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AMENDMENTS TO THE NATURAL GAS ACT

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 666

A BILL TO AMEND SECTIONS 4(2), 4(4), 7(e), AND 15 OF THE NATURAL GAS ACT, RELATING TO RATES AND CONTRACTS OF NATURAL GAS COMPANIES AND THE GRANTING OF CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY TO SUCH COMPANIES, AND RELATING TO HEARINGS AND PROCEDURE IN PROCEEDINGS BEFORE THE FEDERAL POWER COMMISSION INVOLVING NATURAL GAS MATTERS

AND

S. 1946

TO AMEND SECTION 4(e) OF THE NATURAL GAS ACT RELATIVE TO HEARINGS CONCERNING THE LAWFULNESS OF NEW RATE SCHEDULES

MAY 25, JUNE 5, 7, AND 19, 1961

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NOTE.—The Comptroller General and the Department of Justice had no comment to make on the legislation.

AMENDMENTS TO THE NATURAL GAS ACT

THURSDAY, MAY 25, 1961

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee was called to order, pursuant to notice, at 9 a.m., in room 5110, New Senate Office Building, Hon. Clair Engle presiding.[1]

Senator ENGLE. The committee will be in order.

This is the first of 4 days of hearings on S. 666, a bill that would amend sections 4, 7, and 15 of the Natural Gas Act. We will meet today, and on June 5 and 7, and one other day if we can get it.

This legislation, introduced at the request of the National Association of Railroad and Utilities Commissioners, would make unlawful any contract containing an indefinite pricing clause; authorize the Federal Power Commission to suspend rate, charge, classification or service for the sale of natural gas for resale solely for industrial use; bar an increased rate or charge for natural gas, when an earlier increase was already in effect, the reasonableness of which the FPC had not determined; provide that no certificate of public convenience and necessity to sell natural gas in interstate commerce could be granted unless the FPC found that the price of the gas was consistent with the public interest; and prescribe procedural requirements in the hearing and disposition of matters before the FPC aimed at a reduction of the so-called regulatory lag.

Today we will hear representatives from the various States, and from the Federal Power Commission. On June 5 and 7, industry will have a chance to have its say.

(The bill follows:)

[S. 666, 87th Cong., 1st sess.]

A BILL To amend sections 4(2), 4(4), 7(e) and 15 of the Natural Gas Act, relating to rates and contracts of natural gas companies and the granting of certificates of public convenience and necessity to such companies, and relating to hearings and procedure in proceedings before the Federal Power Commission involving natural gas matters

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(a) of the Natural Gas Act (15 U.S.C. 717c(a)) is amended by adding thereto the following:

"It shall be contrary to public policy and unlawful to include one or more of any of the following types of indefinite pricing clauses in any contract, agreement, or arrangement to which a natural gas company is a party or to amend any such contract, agreement, or arrangement to which a natural gas company is a party by adding such indefinite pricing clause to its provisions, and any such indefinite pricing clause in any such contract, agreement, or arrangements shall be unen-

[1] Professional staff member assigned to this hearing: Harold I. Baynton.

forceable for any purpose by or against any party to such contract, agreement, or arrangement or such amendment thereof:

"(1) The 'two-party favored-nation clause,' under the terms of which the price of the natural gas is or may be increased in the event the purchaser shall pay or offer a higher price for natural gas in the same field or in any area specified in the contract;

"(2) The 'third-party favored-nation clause,' under the terms of which the price of the natural gas is or may be increased in the event some person not a party to the contract shall pay or offer a higher price for natural gas in the same field or in any area specified in the contract;

"(3) The 'better market clause' or 'price redetermination clause,' under the terms of which the price of the natural gas is or may be increased in the event the average of two or more prices which are paid by purchasers in a specified area is greater;

"(4) The 'spiral escalation clause,' under the terms of which the price of the natural gas is or may be increased in the event the resale rates of the purchaser under the contract are increased."

SEC. 2. That section 4(e) of the Naturad Gas Act (15 U.S.C. 717c(e)) is amended by striking from the first sentence of subsection (e) the following proviso: "*Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only;"

SEC. 3. That section 4(e) of the Natural Gas Act (15 U.S.C. 717c(e)) is further amended by adding at the end of the second sentence thereof the following: ", except that no proposed change, which would result in an increased rate or charge, shall go into effect while there is already in effect an increased rate or charge filed by such natural gas company, the reasonableness of which the Commission has not determined and which affects any person affected by the proposed change: *Provided, however*, That nothing in this amendment shall be construed as limiting the authority of the Commission to put into effect or to permit to go into effect, in whole or in part, any proposed change deemed necessary by the Commission."

SEC. 4. That section 7(e) of the Natural Gas Act (15 U.S.C. 717f(e)) is amended by adding thereto the following: "No certificate of public convenience and necessity, or other authority, to sell natural gas in interstate commerce for resale, or for any other purpose, shall be granted by the Commission, unless the Commission shall make a finding that the price at which such natural gas is to be sold is consistent with the public interest or shall find what price is consistent with the public interest and impose upon such certificate, or other authority, as a condition, the price so found to be consistent with the public interest. Such finding by the Commission shall not deprive the Commission of the authority, thereafter, to find that such price is unreasonable in a proceeding instituted pursuant to either section 4 or section 5 of this chapter. Upon the applicant for a certificate of public convenience and necessity, or other authority, rests the burden of proving each and every element of public convenience and necessity, including the consistency with the public interest of the price at which the natural gas is to be sold in interstate commerce."

SEC. 5. That section of the Natural Gas Act (15 U.S.C. 717n) is amended by adding at the end thereof the following subsections:

"(c) The presiding officer at any hearing under this Act shall have the right, and it shall be his duty, to so limit the issues, evidence, cross-examination and argument as to eliminate unnecessary delay, subject only to the requirements of due process of law.

"(d) In any proceeding under this Act in which hearings are held and which is instituted or filed on or after the day of , 196 , the hearings shall be concluded within one year from the date of the first hearing thereon.

