ceiling price.

Additionally, the intrastate purchasers of such intrastate gas will *not* be allowed to pay more than that ceiling price either. The inevitable result will be that both the "priority interstate pipelines" and the regular intrastate purchasers will be bidding at the same price level—they will be offering to buy the intrastate gas at the same price. Of course, that price will be the governmentally imposed ceiling because the shortage will be such that anyone will buy all natural gas that is available at that regulated price. Thus, how will the intrastate producer with no price motivation decide whether to sell the gas to the "priority interstate pipeline" or the regular intrastate purchaser. Obviously, the intrastate producer with no incentive to sell it interstate will undoubtedly sell the gas where he will run no risk of committing his production to interstate commerce, and therefore, to regulation by the Federal Power Commission.

Now, to be sure, S. 2310 provides that any such sale in interstate commerce will be regulated by the area price ceiling as established pursuant to the bill, but what happens when this temporary provision in the bill expires? Section 7(b) of the Natural Gas Act (15 U.S.C. § 717f(b)) provides that "No natural gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the (Federal Power) Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present future public convenience or necessity permit such abandonment."

It appears unclear from S. 2310 whether intrastate producers selling natural gas in interstate commerce to a "priority interstate pipeline" as suggested, will be allowed to revert to their prior unregulated position at the expiration of the provisions of the bill. Since it is unclear, intrastate producers will exhibit a natural reluctance to sell natural gas to the so-called "priority interstate pipelines." They will, obviously, sell their product to their traditional intrastate customers, just like they always have. They will do it to avoid any chance of causing their supply to be committed to interstate commerce and Federal regulation. Therefore, S. 2310 will not bring any more natural gas onto the interstate market. It will only attempt to extend Federal regulation into the intrastate market which has not been done before.

S. 2330, the Administration bill, on the other hand, expressly provides that an emergency purchase of natural gas will be exempt from the provisions of the Natural Gas Act. Since such sales will be exempt from the act, it is very clear that under no circumstances could any intrastate natural gas become committed to the interstate market and Federal regulation by virtue of such sale. There is a long history of precedents regarding emergency purchases under section 7(c) of the Natural Gas Act. Therefore, this consideration will be no problem under S. 2330. S. 2330 will bring natural gas into the interstate market where it is so desperately needed.

Secondly, S. 2310 provides that new natural gas produced from the Outer Continental Shelf will go first to the so-called "priority interstate pipelines," except

for such new natural gas that is subject to a previous advance-payment arrangement. To state the proposition is to define the problem with this provision—(1) it only applies to *new* natural gas, and (2) it only applies to such new natural gas as is *not* subject to a previous advance payment arrangement. The question logically arises as to just how much natural gas is within this narrow category thus limited. The answer, of course, is very little. It will offer minimal assistance, far short of what is needed.

Additionally, given this anomalous situation restricting and inhibiting enterprise, there can be no doubt that this provision will discourage development of this much needed energy source. It will serve only to complicate the situation and compound the errors of the past.

Third, S. 2310 provides for the Secretary of the Interior to order the production from designated natural gas fields at a temporary emergency production rate. This, of course, is a case of sacrificing the future for the expediences of the present. There are limits to the rate that natural gas can be produced from such wells and maintain the integrity of the wells. To produce it at certain levels of rapidity will jeopardize future production. While it is imperative that we take the necessary and proper action to provide for our needs this winter, we must consider the future in the sure realization that another and another winter will succeed in the years ahead.

Finally, S. 2310 provides for a prohibition on the use of natural gas by electric generating systems if the Administrator of the Federal Energy Administration determines that such powerplants have the reasonable capability and necessary plant equipment to burn petroleum products or coal, and this prohibition would be implemented only if such natural gas previously used by a powerplant could be made available to "priority interstate pipelines." How long will it take for the Federal Energy Administration to make such determinations? What kind of surveys and studies will such determinations entail when done for each powerplant in the Nation? I do not know, and I do not believe that anyone else knows. But, given the customary propensities of the Federal bureaucracy, this winter will be over before all of the hearings, meetings, appeals and the like attendant to such determinations will have been concluded.

On the other hand, Mr. Chairman, S. 2330, introduced on behalf of the Administration, contains a practical, workable proposal. Title II of the act would allow the Federal Power Commission to exempt from the provisions of the Natural Gas Act the sale of such gas to an interstate natural gas pipeline company which is curtailing deliveries pursuant to a curtailment plan on file with the Commission and which does not have sufficient supply of natural gas to fulfill the requirements of its high priority consumers. Any such exemption would not exceed 180 days. The Federal Power Commission is to define the term "high priority consumer."

Mr. Chairman, title II of S. 2330 is substantially the same as S. 504, the Natural Gas Emergency Purchase Act, which I introduced on January 30 of this year. There are significant differences however. First, S. 504 defines high priority consumers of natural gas by providing that the Commission shall provide such 180 day exemption to interstate pipeline companies that do not have sufficient supplies of natural gas to meet the firm requirements of the ultimate consumers on such pipeline system exclusive of boiler fuel. However, I feel that the Federal Power Commission is qualified to give adequate definition to the term "high priority consumer" as it would be called upon to do under title II of S. 2330.

Secondly, S. 504 provides that interstate natural gas pipeline companies which purchase natural gas under this 180 day exemption shall not be denied by the Commission the right to recover all or any part of the purchase price paid for such gas. Title II of S. 2330 does not contain a comparable provision. Frankly, Mr. Chairman, I believe that such a provision is needed. It is needed because interstate pipeline companies will exhibit an understandable reluctance to purchase such higher priced gas if they are not afforded an assurance that they will be allowed to recover the amount of their expenditures. This is not to say that they would be granted what is so often referred to as "windfall profits." It is simply to suggest that they should be allowed to get the money spend back through a cost pass through. If such a provision is not placed in title II of S. 2330, the Congress would be asking the pipeline companies to gamble on what the Federal Power Commission will permit. Mr. Chairman, I do not believe,

that the pipeline companies will do very much gambling on that score. And, the result will be less natural gas going where it will be so desperately needed.

Sure, I know it's easy to pass the buck to the Commission. It's easy to let the Commission decide to what extent it will allow cost pass throughs. But, Mr. Chairman, I believe that events have gone beyond the point where we in the Congress can say, "let someone else do it." It's time for the Congress to adhere to its Constitutional responsibilities and enact energy legislation that will effectively meet the Nation's needs. Therefore, whatever the popular position may be, I urge that this provision allowing cost pass throughs be adopted just as it appears in S. 504.

Finally, title II of S. 2330 is broader than S. 504 in that it would allow the interstate pipeline companies covered by the provision to purchase interstate gas under the exemption as well as intrastate gas. In my view, this is a wise and meritorious addition, which would be very beneficial to my State and other States similarly situated this winter.

I urge the adoption of this emergency purchase provision because it is a sound, workable approach. It makes no difference to me whether the bill that I introduced last January (S. 504) is enacted or whether another bill introduced by someone else is enacted as long as the job gets done and this 180 day emergency purchase concept becomes law. As I stated in the Senate chamber last January, the emergency purchase approach is a proven success. When the Federal Power Commission implemented this concept during the 1973-1974 winter season, there were over 500 emergency sales made and over 172 million Mcf of natural gas were committed to the interstate market. That figure includes approximately 24 million Mcf of natural gas sales made by intrastate pipelines to interstate pipelines. But due to an unfortunate Federal Court decision, the Federal Power Commission now lacks the authority to implement this much needed provision. The Federal Power Commission favors this approach. The Administration favors this approach. The Governors of many states favor this approach. I believe that it is the duty of Congress to provide the Commission with this authority which it needs in order to do the job that Congress has assigned to the Commission.

Of course, Mr. Chairman, while title II is the most important provision in S. 2330 from the standpoint of bringing more natural gas onto the interstate market, there are other significant provisions. Title III would allow high priority consumers of natural gas experiencing curtailments to directly purchase such gas from producers in the intrastate market and then arrange for an interstate pipeline company to transport such gas. While this approach is somewhat more complex than the 180 day emergency purchase concept, it is far less complicated and cumbersome than S. 2310. It is a desirable supplement to, but certainly not a substitute for, the 180 day emergency purchase period.

Title IV of S. 2330 is designed to foster the use of such alternative fuels as coal where possible. It is well-known that we have large deposits of coal within our natural borders. We do not need to depend on any foreign nation to supply us with this energy resource. It has long been my view that we need to take the necessary legislative steps to permit the more widespread use of coal. To pretend that we can afford to disregard this abundant energy resource because it does not burn as clean as natural gas is to kid ourselves and the American people. We have no choice; we need the fuel. We must make proper utilization of coal. I do, however, have reservations about governmentally enforced conversion from one energy resource to another. The preferable approach would be for the government to refrain from distorting free market conditions and allow consumers of energy resources to make their own decision as to choices of fuel based upon individual needs and price.

Finally, while I can appreciate the fears that exist in certain quarters regarding the possible distortion in the propane market by serious natural gas curtailments, I remain convinced that if appropriate, effective action is taken on the natural gas question itself, the propane question will be far less acute. And, in the end, its allocation by free market considerations will be desirable.

But, the primary message of my testimony, Mr. Chairman, is that I hope that this committee and the Congress, if it is determined that emergency natural gas legislation will be pursued, will move forward with the 180 day emergency purchase concept. It is my hope that the Congress will not gamble on untested proposals while we approach the winter heating season but will instead implement a proposal that is a proven success.

