

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: \_\_\_\_\_

**IN THE SENATE OF THE UNITED STATES—111th Cong., 1st Sess.**

(no.) \_\_\_\_\_

(title) \_\_\_\_\_

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by \_\_\_\_\_

Viz:

1 At the end of the title, add the following:

2 **SEC. 505. EMERGENCY ORDERS UNDER THE FEDERAL**  
3 **POWER ACT.**

4 Section 202 of the Federal Power Act (16 U.S.C.  
5 824a) is amended by adding at the end the following:

6 “(h) EMERGENCY ORDERS.—

7 “(1) DEFINITION OF EMERGENCY.—In this  
8 subsection, the term ‘emergency’ means a major dis-  
9 turbance in wholesale electric markets regulated by  
10 the Commission that—

1           “(A) substantially disrupts, or threatens to  
2           substantially disrupt, the reliability of service to  
3           electric consumers; or

4           “(B) is characterized by sudden and exces-  
5           sive price fluctuations in wholesale electric mar-  
6           kets regulated by the Commission.

7           “(2) ORDERS.—In an emergency, the Commis-  
8           sion may, either on the motion of the Commission or  
9           on complaint, without notice or hearing, require by  
10          order the temporary suspension or modification of  
11          any rate, term, or condition of service on file with  
12          the Commission pursuant to this Act that the Com-  
13          mission determines to be necessary—

14                 “(A) to ensure reliability of service to elec-  
15                 tric consumers; or

16                 “(B) to protect electric consumers from  
17                 potential abuse of market power or market ma-  
18                 nipulation in wholesale electric markets regu-  
19                 lated by the Commission.

20           “(3) EFFECTIVE PERIOD.—An order under this  
21          subsection may remain in effect for not more than  
22          10 days unless extended under paragraph (4).

23           “(4) EXTENSION.—An order under this sub-  
24          section may be extended for additional periods of not

1 more than 10 days if the Commission determines  
2 that—

3 “(A) the emergency still exists; and

4 “(B) the continuation of the order is nec-  
5 essary—

6 “(i) to ensure reliability of service to  
7 electric consumers; or

8 “(ii) to protect electric consumers  
9 from potential abuse of market power or  
10 market manipulation in wholesale electric  
11 markets regulated by the Commission.

12 “(5) LIMITATION.—In no event shall an order  
13 of the Commission under this subsection continue in  
14 effect for more than 30 days.

15 “(6) REVIEW OF ORDERS.—

16 “(A) IN GENERAL.—An order under this  
17 subsection shall be subject to review as provided  
18 in section 313(b).

19 “(B) STANDARD OF REVIEW.—The review-  
20 ing court shall not enter a stay, writ of man-  
21 damus, or similar relief unless the court finds,  
22 after notice and hearing before a panel of the  
23 court, that the action of the Commission is ar-  
24 bitrary, capricious, an abuse of discretion, or  
25 otherwise not in accordance with law.



1           “(B) there is a likelihood of future viola-  
2           tions in the absence of an order under this sub-  
3           section.

4           “(d) TEMPORARY ORDERS.—

5           “(1) IN GENERAL.—If, in any proceeding under  
6           subsection (c), the Commission finds that a violation  
7           of a rule or regulation prescribed under subsection  
8           (a) is likely to result in significant dissipation or  
9           conversion of assets, significant harm to electric con-  
10          sumers, or substantial harm to the public interest,  
11          the Commission may enter a temporary order requir-  
12          ing the respondent—

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

15                 “(B) to take such action as the Commis-  
16                 sion determines appropriate pending completion  
17                 of the proceeding—

18                         “(i) to prevent the violation; and

19                         “(ii) to prevent dissipation or conver-  
20                         sion of assets, significant harm to electric  
21                         consumers, or substantial harm to the pub-  
22                         lic interest.

23           “(2) NOTICE AND HEARING.—A temporary  
24           order under this subsection shall be entered only  
25           after notice and opportunity for a hearing unless the

1 Commission determines that notice and hearing  
2 prior to entry would be impracticable or contrary to  
3 the public interest.

4 “(3) EFFECTIVE DATE.—A temporary order  
5 shall—

6 “(A) become effective on the date of serv-  
7 ice on the respondent; and

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

13 “(4) COMMISSION REVIEW.—

14 “(A) IN GENERAL.—At any time after the  
15 respondent has been served with a temporary  
16 order under this subsection, the respondent  
17 may apply to the Commission to have the order  
18 set aside, limited, or suspended.