"(e) The presiding officer's report shall be made to the Commission within six weeks after the conclusion of the hearings or the filing of briefs, whichever occurs later, and the Commission shall render its decision within ninety days from the receipt by it of the report of said presiding officer: *Provided, however*, That the requirements contained in subsections (c), (d), and (e) herein, shall not be construed as jurisdictional."

Senator ENGLE. The report of the Federal Power Commission will be put in the record at this point.

(The report follows:)

FEDERAL POWER COMMISSION REPORT ON S. 666, 87TH CONGRESS, A BILL TO AMEND SECTIONS 4(A), 4(E), 7(E), AND 15 OF THE NATURAL GAS ACT, MAY 23, 1961

This bill would amend the Natural Gas Act in the following principal respects:

Section 1 would outlaw certain types of indefinite pricing clauses in contracts for the sale of natural gas;

Section 2 would repeal the prohibition against the suspension of rate changes involving sales of natural gas for resale for industrial use;

Section 3 would prevent successive rate increases from becoming effective before the lawfulness of a pending increase has been determined by the Commission.

Section 4 would require the Commission, in a proceeding upon an application for a certificate of public convenience and necessity, to make a specific finding upon the consistency with the public interest of the initial price at which natural gas is to be sold.

Section 5, among other things, would require decisions by hearing officers and the Commission to be rendered within stated periods.

The Federal Power Commission is in accord with the obvious purposes of this bill to expedite proceedings and protect consumers. The amendments embodied in sections 1 and 2 have been recommended by the Commission for several years, and the purposes of section 1 have been accomplished by regulations issued by the Commission. While we have, in the past, been opposed to the amendment in section 3 in the form in which it was pending in the 86th Congress, we believe that the amendment as proposed in this bill has overcome some of the objections we then had. We would question the need for the amendment in section 4 and, while applauding the purpose of section 5, we must oppose this method of achieving the desired ends.

Amendment to section 4(a)

Section 1 of the bill, as stated above, would outlaw certain types of indefinite pricing clauses by amending section 4(a) of the Natural Gas Act which, in its existing text, requires that all rates and charges for the sale or transportation of natural gas shall be just and reasonable and which are not are declared to be unlawful. We have long recommended that such clauses be proscribed and on March 3, 1961, took further steps to that end under our authority to issue rules and regulations.

The Commission's regulations under the Natural Gas Act refer to the subject in two regards. Part 157, which proscribes the requirements to be followed in proceedings leading to the issuance of a certificate of public convenience and necessity, provides in exhibit B under section 157.25 that "* * * Escalation clauses in contracts submitted hereunder on or after May 1, 1955, will not be considered in support of any certificate application or otherwise given effect by the Commission if under such clauses: (a) provision is made for adjustment of the price of the seller by reason of changes in the prices received by the purchaser upon resale; or (b) if provision is made for adjustment of the price of the seller by reason of the payment of higher prices by other purchasers in the same or other producing areas." And in connection with rate filings, section 154.93 reads, in pertinent part, as follows: "*Provided*, That in contracts executed on or after April 3, 1961, for the sale or transportation of natural gas subject to the jurisdiction of the Commission, any provision for a change of price other than the following provisions shall be inoperative and of no effect at law; the permissible provisions for a change in price are—

"(1) Provisions that change a price in order to reimburse the seller for all or any part of the changes in production, severance, or gathering taxes levied upon the seller;

"(2) Provisions that change a price to a specific amount at a definite date; and

"(3) Provisions that, once in 5-year contract periods during which there is no provision for a change in price to a specific amount (subparagraph (2) of this paragraph), change a price at a definite date by a price-redetermination based upon and not higher than a producer rate or producer rates which are subject to the jurisdiction of the Commission are not in issue in suspension or certificate proceedings, and are in the area of the price in question."

The Commission stated in a recent opinion that:

"We are of the opinion that the two-party favored-nation clauses in Pure's contracts with El Paso, and indefinite escalation clauses generally, are contrary to the public interest. From the beginning of Commission regulation of independent producers under the Phillips decision in 1954, the undesirable and injurious aspects of such escalation provisions generally have been forcibly impressed on us and proceedings were early instituted looking to the elimination of such provisions. And although the record in this case was made with special reference to Pure's two-party provisions, by reasonable implication it confirms our conclusion based upon our experience with other types of indefinite escalation provisions, that such provisions generally are contrary to public interest." (*The Pure Oil Co.*, Docket No. G–1973, Opinion No. 341, issued Mar. 3, 1961).

However, because of the doctrine of the *Mobile* case (*United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332), prohibiting the filing of unilateral increases absent a clause permitting them in the contract, some provision should be made for increases to which a company may be actually entitled.

A comparison of the types of clauses proscribed by the bill (p. 2, line 9, to p. 3, line 2) without regulation in section 154.93, quoted heretofore, supra, discloses that we would permit "price-redetermination" clauses under certain controlled conditions whereas the bill probihits them entirely (p. 2, lines 19–23). The Commission is of the opinion that the elimination of all indefinite escalation provisions would be too restrictive to enable the industry adequately to cope with possible changing economic conditions over the span of long-term contracts. In order to assure the economic feasibility of a pipeline system and a continuing adequate supply of gas for consumers it is desirable, among other things, that gas purchase contracts be of maximum duration rather than for short terms. Therefore, to permit pricing flexibility, and to provide an incentive for long-term contracts, we, in our regulations have permitted future contracts to contain limited price-redetermination clauses, invocable not more than once in every 5-year contract period and based upon rates subject to our jurisdiction.

One other point should be mentioned. It is not clear from the text of section 1 of the bill whether or not it is intended to apply prospectively only. If it were to have the effect of proscribing such clauses in existing contracts, we foresee many complex questions of contract, administrative, and constitutional law which would be extremely difficult to resolve. Difficulties and problems in the administration would undoubtedly present themselves also. It will be noted that each of the Commission's regulations quoted provide for prospective effect. If section 1 of the bill be enacted, it should be clarified on this point.

As indicated by the foregoing, the purpose of the amendment proposed by section 1 of the bill is now being effectuated by our procedures and is therefore not necessary. However, if enacted, we recommend that it be amended so as (1) to permit the limited use of price-redetermination clauses along the lines of those permitted in the Commission's regulations, and (2) to make it clear that the amendment operates prospectively only.

