

Ronald Reagan Presidential Library  
Digital Library Collections

---

This is a PDF of a folder from our textual collections.

---

**Collection:** Kruger, Robert M.: Files  
**Folder Title:** RMK/Energy Proposal/Alaska  
Natural Gas Exports (2)  
**Box:** OA 18391

---

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: [reagan.library@nara.gov](mailto:reagan.library@nara.gov)

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

THE WHITE HOUSE

WASHINGTON

July 13, 1987

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: ROBERT M. KRUGER 

SUBJECT: National Finding to Permit  
Export of North Slope Gas

Eugene J. McAllister, Executive Secretary of the Economic Policy Council, sent the attached matter directly to me for a response. I am forwarding it to you for input into the system and for appropriate staffing.

Attachment



THE WHITE HOUSE

WASHINGTON

July 13, 1987

MEMORANDUM FOR ROBERT M. KRUGER

FROM: EUGENE J. McALLISTER *EM*

SUBJECT: National Finding to Permit Export of North Slope Gas

The Economic Policy Council will be considering next week a proposal for the President to issue a national finding under Section 12 of the Alaska Natural Gas Transportation Act (ANGTA) permitting the export of natural gas from Alaska.

The Working Group considered two options: (1) issue a national finding for the TAGS project, which does not appear to be an economically viable project; or (2) instead issue a broader, generic policy permitting the export of all natural gas from Alaska.

I would appreciate having Counsel's view whether: (1) the President can issue such a broad statement; and (2) what justification would have to be provided for such a broad statement.

I am attaching a draft working group paper that provides background on both the policy and legal issues.

Please give me a call if you have any questions. Thanks very much for your help.

attachment

cc: Nancy J. Risque

# DRAFT

## MEMORANDUM

JUL 10 1987

FOR: THE ECONOMIC POLICY COUNCIL

ISSUE: Should the President issue a finding which would permit the export of Alaskan North Slope natural gas to Japan and other nations?

### SUMMARY

Section 12 of ANGTA provides that before North Slope Alaskan natural gas can be exported to nations other than Canada or Mexico, the President must find that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

The 1983 Reagan-Nakasone Joint Policy Statement encouraged a pre-feasibility study by Japan and U.S. firms on the joint development of Alaskan gas. The pre-feasibility study has been completed at considerable expense to the private parties. A private sector project (TAGS) based on that pre-feasibility study is now being proposed to export Alaskan North Slope natural gas to Japan, Taiwan and Korea. The TAGS sponsor is requesting a Presidential finding.

An analysis of world oil and gas markets shows that the export of Alaskan North Slope gas would not diminish the quantity or quality or increase the price of energy available to the United States primarily because adequate supplies of natural gas are potentially available in the lower 48 states, Canada, and Mexico at a lower delivered cost.

Issuance of a Presidential finding is consistent with the Administration's policy of removing regulatory impediments to allow the full utilization of our domestic energy resources.

Opposition to a finding can be expected from supporters of the ANGTS project (a pipeline proposal, dormant since 1982, designed to bring Alaskan and Canadian gas to the lower-48 through Alaska and Canada), and from some members of Congress who would not favor exporting U.S. energy resources.

## BACKGROUND

In November, 1983, the President and Prime Minister Nakasone issued a Joint Policy Statement on Japan-U.S. Energy Cooperation. With respect to natural gas, the Statement provided that

The U.S. and Japan will encourage private industry in both countries to undertake now the pre-feasibility or feasibility studies necessary to determine the extent to which Alaskan natural gas can be jointly developed by U.S. and Japanese interest.

Subsequently, a joint pre-feasibility study was undertaken by ARCO, Japan, and Yukon Pacific for an Alaska Asia Gas System (AAGS) to export Alaskan North Slope natural gas to Japan. The study assumed an 800 mile pipeline to transport the gas to a port facility where it would be liquefied and shipped via tanker to buyers. The AAGS pre-feasibility study was completed June 1, 1987.

Yukon Pacific Corporation was formed in 1983 to bring about a private sector project called the Trans-Alaska Gas System (TAGS). Yukon Pacific does not own Alaskan North Slope Gas.

The TAGS project consists of the 800 mile pipeline and liquefaction facilities examined in the AAGS study project. Tags will require numerous permits and authorizations at the Federal level, including a Presidential Finding under Section 12 of ANGTA. The relevant portion of Section 12 provides that

...before any Alaska natural gas in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

Yukon Pacific estimates the TAGS project (pipeline, liquefaction plant and conditioning plant on the North Slope) will cost \$8.6 billion. They foresee a market of 3 to 3.5 million tons of Liquefied Natural Gas (LNG) demand in Japan by the year 1995. An additional 3.5 to 4 million tons LNG demand from Korea and Taiwan in the same time frame would assure the project's economic feasibility.

Yukon Pacific is applying for the necessary U.S. Government authorizations and approvals. In addition to the Section 12 finding, these include



- o Export authorization from the Economic Regulatory Administration under Section 3 of the Natural Gas Act;
- o Right-of-way grant from DOI Bureau of Land Management under Section 28 of Mineral Leasing Act of 1920;
- o Export exemption from the Department of Commerce under Section 103 of the Energy Policy and Conservation Act;
- o Federal Energy Regulatory Commission "place of export" approval under Section 3 of the Natural Gas Act; and
- o Wetland permit from the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act.

The TAGS project appears to pose no unusual problems in securing these necessary approvals.

The Alaska Natural Gas Transportation System (ANGTS) project was authorized by the U.S. through ANGTA in 1976 to transport North Slope and Canadian gas through Alaska and Canada to the lower 48 states. Construction was halted in 1982 after only a portion of ANGTS (the "prebuild") was completed because the high cost of transporting the gas would make it unmarketable.

### JUSTIFICATION FOR A PRESIDENTIAL SECTION 12 FINDING

Currently, the only concrete project which proposes to get North Slope natural gas to a market is the ANGTS project, which would move the gas across Canada and into markets in the U.S. The ANGTS project is currently not economic. A major impediment to other projects is the requirement for a Presidential finding under Section 12 of ANGTA.

By making other projects viable, a generic Section 12 finding by the President would increase the likelihood that Alaskan North Slope natural gas will be produced and either exported or consumed domestically -- whichever is most efficient and economic will occur first.

Analysis shows that the President has the flexibility to make a finding which satisfies the three criteria specified in Section 12 of ANGTA:

Quantity of energy available to the U.S. -- If North Slope natural gas gets produced and consumed, that gas will increase energy available to the United States. This is true whether the gas is exported or consumed domestically. The production of North Slope

gas increases the supplies of gas available worldwide. Since gas is traded in international markets, an increase in the availability of gas anywhere increases the available supply to all importing countries. Assuming no barriers to free trade, the gas will move to its most efficient and economic use. If, for example, North Slope gas were exported to the Pacific Rim, natural gas from Canada, Mexico, Indonesia and other sources that would otherwise have gone to the Pacific Rim market would become available for transport to the United States.

In addition the Energy Security study and other analyses show that, even without North Slope natural gas, adequate natural gas supplies exist to meet projected U.S. natural gas demand for the foreseeable future. These supplies include lower-48 gas production and Canadian gas. If demand were higher than currently projected, additional gas supplies are potentially available from Canada, Mexico and unconventional gas supplies, including deep gas in the lower-48.

Quality of energy available to the U.S. -- Natural gas is a high quality, uniform product. Unlike crude oil, there is no quality difference among lower-48, North Slope, Canadian, Mexican, or other forms of natural gas. Export or domestic use of North Slope gas would likely have no effect on the quality of energy available in the U.S. Quality of energy can also refer to the security of supply of the energy. Production of North Slope natural gas increases the world's availability of a secure energy source that will likely displace less secure energy, including oil in the Persian Gulf. By increasing the likelihood of production of North Slope gas, a generic Presidential finding increases the security of supply of energy to the U.S. and our allies, regardless of whether the gas is exported or consumed in the U.S.

Price of energy available to the U.S. -- Natural gas and other energy prices in the United States are determined primarily by the world oil price and by the cost of production of domestic energy sources. Future oil prices depend largely on OPEC behavior which depends to a large extent on the market for OPEC crude oil. Lower future oil demand would likely result in a lower future oil price.

A generic Section 12 finding would increase the probability of North Slope gas getting into world gas markets. By increasing world availability of natural gas, which is the closest substitute for crude oil, there will be less demand for crude oil and lower world oil prices. Lower world oil prices will reduce energy prices in the U.S. This likely consequence of producing North Slope natural gas is true, to the same extent, whether or not the North Slope gas is exported to the Pacific Rim or consumed in the U.S.



## DISCUSSION

The TAGS project proposal is currently based on the pre-feasibility study called for in the 1983 Reagan-Nakasone Joint Policy Statement.

TAGS project supporters include Yukon Pacific (the sponsor), and the Governor and the entire Congressional delegation of Alaska. Alaska's primary interest is the timely development of North Slope natural gas reserves.

ANGTS project sponsors have stated that approval of the TAGS project would violate U.S. commitments to ANGTS. There is a risk that suits may be brought by ANGTS sponsors.

THE CANADIAN GOVERNMENT has expressed concern that the U.S. respect previous agreements on ANGTS. The "prebuild portion is currently being used to transport Canadian gas to the lower-48. DOE and others have gone on record that U.S. commitments to ANGTS have been fulfilled. Canada desires consultations before any authorizations are granted for TAGS.

THE JAPANESE GOVERNMENT has not rejected the possibility of importing Alaskan LNG, but in June, 1987 reopened longstanding discussions with the Soviets for Sakhalin Island gas. Japan is also continuing discussions with other countries for LNG imports. The first phase of the TAGS project would be comparable in size to, and thus a possible substitute for, the Sakhalin gas project.

CONGRESSIONAL CONCERNS. Although the Alaskan Congressional delegation supports the TAGS project, some members of Congress may view the export of North Slope gas unfavorably on the grounds that (1) midwestern consumers may need that gas at some point in the future; (2) we should not be exporting U.S. energy if our domestic needs require the development of the Arctic National Wildlife Refuge (ANWR); and (3) an adverse reaction from Canada could burden ongoing trade negotiations with the U.S. Congress may attempt to override the finding as the House sought to do in H.R. 3, which overrides a recent Presidential Finding that allows export of Cook Inlet oil.

The following considerations also bear on a Presidential finding:

- o The U.S. Government made commitments to Canada that it would remove regulatory impediments to the construction and initial operation of the ANGTS project and encouraged construction of the "prebuild" portion. These commitments have

been fulfilled. But ANGTS sponsors argue that a finding may further impair the completion of the ANGTS project because the North Slope gas reserves may be insufficient for both the ANGTS and the TAGS projects.

- o While many considerations bear on the successful negotiation of an export arrangement, a Section 12 finding would facilitate that process. Natural gas exports to Japan, Korea, and Taiwan would have a beneficial effect on the U.S. balance of trade with Pacific Rim countries.
- o A Section 12 finding would be a tangible action to show our continuing commitment to the gas export issue. Such action would also be consistent with current legislative efforts to remove regulatory impediments and trade barriers, and would require no separate legislative effort.

## OPTIONS

### **OPTION 1: ISSUE PRESIDENTIAL FINDING TO REMOVE AN IMPEDIMENT TO THE EXPORT OF ALASKAN NORTH SLOPE NATURAL GAS**

Exercise of this Option assumes consultations with the Canadian Government to address their ANGTS concerns prior to issuance of a Presidential finding.

#### Pro

- o A Section 12 finding will remove a high-level, visible government "impediment" to allowing the marketplace to determine the most efficient development and use of North Slope gas.
- o A Section 12 finding will facilitate negotiation and execution of arrangements concerning North Slope gas with producers, potential customers, and financial institutions.
- o A Section 12 finding will permit continuation of the effort by private parties to secure significant employment and other economic benefits, especially for the State of Alaska, but also for the U.S. generally. Construction of pipeline and facilities will boost the Alaskan economy and U.S. economy and royalties and taxes on gas will replace the decreasing revenue which Alaska receives from oil.



# DRAFT

- o A Section 12 finding will encourage development of an important gas supply which may otherwise remain in the ground. It may stimulate additional exploration for and development of gas supplies on the North Slope.
- o A Section 12 finding could encourage Canadian development of gas in the MacKenzie Delta since the potential availability of North Slope gas for U.S. consumption through ANGTS may chill development of Canadian gas for U.S. markets.

## Con

- o Canada may regard a Section 12 finding as a breach of previous U.S. commitments, even if such a finding is not the reason for non-completion of ANGTS. This could make ANGTS an issue in ongoing "free trade negotiations" between the U.S. and Canada.
- o The North Slope gas may be viewed by some as a "strategic gas reserve" (in effect, a "bank" to meet future domestic needs).
- o A Section 12 finding may increase concerns of environmentalists regarding economic/energy development of Alaska in general, and of ANWR in particular.

## **OPTION 2: DO NOT ISSUE PRESIDENTIAL FINDING**

The Cons listed for Options 1 support this Option. Further considerations for deferral of a section 12 finding are:

## Pro

- o It may be possible to avoid concerns raised by Canada in trade negotiations and to avert sensitivity to the development of ANWR.

## Con

- o Failure to act now would effectively kill the TAGS project.
- o Delaying the decision may foreclose the Japanese market as they seek supplies from the Soviets and elsewhere.



# DRAFT

- o Failure to issue a section 12 Presidential finding could be viewed as a departure from Administration commitments to removal of regulatory impediments to private sector projects.
- o New private sector initiatives to develop North Slope natural gas resources would be discouraged.

## RECOMMENDATION

# DRAFT

DRAFT PRESIDENTIAL STATEMENT REGARDING NORTH SLOPE NATURAL GAS

JUL 10 1967

My Administration has been dedicated to encouraging free trade and to removing regulatory impediments that inhibit the development of our Nation's natural resources. There are over 31 trillion cubic feet of natural gas reserves in the Prudhoe Bay area of Alaska's North Slope -- this represents about 15% of U.S. gas reserves. To date those reserves have remained in the ground because of legal and economic constraints on marketing that gas.

Production of North Slope natural gas would increase the world's availability of a secure energy source that will likely displace less secure energy, including oil from the Persian Gulf. Because world energy markets are interconnected, this is true whether the gas is consumed domestically or exported.

Section 12 of the Alaskan Natural Gas Transportation Act provides that before North Slope gas can be exported to nations other than Canada or Mexico, the President must find that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States. The Section 12 requirement represents a direct impediment to the ability of North Slope gas producers to select transportation projects that get their gas to the most efficient and economic markets -- markets which may or may not be domestic. It is not an appropriate role of the U.S. government to determine which, if any, private sector project is the most efficient and economic means of marketing domestic resources.

Based on an assessment of the situation, I hereby find that removing impediments to the production and use of Alaskan North Slope gas is in the national interest and that the export of that gas in quantities in excess of 1,000 Mcf per day will not diminish the total quantity or quality nor increase the total price of energy available to the United States. I make this finding primarily because the production of North Slope gas will reduce oil consumption and oil prices worldwide, and because adequate supplies of natural gas are potentially available from the Lower-48 states, Canada, Mexico and other sources at a lower delivered price than North Slope gas.

I am hopeful that removing this regulatory impediment will increase the chances that one of several competing projects will become viable so that we can begin to harness and benefit from development of North Slope natural gas.



**§ 6212. Domestic use of energy supplies and related materials and equipment****(a) Export restrictions**

The President may, by rule, under such terms and conditions as he determines to be appropriate and necessary to carry out the purposes of this chapter, restrict exports of—

(1) coal, petroleum products, natural gas, or petrochemical feedstocks, and

(2) supplies of materials or equipment which he determines to be necessary (A) to maintain or further exploration, production, refining, or transportation of energy supplies, or (B) for the construction or maintenance of energy facilities within the United States.

**(b) Exemptions**

(1) The President shall exercise the authority provided for in subsection (a) of this section to promulgate a rule prohibiting the export of crude oil and natural gas produced in the United States, except that the President may, pursuant to paragraph (2), exempt from such prohibition such crude oil or natural gas exports which he determines to be consistent with the national interest and the purposes of this chapter.

(2) Exemptions from any rule prohibiting crude oil or natural gas exports shall be included in such rule or provided for in an amendment thereto and may be based on the purpose for export, class of seller or purchaser, country of destination, or any other reasonable classification or basis as the President determines to be appropriate and consistent with the national interest and the purposes of this chapter.

**(c) Implementing restrictions**

In order to implement any rule promulgated under subsection (a) of this section, the President may request and, if so, the Secretary of Commerce shall, pursuant to the procedures established by the Export Administration Act of 1979 [50 App.U.S.C.A. § 2401 et seq.] (but without regard to the phrase "and to reduce the serious inflationary impact of foreign demand" in section 3(2)(C) of such Act [50 App.U.S.C.A. § 2402(2)(C)]), impose such restrictions as specified in any rule under subsection (a) of this section on exports of coal, petroleum products, natural gas, or petrochemical feedstocks, and such supplies of materials and equipment.

**(d) Restrictions and national interest**

Any finding by the President pursuant to subsection (a) or (b) of this section and any action taken by the Secretary of Commerce pursuant thereto shall take into account the national interest as related to the need to leave uninterrupted or unimpaired—

(1) exchanges in similar quantity for convenience or increased efficiency of transportation with persons or the government of a foreign state,



(2) temporary exports for convenience or increased efficiency of transportation across parts of an adjacent foreign state which exports reenter the United States, and

(3) the historical trading relations of the United States with Canada and Mexico.

**(e) Waiver of notice and comment period**

(1) The provisions of subchapter II of chapter 5 of Title 5 shall apply with respect to the promulgation of any rule pursuant to this section, except that the President may waive the requirement pertaining to the notice of proposed rulemaking or period for comment only if he finds that compliance with such requirements may seriously impair his ability to impose effective and timely prohibitions on exports.

(2) In the event such notice and comment period are waived with respect to a rule promulgated under this section, the President shall afford interested persons an opportunity to comment on any such rule at the earliest practicable date thereafter.

(3) If the President determines to request the Secretary of Commerce to impose specified restrictions as provided for in subsection (c) of this section, the enforcement and penalty provisions of the Export Administration Act of 1969 [50 App.U.S.C.A. § 2401 et seq.] shall apply, in lieu of this chapter, to any violation of such restrictions.

**(f) Quarterly reports to Congress**

The President shall submit quarterly reports to the Congress concerning the administration of this section and any findings made pursuant to subsection (a) or (b) of this section.

(Pub.L. 94-163, Title I, § 103, Dec. 22, 1975, 89 Stat. 877; Pub.L. 96-72, § 22(b) (1), Sept. 29, 1979, 93 Stat. 535.)

**Historical Note**

**References in Text.** This chapter, referred to in subsecs. (a), (b), and (e)(3), in the original read "this Act", meaning Pub.L. 94-163, Dec. 22, 1975, 89 Stat. 871, known as the Energy Policy and Conservation Act, which enacted this chapter and sections 757 to 760h and 2001 to 2012 of Title 15, Commerce and Trade, amended sections 753, 754, 755, 792, 796, and 1901 of Title 15 and section 2071 of the Appendix to Title 50, War and National Defense, enacted provisions set out as notes under section 6201 of this title, sections 753 and 796 of Title 15, and section 2071 of the Appendix to Title 50, and repealed provisions formerly set out as a note under section 1904 of Title 12, Banks and Banking.

The Export Administration Act of 1979, referred to in subsec. (c), is Pub.L. 96-72, Sept. 29, 1979, 93 Stat. 503, which is classified principally to sections 2401 to 2420 of the Appendix to Title 50, War and National

Defense. For complete classification of the Act to this Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables volume.

The Export Administration Act of 1969, referred to in subsec. (e)(3), is Pub.L. 91-184, Dec. 30, 1969, 83 Stat. 841, as amended, which was formerly classified to sections 2401 to 2413 of the Appendix to Title 50 and was terminated on Sept. 30, 1979, pursuant to the terms of that Act.

**1979 Amendment.** Subsec. (c). Pub.L. 96-72 substituted "1979" for "1969" and "(C)" for "(A)".

**Effective Date of 1979 Amendment.** Amendment by Pub.L. 96-72 effective upon the expiration of the Export Administration Act of 1969, which terminated on Sept. 30, 1979, or upon any prior date which the Congress by concurrent resolution or the Presi-



**WHITE HOUSE  
CORRESPONDENCE TRACKING WORKSHEET**

*TADD3*  
*Bot*

- O - OUTGOING
  - H - INTERNAL
  - I - INCOMING
- Date Correspondence Received (YY/MM/DD)   1  /  1  /

Name of Correspondent: Eugene J. McAllister

MI Mail Report      User Codes: (A) \_\_\_\_\_ (B) \_\_\_\_\_ (C) \_\_\_\_\_

Subject: National Funding To Permit Export of North Slope Gas

**ROUTE TO:**

**ACTION**

**DISPOSITION**

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Date YY/MM/DD
<u>Cubole</u>	ORIGINATOR	<u>8710713</u>	<i>W/S</i>	<u>  1  /  1  /  </u>
<u>cut 28</u>	<u>D</u>	<u>8910714</u>		<u>58910724</u>
		<u>  1  /  1  /  </u>	<i>W/S</i>	<u>  1  /  1  /  </u>
		<u>  1  /  1  /  </u>		<u>  1  /  1  /  </u>
		<u>  1  /  1  /  </u>		<u>  1  /  1  /  </u>

**ACTION CODES:**

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure
- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

**DISPOSITION CODES:**

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

**FOR OUTGOING CORRESPONDENCE:**

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: \_\_\_\_\_

Keep this worksheet attached to the original incoming letter.  
Send all routing updates to Central Reference (Room 75, OEOB).  
Always return completed correspondence record to Central Files.  
Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

THE WHITE HOUSE

WASHINGTON

July 13, 1987

MEMORANDUM FOR DIANNA G. HOLLAND

FROM:

ROBERT M. KRUGER 

SUBJECT:

National Finding to Permit  
Export of North Slope Gas

Eugene J. McAllister, Executive Secretary of the Economic Policy Council, sent the attached matter directly to me for a response. I am forwarding it to you for input into the system and for appropriate staffing.

Attachment

THE WHITE HOUSE

WASHINGTON

516811 *cu*

July 13, 1987

MEMORANDUM FOR ROBERT M. KRUGER

FROM: EUGENE J. McALLISTER *EM*

SUBJECT: National Finding to Permit Export of North Slope Gas

The Economic Policy Council will be considering next week a proposal for the President to issue a national finding under Section 12 of the Alaska Natural Gas Transportation Act (ANGTA) permitting the export of natural gas from Alaska.

The Working Group considered two options: (1) issue a national finding for the TAGS project, which does not appear to be an economically viable project; or (2) instead issue a broader, generic policy permitting the export of all natural gas from Alaska.

I would appreciate having Counsel's view whether: (1) the President can issue such a broad statement; and (2) what justification would have to be provided for such a broad statement.

I am attaching a draft working group paper that provides background on both the policy and legal issues.

Please give me a call if you have any questions. Thanks very much for your help.

attachment

cc: Nancy J. Risque

# DRAFT

## MEMORANDUM

JUL 10 1987

FOR: THE ECONOMIC POLICY COUNCIL

ISSUE: Should the President issue a finding which would permit the export of Alaskan North Slope natural gas to Japan and other nations?

### SUMMARY

Section 12 of ANGTA provides that before North Slope Alaskan natural gas can be exported to nations other than Canada or Mexico, the President must find that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

The 1983 Reagan-Nakasone Joint Policy Statement encouraged a pre-feasibility study by Japan and U.S. firms on the joint development of Alaskan gas. The pre-feasibility study has been completed at considerable expense to the private parties. A private sector project (TAGS) based on that pre-feasibility study is now being proposed to export Alaskan North Slope natural gas to Japan, Taiwan and Korea. The TAGS sponsor is requesting a Presidential finding.

An analysis of world oil and gas markets shows that the export of Alaskan North Slope gas would not diminish the quantity or quality or increase the price of energy available to the United States primarily because adequate supplies of natural gas are potentially available in the lower 48 states, Canada, and Mexico at a lower delivered cost.

Issuance of a Presidential finding is consistent with the Administration's policy of removing regulatory impediments to allow the full utilization of our domestic energy resources.

Opposition to a finding can be expected from supporters of the ANGTS project (a pipeline proposal, dormant since 1982, designed to bring Alaskan and Canadian gas to the lower-48 through Alaska and Canada), and from some members of Congress who would not favor exporting U.S. energy resources.



# DRAFT

## BACKGROUND

In November, 1983, the President and Prime Minister Nakasone issued a Joint Policy Statement on Japan-U.S. Energy Cooperation. With respect to natural gas, the Statement provided that

The U.S. and Japan will encourage private industry in both countries to undertake now the pre-feasibility or feasibility studies necessary to determine the extent to which Alaskan natural gas can be jointly developed by U.S. and Japanese interest.

Subsequently, a joint pre-feasibility study was undertaken by ARCO, Japan, and Yukon Pacific for an Alaska Asia Gas System (AAGS) to export Alaskan North Slope natural gas to Japan. The study assumed an 800 mile pipeline to transport the gas to a port facility where it would be liquefied and shipped via tanker to buyers. The AAGS pre-feasibility study was completed June 1, 1987.

Yukon Pacific Corporation was formed in 1983 to bring about a private sector project called the Trans-Alaska Gas System (TAGS). Yukon Pacific does not own Alaskan North Slope Gas.

The TAGS project consists of the 800 mile pipeline and liquifac-tion facilities examined in the AAGS study project. Tags will require numerous permits and authorizations at the Federal level, including a Presidential Finding under Section 12 of ANGTA. The relevant portion of Section 12 provides that

...before any Alaska natural gas in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

Yukon Pacific estimates the TAGS project (pipeline, liquefaction plant and conditioning plant on the North Slope) will cost \$8.6 billion. They foresee a market of 3 to 3.5 million tons of Liqui-fied Natural Gas (LNG) demand in Japan by the year 1995. An additional 3.5 to 4 million tons LNG demand from Korea and Taiwan in the same time frame would assure the project's economic feasi-bility.

Yukon Pacific is applying for the necessary U.S. Government authorizations and approvals. In addition to the Section 12 finding, these include

- o Export authorization from the Economic Regulatory Administration under Section 3 of the Natural Gas Act;
- o Right-of-way grant from DOI Bureau of Land Management under Section 28 of Mineral Leasing Act of 1920;
- o Export exemption from the Department of Commerce under Section 103 of the Energy Policy and Conservation Act;
- o Federal Energy Regulatory Commission "place of export" approval under Section 3 of the Natural Gas Act; and
- o Wetland permit from the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act.

The TAGS project appears to pose no unusual problems in securing these necessary approvals.

The Alaska Natural Gas Transportation System (ANGTS) project was authorized by the U.S. through ANGTA in 1976 to transport North Slope and Canadian gas through Alaska and Canada to the lower 48 states. Construction was halted in 1982 after only a portion of ANGTS (the "prebuild") was completed because the high cost of transporting the gas would make it unmarketable.

### JUSTIFICATION FOR A PRESIDENTIAL SECTION 12 FINDING

Currently, the only concrete project which proposes to get North Slope natural gas to a market is the ANGTS project, which would move the gas across Canada and into markets in the U.S. The ANGTS project is currently not economic. A major impediment to other projects is the requirement for a Presidential finding under Section 12 of ANGTA.

By making other projects viable, a generic Section 12 finding by the President would increase the likelihood that Alaskan North Slope natural gas will be produced and either exported or consumed domestically -- whichever is most efficient and economic will occur first.

