

ALASKA NATURAL GAS TRANSPORTATION ACT OF 1976

SEPTEMBER 22, 1976.—Ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 3521 which on July 21, 1976, was referred jointly to the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 3521) to expedite a decision on the delivery of Alaska natural gas to United States markets, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and is as follows:

SHORT TITLE

SECTION 1. This Act may be cited as the "Alaska Natural Gas Transportation Act of 1976".

CONGRESSIONAL FINDINGS

SEC. 2. The Congress finds and declares that—

- (1) a natural gas supply shortage exists in the contiguous States of the United States;
- (2) large reserves of natural gas in the State of Alaska could help significantly to alleviate this supply shortage;
- (3) the expeditious construction of a viable natural gas transportation system for delivery of Alaska natural gas to United States markets is in the national interest; and
- (4) the determinations whether to authorize a transportation system for delivery of Alaska natural gas to the contiguous States and, if so, which system to select, involve questions of the utmost importance respecting national energy policy, international relations, national security, and economic and environmental impact,

(1)

and therefore should appropriately be addressed by the Congress and the President in addition to those Federal officers and agencies assigned functions under law pertaining to the selection, construction, and initial operation of such a system.

STATEMENT OF PURPOSE

SEC. 3. The purpose of this Act is to provide the means for making a sound decision as to the selection of a transportation system for delivery of Alaska natural gas to the contiguous States for construction and initial operation by providing for the participation of the President and the Congress in the selection process, and, if such a system is approved under this Act, to expedite its construction and initial operation by (1) limiting the jurisdiction of the courts to review the actions of Federal officers or agencies taken pursuant to the direction and authority of this Act, and (2) permitting the limitation of administrative procedures and effecting the limitation of judicial procedures related to such actions. To accomplish this purpose it is the intent of the Congress to exercise its constitutional powers to the fullest extent in the authorizations and directions herein made, and particularly with respect to the limitation of judicial review of actions of Federal officers or agencies taken pursuant thereto.

DEFINITIONS

SEC. 4. As used in this Act:

(1) the term "Alaska natural gas" means natural gas derived from the area of the State of Alaska generally known as the North Slope of Alaska, including the Continental Shelf thereof;

(2) the term "Commission" means the Federal Power Commission;

(3) the term "Secretary" means the Secretary of the Interior;

(4) the term "provision of law" means any provision of a Federal statute or rule, regulation, or order issued thereunder; and

(5) the term "approved transportation system" means the system for the transportation of Alaska natural gas designated by the President pursuant to section 7(a) or 8(b) and approved by joint resolution of the Congress pursuant to section 8.

FEDERAL POWER COMMISSION REVIEWS AND REPORTS

SEC. 5. (a) (1) Notwithstanding any provision of the Natural Gas Act or any other provision of law, the Commission shall suspend all proceedings pending before the Commission on the date of enactment of this Act relating to a system for the transportation of Alaska natural gas as soon as the Com-

mission determines to be practicable after such date, and the Commission may refuse to act on any application, amendment thereto, or other requests for action under the Natural Gas Act relating to a system for the transportation of Alaska natural gas until such time as (A) a decision of the President designating such a system for approval takes effect pursuant to section 8, (B) no such decision takes effect pursuant to section 8, or (C) the President decides not to designate such a system for approval under section 8 and so advises the Congress pursuant to section 7.

(2) In the event a decision of the President designating such a system takes effect pursuant to this Act, the Commission shall forthwith vacate proceedings suspended under paragraph (1) and, pursuant to section 9 and in accordance with the President's decision, issue a certificate of public convenience and necessity respecting such system.

(3) In the event such a decision of the President does not take effect pursuant to this Act or the President decides not to designate such a system and so advises the Congress pursuant to section 7, the suspension provided for in paragraph (1) this subsection shall be removed.

(b)(1) The Commission shall review all applications for the issuance of a certificate of public convenience and necessity relating to the transportation of Alaska natural gas pending on the date of enactment of this Act, and any amendments thereto which are timely made, and after consideration of any alternative transportation system which the Commission determines to be reasonable, submit to the President not later than May 1, 1977, a recommendation concerning the selection of such a transportation system. Such recommendation may be in the form of a proposed certificate of public convenience and necessity, or in such other form as the Commission determines to be appropriate, or may recommend that no decision respecting the selection of such a transportation system be made at this time or pursuant to this Act. Any recommendation that the President approve a particular transportation system shall (A) include a description of the nature and route of the system, and (B) designate a person to construct and operate the system.

(2) The Commission may, by rule, provide for the presentation of data, views, and arguments before the Commission or a delegate of the Commission pursuant to such procedures as the Commission determines to be appropriate to carry out its responsibilities under paragraph (1) of this subsection. Such a rule shall, to the extent determined by the Commission, apply, notwithstanding any provision of law that would otherwise have applied to the presentation of data, views, and arguments.

(3) The Commission may request such information and assistance from any Federal agency as the Commission determines to be necessary or appropriate to carry out its responsibilities under this Act. Any Federal agency requested to submit information or provide assistance shall submit such

information to the Commission at the earliest practicable time after receipt of a Commission request.

(c) (1) The Commission shall accompany any recommendation under subsection (b) (1) with a report, which shall be available to the public, explaining the basis for such recommendation and including for each transportation system reviewed or considered a discussion of the following:

(A) for each year of the 20-year period which begins with the first year following the date of enactment of this Act, the estimated—

(i) volumes of Alaska natural gas which would be available to each region of the United States directly, or indirectly by displacement or otherwise, and

(ii) transportation costs and delivered prices of any such volumes of gas by region;

(B) the effects of each of the factors described in clauses (i) and (ii) of subparagraph (A) on the projected natural gas supply and demand for each region of the United States and on the projected supplies of alternative fuels available by region to offset shortages of natural gas occurring in such region for each such year;

(C) the extent to which the system provides a means for the transportation to United States markets of natural resources or other commodities from sources in addition to the Prudhoe Bay Reserve;

(D) environmental impacts;

(E) safety and efficiency in design and operation and potential for interruption in deliveries of Alaska natural gas;

(F) construction schedules and possibilities for delay in such schedules or for delay occurring as a result of other factors;

(G) feasibility of financing;

(H) extent of reserves, both proven and probable, and their deliverability by year for each year of the 20-year period which begins with the first year following the date of enactment of this Act;

(I) the estimate of the total delivered cost to users of the natural gas to be transported by the system by year for each year of the 20-year period which begins with the first year following the date of enactment of this Act;

(J) capability and cost of expanding the system to transport additional volumes of natural gas in excess of initial system capacity;

(K) an estimate of the capital and operating costs, including an analysis of the reliability of such estimates and the risk of cost overruns; and

(L) such other factors as the Commission determines to be appropriate.

(2) If the Commission recommends the approval of a pipeline transportation system for delivery of Alaska natural gas

to the contiguous States which contemplates reliance on displacement of natural gas in lieu of direct delivery of such gas to any significant extent beyond that proposed by the applicant for such system, it shall submit to the President with such recommendation an analysis of the feasibility and relative costs, reliability and efficiencies in meeting demand requirements in eastern and western regions of the contiguous States through—

(A) the construction and operation of additional pipeline facilities to transport Alaska natural gas directly to such regions, compared with

(B) displacement of natural gas from any region of the United States to be served directly by such system to eastern and western regions or portions thereof not to be served directly by such system.

(3) The analysis prepared under paragraph (2) shall include with respect to any region which was to be served directly under the proposal of the applicant but is to rely on displacement under the Commission recommendation—

(A) the extent to which direct delivery or displacement will assure equality of access to Alaska natural gas and other new sources of natural gas transported by such system;

(B) the extent to which natural gas users in such regions are assured of continued direct delivery of natural gas from present sources and the adequacy of such direct delivered supplies in meeting such users' demand requirements;

(C) the quantities of natural gas estimated to be consumed in the transportation of gas which is to be displaced to such region during the 20-year period which begins on the projected date of initial operation of such system as compared to the quantities estimated to be consumed in such period in the direct delivery of gas to such a region under the applicant's proposal;

(D) the projected price of such displaced natural gas to consumers, the projected sources and reliability of such supplies of displaced gas, and the projected transportation costs of such displaced gas; and

(E) the extent to which the Commission has legal authority to compel displacement of natural gas to any such region or to enforce displacement agreements among or between pipelines and the need for any additional legislation to assure the reliability of displacements to any such region.

(d) The recommendation by the Commission pursuant to this section shall not be based upon the fact that the Government of Canada or agencies thereof have not, by then rendered a decision as to authorization of a pipeline system to transport Alaska natural gas through Canada.

(e) If the Commission recommends the approval of a particular transportation system, it shall submit to the President with such recommendation (1) an identification of those

facilities and operations which are proposed to be encompassed within the term "construction and initial operation" in order to define the scope of directions contained in section 9 of this Act and (2) the terms and conditions permitted under the Natural Gas Act, which the Commission determines to be appropriate for inclusion in a certificate of public convenience and necessity to be issued respecting such system. The Commission shall submit to the President contemporaneously with its report an environmental impact statement prepared respecting the recommended system, if any, and each environmental impact statement which may have been prepared respecting any other system reported on under this section.

OTHER REPORTS

SEC. 6. (a) Not later than July 1, 1977, any Federal officer or agency may submit written comments to the President with respect to the recommendation and report of the Commission and alternative methods for transportation of Alaska natural gas for delivery to the contiguous States. Such comments shall be made available to the public by the President when submitted to him, unless expressly exempted from this requirement in whole or in part by the President, under section 552(b) (1) of title 5, United States Code. Any such written comment shall include information within the competence of such Federal officer or agency with respect to—

- (1) environmental considerations, including air and water quality and noise impacts;
- (2) the safety of the transportation systems;
- (3) international relations, including the status and time schedule for any necessary Canadian approvals and plans;
- (4) national security, particularly security of supply;
- (5) sources of financing for capital costs;
- (6) impact on the national economy, including regional natural gas requirements; and
- (7) relationship of the proposed transportation system to other aspects of national energy policy.

(b) Not later than July 1, 1977, the Governor of any State, any municipality, State utility commission, and any other interested person may submit to the President such written comments with respect to the recommendation and report of the Commission and alternative systems for delivering Alaska natural gas to the contiguous States as they determine to be appropriate.

(c) Not later than July 1, 1977, each Federal officer or agency shall report to the President with respect to actions to be taken by such officer or agency under section 9(a) relative to each transportation system reported on by the Commission under section 5(c) and shall include such officer's or agency's recommendations with respect to the matters to be included under section 7(a) (3) (C) in any decision of the President which designates a system for approval.

(d) Following receipt by the President of the Commission's recommendations, the Council on Environmental Quality shall afford interested persons an opportunity to present oral and written data, views, and arguments respecting the environmental impact statements submitted by the Commission under section 5(e). Not later than July 1, 1977, the Council on Environmental Quality shall submit to the President a report, which shall be contemporaneously made available by the Council to the public, summarizing any data, views, and arguments received and setting forth the Council's views concerning the legal and factual sufficiency of each such environmental impact statement and other matters relating to environmental impact as the Council considers to be relevant.

PRESIDENTIAL DECISION AND REPORT

SEC. 7. (a) (1) As soon as practicable after July 1, 1977, but not later than September 1, 1977, the President shall issue a decision as to whether a transportation system for delivery of Alaska natural gas should be approved under this Act. If he determines such a system should be so approved, his decision shall designate such a system for approval pursuant to section 8. The President in making his decision shall take into consideration the Commission's recommendation pursuant to section 5, the report under section 5(c), and any comments submitted under section 6; and his decision to designate a system for approval shall be based on his determination as to which system, if any, best serves the national interest.

