

(B) such action was not taken for the purpose of injuring competition; and

(C) any such meeting complied with the requirements of paragraph (2).

Persons interposing the defense provided by this subsection shall have the burden of proof, except that the burden shall be on the person against whom the defense is asserted with respect to whether the actions were taken for the purpose of injuring competition.

(2) Requirements of meetings

With respect to any meeting held pursuant to a request by the President under section 3363(g) of this title or pursuant to an order under section 3363 of this title—

(A) there shall be present at such meeting a full-time Federal employee designated for such purposes by the Attorney General;

(B) a full and complete record of such meeting shall be taken and deposited, together with any agreements resulting therefrom, with the Attorney General, who shall make it available for public inspection and copying;

(C) the Attorney General and the Federal Trade Commission shall have the opportunity to participate from the beginning in the development and carrying out of agreements and actions under section 3363 of this title, in order to propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anti-competitive effects while achieving substantially the purposes of section 3363 of this title and any order thereunder; and

(D) such other procedures as may be specified by the President in such request or order shall be complied with.

(f) Effect on certain contractual obligations

There shall be available as a defense to any action brought for breach of contract under Federal or State Law arising out of any act or omission that such act was taken or that such omission occurred for purposes of complying with any order issued under section 3363 of this title.

(g) Preemption

Any order issued pursuant to this subchapter shall preempt any provision of any program for the allocation, emergency delivery, transportation, or purchase of natural gas established by any State or local government if such program is in conflict with any such order.

(Pub. L. 95-621, title III, § 304, Nov. 9, 1978, 92 Stat. 3387.)

EX. ORD. NO. 12235. ASSIGNMENT OF MANAGEMENT RESPONSIBILITY IN CASES OF NATURAL GAS EMERGENCIES

Ex. Ord. No. 12235, Sept. 3, 1980, 45 F.R. 58803, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 304(d) of the Natural Gas Policy Act of 1978 (92 Stat. 3387; 15 U.S.C. 3364(d)) and Section 301 of Title 3 of the United States Code, and in order to assign management responsibility in case of a natural gas supply emergency, it is hereby ordered as follows:

1-101. The functions vested in the President by Sections 301 through 304(c) of the Natural Gas Policy Act of 1978 (92 Stat. 3381-3387; 15 U.S.C. 3361-3364(c)) are del-

egated to the Secretary of Energy; except for the authority to declare, extend, and terminate a natural gas supply emergency pursuant to Section 301 thereof (15 U.S.C. 3361).

1-102. The functions vested in the President by Section 607 of the Public Utility Regulatory Policies Act of 1978 (92 Stat. 3171; 15 U.S.C. 717z) are delegated to the Secretary of Energy; except for the authority to declare, extend, and terminate a natural gas supply emergency pursuant to Section 607(a) and (b) thereof (15 U.S.C. 717z(a) and (b)).

1-103. The Secretary shall consult with the Administrator of the Environmental Protection Agency, the Director [now Administrator] of the Federal Emergency Management Agency, and the heads of other executive agencies in exercising the functions delegated to him by this Order.

1-104. All functions delegated to the Secretary by this Order may be redelegated, in whole or in part, to the head of any other agency.

1-105. All Executive agencies shall, to the extent permitted by law, cooperate with and assist the Secretary in carrying out the functions delegated to him by this Order.

JIMMY CARTER.

PART B—OTHER AUTHORITIES AND REQUIREMENTS

§ 3371. Authorization of certain sales and transportation

(a) Commission approval of transportation

(1) Interstate pipelines

(A) In general

The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas on behalf of—

- (i) any intrastate pipeline; and
- (ii) any local distribution company.

(B) Just and reasonable rates

The rates and charges of any interstate pipeline with respect to any transportation authorized under subparagraph (A) shall be just and reasonable (within the meaning of the Natural Gas Act [15 U.S.C. 717 et seq.]).

(2) Intrastate pipelines

(A) In general

The Commission may, by rule or order, authorize any intrastate pipeline to transport natural gas on behalf of—

- (i) any interstate pipeline; and
- (ii) any local distribution company served by any interstate pipeline.

