

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE
OFFERED BY MR. STUPAK OF MICHIGAN**

After section 358, insert the following and make the necessary conforming changes:

1 SEC. 359. CEASE-AND-DESIST AUTHORITY.

2 (a) NATURAL GAS ACT.—Section 20 of the Natural
3 Gas Act (15 U.S.C. 717s) is amended by adding the fol-
4 lowing at the end:

5 “(e) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY
6 ORDERS; AUTHORITY OF THE COMMISSION.—

7 “(1) IN GENERAL.—If the Commission finds,
8 after notice and opportunity for hearing, that any
9 entity may be violating, may have violated, or may
10 be about to violate any provision of this Act, or any
11 rule, regulation, restriction, condition, or order made
12 or imposed by the Commission under the authority
13 of this Act, the Commission may publish its findings
14 and issue an order requiring such entity, and any
15 other entity that is, was, or would be a cause of the
16 violation, due to an act or omission the entity knew
17 or should have known would contribute to such vio-
18 lation, to cease and desist from committing or caus-

1 ing such violation and any future violation of the
2 same provision, rule, or regulation. Such order may,
3 in addition to requiring an entity to cease and desist
4 from committing or causing a violation, require such
5 entity to comply, to provide an accounting and
6 disgorgement, or to take steps to effect compliance,
7 with such provision, rule, or regulation, upon such
8 terms and conditions and within such time as the
9 Commission may specify in such order. Any such
10 order may, as the Commission deems appropriate,
11 require future compliance or steps to effect future
12 compliance, either permanently or for such period of
13 time as the Commission may specify.

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

20 “(f) HEARING.—The notice instituting proceedings
21 pursuant to subsection (e) shall fix a hearing date not ear-
22 lier than 30 days nor later than 60 days after service of
23 the notice unless an earlier or a later date is set by the
24 Commission with the consent of any respondent so served.

1 “(g) TEMPORARY ORDER.—Whenever the Commis-
2 sion determines that—

3 “(1) a respondent may take actions to dissipate
4 or convert assets prior to the completion of the pro-
5 ceedings referred to in subsection (e), and such as-
6 sets would be necessary to comply with or otherwise
7 satisfy a final enforcement order of the Commission
8 pursuant to alleged violations or threatened viola-
9 tions specified in the notice instituting proceedings,
10 or

11 “(2) a respondent is engaged in actual or
12 threatened violations of this Act or a Commission
13 rule, regulation, restriction or order referred to in
14 subsection (e),

15 the Commission may issue a temporary order requiring
16 the respondent to take such action to prevent dissipation
17 or conversion of assets, significant harm to energy con-
18 sumers, or substantial harm to the public interest, frustra-
19 tion of the Commission’s ability to conduct the pro-
20 ceedings, or frustration of the Commission’s ability to re-
21 dress said violation at the conclusion of the proceedings,
22 as the Commission deems appropriate pending completion
23 of such proceedings.

24 “(h) REVIEW OF TEMPORARY ORDERS.—

1 “(1) COMMISSION REVIEW.—At any time after
2 the respondent has been served with a temporary
3 cease-and-desist order pursuant to subsection (g),
4 the respondent may apply to the Commission to have
5 the order set aside, limited, or suspended. If the re-
6 spondent has been served with a temporary cease-
7 and-desist order entered without a prior Commission
8 hearing, the respondent may, within 10 days after
9 the date on which the order was served, request a
10 hearing on such application and the Commission
11 shall hold a hearing and render a decision on such
12 application at the earliest possible time.

13 “(2) JUDICIAL REVIEW.—Within—

14 “(A) 10 days after the date the respondent
15 was served with a temporary cease-and-desist
16 order entered with a prior Commission hearing;
17 or

18 “(B) 10 days after the Commission ren-
19 ders a decision on an application and hearing
20 under paragraph (1), with respect to any tem-
21 porary cease-and-desist order entered without a
22 prior Commission hearing, the respondent may
23 apply to the United States district court for the
24 district in which the respondent resides or has
25 its principal place of business, or for the Dis-

1 trict of Columbia, for an order setting aside,
2 limiting, or suspending the effectiveness or en-
3 forcement of the order, and the court shall have
4 jurisdiction to enter such an order. A respond-
5 ent served with a temporary cease-and-desist
6 order entered without a prior Commission hear-
7 ing may not apply to the court except after
8 hearing and decision by the Commission on the
9 respondent's application under paragraph (1) of
10 this subsection.

11 “(3) NO AUTOMATIC STAY OF TEMPORARY
12 ORDER.—The commencement of proceedings under
13 paragraph (2) of this subsection shall not, unless
14 specifically ordered by the court, operate as a stay
15 of the Commission's order.

16 “(4) EXCLUSIVE REVIEW.—Sections 19(d) and
17 24 shall not apply to a temporary order entered pur-
18 suant to this section.

19 “(i) IMPLEMENTATION.—The Commission is author-
20 ized to adopt rules, regulations, and orders as it deems
21 appropriate to implement this section.”.

