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MEMORANDUM

THE WHITE HOUSE
WASHINGTON

February 25, 1983

MEMORANDUM FOR FRED F. FIELDING

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Draft Legislation, Fact Sheet and
Presidential Statement Re: Natural Gas

Richard Darman has requested comments by close of business February 25 on draft natural gas decontrol legislation, a proposed Presidential statement on submission of the legislation, and a draft fact sheet. The package is accompanied by a memorandum for the President from Secretary Hodel. Hodel states that the legislation is the specific proposal developed from the general outline presented to the Cabinet earlier this month, revised after consultation with Congressional leaders. Hodel urges transmittal of the legislation as soon as possible.

The only difficulty I have with the package is that the legislation is, in my view, constitutionally suspect. Section 302 of the bill repeals certain "take or pay" provisions in contracts for the delivery of natural gas. Under such not uncommon provisions, purchasers of natural gas agree to accept certain amounts of gas, or pay for the gas even if they do not accept it. The legislation, by repealing these "take or pay" provisions, deprives natural gas sellers of valuable contract rights. While the Contracts Clause, barring states from passing laws impairing the obligation of contracts, U.S. Const. art. I, § 10, does not by its terms apply to federal laws, contract rights are property rights and the federal government cannot deprive private parties of such property rights without just compensation. U.S. Const. amend. V. The analysis in "takings clause" cases is an essentially ad hoc balancing of the harm to private parties against public benefits from the taking, so it is difficult to determine in advance whether a particular law will run afoul of the takings clause. I would not, therefore, want to derail the proposed legislation at this late date. I do, however, feel obligated to raise the concern, and have done so in the proposed memorandum to Darman. I have also suggested that at some point in the legislative process a severability clause be added to the bill, so any problems with § 302 do not bring down the whole house of cards.

Attachment

THE WHITE HOUSE

WASHINGTON

February 25, 1983

MEMORANDUM FOR RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT

FROM: FRED F. FIELDING *RAW for FFF*
COUNSEL TO THE PRESIDENT

SUBJECT: Draft Legislation, Fact Sheet and
Presidential Statement Re: Natural Gas

Counsel's Office has reviewed the proposed natural gas legislation, Presidential statement, and fact sheet. While we do not object to going forward with submission of the legislation and issuance of the statement and fact sheet, it should be noted that section 302 of the bill raises significant Constitutional concerns. That section affects existing contractual rights in a manner that may be considered to constitute a "taking" of private property without just compensation. Those dealing with the legislation should be prepared to address this issue. In particular, at some point in the legislative process a severability clause should be added so that if section 302 is struck down the entire bill will not be jeopardized.

FFF:JGR:aw 2/25/83

cc: FFFielding
JGRoberts
Subj.
Chron

THE WHITE HOUSE

WASHINGTON

February 25, 1983

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FFF:JGR:aw 2/25/83

cc: FFFielding
JGRoberts
Subj.
Chron

WHITE HOUSE STAFFING MEMORANDUM

DATE: February 24 ACTION/CONCURRENCE/COMMENT DUE BY: MONDAY, FEB. 28

SUBJECT: DRAFT LEGISLATION, FACT SHEET, & PRESIDENTIAL STATEMENT
RE NATURAL GAS

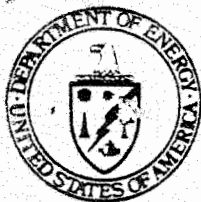
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VICE PRESIDENT	<input type="checkbox"/>	<input type="checkbox"/>	GERGEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MEESE	<input type="checkbox"/>	<input checked="" type="checkbox"/>	HARPER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BAKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JENKINS	<input type="checkbox"/>	<input type="checkbox"/>
DEAVER	<input type="checkbox"/>	<input type="checkbox"/>	MURPHY	<input type="checkbox"/>	<input type="checkbox"/>
STOCKMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROLLINS	<input type="checkbox"/>	<input type="checkbox"/>
CLARK	<input type="checkbox"/>	<input type="checkbox"/>	WHITTLESEY	<input type="checkbox"/>	<input type="checkbox"/>
DARMAN	<input type="checkbox"/> P	<input checked="" type="checkbox"/> SS	WILLIAMSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
DUBERSTEIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	VON DAMM	<input type="checkbox"/>	<input type="checkbox"/>
FELDSTEIN	<input type="checkbox"/>	<input type="checkbox"/>	BRADY/SPEAKES	<input checked="" type="checkbox"/>	<input type="checkbox"/>
FIELDING →	<input checked="" type="checkbox"/>	<input type="checkbox"/>	ROGERS	<input type="checkbox"/>	<input type="checkbox"/>
FULLER	<input type="checkbox"/>	<input type="checkbox"/>	<u>BAIKSHIAN</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Remarks:

Please provide any comments/recommendations by Monday, February 28th.
 Thank you.

Richard G. Darman
 Assistant to the President
 (x2702)

Response:



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

February 23, 1983

MEMORANDUM FOR THE PRESIDENT

FROM: DONALD PAUL HODEL *Don Hodel*

SUBJECT: Natural Gas Deregulation

On February 10, following the Cabinet meeting of February 8, you authorized me to consult with Congressional leaders on the specifics of the natural gas proposal I presented at the Cabinet meeting. That proposal provides for decontrol of natural gas markets in a way intended to protect consumers and to provide adequate supplies at reasonable costs.

I have carried out these consultations with results that have been quite encouraging and frequently more favorable than I had expected. The Republican leadership on both the Senate and House Energy Committees has been most supportive and has urged us to present a specific bill.

Pursuant to these consultations, we have developed specific legislative language generally in line with the outline that was given to the Cabinet, and a copy of that draft legislation is attached. We also have prepared accompanying material, including a draft Presidential transmittal message, and a policy analysis of the bill's effects.

It is interesting to note that DOE's analysis shows that if this bill were enacted, natural gas prices could drop by 10-30 cents per mcf in the first year, as the market moved toward greater decontrol and flexibility. We believe this is a careful analysis, and, should oil prices drop significantly, the natural gas price drop could be larger.

I urge you to make the decision to transmit this legislation to Congress at your earliest opportunity. There hardly could be a better time to make this proposal. The success and wisdom of your effort in decontrolling oil is becoming more apparent daily. That courageous decision has had a major impact in producing the free oil market which has led to a significant price decline in recent days. Moreover, failure of the Administration to come forward with a comprehensive legislative proposal would mean relinquishing the inevitable legislative battle to those who merely would seek extension of controls, price freezes and other "quick fixes" that will not work and would be detrimental to the Nation.

It is very important that your personal decision and commitment be perceived as strong and unequivocal. Our supporters in both the House and Senate have indicated that the bill should be sent soon, and it should be sent with strong Presidential support. I believe that if the transmission is delayed beyond your departure for California next week, it would be taken as a sign of less than complete enthusiasm.

I would be pleased to provide additional material as seems appropriate to you and your staff.

