# *Report of The Committee On Legislation and Regulatory Reform*

## I. Introduction

On February 1, 1982, the newly constituted Committee on Legislation and Regulatory reform submitted its 1981-82 Report to the Federal Energy Bar Association ("FEBA").[1] An Addendum to the Report, dated April 21, 1982, was subsequently filed with FEBA updating certain information with respect to the so-called comprehensive regulatory reform bills (S. 1080 and H.R. 746), and a bill authorizing the Federal Energy Regulatory Commission ("FERC") to collect certain annual charges and fees from entities falling within its regulatory ambit (S. 2358).[2] Since the activities of the Ninety-Seventh Congress were ongoing in 1982, it was deemed appropriate to bring our Report forward with respect to these matters through April. Each Congress has a life of its own, with all pending legislative matters expiring at the end of the second session; however, unresolved legislative issues are generally reintroduced in the succeeding Congress. Therefore, in order to bring the most recent information to the attention of the membership of FEBA, we include the first three months of 1983, as well as calendar year 1982, a period coextensive with the Second session of the Ninety-Seventh Congress ("Second Session").

The Ninety-Seventh Congress will not be remembered for the enactment of sweeping legislative initiatives in the field of energy. In fact, the Second Session appeared to be marked by a waning interest in comprehensive regulatory reform legislation, accelerated deregulation of natural gas prices, and proposals to dismantle the Department of Energy ("DOE"). This is not to say that the Second Session was totally devoid of significant legislative enactments. For example, enactment of the National Nuclear Waste Policy Act (P.L. 97-425) should pave the way for a final resolution of many of the problems associated with the disposal of our nation's nuclear waste.

Of the several matters noted in this Report, perhaps the most significant turn of events in the Second Session was the reemergence of natural gas pricing and policy as a major legislative issue. The natural gas controversy appeared to pick up steam midway through the Second Session, and among energy related issues, dominated the "lame duck" December session. Although none of these issues were resolved by the end of the Second Session, natural gas pricing and regulation quickly emerged as the dominant energy related issue in the First Session of the Ninety-Eighth Congress.

## II. Energy, Fuel And Conservation

### A. *Natural Gas*

#### 1. *Gas Purchase Contracts and Market Clearing Prices*

##### (a) *The Gas Market Ordering Problem*

The existence of a "gas bubble" was recognized prior to 1982. This recent phenomenon has been generally attributed to (1) slack demand due to the economic recession; (2) increased production resulting from the higher gas prices first allowed under FPC Order 770-A and extended by NGPA; (3) the "off-gas" provisions of the Powerplant and Fuel Use Act; (4) restrictions on adding "off system" customers set forth in controlling curtailment orders; and (5) voluntary consumer conservation resulting from higher prices. As noted in this Committee's 1981-82 Report, in the

First Session Congress responded to the excess gas supply problem by amending Section 301 of the Powerplant and Fuel Use Act. Also, FERC initiated approvals of certain "off-system" sales and various delivery options, while interstate pipelines reduced takes to minimum take-or-pay obligations. Underlying the concern over the excess gas supply was the growing likelihood that pipelines would in fact incur take-or-pay penalties which would in turn be rolled into rate base. Furthermore, proved gas reserves added in the lower forty-eight states in 1981 exceeded production for the first time in fifteen years, a fact confirmed by the Energy Information Administration in September, 1982. However, in view of confirmed cutbacks in oil and gas exploration during calendar year 1982, a continuation of this trend is problematic at best.

Advocates of natural gas deregulation and/or the allowance of higher gas prices have traditionally advanced two basic tenants which underlie their economic theories: first, that exploration and reserve additions will respond to higher prices and secondly, that prices will be restrained by competitive factors, including supply and demand, and interfuel competition. Consumer groups have often questioned those assumptions. The increase in exploration and reserve additions following FPC Order 770-A and NGPA would appear to confirm the first of these basic tenants. On the other hand, in 1982, Congress began to focus its attentions on the anomaly of rising gas prices in a period of excess supply, and in some cases, prices exceeding market clearing levels. In proceedings before the FERC and state regulatory commissions, consumer interests opposed to higher natural gas prices questioned the "prudence" of high cost gas purchases by interstate pipelines, especially from their own affiliate production companies. These protests generally took the form of challenges to purchase gas adjustment passthroughs. Although purchases of high cost foreign imports, including Canadian gas and LNG imports, were also challenged, the principal focus of consumer complaints appears to have been directed at pipeline purchases under Section 107 of NGPA.

In addition to complaints from consumers, Congress was soon urged by gas transmission and distribution companies to address the problem of rising gas prices. As before, these interests continued to urge Congress to alleviate the excess supply by repealing the incremental pricing provisions of NGPA and by removing all regulatory and legislative restraints on the sale of gas. However, transmission and distribution companies also acknowledged that natural gas prices were not responding to market conditions and that in fact significant load losses were being experienced where the cost of gas was exceeding market clearing prices. According to the pipelines, natural gas prices were not only being driven higher by the depletion of gas reserves flowing under older low cost contracts, but also by inflexible contract provisions contained in the most recent contracts. These contract provisions include indefinite price escalation, most-favored-nation, and take-or-pay clauses. An AGA survey released in the fall of 1982 projected a net 515 Bcf gas load loss to competing fuel oil. According to the survey this loss was experienced in the industrial electric power plant sectors where alternate fuel capability provided price competition. The collapse of OPEC oil pricing agreements in late 1982 and early 1983, and the downward response of oil prices presages further reductions in the market clearing price for natural gas in these markets, and has drawn further attention to the failure of natural gas prices to respond to market forces.