Repeal of proviso in section 4(e)

Section 2 of the bill would amend section 4(e) of the act to give the Commission authority to suspend all rate schedule changes including those covering sales for resale for industrial use only. The latter may not now be suspended. The same reasoning which justified the necessity to suspend other rate schedules justifies the power to suspend schedules relating to industrial sales. As mentioned above, the Commission has been recommending this amendment for many years. Furthermore, there are no restrictions on the Commission's power to suspend schedules for such sales of electric energy under the almost identical provisions of section 205(e) of the Federal Power Act (16 U.S.C. 824d(e)). We therefore recommend that section 2 of the bill be enacted.

Successive rate increases

The obvious purpose of section 3 of the bill is to prevent the pyramiding of rate increases under the Natural Gas Act until the Commission passes upon each filing. It prohibits a rate increase from becoming effective before a pending increase has been finally determined.

Earlier bills proposed a flat prohibition against a rate increase going into effect at the end of the 5-month suspension if there is already in effect an increased rate, the reasonableness of which has not been determined by the Commission. Lines 12 to 17 on page 3 of the bill contain the text similar in principle to the bills in the 86th Congress. However, the pending amendment contains a

proviso (p. 3, lines 17–21) which would permit such succeeding rate to go into effect if "deemed necessary by the Commission."

This proviso renders irrelevant the major objections raised with respect to the bills pending in the 86th Congress since the proviso would enable the Commission, in its determination of the necessity for a suceeding rate increase to go into effect, to consider the financial stability of the companies, the effect upon expansion plans, and whether even the postponement of an increase to which a company may be actually entitled would amount to confiscation or a denial of due process. In this connection, we would recommend that the words "or appropriate" be inserted after the word "necessary" (p. 3, line 22). We can envision cases in which, for example, it might not be necessary to allow the increase to go into effect in order to prevent confiscation, but where it might well be in the interest of the parties and the public and therefore appropriate to do so.

These considerations, among others, are of utmost importance in considering the necessity for a rate increase, and it is doubtful that Congress could cut off the right to compensatory rates for indefinite periods.

The Commission recognizes that the present law and the delays inherent in the administrative process might not adequate protect the consuming public in that it gives natural gas companies a virtually unlimited right to file and, after the suspension period, to put into effect one rate increase after another, subject to refund of that portion subsequently found to be unjustified. A regulated company, of course, is entitled to recover all legitimate costs from its customers and they in turn from the ultimate consumers. But not all of the increases claimed by natural gas companies have been found to be justified. On the contrary, the Commission has found that on the average nearly 40 percent in dollar amount of the claimed increases of interstate pipeline companies were improper and were not allowed.

Apparently the companies recognizes this to be the case for they often request that the Commission allow a portion of a suspended increase to go into effect at the end of the suspension period. In such circumstances we permit the company to file a rate schedule in substitution for the one previously suspended, reducing the originally filed rate. We then permit the substitute schedule to go into effect subject, of course, to the Commission's final determination of the reasonableness of the substitute. In view of this procedure, the phrase "in whole or in part" (line 20 of p. 3) becomes unnecessary and should be omitted in the interests of clarity.

The present rate filing procedures do not encourage companies to trim their increases to the minimum amount to which they are entitled because they can collect the excessive amounts while the Commission is making its investigation. An obviously higher rate of return could be claimed by a company than it actually expected to receive or than the Commission had previously allowed, and it is difficult to return to the ultimate consumers, after the lapse of 2, 3, or 4 years, those excessive rates which have been collected improperly, even if refunds are made by the pipeline companies to their distributing customers.

It must be recognized that the practical operation of the amendment might raise some problems, particularly by that part of the proviso authorizing the Commission to permit an increase to go into effect "in whole or in part." To mention just one question—what happens to the portion not allowed to go into effect—indicates the type of confusion that could arise. Further, some question is sure to arise with respect to whether or not notice or hearing might be necessary in the implementation of the proviso.

Finally, the definitions in the Natural Gas Act make no distinction between independent producers and pipeline companies. Since this amendment was apparently intended to apply only to pipeline companies, it should clearly provide that it is to have no applicability to independent producers.

The Commission therefore recommends that section 3 of the bill be enacted. However, in view of the foregoing, the text should be amended in several respects.

(1) The Commission should have summary authority after suspension to allow increases to go into effect without notice or hearing but in accordance with such rules and regulations as may be prescribed.

(2) The amendment should apply only to natural gas companies which are primarily engaged in the operation of interstate pipelines.

(3) The words "in whole or in part" in line 20 of page 3 should be deleted.

(4) The words "or appropriate" should be inserted after the word "necessary" in line 21 of page 3.

Amendment to section 7

Section 4 of the bill would, in the language of the sponsor, "write into the statute the spirit of the holding of the Supreme Court in the *CATCO* case" (*Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378) which held, in effect, that while the Commission does not have to turn a section 7 certificate proceeding into a rate proceeding, the subsequent consideration of high initial prices by the Commission under section 5 of the act is not adequate protection for the consumer due to administrative delays and, therefore, the Commission must give careful attention to all factors bearing on public convenience and necessity before allowing an initial price to be certificated.

Section 4 of the bill, it should be noted, is not intended to vitiate the effect of the Supreme Court's decision, but to give it legislative sanction. The Commission recognizes that this is a matter for legislative discretion but believes that the consumer is adequately protected under the existing language of the act as interpreted, not only by the Supreme Court, but by other courts as well.