Attachments

FACT SHEET

NATURAL GAS CONSUMER REGULATORY REFORM LEGISLATION

- o The Natural Gas Policy Act (NGPA) of 1978 currently is causing natural gas prices to rise in spite of an oversupply of deliverable gas, declining oil prices, and a low rate of inflation.
- o The proposed natural gas legislation submitted by the President to the Congress today will benefit consumers by creating a system in which gas prices can be responsive to the pressures of the market. Through "deregulation by renegotiation," this proposal will protect consumers from uneconomic natural gas price increases while eliminating regulatory barriers that prevent natural gas from being purchased, distributed and used efficiently.
- o A primary purpose of the proposal is to see that consumers not bear the risk of price increases from this effort to let the market work. This proposal modifies, until January 1, 1986, the current Federal Energy Regulatory Commission regulations which allow pipelines immediately to pass through to consumers all wellhead cost increases. This will provide fairness to consumers and provide incentives to suppliers and pipelines to renegotiate contracts to minimize costs.
 - Purchased gas costs automatically passed to consumers will be limited to the pre-enactment levels plus the increase attributable to inflation.
 - Price increases above the rate of inflation may not be passed to consumers unless such increases specifically are approved by the Federal Energy Regulatory Commission after a public proceeding with appropriate standards.
- o Under current market conditions, the proposed natural gas legislation should result in a first year drop in the average price of gas of 10 to 30 cents per thousand cubic feet (mcf). This estimate is based on assumptions about the extent of producer/pipeline renegotiations, the current excess of deliverable gas supplies, the rate of economic growth and what path oil prices will follow over the next few years. If, for example, oil prices were to fall below the cautious projections used (which do not take into account recent price reduction announcements by major foreign oil producing nations), we would expect gas prices to drop even further in the near-term.
- o Under the proposed legislation, any new contracts for natural gas purchases may be negotiated and existing contracts may be

renegotiated at the option of the contracting parties, and all these contracts will operate on whatever terms the parties agree. As an incentive to renegotiation, either party will be allowed to opt out of any pre-enactment contract beginning January 1, 1985.

- o Before 1986, the average price of gas purchased through renegotiated and new contracts will become the "gas cap," and the price for all regulated gas will be limited to the lower of either the "gas cap" or the NGPA-controlled price, with the exception of "tight sands" gas which is capped at its maximum lawful price at date of enactment.
- o The price of gas not currently regulated -- so called "deep gas" -- will be capped at the higher of the contract price as of the date of enactment or the "gas cap" until January 1, 1986, unless such contracts are renegotiated prior to that date.
- o The "gas cap" will be applied as a ceiling for price escalator clauses in existing contracts until January 1, 1986, or sooner if such contracts are renegotiated.
- o Until January 1, 1986, the legislative proposal will allow pipeline companies to reduce their minimum rates of take to 70 percent under those "take-or-pay" provisions that require pipelines to pay for a specified quantity of gas regardless of how much gas they can sell. If the purchaser elects to reduce the amount of gas taken under "take-or-pay" provisions, the seller may sell that portion of the gas elsewhere.
- o The proposal will require pipelines to carry gas at an incentive rate where producers find buyers other than the pipeline concerned, there is available capacity, and existing pipeline customers are not penalized.

2/23/83

PRESIDENTIAL STATEMENT -- NATURAL GAS

It is a pleasure today to do what we long have anticipated: to send to Congress our proposal for correcting problems that have resulted from excessive regulation of the natural gas market. Our goal must be to obtain an adequate supply of natural gas at a reasonable price. Anything less is not sufficient and will not solve the problems currently faced by many Americans who depend on natural gas.

In recent months, thousands of people have written to me, to Members of Congress and to state and local officials expressing their distress about rapidly rising natural gas bills. Some areas of the country have been especially hard hit. It is clear that consumers are being poorly and unfairly served by the existing regulatory system -- a system which prevents natural gas producers and their customers from establishing contracts that respond to market forces, including downward pressure on prices that otherwise would occur as a result of plentiful gas supplies and declining oil prices. There is widespread agreement that something must be done to relieve the regulatory straight jacket in which the natural gas market now operates.

The proposal I am submitting to the Congress today will achieve the needed result. It is not a partisan plan, nor does

it resort to seemingly simple "quick fixes," which would turn out to be neither simple nor quick and ultimately would not fix the problems. Instead, our approach is a comprehensive proposal that can -- and I believe will -- be supported by Congressmen and Senators of both parties and will be beneficial to the consumers they represent.

Our legislative package will allow, but not require, the parties to negotiate toward a free market, so that there will be real and long-term incentives to produce and market abundant gas supplies at the lowest possible cost. In this regard, I note the decline in gasoline and home heating oil prices that have occurred since we deregulated oil two years ago.

Although we believe free markets not only can, but will, achieve these results, the American consumer need not take this on faith alone. To assure the consumer is protected, I have insisted on a provision which reverses the present law by providing that, until 1986, there will be a moratorium on the automatic pass-through of increased gas costs other than those increases attributable to inflation, which as you know has been declining steadily.

We believe these ideas offer the best achievable combination of consumer protection and efficient, economic use of our valuable gas resources. I look forward to working closely with the Congress to obtain passage of this urgently needed legislation without delay.

A BILL

To correct deficiencies in the Natural Gas Policy Act of 1978, to protect natural gas consumers from price increases because of current distortions in the regulated market for natural gas, to provide for a free market for natural gas, to permit natural gas contracts to reflect the change from a regulated to a free market, to eliminate incremental pricing requirements for natural gas, to eliminate certain fuel use restrictions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Natural Gas Consumer Regulatory Reform Amendments of 1983".

TABLE OF CONTENTS

TITLE I -- PURCHASED GAS COST

Sec. 101. Purchased Gas Cost.

TITLE II -- REMOVAL OF WELLHEAD PRICE CONTROLS AND REPEAL
OF JURISDICTION OVER CERTAIN FIRST SALES

Sec. 201. Removal of Wellhead Price Controls.

Sec. 202. Repeal of Natural Gas Act Jurisdiction Over First Sales
of Committed or Dedicated Natural Gas.

Sec. 203. Repeal of Provisions Allowing Reimposition of Price Controls and Report to Congress.

TITLE III -- TRANSITIONAL PRICE AND CONTRACT PROVISIONS

Sec. 301. Limitation on Ceiling Prices for Natural Gas.

Sec. 302. Repeal of Certain Contract Requirements and Imposition of Take-or-Pay Limits.

Sec. 303. Market-Out Provision.

Sec. 304. Effect of Gas Cap Price.

TITLE IV -- REMOVAL OF IMPEDIMENTS TO INTERSTATE MOVEMENTS OF GAS

Sec. 401. Authorization of Certain Interstate Sales, Transportation and Assignments.

Sec. 402. Access to Interstate Supply Sources.

Sec. 403. Contract Carrier Authorization.

TITLE V -- REPEAL OF CERTAIN RESTRICTIONS ON NATURAL GAS AND PETROLEUM USE AND PRICING

Sec. 501. Repeal of Certain Sections of the Powerplant and Industrial Fuel Use Act of 1978:

Sec. 502. Conforming Amendments.

Sec. 503. Repeal of Incremental Pricing Requirements.

TITLE I -- PURCHASED GAS COST
PURCHASED GAS COST

SEC. 101. (a) Title VI of the Natural Gas Policy Act of 1978 (15 U.S.C. §3431 et seq.) is amended by adding a new section 603 to read as follows:

"SEC. 603. LIMITATION ON THE PASSTHROUGH OF CERTAIN PURCHASED GAS COSTS.