(2) The President, for a period of up to 90 additional calendar days after September 1, 1977, may delay the issuance of his decision and transmittal thereof to the House of Representatives and the Senate, if he determines (A) that there exists no environmental impact statement prepared relative to a system he wishes to consider or that any prepared environmental impact statement relative to a system he wishes to consider is legally or factually insufficient, or (B) that the additional time is otherwise necessary to enable him to make a sound decision on an Alaska natural gas transportation system. The President shall promptly, but in no case any later than September 1, 1977, notify the House of Representatives and the Senate if he so delays his decision and submit a full explanation of the basis of any such delay.

(3) If the President determines to designate for approval a transportation system for delivery of Alaska natural gas to the contiguous States, he shall in such decision—

(A) describe the nature and route of the system designated for approval;

(B) identify those facilities, the construction of which, and those operations, the conduct of which, shall be encompassed within the term "construction and initial operation" for purposes of defining the scope of the directions contained in section 9 of this Act, taking into consideration any recommendation of the Commission with respect thereto;

(C) identify those provisions of law, relating to any determination of a Federal officer or agency as to whether a certificate, permit, right-of-way, lease, or other authorization shall be issued or be granted, which provisions the President finds (i) involve determinations which are subsumed in his decision and (ii) require waiver in order to permit the expeditious construction and initial operation of the transportation system; and

(D) designate an officer of the United States or designate a board, consisting of an officer of the United States who shall serve as chairman and such other persons as the President determines appropriate to serve on such board by reason of background, experience, or position, to serve as Federal inspector of construction of the Alaska natural gas transportation system. No person having a financial interest in the approved transportation system may be so designated by the President. Upon enactment of a joint resolution pursuant to section 8 approving such a system, the President shall appoint the designated Federal inspector who shall—

(i) monitor compliance with applicable laws and terms and the conditions of any applicable certificate, rights-of-way, permit, lease, or other authorization issued or granted under section 9;

(ii) monitor actions taken to assure timely completion of construction schedules and the achievement of quality of construction, cost control, safety, and environmental protection objectives and the results obtained therefrom;

(iii) have the power to compel, by subpoena if necessary, submission of such information as he deems necessary to carry out his responsibilities; and

(iv) keep the President and the Congress currently informed on any significant departures from compliance and issue quarterly reports to the President and the Congress concerning existing or potential failures to meet construction schedules or other factors which may delay the construction and initial operation of the system and the extent to which quality of construction, cost control, safety and environmental protection objectives have been achieved.

(4) If the President determines to designate for approval a transportation system for delivery of Alaska natural gas to the contiguous States, he may identify in such decision such terms and conditions permissible under existing law as he determines appropriate for inclusion with respect to any issuance or authorization directed to be made pursuant to section 9.

(b) The decision of the President made pursuant to subsection (a) of this section shall be transmitted to both Houses of Congress and shall be considered received by such Houses

for the purposes of this section on the first day on which both are in session occurring after such decision is transmitted. Such decision shall be accompanied by a report explaining in detail the basis for his decision with specific reference to the factors set forth in sections 5(c) and 6(a), and the reasons for any revision, modification of, or substitution for, the Commission recommendation and if his decision designates for approval a pipeline transportation system for delivery of Alaska natural gas to the contiguous States which contemplates reliance on displacement of natural gas in lieu of direct delivery of such gas to any significant extent beyond that proposed by the applicant for such system, an analysis containing the information described in paragraphs (2) and (3) of section 5(c).

(c) The report of the President pursuant to subsection (b) of this section shall contain a financial analysis for the transportation system designated for approval. Unless the President finds and states in his report submitted pursuant to this section that he reasonably anticipates that the system designated by him can be privately financed, constructed, and operated, his report shall also be accompanied by his recommendation concerning the use of existing Federal financing authority or the need for new Federal financing authority.

(d) In making his decision under subsection (a) the President shall inform himself, through appropriate consultation, of the views and objectives of the States, the Government of Canada, and other governments with respect to those aspects of such a decision that may involve intergovernmental and international cooperation among the Government of the United States, the States, the Government of Canada, and any other government.

(e) If the President determines to designate a transportation system for approval, the decision of the President shall take effect as provided in section 8, except that the approval of a decision of the President shall not be construed as amending or otherwise effecting the laws of the United States so as to grant any new financing authority as may have been identified by the President pursuant to subsection (c).

CONGRESSIONAL REVIEW

SEC. 8. (a) Any decision under section 7(a) or 8(b) designating for approval a transportation system for the delivery of Alaska natural gas shall take effect upon enactment of a joint resolution within the first period of 60 calendar days of continuous session of Congress beginning on the date after the date of receipt by the Senate and House of Representatives of a decision transmitted pursuant to section 7(b) or subsection (b) of this section.

(b) If the Congress does not enact such a joint resolution within such 60-day period, the President, not later than the end of the 30th day following the expiration of the 60-day period, may propose a new decision and shall provide a de-

tailed statement concerning the reasons for such proposal. The new decision shall be submitted in accordance with section 7(a) and transmitted to the House of Representatives and the Senate on the same day while both are in session and shall take effect pursuant to subsection (a) of this section. In the event that a resolution respecting the President's decision was defeated by vote of either House, no new decision may be transmitted pursuant to this subsection unless such decision differs in a material respect from the previous decision.

(c) For purposes of this section—

(1) continuity of session of Congress is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day calendar period.

(d) (1) This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of each House of Congress, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by paragraph (2) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as those rules relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

(2) For purposes of this Act, the term "resolution" means (A) a joint resolution, the resolving clause of which is as follows: "That the House of Representatives and Senate approve the Presidential decision on an Alaska natural gas transportation system submitted to the Congress on _____, 19____, and find that any environmental impact statements prepared relative to such system and submitted with the President's decision are in compliance with the National Environmental Policy Act of 1969"; the blank space therein shall be filled with the data on which the President submits his decision to the House of Representatives and the Senate; or (B) a joint resolution described in subsection (h).

(3) A resolution once introduced with respect to a Presidential decision on an Alaska natural gas transportation system shall be referred to one or more committees (and all resolutions with respect to the same Presidential decision on an Alaska natural gas transportation system shall be referred to the same committee or committees) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

(4) (A) If any committee to which a resolution with respect to a Presidential decision on an Alaska natural gas

transportation system has been referred has not reported it at the end of 30 calendar days after its referral, it shall be in order to move either to discharge such committee from further consideration of such resolution or to discharge such committee from consideration of any other resolution with respect to such Presidential decision on an Alaska natural gas transportation system which has been referred to such committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same Presidential decision on an Alaska natural gas transportation system), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential decision on an Alaska natural gas transportation system.

(5) (A) When any committee has reported, or has been discharged from further consideration of, a resolution, but in no case earlier than 30 days after the date of receipt of the President's decision to the Congress, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. An amendment to, or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to or, thereafter within such 60-day period, to consider any other resolution respecting the same Presidential decision.

(6) (A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decision of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedures relating to a resolution shall be decided without debate.

(e) The President shall find that any required environmental impact statement relative to the Alaska natural gas transportation system designated for approval by the Presi-

dent has been prepared and that such statement is in compliance with the National Environmental Policy Act of 1969. Such finding shall be set forth in the report of the President submitted under section 7. The President may supplement or modify the environmental impact statements prepared by the Commission or other Federal officers or agencies. Any such environmental impact statement shall be submitted contemporaneously with the transmittal to the Senate and House of Representatives of the President's decision pursuant to section 7(b) or subsection (b) of this section.

(f) Within 20 days of the transmittal of the President's decision to the Congress under section 7(b) or under subsection (b) of this section, (1) the Commission shall submit to the Congress a report commenting on the decision and including any information with regard to that decision which the Commission considers appropriate, and (2) the Council on Environmental Quality shall provide an opportunity to any interested person to present oral and written data, views, and arguments on any environmental impact statement submitted by the President relative to any system designated by him for approval which is different from any system reported on by the Commission under section 5(c), and shall submit to the Congress a report summarizing any such views received. The committees in each House of Congress to which a resolution has been referred under subsection (d) (3) shall conduct hearings on the Council's report and include in any report of the committee respecting such resolution the findings of the committee on the legal and factual sufficiency of any environmental impact statement submitted by the President relative to any system designated by him for approval.

(g) If a decision of the President designating for approval a transportation system takes effect pursuant to this section, any provision of law identified pursuant to section 7(a) (3) (C) in such decision shall be waived with respect to actions to be taken under section 9(a).

(h) (1) At any time after a decision designating a transportation system takes effect pursuant to this section, if the President finds that additional provisions of law applicable to actions to be taken under subsection (a) or (c) of section 9 require waiver in order to permit expeditious construction and initial operation of the approved transportation system, the President may submit such proposed waiver to both Houses of Congress.

(2) Such provisions shall be waived with respect to actions to be taken under subsection (a) or (c) of section 9 upon enactment of a joint resolution pursuant to the procedures specified in subsections (c) and (d) of this section (other than subsection (d) (2) thereof) within the first period of 60 calendar days of continuous session of Congress beginning on the date after the date of receipt by the Senate and House of Representatives of such proposal.

(3) The resolving clause of the joint resolution referred to in this subsection is as follows: "That the House of Repre-

representatives and Senate approve the waiver of the additional provisions of law as proposed by the President, submitted to the Congress on _____, 19 ____." The blank space therein being filled with the date on which the President submits his decision to the House of Representatives and the Senate.

(4) In the case of action with respect to a joint resolution described in this subsection, the phrase "a waiver of additional provisions of law" in subsection (d) shall be substituted for the phrase "the Alaska natural gas transportation system".

AUTHORIZATION

SEC. 9. (a) To the extent that the taking of any action which is necessary or related to the construction and initial operation of the approved transportation system requires a certificate, right-of-way, permit, lease, or other authorization to be issued or granted by a Federal officer or agency, such Federal officer or agency shall—

(1) to the fullest extent permitted by the provisions of law administered by such officer or agency but

(2) without regard to any provisions of law which is waived pursuant to section 8(g) or section 8(h), issue or grant such certificates, permits, rights-of-way, leases and other authorizations at the earliest practicable date.

(b) All actions of a Federal officer or agency with respect to consideration of applications or requests for the issuance or grant of a certificate, right-of-way, permit, lease, or other authorization to which subsection (a) applies shall be expedited and any such application or request shall take precedence over any similar applications or requests of the Federal officer or agency. To carry out the directions contained in this subsection, any Federal officer or agency, upon such officer's or agency's own motion, may waive, in whole or in part, any procedural requirements of any provision of law applicable to the issuance or grant of any certificate, right-of-way, permit lease, or other authorization where such officer or agency determines and so states with respect to any such issuance or grant that the waiver is necessary to permit expeditious and primary consideration of such application or request.

(c) Any certificate, right-of-way, permit, lease, or other authorization issued or granted pursuant to the direction under subsection (a) shall include the terms and conditions required by law unless waived pursuant to a resolution under section 8(h) and may include terms and conditions permitted by law, except that with respect to terms and conditions permitted but not required, the Federal officer or agency, notwithstanding any such other provision of law, shall have no authority to include terms and conditions as would compel a change in the basic nature and general route of the approved transportation system or those the inclusion of which would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

(d) Any Federal officer or agency, with respect to any certificate, permit, right-of-way, lease, or other authorization issued or granted by such officer or agency, may, to the extent permitted under laws administered by such officer or agency add to, amend or abrogate any term or condition included in such certificate, permit, right-of-way, lease, or other authorization except that with respect to any such action which is permitted but not required by law, such Federal officer or agency, notwithstanding any such other provision of law, shall have no authority to take such action if the terms and conditions to be added, or as amended, would compel a change in the basic nature and general route of the approved transportation system or would otherwise prevent or impair in any significant respect the expeditious construction and initial operation of such transportation system.