Analysis shows that the President has the flexibility to make a finding which satisfies the three criteria specified in Section 12 of ANGTA:

Quantity of energy available to the U.S. -- If North Slope natural gas gets produced and consumed, that gas will increase energy available to the United States. This is true whether the gas is exported or consumed domestically. The production of North Slope



# DRAFT

gas increases the supplies of gas available worldwide. Since gas is traded in international markets, an increase in the availability of gas anywhere increases the available supply to all importing countries. Assuming no barriers to free trade, the gas will move to its most efficient and economic use. If, for example, North Slope gas were exported to the Pacific Rim, natural gas from Canada, Mexico, Indonesia and other sources that would otherwise have gone to the Pacific Rim market would become available for transport to the United States.

In addition the Energy Security study and other analyses show that, even without North Slope natural gas, adequate natural gas supplies exist to meet projected U.S. natural gas demand for the foreseeable future. These supplies include lower-48 gas production and Canadian gas. If demand were higher than currently projected, additional gas supplies are potentially available from Canada, Mexico and unconventional gas supplies, including deep gas in the lower-48.

Quality of energy available to the U.S. -- Natural gas is a high quality, uniform product. Unlike crude oil, there is no quality difference among lower-48, North Slope, Canadian, Mexican, or other forms of natural gas. Export or domestic use of North Slope gas would likely have no effect on the quality of energy available in the U.S. Quality of energy can also refer to the security of supply of the energy. Production of North Slope natural gas increases the world's availability of a secure energy source that will likely displace less secure energy, including oil in the Persian Gulf. By increasing the likelihood of production of North Slope gas, a generic Presidential finding increases the security of supply of energy to the U.S. and our allies, regardless of whether the gas is exported or consumed in the U.S.

Price of energy available to the U.S. -- Natural gas and other energy prices in the United States are determined primarily by the world oil price and by the cost of production of domestic energy sources. Future oil prices depend largely on OPEC behavior which depends to a large extent on the market for OPEC crude oil. Lower future oil demand would likely result in a lower future oil price.

A generic Section 12 finding would increase the probability of North Slope gas getting into world gas markets. By increasing world availability of natural gas, which is the closest substitute for crude oil, there will be less demand for crude oil and lower world oil prices. Lower world oil prices will reduce energy prices in the U.S. This likely consequence of producing North Slope natural gas is true, to the same extent, whether or not the North Slope gas is exported to the Pacific Rim or consumed in the U.S.

# DRAFT

## DISCUSSION

The TAGS project proposal is currently based on the pre-feasibility study called for in the 1983 Reagan-Nakasone Joint Policy Statement.

TAGS project supporters include Yukon Pacific (the sponsor), and the Governor and the entire Congressional delegation of Alaska. Alaska's primary interest is the timely development of North Slope natural gas reserves.

*how large  
is it?*

ANGTS project sponsors have stated that approval of the TAGS project would violate U.S. commitments to ANGTS. There is a risk that suits may be brought by ANGTS sponsors.

THE CANADIAN GOVERNMENT has expressed concern that the U.S. respect previous agreements on ANGTS. The "prebuild portion is currently being used to transport Canadian gas to the lower-48. DOE and others have gone on record that U.S. commitments to ANGTS have been fulfilled. Canada desires consultations before any authorizations are granted for TAGS.

THE JAPANESE GOVERNMENT has not rejected the possibility of importing Alaskan LNG, but in June, 1987 reopened longstanding discussions with the Soviets for Sakhalin Island gas. Japan is also continuing discussions with other countries for LNG imports. The first phase of the TAGS project would be comparable in size to, and thus a possible substitute for, the Sakhalin gas project.

CONGRESSIONAL CONCERNS. Although the Alaskan Congressional delegation supports the TAGS project, some members of Congress may view the export of North Slope gas unfavorably on the grounds that (1) midwestern consumers may need that gas at some point in the future; (2) we should not be exporting U.S. energy if our domestic needs require the development of the Arctic National Wildlife Refuge (ANWR); and (3) an adverse reaction from Canada could burden ongoing trade negotiations with the U.S. Congress may attempt to override the finding as the House sought to do in H.R. 3, which overrides a recent Presidential Finding that allows export of Cook Inlet oil.

The following considerations also bear on a Presidential finding:

- o The U.S. Government made commitments to Canada that it would remove regulatory impediments to the construction and initial operation of the ANGTS project and encouraged construction of the "prebuild" portion. These commitments have



# DRAFT

been fulfilled. But ANGTS sponsors argue that a finding may further impair the completion of the ANGTS project because the North Slope gas reserves may be insufficient for both the ANGTS and the TAGS projects.

- o While many considerations bear on the successful negotiation of an export arrangement, a Section 12 finding would facilitate that process. Natural gas exports to Japan, Korea, and Taiwan would have a beneficial effect on the U.S. balance of trade with Pacific Rim countries.
- o A Section 12 finding would be a tangible action to show our continuing commitment to the gas export issue. Such action would also be consistent with current legislative efforts to remove regulatory impediments and trade barriers, and would require no separate legislative effort.

## OPTIONS

### **OPTION 1: ISSUE PRESIDENTIAL FINDING TO REMOVE AN IMPEDIMENT TO THE EXPORT OF ALASKAN NORTH SLOPE NATURAL GAS**

Exercise of this Option assumes consultations with the Canadian Government to address their ANGTS concerns prior to issuance of a Presidential finding.

#### Pro

- o A Section 12 finding will remove a high-level, visible government "impediment" to allowing the marketplace to determine the most efficient development and use of North Slope gas.
- o A Section 12 finding will facilitate negotiation and execution of arrangements concerning North Slope gas with producers, potential customers, and financial institutions.
- o A Section 12 finding will permit continuation of the effort by private parties to secure significant employment and other economic benefits, especially for the State of Alaska, but also for the U.S. generally. Construction of pipeline and facilities will boost the Alaskan economy and U.S. economy and royalties and taxes on gas will replace the decreasing revenue which Alaska receives from oil.

# DRAFT

- o A Section 12 finding will encourage development of an important gas supply which may otherwise remain in the ground. It may stimulate additional exploration for and development of gas supplies on the North Slope.
- o A Section 12 finding could encourage Canadian development of gas in the Mackenzie Delta since the potential availability of North Slope gas for U.S. consumption through ANGTS may chill development of Canadian gas for U.S. markets.

## Con

- o Canada may regard a Section 12 finding as a breach of previous U.S. commitments, even if such a finding is not the reason for non-completion of ANGTS. This could make ANGTS an issue in ongoing "free trade negotiations" between the U.S. and Canada.
- o The North Slope gas may be viewed by some as a "strategic gas reserve" (in effect, a "bank" to meet future domestic needs).
- o A Section 12 finding may increase concerns of environmentalists regarding economic/energy development of Alaska in general, and of ANWR in particular.

## **OPTION 2: DO NOT ISSUE PRESIDENTIAL FINDING**

The Cons listed for Options 1 support this Option. Further considerations for deferral of a section 12 finding are:

## Pro

- o It may be possible to avoid concerns raised by Canada in trade negotiations and to avert sensitivity to the development of ANWR.

## Con

- o Failure to act now would effectively kill the TAGS project.
- o Delaying the decision may foreclose the Japanese market as they seek supplies from the Soviets and elsewhere.

# DRAFT

- o Failure to issue a section 12 Presidential finding could be viewed as a departure from Administration commitments to removal of regulatory impediments to private sector projects.
- o New private sector initiatives to develop North Slope natural gas resources would be discouraged.

## RECOMMENDATION



# DRAFT

DRAFT PRESIDENTIAL STATEMENT REGARDING NORTH SLOPE NATURAL GAS

JUL 10 1967

My Administration has been dedicated to encouraging free trade and to removing regulatory impediments that inhibit the development of our Nation's natural resources. There are over 31 trillion cubic feet of natural gas reserves in the Prudhoe Bay area of Alaska's North Slope -- this represents about 15% of U.S. gas reserves. To date those reserves have remained in the ground because of legal and economic constraints on marketing that gas.

Production of North Slope natural gas would increase the world's availability of a secure energy source that will likely displace less secure energy, including oil from the Persian Gulf. Because world energy markets are interconnected, this is true whether the gas is consumed domestically or exported.

Section 12 of the Alaskan Natural Gas Transportation Act provides that before North Slope gas can be exported to nations other than Canada or Mexico, the President must find that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States. The Section 12 requirement represents a direct impediment to the ability of North Slope gas producers to select transportation projects that get their gas to the most efficient and economic markets -- markets which may or may not be domestic. It is not an appropriate role of the U.S. government to determine which, if any, private sector project is the most efficient and economic means of marketing domestic resources.

*This is an argument for making the finding general but not for making a finding*

Based on an assessment of the situation, I hereby find that removing impediments to the production and use of Alaskan North Slope gas is in the national interest and that the export of that gas in quantities in excess of 1,000 Mcf per day will not diminish the total quantity or quality nor increase the total price of energy available to the United States. I make this finding primarily because the production of North Slope gas will reduce oil consumption and oil prices worldwide, and because adequate supplies of natural gas are potentially available from the Lower-48 states, Canada, Mexico and other sources at a lower delivered price than North Slope gas.

I am hopeful that removing this regulatory impediment will increase the chances that one of several competing projects will become viable so that we can begin to harness and benefit from development of North Slope natural gas.





**Department of Energy**  
Washington, DC 20585

MEMORANDUM

TO: Robert M. Kruger  
Associate Counsel to the President

FROM: J. Michael Farrell *JMF*

SUBJECT: Section 12 of the Alaska Natural Gas Transportation Act

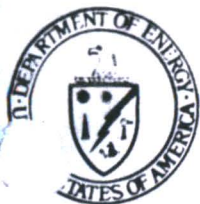
DATE: July 17, 1987

As a follow-up to our telephone conversation of yesterday, I have attached a copy of a brief memorandum from me to Scott Campbell, Director, Office of Policy, Planning and Analysis, dated June 3, 1987. Although this memo deals with major Federal regulatory actions that must be addressed as to the TAGS project, it could be applied to another project. I have highlighted on pages 1 & 2 the references to the Section 12 findings.

It is also my opinion that a generic finding could be made by the President rather than a project specific finding.

*James White*

*586-6667*



## Department of Energy

Washington, DC 20585

June 3, 1987

### MEMORANDUM

TO: Scott Campbell

FROM: J. Michael Farrell *JMS*

SUBJECT: Major Federal Regulatory Actions That Must Be Addressed For TAGS To Proceed

### Background

The Yukon Pacific Corp. is sponsoring a project, the Trans-Alaskan Gas System (TAGS), to export Alaskan North Slope natural gas to markets in the Pacific Rim countries of Japan, South Korea, and Taiwan. The gas would be transported by an 800-mile pipeline across Alaska, from the production fields at Prudhoe Bay to a liquefaction facility at Anderson Bay. The LNG then would be shipped to its final destination in LNG tankers. None of the production, transportation, or liquefaction facilities has yet been constructed.

### Discussion

The following list sets forth the major Federal regulatory actions for the TAGS project:

#### I. The White House

- o Export finding by the President under Section 12 of the Alaska Natural Gas Transportation Act.
- o Section 12 of ANGTA provides that, in addition to "the requirements of the Natural Gas Act and Section 103 of the Energy Policy and Conservation Act ..., the President must make and publish an express finding that [Alaska North Slope natural gas] exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States."
- o Section 12 provides no particular mechanism for making this finding or applying for it.

### Status

- o The President has not delegated responsibility under Section 12.

- o Although there have been several letters and inquiries to the Department of Energy and the White House concerning a Section 12 finding, none of these has been treated as an application for a Presidential finding.

## II. Department of Energy

- o Export authorization from the Energy Department's Economic Regulatory Administration under Section 3 of the Natural Gas Act.
  - o Section 3 of the Natural Gas Act provides that exports shall be authorized unless it is determined an export would "not be consistent with the public interest."
  - o The DOE Act gives responsibility for Section 3 to the Secretary of Energy who has delegated the "public interest" determination to the Economic Regulatory Administration (ERA).

### Status

- o Yukon Pacific has not yet filed an application with ERA, but has discussed with ERA what an application should contain and has indicated it may file by July 1.
- o Final authorization cannot be issued until completion of an EIS.
- o EIS work currently is being done by ERA in cooperation with the Bureau of Land Management (see III. below). ERA expects to complete this work for transmittal to BLM by September 1. BLM expects to have a final EIS in the first quarter of 1988.

## III. Department of the Interior

- o Right-of-Way grant from the Interior Department's Bureau of Land Management under section 28 of Mineral Leasing Act of 1920 for construction and operation of TAGS pipeline across Federal land.
  - o Section 28 of the Mineral Leasing Act authorizes BLM to grant rights-of-way through public lands for natural gas pipelines to applicants who meet the technical qualifications in this section and implementing regulations.



### Status

- o Yukon Pacific has filed an application and BLM expects to issue a draft Right-of-Way in July.
- o Final Right-of-Way cannot be issued until completion of Environmental Impact Statement (EIS).
- o EIS on TAGS project is scheduled to be issued in draft in September 1987 and finalized in first quarter of 1988. BLM and U.S. Army Corps of Engineers are the lead agencies for this EIS, while the Energy Department is participating in EIS process as a "cooperating agency."

### IV. Department of Commerce

- o Export exemption from the Commerce Department under Section 103 of Energy Policy and Conservation Act.
  - o Section 103 of EPCA requires the President to promulgate regulations to prohibit the export of natural gas but these regulations may exempt exports which the President determines "to be consistent with the national interest."
  - o The President has delegated this authority to Commerce (Executive Order No. 11912). Commerce has indicated the "public interest" finding by ERA under Section 3 of the NGA satisfies the "national interest" requirement of Section 103 (see 15 CFR §370.10(g)), and therefore has never issued regulations exempting any gas exports.

### Status

- o The scope of any regulatory action under this section is unclear at this time.

### V. Federal Energy Regulatory Commission

- o Place of export approval by the Federal Energy Regulatory Commission under Section 3 of the Natural Gas Act.
  - o The Secretary of Energy has delegated Section 3 authority over place of export to FERC.

### Status

- o FERC recently ruled it has, and will exercise, jurisdiction "under section 3 to approve or disapprove the place of export" and in so doing

will "consider the environmental and safety aspects of the pipeline and its liquefaction plant." Yukon Pacific, accordingly, must file an application with FERC, but has not yet done so.

- o For the time being, FERC has declined "to exercise any discretionary authority it may have under Section 3 ... to regulate the siting, construction and operation of the TAGS pipeline."
- o Although not participating in the current BLM EIS process, FERC has indicated it expects to use the TAGS EIS rather than start anew.

#### VI. U.S. Army Corps of Engineers

- o Wetlands permit from U.S. Army Corps of Engineers under Section 404 of the Clean Water Act.
  - o Section 404 of the Clean Water Act authorizes the Corps to grant an application for a permit to discharge dredged material into a wetland. If it determines the proposed discharge will have an unacceptable adverse effect on water, the Corps may deny the permit.

#### Status

- o Yukon Pacific has filed a 404 application and the Corps expects to issue a draft permit this summer.
- o Final permit cannot be issued until completion of EIS and certification by State of Alaska.
- o EIS work currently being done jointly with BLM, with completion expected in the first quarter of 1988. The Corps is a co-lead agency for this EIS.

In addition to these actions, there are numerous other Federal authorizations and permits that may be required before production, pipeline, and liquefaction facilities can be constructed and operated, and the gas exported.



CHAPTER 15C. ALASKA NATURAL GAS  
TRANSPORTATION

Section

- 719. Congressional findings
- 719a. Congressional statement of purpose
- 719b. Definitions
- 719c. Federal Power Commission reviews and reports
  - (a) Proceedings: suspension, vacation or removal of suspension; issuance of certificate of convenience and necessity
  - (b) Recommendation; submittal to President; rule for presentation of data, views, and arguments; Federal agency cooperation
  - (c) Report; public availability; factors to be discussed
  - (d) Recommendation not based upon Canadian pipeline system decision
  - (e) Transportation system: recommendation, submittal to President; environmental impact statement: submittal to President
- 719d. Federal and State officer or agency and other interested persons' reports
  - (a) Federal officer or agency comments; submittal to President; public availability
  - (b) State officer or agency and other interested persons' comments; submittal to President
  - (c) Report of Federal officer or agency to the President
  - (d) Report of Council on Environmental Quality to the President
- 719e. Presidential decision and report
  - (a) Dateline for decision; transmission to Congress, delay: notice to Congress; contents of decision; chairman, appointment; Federal inspector of construction: duties, including establishment of joint surveillance and monitoring agreement
  - (b) Transmittal to Congress
  - (c) Financial analysis
  - (d) Views and objectives involving intergovernmental and international cooperation
  - (e) Decision effective as provided in 15 USCS § 719f; financing authority unaffected
- 719f. Congressional review
  - (a) Effectiveness of decision designating transportation system for approval upon enactment of joint resolution
  - (b) New decision: statement of reasons for proposal; transmittal to Congress
  - (c) Sessions of Congress
  - (d) Rules under rulemaking powers of Congress; change of rules; "resolution" defined; referral to congressional committees; debate limitation; motion for consideration of resolution; debate on resolution; nondebatable motions and appeals from procedural decisions

ALASKA NATURAL GAS

15 USCS § 719

- (e) Presidential finding respecting and supplementation or modification of environmental impact statement; submittal to congressional committees
- (f) Report of Commission: submittal to Congress; Council on Environmental Quality: hearings, report, submittal to Congress; congressional committee hearings
- (g) Waiver; submittal to Congress
- 719g. Transportation system certificates, rights-of-way, permits, leases, or other authorizations
  - (a) Earliest practicable date for issuance or grant of authorizations
  - (b) Expedition and precedence of actions on applications or requests
  - (c) Required terms and conditions
  - (d) Additions to, and amendment or abrogation of authorizations; exception
  - (e) Appropriate terms and conditions
- 719h. Judicial review
  - (a) Exclusiveness of remedy
  - (b) Limitations for filing claims
  - (c) Exclusive jurisdiction of the Special Court; barred claims; precedence and expedition of proceedings; decision; conclusiveness of environmental impact statements
- 719i. Supplemental enforcement authority
  - (a) Compliance order or civil action
  - (b) Specificity of compliance order
  - (c) Appropriate relief and jurisdiction of civil action
- 719j. Export limitations
- 719k. Equal access to facilities
  - (a) Ownership in transportation system
  - (b) Use within Alaska
- 719l. Antitrust laws
- 719m. Authorization of appropriations
- 719n. Separability of provisions
- 719o. Civil rights; affirmative action of Federal officers and agencies; rules promulgation and enforcement

CROSS REFERENCES

This chapter is referred to in 15 USCS §§ 3312, 3313, 3319, 3331, 3343, 3348, 3431; 18 USCS § 3214.

§ 719. Congressional findings

The Congress finds and declares that—

- (1) a natural gas supply shortage exists in the contiguous States of the United States;
- (2) large reserves of natural gas in the State of Alaska could help significantly to alleviate this supply shortage;



(3) the expeditious construction of a viable natural gas transportation system for delivery of Alaska natural gas to United States markets is in the national interest; and

(4) the determinations whether to authorize a transportation system for delivery of Alaska natural gas to the contiguous States and, if so, which system to select, involve questions of the utmost importance respecting national energy policy, international relations, national security, and economic and environmental impact, and therefore should appropriately be addressed by the Congress and the President in addition to those Federal officers and agencies assigned functions under law pertaining to the selection, construction, and initial operation of such a system.

(Oct. 22, 1976, P. L. 94-586, § 2, 90 Stat. 2903.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### Short titles:

Act Oct. 22, 1976, P. L. 94-586, § 1, 90 Stat. 2903, provided: "This Act may be cited as the 'Alaska Natural Gas Transportation Act of 1976'." For full classification of such Act, consult USCS Tables volumes.

##### Other provisions:

**Antitrust study.** Act Oct. 22, 1976, P. L. 94-586, § 19, 90 Stat. 2916, provided:

"The Attorney General of the United States is authorized and directed to conduct a thorough study of the antitrust issues and problems relating to the production and transportation of Alaska natural gas and, not later than six months following the date of enactment of this Act [enacted Oct. 22, 1976], to complete such study and submit to the Congress a report containing his findings and recommendations with respect thereto."

**Expiration.** Act Oct. 22, 1976, P. L. 94-586, § 20, 90 Stat. 2916, provided:

"This Act [15 USCS §§ 719 et seq., generally; for full classification, consult USCS Tables volumes] shall terminate in the event that no decision of the President takes effect under section 8 of this Act [15 USCS § 719f], such termination to occur at the end of the last day on which a decision could be, but is not, approved under such section."

#### CODE OF FEDERAL REGULATIONS

Department of Energy, alternate fuels, definitions, 10 CFR Part 500.

Department of Energy, alternate fuels, administrative procedures and sanctions, 10 CFR Part 501.

Department of Energy, alternate fuels, existing powerplants, 10 CFR Part 504.

Functions, powers and duties of Office of Federal Inspector for Alaska Natural Gas Transportation System, 10 CFR Part 1500.

Organization of Office of Federal Inspector for Alaska Natural Gas Transportation System, 10 CFR Part 1502.

Gathering, handling, and disclosing information by Office of Federal Inspector for Alaska Natural Gas Transportation System, 10 CFR Part 1504. Federal Energy Regulatory Commission, general policy and interpretations, 18 CFR Part 2.

Requirements for equal opportunity during construction and operation of Alaska Natural Gas Transportation System, 43 CFR Part 34.

#### § 719a. Congressional statement of purpose

The purpose of this Act is to provide the means for making a sound decision as to the selection of a transportation system for delivery of Alaska natural gas to the contiguous States for construction and initial operation by providing for the participation of the President and the Congress in the selection process, and, if such a system is approved under this Act, to expedite its construction and initial operation by (1) limiting the jurisdiction of the courts to review the actions of Federal officers or agencies taken pursuant to the direction and authority of this Act, and (2) permitting the limitation of administrative procedures and effecting the limitation of judicial procedures related to such actions. To accomplish this purpose it is the intent of the Congress to exercise its constitutional powers to the fullest extent in the authorizations and directions herein made, and particularly with respect to the limitation of judicial review of actions of Federal officers or agencies taken pursuant thereto.

(Oct. 22, 1976, P. L. 94-586, § 3, 90 Stat. 2903.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### References in text:

"This Act", referred to in this section, is Act Oct. 22, 1976, P. L. 94-586, 90 Stat. 2903, which appears generally as 15 USCS §§ 719 et seq. For full classification of such Act, consult USCS Tables volumes.

#### § 719b. Definitions

As used in this Act:

- (1) the term "Alaska natural gas" means natural gas derived from the area of the State of Alaska generally known as the North Slope of Alaska, including the Continental Shelf thereof;
- (2) the term "Commission" means the Federal Power Commission;
- (3) the term "Secretary" means the Secretary of the Interior;
- (4) the term "provision of law" means any provision of a Federal statute or rule, regulation, or order issued thereunder; and
- (5) the term "approved transportation system" means the system for the transportation of Alaska natural gas designated by the President pursuant to section 7(a) [15 USCS § 719e(a)] or 8(b) [15 USCS § 719f(b)] and approved by joint resolution of the Congress pursuant to section 8 [15 USCS § 719f].

(Oct. 22, 1976, P. L. 94-586, § 4, 90 Stat. 2904.)



**HISTORY; ANCILLARY LAWS AND DIRECTIVES****References in text:**

"This Act", referred to in this section, is Act Oct. 22, 1976, P. L. 94-586, 90 Stat. 2903, which appears generally as 15 USCS §§ 719 et seq. For full classification of such Act, consult USCS Tables volumes.

**Transfer of functions:**

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by 42 USCS §§ 7151(b), 7171(a), 7172(a)(1), 7291 and 7293.

**§ 719c. Federal Power Commission reviews and reports**

- (a) **Proceedings; suspension, vacation or removal of suspension; issuance of certificate of convenience and necessity.** (1) Notwithstanding any provision of the Natural Gas Act [15 USCS §§ 717 et seq.] or any other provision of law, the Commission shall suspend all proceedings pending before the Commission on the date of enactment of this Act [enacted Oct. 22, 1976] relating to a system for the transportation of Alaska natural gas as soon as the Commission determines to be practicable after such date, and the Commission may refuse to act on any application, amendment thereto, or other requests for action under the Natural Gas Act [15 USCS §§ 717 et seq.] relating to a system for the transportation of Alaska natural gas until such time as (A) a decision of the President designating such a system for approval takes effect pursuant to section 8 [15 USCS § 719f], (B) no such decision takes effect pursuant to section 8 [15 USCS § 719f], or (C) the President decides not to designate such a system for approval under section 8 [15 USCS § 719f] and so advises the Congress pursuant to section 7 [15 USCS § 719e].
- (2) In the event a decision of the President designating such a system takes effect pursuant to this Act, the Commission shall forthwith vacate proceedings suspended under paragraph (1) and, pursuant to section 9 [15 USCS § 719g] and in accordance with the President's decision, issue a certificate of public convenience and necessity respecting such system.
- (3) In the event such a decision of the President does not take effect pursuant to this Act or the President decides not to designate such a system and so advises the Congress pursuant to section 7 [15 USCS § 719e], the suspension provided for in paragraph (1) of this subsection shall be removed.
- (b) **Recommendation; submittal to President; rule for presentation of data, views, and arguments; Federal agency cooperation.** (1) The Commission shall review all applications for the issuance of a certificate of public convenience and necessity relating to the transportation of Alaska natural gas pending on the date of enactment of this Act [enacted Oct.

- 22, 1976], and any amendments thereto which are timely made, and after consideration of any alternative transportation system which the Commission determines to be reasonable, submit to the President not later than May 1, 1977, a recommendation concerning the selection of such a transportation system. Such recommendation may be in the form of a proposed certificate of public convenience and necessity, or in such other form as the Commission determines to be appropriate, or may recommend that no decision respecting the selection of such a transportation system be made at this time or pursuant to this Act. Any recommendation that the President approve a particular transportation system shall (A) include a description of the nature and route of the system, (B) designate a person to construct and operate the system, which person shall be the applicant, if any, which filed for a certificate of public convenience and necessity to construct and operate such system, (C) if such recommendation is for an all-land pipeline transportation system, or a transportation system involving water transportation, include provision for new facilities to the extent necessary to assure direct pipeline delivery of Alaska natural gas contemporaneously to points both east and west of the Rocky Mountains in the lower continental United States.
- (2) The Commission may, by rule, provide for the presentation of data, views, and arguments before the Commission or a delegate of the Commission pursuant to such procedures as the Commission determines to be appropriate to carry out its responsibilities under paragraph (1) of this subsection. Such a rule shall, to the extent determined by the Commission, apply, notwithstanding any provision of law that would otherwise have applied to the presentation of data, views, and arguments.
- (3) The Commission may request such information and assistance from any Federal agency as the Commission determines to be necessary or appropriate to carry out its responsibilities under this Act. Any Federal agency requested to submit information or provide assistance shall submit such information to the Commission at the earliest practicable time after receipt of a Commission request.
- (c) **Report; public availability; factors to be discussed.** The Commission shall accompany any recommendation under subsection (b)(1) with a report, which shall be available to the public, explaining the basis for such recommendation and including for each transportation system reviewed or considered a discussion of the following:
- (1) for each year of the 20-year period which begins with the first year following the date of enactment of this Act [enacted Oct. 22, 1976], the estimated—
- (A) volumes of Alaska natural gas which would be available to each region of the United States directly, or indirectly by displacement or otherwise, and



- (B) transportation costs and delivered prices of any such volumes of gas by region;
- (2) the effects of each of the factors described in subparagraphs (A) and (B) of paragraph (1) on the projected natural gas supply and demand for each region of the United States and on the projected supplies of alternative fuels available by region to offset shortages of natural gas occurring in such region for each such year;
  - (3) the impact upon competition;
  - (4) the extent to which the system provides a means for the transportation to United States markets of natural resources or other commodities from sources in addition to the Prudhoe Bay Reserve;
  - (5) environmental impacts;
  - (6) safety and efficiency in design and operation and potential for interruption in deliveries of Alaska natural gas;
  - (7) construction schedules and possibilities for delay in such schedules or for delay occurring as a result of other factors;
  - (8) feasibility of financing;
  - (9) extent of reserves, both proven and probable and their deliverability by year for each year of the 20-year period which begins with the first year following the date of enactment of this Act [enacted Oct. 22, 1976];
  - (10) the estimate of the total delivered cost to users of the natural gas to be transported by the system by year for each year of the 20-year period which begins with the first year following the date of enactment of this Act [enacted Oct. 22, 1976];
  - (11) capability and cost of expanding the system to transport additional volumes of natural gas in excess of initial system capacity;
  - (12) an estimate of the capital and operating costs, including an analysis of the reliability of such estimates and the risk of cost overruns; and
  - (13) such other factors as the Commission determines to be appropriate.
- (d) **Recommendation not based upon Canadian pipeline system decision.** The recommendation by the Commission pursuant to this section shall not be based upon the fact that the Government of Canada or agencies thereof have not, by then rendered a decision as to authorization of a pipeline system to transport Alaska natural gas through Canada.
- (e) **Transportation system; recommendation, submittal to President; environmental impact statement; submittal to President.** If the Commission recommends the approval of a particular transportation system, it shall submit to the President with such recommendation (1) an identification of those facilities and operations which are proposed to be encompassed within the term "construction and initial operation" in order to define the scope of directions contained in section 9 of this Act [15 USCS § 719g] and (2) the terms and conditions permitted under the Natural Gas Act [15 USCS §§ 717 et seq.], which the Commission determines to be appropriate for inclusion in a certificate of public convenience and necessity to be

issued respecting such system. The Commission shall submit to the President contemporaneously with its report an environmental impact statement prepared respecting the recommended system, if any, and each environmental impact statement which may have been prepared respecting any other system reported on under this section.  
(Oct. 22, 1976, P. L. 94-586, § 5, 90 Stat. 2904.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### References in text:

"This Act", referred to in this section, is Act Oct. 22, 1976, P. L. 94-586, 90 Stat. 2903, which appears generally as 15 USCS §§ 719 et seq. For full classification of such Act, consult USCS Tables volumes.

