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Supreme Court Denies Extension of Federal Regulation of Natural Gas Producers

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SUPREME COURT DENIES EXTENSION OF FEDERAL REGULATION OF NATURAL GAS PRODUCERS

OIL AND GAS–NATURAL GAS REGULATION–PRUDENT OPERATOR STANDARD–Federal Energy Regulatory Commission prevented from enforcing against natural gas producers, as a condition of the producers' certificates to sell gas in the interstate market, a federal "prudent operator standard." *Federal Energy Regulatory Commission v. Shell Oil Company,* 566 F.2d 536 (5th Cir. 1978), *aff'd,* 440 U.S. 192 (1979).

INTRODUCTION

Natural gas shortages in the United States have become critical. Since the early 1970s, gas curtailments have had severe disruptive effects on the national economy and even more severe effects on the economies of some states. Solutions for curing the shortages cross the spectrum of economic, political and social theories, and the issue of prices and allocations among uses and among states evokes strong opinions. Congress has been in the forefront of the solution process and has done little to resolve the real energy problems. Congressional solutions have tended to be only superficial or limited in scope and effect. The division of interests in Congress has prevented an effective resolution of complex energy and natural gas problems. The urgency of the gas situation and the stalemate in Congress have resulted in federal agencies seeking to expand their powers in order to deal with the problems. Where congressional intent in present law is unclear, federal agencies have pushed their authority to, and beyond, the statutory limits. The result is that the lower federal courts and the United States Supreme Court have been left to decide important questions of energy policy for the nation.

The natural gas industry in the United States is not composed of a few huge conglomerates, as popularly believed. There are three distinct phases of the industry–exploration and production, transportation, and retail sales and service. Most exploration, location, and initial production of gas is done by independent producers, primarily small business operations located in the gas-producing states. The independent producer sells his gas to a pipeline company, which transports the gas to a market. The pipeline usually wholesales the gas to local distribution companies. The latter act as gas retailers and provide residential and business gas service within a specific geographic area. These three functions are not often integrated into one entity. Each phase and function of the industry is dependent on the others, but frequently their interests are conflicting. The situation of independent producers is similar to that of small farmers, who individually are a minute portion of the entire market but combined constitute a large part, or a majority, of the market.

Natural gas is found only in a limited number of areas in this country. The federal government has extensive regulatory power over gas leaving the state of production (interstate gas). Gas produced and used within the same state (intrastate gas) formerly was subject to no federal price or other regulations. A recent act of Congress extends federal price and allocation authority over intrastate gas but also provides for phased decontrol of federal price controls.[1] The gas-producing states have jealously guarded control over their own natural resources. Presently, the federal government, through legislative and administrative actions, seeks to take away the remainder of the essential elements of control exercised by the producing states.[2]

BACKGROUND

A. *Natural Gas Act of 1938*[3]

The Natural Gas Act of 1938 placed federal regulatory control on interstate pipelines selling natural gas. It applies to the transportation and sale of gas in interstate commerce but not to intrastate sales or to the "production or gathering" of gas.[4] Intrastate sales of natural gas are exempt from the act so long as the state regulatory commission has jurisdiction.[5] Congress intended to fill the void in regulation of interstate gas because state regulatory power was geographically limited. The Supreme Court found that the primary purpose of the act was to protect consumers against the power of the large interstate pipeline companies[6] and stated:

> The Natural Gas Act was designed to supplement state power and to produce a harmonious and comprehensive regulation of the industry. Neither state nor federal regulation was to encroach upon the juris-

1. Natural Gas Policy Act of 1978, 15 U.S.C.A. §§3301-3432 (Supp. 1979).
2. For recent federal legislative action see: Pub. L. No. 95-617, 92 Stat. 3117 (1978); Pub. L. No. 95-618, 92 Stat. 3174 (1978); Pub. L. No. 95-619, 92 Stat. 3206 (1978); Pub. L. No. 95-620, 92 Stat. 3289 (1978).
3. 15 U.S.C. §717 (1976) *as amended by* Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3167.
4. *Id.* §717(b).
5. *Id.* §717(c).
6. F.P.C. v. Hope Natural Gas Co., 320 U.S. 591, 610 (1944).