As an immediate response to the load loss problem, certain interstate pipelines, including Columbia, Michigan-Wisconsin, Northern Natural, Trunkline, and Panhandle requested FERC approval in 1982 of various proposals allowing reduced retail prices when necessary to retain load. Additionally, pipelines reported the invocation of market-out clauses recently included in new gas purchase contracts for high cost gas, as well as efforts to renegotiate indefinite escalation clauses and take-or-pay provisions in old contracts.

In April 1982, FERC issued its Notice of Inquiry as to whether or not serious marketing problems might be evolving in the nations' natural gas markets during the transition to partial decontrol in 1985 as the result of the contract provisions discussed.

In August of 1982, the Executive Committee of the National Association of Regulatory Utility Commissioners ("NARUC") voted to seek amendments to the NGPA nullifying indefinite price escalation and most-favored-nation clauses in existing contracts. The NARUC Resolution asserted that these contract provisions may cause "extreme turmoil for gas pipeline and for distribution utilities" by causing gas costs to exceed market clearing prices following the scheduled deregulation in 1985.

In a further effort to resolve the natural gas pricing problems discussed, the staff of FERC was reported to be studying a new pricing scheme referred to as "net-back pricing." The "net-back pricing" would be part of a settlement package negotiated between a pipeline and its customers. The parties would agree as to the burner tip price of a competing fuel oil as a market benchmark. They would then calculate the cost of transmission, distribution and required pipeline rate of return, and subtract these from the benchmark price. The net remaining would constitute the price to be paid to producers for future gas taken. If prices agreed to between pipeline and producer were at or below the "net-back" price, they would be considered "prudent;" if higher, "imprudent." This Committee is not aware of legislation incorporating the "net back" formula. However, in February of 1983, Robert Means, Director of FERC's Office of Regulatory Analysis, in a paper prepared for delivery in Houston, reportedly advocated "net-back" pricing and common carrier status for pipelines as a solution to the gas pricing problem. *See* AGA Washington Newsletter, (February 4, 1983).

(b) *Natural Gas Issues in the Ninety-Seventh Congress*

In July, 1981, the President's Cabinet Counsel recommended a phase-in decontrol of all wellhead prices by 1985. However, on March 1, 1982, President Reagan announced that the Administration would not seek accelerated deregulation of natural gas in 1982. At that time, bills were pending in the House and Senate with various provisions for total deregulation. *(See, e.g.,* H.R. 4390, introduced by Congressman Gramm; H.R. 4885, introduced by Congressman Collins; and S. 2074, introduced by Senator Johnston). Also pending were various proposals amending NGPA with respect to incremental pricing and the contract problem. *(See, e.g.,* H.R. 5645-48, introduced by Congressman Hurtel on March 1, 1982). In view of the President's position, all of these issues were more or less placed on the back burner. However, as the session progressed, the gas contract problem not only gave rise to congressional concern over their immediate effect, *i.e.* higher consumer prices and load loss, but more importantly, their potential effect after January 1, 1985, when substantial categories of gas become deregulated pursuant to Section 121 of NGPA.

When Congress reconvened for the "lame duck" session in December, the issue of natural gas pricing had once again become the dominate energy issue. More than 40 bills were pending in the House and Senate dealing with these issues. Significantly, many of these proposals were authored by Senators and

Representatives considered sympathetic to the oil and gas industry. Commonly found among these bills were provisions (1) freezing wellhead prices at various levels and for different periods of time; (2) abrogating or limiting take-or-pay clauses; (3) nullifying indefinite price escalation and favored-nation clauses; (4) legislating market-out clauses into existing gas purchase contracts, but also creating a "spot market" for gas not taken under such market-out clauses by requiring pipelines to transport to any designated buyer; (5) requiring pipelines to take the "least-cost-mix" from producers, especially when purchasing from affiliate production companies; (6) delaying decontrol of gas prices scheduled for January 1, 1983; and (7) denying PGA recovery for gas purchases found by FERC to have been "imprudent."

On December 14, Senator Kassebaum (R-Kan.) offered two amendments to the gasoline tax bill. The first amendment would have given FERC the authority to rescind, annul, or modify contract provisions that it determined would "prevent the purchasers from responding to the demands of customers or other market forces by requiring the purchaser to pay for a minimum contract quantity of gas whether or not such gas is taken." The amendment would also have made "imprudence" a ground for FERC denial of pass-through of purchased gas costs under PGA clauses. The second Kassebaum amendment would have frozen NGPA prices for two years at October 1, 1982, levels, and would have postponed decontrol until January of 1987. These amendments were tabled by votes of 56 to 38 and 62 to 33, respectively. Inasmuch as opponents of these amendments argued primarily against the adoption of a "piecemeal" approach, the tabling of these amendments was not considered as being dispositive of the underlying issues on the merits.

Immediately following the tabling of the Kassebaum amendments, the Senate adopted by a vote of 90 to 3, S. Res. 515, offered by Senator McClure (R-Idaho), (1) urging FERC to use its authority to control pipeline increases caused by take-or-pay and indefinite price escalator clauses in contracts, and (2) encouraging pipelines and producers to renegotiate existing contracts in this regard.