"(a) LIMITATION ON PURCHASED GAS ADJUSTMENTS. -- Notwithstanding section 601(c) of this Act, for purposes of sections 4 and 5 of the Natural Gas Act, from the first day of the first month following enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 through December 31, 1985, the part of a rate of a pipeline rate that reflects purchased gas costs may not exceed its allowed rate for purchased gas cost.

"(b) RECOVERY OF ADDITIONAL PURCHASED GAS COST. -- A pipeline may file an application under this subsection with the Commission to increase its rates to reflect any purchased gas cost that subsection (a) of this section prevents it from recovering. Notwithstanding section 4(e) of the Natural Gas Act, no increase to the rates of a pipeline that may be recovered under this subsection may go into effect unless the Commission, after opportunity for hearing, issues an order that grants the application, in whole or in part, with such modifications and upon such terms and conditions as the Commission may find necessary and appropriate. This hearing shall be conducted by the Commission separately from proceedings on other rate applications that are filed under section 4 of the Natural Gas Act. In any proceeding involving an application under this subsection, the Commission shall allow recovery if it determines that the costs sought to be recovered were just, reasonable, and prudently incurred. In

making this determination, the Commission shall consider the reasonable availability of lower cost supplies to the pipeline and the necessity of such costs for the pipeline to render adequate service to its existing customers. Within sixty days of the date of the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983, the Commission shall prescribe rules for applications under this subsection. These rules shall facilitate expeditious decisions on these applications.

"(c) DEFINITIONS. --

"(1) ALLOWED RATE FOR PURCHASED GAS. -- The term "allowed rate for purchased gas" means, for a particular pipeline, for a particular month, the pipeline's average cost per million Btu's for purchased gas delivered to the pipeline during the month preceding the enactment of the Natural Gas Consumer Regulatory Reform Act of 1983 plus the adjustment amount for that particular month.

"(2) ADJUSTMENT AMOUNT. -- The term "adjustment amount" means, for a particular month, the difference between the national rate and the adjusted national rate for that particular month.

"(3) NATIONAL RATE. -- The term "national rate" means the national average cost per million Btu's for purchased gas delivered to all interstate pipelines during the month preceding the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983.

"(4) ADJUSTED NATIONAL RATE. -- The term "adjusted national rate" means --

"(A) for the month in which the Natural Gas Consumer Regulatory Reform Amendments of 1983 is enacted, the national rate multiplied by the annual inflation adjustment factor (as defined in section 101(a)) for that month; and

"(B) for any particular succeeding month, the adjusted national rate for the preceding month multiplied by the annual inflation factor (as defined in section 101(a)) for that particular month.

"(d) REPORTING REQUIREMENT. -- By the fifth day following the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983, each interstate pipeline shall report its average cost per million Btu's for purchased gas delivered to it during the month preceding the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 and the volume of purchased gas delivered to it during that month.

"(e) PUBLICATION. -- The Commission shall compute and publish the adjustment amount for each month at least five days before the beginning of that month.

"(f) AFFILIATED PRODUCTION. -- No interstate pipeline may recover any costs associated with its own production or purchases from any affiliated producer to the extent such production or purchases were not reduced to a percentage of deliverability to

which the pipeline had exercised contemporaneously a contractual right to reduce its takes of less expensive gas."

(b) The table of contents of the Natural Gas Policy Act of 1978 (15 U.S.C. §3301 note) is amended by inserting after the item relating to section 602 the following:

"Sec. 603. Purchased Gas Cost."

TITLE II -- REMOVAL OF WELLHEAD PRICE CONTROLS AND REPEAL
OF JURISDICTION OVER CERTAIN FIRST SALES
REMOVAL OF WELLHEAD PRICE CONTROLS

SEC. 201. Section 121 of the Natural Gas Policy Act of 1978 (15 U.S.C. §3331) is amended to read as follows:

"SEC. 121. ELIMINATION OF PRICE CONTROLS FOR CERTAIN NATURAL GAS SALES.

"(a) GENERAL RULE. -- Beginning January 1, 1986, the provisions of subtitle A respecting maximum lawful price shall cease to apply to the first sale of any natural gas.

"(b) HIGH-COST NATURAL GAS. -- Beginning on the effective date of the incremental pricing rule required under section 201, the provisions of subtitle A respecting the maximum lawful price for the first sale of natural gas shall cease to apply to the first sale of high-cost natural gas which is described in section 107(c)(1), (2), (3), or (4). Beginning on the date of enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 through December 31, 1985, the price of natural gas, which is subject to this subsection and which subsection (c) of this sec-

tion does not exempt from the maximum lawful prices of subtitle A of this Act, shall not exceed the higher of the contract price on the date of the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 or the gas cap price for the month during which the gas is delivered.

"(c) REMOVAL OF WELLHEAD PRICE CONTROLS ON CERTAIN CONTRACTS. -- The provisions of subtitle A respecting the maximum lawful price for any first sale of natural gas shall cease to apply to any first sale of natural gas subject to any contract --

"(1) that expired, lapsed, or was terminated pursuant to its own terms or section 316 of this Act, or

"(2) that was executed or amended, after the date of enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983, unless the contract specifically provides that the contract shall not operate to terminate the application of subtitle A."

REPEAL OF NATURAL GAS ACT JURISDICTION OVER FIRST
SALES OF COMMITTED OR DEDICATED NATURAL GAS

SEC. 202. Section 601(a)(1) of the Natural Gas Policy Act of 1978 (15 U.S.C. §3431(a)(1)) is amended by amending subparagraph (B) to read as follows:

"(B) COMMITTED OR DEDICATED NATURAL GAS. --

Effective on January 1, 1985, for the purposes of section 1(b) of the Natural Gas Act, the provisions of such Act and the jurisdiction of the Commission shall not apply

solely by reason of any first sale of natural gas which was committed or dedicated to interstate commerce as of the day before the date of enactment of this subsection. Effective on the date of enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 through December 31, 1984, for the purposes of section 1(b) of the Natural Gas Act, the provisions of such Act and the jurisdiction of the Commission under such Act shall not apply solely by reason of any first sale of natural gas which is committed or dedicated to interstate commerce as of the day before the date of enactment of this Act and which is --

"(i) high-cost natural gas (as defined in section 107(c)(1), (2), (3), or (4) of this Act);

"(ii) new natural gas (as defined in section 102(c) of this Act);

"(iii) natural gas produced from any new, onshore production well (as defined in section 103(c) of this Act); or

"(iv) natural gas exempted from the operation of subtitle A of title I pursuant to section 121(c)."

REPEAL OF PROVISIONS ALLOWING REIMPOSITION OF PRICE

CONTROLS AND REPORT TO CONGRESS

SEC. 203. (a) Sections 122, 123, and 507 of the Natural Gas Policy Act of 1978 (15 U.S.C. §§3332, 3333, and 3417) are repealed

effective upon enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983.

(b) The table of contents of the Natural Gas Policy Act of 1978 (15 U.S.C. §3301 note) is amended by striking the items relating to sections 122, 123, and 507.

TITLE III -- TRANSITIONAL PRICE AND CONTRACT PROVISIONS

LIMITATION ON CEILING PRICES FOR CERTAIN NATURAL GAS

SEC. 301. (a) Title I of the Natural Gas Policy Act of 1978 (15 U.S.C. §§3311-3333) is amended by adding the following new section:

"SEC. 111. LIMITATION ON CEILING PRICES FOR CERTAIN NATURAL GAS.

