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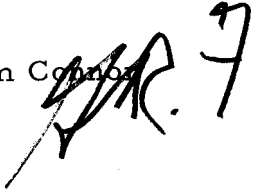
THE WHITE HOUSE
WASHINGTON

September 10, 1975

MR PRESIDENT

Attached is a copy of
the package transmitted today
as follow-up to sustaining of your
veto of S.1849.

Jim Connor



THE PRESIDENT HAS SIGNED

FEDERAL ENERGY ADMINISTRATION

WASHINGTON, D.C. 20461

OFFICE OF THE ADMINISTRATOR

Honorable Nelson A. Rockefeller
President of the Senate
Washington, D. C. 20510

Dear Mr. President:

Because legislative action on natural gas wellhead price regulation has been far too long deferred, the Nation now faces mounting shortages of natural gas. These shortages substantially increase our dependence upon foreign oil and could jeopardize our continued economic recovery and future economic vitality.

While demand for natural gas has been increasing, production peaked in 1973 and declined by about six percent in 1974 (the equivalent of over 230 million barrels of oil). In 1970, interstate pipelines began curtailments of interruptible customers, reflecting shortages of less than one percent of consumption (0.1 trillion cubic feet). Last year curtailments increased to 2.0 trillion cubic feet (Tcf), or ten percent of consumption. For 1975 they are estimated to increase to 2.9 Tcf, or about 15 percent of consumption.

The shortage is the most severe during the winter months; this winter's curtailments are estimated to be 30 percent more acute than those of last winter, and could be 45 percent worse if the weather is severe. Since natural gas is an essential fuel for a large sector of our industry and supplies almost half of the Nation's nontransportation energy use, shortages of this vital fuel pose a serious threat of significant unemployment, economic disruptions and personal hardships.

The gravity of the natural gas situation clearly requires the most immediate attention of the Congress. The single most important legislative initiative required to alleviate the growing problem is deregulation of the wellhead price of new natural gas. Until this critical issue is forthrightly addressed, the Nation will face an unending succession of future winters with ever mounting shortages.

Deregulation is essential to help assure that the trend towards ever increasing curtailments is reversed. Even with immediate deregulation, however, the shortfall has become so acute that the Nation faces the certainty of serious curtailment for the next two winters. The gravity of the immediate situation requires prompt steps to cushion the impact of shortages during this winter. Accordingly, I am transmitting herewith the Natural Gas Emergency Standby Act of 1975. This legislation, to remain in effect until June 30, 1977, would:

- Provide express authority for the Federal Power Commission to permit interstate pipelines whose high priority consumers are experiencing curtailments to purchase gas at market prices from intrastate sources or from other interstate pipelines on an emergency 180 day basis.
- Explicitly allow high priority consumers of natural gas experiencing curtailments to purchase gas from intrastate sources at market prices and to arrange for its transportation through interstate pipeline systems.
- Extend the recently expired authority to require electric utility and industrial boiler conversions from natural gas or oil to coal, and provide additional standby authority to require conversion from gas to oil where coal conversion is not practicable.
- Provide authority to allocate and establish reasonable prices for propane in order to assure an equitable distribution of propane among historical users and consumers experiencing natural gas curtailments.

Because certain areas of the country, particularly the Mid-Atlantic and Midwestern States, face especially serious potential shortages, I urge prompt Congressional action to enact this legislation. Without such action, we will lack the ability to respond to these serious situations in the timely and effective fashion that their gravity warrants.

The Office of Management and Budget has advised that enactment of this proposed legislation would be in accord with the program of the President.

Sincerely,

Frank G. Zarb
Administrator

enclosure

FEDERAL ENERGY ADMINISTRATION

WASHINGTON, D.C. 20461

OFFICE OF THE ADMINISTRATOR

Honorable Carl Albert
Speaker of the House
of Representatives
Washington, D. C. 20515

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Frank G. Zarb
Administrator

Section by Section Analysis
Natural Gas Emergency Standby Act of 1975

Title I

Section 101. Sets forth Congressional findings and purposes applicable to whole Act.

Section 102. Sets expiration date for whole Act of June 30, 1977.

Title II

Section 201. Names Title as the "Interstate Pipeline Emergency Natural Gas Purchases Act of 1975."

Section 202. States the purpose of Title to grant the Federal Power Commission authority to allow interstate pipeline companies with insufficient natural gas for their high priority consumers to acquire natural gas from intra-state sources and other interstate pipeline companies on an emergency basis free from the provisions of the Natural Gas Act.

Section 203. Definitions.