On December 16, obviously in response to Senate Resolution 515, FERC issued its Statement of Policy declaring that it would not allow prepayment charges under a take-or-pay contract clause to be included in pipeline rate base if such clause required the pipeline to take in excess of 75% of annual deliverability, and if the contract was entered into on or after the date of adoption.

Throughout the "lame duck" December session numerous hearings were held before House and Senate committees on these issues. On December 3, 1982, Congressman Sharp, Chairman of the Subcommittee on Fossil and Synthetic Fuel of the House Committee on Energy and Commerce wrote to 21 major interstate pipeline companies and 33 companies that produce natural gas encouraging them to renegotiate gas purchase contracts which "have led to the anamalous situation of rapidly rising gas prices for consumers while a surplus supply of gas is available." Congressman Sharp also "put the companies on notice that the relative success of their efforts at this time would serve as an indication to the Congress of the ability of the gas industry to deal with marketing problems, thus shedding light on the question of whether the industry is prepared to deal with the partial wellhead deregulation that will take place in 1985 under current law." Early January responses were requested. On January 27, 1983, the subcommittee released its memorandum summarizing the 46 responses received, adding the staff's preliminary assessment of those responses. The staff assessment questioned whether a voluntary solution, involving thousands of individual contracts "should or could be rationally expected." The staff analysis concluded: "In addition, the consuming public, accustomed to pricing practices which show much more rapid adjustment to market demands, may simply not have the patience or ability to give the industry the time to adjust on its own." The threat of Congressional intervention was implicit.

*The Natural Gas Issue in the Ninety-Eighth Congress*

The unfolding events in 1982 led to the reemergence of natural gas pricing as a major legislative issue in the December "lame duck" session, leaving no doubt that it would receive prompt attention in the First Session of the Ninety-Eighth Congress.

The Administration, which had relegated natural gas deregulation to the "back burner" in 1982, wasted little time in its efforts to regain the initiative on this issue. At the January 6, 1983, meeting of the Cabinet Council on Natural Resources and Environment, DOE Secretary Donald Hodel was asked to recomment a natural gas deregulation proposal for submission to Congress. On February 8, following consultations with congressional leaders, the new Administration proposal was transmitted to Congress where it was introduced as S. 615 and H.R. 1760. The Administration proposal contains eighteen basic provisions, which are:

(1) As of date of enactment, any new contract may be signed and may operate by its terms.
(2) Any contract may be renegotiated and may operate by its new terms.
(3) The volume-weighted average of the price for natural gas in all contracts under (1) and (2), for the most recent month with available data, is called the "gas cap."
(4) Pending renegotiation, prices for all regulated gas are the lower of the Natural Gas Policy Act (NGPA) price ceiling or the "gas cap."
(5) On January 1, 1985, for any contract that has not been renegotiated, either party may exercise a "market-out" (abrogate the contract). In that event, purchaser must carry gas for seller to any other purchaser at an incentive rate.
(6) All gas is decontrolled from the non-price regulations of the Natural Gas Act (NGA) and the NGPA on January 1, 1985, or on renegotiation, if sooner.
(7) Section 122, which gives the President or Congress the power to reimpose controls, is repealed.
(8) The Fuel Use Act (forbidding some uses of natural gas) and Incremental Pricing are repealed immediately.
(9) All buyers have equal access to offshore and interstate gas.
(10) Latest gas cap is considered a federally-approved rate for area rate clauses.
(11) Purchasers may reduce all "take-or-pay" contracts to 70 percent of deliverability (conservation exception for associated gas).
(12) If that take-or-pay option is exercised, seller can abrogate contract and sell gas elsewhere. In that event, the buyer must transport the gas at an incentive rate.
(13) The option to reduce takes expires on January 1, 1986.
(14) All escalator clauses of all types in pre-enactment contracts are limited by the "gas cap." This limitation continues until January 1, 1986.
(15) Through January 1, 1986, an interstate pipeline may not immediately pass-through purchased gas costs above its last pre-enactment level plus inflation. Any additional cost must be specifically approved by FERC after a public proceeding with appropriate standards.

(16) FERC, on application, can require an interstate, intrastate or distribution pipeline with available capacity to carry gas under contract between producer and purchaser at an incentive rate.
(17) No pipeline may take gas from its own production or from an affiliate at a rate higher than its rate of take for any less expensive gas.
(18) Prices for currently deregulated gas ("Section 107") that are above the "gas cap" are frozen until or unless the cap rises above them.

Two provisions suggested by House Republican Leader Robert Michel (R-Ill.) were omitted by the final Administration proposal. These would have required renegotiation of imported gas prices, including LNG, Canadian and Mexican.

On March 16, Representative Gephardt (D-Mo.) and seventy-three co-sponsors introduced H.R. 2154 as a response to the Administration proposal. The Gephardt bill contains various elements of consumer oriented proposals pending at the end of the Ninety-Seventh Congress, which include:

(1) Take-or-pay clauses in contracts governing new and high-cost gas would be limited to a ceiling of 50 percent of the maximum contracted volumes.
(2) A market-out clause would be available to all interstate and intrastate pipelines after notice to the producer and expiration of a 30-day renegotiation period.
(3) Gas that is "marketed out" could be resold by the producer, with a pipeline right of first refusal and a mandatory pipeline transportation obligation if the right of first refusal is not exercised.
(4) Indefinite price escalators in existing and future contracts would be banned.
(5) FERC would be given authority to deny pass-through of costs if "the pipeline has failed to adopt and follow practices that minimize amounts paid for purchases of natural gas."
(6) Minimum commodity bills by pipelines to any purchaser in excess of 50 percent of maximum annual contract volumes would be unenforceable.
(7) Interstate pipelines could be ordered by FERC to carry gas on behalf of any purchaser at just and reasonable rates. Intrastate purchasers and local distribution companies would not become subject to FERC jurisdiction.
(8) FERC would be ordered to develop a rate design standard to ensure that pipeline purchasing practices are sensitive to end-use markets.
(9) First sale contracts would have to be filed with FERC.
(10) For gas in all categories other than Section 107, the maximum lawful price would be rolled back to January 1, 1982 levels.
(11) In subsequent months, the price of this gas would rise at the lesser of 75 percent of the GNP deflator or an energy index rate based on the energy component of the Consumer Price Index.
(12) Section 107 gas prices would be limited to 150 percent of the section 103 price.
(13) Decontrol of gas currently scheduled for January 1, 1985 would be delayed for two years; standby authority to reimpose controls after that date also is provided.
(14) FERC would be prohibited from creating additional types of incentive rate gas under section 107(c)(5).
(15) Producers of gas from wells drilled after January 1, 1982 and before enactment could petition FERC to receive a price up to the level of the NGPA ceiling at the time the well was commenced.

(16) FERC authority to raise old gas prices to "just and reasonable" levels above NGPA ceiling levels would be abolished.
(17) Production-related costs would be treated as compensation to the producer for purposes of the maximum lawful price.
(18) The price for gas imported from sources other than Canada or Mexico would be limited to 150 percent of section 103 gas. A report on negotiations with Canada and Mexico regarding gas imports would be required from the President within 60 days of enactment.

*See* AGA Washington Letter, Volume XVI, Issue 7, (February 18, 1983).

Another major alternative to the Administration proposal is commonly referred to as the Addabbo/Heinz proposal, H.R. 1752/S. 689. A comparative analysis of the Gephardt and Addabbo/Heinz proposals is incorporated as Attachment I to this Report. Other pending bills include H.R. 1359, H.R. 1405, H.R. 1422, H.R. 1441, H.R. 1685, H.R. 1686, H.R. 1759, H.R. 1760, H.R. 2012, H.R. 2054, H.R. 2164, H.R. 2182, H. Con. Res. 55, S. 239, S. 291, S. 293, S. 370, S. 512, S. 615, S. 740, S. 823 and S.J. Res. 46.

Hearings on these and other natural gas bills, and other proposals, have concluded in the Senate Energy and Natural Resources Committee, and are continuing in the House Subcommittee on Fossil and Synthetic Fuels of the House Energy and Commerce Committee.

2. *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*

On January 24, 1983, the Supreme Court rendered its decision in *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 74 L.Ed.2d 569 (1983). The Court rejected the constitutional challenge to the Kansas Natural Gas Price Protection Act. This challenge was based upon the argument that its regulation of indefinite price escalation clauses in existing contracts for intrastate sales was violative of the Contract Clause of the U.S. Constitution. The Court held that the statute was not an unconstitutional contract impairment.

3. *Oklahoma v. FERC*

On June 7, 1982, the Supreme Court declined to review an earlier decision by the Tenth Circuit upholding the constitutionality of NGPA in all respects. *Oklahoma v. FERC*, 661 F.2d 832 (10th Cir. 1981), *cert. denied*, 73 L.Ed.2d 1313 (1982).

*B. Emergency Preparedness*

1. *Veto of Standby Petroleum Act of 1982*

On March 20, 1982, the President vetoed S. 1503, the Standby Petroleum Act of 1982. Under the proposed Act the President would have been vested with standby energy emergency authority, including the authority to allocate fuel on the basis of priorities contained in the EPAA and to impose price controls. In his veto message (128 Congressional Record S. 2513) the President maintained that the free market system would provide a more efficient allocation of resources in the event of a supply interruption. Furthermore, the President said:

> The bill would discourage self-protective measures because it tells the public that those measures will be nullified by government allocations and controls or that such measures are unnecessary because the government will guarantee them low priced energy in the event of any disruption.

The President's veto message did recommend that one feature of the rejected bill be passed as a separate act, that being the extension of Section 252 of the Energy Policy and Conservation Act, allowing continued U.S. participation in the International Energy Agency. The President noted that H.R. 5789 and S. 1937, both of which would accomplish that purpose, were pending in Congress.

2. *Energy Emergency Preparedness Act of 1982*

In response to the President's veto of the Standby Petroleum Act of 1982, Congress passed S. 2332, the Energy Emergency Preparedness Act. The Act amends the Energy Policy and Conservation Act to require the President, among other things, to (1) acquire petroleum for the strategic reserve at an annual rate of at least 300,000 barrels per day, (2) prepare a comprehensive energy emergency response procedure pursuant to the authority available under existing law, and (3) to extend the antitrust defenses under Section 252 of the Energy Policy and Conservation Act through December 31, 1983.

*C. DOE Reorganization*

On May 24, 1982, the President submitted to Congress a special message to accompany his proposed Federal Energy Reorganization Act of 1982. The proposed legislation, subsequently introduced by Senator Roth of Delaware, would reestablish FERC as an independent agency and transfer the remaining DOE functions to the Departments of Commerce, Interior, Justice and Agriculture. The legislation was not received with enthusiasm in Congress, and no action was taken following hearings by the Senate Governmental Affairs Committee.

