

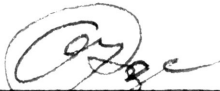
INTRASTATE ACCESS CONSTRAINTS UNDER THE NGPA:
WILL TEXANS BE PROHIBITED FROM RECEIVING TEXAS NATURAL GAS?

by

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I. INTRODUCTION

In response to a critical shortage in the interstate natural gas market, Congress passed the Natural Gas Policy Act in 1978.¹ Rather than simply repairing the problems of the interstate pipeline system, however, the NGPA has shifted those difficulties to the intrastate market. Specifically, the Texas intrastate pipeline system faces a situation in which it cannot legally access interstate supplies, and it may not be able to afford to bid for its own newly discovered supplies. The end result is an extremely large Texas consumer market incapable of receiving its own or other natural gas supplies. The purpose of this article is to investigate and to analyze the regulatory environment leading to this prodigious result.

The article begins with a brief overview of pre-NGPA and NGPA regulation in Section II. Section III investigates the market anomalies inherent in the NGPA regulatory scheme. This section concludes with an analysis of the interaction between contract law and the deregulation time table. The results of the market distortions in Section III are then compared in a "hard" versus "soft" economic environment in Section IV. Finally, Section V suggests methods of reform, with a discussion of the most efficient solution under current market conditions.

II. FEDERAL REGULATION OF NATURAL GAS

A. Pre-NGPA Regulation, 1938-1978.

The federal regulation of the natural gas industry begins in 1938 with

the Natural Gas Act.² From 1938 to 1954 the Commission regulated natural gas pipelines in interstate commerce (and only such pipelines) in the same way that state utility commissions regulate public utilities. In 1954, the Supreme Court extended NGA pipeline regulation to include sales at the wellhead.³ The Federal Power Commission⁴ accepted the responsibility of controlling a producer's market long-regarded by Congress and the Court as monopolized by the major oil companies.⁵

With the idea of controlling monopoly power, the Commission employed a cost-of-service approach in the regulation of producers and pipelines in interstate commerce. However, as applied to producers, cost-of-service rate regulation was a dismal failure. A tremendous case back-log⁶ forced the Commission to a shift away from individual rate studies towards an area-rate approach.⁷ The scope of review had changed, yet the methodology of review had not. Cost-based pricing remained the central regulatory method.⁸

Area-rate proceedings continued until the Commission began to see history repeat itself -- the list of impending cases again strained review capacity and area-rate methods yielded to a national-rate approach.⁹ For the first time in gas regulatory history, the Commission set prices based on other non-cost factors.¹⁰ A substantial increase in well-footage indicated the relative success of incentive pricing.¹¹

Unfortunately, the relative success of the national-rate "incentive" price was only a temporary phenomenon, as severe shortages continued to grow in the interstate market. Regulation in the interstate market without commensurate regulation in the intrastate market has been generally accepted as the source of this shortage during the early 1970's.¹² The unregulated intrastate market, governed only by the laws of supply and demand,

experienced a surplus supply of gas as potential interstate producers committed their supplies to that market and not to the artificially low-priced interstate market. The final result was a dual market for natural gas. Shortages in the interstate market become so severe that the viability of future supplies was seriously questioned.

B. An Overview of the NGPA

After a long and arduous debate, Congress decided to correct the dual market anomaly by passing the Natural Gas Policy Act¹³ in 1978. The final bill contained elements of a Senate bill proposing interstate deregulation¹⁴ and a House bill advocating the extension of federal regulation to all markets.¹⁵ The NGPA, however, followed the House bill more closely, regulating both the interstate and intrastate systems.¹⁶

As opposed to analyzing the six separate titles¹⁷ of the NGPA, this article concentrates solely on those sections affecting the livelihood of the intrastate pipeline system. Key to this analysis are the complex gas classification and deregulatory scheme delineated in Title I and the interstate sales agreements under Title III. Under proper market conditions, various provisions of Title I and Title III have the potential to create a number of market distortion and allocative inefficiency difficulties for intrastate pipeline companies.