"(a) GENERAL RULE. -- Beginning on the date of enactment of this section, the maximum lawful price of any first sale of natural gas subject to this subtitle shall not exceed the lower of the applicable price as calculated pursuant to sections 102 through 106, 108, and 109 or the published gas cap price, as defined in subsection (b).

"(b) SPECIAL RULE FOR SECTION 107 GAS. -- Beginning on the date of the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983, the maximum lawful price for gas described in subsection (c)(5) of section 107 of this Act shall be no higher than the maximum lawful price for such gas during the month in which the Natural Gas Consumer Regulatory Reform Amendments of 1983 are enacted.

"(c) SPECIAL RULE FOR CERTAIN GAS DELIVERED DURING 1985. --

Notwithstanding subsection (a) of this section, beginning January 1, 1985, the gas cap price shall be the maximum lawful price for --

"(1) NEW NATURAL GAS. -- New natural gas (as defined in section 102(c)).

"(2) NEW, ONSHORE PRODUCTION WELLS. -- Natural gas produced from any new, onshore production well (as defined in section 103(c)), if such natural gas --

"(A) was not committed or dedicated to interstate commerce on April 20, 1977; and

"(B) is produced from a completion location which is located at a depth of more than 5,000 feet.

"(3) INTRASTATE CONTRACTS IN EXCESS OF \$1.00. -- Natural gas sold under an existing contract, any successor to an existing contract, or any rollover contract, if --

"(A) such natural gas was not committed or dedicated to interstate commerce on the day before the date of the enactment of this Act; and

"(B) the price paid for the last deliveries of such natural gas occurring on December 31, 1984, or, if no deliveries occurred on such date, the price would have been paid had deliveries occurred on such date is higher than \$1.00 per million Btu's.

"(d) DEFINITION OF GAS CAP PRICE. -- The term "gas cap price" means, for a particular month, the volume-weighted average price

of natural gas that was --

"(1) delivered during the second, third, and fourth months preceding that particular month; and

"(2) delivered during the first three months of deliveries under a contract filed under subsection (d) of this section.

"(e) CALCULATION OF THE GAS CAP PRICE. -- Beginning with the fourth month after enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983, the Commission (in accordance with section 101(a)(6) of this subtitle) shall compute and publish the gas cap price for each month through December 1985.

"(f) FILING REQUIREMENT. -- A purchaser of natural gas subject to a contract executed or amended on or after the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 shall file with the Commission within five days of that date on which the contract is executed or amended --

"(1) a summary of the contract and all ancillary agreements, including all pricing provisions;

"(2) the prices to be paid under the contract during the first three months of deliveries;

"(3) the estimated volumes (in millions of Btu's) to be delivered during the first year of the contract; and

"(4) any additional data required by the Commission.

"(g) COMMISSION RULES. -- Within thirty days of the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983,

the Commission shall issue rules to implement this section."

(b) The table of contents of the Natural Gas Policy Act of 1978 (15 U.S.C. §3301 note) is amended by inserting after the item relating to section 110 the following:

"Sec. 111. Limitation on Ceiling Prices for Certain Natural Gas."

(c) Section 101(b)(5) of the Natural Gas Policy Act of 1978 (15 U.S.C. §3311(b)(5)) is amended by striking the period at the end and inserting the following:

", but in no event shall the operation of this paragraph be deemed to entitle any seller to collect a price in excess of that established pursuant to section 111."

(d) Section 105(b)(3)(B) of the Natural Gas Policy Act of 1978 is amended by adding a new sentence at the end to read as follows:

"This definition shall not include any clause which establishes the price for natural gas exempted from the operation of this subtitle pursuant to section 121(c)."

REPEAL OF CERTAIN CONTRACT REQUIREMENTS AND IMPOSITION
OF TAKE-OR-PAY LIMITS

SEC. 302. (a) Section 315 of the Natural Gas Policy Act of 1978 (15 U.S.C. §3375) is repealed, and a new section 315 is inserted in its place to read as follows:

"SEC. 315. IMPOSITION OF TAKE-OR-PAY LIMITS.

"(a) GENERAL RULE. -- In the case of any contract in effect

on the date of enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983, which has not been amended subsequent to the date of enactment, and which contains a clause requiring a purchaser to take delivery of, or if not taken, to pay for, volumes of gas in excess of 70 percent of available deliverability from those wells included under a contract, the purchaser may exercise without obligation to pay for volumes not taken in excess of 70 percent of well deliverability, a right not to accept delivery of any portion of the total volume which exceeds 70 percent of well deliverability. This right applies only to deliveries under a contract from the date of enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 through December 31, 1985.

"(b) NOTICE REQUIREMENT. -- Any purchaser electing to reduce volumes purchased pursuant to this section must give the seller a minimum of thirty days written notice prior to the date of delivery of the natural gas involved.

"(c) RELEASE OF CONTRACTUAL OBLIGATIONS. -- Upon receipt of the notice provided for in subsection (b), the seller shall have the right to terminate the contract with respect only to amounts not taken by reason of this section. If the seller elects to terminate the contract in accordance with this section, the purchaser shall tender to the seller full and unconditional release from all duties and obligations in contract or in law. The purchaser, if a transporter of natural gas, shall tender

transportation in accordance with the provisions of section 316(d).

"(d) CASINGHEAD NATURAL GAS AND DRAINAGE SITUATIONS. -- The Commission, by rule or order, may determine that this section shall not apply to the extent the production of the volume for which delivery is required to be taken is necessary --

"(1) in order to prevent drainage and protect the correlative rights of the person producing the natural gas involved; or

"(2) because the natural gas involved is casinghead gas.

"(e) CONTRACTS COVERING MORE THAN ONE CATEGORY OF NATURAL GAS. -- For purposes of this section, any contract establishing two or more categories of natural gas for purposes of pricing the natural gas delivered under the contract shall be treated as separate contracts for each such category."

(b) The table of contents of the Natural Gas Policy Act of 1978 (15 U.S.C. §3301 note) is amended by striking the item relating to section 315 and inserting in its place the following:

"Sec. 315. Imposition of Take-or-Pay Limits."

MARKET-OUT PROVISION

SEC. 303. (a) Title III of the Natural Gas Policy Act of 1978 (15 U.S.C. §§3361-3375) is amended by adding a new section 316 to read as follows:

"SEC. 316. MARKET-OUT PROVISION.

"(a) GENERAL RULE. -- Beginning January 1, 1985, either party to a contract for the first sale of natural gas which was in effect on the date of enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983 and which was not thereafter amended shall have the right to terminate the contract under the following conditions:

"(1) the party wishing to terminate the contract must give notice to the other party between November 16, 1984, and November 15, 1985, and at least 45 days in advance, that the contract is to be terminated;

"(2) the party giving notice of termination does not materially breach the contract at any time prior to the end of the notice period; and

"(3) the party giving notice of termination must offer to the other party a full and unconditional release from all future duties and obligations in contract or in law relating to the contract, which release is effective upon termination of the notice period.

"(b) EFFECT OF SECTION 315 REDUCTION. -- A reduction of a take-or-pay obligation pursuant to section 315 shall not be considered an amendment for purposes of subsection (a) of this section.