(e) Any Federal officer or agency to which subsection (a) applies, to the extent permitted under laws administered by such officer or agency, shall include in any certificate, permit, right-of-way, lease, or other authorization issued or granted those terms and conditions identified in the President's decision as appropriate for inclusion except that the requirement to include such terms and conditions shall not limit the Federal officer or agency's authority under subsection (d) of this section.

JUDICIAL REVIEW

SEC. 10. (a) Notwithstanding any other provision of law, the actions of Federal officers or agencies taken pursuant to section 9 of this Act, shall not be subject to judicial review except as provided in this section.

(b) (1) Claims alleging the invalidity of this Act may be brought not later than the 60th day following the date a decision takes effect pursuant to section 8 of this Act.

(2) Claims alleging that an action will deny rights under the Constitution of the United States, or that an action is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right may be brought not later than the 60th day following the date of such action, except that if a party shows that he did not know of the action complained of, and a reasonable person acting in the circumstances would not have known, he may bring a claim alleging the invalidity of such action on the grounds stated above not later than the 60th day following the date of his acquiring actual or constructive knowledge of such action.

(c) (1) A claim under subsection (b) shall be barred unless a complaint is filed prior to the expiration of such time limits in the United States Court of Appeals for the District of Columbia acting as a Special Court. Such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia,

shall have jurisdiction of any such claim in any proceeding instituted prior to or on or after the date of enactment of this Act.

(2) Any such proceeding shall be assigned for hearing and completed at the earliest possible date, shall, to the greatest extent practicable, take precedence over all other matters pending on the docket of the court at that time, and shall be expedited in every way by such court and such court shall render its decision relative to any claim within 90 days from the date such claim is brought unless such court determines that a longer period of time is required to satisfy requirements of the United States Constitution.

(3) Such court shall not have jurisdiction to grant any injunctive relief against the issuance or grant of any certificate, right-of-way, permit, lease, or other authorization except in conjunction with a final judgment entered with respect to a claim filed pursuant to this section. There shall be no review of an interlocutory, or final judgment, decree, or order of such court except that any party may file a petition for certiorari with the Supreme Court of the United States, within 15 days after the date the decision of such court is rendered.

(4) The enactment of a joint resolution under section 8 approving the decision of the President shall be conclusive as to the legal and factual sufficiency of the environmental impact statements submitted by the President relative to the approved transportation system and no court shall have jurisdiction to consider questions respecting the sufficiency of such statements under the National Environmental Policy Act of 1969.

SUPPLEMENTAL ENFORCEMENT AUTHORITY

SEC. 11. (a) In addition to remedies available under other applicable provisions of law, whenever any Federal officer or agency determines that any person is in violation of any applicable provision of law administered or enforceable by such officer or agency or any rule, regulation, or order under such provision, including any term or condition of any certificate, right-of-way, permit, lease, or other authorization, issued or granted by such officer or agency, such officer, or agency, may—

(1) issue a compliance order requiring such person to comply with such provision or any rule, regulation, or order thereunder, or

(2) bring a civil action in accordance with subsection (c).

(b) Any order issued under subsection (a) shall state with reasonable specificity the nature of the violation and a time of compliance, not to exceed 30 days, which the officer or agency, as the case may be, determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(c) Upon a request of such officer or agency, as the case may be, the Attorney General may commence a civil action for

appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed \$25,000 per day for violations of the compliance order issued under subsection (a). Any action under this subsection may be brought in any district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to restrain such violation, require compliance, or impose such penalty or give ancillary relief.

EXPORT LIMITATIONS

SEC. 12. Any exports of Alaska natural gas shall be subject to the requirements of the Natural Gas Act and section 103 of the Energy Policy and Conservation Act, except that in addition to the requirements of such Acts, before any Alaska natural gas in excess of 1,000 Mcf per day may be exported to any nation other than Canada or Mexico, the President must make and publish an express finding that such exports will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

EQUAL ACCESS TO FACILITIES

SEC. 13. There shall be included in the terms of any certificate, permit, right-of-way, lease, or other authorization issued or granted pursuant to the directions contained in section 9 of this Act, a provision that no person seeking to transport natural gas in the Alaska natural gas transportation system shall be prevented from doing so or be discriminated against in the terms and conditions of service on the basis of degree of ownership, or lack thereof, of the Alaska natural gas transportation system.

ANTITRUST LAWS

SEC. 14. Nothing in this Act, and no action taken hereunder, shall imply or effect an amendment to, or exemption from, any provision of the antitrust laws.

AUTHORIZATION FOR FEDERAL INSPECTOR

SEC. 15. There is hereby authorized to be appropriated beginning in fiscal year 1978 and each fiscal year thereafter, such sums as may be necessary to carry out the functions of the Federal inspector designated by the President under section 7, provided the decision of the President which designates such Federal inspector takes effect pursuant to section 8.

SEPARABILITY

SEC. 16. If any provision of this Act, or the application thereof, is held invalid, the remainder of this Act shall not be affected thereby.

CIVIL RIGHTS

SEC. 17. All Federal officers and agencies shall take such affirmative action as is necessary to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving, or participating in any activity conducted under, any certificates, permit, right-of-way, lease, or other authorization granted or issued pursuant to this Act. The appropriate Federal officers and agencies shall promulgate such rules as are necessary to carry out the purposes of this section and may enforce this section, and any rules promulgated under this section through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights of 1964.

EXPIRATION

SEC. 18. This Act shall terminate in the event that no decision of the President takes effect under section 8 of this Act, such termination to occur at the end of the last day on which a decision could be, but is not, approved under such section.

The title of the bill (as amended by the Senate) is amended to reflect the amendment to the text of the bill.

PURPOSE AND BRIEF SUMMARY

The purpose of this legislation is to provide a process for arriving at a sound decision with respect to the selection of a transportation system for the delivery of Alaska natural gas to United States markets and, should any such system be approved, to expedite its construction and initial operation.

The Committee substitute to the bill S. 3521 would alter procedures under existing law for the selection of a transportation system for the delivery of Alaska natural gas in order to expedite both the designation and the construction of such a system. A 4-step process is contemplated.

In the first stage, the Federal Power Commission is directed to suspend current proceedings pursuant to which contesting applicants seek the issuance of a certificate of public convenience and necessity from the Commission authorizing the construction of a transportation system for such gas. The Commission is directed to review the contesting systems proposed by applicants, together with other alternatives, and to report to the President by May 1, 1977. The Commission's report is to analyze various economic and environmental considerations as well as other factors which the Committee believes to be relevant to the selection of an appropriate system. The Commission may recommend approval of a particular system or advise that no system should be approved pursuant to this Act.

In the second stage of the decision-making process, an opportunity is provided for Federal officers and agencies, State governors, other instrumentalities of government, and interested persons to comment on the recommendation and report of the Federal Power Commission.

This device is seen as a means of equipping the President with a full range of information to enable him to arrive at a determination as to whether to submit a decision to the Congress designating a system for approval and, if so, to make an intelligent selection of the system to be designated. All such comments are to be submitted to the President by July 1, 1977. The Council on Environmental Quality is given specific responsibilities to hold hearings on the various environmental impact statements which have been prepared relative to the alternative transportation systems reported on by the Federal Power Commission and to comment formally to the President on the legal and factual sufficiency of each such statement. As is the case with other Federal agencies, this report must be submitted to the President by July 1, 1977, and must be contemporaneously made available to the public.

The President has until September 1, 1977, to either accept the Commission recommendation or designate an alternative system, if he determines that a system should be built. In arriving at his decision, the President shall consider those factors identified in the Commission in its report to him. The President's decision shall be submitted to the Congress and accompanied by a report explaining its basis. The President may delay his decision an additional 90 days if he determines that extra time is necessary to gather environmental impact information, or to enable him to otherwise arrive at a sound decision.

In the third stage of this process, the Congress would review the President's decision under expedited procedures which are designed to assure that no single member or committee may block a vote on whether to approve the President's decision. For the President's decision to take effect, the Congress must enact a joint resolution of approval within the 60-day period following its receipt by both Houses. In the event such a resolution is not enacted in this period, the President then has 30 days in which to make and submit a new decision to the Congress.¹ This second submission is also to be considered under expedited procedures.

The fourth and final phase is to be implemented only in the event that a decision of the President designating a system for approval wins Congressional acceptance. In this event, all Federal officers and agencies whose permission is required to proceed with the construction and initial operation of the approved system are directed to issue the necessary certificates, permits, rights-of-way, leases or other authorization as soon as is practicable. Judicial review of the actions of Federal officers or agencies acting pursuant to this direction may be obtained only in the Court of Appeals of the District of Columbia. Claims will lie only with respect to allegations that the actions complained of deny rights guaranteed under the Constitution or are beyond statutory authority. No such claim may be brought at a date later than 60 days following the complained-of-action. Also, any action seeking to test the validity of the Alaska Natural Gas Transportation Act, itself, must be brought before the Court of Appeals of the District of Columbia not later than the 60th day following enactment of a joint resolution approving the selection of a transportation system.

¹ Excluded from the 60-day and the 30-day period are recess periods of more than 3 days or period of adjournment sine die.

BACKGROUND

1. Alaska Natural Gas Supplies

In 1968, the largest single discovery of oil and gas ever made on the North American Continent was made at Prudhoe Bay on the North Slope of Alaska. A pipeline to transport the oil is more than half-completed and it is anticipated that operation will commence in the fall of 1977. Engineers estimate that during the first few years of production of oil from the North Slope, natural gas will be economically reinjected into the reservoir. By 1980, however, if an economical transportation system were to be completed, Alaska natural gas might be shipped to consumers in the contiguous 48 states and could make a significant contribution to the natural gas requirements of the nation.

There are an estimated 26 trillion cubic feet of proved reserves of natural gas at Prudhoe Bay alone. The proved reserves at Prudhoe Bay are composed of solution gas and gas cap gas. The solution gas is gas produced along with the crude oil. It is uncertain how much of solution gas will be sold and how much re-injected into the field to optimize crude oil recovery. The remaining natural gas at Prudhoe Bay is in a gas cap which if produced would require additional well completions. It is also uncertain how much (if any) natural gas from the gas cap will be permitted to be produced in the early years of oil production. The Commissioner of Natural Resources for the State of Alaska has responsibility for review of production plans to assure that they do not waste oil or gas. The State, in conjunction with H. K. Van Poolen, has undertaken to develop a model of the effect of gas production upon oil production levels. Current deliverability estimates from Prudhoe Bay range from 1.2 to 3.3 billion cubic feet per day, with a general consensus at around 2.0 Bcf to 2.25 Bcf per day.

Additional reserves of natural gas have been discovered in Canada's MacKenzie Delta and Beaufort Sea. While there is uncertainty regarding deliverability estimates from these reserves, current projections range from 0.4 to 1.25 Bcf per day. Improved information should be available when the current drilling season is completed.

Other areas in Alaska, including Naval Petroleum Reserve No. 4 and offshore areas have been estimated to contain as much as 150 trillion cubic feet of undiscovered recoverable natural gas resources. The deliverability from these Alaskan natural gas reserves has not yet been determined, but is among the factors that should be considered in reaching a decision on an Alaskan gas transportation system.

The level of natural gas deliveries to the pipeline system is an important variable that affects both economic feasibility and consumer costs, since the delivered unit cost of Alaska natural gas is affected by the amount of natural gas transported.

Under the current estimates of natural gas deliverability from Prudhoe Bay, it would provide up to 6 percent of the Nation's total natural gas supply. If additional Alaska natural gas resources were developed, Alaska's importance as a source of supply of natural gas to U.S. consumers would greatly increase.