III. AREAS OF DIFFICULTY FOR INTRASTATE
PIPELINES ATTRIBUTABLE TO FEDERAL REGULATION

A. Constraints on Access to Newly Discovered Supplies

As defined herein, the "access problem" is simply the inability of intrastate pipelines to purchase natural gas from the interstate system. Interstate and intrastate pipelines may transport¹⁸ gas supplies on behalf

of each other, but NGPA section 311 permits actual sales in only one direction: Congress authorized sales from the intrastate to the interstate system without equal access for intrastate pipelines.¹⁹ The logic behind this decision is quite lucid. The bifurcated gas market of the 1970's, created by pre-NGPA regulation,²⁰ left the interstate pipeline system with severe supply shortages. In response to that shortage, Congress specifically enacted NGPA section 311 to ensure a stable gas supply for the interstate system. Without considering the potential impact on the intrastate market, however, Congress left the job only half-finished. If the intrastate surplus should shift to the interstate system, intrastate pipelines will be legally constrained from accessing non-intrastate supplies regardless of their willingness to pay for such supplies.

1. *Off-System Sales Impacts.* In an attempt to alleviate the NGPA's access difficulties, the Commission has instituted an "off-system sales" program. Under the program, interstate pipelines are allowed to sell gas to intrastate pipelines under strict and limited conditions. While intended to benefit intrastate pipeline companies, recent testimony at a Texas Railroad Commission hearing reveals a number of difficulties encountered with off-system sales.²¹ Off-system gas supplies, being a less expensive source than intrastate supplies,²² have replaced much of the demand for intrastate gas. Off-system sales could impose a number of adverse effects on Texas consumers including: (1) load losses requiring that fixed costs be spread over fewer customers -- specifically the residential consumer; (2) replacement of intrastate reserves will be reduced; (3) "takes" from intrastate producers will decline; and (4) producers are induced to search for more expensive supramarket priced supplies.²³ The real danger inherent in off-system sales revolves around the temporary and interruptible nature of

these sales.²⁴ Purchases may become overly dependent upon a cheap, yet only temporary supply.²⁵ Testimony indicates that such sales will work to cripple the permanent intrastate supply system, leaving customers with access to a temporary and interruptible supply.

Clearly, off-system sales are not an answer to the intrastate access problem. In fact, such sales violate the public interest test embodied in the NGA.²⁶ To avoid future problems with off-system gas supplies, the Railroad Commission suggests that off-system sales be defined as interruptible sales enduring less than one year.²⁷ Additionally, off-system sales must meet several criteria before approval.²⁸

2. *Restrictions on Outer Continental Shelf Supplies.* For Texas and the U.S., offshore production is an important source of natural gas.²⁹ In the first two years following the enactment of the NGPA, some forty percent of well applications for section 102 "new gas" originated in offshore Texas and Louisiana.³⁰ The Federal Submerged Lands Act and the Outer Continental Shelf Lands Act define the division between federal and state offshore boundaries. As a general rule, the federal boundary begins three miles offshore. Texas, however, is a major exception to that general rule with its state boundary extending three leagues (10.4 miles).³¹

The Texas intrastate pipeline system had access to approximately 237 billion cubic feet of offshore gas in 1981 alone.³² This gas represents production wholly within the three league state boundary. On the other hand, the interstate pipeline system received approximately 729 billion cubic feet of offshore gas in 1981³³ -- from wells producing outside the three league state boundary which is statutorily defined as dedicated to interstate commerce.³⁴ Being a part of the interstate supply system, federal offshore gas is one of the largest supplies inaccessible to the

intrastate system.³⁵

B. Gas Cushioning Under the NGPA

If intrastate shortages do not appear and the access problem subsides, then the next area of concern for intrastate pipelines will be the "gas cushioning" or "fly-up" problem.³⁶ Gas cushioning is a direct result of pipeline cost-averaging techniques. Pipelines are able to purchase high-cost supplies at a price above what the current consumers would pay, average this cost in with lower-cost supplies, and sell the mixed result at competitive market levels.³⁷ Unfortunately, the averaging technique results in a pricing approach that reflects only the average cost of old and new gas, not the marginal cost of new supplies.

