

111TH CONGRESS
1ST SESSION

S. _____

To amend the Natural Gas Act, the Natural Gas Policy Act of 1978, and the Federal Power Act to modify provisions relating to enforcement and judicial review.

IN THE SENATE OF THE UNITED STATES

_____ introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To amend the Natural Gas Act, the Natural Gas Policy Act of 1978, and the Federal Power Act to modify provisions relating to enforcement and judicial review.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Natural Gas and Elec-
5 tricity Review and Enforcement Act”.

6 **SEC. 2. NATURAL GAS ACT.**

7 Section 20 of the Natural Gas Act (15 U.S.C.717s)
8 is amended by adding at the end the following:

9 “(e) CEASE-AND-DESIST PROCEEDINGS.—

1 “(1) IN GENERAL.—If the Commission deter-
2 mines that any entity may be violating, may have
3 violated, or may be about to violate any provision of
4 this Act, or any regulation promulgated by, or any
5 restriction, condition, or order made or imposed by,
6 the Commission under this Act, and if the Commis-
7 sion finds that the alleged violation or threatened
8 violation, or the continuation of the violation, is like-
9 ly to result in significant harm to natural gas con-
10 sumers or significant harm to the public interest, the
11 Commission may issue a temporary order requiring
12 the respondent—

13 “(A) to cease and desist from the violation
14 or threatened violation;

15 “(B) to take such action as is necessary to
16 prevent the violation or threatened violation;
17 and

18 “(C) to prevent, as the Commission deter-
19 mines to be appropriate—

20 “(i) significant harm to natural gas
21 consumers;

22 “(ii) significant harm to the public in-
23 terest; and

24 “(iii) frustration of the ability of the
25 Commission to conduct the proceedings or

1 to redress the violation at the conclusion of
2 the proceedings.

3 “(2) TIMING OF ENTRY.—An order issued
4 under this subsection shall be entered only after no-
5 tice and opportunity for a hearing, unless the Com-
6 mission determines that notice and hearing prior to
7 entry would be impracticable or contrary to the pub-
8 lic interest.

9 “(3) EFFECTIVE DATE.—A temporary order
10 issued under this subsection shall—

11 “(A) become effective upon service upon
12 the respondent; and

13 “(B) unless set aside, limited, or sus-
14 pended by the Commission or a court of com-
15 petent jurisdiction, remain effective and en-
16 forceable pending the completion of the pro-
17 ceedings.

18 “(f) PROCEEDINGS REGARDING DISSIPATION OR
19 CONVERSION OF ASSETS.—

20 “(1) IN GENERAL.—In a proceeding involving
21 an alleged violation of a regulation or order promul-
22 gated or issued by the Commission in accordance
23 with section 4A, if the Commission determines that
24 the alleged violation or related circumstances are
25 likely to result in significant dissipation or conver-

1 sion of assets, the Commission may issue a tem-
2 porary order requiring the respondent to take such
3 action as is necessary to prevent the dissipation or
4 conversion of assets.

5 “(2) TIMING OF ENTRY.—An order issued
6 under this subsection shall be entered only after no-
7 tice and opportunity for a hearing, unless the Com-
8 mission determines that notice and hearing prior to
9 entry would be impracticable or contrary to the pub-
10 lic interest.

11 “(3) EFFECTIVE DATE.—A temporary order
12 issued under this subsection shall—

13 “(A) become effective upon service upon
14 the respondent; and

15 “(B) unless set aside, limited, or sus-
16 pended by the Commission or a court of com-
17 petent jurisdiction, remain effective and en-
18 forceable pending the completion of the pro-
19 ceedings.

20 “(g) REVIEW OF TEMPORARY ORDERS.—

21 “(1) APPLICATION FOR REVIEW.—At any time
22 after a respondent has been served with a temporary
23 cease-and-desist order pursuant to subsection (e) or
24 order regarding the dissipation or conversion of as-
25 sets pursuant to subsection (f), the respondent may

1 apply to the Commission to have the order set aside,
2 limited, or suspended.