19 “(B) TEMPORARY ORDERS WITHOUT  
20 HEARINGS.—If the respondent has been served  
21 with a temporary order entered without a prior  
22 Commission hearing—

23 “(i) the respondent may, within 10  
24 days after the date on which the order was

1 served, request a hearing on the applica-  
2 tion; and

3 “(ii) the Commission shall hold a  
4 hearing and render a decision on the appli-  
5 cation at the earliest possible time.

6 “(5) JUDICIAL REVIEW.—

7 “(A) IN GENERAL.—The respondent may  
8 apply to an appropriate United States district  
9 court for an order setting aside, limiting, or  
10 suspending the effectiveness or enforcement of  
11 the order, within—

12 “(i) 10 days after the date the re-  
13 spondent was served with a temporary  
14 order entered with a prior Commission  
15 hearing; or

16 “(ii) 10 days after the Commission  
17 renders a decision on an application and  
18 hearing under paragraph (4) with respect  
19 to any temporary order entered without a  
20 prior Commission hearing.

21 “(B) JURISDICTION.—The United States  
22 District Court for the district in which the re-  
23 spondent resides or has its principal place of  
24 business, or for the District of Columbia, shall

1           have jurisdiction to enter an order under this  
2           paragraph.”.

3 **SEC. 507. CEASE-AND-DESIST AUTHORITY UNDER THE NAT-**  
4 **URAL GAS ACT.**

5           Section 4A of the Natural Gas Act (15 U.S.C. 717c–  
6 1) is amended—

7           (1) by striking the section heading and all that  
8           follows through “It” and inserting the following:

9 **“SEC. 4A. PROHIBITION ON MARKET MANIPULATION.**

10          “(a) IN GENERAL.—It”; and

11          (2) by adding at the end the following:

12          “(b) CEASE-AND-DESIST ORDERS.—

13                 “(1) IN GENERAL.—If the Commission finds,  
14                 on a proper showing, after notice and opportunity  
15                 for a hearing, that any entity is manipulating or at-  
16                 tempting to manipulate or has manipulated or at-  
17                 tempted to manipulate the market for the purchase  
18                 or sale of natural gas or the purchase or sale of  
19                 transportation services subject to the jurisdiction of  
20                 the Commission in violation of a rule or regulation  
21                 prescribed by the Commission under subsection (a),  
22                 the Commission may make and enter an order re-  
23                 quiring the entity to cease and desist from commit-  
24                 ting the violation.

1           “(2) PROPER SHOWING REQUIRED.—For pur-  
2           poses of this subsection, a proper showing is made  
3           by demonstrating that—

4                   “(A) an entity has violated a rule or regu-  
5                   lation under subsection (a); and

6                   “(B) there is a likelihood of future viola-  
7                   tions in the absence of an order under this sub-  
8                   section.

9           “(c) TEMPORARY ORDERS.—

10           “(1) IN GENERAL.—If, in any proceeding under  
11           subsection (b), the Commission finds that a violation  
12           of a rule or regulation prescribed under subsection  
13           (a) is likely to result in significant dissipation or  
14           conversion of assets, significant harm to electric con-  
15           sumers, or substantial harm to the public interest,  
16           the Commission may enter a temporary order requir-  
17           ing the respondent—

18                   “(A) to cease and desist from the violation;  
19                   and

20                   “(B) to take such action as the Commis-  
21                   sion determines appropriate pending completion  
22                   of the proceeding—

23                           “(i) to prevent the violation; and

24                           “(ii) to prevent dissipation or conver-  
25                           sion of assets, significant harm to electric

1 consumers, or substantial harm to the pub-  
2 lie interest.

3 “(2) NOTICE AND HEARING.—A temporary  
4 order under this subsection shall be entered only  
5 after notice and opportunity for a hearing unless the  
6 Commission determines that notice and hearing  
7 prior to entry would be impracticable or contrary to  
8 the public interest.

9 “(3) EFFECTIVE DATE.—A temporary order  
10 shall—

11 “(A) become effective on the date of serv-  
12 ice on 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 “(4) COMMISSION REVIEW.—

19 “(A) IN GENERAL.—At any time after the  
20 respondent has been served with a temporary  
21 order under this subsection, the respondent  
22 may apply to the Commission to have the order  
23 set aside, limited, or suspended.

24 “(B) TEMPORARY ORDERS WITHOUT  
25 HEARINGS.—If the respondent has been served

1 with a temporary order entered without a prior  
2 Commission hearing—

3 “(i) the respondent may, within 10  
4 days after the date on which the order was  
5 served, request a hearing on the applica-  
6 tion; and

7 “(ii) the Commission shall hold a  
8 hearing and render a decision on such ap-  
9 plication at the earliest possible time.