Although the real urgency of the problem did not arise until after the *Phillips Petroleum* decision in 1954 (*Phillips Petroleum Co.* v. *State of Wisconsin*, 347 U.S. 672 (1954)) which brought producers under Commission jurisdiction, the Commission stated in 1955 that it had long followed the practice of imposing rate conditions where appropriate in granting certificates of public convenience and necessity and the power so to do has been upheld by the courts. *Alabama-Tennessee Natural Gas Co.* v. *F.P.C.* (CA 3, 1953), 203 F. 2d 494. As an example, in the year 1954 alone, as stated at page 128 of the 1954 annual report of the Commission, 52 certificates were issued subject to rate conditions. Section 7(e) of the Natural Gas Act grants the Commission power to attach reasonable terms and conditions to the issuance of a certificate and, more generally, the power is found in the need to protect the public interest in a timely manner when a new service is authorized. Furthermore, there is no basis upon which to distinguish the Commission's power with reference to issuance of a certificate to an "independent producer," as here, and the exercise of such power with reference to an "interstate pipeline company," from which the precedents referred to are taken. The same act applies to both (*Cities Service Gas Co.*, 14 FPC 134 at 142).

In the case out of which CATCO grew, the Commission stated that "this crucial sale should not be permanently certificated unless the rate level has been shown to be in the public interest." [Emphasis added.] (*Continental Oil Co., et al.*, 17 FPC 563 at 575, citing the *Cities Service* case, supra, footnote 5, and its affirmance in *Signal Oil and Gas Co.* v. *F.P.C.*, 238 F. 2d 771, certiorari denied, 353 U.S. 923.)

Procedural amendment to section 15

The Commission is opposed to the amendments proposed in section 5 of the bill for two principal reasons. First, because either the amendments do not offer a practical solution to the problem of delay or, second, granting the practicality for argument's sake, amendments of this type, in our opinion, would more properly be made to a general statute like the Administrative Procedure Act than to specific organic acts such as the Natural Gas Act. In other words, if the amendments were practical or desirable they would apply to all administrative hearings. In this connection, we would remind the committee of the recently established Administrative Conference of the United States under the chairmanship of Judge Prettyman. In our opinion, the amendments proposed by this section are of the type which might well be left to the consideration of that conference.

The proposed new subsection (c) relating to the authority of a presiding officer to limit issues, evidence, cross-examination, and argument, is in the latter category. We have no objection to the principle of the amendment provided it is not intended to preclude the Commission from exercising the same rights, but believe it would be preferable as an amendment to section 7(b) of the Administrative Procedure Act, if it is necessary at all. But we consider the specified duty as already being inherent in duties of an officer presiding at administrative hearings.

While officers presiding at our hearings are not specifically charged with the duties enumerated in the amendment, they have authority to "regulate the course of hearings" (18 CFR 1.27(b)(1)) and "to take any other actions necessary or appropriate consistent with * * * policies of the Commission" (18 CFR 1.27(b)(10)). The Commission's presiding officers are well aware of the fact that the Commission has taken many steps to improve its own pro-

cedures so as to move cases along at a faster pace. They are constantly importuned to take whatever measures are necessary to achieve this result, consistent with the requirements of due process. We do not anticipate that the enactment of the new subsection (c) would have any more than a hortatory effect.

We are opposed to the imposition of time limits as proposed by the new subsections (d) and (e) to section 15. There may be, and probably are, many delays inherent in the administrative process but procedures are designed to elicit all the law and facts pertinent to a given situation to the end that public interest will be served. But the public interest cannot be served at the expense of due process. The Commission has no rules or regulations which set any time limits on the actions of either its examiners or itself but the whole problem is under constant consideration and, in policing its own work and the work of its staff, time limits are informally set to enable us to keep track of any failures to expedite proceedings as much as possible.

It is undoubtedly true that the time limits set by the proposed amendment would be ample in many of the Commission proceedings. However, it is just those cases concerned with highly complicated factual situations, important financial considerations, and broad public interest, that makes it even more necessary that there be a complete understanding of the law and the facts to the end that justice be done.

We do not gainsay the fact that there may be too much due process in administrative proceedings as they are now required to be conducted, but until the requirements are relaxed they must be recognized.

Practical considerations also compel us to oppose any time limits. Our experience is that many examiner's decisions cannot possibly be made in 6 weeks. In cases where the examiners might properly need more time, the proposal would tend to impair the effectiveness of the administrative process, resulting again in a failure to do justice.

Then there is the policy angle to be considered. Often a hearing officer or the Commission itself must decide, as a matter of policy, whether or not to delay a decision. For example, he may be at the decisionwriting stage in two or more cases and must decide which deserves priority, for it may be that there is no need for hurry in the older case whereas an early decision in the younger case is much to be desired. Hearing officers may justifiably believe it to be in the public interest or to the interest of the parties involved to await an anticipated enunciation of law or policy pending before the Commission or the courts. And the Commission might well decide to await the result of a pending court case. In situations of this nature an early decision might be unwise, require future litigation and expense to the detriment of all concerned.

The Commission, therefore, recommends against the amendment proposed in section 5 of the bill. However, if the committee is of the opinion that the amendment should be enacted, we recommnd that the proposd subsection (c) be amended by inserting between "(c)" and "The" in line 21 of page 4, the following: "Subject to such orders, rules, or regulations as the Commission may prescribe,".

The Commission would take this opportunity to renew its recommendations that the Federal Power Act and the Natural Gas Act be amended so as to give it authority to delegate to one or more commissioners, or subordinates, any portion of its work, business, or functions now requiring Commission action. Under such an amendment, the Commission would be able to delegate responsibility for disposing of matters of lesser importance which now consume time that could be more profitably devoted to substantial questions of major significance. More importantly, the Commission again recommends the elimination of many of the public utility features of the regulation of independent producers carried in the Natural Gas Act. This change in the statutory requirements would be most helpful in the administration of the controls imposed by Congress, but, in our opinion, would not prejudice the protection of consumers which is the primary purpose of the regulation which Congress has provided.

Furthermore, much of the difficulty in applying the Natural Gas Act to independent producers arises because that statute was not drawn with the operations of the producing phase of the industry clearly in mind. Among other things, Congress should consider specifically the question of a rate formula applicable to independent producers and to the production of natural gas for interstate transportation and sale. The other legislative recommendations which we have submitted are also of sufficient importance to justify consideration by

the Congress, although we do not here repeat them (40th Annual Report of the Federal Power Commission (1960), pp. 17–20).