##### Transfer of functions:

Enforcement functions authorized by, and supplemental enforcement authority created by 15 USCS §§ 719 et seq. with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, by Reorg. Plan No. 1 of 1979, §§ 102(h)(1), 203(a), 44 Fed. Reg. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, which appears as 15 USCS § 719e note.

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by 42 USCS §§ 7151(b), 7171(a), 7172(a)(1), 7291 and 7293.

#### CROSS REFERENCES

This section is referred to in 15 USCS §§ 719d, 719e, 719f.

#### § 719d. Federal and State officer or agency and other interested persons' reports

(a) **Federal officer or agency comments; submittal to President; public availability.** Not later than July 1, 1977, any Federal officer or agency may submit written comments to the President with respect to the recommendation and report of the Commission and alternative methods for transportation of Alaska natural gas for delivery to the contiguous States. Such comments shall be made available to the public by the President when submitted to him, unless expressly exempted from this requirement in whole or in part by the President, under section 552(b)(1) of title 5, United States Code [5 USCS § 552(b)(1)]. Any such written comment shall include information within the competence of such Federal officer or agency with respect to—



- (1) environmental considerations, including air and water quality and noise impacts;
- (2) the safety of the transportation systems;
- (3) international relations, including the status and time schedule for any necessary Canadian approvals and plans;
- (4) national security, particularly security of supply;
- (5) sources of financing for capital costs;
- (6) the impact upon competition;
- (7) impact on the national economy, including regional natural gas requirements; and
- (8) relationship of the proposed transportation system to other aspects of national energy policy.

**(b) State officer or agency and other interested persons' comments; submittal to President.** Not later than July 1, 1977, the Governor of any State, any municipality, State utility commission, and any other interested person may submit to the President such written comments with respect to the recommendation and report of the Commission and alternative systems for delivering Alaska natural gas to the contiguous States as they determine to be appropriate.

**(c) Report of Federal officer or agency to the President.** Not later than July 1, 1977, each Federal officer or agency shall report to the President with respect to actions to be taken by such officer or agency under section 9(a) [15 USCS § 719g(a)] relative to each transportation system reported on by the Commission under section 5(c) [15 USCS § 719c(c)] and shall include such officer's or agency's recommendations with respect to any provision of law to be waived pursuant to section 8(g) [15 USCS § 719f(g)] in conjunction with any decision of the President which designates a system for approval.

**(d) Report of Council on Environmental Quality to the President.** Following receipt by the President of the Commission's recommendations, the Council on Environmental Quality shall afford interested persons an opportunity to present oral and written data, views, and arguments respecting the environmental impact statements submitted by the Commission under section 5(e) [15 USCS § 719c(e)]. Not later than July 1, 1977, the Council on Environmental Quality shall submit to the President a report, which shall be contemporaneously made available by the Council to the public, summarizing any data, views, and arguments received and setting forth the Council's views concerning the legal and factual sufficiency of each such environmental impact statement and other matters related to environmental impact as the Council considers to be relevant. (Oct. 22, 1976, P. L. 94-586, § 6, 90 Stat. 2906.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### Transfer of functions:

Enforcement functions authorized by, and supplemental enforcement authority created by 15 USCS §§ 719 et seq. with respect to pre-

construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, by Reorg. Plan No. 1 of 1979, §§ 102(h)(1), 203(a), 44 Fed. Reg. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, which appears as 15 USCS § 719e note.

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by 42 USCS §§ 7151(b), 7171(a), 7172(a)(1), 7291 and 7293.

#### CROSS REFERENCES

This section is referred to in 15 USCS § 719e.

#### § 719e. Presidential decision and report

**(a) Dateline for decision; transmission to Congress, delay; notice to Congress; contents of decision; chairman, appointment; Federal inspector of construction; duties, including establishment of joint surveillance and monitoring agreement.** (1) As soon as practicable after July 1, 1977, but not later than September 1, 1977, the President shall issue a decision as to whether a transportation system for delivery of Alaska natural gas should be approved under this Act. If he determines such a system should be so approved, his decision shall designate such a system for approval pursuant to section 8 [15 USCS § 719f] and shall be consistent with section 5(b)(1)(C) [15 USCS § 719c(b)(1)(C)] to assure delivery of Alaska natural gas to points both east and west of the Rocky Mountains in the continental United States. The President in making his decision shall take into consideration the Commission's recommendation pursuant to section 5 [15 USCS § 719c], the report under section 5(c) [15 USCS § 719c(c)], and any comments submitted under section 6 [15 USCS § 719d]; and his decision to designate a system for approval shall be based on his determination as to which system, if any, best serves the national interest.

(2) The President, for a period of up to 90 additional calendar days after September 1, 1977, may delay the issuance of his decision and transmit thereof to the House of Representatives and the Senate, if he determines (A) that there exists no environmental impact statement prepared relative to a system he wishes to consider or that any prepared environmental impact statement relative to a system he wishes to consider is legally or factually insufficient, or (B) that the additional time is otherwise necessary to enable him to make a sound decision on an Alaska natural gas transportation system. The President shall promptly, but in no case any later than September 1, 1977, notify the



House of Representatives and the Senate if he so delays his decision and submit a full explanation of the basis of any such delay.

(3) If, on or before May 1, 1977, the President determines to delay issuance and transmittal of his decision to the House of Representatives and the Senate pursuant to paragraph (2) of this subsection, he may authorize a delay of not more than 90 days in the date of taking of any action specified in sections 5 and 6 [15 USCS §§ 719c, 719d]. The President shall promptly notify the House of Representatives and the Senate of any such authorization of delay and submit a full explanation of the basis of any such authorization.

(4) If the President determines to designate for approval a transportation system for delivery of Alaska natural gas to the contiguous States, he shall in such decision—

(A) describe the nature and route of the system designated for approval;

(B) designate a person to construct and operate such a system, which person shall be the applicant, if any, which filed for a certificate of public convenience and necessity to construct and operate such system;

(C) identify those facilities, the construction of which, and those operations, the conduct of which, shall be encompassed within the term "construction and initial operation" for purposes of defining the scope of the directions contained in section 9 of this Act [15 USCS § 719g], taking into consideration any recommendation of the Commission with respect thereto; and

(D) identify those provisions of law, relating to any determination of a Federal officer or agency as to whether a certificate, permit, right-of-way, lease, or other authorization shall be issued or be granted, which provisions the President finds (i) involve determinations which are subsumed in his decision and (ii) require waiver pursuant to section 8(g) [15 USCS § 719f(g)] in order to permit the expeditious construction and initial operation of the transportation system.

(5) After a decision of the President designating an Alaska natural gas transportation system takes effect under section 8 [15 USCS § 719f], the President shall appoint an officer of the United States, with the advice and consent of the Senate, or designate a board (consisting of such an officer, so appointed with the advice and consent of the Senate, as chairman and such other individuals as the President determines appropriate to serve on such board by reason of background, experience, or position) to serve as Federal inspector of construction of such transportation system, except that no such individual or officer may have a financial interest in the approved transportation system. Upon enactment of a joint resolution pursuant to section 8 [15 USCS § 719f] approving such a system the Federal inspector shall—

(A) establish a joint surveillance and monitoring agreement, approved by the President, with the State of Alaska similar to that in effect

during construction of the trans-Alaska oil pipeline to monitor the construction of the approved transportation system within the State of Alaska;

(B) monitor compliance with applicable laws and the terms and conditions of any applicable certificate, rights-of-way, permit, lease, or other authorization issued or granted under section 9 [15 USCS § 719g];

(C) monitor actions taken to assure timely completion of construction schedules and the achievement of quality of construction, cost control, safety, and environmental protection objectives and the results obtained therefrom;

(D) have the power to compel, by subpoena if necessary, submission of such information as he deems necessary to carry out his responsibilities; and

(E) keep the President and the Congress currently informed on any significant departures from compliance and issue quarterly reports to the President and the Congress concerning existing or potential failures to meet construction schedules or other factors which may delay the construction and initial operation of the system and the extent to which quality of construction, cost control, safety and environmental protection objectives have been achieved.

(6) If the President determines to designate for approval a transportation system for delivery of Alaska natural gas to the contiguous States, he may identify in such decision such terms and conditions permissible under existing law as he determines appropriate for inclusion with respect to any issuance or authorization directed to be made pursuant to section 9 [15 USCS § 719g].

**(b) Transmittal to Congress.** The decision of the President made pursuant to subsection (a) of this section shall be transmitted to both Houses of Congress and shall be considered received by such Houses for the purposes of this section on the first day on which both are in session occurring after such decision is transmitted. Such decision shall be accompanied by a report explaining in detail the basis for his decision with specific reference to the factors set forth in sections 5(c) and 6(a) [15 USCS §§ 719c(c), 719d(a)], and the reasons for any revision, modification of, or substitution for, the Commission recommendation.

**(c) Financial analysis.** The report of the President pursuant to subsection (b) of this section shall contain a financial analysis for the transportation system designated for approval. Unless the President finds and states in his report submitted pursuant to this section that he reasonably anticipates that the system designated by him can be privately financed, constructed, and operated, his report shall also be accompanied by his recommendation concerning the use of existing Federal financing authority or the need for new Federal financing authority.

**(d) Views and objectives involving intergovernmental and international cooperation.** In making his decision under subsection (a) the President



shall inform himself, through appropriate consultation, of the views and objectives of the States, the Government of Canada, and other governments with respect to those aspects of such a decision that may involve intergovernmental and international cooperation among the Government of the United States, the States, the Government of Canada, and any other government.

(e) **Decision effective as provided in 15 USCS § 719f; financing authority unaffected.** If the President determines to designate a transportation system for approval, the decision of the President shall take effect as provided in section 8 [15 USCS § 719f], except that the approval of a decision of the President shall not be construed as amending or otherwise affecting the laws of the United States so as to grant any new financing authority as may have been identified by the President pursuant to subsection (c). (Oct. 22, 1976, P. L. 94-586, § 7, 90 Stat. 2907.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### References in text:

"This Act", referred to in this section, is Act Oct. 22, 1976, P. L. 94-586, 90 Stat. 2903, which appears generally as 15 USCS §§ 719 et seq. For full classification of such Act, consult USCS Tables volumes.

##### Transfer of functions:

Enforcement functions authorized by, and supplemental enforcement authority created by 15 USCS §§ 719 et seq., all functions assigned to the person or board to be appointed by the President under subsec. (a)(5) of this section, and, pursuant to subsec. (a)(6) of this section, function of enforcing terms and conditions described in section 5 of the Decision and Report to the Congress on the Alaska Natural Gas Transportation System, approved by Congress pursuant to Pub. L. 95-158, which appears as 15 USCS § 719f note, with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, by Reorg. Plan No. 1 of 1979, §§ 102(h), 203(a), which appears as a note to this section.

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by 42 USCS §§ 7151(b), 7171(a), 7172(a)(1), 7291 and 7293.

##### Other provisions:

#### REORGANIZATION PLAN NO. 1 OF 1979

Effective July 1, 1979, 44 Fed. Reg. 33663, 93 Stat. 1373.

Prepared by the President and transmitted to the Senate and House of Representatives in Congress assembled, April 2, 1979, pursuant to the

provisions of Chapter 9 of Title 5 of the United States Code [5 USCS §§ 901 et seq.].

Office of the Federal Inspector for Construction of the Alaska Natural Gas Transportation System

Part I. Office of the Federal Inspector and transfer of functions

"SECTION 101. *Establishment of the Office of Federal Inspector for the Alaska Natural Gas Transportation System*

"(a) There is hereby established as an independent establishment in the executive branch, the Office of the Federal Inspector for the Alaska Natural Gas Transportation System (the 'Office').

"(b) The Office shall be headed by a Federal Inspector for the Alaska Natural Gas Transportation System (the 'Federal Inspector') who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter prescribed by law for Level III of the Executive Schedule [5 USCS § 5314], and who shall serve at the pleasure of the President.

"(c) Each Federal agency having statutory responsibilities over any aspect of the Alaska Natural Gas Transportation System shall appoint an Agency Authorized Officer to represent that authority on all matters pertaining to pre-construction, construction, and initial operation of the system.

"SEC. 102. *Transfer of Functions to the Federal Inspector*

"Subject to the provisions of Section 201, 202, and 203 of this Plan [this note], all functions insofar as they relate to enforcement of Federal statutes or regulations and to enforcement of terms, conditions, and stipulations of grants, certificates, permits and other authorizations issued by Federal agencies with respect to pre-construction, construction, and initial operation of an 'approved transportation system' for transport of Canadian natural gas and 'Alaskan natural gas,' as such terms are defined in the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.) [15 USCS §§ 719 et seq., generally; for full classification, consult USCS Tables volumes] hereinafter called the 'Act', are hereby transferred to the Federal Inspector. This transfer shall vest in the Federal Inspector exclusive responsibility for enforcement of all Federal statutes relevant in any manner to pre-construction, construction, and initial operation. With respect to each of the statutory authorities cited below, the transferred functions include all enforcement functions of the given agencies or their officials under the statutes as may be related to the enforcement of such terms, conditions, and stipulations, including but not limited to the specific sections of the statute cited. 'Enforcement', for purposes of this transfer of functions, includes monitoring and any other compliance or oversight activities reasonably related to the enforcement process. These transferred functions include:

"(a) Such enforcement functions of the Administrator or other appropriate official or entity in the Environmental Protection Agency related to compliance with: national pollutant discharge elimination system permits provided for in Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) [33 USCS § 1342]; spill prevention, containment and countermeasure plans in Section 311 of the Federal



Water Pollution Control Act (33 U.S.C. 1321) [33 USCS § 1321]; review of the Corps of Engineers' dredged and fill material permits issued under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) [33 USCS § 1344]; new source performance standards in Section 111 of the Clean Air Act, as amended by the Clean Air Act Amendments of 1977 (42 U.S.C. 7411) [42 USCS § 7411]; prevention of significant deterioration review and approval in Sections 160-169 of the Clean Air Act, as amended by the Clean Air Amendments of 1977 (42 U.S.C. 7470 et seq.) [42 USCS §§ 7470 et seq.]; and the resource conservation and recovery permits issued under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.) [42 USCS §§ 6901 et seq.];

“(b) Such enforcement functions of the Secretary of the Army, the Chief of Engineers, or other appropriate officer or entity in the Corps of Engineers of the United States Army related to compliance with: dredged and fill material permits issued under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) [33 USCS § 1344]; and permits for structures in navigable waters, issued under Section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403) [33 USCS § 403];

“(c) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of Transportation related to compliance with: the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671, et seq.) [49 USCS §§ 1671 et seq.] and the gas pipeline safety regulations issued thereunder; the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, et seq.) [49 USCS §§ 1301 et seq.] and authorizations and regulations issued thereunder; and permits for bridges across navigable waters, issued under Section 9 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401) [33 USCS § 401];

“(d) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of Energy and such enforcement functions of the Commission, Commissioners, or other appropriate officer or entity in the Federal Energy Regulatory Commission related to compliance with: the certificates of public convenience and necessity, issued under Section 7 of the Natural Gas Act, as amended (15 U.S.C. 717f) [15 USCS § 717f]; and authorizations for importation of natural gas from Alberta as predeliveries of Alaskan gas issued under Section 3 of the Natural Gas Act, as amended (15 U.S.C. 717b) [15 USCS § 717b];

“(e) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of the Interior related to compliance with: grants of rights-of-way and temporary use permits for Federal land, issued under Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185) [30 USCS § 185]; land use permits for temporary use of public lands and other associated land uses, issued under Sections 302, 501, and 503-511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1761, and 1763-1771) [43 USCS §§ 1732, 1761, 1763-1771]; materials sales contracts under the Materials Act of 1947 (30 U.S.C. 601-603) [30 USCS §§ 601 et seq.]; rights-of-way across

Indian lands, issued under the Rights of Way Through Indian Lands Act (25 U.S.C. 321, et seq.) [25 USCS §§ 321 et seq.]; removal permits issued under the Materials Act of 1947 (30 U.S.C. 601-603) [30 USCS §§ 601 et seq.]; approval to cross national wildlife refuges, National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668jj) [16 USCS §§ 668dd et seq.] and the Upper Mississippi River Wildlife and Fish Refuge Act (16 U.S.C. 721-731) [16 USCS §§ 721 et seq.]; wildlife consultation in the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) [16 USCS §§ 661 et seq.]; protection of certain birds in the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) [16 USCS §§ 703 et seq.]; Bald and Golden Eagles Protection Act (16 U.S.C. 668-668d) [16 USCS §§ 668 et seq.]; review of Corps of Engineers dredged and fill material permits issued under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) [33 USCS § 1344]; rights-of-way across recreation lands issued under the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 4601-4-4601-11) [16 USCS § 4601-4 et seq.]; historic preservation under the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470-470f) [16 USCS §§ 470 et seq.]; permits issued under the Antiquities Act of 1906 (16 U.S.C. 432, 433) [16 USCS §§ 432, 433]; and system activities requiring coordination and approval under general authorities of the National Trails System Act, as amended (16 U.S.C. 1241-1249) [16 USCS §§ 1241 et seq.], the Wilderness Act, as amended (16 U.S.C. 1131-1136) [16 USCS §§ 1131 et seq.], the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271-1287) [16 USCS §§ 1271 et seq.], the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) [16 USCS §§ 4321 et seq.], the Act of April 27, 1935 (prevention of soil erosion) (16 U.S.C. 590a-f) [16 USCS § 590a-f], and an Act to Provide for the Preservation of Historical and Archeological Data, as amended (16 U.S.C. 469-469c) [16 USCS §§ 469 et seq.];

“(f) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of Agriculture, insofar as they involve lands and programs under the jurisdiction of that Department, related to compliance with: associated land use permits authorized for and in conjunction with grants of rights-of-way across Federal lands issued under Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185) [30 USCS § 185]; land use permits for other associated land uses issued under Sections 501 and 503-511 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761, 1763-1771) [43 USCS §§ 1761, 1763 et seq.]; under the Organic Administration Act of June 4, 1897, as amended (16 U.S.C. 473, 474-482, 551) [16 USCS §§ 473, 474-482, 551], and under Title III of the Bankhead-Jones Farm Tenant Act of 1937, as amended (7 U.S.C. 1010-1012) [7 USCS §§ 1010 et seq.]; removal of materials under the Materials Act of 1947 (30 U.S.C. 601-603) [30 USCS §§ 601 et seq.] and objects of antiquity under the Antiquities Act of 1906 (16 U.S.C. 432, 433) [16 USCS §§ 432, 433]; construction and utilization of national forest roads under the Roads and Trails System Act of 1964 (16 U.S.C. 532-538) [16 USCS §§ 532 et seq.]; and system activities requiring coordination and approval under general authorities of the National Forest Management Act of 1976 (16 U.S.C. 1600 et seq.) [16 USCS §§ 1600 et seq.]; the Multiple



Use-Sustained-Yield Act of 1960 (16 U.S.C. 528–531) [16 USCS §§ 528 et seq.]; the Forest and Rangelands Renewable Resources Planning Act of 1974 (16 U.S.C. 1601–1610) [16 USCS §§ 1601 et seq.]; the National Trails System Act, as amended (16 U.S.C. 1241–1249) [16 USCS §§ 1241 et seq.]; the Wilderness Act, as amended (16 U.S.C. 1131–1136) [16 USCS §§ 1131 et seq.]; the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271–1287) [16 USCS §§ 1271 et seq.]; the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460 et seq.) [16 USCS §§ 460 et seq.]; the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1151 et seq.) [33 USCS §§ 1151 et seq.]; the Fish and Wildlife Coordination Act and Fish and Game Sanctuaries Act (16 U.S.C. 661 et seq. and 694, 694a–b, respectively) [16 USCS §§ 661 et seq., 694, 694a–694b]; the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470–470f) [16 USCS §§ 470 et seq.]; an Act to Provide for the Preservation of Historical and Archeological Data, as amended (16 U.S.C. 469–469c) [16 USCS §§ 469 et seq.]; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) [42 USCS §§ 4321 et seq.]; the Watershed Protection and Flood Prevention Act, as amended (16 U.S.C. 1001 et seq.) [16 USCS §§ 1001 et seq.]; the Soil and Water Conservation Act of 1977 (16 U.S.C. 2001 et seq.) [16 USCS §§ 2001 et seq.]; and the Act of April 27, 1965 (prevention of soil erosion) (16 U.S.C. 590a–f) [16 USCS § 590a et seq.];

“(g) Such enforcement functions of the Secretary or other appropriate officer or entity in the Department of the Treasury related to compliance with permits for interstate transport of explosives and compliance with regulations for the storage of explosives, Title XI of the Organized Crime Control Act of 1970 (18 U.S.C. 841–848) [18 USCS §§ 841 et seq.];

“(h)(1) The enforcement functions authorized by, and supplemental enforcement authority created by the Act (15 U.S.C. 719 et seq.) [15 USCS §§ 719 et seq.];

“(2) All functions assigned to the person or board to be appointed by the President under Section 7(a)(5) of the Act (15 U.S.C. 719e) [subsec. (a)(5) of this section]; and

“(3) Pursuant to Section 7(a)(6) of the Act (15 U.S.C. 719e) [subsec. (a)(6) of this section]; enforcement of the terms and conditions described in Section 5 of the Decision and Report to the Congress on the Alaska Natural Gas Transportation System, as approved by the Congress pursuant to Public Law 95-158 (91 Stat. 1268), November 2, 1977, (hereinafter the ‘Decision’).

“Part II. Other Provisions

“SEC. 201. *Executive Policy Board*

“The Executive Policy Board for the Alaska Natural Gas Transportation System, hereinafter the ‘Executive Policy Board’, which shall be established by executive order, shall advise the Federal Inspector on the performance of the Inspector’s functions. All other functions assigned, or which could be assigned pursuant to the Decision, to the Executive Policy Board are hereby transferred to the Federal Inspector.

“SEC. 202. *Federal Inspector and Agency Authorized Officers*

“(a) The Agency Authorized Officers shall be detailed to and located within the Office. The Federal Inspector shall delegate to each Agency Authorized Officer the authority to enforce the terms, conditions, and stipulations of each grant, permit, or other authorization issued by the Federal agency which appointed the Agency Authorized Officer. In the exercise of these enforcement functions, the Agency Authorized Officers shall be subject to the supervision and direction of the Federal Inspector, whose decision on enforcement matters shall constitute ‘action’ for purposes of Section 10 of the Act (15 U.S.C. 719h) [15 USCS § 719h].

“(b) The Federal Inspector shall be responsible for coordinating the expeditious discharge of nonenforcement activities by Federal agencies and coordinating the compliance by all the Federal agencies with Section 9 of the Act (15 U.S.C. 719g) [15 USCS § 719g]. Such coordination shall include requiring submission of scheduling plans for all permits, certificates, grants or other necessary authorizations, and coordinating scheduling of system-related agency activities. Such coordination may include serving as the ‘one window’ point for filing for and issuance of all necessary permits, certificates, grants or other authorizations, and, consistent with law, Federal government requests for data or information related to any application for a permit, certificate, grant or other authorization. Upon agreement between the Federal Inspector and the head of any agency, that agency may delegate to the Federal Inspector any statutory function vested in such agency related to the functions of the Federal Inspector.

“(c) The Federal Inspector and Agency Authorized Officers in implementing the enforcement authorities herein transferred shall carry out the enforcement policies and procedures established by the Federal agencies which nominally administer these authorities, except where the Federal Inspector determines that such policies and procedures would require action inconsistent with Section 9 of the Act (15 U.S.C. 719g) [15 USCS § 719g].

“(d) Under the authority of Section 15 of the Act (15 U.S.C. 719m) [15 USCS § 719m], the Federal Inspector will undertake to obtain appropriations for all aspects of the Federal Inspector’s operations. Such undertaking shall include appropriations for all of the functions specified in the Act and in the general terms and conditions of the Decision as well as for the enforcement activities of the Federal Inspector. The Federal Inspector will consult with the various Federal agencies as to resource requirements for enforcing their respective permits and other authorizations in preparing a unified budget for the Office. The budget shall be reviewed by the Executive Policy Board.

“SEC. 203. *Subsequent Transfer Provision*

“(a) Effective upon the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, the functions transferred by Section 102 of this Plan [this note] shall be transferred to the agency which performed the functions on the date prior to date the provisions of Section 102 of this Plan [this note] were made effective pursuant to Section 205 of this Plan [this note].



“(b) Upon the issuance of the final determination order by the Director of the Office of Management and Budget for the transfers provided for by subsection (a) of this section, the Office and the position of Federal Inspector shall, effective on the date of that order, stand abolished.

“SEC. 204. *Incidental Transfers*

“So much of the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan [this note], as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for the terminating of the affairs of the Office and the Federal Inspector upon their abolition pursuant to this Plan [this note] and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Plan [this note].

“SEC. 205. *Effective Date*

“This Plan [this note] shall become effective at such time or times as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code [5 USCS § 906], except that the provisions of Section 203 shall occur as provided by the terms of that Section.”

**Alaska Natural Gas Transportation System.** Ex. Or. No. 12142 of June 21, 1979, 44 Fed. Reg. 36927, provided:

“By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 301 of Title 3 of the United States Code [3 USCS § 301] and Sections 201 and 205 of Reorganization Plan No. 1 of 1979 [note to this section], it is hereby ordered as follows:

“1-101. Reorganization Plan No. 1 of 1979 [note to this section], not having been disapproved by Congress (S. Res. 126, 125 Cong. Rec. S 6563-64 (May 23, 1979); H. Res. 199, 125 Cong. Rec. H 3950-51 (May 31, 1979)), shall be effective on July 1, 1979.