Section 204. Amends section 7(c) of the Natural Gas Act to permit the FPC to exempt from the provisions of the Natural Gas Act the transportation, sale, transfer or exchange of natural gas in connection with emergency acquisitions of natural gas by interstate pipelines.

Exemptions could be granted for transactions between a producer, interstate pipeline company, intrastate pipeline company or gas distributing company, to or with an interstate pipeline company which does not have a sufficient supply of natural gas to fulfill the requirements of its high priority consumers of natural gas, and which is curtailing deliveries pursuant to a curtailment plan on file with the FPC. Exemptions could not exceed 180 days in duration.

Title III

Section 301. Names Title as the "Curtailed Consumers Emergency Natural Gas Purchases Act of 1975."

Section 302. States the purpose of Title to allow curtailed high priority consumers of natural gas to purchase natural gas from the intrastate market by enabling them to arrange for the transportation of such gas by regulated interstate pipeline companies.

Section 303. Definitions.

Section 304. Subsection (a) amends section 1 of the Natural Gas Act to make clear that FPC jurisdiction shall not extend to transportation by gas distributing companies of natural gas purchased under this Title by curtailed high priority consumers. Subsection (b) amends subsection 7(c) of the Natural Gas Act by providing explicit authority to the FPC to issue a certificate of public convenience and necessity to transport natural gas purchased under this Title, without the need to review and approve the price paid by a high priority consumer directly to the seller.

Title IV

Section 401. Names Title as "Emergency Energy Supply and Environmental Coordination Act Amendments of 1975."

Section 402. States the purpose of Title to continue the conservation of natural gas and petroleum products by fostering the use of coal by powerplants and major fuel burning installations, and if coal cannot be utilized, to provide authority to prohibit the use of natural gas when petroleum products can be substituted.

Section 403. Amends section 2 of the Energy Supply and Environmental Coordination Act of 1974 ("ESECA") to extend FEA's recently expired authority to require conversion to coal by gas and oil burning powerplants and major fuel burning installations, and to add a new authority to require conversion from gas to oil where coal conversion is not feasible and certain other requirements are met, including a certification by the Administrator of the Environmental Protection Agency that the particular powerplant or installation will be able to comply with the Clean Air Act while burning oil. Certain technical amendments of a conforming nature are also made to section 2 of ESECA.

Section 404. Amends section 11(g)(2) of ESECA by extending the expiration of Section 11 from June 30, 1975 to June 30, 1977.

Title V

Section 501. Names Title as the "Propane Standby Allocation Act of 1975."

Section 502. States the purpose of Title to provide standby authority for the President to allocate propane during periods of actual or threatened severe shortages of natural gas.

Section 503. Definitions.

Section 504. Provides standby authority to the President to issue such orders and regulations as may be appropriate in order to provide for systematic allocation and pricing of propane. Prior findings are required that shortages of natural gas exist or are imminent and that such shortages constitute a threat to public health, safety or welfare.

Section 505. Sets forth criminal and civil sanctions for violation of regulations and orders made pursuant to the Title, as well as authority to issue orders to insure compliance and to afford restitution to injured parties.

Section 506. Provides a defense under antitrust or contract law for failures or delays in providing, selling or offering for sale propane if such failures or delays result from compliance with the Title.

Section 507. Prescribes administrative procedures including the manner by which rulemakings are to be initiated. Also, sets forth the requirement for administrative procedures by which any inequities or hardships arising from the administration of the program can be prevented.

Section 508. Provides for judicial review by the federal courts, including the Temporary Emergency Court of Appeals and the Supreme Court, of the provisions of the Title and any rules, regulations or orders issued to carry out the purposes of the Title.

Section 509. Provides injunctive and other remedies for insuring compliance with the Title.

Section 510. Specifies subpoena power and the authority to inspect premises, inventories, documents and other items to carry out the provisions of this Title. It also provides for paying witnesses' fees and mileages and for compelling attendance of witnesses.

Section 511. Establishes a private right of action based on any legal wrong suffered because of acts or practices arising out of this Title.

Section 512. Amends the Federal Energy Administration Act of 1974 to clarify that any regulated pricing of propane may reflect factors other than the cost attributed to its production.

Section 513. Authorizes the President to delegate powers granted by Title to other offices, departments and agencies of the United States.

Section 514. Provides for the relationship of this Title to state and municipal laws, rules, regulations, orders, or ordinances.

Title VI

Section 601. Provides that the termination of the Act or of the authorities granted under the Act does not affect any action or pending proceedings not finally determined on such date, nor any action or proceeding based upon any act committed prior to such date.

Section 602. Preserves the validity of the remainder of the Act and its continuing application if any particular provision or application is held invalid.