STATEMENT OF BILL BRIER, DIRECTOR OF ENERGY RESOURCES, NATIONAL COUNCIL OF FARMER COOPERATIVES

The National Council of Farmer Cooperatives appreciates this opportunity to comment on proposed emergency natural gas legislation—S. 2244, S. 2310, and S. 2330. The Council is a nationwide association of farmer cooperative businesses owned and controlled by farmers. Farmers own 7,800 local marketing and supply cooperatives doing a gross annual volume of \$25 billion. They sell 28% of their production through cooperatives and buy 19% of their farm supplies from them. Through its membership, the National Council represents about 80% of this cooperative agricultural industry.

Farmer cooperatives are large users of natural gas both for input manufacturing and food and kindred product processing. Cooperatives produce little gas of their own, purchasing most of their needs from outside sources. However, cooperatives are basic in petroleum, operating eight refineries and an exploration and production program providing 30,000 to 40,000 bpd of crude oil.

Natural gas is singly the most important fuel utilized by the food and fiber sector, accounting for 36% of total energy use. It is important to note that agriculture's use of natural gas is centered in two major areas—food and kindred products processing and input manufacturing. Without adequate supplies of natural gas it appears unlikely that agriculture cannot meet this nation's food and fiber production goals.

S. 2244, S. 2310 and S. 2330 are all designed to encourage the movement of available natural gas from the intrastate market to the interstate market. Unfortunately, none of the emergency legislation will stimulate maximum production of new natural gas. Thus, this legislation is stopgap—designed to increase interstate supplies at the expense of the intrastate market during the 1975-76 winter curtailment period. While useful over the short term, none of the bills provide long term incentives for exploration and development of new natural gas.

The authors of these bills have been silent as to the amount of gas that might be committed to the interstate system should one of these proposals pass. However, the Chairman of the Federal Power Commission has suggested that Order No. 491-B resulted in the introduction of 200 billion cubic feet of gas into the interstate gas stream. Order No. 491-B is similar in nature to the provisions of S. 2244.

The benefits of emergency legislation must be considered in relation to curtailments. Last year curtailments increased to 2 trillion cubic feet or 10% of consumption. For 1975, they are estimated to be 2.9 trillion cubic feet or 15% of consumption. Thus, the real issue is not what can be done now on an emergency basis but rather what can be done to increase supplies on a long term basis to help offset increasing shortages. Simply stated, this nation has consumed more natural gas than has been added to reserves by new discoveries.

Over the last two years, the Commerce Committee has heard scores of witnesses and received hundreds of pages of testimony on the current natural gas shortages. The focus of these hearings has always been the long term issue of stimulating the maximum production of natural gas. Recently, as a result of those deliberations, this Committee reported S. 692, the Natural Gas Production and Conservation Act of 1975.

While the National Council does not support this legislation, preferring instead the Pearson-Bentsen substitute, the Council believes that the bill offers the forum necessary for full consideration by the Senate of various alternatives providing long term solutions to the current natural gas shortage.

Thus, the Council is deeply concerned with recent events within the Committee that suggest the possibility that long term solutions will be set aside in favor of emergency short term legislation. While the National Council feels that emergency legislation is important, we respectfully urge the Committee to delay action on short term proposals until such time as the Senate has completed action on S. 692 and amendments thereto. It would be a national tragedy if the long term solutions developed by this Committee (S. 692) were thrust aside in favor of hastily drawn emergency legislation.

Most National Council comments on the three major emergency natural gas bills pending before this Committee will be limited to S. 2310 since it appears to be the focus of these hearings. To determine the probable effects of S. 2244 and S. 2330 on interstate natural gas supplies, the Committee can study the general results of FPC Order No. 491-B allowing interstate pipelines in curtailment to purchase natural gas at unregulated wellhead prices from the intrastate market

for periods not to exceed 180 days. However, S. 2310 breaks new ground and thus deserves special attention. For purposes of expediency, comment on S. 2310 is separated into two categories—short term issues and long term issues.

COMMENTS ON S. 2310

The bill has only one redeeming quality as emergency short term legislation designed to improve interstate supplies during the 1975-76 winter curtailment period—its agricultural priority, which the National Council strongly supports. This agricultural priority is important if the nation's food and fiber production goals are to be met.

However, the Council would suggest one change in Section 5(a)(2), "Availability of Gas for Agricultural Users." The words "with the goals of substantially minimizing unemployment attributable to interruption of natural gas supplies" should be deleted. Since both employment and food production are mentioned in the "Purposes" of the bill, this statement may have the effect of limiting the agricultural priority. It must be remembered that almost all natural gas curtailments excluding category 1 can result in unemployment if alternate fuels are not found.

SHORT TERM ISSUES

1) *Producer disincentive to sell new gas in the interstate market even though Section 4(c) provides a price parity between interstate and intrastate markets.* The producer, it would appear, must go through FPC abandonment proceedings before terminating his 10-month sale. Producers would be subject to current FPC rate ceilings when the act expires on June 30, 1976.

2) *FPC administrative difficulties in establishing area ceiling prices within the 15 days required by the bill.* Much of the data required is not as yet on file with the Commission. In addition, the FPC is required to identify essential users (Section 3(3)), review curtailment plans, supply availability and essential user needs (Section 3(10)) and determine priority purchasers (Section 4(A)(1)) within the same time frame. Aside from the 15-day requirement, it should be apparent that it is doubtful that the FPC could complete its work until after the 1975-76 winter curtailment period begins, making it unlikely that sales could be made under the act during much of the period of greatest curtailment.

3) *Boiler-fuel-forced conversions under Section 6 would not make more gas available during the 1975-76 winter curtailment period.* To effect forced conversions under Section 6 requires a high degree of coordination between three government agencies—FEA, FPC and EPA. For short term emergency purposes, this section has little value.

4) *Administrative coordination and bureaucratic problems would preclude the possibility that the legislation can serve an emergency use and help relieve the interstate natural gas shortages during the 1975-76 winter curtailment period.* Five separate federal agencies (FEA, FPC, USDA, EPA and Department of the Interior) are required to make findings, establish rules and set proceedings. Further impairment of immediate effectiveness arises through Section 10 which authorizes suits by "any person" to enforce provisions of the Act.

LONG TERM ISSUES

1) *Gas exploration and development would be limited as long as wellhead price uncertainties are encouraged by the government.* Under the bill, the producer does not know with any degree of certainty the wellhead price of gas discovered within the next ten months. Will a producer be able to discontinue service to an interstate purchaser, or will he be subject to requirements of Section 7(b) of the Natural Gas Act? At the same time, onshore intrastate natural gas rates will suffer a rollback. This rollback will affect the level of exploration and development of onshore supplies. The producer operating onshore will face the prospect of a frozen natural gas rate based on August 1975 contract rates.

2) *Production methods which reduce the amount of ultimately recoverable natural gas aggravates the gas shortage in the future.* Legislation which authorizes wasteful production practices is fundamentally unsound. Section 7 authorizes practices, which, because of time restraints on the Secretary of the Interior, cannot produce extra interstate gas for the 1975-76 winter curtailment period. By ignoring the maximum efficient rate (MER) of production the bill sanctions the use of production methods which lower the net amount of gas which can be produced under known technology from a given reservoir.

SUMMARY

The National Council feels that emergency natural gas legislation can be useful only over the short term. As short term legislation, S. 2330 appears to offer the greatest chance of improving interstate natural gas supplies during the 1975-76 winter curtailment period. However, S. 2330 is seriously deficient and should be amended by adding Section 5, "Availability of Gas for Agricultural Users," of S. 2310, with the deletion already noted.

It is important to again emphasize that this legislation is only a short term, partial solution to a long term problem. The Senate should instead immediately consider S. 692 and amendments thereto. By adopting the Pearson-Bentsen Substitute to S. 692, the Senate will have provided a reasonable long term solution as well by encouraging the maximum development of our domestic natural gas supplies.

STATEMENT OF PAUL E. REICHARDT, CHAIRMAN OF THE BOARD, WASHINGTON GAS LIGHT COMPANY AND FIRST VICE CHAIRMAN, AMERICAN GAS ASSOCIATION

Mr. Chairman, my name is Paul E. Reichardt, Chairman of the Board of Washington Gas Light Company, and First Vice Chairman of the American Gas Association. Today, I am appearing on behalf of the Association and its over 300 member companies representing the transmission and distribution segments of the natural gas industry.

For more than six years the American Gas Association has sought to alert the Congress to the impending natural gas crisis. We share your concern about the potential disruption of our economy and the denial of basic human needs which could arise should consumers be deprived of adequate gas supplies this winter. The shortage is real, and is deepening. The current annual shortage of natural gas is about 2.5 quads (A quad equals 10^{15} Btu). Without remedial action the supply deficit for 1975-76 will be 2.9 trillion cubic feet or 3 quads and by 1980 could reach 6.1 quads. This is just about as much energy as the nation's present total electric generation (6.3 quads). The direct economic impact of such a shortage would be devastating. A recent study shows that if the major gas-consuming manufacturing industries had their gas supply reduced just 20%, more than 2,000,000 manufacturing industry workers could be unemployed. This, of course, does not include the cascading affect on employment in other industries and businesses.