"(c) OBLIGATIONS OF PARTIES UPON TERMINATION. -- Neither party to a contract terminated pursuant to this section shall have an obligation to perform any act because of the contract on

and after the effective date of the termination of the contract except that a party that has received a good or service under the contract before the effective date of its termination shall have a duty to pay for that good or service as provided for in the contract and that a party that has received payment under the contract for a good or service that was not provided before the effective date of its termination shall have a duty to make restitution of the payment.

"(d) TRANSPORTATION OBLIGATION. --

"(1) IN GENERAL. -- In the event that a contract is terminated under this section, a pipeline that was a party to the terminated contract shall have an obligation to transport natural gas for a producer that was a party to the terminated contract; Provided that, the obligation of the pipeline shall not exceed on an annual basis the volume delivered under the contract during the year prior to its termination.

"(2) LIMITATION OF OBLIGATION. -- The Commission, upon application by the pipeline and after opportunity for hearing, may order a limitation of the obligation of the pipeline under this subsection if compliance with the obligation would require construction of additional facilities or would impair the ability of the pipeline to render adequate service to its existing customers.

"(3) CONSIDERATION. -- The consideration for any transportation provided under the contract provisions pro-

vided by this section shall be \$.05 per million Btu's plus the cost of such transportation, as established by the appropriate State or Federal regulatory body, unless the Commission has established, by rule, a different rate as just compensation for such transportation. No amount of such consideration shall be required to be credited and flowed back to the customers of such pipeline."

(b) The table of contents of the Natural Gas Policy Act of 1978 (15 U.S.C. §3301 note) is amended by inserting after the item relating to section 315 the following:

"Sec. 316. Market-Out Option.

EFFECT OF GAS CAP PRICE

SEC. 304. (a) Title III of the Natural Gas Policy Act of 1978 (15 U.S.C. §§3361-3375) is amended by adding a new section 316 to read as follows:

"SEC. 318. EFFECT OF GAS CAP PRICE.

"(a) PRICE ESCALATOR CLAUSES. -- No price escalator clause may operate to establish a price for natural gas which is subject to the provisions of subtitle A respecting the maximum lawful price for the first sale of natural gas, other than natural gas described in section 107 of this Act, higher than the gas cap price. For purposes of this paragraph, the term "price escalator clause" means any contract clause which provides for a periodic price increase, either on a fixed or indefinite basis, which references other natural gas prices, Federally imposed price

ceilings, or prices of other commodities.

"(b) AREA RATE CLAUSES. -- For purposes of applying an area rate clause, the gas cap price shall be deemed a Federally established rate or price."

(b) The table of contents of the Natural Gas Policy Act of 1978 (U.S.C. §3301 note) is amended by inserting after the item relating to section 317 the following:

"Sec. 318. Effect of Gas Cap Price."

TITLE IV -- REMOVAL OF IMPEDIMENTS
TO INTERSTATE MOVEMENTS OF GAS
AUTHORIZATION OF CERTAIN INTERSTATE SALES,
TRANSPORTATION AND ASSIGNMENTS

SEC. 401. (a) Section 311 of the Natural Gas Policy Act of 1978 (15 U.S.C. §3311) is amended by adding a new subsection (d) to read as follows:

"(d) DEFINITION OF INTRASTATE PIPELINE AND LOCAL DISTRIBUTION COMPANY. -- For purposes of this section, the terms "intrastate pipeline" and "local distribution company" include any company that is not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the Natural Gas Act."

(b) Section 311(a) of the Natural Gas Policy Act of 1978 (15 U.S.C. §3371(a)) is amended by --

(1) inserting "AND LOCAL DISTRIBUTION COMPANIES" after "INTRASTATE PIPELINES" in the paragraph (2) heading;

(2) inserting in paragraph (2) "or local distribution

company" after "intrastate pipeline";

(3) amending subparagraph (A)(ii) of paragraph (2) to read as follows:

"(ii) any intrastate pipeline or local distribution company. This clause does not apply to the transportation of natural gas that is not intended to leave the state in which the gas is produced or transported."; and

(4) in subparagraph (B)(ii)(I) and (II) of paragraph (2), inserting "or company" after "pipeline."

(c) Section 311(b) of the Natural Gas Policy Act of 1978 (15 U.S.C. §3371(b)) is amended by --

(1) amending paragraph (1) to read as follows:

"(1) IN GENERAL. -- The Commission may, by rule or order, authorize -

"(A) any interstate pipeline to sell natural gas to any intrastate pipeline or local distribution company; and

"(B) any intrastate pipeline or local distribution company to sell natural gas to --

"(i) any interstate pipeline; and

"(ii) any intrastate pipeline or local distribution company. This clause does not apply to the sale of natural gas that is not intended to leave the state in which the gas is produced or sold."

(2) amending paragraph (2) by --

(A) inserting "INTRASTATE PIPELINES AND LOCAL DISTRIBUTION COMPANIES" after the subparagraph designator "A";

(B) adding "or local distribution company" following "pipeline" and "or local distribution company's" following "pipelines" wherever they appear; and

(C) adding a new subparagraph (D) to read as follows:

"(D) INTERSTATE PIPELINES. JUST AND REASONABLE RATES. -- The rates and charges of any interstate pipeline with respect to any sales authorized under subparagraph (b)(1)(A) shall be just and reasonable (within the meaning of the Natural Gas Act).";

(3) in paragraph (4), striking "pipeline's" and inserting in its place "seller's," and striking out "INTRASTATE" in the heading and inserting in its place "EXISTING";

(4) in paragraphs (4)-(7), except for subparagraph (5)(a)(i), striking "intrastate pipeline" or "pipeline" wherever they appear and inserting in their place "seller";

(5) in paragraph (5)(A)(i), striking "interstate pipeline or local distribution" and inserting in its place "purchasing"; and

(6) adding a new paragraph (8) to read as follows:

"(8) DEFINITION OF SELLER. -- For purposes of this

subsection, the term 'seller' means any person that sells gas under paragraph (b)(1)."

(d) Section 312 of the Natural Gas Policy Act of 1978 (15 U.S.C. §3372) is amended --

(1) by amending subsection (a) to read as follows:

"(a) AUTHORIZATION OF ASSIGNMENTS. -- The Commission may, by rule or order, authorize a pipeline or local distribution company to assign, without compensation, to any other pipeline or local distribution company, all or any portion of the assignor's right to receive surplus natural gas at any first sale, upon such terms and conditions as the Commission determines appropriate."; and

(2) by amending subsection (c) to read as follows:

"(c) SURPLUS NATURAL GAS. -- For purposes of this section, the term 'surplus natural gas' means, with respect to any pipeline or local distribution company, any natural gas which exceeds the then current demands of such person for natural gas, as determined by the Commission, or the State agency having regulatory jurisdiction over that person."

ACCESS TO INTERSTATE SUPPLY SOURCES

SEC. 402. (a) Section 314 of the Natural Gas Policy Act of 1978 (15 U.S.C. §3374) is amended by --

(1) striking "first" in subsection (a), and

(2) amending subsection (b) to read as follows:

"(b) NATURAL GAS COVERED BY THIS ACT. -- For purposes of subsection (a), the term 'natural gas covered by this Act' means --

"(1) for any contract for the first sale of natural gas, natural gas which is not subject to the jurisdiction of the Commission under the Natural Gas Act by reason of section 601(a)(1)(A) or (B); and

"(2) for any contract for the sale or transportation of natural gas, natural gas which is not deemed to be gas in interstate commerce by reason of section 601(d) of this Act.