3 “(2) NO PRIOR HEARING.—If a respondent has
4 been served with a temporary order entered without
5 a prior hearing of the Commission—

6 “(A) the respondent may, not later than
7 10 days after the date on which the order was
8 served, request a hearing on the application;
9 and

10 “(B) the Commission shall hold a hearing
11 and render a decision on the application at the
12 earliest practicable time.

13 “(3) JUDICIAL REVIEW.—

14 “(A) IN GENERAL.—An entity shall not be
15 required to submit a request for rehearing of a
16 temporary order prior to seeking judicial review
17 in accordance with section 19(a).

18 “(B) TIMING OF REVIEW.—Not later than
19 10 days after the date on which a respondent
20 was served with a temporary cease-and-desist
21 order entered with a prior hearing of the Com-
22 mission, or 10 days after the date on which the
23 Commission renders a decision on an applica-
24 tion and hearing under paragraph (1) with re-

1 spect to any temporary order entered without a
2 prior hearing of the Commission—

3 “(i) a respondent may obtain a review
4 of the order in a United States circuit
5 court having jurisdiction over the circuit in
6 which the respondent resides or has a prin-
7 cipal place of business, or in the United
8 States Court of Appeals for the District of
9 Columbia Circuit, for an order setting
10 aside, limiting, or suspending the effective-
11 ness or enforcement of the order; and

12 “(ii) the court shall have jurisdiction
13 to enter such an order.

14 “(C) NO PRIOR HEARING.—A respondent
15 served with a temporary order entered without
16 a prior hearing of the Commission may not
17 apply to the applicable court described in sub-
18 paragraph (B) except after a hearing and deci-
19 sion by the Commission on the application of
20 the respondent under paragraphs (1) and (2).

21 “(4) PROCEDURES.—Section 19(b) shall apply
22 to—

23 “(A) an application for review of an order
24 under paragraph (1); and

1 “(B) an order subject to review under
2 paragraph (3).

3 “(5) NO AUTOMATIC STAY OF TEMPORARY
4 ORDER.—The commencement of proceedings under
5 paragraph (3) shall not, unless specifically ordered
6 by the court, operate as a stay of the order of the
7 Commission.

8 “(h) REGULATIONS AND ORDERS.—The Commission
9 may promulgate such regulations and issue such orders
10 as the Commission determines to be necessary to carry
11 out this section.”.

12 **SEC. 3. NATURAL GAS POLICY ACT OF 1978.**

13 Section 504 of the Natural Gas Policy Act of 1978
14 (15 U.S.C. 3414) is amended by adding at the end the
15 following:

16 “(d) CEASE-AND-DESIST PROCEEDINGS.—

17 “(1) IN GENERAL.—If the Commission deter-
18 mines that any entity may be violating, may have
19 violated, or may be about to violate any provision of
20 this Act, or any regulation promulgated by, or any
21 restriction, condition, or order made or imposed by,
22 the Commission under this Act, and if the Commis-
23 sion finds that the alleged violation or threatened
24 violation, or the continuation of the violation, is like-
25 ly to result in significant harm to natural gas con-

1 sumers or significant harm to the public interest, the
2 Commission may issue a temporary order requiring
3 the respondent—

4 “(A) to cease and desist from the violation
5 or threatened violation;

6 “(B) to take such action as is necessary to
7 prevent the violation or threatened violation;
8 and

9 “(C) to prevent, as the Commission deter-
10 mines to be appropriate—

11 “(i) significant harm to natural gas
12 consumers;

13 “(ii) significant harm to the public in-
14 terest; and

15 “(iii) frustration of the ability of the
16 Commission to conduct the proceedings or
17 to redress the violation at the conclusion of
18 the proceedings.

19 “(2) TIMING OF ENTRY.—An order issued
20 under this subsection shall be entered only after no-
21 tice and opportunity for a hearing, unless the Com-
22 mission determines that notice and hearing prior to
23 entry would be impracticable or contrary to the pub-
24 lic interest.