Commissioner Kline favors the enactment of sections 2, 4, and 5(c) of the bill; of section 1 provided the bill is amended to operate prospectively only; and of section 5(e) provided that the bill is amended to give the Commission power to extend the time for filing of the presiding officer's reports in unusual cases. He is opposed to the enactment of sections 3 and 5(d). He is aware of the abuses which section 3 is designed to correct and strongly favors legislation to correct these abuses, but believes that this section as drawn will not substantially reduce the excessive amounts being collected from consumers, and will reproduce other undesired results.

FEDERAL POWER COMMISSION,
By JEROME K. KUYKENDALL, *Chairman.*

Senator ENGLE. Our first witness is Mr. Peter E. Mitchell, president of the National Association of Railroad & Utilities Commissioners, and member of the California Public Utilities Commission, San Francisco, Calif.

STATEMENT OF HON. EDMUND G. BROWN, GOVERNOR, STATE OF CALIFORNIA, PRESENTED BY PETER E. MITCHELL, PRESIDENT OF THE NATIONAL ASSOCIATION OF RAILROAD & UTILITIES COMMISSIONERS, AND MEMBER OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION, SAN FRANCISCO, CALIF.

Mr. MITCHELL. Thank you, Mr. Chairman.

Mr. Chairman and gentlemen of the committee, as announced by the chairman, my name is Peter E. Mitchell. Presently I am serving as the president of the National Association of Railroad & Utilities Commissioners.

I would say that the association is an organization having some 70-odd years of existence. Its purpose is to promote the cooperation of several State regulatory commissions and the several regulatory commissions with the various Federal commissions. It is interested in the promulgation and advancement of regulatory procedures, rules, laws, and regulations.

Mr. Chairman, as you have announced, I am a member of the California Public Utilities Commission, having been so for some 10 years, 4 years of which I was president of that commission.

I have been requested by the Honorable Edmund G. Brown, Governor of the State of California, to represent him here at this hearing this morning. He has prepared a statement wherein he voices his unqualified support of this bill.

If it would be the desire of the chairman and the gentlemen of the committee that I not read this statement but that it be received and entered into the record as though read, that would be perfectly satisfactory with the Governor and myself. We do that as a gesture to conserve the time of the committee, realizing that we lost all of yesterday.

Senator ENGLE. Without objection, the statement will be made a part of the record as if read by Mr. Mitchell. If you desire, Mr. Mitchell, you may summarize briefly what the Governor has to say in his statement as you interpret it.

(The statement follows:)

My name is Edmund G. Brown.

I am the Governor of the State of California and have held such office since January 1959. Prior to that time, I was, for 8 years, the attorney general of California.

My appearance before you today is for the purpose of lending my unqualified support to S. 666, introduced by my good friend, Senator Magnuson, which bill seeks to amend the Federal Natural Gas Act in several particulars. I am informed that Congressman Moss, of my State; Congressman Dingell, of Michigan, and Congressman Flynt, of Georgia, also have introduced in the House identical bills to S. 666. I wish to compliment Senator Magnuson and Congressmen Moss, Dingell, and Flynt for this action which is so necessary in the public interest. I greatly appreciate this opportunity of being permitted to state my views on this most important subject of natural gas.

During the time I was attorney general, I became interested in the subject of natural gas, particularly because of the fact that the gas distributing companies of California had begun to purchase out-of-State gas in large quantities. During the past 8 or more years, I have closely followed this subject at both the Federal and State levels. The particular feature of this problem which has prominently commanded my attention is the provision of the Federal Natural Gas Act which permits natural gas companies (both pipeline companies and producing companies) to file rate increases with the Federal Power Commission and place those rate increases in effect at the expiration of the 5-month suspension period and charge those rate increases for periods of years, without such increases ever having been passed upon by the Federal Power Commission as reasonable or unreasonable. To my mind, this particular provision of the Natural Gas Act, under the facts existing and which have existed for many years past, operates in a grossly inequitable way, not to say iniquitous way.

Prior to around 1947 or 1948, the gas distributing companies of California imported little or no out-of-State natural gas. Beginning with that time, importation of natural gas began and the volume of such importation has grown by leaps and bounds until now the gas distributing companies of California are paying an annual bill for such out-of-State natural gas in the amount of approximately $320 million. California imports between 75 and 80 percent of all natural gas consumed within the State. Two large pipelines are now supplying gas to California, and one additional pipeline has been certificated to bring gas to California from the Canadian fields. Judging the future by the past, it is not unreasonable to forecast that within the next 7 to 10 years the annual out-of-State natural gas bill for California may well be in the neighborhood of three-quarters of a billion dollars. Presently, two additional gas pipelines are knocking at California's door for the opportunity to sell natural gas to its consumers. These staggering figures will clearly indicate why the State of California is so intensely interested in this natural gas problem.

Let me emphasize that this natural gas problem is a national problem. Being a national problem, it is a matter of Federal concern and the solution of the problem, necessarily, lies in the hands of the Congress of the United States.

As of today, there are pending before the Federal Power Commission four natural gas rate increase proceedings affecting California and its gas consumers, which have not been finally determined by the Federal Power Commission. These increased rates are being charged to the gas distributing companies of California who, in turn, have passed on the ultimate gas consumers of California the increase. These unadjudicated increases amount to the huge sum of approximately $250 million. One of these proceedings has been pending since some time prior to April 15, 1955. Such an extortionate situation is indefensible judged by any man's reasoning. Here, we have a situation where, since April 15, 1955, the gas consumers of California have been paying rate increases which, as of today, have not been fully determined to be reasonable by the Federal Power Commission. For nearly 6 years this condition has existed. As though this were not enough, the rate increase which commenced April 15, 1955, has been garnished three additional times by the filing of consecutive rate increases piled one upon top of the other, until now we have reached the staggering figure of $250 million, no part of which has yet been found to be reasonable or otherwise has been finally adjudicated by the Federal Power Commission. Not one of these cases has been finally determined.

