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Abstract

Included in the Natural Gas Policy Act of 1978 is a section which provides priority treatment for essential agricultural users. The applicability and importance of this Act in maintaining a viable agricultural base in this nation is developed.

American agriculture is energy intensive. The United States Department of Agriculture estimates that twenty-two percent of this country's energy is used in the production of food and fiber. Approximately one-half of that energy is petroleum based and approximately one-third is from natural gas.

Although only two percent of all Americans "work the land" this country's approximately 2.5 million farms constitute the third largest industrial user of energy after the steel manufacturing and petroleum refining industries. The American farmer is dependent upon natural gas and petroleum products for fertilizer, fuel, irrigation, pesticides, and crop drying.

The importance of American agriculture should not be underestimated. One American farmer can produce enough to feed himself and more than sixty others. The value of United States farm exports for the year beginning October, 1979, is estimated to be between $35 and $40 billion, and paid for almost one-half of the oil we bought.

In addition to its significant economic role, American agriculture aids this country's world-wide humanitarian efforts and is a diplomatic weapon in our foreign policy. More importantly, American agriculture provides us with "adequate nutritious food of acceptable variety to feed the increasing population" at a low cost. The high productivity of American agriculture is mainly attributable to two events: the introduction of the gasoline tractor at about the time of World War I and, after World War II, the large scale use of nitrogen fertilizer which is manufactured from natural gas. Both of these are dependent upon non-renewable fossil fuels.

The impact of the energy crisis on agriculture is significant because it will mean that the farmer will pay ever-increasing prices for his energy inputs as long as energy is available. The obvious impacts will be higher food prices and in the end, more seriously, the possibility of insufficient food for our national policies and even insufficient food for our population. As a result of these undesirable consequences, the federal government has initiated policies intended to insure adequate energy inputs to members of the agricultural community. A plentiful supply of food has never been a problem in the U.S. We more or less take our agricultural abundance for granted.

Since 1971, federal curtailment policy has focused on the proper method under the Natural Gas Act of allocating diminishing supplies of natural gas among consumers. Curtailment has been difficult for the regulator, the regulated, and the consumer. Curtailment policy through use has become acceptable and it was based upon "end-use"

considerations. With the passage of title IV of the Natural Gas Policy Act in November, 1978, established curtailment policies were impacted by a congressional determination that a special class of consumers - "essential agricultural users" should receive a preference during periods of natural gas curtailments. That preference effectively rejected "end-use" as the basis for the allocation of natural gas by substituting an "end-product" criteria. This change has caused some uncertainty and dissatisfaction. Some of this dissatisfaction has come as a result of the federal rulemaking which has been taken to enact a high level of protection for agricultural users during periods of natural gas curtailments. Some of the dissatisfaction comes from the distributors and some from industries other than agriculture.

As background, the history of regulation of natural gas curtailments can be traced to an order which was issued as a policy statement by the Federal Power Commission in April, 1971. The significance of this order is that it established three principles for allocating natural gas service among classes of customers. The first principle distinguished between firm and interruptible contracts. Customers with interruptible contracts were deemed, for the purposes of curtailment, to be of a lower priority than customers purchasing under firm contracts.

The second curtailment principle was that "inferior" end-uses, such as boiler fuel, should have less protection from curtailment than higher priority end-uses such as natural gas used in residences.

The third curtailment principle was that if a user has an ability to use an alternative fuel to natural gas, then that user deserves less protection from natural gas curtailments than a user without an alternative fuel capability. With the exception of the firm-interruptible distinction, the remaining principles have been recognized by the courts and retained as valid criteria for establishing curtailment priorities.

However, with the passage of title IV of the Natural Gas Policy Act of 1978, a significant new element was added by the congressional determination that certain consumers, described as "essential agricultural" users, were to be given high priority treatment during periods of natural gas curtailment. Congress did not intend major disruptions of existing curtailment plans because it perceived that the volumes would be low and that most already had high priority.

Title IV of the Natural Gas Policy Act affects the law of natural gas curtailments by statutorily determining a preference for agricultural users of natural gas and establishing an order of curtailment priorities essentially based upon end-product as distinguished from end-use consideration. Specifically, section 401 of title IV of the Natural Gas Policy Act provides in pertinent part that:

> To the maximum extent practicable, no curtailment plan of an interstate pipeline may provide for curtailment of deliveries of natural gas for any essential agricultural use, unless such curtailment ... is necessary in order to meet the requirements of high priority users.

