

THE ALASKA NATURAL GAS
TRANSPORTATION ACT OF 1976

JOINT REPORT

OF THE

SENATE COMMITTEES ON COMMERCE
AND INTERIOR AND INSULAR AFFAIRS

together with

MINORITY AND ADDITIONAL VIEWS

ON

S. 3521

TO EXPEDITE A DECISION ON THE DELIVERY OF ALASKA
NATURAL GAS TO UNITED STATES MARKETS AND FOR
OTHER PURPOSES



JUNE 30 (legislative day, JUNE 28), 1976.—Ordered to be printed

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**THE ALASKA NATURAL GAS TRANSPORTATION
ACT OF 1976**

JUNE 30 (legislative day, JUNE 18), 1976.—Ordered to be printed

Mr. STEVENSON, from the Committees on Commerce, and Interior
and Insular Affairs, submitted the following

JOINT REPORT

[To accompany S. 3521]

together with

MINORITY AND ADDITIONAL VIEWS

The Committees on Commerce and Interior and Insular Affairs to which 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, reports favorably thereon, with an amendment, and recommends that the bill as amended do pass.

SUMMARY AND PURPOSE

The Alaska Natural Gas Transportation Act of 1976 would establish an expedited process for reaching a sound decision on the selection of a natural gas transportation system for delivery of Alaska natural gas to other states. There is a current and growing shortage of natural gas in the contiguous 48 states. Production from Alaskan reserves could significantly alleviate this shortage if an economical transportation system could be constructed and operated. The legislation accordingly establishes a schedule designed to reach an early decision on the delivery of Alaska natural gas. The bill provides for administrative, Executive and Congressional participation in the decision-making process because selection of a system involves critical questions of national energy policy, international relations, and economic and environmental impacts. Many of these considerations cut across agency lines and are thus beyond the expertise of the Federal Power Commission (FPC), the Department of Interior, or other agen-

cies which would, under existing law, be responsible for limited aspects of any such transportation system.

The proposed legislation does not designate a specific transportation system. Rather, it is designed to assure fair and impartial consideration of every reasonable alternative and to establish a rational, expeditious process for making a selection of the best system. Selection of a specific system by Congress at this time is not advisable because some vital information for making a choice is not yet available, and many proposals are going through a process of modification and improvement. Moreover, many complicated issues will benefit from initial resolution by the agencies with expertise.

Accordingly, the legislation establishes a neutral four-step process for selecting a transportation system.

First, the FPC is directed to consider reasonable alternatives for the transportation of Alaska natural gas to consumers. The Congress intends that alternatives considered include such systems as an Alaska-LNG system, an Alaska-Canada Mackenzie corridor system, an Alaska-Canada Alcan Highway system, the feasibility of a methanol system, or no system at the present time. The Commission is then directed to recommend the transportation system, if any, which it believes best satisfies criteria specified in the legislation, and to transmit its recommendation to the President by March 1, 1977, together with relevant information concerning all of the systems which it examined. It is presently anticipated that this Commission recommendation would be made at about the same time as a recommendation by the National Energy Board of Canada.

Second, the President is to review the FPC recommendation, evaluate reports from other agencies, and transmit his own decision to the Congress as soon as possible but not later than July 1, 1977. However, the President may delay transmitting this decision, for up to ninety additional days if he selects a system for which no required final environmental impact statement has been prepared.

The President is directed to use the period prior to July 1, 1977 for the purpose of reviewing the Commission recommendation, considering comments and views submitted by federal and state agencies, and if an Alaska-Canada system is to be designated, finalize any negotiations with the government of Canada so that negotiations can be immediately concluded if Congress approves the President's decision. The President is to then approve or modify the Commission recommendation based upon his determination of which system, if any, best serves the national interest. He is to take into account specific factors enumerated in the legislation. The President would then transmit his decision to the Congress with a report explaining the basis for such decision, including an analysis of the system chosen by him with respect to the specific criteria enumerated in the legislation and reports and findings concerning environmental impact and financing arrangements.

Third, the President's decision would, under S. 3521 as reported, become final upon enactment of a joint resolution of approval within 60 days of transmittal by the President. Expedited procedures are included in the legislation to assure a vote on the joint resolution of approval. If the joint resolution is not enacted within 60 days, the

President may propose a new decision within 30 days which becomes final under the same procedures. The President is authorized to make only one additional decision.

Fourth, judicial review of a certificate and other approvals required through the construction phase to the point of initial commercial operation of the Alaska natural gas transportation system is restricted to claims alleging the invalidity of this Act, and claims alleging that an action will deny rights under the Constitution or that an action is beyond the scope of authority conferred by this Act. A claim alleging the invalidity of the Act must be brought within 60 days after enactment of a joint resolution of approval of the President's decision pursuant to section 8. A claim alleging that an action denies Constitutional rights or is beyond the scope of authority conferred by the Act must be brought within 60 days following the date of such action. Claims must be filed in the United States Court of Appeals for the District of Columbia within the time limits specified above. Further appeal may be taken only by filing a petition for certiorari with the United States Supreme Court within 15 days of the Court of Appeals' decision.

The legislation provides for the establishment of a process for resolving inter-agency disputes and appealing agency decision during construction of the transportation system as follows. The legislation authorizes the President to establish a special administrative process to review actions of Federal officers for which the bill limits judicial review. This review may not exceed 45 days. The legislation directs the President to appoint a Federal inspector and coordinator to assure compliance with applicable laws and authorizations, to maintain adequate control of construction quality and environmental impacts, and to keep the President and Congress informed of departures from compliance and the progress of construction. Quarterly reports are required and must include an evaluation of the extent to which quality control, safety and environmental objectives are being achieved.

In addition to establishing a process for selecting an Alaska natural gas transportation system, S. 3521 as reported would also place certain other requirements upon any Alaska natural gas transportation system certificate holder. The legislation provides that persons seeking to transport Alaska natural gas are not to be discriminated against due to their lack of ownership in the transportation facilities. The legislation does not waive or modify the antitrust laws. Several provisions are designed to assure compliance with certificate terms and permit stipulations. In addition to remedies under existing law, the Commission or other appropriate Federal officers, including the Federal inspector, can seek civil damages or a permanent or temporary injunction to assure compliance with the terms of the certificate and other Federal permits and approvals. The bill would also establish certain export restrictions on Alaska natural gas to countries other than Canada or Mexico.

BACKGROUND AND NEED

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 be the source of 2 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, proceedings with respect to transporting the Prudhoe Bay gas have been

underway before the Commission. FPC Chairman Richard Dunham testified that the purpose of these proceedings was to thoroughly examine the issues involved, test the evidence presented by cross-examination, and allow all interested parties an opportunity to contribute to the decision. 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.

There are currently three principal proposals pending before the FPC to transport Alaska natural gas to consumers in the contiguous 48 states:

1. In September, 1974, the El Paso Alaska Company applied to the FPC for a certificate to construct a 42-inch 800-mile natural gas pipeline parallel to the Alaskan oil pipeline from the North Slope to southern Alaska. The gas would then be liquefied and shipped 1,900 nautical miles to Southern California in cryogenic tankers. Natural gas would then be supplied to contract purchasers throughout the nation, by displacement, primarily through existing pipeline facilities.

2. The Arctic gas pipeline consortium in March, 1974, applied for FPC, Department of the Interior and Canadian approvals to build a 48-inch pipeline (some 42 inch sections) approximately 3,700 miles long from the North Slope of Alaska to the Mackenzie Delta area of Canada's Northwest territories. This system traverses south to Alberta and then divides into two legs to serve markets in the West and Midwest. The project also provides that gas will be delivered from the termination of the line through existing pipelines by displacement. The Arctic Gas project would also deliver Canadian Mackenzie Delta gas to Canadian pipeline purchasers.

3. In an application to be submitted to the FPC in July, 1976, Northwest Pipeline Corporation will seek a certificate to construct a 42-inch all-pipeline system from Prudhoe Bay paralleling the trans-Alaska oil pipeline to Delta Junction, where the pipeline would then follow the so-called Alcan Highway to the Alaska Yukon Border. Canadian companies would sponsor a pipeline from the Yukon border to Fort Nelson, British Columbia and Zama Lake, Alberta to connect with existing systems to bring the Alaska natural gas to consumers in the United States. This system is proposed to include approximately 1,700 miles of new pipeline construction together with an extensive expansion or reconstruction of existing pipelines to accommodate the volumes of gas that would be delivered from Northern Alaska.

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. 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 March 1, 1977, to make its recommendation after weighing and balancing all considerations.

3. 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 an anticipated shortfall of about 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 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 S. 3521 is to prevent time-consuming administrative and judicial delay after a decision to construct a system has been made.

4. 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, S. 3521 minimizes the possibility of delay inherent in such proceedings. Under S. 3521, 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 several years.