A BILL

To provide temporary authority for the President, the Federal Power Commission and the Federal Energy Administration to institute emergency measures to minimize the adverse effects of natural gas shortages; and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress Assembled, That this Act may be cited as the "Natural Gas Emergency Standby Act of 1975."

Title I

Section 101. (a) The Congress hereby finds that:

(1) inadequate domestic production of natural gas has resulted in serious natural gas shortages which threaten severe economic dislocations and hardships, including loss of jobs, closing of factories and businesses, reduction of agricultural production, and curtailment of vital public services;

(2) such shortages constitute a threat to the public health, safety, and welfare and to national defense;

(3) such shortages have created an unreasonable burden on certain areas of the country and on certain sectors of the economy;

(4) such shortages affect interstate and foreign commerce by jeopardizing the normal flow of commerce;

(5) while deregulation of wellhead prices of new natural gas is urgently needed to minimize such shortages in the future, serious shortages during the next two winters cannot be averted; and

(6) the adverse effects of such shortages can be minimized most efficiently and effectively by providing emergency authority to permit prompt further action by the Federal government to supplement existing Federal, State and local government efforts to deal with such shortages.

(b) The purpose of this Act is to authorize the President or his delegate, the Federal Power Commission and the Federal Energy Administration to deal with existing and imminent shortages and dislocations of natural gas in the national distribution system which jeopardize the public health, safety, and welfare; and to provide protection of natural gas service to customers who use natural gas for high priority end uses during periods of curtailed deliveries by natural gas companies. The authority granted under this Act shall be exercised for the purpose of minimizing the adverse impacts of shortages or dislocations on the American people and the domestic economy.

Section 102. This Act shall expire at midnight June 30, 1977.

Title II

Section 201. This Title may be cited as the "Interstate Pipeline Emergency Natural Gas Purchases Act of 1975."

Section 202. The purpose of this Title is to grant the Federal Power Commission authority to allow interstate pipeline companies with insufficient natural gas for their high priority consumers of natural gas to acquire natural gas from intrastate sources and other interstate pipeline companies on an emergency basis free from the provisions of the Natural Gas Act.

Section 203. Section 2 of the Natural Gas Act (15 U.S.C. 717a) is amended by inserting immediately after subsection (9) thereof the following new subsections:

"(10) 'Gas distributing company' means a person involved in the distribution or transportation of natural gas for ultimate public consumption for domestic, commercial, industrial or any other use but does not include a natural-gas company as defined in subsection (6) of this section.

"(11) 'High priority consumer of natural gas' means a person so defined by the Commission by rules and regulations."

Section 204. Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) is amended by designating the two unnumbered paragraphs thereof as paragraphs (1) and (2) and by adding

at the end of paragraph (2) as designated hereby the following:

"Provided further, That within fifteen days after the enactment of this amendment, the Commission may by regulation exempt from the provisions of this Act the transportation, sale, transfer or exchange of natural gas from any source, other than any land or subsurface area within the Outer Continental Shelf as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)), by a producer, an interstate pipeline company, an intrastate pipeline company or gas distributing company, to or with an interstate pipeline company which does not have a sufficient supply of natural gas to fulfill the requirements of its high priority consumers of natural gas, and which is curtailing deliveries pursuant to a curtailment plan on file with the Commission. No exemption granted under this proviso shall exceed one hundred and eighty days in duration."

Title III

Section 301. This Title may be cited as the "Curtailed Consumers Emergency Natural Gas Purchases Act of 1975."

Section 302. The purpose of this Title is to allow curtailed high priority consumers of natural gas to purchase natural gas from the intrastate market by enabling them to arrange for the transportation of such gas by regulated interstate pipeline companies.

Section 303. Section 2 of the Natural Gas Act (15 U.S.C. 717a), as amended by section 203 of this Act, is amended further by inserting immediately after subsection (11) thereof, the following new subsection:

"(12) 'Independent producer' means a person, as determined by the Commission, who is engaged in the production of natural gas and who is not (i) an interstate pipeline company or (ii) affiliated with and interstate pipeline company."

Section 304. (a) Section 1 of the Natural Gas Act (15 U.S.C. 717) is amended by adding at the end thereof the following new subsection:

"(d) The provisions of this Act shall not apply to the use of the facilities of a gas distributing company for the transportation of natural gas produced by an independent producer from lands, other than any land or subsurface area within the Outer Continental Shelf as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)), and sold by such a producer directly to a high priority consumer of natural gas, provided that the rates applicable to the use of such facilities for the transportation of natural gas described in this subsection are subject to regulation by a State commission. The transportation of natural gas exempted from the provisions of this Act by this subsection is hereby declared to be a matter primarily of local concern and subject to regulation by the several States. A certification from such State

commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction."