In order to better understand the nature of the current crisis, Congress must consider the trends in natural gas production and consumption. Since World War II the use of natural gas has increased annually at a rate twice that of total primary U.S. energy. Today, it provides over 30% of our annual energy requirements and more than 40% of domestically produced energy. Meanwhile, gas reserves additions have been declining. Primarily, this is because of the inhibiting affect that Federal Power Commission regulation has had on exploratory drilling. Current annual consumption is nearly three times as great as addition to reserves. Further, this same FPC regulation has severely limited sales of new gas to the regulated interstate pipelines. As a result, total production has leveled off. Low regulated prices, however, have stimulated demand and as a consequence, a severe shortage has developed. Aggravating this shortage has been the fact that the nation's total energy requirements have been growing rapidly. Curtailments of firm contract gas in excess of two trillion cubic feet have occurred in the past 12 months, and the present total unmet demand has been estimated to be greater than five trillion cubic feet.

Demand for natural gas, as a primary fuel, will continue to increase due to the inherent qualities of this energy source. Natural gas is our premium fuel, because of its basic efficiency and the fact that it does not pollute the air or water. For many years, almost anywhere that gas has been reasonably available, it has been the preferred fuel. In order to avoid air pollution problems, many communities have mandated the use of natural gas where feasible. On a delivered Btu basis, and when used for those purposes which require a premium fuel, it represents the most efficient possible use of natural resources. These uses include: residential and commercial space heating; petrochemical feedstock; industrial processing; and water heating and cooking.

But, in order to solve this deepening crisis, the Congress must address itself now, not just to this winter's shortage, but to the long term shortage as well.

Unfortunately, the proposals introduced by Senators Hollings, Glenn, and

Talmadge will not in our opinion alleviate the forthcoming crisis. S. 2310 addresses only this coming winter—and does so by means of a complicated regulatory program, when already there is too little time to accommodate the administrative preparation and surveillance for which the legislation calls. The proposal would extend Federal controls to the intrastate market; achieve price parity by establishing prices by producing areas, based on the general level of intrastate prices during the month of August 1975; require setting up regulations for and reviewing the validity of priority requests for gas; grant to the Federal Power Commission the authority to compel interconnections between pipelines; and grant the Secretary of the Interior the authority to force operation of natural gas production at levels which could very well severely impair future production capability.

The extension of F.P.C. controls over the intrastate market as designated in Section 4, would only broaden the current regulatory policy which is largely responsible for the current natural gas shortage. Further, the establishment of area ceiling prices as called for in the bill, would be difficult to accomplish in time for winter weather much less in the required fifteen days specified by the bill, since such prices would have to be based upon complicated pricing information which in some instances is not available. The time consuming burden thrust on The Federal Power Commission with a respect to setting up priorities and then, apparently on a case by case basis, validating those priorities, appears to present an almost insuperable task in the time allotted.

The authorization of mandatory pipeline interconnections by the F.P.C. as it appears on Section 8 of the bill is, in our opinion, both unwise and unnecessary. Currently our member companies accomplish this objective on a voluntary basis. This provision would compel a well managed pipeline to share its gas supply with another pipeline which has been less successful or aggressive in its gas procurement efforts. Even though compensation may be paid to the pipeline from which the gas is taken, there is no adequate provision for the customers of that pipeline in terms of future availability of gas.

The mandating of production rates for designated natural gas fields as stated in Section 7 would encourage non-efficient production. By mandating maximum production rates or worse yet, temporary emergency production rates, the ultimate effect on the production, and resulting effect on the consumer, will be to ultimately recover less gas from the reservoirs. Thus, due to this non-efficient rate of production, the loss of gas to our pipelines and their consumers will represent a supply which can never be recovered. This is an inefficient method which attempts to solve the short-term problem at the expense of long-term supplies. The drafters of the bill recognized this by providing that the ultimate consumer of gas so released indemnify the federal government against liability.

Further, Section 5 of S. 2310, places under the Secretary of Agriculture the authorization to direct gas for agricultural use. Such priorities for agricultural uses are currently set by the F.P.C. This proposal would transfer such authority to another executive agency which is not in a position to evaluate all of the high priority needs of the nation. Such establishment of priorities should be placed under the F.P.C. which possesses such information.

The other proposal which was presented to the Congress, is the Federal Energy Administration's proposal, S. 2330, introduced by Senator Pearson, entitled the Natural Gas Emergency Standby Act of 1975. S. 2330 contains proposals which will be helpful in dealing with the shortages of natural gas which will arise in the interstate market this winter. Section 204 of the bill grants statutory confirmation of the F.P.C.'s 180 day emergency purchase authority. Such a provision is sorely needed in light of potential judicial contests. A similar emergency sales provision is contained in S. 2244 that you Mr. Chairman, introduced at the request of the F.P.C. The bill also protects in Title III the rights of high priority consumers experiencing curtailments to purchase gas at market prices from intrastate sources and to arrange for its transportation through interstate pipelines. While we commend the Administration for recognizing this need, we regret the Administration's failure to extend this privilege to natural gas distribution companies.

Title V of S. 2330 grants the President the authority to allocate and establish reasonable prices for propane in order to assure an equitable distribution of propane among historic users and consumers experiencing natural gas curtailments. We view this proposal as too indefinite to permit a meaningful analysis of what the Administration has in mind in dealing with any shortage of propane that might arise. It is vitally important that by statute, gas utilities be assured of access to adequate supplies of propane to insure the continuity of

service to their high priority customers during the severest winter weather and to insure adequate feedstocks for their existing peak shaving and synthetic natural gas plants where facility design precludes the use of substitute fuels. We would urge the Administration to define what it has in mind in dealing with any propane shortage, and to include the gas utilities at a high priority level in any allocation system.

Mr. Chairman, The American Gas Association supports S. 2330 with modification and clarification as previously noted. But we urge that the Committee, and the Congress, not become preoccupied with so-called emergency legislation dealing only with the present and the immediate future. This is not to say that these policies are not needed and will not be helpful. They will. But they will not produce one additional cubic foot of new supply.

Alleviation of the natural gas shortage depends on development of new supplies and the latter, in turn, depend on creation of an economic climate which will foster such development over the long pull. The only meaningful solution is to deregulate the price of new gas. The application of band-aids is no substitute for necessary surgery. I urge this Committee and the Congress to proceed now with both short-term and long-term legislation which will meet the problems of allocation this winter and next—and, crucially, will get us started *now* to expand our inventory of new gas. Deregulation of new gas will automatically trigger many of the meaningful short-term solutions that have been suggested for this winter. We have already wasted precious time.

I remind you again that we are dealing here with the keystone of the nation's energy supply. The discovery of new domestic gas supply is essential to our energy independence. The longer we wait to "bite the bullet" the deeper becomes the curtailments of gas to our homes and our industries and the more likely we expose our citizens to grave physical and economic sicknesses.

A.G.A. member companies have nothing to gain financially from increased field prices, but strongly reiterate that substantial increases in gas supply require without further delay a climate permitting interstate pipelines to compete freely in the market place.

Mr. Chairman, I thank you for giving us the opportunity again to present our views.

SEPTEMBER 17, 1975.

To: Members of the United States Senate.

From: The Interstate Natural Gas Association of America.

DEAR SENATOR: This letter is being written to you in this form for the simple reason that we do not have time to separately address each Member of the Senate. We wanted to get this information to you at the quickest possible time, which explains the fact that it is being "hand delivered."

Attached hereto is a copy of our statement filed with the Senate Commerce Committee on September 16, 1975. The statement was filed, although we would have preferred to testify. The only oral presentation of testimony before the Committee was from the Federal Energy Administration and the Federal Power Commission.

The first indication we had of hearings on the two measures concerned was on Friday, the 12th, when we were advised that there would be hearings on Monday, September 15. We were also advised that the appearance of witnesses would be confined to government agencies.

You will note from our statement that the two measures referred to involve some rather complicated issues, and that the passage of either bill in its present form, or substantially in its present form, will not accomplish the purposes for which it was intended.

You will also note that the bills referred to were introduced on the 9th and 10th of September.

Under the circumstances, we feel that hearings would be justified in order to permit testimony from other than government witnesses.

We feel that the industry can make a substantial contribution toward lessening the effect of the natural gas shortage for the winter of 1975-1976. A review of our statement will provide you with further information on the subject.

Sincerely yours,

WALTER E. ROGERS,
Interstate Natural Gas Association of America.

Enclosure.

STATEMENT OF WALTER E. ROGERS, PRESIDENT, INTERSTATE NATURAL GAS
ASSOCIATION OF AMERICA

The Interstate Natural Gas Association of America (INGAA), which is an association composed of virtually all of the major interstate natural gas transmission companies in the United States accounting for over 90% of all gas transported and sold in interstate commerce, appreciates this opportunity to submit its comments on S. 2310 and S. 2330. Consideration of legislation to meet the critical and rapidly worsening natural gas shortage facing this country is certainly timely; in fact it is long overdue.