DETAILED DESCRIPTION

1. Federal Power Commission Recommendation

As explained above, the provisions of S. 3521 would alter the normal procedures for selecting an Alaska natural gas transportation system. The Commission is authorized to establish appropriate, streamlined rules and procedures to carry out its responsibilities under the legislation so as to reach a decision by March 1, 1977. To further assist the Commission, the bill authorizes the Commission to request such information and assistance from any federal agency as it deems necessary and appropriate. All federal agencies are directed to submit requested information at the earliest possible time.

The bill requires the Commission to consider not only systems that are supported by pending applications, but also other reasonable alternatives for transporting Alaska natural gas to other states, even though no formal application is pending before the Commission for such an alternative and even if the Commission does not have jurisdiction over certification of such a system. The Committees clearly intend, therefore, that the Commission will undertake detailed consideration of the El Paso, Arctic Gas, Northwest Pipeline and methanol proposals, together with any reasonable variations and combinations, without reference to sponsors or lack thereof. S. 3521 is designed to assure that the Commission's recommendation reflects consideration of all reasonable alternatives under the factors specified in the bill.

Section 5(d) of S. 3521 specifies the factors that the Commission is to weigh for each transportation system under review in making its recommendation to the President.

The Commission's recommendation to the President shall not be based upon the fact that Canadian agencies may not by then have rendered a decision on the authorization of a pipeline system to transport Alaska natural gas through Canada. The Commission, after evaluating each alternative to transport Alaska natural gas to other states in view of these factors, is to make a recommendation to the President by March 1, 1977.

Finally, the Commission, within 20 days after the President transmits his decision to the Congress, is to comment on the President's decision and to issue a report that includes any information that it considers appropriate.

2. Federal Agency Reports

By April 1, 1977, any interested Federal agencies may submit a report to the President on the Commission's recommendation. The report shall include such information and recommendations within the competence of such agencies concerning environmental consideration safety factors, international relations, national security, sources of financing, impact on the national economy, employment and balance of payments, and the relationship of the proposed Alaska natural gas transportation system to other aspects of national energy policy.

Similarly, by April 1, 1977, State Utility Commissioners, municipalities and any other interested persons are invited to submit reports to the President containing recommendations and comments on the Commission's recommendation and alternative systems for delivering Alaska natural gas to other states as they deem appropriate.

3. Presidential Decision

As soon as practicable after April 1, but not later than July 1, 1977, (unless up to an additional 90 days are required to prepare required environmental impact statements) the President is directed under S. 3521, to issue a decision as to which system for the transportation of Alaska natural gas, if any, should be approved. In making his decision, the President is to take into consideration the Commission recommendation, the factors considered by the Commission, and the comments of federal agencies and state and local officials. His decision is to be based on his determination as to which system, if any, best serves the national interest taking into consideration the criteria for reaching a decision enumerated in the bill.

There are several reasons for involving the President in the Alaska natural gas transportation system selection. First, the sheer size of an Alaska natural gas transportation system would make it the largest single project proposed to be privately constructed. Its potential importance for natural gas supply is such that a decision on this issue has a significant impact on national energy policy that requires review at the highest level to assure the protection of the national interest.

Second, the Alaska natural gas transportation system alternatives include projects that traverse Canada. Their proper consideration and possible selection involve important issues of foreign policy. The coordination of timing, negotiations of treaty protocols, if needed, and detailed project arrangements if a trans-Canadian route is selected would be difficult for the Commission to handle. Issues involving such important matters of foreign policy, should be resolved by the President.

Third, an Alaska natural gas transportation system raises issues of national security which are best addressed in the Executive Branch rather than at the FPC.

Fourth, the coordination of agency review and oversight of such a large construction project is a task for which the Executive is far better equipped than a regulatory agency.

For these reasons, the Committees believe that Presidential participation in the selection of an Alaska natural gas pipeline is important in reaching a sound decision in the national interest.

The President, in making his decision, shall consider the same factors which the Commission considered, as well as the reports he received from other federal agencies, and state and local officials. Consistent with the provisions of this legislation, the Natural Gas Act and other applicable law shall contain such terms and conditions as he deems appropriate for inclusion in any certificate issued pursuant to this legislation. The President has no authority to impose terms or conditions that could not otherwise be included under applicable law.

The President's decision, which he submits to Congress for approval, shall also provide a process for resolving disputes and designating a federal inspector to monitor the construction of the Alaska natural gas transportation system for the purpose of assuring adequate quality control and maximizing safety and protection of the environment in a manner compatible with the certificates and rights-of-way designated under the Act. Such a process shall also provide a special administrative review of actions by federal officials for which judicial review is limited by this Act. This process is designated to assure that an effective substitute for judicial review is available so that concerns for safety, environmental protection, and quality workmanship receive priority attention.

The President is directed to transmit his decision to the Congress together with a detailed report explaining the basis of his decision and the reason for any revision, modification, or substitution of the Commission recommendation no later than July 1, 1977. This deadline for the President's decision may be delayed for a period not to exceed 90 days if necessary to supplement or prepare a final environmental impact statement for a system selected for which no such statement has been completed. The Council on Environmental Quality (CEQ) is di-

rected to hold public hearings on the adequacy of the environmental impact statement within 20 days after the President's decision and prepare a report to the Congress. The Congress, in turn, is required to hold public hearings on the CEQ report.

The President's report of this decision shall contain a financial analysis for the system chosen by him. If the President cannot reasonably anticipate that the system selected can be privately financed, he shall make recommendations concerning the use of existing federal financing authority or the need for new authority. In making his decision the President shall inform himself of the views of the several States and the government of Canada with respect to matters that may involve intergovernmental and international cooperation.

4. Congressional Approval of the President's Decision by Joint Resolution

S. 3521 as reported requires enactment of a joint resolution of approval of the President's decision within 60 calendar days of continuous session after receipt of the President's decision.

The bill provides for expedited procedures to assure that both Houses of Congress can vote on the joint resolution approving the President's decision within the specified time limit.

If the Congress does not pass a joint resolution of approval within the 60-day period, then the President may, within 30 days of such failure to enact a joint resolution, propose a new decision together with a detailed statement concerning the reasons for such a proposal. Such a second decision shall also become final only upon passage of a joint resolution approving such a decision within 60 days of submission. If such a joint resolution is not passed, then no further special procedures are provided for, and this legislation would in effect expire. The selection of an Alaska natural gas transportation system would thereafter be continued pursuant to the Natural Gas Act or by legislation enacted by Congress and signed by the President.

5. Judicial Review

The intent of S. 3521 as reported is to limit judicial review of the issuance of certificates, rights-of-way, permits, leases, and other authorizations necessary for the construction and initial commercial operation of the Alaska natural gas transportation system designated pursuant to the bill to the specific categories of actions specified in section 10 of S. 3521. Under section 9 of S. 3521 the Commission, the Secretary of the Interior, and other appropriate federal officers and agencies are directed to issue and take all necessary action to administer and enforce all certificates, rights-of-way, permits, leases and other authorizations necessary or related to the construction and initial commercial operation of the transportation system selected under the Act. All federal agencies are required to issue the necessary authorizations at the earliest practicable date. All of the authorizations issued shall include the terms and conditions required and may include the terms and conditions permitted by the provisions of law that would otherwise be applicable if S. 3521 had not been enacted.

Under S. 3521, Presidential and Congressional review is provided as a substitute to the extent that judicial review is limited in the case of the certificate of public convenience and necessity issued by the FPC

and the right-of-way permit issued by the Secretary of the Interior. To the extent judicial review is limited by section 10 for the other permits necessary for construction and initial commercial operation, they may be subject to administrative review under a process to be established by the President as part of his decision on the selection of an Alaska natural gas transportation system.

Under section 10 of S. 3521 as reported, the actions of Federal officers or agencies taken pursuant to S. 3521 concerning the issuance of all required authorizations for the construction and initial commercial operation of the project shall not be subject to judicial review at any time under law, except certain specified categories of claims brought within specified time limits. The only basis for judicial review of such decisions are claims alleging the invalidity of this Act, claims alleging that an action will deny rights under the Constitution of the United States, or that an action is beyond the scope of authority conferred by this Act. Claims alleging the invalidity of the Act must be brought within 60 days of a decision becoming final pursuant to section 8. Decisions alleging that an action will deny rights under the Constitution or is beyond the authority conferred by this Act may be brought within 60 days following the date of such action in the United States Court of Appeals for the District of Columbia. The Court of appeals shall have exclusive jurisdiction to determine such a claim in accordance with expedited procedures and no other court would have jurisdiction over any matter during the construction to the point of initial commercial operation of the Alaska natural gas transportation system designated under this Act.