(b) Subsection (c) of section 7 of the Natural Gas Act (15 U.S.C. 717f(c)), as amended by section 204 of this Act, is amended further by inserting therein the following new paragraph:

"(3) Pursuant to the substantive and procedural provisions of this section the Commission may in its discretion issue a certificate of public convenience and necessity upon filing of an application by a natural gas company to transport natural gas produced by independent producers from lands, other than any land or subsurface area within the Outer Continental Shelf as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)), and sold by such producers directly to existing high priority consumers of natural gas whose current supply of natural gas is curtailed due to natural gas company curtailment plans on file with the Commission. Provided, however, That in issuing a certificate pursuant to this paragraph, the Commission need not review or approve the price paid by a high priority consumer of natural gas directly to an independent producer."

Title IV

Section 401. This Title may be cited as the "Emergency Energy Supply and Environmental Coordination Act Amendments of 1975."

Section 402. The purpose of this Title is to continue the conservation of natural gas and petroleum products by fostering the use of coal by power plants and major fuel burning installations, and if coal cannot be utilized, to provide authority to prohibit the use of natural gas when petroleum products can be substituted.

Section 403. Section 2 of the Energy Supply and Environmental Coordination Act of 1974 is amended by:

(a) Redesignating subsections (e) and (f) as subsections (f) and (g), respectively;

(b) Amending redesignated subsection (g)(1) to read as follows:

"(g)(1) Authority to issue orders or rules under subsections (a), (b), (d), and (e) of this section shall expire at midnight June 30, 1977. Authority to issue orders under subsection (c) shall expire at midnight June 30, 1975. Any rule or order issued under subsections (a) through (e) may take effect at any time before January 1, 1979."

(c) Inserting after subsection (d) the following new subsection (e):

"(e)(1) The Federal Energy Administrator may, by order, prohibit any powerplant or major fuel burning installation from burning natural gas if--

"(A) the Administrator determines that:

"(i) such powerplant or installation had on June 30, 1975 (or at any time thereafter) the capability and necessary plant equipment to burn petroleum products,

"(ii) an order under subsection (a) may not be issued with respect to such powerplant or installation,

"(iii) the burning of petroleum products by such powerplant or installation in lieu of natural gas is practicable,

"(iv) petroleum products will be available during the period the order is in effect,

"(v) with respect to powerplants, the prohibition under this subsection will not impair the reliability of service in the area served by the plant, and

"(B) the Administrator of the Environmental Protection Agency has certified that such powerplant or installation will be able to burn the petroleum products which the Federal Energy Administrator has determined under subparagraph (A)(iv) will be available to it and will be able to comply with the Clean Air Act (including applicable implementation plans).

"(2) An order under this subsection shall not take effect until the earliest date the Administrator of the Environmental Protection Agency has certified that the powerplant or installation can burn petroleum products and can comply with the Clean Air Act (including applicable implementation plans).

"(3) The Federal Energy Administrator may specify in any order issued under this subsection the periods of time during which the order will be in effect and the quantity (or rate of use) of natural gas that may be burned by a powerplant or major fuel burning installation during such periods, including the burning of natural gas by a powerplant to meet peaking load requirements."

Section 404. Section 11 (g) (2) of the Energy Supply and Environmental Coordination Act of 1974 is amended by striking out "June 30, 1975" wherever it appears and inserting in lieu thereof "June 30, 1977."

Title V

Section 501. This Title may be cited as the "Propane Standby Allocation Act of 1975."

Section 502. The purpose of this Title is to provide standby authority for the President to allocate propane during periods of actual or threatened severe shortages of natural gas.

Section 503. For purposes of this Title, the following

terms shall have the following meanings:

(a) "Propane" means propane derived from natural gas streams or crude oil, and mixtures containing propane.

(b) "United States" means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

Section 504. Upon finding that shortages of natural gas exist or are imminent and upon finding that such shortages or potential shortages constitute a threat to the public health, safety or welfare, the President is authorized to issue orders and regulations as he deems appropriate to provide, consistent with section 507 of this Title, for the establishment of priorities of use and for systematic allocation and pricing of propane in order to meet the essential needs of various sections of the United States and to lessen anticompetitive effects resulting from shortages of natural gas.

Section 505. (a) Whoever willfully violates any order or regulation under this Title shall be fined not more than \$5,000 for each violation.

(b) Whoever violates any order or regulation under this Title shall be subject to a civil penalty of not more than \$2,500 for each violation.

(c) Any person or agency to whom the President has delegated his authority pursuant to section 513 of this Title may issue such orders and notices as are deemed necessary to insure compliance with any order or regulation issued pursuant to section 504 of this Title, or to remedy the effects of violations of any such orders or regulations.