THE MOST IMPORTANT SOLUTION TO THIS PROBLEM IS DEREGULATION OF THE PRICE
OF SALES OF NEW NATURAL GAS

The problems of the natural gas shortage can only be solved by striking at the source of the problem. This requires that new supplies of natural gas be made available to meet the needs of American consumers. This will only take place if long-term incentives are provided for producers to search for and develop new supplies of natural gas. An approach which seeks to only allocate the supplies of natural gas which already are available to the market is no more than a bandaid applied to a hemorrhaging wound and should be recognized for what it is—allocation of the shortage. The only possible solution to the nation's natural gas shortage is through legislation which will increase the supplies of natural gas available. This will only occur when the natural gas producing industry is provided with sufficient incentives and with the elimination of uncertainties which will permit the investment required for the development of new natural gas supplies.

EMERGENCY LEGISLATION IS REQUIRED IF SUBSTANTIAL DISLOCATIONS ARE TO BE
AVOIDED FOR THIS WINTER

While it should be recognized that emergency regulation is no substitute for the long-term remedies which are required to increase future supplies of natural gas, the significant problems which certain pipelines and their customers will be facing during the coming winter require that emergency legislation be passed immediately. In this regard, INGAA supports, with certain modifications discussed hereafter, Sec. 204 of S. 2330. Under this provision interstate pipelines would be permitted to obtain supplies, on a short-term emergency basis, to meet the high priority needs of their customers. At least two other bills (S. 504 by Senator Helms and S. 2244 by Senator Magnuson) have been introduced which would also propose similar temporary emergency relief.

There are three modifications that INGAA would urge be made if this bill is to truly be effective. First, in order to assure pipelines that purchase emergency gas under the provisions of this Act that they will be entitled to recover the costs which they have incurred in order to obtain gas supplies for their customers, it is imperative that the legislation specifically provide for automatic flow through of all costs of such emergency purchasers. To that end INGAA would suggest that the following language be inserted before the last sentence in the Section 204 proviso of S. 2330:

* * *; and the Commission shall have no power to deny, in whole or in part, that portion of the rates and charges made, demanded or received by any natural gas company for or in connection with the purchase of gas under any exemption granted hereunder.

Second, in order to assure that the FPC acts promptly in establishing the procedures which are required to implement this legislation, INGAA urges that the provisions of Section 204 of Title II be modified by changing the word "may" in the first sentence to "shall."

Third, INGAA believes that the most substantial volumes of gas supplies which may be made available on a short-term, emergency basis are those which are presently committed to intrastate pipeline companies but which may be surplus to the immediate needs of those pipelines and their customers. However, a considerable amount of the gas committed to those intrastate pipelines is sold under contracts which preclude that gas from being transported or sold outside the state of production, or commingled with volumes of gas which are transported or sold beyond the boundaries of that state. In order to make this gas available to the interstate market for the limited period covered by the bill and to eliminate possible barriers to its sale in interstate commerce, INGAA urges that the

following language be added to Section 204 of Title II immediately following the above "flow through" language:

* * *; any provision of any gas supply or sales contracts or other contractual arrangement which would prohibit or interfere with sales in interstate commerce or terminate any other obligations of any such contract as a result of the making of such sale or sales pursuant to such regulation, is hereby declared to constitute an undue burden on interstate commerce for the purposes and duration of this act and shall be suspended and unenforceable insofar as such provisions or other contractual arrangements would prohibit or interfere with any sale or delivery of natural gas in interstate commerce under this proviso.

S. 2310 WILL DO NOTHING TO RELIEVE THIS WINTER'S PROBLEMS AND WILL BE COUNTERPRODUCTIVE TO LONG-TERM SOLUTIONS

While S. 2310 seeks to assist in meeting the natural gas shortage for the winter of 1975-76, it should initially be recognized that the many additional uncertainties which are created in the natural gas market place will considerably add to the problems facing producers, pipelines and consumers and result in a further dampening of the massive effort needed for the development of new supplies. There is nothing in the bill which provides any incentive to search for new supplies of natural gas. Indeed, the potential reduction in onshore prices which have served as an incentive for increased development; the prospect of freezing those prices at arbitrary past levels and the uncertainties created as to possible future federal preemption of the intrastate market are certain to delay if not substantially reduce the investment which would otherwise be made toward the development of any natural gas supplies.

Although the bill is designed to provide relief for the winter heating season of 1975-76, it would be administratively impossible to implement the complex procedures which are required prior to the commencement of that heating season within the next six weeks. It is not realistic, therefore, to expect the administrative actions which this bill would require to be taken within the time available before the commencement of winter. The FPC is required to establish area rates before implementation can commence and is given fifteen days to accomplish that which has required years to fulfill in the past. Furthermore, the FPC is required to base those rates upon an examination of contracts entered during the month of August 1975, few of which are yet available to the Commission and many of which may not be available during 1975, if ever. Further, the FPC is required to establish a category of "essential user" and to then apply those rules to the existing and prospective requirements of each pipeline. It is optimistic to believe that this could be accomplished within fifteen months, and yet the bill would require the Commission to complete its responsibilities within fifteen days. As a further difficulty the bill requires concerted actions by the FPC, the Federal Energy Administration, the Secretary of the Interior, the Secretary of Agriculture and the Environmental Protection Agency. Disagreements among these agencies could result in protracted delays. Additionally, the provision permitting civil suits by private litigants would assure such uncertainty that no action would be likely this winter.

While the apparent concept of S. 2310 is to attract supplies of natural gas for interstate pipelines, this is not achieved by the bill.

The most serious deficiency in the plan as far as emergency purchases are concerned is that it permits pipelines to buy only "new natural gas" which is defined essentially as gas that has not been committed by contract to interstate or intrastate commerce. This means that presently committed intrastate gas which may be surplus to the purchaser's current needs would not qualify for purchase under this plan. It is INGAA's understanding that most, if not all, of the available emergency gas is presently committed intrastate gas. Therefore, the emergency gas purchase would be essentially meaningless since there would be little if any "new natural gas" supplies.

In addition, the establishment of a ceiling price based upon an average for a single month may not be workable. How much gas was contracted for intrastate in each of the many FPC pricing areas during the month of August, 1975, is unknown and much of the information the FPC would need to make such a determination for each area is not available to FPC and beyond its authority to obtain. Further, even if the price is at or near the highest level of sales in the area during the recent past, it is doubtful that the ceiling price would

effectively attract gas from the intrastate market which is not required to obtain FPC authorization for certification or abandonment.

Another basic problem in the bill is that it virtually halts the efforts of the majority of the interstate pipeline companies to acquire much needed new gas supplies and establishes very few pipelines as "priority interstate purchasers" who would have special rights to buy gas under preferential circumstances.

In essence the gas buying activities of the non-priority pipelines would come to a halt during the period that this legislation is in effect. The result would be that non-priority pipelines—excluded from the gas market—would soon become priority pipelines in self-defense, if not by necessity. Improvement of a company's gas supply situation would actually impair its ability to compete for gas.

Even if the legislation should be enacted very promptly—and the number of highly controversial issues make this unlikely—the priority pipeline would have to find some supply of "new natural gas" that a *producer* was willing to sell at the ceiling prices established by the FPC. As a matter of fact, such gas is just not available waiting for sale. But, even if the gas could be found, and the producer persuaded to sell, it may then be necessary to construct new pipelines facilities that would somehow make it available to the priority purchaser's line. In many cases the new gas may have to be treated in a processing plant that may or may not be available. Experience clearly demonstrates that the winter would be long over before any gas would actually be flowing to consumers, even under the most favorable circumstances. In contrast, under the 180 day provision of S. 2330 as INGAA would amend it, emergency gas could be purchased from intrastate pipelines without the need to construct any major facilities due to the close proximity of intrastate lines to existing interstate facilities.

Under this legislation any pipeline that was not designated as a priority purchaser would be effectively blocked from acquiring new gas reserves from lands located on the Outer Continental Shelf. Of course, at the same time, the pipeline which did not have the designation would be foreclosed from buying onshore gas, even if such a purchase was possible.

This would simply mean that all non-priority purchasers would be forced to cease all buying activities. Ironically, however, these same purchasers who could not buy might well be the operators of the transmission facilities in the pertinent offshore areas involved. If a priority purchaser were to purchase gas, it may then seek to have this gas transported in a facility owned by a non-priority supplier. Would this mean that not only would a non-priority supplier be forced out of the buying market, but also expected to transport some other pipeline's gas in preference to its own? These and a series of other related questions would effectively block any efforts to provide emergency service under this legislation this winter—and, of course, the need to construct new facilities to connect new gas offshore would make this additional supply impossible of being connected to the market.

From the standpoint of the customers of the pipeline which is denied the opportunity to buy new gas, the unfairness and dislocations inherent in such a policy are manifest. Through payment of a pipeline's cost of service, the distributors supplied by the pipeline and the consumers they serve have provided the financial support that has enabled that pipeline to acquire and transport the gas to market. It is completely inequitable and unfair to deny these customers access to new gas reserves because of their supplier's past enterprise and success and the willingness of these customers and their regulatory bodies to provide the necessary cooperation and financing.

One of the most self-defeating aspects of S. 2310 is the provision which would permit the Secretary of the Interior to require accelerated production above rates which are considered to be maximum for the efficient recovery of gas from a reservoir. This provision is decidedly anti-conservation insofar as the utilization of the nation's natural resources is concerned. It will undoubtedly, as the bill recognizes, result in a reduction in the overall recovery of natural gas supplies. In exchange for the possibility of providing minimal additional supplies to meet the demands of the next winter, we would be risking drastic potential reductions in future deliverability of natural gas supplies to meet the needs of subsequent winters. Even if this provision were not contrary to the necessity for conserving the nation's valuable natural gas resources, it would be administratively impossible for the Department of the Interior, which has very little expertise in the complex problems involved in establishing production rates in onshore areas, to suddenly replace the state conservation agencies which have had decades of experience in handling these matters.