2. Proceedings Before the FPC

Under the existing law, no person may construct or extend facilities for the transportation of natural gas in interstate commerce without

the FPC issuing a certificate of public convenience and necessity authorizing such construction or extension. Since January of 1975, proceeding with respect to transporting the Prudhoe Bay gas have been underway before the Commission. The present proceedings involve more than 100 intervenors, in addition to competing groups of applicants. The intervenors include pipelines, distributing companies, customers, state and local government agencies, Congressmen, and individual citizens. Approximately 150 witnesses have testified, presenting over 27,000 pages of testimony and tens of thousands of additional pages of exhibits.

In addition, the Secretary of the Interior, in response to the Congressional requirement under section 302 of Public Law 93-153, the Trans-Alaska Oil Pipeline Authorization Act, has investigated and reported to Congress concerning the feasibility of various Alaska natural gas transportation system proposals. The Interior Department, pursuant to the Mineral Leasing Act of 1920, has authority to grant right-of-way permits for the use of federal lands for natural gas pipelines.

3. Pending Applications for Approval of a Transportation System

The following describe the current proposals of three applicants for transporting the Alaskan gas to the contiguous 48 States. It should be noted that these applications have undergone revisions during the FPC hearings and could be further modified by the inclusion of terms and conditions required of any approved system.

ARCTIC GAS SYSTEM

In March, 1974, Alaskan Arctic Gas Pipeline, a consortium of American and Canadian companies, applied for FPC, Department of Interior and Canadian approval of construction of an all pipeline system to bring gas from Prudhoe Bay to the lower contiguous 48 states. The 48-inch chilled pipeline would go east across the North Slope of Alaska approximately 195 miles to the MacKenzie Delta region in the northwestern part of the Northwest Territories. From there, the route would run south through Canada to a point near Carolina Junction, Alberta. Here, Canadian gas from MacKenzie Delta and potential discoveries in the Beaufort Sea would be removed and transported to Canadian markets through the existing pipeline system. The pipeline would then diverge, with an expanded western leg running south to Kingsgate, British Columbia, near the Northern Idaho border, and the new eastern leg running to Morely, Saskatchewan on the Montana border. This portion of the line would total 2,305 miles in length, and is proposed to have a start-up capacity of 3.25 BCFD, expanding to carry 4.5 BCFD over a 4-year period. The Northern Border pipeline segment of the project would then carry the gas to eastern and midwest markets through 1,138 miles of 42" diameter pipeline from the Montana/Canada border terminating in Illinois. Carrying capacity of this leg would be initially 1.5 BCFD with a future scale up to 3.0 BCFD. Pacific Gas Transmission and Pacific Gas and Electric would construct 874 miles of 36" diameter pipeline from the Idaho/Canada border terminating at Antioch, California, to serve the western market.

EL PASO ALASKA COMPANY

In September, 1974, El Paso filed an application with the FPC for certification of their proposed gas transportation system. The Alaska portion of the system calls for construction of 809 miles of 42" chilled pipeline roughly paralleling the Alyeska oil pipeline from Prudhoe Bay to a gas liquefaction plant located on Prince William Sound at Point Graving, Alaska. There the gas would be converted to liquid natural gas (LNG) and shipped via eleven cryogenic tankers 1900 nautical miles south to regasification facilities in Southern California at Point Conception. The revaporized gas would then reach markets in the lower 48 states by displacement through existing pipelines and approximately 800 miles of new pipeline. Initial capacity is estimated at approximately 1.2 BCFD, with the capacity of increasing to 3.4 BCFD as more gas comes on stream.

NORTHWEST/ALCAN PIPELINE CORPORATION

In July, 1976, Northwest Pipeline Corporation applied to the FPC for certification of a transportation system for Alaskan gas. The proposed system would entail construction by Northwest of a 42" pipeline from Prudhoe Bay to Delta Junction, following the route of the Alyeska oil pipeline, then down as far as the Yukon border, parallel to the Alcan Highway, a distance of approximately 731 miles. At the Alaska/Yukon border, the gas would enter a new 42" pipeline to be constructed by Foothills Pipe Lines, Ltd., a Canadian Company, which would continue to parallel the Alcan Highway down to Fort Nelson, British Columbia. At Fort Nelson, a portion of the gas would enter the expanded system of Westcoast Transmission, Ltd., a Canadian company, for delivery to U.S./Canadian border near Sumas, Washington. It would then enter the expanded facilities of Northwest in Washington and Oregon for delivery to the western states. The remaining portion of the gas would travel through new and expanded existing lines of Alberta Gas Trunk Line Co. and Foothills Pipe Lines Ltd. to Monchy, Saskatchewan, for delivery to the midwest and eastern markets.

The Northwest/Alcan system is proposed to have an initial capacity of 1 BCFD's, increasing to 2.4 BCFD as more gas comes on stream. The three Canadian companies involved have applied to the Canadian government for the necessary approval.

In addition to proposals pending before the FPC, Foothills Pipelines Limited has applied to the Canadian National Energy Board to construct an 847 mile 42-inch pipeline from the Mackenzie Delta southward to connect with existing Canadian transmission systems in British Columbia and Alberta, Canada, which would be expanded substantially. This is a competing all-Canadian proposal to the Arctic Gas Project to deliver Mackenzie Delta gas to Canadian markets.

Finally, although no construction permits have yet been requested, the Westinghouse Oceanic Division and the U.S. Maritime Administration have undertaken preliminary conceptual studies of bringing Alaska natural gas energy to the contiguous 48 states in the form of methanol. Under the present proposal, North Slope gas cap gas would not initially be produced. The solution gas would be converted to methanol and initially shipped through the trans-Alaska oil pipeline

and transported by conventional tankers to markets for use as a utility peaking fuel, gasoline additive, petrochemical feedstock, or industrial fuel. As more of the oil pipeline capacity was required to ship crude oil, the proposal contemplates that the methanol would then be transported to East Coast markets by submarine tanker.

The approval of any proposal to transport Alaskan natural gas to other states would have major economic, energy distribution, consumer cost and other impacts on the nation. It would also be a major federal action affecting the environment, and environmental impact statements covering the pending applications have been prepared by the FPC and the Department of the Interior. The committee substitute to S. 3521 would provide the Commission with procedural flexibility to consider natural gas supply and demand, consumer cost, safety and environmental aspects of the previous applications, the new Northwest Pipeline proposal and all reasonable alternatives, with a firm deadline of May 1, 1977, to make its recommendation after weighing and balancing all considerations.

4. Advantages of an Early Decision on Alaska Natural Gas

After decades of rapidly increasing consumption and ample supplies, the Nation is now facing severe shortages of natural gas. Since 1968, consumption each year has been greater than reserves added by new discoveries, according to industry estimates. Domestic natural gas production peaked in 1973 at 22.6 trillion cubic feet, declining to 21.6 Tcf in 1974, and 20.1 Tcf in 1975. Natural gas shortages have caused interruptions for industrial customers. Curtailments of interstate pipeline deliveries below firm contract demand have increased from 0.7 Tcf in 1970 to a possible shortfall of 3.5 Tcf in 1976. Curtailments of natural gas service could become dramatically higher if winter weather conditions are severe, and if industrial production continues to increase as the economy recovers from the recession.

An early decision on whether or not consumers can rely upon receiving approximately a trillion cubic feet of Alaska natural gas per year in the early 1980's would greatly assist future planning and could alleviate severe hardships. If Alaska gas will be available, it could contribute significantly to reducing natural gas shortages. If Alaska natural gas will not be available, then the Nation needs to know so that planning can begin for alternate energy supplies. A prompt decision on an Alaska natural gas transportation system is also needed because construction costs for such large construction projects can and have escalated very rapidly. For example, in 1972, the estimated cost of the trans-Alaska oil pipeline to initial commercial operation was \$1.7 billion. The present estimate is nearly \$7 billion. The production and transportation of Alaska natural gas would be the largest private construction project ever undertaken. Substantial delays could cost consumers large sums of money and threaten the economic feasibility of any Alaska gas transportation system.

Needless delay must be avoided in coming to a decision. However, time is needed for a considered analysis of alternatives, the selection of the most competent applicant to construct and operate the project, and if an Alaska-Canada system is chosen, careful coordination and negotiations with the government of Canada. The timetable established in the Committee substitute to S. 3521, in the judgment of the Committees, reflects these necessities and results in a decision at the

earliest practicable time consistent with prudent government decision-making. Moreover, a central purpose of this legislation is to prevent time-consuming administrative and judicial delay after a decision to construct a system has been made.

5. Potential for Delay Under Existing Law

Under existing law, the potential for delay is great. First, there can be serious delay at the FPC. There are competing applications before the Commission for the construction of an Alaska natural gas transportation system. Under the Natural Gas Act and the Administrative Procedure Act the Commission selection of a successful applicant requires a full adjudicatory proceeding. By authorizing the Commission to establish special procedures, this bill minimizes the possibility of delay inherent in such proceedings. Under this bill, the Commission decision would not be a final decision but a recommendation to the President.

Second, additional years of delay could result because under current law a decision by the Commission to issue a certificate of public convenience and necessity would be subject to judicial review under the Natural Gas Act by the Court of Appeals and the United States Supreme Court. Since judicial review casts a cloud on the applicant's ability to proceed, construction of a major project is generally postponed under the completion of judicial review. It is likely that such review under existing law, with applicants having large financial resources and expert representation, would delay commencement of construction for an extended period of many years.

COMMITTEE CONSIDERATION

The Subcommittee on Energy and Power of the House Interstate and Foreign Commerce Committee met May 17, 18, and 19, 1976, to conduct hearings on the transportation of Alaskan gas to U.S. markets. The bills considered at these hearings were H.R. 11273, H.R. 12983, H.R. 12311, H.R. 13220, H.R. 13651, and similar and related bills.

On July 1, S. 3521, entitled "The Alaskan Natural Gas Transportation Act of 1976", passed the Senate unanimously; on July 21, 1976, it was referred jointly to the House Interstate and Foreign Commerce Committee and the House Interior and Insular Affairs Committee.

On August 6, 1976, hearings were conducted by the Subcommittee on Energy and Power relating to S. 3521. An amended working draft of S. 3521 was placed before the Subcommittee for markup on September 13, 1976, and reported favorably by voice vote, with three amendments. On September 16, 1976, it was placed before the full Committee for consideration. Various technical amendments were made, and the bill was reported favorably with an amendment in the nature of a substitute by voice vote.

SECTION-BY-SECTION EXPLANATION

Section 1. Short title. The section provides a citation reference for this Act, denominating it the "Alaska Natural Gas Transportation Act of 1976."

Section 2. Congressional findings

Section 2 enumerates the findings upon which S. 3521 is based. Those are that first, a natural gas supply shortage currently exists in the lower 48 states which the large proven reserves in Alaska could alleviate to some extent. Second, construction of a viable transportation system to facilitate delivery to U.S. markets is in the national interest. The viability of such system is to be determined by the Commission under section 5 and the President under section 7, for approval of the Congress under section 8. Third, the selection of such system is a decision of such magnitude as to merit the attention of the President and the Congress, as well as Federal agencies.

Section 3. Statement of purpose

It is the purpose of S. 3521 to provide a procedure to arrive at a decision as to the selection, and to expedite the construction and initial operation of a natural gas transportation system to deliver Alaska gas to U.S. markets. The President and the Congress shall participate in this process, and judicial review of the actions of Federal officers and agencies pursuant to the Act is to be limited.

Section 4. Definitions

Section 4 defines terms used in S. 3521. "Alaska natural gas" is defined as gas derived from the area of Alaska generally known as the North Slope, including the Continental Shelf. "Commission" means Federal Power Commission, and "Secretary" means Secretary of the Interior. The term "provision of law" means any provision of a Federal statute, or any rule, regulation, or order issued thereunder. "Approved transportation system" means a system of transporting Alaska gas which has been designated by the President and approved by joint resolution of the Congress.