> diction of the other .... [Congress] considered the state interests as well as the national interest. It had both producers and consumers in mind.[7]

The authority of producing states to regulate their own production and interstate sales was not to be usurped by federal authority under the act.[8]

The Natural Gas Act provides that a "certificate of public convenience and necessity" be applied for and obtained from the Federal Energy Regulatory Commission[9] (hereinafter FERC, FPC, or the commission) before interstate transportation or sales of natural gas can occur.[10] Once interstate sales of gas begin, FERC regulates the price rates and the facilities and service involved in the sales. The price rates must be reasonable,[11] but cannot be so low as to be confiscatory.[12]

A gas company or gas producer, after obtaining the certificate and commencing gas delivery, cannot abandon all or any part of the facilities used or gas service provided without approval of the commission.[13] Any curtailment of the quantity of gas delivered constitutes an abandonment under the act.

A bare framework for regulation of interstate gas is created by the Natural Gas Act. The bulk of what now constitutes the incredible maze of government regulations of the gas industry has been created by the commission and condoned by the federal courts in order to enforce the commission's pricing requirements. The commission views its role as a zealous protector of consumer interests, rather than an impartial regulator of gas prices and supplies. It has followed short-sighted policies which have kept the price of natural gas artificially low and which have substantially contributed to the shortages that occur today.[14] In order to feed an insatiable market for interstate natural gas, the commission constantly seeks to expand its juris-

7. F.P.C. v. Panhandle Eastern Pipeline Co., 337 U.S. 498, 513 (1949) (citations omitted).

8. Therefore, the intent of Congress was not to exercise the full measure of the federal Commerce Clause power over natural gas. Several states are currently challenging, primarily on Tenth Amendment grounds, federal intrusion into control of intrastate gas authorized by the Natural Gas Policy Act of 1978, 15 U.S.C.A. §§3301-3432 (Supp. 1979). State of Oklahoma v. F.E.R.C., No. 78-______(W. D. Okla., filed Nov. 29, 1978).

9. Formerly the Federal Power Commission (FPC).

10. 15 U.S.C. §717f(c) (1976).

11. *Id.* §717c(a).

12. Permian Basin Area Rate Cases, 390 U.S. 747 (1968).

13. 15 U.S.C. §717f(b) (1976).

14. *See* 22 ROCKY MTN. MIN. L. INST. 695 (1976), and 57 N.C.L. REV. 57, 88 (1978).

diction.[15] Low interstate gas prices have caused producers to sell in the intrastate market, where the gas sells for substantially higher prices than in the interstate market. Price controls have created a distortion in the market allocation of gas. Producing states account for a disproportionate percentage of natural gas use, although prices are higher in these states.[16] Other effects of price controls have occurred, such as the movement of gas-consuming industries to producing states, where they are more assured of receiving constant supplies of natural gas, although at a higher price.

FERC has made several attempts by various means to lure intrastate gas into the interstate market.[17] However, FERC has not conceded that interstate prices must increase substantially in order for any significant reallocation of market supplies to occur. Through a series of Supreme Court decisions, FERC has acquired considerable authority to bind producers to the interstate market. Recent attempts by FERC amount to near coercion to enter and remain in the interstate gas market. One commentator remarked, "the Commission knows that it is not *attracting* gas to the interstate market and must therefore *compel* gas deliveries to that market."[18]

B. Federal Regulatory Jurisdiction

The decision by the Supreme Court in *Phillips Petroleum Co. v. Wisconsin*[19] is the hallmark case in FPC/FERC jurisdiction. The Natural Gas Act provides that only "natural-gas companies" engaged in the transportation or sale of natural gas in interstate commerce are subject to the act. In *Phillips,* the Court expanded the FPC's jurisdiction to include independent producers (as opposed to major interstate producers and pipelines) who sell gas for resale in the interstate market. By inclusion of independent producers under its authority, the commission exercised control over a much larger segment of total gas production than before.[20]

With the authority acquired by *Phillips,* the FPC began regulation of the field, or wellhead, price of natural gas. Because of the large

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15. The demand for interstate gas is a direct result of the artificially low prices. This writer is of the opinion that the FPC and its successor, FERC, with approval of the courts, have expanded the commission's jurisdiction beyond what was intended by Congress in the Natural Gas Act and its amendments.

16. A recent FERC estimate is that 40-45% of nationwide gas sales are intrastate.

17. *See* 29 ANN. INST. OIL & GAS L. & TAX 417 (1978).

18. 22 ROCKY MTN. MIN. L. INST. 695 (1976) (emphasis in original).

19. 347 U.S. 672 (1954).