The Court of Appeals of the District of Columbia would be prohibited from issuing any injunctive relief except in conjunction with a final judgment entered in a case involving one of the causes of action expressly authorized by this legislation. The Court of Appeals, acting as a special court, shall decide any claim filed pursuant to this Act within 90 days from the date such action is brought unless the court determines a longer period is necessary to satisfy requirements of the Constitution. There shall be no review of any action of the Court of Appeals of the District of Columbia except that any party may file a petition for certiorari with the Supreme Court of the United States within 15 days after the decision of the United States Court of Appeals is rendered.

LEGISLATIVE HISTORY

1. Joint Committee Questionnaire

In January 1976, the Committees on Commerce and Interior and Insular Affairs invited all interested persons to respond to a series of questions designed to obtain the basic facts concerning the transportation of Alaska Natural Gas. This questionnaire entitled "Issues Concerning the Transportation of Alaskan Natural Gas" explored the anticipated natural gas supplies in Alaska, and their estimated delivered costs. It addressed the projected demand for Alaska gas and the relationship of that demand to anticipated natural gas shortages in the contiguous 48 states, the relationship of that demand of the price of Alaska natural gas, and the cost of delay. The questionnaire also examined the status of regulatory approvals including all of the

agencies involved, Federal-State relationships, judicial review, alternatives for delivering Alaska natural gas to consumers in other states, safety issues, and Canadian procedures and treaty status. Finally, the questionnaire examined various financing issues including private financial capabilities, the need for Federal subsidies, special tariff treatment, and any recommended legislation.

The Committees received 15 responses to this detailed questionnaire—including responses from six agencies of the Federal Government, the State of Alaska, four proponents of alternative Alaska natural gas transportation systems, the three principal producers at Prudhoe Bay, and a major California distributor. The questionnaire and these responses are printed in the Joint Hearings before the Committees on Commerce and Interior and Insular Affairs on the Transportation of Alaskan Natural Gas—Part II, Serial No. 94-29 (92-119). These materials provide a summary of the principal facts and issues surrounding the transportation of Alaska natural gas.

2. Joint Hearings

The Senate Commerce Committee has jurisdiction over the FPC, the agency which has statutory responsibility for issuing a certificate of public convenience and necessity. The Senate Committee on Interior and Insular Affairs has jurisdiction over the Secretary of the Interior, who has responsibility for issuing pipeline right-of-way permits over federal lands. Accordingly, the two Committees have proceeded jointly in their consideration of this matter.

On February 17, 1976, the Committees conducted joint oversight hearings on Alaska and Canadian natural gas reserves and alternatives transportation systems for delivery of this gas to markets in the lower 48 states.

On March 24 and 25, 1976 the Committees conducted joint legislative hearings on legislation to transport Alaska natural gas to other states. The principal pending measures were:

S. 2510, by Senator Gravel, to require the FPC to make a final decision on certification of an Alaska natural gas transportation system by June 30, 1976. The legislation would also substitute Congressional for judicial review by providing for a 60-day review period for either House of Congress to disapprove the FPC decision.

S. 2778, by Senator Stevens, to require the FPC and all other Federal agencies to approve only an application for the transportation of Alaska natural gas where the facilities would be located entirely in areas subject to the jurisdiction of the United States. This bill would also provide for allocation of Alaska natural gas in a manner inversely proportional to the level of curtailments experienced in the various regions of the United States.

S. 2950, by Senator Mondale and others, to Congressionally designate the certification of the Arctic Gas Project proposal. This bill would also limit the scope of judicial review.

S. 3167, the Administration's bill, introduced by request to require the FPC to make a recommendation to the President by January 1, 1977. All other interested Federal agencies would be required to make recommendations to the President by February 1, 1977, and the President would have until August 1, 1977 to selected a natural gas trans-

portation system based upon his determination of which system best serves the national interests. Congress would then have a 60-day period to enact legislation to set aside the Presidential decision.

3. Committee Markup

On June 3, 1976, the Committee on Interior and Insular Affairs commenced discussion of a working paper that would expedite administrative procedures, provide for coordination with Canada, and assure Congressional input into the selection of an Alaska natural gas transportation system.

On June 4, 1976, Senator Stevenson, for himself, Senators Pearson, Mondale, Stevens, Hollings, and Gravel, introduced S. 3521, which was supported and cosponsored by the principal authors of the Alaska natural gas legislation that had been previously introduced.

The Commerce Committee considered S. 3521 on June 16, 1976, and ordered the bill reported subject to technical changes. The Interior Committee then marked-up S. 3521, and on June 25, 1976, ordered the bill reported with amendments, also subject to technical changes.

ESTIMATED COSTS

Pursuant to section 252 of the Legislative Reorganization Act of 1970, the Committees estimate that the cost of this Act does not exceed the costs under existing law except for the amounts required to fund the activities of the Federal inspector under section 7. The Committees know of no other cost estimates by any Federal agency which are at variance with its estimate.

SECTION-BY-SECTION ANALYSIS

SECTION 2—CONGRESSIONAL FINDINGS

Section 2 states the findings of Congress upon which the provisions of S. 3521 are based, regarding the existence of a natural gas supply shortage, the large proved and potential reserves of natural gas in the State of Alaska, and the desirability of constructing a viable transportation system to deliver Alaska natural gas to other states. It further states that the selection of an Alaska natural gas transportation system involves critical questions of national energy policy, international relations, national security, and economic and environmental impacts that both the President and the Congress should address in the selection of an appropriate transportation system, if any.

SECTION 3—STATEMENT OF PURPOSE

Section 3 declares that it is the purpose of this Act to expedite a sound decision regarding the selection of a natural gas transportation system for delivery of Alaska natural gas to other states by establishing new administrative, congressional and judicial procedures. This section also states that 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 contained in the bill, and in limiting judicial review of such actions.

SECTION 4—DEFINITIONS

Section 4 defines a number of terms used in this Act.

Section 4(a) defines "Alaska natural gas" as natural gas derived from the area of the State of Alaska generally known as the North Slope of Alaska, including state offshore lands and federal offshore lands.

The term "Commission" as defined means the Federal Power Commission, and the term "Secretary" means the Secretary of the Interior.

SECTION 5—FEDERAL POWER COMMISSION REVIEW AND REPORT

Section 5(a) states that further proceedings by the Commission relating to the transportation of Alaska natural gas shall be governed by this Act. The procedures established and authorized in this Act shall govern actions by the Commission with respect to review of applications and reasonable alternatives relating to the transportation of Alaska natural gas to other states. Under current law, the Commission is giving principal attention to applications filed for a certificate of public convenience and necessity to construct an Alaska natural gas transportation system. Under this Act, the Federal Power Commission is to consider not only these applications, but other reasonable alternatives relating to the transportation of Alaska natural gas. Such alternatives include an Alaska liquefied natural gas system, a pipeline route from Prudhoe Bay to the Mackenzie Delta region of Canada and then southward to consumers in the United States, a system from Prudhoe Bay following the Alcan Highway route, a methanol conversion and transportation system, or the construction of no system at this time.

Section 5(a) also requires the Commission to exercise its discretion in establishing such rules and procedures as it deems appropriate to carry out its responsibilities under this Act with respect to the review of applications and reasonable alternatives relating to the transportation of Alaska natural gas to other States. Such new rules and procedures would supercede existing rules and procedures under the Natural Gas Act and the Administrative Procedure Act. The Committees believe that such procedural discretion is required to assure that all alternatives receive adequate consideration within the time frame specified. Such revised procedures remove the possibility of a challenge premised upon the argument that an expeditious FPC decision violates the right of any applicant to due process, since the Commission's action will be only in the form of a recommendation for subsequent consideration by the President and ultimately the Congress.

Section 5(a) also specifies that the provisions of the Natural Gas Act are to apply to the extent that they are not inconsistent, as determined by the Commission, with this Act. Thus, for example, Commission regulation of the rates and charges for natural gas transportation through the Alaska natural gas transportation system will be subject to the Natural Gas Act just as any other natural gas company would be subject to the Natural Gas Act.

Under section 5(a) (3), if the President's decision with respect to an Alaska natural gas transportation system is made final by enactment of a joint resolution approving such a decision, then under sec-

tion 9 of this Act, the Commission is required to issue a certificate pursuant to such decision at the earliest practical time.

Section 5(b) authorizes the Commission to request any information and assistance regarding the transportation of Alaska natural gas from all federal agencies as it deems necessary or appropriate. S. 3521 as reported directs all federal agencies to submit such information at the earliest possible time after receipt of a Commission request. Section 5(b) assures that the Commission can base its recommendation to the President upon the most complete and current information available to any agency of the Federal Government.

Section 5(c) of S. 3521 as reported directs the Commission to review all applications pending on the date of enactment of this Act, any subsequent amendments thereto and other reasonable alternatives for the transportation of Alaska natural gas to other states, and to transmit a recommendation concerning an Alaska natural gas transportation system to the President no later than March 1, 1977. Applications shall be considered pending on the date of enactment if an application for a certificate has been submitted to the Commission. The recommendation may be in the form of a proposed certificate of public convenience and necessity or such other forms as the Commission deems appropriate. The Commission may also recommend that approval of a transportation system be delayed or that all applications be denied. Any recommendation for the construction of a system shall include a description of the route and major facilities and designate a party to construct and operate such a system.