*D. Coal*

1. *Eminent Domain for Coal Slurry Pipelines*

As noted in this Committee's 1982 report, H.R. 4230, the Coal Pipeline Act of 1981, authorizing the builders of coal slurry pipelines to invoke the power of Federal eminent domain to acquire rights-of-way, was reported out of the House Committee on Interior and Insular Affairs, as amended. During 1982, the same bill was reported out of the House Committee on Public Works and Transportation, and a similar bill, S. 1844, was reported by the Senate Energy and Natural Resources Committee. The Ninety-Seventh Congress adjourned with no floor action in either chamber.

2. *Limitations on State Coal Severance Taxes*

Proponents of legislation limiting state coal severance taxes to 12.5% continued their efforts in the Second Session. The coalition of coal consumer interest were unable, however, to obtain House approval of H.R. 1313. Bills introduced in the Ninety-Eighth Congress include S. 463 (Dixon, D-Ill.)

*E. Oil Pipeline Deregulation*

The Ninety-Seventh Congress adjourned without action in either chamber on S. 1626 or H.R. 4488, companion bills to remove FERC's authority to set rates for oil pipelines, although retaining the authority to regulate discriminatory practices. The transfer of oil pipeline regulation from the ICC to FERC, and from one concept of rate regulation to another, has been the subject of a continuing controversy.

### *F. Pipeline Safety*

In the Second Session Congress passed the Pipeline Safety Authorization Act of 1981 (P.L. 97-468) authorizing $8,000,000 in appropriations for FY82 for the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979. Among other things, the Act extends the deadline for filing petitions for judicial relief from agency actions on pipeline safety from 60 to 90 days, and changes the meeting requirements for the Technical Pipeline — Safety Standards Committee and the Hazardous Liquids — Technical Pipeline Safety Standards Committee.

### *G. Nuclear*

#### 1. *National Nuclear Waste Policy Act of 1982*

One of the principal achievements of the Ninety-Seventh Congress was final passage, in late December, of the National Nuclear Waste Policy Act of 1982 (P.L. 97-425). The Act was passed on December 20, 1982, when the House agreed to accept some eighteen amendments tacked on to H.R. 3809 in the Senate the previous day. The Act provides a timetable for DOE to narrow down its list of sites for storage of nuclear waste. Section 115 of the Act allows the governor and legislature of a state within which a proposed site is recommended by the President, or the governing body of an Indian Tribe on whose reservation such site is located, to submit to the Congress a Notice of Disapproval. If such Notice of Disapproval is received by the Congress, passage of a resolution of site approval would be required by both the House and Senate before such site selection could become effective. The House bill had provided that such site disapprovals could be overriden by a resolution of either the House or the Senate. This change in the site selection process substantially strengthened the positions of the respective states and Indian tribes.

#### 2. *FY-82 NRC Authorization*

Late in the Second Session Congress passed H.R. 2330, a bill to authorize funds for the Nuclear Regulatory Commission for fiscal years 82 and 83. Among other things, the Act (P.L. 97-415) authorizes the NRC to issue an interim operating license pending a hearing for a full operating license. The interim license will authorize fuel loading, testing, and operation. In response to the decision in *Sholly v. Nuclear Regulatory Commission*, 651 F.2d 780 (D.C. Cir. 1980), the Act authorizes the NRC to issue and make effective immediately an amendment to a license, even in the face of a requested hearing, upon its determination that the amendment will not involve a significant hazard consideration.

#### 3. *Protection of Nuclear Materials*

In October of 1982, Congress passed the Convention on the Physical Protection of Nuclear Material Implementation Act of 1982. The Act (P.L. 97-351) implements the convention by amending the criminal code to provide penalties for violations of the proscribed conduct with respect to nuclear material.

4. *Nuclear Cooperation With EURATOM*

By Executive Order 12351, the President extended until March 10, 1983, the period of American participation with EURATOM, and the continued peaceful nuclear cooperation with the European Atomic Energy Community.

*H. Taxes*

1. *The Technical Corrections Act of 1982*

In December Congress passed H.R. 6056, the Technical Corrections Act of 1982 ("TCA"). The Act (P.L. 97-448) makes certain technical, clarifying and conforming amendments to various tax statutes. Of particular interest to members of FEBA are provisions dealing with the computation and application of the windfall profits tax on crude oil. The Act clarifies the treatment of condensate removed from natural gas after the gas is removed from the premises. The TCA also (1) deals with the definition of an "independent producer" entitled to the stripper oil well exemption; (2) extends the royalty owners exemption on qualified royalty oil to the beneficiaries of qualified trusts; (3) clarifies the use of the GNP deflator in setting the inflation adjustment factor in the adjusted base price; (4) expands the definition of Tier 2 oil to that produced from the Naval Petroleum Reserve; and (5) clarifies the definition of an "independent producer" entitled to the special windfall profit tax rate. TCA also adopts the IRS definition of "incremental tertiary oil" entitled to Tier 3 oil tax treatment, and further clarifies exempt "Alaskan oil," and the definition of "crude oil" and "net profits interests."

2. *Tax Normalization for Gas Pipelines*

On December 3, 1982, the Iowa State Commission challenged the right of natural gas pipelines to use normalization tax treatment for investment tax credits rather than flow-through. The Iowa Commission noted that the Revenue Act of 1971 gives FERC the option of denying tax normalization treatment of investment tax credits if it finds that natural gas is in sufficient supply to meet demand. The Iowa Commission contends that the excess supply situation no longer justifies that tax treatment previously allowed. In response to the Iowa petition, legislation was introduced in the House allowing tax normalization of investment tax credits regardless of whether gas supply is sufficient or insufficient. No action was taken on the legislation.