BOILER FUEL PROHIBITION IN BOTH S. 2310 AND S. 2330 SHOULD BE MODIFIED

While INGAA favors the orderly phasing out of boiler fuel use of natural gas for steam electric generation we do not believe that the abrupt prohibition of such use which could result if either Sec. 6 of S. 2310 or Title IV of S. 2330 were adopted in their present form is appropriate or in the public interest. In our view any prohibition on such boiler fuel use should be under the conditions and in the manner set forth in INGAA's comments of March 7, 1975, to this Committee in response to Senator Stevenson's invitation to submit comments on S. 692 (see pp. 15-16). To avoid repetition of our position here INGAA respectfully incorporates such comments herein by reference and request that they be made a part of this statement.

CONCLUSION

We appreciate the opportunity to comment on these most important matters and earnestly hope our suggestions will assist the Committee in fashioning legislation which will be effective in bringing new gas supplies into the interstate markets this coming winter.

LONE STAR GAS COMPANY,
Washington, D.C., September 15, 1975.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Dirksen Building, Washington, D.C.

DEAR SENATOR MAGNUSON: The following are comments on natural gas emergency legislation pending before the Senate Commerce Committee. These comments are submitted on behalf of Lone Star Gas Company, an intrastate natural gas company based in Dallas, Texas.

The three main bills pending before the Committee are S 504, S 2310 and S 2330.

S 504, introduced by Senator Helms, goes a long way to answer the emergency problems this winter. It allows interstate pipelines which are curtailing higher priority deliveries to acquire natural gas from intrastate sources for a period up to 180 days and, if good cause is shown to the Federal Power Commission, for an additional 180 days. This provides an orderly method to bring temporary relief to needy interstate pipelines by permitting them to purchase natural gas which has already been committed intrastate but which is not immediately needed to meet current demand. This "excess" results from many factors including gas which is committed to a facility which is still under construction, increased utilization of conservation methods, changing weather patterns, and time of year (Lone Star's demand is twice as high in the winter as it is in the spring).¹ These 180 day emergency sales also allows the free market to work. The interstate pipelines can bid for the gas and the intrastate pipelines can sell it at no less than their replacement cost.

S 2310, introduced by Senators Hollings, Glenn and Talmadge, causes Lone Star a great deal of concern, not only for what it might do to the intrastate market but also for the bad precedent it would set for the natural gas industry as a whole.

Intrastate Market

S. 2310 freezes all gas prices both interstate and intrastate and authorizes the Federal Power Commission to set area rates based on contracts completed in August 1975. Aside from telling the Federal Power Commission to take a giant step backwards (area rates were set from 1960-1973) and assuming that every area had contracts negotiated in August, this Sec. (4) would permit the Federal Power Commission to set wellhead prices in the intrastate market. Lone Star opposes any extension of federal regulation, which regulation has caused the current need for emergency legislation.

Also, since the area price is the average price for contracts completed in August, we must assume it would include both interstate and intrastate contracts. The Federal Power Commission has recently obtained intrastate information from jurisdictional producers. However, what about those producers selling natural gas strictly intrastate? How is the Federal Power Commission to obtain that information within the 15 days required in the legislation? Also, wouldn't averaging intrastate contracts in with interstate contracts roll back the price for gas selling intrastate? As mentioned above, intrastate companies cannot sell natural gas for

¹ Enclosed is a copy of a letter to the State Utility Commissioner of New Jersey explaining our current supply situation.

less than the replacement cost of gas. Also, what incentive does a price rollback provide for a producer to continue to explore for natural gas? It is unconscionable!

The definition of new natural gas in S 2310 means natural gas that has not, prior to the date of enactment of the Act, been committed by contract to interstate or intrastate commerce and any natural gas committed by contract to intrastate commerce which contract terminates and is not renewed. Why does this definition pertain only to intrastate natural gas whose contract is not renewed? What about interstate gas whose contract has expired?

Sec. 8 of S 2310 authorizes the Federal Power Commission to direct any pipeline to establish a physical interconnection between any specified facility of any other pipeline. The definition of pipeline is so general that it could be interpreted to include intrastate pipelines, long gathering lines or some distribution lines. Therefore, this legislation not only encroaches on the intrastate market by permitting the Federal Power Commission to set wellhead prices but can possibly completely eliminate the intrastate market, which has been all that has sustained a continuing search for natural gas. According to current standards, any natural gas which is commingled is no longer intrastate gas. Also, any intrastate pipeline must be completely physically separate from an interstate pipeline. If a physical connection is made, the intrastate pipeline will become interstate. There is no proviso in S 2310 that would preclude this from happening.

Finally, powerplants, under this legislation, may be ordered by the Federal Energy Administration to convert from natural gas to oil and the freed gas must be sold to an interstate priority purchaser. If this occurred in either the intrastate or interstate market, there is no pregranted abandonment. Although the legislation is only for 10 months the natural gas diverted could essentially be committed to interstate commerce for the life of the well.

Precedent for gas industry as a whole

This legislation permits the Federal Power Commission to designate certain interstate pipelines which cannot fill all high priority needs this winter as priority purchasers. These pipelines are permitted to contract for all new natural gas found offshore (which does not involve advance payments) as well as all natural gas diverted from powerplants and which results from increased well flow due to temporary emergency rates. This type of legislation is highly discriminatory. There may be interstate pipelines which can meet all their high priority needs this winter, but, because they are not permitted to bid for natural gas until July 1976, they will not be able to meet these same needs next year.

Another problem with this type of legislation is what does it do to competition? There is competition in the natural gas industry—both in the intrastate market and in the interstate market. This legislation almost completely eliminates competition by setting the price of natural gas and determining who may buy the gas. The freedom of contract between the supplier and the purchaser is abrogated.

S 2310 seems to have the potential for complete chaos in the natural gas industry. By attempting to bailout certain pipelines, this legislation can be interpreted to completely eliminate the intrastate market (converting it to interstate), to rollback the price of new natural gas and shift unemployment from some areas of the country this year to other areas of the country next year.

S 2330, the Administration bill, presents the best method for handling the short-term emergency situation pending before the Committee.

Title II, of S 2330, like Senator Helms bill, permits 180 day emergency sales of natural gas. However, this title is even better than S 504 because it permits exchanges and sales not only between interstate and intrastate pipelines but also between interstate pipelines and between distributors.

Title III permits high priority consumers to bid for natural gas in the intrastate market. Lone Star believes this is also beneficial as a short-term solution to the emergency.

Title IV extends the Energy Supply and Coordination Act and broadens the authority of the Federal Energy Administration to order electrical utilities which currently are using natural gas to convert to oil if they possess the capability to convert, can obtain a secure supply of oil, and can meet environmental requirements. Lone Star supports a reasonable phaseout of natural gas for electrical boiler use. However, we must point out that conversion of the boilers capable of converting to petroleum in the intrastate market in 1973 would create an additional 1.5 million barrels of oil per day demand on the market. Converting facilities from one fuel to another does not produce one more drop of fuel, it just shifts usage of the various fuels to different areas of the country.

Title V authorizes the President to issue any orders or regulations regarding propane he deems necessary during the natural gas shortage. While Lone Star recognizes the need for limited propane regulation in the short-term to protect historical users of propane, we find this title too broad. We believe the Administration should be able to submit propane legislation which better defines their intentions.

Before concluding, I would like to point out one more faulty assumption in S 2310. By freezing the price of all gas and placing an area rate over new purchases, the authors of this legislation believe they are protecting the consumer. However, only about 20 percent of the consumer's bill is the price of natural gas at the wellhead. The other 80 percent is the cost of the transportation and distribution facilities in-place. As the amount of natural gas in a pipeline decreases and larger customers are shut off, the residential and commercial customers have to assume more of the burden of the cost of the in-place facilities. According to the Federal Energy Administration's *Monthly Energy Review* the cost of natural gas from domestic producers was 24.3 cents in January 1973 and 32.9 cents in April 1975, a difference of 8.6 cents. However, the average retail price for natural gas sold to residential customers was 113.3 cents in January of 1974 and 146.1 cents in April 1975, a difference of 33.8 cents. This is an increase of 8.6 for natural gas and 25.2 for transmission and distribution.

Lone Star believes the best solution to the natural gas shortage is 180 day emergency sales and short-term curtailed customer emergency purchases (as found in the Administration bill) coupled with decontrol of new natural gas at the wellhead. These measures would bring additional natural gas into the interstate market in both the short-term and the long-term while protecting consumers from huge increases in their natural gas bills by rolling in the cost of new natural gas with the cost of the old gas. The Federal Energy Administration believes the increase in cost of the residential consumer would be approximately \$10.21 in 1976, \$13.30 in 1977 and \$19.15 in 1978.

I must once again point out that under decontrol of new gas higher prices can only be obtained for gas if more gas is found.

I appreciate the opportunity to submit these comments and request that the Senate Commerce Committee consider their implications before reporting out a bill for consideration of the entire Senate.

Sincerely,

WILLIAM C. McCORD,
President.