“1-102. In accord with Section 201 of that Plan [note to this section], there is hereby established the Executive Policy Board for the system for the transportation of Alaska natural gas (‘the System’) as such system is defined in the Alaska Natural Gas Transportation Act of 1976 (15 U.S.C. 719 et seq.) [15 USCS §§ 719 et seq., generally; for full classification, consult USCS Tables volumes].

“1-103. The Board shall consist of the Secretaries of the Departments of Agriculture, Energy, Labor, Transportation, and the Interior, the Administrator of the Environmental Protection Agency, the Chief of Engineers of the United States Army, and the Chairman of the Federal Energy Regulatory Commission. Additional members may be elected to the Board by vote of a majority of the members. The Board will by majority vote elect a Chairman to serve for a one-year term.

“1-104. The Board shall perform the following functions:

“(a) Advise the Federal Inspector for the Alaska Natural Gas Transportation System (the ‘Federal Inspector’) established by Reorganization Plan No. 1 of 1979 [note to this section], on policy issues in accord with applicable law and existing Departmental or Agency policies.

“(b) Provide advice, through the Federal Inspector, to the officers representing and exercising the functions of the Federal Departments and Agencies that concern the System (‘Agency Authorized Officers’).

“(c) Advise the Federal Inspector and the Agency Authorized Officers on matters concerning enforcement actions.

“(d) At least every six months, assess the progress made and problems encountered in constructing the System and make necessary recommendations to the Federal Inspector.

“1-105. The Federal Inspector shall keep the Board informed of the progress made and problems encountered in the course of construction of the System.

“1-106. Whenever the Federal Inspector determines that implementation of Departmental or Agency enforcement policies and procedures would require action inconsistent with Section 9 of the Alaska Natural Gas Transportation Act of 1976 [15 USCS § 719g], the Federal Inspector shall issue a written statement of such determination including a complete factual and legal basis for the determination. A copy of each statement shall be forwarded promptly to the Board and made available to the public by the Federal Inspector.

“1-107. After written notice of a proposed enforcement action is given by the Federal Inspector, the Federal Inspector will be subject to the rules of procedure for ex parte contacts as reflected in the guidelines and policies of Departments and Agencies from which the specific enforcement authority is transferred.

“1-108. The Federal Inspector and all employees of the Office of the Federal Inspector shall be subject to the provisions of Executive Order No. 11222 [3 USCS § 301 note], concerning standards of conduct for Federal employees. The Federal Inspector shall issue standards of conduct, pursuant to the Order, for the Office of the Federal Inspector.

“1-109. To the extent permitted by law, each Department and Agency shall cooperate with and furnish necessary information and assistance to the Board in the performance of its functions.

“1-110. This Order shall be effective on July 1, 1979.”

**Authorization of appropriations.** Act Aug. 13, 1981, P. L. 97-35, Title X, Subtitle E, § 1051, 95 Stat. 622, effective Aug. 13, 1981, as provided by § 1038 of such Act, which appears as 42 USCS § 6240 note, provided: “Notwithstanding any other provision of law, there shall not be appropriated for programs of the Office of Federal Inspector for the Alaska Natural Gas Transportation System in excess of \$21,038,000 for the fiscal year ending September 30, 1981; \$36,568,000 for the fiscal year ending September 30, 1982; in excess of \$45,532,000 for the fiscal year ending September 30, 1983, and \$46,908,000 for the fiscal year ending September 30, 1984.”



Act Aug. 13, 1981, P. L. 97-35, Title XIV, § 1403, 95 Stat. 749, enacted identical provisions.

#### CROSS REFERENCES

This section is referred to in 15 USCS §§ 719b, 719c, 719f, 719m.

#### § 719f. Congressional review

(a) **Effectiveness of decision designating transportation system for approval upon enactment of joint resolution.** Any decision under section 7(a) or 8(b) [15 USCS § 719e(a) or subsec. (b) of this section] designating for approval a transportation system for the delivery of Alaska natural gas shall take effect upon enactment of a joint resolution within the first period of 60 calendar days of continuous session of Congress beginning on the date after the date of receipt by the Senate and House of Representatives of a decision transmitted pursuant to section 7(b) [15 USCS § 719e(b)] or subsection (b) of this section.

(b) **New decision: statement of reasons for proposal; transmittal to Congress.** If the Congress does not enact such a joint resolution within such 60-day period, the President, not later than the end of the 30th day following the expiration of the 60-day period, may propose a new decision and shall provide a detailed statement concerning the reasons for such proposal. The new decision shall be submitted in accordance with section 7(a) [15 USCS § 719e(a)] and transmitted to the House of Representatives and the Senate on the same day while both are in session and shall take effect pursuant to subsection (a) of this section. In the event that a resolution respecting the President's decision was defeated by vote of either House, no new decision may be transmitted pursuant to this subsection unless such decision differs in a material respect from the previous decision.

(c) **Sessions of Congress.** For purposes of this section—

- (1) continuity of session of Congress is broken only by an adjournment sine die; and
- (2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day calendar period.

(d) **Rules under rulemaking powers of Congress; change of rules; "resolution" defined; referral to congressional committees; debate limitation; motion for consideration of resolution; debate on resolution; nondebateable motions and appeals from procedural decisions.** (1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of each House of Congress, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions

described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as those rules relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

(2) For purposes of this Act, the term "resolution" means (A) a joint resolution, the resolving clause of which is as follows: "That the House of Representatives and Senate approve the Presidential decision on an Alaska natural gas transportation system submitted to the Congress on \_\_\_\_\_, 19\_\_\_, and find that any environmental impact statements prepared relative to such system and submitted with the President's decision are in compliance with the Natural [National] Environmental Policy Act of 1969."; the blank space therein shall be filled with the date on which the President submits his decision to the House of Representatives and the Senate; or (B) a joint resolution described in subsection (g).

(3) A resolution once introduced with respect to a Presidential decision on an Alaska natural gas transportation system shall be referred to one or more committees (and all resolutions with respect to the same Presidential decision on an Alaska natural gas transportation system shall be referred to the same committee or committees) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4)(A) If any committee to which a resolution with respect to a Presidential decision on an Alaska natural gas transportation system has been referred has not reported it at the end of 30 calendar days after its referral, it shall be in order to move either to discharge such committee from further consideration of such resolution or to discharge such committee from consideration of any other resolution with respect to such Presidential decision on an Alaska natural gas transportation system which has been referred to such committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same Presidential decision on an Alaska natural gas transportation system), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential decision on an Alaska natural gas transportation system.

(5)(A) When any committee has reported, or has been discharged from further consideration of, a resolution, but in no case earlier than 30



days after the date of receipt of the President's decision to the Congress, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution described in subsection (d)(2)(A) shall be limited to not more than 10 hours and on any resolution described in subsection (g) to one hour. This time shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to or, thereafter within such 60-day period, to consider any other resolution respecting the same Presidential decision.

(6)(A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.

**(e) Presidential finding respecting and supplementation or modification of environmental impact statement; submittal to congressional committees.** The President shall find that any required environmental impact statement relative to the Alaska natural gas transportation system designated for approval by the President has been prepared and that such statement is in compliance with the National Environmental Policy Act of 1969. Such finding shall be set forth in the report of the President submitted under section 7 [15 USCS § 719e]. The President may supplement or modify the environmental impact statements prepared by the Commission or other Federal officers or agencies. Any such environmental impact statement shall be submitted contemporaneously with the transmittal to the Senate and House of Representatives of the President's decision pursuant to section 7(b) [15 USCS § 719e(b)] or subsection (b) of this section.

**(f) Report of Commission; submittal to Congress; Council on Environmental Quality; hearings, report, submittal to Congress; congressional committee hearings.** Within 20 days of the transmittal of the President's decision to the Congress under section 7(b) [15 USCS § 719e(b)] or under subsection (b) of this section, (1) the Commission shall submit to the Congress a report commenting on the decision and including any information with regard to that decision which the Commission considers appropriate, and

(2) the Council on Environmental Quality shall provide an opportunity to any interested person to present oral and written data, views, and arguments on any environmental impact statement submitted by the President relative to any system designated by him for approval which is different from any system reported on by the Commission under section 5(c) [15 USCS § 719c(c)], and shall submit to the Congress a report summarizing any such views received. The committees in each House of Congress to which a resolution has been referred under subsection (d)(3) shall conduct hearings on the Council's report and include in any report of the committee respecting such resolution the findings of the committee on the legal and factual sufficiency of any environmental impact statement submitted by the President relative to any system designated by him for approval.

**(g) Waiver; submittal to Congress.** (1) At any time after a decision designating a transportation system is submitted to the Congress pursuant to this section, if the President finds that any provision of law applicable to actions to be taken under subsection (a) or (c) of section 9 [15 USCS § 719g(a), (c)] require waiver in order to permit expeditious construction and initial operation of the approved transportation system, the President may submit such proposed waiver to both Houses of Congress.

(2) Such provision shall be waived with respect to actions to be taken under subsection (a) or (c) of section 9 [15 USCS § 719g(a), (c)] upon enactment of a joint resolution pursuant to the procedures specified in subsections (c) and (d) of this section (other than subsection (d)(2) thereof) within the first period of 60 calendar days of continuous session of Congress beginning on the date after the date of receipt by the Senate and House of Representatives of such proposal.

(3) The resolving clause of the joint resolution referred to in this subsection is as follows: "That the House of Representatives and Senate approve the waiver of the provision of law ( ) as proposed by the President, submitted to the Congress on \_\_\_\_\_, 19\_\_." The first blank space therein being filled with the citation to the provision of law and the second blank space therein being filled with the date on which the President submits his decision to the House of Representatives and the Senate.

(4) In the case of action with respect to a joint resolution described in this subsection, the phrase "a waiver of a provision of law" shall be substituted in subsection (d) for the phrase "the Alaska natural gas transportation system."

(Oct. 22, 1976, P. L. 94-586, § 8, 90 Stat. 2909.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

"This Act", referred to in this section, is Act Oct. 22, 1976, P. L. 94-586, 90 Stat. 2903, which appears generally as 15 USCS §§ 719 et seq. For full classification of such Act, consult USCS Tables volumes.

"The Natural Environmental Policy Act of 1969", referred to in this section, is probably intended to be a reference to Act Jan. 1, 1970, P.



L. 91-190, 83 Stat. 851, which appears generally as 42 USCS §§ 4321 et seq. For full classification of such Act, consult USCS Tables volumes.

"The National Environmental Policy Act of 1969", referred to in this section, is Act Jan. 1, 1970, P. L. 91-190, 83 Stat. 851, which appears generally as 42 USCS §§ 4321 et seq. For full classification of such Act, consult USCS Tables volumes.

**Explanatory notes:**

The bracketed word "National" has been inserted in subsec. (d)(2) as the word probably intended by Congress.

**Transfer of functions:**

Enforcement functions authorized by, and supplemental enforcement authority created by 15 USCS §§ 719 et seq. with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, by Reorg. Plan No. 1 of 1979, §§ 102(h)(1), 203(a), 44 Fed. Reg. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, which appears as 15 USCS § 719e note.

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by 42 USCS §§ 7151(b), 7171(a), 7172(a)(1), 7291 and 7293.

**Other provisions:**

**Approval of Alaska natural gas transportation system.** Act Nov. 8, 1977, P. L. 95-158, 91 Stat. 1268, provided: "The House of Representatives and Senate approve the Presidential decision on an Alaska natural gas transportation system submitted to the Congress on September 22, 1977, and find that any environmental impact statements prepared relative to such system and submitted with the President's decision are in compliance with the Natural [National] Environmental Policy Act of 1969 [Act Jan. 1, 1970, P. L. 91-190, 83 Stat. 851; for full classification, consult USCS Tables volumes]."

**Approval of waiver.** Act Dec. 15, 1981, P. L. 97-93, 95 Stat. 1204, provided: "The House of Representatives and Senate approve the waiver of the provision of law (Public Law 95-158 [note to this section], Public Law numbered 688, Seventy-fifth Congress, second session [adding 15 USCS §§ 717 et seq.]; and Public Law 94-163 [adding 42 USCS §§ 6201 et seq. among other things; for full classification, consult USCS Tables volumes]) as proposed by the President, submitted to the Congress on October 15, 1981."

**CROSS REFERENCES**

This section is referred to in 15 USCS §§ 719b, 719c, 719d, 719e, 719g, 719h; 16 USCS §§ 3166, 3233; 43 USCS § 2008.

**§ 719g. Transportation system certificates, rights-of-way, permits, leases, or other authorizations**

**(a) Earliest practicable date for issuance or grant of authorizations.** To the extent that the taking of any action which is necessary or related to the construction and initial operation of the approved transportation system requires a certificate, right-of-way, permit, lease, or other authorization to be issued or granted by a Federal officer or agency, such Federal officer or agency shall—

(1) to the fullest extent permitted by the provisions of law administered by such officer or agency, but

(2) without regard to any provision of law which is waived pursuant to section 8(g) [15 USCS § 719f(g)] issue or grant such certificates, permits, rights-of-way, leases, and other authorizations at the earliest practicable date.

**(b) Expedition and precedence of actions on applications or requests.** All actions of a Federal officer or agency with respect to consideration of applications or requests for the issuance or grant of a certificate, right-of-way, permit, lease, or other authorization to which subsection (a) applies shall be expedited and any such application or request shall take precedence over any similar applications or requests of the Federal officer or agency.

**(c) Required terms and conditions.** Any certificate, right-of-way, permit, lease, or other authorization issued or granted pursuant to the direction under subsection (a) shall include the terms and conditions required by law unless waived pursuant to a resolution under section 8(g) [15 USCS § 719f(g)], and may include terms and conditions permitted by law, except that with respect to terms and conditions permitted but not required, the Federal officer or agency, notwithstanding any such other provision of law, shall have no authority to include terms and conditions as would compel a change in the basic nature and general route of the approved transportation system or those the inclusion of which would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

**(d) Additions to, and amendment or abrogation of authorizations; exception.** Any Federal officer or agency, with respect to any certificate, permit, right-of-way, lease, or other authorization issued or granted by such officer or agency, may, to the extent permitted under laws administered by such officer or agency add to, amend or abrogate any term or condition included in such certificate, permit, right-of-way, lease, or other authorization except that with respect to any such action which is permitted but not required by law, such Federal officer or agency, notwithstanding any such other provision of law, shall have no authority to take such action if the terms and conditions to be added, or as amended, would compel a change in the basic nature and general route of the approved transportation system or



would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

(e) **Appropriate terms and conditions.** Any Federal officer or agency to which subsection (a) applies, to the extent permitted under laws administered by such officer or agency, shall include in any certificate, permit, right-of-way, lease, or authorization issued or granted those terms and conditions identified in the President's decision as appropriate for inclusion except that the requirement to include such terms and conditions shall not limit the Federal officer or agency's authority under subsection (d) of this section.

(Oct. 22, 1976, P. L. 94-586, § 9, 90 Stat. 2912.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### Transfer of functions:

Enforcement functions authorized by, and supplemental enforcement authority created by 15 USCS §§ 719 et seq. with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, by Reorg. Plan No. 1 of 1979, §§ 102(h)(1), 203(a), 44 Fed. Reg. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, which appears as 15 USCS § 719e note.

#### CODE OF FEDERAL REGULATIONS

Office of Federal Inspector for Alaska Natural Gas Transportation System employee standards of conduct, 10 CFR Part 1530.

Enforcement procedures for regulations requiring equal opportunity during planning, construction, and initial operation of Alaska Natural Gas Transportation System, 10 CFR Part 1534.

#### CROSS REFERENCES

This section is referred to in 15 USCS §§ 719c, 719d, 719e, 719f, 719h, 719k.

#### INTERPRETIVE NOTES AND DECISIONS

<p>Importation of Canadian gas into United States is "necessary or related to" Alaska Natural Gas Transportation System within meaning</p>	<p>of 15 USCS § 719g. <i>Midwestern Gas Transmission Co. v Federal Energy Regulatory Com.</i> (1978) 191 App DC 80, 589 F2d 603.</p>
--	--

#### § 719h. Judicial review

(a) **Exclusiveness of remedy.** Notwithstanding any other provision of law, the actions of Federal officers or agencies taken pursuant to section 9 of this Act [15 USCS § 719g], shall not be subject to judicial review except as provided in this section.

(b) **Limitations for filing claims.** (1) Claims alleging the invalidity of this Act may be brought not later than the 60th day following the date a decision takes effect pursuant to section 8 of this Act [15 USCS § 719f].

(2) Claims alleging that an action will deny rights under the Constitution of the United States, or that an action is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right may be brought not later than the 60th day following the date of such action, except that if a party shows that he did not know of the action complained of, and a reasonable person acting in the circumstances would not have known, he may bring a claim alleging the invalidity of such action on the grounds stated above not later than the 60th day following the date of his acquiring actual or constructive knowledge of such action.

(c) **Exclusive jurisdiction of the Special Court; barred claims; precedence and expedition of proceedings; decision; conclusiveness of environmental impact statements.** (1) A claim under subsection (b) shall be barred unless a complaint is filed prior to the expiration of such time limits in the United States Court of Appeals for the District of Columbia acting as a Special Court. Such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such claim in any proceeding instituted prior to or on or after the date of enactment of this Act [enacted Oct. 22, 1976].

(2) Any such proceeding shall be assigned for hearing and completed at the earliest possible date, shall, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at that time, and shall be expedited in every way by such court and such court shall render its decision relative to any claim within 90 days from the date such claim is brought unless such court determines that a longer period of time is required to satisfy requirements of the United States Constitution.

(3) The enactment of a joint resolution under section 8 [15 USCS § 719f] approving the decision of the President shall be conclusive as to the legal and factual sufficiency of the environmental impact statements submitted by the President relative to the approved transportation system and no court shall have jurisdiction to consider questions respecting the sufficiency of such statements under the National Environmental Policy Act of 1969.

(Oct. 22, 1976, P. L. 94-586, § 10, 90 Stat. 2913.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### References in text:

"This Act", referred to in this section, is Act Oct. 22, 1976, P. L. 94-586, 90 Stat. 2903, which appears generally as 15 USCS §§ 719 et seq. For full classification of such Act, consult USCS Tables volumes.



"The National Environmental Policy Act of 1969", referred to in this section, is Act Jan. 1, 1970, P. L. 91-109, 83 Stat. 851, which appears generally as 42 USCS §§ 4321 et seq. For full classification of such Act, consult USCS Tables volumes.

**Transfer of functions:**

Enforcement functions authorized by, and supplemental enforcement authority created by 15 USCS §§ 719 et seq. with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, by Reorg. Plan No. 1 of 1979, §§ 102(h)(1), 203(a), 44 Fed. Reg. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, which appears as 15 USCS § 719e note.

**RESEARCH GUIDE**

**Federal Procedure L Ed:**

Foreign Trade and Commerce, Fed Proc, L Ed, § 37:1289.

**INTERPRETIVE NOTES AND DECISIONS**

When FERC exercises its discretion under Alaska Natural Gas Transportation Act of 1976 (15 USCS §§ 719 et seq.), reviewing court may not consider reasonableness of action or substantiality of evidence supporting it. *Midwestern Gas Transmission Co. v Federal Energy Regulatory Com.* (1978) 191 App DC 80, 589 F2d 603.

15 USCS § 719h prevents review of agency

decision on pipeline system for reasonableness or substantial support on record; judicial review is strictly limited to (1) claims of denial of constitutional rights, (2) actions in excess of statutory jurisdiction, authority, or limitations, or (3) actions short of statutory right. *Earth Resources Co. v Federal Energy Regulatory Com.* (1980) 199 App DC 193, 617 F2d 775.

**§ 719i. Supplemental enforcement authority**

(a) **Compliance order or civil action.** In addition to remedies available under other applicable provisions of law, whenever any Federal officer or agency determines that any person is in violation of any applicable provision of law administered or enforceable by such officer or agency or any rule, regulation, or order under such provision, including any term or condition of any certificate, right-of-way, permit, lease, or other authorization, issued or granted by such officer or agency, such officer or agency may—

- (1) issue a compliance order requiring such person to comply with such provision or any rule, regulation, or order thereunder, or
- (2) bring a civil action in accordance with subsection (c).

(b) **Specificity of compliance order.** Any order issued under subsection (a) shall state with reasonable specificity the nature of the violation and a time of compliance, not to exceed 30 days, which the officer or agency, as the case may be, determines is reasonable, taking into account the seriousness

of the violation and any good faith efforts to comply with applicable requirements.

(c) **Appropriate relief and jurisdiction of civil action.** Upon a request of such officer or agency, as the case may be, the Attorney General may commence a civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed \$25,000 per day for violations of the compliance order issued under subsection (a). Any action under this subsection may be brought in any district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to restrain such violation, require compliance, or impose such penalty or give ancillary relief.

(Oct. 22, 1976, P. L. 94-586, § 11, 90 Stat. 2914.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

**Transfer of functions:**

Enforcement functions authorized by, and supplemental enforcement authority created by 15 USCS §§ 719 et seq. with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, by Reorg. Plan No. 1 of 1979, §§ 102(h)(1), 203(a), 44 Fed. Reg. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, which appears as 15 USCS § 719e note.

**§ 719j. Export limitations**

Any exports of Alaska natural gas shall be subject to the requirements of the Natural Gas Act [15 USCS §§ 717 et seq.] and section 103 of the Energy Policy and Conservation Act [42 USCS § 6212], except that in addition to the requirements of such Acts, before any Alaska natural gas in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

(Oct. 22, 1976, P. L. 94-586, § 12, 90 Stat. 2914.)

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

**Transfer of functions:**

Enforcement functions authorized by, and supplemental enforcement authority created by 15 USCS §§ 719 et seq. with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, by Reorg.



Plan No. 1 of 1979, §§ 102(h)(1), 203(a), 44 Fed. Reg. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, which appears as 15 USCS § 719e note.

### § 719k. Equal access to facilities

(a) **Ownership in transportation system.** There shall be included in the terms of any certificate, permit, right-of-way, lease, or other authorization issued or granted pursuant to the directions contained in section 9 of this Act [15 USCS § 719g], a provision that no person seeking to transport natural gas in the Alaska natural gas transportation system shall be prevented from doing so or be discriminated against in the terms and conditions of service on the basis of degree of ownership, or lack thereof, of the Alaska natural gas transportation system.

(b) **Use within Alaska.** The State of Alaska is authorized to ship its royalty gas on the approved transportation system for use within Alaska and, to the extent its contracts for the sale of royalty gas so provide, to withdraw such gas from the interstate market for use within Alaska; the Federal Power Commission shall issue all authorizations necessary to effectuate such shipment and withdrawal subject to review by the Commission only of the justness and reasonableness of the rate charged for such transportation.

(Oct. 22, 1976, P. L. 94-586, § 13, 90 Stat. 2915.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### Transfer of functions:

Enforcement functions authorized by, and supplemental enforcement authority created by 15 USCS §§ 719 et seq. with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, by Reorg. Plan No. 1 of 1979, §§ 102(h)(1), 203(a), 44 Fed. Reg. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, which appears as 15 USCS § 719e note.

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by 42 USCS §§ 7151(b), 7171(a), 7172(a)(1), 7291 and 7293.

### § 719l. Antitrust laws

Nothing in this Act, and no action taken hereunder, shall imply or effect an amendment to, or exemption from, any provision of the antitrust laws. (Oct. 22, 1976, P. L. 94-586, § 14, 90 Stat. 2915.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### References in text:

"This Act", referred to in this section, is Act Oct. 22, 1976, P. L. 94-586, 90 Stat. 2903, which appears generally as 15 USCS §§ 719 et seq. For full classification of such Act, consult USCS Tables volumes. "The antitrust laws", referred to in this section, appear generally as 15 USCS §§ 1 et seq.

### § 719m. Authorization of appropriations

There is hereby authorized to be appropriated beginning in fiscal year 1978 and each fiscal year thereafter, such sums as may be necessary to carry out the functions of the Federal inspector appointed by the President with the advice and consent of the Senate under section 7 [15 USCS § 719e]. (Oct. 22, 1976, P. L. 94-586, § 15, 90 Stat. 2915.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### Transfer of functions:

Enforcement functions authorized by, and supplemental enforcement authority created by 15 USCS §§ 719 et seq. with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, by Reorg. Plan No. 1 of 1979, §§ 102(h)(1), 203(a), 44 Fed. Reg. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, which appears as 15 USCS § 719e note.

### § 719n. Separability of provisions

If any provision of this Act, or the application thereof, is held invalid, the remainder of this Act shall not be affected thereby. (Oct. 22, 1976, P. L. 94-586, § 16, 90 Stat. 2915.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### References in text:

"This Act", referred to in this section, is Act Oct. 22, 1976, P. L. 94-586, 90 Stat. 2903, which appears generally as 15 USCS §§ 719 et seq. For full classification of such Act, consult USCS Tables volumes.

### § 719o. Civil rights; affirmative action of Federal officers and agencies; rules promulgation and enforcement

All Federal officers and agencies shall take such affirmative action as is necessary to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving, or participating in any activity conducted under, any certificates, permit, right-of-way,

lease, or other authorization granted or issued pursuant to this Act. The appropriate Federal officers and agencies shall promulgate such rules as are necessary to carry out the purposes of this section and may enforce this section, and any rules promulgated under this section through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d et seq.].

(Oct. 22, 1976, P. L. 94-586, § 17, 90 Stat. 2915.)

#### HISTORY; ANCILLARY LAWS AND DIRECTIVES

##### References in text:

"This Act", referred to in this section, is Act Oct. 22, 1976, P. L. 94-586, 90 Stat. 2903, which appears generally as 15 USCS §§ 719 et seq. For full classification of such Act, consult USCS Tables volumes.

##### Transfer of functions:

Enforcement functions authorized by, and supplemental enforcement authority created by 15 USCS §§ 719 et seq. with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, by Reorg. Plan No. 1 of 1979, §§ 102(h)(1), 203(a), 44 Fed. Reg. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, which appears as 15 USCS § 719e note.

#### CODE OF FEDERAL REGULATIONS

Enforcement procedures for regulations requiring equal opportunity during planning, construction, and initial operation of Alaska Natural Gas Transportation System, 10 CFR Part 1534.

#### RESEARCH GUIDE

##### Federal Procedure L Ed:

Civil Rights, Fed Proc, L Ed, § 11:610.



CHAPTER 15C. ALASKA NATURAL GAS  
TRANSPORTATION

## CODE OF FEDERAL REGULATIONS

## Add:

18 CFR Part 154.

This section is no longer cited as authority for:  
18 CFR Part 2.

## § 719. Congressional findings

## CODE OF FEDERAL REGULATIONS

This section is no longer cited as authority for:  
18 CFR Part 2.

## § 719h. Judicial review

(a), (b) [Unchanged]

(c) **Exclusive jurisdiction of the Special Court; barred claims; precedence and expedition of proceedings; decision; conclusiveness of environmental impact statements.** (1) [Unchanged]

(2) [Repealed]

(3) [Unchanged]

(As amended Nov. 8, 1984, P. L. 98-620, Title IV, Subtitle A, § 402(16), 98 Stat. 3358.)

## HISTORY; ANCILLARY LAWS AND DIRECTIVES

## Amendments:

1984. Act Nov. 8, 1984, in subsec. (c), deleted para. (2) which read: "Any such proceedings shall be assigned for hearing and completed at the earliest possible date, shall, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at that time, and shall be expedited in every way by such court and such court shall render its decision relative to any claim within 90 days from the date such claim is brought unless such court determines that a longer period of time is required to satisfy requirements of the United States Constitution." For application of this amendment, see § 403 of such Act, which appears as 28 USCS § 1657 note.

## RESEARCH GUIDE

## Federal Procedure L Ed:

Natural and Marine Resources, Fed Proc, L Ed, 56:824, 825.