Thus, by this language, the Congress has established two distinct curtailment categories: high priority users and essential agricultural users. Moreover, the next section of the Natural Gas Policy Act establishes a third curtailment category: "essential industrial process and feedstock users" which are to be subordinated in any priority scheme to both high priority and essential agricultural users. As a consequence, during periods of natural gas curtailments, title IV of the Natural Gas Policy Act mandates that all interstate pipeline companies give protection in the following descending order of priorities: high priority users, essential agricultural users, and essential industrial process and feedstock users.

The significant change to existing curtailment law compelled by section 401 is its grant of special treatment to essential agricultural users, which are defined as those which use natural gas:

> (a) for agricultural production, natural fiber production, natural fiber processing, food processing, food quality maintenance, irrigation pumping, crop drying, or
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> (b) as a process fuel or feedstock in the production of fertilizer, agricultural chemicals, animal feed, or food.

which the Secretary of Agriculture determines is necessary for full food and fiber production.

The law seems clear enough, but it is at this point that the agencies and departments take over to implement the law. To make the law operative, the Secretary of Energy was to prescribe and make effective a rule which provides that no curtailment plan of any interstate pipeline company may provide for curtailment of deliveries of natural gas for essential agricultural use except to meet the requirements of

enumerated high priority users. Prior to the issuance of the Secretary of Energy's rule, the Secretary of Agriculture shall certify to both the Secretary of Energy and the Federal Energy Regulatory Commission "the natural gas quantity requirements for essential agricultural uses in order to meet the requirements of full food and fiber production."

Thus, the congressional legislation contemplated at least three separate rule-making proceedings by the United States Department of Energy and Agriculture and the Federal Energy Regulatory Commission to implement the essential agricultural user priority. In actuality, the administrative proceedings which were triggered far exceeded the three contemplated by section 401 of the Natural Gas Policy Act.

First, the USDA issued its proposed rule for public hearings. The Secretary of Agriculture sought comments on the proposed regulation. One of the two most significant provisions of the Secretary of Agriculture's proposed rule was its selection of Standard Industrial Classification numbers to certify "those classes of establishments...that are carrying out essential agricultural functions necessary for full food and fiber production." One obvious advantage of using SIC numbers was that it avoided a case-by-case determination by the Secretary of Agriculture as to which facilities qualified as essential agricultural users. Everyone liked this, and it stood through all of the proposed, interim, interim final, and final rulemaking steps.

The other significant and probably most controversial aspect of the Secretary of Agriculture's rule was its definition of natural gas requirements for essential agricultural users. The rule provided that: "The natural gas requirements for...the essential agricultural uses are certified to be one-hundred percent of current natural gas requirements of existing essential agricultural use establishments." Utilization of a one-hundred percent current requirements approach means that essential agricultural users were not only immunized to a large extent from curtailment but would be able to increase their natural gas requirements at the possible expense of the pipeline's existing lower priority customers. As you could expect, this started a major controversy, and without boring you with the details, the USDA switched its position several times before finally issuing its final rule.

During the course of the several rulemaking proceedings, it became clear that disposition of the growth question -- whether essential agricultural users should be limited to an historical base period or be permitted to increase their base period entitlements (the one-hundred percent current requirements approach) to meet the growing need for food and fiber -- was the key issue.

The Federal Energy Regulatory Commission's calculation of an essential agricultural user's volumes was not the one-hundred percent current requirements approach proposed by the Secretary of Agriculture, but was based upon an historical period. As an added kicker in calculating an essential agricultural user's base period volumes, it not only utilized the base period volumes included in the various curtailment plans of the numerous interstate pipelines, but adjusted it for the user's alternate fuel capability.

The USDA's final rule certified essential agricultural requirements as one-hundred percent of current requirements for small users and for daily users of more than 300 MCF an historical period or the maximum entitled by the gas company was ruled. This formula was an attempted compromise between the current requirements and historical base period approaches. The only explanation for the Secretary of Agriculture's new approach in defining requirements was the following conclusionary rationalization that: "A dual approach is designed to combine the current and base period approaches so as to achieve an effective and practicable result."