1 “(3) EFFECTIVE DATE.—A temporary order
2 issued under this subsection shall—

3 “(A) become effective upon service upon
4 the respondent; and

5 “(B) unless set aside, limited, or sus-
6 pended by the Commission or a court of com-
7 petent jurisdiction, remain effective and en-
8 forceable pending the completion of the pro-
9 ceedings.

10 “(e) PROCEEDINGS REGARDING DISSIPATION OR
11 CONVERSION OF ASSETS.—

12 “(1) IN GENERAL.—In a proceeding involving
13 an alleged violation of a regulation or order promul-
14 gated or issued by the Commission in accordance
15 with section 4A of the Natural Gas Act (15 U.S.C.
16 717e), if the Commission determines that the alleged
17 violation or related circumstances are likely to result
18 in significant dissipation or conversion of assets, the
19 Commission may issue a temporary order requiring
20 the respondent to take such action as is necessary
21 to prevent the dissipation or conversion of assets.

22 “(2) TIMING OF ENTRY.—An order issued
23 under this subsection shall be entered only after no-
24 tice and opportunity for a hearing, unless the Com-
25 mission determines that notice and hearing prior to

1 entry would be impracticable or contrary to the pub-
2 lic interest.

3 “(3) EFFECTIVE DATE.—A temporary order
4 issued under this subsection shall—

5 “(A) become effective upon service upon
6 the respondent; and

7 “(B) unless set aside, limited, or sus-
8 pended by the Commission or a court of com-
9 petent jurisdiction, remain effective and en-
10 forceable pending the completion of the pro-
11 ceedings.

12 “(f) REVIEW OF TEMPORARY ORDERS.—

13 “(1) APPLICATION FOR REVIEW.—At any time
14 after a respondent has been served with a temporary
15 cease-and-desist order pursuant to subsection (d) or
16 order regarding the dissipation or conversion of as-
17 sets pursuant to subsection (e), the respondent may
18 apply to the Commission to have the order set aside,
19 limited, or suspended.

20 “(2) NO PRIOR HEARING.—If a respondent has
21 been served with a temporary order entered without
22 a prior hearing of the Commission—

23 “(A) the respondent may, not later than
24 10 days after the date on which the order was

1 served, request a hearing on the application;
2 and

3 “(B) the Commission shall hold a hearing
4 and render a decision on the application at the
5 earliest practicable time.

6 “(3) JUDICIAL REVIEW.—

7 “(A) IN GENERAL.—An entity shall not be
8 required to submit a request for rehearing of a
9 temporary order prior to seeking judicial review
10 in accordance with section 506(a)(2).

11 “(B) TIMING OF REVIEW.—Not later than
12 10 days after the date on which a respondent
13 was served with a temporary cease-and-desist
14 order entered with a prior hearing of the Com-
15 mission, or 10 days after the date on which the
16 Commission renders a decision on an applica-
17 tion and hearing under paragraph (1) with re-
18 spect to any temporary order entered without a
19 prior hearing of the Commission—

20 “(i) a respondent may obtain a review
21 of the order in a United States circuit
22 court having jurisdiction over the circuit in
23 which the respondent resides or has a prin-
24 cipal place of business, or in the United
25 States Court of Appeals for the District of

1 Columbia Circuit, for an order setting
2 aside, limiting, or suspending the effective-
3 ness or enforcement of the order; and

4 “(ii) the court shall have jurisdiction
5 to enter such an order.

6 “(C) NO PRIOR HEARING.—A respondent
7 served with a temporary order entered without
8 a prior hearing of the Commission may not
9 apply to the applicable court described in sub-
10 paragraph (B) except after a hearing and deci-
11 sion by the Commission on the application of
12 the respondent under paragraphs (1) and (2).

13 “(4) PROCEDURES.—Section 506(a)(4) shall
14 apply to—

15 “(A) an application for review of an order
16 under paragraph (1); and

17 “(B) an order subject to review under
18 paragraph (3).