## INTERPRETIVE NOTES AND DECISIONS

Final rate base terminations made by Office of Federal Inspector of Alaska Natural Gas Transportation System can be reviewed only under 15 USCS § 719h; hearing requirements beyond "notice and comment" are not required for § 719h pipeline rate base determinations. Iowa State Commerce Com. v Office of Federal Inspector of Alaska Natural Gas Transp. System (1984, App DC) 730 F2d 1566.

State commerce commission seeking review of final orders of Office of Federal Inspector of Alaska Natural Gas Transportation System was not denied its hearing or comment rights pursuant

## § 719j. Export limitations

## INTERPRETIVE NOTES AND DECISIONS

When FERC grants certificate of public convenience and necessity under 15 USCS § 717f, Commission can attach conditions to certificates; such conditions may include apportionment of risk be-

to 15 USCS § 719h. Iowa State Commerce Com. v Office of Federal Inspector of Alaska Natural Gas Transp. System (1984, App DC) 730 F2d 1566.

In action challenging final orders of Office of Federal Inspector of Alaska Natural Gas Transportation System concerning inclusion in rate base of profit realized by engineering company as part of project management costs paid by pipeline company, final determination of office is not faulty for lack of findings of fact or conclusions of law. Iowa State Commerce Com. v Office of Federal Inspector of Alaska Natural Gas Transp. System (1984, App DC) 730 F2d 1566.

tween shareholders and rate payers if project fails. Natural Gas Pipeline Co. v Federal Energy Regulatory Com. (1985, App DC) 765 F2d 1155.

## CHAPTER 16A. EMERGENCY PETROLEUM ALLOCATION

## CODE OF FEDERAL REGULATIONS

## Add:

18 CFR Part 157.

## RESEARCH GUIDE

## Federal Procedure L Ed:

Natural and Marine Resources, Fed Proc, L Ed, §§ 56:2, 3.

## § 751. Congressional findings and declaration of purpose

## CODE OF FEDERAL REGULATIONS

## Add:

18 CFR Part 157.

## RESEARCH GUIDE

## Federal Procedure L Ed:

Natural and Marine Resources, Fed Proc, L Ed, §§ 56:2, 3.

## INTERPRETIVE NOTES AND DECISIONS

## 1. Constitutionality

Unconstitutional legislative vetoes contained in Emergency Petroleum Allocation Act (15 USCS §§ 751 et seq.) and Energy Policy and Conservation Act (42 USCS §§ 6201 et seq.) are severable, leaving remaining sections of legislation intact and operable, and with no effect on Court of Appeal's jurisdiction. Gulf Oil Corp. v Dyke (1984, Em Ct App) 734 F2d 797.

Various oil producers have standing to challenge constitutionality of both Emergency Petroleum Allocation Act (15 USCS §§ 751 et seq.) and Energy Policy and Conservation Act (42 USCS §§ 6201 et seq.), on grounds of allegedly invalid one house legislative vetoes contained in Acts, and that money presently in escrow fund must be restored to producers because it was exacted from them under unconstitutional acts, since exaction of large sums of money under unconstitutional acts constitutes sufficient injury to invoke standing doctrine; however, District Court lacks jurisdiction to determine constitutionality of Acts, since exclusive jurisdiction over such issues is vested in Temporary Emergency Court of Appeals. Re Department of Energy Stripper Well Exemption Litigation (1983, DC Kan) 578 F Supp 586.

Defendants do not have standing to challenge one-House legislative veto provisions in Emergency Petroleum Allocation Act of 1973 (15 USCS §§ 751 et seq.), since one-House veto provision was exercised prior to incorporation of any defendants herein, and thus defendants can show no injury in fact. United States v Sutton (1984, ND Okla) 585 F Supp 1478.

## 2. Purpose

Primary aim of Emergency Petroleum Allocation Act of 1973 (15 USCS § 751 et seq.) was to

## § 753. Mandatory allocation

## INTERPRETIVE NOTES AND DECISIONS

## 1. Generally

Supreme Court's ruling that one-House legislative veto is unconstitutional will not be applied

deal with existing or imminent shortages and dislocations in national distribution system of petroleum and petroleum products caused by Arab oil embargo of 1973. *Cibro Petroleum Products, Inc. v Sohio Alaska Petroleum Co.* (1985, ND NY) 602 F Supp 1520.

## 4. Relationship with state laws

Gasoline supplier did not violate state antitrust laws by charging non-branded, independent retailer of gasoline same dealer tank wagon price for gasoline as it charged its branded, retail dealers, or by submitting statements to Federal Energy Administration [now DOE] challenging retailer's request for base period allocation. *Palazzo v Gulf Oil Corp.* (1985, CA11 Fla) 764 F2d 1381, 1985-2 CCH Trade Cases ¶ 66679.

Branded independent marketers of gasoline are not precluded from bringing action under state law for tortious interference against gasoline supplier which allegedly circumvented its gasoline supply obligation in violation of mandatory petroleum allocation regulations promulgated under 15 USCS §§ 751 et seq., despite fact that plaintiffs may have engaged in fraud with respect to prospective purchaser of gasoline by misrepresenting available gasoline supply. *Union Oil Co. v Rainey* (1985, Em Ct App) 777 F2d 705.

## 5. Entities covered

Gasoline discount enjoyed by service station chain is properly terminated by oil company where discount is not due to volume, credit rating or marketing considerations, and where discount thus is not customary price differential making chain separate class of purchaser, but is instead competitive allowance. *Reynolds Industries, Inc. v Mobil Oil Corp.* (1984, Em Ct App) 741 F2d 1385, 1984-2 CCH Trade Cases ¶ 66120.

retroactively to invalidate any or all parts of Emergency Petroleum Allocation Act (15 USCS §§ 751 et seq.) or Energy Policy and Conservation



hands of the President of the United States and the Congress. It requires the Federal Power Commission to place before the President all possible alternatives, and it leaves to him the prudent judgment as to where national security interests, diplomatic concerns, and costs lie.

Mr. Chairman, I would urge my colleagues not to require construction of a project which is so beneficial and so slanted to one area at the expense of the rest of the country.

Mr. RONCALIO. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Wyoming.

Mr. RONCALIO. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I was wondering about the fact that it has been expedient for this House to give in with respect to vetoing the strip mining bill. We encourage mining in Wyoming where coal is plentiful; and ship it to nearly every State in the East.

In the case of natural gas, therefore, we say that we would like the assurance that some Canadian or Alaskan natural gas is available. But some would argue that the West must not be permitted to have a pipeline; be sure it goes to the Midwest, but not to the Rocky Mountain States.

Mr. Chairman, that is not a fair system.

Mr. DINGELL. Mr. Chairman, I decline to yield further to the gentleman from Wyoming. I think he is entirely in error.

Mr. ANDERSON of California. Mr. Chairman, the North Slope of Alaska is expected to become one of our largest, if not the largest, source of untapped natural gas for this Nation. According to a Rand Corp. study, the Prudhoe Bay field alone contains 26 trillion feet of confirmed natural gas reserves. This "amount constitutes more than 10 percent of current U.S. gas reserves."

Everyone knows why we need new reserves of natural gas, but the how and when of transporting it to U.S. markets has not been decided. The Alaskan Natural Gas Transportation Act, S. 3521, is not a final solution, but it will expedite a sensible decision.

The Federal Power Commission has already conducted extensive hearings on the three principal proposals: El Paso, Arctic Gas, and Northwest Pipeline. However, no decision has been made, and longer delays cannot be tolerated.

Generally, the bill establishes a neutral process for a speedup in the approval process. Briefly, it directs the Federal Power Commission to complete its work and make a recommendation by March 1, 1977. Once the recommendation is made, then the Federal agencies, State and local officials, and interested parties will have until July 1, 1977, to comment on the Commission's recommendation. The President would have until September 1, 1977, to accept the FPC recommendation or designate an alternative system. His decision would be

submitted to the Congress with a supporting report.

Congress has 60 days after the President's recommendation is submitted to approve a joint resolution of approval. If they do not do so, the President has 30 days to prepare another report if he chooses and that recommendation is subject to a 60-day approval period. If not approved, the expedited procedures under the bill are terminated.

Mr. Chairman, we need this gas, and construction costs are not getting any lower. Therefore, I urge my colleagues to join me in supporting this bill that establishes a workable time frame for a sensible decision on the transportation of Alaskan gas to the lower 48.

Mr. MURTHA. Mr. Chairman, this legislation to establish a firm procedure for review of the development of the Alaskan natural gas reserves is extremely important.

Mr. Chairman, we can throw as many statistics and figures around as we want about how severe the natural gas shortage is, but one fact is clear: somewhere around the corner we face a definite, potentially catastrophic shortage of natural gas that could cause severe unemployment and hardships for many families. There are only a limited number of potential new sources of gas, and possibly the most important of those is the Alaskan gas.

In earlier remarks in the RECORD I stated my support for the trans-Alaska route. Whatever route you support, however, this bill is important because it does the following:

Sets a firm timetable for consideration by the Federal Power Commission, the President, and Congress;

Insures a role for Congress in reviewing the final decision on what route the line is to follow; and

Limits but allows judicial review which will help prevent the issue from being bottled up in the courts for many years.

The earliest we are talking about delivering the gas from Alaska after this bill's procedures are completed and construction completed is about 1981 or 1982. Each year we delay final construction of the pipeline raises the final project cost by about 10 percent because of inflation rates, labor costs, et cetera.

I personally wish the timetable in this bill was even quicker, because I believe this decision and construction should be a top energy priority. But at least this bill is a step in the right direction, and I urge a favorable vote.

Mr. Chairman, every Member of Congress realizes the importance of natural gas and the problems America faces in the years ahead over shortages of this energy source.

An extremely important debate is now underway in Congress that will decide a great deal about how we handle that natural gas problem. That debate is over when and how we plan to develop the natural gas reserves in Alaska.

This week I presented testimony to the House Energy and Power Subcommittee of the Interstate and Foreign Commerce

Committee on this subject. In the remarks that follow I want to share the thoughts from that testimony with my colleagues.

One word before I begin. I want to congratulate my colleagues and the major spokesmen for the competing approaches to Alaskan development. To date the debate has been based on the facts, without distortion or unfairness, and has been aimed toward developing the best possible approach for the United States. I hope the following remarks will add to the facts and to that spirit.

I have divided this presentation into two parts. First, I discuss the legislation presently before the subcommittee; second, I detail my own preference for Alaskan natural gas development:

#### LEGISLATION

##### PART I: INITIAL LEGISLATION

After debating the natural gas issue for over a year in Congress there should be little doubt that the situation is serious. While we can look to off-shore drilling, Alaska, and Devonian shale for possible large inputs of new gas, we must also face the fact that development on these sources must begin quickly.

In H.R. 12983 we have a good vehicle for expediting the decision on how to tap the Alaskan natural gas. The decisions moving from the Federal Power Commission, to the President, and finally to Congress represent in my estimation a proper decision-making path.

In all candor we face a difficult time problem because it is a Presidential election year. I can understand the philosophy underlying this bill that in the interests of national policy the Presidential decision should be made by the administration taking office in 1977.

Personally, I must disagree with that philosophy. My own preference is for making the decision this year. I have two main reasons for that. The first is the severity of the natural gas situation. Most estimates I have seen indicate all known reserves of natural gas will be used up at our present rate of consumption by 1990. Last week I saw a news story reporting that a Federal Power Commission study indicated it might only be 10 years before those reserves were gone. When we have 40 million households, 135 million residents, and millions of jobs depending on this energy source. I believe we must move as quickly as possible.

Second, estimates I have seen are that each year of delay in pipeline construction increases the final project cost by 10% because of inflation, labor rates, etc. We want to add as little to that final delivery cost as possible to protect the consumer who is already hard hit by jumps in energy prices.

If a majority of the Committee believes the administration beginning in 1977 should make the determination, then I would strongly urge that the deadlines in the bill for decision-making be moved forward. I am concerned that under the time limits in the legislation it could be as late as October 1977 before the government clears the way for development of the Alaskan gas. My recommendation would be to move up the dates for Presidential and Congressional decisions in 1977 so at the latest by one year from this testimony a final decision is made. Despite the possibility of a change in administration, I believe enough evidence will be known for any new administration to make its decision earlier in 1977 than the August 1 final deadline in this bill.

I hope the Committee will report and Congress pass an outline such as in this bill, so we do develop a firm time plan for making this decision.



## PART II: FINAL ROUTE

Because it is essential for Congress to debate thoroughly the final development plan for the Alaskan natural gas, I also want to take this opportunity to state my firm, positive support for the Trans-Alaskan route for transporting the gas. In the remainder of this testimony I would like to first cite the positive elements of this route, and then answer some of the criticisms being made of this Trans-Alaskan plan.

## A. Outline

There have basically been two proposals for moving the gas. The Trans-Alaskan route involves building a pipeline across Alaska, paralleling the oil line, then transporting the gas as LNG to California for distribution in the continental U.S. The alternative proposal (the Trans-Canadian line) involves building a pipeline through Alaska coupled to another pipeline through Canada arriving at the U.S. in the middle west for distribution. I believe the Trans-Alaskan route is superior. [Note: A third route, the Northwest Pipeline, routed through the Fairbanks Corridor, has also been mentioned. I believe the FPC should consider this route if a firm proposal is made, but facts are scarce at this time on the idea, therefore it is excluded from the discussion.]

## B. Security

The United States would have total control of a Trans-Alaskan pipeline. Only American approval would be necessary to begin the project. Only the actions of Congress, the Administration, and the State of Alaska would control the development of the project.

If the route is built through Canada, several factors then complicate the issue. Canadian litigation on environmental and other problems could tie up development of the project for many years. In Canada the provinces have sovereignty over the central government and it is unknown what actions the provinces containing the pipeline will take. One option they have is taxing the line heavily, a decision we could not prevent.

Obviously, the Canadian government has traditionally been very friendly to the United States. I am confident that friendship will be strong in the years ahead. But the situations involving the Panama Canal and the Arab Oil Embargo should have shown us that the United States must control our own destiny. The oil and gas coming to the United States from Alaska should be under the total control of the United States government. We should not rely on other nations, no matter how friendly, during this key energy development.

## C. Economics

The economic advantages of the Trans-Alaskan pipeline are many.

First, this project means jobs for Americans. Estimates are the Trans-Alaskan project would produce 345,000 jobs for American citizens during construction. If the Trans-Canadian line is built, the vast majority of jobs will go to Canadian citizens. After completion, the Trans-Alaskan line means 3½ times as many jobs for Americans as the Canadian line.

Second, building through Alaska will mean the U.S. government will collect some \$9.3 billion in tax revenues. If the line goes through Canada, the Canadian government will collect at least \$7 billion. Let us not kid ourselves, in either case the tax cost will eventually be passed on to the American consumer. But I say that if taxes are going to be collected, let us have them come into the U.S. treasuries.

Third, in studying testimony and talking to officials of the El-Paso Natural Gas Company (who would be chief builder of the Trans-Alaskan route) I am impressed with their commitment to build the pipeline with goods purchased from American companies. There is already substantial information that a Trans-Canadian line will depend on Japanese and German firms for much of their material.

Fourth, a key question to me is the purchase of pipe for the lines. The oil route was built largely with foreign steel because U.S. companies did not produce the 48 inch pipe needed. I have spoken with steel company officials and they plan to develop facilities to roll 48 inch pipe. U.S. Steel has already announced plans to build an \$80 million pipe mill in Texas to produce the 48 inch pipe. Also, the El-Paso company officials are considering some use of 42 inch pipe, which is already produced by American companies (including Kaiser, Bethlehem, and U.S. Steel). If the line is built through Canada, American companies could be frozen out of pipe production, at the very least they will produce less of it. I make no secret of the fact that both Bethlehem and U.S. Steel have plants in the 12th Congressional District of Pennsylvania and I believe that if we can use American pipe on this project to help these companies and protect American jobs that we should make every effort to do so.

## D. Time span

The Trans-Alaskan natural gas project will parallel the existing oil project. What that means is that the gravel roads, work parks, and camps are already built, and much of the equipment is already there and available. The start-up time will be much less. Needed construction before the project actually begins will be less.

Finally, several recent indications are that the Canadian government plans to develop and stress gas sources that will help their own nation, placing any Trans-Canadian line on a back-burner. That makes clear sense for their nation, but it is another reason why the timing on a Trans-Alaskan line will be better for our country.

## E. Environment

The corridors through Alaska are already developed and environmental considerations have already been met along the routes. Some of the Trans-Canadian line will go through wilderness area that will be extremely difficult to protect environmentally. The Trans-Canadian line requires more than 5 times as many minor waterway crossings and 6 times as many major water crossings. That is just one indication of the additional harm that could be done to much of the beautiful Canadian wilderness this line would have to traverse.

## F. Some questions

Concerned citizens have raised some important questions about the Trans-Alaskan route. I want to answer those questions briefly. My explanations will be a quick summary, but for the completeness of the testimony I would like to mention them.

*The Trans-Alaskan line calls for shipping gas as LNG from Alaska to California, isn't shipping LNG unsafe?* The U.S. Coast Guard has testified to the safety of this shipping. The danger with LNG is during loading and unloading, and the plans are being made to do this in the safest areas possible and away from population. The system involves an automatic cut-off in the pipes when they reach certain stress levels. No one should say there is no danger, but from the material I have seen I believe it is very minimal.

*The Trans-Canadian line will bring gas into the Midwest which is hard pressed for gas. By bringing it into California instead, won't we just gut the West Coast market with gas?* Those advocating bringing the gas into the Midwest are sincerely trying to help their area, but there are two reasons why I do not believe the Midwest would benefit more than the rest of the nation. First, because of displacement, gas coming into California from Alaska will shift the flow of gas now coming into California from the Southwest to Midwest and Eastern markets. If the gas comes into the Midwest, displacement will transfer gas now going into that region to the east or west. Second, if you don't have a contract for the gas, you aren't going to get it regardless of where it comes in unless there is government allocation which we all want to avoid.

*I read where if this gas comes into California, some of it is going to be shipped to Japan. Is that true?* That would be against the law. The Alaskan pipeline law says all gas and oil from the pipeline must be used in the U.S., unless Congress and the President give the right to ship it to a foreign nation. Also, the El-Paso Company has publicly stated it has no intention of marketing even the smallest quantity of Alaskan gas anywhere but in the United States.

*Can't bad weather halt the shipping and mess up the plans?* Sure. The weather has been checked, however, and lead time built in, so that a substantial delay because of continuing bad weather would be unlikely.

It is impossible in a short time to present all the arguments and facts. I would like to conclude, however, by restating several key points. First, I believe it is essential for Congress to act quickly on this proposal. Enough parts of the energy solution have already been delayed. We need to act quickly, and forcefully on this issue so we can stimulate the flow of Alaskan gas within the best time frame possible. Second, I believe the Trans-Alaskan line is the best route. It makes the project entirely under the control of the U.S. government. It increases jobs for Americans, and tax revenues for state and federal governments. It is the quickest project to develop. It is the most environmentally reasonable.

I am submitting a chart outlining the pros and cons of the two proposed routes prepared by the El-Paso Natural Gas Company.

## FACTUAL COMPARISON OF PROJECTS

## TRANS-ALASKA PROJECT

## I. Security Risks:

None. Totally under American control.

## II. Balance of Payments Impact:

Favorable.

## III. Economic Impact:

All goods and services will be contracted within the U.S., including the LNG carriers.

## ARCTIC GAS PROJECT

Severe. Substantial portion of the pipeline crosses a foreign country. Contrary to Arctic Gas claims, a treaty is powerless to solve the problem.

Unfavorable. Adverse balance of at least \$10 billion.

Only 6% of \$6 billion of Arctic Gas facilities in Canada will be procured in the U.S.



NATURAL GAS TRANSPORTATION ACT  
P.L. 94-586

ALASKA NATURAL GAS TRANSPORTATION  
ACT OF 1976

*P.L. 94-586, see page 90 Stat. 2903*

Senate Report (Commerce and Interior and Insular Affairs Committees) No. 94-1020, June 30, 1976 [To accompany S. 3521]

House Report (Interstate and Foreign Commerce Committee) No. 94-1658, Sept. 22, 1976 [To accompany S. 3521]

Cong. Record Vol. 122 (1976)

DATES OF CONSIDERATION AND PASSAGE

Senate July 1, October 1, 1976

House September 30, 1976

The House Report is set out.

HOUSE REPORT NO. 94-1658

[page 1]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3521) to expedite a decision on the delivery of Alaska natural gas to United States markets, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

\* \* \* \* \*

[page 17]

PURPOSE AND BRIEF SUMMARY

The purpose of this legislation is to provide a process for arriving at a sound decision with respect to the selection of a transportation system for the delivery of Alaska natural gas to United States markets and, should any such system be approved, to expedite its construction and initial operation.

The Committee substitute to the bill S. 3521 would alter procedures under existing law for the selection of a transportation system for the delivery of Alaska natural gas in order to expedite both the designation and the construction of such a system. A 4-step process is contemplated.

In the first stage, the Federal Power Commission is directed to suspend current proceedings pursuant to which contesting applicants seek the issuance of a certificate of public convenience and necessity from the Commission authorizing the construction of a transportation system for such gas. The Commission is directed to review the contesting systems proposed by applicants, together with other alternatives, and to report to the President by May 1, 1977. The Commission's report is to analyze various economic and environmental considerations as well as other factors which the Committee believes to be relevant to the selection of an appropriate system. The Commission may



## LEGISLATIVE HISTORY

P.L. 94-586

it is adequately supported by the record of any proceedings as may have occurred before the agency.

Subsection (c) vests exclusive jurisdiction over claims brought under subsection (b) in the U.S. Court of Appeals for the District of Columbia. The court is directed to give precedence to these claims over all other pending matters on the docket, and to adjudicate such claims within 90 days from the date the action is brought, unless the court determines a longer period is necessary to satisfy constitutional requirements. The court shall not have jurisdiction to grant injunctive relief except in connection with a final judgment entered in the case. Sole

[page 32]

review of any interlocutory or final judgment on order of the court shall lie with the Supreme Court, and the appellant must file a petition for certiorari within 15 days after the decision of Court of Appeals. The approval of a system pursuant to section 8 shall be conclusive as to the legal and factual sufficiency of any environmental impact statement related to the system and the court shall have no jurisdiction to consider questions respecting the sufficiency of such statements.

### *Sec. 11. Supplemental Enforcement Authority*

Section 11 gives any Federal officer or agency the authority to issue a compliance order or bring a civil action against any person he determines to be in violation of any provision of law administered by such officer or agency. Any such compliance order would state the nature of the violation with specificity, and set a time of compliance, not to exceed 30 days, in keeping with the seriousness of the violation and any good faith efforts to comply with the requirements. Continued non-compliance in violation of a compliance order would permit the Attorney General, at the request of the officer or agency, to commence civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed \$25,000 per day for each day of continued violation. These actions may be brought in the District Court of the U.S. for the district in which the defendant resides or is doing business.

### *Sec. 12. Export Limitations*

Section 12 provides that any exportation of Alaskan natural gas, as defined by Section 4(1), be subject to the requirements of the Natural Gas Act and section 103 of the Energy Policy and Conservation Act. In addition, such exports may not exceed 1,000 MCF per day unless it is done under an exchange agreement whereby the exports would not diminish the total quality or quantity, nor increase the total price of energy available within the United States.

### *Sec. 13. Equal Access to Facilities*

Section 13 provides that no person seeking to transport gas in the approved system would be prevented from doing so or discriminated against in the terms and conditions of service, on the basis of ownership or lack thereof. This section would work to assure that any tariffs applied to the transportation of gas through the system would be equal for owners and non-owners alike.

### *Sec. 14. Antitrust Laws*

Section 14 states that nothing in the Act is intended to operate as an amendment to any provisions of the anti-trust laws.



Calendar No. 963

94TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 94-1020

THE ALASKA NATURAL GAS  
TRANSPORTATION ACT OF 1976

---

JOINT REPORT

OF THE

SENATE COMMITTEES ON COMMERCE  
AND INTERIOR AND INSULAR AFFAIRS

together with

MINORITY AND ADDITIONAL VIEWS

ON

S. 3521

TO EXPEDITE A DECISION ON THE DELIVERY OF ALASKA  
NATURAL GAS TO UNITED STATES MARKETS AND FOR  
OTHER PURPOSES



JUNE 30 (legislative day, JUNE 28), 1976.—Ordered to be printed

---

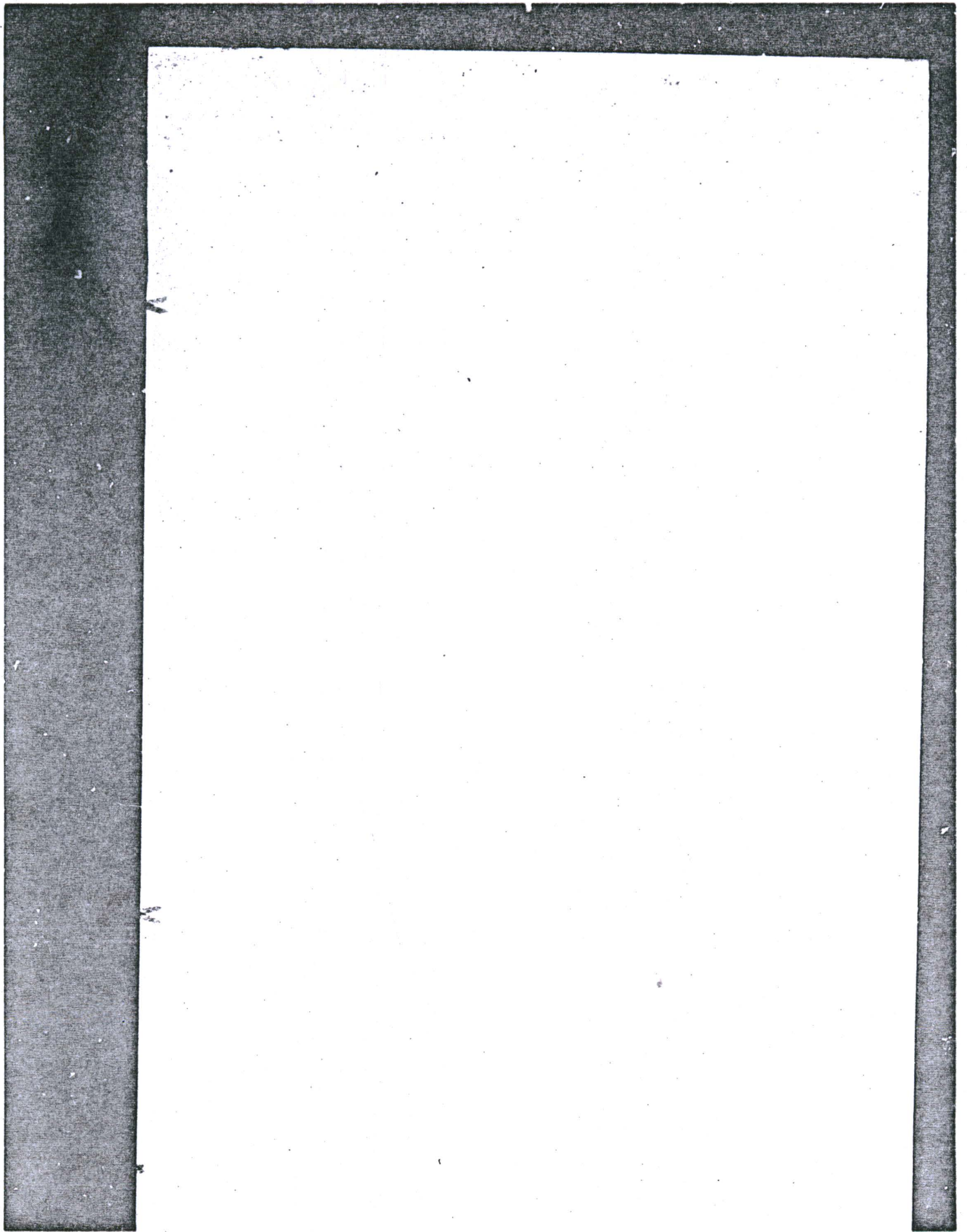
U.S. GOVERNMENT PRINTING OFFICE

57-010 O

WASHINGTON : 1976

8443-36





## CONTENTS

---

	Page
Summary and purpose.....	1
Background and need.....	3
1. Alaskan natural gas supplies.....	3
2. Proceedings before the FPC.....	4
3. Advantages of an early decision on Alaska natural gas.....	6
4. Potential for delay under existing law.....	7
Detailed description.....	7
1. FPC recommendation.....	7
2. Federal Agency Reports.....	8
3. Presidential decision.....	8
4. Congressional approval of President's decision by joint resolution.....	10
5. Judicial Review.....	10
Legislative History.....	11
1. Joint Committee questionnaire.....	11
2. Joint hearings.....	12
3. Committee markup.....	13
Estimated costs.....	13
Section-by-section analysis.....	13
Changes in existing law.....	24
Text of S. 3521 as reported.....	24
Agency comments.....	34
Additional views of Mr. Bumpers.....	35
Minority views of Mr. Durkin.....	37



THE ALASKA NATURAL GAS TRANSPORTATION  
ACT OF 1976

JUNE 30 (legislative day, JUNE 18), 1976.—Ordered to be printed

Mr. STEVENSON, from the Committees on Commerce, and Interior  
and Insular Affairs, submitted the following

JOINT REPORT

[To accompany S. 3521]

together with

MINORITY AND ADDITIONAL VIEWS

The Committees on Commerce and Interior and Insular Affairs to which was referred the bill (S. 3521), to expedite a decision on the delivery of Alaska natural gas to United States markets, and for other purposes, having considered the same, reports favorably thereon, with an amendment, and recommends that the bill as amended do pass.