Section 506. There shall be available as a defense to any action brought under the antitrust laws, or for breach of contract in any Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange any product covered by this Title that such delay or failure was caused solely by compliance with the provisions of this Title or with any regulations or any orders issued pursuant to this Title.

Section 507. (a) Subject to subsections (b), (c), and (d) of this section, which shall apply to any rule or regulation, or any order having the applicability and effect of a rule as defined in section 551 (4) of Title 5, United States Code, and issued pursuant to this Title the functions exercised under this Title are excluded from the operation of Subchapter II of Chapter 5, and Chapter 7 of Title 5, United States Code, except as to the requirements of sections 552, 553, and 555(e) of Title 5, United States Code.

(b) Notice of any proposed rule, regulation, or order described in subsection (a) shall be given by publication of such proposed rule, regulation, or order in the Federal Register. In each case, a minimum of ten days following such publication shall be provided for opportunity to comment; except that the requirements of this paragraph as to time of notice and opportunity to comment may be waived where strict compliance is found to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out

in detail in such rule, regulation, or order.

(c) In addition to the requirements of subsection (b), if any rule, regulation, or order described in subsection (a) is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be afforded. To the maximum extent practicable, such opportunity shall be afforded prior to the issuance of such rule, regulation, or order, but in all cases such opportunity shall be afforded no later than forty-five days after the issuance of any such rule, regulation, or order. A transcript shall be kept of any oral presentation.

(d) The President or any officer or agency authorized to issue the rules, regulations, or orders described in subsection (a) shall provide for the making of such adjustments, consistent with the other purposes of this Title, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens and shall, by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, rescission of, exception to, or exemption from such rules, regulations, and orders. If such person is aggrieved or adversely affected by the denial of a request for such action under the preceeding sentence, he may request a review of such denial by the President or the officer or agency to whom he has delegated his authority pursuant to section 513 of this Title and may obtain judicial review in

accordance with section 508 of this Title when such denial becomes final. The President or the officer or agency shall, by rule, establish appropriate procedures, including a hearing where deemed advisable, for considering such requests for action under this paragraph.

Section 508. (a) The district courts of the United States shall have exclusive original jurisdiction of cases or controversies arising under this Title or under regulations or orders issued thereunder, notwithstanding the amount in controversy; except that nothing in this subsection or in subsection (h) of this section affects the power of any court of competent jurisdiction to consider, hear, and determine any issue by way of defense (other than a defense based on the constitutionality of this Title or the validity of action taken by any agency under this Title) raised in any proceeding before such court. If in any such proceeding an issue by way of defense is raised based on the constitutionality of this Title or the validity of actions under this Title, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of Chapter 89 of Title 28, United States Code.

(b) Except as otherwise provided in this section, exclusive appellate jurisdiction is vested in the Temporary Emergency Court of Appeals, a court which is currently in existence, but which is independently authorized by this

section. The court, a court of the United States, shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. The Chief Justice of the United States shall designate one of such judges as chief judge of the Temporary Emergency Court of Appeals, and may, from time to time, designate additional judges for such court and revoke previous designations. The chief judge may, from time to time, divide the court into divisions of three or more members, and any such division may render judgment as the judgment of the court. Except as provided in subsection (e) (2) of this section, the court shall not have power to issue any interlocutory decree staying or restraining in whole or in part any provision of this Title, or the effectiveness of any regulation or order issued thereunder. In all other respects, the court shall have the powers of a circuit court of appeals with respect to the jurisdiction conferred on it by this Title. The court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases over which it has jurisdiction under this Title. The court shall have a seal, hold sessions at such places as it may specify, and appoint a clerk and such other employees as it deems necessary or proper.

(c) Appeals from the district courts of the United States in cases and controversies arising under regulations or orders issued under this Title shall be taken by the filing of a notice of appeal with the Temporary Emergency Court of Appeals within thirty days of the entry of judgment by the district court.

(d) In any action commenced under this Title in any district court of the United States in which the court determines that a substantial constitutional issue exists, the court shall certify such issue to the Temporary Emergency Court of Appeals. Upon such certification, the Temporary Emergency Court of Appeals shall determine the appropriate manner of disposition which may include a determination that the entire action be sent to it for consideration or it may, on the issues certified, give binding instructions and remand the action to the certifying court for further disposition.

(e) (1) Subject to paragraph (2) no regulation of any agency exercising authority under this Title shall be enjoined or set aside, in whole or in part, unless a final judgment determines that the issuance of such regulation was in excess of the agency's authority, was arbitrary or capricious, or was otherwise unlawful under the criteria set forth in section 706(2) of Title 5, United States Code, and no order of such agency shall be enjoined or set aside, in whole or in part, unless a final judgment determines that

such order is in excess of the agency's authority, or is based upon findings which are not supported by substantial evidence.