19 “(5) NO AUTOMATIC STAY OF TEMPORARY
20 ORDER.—The commencement of proceedings under
21 paragraph (3) shall not, unless specifically ordered
22 by the court, operate as a stay of the order of the
23 Commission.

24 “(g) REGULATIONS AND ORDERS.—The Commission
25 may promulgate such regulations and issue such orders

1 as the Commission determines to be necessary to carry
2 out this section.”.

3 **SEC. 4. FEDERAL POWER ACT.**

4 (a) REGULATION OF ELECTRIC UTILITY COMPANIES
5 ENGAGED IN INTERSTATE COMMERCE.—Section 202 of
6 the Federal Power Act (16 U.S.C. 824a) is amended by
7 adding at the end the following:

8 “(h) EMERGENCY AUTHORITY.—

9 “(1) IN GENERAL.—Subject to paragraphs (2)
10 and (3), if necessary in the case of an emergency to
11 ensure continued reliability of service to electric con-
12 sumers or to protect electric customers from poten-
13 tial abuse of market power or market manipulation
14 in wholesale markets regulated by the Commission,
15 the Commission, upon petition or upon a motion of
16 the Commission, and before providing public notice
17 and an opportunity for comment, shall have emer-
18 gency authority to change or suspend temporarily
19 the rates, terms, or conditions of service on file with
20 the Commission pursuant to this Act.

21 “(2) DURATION.—A temporary change or sus-
22 pension under paragraph (1) may remain in effect
23 for a period of not more than 30 days unless the
24 Commission, during that period—

1 “(A) provides formal public notice and an
2 opportunity for comment in accordance with
3 section 206; and

4 “(B) determines that the a change or sus-
5 pension shall remain in effect pursuant to that
6 section.

7 “(3) EFFECTIVE DATE.—Any temporary change
8 or suspension of a filed rate, term, or condition of
9 service under paragraph (1) shall take effect only
10 upon the date of issuance by the Commission of
11 written public notice stating the findings of the
12 Commission in support of the temporary change or
13 suspension.”.

14 (b) LICENSEES AND PUBLIC UTILITIES; PROCE-
15 DURAL AND ADMINISTRATIVE PROVISIONS.—Section 314
16 of the Federal Power Act (16 U.S.C. 825m) is amended
17 by adding at the end the following:

18 “(e) CEASE-AND-DESIST PROCEEDINGS.—

19 “(1) IN GENERAL.—If the Commission deter-
20 mines that any entity may be violating, may have
21 violated, or may be about to violate any provision of
22 this Act, or any regulation promulgated by, or any
23 restriction, condition, or order made or imposed by,
24 the Commission under this Act, and if the Commis-
25 sion finds that the alleged violation or threatened

1 violation, or the continuation of the violation, is like-
2 ly to result in significant harm to electricity con-
3 sumers or significant harm to the public interest, the
4 Commission may issue a temporary order requiring
5 the respondent—

6 “(A) to cease and desist from the violation
7 or threatened violation;

8 “(B) to take such action as is necessary to
9 prevent the violation or threatened violation;
10 and

11 “(C) to prevent, as the Commission deter-
12 mines to be appropriate—

13 “(i) significant harm to electricity
14 consumers;

15 “(ii) significant harm to the public in-
16 terest; and

17 “(iii) frustration of the ability of the
18 Commission to conduct the proceedings or
19 to redress the violation at the conclusion of
20 the proceedings.

21 “(2) TIMING OF ENTRY.—An order issued
22 under this subsection shall be entered only after no-
23 tice and opportunity for a hearing, unless the Com-
24 mission determines that notice and hearing prior to

1 entry would be impracticable or contrary to the pub-
2 lic interest.

3 “(3) EFFECTIVE DATE.—A temporary order
4 issued under this subsection shall—

5 “(A) become effective upon service upon
6 the respondent; and

7 “(B) unless set aside, limited, or sus-
8 pended by the Commission or a court of com-
9 petent jurisdiction, remain effective and en-
10 forceable pending the completion of the pro-
11 ceedings.