The increasing of the rates of a public utility is not unlike the levying of increased taxes. They are both governmental in nature and the impact upon the people is the same. I know of no jurisdiction which permits the levying of a tax increase by merely filing in a public office an increased tax rate. Some agency of government must act in order to increase a tax rate. In the State of California I can say, as Governor of that State, that the process available for the increasing of taxes requires a great amount of effort, persuasion and meritorious fact presentation before the legislature will authorize a tax increase. It is astounding that natural gas rates may be increased in such a cavalier way as is now being done and has been done for the past several years.

I am not unmindful of the fact that the Federal Natural Gas Act provides that these increased gas rates may be later adjudicated by the Federal Power Commission and, if found to be unreasonable, these pipeline companies and producers may be required to refund that portion of the rate increase found to be unreasonable. However, it must be remembered that the price of natural gas has been soaring and has doubled in the last 12 years. One does not have to be an expert in economics or history to know that it is most difficult for a regulatory body, however wise and fair, to realistically adjudicate the reasonableness of a natural gas rate as of 5 or 6 years ago, particularly when the fact is realized that the price of natural gas today has increased markedly over the price of natural gas at that time. In other words, it is difficult for a regulatory body to adjudicate the reasonableness of a natural gas rate which has long since been overcome by inflation. I do not believe that anyone could successfully contend that a natural gas rate which should have been passed upon as to its reasonableness in 1955 or 1956 may be as realistically adjudicated today as it could have been in 1955 or 1956. In an inflationary economy, a timelag in the adjudication of the reasonableness of consecutively increased utility rates will always work to the prejudice of the ratepayer, and no one need be reminded that we have been operating in an inflationary economy, at least since 1955. The tendency of such a situation; that is, delayed adjudication, is to shortchange the ultimate consumer. Justice delayed is justice denied.

This provision of the Natural Gas Act, which I have been discussing, invites the situation which has resulted and places no restraint upon natural gas companies to refrain from filing repeated increases except their own sense of self-restraint.

What is the answer to this fantastic situation? The answer is to be found in section 3 of Senator Magnuson's bill (S. 666). That section prohibits the going into effect, by operation of law, of a filed rate increase, if there is then pending and undetermined by the Federal Power Commission a prior rate increase filed by the same company and affecting the same customers. However, this amendment would permit the Federal Power Commission to order or permit to go into effect any filed rate increase, where emergency or other conditions justified, in order to protect the lawful interests of a natural gas company or its customers. The discretion left to the Commission is broad and general. The amendment would not operate retroactively but it would bring lawful pressure upon the Federal Power Commission and the natural gas companies to dispose of these accumulated rate increase filings and would bar in the future, these repeated rate increases by operation of law.

There is nothing oppressive or unprecedented about this proposed amendment. In my State, California, there has existed for 50 years a statute which prohibits a public utility from putting into effect even one rate increase without first making a showing before the public utilities commission and securing a finding by that commission that such increase is justified. That statute has been held valid over and over again. The proponents of this amendment to the Natural Gas Act are not asking for anything unusual or novel. They are merely asking for simple justice and equal protection of the law.

This bill would effect other vital reforms, long since overdue. Section 1 of the bill would outlaw these indefinite pricing clauses in natural gas contracts, often referred to as favored-nation clauses. These clauses effect price increases without any relation to or casual connection with cost or value. They are simply special privilege instruments which feed the fires of inflation. The fact that the Federal Power Commission, at long last, has undertaken to outlaw some of these indefinite pricing clauses is no reason whatsoever that their outlawry should not be written boldly into the Natural Gas Act, so that we may not be left to the fortunes of uncertain judicial attitudes toward such Commission action.

By section 4 of this bill, the act would be amended so as to require the Federal Power Commission to find on the consistency with the public interest of the price of natural gas when it is first sold in interstate commerce. If the price is not found consistent with the public interest, the Commission is prohibited from certificating such sale at such price. The Commission must then put a price condition on a certificate if it is issued in such circumstances. This amendment writes the CATCO holding of the Supreme Court of the United States into the Natural Gas Act. I assert that the gas consumers of the Nation are entitled to have this salutary rule written into the statute and not be left to judicial constancy or the lack thereof. History proves that the Supreme Court changes its official view with great frequency. Hence, the need to make the voice of the statute unmistakably clear. Certificating a sale of natural gas in interstate commerce without taking action to assure that the initial price is consistent with the public interest makes regulation thereafter of such price like locking the stable door after the horse has been stolen.

Here, gentlemen, is a problem which is not only ripe, but rotten ripe, for solution. In fact, the solution is long overdue. I urge you to write this bill into law and thus throw a wall of protection around the gas consumers of this country, thereby restoring the original intent of the Congress in enacting the Natural Gas Act.

Mr. MITCHELL. I shall be happy to do that, Mr. Chairman.

The Governor points out that his personal interest is not a new one; that he became interested in this problem of a multiplicity of unadjudicated rate cases in California during the time that he was serving that State as attorney general.

He points out that this legislation does have, as I announced previously, his unqualified support.

He urges this committee to give it favorable action. He would emphasized the fact that there are approximately $250 million of unadjudicated cases, increases affecting the consumers in the State of California; that he feels that the problem of effecting and bringing about an equitable refund if the Federal Power Commission were to subsequently, at some future date, not accord and award the entire amount of rates sought, would be tremendous.

He points out that in his estimation this is a national problem and not particularly peculiar to the State of California, and he urges a favorable consideration by your committee, Mr. Chairman.

I would also like to say, Mr. Chairman, that because of the situation of yesterday, of which this committee had no control—and we certainly appreciate the efforts to meet earlier this morning to give us this time—that some of our people had to return to their various States. If again I may offer the printed statement of the Honorable Crawford L. Pilcher, chairman of the Georgia Public Service Commission, as though read into the record, and that of the Honorable Joseph Sharfsin, chairman of Pennsylvania Public Utility Commission, as though it were read into the record, and that of the Honorable Francis Pearson, chairman of the Washington Public Service Commission, I would like to do so.

Senator ENGLE. Without objection the statements will be made a part of the record as if read by Mr. Mitchell.

The Chair assumes that all of these statements are in support of the legislation?

Mr. MITCHELL. That is correct. They all give their unqualified support and make particular comments upon the situation as applied and existing in the individual States from which these gentlemen come.