Enclosure.

LONE STAR GAS COMPANY,
Dallas, Tex., September 4, 1975.

Hon. JOEL R. JACOBSON,
Commissioner, Department of Public Utilities,
Trenton, N.J.

DEAR COMMISSIONER JACOBSON: Your letter of July 2, 1975, to the New Jersey Congressional delegation in which you refer to Lone Star Gas Company and to apparent natural gas surpluses in Texas has been brought to my attention.

Lone Star Gas Company is indeed experiencing a temporary oversupply of daily availability. When examining the market on a day-to-day basis, we find ourselves in a surplus position for a number of reasons. For the past several years, our system had been experiencing increasing shortages because one of our major pipeline suppliers was unable to meet its delivery commitments. In fact, we curtailed our largest customers up to 100% for a total of 542.5 hours in the winters of 1972-73 and 1973-74; then, in the summer of 1973, we had to curtail them again—which had never occurred before.

Lone Star aggressively sought new gas purchases to lessen the impact of this shortage to our customers, and joined in supporting higher wellhead prices in order to stimulate gas drilling.

Meanwhile, the Texas Railroad Commission granted this major pipeline supplier unexpected regulatory relief, which allowed it to increase its purchase prices drastically. Now this supplier has purchased more gas and has doubled its deliveries to the Lone Star system. At the same time, milder weather patterns than usual during the spring and summer of this year, coupled with the reduced economic activity in the area we serve, have depressed certain of our gas markets below normally anticipated levels. The educational program Lone Star has undertaken since 1973 to encourage our customers to conserve natural gas is

achieving desired results. Finally, newly connected wells are currently producing at a peak rate which lasts only a short period of time.

These and other factors of lesser import have resulted in what the gas utility industry describes as a short-term deliverability surplus. *This is not a reserve surplus.* The two are distinctly different. A deliverability surplus is a condition which appears from time to time in the natural gas industry—just as any industry may be confronted with an inventory temporarily exceeding consumer demand.

In order to balance our annual load pattern, which historically has required that our system be able to deliver more than two times as much gas per day in the winter as during the spring, Lone Star uses underground gas storage reservoirs as supply banks. We are currently pumping gas into our underground storage network at our peak injection rate to increase daily availability in later months when the daily load exceeds daily production's ability to deliver. In addition, we, like other companies, employ gas purchase contracts that used to provide average take-or-pay requirements of 60-70 percent of the amount of gas a well is capable of producing each day.

These requirements mean that Lone Star has to take or pay for a percentage of the amount of gas that can be produced from a well each day to as much as 90%. This assures a producer a continuous flow of income and enables him both to repay outstanding loans and to obtain new financing for future drilling endeavors. If Lone Star chooses to pay and not take the gas, we can, in theory, obtain the gas at a later date. However, new purchase contracts do not allow flexibility for much makeup. Also, pressure in a gas field diminishes over time, which can and often does reduce the volume of gas a well may yield at a future date. Thus, we prefer to take the gas.

Our storage facilities and long-term contracts assure our high-priority customers of adequate supplies during the winter season and during peak demand periods. At the same time, during circumstances such as encountered this past spring, the supply of gas temporarily available to us from all sources will exceed demand, and we then look to short-term sales agreements (60-day sales) to bring supply and demand back into balance.

Surely a man so intelligent as you has not been deluded into believing that this nation's natural gas shortage has been contrived. Available facts prove exactly the opposite.

Because our experience tells us that the surpluses we now enjoy are fleeting and will soon disappear, Lone Star will continue its efforts to find more natural gas supplies. We had originally budgeted more than \$47.7 million for our producing subsidiary in 1975, a sum not much less than profits in 1974 for the Company as a whole. However, because of the loss of the depletion allowance, this budget had to be cut back to \$39.4 million, a pattern not dissimilar from the industry as a whole.

Lone Star believes that in order to ease the growing imbalance between supply and demand, our nation needs a free market price at the wellhead, not only in Texas, but nationwide. As you pointed out, because the Texas intrastate market is unregulated at the wellhead, the price for natural gas in this market has increased to a competitive value level and drilling has also increased by "20 percent" and "gas production from newly discovered wells by 15 percent above the 1973 level and 250 percent greater than the 1970 level." Deregulation would provide further impetus to those who would drill for gas.

Lone Star asks that the Congress remove price controls on new gas at the wellhead for interstate market. It is our considered opinion that:

1. Removal of price controls on new gas would give the consumer adequate and timely notice that the price he pays for his gas will increase, but that this increase will be gradual because the decontrolled price of new gas would be rolled in the regulated price of old gas. The consumer would also have sufficient notice to choose to keep this premium fuel or to change systems and begin to use another fuel.

2. Removal of price controls on new gas would provide the producer with adequate notice and incentive to begin renewed efforts to explore for natural gas alone—not as a stepchild to oil—as has already taken place in the intrastate market. This guarantee of an adequate price for his gas will encourage a producer to intensify his efforts in the Outer Continental Shelf, at deeper horizons and at what is presently described as impermeable reservoirs. These are the areas where most of the new reserves will be found.

3. Removal of price controls on new gas will give the financial market notice

that a full price for the product can be obtained in competition with other fuels and thereby attract capital required for expanded exploration programs.

We hope that this necessarily brief explanation of the current gas availability position of Lone Star Gas Company will be able to contribute to a fuller understanding of the difficulties we face in seeking to balance gas availability with gas demand, at all times of the year, against imprecise variables.

Sincerely,

W. C. McCORD.

THE COLUMBIA GAS SYSTEM, INC.,
Wilmington, Del., September 15, 1975.

Hon. WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee,
Washington, D.C.

DEAR SENATOR MAGNUSON: We are extremely pleased that Congress is giving serious consideration to some emergency legislation that will assist in alleviating to some extent the gas supply shortage confronting many sections of the country, including that served by the Columbia Gas System. Columbia Gas System serves a seven-state area extending from western Ohio to the Atlantic Seaboard.

It presently appears that the Columbia Gas System, even after the use of its synthetic natural gas plant at Green Springs, Ohio, will have a deficiency of approximately 213.7 billion cubic feet during the five winter months commencing November 1, 1975. This represents approximately 25% of the total contractual requirements of its affiliated and non-affiliated distribution markets. This shortage, of course, will be borne almost in toto by the industrial customers served directly and indirectly by the System.

The magnitude of this curtailment of industry will result in almost a complete curtailment of customers in EPC Categories 3-9 and in some cases, depending upon the load pattern of the distribution company, a substantial curtailment of industry in FPC Category 2 (the highest priority industrial customer under the FPC classification).

During the past two months, Columbia has been seeking to acquire, on an emergency basis, gas that might be made available for a short term. Such efforts have disclosed that gas presently under contract in the intrastate market may be surplus to the purchasers for varying periods of time such as 30-180 days. While efforts are being made to make this surplus gas available on a direct purchase basis to industrials, existing problems and complicated administration and transportation arrangements make the effort most difficult. Among other things, there is the problem of insuring a fair allocation of this surplus gas to all industries served by the System.

Based upon this experience, we sincerely urge that the Commerce Committee act favorably on the concepts embodied in S. 2244 and Titles II and III of the Administration's bill. We would stress that the concept of exempting from the FPC's jurisdiction 180-day emergency sales is the only legislation before the Commerce Committee today that will make surplus gas available. We would note, however, that S. 2244 needs amendment in two respects:

1. It should be amended to provide flow-through of the higher gas costs incurred by the pipelines. Otherwise, pipelines cannot afford to take the risk of incurring the high costs of exempt gas.
2. It should provide that certain limitations in contracts between producers and persons willing to make surplus gas available are suspended during the emergency period. Without this amendment, there may be insurmountable obstacles in getting surplus gas released for interstate movement.

We appreciate the objectives of the sponsors of S. 2310 to provide for emergency sales during the period ending June 30, 1976. However, we think that the enactment of S. 2310 will not provide any significant volumes of additional gas to the interstate market this winter and next summer. The surplus gas that is available is presently under contract and would be released in most cases by the purchaser. Thus, this surplus gas is not "new gas" as defined in the bill.

S. 2310 does not specifically allow for emergency purchases and unregulated prices between interstate pipelines or between interstate pipelines and distributors. Such provisions could provide opportunities for sale of natural gas from companies with a temporary surplus to companies that are short of supply. This type of provision is found in the Administration's bill.

Finally, the provision in S. 2310 that would restrict the wellhead prices of intrastate gas is a large step toward the regulation of intrastate sales. We believe that this would be self-defeating because the mere threat of such type of legislation will discourage investment in exploratory and development drilling onshore. If there is one lesson to be learned from recent experience with respect to intrastate operations, it is that the unfettered right of the buyers and sellers to negotiate prices for natural gas has stimulated an extensive exploratory and development effort in the producing states.

Accordingly, it is respectfully submitted that at this time Congress should promptly adopt appropriate 180-day emergency legislation. This will be, in our view, the best hope for alleviating to some extent the critical gas shortage confronting us this winter.

Respectfully yours,

RICHARD A. ROSAN.

AMERICAN PUBLIC GAS ASSOCIATION,
September 17, 1975.

DEAR SENATOR: The American Public Gas Association, an association composed of over 200 publicly-owned gas systems in more than 40 states, is certainly in favor of legislation that would alleviate the threatened shortage of natural gas this winter.