Title I of the NGPA³⁸ is by far the most significant contributor to the cushion problem. Under Title I low-cost supplies include gas dedicated to interstate commerce on the day before the enactment of the NGPA,³⁹ gas sold under existing intrastate contracts,⁴⁰ and gas sold under rollover contracts.⁴¹ For the most part, these supplies are never decontrolled under the NGPA and their prices are well below market levels. As a consequence, these old gas categories mentioned above combine to form the so-called "gas cushion." The fly-up problem follows from the cushion because pipelines with large quantities of cheap, old gas are better able to bid supramarket prices for expensive new supplies. Current studies indicate a larger resource of old gas supplies in the interstate market.⁴² Therefore, interstate pipelines may have a significant advantage over Texas intrastate pipelines in bidding for newly discovered Texas natural gas supplies.

C. Pipeline Contract Obligations

Long-term contracts between producers and pipelines have long been

recognized as a stabilizing and binding force.⁴³ Contracts are essential in this capital intensive industry because they encourage and establish a stable supply for pipelines and their customers. With many contracts lasting as long as two decades, producers must insure themselves against long-term uncertainty by including a variety of flexible supply and price clauses.⁴⁴ This section examines the potential interaction between contract clauses and the NGPA deregulatory scheme.

1. *Escalation Clauses.* Contract escalation clauses fall into two general categories: (1) fixed-escalation clauses, which increase at a constant rate over an established base price; and (2) indefinite-escalation clauses, which equate contract price with a substitute representing the "market price." Fixed escalation clauses occur in an insignificant proportion of recent gas contracts. On the other hand, indefinite escalation clauses can be found in nearly all post-1977 interstate contracts.⁴⁵

Indefinite-escalator clauses include "favored-nation" clauses⁴⁶ or "oil-equivalency" clauses.⁴⁷ Favored-nation clauses relate contract price to the highest amount paid for comparable gas supplies. A two-party favored-nation clause escalates price to the highest amount paid by the contracting purchaser whereas the three party favored-nation clause dictates price based on the highest amount paid by any purchaser. Many of these escalator clauses have been installed in recent contracts to protect the producer in an uncertain future gas market.

2. *Take-or-Pay Clauses.* A second clause of concern is the Take-or-Pay (TOP) clause which requires a pipeline to pay for a minimum percentage of the daily allowable whether or not the pipeline takes delivery. Many of these clauses are a by-product of the tight gas market of the 1970's. With demand overwhelming supply, producers had the power to require take-or-pay

in the 80 to 100 percent range.

3. *The Potential Impact of Gas Contract Clauses.* Although indefinite escalators and TOP provisions work to protect interests, the same clauses will combine with phased-in deregulation to produce an array of prices contrasting sharply with what Congress originally envisioned. Upon partial deregulation in 1985, some scholars believe that indefinite escalators will work to produce a "domino effect" on wellhead prices.⁴⁹ As the fly-up problem begins to surface, increasing prices will be transmitted from state to state via the workings of favored nation clauses.

Take-or-pay clauses will function in a similar fashion. Instead of working with prices, however, TOP clauses theoretically could affect the normal operations of supply and demand. TOP provisions force pipelines to take gas supplies without regard for ultimate consumer demand. Here again, the final result is a potential distortion of the consumer market for natural gas.⁵⁰ There are some scholars, however, that believe that market forces will resolve these contract difficulties.