10 “(5) JUDICIAL REVIEW.—

11 “(A) IN GENERAL.—The respondent may  
12 apply to an appropriate United States district  
13 court for an order setting aside, limiting, or  
14 suspending the effectiveness or enforcement of  
15 the order, within—

16 “(i) 10 days after the date the re-  
17 spondent was served with a temporary  
18 order entered with a prior Commission  
19 hearing; or

20 “(ii) 10 days after the Commission  
21 renders a decision on an application and  
22 hearing under paragraph (4) with respect  
23 to any temporary order entered without a  
24 prior Commission hearing.

1           “(B) JURISDICTION.—The United States  
2           District Court for the district in which the re-  
3           spondent resides or has its principal place of  
4           business, or for the District of Columbia, shall  
5           have jurisdiction to enter an order under this  
6           paragraph.”.

7   **SEC. 508. REFUND AUTHORITY UNDER THE NATURAL GAS**  
8           **ACT.**

9           Section 5 of the Natural Gas Act (15 U.S.C. 717d)  
10          is amended by adding at the end the following:

11          “(c) REFUND EFFECTIVE DATE.—

12                 “(1) IN GENERAL.—Whenever the Commission  
13                 institutes a proceeding under this section, the Com-  
14                 mission shall establish a refund effective date.

15                 “(2) ON COMPLAINT.—In the case of a pro-  
16                 ceeding instituted on complaint, the refund effective  
17                 date shall not be earlier than the date of the filing  
18                 of the complaint nor later than 150 days after the  
19                 filing of the complaint.

20                 “(3) ON COMMISSION MOTION.—In the case of  
21                 a proceeding instituted by the Commission on the  
22                 motion of the Commission, the refund effective date  
23                 shall not be earlier than the date of the publication  
24                 by the Commission of notice of the intention of the

1 Commission to initiate the proceeding nor later than  
2 150 days after the publication date.

3 “(4) PREFERENTIAL PROCEEDINGS.—On insti-  
4 tution of a proceeding under this section, the Com-  
5 mission shall give the decision of the proceeding the  
6 same preference as provided under section 4 and  
7 otherwise act as speedily as possible.

8 “(5) FAILURE TO ISSUE DECISION.—If no final  
9 decision is rendered by the conclusion of the 180-day  
10 period commencing on the date of initiation of a pro-  
11 ceeding pursuant to this section, the Commission  
12 shall provide—

13 “(A) the reasons why the Commission has  
14 failed to do so; and

15 “(B) the best estimate of the Commission  
16 as to when the Commission reasonably expects  
17 to make the decision.

18 “(6) BURDEN OF PROOF.—In any proceeding  
19 under this section, the burden of proof to show that  
20 any rate, charge, classification, rule, regulation,  
21 practice, or contract is unjust, unreasonable, unduly  
22 discriminatory, or preferential shall be on the Com-  
23 mission or the complainant.

24 “(7) ISSUANCE OF REFUNDS.—

1           “(A) IN GENERAL.—At the conclusion of  
2           any proceeding under this section, the Commis-  
3           sion may order refunds of any amounts paid,  
4           for the period subsequent to the refund effective  
5           date through a date 450 days after the refund  
6           effective date, in excess of amounts that would  
7           have been paid under the just and reasonable  
8           rate, charge, classification, rule, regulation,  
9           practice, or contract that the Commission or-  
10          ders to be subsequently observed and in force.

11           “(B) EXCEPTION.—Notwithstanding sub-  
12          paragraph (A), if the proceeding is not con-  
13          cluded within 450 days after the refund effec-  
14          tive date and if the Commission determines at  
15          the conclusion of the proceeding that the pro-  
16          ceeding was not resolved within the 450-day pe-  
17          riod primarily because of dilatory behavior by  
18          the natural gas company, the Commission may  
19          order refunds of all or part of amounts paid for  
20          the period subsequent to the refund effective  
21          date and prior to the conclusion of the pro-  
22          ceeding.

23           “(8) INTEREST.—The refunds shall be made,  
24          with interest, to those entities who have paid those

1 rates or charges that are the subject of the pro-  
2 ceeding.”.

3 **SEC. 509. DE NOVO REVIEW OF CIVIL PENALTIES UNDER**  
4 **THE NATURAL GAS ACT.**

5 Section 22(b) of the Natural Gas Act (15 U.S.C.  
6 717t-1(b)) is amended by inserting before the period at  
7 the end the following: “, in accordance with the same pro-  
8 visions as are applicable under section 31(d) of the Fed-  
9 eral Power Act (16 U.S.C. 823b(d)) in the case of civil  
10 penalties assessed under section 31 of the Federal Power  
11 Act (16 U.S.C. 823b)”.