(The statements referred to are as follows:)

STATEMENT OF CRAWFORD L. PILCHER, CHAIRMAN, GEORGIA PUBLIC SERVICE COMMISSION, PRESENTED BY PETER E. MITCHELL, PRESIDENT OF THE NATIONAL ASSOCIATION OF RAILROAD & UTILITIES COMMISSIONERS

Mr. PILCHER. My appearance before the Senate committee is made as chairman of the Georgia Public Service Commission; also as chairman of a special committee of the National Association of Railroads & Utilities Commissioners that was created for the study of natural gas rate problems. It was two members of the Georgia Public Service Commission who were members of the executive committee of the National Association of Railroad & Utilities Commissioners who introduced the resolution, of which I was author, to create this special committee, which led to the naming by the president of NARUC of this special committee with me as chairman.

The multiple number of rate increases that were filed by the pipeline companies serving Georgia and by the producer companies that were selling to the pipeline companies serving in Georgia which had increase upon increase in their rates, under bond, but which had not been heard, nor even scheduled for hearing, that led to our effort to seek relief from the Congress of the United States by asking for an amendment to the Natural Gas Act that would alleviate in part this intolerable situation. There is no other utility with which I am familiar that is allowed to file rates without rhyme or reason and have them placed in effect, under bond, without any justification for the amount of the rate increase sought. There are some companies with as many as five rate increases under bond pending and undisposed of before the Federal Power Commission.

Other commissioners have appeared here who have explained to you the historical background, the amendments that are proposed in S. 666 and the arguments therefor.

It has been reported that approximately $600 million subject to refund, under bond, is now being collected from consumers of natural gas in the United States. According to figures released by the Federal Power Commission, some 40 percent of the increases put into effect under bond have, in the past, been found improper and disallowed. This means that the natural gas rate payers have had to furnish to the gas industry approximately $240 million of money that they should have not been forced to pay if the Natural Gas Act had provided for the determination of the reasonableness of a rate before being allowed to be placed into effect.

In Georgia, under the jurisdiction of the Georgia Public Service Commission, there are 5 natural gas distributing companies serving some 90 cities and towns. In addition, there are some 82 municipal gas systems in Georgia. These people are looking to the Senate and to the House of Representatives to give them some relief from the requirement that they pay money in the form of natural gas rate increases that are not required when the reasonableness of rates have not been determined before being placed into effect.

The industrial consumers of natural gas are not able to determine the lowest cost fuel in the competitive market because of the fact that

they will not know for some 1, 2, 3 or more years what price that will be charged for gas that they have used in the far distant past.

In the past 5 years, the pipeline companies serving in Georgia have increased their rates to Georgia consumers of natural gas more than $20 million; involving 11 applications before the Federal Power Commission. At present, the largest supplier of natural gas in Georgia—Southern Natural Gas Co.—has in effect, under bond, three rate proceedings which were effective on November 1, 1959, June 1, 1960, and August 13, 1960. One of these cases—the second one—is now the subject of a hearing before the Federal Power Commission. Continued hearing on this case commenced on May 23, 1961.

In fairness to all concerned—the producer, the pipeline company, the investors in both, and to the ultimate consumer of natural gas—Congress should pass S. 666 in order that everyone will be in position to know today what the price of natural gas is and not have to wait some 1, 2, 3 or more years to find out how the business operated and what price was paid for natural gas in the distant past.

May I implore this honorable committee to vote this bill—S. 666—to the floor of the Senate and to support its passage both on the Senate floor and with your friends who are Members of the House of Representatives in order that gas rates may be made for the future and not for the past.

Thank you.

STATEMENT OF JOSEPH SHARFSIN, CHAIRMAN OF PENNSYLVANIA PUBLIC UTILITY COMMISSION, PRESENTED BY PETER E. MITCHELL, PRESIDENT OF THE NATIONAL ASSOCIATION OF RAILROAD & UTILITIES COMMISSIONERS

Mr. SHARFSIN. My name is Joseph Sharfsin, chairman of Pennsylvania Public Utility Commission, 101 North Office Building, Harrisburg, Pa. My residence is Rittenhouse-Claridge Apartments, 18th and Walnut Streets, Philadelphia, Pa., and I represent the Pennsylvania Public Utility Commission.

Our commission unanimously and unqualifiedly supports Senate bill S. 666 and we endorse the substance of the recommendations in support of the bill signed by Senator Magnuson when this bill was introduced.

Since early 1957, 13 pipeline companies which sell gas to Pennsylvania distributing companies under rates subject to the jurisdiction of the Federal Power Commission have filed a total of 37 applications for rate increases. Of these 37 applications, 24 represented pyramided rate increases—that is, application filed for additional increases before the FPC had determined reasonable and lawful rates under prior applications. Ten of the thirteen companies filed these pyramided increases. Three companies each have had five applications pending at one time, one has had four (one of the four applications has been pending since mid-1954), three have had three, and three have had two.

As shown by the companies' applications filed with the FPC, the total direct impact on Pennsylvania distributing companies of these pyramided rate increases is about $22 million a year. This amount is in addition to the impact of the companies' initial applications which totaled about $12.5 million a year. However, since 1 of the

pyramided increases has been in effect for almost 4 years, 1 for more than 2½ years, and 5 others for 2 years, the total amount collected subject to refund under pyramided rates by these 10 companies from Pennsylvania distributing companies is about $34.5 million. Again, this is on top of about $40 million in increases collected by these companies under their initial rate increase applications.

In addition, the three companies which each filed only a single rate increase application have collected almost $3 million, subject to refund in the period under review. Thus, a total of some $77.5 million in increased rates has been collected over the past 4 years from the 50 Pennsylvania distributing companies purchasing gas from pipelines which are regulated by the Federal Power Commission.

Of the total of 37 applications 18 have been settled in the past few months and refunds have been paid. However, the settlements for some of the companies involved "package" refunds for both initial and pyramided rate increases. Hence it is not possible to segregate the refunds between the two categories of cases. To date some $14 million has been refunded to Pennsylvania distributing companies out of the total of about $77.5 million collected in increases. Additional refunds will be made under some dockets if pending increases filed by independent producers result in refunds to the pipelines involved. Also, in one case where the FPC has ordered interim refunds, the settlement of additional issues may result in more refunds.