IV. IMPACT ON THE NATURAL GAS MARKET IN TEXAS

As discussed in Section III, intrastate pipeline must confront a number of difficulties: access to interstate supplies and OCS gas; the interstate "gas-cushioning" advantage; off-system sales complications; and producer-pipeline contract obligations. The extent to which each of these problem areas impacts intrastate pipelines depends largely upon prevailing market conditions. Under the current "soft" market environment, market distortions are, to a degree, mitigated.⁵¹ However, if the intrastate market should experience "tight" market conditions similar to the interstate shortages of the 1970's, market distortions and allocative inefficiencies

can be expected to rapidly appear.

The current state of excess deliverability in both the interstate and intrastate markets softens the impact of market distortions on phased-in deregulation.⁵² The "access problem" and the "gas cushioning" effect become less powerful -- a situation of excess deliverability precludes fierce bidding wars. Second, the "contracts problem" follows closely behind pipeline bidding patterns. With the pipeline's new focus on sales instead of high cost purchases, the potential for indefinite escalators to cause the "dominoe effect" is of little concern.⁵³ It is under this type of market that pipelines feel the greatest pressures to renegotiate private contracts.⁵⁴

A much more troubling situation would exist, however, under a "hard" economic market. With producers confirming a solid downturn in 1982 drilling activity, the industry must prepare itself for potential future shortages. The advent of the "hard" economic market will supply the impetus necessary to trigger the full force of all market distortions detailed herein. Commodity price will no longer serve in its critical role of resource allocation.⁵⁵ Rather, the intrastate pipeline will be unable to access certain supplies by law, and incapable of competitively bidding for newly discovered supplies within its boundaries. A number of scholars have outlined the social losses inherent in this misallocation of resources.⁵⁶

V. PROPOSALS FOR REFORM

In light of the prospects for a "hard" economic market, Congress must act quickly to avoid complete obfuscation in the natural gas markets. Of the many bills currently before Congress, only a few recognize and properly react to the issue of market access constraints.⁵⁷ Other bills cover

the full spectrum of policy choices with regard to prices -- from partial deregulation to total reregulation -- but essentially ignore the technical nuances of the NGPA's market access constraint difficulties.

This article considers a proposal most conducive to the current market situation. The proposal is controversial, yet the results are efficient, and will quickly return the pricing and allocation decisions to private decision makers.

In consideration of current excess deliverability, Congress should take advantage of the situation to legislate immediate and total decontrol of all gas supplies and provide equal access to all supplies by all pipelines. Again, the soft market condition will mitigate many of the past perceived dangers associated with natural gas decontrol. First, price "fly-up" to supramarket levels will be alleviated. With a surplus already on hand, pipelines will not find the need to purchase expensive supplies. Second, as long as the market price is allowed to equate supply with demand, indefinite escalator clauses will have little chance of magnifying price "fly-up." To the extent that they do, producers and pipelines will have adequate incentives to renegotiate such contracts. Finally, commodity price will be reinstated as an allocational device. Equal access will assure that the most efficient users in either the interstate or the intrastate markets will have equal access to gas supplies.

VI. CONCLUSIONS

A hard economic market has the ability to revive the market problems existing prior to the NGPA. The new victim will be the intrastate pipeline system. In consideration of the potential for a future "tight" gas market, Congress must act quickly to avoid numerous market distortions. The current state of the natural gas market is ideal for Congressional action.

Today's surplus situation in both the interstate and intrastate provides an ideal environment for immediate and complete decontrol of and unconstrained access to all natural gas supplies. Although controversial in nature, total decontrol provides society's most efficient solution.

FOOTNOTES

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¹ 15 U.S.C. §§3301-3432 (Supp. IV, 1980).

² 15 U.S.C. §717 *et. seq.* (1976).

³ PHILLIPS PETROLEUM CO. v. WISCONSIN, 347 U.S. 672 (1954).