(B) Rates and charges

(i) Maximum fair and equitable price

The rates and charges of any intrastate pipeline with respect to any transportation authorized under subparagraph (A), including any amount computed in accordance with the rule prescribed under clause (ii), shall be fair and equitable and may not exceed an amount which is reasonably comparable to the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

(ii) Commission rule

The Commission shall, by rule, establish the method for calculating an amount necessary to—

(I) reasonably compensate any intrastate pipeline for expenses incurred by the pipeline and associated with the providing of any gathering, treatment, processing, transportation, delivery, or similar service provided by such pipeline in connection with any transportation of natural gas authorized under subparagraph (A); and

(II) provide an opportunity for such pipeline to earn a reasonable profit on such services.

(b) Commission approval of sales

(1) In general

The Commission may, by rule or order, authorize any intrastate pipeline to sell natural gas to—

(A) any interstate pipeline; and

(B) any local distribution company served by any interstate pipeline.

(2) Rates and charges

(A) Maximum fair and equitable price

The rates and charges of any intrastate pipeline with respect to any sale of natural gas authorized under paragraph (1) shall be fair and equitable and may not exceed the sum of—

(i) such intrastate pipeline's weighted average acquisition cost of natural gas;

(ii) an amount, computed in accordance with the rule prescribed under subparagraph (B); and

(iii) any adjustment permitted under subparagraph (C).

(B) Commission rule

The Commission shall, by rule, establish the method for calculating an amount necessary to—

(i) reasonably compensate any intrastate pipeline for expenses incurred by the pipeline and associated with the providing of any gathering, treatment, processing, transportation, or delivery service provided by such pipeline in connection with any sale of natural gas authorized under paragraph (1); and

(ii) provide an opportunity for such pipeline to earn a reasonable profit on such services.

(C) Adjustment

(i) Application

This subparagraph shall apply in any case in which, in order to deliver any volume of natural gas pursuant to any sale authorized under paragraph (1), any intrastate pipeline acquires quantities of natural gas under any existing contract, if—

(I) such intrastate pipeline acquires any volume of natural gas under such contract in excess of that which such pipeline would otherwise have acquired; and

(II) the price paid for such additional volume of natural gas acquired under such contract is greater than such pipeline's weighted average acquisition cost of natural gas, computed without regard

to the acquisition of such additional volume of natural gas.

(ii) Commission adjustment

In any case to which this subparagraph applies, the Commission shall permit an adjustment to the maximum fair and equitable price provided under subparagraph (A) to increase the revenue to the intrastate pipeline under such sale by an amount determined by the Commission to be adequate to offset the additional cost incurred by such pipeline due to any increase in such pipeline's weighted average acquisition cost of natural gas.

(3) Limitation

(A) Two-year duration

No authorization of any sale (or any extension thereof) under paragraph (1) may be for a period exceeding two years.

(B) Extension

Any authorization of any sale under paragraph (1), and any extension of any such authorization under this subparagraph, may be extended by the Commission if such extension satisfies the requirements of this subsection.

(4) Adequacy of service to intrastate customers

Any sale authorized under paragraph (1) shall be subject to interruption to the extent that natural gas subject to such sale is required to enable the intrastate pipeline involved to provide adequate service to such pipeline's customers at the time of such sale.

(5) Procedural requirements

(A) Affidavit

Any application for authorization of any sale under paragraph (1) shall be accompanied by an affidavit filed by the intrastate pipeline involved and setting forth—

(i) the identity of the interstate pipeline or local distribution company involved;

(ii) each point of delivery of the natural gas from the intrastate pipeline;

(iii) the estimated total and daily volumes of natural gas subject to such sale;

(iv) the price or prices of such volumes; and

(v) such other information as the Commission may, by rule, require.

(B) Verification of compliance

Any application for authorization of any sale under paragraph (1) shall be accompanied by a statement by the intrastate pipeline involved verifying by oath or affirmation that such sale, if authorized, would comply with all requirements applicable to such sale under this subsection and all terms and conditions established, by rule or order, by the Commission and applicable to such sale.