The disparity between the Secretary of Agriculture's and the Federal Energy Regulatory Commission's interim rules was not resolved by the next federal action, the ERA's final rule. The ERA's final rule was probably the most significant in all the section 401 rulemakings. "The curtailment plans of interstate pipelines protect, to the maximum extent practicable, deliveries of natural gas for essential agricultural uses and for high-priority uses."

Specifically, the order requires interstate pipelines to establish a high priority use category designated as priority 1 and an essential agricultural use category designated as priority 2. Priority 1 is required to include all high priority use entitlements of direct and indirect customers and related storage injection volumes. Priority 2 must include all essential agricultural use entitlements of its direct and indirect customers and related storage injection volumes. The method of curtailment requires that deliveries of natural gas be curtailed sequentially beginning with the lowest priority of service category. All categories are to be fully curtailed before priorities 1 and 2 are curtailed. Priority 1 is to be curtailed last. So, after a year of regulatory gyrations, the rules seem to do what Congress wanted.

Federal natural gas curtailment policy has not been fully successful in equitably allocating what has been called "nature's most perfect source of energy." The reasons for the lack of success are attributable to the cumbersome nature of federal regulation, which places the initiative for curtailment allocations with interstate pipelines and the inherent difficulties in making an equitable, national system of curtailment priorities. Naturally, you get a lot of controversy generated when one customer feels that his rights are being violated just to be given to another group.

The congressional legislation in addition to guaranteeing gas supplies for full food and fiber production recognizes the need for an alternate fuel rule. The Federal Energy Regulatory Commission has had rulemaking on this subject and the definitions of economically practicable and readily available with regard to alternate fuel supplies have received heated debate. A rulemaking has been adopted which states that coal and residual fuel oils are "economically practicable and readily available" as an alternate fuel source and anyone who ever used these sources is defined to have alternate fuel capability.

The subject of incremental pricing, which is title II of the Natural Gas Policy Act, has not had to be resolved in its entirety. The present abundance of natural gas causes there to be little action on this subject at the moment. Phase I incremental pricing is in effect and Phase II was vetoed by Congress.

All the issues of the Natural Gas Policy Act of 1978 are not yet totally resolved. Most of the rulemakings which have been made have been challenged in the federal courts. There are some rulemakings which have not been made. The action initiated by title IV of the Natural Gas Policy Act granting essential agricultural users a preference during periods of natural gas supply shortages is positive and should not be diminished by either subsequent federal or state legislation or judicial action.

I am sure that it is imperative that we do everything in our power to insure that we can produce full food and fiber needed by this nation for its own sustanance and to provide an important element of our balance of payments. We must do everything we can to insure that the energy base remains domestic. If we don't put agriculture high on this totem pole, we might find it eroding away like so many other strengths of our life style. We must seek, before it's too late, an adequate energy supply to effectively operate our nation's industry on a domestic basis or we must be content with a life and standard of living much below that we presently enjoy. I believe that it is a little like S. I. Hayakawa remarked:

> We are people of plenty. We have become so through our energy, our inventiveness, our encouragement of initiative. Yet with the prevailing political philosophy of rewarding the unsuccessful and punishing the creators of our national abundance, there is no guarantee that we shall continue to be people of plenty. Washington is full of power-hungry mandarins and bureaucrats who distrust abundance, which gives people freedom, and who love scarcity and "zero growth," which give them power to assign, allocate, and control. If they ever win out, heaven help us!

BIOGRAPHY

James Atwood graduated from Pan American College in his hometown, Edinburg, Texas, with an Associate in Arts degree and graduated from Texas Tech University at Lubbock, Texas, in 1952 with a B.S. in Chemical Engineering.

Prior to joining Farmland Industries he was employed by Celanese Chemical Company at various locations and in various positions, including process engineering, process design, and operations management. With Farmland in January, 1973, responsibilities included the construction and management of the Enid, Oklahoma ammonia plants.

In his present position as Vice President, Nitrogen Manufacturing, which was assumed in March, 1976, he is responsible for all nitrogen fertilizer manufacturing, including plants at Fort Dodge, Iowa; Hastings, Nebraska; Dodge City and Lawrence, Kansas; Enid, Oklahoma; and Pollock Louisiana. This responsibility includes procurement of raw materials and other energy related matters.