20. Applications for certificates in the one year period after Phillips exceeded by almost five times the total number of applications for the previous 12 years. *See* 57 N.C.L. REV. 57, at 65 (1978).

number of filings to the FPC for price determinations, the FPC, without legislative authorization, instituted area-wide price ceilings. This price control method, which included two levels of prices depending on when production for interstate commerce began, was upheld in *Permian Basin Area Rate Cases.*[21] In 1974, the FPC adopted uniform national rates for certain gas sold in interstate commerce.[22] The effect of these pricing variations created by the FPC was a multi-tiered system of pricing, with the price depending almost solely on the date the gas was put into interstate commerce.

When a producer applies for a certificate, the commission must follow the standards set out in the Natural Gas Act.[23] The applicant will be granted a certificate if FERC finds that (1) he is able to properly perform the proposed service; (2) he will conform to the act and FERC rules; and (3) the proposed service "is or will be required by the present or future public convenience and necessity."[24] The commission is allowed to attach to the certificate "such reasonable terms and conditions as the public convenience and necessity may require."[25] "Public convenience and necessity" has been described as a "shifting standard" depending on the perception of the public interest of the present commissioners.[26] The Court of Appeals for the District of Columbia Circuit said, "anything the FPC can do to alleviate the critical shortage facing our country today is most certainly in the 'public interest.' "[27] In recent years, the majority of the commission obviously has felt that the public interest requires the commission to effectuate a substantial reallocation of the intrastate and interstate markets.

One of the most powerful tools FERC has is the concept of "dedication." Once a producer has received a certificate and commences delivery of natural gas, he has "dedicated" that well's production *and* reserves to interstate commerce. Dedication arises from FERC's power to require its approval before any abandonment of service is made and from the public reliance on the supply of interstate gas. Abandonment, in whole or in part, is allowed only if:

> [T]he available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or . . . the present or future public convenience or necessity permit such abandonment.[28]

21. 390 U.S. 747 (1968).
22. Just and Reasonable National Rates for Sales of Natural Gas, 51 F.P.C. 2212 (1974). The prior FPC procedure was to review each individual producer's filing.
23. 15 U.S.C. § 717f(e) (1976).
24. *Id.*
25. *Id.*
26. 22 ROCKY MTN. MIN. L. INST. 695, 702 (1976).
27. Public Service Comm'n v. F.P.C., 463 F.2d 824, 828 (D.C. Cir. 1972).
28. 15 U.S.C. § 717f(b) (1976).

In *Harry C. Boggs,*[29] the applicant requested abandonment authorization, asserting that he should be allowed to sell for a greater price in the intrastate market because such a sale would generate greater revenues and promote exploration for new gas. The commission rejected this contention, stating that there is a greater public interest in a stabilized interstate gas supply.

FERC maintains that *any* action or inaction which may decrease the amount of gas the producer was to produce under the certificate is not allowed. Thus, expiration of a contract or lease is no basis for authorization of abandonment.[30] In other words, "[s]o long as a supply of gas remains the obligation to continue deliveries to the [interstate] pipeline exists."[31] In *Sunray Oil Co. v. FPC,*[32] The Supreme Court held that deliveries must continue, despite a lease or contract, until abandonment is authorized. The obligations of the FERC certificate outweigh any private contractual obligations. Assignment of a lease will not be allowed unless the assignee assures FERC that he will obtain a certificate covering the same area leased. A certificate also requires that reserves in the dedicated area be established in order that production is maintained at the certificated level.[33]

If a well depletes so that the authorized level of production cannot be maintained, the commission may permit special rate relief.[34] A special rate will be allowed so that the producer can at least recoup costs of maintaining the certificated level of production. When actual depletion is found, FERC must allow either abandonment or rate relief.[35] Abandonment will not be allowed if production is economical at a higher rate than the rate applied to that producer.[36]

Dedication involves both gas service and facilities. FERC maintains that all the facilities, including all the acreage involved in the lease under which the certificate is made, are dedicated to interstate commerce. Therefore, FERC concludes, all the gas under the leased land must be sold, when produced, in interstate commerce. In a 4-3 decision in *California v. Southland Royalty Co.,*[37] the Supreme Court

29. 38 F.P.C. 947 (1967).
30. J. M. Huber Corp. v. F.P.C., 236 F.2d 550 (3rd Cir. 1956), *cert. denied,* 352 U.S. 971 (1957).
31. Hugoton Prod. Co., 41 F.P.C. 490 (1969), *aff'd in part,* 5th Cir. (no published opinion).
32. 364 U.S. 137 (1960).
33. Continental Oil Co., 31 F.P.C. 1079 (1964).
34. *See* 18 C.F.R. §2.76 (1978).
35. 30 OKLA. L. REV. 735, at 794 (1977).
36. *Id.*
37. 436 U.S. 519 (1977).