Section 5. Federal Power Commission Review and Report

Section 5(a) provides for the suspension as soon as practicable of all proceedings pending before the Commission on date of enactment related to the transportation of Alaska natural gas. Such suspension shall remain in effect until a system is selected pursuant to this Act, or until the Act terminates. In the event a system is selected, the suspended proceedings shall be vacated and the Commission is directed to issue a certificate of public convenience and necessity for the designated system. If no system is selected, the Act shall terminate and suspensions imposed pursuant to the Act shall be removed.

It should be noted that the Commission is directed to suspend the proceedings which are currently pending "as soon as is practicable following the date of enactment of this Act." The Committee does not intend a summary suspension. Rather the Commission is to have discretion to break the proceeding at a convenient point. This would allow the Commission to maintain the integrity of the record of this proceeding so that it may be resumed at a logical point should a system fail to win approval under the mechanism provided in this Act.

The Committee has recommended language which would *permit* the Commission to refuse to process requests for action under the Natural Gas Act which relate to a transportation system for the delivery of Alaska natural gas. In most cases, it would be the expectation of the Committee that this authority will be exercised by the Commission to

hold all such matters in abeyance pending the outcome of the decision-making process provided for in this Act. Nonetheless, the Committee chose not to deny the Commission all authority under the Natural Gas Act to process requests or applications in the event that future circumstances develop which would justify the Commission proceeding notwithstanding the pendency of the matter before the President or before the Congress.

Section 5(b)(1) directs the Commission to review all applications for a certificate of public convenience and necessity relating to the transportation of Alaska natural gas pending on date of enactment, and any amendments thereto which are timely made, as well as any reasonable alternative transportation systems. By May 1, 1977 the Commission must submit a recommendation to the President concerning the selection, if any, of such a system. If the recommendation is that the President approve a particular system, the report required pursuant to section 5(c) shall include a description of the basic nature and route of the system, and shall designate a person to construct and operate the system.

Section 5(b)(3) provides for the Commission to gather all relevant information and data appropriate for the preparation of the recommendation mandated by section 5(b). The Commission may request information and assistance from other agencies where deemed to be necessary or appropriate, and any such agencies are directed to comply with such requests for information.

The direction to other agencies to cooperate with the Commission and furnish any requested information has been included to assure that the Commission will have the benefit of the full range of information available to the Federal government in carrying out its responsibilities under this Act. This direction is not intended to override current legal impediments to access to information as may exist in law or to compel disclosures to the Federal Power Commission in situations where the disclosure of such information would imperil or prevent the discharge of the other agencies' responsibilities.

Section 5(c) directs the Commission to accompany the recommendation required under subsection (b)(1) with a report explaining the basis of the recommendation and a discussion of certain enumerated factors for each of the transportation systems reviewed or considered by the Commission's analysis. The factors required to be considered are, first, the volume of Alaska natural gas which would consequently become available to each region of the country, directly, or the amount attributable to Alaska natural gas by displacement, or otherwise, along with transportation costs and delivered prices of such gas, by region.

In choosing a 20-year period for the purposes of analysis, the Committee does not intend that the Commission would be precluded from submitting information over some longer period of time should the Commission determine that this information is relevant to the decision. The Committee is cognizant that no matter which system may finally be approved, deliveries will not occur in the first several years of the 20-year period which begins with the first year occurring after date of enactment. The Committee has chosen this analytical period in order to obtain data on supply and demand trends in the various regions of the country and to highlight any differences as may exist among the competing systems with respect to when deliveries will first occur and in what volumes.

Second, if the Commission selects a system which relies on displacement to a significant extent beyond that proposed by the applicant for such system, the Commission shall include in its report an analysis of the feasibility, and the relative costs, reliability and efficiencies of supplying eastern and western regions of the contiguous States through additional pipeline construction to transport gas directly to the regions compared with a displacement system.

Third, if the Commission recommendation is to rely on displacement where the applicant's proposed system would have provided direct service, the Commission analysis is to include additional enumerated factors under subsection (c) (3).

Fourth, the Commission is to determine the extent to which each system provides a means of transportation to U.S. markets of natural resources and other commodities from areas other than Prudhoe Bay.

Fifth, the Commission must consider the environmental impacts which each system would have.

Sixth, the Commission is directed to analyze the relative safety, efficiency, and potential for interruption of each system.

Seventh, the Commission is to consider construction schedules and the possibilities for delay due to other factors.

Eighth, the Commission is directed to consider the relative feasibility of financing for each system.

Ninth, the Commission must analyze the extent of both the proven and probable reserves, and their deliverability by year for the 20-year period following enactment.

Tenth, the Commission is to estimate the total delivered cost to users of natural gas to be transported by each system by year for a 20-year period following enactment.

Eleventh, the Commission is to consider the capability of each system to expand for the transportation of natural gas, and the relative costs of such expansion.

Twelfth, the Commission is to consider estimated capital and operating costs, including an analysis of the reliability of such estimates and the risk of cost overruns.

Thirteenth, the Commission may consider whatever other factors it deems to be appropriate.

Subsection 5(d) directs the Commission, in formulating its recommendation pursuant to section 5(b), not to consider the fact that a decision by the Government of Canada relating to transporting Alaska gas through Canada, may not yet have been rendered. It is the intent of the Committee that the National Energy Board decision, or lack thereof, is not to serve as the determining factor in the Commission's decision.

Section 5(e) directs the Commission, if it recommends a particular system, to identify those facilities and operations which are proposed to be encompassed within provisions to expedite the issuance of necessary certificates, leases, and rights-of-way, etc., pursuant to section 9 of the Act. The Commission is also to submit an environmental impact statement for such system, as well as any environmental statements which may have been prepared respecting other systems considered by the Commission in making their recommendation pursuant to section 5(c).

Section 5(f) directs the Commission to issue a report, within 20 days of transmittal of a Presidential decision pursuant to section 7,

commenting on the decision and including any information regarding the decision which the Commission considers appropriate.

Sec. 6. Other Reports

Section 6 provides for the submission by any agency of permissive advisory reports to assist the President with respect to the recommendation by the Federal Power Commission. Any report submitted pursuant to this section shall be available to the public unless withheld by the President on grounds related to national defense or foreign policy. Any report under this section would include information within the competence of the agency covering certain enumerated factors. Those factors are:

First, environmental considerations, including air and water quality and noise impacts;

Second, the safety of the transportation system;

Third, international relations including the status and time schedule for necessary Canadian approvals and plans;

Fourth, national security, particularly security of supply;

Fifth, sources of financing for capital costs;

Sixth, the impact on the economy, including regional natural gas requirements; and

Seventh, the relationship of the proposed transportation system to other aspects of national energy policy.

These reports must be submitted by July 1, 1977.

Although the President is confined to national defense or foreign policy grounds for withholding any formal report submitted under section 6, the Committee does not intend to imply that the President is not to be able to maintain the confidentiality of the advice he may receive from members of the Office of the President. Nor is there any intention to imply that he base his decisions solely upon the formal agency reports provided for in section 6.

Section 6(b) provides for the submission of permissive advisory reports by any Governor, municipality, State utility commission, or other interested persons concerning the recommendation by the Commission on alternative systems for delivery. Reports prepared pursuant to this section must also be submitted by July 1, 1977.

Section 6(c) requires each Federal officer or agency who may be required to issue certificates, rights-of-way, permits, leases or other authorizations under section 9(a), with respect to any of the systems considered by the Commission, to submit a report to the President on any waiver of provisions of law which may be necessary for the issuance of such authorization. The purpose of this section is to assist the President in identifying any waivers of law which may be necessary for expeditious construction of the system he designates, as required by section 7(c).

Section 6(d) requires the Council on Environmental Quality (CEQ) to conduct hearings and receive written statements concerning the legal and factual sufficiency of the environmental impact statements which may have been prepared relative to each of the systems considered by the Commission. By July 1, 1977, the Council must submit a report to the President (1) summarizing the data, views and arguments presented and (2) relating the views of the Council as to the legal and factual sufficiency of each of these environmental impact statements.

Sec. 7. Presidential Decision and Report

Section 7(a)(1) requires the President to render a decision by September 1, 1977 as to whether an Alaskan gas transportation system should be approved. If he determines that one should be constructed, he must designate a system for approval by joint resolution of the Congress pursuant to Section 8.

If the President designates a system for which no environmental impact statement has been prepared or which statement he determines to be legally or factually insufficient, section 7(a)(2) would allow him to delay the issuance of his decision for up to 90 days after September 1. This additional time may also be taken if the President determines it is necessary to enable him to make a sound decision. In the event the extra time period is to be utilized, the President shall so inform the Congress, explaining the reason for delay.

Section 7(a)(3) requires the President, if he decides a system should be approved, to include certain specific elements in his decision. He must describe the nature and route of the designated system. He must identify the facilities the construction and initial operation of which Federal officers are directed to authorize under Section 9. He must identify provisions of law which involve determinations subsumed in his decision and which must be waived to permit expeditious construction and initial operation of the system.

Section 7(a)(3)(D) directs the President to appoint a Federal officer or board to serve as Federal inspector of construction of the approved system. The inspector is directed to monitor compliance with applicable laws and those authorizations issued pursuant to section 9. He would monitor any actions taken to assure a timely completion and to maintain the quality of construction and actions taken to accomplish cost control, and of safety and environmental objectives. The inspector would have authority to compel by subpoena the submission of whatever information he deems necessary to carry out his responsibilities under this section.

The inspector would prepare and submit quarterly reports to the President and the Congress on existing or potential failure to achieve timely completion or comply with cost, safety, or environmental goals. The Committee intends that these reports include likelihood of delays due to legal actions, inclement weather, shortages of material or labor disputes. The inspector is directed to keep the President and the Congress currently informed of any significant departure from compliance.

If the President selects a board to serve as the Federal Inspector it is the Committee's intention that his decision set forth the manner of operation of such a board including what authority is to be vested in the Chairman and what authority resides in the board as a whole.

Sec. 7(b) directs the President to transmit his decision to the Congress, accompanied by all environmental impact statements prepared relative to the designated system, and a report explaining in detail the basis for his decision. Such report shall contain specific references to factors set forth in 5(c), 5(d), and 6(a).

Sec. 8. Congressional Review

Section 8 provides that the decision of the President under section 7 shall take effect upon enactment of a joint resolution by the Congress within 60 days of receipt of such decision. If the Congress does not approve the decision within that period, the President then has 30 days to reach a new decision which must differ in a material respect from the previous decision if either House had voted down a resolution of approval of the previous submission. The President does not have authority to delay beyond the 30-day period submission of a new decision. This alternative decision must be approved by a joint resolution of Congress within 60 days. If such a joint resolution is not enacted by the Congress to approve the second submission of the President, no further provisions for the selection of an Alaska gas transportation system are made under this Act, and any certification of a system would have to be made under the authority of the Federal Power Commission under the Natural Gas Act or by additional legislation enacted by Congress.

For the purposes of section 8, the 60-day period is broken only by an adjournment of the Congress sine die or an adjournment of more than 3 days by either House.

Section 8(d) establishes an expedited procedure for Congressional consideration of a joint resolution of approval of the President's decision pursuant to section 7. This section sets out the form of the non-amendable resolution, and provides for singular or joint Committee referrals.

In the event that a Committee to which such a resolution has been referred has not reported it out within 30 days, any member who favors the resolution may move to discharge the Committee from consideration of that resolution or any other resolution with respect to the President's decision under section 7. Such a motion would be highly privileged and nonamendable. Debate on the motion is limited to one hour, divided equally between those in favor and those opposed to the resolution. Once the motion to discharge has been agreed or disagreed to, the motion may not be made with respect to any other resolution concerning the President's decision under section 7.

If a Committee to which a joint resolution of approval has been referred reports the resolution out, or is discharged from consideration of the resolution, a nonamendable motion to proceed to the consideration of the resolution shall be in order, regardless of whether a previous motion to discharge the Committee from consideration has been defeated. The motion shall be highly privileged and not debatable.