3. *The Tax Equity and Fiscal Responsibility Act of 1982.*

On September 3, 1982, President Reagan signed into law the Tax Equity and Fiscal Responsibility Act of 1982. As originally passed by the House, H.R. 4961 was a modest bill. In the Senate it became a vehicle to which numerous "revenue enhancement" measures were attached. Among its provisions are several relating to the tax treatment of oil and gas. Section 211 of the Act imposes more stringent treatment of income from oil and gas extracted in foreign countries. Section 291 of the Act reduces certain corporate tax preferences by 15%. Included among these is the percentage depreciation for coal, intangible drilling costs of integrated oil companies, as well as mining exploration development costs. Additionally, the Act provides that oil companies removing oil from Alaska after December 1, 1982, will be required to pay higher windfall profits taxes due to the repeal of the special TAPS adjustment.

Of importance to public utilities was the deletion by the conferees of the Senate amendment repealing the special tax treatment afforded to public utility investors to take dividends in the form of stock.

4. *The Federal Oil and Gas Royalty Management Act of 1982*

In December, 1982, Congress enacted the Federal Oil and Gas Royalty Management Act of 1982, (P.L. 97-451). The Act is intended to improve the collection of Federal royalties and lease payments derived from certain natural resources under the jurisdiction of the Secretary of the Interior. Among its provisions, the Act requires that lessees and operators maintain records to properly account for the production of oil and gas from the designated Federal lands. The Act established both civil and criminal penalties for its violation.

5. *The Miscellaneous Revenue Act of 1982*

Section 104 of the Miscellaneous Revenue Act of 1982 (P.L. 97-362) expands the definition of "shale oil equipment" for purposes of the 10% energy investment tax credit to include equipment used in hydrogenation or other similar processes.

6. *Ptasynski v. U.S.*

On November 4, 1982, United States District Judge Ewing T. Kerr, District of Wyoming, declared the Crude Oil Windfall Profits Tax Act of 1980 to be unconstitutional. Judge Kerr found that the exemption of certain Alaskan oil from the tax to be violative of the Uniformity Clause of Article 1 of the Constitution, that the offending exemption could not be severed; and therefore, the entire Act must fall. The judgment was stayed pending further judicial review by the U.S. Supreme Court. *Ptasynski v. U.S.*, 550 F. Supp. 549 (D. Wyo. 1982).

## III. Public Utilities

### A. *The Public Utility Holding Company Act of 1935*

In the Second Session of the Ninety Seventh Congress hearings continued in the House and Senate on legislation to repeal or amend the Public Utility Holding Company Act of 1935 in order to allow such utilities to expand the types of business in which they are engaged. In the Senate the Securities Subcommittee of the Banking, Housing and Urban Affairs Committee heard testimony on S. 1869, S. 1870, S. 1871 and S. 1977. In the House the Energy Conservation and Power Subcommittee of the Energy and Commerce Committee held hearings on H.R. 5465 and H.R. 6134. No committee action was taken in either chamber.

### B. *Cogeneration and Small Power Production*

In the Second Session, the House Subcommittee on Energy Conservation and Power of the Energy and Commerce Committee held hearings on H.R. 6500, Chairman Ottinger's bill to amend the Federal Power Act to encourage cogeneration and small power production. No action was taken on this legislation.

### C. *Construction Work In Progress*

In the Second Session the Energy Conservation and Power Subcommittee of the House Energy and Commerce Committee held hearings on H.R. 5755, Representative Harkin's bill to limit FERC's allowance of construction work in progress in rate base to (1) pollution control facilities and (2) conversion of oil or gas-fired facilities to other fuels, unless evidentiary hearings are held.

### D. *Tax Normalization*

On September 20, the House passed H.R. 1524, a bill to amend Sections 46(f) and 167(1) of the Internal Revenue Code of 1954 to prohibit any tax paying utility from using the normalization method of accounting if, for rate-making purposes or for reflecting operating results in its regulated books of account, it employs any adjustment that is inconsistent with existing requirements for users of such accounting method. The House bill was reported by the Senate Finance Committee in September, with amendments. In December, the Senate briefly considered a motion to proceed to its consideration; however, no further action was taken.

### E. *Standard Utility Allowance*

The Budget Reconciliation Act (P.L. 97-253) provides that state agencies may use standard utility allowances in computing a household's excess shelter expense deductions. Such allowances would not be required to reflect seasonal variations in utility costs. State agencies cannot use such an allowance for households which do not incur heating or cooling expenses, or which do incur heating or cooling expenses but which are public housing households with central utilities and which are charged only for excess utility costs. In the case where a food stamp household shares a dwelling with others, whether or not such others are participating in the food stamp program, the standard utility allowance would be prorated between them. The new provision would supercede current departmental regulations which mandate that states develop utility standards for use for households which do not document higher utility costs. State agencies would be able to choose between using a standard utility allowance or actual costs.

### F. *DOE Petroleum Violation Escrow Funds*

Section 155 of the Continuing Appropriations Act (P.L. 97-377) provides that the $200,000 "designated petroleum violation escrow funds" be distributed to the states for fuel aid and conservation programs. The distribution is to be based on the amount of petroleum products consumed within a state during the period beginning September 1, 1983, and ending January 28, 1981.