SUMMARY AND PURPOSE

The Alaska Natural Gas Transportation Act of 1976 would establish an expedited process for reaching a sound decision on the selection of a natural gas transportation system for delivery of Alaska natural gas to other states. There is a current and growing shortage of natural gas in the contiguous 48 states. Production from Alaskan reserves could significantly alleviate this shortage if an economical transportation system could be constructed and operated. The legislation accordingly establishes a schedule designed to reach an early decision on the delivery of Alaska natural gas. The bill provides for administrative, Executive and Congressional participation in the decision-making process because selection of a system involves critical questions of national energy policy, international relations, and economic and environmental impacts. Many of these considerations cut across agency lines and are thus beyond the expertise of the Federal Power Commission (FPC), the Department of Interior, or other agen-



cies which would, under existing law, be responsible for limited aspects of any such transportation system.

The proposed legislation does not designate a specific transportation system. Rather, it is designed to assure fair and impartial consideration of every reasonable alternative and to establish a rational, expeditious process for making a selection of the best system. Selection of a specific system by Congress at this time is not advisable because some vital information for making a choice is not yet available, and many proposals are going through a process of modification and improvement. Moreover, many complicated issues will benefit from initial resolution by the agencies with expertise.

Accordingly, the legislation establishes a neutral four-step process for selecting a transportation system.

First, the FPC is directed to consider reasonable alternatives for the transportation of Alaska natural gas to consumers. The Congress intends that alternatives considered include such systems as an Alaska-LNG system, an Alaska-Canada Mackenzie corridor system, an Alaska-Canada Alcan Highway system, the feasibility of a methanol system, or no system at the present time. The Commission is then directed to recommend the transportation system, if any, which it believes best satisfies criteria specified in the legislation, and to transmit its recommendation to the President by March 1, 1977, together with relevant information concerning all of the systems which it examined. It is presently anticipated that this Commission recommendation would be made at about the same time as a recommendation by the National Energy Board of Canada.

Second, the President is to review the FPC recommendation, evaluate reports from other agencies, and transmit his own decision to the Congress as soon as possible but not later than July 1, 1977. However, the President may delay transmitting this decision, for up to ninety additional days if he selects a system for which no required final environmental impact statement has been prepared.

The President is directed to use the period prior to July 1, 1977 for the purpose of reviewing the Commission recommendation, considering comments and views submitted by federal and state agencies, and if an Alaska-Canada system is to be designated, finalize any negotiations with the government of Canada so that negotiations can be immediately concluded if Congress approves the President's decision. The President is to then approve or modify the Commission recommendation based upon his determination of which system, if any, best serves the national interest. He is to take into account specific factors enumerated in the legislation. The President would then transmit his decision to the Congress with a report explaining the basis for such decision, including an analysis of the system chosen by him with respect to the specific criteria enumerated in the legislation and reports and findings concerning environmental impact and financing arrangements.

Third, the President's decision would, under S. 3521 as reported, become final upon enactment of a joint resolution of approval within 60 days of transmittal by the President. Expedited procedures are included in the legislation to assure a vote on the joint resolution of approval. If the joint resolution is not enacted within 60 days, the



President may propose a new decision within 30 days which becomes final under the same procedures. The President is authorized to make only one additional decision.

Fourth, judicial review of a certificate and other approvals required through the construction phase to the point of initial commercial operation of the Alaska natural gas transportation system is restricted to claims alleging the invalidity of this Act, and claims alleging that an action will deny rights under the Constitution or that an action is beyond the scope of authority conferred by this Act. A claim alleging the invalidity of the Act must be brought within 60 days after enactment of a joint resolution of approval of the President's decision pursuant to section 8. A claim alleging that an action denies Constitutional rights or is beyond the scope of authority conferred by the Act must be brought within 60 days following the date of such action. Claims must be filed in the United States Court of Appeals for the District of Columbia within the time limits specified above. Further appeal may be taken only by filing a petition for certiorari with the United States Supreme Court within 15 days of the Court of Appeals' decision.

The legislation provides for the establishment of a process for resolving inter-agency disputes and appealing agency decision during construction of the transportation system as follows. The legislation authorizes the President to establish a special administrative process to review actions of Federal officers for which the bill limits judicial review. This review may not exceed 45 days. The legislation directs the President to appoint a Federal inspector and coordinator to assure compliance with applicable laws and authorizations, to maintain adequate control of construction quality and environmental impacts, and to keep the President and Congress informed of departures from compliance and the progress of construction. Quarterly reports are required and must include an evaluation of the extent to which quality control, safety and environmental objectives are being achieved.

In addition to establishing a process for selecting an Alaska natural gas transportation system, S. 3521 as reported would also place certain other requirements upon any Alaska natural gas transportation system certificate holder. The legislation provides that persons seeking to transport Alaska natural gas are not to be discriminated against due to their lack of ownership in the transportation facilities. The legislation does not waive or modify the antitrust laws. Several provisions are designed to assure compliance with certificate terms and permit stipulations. In addition to remedies under existing law, the Commission or other appropriate Federal officers, including the Federal inspector, can seek civil damages or a permanent or temporary injunction to assure compliance with the terms of the certificate and other Federal permits and approvals. The bill would also establish certain export restrictions on Alaska natural gas to countries other than Canada or Mexico.

#### BACKGROUND AND NEED

##### *1. Alaska Natural Gas Supplies*

In 1968, the largest single discovery of oil and gas ever made on the North American Continent was made at Prudhoe Bay on the



North Slope of Alaska. A pipeline to transport the oil is more than half-completed and it is anticipated that operation will commence in the fall of 1977. Engineers estimate that during the first few years of production of oil from the North Slope, natural gas will be economically reinjected into the reservoir. By 1980, however, if an economical transportation system were to be completed, Alaska natural gas might be shipped to consumers in the contiguous 48 states and could make a significant contribution to the natural gas requirements of the nation.

There are an estimated 26 trillion cubic feet of proved reserves of natural gas at Prudhoe Bay alone. The proved reserves at Prudhoe Bay are composed of solution gas and gas cap gas. The solution gas is gas produced along with the crude oil. It is uncertain how much of solution gas will be sold and how much re-injected into the field to optimize crude oil recovery. The remaining natural gas at Prudhoe Bay is in a gas cap which if produced would require additional well completions. It is also uncertain how much (if any) natural gas from the gas cap will be permitted to be produced in the early years of oil production. The Commissioner of Natural Resources for the State of Alaska has responsibility for review of production plans to assure that they do not waste oil or gas. The State, in conjunction with H. K. Van Poolen, has undertaken to develop a model of the effect of gas production upon oil production levels. Current deliverability estimates from Prudhoe Bay range from 1.2 to 3.3 billion cubic feet per day, with a general consensus at around 2.0 Bcf to 2.25 Bcf per day.

Additional reserves of natural gas have been discovered in Canada's MacKenzie Delta and Beaufort Sea. While there is uncertainty regarding deliverability estimates from these reserves, current projections range from 0.4 to 1.25 Bcf per day. Improved information should be available when the current drilling season is completed.

Other areas in Alaska, including Naval Petroleum Reserve No. 4 and offshore areas have been estimated to contain as much as 150 trillion cubic feet of undiscovered recoverable natural gas resources. The deliverability from these Alaskan natural gas reserves has not yet been determined, but is among the factors that should be considered in reaching a decision on an Alaskan gas transportation system.

The level of natural gas deliveries to the pipeline system is an important variable that affects both economic feasibility and consumer costs, since the delivered unit cost of Alaska natural gas is affected by the amount of natural gas transported.

Under the current estimates of natural gas deliverability from Prudhoe Bay, it would be the source of 2 to 6 percent of the Nation's total natural gas supply. If additional Alaska natural gas resources were developed, Alaska's importance as a source of supply of natural gas to U.S. consumers would greatly increase.

## *2. Proceedings Before the FPC*

Under the existing law, no person may construct or extend facilities for the transportation of natural gas in interstate commerce without the FPC issuing a certificate of public convenience and necessity authorizing such construction or extension. Since January of 1975, proceedings with respect to transporting the Prudhoe Bay gas have been



underway before the Commission. FPC Chairman Richard Dunham testified that the purpose of these proceedings was to thoroughly examine the issues involved, test the evidence presented by cross-examination, and allow all interested parties an opportunity to contribute to the decision. The present proceedings involve more than 100 intervenors, in addition to competing groups of applicants. The intervenors include pipelines, distributing companies, customers, state and local government agencies, Congressmen, and individual citizens. Approximately 150 witnesses have testified, presenting over 27,000 pages of testimony and tens of thousands of additional pages of exhibits.

In addition, the Secretary of the Interior, in response to the Congressional requirement under section 302 of Public Law 93-153, the Trans-Alaska Oil Pipeline Authorization Act, has investigated and reported to Congress concerning the feasibility of various Alaska natural gas transportation system proposals. The Interior Department, pursuant to the Mineral Leasing Act of 1920, has authority to grant right-of-way permits for the use of federal lands for natural gas pipelines.

There are currently three principal proposals pending before the FPC to transport Alaska natural gas to consumers in the contiguous 48 states:

1. In September, 1974, the El Paso Alaska Company applied to the FPC for a certificate to construct a 42-inch 800-mile natural gas pipeline parallel to the Alaskan oil pipeline from the North Slope to southern Alaska. The gas would then be liquefied and shipped 1,900 nautical miles to Southern California in cryogenic tankers. Natural gas would then be supplied to contract purchasers throughout the nation, by displacement, primarily through existing pipeline facilities.

2. The Arctic gas pipeline consortium in March, 1974, applied for FPC, Department of the Interior and Canadian approvals to build a 48-inch pipeline (some 42 inch sections) approximately 3,700 miles long from the North Slope of Alaska to the Mackenzie Delta area of Canada's Northwest territories. This system traverses south to Alberta and then divides into two legs to serve markets in the West and Midwest. The project also provides that gas will be delivered from the termination of the line through existing pipelines by displacement. The Arctic Gas project would also deliver Canadian Mackenzie Delta gas to Canadian pipeline purchasers.

3. In an application to be submitted to the FPC in July, 1976, Northwest Pipeline Corporation will seek a certificate to construct a 42-inch all-pipeline system from Prudhoe Bay paralleling the trans-Alaska oil pipeline to Delta Junction, where the pipeline would then follow the so-called Alcan Highway to the Alaska Yukon Border. Canadian companies would sponsor a pipeline from the Yukon border to Fort Nelson, British Columbia and Zema Lake, Alberta to connect with existing systems to bring the Alaska natural gas to consumers in the United States. This system is proposed to include approximately 1,700 miles of new pipeline construction together with an extensive expansion or reconstruction of existing pipelines to accommodate the volumes of gas that would be delivered from Northern Alaska.

In addition to proposals pending before the FPC, Foothills Pipelines Limited has applied to the Canadian National Energy Board to construct an 847 mile 42-inch pipeline from the Mackenzie Delta



southward to connect with existing Canadian transmission systems in British Columbia and Alberta, Canada, which would be expanded substantially. This is a competing all-Canadian proposal to the Arctic Gas Project to deliver Mackenzie Delta gas to Canadian markets.

Finally, although no construction permits have yet been requested, the Westinghouse Oceanic Division and the U.S. Maritime Administration have undertaken preliminary conceptual studies of bringing Alaska natural gas energy to the contiguous 48 states in the form of methanol. Under the present proposal, North Slope gas cap gas would not initially be produced. The solution gas would be converted to methanol and initially shipped through the trans-Alaska oil pipeline and transported by conventional tankers to markets for use as a utility peaking fuel, gasoline additive, petrochemical feedstock, or industrial fuel. As more of the oil pipeline capacity was required to ship crude oil, the proposal contemplates that the methanol would then be transported to East Coast markets by submarine tanker.

The approval of any proposal to transport Alaskan natural gas to other states would have major economic, energy distribution, consumer cost and other impacts on the nation. It would also be a major federal action affecting the environment, and environmental impact statements covering the pending applications have been prepared by the FPC and the Department of the Interior. S. 3521 would provide the Commission with procedural flexibility to consider natural gas supply and demand, consumer cost, safety and environmental aspects of the previous applications, the new Northwest Pipeline proposal and all reasonable alternatives, with a firm deadline of March 1, 1977, to make its recommendation after weighing and balancing all considerations.

### *3. Advantages of an Early Decision on Alaska Natural Gas*

After decades of rapidly increasing consumption and ample supplies, the Nation is now facing severe shortages of natural gas. Since 1968, consumption each year has been greater than reserves added by new discoveries, according to industry estimates. Domestic natural gas production peaked in 1973 at 22.6 trillion cubic feet, declining to 21.6 Tcf in 1974, and 20.1 Tcf in 1975. Natural gas shortages have caused interruptions for industrial customers. Curtailments of interstate pipeline deliveries below firm contract demand have increased from 0.7 Tcf in 1970 to an anticipated shortfall of about 3.5 Tcf in 1976. Curtailments of natural gas service could become dramatically higher if winter weather conditions are severe, and if industrial production continues to increase as the economy recovers from the recession.

An early decision on whether or not consumers can rely upon receiving approximately a trillion cubic feet of Alaska natural gas per year in the early 1980's would greatly assist future planning and could alleviate severe hardships. If Alaska gas will be available, it could contribute significantly to reducing natural gas shortages. If Alaska natural gas will not be available, then the Nation needs to know so that planning can begin for alternate energy supplies. A prompt decision on an Alaska natural gas transportation system is also needed because construction costs for such large construction projects can and have escalated very rapidly. For example, in 1972, the



estimated cost of the trans-Alaska oil pipeline to initial commercial operation was \$1.7 billion. The present estimate is nearly \$7 billion. The production and transportation of Alaska natural gas would be the largest private construction project ever undertaken. Substantial delays could cost consumers large sums of money and threaten the economic feasibility of any Alaska gas transportation system,

Needless delay must be avoided in coming to a decision. However, time is needed for a considered analysis of alternatives, the selection of the most competent applicant to construct and operate the project, and if an Alaska-Canada system is chosen, careful coordination and negotiations with the government of Canada. The timetable established in S. 3521, in the judgment of the Committees, reflects these necessities and results in a decision at the earliest practicable time consistent with prudent government decision-making. Moreover, a central purpose of S. 3521 is to prevent time-consuming administrative and judicial delay after a decision to construct a system has been made.

#### *4. Potential for Delay Under Existing Law*

Under existing law, the potential for delay is great. First, there can be serious delay at the FPC. There are competing applications before the Commission for the construction of an Alaska natural gas transportation system. Under the Natural Gas Act and the Administrative Procedure Act the Commission selection of a successful applicant requires a full adjudicatory proceeding. By authorizing the Commission to establish special procedures, S. 3521 minimizes the possibility of delay inherent in such proceedings. Under S. 3521, the Commission decision would not be a final decision but a recommendation to the President.

Second, additional years of delay could result because under current law a decision by the Commission to issue a certificate of public convenience and necessity would be subject to judicial review under the Natural Gas Act by the Court of Appeals and the United States Supreme Court. Since judicial review casts a cloud on the applicant's ability to proceed, construction of a major project is generally postponed under the completion of judicial review. It is likely that such review under existing law, with applicants having large financial resources and expert representation, would delay commencement of construction for an extended period of several years.

### DETAILED DESCRIPTION

#### *1. Federal Power Commission Recommendation*

As explained above, the provisions of S. 3521 would alter the normal procedures for selecting an Alaska natural gas transportation system. The Commission is authorized to establish appropriate, streamlined rules and procedures to carry out its responsibilities under the legislation so as to reach a decision by March 1, 1977. To further assist the Commission, the bill authorizes the Commission to request such information and assistance from any federal agency as it deems necessary and appropriate. All federal agencies are directed to submit requested information at the earliest possible time.



The bill requires the Commission to consider not only systems that are supported by pending applications, but also other reasonable alternatives for transporting Alaska natural gas to other states, even though no formal application is pending before the Commission for such an alternative and even if the Commission does not have jurisdiction over certification of such a system. The Committees clearly intend, therefore, that the Commission will undertake detailed consideration of the El Paso, Arctic Gas, Northwest Pipeline and methanol proposals, together with any reasonable variations and combinations, without reference to sponsors or lack thereof. S. 3521 is designed to assure that the Commission's recommendation reflects consideration of all reasonable alternatives under the factors specified in the bill.

Section 5(d) of S. 3521 specifies the factors that the Commission is to weigh for each transportation system under review in making its recommendation to the President.

The Commission's recommendation to the President shall not be based upon the fact that Canadian agencies may not by then have rendered a decision on the authorization of a pipeline system to transport Alaska natural gas through Canada. The Commission, after evaluating each alternative to transport Alaska natural gas to other states in view of these factors, is to make a recommendation to the President by March 1, 1977.

Finally, the Commission, within 20 days after the President transmits his decision to the Congress, is to comment on the President's decision and to issue a report that includes any information that it considers appropriate.

### *2. Federal Agency Reports*

By April 1, 1977, any interested Federal agencies may submit a report to the President on the Commission's recommendation. The report shall include such information and recommendations within the competence of such agencies concerning environmental consideration safety factors, international relations, national security, sources of financing, impact on the national economy, employment and balance of payments, and the relationship of the proposed Alaska natural gas transportation system to other aspects of national energy policy.

Similarly, by April 1, 1977, State Utility Commissioners, municipalities and any other interested persons are invited to submit reports to the President containing recommendations and comments on the Commission's recommendation and alternative systems for delivering Alaska natural gas to other states as they deem appropriate.

### *3. Presidential Decision*

As soon as practicable after April 1, but not later than July 1, 1977, (unless up to an additional 90 days are required to prepare required environmental impact statements) the President is directed under S. 3521, to issue a decision as to which system for the transportation of Alaska natural gas, if any, should be approved. In making his decision, the President is to take into consideration the Commission recommendation, the factors considered by the Commission, and the comments of federal agencies and state and local officials. His decision is to be based on his determination as to which system, if any, best serves the national interest taking into consideration the criteria for reaching a decision enumerated in the bill.



There are several reasons for involving the President in the Alaska natural gas transportation system selection. First, the sheer size of an Alaska natural gas transportation system would make it the largest single project proposed to be privately constructed. Its potential importance for natural gas supply is such that a decision on this issue has a significant impact on national energy policy that requires review at the highest level to assure the protection of the national interest.

Second, the Alaska natural gas transportation system alternatives include projects that traverse Canada. Their proper consideration and possible selection involve important issues of foreign policy. The coordination of timing, negotiations of treaty protocols, if needed, and detailed project arrangements if a trans-Canadian route is selected would be difficult for the Commission to handle. Issues involving such important matters of foreign policy, should be resolved by the President.

Third, an Alaska natural gas transportation system raises issues of national security which are best addressed in the Executive Branch rather than at the FPC.

Fourth, the coordination of agency review and oversight of such a large construction project is a task for which the Executive is far better equipped than a regulatory agency.

For these reasons, the Committees believe that Presidential participation in the selection of an Alaska natural gas pipeline is important in reaching a sound decision in the national interest.

The President, in making his decision, shall consider the same factors which the Commission considered, as well as the reports he received from other federal agencies, and state and local officials. Consistent with the provisions of this legislation, the Natural Gas Act and other applicable law shall contain such terms and conditions as he deems appropriate for inclusion in any certificate issued pursuant to this legislation. The President has no authority to impose terms or conditions that could not otherwise be included under applicable law.

The President's decision, which he submits to Congress for approval, shall also provide a process for resolving disputes and designating a federal inspector to monitor the construction of the Alaska natural gas transportation system for the purpose of assuring adequate quality control and maximizing safety and protection of the environment in a manner compatible with the certificates and rights-of-way designated under the Act. Such a process shall also provide a special administrative review of actions by federal officials for which judicial review is limited by this Act. This process is designated to assure that an effective substitute for judicial review is available so that concerns for safety, environmental protection, and quality workmanship receive priority attention.

The President is directed to transmit his decision to the Congress together with a detailed report explaining the basis of his decision and the reason for any revision, modification, or substitution of the Commission recommendation no later than July 1, 1977. This deadline for the President's decision may be delayed for a period not to exceed 90 days if necessary to supplement or prepare a final environmental impact statement for a system selected for which no such statement has been completed. The Council on Environmental Quality (CEQ) is di-



rected to hold public hearings on the adequacy of the environmental impact statement within 20 days after the President's decision and prepare a report to the Congress. The Congress, in turn, is required to hold public hearings on the CEQ report.

The President's report of this decision shall contain a financial analysis for the system chosen by him. If the President cannot reasonably anticipate that the system selected can be privately financed, he shall make recommendations concerning the use of existing federal financing authority or the need for new authority. In making his decision the President shall inform himself of the views of the several States and the government of Canada with respect to matters that may involve intergovernmental and international cooperation.

#### *4. Congressional Approval of the President's Decision by Joint Resolution*

S. 3521 as reported requires enactment of a joint resolution of approval of the President's decision within 60 calendar days of continuous session after receipt of the President's decision.

The bill provides for expedited procedures to assure that both Houses of Congress can vote on the joint resolution approving the President's decision within the specified time limit.

If the Congress does not pass a joint resolution of approval within the 60-day period, then the President may, within 30 days of such failure to enact a joint resolution, propose a new decision together with a detailed statement concerning the reasons for such a proposal. Such a second decision shall also become final only upon passage of a joint resolution approving such a decision within 60 days of submission. If such a joint resolution is not passed, then no further special procedures are provided for, and this legislation would in effect expire. The selection of an Alaska natural gas transportation system would thereafter be continued pursuant to the Natural Gas Act or by legislation enacted by Congress and signed by the President.

#### *5. Judicial Review*

The intent of S. 3521 as reported is to limit judicial review of the issuance of certificates, rights-of-way, permits, leases, and other authorizations necessary for the construction and initial commercial operation of the Alaska natural gas transportation system designated pursuant to the bill to the specific categories of actions specified in section 10 of S. 3521. Under section 9 of S. 3521 the Commission, the Secretary of the Interior, and other appropriate federal officers and agencies are directed to issue and take all necessary action to administer and enforce all certificates, rights-of-way, permits, leases and other authorizations necessary or related to the construction and initial commercial operation of the transportation system selected under the Act. All federal agencies are required to issue the necessary authorizations at the earliest practicable date. All of the authorizations issued shall include the terms and conditions required and may include the terms and conditions permitted by the provisions of law that would otherwise be applicable if S. 3521 had not been enacted.

Under S. 3521, Presidential and Congressional review is provided as a substitute to the extent that judicial review is limited in the case of the certificate of public convenience and necessity issued by the FPC



and the right-of-way permit issued by the Secretary of the Interior. To the extent judicial review is limited by section 10 for the other permits necessary for construction and initial commercial operation, they may be subject to administrative review under a process to be established by the President as part of his decision on the selection of an Alaska natural gas transportation system.

Under section 10 of S. 3521 as reported, the actions of Federal officers or agencies taken pursuant to S. 3521 concerning the issuance of all required authorizations for the construction and initial commercial operation of the project shall not be subject to judicial review at any time under law, except certain specified categories of claims brought within specified time limits. The only basis for judicial review of such decisions are claims alleging the invalidity of this Act, claims alleging that an action will deny rights under the Constitution of the United States, or that an action is beyond the scope of authority conferred by this Act. Claims alleging the invalidity of the Act must be brought within 60 days of a decision becoming final pursuant to section 8. Decisions alleging that an action will deny rights under the Constitution or is beyond the authority conferred by this Act may be brought within 60 days following the date of such action in the United States Court of Appeals for the District of Columbia. The Court of appeals shall have exclusive jurisdiction to determine such a claim in accordance with expedited procedures and no other court would have jurisdiction over any matter during the construction to the point of initial commercial operation of the Alaska natural gas transportation system designated under this Act.

The Court of Appeals of the District of Columbia would be prohibited from issuing any injunctive relief except in conjunction with a final judgment entered in a case involving one of the causes of action expressly authorized by this legislation. The Court of Appeals, acting as a special court, shall decide any claim filed pursuant to this Act within 90 days from the date such action is brought unless the court determines a longer period is necessary to satisfy requirements of the Constitution. There shall be no review of any action of the Court of Appeals of the District of Columbia except that any party may file a petition for certiorari with the Supreme Court of the United States within 15 days after the decision of the United States Court of Appeals is rendered.

#### LEGISLATIVE HISTORY

##### *1. Joint Committee Questionnaire*

In January 1976, the Committees on Commerce and Interior and Insular Affairs invited all interested persons to respond to a series of questions designed to obtain the basic facts concerning the transportation of Alaska Natural Gas. This questionnaire entitled "Issues Concerning the Transportation of Alaskan Natural Gas" explored the anticipated natural gas supplies in Alaska, and their estimated delivered costs. It addressed the projected demand for Alaska gas and the relationship of that demand to anticipated natural gas shortages in the contiguous 48 states, the relationship of that demand of the price of Alaska natural gas, and the cost of delay. The questionnaire also examined the status of regulatory approvals including all of the



agencies involved, Federal-State relationships, judicial review, alternatives for delivering Alaska natural gas to consumers in other states, safety issues, and Canadian procedures and treaty status. Finally, the questionnaire examined various financing issues including private financial capabilities, the need for Federal subsidies, special tariff treatment, and any recommended legislation.

The Committees received 15 responses to this detailed questionnaire—including responses from six agencies of the Federal Government, the State of Alaska, four proponents of alternative Alaska natural gas transportation systems, the three principal producers at Prudhoe Bay, and a major California distributor. The questionnaire and these responses are printed in the Joint Hearings before the Committees on Commerce and Interior and Insular Affairs on the Transportation of Alaskan Natural Gas—Part II, Serial No. 94-29 (92-119). These materials provide a summary of the principal facts and issues surrounding the transportation of Alaska natural gas.

## *2. Joint Hearings*

The Senate Commerce Committee has jurisdiction over the FPC, the agency which has statutory responsibility for issuing a certificate of public convenience and necessity. The Senate Committee on Interior and Insular Affairs has jurisdiction over the Secretary of the Interior, who has responsibility for issuing pipeline right-of-way permits over federal lands. Accordingly, the two Committees have proceeded jointly in their consideration of this matter.