Debate on the joint resolution of approval is limited to ten hours, divided equally between those in favor and those opposed to the resolution. It would not be in order to amend or move to recommit the resolution; nor would it be in order to move to reconsider the vote, once agreed or disagreed to.

Any motions to postpone made with respect to the discharge from Committee, or the consideration of a resolution and motions to proceed

to the consideration of other business, shall be decided without debate, as shall appeals from the decision of the Chair regarding the application of House or Senate rules.

Before the President submits his decision to the Congress for approval, he must find that any required environmental impact statement related to the designated system has been prepared and complies with the requirements of the National Environmental Policy Act. He has the authority to supplement or modify any environmental impact statement prepared by the Commission or other Federal officers or agencies.

If the President selects a system other than the system recommended, reviewed, considered or commented on pursuant to section 5(d) by the Federal Power Commission, section 8(f) directs the Council on Environmental Quality to hold additional public hearings on the related environmental impact statement within 20 days of transmittal of the decision to the Congress. The Council is then directed to summarize any views received during the course of such hearings in a report to the Congress. The Committee in each House to which a resolution of approval under section 8 has been referred are then to conduct hearings on the report of the Council, and include in any Committee report the Committee's findings as to the legal and factual sufficiency of the statement.

Section 8(g) provides that any provisions of law identified by the President according to section 7(a)(3)(C) are waived with respect to actions taken under section 9(a) if the decision of the President takes effect pursuant to the provisions of this section.

Section 8(h) provides an additional expedited Congressional consideration procedure in the event that the President determines additional waivers of law are necessary to permit expeditious construction and initial operation of the designated system. The President may submit a proposed waiver to both Houses, and the provisions will be waived with respect to authorizations to be issued pursuant to section 9 upon the enactment of a joint resolution of approval by the Congress within 60 days of submission.

The procedures set forth in subsections (c) and (d) shall govern this joint resolution as well as the resolution referred to in subsection (a). The form that the resolution shall take is also specified.

Sec. 9. Authorizations

Section 9(a) directs any Federal officer or agency who has the authority to issue a certificate, right-of-way permit, lease or other authorizations necessary or related to the construction and initial operation of the approved system, to issue such authorization as soon as practicable. Such issuance must be in keeping with the provisions of the law administered by him, except where such provisions have been waived pursuant to section 8.

Section 9(b) directs the Federal officer or agency to expedite applications or requests for authorization for construction and initial operation of the approved system and to give such applications priority over other similar applications and requests. To do so, procedural requirements of the law may be waived by the officer or agency on his or its own motion where he determines it to be necessary to permit expeditious and priority consideration of the application or request.

Section 9(c) provides that authorizations issued under subsection (a) will include all terms and conditions required by law, and may include those permitted. However, permissive conditions may not be included where they would compel a change in the basic nature and general route of the system, or impede expeditious construction and initial operation.

Section 9(d) permits a Federal officer or agency to amend or abrogate any terms or conditions in an authorization where permitted by law, unless such an action is permitted but not required by the law, and the term and condition to be added would compel a change in the basic nature and route, or would impede expeditious construction and initial operation of the system.

Any Federal officer or agency issuing an authorization pursuant to subsection (a) shall include terms and conditions identified in the President's decision as appropriate, except where such inclusion would limit authorizations in subsection (d).

Sec. 10. Judicial Review

Section 10(a) provides that actions taken by Federal officers or agencies taken pursuant to section 9, shall not be subject to judicial review except as specifically provided by this section.

Subsection (b) provides all claims alleging the invalidity of this Act must be brought within 60 days of a system being approved pursuant to section 8. Any claim alleging that an action under this Act will deny constitutional rights or is in excess of statutory jurisdiction, authority or limitation or short of statutory right may be brought within 60 days of the action in controversy. However, if the claimant can support the burden of proving that he did not know of the action complained of, nor would a reasonable person under the circumstances have known, he may bring a claim within 60 days of his acquiring real or constructive knowledge of the action.

Judicial review is intended to be confined to consideration of questions of whether the agency action complied with constitutional and statutory requirements. The reference to the phrase "in excess of statutory jurisdiction, authority or limitations, or short of statutory right," is an incorporation of the grounds provided in section 706(2)(C) of Title 5, United States Code. The Committee wishes to emphasize that the other grounds for review set forth in section 706(2)—except those which relate to constitutional rights, powers, privileges or immunities—are intentionally excluded. In other words the Court is to look to see if the action is taken within the agency's authority. It is not intended that the Court would have jurisdiction to look behind the agency decision to examine its reasonableness or determine whether it is adequately supported by the record of any proceedings as may have occurred before the agency.

Subsection (c) vests exclusive jurisdiction over claims brought under subsection (b) in the U.S. Court of Appeals for the District of Columbia. The court is directed to give precedence to these claims over all other pending matters on the docket, and to adjudicate such claims within 90 days from the date the action is brought, unless the court determines a longer period is necessary to satisfy constitutional requirements. The court shall not have jurisdiction to grant injunctive relief except in connection with a final judgment entered in the case. Sole

review of any interlocutory or final judgment on order of the court shall lie with the Supreme Court, and the appellant must file a petition for certiorari within 15 days after the decision of Court of Appeals. The approval of a system pursuant to section 8 shall be conclusive as to the legal and factual sufficiency of any environmental impact statement related to the system and the court shall have no jurisdiction to consider questions respecting the sufficiency of such statements.

Sec. 11. Supplemental Enforcement Authority

Section 11 gives any Federal officer or agency the authority to issue a compliance order or bring a civil action against any person he determines to be in violation of any provision of law administered by such officer or agency. Any such compliance order would state the nature of the violation with specificity, and set a time of compliance, not to exceed 30 days, in keeping with the seriousness of the violation and any good faith efforts to comply with the requirements. Continued non-compliance in violation of a compliance order would permit the Attorney General, at the request of the officer or agency, to commence civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed \$25,000 per day for each day of continued violation. These actions may be brought in the District Court of the U.S. for the district in which the defendant resides or is doing business.

Sec. 12. Export Limitations

Section 12 provides that any exportation of Alaskan natural gas, as defined by Section 4(1), be subject to the requirements of the Natural Gas Act and section 103 of the Energy Policy and Conservation Act. In addition, such exports may not exceed 1,000 MCF per day unless it is done under an exchange agreement whereby the exports would not diminish the total quality or quantity, nor increase the total price of energy available within the United States.

Sec. 13. Equal Access to Facilities

Section 13 provides that no person seeking to transport gas in the approved system would be prevented from doing so or discriminated against in the terms and conditions of service, on the basis of ownership or lack thereof. This section would work to assure that any tariffs applied to the transportation of gas through the system would be equal for owners and non-owners alike.

Sec. 14. Antitrust Laws

Section 14 states that nothing in the Act is intended to operate as an amendment to any provisions of the anti-trust laws.

Sec. 15. Authorization for Federal Inspector

Section 15 authorizes whatever sums are necessary to carry out the functions of the Federal Inspector appointed by the President.

Sec. 16. Separability

Section 16 provides that if any provisions of the Act are held invalid, the remainder of the Act will remain in effect.

Sec. 17. Civil Rights

Section 17 directs Federal officers and agencies to take affirmative action to assure that no person be excluded from receiving or partic-

ipating in any activity conducted under, a Federal authorization issued pursuant to this Act on the grounds of race, creed, color, national origin, or sex.

CHANGES IN EXISTING LAW

The Committee substitute does not directly amend any Federal statute, although several of its sections indirectly modify the requirements of existing law.

First, the Federal Power Commission is authorized by the Natural Gas Act to issue a certificate of public convenience and necessity, following full adjudicatory proceedings, for construction or expansion of a system to transport natural gas in interstate commerce. Section 5 of S. 3521 directs the Commission to suspend procedures currently underway relating to the transportation of Alaskan natural gas as soon as practicable. For the duration of this Act, the Commission is to have authority, notwithstanding any other provision of law, to disregard, refuse to act on, or hold in abeyance applications or other requests for Commission action on matters relating to the transportation of Alaska natural gas.

Second, the National Environmental Policy Act of 1969 establishes certain legal and factual criteria for environmental impact statements which it requires. Section 8 of this Act provides that all such criteria are deemed to be met by passage of a joint resolution of Congress approving the President's decision.

Section 9(b) of the Act would permit Federal officers and agencies to waive any procedural requirements of existing law with respect to the actions to be taken pursuant to the directions contained in this Act.

Third, section 10 of the Act limits the right of a plaintiff under existing law to obtain judicial review of actions of a Federal officer or agency taken pursuant to section 9 of this Act. Any actions alleging the invalidity of the Act itself must be brought within 60 days of a decision becoming final by joint resolution of the Congress. Any claim alleging that actions taken will deny Constitutional rights, or that such actions are not within the scope of statutory authority, must be brought within 60 days of the action in question, or within 60 days of gaining constructive knowledge of such action. Jurisdiction over such claims is vested exclusively in the U.S. Court of Appeals for the District of Columbia acting as a Special Court, which shall have no injunctive authority except in conjunction with a final judgment. Any such claims would take precedence over all other matters pending on the docket. Appeal from a judgment of that Court could only be made to the Supreme Court by filing a petition for certiorari within 15 days of the judgment being rendered.

Section 7 of the Act, while effecting no immediate change in existing law, provides a mechanism to expedite waivers of existing law which may be necessary to allow the issuance of authorizations pursuant to section 9.

COST ESTIMATE

The only section of the substitute to S. 3521 which would authorize the expenditure of Federal monies is section 7 which provides for the appointment of a Federal Inspector. Since the activities of the Federal

Inspector would vary considerably, depending on which system is designated, it is impossible to make any precise cost estimate. However, the Committee believes that in no event would costs exceed \$4.5 million for fiscal year 1978 and each of the next 5 fiscal years.

This estimate comports with and is derived from the following analysis submitted by the Congressional Budget Office:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE
SEPTEMBER 20, 1976.

1. Bill No. S. 3521.

2. Bill title: Alaska Natural Gas Transportation Act of 1976.

3. Purpose of bill: The major purpose of this legislation is to expedite a decision on the delivery of Alaska natural gas to United States markets. Specifically, the bill provides a timeframe for a decision on the transportation mode by requiring the Federal Power Commission, the President, the Council on Environmental Quality and the Congress to analyze alternative modes and report recommendations. The legislation also authorizes the President to appoint a Federal Inspector to oversee compliance with applicable laws and to monitor construction schedules.

4. Cost estimate:

[In millions of dollars]

Authorization amounts:	
Fiscal year 1978.....	10.5
Fiscal year 1979.....	1.5
Fiscal year 1980.....	1.5
Fiscal year 1981.....	1.5
Fiscal year 1982.....	1.5
Costs:	
Fiscal year 1978.....	4.5
Fiscal year 1979.....	4.5
Fiscal year 1980.....	4.5
Fiscal year 1981.....	4.5
Fiscal year 1982.....	4.5

5. Basis for estimate: Although the Federal Power Commission (FPC) and the Council on Environmental Quality are required to review and report on alternative transportation systems, most of this work has already been completed. For example, the FPC has been holding hearings on several requests for the last two years. For this reason it is assumed that no additional costs would be created due to these sections. However, there would be costs associated with the section which mandates a Federal Inspector to do the following: (1) monitor compliance with applicable laws and (2) monitor actions taken to assure timely completion of construction schedules, quality of construction, cost control, safety and environmental protection. Based on the experience of the Department of Transportation and the Department of Interior with the current Alaskan crude petroleum pipeline, it is assumed that an office of sixty individuals would be required to perform the specific functions. With an additional assumption of an average salary of \$22,000 and 20 percent overhead, the total comes to \$1.5 million for staffing. In addition, how-

ever, a technical assistance contract of approximately \$15 million would be necessary.