### G. *Fuel Aid For the Poor*

The Continuing Appropriations Act (P.L. 97-377) authorizes $1.975 billion to be spent on fuel aid for the poor during fiscal 1983. Additionally, Section 128 prohibits the denial or reduction of supplemental security income or aid to families with dependent children benefits because of aid received from any nonprofit private entity; provided the appropriate state agency has certified that such assistance was based on need as determined by such organization or entity.

### H. *FERC v. Mississippi*

On June 1, 1982, the Supreme Court reversed a judgment of the U.S. District Court of the Southern District of Mississippi wherein Judge Harold Cox had struck down the Public Utility Regulatory Policies Act of 1978 (PURPA) as being an unconstitutional intrusion into the powers reserved to the states. Justice Blackman, speaking for the Court's five member majority, concluded:

> If Congress can require a state administrative body to consider proposed regulations as a condition to its continued involvement in a pre-emptible field — and we hold today that it can — there is nothing unconstitutional about Congress' requiring certain procedural minima as that body goes about undertaking its tasks. The procedural requirements obviously do not compel the exercise of the State's sovereign powers, and do not purport to set standards to be followed in all areas of the state commission's endeavors.

*FERC v. Mississippi*, 72 L.Ed.2d 532 (1982)

## IV. Environmental Matters

### A. *The Clean Air Act Amendments/Acid Rain*

In August, 1982, the Senate Committee on Environment and Public Works reported S. 3041, the proposed Clean Air Amendments of 1982, which would amend the Clean Air Act and provide funds for its implementation through the close of fiscal year 1987. On the House side the Subcommittee on Health and the Environment of the House Committee on Energy and Commerce reported to the full committee H.R. 5252. Both Senate and House bills redefined the acceptable level of technology for licensing, and included numerous other changes.

Of special concern to electric utilities, the Senate bill, as reported, provided for an acid deposition control program. The bill would have established a 31 state acid deposition impact region, consisting of all states east of or contiguous to the Mississippi River. The states within the region would have to reduce emissions of sulfur dioxide by 8,000,000 tons over a 12 year period. Bills dealing with acid rain as separate legislation were H.R. 4829 and S. 1706.

Legislation dealing with these amendments to the Clean Air Act is expected to receive further attention in the Ninety-Eighth Congress. *See, e.g.*, S. 766 (Randolph, D-WV), introduced March 10, 1983.

## V. Natural Resources

### A. *The Wilderness Protection Act of 1982*

In July of 1982, the House Interior and Insulor Affairs Committee reported H.R. 5603, a bill prohibiting oil or gas exploration in wilderness areas absent a Presidential finding of an urgent national need. Congress would have 60 days under the proposed Act within which to pass a bill reversing the President's finding. That bill could in turn be vetoed by the President, in which case it would require a two thirds Congressional override to remain effective. The legislation was not acted on by the House.

### C. *Coastal Barrier Resources Act*

The Second Session of the Ninety-Seventh Congress passed the Coastal Barrier Resources Act (P.L. 97-348). The Act prohibits all federal expenditures or financial assistance for development activities within the proposed Coastal Barrier Resources System excluded from the Act's prohibitions are federal expenditures or financial assitance for "any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in or adjacent to coastal water areas because the use or facility requires access to the coastal water body . . ."

## VI. Regulatory Reform

### A. *The Regulatory Reform Act of 1982*

As previously stated, this Committee filed in 1982, an Addendum to its 1981–1982 Report updating certain information with respect to two regulatory reform bills pending in the Senate and House, S. 1080 and H.R. 746. That Addendum provided a comprehensive review and comparison of these two bills. As suggested in this Committee's Addendum, the overwhelming vote in the Senate did not presage passage of this legislation. It may be that the omnibus approach to regulatory reform of this nature is an idea whose time has come and gone for the time being.

### B. *FERC Fees and Charges*

This Committee's Addendum to its 1981-82 Report also covered Senator McClure's S. 2358, a bill providing for FERC imposition of fees and annual charges on its regulated utilities and common carriers. Its purpose was to help defray the cost of the Commission's activities. The bill was referred to the Senate Committee on Energy and Natural Resources. The Administration had recommended the legislation as a means of shifting part of the cost of FERC from the Budget to the regulated utilities. No further action was taken.

### C. *The Congressional Reports Elimination Act of 1982*

The Ninety-Seventh Congress passed H.R. 6005, the Congressional Reports Elimination Act of 1982. The bill, introduced at the request of the Office of Management and Budget, eliminates, consolidates or simplifies some seventy-seven recurring congressionally-mandated reporting requirements. At the time of enactment, there were approximately 2,900 congressionally-mandated recurring reporting requirements. The OMB recommendations resulted in part from the examination requirements in the Paperwork Reduction Act of 1980.

### D. *Sunset Legislation*

In the Second Session, the Legislative Process Subcommittee of the House Rules Committee held hearings on H.R. 2, the Sunset Act of 1981 and H.R. 58, the Sunset Review Act of 1981. No further action was taken.