On February 17, 1976, the Committees conducted joint oversight hearings on Alaska and Canadian natural gas reserves and alternatives transportation systems for delivery of this gas to markets in the lower 48 states.

On March 24 and 25, 1976 the Committees conducted joint legislative hearings on legislation to transport Alaska natural gas to other states. The principal pending measures were:

S. 2510, by Senator Gravel, to require the FPC to make a final decision on certification of an Alaska natural gas transportation system by June 30, 1976. The legislation would also substitute Congressional for judicial review by providing for a 60-day review period for either House of Congress to disapprove the FPC decision.

S. 2778, by Senator Stevens, to require the FPC and all other Federal agencies to approve only an application for the transportation of Alaska natural gas where the facilities would be located entirely in areas subject to the jurisdiction of the United States. This bill would also provide for allocation of Alaska natural gas in a manner inversely proportional to the level of curtailments experienced in the various regions of the United States.

S. 2950, by Senator Mondale and others, to Congressionally designate the certification of the Arctic Gas Project proposal. This bill would also limit the scope of judicial review.

S. 3167, the Administration's bill, introduced by request to require the FPC to make a recommendation to the President by January 1, 1977. All other interested Federal agencies would be required to make recommendations to the President by February 1, 1977, and the President would have until August 1, 1977 to selected a natural gas trans-



portation system based upon his determination of which system best serves the national interests. Congress would then have a 60-day period to enact legislation to set aside the Presidential decision.

### *3. Committee Markup*

On June 3, 1976, the Committee on Interior and Insular Affairs commenced discussion of a working paper that would expedite administrative procedures, provide for coordination with Canada, and assure Congressional input into the selection of an Alaska natural gas transportation system.

On June 4, 1976, Senator Stevenson, for himself, Senators Pearson, Mondale, Stevens, Hollings, and Gravel, introduced S. 3521, which was supported and cosponsored by the principal authors of the Alaska natural gas legislation that had been previously introduced.

The Commerce Committee considered S. 3521 on June 16, 1976, and ordered the bill reported subject to technical changes. The Interior Committee then marked-up S. 3521, and on June 25, 1976, ordered the bill reported with amendments, also subject to technical changes.

### ESTIMATED COSTS

Pursuant to section 252 of the Legislative Reorganization Act of 1970, the Committees estimate that the cost of this Act does not exceed the costs under existing law except for the amounts required to fund the activities of the Federal inspector under section 7. The Committees know of no other cost estimates by any Federal agency which are at variance with its estimate.

### SECTION-BY-SECTION ANALYSIS

#### SECTION 2—CONGRESSIONAL FINDINGS

Section 2 states the findings of Congress upon which the provisions of S. 3521 are based, regarding the existence of a natural gas supply shortage, the large proved and potential reserves of natural gas in the State of Alaska, and the desirability of constructing a viable transportation system to deliver Alaska natural gas to other states. It further states that the selection of an Alaska natural gas transportation system involves critical questions of national energy policy, international relations, national security, and economic and environmental impacts that both the President and the Congress should address in the selection of an appropriate transportation system, if any.

#### SECTION 3—STATEMENT OF PURPOSE

Section 3 declares that it is the purpose of this Act to expedite a sound decision regarding the selection of a natural gas transportation system for delivery of Alaska natural gas to other states by establishing new administrative, congressional and judicial procedures. This section also states that to accomplish this purpose it is the intent of the Congress to exercise its Constitutional powers to the fullest extent in the authorizations and directions contained in the bill, and in limiting judicial review of such actions.



## SECTION 4—DEFINITIONS

Section 4 defines a number of terms used in this Act.

Section 4(a) defines "Alaska natural gas" as natural gas derived from the area of the State of Alaska generally known as the North Slope of Alaska, including state offshore lands and federal offshore lands.

The term "Commission" as defined means the Federal Power Commission, and the term "Secretary" means the Secretary of the Interior.

## SECTION 5—FEDERAL POWER COMMISSION REVIEW AND REPORT

Section 5(a) states that further proceedings by the Commission relating to the transportation of Alaska natural gas shall be governed by this Act. The procedures established and authorized in this Act shall govern actions by the Commission with respect to review of applications and reasonable alternatives relating to the transportation of Alaska natural gas to other states. Under current law, the Commission is giving principal attention to applications filed for a certificate of public convenience and necessity to construct an Alaska natural gas transportation system. Under this Act, the Federal Power Commission is to consider not only these applications, but other reasonable alternatives relating to the transportation of Alaska natural gas. Such alternatives include an Alaska liquefied natural gas system, a pipeline route from Prudhoe Bay to the Mackenzie Delta region of Canada and then southward to consumers in the United States, a system from Prudhoe Bay following the Alcan Highway route, a methanol conversion and transportation system, or the construction of no system at this time.

Section 5(a) also requires the Commission to exercise its discretion in establishing such rules and procedures as it deems appropriate to carry out its responsibilities under this Act with respect to the review of applications and reasonable alternatives relating to the transportation of Alaska natural gas to other States. Such new rules and procedures would supercede existing rules and procedures under the Natural Gas Act and the Administrative Procedure Act. The Committees believe that such procedural discretion is required to assure that all alternatives receive adequate consideration within the time frame specified. Such revised procedures remove the possibility of a challenge premised upon the argument that an expeditious FPC decision violates the right of any applicant to due process, since the Commission's action will be only in the form of a recommendation for subsequent consideration by the President and ultimately the Congress.

Section 5(a) also specifies that the provisions of the Natural Gas Act are to apply to the extent that they are not inconsistent, as determined by the Commission, with this Act. Thus, for example, Commission regulation of the rates and charges for natural gas transportation through the Alaska natural gas transportation system will be subject to the Natural Gas Act just as any other natural gas company would be subject to the Natural Gas Act.

Under section 5(a) (3), if the President's decision with respect to an Alaska natural gas transportation system is made final by enactment of a joint resolution approving such a decision, then under sec-



tion 9 of this Act, the Commission is required to issue a certificate pursuant to such decision at the earliest practical time.

Section 5(b) authorizes the Commission to request any information and assistance regarding the transportation of Alaska natural gas from all federal agencies as it deems necessary or appropriate. S. 3521 as reported directs all federal agencies to submit such information at the earliest possible time after receipt of a Commission request. Section 5(b) assures that the Commission can base its recommendation to the President upon the most complete and current information available to any agency of the Federal Government.

Section 5(c) of S. 3521 as reported directs the Commission to review all applications pending on the date of enactment of this Act, any subsequent amendments thereto and other reasonable alternatives for the transportation of Alaska natural gas to other states, and to transmit a recommendation concerning an Alaska natural gas transportation system to the President no later than March 1, 1977. Applications shall be considered pending on the date of enactment if an application for a certificate has been submitted to the Commission. The recommendation may be in the form of a proposed certificate of public convenience and necessity or such other forms as the Commission deems appropriate. The Commission may also recommend that approval of a transportation system be delayed or that all applications be denied. Any recommendation for the construction of a system shall include a description of the route and major facilities and designate a party to construct and operate such a system.

Section 5(d) requires the Commission to consider specifically enumerated factors in making its recommendation to the President. The Commission is to compare each alternative under review for the following factors:

First, the Commission is to examine the projected natural gas supply and demand for all regions in the United States including an analysis of economic deliverability to each region and availability of alternative fuels if adequate supplies of natural gas are not available in that region. This analysis will include the direct delivery of the gas to consuming markets and delivery by displacement. Such analysis should be made because the Alaska natural gas transportation system may well constitute the only link between the large Alaska natural gas resource and the lower 48 states.

Second, in making its recommendation the Commission is to consider the estimated transportation costs of shipping natural gas (or natural gas energy in some other form), initially and over the estimated 20 year economic life for each of the systems considered by the Commission. The analysis shall include consideration of anticipated tariffs and shall provide an estimate of the delivered prices for Alaska natural gas in each affected region of the country. Such forecasts would require varying assumptions concerning the deliverability and locations of the Alaska natural gas reserve that may be attached to the pipeline system.

Third, the Commission is to consider the extent to which each transportation system may provide access for transportation to the United States of natural resources or other commodities from sources in addition to the Prudhoe Bay reserve. Substantial additional supplies



of natural gas may be available for delivery to the United States from areas on the north slope of Alaska other than the Prudhoe Bay reserve, and from other areas of Alaska and Canada.

Fourth, the Commission is directed to consider the environmental impacts of the alternative Alaska natural gas transportation system.

Fifth, the Commission is to consider safety and efficiency in design and operation and potential for interruption in the supply of natural gas.

Sixth, the Commission is directed to consider the probable construction schedules and to identify other opportunities for delay. This would involve an analysis of each of the systems considered to determine the relative likelihood of delays and the possible duration of such delays.

Seventh, the Commission is directed to consider the feasibility of financing with respect to each Alaska natural gas transportation system. This would require the Commission as part of its consideration of alternative systems to evaluate and describe the proposed financing arrangements for each system.

The Commission would evaluate whether or not private capital will be available or whether some form of federal financial assistance will be needed to finance the construction of each of the alternatives.

Eighth, the Commission is directed to estimate the extent of the natural gas reserves, both proven and probable, and their deliverability. The estimate is to include Canadian reserves as well as Alaskan reserves that are proposed to be transported by the alternative systems.

Ninth, the Commission is to consider for each alternative the estimated total delivered cost to consumers of the natural gas to be transported by each alternative. This requires a consideration not only of the costs of transportation in the proposed system but should also assess the wellhead price of natural gas and any costs affecting the total price to consumers.

Tenth, the Commission is directed to consider the capability and cost of expanding each system to transport additional volumes of natural gas in excess of initial system capacity. The capacity of each system to be expanded is relevant in view of the large additional natural gas resource expected to be discovered in Alaska and the fact that this system may well represent the only economic system for transporting such gas to the lower 48 states.

Eleventh, the Commission can consider such other factors as it deems appropriate.

Section 5(e) directs the Commission not to base its recommendation upon any failure of the government of Canada to have issued a decision which would authorize a compatible natural gas transportation system to transport Alaska natural gas through Canada. This provision is not intended to require the FPC to close its eyes to the international implications of any Alaska natural gas transportation system it may recommend, but it is intended to indicate that the President would have the principal role of negotiating and coordinating with the government of Canada if the Commission and/or the President decides that an Alaska natural gas transportation system through Canada is in the public interest.



Section 5(f) requires that the Commission recommendation be accompanied by a public report that explains the reasons for its recommendations, including a specific discussion of the factors described in section 5(d) for each alternative system.

Section 5(g) also directs the Commission to comment upon the President's decision by issuing a public report that includes any information which the Commission deems appropriate.

#### SECTION 6—OTHER REPORTS

Section 6(a) invites any federal agency to submit a report to the President concerning the Commission's recommendation and alternative methods for delivering Alaska natural gas to other states. Such reports are to be made available to the public when submitted to the President unless the President specifically directs that certain agency reports or parts thereof not be made public and gives his reasons therefor. Such agency reports shall include information and recommendations within the competence of such federal agencies with respect to:

First, environmental considerations, including air and water quality and noise impacts;

Second, the safety of construction and operation of the transportation systems;

Third, international relations and an analysis of the status and time schedule for any necessary Canadian approvals and plans;

Fourth, national security, including an evaluation of the security of supply;

Fifth, the anticipated sources of financing, including an analysis and findings regarding proposed and potential financing arrangements for the transportation system recommended by the Commission and other alternatives;

Sixth, the impact on the national economy, including the likelihood of natural gas shortages in various regions, the price impact of Alaska natural gas on each region, and any impacts on interest rates, employment, and balance of payments during the construction phase and during the operation of an Alaska natural gas transportation system; and

Seventh, the relationship of the proposed transportation systems to other aspects of national energy policy.

All of these reports by Federal agencies are to be submitted to the President by April 1, 1977.

Section 6(b) invites any State Governor, Utility Commission, municipality, or any other interested person to submit to the President such reports, recommendations and comments concerning the delivery of Alaska natural gas to the United States as they deem appropriate.

#### SECTION 7—PRESIDENTIAL DECISION AND REPORT

Section 7(a) (1) directs the President to issue a decision as to which system for the transportation of Alaska natural gas, if any, should be approved as soon as possible but not later than July 1, 1977 subject to a possible 90-day delay pursuant to section 8(e). In making his decision with respect to an Alaska natural gas transportation sys-



tem, the President is directed to take into consideration the Commission's recommendation, the factors set forth in section 5(d) and the reports and comments received pursuant to section 6. After considering all of these matters, the President shall issue a decision based on his determination as to which system, if any, best serves the national interest.

If the President recommends the construction of an Alaska natural gas transportation system, section 7(a)(2) requires that his decision shall include a process by which disputes among agencies and administrative appeals from agency decisions may be expeditiously resolved. The President's decision shall also designate a federal inspector to coordinate and monitor the construction of such a system to assure compliance with applicable laws and the terms and conditions of all authorizations for the purpose of maximizing quality of workmanship, safety and the protection of the environment, and controlling costs. The federal inspector is authorized to subpoena information he deems necessary and has available the remedies under section 11 to compel compliance with his directions. The inspector is to keep the President and the Congress fully and currently informed of any violations and issue quarterly reports on construction difficulties and the extent to which quality control, safety, environmental protection and cost objectives have been achieved.

Section 7(a)(3) provides that the President may provide for the establishment of a special administrative review process (to substitute for judicial review) to further assure that actions by federal officers are reasonable and in the public interest. Such reviews are to be completed as expeditiously as practicable, but in no event shall they take longer than 45 days. Such sums as may be necessary are authorized to be appropriated to the federal inspector to carry out his responsibilities under this Act.

Section 7(a)(5) requires the President's decision to contain such terms and conditions as he deems appropriate for inclusion in any certificate issued by the Commission under section 9 of this Act. However, the President is required to identify the legal authority pursuant to which such term or condition is included and no term or condition may be included. The purpose of this provision is to assure that the President can impose terms and conditions as other federal agencies could impose pursuant to their existing statutory authority, but the President cannot impose terms and conditions which are not authorized by this Act or other applicable law.

Section 7(b) requires the President to transmit to the Senate and the House of Representatives on the 1st day that both are in session his decision on a system for the transportation of Alaska natural gas to other states. Such a decision is to be accompanied by a report that explains in detail the basis of his decision with specific reference to the factors set forth in section 5(d) and 6(a) of this Act, and the reasons for any revision, modification, or substitution of the Commission recommendation.

In addition to the financial analysis and reports provided for in sections 5 and 6, section 7(c) requires the President to analyze and report on the feasibility of financing the Alaska natural gas transportation system chosen by him. The Committees intend that the President



analyze proposed and potential financing arrangements, including a discussion of the impact of such arrangements on various components of the capital market, the apportionment of risk upon the system's owners, bondholders and other creditors, natural gas distributors, various classes of consumers and the Federal Government. This analysis should also include a discussion of the acceptability of such arrangements to lenders, State Utility Commissions, other government entities, natural gas distributors and various classes of consumers.

The section specifically directs the President to include recommendations concerning the use of existing Federal financing authority or the need for new Federal financing authority if he cannot reasonably anticipate that the system chosen by him can be privately financed, constructed and operated. By identifying this issue the Congress holds out no commitment of federal financial assistance. The purpose of the provisions of section 7(c) is to assure that the President and Congress make their decisions based upon the best available information on the manner in which such a major project can and should be financed.

Section 7(d) of S. 3521 directs the President to fully inform himself of the views and objectives of the States and of the Government of Canada with respect to those aspects of the selection of an Alaska natural gas transportation system that may involve intergovernmental and/or international cooperation.

Under subsection (d) of section 7, the decision of the President becomes final if approved by joint resolution as provided in section 8.

#### SECTION 8—CONGRESSIONAL REVIEW

Section 8(a) as reported provides that the President's decision shall become final upon enactment of a joint resolution of approval within 60-calendar days of continuous session after receipt of the President's decision by the Congress.

Under Section 8(b) if the Congress does not enact a joint resolution of approval within the 60-day period, then the President may, within the 30 days of a failure to pass a joint resolution by either House (or the expiration of the 60-day period without action by both Houses), propose a new decision together with a detailed statement concerning the reasons for such a revised proposal. Such an alternative decision shall become final only upon enactment of a joint resolution approving such a decision within 60 days of submission. If such a joint resolution is not enacted after a second submission by the President, then no further special procedures are provided for and the selection of an Alaska natural gas transportation system would thereafter be made either pursuant to the Natural Gas Act under existing law or by additional legislation enacted by Congress pursuant to ordinary procedures.

For purposes of section 8, the continuity of a session of Congress is broken only by an adjournment *sine die*, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the 60-day calendar period.

Paragraph (2) of Section 8(d) specifies the form of the joint resolution of approval which must be passed in identical form by both



Houses. The resolution is specified to assure a vote in both Houses. The resolution is specified to assure a vote in both Houses within the 60-day period and to eliminate the possibility of amendments and the need for a conference.

Section 8(c) establishes special expedited procedures for Congressional consideration of the joint resolution of approval of the President's decision on selecting an Alaska natural gas transportation system. The legislation, as reported, sets forth the required form of the joint resolution and provides that the joint resolution is to be referred to an appropriate Committee. All joint resolutions with respect to the same Presidential decision on Alaska natural gas transportation systems are to be referred to the same Committee by the appropriate officer of the Senate or the House. If the Committee to which the joint resolution was referred has not reported at the end of 30-calendar days after referral, it is in order for any Senator or Member of the House of Representatives, as the case may be, who favors the joint resolution to move to discharge the Committee from further consideration of this or any other resolution with respect to a Presidential decision on an Alaska natural gas transportation system. The debate on such a motion shall be limited to not more than 1 hour to be divided equally between those favoring and those opposing the resolution. No amendments nor motions to reconsider the vote are in order. Once a motion to discharge is agreed or disagreed to, the motion may not again be made with respect to any other resolution concerning the same Presidential decision on Alaska natural gas transportation system.

Thereafter, it shall be in order for any member to move to proceed to the consideration of the joint resolution. Such a motion is highly privileged, shall not be debateable and neither amendments thereto nor a motion to reconsider shall be in order. The debate on the joint resolution is limited to not more than 10 hours divided equally between those favoring and those opposing the resolution. No amendments or motions to recommit are in order nor shall it be in order to move to reconsider a vote by which such a joint resolution was agreed or disagreed to. Any motions made with respect to postponing a discharge from Committee shall be decided without debate. Any appeals from the decision of the chair relating to the application of the rules of the Senate or the House, as the case may be, to the procedures relating to a joint resolution shall be decided without debate.

These special procedures are an exercise of the Congressional rule-making power, and they supersede any other rules to the extent that they are inconsistent with the rules contained in S. 3521 as reported. There is full recognition of the Constitutional right of either House to change the rules with respect to procedures of that House at any time in the same manner and to the extent, as the case may be, with respect to any other rules.

Section 8(e) specifies that, as part of the President's decision, he must find that any final environmental statement required pursuant to section 102(c) (2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq.) has been prepared. He may supplement existing environmental impact statements and if he selects a system for which no required statement has been prepared he may delay his decision for up to 90 days to supplement or prepare a final environmental impact statement.



## SECTION 9—AUTHORIZATIONS

Section 9(a) directs the Federal Power Commission, the Secretary of the Interior, and other appropriate federal officers and agencies to issue and take all necessary action to administer and enforce all certificates, rights-of-way, permits, leases, and other authorizations necessary to the construction, and initial commercial operation of the transportation system, if any, selected by the President and approved by joint resolution by the Congress. All such authorizations are to be issued at the earliest practicable date. Further, all Federal agencies are directed to expedite in every way their consideration of such authorizations and that such matters take precedence over all similar activities of federal agencies. The issuance by the Secretary of the Interior of a right-of-way permit over federal lands shall be subject to the provisions of section 28 of the Mineral Leasing Act of 1920, except that the provisions of subsection (h) (1) (relating to the National Environmental Policy Act), (j) (relating to the Secretary's determination of technical and financial capability but only with respect to initial approvals and not with respect to renewals of rights-of-way permits), (k) (relating to public hearings), (q) (relating to other statutes and providing for an election), and (w) (2) (relating to authorizing the Senate and House Committees on Interior and Insular Affairs to examine for 60 days any proposed right-of-way across Federal lands). However, the submission required by the first sentence of subsection (h) (2) (relating to the submission of a plan of construction, operation, and rehabilitation of the federal right-of-way) shall be made at the earliest practicable time after issuance of the right-of-way and other authorizations hereunder.

Section 9(b) requires that all authorizations required for the construction and initial commercial operation of the Alaska natural gas transportation system shall include the terms and conditions required, and may include the terms and conditions permitted, by the provisions of law that would otherwise be applicable if S. 3521 had not been enacted, so long as such terms and conditions are not inconsistent with the purposes of this Act and do not change the basic nature and route of the transportation system approved by enactment of a joint resolution of the Congress. However, federal officers and agencies issuing such required authorizations may expedite or waive any procedural requirements of law or regulation which they deem necessary to waive in order to accomplish the purposes of this Act. The directions contained in this subsection are to supersede the provisions of any law or regulations relating to an administrative determination as to whether the authorization for the construction of a system for the transportation of Alaska natural gas shall be issued.

Subsection (c) of section 9 states that the holders of certificates of public convenience and necessity for an Alaska natural gas transportation system shall have all the rights, powers, and obligations of a holder of a certificate of public convenience and necessity issued pursuant to the Natural Gas Act, together with any other rights, powers, and obligations imposed pursuant to this Act.

Section 9(d) authorizes the Commission, the Secretary, and other federal officers and agencies to exercise any authority under existing law at any time when necessary to protect the public interest to amend



or modify any certificate, right-of-way, permit, lease, or other authorization issued by such officer or agency pursuant to this Act.

#### SECTION 10—JUDICIAL REVIEW

Section 10 of S. 3521 minimizes judicial review of the issuance of certificates, rights-of-way, permits, leases, and other authorizations necessary for the construction and initial commercial operation of the Alaska natural gas transportation system approved by enactment of a joint resolution of the Congress. A detailed discussion of the judicial review provisions appears as part of the Detailed Description section of this report.

#### SECTION 11—REMEDIES

Section 11(a) states that in addition to remedies available under other applicable provisions of law, whenever on the basis of any information available to it the Commission, the Secretary, or other appropriate federal officers finds that any person is in violation of any provision of this Act or other applicable law or any rule, regulation, or order thereunder or a condition of the certificate, right-of-way, permit, lease, or other authorization required for the construction of initial commercial operation of the Alaska natural gas transportation system approved by enactment of a joint resolution of the Congress, the Commission, Secretary, or other appropriate federal officer as the case may be, in their discretion may either issue an order requiring such person to comply with such provision or requirement, or request the Attorney General to commence a civil action for appropriate relief including a permanent or temporary injunction or a civil penalty not to exceed \$25,000 per day of any violation for which the appropriate federal officer is authorized to issue a compliance order. The United States District Court in which the defendant is located or resides or is doing business is given jurisdiction to restrain a violation, require compliance or impose a penalty.

Subsection (b) of section 11 requires that any compliance order issued shall state with reasonable specificity the nature of the violation and a time for compliance not to exceed 30 days, which the Commission, the Secretary or other appropriate federal officer, as the case may be, determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

#### SECTION 12—EXPORT LIMITATIONS

Any exports of Alaska natural gas shall be subject to all of the limitations and approval requirements of the Natural Gas Act and in addition, notwithstanding any other provision of law, before any natural gas from Alaska in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States and that such exports are in the national interest. This provision is designed to assure that if the export of Alaska natural gas is in the national interest, it may be done only under an ex-



change arrangement whereby U.S. consumers would not be faced with increases in energy prices nor a reduction in the total quantity or quality of energy.

#### SECTION 13—EQUAL ACCESS TO FACILITIES

Section 13 requires that there shall be included in the terms of any certificate issued pursuant to this Act a provision that no person seeking to transport natural gas in the Alaska natural gas transportation system approved by enactment of a joint resolution of the Congress may be prevented from doing so or discriminated against in the terms and conditions of service on the basis of his degree of ownership or lack thereof of the Alaska natural gas transportation system. This provision requires that tariffs shall be equal to shippers who are owners or non-owners of the system for the shipment of similar quantities of natural gas for similar distances. This is to assure that pipelines or distributors who are able to purchase additional quantities of Alaska natural gas are able to transport such natural gas to their own system upon non-discriminatory terms.

In addition, section 28(r)(2)(B) of the Mineral Leasing Act of 1920 (Public Law 93-153) imposes certain requirements to transport natural gas produced from federal lands through natural gas pipelines crossing federal lands. These requirements are imposed even though such natural gas pipelines are operated by a person subject to regulation under the Natural Gas Act or by a public utility subject to regulation by a state or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the state or municipality. These requirements specify that “\* \* \* in the case of oil or gas produced from federal lands or from the resources on the federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased”. This provision allows any person producing natural gas from federal lands in the vicinity of the Alaska natural gas transportation system certified hereunder to petition the Secretary of the Interior who may, after a full hearing, require the certificate holder, in the event adequate capacity is not available, to apportion shipments of other shippers in order to accommodate the production from federal lands. For a more complete discussion of this provision, see Senate Report No. 93-207, pages 32-35.

#### SECTION 14—ANTITRUST LAWS

This section makes clear that the grant of a certificate, right-of-way, permit, lease, or other authorization pursuant to this Act shall not impair or amend any of the antitrust laws.

#### SECTION 15—EXPIRATION OF AUTHORITY

This section provides that the provisions of section 4(a), 5, 6, and 8 of this Act shall expire upon the date that the provisions for the Alaska natural gas transportation system becomes final in accordance



with the provisions of section 8 of this Act or July 1, 1978, whichever is earlier.

#### SECTION 16—SEPARABILITY

This section states that if any provision of this Act, or the application thereof is held invalid, the remainder of the Act shall not be affected thereby.

#### CHANGES IN EXISTING LAW

In compliance with section 4 of rule XXIX of the Standing Rules of the Senate, S. 3521, as reported, does not directly repeal any existing law.

However, it does contain a "notwithstanding any other provision of law" provision which may operate to indirectly modify existing provisions of law:

Section 5 (relating to the Commission recommendation concerning an Alaska natural gas transportation system);

Section 9 (directing appropriate federal agencies to issue as soon as practicable all necessary authorizations required for the construction and initial commercial operation of an Alaska natural gas transportation system);

Section 10 (relating to judicial review of agency decisions with respect to an Alaska natural gas transportation system); and

Section 12 (relating to limitations on the export of Alaska natural gas to nations other than Canada or Mexico).

#### TEXT OF S. 3521, AS REPORTED

To expedite a decision on the delivery of Alaska natural gas to United States markets, and for other purposes

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

#### SHORT TITLE

This Act may be cited as the "Alaska Natural Gas Transportation Act of 1976".

#### CONGRESSIONAL FINDINGS

SEC. 2. The Congress finds and declares that—

- (a) a natural gas supply shortage exists in the United States;
- (b) large reserves of natural gas in the State of Alaska could help significantly to alleviate this supply shortage;
- (c) the construction of a viable natural gas transportation system for delivery of Alaska natural gas to other States is in the national interest; and
- (d) alternative systems for transporting Alaska natural gas to other States have been proposed, and the selection of a system, if any, involves critical questions of national energy policy, international relations, national security, and economic and environmental impact, and therefore should appropriately be addressed by the Congress of the United States and the executive branch, in addition to the Federal Power Commission.



## STATEMENT OF PURPOSE

SEC. 3. The purpose of this Act is to expediate a sound decision as to the selection and construction of a natural gas transportation system for delivery of Alaska natural gas to other States through establishment of new administrative and judicial procedures. To accomplish this purpose it is the intent of the Congress to exercise its constitutional powers to the fullest extent in the authorizations and directions herein made, in limiting judicial review of the actions taken pursuant thereto.