⁴ The Federal Energy Regulatory Commission replaced the Federal Power Commission in 1977 under the DEPARTMENT OF ENERGY ORGANIZATION ACT, Pub. L. No. 95-91, 92 Stat. 565, 42 U.S.C. §§7101-7352 (Supp. IV 1980). This article uses "Commission" to refer to both organizations.

⁵ There is, however, little creditable evidence for such a presumption. See, *e.g.*, Breyer & MacAvoy, THE NATURAL GAS SHORTAGE AND REGULATION OF NATURAL GAS PRODUCERS, 86 Harv. L. Rev. 941 (1973).

⁶ See ORDER NO. 61-1, 24 F.P.C. 818 (1960).

⁷ See PERMIAN BASIN AREA RATE CASES, 390 U.S. 747 (1968); and SOUTHERN LOUISIANA AREA RATE CASES, 428 F.2d 407 (5th Cir.) *cert. denied*, 400 U.S. 956 (1979).

⁸ The validity of cost-based pricing has come under criticism on a number of grounds. One author states that cost-based pricing "simply ensured that producers would not develop future, higher cost resources." Note, LEGISLATIVE HISTORY OF THE NATURAL GAS POLICY ACT: TITLE I. 59 Tex. L. Rev. 101, 109 (1980).

⁹ NATIONAL RATES FOR NATURAL GAS, ____ F.P.C. ____, 4 P.U.R. 4th 401 (1974) (Op. No. 699).

¹⁰ Opinion 699 in 1974, followed by Opinion 770A in 1976 set national rate ceilings based on other non-cost factors.

¹¹ Gas well footage increased from 47.45 million feet in 1976, to 59.5 in 1977, and to 70.2 million feet in 1978. EIA, U.S. DEPARTMENT OF THE INTERIOR ANNUAL REPORT TO CONGRESS, 1980, DOE/FIA-0173 (80). Washington, D.C., June 1981.

¹² See MacAvoy and Pindyck, THE ECONOMICS OF THE NATURAL GAS SHORTAGE

(1960-1980).

¹³15 U.S.C. §§3301-3432 (Supp. IV 1980). For an analysis of the Act in its entirety, see generally Ringleb, NATURAL GAS PRODUCER PRICE REGULATION UNDER THE NGPA: REGULATORY FAILURE, ALTERNATIVES, AND REFORM, Houston Law Review (*forthcoming*).

¹⁴S. 2104, 95th Cong., 2d Sess. (1978).

¹⁵H.R. 8444, 95th Cong., 2d Sess. (1978) (Administration Proposal).

¹⁶See JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE, THE CONFERENCE REPORT ON NATURAL GAS, S. Rep. No. 1126, 95th Cong., 2d Sess., 67-94 (1978).

¹⁷Title I-Wellhead pricing, NGPA §§101-123; 15 U.S.C. §§3311-3334 (Supp. IV 1980); Title II - Incremental Pricing, NGPA §201-208; Id., §§3341-3348; Title III - Additional Authorities and Requirements, NGPA §301-305; Id., §§3361-3375; Title IV - Administration, Enforcement, and Review, NGPA §501-508; Id., §§3411-3418; and Title VI - Coordination with the National Gas Act; Effect on state laws, NGPA §601-602; Id., §§3431-3432.

¹⁸NGPA §311(a)(1); 15 U.S.C. §3371(a)(1) (Supp. IV 1980).

¹⁹NGPA §311(b)(1); 15 U.S.C. §3371(b)(1) (Supp. IV 1980).

²⁰See *supra* notes 2-12 and accompanying text.

²¹TEXAS RAILROAD COMMISSION COMMENTS ON OFF-SYSTEM SALES PURSUANT TO NOTICE OF INFORMAL PUBLIC CONFERENCE ISSUED BY THE FERC. 166 Fed. Reg. 37,664 (1982). The Railroad Commission held a public hearing on September 8, 1982 to determine the impact of off-system sales on the Texas intrastate market. The Commission Comments paper is a summary of twenty-two participants in the hearing.