The Association therefore urges your support for the provisions in Senator Hollings' "Natural Gas Emergency Act of 1975 (S. 2310)" which would allow so-called "priority" purchasers first access to gas from the Outer Continental Shelf; which would prohibit certain power plants from burning natural gas; which would authorize the Secretary of the Interior to order natural gas production at maximum efficient and emergency production rates from fields on Federal lands; and which would authorize the FPC to order interconnections between pipelines.

We strongly urge, however, that you oppose Section 4 of the bill which would allow interstate pipelines to purchase gas in the unregulated intrastate market at unregulated prices. Because the effect of such a provision would be detrimental to consumers, the American Public Gas Association at its annual convention held this past August, adopted a resolution opposing 180-day deregulation.

Moreover, in a case now before the Supreme Court, the D.C. Circuit Court of Appeals in a suit brought by the Consumer Federation of America and the American Public Gas Association ruled that the Federal Power Commission had acted illegally in 1973 by permitting such 180-day exempted sales of natural gas. The Court found that the FPC's Order 491 "convinces us that the Commission has exceeded its authority under the Act. In essence, it has attempted to remedy the shortfall of supply in the interstate market by authorizing a supplemental injection of large quantities of gas through sales freed from the constraints of meaningful regulation." (*CFA, et al. v. FPC*, U.S. App. D.C. 25, 26, March 13, 1975).

The Court stated further that "In this case, we are reviewing an order expressly intended to elicit large volume sales. The exemption it provided extended to all producers, and authorized sales of unlimited quantities of gas for a period that is not merely half the calendar year but spans an entire heating season. At a time when curtailment and shortages are projected for the foreseeable future, the Commission's 1973-74 position is tantamount to a claim of authority to continue this vast 180-day exemption indefinitely." (*CFA, et al. v. FPC*, U.S. App. D.C., 15, March 13, 1975). It is precisely this argument that is now before the Supreme Court. Therefore, we feel it incumbent on the Senate to wait until the Court has made some determination in this case.

It might be helpful to point out that in a parallel case where the FPC attempted to deregulate small producers, the Supreme Court concluded that the Commission "is free to engage in indirect regulation of small producers by reviewing pipeline costs of purchased gas, providing that it insures that rates paid by pipelines, and ultimately borne by the consumer, are just and reasonable." But, the Court found, that the FPC's Order 428 could not "stand in its present form" because of its failure to state clearly that producers would be allowed to receive and pipelines would be authorized to collect only just and reasonable rates. (*FPC v. Texaco*, 417 U.S. 380 (1974).) In short, the proposal to allow short-term deregulation contained in the Hollings bill undermines the "just and reasonable" standard of the Natural Gas Act. And since it is likely, given the

current anti-competitive structure of the natural gas producing industry, that the shortages will continue, Congress will grant the producers that which they have been unable to gain at the FPC and in the Courts. They will have broken the bond of regulation, and that small crack will assuredly become a wide chasm, despite the bill's proviso that the deregulation will expire in less than a year's time.

There is, however, another means whereby the Congress can aid the gas customers in the interstate market. Under the Commerce clause of the U.S. Constitution, the Federal Power Commission has, at present, the authority to prohibit discrimination against interstate gas users. The FPC could, if it wanted to, regulate the intrastate market to obtain the gas necessary for the coming winter heating season. Since it appears that the FPC is reluctant to use this authority, Congress could lend the Commission a helping hand by mandating regulation of the intrastate market.

Such regulation would stop the flow of gas from the interstate to the intrastate market. It would inhibit producers (who are also purchasers in the intrastate market) from diverting gas from the interstate to the intrastate market in the expectation of greater profits from unregulated prices. Moreover, the FPC could during the emergency period allocate supplies from the areas of excess supply to the areas of supply deficiency.

While the members of this Association know full well the kinds of hardships that result when their supplies are curtailed, these municipal systems do not lose sight of the fact that once even temporary deregulation is allowed, total deregulation will not be far behind, for this is precisely what has happened to controls over oil prices.

In sum, it is necessary for Congress to enact swiftly legislation to deal effectively with natural gas shortages. Efforts to conserve gas and increase production from Federal lands must be enacted. However, we strongly urge you not to vote for provisions which would undermine consumer protection through temporary, or partial, deregulation of natural gas prices.

Very truly yours,

EDWARD E. COBB,
President.

FEDERAL ENERGY ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., September 16, 1975.

HON. ERNEST F. HOLLINGS,
Vice Chairman, Special Subcommittee on Oil and Natural Gas Production and Distribution, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. HOLLINGS: I appreciated the opportunity to testify yesterday before the Commerce Committee on natural gas emergency legislation and am pleased to submit for the record specific information which was requested by various members of the committee.

S. 2310, which you have co-sponsored with Senators Glenn and Talmadge, would establish area ceiling prices for all intrastate sales of natural gas based on the average sales price for contracts entered into or renewed during the Month of August 1975. We are strongly opposed to any extension of natural gas regulation to the intrastate market, even in the context of emergency legislation. The current system of interstate price regulation is the principal reason for the present natural gas shortages, as the artificially low price set by the Federal Power Commission inhibits production and encourages excessive consumption. The setting of intrastate prices not only would create an immense unnecessary administrative burden, but even in the short term the uncertainties stemming from possible lawsuits challenging ceiling rates will very likely impede the flow of additional intrastate gas into the interstate pipeline system—a goal which we all agree is essential if we are to react in a timely manner to the curtailments this winter.

While the area ceiling prices proposed in S. 2310 might exceed the average prices of current intrastate natural gas sales, it would be below marginal or "spot" prices. In some instances, this could result in some priority interstate purchasers not being able to obtain sufficient amounts of gas to meet the needs of essential users, because producers would probably prefer to sell to intrastate purchasers at the ceiling price rather than commit their gas to the interstate market for the duration of the emergency legislation.

As to the practical matter of determining intrastate prices, we are submitting the following information at your request. While the Federal Power Commission

does not now regulate intrastate prices set by natural gas companies who also sell natural gas to the interstate market, it does collect data on intrastate prices from such companies. It is estimated that these companies supply at least 80 percent of the gas sold in the intrastate market. The attached table indicates the range of intrastate prices in the Texas Gulf Coast area for the first seven months of this year. August figures are not yet available, and the Federal Power Commission has not assembled data from the other producing areas. Only 16 contracts were executed in the month of July, as compared with 145 for the January-July period. The data suggest that ceiling prices, if established for each area on the basis of August 1975 prices, would be unrepresentative and should probably be based on a larger sample than that available during a single month.

There are some significant differences between the natural gas powerplant conversion sections of the Administration's bill and that of S. 2310. The Administration's bill would prohibit electric utility and industrial *use of* natural gas provided oil could be used as an alternative fuel and the necessary plant equipment to burn oil were installed. S. 2310 would apply only to gas powered electrical generating facilities. Based on 1974 consumption data, and assuming every natural gas boiler could be converted to coal or oil, approximately 3.5 Tcf could be saved in the utility sector and an additional 3.5 Tcf in the industrial sector. However, not all gas-fired boilers are convertible to the long-run use of oil, mainly because alternative fuel burning capability does not exist, and because of the difficulties in transporting oil from refineries to the point of use.

Based on preliminary data, the Federal Power Commission has identified 17 large powerplants in the West-South Central region that could convert immediately from natural gas to continuous oil use. This would result in a saving of 180 Bcf annually. We do not have data for other regions of the country. FEA, in a recent survey of approximately 2400 large industrial boilers using over 100,000 cubic feet of natural gas per hour, concluded that approximately 35 percent could be converted from natural gas to oil if no difficulties were encountered in delivering oil to the plant site. An additional 16 percent of these boilers could be converted within several months from natural gas to other fuels (coal, wood bark, and other sources). Assuming conversion of 51 percent of these industrial boilers to other fuels, approximately 800 Bcf could be saved annually. While the conversion authorities could have a measurable impact for the 1976-1977 heating season, they would have limited effect in coping with the short-term emergencies this winter. In this respect, the duration of the amendments provided in the Administration's bill, a full year longer than S. 2310, is more realistic.

In addition to these important differences in the scope and duration of the conversion authorities, several provisions in S. 2310 regarding administrative implementation could reduce "gas savings" by imposing unnecessary delay in the exercise of the conversion authorities. For example, the requirement in section 6(a) that conversion of a particular powerplant could not take effect until the Administrator of the Environmental Protection Agency has determined that all "State environmental protection laws" can be met could delay EPA certifications because of its unnecessarily broad and ambiguous scope. Similarly, conditioning issuance of orders on the additional finding in section 6(a) that natural gas to be freed up as the result of a prohibition order "could be made available, directly or indirectly, to a priority interstate purchaser" is ambiguous and could delay issuance of orders.

Regarding this committee's request for information on the elasticity of gas supply, we estimate that the long-run positive supply elasticity is in the range of 0.2 to 0.5 with respect to the wellhead price for natural gas. However, as I indicated in my testimony, there is not expected to be any prices for natural gas because of the long lead time required to explore for, drill and complete gas producing wells.

I look forward to working closely with the committee in developing necessary natural gas emergency legislation which will meet the needs of the Nation.

Sincerely,

FRANK G. ZARB,
Administrator.

Attachment.