## DEFINITIONS

SEC. 4. As used in this Act—

- (a) the term "Alaska natural gas" means natural gas derived from the area of the State of Alaska generally known as the North Slope of Alaska, including the Continental Shelf thereof;
- (b) the term "Commission" means the Federal Power Commission; and
- (c) the term "Secretary" means the Secretary of the Interior.

## FEDERAL POWER COMMISSION REVIEW AND REPORTS

SEC. 5. (a) (1) Notwithstanding the provisions of the Natural Gas Act (15 U.S.C. 717-717w), all pending proceedings before the Commission relating to the transportation of Alaska natural gas shall be governed by this Act, and the procedures established and authorized hereunder shall govern actions by the Commission with respect to review of applications and reasonable alternatives relating to the transportation of Alaska natural gas to other States.

(2) The Commission, in the exercise of its discretion, shall establish such rules and procedures as it deems appropriate to carry out its responsibilities under this Act with respect to review of applications and reasonable alternatives relating to the transportation of Alaska natural gas to other States. Such rules and procedures shall supersede rules or procedures that would otherwise have obtained under the Natural Gas Act (15 U.S.C. 717-717w) and the Administrative Procedure Act (5 U.S.C. 522).

(3) Any certificate of public convenience and necessity related to the transportation of Alaska natural gas from the State of Alaska to other States shall be issued by the Commission in accordance with section 9 of this Act.

(4) The provisions of the Natural Gas Act shall apply to the extent they are not inconsistent, as determined by the Commission, with this Act.

(b) The Commission may request such information and assistance from any Federal agency as it deems necessary and appropriate regarding the transportation of Alaska natural gas. All Federal agencies requested to submit information shall submit such information to the Commission at the earliest possible time after receipt of a Commission request.

(c) The Commission, pursuant to rules and procedures established under paragraph (2) of subsection (a) of this section, is hereby di-



rected to review all applications pending on the date of enactment of this Act, and any subsequent amendments thereto, as well as other reasonable alternatives, as determined by the Commission, for the transportation of Alaska natural gas to other States, and to transmit a recommendation concerning an Alaska natural gas transportation system to the President by March 1, 1977. Such recommendation may be in the form of a proposed certificate of public convenience and necessity, or such other form as the Commission deems appropriate, and may include a recommendation that approval of a transportation system be delayed. Any recommendation for the construction of a system shall: (1) include a description of the route and major facilities; and (2) designate a party to construct and operate such a system.

(d) In making its recommendation, the Commission shall consider, and its report shall include, for each transportation system under review, a discussion of the following factors:

(i) projected natural gas supply and demand for all regions of the United States, including an analysis of—

(A) the economic deliverability of Alaska natural gas directly, by displacement, or otherwise; and

(B) the regional availability of alternative fuel supplies if adequate supplies of natural gas are not available;

(ii) transportation costs over its economic life, including an analysis of—

(A) anticipated tariffs, and

(B) delivered prices for Alaska natural gas in each affected region of the country;

(iii) the extent to which it provides access for the transportation to the United States of natural resources or other commodities from sources in addition to the Prudhoe Bay Reserve;

(iv) environmental impacts;

(v) safety and efficiency in design and operation and potential for interruption in the supply of natural gas;

(vi) construction schedules and other possibilities for delay;

(vii) feasibility of financing;

(viii) extent of reserves, both proven and probable, and their deliverability;

(ix) the estimate of the total delivered cost to consumers of the natural gas to be transported by the system;

(x) capability and cost of expanding the system to transport additional volumes of natural gas in excess of initial system capacity; and

(xi) such other factors as the Commission deems appropriate.

(e) The recommendation by the Commission pursuant to this section shall not be based upon the fact that the Government of Canada or agencies thereof have not by then rendered a decision as to authorization of a pipeline system to transport Alaska natural gas through Canada.

(f) The Commission's recommendation shall be accompanied by a report, which shall be made public, explaining the basis of its recommendation, including specific reference to the factors described in subsection (d) of this section.



(g) Within 20 days of the transmittal of the President's decision to the Congress pursuant to section 7, the Commission shall issue a report, which shall be made public, commenting on the decision and including any information with regard to that decision which the Commission deems appropriate.

#### OTHER REPORTS

SEC. 6. (a) By April 1, 1977, any agency may submit a report to the President with respect to the recommendation of the Commission and the alternative methods for delivering Alaska natural gas to other States. Such reports shall be made public when submitted to the President, unless expressly exempted from this requirement by the President, and shall include information within the competence of such agency with respect to—

- (i) environmental considerations, including air and water quality and noise impacts;
- (ii) the safety of the transportation systems;
- (iii) international relations, including the status and time schedule for any necessary Canadian approvals and plans;
- (iv) national security, particularly security of supply;
- (v) sources of financing for capital costs;
- (vi) impact on the national economy including regional natural gas requirements; and
- (vii) relationship of the proposed transportation system to other aspects of national energy policy.

(b) By April 1, 1977, the Governor of any State, any municipality or State utility commission, and any other interested person may submit to the President such reports, recommendations and comments with respect to the recommendation of the Commission and alternative systems for delivering Alaska natural gas to other States as they deem appropriate.

#### PRESIDENTIAL DECISION AND REPORT

SEC. 7. (a) (1) As soon as possible after receipt of the recommendation, reports, and comments pursuant to sections 5 and 6 of this Act, but not later than July 1, 1977, the President shall issue a decision as to which system for transportation of Alaska natural gas, if any, shall be approved. The President in making his decision on the natural gas transportation system shall take into consideration the Commission's recommendation pursuant to section 5, the factors set forth in section 5(d), and the reports provided for in section 6, and his decision shall be based on his determination as to which system, if any, best serves the national interest.

(2) If the President's decision pursuant to this section designates a system for the transportation of Alaska natural gas, such decision shall provide for—

(A) a process by which disputes among agencies and by which administrative appeals from agency decisions may be resolved in an expeditious manner;

(B) the designation of an official of the United States to serve as Federal inspector and coordinator of construction of the Alaska natural gas transportation system. The Federal inspector shall—



(i) assure compliance with applicable laws and the terms and conditions of any applicable certificate of public convenience and necessity, rights-of-way, permits, leases or other authorizations in accordance with Section 11 of this Act;

(ii) assure adequate control of construction, quality of workmanship, environmental impact and cost;

(iii) have the power to compel, by subpoena if necessary, submission of such information as he deems necessary to carry his responsibilities; and

(iv) keep the President and the Congress currently informed on any significant departures from compliance and issue quarterly reports to the President and the Congress concerning existing or potential construction difficulties and the extent to which quality control, safety and environmental protection objectives have been achieved.

(3) The President's decision pursuant to this section may provide for the establishment of a special administrative review process to assure that the actions of Federal officers under this Act for which judicial review is limited may be reviewed administratively to assure they are reasonable and in the public interest. Any such review under such process shall not exceed 45 days and shall be subject to section 10 of this Act.

(4) For fiscal year 1978 and each succeeding year, there are hereby authorized to be appropriated such sums as may be necessary to carry out the functions delegated to the Federal inspector.

(5) Consistent with the provisions of this Act, the Natural Gas Act and other applicable law, the President's decision shall contain such terms and conditions as he deems appropriate for inclusion in any certificate issued pursuant to the Act. The President shall identify the legal authority pursuant to which any such term or condition is included. No such term or condition shall be included unless the President has identified such legal authority.

(b) The decision of the President made pursuant to subsection (a) of this section shall be transmitted immediately to the Senate and the House of Representatives on the first day that both are in session, and such decision shall be accompanied by a report explaining in detail the basis for his decision with specific reference to the factors set forth in sections 5(d) and 6(a), and the reasons for any revision, modification or substitution of the Commission recommendation.

(c) The report of the President pursuant to subsection (b) of this section shall contain a financial analysis for the transportation system chosen by him. Unless the President states in his findings pursuant to this subsection that he can reasonably anticipate that the system chosen by him can be privately financed, constructed, and operated, his report shall also be accompanied by his recommendation concerning the use of existing Federal financing authority or the need for new Federal financing authority.

(d) In making his decision the President shall inform himself, through appropriate consultation, of the views and objectives of the several States and the Government of Canada with respect to those aspects of such a decision that may involve intergovernmental and international cooperation between the Government of the United States and the Government of Canada.



(e) The decision of the President shall become final as provided in section 8.

CONGRESSIONAL REVIEW

SEC. 8. (a) The decision concerning an Alaska natural gas transportation system by the President shall become final upon enactment of a joint resolution in the form described in subsection (d) of this section within the first period of 60 calendar days of continuous session of Congress after the date of receipt by the Senate and House of Representatives.

(b) If the Congress does not enact a joint resolution within such 60-day period, the President, within 30 days of such failure to enact a joint resolution, may propose a new decision and shall provide a detailed statement concerning the reasons for such proposal. The new decision, together with a statement of the reasons therefor, shall be transmitted to the House of Representatives and the Senate on the same day while both are in session and shall become final pursuant to subsection (a) of this section.

(c) For purposes of this section—

(1) continuity of session is broken only by adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day calendar period.

(d) (1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of the House.

(2) For purposes of this subsection, the term "resolution" means only a joint resolution passed by each House, the resolving clause of which is as follows: "That the House and Senate approve the Presidential decision on an Alaska natural gas transportation system submitted to the Congress on \_\_\_\_\_, 19—, and find that any required final environmental impact statements issued in connection with that decision are in compliance with the National Environmental Policy Act, 42 U.S.C. 4321 et seq." The blank space therein being filled with the date on which the President transmits his decision to the House and Senate.

(3) A resolution once introduced with respect to a Presidential decision on an Alaska natural gas transportation system shall immediately be referred to a committee (and all resolutions with respect to the same Presidential decision on an Alaska natural gas transportation system shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.



(4) (A) If the committee to which a resolution with respect to a Presidential decision on an Alaska natural gas transportation system has been referred has not reported it at the end of 30 calendar days after its referral, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to such Presidential decision on an Alaska natural gas transportation system which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same Presidential decision on an Alaska natural gas transportation system), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential decision on an Alaska natural gas transportation system.

(5) (A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

(6) (A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.

(e) Prior to the transmittal to the Senate and House of Representative of the President's decision pursuant to section 7(b) the President must find that all final environmental impact statements on the Alaska natural gas transportation system proposed by the President has been prepared. To meet the requirements of this section the President may supplement the impact statements prepared by the Commission or other appropriate Federal agencies. If the President selects an Alaska natural gas transportation system for which no required final environ-



mental impact statement has been prepared, the President may delay his transmittal to the House and Senate for up to 90 additional days for the purpose of supplementing or preparing any required final environmental impact statement.

(f) Within 20 days of the transmittal of the President's decision to the Congress under section 7(b) the Council on Environmental Quality shall hold public hearings on the legal and factual sufficiency of the environmental impact statements prepared in connection with the President's decision, and shall submit to the Congress a report summarizing the testimony received and setting forth the Council's views concerning the legal and factual sufficiency of such environmental impact statements. The appropriate committees in each House shall conduct hearings on the Council's report and shall invite testimony from the Council on Environmental Quality and representatives of the public.

#### AUTHORIZATIONS

SEC. 9. (a) The Congress hereby authorizes and directs the Commission, the Secretary and other appropriate Federal officers and agencies to issue and take all necessary action to administer and enforce all certificates, rights-of-way, permits, leases, and other authorizations necessary or related to the construction and initial commercial operation of the transportation system selected in the decision, if any, which becomes final pursuant to section 8 of this Act. All certificates, rights-of-way, permits, leases, and other authorizations issued pursuant to this subsection shall be issued at the earliest practical date. All agencies shall expedite in every way their consideration of such certificates, rights-of-way, permits, leases, and other authorizations and such matters shall take precedence over all other similar activities of such agencies. Rights-of-way, permits, leases, and other authorizations issued pursuant to this Act by the Secretary shall be subject to the provisions of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), except the provisions of subsections (h) (1), (j), with respect to initial approvals, (k), (q), and (w) (2) thereof: Provided, however, That the submission required by the first sentence of subsection (h) (2) thereof shall be made at the earliest practicable time after issuance of the rights-of-way and other authorizations hereunder.

(b) All authorizations issued pursuant to this Act shall include the terms and conditions required, and may include the terms and conditions permitted, by the provisions of law that would otherwise be applicable if this Act had not been enacted, so long as such terms and conditions are not inconsistent with the purposes of this Act and do not change the basic nature and general route of the transportation system designated hereunder, and the Federal officers and agencies issuing such authorizations may expedite or waive any procedural requirements of law or regulations which they deem necessary to waive in order to accomplish the purposes of this Act. The direction contained in this section shall supersede the provisions of any law or regulations relating to an administrative determination as to whether the authorizations for construction of a system for transportation of Alaskan natural gas shall be issued.



(c) The holders of certificates issued by the Commission pursuant to this section 9 shall have all rights, powers, and obligations of holders of a certificate of public convenience and necessity issued pursuant to the Natural Gas Act in addition to any other rights, powers and obligations pursuant to this Act.

(d) Consistent with the purposes of this Act, the Secretary and other Federal officers and agencies are authorized at any time when necessary to protect the public interest, to exercise any authority under existing law to amend or modify any right-of-way, permit, lease, or other authorization issued by such officer or agency pursuant to this Act.

#### JUDICIAL REVIEW

SEC. 10. Notwithstanding any other provisions of law, except the provisions of section 11 of this Act, the actions of Federal officers or agencies taken pursuant to this Act, including the issuance of a certificate of public convenience and necessity by the Commission and actions concerning the issuance of the necessary rights-of-way, permits, leases, and other authorization pursuant to section 9 for construction and initial commercial operation of a system for the transportation of Alaska natural gas and the legal or factual sufficiency of any environmental statement prepared relative to the Alaska natural gas pipeline pursuant to the National Environmental Policy Act (42 U.S.C. 4321 et seq.) shall not be subject to judicial review under any law, except that claims alleging the invalidity of this Act may be brought within 60 days following a decision becoming final pursuant to section 8 of this Act, and claims alleging that an action will deny rights under the Constitution of the United States, or that an action is beyond the scope of authority conferred by this Act, may be brought within 60 days following the date of such action. A claim shall be barred unless a complaint is filed in the United States Court of Appeals for the District of Columbia acting as a Special Court within such time limits, and such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such claim whether in a proceeding instituted prior to or on or after the date of enactment of this Act. Any such proceeding shall be assigned for hearing and completed at the earliest possible date, shall, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at that time, and shall be expedited in every way by such court and such court shall render its decision relative to any claim within 90 days from the date such action is brought unless such court determines that a longer period of time is required to satisfy requirements of the United States Constitution. Such court shall not have jurisdiction to grant any injunctive relief against the issuance of any certificate right-of-way, permit, lease, or other authorization pursuant to this section except in conjunction with a final judgment entered in a case involving a claim filed pursuant to this section. There shall be no review of an interlocutory, or final judgment, decree, or order



of such court except that any party may file a petition for certiorari with the Supreme Court of the United States, within 15 days after the decision of the United States Court of Appeals for the District of Columbia shall be rendered.

#### REMEDIES

SEC. 11. (a) In addition to remedies available under other applicable provisions of law, whenever on the basis of any information available to it the Commission, the Secretary or other appropriate Federal officer finds that any person is in violation of any provision of this Act or other applicable law or any rule, regulation, or order thereof, or condition of the certificate, right-of-way, permit, lease or other authorization, the Commission, Secretary, or other appropriate agency head, as the case may be, in their discretion, may: (1) issue an order requiring such person to comply with such provision or requirement or; (2) bring a civil action in accordance with subsection (c).

(b) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and a time of compliance not to exceed 30 days, which the Commission, the Secretary, or other appropriate agency head, as the case may be, determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(c) Upon a request by the Commission, the Secretary, or other appropriate Federal Officer, the Attorney General may commence a civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed \$25,000 per day of such violation, for any violation for which the Commission, the Secretary, or other appropriate Federal Officer is authorized to issue a compliance order under subsection (a) of this section. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation, require compliance, or impose such penalty.

#### EXPORT LIMITATIONS

SEC. 12. Any exports of Alaska natural gas shall be subject to all of the limitations and approval requirements of the Natural Gas Act (15 U.S.C. 717 et seq.) and, in addition, notwithstanding any other provision of law, before any Alaska natural gas in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States, and are in the national interest.

#### EQUAL ACCESS TO FACILITIES

SEC. 13. There shall be included in the terms of any certificate issued pursuant to this Act a provision that no person seeking to transport natural gas in the Alaska natural gas transportation system shall be prevented from doing so or be discriminated against in the terms and



conditions of service on the basis of degree of ownership, or lack thereof, of the Alaska natural gas transportation system.

#### ANTITRUST LAWS

SEC. 14. The grant of a certificate, right-of-way, permit, lease, or other authorization pursuant to this Act shall not impair or amend any of the antitrust laws.

#### EXPIRATION OF AUTHORITIES

SEC. 15. The provisions of sections 4(a), 5, 6, and 8 of this Act shall expire upon the date that a certificate for the Alaska natural gas transportation system becomes final in accordance with the provisions of section 8 of this Act or July 1, 1978, whichever is earlier.

#### SEPARABILITY

SEC. 16. If any provision of this Act, or the application thereof, is held invalid, the remainder of this Act shall not be affected thereby.

#### AGENCY COMMENTS

The Committees received no agency comments specifically on S. 3521. However, the Federal agencies with principal responsibilities with respect to the transportation of Alaska natural gas responded to the Committees' joint questionnaire and testified at joint hearings on this subject.



## ADDITIONAL VIEWS OF MR. BUMPERS

It is clear that we will face increasing shortages of natural gas in this country within the next few years. Curtailments of existing contracts have already occurred, and new customers have been denied access to our present limited supply. Because the amount of natural gas is limited, and non-renewable, there has been understandable excitement over the discovery of the massive gas field at Prudhoe Bay, Alaska.

The major purpose of this bill is to expedite both the decisions as to which route the natural gas pipeline will follow to the lower forty-eight states, and its construction. As anxious as I am to make Alaskan natural gas available at as early a date as possible, I am troubled by what I see as the development of a dangerous trend in our energy policy. One of the key provisions of this act is Section 10 which severely limits judicial review of decisions concerning the gas pipeline itself, and the environmental impact statements prepared subject to the National Environmental Policy Act. The reason for the limitation is the assumption that permitting judicial review will only lead to challenges and delays in constructing the pipeline. We all remember the oil pipeline court battle and the delay which followed. What we tend to forget is how much was accomplished by that court challenge. Yes, the pipeline did cost more because of the delay, but all of us benefited by a safer, more reliable oil supply, and the protection of one of the most important environmental areas, and its fish and wildlife resources. It is important to remember that it is not environmentalists and other intervenors who cause delays. It is the courts that grant delays, and they grant them because laws or procedures have been violated. The high quality of the environmental impact statements already prepared by the Federal Power Commission and the Department of the Interior on several Alaskan gas pipeline proposals is certainly due in part to the knowledge that such statements were potentially subject to judicial review. It is interesting to note that of the 6,466 draft environmental impact statements filed by July 1, 1975, less than 5 percent or 291 have been challenged, and of those, 120 temporary and 4 permanent injunctions granted.

I have always felt that the right to judicial review of administrative and Congressional actions provides an important check on what might otherwise become oppressive or unreasonable governmental policy. We should be exceedingly reluctant to relinquish that right, and should do so only in the face of overriding concerns.

The bill before us provides an alternative to judicial review in several places. First, the President must prepare a final environmental impact statement (EIS) on the actual route selected, and must find that it is in compliance with NEPA. Second, the President's Council on Environmental Quality (CEQ) must hold a public hearing to receive comments on the adequacy of the EIS. Third, committees of each



House of Congress shall hold hearings on the adequacy of the EIS to which the chairman of CEQ and members of the public are invited to testify. Finally, an organizational scheme is provided which has provision for the public review of administration decisions. All of these review provisions are to be implemented within tight time constraints so as to expedite pipeline construction.

Having described these alternatives to the judicial review of environmental impact statements, I would like to raise a word of caution. The National Environmental Policy Act and its requirements were enacted in order to provide an orderly procedure for assessing the impact of major governmental actions on the environment. No one denies that this \$10 billion project constitutes a major action having substantial environmental consequences. Because of time and financial constraints many feel that it is necessary to curtail judicial review. Despite the safeguards proposed in this bill, we run a major risk in following this course.

There is a danger as we deplete our energy resources that we will come to accept even greater environmental damage as the price we must pay to retain our "highest standard of living." The NEPA review process, and the opportunity to challenge its adequacy in the courts presently stands as an all too thin barrier between us and that possibility. I hope that we will withstand the temptation to remove that protection to suit our convenience. NEPA has served us well in the past, and must be permitted to continue to do so in the future. The limitation on judicial review contained in this act should not be viewed as a precedent for undermining our commitment either to the NEPA process or to a quality environment.

DALE BUMPERS.



## MINORITY VIEWS OF MR. DURKIN

This bill would establish expedited procedures for consideration, selection and approval of a transportation system for bringing natural gas from Alaska's North Slope to the lower 48 states. The expedited procedures contained in this bill are extraordinary and in the nature of emergency measures. I am not convinced, however, that a case has been made that these procedures are necessary at this time or that existing procedures are inadequate to assure timely resolution of the issues surrounding transportation of natural gas from Alaska. A multi-billion dollar transportation project is at stake. Economic and environmental issues of tremendous importance are involved. The resolution of the issues involved will have a significant impact on our national energy policy for some time to come. With these stakes, I expected a compelling showing of an urgent and immediate need to abandon existing and proven decision-making procedures. No such showing has been made to date.

First, S. 3521 proposes that Congress shortcut the certification process mandated by the Natural Gas Act, substituting direct Congressional decision following recommendations by the Federal Power Commission (FPC) and the President. Second, it would suspend for all practical purposes the operation of the National Environmental Policy Act of 1969 (NEPA), permitting FPC recommendations to be based on less extensive environmental considerations than heretofore has been required. Third, it restricts judicial review of the decision reached through this truncated procedure to questions of constitutionality and allegations that the mandated decision processes have not been followed. Thus, passage of this legislation would mark a significant departure from a whole series of policies intended to promote energy decisions in the public interest.

Moreover, S. 3521 saddles the FPC with an arbitrary timetable that will severely limit its ability to give full consideration to all proposals now pending before it. The result may well be that an FPC recommendation will be forthcoming that cannot be fully supported technically, economically, environmentally or as a matter of national energy policy.

I view with particular concern whether an adequate case has been made for the weakening of NEPA. First, there is no assurance that environmental factors will be weighed adequately under the provisions of this bill. The "environmental impacts" which the FPC will be required to consider are largely unspecified except in the negative: all of the careful court opinions delineating what environmental factors must ordinarily be considered in such decisions are deliberately excluded. Nobody seriously contends that environmental evaluation has been completed for all existing route proposals. Substituting a hasty Presidential environmental impact analysis and comment by the Council on Environmental Quality is a poor substitute for careful



judicial scrutiny. Cutting short this crucial evaluation process at this time could result in a poorly analyzed decision.

In addition, setting aside NEPA under these circumstances may create another undesirable precedent. By reporting S. 3521, my colleagues would interrupt for the first time the requirement that regulatory agencies be afforded adequate time to complete environmental impact statements in all instances except emergencies. It is particularly ironic that this proposal arises in a case where the least studied application—potentially the soundest from an economic and environmental point of view—is an outgrowth of the alternative route suggestions which were required to be included in the impact statements on earlier applications. Without NEPA, we might never have been aware of the possibility of building a natural gas pipeline to Alaska without unnecessary cost or threat to the environment. This hardly seems an occasion to suspend or weaken the policy.

Of equal concern is the provision which would deprive federal courts of jurisdiction over environmental questions until the pipeline begins operation. I believe that this action is at best premature. There is no present indication that dilatory litigation will be attempted if an application is approved. A recent study by the Council on Environmental Quality concluded that less than five percent of the environmental impact statements produced to date have been challenged in court. It is far more likely that the source of a long court fight would be an unsuccessful applicant. We should not be so quick to deprive citizens of access to legal redress for the convenience of these corporate giants.

If a trans-Alaska natural gas pipeline is built, it will be one of the largest construction projects ever undertaken. Much of the technology that will enable its completion is untested. Shortening the normal certification process can only come at the expense of fully understanding the implication of each application. At this stage, there is no demonstrated need for expediting the process, but there is obvious risk. Congress should not be stampeded into approving this bill without adequate consideration.

My opposition to S. 3521 should not be misinterpreted as opposition to the transportation of natural gas from Alaska. My concern is that the procedures followed and the route chosen are economically sound and environmentally safe. Furthermore, the route taken should bring the natural gas as close as possible to New Hampshire, New England and the Atlantic Seaboard—the areas of the country which need low cost energy the most.

JOHN A. DURKIN.



TAGS (Trans-Alaska Gas System)

← memo. from McA to RMC indicates the proj. is not economically viable

✓ ANGTS (Alaska Natural Gas Transport. System)

← memo for EPC indicates ANGTS proj. "is currently not economic"

Q: why are we taking this action?

① has the Pres issued any findings under ANGTA §12 before?  
(assume ANGTS did not require one)

NO

② has DOE looked into ANGTA findings?

③ Pres. must make + publish an express finding

- such exports will not diminish the total quantity or quality

nor increase the total price of energy available to the U.S.

ANGTA

designed to ensure supply of natural gas to contiguous States of U.S.

Executive Policy Board for the sys for the transp. of Alaska natural gas

- are any "rules" in effect relating to exports under 42 USC §6212

Memo to EPC

- does not mention that TAGS project is economically infeasible at this time

7/16 G McAulister ↓

Memo should reflect this bec. it reveals that Pres. will accept'g some political heat + controversy (mess up Canada needs) w no correspond'g benefit at this time

Mike Ferrell  
May have looked at this Qs



7/16 TIC

M. Ferrell

- can be generic - need not be project - specific
- need not be in any particular form
- pretty solid: can be letter or press release or anything



gas produced by the company was distributed to purchasers in the state. *Columbian Fuel Corp. v. Public Service Commission*, Ky.1960, 333 S.W.2d 945.

### § 717b. Exportation or importation of natural gas

After six months from June 21, 1938 no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.

June 21, 1938, c. 556, § 3, 52 Stat. 822.

#### Historical Note

**Transfer of Functions.** All executive and administrative functions of the Federal Power Commission were, with certain reservations, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by 1950 Reorg. Plan No. 9, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat.

1265, set out in the Appendix to Title 5, Government Organization and Employees.

**Delegation of Functions.** Functions of the President respecting certain facilities constructed and maintained on United States borders delegated to the Secretary of State, see Ex.Ord. No. 11423, Aug. 20, 1968, 33 F.R. 11741, set out as a note under section 301 of Title 3, The President.

#### EXECUTIVE ORDER NO. 10485

Sept. 3, 1953, 18 F.R. 5397

#### PERFORMANCE OF FUNCTIONS RESPECTING ELECTRIC POWER AND NATURAL GAS FACILITIES LOCATED ON UNITED STATES BORDERS

**Section 1.** (a) The Federal Power Commission is hereby designated and empowered to perform the following-described functions:

(1) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country.

(2) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the exportation or importation of natural gas to or from a foreign country.

(3) Upon finding the issuance of the permit to be consistent with the public

interest, and, after obtaining the favorable recommendations of the Secretary of State and the Secretary of Defense thereon to issue to the applicant, as appropriate, a permit for such construction, operation, maintenance, or connection. The Commission shall have the power to attach to the issuance of the permit and to the exercise of the rights granted thereunder such conditions as the public interest may in its judgment require.

(b) In any case wherein the Federal Power Commission, the Secretary of State and the Secretary of Defense cannot agree as to whether or not a permit should be issued, the Commission shall submit to the President for approval or disapproval the application for a permit with the respective views of the Commis-