Section 5(d) requires the Commission to consider specifically enumerated factors in making its recommendation to the President. The Commission is to compare each alternative under review for the following factors:

First, the Commission is to examine the projected natural gas supply and demand for all regions in the United States including an analysis of economic deliverability to each region and availability of alternative fuels if adequate supplies of natural gas are not available in that region. This analysis will include the direct delivery of the gas to consuming markets and delivery by displacement. Such analysis should be made because the Alaska natural gas transportation system may well constitute the only link between the large Alaska natural gas resource and the lower 48 states.

Second, in making its recommendation the Commission is to consider the estimated transportation costs of shipping natural gas (or natural gas energy in some other form), initially and over the estimated 20 year economic life for each of the systems considered by the Commission. The analysis shall include consideration of anticipated tariffs and shall provide an estimate of the delivered prices for Alaska natural gas in each affected region of the country. Such forecasts would require varying assumptions concerning the deliverability and locations of the Alaska natural gas reserve that may be attached to the pipeline system.

Third, the Commission is to consider the extent to which each transportation system may provide access for transportation to the United States of natural resources or other commodities from sources in addition to the Prudhoe Bay reserve. Substantial additional supplies

of natural gas may be available for delivery to the United States from areas on the north slope of Alaska other than the Prudhoe Bay reserve, and from other areas of Alaska and Canada.

Fourth, the Commission is directed to consider the environmental impacts of the alternative Alaska natural gas transportation system.

Fifth, the Commission is to consider safety and efficiency in design and operation and potential for interruption in the supply of natural gas.

Sixth, the Commission is directed to consider the probable construction schedules and to identify other opportunities for delay. This would involve an analysis of each of the systems considered to determine the relative likelihood of delays and the possible duration of such delays.

Seventh, the Commission is directed to consider the feasibility of financing with respect to each Alaska natural gas transportation system. This would require the Commission as part of its consideration of alternative systems to evaluate and describe the proposed financing arrangements for each system.

The Commission would evaluate whether or not private capital will be available or whether some form of federal financial assistance will be needed to finance the construction of each of the alternatives.

Eighth, the Commission is directed to estimate the extent of the natural gas reserves, both proven and probable, and their deliverability. The estimate is to include Canadian reserves as well as Alaskan reserves that are proposed to be transported by the alternative systems.

Ninth, the Commission is to consider for each alternative the estimated total delivered cost to consumers of the natural gas to be transported by each alternative. This requires a consideration not only of the costs of transportation in the proposed system but should also assess the wellhead price of natural gas and any costs affecting the total price to consumers.

Tenth, the Commission is directed to consider the capability and cost of expanding each system to transport additional volumes of natural gas in excess of initial system capacity. The capacity of each system to be expanded is relevant in view of the large additional natural gas resource expected to be discovered in Alaska and the fact that this system may well represent the only economic system for transporting such gas to the lower 48 states.

Eleventh, the Commission can consider such other factors as it deems appropriate.

Section 5(e) directs the Commission not to base its recommendation upon any failure of the government of Canada to have issued a decision which would authorize a compatible natural gas transportation system to transport Alaska natural gas through Canada. This provision is not intended to require the FPC to close its eyes to the international implications of any Alaska natural gas transportation system it may recommend, but it is intended to indicate that the President would have the principal role of negotiating and coordinating with the government of Canada if the Commission and/or the President decides that an Alaska natural gas transportation system through Canada is in the public interest.

Section 5(f) requires that the Commission recommendation be accompanied by a public report that explains the reasons for its recommendations, including a specific discussion of the factors described in section 5(d) for each alternative system.

Section 5(g) also directs the Commission to comment upon the President's decision by issuing a public report that includes any information which the Commission deems appropriate.

SECTION 6—OTHER REPORTS

Section 6(a) invites any federal agency to submit a report to the President concerning the Commission's recommendation and alternative methods for delivering Alaska natural gas to other states. Such reports are to be made available to the public when submitted to the President unless the President specifically directs that certain agency reports or parts thereof not be made public and gives his reasons therefor. Such agency reports shall include information and recommendations within the competence of such federal agencies with respect to:

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

Second, the safety of construction and operation of the transportation systems;

Third, international relations and an analysis of the status and time schedule for any necessary Canadian approvals and plans;

Fourth, national security, including an evaluation of the security of supply;

Fifth, the anticipated sources of financing, including an analysis and findings regarding proposed and potential financing arrangements for the transportation system recommended by the Commission and other alternatives;

Sixth, the impact on the national economy, including the likelihood of natural gas shortages in various regions, the price impact of Alaska natural gas on each region, and any impacts on interest rates, employment, and balance of payments during the construction phase and during the operation of an Alaska natural gas transportation system; and

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

All of these reports by Federal agencies are to be submitted to the President by April 1, 1977.

Section 6(b) invites any State Governor, Utility Commission, municipality, or any other interested person to submit to the President such reports, recommendations and comments concerning the delivery of Alaska natural gas to the United States as they deem appropriate.

SECTION 7—PRESIDENTIAL DECISION AND REPORT

Section 7(a) (1) directs the President to issue a decision as to which system for the transportation of Alaska natural gas, if any, should be approved as soon as possible but not later than July 1, 1977 subject to a possible 90-day delay pursuant to section 8(e). In making his decision with respect to an Alaska natural gas transportation sys-

tem, the President is directed to take into consideration the Commission's recommendation, the factors set forth in section 5(d) and the reports and comments received pursuant to section 6. After considering all of these matters, the President shall issue a decision based on his determination as to which system, if any, best serves the national interest.

If the President recommends the construction of an Alaska natural gas transportation system, section 7(a)(2) requires that his decision shall include a process by which disputes among agencies and administrative appeals from agency decisions may be expeditiously resolved. The President's decision shall also designate a federal inspector to coordinate and monitor the construction of such a system to assure compliance with applicable laws and the terms and conditions of all authorizations for the purpose of maximizing quality of workmanship, safety and the protection of the environment, and controlling costs. The federal inspector is authorized to subpoena information he deems necessary and has available the remedies under section 11 to compel compliance with his directions. The inspector is to keep the President and the Congress fully and currently informed of any violations and issue quarterly reports on construction difficulties and the extent to which quality control, safety, environmental protection and cost objectives have been achieved.

Section 7(a)(3) provides that the President may provide for the establishment of a special administrative review process (to substitute for judicial review) to further assure that actions by federal officers are reasonable and in the public interest. Such reviews are to be completed as expeditiously as practicable, but in no event shall they take longer than 45 days. Such sums as may be necessary are authorized to be appropriated to the federal inspector to carry out his responsibilities under this Act.

Section 7(a)(5) requires the President's decision to contain such terms and conditions as he deems appropriate for inclusion in any certificate issued by the Commission under section 9 of this Act. However, the President is required to identify the legal authority pursuant to which such term or condition is included and no term or condition may be included. The purpose of this provision is to assure that the President can impose terms and conditions as other federal agencies could impose pursuant to their existing statutory authority, but the President cannot impose terms and conditions which are not authorized by this Act or other applicable law.

Section 7(b) requires the President to transmit to the Senate and the House of Representatives on the 1st day that both are in session his decision on a system for the transportation of Alaska natural gas to other states. Such a decision is to be accompanied by a report that explains in detail the basis of his decision with specific reference to the factors set forth in section 5(d) and 6(a) of this Act, and the reasons for any revision, modification, or substitution of the Commission recommendation.

In addition to the financial analysis and reports provided for in sections 5 and 6, section 7(c) requires the President to analyze and report on the feasibility of financing the Alaska natural gas transportation system chosen by him. The Committees intend that the President

analyze proposed and potential financing arrangements, including a discussion of the impact of such arrangements on various components of the capital market, the apportionment of risk upon the system's owners, bondholders and other creditors, natural gas distributors, various classes of consumers and the Federal Government. This analysis should also include a discussion of the acceptability of such arrangements to lenders, State Utility Commissions, other government entities, natural gas distributors and various classes of consumers.

The section specifically directs the President to include recommendations concerning the use of existing Federal financing authority or the need for new Federal financing authority if he cannot reasonably anticipate that the system chosen by him can be privately financed, constructed and operated. By identifying this issue the Congress holds out no commitment of federal financial assistance. The purpose of the provisions of section 7(c) is to assure that the President and Congress make their decisions based upon the best available information on the manner in which such a major project can and should be financed.

Section 7(d) of S. 3521 directs the President to fully inform himself of the views and objectives of the States and of the Government of Canada with respect to those aspects of the selection of an Alaska natural gas transportation system that may involve intergovernmental and/or international cooperation.