(2) A district court of the United States or the Temporary Emergency Court of Appeals may enjoin temporarily or permanently the application of a particular regulation or order issued under this Title to a person who is a party to litigation before it. Except as provided in this subsection, no interlocutory or permanent injunction restraining the enforcement, operation or execution of this Title, or any regulation or order issued thereunder, shall be granted by any district court of the United States or judge thereof. Any such court shall have jurisdiction to declare (i) that a regulation of an agency exercising authority under this Title is in excess of the agency's authority, is arbitrary or capricious, or is otherwise unlawful under the criteria set forth in section 706(2) of Title 5, United States Code, or (ii) that an order or such agency is invalid upon a determination that the order is in excess of the agency's authority, or is based upon findings which are not supported by substantial evidence. Appeals from interlocutory decisions by a district court of the United States under this paragraph may be taken in accordance with the provisions of section 1292 of Title 28, United States Code; except that reference in such section to

the courts of appeals shall be deemed to refer to the Temporary Emergency Court of Appeals.

(f) The effectiveness of a final judgment of the Temporary Emergency Court of Appeals enjoining or setting aside in whole or in part any provision of this Title, or any regulation or order issued thereunder shall be postponed until the expiration of time for filing a writ of certiorari with the Supreme Court under subsection (g). If such petition is filed, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such petition becomes final, or until other final disposition of the action by the Supreme Court.

(g) Within thirty days after entry of any judgment or order by the Temporary Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a United States court of appeals as provided in section 1254 of Title 28, United States Code. The Temporary Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Temporary Emergency Court of Appeals, shall have exclusive jurisdiction to determine the constitutional validity of any provision of this Title or of

any regulation or order issued under this Title. Except as provided in this section, no court, Federal or State, shall have jurisdiction or power to consider the constitutional validity of any provision of this Title or of any such regulation or order, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Title authorizing the issuance of such regulations or orders, or any provision of any such regulation or order, or to restrain or enjoin the enforcement of any such provision.

Section 509. Whenever it appears to any person or agency authorized by the President pursuant to section 513 of this Title that any individual or organization has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any order or regulation under this Title, such person or agency may request the Attorney General to bring an action in the appropriate district court of the United States to enjoin such acts or practices, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. Any such court may also issue mandatory injunctions commanding any person to comply with any such order or regulation. In addition to such injunctive relief, the court may also order restitution of moneys received in violation of any such order or regulation.

Section 510. (a) An agency or person exercising authority pursuant to section 513 of this Title shall have authority,

for any purpose related to this Title, to sign and issue subpoenas for the attendance and testimony of witnesses and the production of relevant books, papers, and other documents, and to administer oaths.

(b) Upon presenting appropriate credentials and a written notice to the owner, operator, or agency in charge, any agency or person exercising authority pursuant to section 513 of this Title may enter, at reasonable times, any business premise or facility and inspect, at reasonable times and in a reasonable manner, any such premise or facility, inventory and sample any stock of energy resources therein, and examine and copy books, records, papers, or other documents, in order to obtain information as necessary or appropriate for the proper exercise of functions under this Title and to verify the accuracy of any such information.

(c) Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of refusal to obey a subpoena served upon any person under the provisions of this section, the agency or person authorizing such subpoena may request the Attorney General to seek the aid of the district court of the United States for any district in which such person is found to compel such person, after notice, to appear and give testimony, or to appear and produce documents before the agency or person.

Section 511. Any person suffering legal wrong because of any act or practice arising out of this Title, or any order or regulation issued pursuant thereto, may bring an action in a district court of the United States, without regard to the amount in controversy, for appropriate relief, including an action for a declaratory judgment, writ of injunction (subject to the limitations in Section 508 of this Title), and/or damages.

Section 512. Section 5 of the Federal Energy Administration Act of 1974 (15 U.S.C. 761) is amended in subsection (b) by adding the word "and" after the semicolon in paragraph 10; by deleting paragraph 11; and by redesignating paragraph 12 as paragraph 11.

Section 513. The President may delegate the performance of any function under this Title to such offices, departments, and agencies of the United States as he deems appropriate.

Section 514. (a) No law, rule, regulation, order or ordinance of any State or municipality in effect on the date of enactment of this Title, or which may become effective thereafter, shall be superseded by any provision of this Title or any rule, regulation or order issued pursuant to this Title except insofar as such law, rule, regulation, order or ordinance is inconsistent with the provisions of this Title or any rule, regulation or order issued thereunder.