(b) Section 601 of the Natural Gas Policy Act of 1978 (15 U.S.C. §3431) is amended by adding new subsections (d) and (e) to read as follows:

"(d) LIMITATION OF COMMISSION JURISDICTION OVER INTRASTATE TRANSACTIONS. -- The provisions of the Natural Gas Act shall not apply to any person solely because that person --

"(1) receives natural gas directly or indirectly from another person who is not subject to the jurisdiction of the Commission solely by reason of section 1(c) of the Natural Gas Act, and such gas shall not on that basis be deemed to be gas in interstate commerce, or

"(2) receives, transports, or sells natural gas within the same state and the natural gas shall not on that basis be deemed to be gas in interstate commerce if all transportation of the natural gas between States or between a State and the Outer Continental Shelf is performed pursuant to section 302(c), 303(b), (c), (d), or (h), 311(a), or 317.

"(e) NONDISCRIMINATION PROVISION. -- In acting on any appli-

cation for sale or transportation under section 311 of this Act or section 7 of the Natural Gas Act, for any gas produced from the Outer Continental Shelf, the Commission may not impose a condition or restriction upon such sale or transportation, and may not grant or deny authorization, solely on the basis that such gas is dedicated to or will be received by either an intrastate or interstate purchaser or user or on the basis of general conditions in the intrastate and interstate markets for natural gas."

CONTRACT CARRIER AUTHORIZATION

SEC. 403. (a) Title III of the Natural Gas Policy Act of 1978 (15 U.S.C. §§3361-3375) is amended by adding a new section 317 to read as follows:

"SEC. 317. CONTRACT CARRIER AUTHORIZATION.

"(a) IN GENERAL. -- Upon application by a producer of natural gas or by a purchaser of natural gas from a producer, the Commission shall order any interstate pipeline to carry gas under contract between producer and purchaser upon such terms and subject to such conditions as it considers just and reasonable if the Commission finds that such pipeline has available capacity, that no undue burden will be placed upon such pipeline, that no construction of new facilities would be required, and that such order would not impair the ability of such pipeline to render adequate service to its existing customers.

"(b) CONSIDERATION. -- The consideration for any transpor-

tation provided under the contract provisions provided by this section shall be \$.05 per million Btu's plus the cost of such transportation, as established by the appropriate State or Federal regulatory body, unless the Commission has established, by rule, a different rate as just compensation for such transportation. No amount of such consideration shall be required to be credited and flowed back to the customers of such pipeline."

(b) The table of contents of the Natural Gas Policy Act of 1978 (15 U.S.C. §3301 note) is amended by inserting after the item relating to section 316 the following:

"Sec. 317. Contract Carrier Authorization."

TITLE V -- REPEAL OF CERTAIN RESTRICTIONS ON NATURAL GAS
AND PETROLEUM USE AND PRICING
REPEAL OF CERTAIN SECTIONS OF THE POWERPLANT AND INDUSTRIAL FUEL
USE ACT OF 1978

SEC. 501. (a) The following sections of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8301 et seq.) are repealed:

- (1) sections 102(a)(16), (a)(18), (a)(19), and (a)(29) (42 U.S.C. §8302(a)(16), (a)(18), (a)(19), and (a)(29));
- (2) sections 201 and 202 (42 U.S.C. §§8311 and 8312);
- (3) section 302 (42 U.S.C. §8342);
- (4) section 401 (42 U.S.C. §8371);
- (5) section 402 (42 U.S.C. §8372); and
- (6) section 405 (42 U.S.C. §8375).

(b) The table of contents in section 101(b) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8301(b)) is amended by striking the items relating to the sections repealed by subsection (a) of this section.

CONFORMING AMENDMENTS

SEC. 502. (a) Section 102 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8301) is amended by striking "and major fuel-burning installations" and "and new" wherever these phrases appear.

(b) Section 103 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8302) is amended --

(1) in subsection (a)(13)(B), by --

(A) striking clause (ii)(III);

(B) striking "; or" at the end of clause (ii)(II), and inserting a period in its place; and

(C) inserting "and" at the end of clause (ii)(I);

(2) in subsection (a)(15), by striking "or major fuel-burning installation" and "or new" wherever these phrases appear;

(3) in subsection (a)(20), by striking "or major fuel-burning installation";

(4) by redesignating subsections (a)(17), (a)(20), (a)(21), (a)(22), (a)(23), (a)(24), (a)(25), (a)(26), (a)(27), and (a)(28) as subsections (a)(16), (a)(17), (a)(18), (a)(19), (a)(20), (a)(21), (a)(22), (a)(23), (a)(24), and (a)(25);

(5) in subsection (b), by striking or "major fuel-burning installation" wherever this phrase appears;

(6) in subsection (b)(1)(D), by striking everything after "synthetic gas involved" and inserting in its place a period; and

(7) by striking subsection (b)(3), and redesignating subsection (b)(4) as subsection (b)(3).

(c) Section 104 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8303) is amended to read as follows:

"The provisions of this Act shall apply in all the States, Puerto Rico, and the territories and possessions of the United States.

(d) Section 303 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8343) is amended --

(1) by striking "or installation" and "or installations" wherever the phrases appear;

(2) by striking "or 302" wherever the phrase appears;

(3) by striking subsection (a)(3);

(4) by amending subsection (b)(1) to read as follows:

"(1) The Secretary may prohibit, by rule, the use of natural gas or petroleum under section 301(b) in existing electric powerplants.";

(5) in subsection (b)(3), by striking "or major fuel-burning installation"; and

(6) by amending the last sentence of subsection (b)(3)

to read as follows:

"Any such rules shall not apply in the case of any existing electric powerplant with respect to which a comparable prohibition was issued by order."

(e) Section 403 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8373) is amended by striking --

(1) in subsection (a)(1), "major fuel-burning installation, or other unit" and the comma immediately preceding this phrase and "installation, or unit" and the comma immediately preceding this phrase;

(2) in subsection (a)(2), "installation, or other unit" and the comma immediately preceding that phrase, and "installation, or unit" and the comma immediately preceding that phrase;

(3) in subsection (a)(2), the last sentence; and

(4) subsection (a)(3).

(f) Section 404 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8374) is amended by striking --

(1) in subsection (c), "new or" in the phrase "applicable to any new or existing electric powerplant"; and

(2) subsection (g).

(g) Section 701 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8411) is amended by striking --

(1) in the last sentence of subsection (b), "or installation";

(2) subsection (c);

(3) in the title of subsection (d), "AND EXEMPTIONS";

(4) in the first sentence of subsection (d)(1), "or any petition for any order granting an exemption (or permit)";

(5) in subsection (d)(1)(B), "or in the consideration of such petition";

(6) in subsection (f), "or a petition for an exemption (or permit) under this Act (other than under section 402 or 404),"; and

(7) subsection (g).

(h) Section 702 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8412) is amended by striking --

(1) in the title of subsection (a), "OR EXEMPTION";

(2) in subsection (a), "or granting an exemption (or permit)";

(3) subsection (b), and redesignating subsection (c) as subsection (b);

(4) in the first sentence of subsection (b)(1) (as redesignated), "or by the denial of a petition for an order granting an exemption (or permit) referred to in subsection (b),";

(5) in the first sentence of subsection (b)(1) (as redesignated), "such rule, order, or denial is published under subsection (a) or (b)" and inserting in its place "such rule, or order is published under subsection (a)";

(6) in the first sentence of subsection (b)(2) (as

redesignated), "the rule, order, or denial" and inserting in its place "the rule or order";

(7) in the second sentence of subsection (b)(2) (as redesignated), "(or denial thereof)";

(8) in subsection (b)(3) (as redesignated), "any such rule, order, or denial" and inserting in its place "any such rule or order".