Under subsection (d) of section 7, the decision of the President becomes final if approved by joint resolution as provided in section 8.

SECTION 8—CONGRESSIONAL REVIEW

Section 8(a) as reported provides that the President's decision shall become final upon enactment of a joint resolution of approval within 60-calendar days of continuous session after receipt of the President's decision by the Congress.

Under Section 8(b) if the Congress does not enact a joint resolution of approval within the 60-day period, then the President may, within the 30 days of a failure to pass a joint resolution by either House (or the expiration of the 60-day period without action by both Houses), propose a new decision together with a detailed statement concerning the reasons for such a revised proposal. Such an alternative decision shall become final only upon enactment of a joint resolution approving such a decision within 60 days of submission. If such a joint resolution is not enacted after a second submission by the President, then no further special procedures are provided for and the selection of an Alaska natural gas transportation system would thereafter be made either pursuant to the Natural Gas Act under existing law or by additional legislation enacted by Congress pursuant to ordinary procedures.

For purposes of section 8, the continuity of a session of Congress is broken only by an adjournment *sine die*, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the 60-day calendar period.

Paragraph (2) of Section 8(d) specifies the form of the joint resolution of approval which must be passed in identical form by both

Houses. The resolution is specified to assure a vote in both Houses. The resolution is specified to assure a vote in both Houses within the 60-day period and to eliminate the possibility of amendments and the need for a conference.

Section 8(c) establishes special expedited procedures for Congressional consideration of the joint resolution of approval of the President's decision on selecting an Alaska natural gas transportation system. The legislation, as reported, sets forth the required form of the joint resolution and provides that the joint resolution is to be referred to an appropriate Committee. All joint resolutions with respect to the same Presidential decision on Alaska natural gas transportation systems are to be referred to the same Committee by the appropriate officer of the Senate or the House. If the Committee to which the joint resolution was referred has not reported at the end of 30-calendar days after referral, it is in order for any Senator or Member of the House of Representatives, as the case may be, who favors the joint resolution to move to discharge the Committee from further consideration of this or any other resolution with respect to a Presidential decision on an Alaska natural gas transportation system. The debate on such a motion shall be limited to not more than 1 hour to be divided equally between those favoring and those opposing the resolution. No amendments nor motions to reconsider the vote are in order. Once a motion to discharge is agreed or disagreed to, the motion may not again be made with respect to any other resolution concerning the same Presidential decision on Alaska natural gas transportation system.

Thereafter, it shall be in order for any member to move to proceed to the consideration of the joint resolution. Such a motion is highly privileged, shall not be debateable and neither amendments thereto nor a motion to reconsider shall be in order. The debate on the joint resolution is limited to not more than 10 hours divided equally between those favoring and those opposing the resolution. No amendments or motions to recommit are in order nor shall it be in order to move to reconsider a vote by which such a joint resolution was agreed or disagreed to. Any motions made with respect to postponing a discharge from Committee shall be decided without debate. Any appeals from the decision of the chair relating to the application of the rules of the Senate or the House, as the case may be, to the procedures relating to a joint resolution shall be decided without debate.

These special procedures are an exercise of the Congressional rule-making power, and they supersede any other rules to the extent that they are inconsistent with the rules contained in S. 3521 as reported. There is full recognition of the Constitutional right of either House to change the rules with respect to procedures of that House at any time in the same manner and to the extent, as the case may be, with respect to any other rules.

Section 8(e) specifies that, as part of the President's decision, he must find that any final environmental statement required pursuant to section 102(c)(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et. seq.) has been prepared. He may supplement existing environmental impact statements and if he selects a system for which no required statement has been prepared he may delay his decision for up to 90 days to supplement or prepare a final environmental impact statement.

SECTION 9—AUTHORIZATIONS

Section 9(a) directs the Federal Power Commission, the Secretary of the Interior, and other appropriate federal officers and agencies to issue and take all necessary action to administer and enforce all certificates, rights-of-way, permits, leases, and other authorizations necessary to the construction, and initial commercial operation of the transportation system, if any, selected by the President and approved by joint resolution by the Congress. All such authorizations are to be issued at the earliest practicable date. Further, all Federal agencies are directed to expedite in every way their consideration of such authorizations and that such matters take precedence over all similar activities of federal agencies. The issuance by the Secretary of the Interior of a right-of-way permit over federal lands shall be subject to the provisions of section 28 of the Mineral Leasing Act of 1920, except that the provisions of subsection (h)(1) (relating to the National Environmental Policy Act), (j) (relating to the Secretary's determination of technical and financial capability but only with respect to initial approvals and not with respect to renewal, of rights-of-way permits), (k) (relating to public hearings), (q) (relating to other statutes and providing for an election), and (w)(2) (relating to authorizing the Senate and House Committees on Interior and Insular Affairs to examine for 60 days any proposed right-of-way across Federal lands). However, the submission required by the first sentence of subsection (h)(2) (relating to the submission of a plan of construction, operation, and rehabilitation of the federal right-of-way) shall be made at the earliest practicable time after issuance of the right-of-way and other authorizations hereunder.

Section 9(b) requires that all authorizations required for the construction and initial commercial operation of the Alaska natural gas transportation system shall include the terms and conditions required, and may include the terms and conditions permitted, by the provisions of law that would otherwise be applicable if S. 3521 had not been enacted, so long as such terms and conditions are not inconsistent with the purposes of this Act and do not change the basic nature and route of the transportation system approved by enactment of a joint resolution of the Congress. However, federal officers and agencies issuing such required authorizations may expedite or waive any procedural requirements of law or regulation which they deem necessary to waive in order to accomplish the purposes of this Act. The directions contained in this subsection are to supersede the provisions of any law or regulations relating to an administrative determination as to whether the authorization for the construction of a system for the transportation of Alaska natural gas shall be issued.

Subsection (c) of section 9 states that the holders of certificates of public convenience and necessity for an Alaska natural gas transportation system shall have all the rights, powers, and obligations of a holder of a certificate of public convenience and necessity issued pursuant to the Natural Gas Act, together with any other rights, powers, and obligations imposed pursuant to this Act.

Section 9(d) authorizes the Commission, the Secretary, and other federal officers and agencies to exercise any authority under existing law at any time when necessary to protect the public interest to amend

or modify any certificate, right-of-way, permit, lease, or other authorization issued by such officer or agency pursuant to this Act.

SECTION 10—JUDICIAL REVIEW

Section 10 of S. 3521 minimizes judicial review of the issuance of certificates, rights-of-way, permits, leases, and other authorizations necessary for the construction and initial commercial operation of the Alaska natural gas transportation system approved by enactment of a joint resolution of the Congress. A detailed discussion of the judicial review provisions appears as part of the Detailed Description section of this report.

SECTION 11—REMEDIES

Section 11(a) states that in addition to remedies available under other applicable provisions of law, whenever on the basis of any information available to it the Commission, the Secretary, or other appropriate federal officers finds that any person is in violation of any provision of this Act or other applicable law or any rule, regulation, or order thereunder or a condition of the certificate, right-of-way, permit, lease, or other authorization required for the construction of initial commercial operation of the Alaska natural gas transportation system approved by enactment of a joint resolution of the Congress, the Commission, Secretary, or other appropriate federal officer as the case may be, in their discretion may either issue an order requiring such person to comply with such provision or requirement, or request the Attorney General to commence a civil action for appropriate relief including a permanent or temporary injunction or a civil penalty not to exceed \$25,000 per day of any violation for which the appropriate federal officer is authorized to issue a compliance order. The United States District Court in which the defendant is located or resides or is doing business is given jurisdiction to restrain a violation, require compliance or impose a penalty.

Subsection (b) of section 11 requires that any compliance order issued shall state with reasonable specificity the nature of the violation and a time for compliance not to exceed 30 days, which the Commission, the Secretary or other appropriate federal officer, 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.

SECTION 12—EXPORT LIMITATIONS

Any exports of Alaska natural gas shall be subject to all of the limitations and approval requirements of the Natural Gas Act and in addition, notwithstanding any other provision of law, before any natural gas from Alaska 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 and that such exports are in the national interest. This provision is designed to assure that if the export of Alaska natural gas is in the national interest, it may be done only under an ex-

change arrangement whereby U.S. consumers would not be faced with increases in energy prices nor a reduction in the total quantity or quality of energy.

SECTION 13—EQUAL ACCESS TO FACILITIES

Section 13 requires that there shall be included in the terms of any certificate issued pursuant to this Act a provision that no person seeking to transport natural gas in the Alaska natural gas transportation system approved by enactment of a joint resolution of the Congress may be prevented from doing so or discriminated against in the terms and conditions of service on the basis of his degree of ownership or lack thereof of the Alaska natural gas transportation system. This provision requires that tariffs shall be equal to shippers who are owners or non-owners of the system for the shipment of similar quantities of natural gas for similar distances. This is to assure that pipelines or distributors who are able to purchase additional quantities of Alaska natural gas are able to transport such natural gas to their own system upon non-discriminatory terms.