6. Estimate comparison: None.

7. Previous CBO estimate: None.

8. Estimate prepared by Raymond C. Scheppach.

9. Estimate approved by Raymond C. Scheppach for James L. Blum, Assistant Director for Budget Analysis.

AGENCY REPORTS

No formal agency reports have been received by the Committee relating to S. 3521. However, the Administrator of the Federal Energy Administration, and the Secretary of the Department of the Interior have both written to the Chairman of the Committee to express their views. These letters follow:

FEDERAL ENERGY ADMINISTRATION,
Washington, D.C., September 16, 1976.

HON. HARLEY O. STAGGERS,

Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I understand that the Interstate and Foreign Commerce Committee will soon be considering S. 3521, as amended by the Subcommittee on Energy and Power. It is encouraging that both the Senate and the Subcommittee on Energy and Power have acted upon necessary procedural legislation to expedite the selection and construction of a system to transport Alaskan natural gas to the lower 48 States.

The bill reported to your Committee appropriately provides for both Presidential and Congressional scrutiny of any recommendation made by the Federal Power Commission, while assuring necessary contributions by Federal agencies, the States, and the general public. The Administration believes strongly that prompt passage of sound legislation is critical to achieving our national energy goals.

I would like to take this opportunity to convey the Administration's views on S. 3521, as amended. While changes have been made to the bill in Subcommittee, important improvements are still required before it can achieve its purpose.

The most important concern relates to the nature of the Congressional review process. Section 8 of the bill would provide that the decision of the President shall become final only upon enactment by both Houses of a Joint Resolution of approval. As you know, the Administration's bill on this subject provides that the President's decision would become final after 60 days unless Congress took action to disapprove it. The Administration believes strongly that Congressional review should be incorporated as a Joint Resolution of disapproval. The affirmative approval mechanism, in effect, does little more than invite the President to submit legislation on a particular route. Legislation requiring both Houses of Congress to affirmatively endorse a particular route in a limited period of time would create the very stalemate that the legislation was designed to avoid. Should such an impasse occur, the end result of the legislation could be a serious delay in the construction of the pipeline, in direct contradiction to its original purpose.

We are pleased that the Senate passed bill has been amended to require in Section 6 Council on Environmental Quality review of environmental impact statements *prior* to the President making his recommendation. Sections 6(d) and 8(f), however, stipulate CEQ review on the "legal and factual sufficiency" of the environmental impact statements prepared. We strongly recommend that the words "legal and factual sufficiency" be deleted where they appear in those sections, as such specific reference may unduly inhibit the scope of the public's comments and CEQ's consideration of all views and relevant information. In addition, Section 8(f) should be clarified in light of Section 6(d) by not requiring CEQ to again review environmental impact statements already considered in prior hearings. Thus, we recommend that the language of Section 8(f) be amended to read: ". . . if different from any system previously considered in CEQ hearings pursuant to Section 6."

Section 8(e) would require the President to make findings on environmental impact statements as well as prepare statements where none have been previously prepared. This requirement would differ significantly from the procedures established by the Council on Environmental Quality under the National Environmental Policy Act of 1969 (NEPA). We believe strongly that Section 102(2)(C) of NEPA as well as the Council on Environmental Quality's guidelines establishing environmental impact statement procedures among agencies, are adequate in requiring consideration of the possible impacts on the environment of any transportation route selected and ensuring that environmental impact statements will be prepared. In addition, the amendments we have proposed under Sections 6(d) and 8(f) above further strengthen these procedures. We see no reason for changing the current responsibilities regarding the preparation and review of environmental impact statements. Thus, we strongly recommend the following language as a substitute for Section 8(e):

"Prior to the transmittal to the Senate and House of Representatives of the President's decision pursuant to Section 7(b) or subsection (b) of this section, and following CEQ's report to the President on the EIS's pursuant to Section 6(d) of this Act, the President may provide for supplementing or modifying the environmental impact statements prepared by the Commission or other Federal officers or agencies."

In addition, the new Section 7(a)2 as amended in the Subcommittee should therefore be amended to conform with the new language proposed above for Section 8(e). We recommend strongly that Section 7(a)2 read as follows:

"The President shall delay his transmittal to the House and Senate for up to 90 additional days beyond September 1, 1977 (i) if he selects an Alaska natural gas transportation system for which no environmental impact statement has been prepared, or (ii) if, in his opinion, the additional time is necessary to enable him to make a sound decision on an Alaska natural gas transportation system. The President shall promptly notify the House and Senate if he so delays his decision, submitting the reasons therefore."

Section 5(b) of the Subcommittee bill would give the Federal Power Commission the authority to request "such information and assistance from any Federal agency as it determines to be necessary or appropriate to carry out its responsibilities under Subsection (c)

of this Section." In order to avoid impeding agencies' data collection efforts as well as protecting against the exchange of proprietary data among agencies, we strongly recommend that the second sentence of Section 5(b) be modified to read as follows: "All Federal agencies shall cooperate with the Commission to the fullest extent appropriate."

Section 6(a) would stipulate that all written comments to the President from Federal offices or agencies with respect to the recommendation and report of the FPC "shall be made available to the public when submitted to the President, unless expressly exempted from this requirement in whole or in part by the President, on grounds related to national defense or foreign policy under Section 552(b)(1) of Title V, United States Code." We believe that the language contained in the Senate-passed version of S. 3521 is more appropriate. Under that language the President would have the flexibility to withhold sensitive documents from public release without being limited to the narrow category covered by Section 552(b)(1) of Title V.

Section 17 requires that all Federal officers take such affirmative action as is necessary to assure that no person shall be excluded from receiving, or participating in any activity conducted under permit, right-of-way, public land order, or other Federal authorization granted or issued pursuant to this Act. This provision is similar to one in the Trans-Alaskan Pipeline Act which directs the Secretary of the Interior, rather than all Federal officers, to undertake an affirmative action program to prevent discrimination. The Administration strongly endorses the objectives of this provision which seeks to assure non-discrimination in awarding Federal contracts, rights-of-way, and permits. However, because of the ambiguities in the language of this provision, it is unclear what affirmative actions would be required; how the requirements that all Federal officers take affirmative action could be reasonably administered; and which Agency, if any, could or should take the lead in assuring compliance. This provision could lead to a situation where a number of agencies would be taking action simultaneously with respect to the same firms to ensure enforcement of civil rights statutes. Because of the fundamental ambiguities in this provision as now written, numerous legal questions could develop thereby initiating much litigation. As a result, we would strongly recommend that Section 17 be modified to direct "the Secretary of the Interior" rather than "all Federal officers" take such affirmative action, and thus conform with the provision in the Trans-Alaskan Pipeline Act.

As part of the President's decision, Section 7(a)(3)(D) would require the designation of an officer or a Board to serve as Federal inspector of construction of the Alaska natural gas transportation system. Designation of the inspector at that time may be premature. In addition, the statute should conform to the Constitutional procedure concerning confirmation of Presidential appointments. Consequently, we believe strongly that the requirement for designation of an inspector should be separated from the Presidential decision submitted pursuant to Section 8.

Section 8(b) would stipulate that if the Congress does not enact a Joint Resolution within the 60-day period, the President may submit a new decision. We believe that the President should have the discretion to submit either the same or a new decision if the Congress does

not act within the requisite time period. Therefore, we recommend strongly the last sentence of Section 8(b) be deleted, and the words "the same or" be inserted appropriately in the first sentence.

Section 12 which limits exports of Alaska natural gas to any nation other than Canada or Mexico is unnecessary since the Energy Policy and Conservation Act already requires export controls on natural gas.

Finally, a technical clarification is needed in Section 11(a) to make the supplemental enforcement authority applicable only "to the provisions of this Act."

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of S. 3521, if amended as set forth above, would be in accord with the President's program.

Sincerely,

FRANK G. ZARB,
Administrator.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., August 23, 1973.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department with respect to several bills, all of which concern the transportation of natural gas from Alaska to the lower forty-eight States. The bills are: H.R. 11273; H.R. 12983; H.R. 13651; H.R. 13678; H.R. 14738; and S. 3521 as passed by the Senate.

The Department fully supports the approach and provisions of H.R. 12983, the Administration bill. We would not object, however, to the passage of a bill such as S. 3521, inasmuch as it is quite similar in approach and content to the Administration bill; and, since S. 3521 has passed the Senate, it may provide the basis for a quicker solution to the problem of formulating a bill that is mutually satisfactory to the Senate, the House, and the Administration. We strongly urge, however, that if S. 3521 is to be given further serious consideration, certain modifications should be made.

The bills fall into two groups, those which would require construction of a specific route or system from among several alternative systems which have been proposed, and those which would establish a process of decision for choosing a system.

In the former category are H.R. 11273 and H.R. 13678. H.R. 11273, (and other similar bills which have been introduced, including H.R. 12311, H.R. 12394, and H.R. 13220) would select a route from the North Slope across Canada to the North Central States. H.R. 13678 would choose a route from the North Slope of Alaska south along the current Alyeska Pipeline route, then via the existing Fairbanks-Alcan Highway corridor, across Canada to the North Central States. Each system would require other distribution pipelines within the lower forty-eight States to other sectors of the country. A third alternative route, via pipeline from the North Slope, paralleling the Alyeska pipeline to the South Coast of Alaska, and thence by ING

tankers to the West Coast, is also under consideration by Federal agencies but has not been proposed by any of the bills on which comment has been requested.

Of the procedural bills, H.R. 12983 is the Administration's proposal which was introduced by Representative Staggers on April 1, 1976.

S. 3521, passed by the Senate, is quite similar in content and approach. H.R. 14738, recently introduced in the House, is substantially identical to S. 3521. H.R. 13651, introduced by Representative Young of Alaska, is another variation of the procedural approach which has potential merit.

The Department and the Administration strongly favor legislation which would provide a process of decision, rather than a bill which would mandate a particular route. Consequently, we oppose legislation which would mandate a choice between the three competing Alaskan natural gas delivery systems currently under consideration. Any such legislative choice at this time is premature and would cut short the necessary consideration now being undertaken by Administration agencies.

Further analyses of the many complex technological, economic, and political factors involved are required to determine whether one of the pipelines through Canada, or the competing plan for an Alaskan pipeline/cryogenic tanker system, would be the most desirable. These factors are currently being reviewed by the Department of the Interior, the Federal Power Commission, and other interested agencies. Further, it should be noted that a decision by the Canadian Government relative to its willingness to approve construction of a pipeline for the transmission of Alaskan gas across its territory is not expected before 1977, at the earliest.

H.R. 12983.—The purpose of H.R. 12983 is to expedite selection and construction of a system.

Its provisions are as follows:

- The Natural Gas Act notwithstanding, procedures established by the bill will govern FPC actions on the system selection.
- The FPC would complete its proceedings and transmit its "determination" to the President by January 1, 1977. The "determination" may be in any form (including a proposed certificate of public convenience and necessity) and must include consideration of such factors as: costs and possible overruns; construction schedules and possibilities of delay; extent of reserves, and their deliverability; environmental considerations; financial capabilities; safety; demand in, and deliverability to particular markets; and tariffs.
- The President would require reports by February 1, 1977, from such agencies as he would select regarding alternative methods for delivering the gas, for additional information on issues related to national energy policy, environmental considerations, pipeline safety and LNG transportation, foreign policy, national defense, natural resources and Federal lands, and financing.
- By August 1, 1977, the President would issue a selection decision, to include terms and conditions he deems appropriate. The decision would be sent to both Houses of Congress immediately. The decision would become final in 60 days unless Congress takes contrary action. In case of negative action, the President may submit his original decision again or a new decision.