held that a lessee can perpetually bind, by accepting a certificate covering the leased acreage, the lessor's gas to interstate commerce. Therefore, a lessee can bind the land beyond his limited interest despite the reversion of the leasehold to the owner.[38] Such a dedication is perpetual, unless abandonment is authorized by FERC.[39] Considering the outlook of FERC, it is highly unlikely that any production, or productive land, will be allowed to be abandoned.[40] FERC claims there is, in essence, a federal covenant of dedication and service obligations which runs with the land.[41]

The limitation on the extent of dedication is set by the "production or gathering" exemption of the Natural Gas Act,

> but [the act] shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such a distribution or to the production or gathering of natural gas.[42]

Production and gathering activities are within the exclusive jurisdiction of state commissions. The courts have strictly construed this exemption.[43] Activities of production and gathering include drilling, well spacing, and collecting of gas. The problem is in defining when and where production ends and interstate sales begin. In *Saturn Oil & Gas Co. v. FPC,*[44] FPC jurisdiction over facilities required for sales of gas in interstate commerce was approved. The test is "whether the continued operation of a facility is necessary to the delivery of the gas sold."[45] In other words, "those production and gathering facilities directly affecting the jurisdictional sale are to be certificated"[46] and thereby dedicated to the interstate market. This test may be too artificial to be practical. FERC jurisdiction could be asserted over all facilities because they are all essential to the sale of the gas. But this would leave the "production or gathering" clause of no value, and

38. This has caused lessees to limit descriptions to single wells or to very specific areas in order to avoid dedication of the entire leased area. FERC may take action to attempt to prohibit such limitations. *See* 30 OKLA. L. REV. 735, 828 (1977).

39. Sunray Oil Co. v. F.P.C., 364 U.S. 137 (1960). All certificates are of unlimited duration unless specifically noted, Sun Oil Co. v. F.P.C., 364 U.S. 170 (1960).

40. The obvious fear of FERC is that if abandonment is authorized the lessee will turn around and sell in the intrastate market whatever amount can be produced from the acreage abandoned.

41. *See* 29 ANN. INST. OIL & GAS L. & TAX. 417, 424 (1978).

42. 15 U.S.C. §717(b) (1976).

43. J. M. Huber Corp. v. F.P.C., 236 F.2d 550 (3rd Cir. 1956), *cert. denied,* 352 U.S. 971 (1957).

44. 250 F.2d 61 (10th Cir. 1957), *cert. denied,* 355 U.S. 956 (1958).

45. *Id.* at 69.

46. 30 OKLA. L. REV. 735, 811 (1977).

clearly that result would be contrary to the intent embodied in the Natural Gas Act.

THE FERC "PRUDENT OPERATOR STANDARD" ORDER

Service dedications, rather than facilities dedications, appear to be the area in which FERC wants to extend its jurisdiction. FERC issued Order No. 539[47] in 1975. The order asserted what has been termed a "federally enforceable delivery obligation."[48] This "obligation" involves delivery of specified amounts of gas to the interstate market, and these amounts are independent of the gas sales contract. Of primary importance was the assertion by FERC that it could enforce the producer's delivery and supply "obligations." The order amended FERC's General Policy and Interpretations to this effect.[49] Order No. 539-A was issued soon thereafter to clarify Order No. 539.[50]

In 1976, FERC withdrew its policy amendment from Order No. 539 and substituted for it Order No. 539-B.[51] The latter order added a new section to FERC's rules regarding issuing of certificates.[52] The new rule incorporated contractual obligations between the buyer and seller of the interstate gas into the seller's certificate. As to these obligations, "the seller shall observe the standard of a prudent operator to develop and maintain deliverability from reserves dedicated hereunder."[53] Natural gas producers petitioned the Fifth Circuit Court of Appeals for review of the order. The court vacated Order No. 539-B because it exceeded the jurisdiction of FERC.[54] The decision was based upon the "production or gathering" exclusion in the Natural Gas Act, although there were other possible bases for vacating the order. The Supreme Court affirmed the decision of the Fifth Circuit in a 4-4 decision with no opinion issued.[55]