In addition, section 28(r)(2)(B) of the Mineral Leasing Act of 1920 (Public Law 93-153) imposes certain requirements to transport natural gas produced from federal lands through natural gas pipelines crossing federal lands. These requirements are imposed even though such natural gas pipelines are operated by a person subject to regulation under the Natural Gas Act or by a public utility subject to regulation by a state or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the state or municipality. These requirements specify that " * * * in the case of oil or gas produced from federal lands or from the resources on the federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased". This provision allows any person producing natural gas from federal lands in the vicinity of the Alaska natural gas transportation system certified hereunder to petition the Secretary of the Interior who may, after a full hearing, require the certificate holder, in the event adequate capacity is not available, to apportion shipments of other shippers in order to accommodate the production from federal lands. For a more complete discussion of this provision, see Senate Report No. 93-207, pages 32-35.

SECTION 14—ANTITRUST LAWS

This section makes clear that the grant of a certificate, right-of-way, permit, lease, or other authorization pursuant to this Act shall not impair or amend any of the antitrust laws.

SECTION 15—EXPIRATION OF AUTHORITY

This section provides that the provisions of section 4(a), 5, 6, and 8 of this Act shall expire upon the date that the provisions for the Alaska natural gas transportation system becomes final in accordance

with the provisions of section 8 of this Act or July 1, 1978, whichever is earlier.

SECTION 16—SEPARABILITY

This section states that if any provision of this Act, or the application thereof is held invalid, the remainder of the Act shall not be affected thereby.

CHANGES IN EXISTING LAW

In compliance with section 4 of rule XXIX of the Standing Rules of the Senate, S. 3521, as reported, does not directly repeal any existing law.

However, it does contain a "notwithstanding any other provision of law" provision which may operate to indirectly modify existing provisions of law:

Section 5 (relating to the Commission recommendation concerning an Alaska natural gas transportation system);

Section 9 (directing appropriate federal agencies to issue as soon as practicable all necessary authorizations required for the construction and initial commercial operation of an Alaska natural gas transportation system);

Section 10 (relating to judicial review of agency decisions with respect to an Alaska natural gas transportation system); and

Section 12 (relating to limitations on the export of Alaska natural gas to nations other than Canada or Mexico).

TEXT OF S. 3521, AS REPORTED

To expedite a decision on the delivery of Alaska natural gas to United States markets, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

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

CONGRESSIONAL FINDINGS

SEC. 2. The Congress finds and declares that—

- (a) a natural gas supply shortage exists in the United States;
- (b) large reserves of natural gas in the State of Alaska could help significantly to alleviate this supply shortage;
- (c) the construction of a viable natural gas transportation system for delivery of Alaska natural gas to other States is in the national interest; and
- (d) alternative systems for transporting Alaska natural gas to other States have been proposed, and the selection of a system, if any, involves critical questions of national energy policy, international relations, national security, and economic and environmental impact, and therefore should appropriately be addressed by the Congress of the United States and the executive branch, in addition to the Federal Power Commission.

STATEMENT OF PURPOSE

SEC. 3. The purpose of this Act is to expediate a sound decision as to the selection and construction of a natural gas transportation system for delivery of Alaska natural gas to other States through establishment of new administrative and judicial procedures. 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, in limiting judicial review of the actions taken pursuant thereto.

DEFINITIONS

SEC. 4. As used in this Act—

(a) 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;

(b) the term "Commission" means the Federal Power Commission; and

(c) the term "Secretary" means the Secretary of the Interior.

FEDERAL POWER COMMISSION REVIEW AND REPORTS

SEC. 5. (a) (1) Notwithstanding the provisions of the Natural Gas Act (15 U.S.C. 717-717w), all pending proceedings before the Commission relating to the transportation of Alaska natural gas shall be governed by this Act, and the procedures established and authorized hereunder shall govern actions by the Commission with respect to review of applications and reasonable alternatives relating to the transportation of Alaska natural gas to other States.

(2) The Commission, in the exercise of its discretion, shall establish such rules and procedures as it deems appropriate to carry out its responsibilities under this Act with respect to review of applications and reasonable alternatives relating to the transportation of Alaska natural gas to other States. Such rules and procedures shall supersede rules or procedures that would otherwise have obtained under the Natural Gas Act (15 U.S.C. 717-717w) and the Administrative Procedure Act (5 U.S.C. 522).

(3) Any certificate of public convenience and necessity related to the transportation of Alaska natural gas from the State of Alaska to other States shall be issued by the Commission in accordance with section 9 of this Act.

(4) The provisions of the Natural Gas Act shall apply to the extent they are not inconsistent, as determined by the Commission, with this Act.

(b) The Commission may request such information and assistance from any Federal agency as it deems necessary and appropriate regarding the transportation of Alaska natural gas. All Federal agencies requested to submit information shall submit such information to the Commission at the earliest possible time after receipt of a Commission request.

(c) The Commission, pursuant to rules and procedures established under paragraph (2) of subsection (a) of this section, is hereby di-

rected to review all applications pending on the date of enactment of this Act, and any subsequent amendments thereto, as well as other reasonable alternatives, as determined by the Commission, for the transportation of Alaska natural gas to other States, and to transmit a recommendation concerning an Alaska natural gas transportation system to the President by March 1, 1977. Such recommendation may be in the form of a proposed certificate of public convenience and necessity, or such other form as the Commission deems appropriate, and may include a recommendation that approval of a transportation system be delayed. Any recommendation for the construction of a system shall: (1) include a description of the route and major facilities; and (2) designate a party to construct and operate such a system.

(d) In making its recommendation, the Commission shall consider, and its report shall include, for each transportation system under review, a discussion of the following factors:

(i) projected natural gas supply and demand for all regions of the United States, including an analysis of—

(A) the economic deliverability of Alaska natural gas directly, by displacement, or otherwise; and

(B) the regional availability of alternative fuel supplies if adequate supplies of natural gas are not available;

(ii) transportation costs over its economic life, including an analysis of—

(A) anticipated tariffs, and

(B) delivered prices for Alaska natural gas in each affected region of the country;

(iii) the extent to which it provides access for the transportation to the United States of natural resources or other commodities from sources in addition to the Prudhoe Bay Reserve;

(iv) environmental impacts;

(v) safety and efficiency in design and operation and potential for interruption in the supply of natural gas;

(vi) construction schedules and other possibilities for delay;

(vii) feasibility of financing;

(viii) extent of reserves, both proven and probable, and their deliverability;

(ix) the estimate of the total delivered cost to consumers of the natural gas to be transported by the system;

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

(xi) such other factors as the Commission deems appropriate.

(e) 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.

(f) The Commission's recommendation shall be accompanied by a report, which shall be made public, explaining the basis of its recommendation, including specific reference to the factors described in subsection (d) of this section.

(g) Within 20 days of the transmittal of the President's decision to the Congress pursuant to section 7, the Commission shall issue a report, which shall be made public, commenting on the decision and including any information with regard to that decision which the Commission deems appropriate.

OTHER REPORTS

SEC. 6. (a) By April 1, 1977, any agency may submit a report to the President with respect to the recommendation of the Commission and the alternative methods for delivering Alaska natural gas to other States. Such reports shall be made public when submitted to the President, unless expressly exempted from this requirement by the President, and shall include information within the competence of such agency with respect to—

- (i) environmental considerations, including air and water quality and noise impacts;
- (ii) the safety of the transportation systems;
- (iii) international relations, including the status and time schedule for any necessary Canadian approvals and plans;
- (iv) national security, particularly security of supply;
- (v) sources of financing for capital costs;
- (vi) impact on the national economy including regional natural gas requirements; and
- (vii) relationship of the proposed transportation system to other aspects of national energy policy.

(b) By April 1, 1977, the Governor of any State, any municipality or State utility commission, and any other interested person may submit to the President such reports, recommendations and comments with respect to the recommendation of the Commission and alternative systems for delivering Alaska natural gas to other States as they deem appropriate.

PRESIDENTIAL DECISION AND REPORT

SEC. 7. (a) (1) As soon as possible after receipt of the recommendation, reports, and comments pursuant to sections 5 and 6 of this Act, but not later than July 1, 1977, the President shall issue a decision as to which system for transportation of Alaska natural gas, if any, shall be approved. The President in making his decision on the natural gas transportation system shall take into consideration the Commission's recommendation pursuant to section 5, the factors set forth in section 5(d), and the reports provided for in section 6, and his decision shall be based on his determination as to which system, if any, best serves the national interest.