(i) Section 711 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8421) is amended by striking in the first sentence of subsection (a), "or major fuel-burning installation".

(j) Section 721 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8431) is amended by striking subsection (c) and redesignating subsection (d) as subsection (c).

(k) Section 723 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8433) is amended by striking subsection (b) and redesignating subsections (c) and (d) as subsections (b) and (c).

(l) Section 731 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8441) is amended by striking --

(1) "or major fuel-burning installation" wherever the phrase appears; and

(2) "title II or" in subsections (a)(1) and (g)(3).

(m) Section 745 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8455) is amended by striking in the first sentence of subsection (a), "from new and existing electric

powerplants and major fuel-burning installations" and inserting in its place "from existing electric powerplants".

(n) Section 761 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8471) is amended by striking --

(1) in subsection (a), "any existing or new electric powerplant or major fuel-burning installation" and inserting in its place "any existing electric powerplant"; and

(2) in subsection (b) --

(1) "new or" in the phrase "In the case of any new or existing facility"; and

(2) "except to the extent provided under section 212(b) or section 312(b)" and the comma immediately preceding that phrase.

(o) The amendments made by this Act to the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8301 et seq.) shall not apply to any electric powerplant for which a final order was issued pursuant to section 301(b) or (c) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8341 (b) or (c)) before August 13, 1981.

(p) The amendments made by this Act to the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8301 et seq.) shall not apply to any electric powerplant issued a proposed order under section 301(b) or (c) of the Powerplant and Industrial Fuel Use Act of 1978 --

(1) whose order was pending on August 13, 1981, and

(2) which has elected not to have the amendments made by section 1021 of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 615) to section 301(b) or (c) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8341 (b) or (c)) apply with respect to that powerplant.

(q) (1) The amendments made by this Act to the Powerplant and Industrial Fuel Use Act of 1978 shall not affect the validity of any final order issued under section 301(b) or (c) (42 U.S.C. §8341 (b) or (c)) of the Powerplant and Industrial Fuel Use Act of 1978 before August 13, 1981.

(2) This Act shall not affect the validity of any proposed order issued under section 301(b) or (c) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. §8341 (b) or (c)) in the case of powerplants covered by elections made under section 1022(b) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 616).

(3) The authority of the Secretary of Energy to amend, repeal, rescind, modify, or enforce any order referred to in paragraph (q)(1) or (q)(2), or rules applicable thereto, shall remain in effect notwithstanding any such amendments.

REPEAL OF INCREMENTAL PRICING REQUIREMENTS

SEC. 503. (a) Subject to subsections (b) and (c) of this section, title II of the Natural Gas Policy Act of 1978 (15 U.S.C. §§3341-3348) is repealed, and the items relating to title II are stricken from the table of contents of that Act.

(b) A rule promulgated by the Commission under title II of the Natural Gas Policy Act of 1978 shall continue in effect only with respect to the flow-through of costs incurred before the enactment of the Natural Gas Consumer Regulatory Reform Amendments of 1983, including any surcharges based on such costs.

(c) The Commission may take appropriate action to implement this section.

3 ER Suly.
DRAFT BILLS

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

January 31, 1983

FOR: FRED F. FIELDING
FROM: JOHN G. ROBERTS *JGR*
SUBJECT: Draft Bill on Establishment
of Offshore Boundaries

Robert McConnell has provided copies of the proposed "Seabed Boundary Act," a proposed transmittal letter from him to Speaker O'Neill, and a letter from him to David Stockman seeking OMB clearance of both items. The bill, which received Administration clearance in the last Congress, authorizes the Attorney General, with the concurrence of other pertinent Cabinet Officers, to agree with state officials on the boundary between seabed (federal jurisdiction) and subsoil (state jurisdiction). No such authority presently exists, so the boundary must be determined by complex litigation, even if there is no real dispute. The bill also provides several means of making a legal boundary permanent, to increase certainty, even when the geologic line is ambulatory. Only two minor and non-controversial changes from the previously approved bill have been made. I see no legal objections and no need for any action on your part.

NR004

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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

Name of Correspondent: Robert A. McConnell

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Draft bill to authorize the Attorney General to negotiate with Coastal States in the establishment of their offshore boundaries (letter to David Stockman & Thomas O'Neill Jr.)

ROUTE TO:	ACTION	DISPOSITION
Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD
<u>CU Holland</u>	<u>ORIGINATOR</u>	<u>8310126</u>
	Referral Note:	
<u>CU AT 18</u>	<u>A</u>	<u>8310121</u>
	Referral Note:	
		<u>1/1</u>
	Referral Note:	
		<u>1/1</u>
	Referral Note:	
		<u>1/1</u>
	Referral Note:	

- 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: _____

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United States Department of Justice

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ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

WASHINGTON, D.C. 20530

24 JAN 1983

Honorable David A. Stockman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Stockman:

There is enclosed a draft bill which would authorize the Attorney General, with the concurrence of other interested agency heads, to negotiate with coastal states in the establishment of their offshore boundaries. At present, no federal official has authority to set the dividing line between state and federal rights to resources of the offshore submerged lands. That line must be established by expensive and time consuming litigation. What is more, the line is ambulatory, moving as the shoreline from which it is measured moves with erosion and accretion.

The bill would make it possible for the federal government to agree on a boundary line if there were no disagreement with a coastal state. It would also permit the parties to fix that line. This would reduce the need for litigation and simplify the administration of leases for the states and federal government. It would also give more security to lessees who would no longer lease from one government and later find that, through erosion or accretion, their leases now covered land under control of another government.

The bill is non-controversial. It does not withdraw any right now available to the federal government or the states. We would expect support from states and oil companies.

This proposal received Administration clearance during the 97th Congress and was introduced by Chairman Rodino of the House Judiciary Committee as H.R. 5477. Based on discussions with other parties, two minor amendments have been placed in this draft. First, the bill has been expanded to permit the parties to negotiate the immobilization of boundaries for both living and non-living resources, not just non-living resources. The second change, new section 204, would permit a state and the federal government to agree to allow a final decree of the Supreme Court establishing a specific boundary to become the permanent boundary.

Both of these changes have previously been conveyed to your Office. As this proposal received Administration clearance during the 97th Congress, we request an expeditious review of the enclosed draft bill.

Sincerely,

ROBERT A. McCONNELL
Assistant Attorney General



Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Thomas P. O'Neill, Jr.
Speaker
House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

There is enclosed for your consideration and appropriate reference a legislative proposal entitled the "Seabed Boundary Act."

This proposed legislation is addressed to the problem of delimiting the boundary between the area of the seabed and subsoil over which the Federal Government has exclusive jurisdiction for exploration and exploitation of the living and non-living natural resources and that area over which the States of the Union have such jurisdiction.