In Order No. 539-B, the commission asserted that because of its power to authorize abandonments, "it is simply incorrect to assert that the Commission cannot act to preserve the integrity of its certification process by conducting an oversight review of an on-going service obligation."[56] The commission planned to apply the prudent

47. 40 Fed. Reg. 49,571 (1975).
48. 29 ANN. INST. OIL & GAS L. & TAX. 417, 438 (1978).
49. 18 C.F.R. § 2.83 (1975).
50. 41 Fed. Reg. 14,531 (1976).
51. 41 Fed. Reg. 32,883 (1976).
52. 18 C.F.R. § 157.41 (1977).
53. *Id.*
54. Shell Oil Co. v. F.E.R.C., 566 F.2d 536 (5th Cir. 1978).
55. F.E.R.C. v. Shell Oil Co., 440 U.S. 192 (1979).
56. 41 Fed. Reg. 32,884 (1976).

operator standard to producers in order to determine whether their operations were proper in the context of the producers' certificate service obligations. The commission's order described the standard:

> This standard encompasses the obligations to develop the properties consistent with the performance requirements of lease agreements . . . ; all valid rules and regulations of any Federal, state or local governments having jurisdiction; and the standard of what a reasonably prudent operator would do with respect to the drilling, completion, workover, recompletion or abandonment of wells.[57]

FERC stated that *all sales* made pursuant to the certificate by a producer would be subject to review by the commission under the prudent operator standard.[58]

The Fifth Circuit reviewed FERC jurisdiction, finding that FERC could enforce delivery obligations from proven producing fields and could regulate abandonment of gas service. The court found that the "production or gathering" exemption was a formidable barrier to FERC jurisdiction, although the term had been narrowed by courts in the past several decades of gas regulation. The court stated: "No case has been found, however, that extends FERC jurisdiction into the physical activities, processes, and facilities of production and development."[59] The court looked at the language, referring to drilling and working of wells, used by FERC in its definition of the prudent operator standard and concluded:

> Order No. 539-B clearly is intended to open the door to FERC involvement into forbidden activities . . .
>
> To hold that the power to issue Order No. 539-B is within the jurisdiction of the FERC would all but eliminate the "production or gathering" exclusion and would allow the FERC to encroach on areas reserved to the states.[60]

The order was vacated on jurisdictional grounds, but in dicta the court hinted that it would also have done so on other grounds. The impetus for the series of FERC orders was:

> [T]he charge made before various subcommittees of Congress that natural gas producers were avoiding the delivery obligations in their contracts of sale in order to realize greater profits. It was claimed that the producers were diverting natural gas from interstate to intrastate sales or withholding it in hope of future deregulation of the industry.[61]

57. *Id.*
58. 18 C.F.R. §157.41 (1977).
59. 566 F.2d at 540.
60. *Id.*
61. *Id.* at 538 n. 1.

The court implied that it would have vacated Order No. 539-B because FERC's own investigation showed no evidence of improper sales by producers or withholding of supplies of gas.

Apparently, FERC intended to apply the prudent operator standard in its own fashion. Frustrated with conservation-minded state regulatory commissions and distrusting of their motives, FERC resolved to take over, insofar as interstate gas producers are concerned, the state commission function of determining prudence. The Fifth Circuit noted that a FERC staff brief to the commission stated:

> Immediate development of these known proved reserves will serve the public interest by increasing the supply of natural gas available to the interstate market. In the event that such development is not undertaken voluntarily by the producers, *staff recommends that the Commission use its authority pursuant to Order 539-B to insure full and timely development of these dedicated proved reserves.*[62]

Each gas producing state has developed a body of law defining its prudent operator standard.[63] FERC's action, if approved would have imposed an additional, but radically different, standard on those producers selling to the interstate market. FERC would develop a federal prudent operator standard which undoubtedly would require *immediate* development of gas reserves. One can only speculate as to the methods FERC would utilize to enforce its standard. FERC obviously intended to order noncomplying producers to engage in drilling or reworking operations. Considering FERC's motives these operations could be extensive and extremely costly. This could be punitive, especially when applied to small operators.

Many questions arise when considering the scope of the proposed federal prudent operator standard.[64] Could FERC order drilling of wells in contravention of state spacing regulations? If an operator is found to be non-prudent, could this finding establish liability to the lessor or other working interest owners? What kind of rate adjustments would be allowed for the required additional development, especially for high risk operations? What deviation from a required minimum daily delivery obligation would constitute a violation of the standard?[65] It appears that FERC's standard would not have related to what other operators in the area do, as state commissions and courts apply the standard. Instead, it would have related to what

62. *Id.* at 540 n. 4 (emphasis added by court).

