Major Problems
Remaining In Senate
Natural Gas Compromise

1. Old gas ramp up -- the time period for old gas ramp up is simply too short.

2. Released take-or-pay -- released take-or-pay volumes is not specifically defined and could be construed to mean all volumes not taken (see p. 14, line 14).

   Released take-or-pay volumes should be those volumes covered by the difference between the stated contract take-or-pay percentage and the percentage reduced to by statute. Thus, if the contract percent is 90 and a first year reduction to 50 is exercised, then the released volumes should be 40 percent. In this manner, the producer's expectation of 90 percent is preserved and the purchaser retains the swing ability of 10 percent.

3. Area rate clauses -- section 320 of the compromise (pp. 24-25) addresses the operation and effectiveness of area rate clauses both as to the free market price indicator (FMPI) (§ 320(a)) and as to any maximum lawful price (MLP) under Subtitle A or section 131 price (§ 320(c)). The plain effect of these provisions is to escalate automatically and practically all old gas contracts to the FMPI, MLP or 131 price levels without regard to the actual language of the contract and intent of the parties thereunder. Moreover, subsection 320(c) would effectively decide all cases pending at FERC where area rate clauses have been challenged as contract authority to collect MLP's. This simply says consumers lose the FERC litigation and $10 billion without even the opportunity for an FERC decision.

   The preferable approach would be to settle the area rate litigation in favor of consumers. Given the politics of the Committee, this is probably impossible. At the very least, however, the litigation should not be decided by statute against consumers. Thus, section 320 should be deleted in its entirety. This would leave the question of contract authority to collect FMPI, MLP or 131 prices right where it stands now; that is, if the specific language of an area rate clause allows prices to escalate with congressionally set prices, then the producer can receive such prices pursuant to the area rate clause contract authority; and, if the language of the area rate clause does not authorize congressionally established prices, then the producer would not get the higher prices and would have to bargain to them.

4. Expired contracts -- (p. 27, line 2) the Commission's jurisdiction over all expired old gas contracts is removed.

5. Pipeline accountability; purchased gas costs passthrough limitation -- (p. 27, line 18 through p. 30, line 4) this is probably the most significant and structurally unsound provision of the "compromise" from a consumer protection perspective, especially given the substantial wellhead decontrol in the rest of the compromise. Even the present weak and ineffective "fraud, abuse or similar grounds" provision of NGPA section 601(c)(2) is further limited. That is, pipeline passthrough of "new new" and renegotiated contracts is statutorily deemed prudent if the weighted average amount paid does not exceed 105% of the FMPI or matches the terms of an offer under section 318. Amounts paid in excess of 105% of the FMPI may be disallowed depending on the reasonable availability of lower cost supplies and the necessity of incurring such amounts paid to enable the pipeline to render adequate service to existing customers. This "prudence" standard is in effect through the ramp up period. The guaranteed passthrough is further exacerbated at p. 29, lines 14-17 where FERC's Gas Act power to suspend increased rates for a mere five months is also repealed.

   The upshot of this section is that the NGPA's guaranteed passthrough is turned into an iron-clad guarantee. Pipeline purchasing practices will be subject to virtually no review, let alone any significant consumer protection test.

   At the very least, the whole of new paragraphs (3) and (4) should be stricken and the word "imprudence" added to the present NGPA 601(c)(2) passthrough section.

6. Contract carriage incentive allowance limitation -- (p. 40, lines 13-18) this provision seeks to limit the incentive transportation rate which could otherwise be earned by pipelines and LDC's in "self-dealing" transactions. However, the provision creates substantial problems from an LDC perspective.

   One of the primary reasons for "freeing up" pipeline transportation service is to facilitate transportation of LDC-owned gas back to the LDC's service area. Obviously, if pipelines do not receive the incentive rate for this service, they will be less inclined to render the service. Also, the provision would preclude an LDC's production affiliate, which engages in some

transportation to deliver gas from the wellhead to the pipeline, from receiving the incentive rate and, thus, discourage LDC's from engaging in self-help gas supply activities which are necessary to meet customers' needs.

The provision should be revised to remove its application to LDC's.

[N.B. -- there are still substantial pipeline capacity problems with the contract carriage section, but they are apparently beyond repair in the Senate Energy Committee.]

7. Section 311 transportation -- (p. 46, line 15 through p. 48, line 21) this provision is basically the transportation language from S. 615. The major flaw in this revision to NGPA § 311 is that it grants the Commission jurisdiction over transportation, including rates, by local distribution companies. This is a far-reaching departure from historic state/federal jurisdiction over the gas industry and is directly contrary to the Committee's resolution of similar jurisdictional issues in the contract carriage section of the compromise.

   The language of this revision relating to LDC's should be deleted.

8. Warranty contracts -- these should be exempted entirely from the pricing provisions of the compromise.