12 “(f) PROCEEDINGS REGARDING DISSIPATION OR
13 CONVERSION OF ASSETS.—

14 “(1) IN GENERAL.—In a proceeding involving
15 an alleged violation of a regulation or order promul-
16 gated or issued by the Commission in accordance
17 with section 222, if the Commission determines that
18 the alleged violation or related circumstances are
19 likely to result in significant dissipation or conver-
20 sion of assets, the Commission may issue a tem-
21 porary order requiring the respondent to take such
22 action as is necessary to prevent the dissipation or
23 conversion of assets.

24 “(2) TIMING OF ENTRY.—An order issued
25 under this subsection shall be entered only after no-

1 tice and opportunity for a hearing, unless the Com-
2 mission determines that notice and hearing prior to
3 entry would be impracticable or contrary to the pub-
4 lic interest.

5 “(3) EFFECTIVE DATE.—A temporary order
6 issued under this subsection shall—

7 “(A) become effective upon service upon
8 the respondent; and

9 “(B) unless set aside, limited, or sus-
10 pended by the Commission or a court of com-
11 petent jurisdiction, remain effective and en-
12 forceable pending the completion of the pro-
13 ceedings.

14 “(g) REVIEW OF TEMPORARY ORDERS.—

15 “(1) APPLICATION FOR REVIEW.—At any time
16 after a respondent has been served with a temporary
17 cease-and-desist order pursuant to subsection (e) or
18 order regarding the dissipation or conversion of as-
19 sets pursuant to subsection (f), the respondent may
20 apply to the Commission to have the order set aside,
21 limited, or suspended.

22 “(2) NO PRIOR HEARING.—If a respondent has
23 been served with a temporary order entered without
24 a prior hearing of the Commission—

1 “(A) the respondent may, not later than
2 10 days after the date on which the order was
3 served, request a hearing on the application;
4 and

5 “(B) the Commission shall hold a hearing
6 and render a decision on the application at the
7 earliest practicable time.

8 “(3) JUDICIAL REVIEW.—

9 “(A) IN GENERAL.—An entity shall not be
10 required to submit a request for rehearing of a
11 temporary order prior to seeking judicial review
12 in accordance with section 313(a).

13 “(B) TIMING OF REVIEW.—Not later than
14 10 days after the date on which a respondent
15 was served with a temporary cease-and-desist
16 order entered with a prior hearing of the Com-
17 mission, or 10 days after the date on which the
18 Commission renders a decision on an applica-
19 tion and hearing under paragraph (1) with re-
20 spect to any temporary order entered without a
21 prior hearing of the Commission—

22 “(i) a respondent may obtain a review
23 of the order in a United States circuit
24 court having jurisdiction over the circuit in
25 which the respondent resides or has a prin-

1 cipal place of business, or in the United
2 States Court of Appeals for the District of
3 Columbia Circuit, for an order setting
4 aside, limiting, or suspending the effective-
5 ness or enforcement of the order; and

6 “(ii) the court shall have jurisdiction
7 to enter such an order.

8 “(C) NO PRIOR HEARING.—A respondent
9 served with a temporary order entered without
10 a prior hearing of the Commission may not
11 apply to the applicable court described in sub-
12 paragraph (B) except after a hearing and deci-
13 sion by the Commission on the application of
14 the respondent under paragraphs (1) and (2).

15 “(4) PROCEDURES.—Section 313(a) shall apply
16 to—

17 “(A) an application for review of an order
18 under paragraph (1); and

19 “(B) an order subject to review under
20 paragraph (3).

21 “(5) NO AUTOMATIC STAY OF TEMPORARY
22 ORDER.—The commencement of proceedings under
23 paragraph (3) shall not, unless specifically ordered
24 by the court, operate as a stay of the order of the
25 Commission.

1 “(h) REGULATIONS AND ORDERS.—The Commission
2 may promulgate such regulations and issue such orders
3 as the Commission determines to be necessary to carry
4 out this section.”.