TABLE I.—INTRASTATE NATURAL GAS CONTRACT PRICES IN THE TEXAS GULF COAST AREAS FROM
FPC FORM 45¹

Price range	Number of contracts	
	July 1975	January–July 1975
Under \$0.75.....	2	13
\$0.75 to \$1.00.....	0	11
\$1.01 to \$1.25.....	0	12
\$1.26 to \$1.50.....	1	8
\$1.51 to \$1.75.....	3	23
\$1.76 to \$2.00.....	7	66
\$2.01 to \$2.25.....	3	11
\$2.26 and above.....	0	1
Total.....	16	145

¹ These are new contract prices as well as renegotiated prices under existing contracts.

FEDERAL POWER COMMISSION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., September 15, 1975.

Hon. VANCE HARTKE,
U.S. Senate, Washington, D.C.

DEAR SENATOR HARTKE: At the conclusion of today's hearing, you requested that I supply you, if at all possible today, with an analysis of the cost to gas consumers of S-2310. As you know, it is not possible to conduct a cost-benefit analysis of a proposal which will broadly impact upon interstate gas consumption, pipelines and the economy of various regions of the nation. However, it is feasible to give you a preliminary framework of the cost impact upon pipelines and ultimate consumers without quantifying in a cost-benefit analysis the "net cost" to the economy.

I have enclosed a preliminary staff analysis of the impact on natural gas consumers of S-2310. The staff analysis would indicate that the impact on consumers of major curtailed pipelines utilizing the Columbia Gas Transmission Corporation as an energy model, may range an additional 5-10 cents per Mcf. If we assume 250 Bcf (or 250 million Mcf) were to be committed and delivered to the interstate market for the winter of 1975-1976 that would otherwise not be delivered, the gross cost of purchased gas may range from \$310 million at an assumed price of \$1.25 to \$425 million at an assumed price of \$1.75.

However, rolling in the incremental quantities of gas at the assumed prices to all purchased gas costs of the four major curtailed pipelines analyzed would result in an added gross cost to consumers ranging from 5-20 cents per Mcf. Therefore, if a consumer used 200 Mcf per year, the gross increase in purchased gas costs would be \$10-\$20. A consumer using 100,000 Mcf would experience an increase in gas costs to \$5,000-\$20,000 without considering adjustments for demand-commodity rate design schedules.

You will note the concluding paragraph of the staff study to the effect that there is no quantification of offsetting benefits to consumers from both load factors in the more efficient utilization of pipeline capacity or the "cost" to society or the economy of aggravated unemployment which may result from the lack of the assumed quantities of natural gas for "essential users" served by "priority interstate purchasers."

While our preliminary study of July 1975 intrastate prices would indicate levels at the range of \$1.25, as stated in my testimony, this price is derived from some twenty jurisdictional gas companies selling in the intrastate market and is by no means a definitive price. Accordingly, assumed price ranges of \$1.25-\$1.75 may be a more valid representation of "costs" than to utilize the effects of a preliminary analysis.

Secondly, the increment of 250 billion cubic feet is assumed to be an absolute addition to interstate supply which could not otherwise have been committed at a

the basis of a fixed assumption that is not predictable. To predict the price elasticity of supply is an evanescent occupation of economists. The only certainty is that the supply response is unpredictable. I believe that higher price lower price. The staff analysis recognizes this fact and establishes "cost" on levels established by this emergency legislation will attract substantial additional quantities of natural gas, but the actual "cost" is too variable to quantify.

I have also enclosed the following reports:

1. A "Preliminary Evaluation of the Cost of Natural Gas Deregulation" by the Federal Power Commission Intra-Agency Task Force, January 1975;
2. "The Consumer Costs of Deregulation of the Field Price of Natural Gas"—A Staff Analysis by Marquis R. Seidel, Office of Energy Systems, Hayden G. Bryan, Bureau of Natural Gas, Federal Power Commission, April 28, 1975; and

Letter of August 29, 1975 to Senator James B. Pearson, analyzing the cost and benefits of key proposals relating to deregulation of natural gas pending before the Senate Commerce Committee (namely S. 692, Commerce Committee Bill, Amendment No. 586, Senator Pearson, S. 594, Administration Bill).

Sincerely,

JOHN N. NASSIKAS, *Chairman.*

Enclosures.

PRELIMINARY STAFF ANALYSIS OF IMPACT ON CONSUMERS OF S 2310

The purpose of this report is to provide an analysis of the impact upon natural gas consumers of the proposed legislation S-2310.

The purpose of the bill is to provide additional natural gas to certain interstate pipeline companies to minimize the detrimental effects of natural gas curtailments for the forthcoming winter period, 1975-1976, by permitting sales by producers to such pipelines at rate levels equal to the average price of intrastate sales from contracts executed during the month of August 1975. The analysis consists of (a) a determination of the approximate impact on sales by interstate pipelines and upon rates to ultimate consumer of higher priced natural gas supply purchases attributable to S-2310, and (b) an evaluation of the effects of additional curtailment of industrial consumers under the assumption that the subject additional volumes of supply are not available to the interstate pipeline market, and that industrial dislocations or unemployment will result therefrom.

The impact upon sales of natural gas by priority interstate pipeline companies can be approximated by computing the effect of these higher-priced gas supplies upon the existing weighted average cost of purchased gas.

An adjusted weighted average can then be derived by assuming the purchase of additional volumes of natural gas equivalent to the incremental increase in curtailed volumes projected for the 1975-1976 winter as compared to actual curtailments during the 1974-1975 winter period.

The range of prices for additional natural gas purchases under the S-2310 approach of using August 1975 as a benchmark for pricing may be estimated at \$1.25 per Mcf, \$1.50 per Mcf and \$1.75 per Mcf as a basis for "cost" impact. There are over 25 major pipelines undergoing curtailment. However, it is not possible in a few hours to quantify impacts on all curtailed pipeline systems. However, an analysis of the Columbia Gas Transmission Corporation may be utilized as a framework to forecast on a crude basis the impact of S-2310 upon purchased gas costs of other major pipeline systems. In addition, we may consider the effect of S-2310 in reducing projected curtailments on three other major pipeline systems. In addition to Columbia, the three systems analyzed are Panhandle Eastern Pipeline Company, Transcontinental Gas Pipe Line Corp. and Texas Eastern Transmission Corp.

The following chart illustrates the increase in projected curtailment of firm natural gas requirements for these pipelines over last winter's actual curtailments, and provides an indication of the approximate additional amount of gas needed to restore the deficiency to 1974-1975 levels, which did not involve substantial adverse impact concerning industrial dislocation.

[In billions of cubic feet]

	Actual curtailment 1974-75 winter	Projected curtailment 1975-76 winter	Difference
Columbia.....	182	235	53
Panhandle.....	61	86	25
Transco.....	124	180	56
Texas Eastern.....	99	117	18
Total.....	466	618	152

The currently effective weighted average cost of purchased gas for these pipelines and their approximate 1975-1976 winter sales volumes are shown below:

	Cents per M cf	1975-76 firm sales (approximate) (B cf) ¹
Columbia.....	² 55.8	617
Panhandle.....	31.3	275
Transco.....	31.2	317
Texas Eastern.....	44.1	348

¹ Source: FPC form No. 16, filed April 1975.

² Columbia purchases substantial quantities from other interstate pipeline companies. Hence, the higher purchase-cost of 55.8 cents per M cf compared to the other pipelines shown above which purchase substantial quantities from producers at the wellhead.

The impact of additional purchases at higher unit prices under S-2310 can be computed by adding the cost of these additional volumes to the current cost of purchased gas and recomputing the new weighted average. The results of this computation for Columbia are shown below:

[Cents per million cubic feet]

	Current cost of purchased gas	Adjusted cost of purchased gas	Difference
Columbia:			
\$1.25.....	55.8	61.3	5.5
\$1.50.....	55.8	63.3	7.5
\$1.75.....	55.8	65.3	9.5

Similar impacts upon the cost of purchased gas are expected for the other pipelines.

The impacts shown above on Columbia's gas system indicate that the approximate range of increases in the price of natural gas if 53 Bcf was committed and delivered to the interstate market during the 1975-1976 winter at the indicated price ranging between \$1.25-\$1.75 would be between 5-10 cents per Mcf.

In the case of Transco's system, with a staff projected additional curtailment for the 1975-1976 winter of 56 billion cubic feet in excess of the 1974-1975 winter curtailment and with an average purchased price of 31 cents per Mcf for 317 Bcf of firm sales in 1975-1976, the injection of 56 Bcf of gas at prices ranging from \$1.25-1.75 will increase the cost to Transco customers by an additional \$50 million at \$1.25 and by \$75 million at \$1.75, or an increase in the average purchased gas costs per Mcf on that system ranging from 14-20 cents.

This rough staff study does not propose to quantify offsetting benefits represented by the benefit to consumers from full utilization of pipeline capacity or possible conservation savings as the result of higher prices leading to more efficient utilization of fuels or the "cost" to society or the economy of aggravated unemployment resulting from the lack of the assumed quantities of natural gas for "essential users" served by "priority interstate purchasers" or the effect on productivity or inflationary impact resulting from essential industrial production being curtailed. Moreover, it would seem a desirable tradeoff to secure additional natural gas supply even at the assumed higher intrastate price August 1975 level than to place economic recovery at risk or jobs in jeopardy.