(2) If the President's decision pursuant to this section designates a system for the transportation of Alaska natural gas, such decision shall provide for—

(A) a process by which disputes among agencies and by which administrative appeals from agency decisions may be resolved in an expeditious manner;

(B) the designation of an official of the United States to serve as Federal inspector and coordinator of construction of the Alaska natural gas transportation system. The Federal inspector shall—

(i) assure compliance with applicable laws and the terms and conditions of any applicable certificate of public convenience and necessity, rights-of-way, permits, leases or other authorizations in accordance with Section 11 of this Act;

(ii) assure adequate control of construction, quality of workmanship, environmental impact and cost;

(iii) have the power to compel, by subpoena if necessary, submission of such information as he deems necessary to carry 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 construction difficulties and the extent to which quality control, safety and environmental protection objectives have been achieved.

(3) The President's decision pursuant to this section may provide for the establishment of a special administrative review process to assure that the actions of Federal officers under this Act for which judicial review is limited may be reviewed administratively to assure they are reasonable and in the public interest. Any such review under such process shall not exceed 45 days and shall be subject to section 10 of this Act.

(4) For fiscal year 1978 and each succeeding year, there are hereby authorized to be appropriated such sums as may be necessary to carry out the functions delegated to the Federal inspector.

(5) Consistent with the provisions of this Act, the Natural Gas Act and other applicable law, the President's decision shall contain such terms and conditions as he deems appropriate for inclusion in any certificate issued pursuant to the Act. The President shall identify the legal authority pursuant to which any such term or condition is included. No such term or condition shall be included unless the President has identified such legal authority.

(b) The decision of the President made pursuant to subsection (a) of this section shall be transmitted immediately to the Senate and the House of Representatives on the first day that both are in session, and 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(d) and 6(a), and the reasons for any revision, modification or substitution of the Commission recommendation.

(c) The report of the President pursuant to subsection (b) of this section shall contain a financial analysis for the transportation system chosen by him. Unless the President states in his findings pursuant to this subsection that he can reasonably anticipate that the system chosen 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 the President shall inform himself, through appropriate consultation, of the views and objectives of the several States and the Government of Canada with respect to those aspects of such a decision that may involve intergovernmental and international cooperation between the Government of the United States and the Government of Canada.

(e) The decision of the President shall become final as provided in section 8.

CONGRESSIONAL REVIEW

SEC. 8. (a) The decision concerning an Alaska natural gas transportation system by the President shall become final upon enactment of a joint resolution in the form described in subsection (d) of this section within the first period of 60 calendar days of continuous session of Congress after the date of receipt by the Senate and House of Representatives.

(b) If the Congress does not enact a joint resolution within such 60-day period, the President, within 30 days of such failure to enact a joint resolution, may propose a new decision and shall provide a detailed statement concerning the reasons for such proposal. The new decision, together with a statement of the reasons therefor, shall be transmitted to the House of Representatives and the Senate on the same day while both are in session and shall become final pursuant to subsection (a) of this section.

(c) For purposes of this section—

(1) continuity of session is broken only by 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 the Senate and the House of Representatives, 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 relating 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 the House.

(1) For purposes of this subsection, the term "resolution" means only a joint resolution passed by each House, the resolving clause of which is as follows: "That the House and Senate approve the Presidential decision on an Alaska natural gas transportation system submitted to the Congress on ———, 19—, and find that any required final environmental impact statements issued in connection with that decision are in compliance with the National Environmental Policy Act, 42 U.S.C. 4321 et seq." The blank space therein being filled with the date on which the President transmits his decision to the House and Senate.

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

(4) (A) If the 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 the committee from further consideration of such resolution or to discharge the 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 the 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 the committee has reported, or has been discharged from further consideration of, a resolution, 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 referred to in subparagraph (A) of this paragraph 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.

(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) Prior to the transmittal to the Senate and House of Representatives of the President's decision pursuant to section 7(b) the President must find that all final environmental impact statements on the Alaska natural gas transportation system proposed by the President has been prepared. To meet the requirements of this section the President may supplement the impact statements prepared by the Commission or other appropriate Federal agencies. If the President selects an Alaska natural gas transportation system for which no required final environ-

mental impact statement has been prepared, the President may delay his transmittal to the House and Senate for up to 90 additional days for the purpose of supplementing or preparing any required final environmental impact statement.

(f) Within 20 days of the transmittal of the President's decision to the Congress under section 7(b) the Council on Environmental Quality shall hold public hearings on the legal and factual sufficiency of the environmental impact statements prepared in connection with the President's decision, and shall submit to the Congress a report summarizing the testimony received and setting forth the Council's views concerning the legal and factual sufficiency of such environmental impact statements. The appropriate committees in each House shall conduct hearings on the Council's report and shall invite testimony from the Council on Environmental Quality and representatives of the public.

AUTHORIZATIONS

SEC. 9. (a) The Congress hereby authorizes and directs the Commission, the Secretary and other appropriate Federal officers and agencies to issue and take all necessary action to administer and enforce all certificates, rights-of-way, permits, leases, and other authorizations necessary or related to the construction and initial commercial operation of the transportation system selected in the decision, if any, which becomes final pursuant to section 8 of this Act. All certificates, rights-of-way, permits, leases, and other authorizations issued pursuant to this subsection shall be issued at the earliest practical date. All agencies shall expedite in every way their consideration of such certificates, rights-of-way, permits, leases, and other authorizations and such matters shall take precedence over all other similar activities of such agencies. Rights-of-way, permits, leases, and other authorizations issued pursuant to this Act by the Secretary shall be subject to the provisions of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), except the provisions of subsections (h)(1), (j), with respect to initial approvals, (k), (q), and (w)(2) thereof: Provided, however, That the submission required by the first sentence of subsection (h)(2) thereof shall be made at the earliest practicable time after issuance of the rights-of-way and other authorizations hereunder.

(b) All authorizations issued pursuant to this Act shall include the terms and conditions required, and may include the terms and conditions permitted, by the provisions of law that would otherwise be applicable if this Act had not been enacted, so long as such terms and conditions are not inconsistent with the purposes of this Act and do not change the basic nature and general route of the transportation system designated hereunder, and the Federal officers and agencies issuing such authorizations may expedite or waive any procedural requirements of law or regulations which they deem necessary to waive in order to accomplish the purposes of this Act. The direction contained in this section shall supersede the provisions of any law or regulations relating to an administrative determination as to whether the authorizations for construction of a system for transportation of Alaskan natural gas shall be issued.

(c) The holders of certificates issued by the Commission pursuant to this section 9 shall have all rights, powers, and obligations of holders of a certificate of public convenience and necessity issued pursuant to the Natural Gas Act in addition to any other rights, powers and obligations pursuant to this Act.

(d) Consistent with the purposes of this Act, the Secretary and other Federal officers and agencies are authorized at any time when necessary to protect the public interest, to exercise any authority under existing law to amend or modify any right-of-way, permit, lease, or other authorization issued by such officer or agency pursuant to this Act.

JUDICIAL REVIEW

SEC. 10. Notwithstanding any other provisions of law, except the provisions of section 11 of this Act, the actions of Federal officers or agencies taken pursuant to this Act, including the issuance of a certificate of public convenience and necessity by the Commission and actions concerning the issuance of the necessary rights-of-way, permits, leases, and other authorization pursuant to section 9 for construction and initial commercial operation of a system for the transportation of Alaska natural gas and the legal or factual sufficiency of any environmental statement prepared relative to the Alaska natural gas pipeline pursuant to the National Environmental Policy Act (42 U.S.C. 4321 et seq.) shall not be subject to judicial review under any law, except that claims alleging the invalidity of this Act may be brought within 60 days following a decision becoming final pursuant to section 8 of this Act, and claims alleging that an action will deny rights under the Constitution of the United States, or that an action is beyond the scope of authority conferred by this Act, may be brought within 60 days following the date of such action. A claim shall be barred unless a complaint is filed in the United States Court of Appeals for the District of Columbia acting as a Special Court within such time limits, and 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 whether in a proceeding instituted prior to or on or after the date of enactment of this Act. 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 action is brought unless such court determines that a longer period of time is required to satisfy requirements of the United States Constitution. Such court shall not have jurisdiction to grant any injunctive relief against the issuance of any certificate right-of-way, permit, lease, or other authorization pursuant to this section except in conjunction with a final judgment entered in a case involving 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 decision of the United States Court of Appeals for the District of Columbia shall be rendered.

REMEDIES

SEC. 11. (a) In addition to remedies available under other applicable provisions of law, whenever on the basis of any information available to it the Commission, the Secretary or other appropriate Federal officer finds that any person is in violation of any provision of this Act or other applicable law or any rule, regulation, or order thereof, or condition of the certificate, right-of-way, permit, lease or other authorization, the Commission, Secretary, or other appropriate agency head, as the case may be, in their discretion, may: (1) issue an order requiring such person to comply with such provision or requirement or; (2) bring a civil action in accordance with subsection (c).