- Within 30 days after the President's decision is final, the FPC must issue all appropriate certificates, including Presidential terms and conditions.
- No action may be taken by any agency until any EIS's in draft form on the Act's effective date are completed and filed with CEQ. No other provisions of Sec. 102(2)(c) of NEPA apply.
- Interior and all other appropriate Federal agencies are directed to issue and take other actions required to administer and enforce rights-of-way permits, and the like; this provision cannot be construed to require any authorization relating to Federal financial assistance.
- Permits, and other approvals issued by Interior are subject to Sec. 28 of the Mineral Leasing Act, with certain exceptions. In issuing authorizations, Interior and other Federal agencies would be granted open-ended authority to ". . . waive any procedural requirements of law or regulations deemed desirable in order to accomplish the purposes of this Act."
- Interior and other Federal agencies would be authorized at any time to amend or modify any right-of-way, permit, or other approval where necessary to protect the public interest.
- Actions of Interior and other Federal agencies would not be subject to judicial review under any law except for specified matters. Time limits would be imposed, and no injunctive relief would be allowed except on a final judgment.

S. 3521.—S. 3521 is similar to the Administration bill but there are a number of modifications and new provisions.

Modifications

- Certain time requirements are different from the Administration bill:
 - a. FPC recommendation to the President by March 1, 1977, instead of January 1, 1977.
 - b. Agency reports to the President by April 1, 1977, instead of February 1, 1977.
 - c. Presidential decision to the Congress by July 1, 1977, instead of August 1, 1977.
- Agency reports would be permitted at discretion of the agency, with criteria similar to H.R. 12983.
- The President's authority to impose terms and conditions is restricted to existing law, which must be identified; the Administration bill has no limitation on terms and conditions that could be imposed.
- The President's decision would be final upon a Joint Resolution of Approval within 60 days of transmittal. If Congress fails to act within 60 days, the President could submit a new decision within 30 days. If a Joint Resolution is not enacted after a second submission, then no further special provisions are provided for and system selection would follow normal procedures under the Natural Gas Act or additional legislation enacted by Congress.
- Permitting agencies authority to amend permits and the like, would be limited to existing law.
- Judicial review would be narrowly limited for all necessary authorizations and actions of Federal agencies under the Act for the period of construction and up to initial commercial operation.

Review would be confined to U.S. Court of Appeals for the District of Columbia; Court action would be required within 90 days of filing of a petition.

New provisions

- By April 1, 1977, the Governor of any State, any municipality, or State Utility Commission, and any other interested person could submit reports, recommendations, and comments to the President.
- In reaching a decision, the President must consult, as appropriate, with the States and Canada.
- Within 20 days of time the President's decision is sent to Congress, the FPC must issue a public report commenting on the President's decision and including information regarding the decision which the FPC deems appropriate.
- The FPC could request any information and assistance from other Federal agencies as deemed necessary.
- Agency reports would be required to be made public.
- As part of his decision, the President shall provide for a process to resolve interagency disputes and designate a Federal inspector and coordinator of system construction to assure compliance with law, to assure control of construction, quality, environmental impact and cost, and to keep the President and Congress informed.
- The President's report accompanying his decision must contain a financial analysis for the chosen system. If the system appears to be incapable of being privately financed, then a recommendation must be included concerning possible use of Federal financing.
- Before sending his decision to Congress, the President must find that all final environmental impact statements on the chosen system have been prepared. The President could supplement existing EIS's. If the chosen system has no final EIS, the President may delay his decision transmittal for up to 90 additional days to supplement or prepare the required EIS.
- Within 20 days after the President's decision is sent to Congress, the Council on Environmental Quality would hold public hearings on legal and factual sufficiency of the EIS on the chosen system and submit a report to Congress summarizing testimony and presenting CEQ's overviews. Congress would then hold hearings on CEQ's report.
- Natural gas exports exceeding 1,000 m.c.f. per day, other than to Mexico and Canada, are prohibited unless and until the President makes and publishes a finding that such exports will not diminish total quantity or quality, nor increase the total price of energy available to the United States, and are in the national interest.
- The bill provides for an affirmative action program to assure that no person shall be excluded from activities conducted under the bill by reason of race, creed, color, nationality, or sex.

Discussion

With respect to S. 3521 certain features of the Senate bill are troublesome and should be changed.

We strongly object to the provision in Section 8 that Congressional review of the President's decision on the transportation system shall be by joint resolution of approval. A basic justification for the Senate

bill or any other procedural bill is that it establishes an expedited process for choosing the route rather than having the risk of the ordinary administrative process being interminably delayed. The provision for a joint resolution of approval, in effect, establishes a *de-novo* consideration in the Congress to choose one system over another by joint affirmative action. This creates the risk of additional delay and could negate the purpose of the bill and prior administrative proceedings. While I fully support the concept of Congressional review on this matter, I strongly urge that this provision be changed from a joint resolution of approval to a provision whereby the President's decision would not become final until 60 days after the decision is transmitted to the Congress.

Section 7 of S. 3521 provides for a Federal inspector and coordinator of construction. Such an individual could be very useful in coordinating the issuance of the numerous permits from Federal and even State and local agencies, and monitoring compliance with the terms and conditions of these permits. However, S. 3521 gives the inspector much broader authority. His responsibility is to "assure adequate control of construction, quality of workmanship, environmental impact, and cost." The appropriate government responsibilities in these areas have already been given to various agencies such as the Federal Power Commission, the Department of Transportation, and the Department of the Interior and would be covered by any permits issued by these agencies. To give this inspector such broad responsibilities for setting the terms and conditions under which a transportation system can be built may overlap, exceed, or perhaps contradict the terms and conditions of other agencies and can lead to confusion and delay. Moreover, it is doubtful if such a Federal inspector could or should enforce these responsibilities—especially control of cost—on a privately developed project and one of this magnitude. Thus we recommend that subsection A(2)(b)ii be deleted and that the role of the inspector be defined as one of coordination and monitoring.

S. 3521 requires the President to choose among the various transportation systems after receiving public reports from Federal agencies on a wide variety of factors. The first listed is "environmental considerations, including air and water quality and noise impacts." The bill at a later point requires the Council on Environmental Quality to hold public hearings on the legal and factual sufficiency of the various environmental impact statements prepared by the various government agencies on this issue and report to the Congress within twenty days after the President's report to Congress on his decision. The President should have the benefit of any information developed by these hearings before making his decision. Consequently, any such hearings should be held before his decision, not after. Also, these hearings should be held only at the discretion of CEQ, since after reviewing the available record, CEQ could reasonably decide that no further public hearings are necessary. Both the Department of the Interior and the Federal Power Commission have had extensive hearings during the preparation of the environmental impact statements. The Federal Power Commission has also had weeks of expert testimony on environmental issues and will have more in light of the recent application by Northwest Pipeline to build a system following the Alcan Highway.

Section 8(e) of S. 3521 also requires the President to make findings on environmental impact statements that have been prepared, or to delay his decision by three months in order to prepare an environmental impact statement. We strongly object to imposing additional requirements beyond those already required by NEPA. The National Environmental Policy Act and Council on Environmental Quality guidelines require all agencies to consider the possible environmental impacts and to prepare environmental impact statements. Adequate consideration of the environment and the preparation of environmental impact statements would be assured if instead the bill required all government agencies to either prepare an environmental impact statement or adopt another agency's statement before issuing certificates, permits, or other authorizations to build a transportation system.

Section 5(d) of S. 3521 lists a number of important factors which the Federal Power Commission is required to discuss and analyze in its report and recommendation on a transportation system. Two very important factors, however, have not been included and should be. First, the Commission should be required to report on the economic benefits and costs to the Nation of the alternative systems. The applicants, the Federal Power Commission staff, and the Department of the Interior have presented cost-benefit analyses at the Federal Power Commission hearings.

Secondly, many private and Government construction projects have experienced large cost overruns and schedule delays. The trans-Alaska oil pipeline is just one of several examples. Any differential in risk of cost overruns and schedule delays between the various proposed systems could be an extremely important factor in making a decision. Considerable testimony has been presented at the Commission hearings on this subject, and the Commission should be required to address this factor in its report.

The Senate bill (section 9(d)) limits the ability of the Secretary of the Interior and other Federal agencies to amend or modify any right-of-way, permit, lease, or other authorization to the authority allowed under existing law. The Administration bill contains the broader authority to amend or modify at any time "to protect the public interest." This broader authority could prove very useful in completing the system as quickly as possible and in meeting unexpected problems in the course of the project. The Trans-Alaska Pipeline Authorization Act granted the Secretary and other agencies such broader authority for the construction of the trans-Alaska oil pipeline.

Over the past months, various Federal agencies including the Departments of the Interior, Treasury, State, Defense and Commerce have helped the Federal Power Commission prepare environmental impact statements, testified at the Commission hearings, or answered interrogatories. In light of this past effort to cooperate and assist the Federal Power Commission in making this difficult decision, we see little need for the provision in section 5(b) of the Senate bill giving the Commission unprecedented authority to demand and receive any information and assistance from other Federal agencies. However, to the extent that Congress deems such a provision necessary and appropriate and to avoid misunderstanding, I recommend that the second sentence of section 5(b) be modified to include that all Federal agen-

cies shall cooperate with the Commission to the fullest extent appropriate.

S. 3521 adds a provision, section 17, which would require a Federal program of affirmative action to assure that no one would be excluded from activities authorized by the bill for reasons of creed, race, nationality, color or sex. The Administration supports the addition of this provision. (We note that the recently introduced H.R. 14738, which is substantially identical to S. 3521 in other respects, lacks this provision). Section 17 does not, however, designate the appropriate Federal officials to enforce Civil Rights obligations. The Congress specifically designated the Department of the Interior as the enforcement agency with respect to civil rights obligations on the Alaska Pipeline. Enforcement of section 17 could cause confusion because a number of different agencies might be "appropriate" agencies to establish and enforce civil rights obligations.

In this regard, the Department of the Interior is the only agency which has written regulations to apply in the situation specifically set forth in section 17. Among the significant results of the TAPS experience have been the development of hiring goals for women on construction projects and provisions for establishing goals for contracting with minority business enterprises and enforcing a program in that regard. Further, the Department has the experience of combining the interests of several civil rights authorities in one set of regulations, and in enforcing those regulations in a single coordinated program which has been successful. It is essential that one lead agency write regulations and enforce section 17, in order that the construction and operation of the transportation system be pursued without the additional problem of different and possibly conflicting regulations relating to the same interest. Since the Department has the experience to do this, I strongly recommend that section 17 be modified to direct the Secretary of the Interior to undertake the affirmative action program to insure non-discrimination.

In conclusion, the Senate bill represents a step forward in the difficult task of choosing a transportation system for Alaskan gas. However, the bill would be greatly improved by the modifications I have suggested.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

WILLIAM L. FISHER,
Assistant Secretary of the Interior.

INFORMATION SUBMITTED PURSUANT TO RULES X AND XI¹

A

The Committee, in considering S. 3521, made no specific oversight findings pursuant to clause 2(b)(1) of rule X. However, where relevant, the Committee has drawn on material from its hearings on this bill and related legislation.

B

No new budget authority for fiscal year 1977 is provided.

¹ The Congressional Budget Office report is printed supra at page 34 of this report.

C

No related oversight findings and recommendations have been made by the Committee on Government Operations under clause 2(b)(2) of rule X.

D

Inflationary Impact Statement.

Pursuant to clause 2(1)(4) of rule XI, the Committee concluded that there will be no measurable inflationary impact on the national economy. The Department of the Interior estimates a 10 percent reduction in net economic benefit to consumers for each year of delay. So in fact, by providing an expeditious system for designation and construction of an Alaskan natural gas transportation system, this legislation will act to minimize the cost to consumers, having an overall deflationary impact when compared to the results which would obtain if we were to rely on existing law.

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