John H. Holloman, III, *Chairman*
J. Curtis Moffatt, *Vice Chairman*

Ernest J. Altgelt, III
Leslie Berkowitz
Joel Berson
Christopher T. Boland
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## ATTACHMENT 1

## COMPARISON OF H.R. 1752/S. 689 (Addabbo/Heinz) AND H.R. 2154 (Gephardt)

| | *H.R. 1752/S. 689 (Addabbo/Heinz)* | *H.R. 2154 (Gephardt)* |
|---|---|---|
| 1. Old gas decontrol | No old gas decontrol. | Same |
| 2. Accelerated decontrol of new gas | No accelerated decontrol. | Same |
| 3. Incremental pricing | No action on incremental pricing. | Same |
| 4. Fuel Use Act | No action on Fuel Use Act. | Same |
| 5. NGPA authority of Congress or President to reimpose price controls | Retains | Same |
| 6. Take-or-pay | Limits take-or-pay percentage factor in all existing contracts to 50 percent. | Voids for 3 years take-or-pay above 50 percent in all NGPA 102, 103, 107 and 108 contracts and requires for 3 years a minimum one year make-up right. |
| 7. Market-out | As to most gas to be decontrolled in 1985, permits either party on 30 days notice to set a price different from the prevailing contract price. Grants buyer a right of first refusal; grants seller best efforts transportation service on sale to alternative buyer. | As to all gas, permits pipeline purchaser to request, on 30 days notice, renegotiation and to "market-out." Pipeline may, if it determines inability to market gas, refuse delivery of any portion of such gas without obligation to pay. Pipeline must reduce highest priced gas and affiliate's higher priced gas first and may not take delivery of any new or renegotiated contract gas at price equal to or higher than price of market-out gas. Seller may sell marketed-out volumes to others, but must offer pipeline right of first refusal. Pipeline must provide, under stated conditions, seller transportation service to other buyer. |
| 8. Indefinite price escalators | Nullifies and voids indefinite price escalator clauses in all contracts forever. | Essentially does same but also grants FERC power to nullify such clauses which have same effect but not directly voided by statute. |

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| 9. Interstate pipeline guaranteed purchased gas costs passthrough | Reaffirms applicability of sections 4 and 5 Natural Gas Act "just, reasonable and prudent" standard of review as to interstate pipeline purchased gas costs passthrough in lieu of NGPA section 601 (c) (2). | In addition to NGPA 601 (c) (2) fraud and abuse power of FERC to disallow passthrough, permits FERC to disallow where the pipeline has failed to adopt and follow practices which minimize amounts paid for gas. |
| 10. Interstate and intrastate pipeline minimum bill | As to *inter*state pipelines only, requires FERC to examine minimum bill and related tariff provisions for their effects on responsiveness of well-head prices to demand signals and on pipeline financing and to make changes in such provisions as appropriate. | Nullifies and voids all interstate and intrastate minimum bill provisions in excess of 50 percent of contract take requirement. |
| 11. Contract carrier | No comparable provision. | Requires FERC to order interstate pipeline, at request of any producer (excluding pipeline affiliates) or purchaser, to carry gas *if* capacity is available, no undue burden on pipeline, no construction of new facilities required and no impairment of service to existing customers or future firm customers. "Just and reasonable" shall be the rate for such service. |
| 12. Incentive for interstate pipeline transportation service | Amends NGPA section 311 to allow interstate pipelines a 5 cents per mmbtu profit on transportation of gas on behalf of intrastate pipelines and local distribution companies. | No comparable provision. |
| 13. Rate increase disincentive | Requires FERC to assess interest on interstate pipeline refunds of excessive charges at 3 points above prevailing prime rate. | No comparable provision |
| 14. Disclosure of gas purchase contracts | Requires all gas purchase contracts to be filed with FERC and made available to the public. | Requires all gas purchase contracts to be filed with FERC. |
| 15. Purchaser right to contest | Nullifies and voids any provision of any gas purchase contract which restricts purchaser's right to contest rights and obligations of parties to contract. | No comparable provision. |
| 16. Contract interpretation | Authorizes FERC to resolve disputes concerning meaning of gas purchase contract language. | No comparable provision. |

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| 17. Rates and rate design | No provision. | Requires FERC to develop and implement standards for interstate pipeline rate design to assure that pipeline gas purchases are sensitive to end-use market conditions and that end-use signals are effectively transmitted to pipelines and producers. |
| 18. NGPA ceiling price inflation adjustor | Repeals inflation adjustor. | Amends to lower of 75 percent of inflation or percentage change in "energy index." |
| 19. NGPA ceiling prices | No provision. | Rolls back to January, 1982 levels, NGPA 102, 103, 104, 105, 106, 108 and 109 prices. Sets 107 (c) (1)-(4) prices at 150 percent of 103 price. Limits 107 (c) (5) prices to 150 percent of 103 prices. Repeals FERC 107 (c) (5) power to create new high-cost gas categories. |
| 20. FERC power to increase NGPA 104, 106 and 109 to higher just and reasonable levels | No provision. | Repeals FERC power. |
| 21. NGPA section 110 production related allowances and additional consideration received by seller in excess of ceiling prices. | Reverses FERC rulings on these matters ($11 billion consumer impact). | Same. |
| 22. Natural gas imports | No provision. | Caps non-Canadian and Mexican imports at 150 percent of NGPA 103 prices. |
| 23. Extension of new gas controls | No provision. | Extends NGPA new gas decontrol schedule for two years. |
| 24. Area rate clauses | Requires specific contract authority to charge NGPA ceiling prices ($10 billion consumer impact). | No provision. |
| 25. Btu measurement | Reverses FERC rulings on this matter ($2 billion consumer impact). | No provision. |