Title VI

Section 601. Termination of this Act or the authorities granted under this Act shall not affect any action or pending proceedings, civil or criminal, not finally determined on such date, nor any action or proceeding based upon any act committed prior to such date.

Section 602. If any provision of this Act, or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Retail Service Station
Dealers "Day in Court"

A BILL

To provide for the protection of franchised dealers of petroleum products from coercive business practices, 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 "Gasoline Dealers' Protection Act of 1975."

Findings and Purposes

Section 1.(a) The Congress hereby finds that:

(1) Retail gasoline dealers constitute a significant element in the distribution of petroleum products in interstate commerce;

(2) The terms and conditions of petroleum products franchises govern virtually every aspect of the retail dealer's business; and

(3) Good faith performance of the obligations and duties set forth in petroleum products franchises promotes efficiency and fair dealing in retail petroleum marketing, and contributes to the public welfare.

(b) It is the purpose of this Act --

(1) to supplement the antitrust laws of the United States by providing retail sellers of petroleum products with judicial recourse against certain business practices affecting interstate commerce;

(2) to enable a retail seller of petroleum products to

bring a civil action for declaratory or injunctive relief in a District Court of the United States and to recover threefold any damages sustained from the failure of his supplier or franchisor to act in good faith in performing or complying with the terms or conditions of a petroleum products franchise;

(3) to permit retail sellers of petroleum products to obtain redress, including treble damages, for coercive or intimidative terminations and non-renewals of lease and franchise agreements; and,

(4) to require refiners and other distributors of petroleum products to give effective and timely notice of terminations and non-renewals of lease and franchise agreements.

Section 2. As used in this Act, the term -

(1) "Commerce" means commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(2) "Distributor" or "distributorship" means a person engaged in commerce in any State in the marketing of petroleum products through the sale, consignment, or distribution of such products to wholesale or retail outlets (whether or not such person owns, leases, or in any way controls such outlets) under a petroleum products franchise.

(3) "good faith" means the duty of each party to a petroleum products franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other, so as to guarantee each party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: Provided, That recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith.

(4) "petroleum products" means gasolines and diesel fuels for use in motor vehicles, distillates used as heating fuel, and kerosene;

(5) "petroleum products franchise" means any agreement or contract --

(A) between a refiner or a distributor and a retailer or between a refiner and distributor, under which such retailer or distributor is granted authority to use a trademark, trade name, service mark, or other identifying symbol or name, owned by such refiner or distributor; or,

(B) which grants such a retailer or distributor the authority to occupy premises owned, leased, or in any way controlled by a party to such agreement or contract; or,

(C) which delineates in writing the terms and conditions by which a refiner or distributor supplies a retailer with any petroleum product.

(6) "Refiner" means a firm which refines petroleum products or blends and substantially changes petroleum products, or refines liquid hydrocarbons from oil and gas

field gases, or recovers liquefied petroleum gases incident to petroleum refining and sells those products to distributors, retailers, or ultimate consumers. "Refiner" includes any owner of petroleum products which contracts to have those products refined and then sells the refined petroleum products to distributors, retailers, or ultimate consumers.

(70 "Retailer" means a person engaged in the sale of any petroleum product in commerce under a petroleum products franchise in any State.

(8) "State" means any state of the United States, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Canal Zone.

Section 3(a). A refiner or distributor shall not cancel, fail to renew, or otherwise terminate a petroleum products franchise except for good cause, unless he furnishes prior notification pursuant to this paragraph to each distributor or retailer who is a party to the petroleum products franchise agreement. Such notification shall be in writing and shall be sent to such distributor or retailer by certified mail not less than ninety days prior to the date on which such petroleum products franchise will be canceled, not renewed, or otherwise terminated. Such notification shall contain a statement of intention to cancel, not renew, or to terminate (together with the reasons therefor); the date on which such action shall take effect; and a statement of the remedy or remedies available to such distributor or retailer under

this Act, including a summary of the applicable provisions of this Act.

(b) As used in this section, "good cause" exists when any one or more of the following circumstances have occurred:

(1) conviction of the retailer of any state or federal crime directly related to the petroleum products franchise or the associated business.

(2) fraudulent operation of the retail establishment, such as intentionally damaging automobiles, intentionally overcharging or intentionally deceiving customers as to repairs which are not needed.

(3) court determined mental incompetency of the retailer.

(4) failure of the retailer to pay obligations due the refiner or distributor, such as rent, franchise fees or charges for petroleum products sold to the retailer, within a reasonable period of time.

(5) abandonment of the retail establishment leased from the distributor or refiner.

(6) adulteration, mislabeling, or misbranding of a petroleum product.

