

Nationwide Deep Freeze Leads to Spike in Natural Gas Prices

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In the wake of the deep freeze that recently swept the nation, natural gas has taken the forefront among a slew of price gouging allegations. Last week's winter storms caused natural gas spot market prices to spike, with some reporting up to a 100% percent increase. Reports also surfaced of spot prices for wholesale electricity in Texas' power grid increasing more than 10,000%. In response, Minnesota Senator Tina Smith (D-MN) has not only encouraged federal regulators to investigate the price spikes, but has also [requested](#) regulators to "[i]nvoke, as appropriate, any emergency authorities available, including under the *Natural Gas Policy Act*, to allocate natural gas supplies at fair prices." Whether natural gas prices exceeded allowable limits under applicable price gouging statutes currently in effect depends, among other things, on whether natural gas is within the scope of these laws in the first place.

As with many products, whether natural gas is covered under state price gouging laws varies state-by-state. Certain state price gouging laws, like Vermont, apply to "petroleum or heating fuel products," defined as "motor fuels, liquefied petroleum gas, fuel oil, kerosene, and wood pellets used for heating or cooking purposes." [Vt. Stat. Ann. Tit. 9 § 2461d\(a\)](#). Illinois' price gouging law, triggered by "[a]ny abnormal disruption of any market for petroleum products," takes a similar approach, defining "petroleum product" to include motor fuels, and fuel used for heating or cooking purposes. [14 Ill. Code R. § 465.20-464.30](#).

Other states, however, more broadly cover "fuel" or "home heating oil." For example, Minnesota, Alaska, Colorado, Idaho, and Texas cover "fuel." While Kansas, Kentucky, Rhode Island, Virginia, and West Virginia, to name a few, cover "home heating fuel" or "home heating oil." However, some states only cover "gasoline," which arguably does not cover natural gas. For instance, Tennessee's price gouging law covers gasoline, but does not cover heating oil or fuel. [Tenn. Code Ann. § 47-18-5103\(a\)\(1\)](#). There are also states that broadly cover "goods and services," such as Louisiana and Mississippi.

Fuel producers and suppliers are not necessarily without a defense. Alaska, for example, may allow for a price increase in fuel if “caused by normal fluctuations in the market for fuel based on supply and demand.” Alaska Ch. 10 SLA 20 § 26. Kentucky may allow for price increases in home heating oil if the increase is “[g]enerally consistent with fluctuations in applicable commodity, regional, national, or international markets, or seasonal fluctuations.” [Ky. Rev. Stat. Ann. § 367.374\(1\)\(c\)](#). Similarly, Louisiana provides that a price increase is not a violation if it is “attributable to fluctuations in applicable commodity markets, fluctuations in applicable regional or national market trends.” La. Stat. Ann. § 29:723(A).

While essential goods and services related to the pandemic have been the topic of discussion regarding price gouging over the past year, energy and fuel suppliers and distributors should be aware that price gouging laws may also apply to them if covered by an emergency declaration. Natural gas companies and others should also be aware that beyond state attorneys general investigating the price spikes, the Federal Energy Regulatory Commission has also [announced](#) that it “is examining wholesale natural gas and electricity market activity during last week’s extreme cold weather to determine if any market participants engaged in market manipulation or other violations.”

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