²²RAILROAD COMMISSION COMMENTS, *supra* note 21, at 8. Testimony received by the Railroad Commission state that off-system gas is approximately one dollar per MCF cheaper than the average rate for intrastate gas.

²³*Id.* at 5.

²⁴*Id.* at 6.

²⁵*Id.* at 9.

²⁶See, e.g., *FPC v. TRANSCONTINENTAL GAS PIPELINE COMPANY*, 365 U.S. 1 (1961).

²⁷RAILROAD COMMISSION COMMENTS, *supra* note 4, at 15.

²⁸*Id.*, at 16. The Railroad Commission suggests the following guidelines: (1) the purchaser must have a physical need for the gas and must have checked other alternatives for purchases; (2) the sale should not affect exploration and development within the state; and (3) the sale should not shift take-or-pay exposure from the interstate to the intrastate market.

²⁹The offshore areas of Texas and Louisiana account for virtually 100% of all offshore gas production. U.S. DEPARTMENT OF INTERIOR, GEOLOGICAL SURVEY, OUTER CONTINENTAL SHELF STATISTICS (Washington, D.C., 1981), pp. 90-91. Approximately one-fourth of the total U.S. natural gas production comes from offshore. TEXAS OFFSHORE: HIGH TECH 'ISLANDS' REPRESENT HIGH RISKS TO INDUSTRY, Fiscal Notes, Office of Research & Statistics, State Comptroller, Oct., 1982 Issue 82:11.

³⁰Foster Natural Gas Rep. No. 1293, at 13 (Dec. 31, 1980).

³¹The state boundary of three leagues has been recognized since the days of Spanish rule. Thomas Lloyd Miller, *THE PUBLIC LANDS OF TEXAS, 1519-1970*. (Norman: The Univ. of Oklahoma Press, 1981), at 181.

³²TEXAS OFFSHORE, *supra* note 29, at 3.

³³*Id.*, at 3.

³⁴NGPA §2(18); 15 U.S.C. §3301(18)(A) (Supp. IV 1980).

³⁵Based on federal estimates of known reserves, approximately 7.5 billion cubic feet of natural gas remains to be produced from Texas offshore fields. DOE, EIA, U.S. CRUDE OIL, NATURAL GAS AND NATURAL GAS LIQUIDS RESERVES, DOE/EIA - 0216 (80), (October, 1981), at 16 and 20. NGPA §311(b)(1); 15 U.S.C. §3371(b)(1) (Supp. IV 1980).

³⁶For an economic interpretation of the "fly-up" problem, see Ringleb, *supra* note 13, at 49 (note 203).

³⁷See generally, Pierce, NATURAL GAS RATE DESIGN: A NEGLECTED ISSUE, 31 Vand. L. Rev. 1089, 1094-1110 (1978).

³⁸NGPA §101-123; 15 U.S.C. §§3311-3333 (Supp. IV 1980).

³⁹NGPA §104(a); 15 U.S.C. §3314(a) (Supp. IV 1980).

⁴⁰NGPA §105(a); 15 U.S.C. §3315(a) (Supp. IV 1980).

⁴¹NGPA §106(a); 15 U.S.C. §3316(a) (Supp. IV 1980) (interstate rollover contracts). NGPA §106(b); Id., §3316(b) (intrastate rollover contracts). NGPA §2(12); Id., §3301(12) define a rollover contract as an agreement for first sale of natural gas that was previously subject to an existing contract which have expired after a fixed term.

⁴²For estimates of the extent of the gas cushioning problem, see Foster Associates, Inc., TRANSITION IN DECONTROL: AN ANALYSIS OF "FLY-UP" (Sept. 1980); and Means, ANALYSIS OF THE BIDDING DISPARITY BETWEEN INTERSTATE AND INTRASTATE PIPELINES, Working Draft (March 18, 1982). Comments regarding bidding advantages must be taken on a very general level. Pipelines within the same state may have a vastly different composition of old and new supplies. Therefore, individual intrastate pipelines could have access to a wealth of old gas supplies, whereas some individual interstate pipelines rely heavily upon new supplies.