(6) Termination of sales

(A) Hearing

Upon complaint of any interested person, or upon the Commission's own motion, the Commission shall, after affording an oppor-

tunity for oral presentation of views and arguments, terminate any sale authorized under paragraph (1) if the Commission determines—

(i) such termination is required to enable the intrastate pipeline involved to provide adequate service to the customers of such pipeline at the time of such sale;

(ii) such sale involves the sale of natural gas acquired by the intrastate pipeline involved solely or primarily for the purpose of resale of such natural gas pursuant to a sale authorized under paragraph (1);

(iii) such sale violates any requirement of this subsection or any term or condition established, by rule or order, by the Commission and applicable to such sale; or

(iv) such sale circumvents or violates any provision of this chapter.

(B) Suspension pending hearing

Prior to any hearing or determination required under subparagraph (A), upon complaint of any interested person or upon the Commission's own motion, the Commission may suspend any sale authorized under paragraph (1) if the Commission finds that it is likely that the determinations described in subparagraph (A) will be made following the hearing required under subparagraph (A).

(C) Determination

The determination of whether any interruption of any sale authorized under paragraph (1) is required under subparagraph (A)(i) shall be made by the Commission without regard to the character of the use of natural gas by any customer of the intrastate pipeline involved.

(D) State intervention

Any interested State may intervene as a matter of right in any proceeding before the Commission relating to any determination under this section.

(7) Disapproval of application

The Commission shall disapprove any application for authorization of any sale under paragraph (1) if the Commission determines—

(A) such sale would impair the ability of the intrastate pipeline involved to provide adequate service to its customers at the time of such sale (without regard to the character of the use of natural gas by such customer);

(B) such sale would involve the sale of natural gas acquired by the intrastate pipeline involved solely or primarily for the purpose of resale of such natural gas pursuant to a sale authorized under paragraph (1);

(C) such sale would violate any requirement of this subsection or any term or condition established, by rule or order, by the Commission and applicable to such sale; or

(D) such sale would circumvent or violate any provision of this chapter.

(c) Terms and conditions

Any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe.

(Pub. L. 95-621, title III, §311, Nov. 9, 1978, 92 Stat. 3388.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (a)(1)(B), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

§ 3372. Assignment of contractual rights to receive surplus natural gas

(a) Authorization of assignments

The Commission may, by rule or order, authorize any intrastate pipeline to assign, without compensation, to any interstate pipeline or local distribution company all or any portion of such intrastate pipeline's right to receive surplus natural gas at any first sale, upon such terms and conditions as the Commission determines appropriate.

(b) Effect of authorization under subsection (a)

For the effect of an authorization under subsection (a), see section 3431 of this title (relating to the coordination of this chapter with the Natural Gas Act [15 U.S.C. 717 et seq.]).

(c) Surplus natural gas

For purposes of this section, the term "surplus natural gas" means any natural gas which is determined, by the State agency having regulatory jurisdiction over the intrastate pipeline which would be entitled to receive such natural gas in the absence of any assignment to exceed the then current demands on such pipeline for natural gas.

(Pub. L. 95-621, title III, §312, Nov. 9, 1978, 92 Stat. 3392; Pub. L. 101-60, §3(b)(2), July 26, 1989, 103 Stat. 158.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsec. (b), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of this title. For complete classification of this act to the Code, see section 717w of this title and Tables.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101-60 substituted "any natural gas" for "any natural gas—

"(1) which is not committed or dedicated to interstate commerce on November 8, 1978;

"(2) the first sale of which is subject to a maximum lawful price established under subchapter I of this chapter; and

"(3)".

EFFECTIVE DATE OF 1989 AMENDMENT

Section 3(b) of Pub. L. 101-60 provided in part that the amendment by section 3(b)(2) of Pub. L. 101-60 is effective Jan. 1, 1993.

§ 3373. Effect of certain natural gas prices on indefinite price escalator clauses

(a) High-cost natural gas

No price paid in any first sale of high-cost natural gas (as defined in section 3317(c)¹ of this title, as such section was in effect on January 1, 1989) may be taken into account in applying any indefinite price escalator clause (as defined in section 3315(b)(3)(B)¹ of this title, as such sec-

¹ See References in Text note below.