22 (c) NATURAL GAS POLICY ACT OF 1978.—Section
23 504 of the Natural Gas Policy Act of 1978 (15 U.S.C.
24 3414) is amended by adding the following at the end:

1 “(c) CEASE-AND-DESIST PROCEEDINGS; TEMPORARY
2 ORDERS; AUTHORITY OF THE COMMISSION.—

3 “(1) IN GENERAL.—If the Commission finds,
4 after notice and opportunity for hearing, that any
5 entity may be violating, may have violated, or may
6 be about to violate any provision of this Act, or any
7 rule, regulation, restriction, condition, or order made
8 or imposed by the Commission under the authority
9 of this Act, the Commission may publish its findings
10 and issue an order requiring such entity, and any
11 other entity that is, was, or would be a cause of the
12 violation, due to an act or omission the entity knew
13 or should have known would contribute to such vio-
14 lation, to cease and desist from committing or caus-
15 ing such violation and any future violation of the
16 same provision, rule, or regulation. Such order may,
17 in addition to requiring an entity to cease and desist
18 from committing or causing a violation, require such
19 entity to comply, to provide an accounting and
20 disgorgement, or to take steps to effect compliance,
21 with such provision, rule, or regulation, upon such
22 terms and conditions and within such time as the
23 Commission may specify in such order. Any such
24 order may, as the Commission deems appropriate,
25 require future compliance or steps to effect future

1 compliance, either permanently or for such period of
2 time as the Commission may specify.

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) HEARING.—The notice instituting pro-
10 ceedings pursuant to paragraph (1) shall fix a hear-
11 ing date not earlier than 30 days nor later than 60
12 days after service of the notice unless an earlier or
13 a later date is set by the Commission with the con-
14 sent of any respondent so served.

15 “(4) TEMPORARY ORDER.—Whenever the Com-
16 mission determines that—

17 “(A) a respondent may take actions to dis-
18 sipate or convert assets prior to the completion
19 of the proceedings referred to in paragraph (1)
20 and such assets would be necessary to comply
21 with or otherwise satisfy a final enforcement
22 order of the Commission pursuant to alleged
23 violations or threatened violations specified in
24 the notice instituting proceedings, or

1 “(B) a respondent is engaged in actual or
2 threatened violations of this Act or a Commis-
3 sion rule, regulation, restriction or order re-
4 ferred to in paragraph (1),
5 the Commission may issue a temporary order requir-
6 ing the respondent to take such action to prevent
7 dissipation or conversion of assets, significant harm
8 to energy consumers, or substantial harm to the
9 public interest, frustration of the Commission’s abil-
10 ity to conduct the proceedings, or frustration of the
11 Commission’s ability to redress said violation at the
12 conclusion of the proceedings, as the Commission
13 deems appropriate pending completion of such pro-
14 ceedings.

15 “(5) REVIEW OF TEMPORARY ORDERS.—

16 “(A) COMMISSION REVIEW.—At any time
17 after the respondent has been served with a
18 temporary cease-and-desist order pursuant to
19 paragraph (4), the respondent may apply to the
20 Commission to have the order set aside, limited,
21 or suspended. If the respondent has been served
22 with a temporary cease-and-desist order entered
23 without a prior Commission hearing, the re-
24 spondent may, within 10 days after the date on
25 which the order was served, request a hearing

1 on such application and the Commission shall
2 hold a hearing and render a decision on such
3 application at the earliest possible time.

4 “(B) JUDICIAL REVIEW.—Within—

5 “(i) 10 days after the date the re-
6 spondent was served with a temporary
7 cease-and-desist order entered with a prior
8 Commission hearing; or

9 “(ii) 10 days after the Commission
10 renders a decision on an application and
11 hearing under subparagraph (A), with re-
12 spect to any temporary cease-and-desist
13 order entered without a prior Commission
14 hearing, the respondent may apply to the
15 United States district court for the district
16 in which the respondent resides or has its
17 principal place of business, or for the Dis-
18 trict of Columbia, for an order setting
19 aside, limiting, or suspending the effective-
20 ness or enforcement of the order, and the
21 court shall have jurisdiction to enter such
22 an order. A respondent served with a tem-
23 porary cease-and-desist order entered with-
24 out a prior Commission hearing may not
25 apply to the court except after hearing and

1 decision by the Commission on the re-
2 spondent's application under paragraph (1)
3 of this subsection.

4 “(C) NO AUTOMATIC STAY OF TEMPORARY
5 ORDER.—The commencement of proceedings
6 under subparagraph (B) of this paragraph shall
7 not, unless specifically ordered by the court, op-
8 erate as a stay of the Commission's order.

9 “(6) IMPLEMENTATION.—The Commission is
10 authorized to adopt rules, regulations, and orders as
11 it deems appropriate to implement this subsection.”

In section 401(b)(3)(C)(i) of the Federal Power Act,
as added by section 341, (page 682 lines 16 and 19)
strike “part” and insert “Act”.