In 1953 the Submerged Lands Act, 67 Stat. 29, granted to the States rights in the natural resources of the submerged lands generally out to a distance of three miles from the coastline of the States. At the same time, Congress reaffirmed the Federal claim to the continental shelf seaward of the State grants. Because the coastline from which the States' three-mile grants are measured is subject to natural changes, the boundaries separating the seabed areas subject to State rights from Federal rights are ambulatory. Since the passage of the Submerged Lands Act, this Department has engaged in major litigation with most of the coastal States to determine the boundary between the rights in those resources of the States and the Federal Government.

Title I would authorize the Attorney General, with the concurrence of the Secretaries of State, Commerce, the Interior and other concerned departments and agencies, to agree with a state on the location of the boundary. The Attorney General, as an incident of the authority to settle litigation, may agree to the location of a seabed boundary, where that boundary is the subject of a suit. But absent litigation, no official in the Federal Government, at the present time, has the authority to establish a boundary line between Federal and state resources. Obviously, where there is no real disagreement between the State and Federal Government as to the location of a boundary line, some Federal officers should possess the necessary authority to declare, on behalf of the United States, where the boundary is. Title I would establish this authority.

Title II of this proposal establishes a means by which the boundary may be frozen for all time. The Federal/State boundary is measured from the coastline and is ambulatory, changing as the coastline changes. The direct result of this is an insecurity in title to the resources and a decrease in the value of leases to the resources near the boundary line. The ambulatory boundary also creates a situation that encourages endless and expensive litigation due to the fact that the determination of the boundary at one time may be relitigated shortly thereafter due to a change in the coastline. Without such a provision there could be no end to the submerged lands litigation that has already gone on for 25 years. Title II also provides a means for a state and the Federal Government to agree that a final decree of the Supreme Court establishing a boundary is the permanent boundary.

Title III establishes a procedure by which states may waive any rights which might accrue from changes in the coastline. At the present time, when Federal approval is required for the construction of an artificial structure extending seaward from the natural coastline which could extend the area of state jurisdiction, such rights to submerged lands within three miles of the structure but more than three miles from the natural coastline have been waived by states in order to secure the Federal approval. This Title merely preserves this process and establishes a procedure for handling such waivers. This provision would only be important prior to the time that the State and the Federal Government froze the boundary as provided for in Title II of this proposal.

Title IV makes clear that boundaries determined under this Act shall not affect the location of the territorial sea of the United States or its baseline.

Passage of this legislation will make it possible to develop the petroleum resources of the outer continental shelf more quickly than if litigation were required. The fixed boundaries which result will be advantageous to the Federal Government, the States and the lessee petroleum companies.

On behalf of the Attorney General, I urge early consideration and adoption of this proposed legislation.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this legislative proposal to the Congress and that its enactment would be consistent with the objectives of the Administration.

Sincerely,

ROBERT A. McCONNELL
Assistant Attorney General

H.R.

IN THE HOUSE OF REPRESENTATIVES

A BILL

To Provide For Seabed Boundary Agreements
Between The United States And Any Coastal
State And The Immobilization Of The
Seabed Boundary Of Any State

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Seabed Boundary Act."

TITLE I

Boundary Agreements

Sec. 101. The Attorney General, with the concurrence of the Secretary of State, the Secretary of the Interior, the Secretary of Commerce and the Secretary or other head of any Federal department or agency having administrative responsibility or jurisdiction over any areas of the seabed and subsoil involved, is authorized to agree with similarly authorized officials of any state, as to the specific description of all or part of the boundary between the areas of the seabed and subsoil in which the United States and the State are respectively entitled, on the date of agreement, to control the exploration for and exploitation of the living and/or non-living natural resources. Whenever such an agreement has become binding on the State, either by virtue of the authority vested in the officials negotiating on behalf of the State or by virtue of subsequent ratification by the State in the manner provided by the law of the State, the Governor and Attorney General of the State shall so certify and shall cause the agreement to be deposited,

with their certificate in the National Archives and to be published in the Federal Register.

Sec. 102. An agreement entered into under this Title shall determine the location of the boundary until modified by a subsequent agreement or the decree of a court of competent jurisdiction. It is recognized that changes in the coastline may justify changes in the boundary. In such case either party may seek such changes through a subsequent agreement or judicial decree. However, such subsequent agreement or decree shall have no retroactive effect.

TITLE II

Immobilization of Boundaries

Sec. 201. Whenever the entire boundary between the areas of the seabed and subsoil in which the United States and a state are respectively entitled to control the exploration for and exploitation of the natural resources has been specifically described by one or more final decrees and agreements, and if no legal proceeding is pending to revise the description of any part of such boundary, the United States or the State may propose to immobilize the entire boundary as so described.

Sec. 202. The proposal may be initiated by the Attorney General or by an authorized official of the State. When such action is initiated by the State it may be taken in any way authorized by the constitution and laws of the State, provided that the Governor and Attorney General of the State shall furnish to the Attorney General of the United States a copy of the statute or other document embodying the state action, together with their certification that it is in compliance with and effective under the constitution and

laws of the State.

Sec. 203. The Attorney General of the United States shall consult with the Secretary of State, Secretary of the Interior, Secretary of Commerce and the Secretary or other head of any Federal department or agency having administrative responsibility or jurisdiction over any areas of the seabed or subsoil involved as to whether the proposed immobilization is in the best interest of the United States. If any Secretary, the Attorney General or other head of any Federal department or agency believes it is not, the Attorney General shall notify the Governor and Attorney General of the State that the proposal is rejected. If all concur that the proposed immobilization is in the best interests of the United States, the Attorney General shall notify the Governor and Attorney General of the State that the proposal is accepted, and shall deposit in the National Archives and cause to be published in the Federal Register the documents received from the State and his certificate of acceptance, together with a complete description of the boundary referred to if the other documents do not contain such a description. Upon such publication, the boundary so described shall become an immovable boundary for the purposes of delimiting the areas of the seabed or subsoil in which the United States and the State are respectively entitled to control exploration for and exploitation of the living and/or nonliving natural resources as provided in the agreement and regulation and taxation thereof; but such boundary shall have no other legal effect.

Sec. 204. Whenever the extent of the rights acquired by a state under the Submerged Lands Act has been determined by a final

decree of the United States Supreme Court and fixed by coordinates, the line so fixed shall be immobilized as described in said decree and shall not be ambulatory in determining the seaward extent of the rights acquired by said state under the Submerged Lands Act, unless within two years of the date of the final decree either party formally objects to the immobilization of such line. Any such objection shall be deposited in the National Archives and published in the Federal Register.

TITLE III

Sec. 301. If any state waives its right to the living and/or nonliving natural resources of the seabed or subsoil which would accrue to it as a result of changes in any portion of its coastline by either serving on the Attorney General a waiver of those rights duly signed by authorized officials of that State, or by entering into an agreement signed by the Attorney General and the Secretary of the Interior with the concurrence of the Secretary or head of any Federal department or agency having administrative cognizance or jurisdiction over any areas of the seabed and subsoils involved and similarly authorized officials of that State, the Attorney General shall, when that agreement or waiver becomes binding, cause it to be deposited in the National Archives and a copy be published in the Federal Register.

TITLE IV

Sec. 401. No boundary established pursuant to this Act shall be deemed to affect, determine, or prejudice the location of the territorial sea of the United States or the baseline from which the breadth of the territorial sea of the United States is measured.

Nor shall any such agreement be determinative of state boundaries for any purpose except exploration for and exploitation of the natural resources of the seabed and subsoil, including the regulation and taxation thereof.