(b) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and a time of compliance not to exceed 30 days, which the Commission, the Secretary, or other appropriate agency head, 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 by the Commission, the Secretary, or other appropriate Federal Officer, 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 of such violation, for any violation for which the Commission, the Secretary, or other appropriate Federal Officer is authorized to issue a compliance order under subsection (a) of this section. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation, require compliance, or impose such penalty.

EXPORT LIMITATIONS

SEC. 12. Any exports of Alaska natural gas shall be subject to all of the limitations and approval requirements of the Natural Gas Act (15 U.S.C. 717 et seq.) and, in addition, notwithstanding any other provision of law, 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, and are in the national interest.

EQUAL ACCESS TO FACILITIES

SEC. 13. There shall be included in the terms of any certificate issued pursuant to 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. The grant of a certificate, right-of-way, permit, lease, or other authorization pursuant to this Act shall not impair or amend any of the antitrust laws.

EXPIRATION OF AUTHORITIES

SEC. 15. The provisions of sections 4(a), 5, 6, and 8 of this Act shall expire upon the date that a certificate for the Alaska natural gas transportation system becomes final in accordance with the provisions of section 8 of this Act or July 1, 1978, whichever is earlier.

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.

AGENCY COMMENTS

The Committees received no agency comments specifically on S. 3521. However, the Federal agencies with principal responsibilities with respect to the transportation of Alaska natural gas responded to the Committees' joint questionnaire and testified at joint hearings on this subject.

ADDITIONAL VIEWS OF MR. BUMPERS

It is clear that we will face increasing shortages of natural gas in this country within the next few years. Curtailments of existing contracts have already occurred, and new customers have been denied access to our present limited supply. Because the amount of natural gas is limited, and non-renewable, there has been understandable excitement over the discovery of the massive gas field at Prudhoe Bay, Alaska.

The major purpose of this bill is to expedite both the decisions as to which route the natural gas pipeline will follow to the lower forty-eight states, and its construction. As anxious as I am to make Alaskan natural gas available at as early a date as possible, I am troubled by what I see as the development of a dangerous trend in our energy policy. One of the key provisions of this act is Section 10 which severely limits judicial review of decisions concerning the gas pipeline itself, and the environmental impact statements prepared subject to the National Environmental Policy Act. The reason for the limitation is the assumption that permitting judicial review will only lead to challenges and delays in constructing the pipeline. We all remember the oil pipeline court battle and the delay which followed. What we tend to forget is how much was accomplished by that court challenge. Yes, the pipeline did cost more because of the delay, but all of us benefited by a safer, more reliable oil supply, and the protection of one of the most important environmental areas, and its fish and wildlife resources. It is important to remember that it is not environmentalists and other intervenors who cause delays. It is the courts that grant delays, and they grant them because laws or procedures have been violated. The high quality of the environmental impact statements already prepared by the Federal Power Commission and the Department of the Interior on several Alaskan gas pipeline proposals is certainly due in part to the knowledge that such statements were potentially subject to judicial review. It is interesting to note that of the 6,466 draft environmental impact statements filed by July 1, 1975, less than 5 percent or 291 have been challenged, and of those, 120 temporary and 4 permanent injunctions granted.

I have always felt that the right to judicial review of administrative and Congressional actions provides an important check on what might otherwise become oppressive or unreasonable governmental policy. We should be exceedingly reluctant to relinquish that right, and should do so only in the face of overriding concerns.

The bill before us provides an alternative to judicial review in several places. First, the President must prepare a final environmental impact statement (EIS) on the actual route selected, and must find that it is in compliance with NEPA. Second, the President's Council on Environmental Quality (CEQ) must hold a public hearing to receive comments on the adequacy of the EIS. Third, committees of each

House of Congress shall hold hearings on the adequacy of the EIS to which the chairman of CEQ and members of the public are invited to testify. Finally, an organizational scheme is provided which has provision for the public review of administration decisions. All of these review provisions are to be implemented within tight time constraints so as to expedite pipeline construction.

Having described these alternatives to the judicial review of environmental impact statements, I would like to raise a word of caution. The National Environmental Policy Act and its requirements were enacted in order to provide an orderly procedure for assessing the impact of major governmental actions on the environment. No one denies that this \$10 billion project constitutes a major action having substantial environmental consequences. Because of time and financial constraints many feel that it is necessary to curtail judicial review. Despite the safeguards proposed in this bill, we run a major risk in following this course.

There is a danger as we deplete our energy resources that we will come to accept even greater environmental damage as the price we must pay to retain our "highest standard of living." The NEPA review process, and the opportunity to challenge its adequacy in the courts presently stands as an all too thin barrier between us and that possibility. I hope that we will withstand the temptation to remove that protection to suit our convenience. NEPA has served us well in the past, and must be permitted to continue to do so in the future. The limitation on judicial review contained in this act should not be viewed as a precedent for undermining our commitment either to the NEPA process or to a quality environment.

DALE BUMPERS.

MINORITY VIEWS OF MR. DURKIN

This bill would establish expedited procedures for consideration, selection and approval of a transportation system for bringing natural gas from Alaska's North Slope to the lower 48 states. The expedited procedures contained in this bill are extraordinary and in the nature of emergency measures. I am not convinced, however, that a case has been made that these procedures are necessary at this time or that existing procedures are inadequate to assure timely resolution of the issues surrounding transportation of natural gas from Alaska. A multi-billion dollar transportation project is at stake. Economic and environmental issues of tremendous importance are involved. The resolution of the issues involved will have a significant impact on our national energy policy for some time to come. With these stakes, I expected a compelling showing of an urgent and immediate need to abandon existing and proven decision-making procedures. No such showing has been made to date.

First, S. 3521 proposes that Congress shortcut the certification process mandated by the Natural Gas Act, substituting direct Congressional decision following recommendations by the Federal Power Commission (FPC) and the President. Second, it would suspend for all practical purposes the operation of the National Environmental Policy Act of 1969 (NEPA), permitting FPC recommendations to be based on less extensive environmental considerations than heretofore has been required. Third, it restricts judicial review of the decision reached through this truncated procedure to questions of constitutionality and allegations that the mandated decision processes have not been followed. Thus, passage of this legislation would mark a significant departure from a whole series of policies intended to promote energy decisions in the public interest.

Moreover, S. 3521 saddles the FPC with an arbitrary timetable that will severely limit its ability to give full consideration to all proposals now pending before it. The result may well be that an FPC recommendation will be forthcoming that cannot be fully supported technically, economically, environmentally or as a matter of national energy policy.

I view with particular concern whether an adequate case has been made for the weakening of NEPA. First, there is no assurance that environmental factors will be weighed adequately under the provisions of this bill. The "environmental impacts" which the FPC will be required to consider are largely unspecified except in the negative: all of the careful court opinions delineating what environmental factors must ordinarily be considered in such decisions are deliberately excluded. Nobody seriously contends that environmental evaluation has been completed for all existing route proposals. Substituting a hasty Presidential environmental impact analysis and comment by the Council on Environmental Quality is a poor substitute for careful

judicial scrutiny. Cutting short this crucial evaluation process at this time could result in a poorly analyzed decision.

In addition, setting aside NEPA under these circumstances may create another undesirable precedent. By reporting S. 3521, my colleagues would interrupt for the first time the requirement that regulatory agencies be afforded adequate time to complete environmental impact statements in all instances except emergencies. It is particularly ironic that this proposal arises in a case where the least studied application—potentially the soundest from an economic and environmental point of view—is an outgrowth of the alternative route suggestions which were required to be included in the impact statements on earlier applications. Without NEPA, we might never have been aware of the possibility of building a natural gas pipeline to Alaska without unnecessary cost or threat to the environment. This hardly seems an occasion to suspend or weaken the policy.

Of equal concern is the provision which would deprive federal courts of jurisdiction over environmental questions until the pipeline begins operation. I believe that this action is at best premature. There is no present indication that dilatory litigation will be attempted if an application is approved. A recent study by the Council on Environmental Quality concluded that less than five percent of the environmental impact statements produced to date have been challenged in court. It is far more likely that the source of a long court fight would be an unsuccessful applicant. We should not be so quick to deprive citizens of access to legal redress for the convenience of these corporate giants.

If a trans-Alaska natural gas pipeline is built, it will be one of the largest construction projects ever undertaken. Much of the technology that will enable its completion is untested. Shortening the normal certification process can only come at the expense of fully understanding the implications of each application. At this stage, there is no demonstrated need for expediting the process, but there is obvious risk. Congress should not be stampeded into approving this bill without adequate consideration.

My opposition to S. 3521 should not be misinterpreted as opposition to the transportation of natural gas from Alaska. My concern is that the procedures followed and the route chosen are economically sound and environmentally safe. Furthermore, the route taken should bring the natural gas as close as possible to New Hampshire, New England and the Atlantic Seaboard—the areas of the country which need low cost energy the most.

JOHN A. DURKIN.

