



Statement # 5

Statement on Procedures to Deal with Emergency Shortages of Natural Gas

(Adopted December 9-10, 1976)

Consideration of procedures to deal with possible emergency shortages of natural gas involves the analysis and weighing of numerous and complex issues. The Congress is the proper body to consider the policy responses which may be appropriate for dealing with such an emergency. Of significance to the Administrative Conference is that, in any such deliberative process, Congress should consider from the beginning how to assure fair and effective administrative procedure in any program which it adopts. This Statement is not intended to recommend any particular program or to go beyond procedural considerations.

If the Congress believes an emergency shortage of natural gas is a significant possibility in the foreseeable future, then the necessary investigation and analysis of the issues noted in this Statement should be undertaken soon. By giving early consideration to the difficult issues which must be resolved, the Congress can enable the orderly development of fair and effective administrative procedures to be available in the case of need. The alternative to such prompt consideration is likely to be, in the event of an emergency, a hastily-established program which might not adequately provide for public participation in the development of policies and regulations nor for suitable procedures for the determination of matters involving identifiable parties. This might work unnecessary hardships, invite public distrust, and create more serious social and economic dislocations than necessary.

1. At the present time the procedures by which Government can deal with an emergency created by an undersupply of natural gas have severe limitations. Governmental authority over natural gas, to the extent it exists, is fragmented among the Federal Power Commission and the several States.

(a) The Natural Gas Act confines the Federal Power Commission's jurisdiction, and consequently its curtailment authority, mainly to the interstate sale and transportation of natural gas; the Commission does not exercise authority over natural gas that is produced and consumed within a single State, nor normally over the retail sale distribution of either intrastate or interstate gas.



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(b) The procedures of the Federal Power Commission are largely designed for certification and ratemaking cases, and they are generally ill-suited for emergency situations. While the Commission has adopted an end-use curtailment policy, in fact it is without jurisdiction to enforce it at the State level. Nor does the Commission have the authority to order interconnections among pipelines and transfer of gas from one to another.

(c) The respective States have widely varying resources and interests. No procedures exist for them to distribute the burden of an emergency shortage of natural gas among themselves and throughout the Nation.

2. The range of possible legislative responses is wide, and the questions involved are of the highest complexity.

(a) The approaches which have been suggested include: Complete reliance on the free market mechanism to bring supply and demand into balance; primary reliance on the free market mechanism, coupled with standby emergency procedures of some sort; an end-use allocation procedure administered jointly by a Federal agency and the States; a procedure in which States or regions or classes of users receive pro-rata portions of the gas used in a base period; incentives to conserve natural gas and other forms of energy; accelerated development of renewable forms of energy; extension of federal regulation to the intrastate gas market.

(b) Determination of the appropriate approach, from among the foregoing or others, is for Congress to resolve through the political process.

3. Any Congressional action to institute Federal or Federal/State allocation procedures requires consideration of many complex subjects, several of which are noted below in Paragraphs 4-6. If, therefore, Congress determines (a) that an emergency shortage of natural gas is a significant possibility in the foreseeable future and (b) that its response will be some sort of allocation procedures, it should act promptly in view of the time involved in the legislative process and the lead time necessary to establish any new program. Adequate lead time should also be provided to allow States, gas users, and industry participants to plan on a sound, well-conceived basis.

4. If Congress were to consider some sort of end-use allocation procedure, the following issues should be addressed in the legislative process:



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(a) Comprehensive data are required for its organization and implementation, and such data do not appear to be readily available in sufficiently accurate, complete, and compatible form.

(b) An end-use allocation procedure might adversely affect incentives for the conservation of natural gas by States, gas distributors, and users, and for the development of new sources of supply, so that care should be taken to minimize any such adverse effects.

(c) The sheer number of users of natural gas, each of which or each category of which might require consideration in an end-use allocation procedure, and each of which would incur particular economic and social consequences if the supply of natural gas were interrupted, means that it may be impractical to administer an end-use allocation procedure exclusively by means of a centralized Federal agency.

5. If Congress were to consider involving the States in the administration of an end-use allocation procedure, the following issues should be addressed in the legislative process:

(a) In some States, the authority to formulate and implement relevant energy policy resides in a public utilities commission, while in other States it resides in the Governor's office, and in still other States legislative provision for such authority does not currently exist. In some States, authority is divided between statewide and local governmental entities.

(b) Many State governments appear at present to lack the resources and expertise to administer an end-use allocation system. A comprehensive survey of the respective personnel and financial resources of the various States that would be needed to undertake an end-use allocation system apparently does not currently exist.

(c) Congress should consider whether and by what means the Federal Government may induce a State to take legislative action.

(d) Some States have taken measures to protect their respective economies from the adverse effects of natural gas shortages, and they would probably resist any Federal system which failed to recognize and reward such diligence.

6. If Congress were to consider authorizing some Federal agency to order, as part of an allocation procedure, interconnections among interstate and intrastate pipelines and the mandatory transfer of gas from one to another, then the legislative process should address the fact that no comprehensive, accurate, compatible, and readily available data concerning the existence and feasibility of interconnections among pipelines exist.



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7. Whatever action it takes, Congress should consider the relationship between that action and a number of laws, including the National Environmental Policy Act (NEPA) and existing antipollution statutes.

(a) The effect on the environment of requiring large users of natural gas to switch to alternative fuels may be substantial.

(b) Environmental impact statements may be time consuming and may be incompatible with the implementation of emergency procedures, if not their development.

8. To the extent that it enacts legislation authorizing allocative procedures by government agencies, whether on the Federal, State, or local level, Congress should ensure the use of suitable and adequate administrative procedures.

(a) To the maximum extent feasible, each agency should develop its policies and regulations as far in advance of an actual emergency as possible and do so by using the procedures of § 553 of the Administrative Procedure Act and Recommendations 72-5 and 76-3 of the Administrative Conference.

(b) For the determination of matters that involve any specifically identifiable party, agencies should, to the maximum extent feasible, use procedures that assure the party adequate notice, opportunity to present facts and positions, a statement of the basis for decision, and reasonable administrative appeal.

Citations

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