(7) violation of trademark rights associated with any petroleum product sold by the refiner or distributor to the retailer pursuant to a petroleum products franchise.

(8) mutual agreement of the parties to terminate the petroleum products franchise.

Section 4(a). A retailer may bring a civil action for declaratory or injunctive relief against any refiner or distributor engaged in commerce, in any district court of the United States in the district in which said refiner or distributor resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained and the costs of suit by reason of the failure of said refiner or distributor to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer: Provided, that in any such suit the refiner or distributor shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith. Provided further, that in any action based on the cancellation, termination or failure to renew a petroleum products franchise, it shall be a complete defense that such cancellation, termination or failure to renew was due to the retailer's failure to comply substantially with the provisions of such franchise.

(b) No action under this section shall be maintained unless it is commenced within three years after the cancellation, failure to renew, termination or modification of the applicable petroleum products franchise.

(c) The court shall grant such relief as is necessary or appropriate to remedy the effects of conduct it finds to exist if such conduct is prohibited under sections 3(a) and 4(a) of this Act. Such relief may include, but is not limited to, declaratory judgments, mandatory or prohibitive injunctive relief, interim equitable relief, and actual and exemplary damages in an amount equal to three times the damages suffered as a result of such action.

RELATIONSHIP TO OTHER LAWS

Section 5(a). Nothing in this Act shall be deemed to convey to any individual, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions under the antitrust laws.

(b). As used in this section, the term "anti-trust law" means --

(1) The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(2) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(4) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes:", approved August 27,

1894 (15 U.S.C. 8 and 9), as amended; and

(5) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(c) No provision of this Act shall be construed as limiting or in any way affecting any remedy or penalty that may result from any legal action or proceeding arising from any acts or practices that occurred --

(1) prior to the date of enactment of this Act, or

(2) outside the scope and purpose, or not in compliance with, the terms of this Act.

SEPARABILITY

Section 6. If any provision of this Act, or the application of such a provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such a provision to any other person or circumstance, shall not be affected thereby.

Treasury Secretary's
Letter to Congress re
Independent Refiners



THE SECRETARY OF THE TREASURY

WASHINGTON 20220

September 10, 1975

Dear Mr. Chairman:

Should the Senate vote today to sustain the President's veto of S.1849, price controls will not be re-imposed. While the President has indicated that he would still attempt to compromise on a phased plan, a windfall profits tax will be necessary if this effort fails.

In the event this occurs, we believe assistance should be provided to small farmers and independent refiners to ease the transition to a free market.

Farmers

- ° Farmers are faced with rising production costs generally and fuels represent about three percent of the cost of farming.
- ° To reduce any added inflationary pressures on food, the Administration requests that a direct tax rebate be provided on the increased price of gasoline and diesel oil as a result of decontrol.
- ° The rebate, which would amount to about six cents per gallon, should be aimed at the smaller farmer. This could be accomplished by either a gross income or a maximum rebate limitation.
- ° While a full rebate to all farmers could cost about \$450-500 million annually, a limitation to those that need it the most -- small farmers -- could cut this cost to \$100-150 million.

Small and Independent Refiners

- ° Small and independent refiners have received some form of protection since 1959.
 - Under the Mandatory Oil Import Program a "sliding scale" was used to provide greater than proportionate shares of imports.
 - Under the Old Oil Entitlements Program, provision was made for a "small refiner bias" which effectively duplicated the maximum subsidy

under the oil import program (about \$.74 per barrel for refineries of less than 10,000 barrels per day and decreasing to zero for refineries greater than 175,000 B/D).

- ° To ensure competition and to avoid a sudden adverse impact to small refiners, the Administration requests that legislation be enacted to continue these subsidies and that they be gradually phased out over three years.
- ° Such protection could cost \$225 million in the first year.

These rebates should be provided out of the revenues collected from a windfall profits tax on old oil. The basic approach of the Finance Committee's windfall profits tax is acceptable to the Administration. We will be happy to work with the Joint Committee staff to make the appropriate modifications.

It is also essential that the remaining revenues raised by the windfall profits tax net of the refunds to farmers and small refiners be returned to the American consumer. The rebates should not exceed the revenues raised by the tax and should be directed primarily to individuals.

We would welcome the opportunity to review these proposals with you and develop the detailed mechanisms to be used.

Sincerely,


Stephen S. Gardner
Acting Secretary

The Honorable
Russell B. Long
Chairman
Senate Finance Committee
United States Senate
Washington, D.C. 20510



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Acting Secretary

Honorable Al Ullman, Chairman
Ways and Means Committee
U.S. House of Representatives
Washington, D. C. 20515