⁴³This section relies heavily upon Pierce, NATURAL GAS REGULATION, DE-REGULATION, AND CONTRACTS, 68 Va. L. Rev. 63 (1982).

⁴⁴According to Erck: "In any long-term contract, there is a need for flexible pricing clauses. In addition, there must be some relevant criterion or criteria to use as a guideline either to set a changed price or to provide a basis for renegotiation of the price." Erck, GAS CONTRACT CLAUSES UNDER CURRENT CONTROVERSIAL CONDITIONS, State Bar Section Report (1983), p. 2.

⁴⁵From a weighted sample of 200 gas purchase contracts, the American Gas Association concludes that 67% of all flowing interstate gas contracts are subject to indefinite price escalator clauses. Of post-April 1977 gas contracts, 96% contain such clauses. American Gas Association, Gas Supply Committee, ANALYSIS OF NATURAL GAS PRODUCER/INTERSTATE PIPELINE CONTRACTS, Vol. 9, #9, Gas Energy Review (July 1, 1981) (Decision Analysis Corporation, Contractor).

⁴⁶See 4 H. Williams & C. Myers, OIL AND GAS LAW §726 (1980).

⁴⁷Oil equivalency clauses are usually tied to the price of No. 2 or No. 6 fuel oil.

⁴⁸See generally 4 Oil & Gas Law (MB) §724.5 (1980).

⁴⁹See, e.g., Pierce, supra note 43, at 64.

⁵⁰A major concern of intrastate pipelines is the potential "shifting" of TOP obligations from the interstate market to the intrastate market. As off-system sales displace the sales volumes of intrastate pipelines, intrastate pipelines argue that high TOP obligations will become unbearable. See RAILROAD COMMISSION COMMENTS, supra note 21, at 9.

⁵¹Production statistics provided by the Texas Railroad Commission illustrate the current surplus market in Texas:

	<u>Total Produced</u>	<u>Marketed Production</u>
1977	7,536,852,272	6,387,152,767
1978	7,026,008,974	5,950,397,779
1979	7,077,914,222	6,018,645,036
1980	6,934,234,878	5,924,307,914
1981	6,678,668,995	5,662,736,657

Texas Railroad Commission, ANNUAL REPORTS OF THE OIL & GAS DIVISION, 1977-1982 (Selected issues) (Marketed production is the total gas sold to Transmission Lines, Carbon Block and Plant Fuel, and Lease Use).

⁵²Testimony before the Texas Railroad Commission indicates that the size of the interstate surplus is approximately 4.4 billion cubic feet per day. RAILROAD COMMISSION COMMENTS, supra note 21, at 9. The intrastate surplus was estimated to be between 1.4 and 2.5 billion cubic feet per day. Id., at 9.

⁵³Pipelines make the interesting note, however, that long-term contracts seem to be devoid of provisions for downward price adjustment in the prevailing "soft" market.

⁵⁴An apparent reluctance on behalf of producers and pipelines to renegotiate contracts is based to a degree on (1) the belief that the current surplus market will soon end, and (2) a concern that Congress will upset market conditions by enacting new legislation.

⁵⁵Mr. Justice Jackson concludes that "price is the heart of producer regulation." COLORADO INTERSTATE GAS CO. v. FPC, 324 U.S. 581, 612 (1945) (concurring opinion).

⁵⁶See generally, Ringleb, supra note 13, at 23-27.

⁵⁷Rep. Phil Gramm (R-Texas) introduced H.R. 5866, 97th Cong., 2nd Session (1982). The bill is currently being reintroduced as the "Natural Gas Production, Utilization and Conservation Act" in the 98th Congress.