63. For example, *see* Cook v. El Paso Natural Gas Co., 560 F.2d 978 (10th Cir. 1977); Clayton v. Atlantic Refining Co., 150 F. Supp. 9 (D. N.M. 1957); Libby v. DeBaca, 51 N.M. 95, 179 P.2d 263 (1947); Shell v. Worden, 44 N.M. 400, 103 P.2d 124 (1940).

64. 29 ANN. INST. OIL & GAS L. & TAX. 417, 442 (1978).

65. 22 ROCKY MTN. MIN. LAW INST. 695, 719 (1976).

the commission perceived the national interest to be, as viewed by the consuming states.[66] The effect of a federal prudent operator standard would be similar to that of federal price controls—production-oriented, short-sighted and disastrous in its results. One observer stated that Order No. 539-A itself "dried up any new supply of gas available to interstate pipelines."[67]

The Fifth Circuit questioned FERC's utilization of the prudent operator standard to achieve its stated purpose.[68] The court noted that the standard is used by state regulatory commissions in order to increase the total recovery of oil and gas in the ground. Conservation, rather than blind exploitation, is the goal of state commissions. While conservation, through controlled production, serves the goals of the individual producing states, it also serves the national interest. FERC's attempt to exercise the prudent operator standard was not intended to be in line with the ordinary meaning of the term. FERC wanted to use this standard as a subterfuge for greatly increasing its power over producers.

The regulations involved in *FERC v. Shell Oil Co.* were a limited move by FERC in terms of the entire federal control over natural gas. If the maximum authority of Order No. 539-B had been exerted, its effect would have been dramatic. The order was a desperate attempt by FERC to supply the interstate market with gas. The Supreme Court's affirmance of the Fifth Circuit result was correct; FERC exceeded its powers.

CONCLUSION

Independent producers, the essential link in discovery and production of new natural gas, are hit hardest by federal regulation. They are highly vulnerable to price controls and can least afford the expense that federal regulations force upon them. Independents contend that decontrol of prices will greatly benefit the nation by adding significant new supplies of gas to the market. As things presently stand, price controls have taken most of the incentive out of exploration for new gas. In addition to price controls, the maze of federal regulations creates a corresponding disincentive for exploration for and development of new gas reserves.[69] The combination of price

66. The federal standard may not have related to any oil and gas principles because, as a joke among oil and gas producers goes, anyone who has actually seen an oil well is ineligible for employment with FERC or the Department of Energy.

67. 22 ROCKY MTN. MIN. L. INST. 695, 722 (1976).

68. 566 F.2d, at 541 n. 6.

69. Interview with independent producer Jerry Herrmann of Amarillo, Texas, in Santa Fe, New Mexico, May 24, 1979.

controls and federal regulations have driven many independents out of business. If FERC takes away the independents' incentive to drill, a vital part of the industry will be destroyed and gas production will suffer.

Congress, by its inaction, has created a power vacuum in energy regulation. Federal energy laws and policies are incomplete and conflicting. FERC has attempted to fill the regulatory and policy void by acting where Congress has refused, or been unable, to act. The courts are left to determine the validity of the federal administrative actions.

Congress has been urged for years to provide a comprehensive remedy for natural gas problems. The response has been the Natural Gas Policy Act of 1978.[70] It extends some federal pricing and allocation authority over intrastate gas and provides for decontrol of "new" gas prices in 1985.[71] The act attempts to strike a balance between state and federal interests on one hand, and producer and consumer interests on the other, in the control and pricing of natural gas. Whether this is a solution to the problem remains to be seen. Extensive federal regulation, considered onerous by producers, still remains.

One conclusion can be made from the history of federal regulation of natural gas–it has not worked. While price regulation has been consumer oriented and well intentioned, it has ignored economic realities. Cheap natural gas is gone and consumers must now pay a fair price to insure future supplies of gas. The solution to the problem may lie in virtually complete price decontrol and administrative deregulation.

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70. 15 U.S.C.A. §§3301-3432 (Supp. 1979).

71. The states of Oklahoma, Texas and Louisiana are challenging this Act primarily on the basis of the Tenth Amendment. The states reason that the Tenth Amendment presents a bar to federal regulation of intrastate gas because it is a traditional and essential function of producing states and the power to regulate intrastate gas was reserved by the states and never delegated to the federal government.