Of the total rate increase applications filed by the 13 pipeline companies discussed above, the Pennsylvania Public Utility Commission has intervened in 28. It has also intervened in 10 rate increase cases filed by 4 pipeline companies where rates have only an indirect effect upon Pennsylvania because they sell gas to other pipelines which in turn sell to Pennsylvania distributing companies. The Pennsylvania commission also has intervened in 14 cases involving rate increases by producing companies to pipelines serving Pennsylvania companies. In addition, it has intervened in 119 certificate applications, most of which involve initial sales by producers to pipelines and the latters' applications for authority to construct and operate the necessary facilities to take the gas into their systems. Of the remaining certificate applications, two involve the purchase of underground gas reserves by Tennessee Gas Transmission Co., two involved increasing the capacity of pipeline systems, and the remaining four involve a realinement, a merger, and temporary exchanges of gas.

The Pennsylvania commission analyzes rate increase and certificate applications filed with the Federal Power Commission to determine their potential impact on Pennsylvania distributing companies. It also analyzes the testimony and exhibits filed by the various parties to the proceedings and participates in the hearings on cases in which it has intervened by conducting cross-examination and presenting direct evidence where necessary. Also, in an effort to expedite proceedings, the Pennsylvania commission's representatives participate in conferences called for settlement of cases by reaching an equitable solution or at least to limit the issues that must be tried. In participating in the settlement of some cases, the Pennsylvania commission has felt impelled to sacrifice possible greater ultimate benefits in the interest of getting sure and quick relief from the ever-spiraling rate increases.

However, if a provision similar to section 3 of Senate bill 666 had been in effect, the pipeline companies would not have been permitted to collect some $34.5 million in pyramided rate increases. This amount and all the other moneys collected, subject to refund, have provided the pipeline companies with funds which otherwise would not have been available to them except by embarking on financing at the money markets.

Section 3 of Senate bill 666 merely does what Pennsylvania law has required at least since 1921. In *Coplay Cement Manufacturing Co.* v. *Public Service Commission* (76 Pa. Super. Ct. 354, 359, 360) and reaffirmed by the superior court in *City of Pittsburgh* v. *Pennsylvania Public Utility Commission* (1952, 171 Pa. Super. Ct. 391), the court stated:

> It would be an anomaly indeed if while such investigation was still pending, and while such burden was unsatisfied, the company, by ignoring the situation and proceeding as if no burden then rested upon it, could merely by filing, publishing, and posting newer and higher rates, interfere with, hamper, or render to some extent abortive the pending investigation and make its customers pay still higher rates when it had not to that time satisfied the Commission that it was justified in charging the rates then being investigated.

While recognizing certain fundamental differences in, and approach to, the methods of regulation by the Federal Power Commission and the Pennsylvania commission, I respectfully submit that the evils inherent in rate pyramiding are identical on either level.

It seriously impinges on the general public interest, and more particularly on the cost-of-living problems of many thousands of natural gas consumers in our Commonwealth.

In behalf of the Pennsylvania Public Utility Commission, therefore, I fully support Senate bill 666 and strongly urge its passage.

STATEMENT OF FRANCIS PEARSON, CHAIRMAN OF THE WASHINGTON PUBLIC SERVICE COMMISSION, PRESENTED BY PETER E. MITCHELL, PRESIDENT OF THE NATIONAL ASSOCIATION OF RAILROAD & UTILITIES COMMISSIONERS

Mr. PEARSON. My name is Francis Pearson, and I am chairman of the Washington Public Service Commission, which is the regulatory body of the State of Washington having jurisdiction to regulate companies engaged in the distribution and sale of natural gas to the public in the State of Washington. I am a member of the executive committee of the National Association of Railroad & Utility Commissioners. That association, at its last annual meeting, adopted a resolution to seek amendment of sections 4, 7, and 15 of the Natural Gas Act. Pursuant to that resolution, the Honorable Warren G. Magnuson, chairman of the Senate Committee on Commerce was requested to, and did, introduce a bill (S. 666) to amend sections 4(2), 4(4), 7(e), and 15 of the Natural Gas Act. I have been authorized on behalf of the National Association of Railroad & Utility Commissioners and also by my own commission, to make this statement.

Proposed amendment to section 4(a) of the Natural Gas Act (15 U.S.C. 717c(a): This proposed amendment would prohibit the inclusion in any contract agreement or arrangement between a natural gas company and a supplier of gas, any indefinite price clauses which

could have the effect of increasing the price of natural gas to a gas purchaser upon the happening of future circumstances such as:

1. The two-party favored-nation clause under which the price of natural gas to the purchaser could or would automatically be increased in the event that the purchaser would pay or offer a higher price for natural gas in the same field or in any area specified in the contract.

2. The third party favored-nation clause in which the price could or would be increased in the event some person not a party to the contract paying or offering a higher price for natural gas in the same field or in any area specified in the contract.

3. The better market clause or price redetermination clause where the price of natural gas is or may be increased in the event the average of two or more prices paid by the purchasers in a specified area is greater.

4. The spiral escalation clause where the price of natural gas is or may be increased in the event the resale rates of the natural gas company purchaser under the contract are increased.

The automatic escalation provisions are against public policy in that they permit higher prices of natural gas to the public without relation to the cost of the furnished gas upon which the price to the consumer was based. To permit such clauses in contracts is an abrogation of the functions of the regulatory commission. These indefinite price clauses inflate natural gas prices without any relation whatsoever to cost or value of product. They should not be permitted by any regulatory agency.

Although I am informed that the Federal Power Commission has held such automatic escalation provisions in contracts providing for automatic adjustment of charges in the event of changes in expenses, were unreasonable and in contravention of the Federal Power Act and Commission regulations governing the filing of changes in rates, nevertheless, they should be prohibited by statute so that no further possible legal argument could be made in their behalf and the Federal Power Commission could not be subjected to requests for approval of such clauses. For these reasons the Natural Gas Act in section 4(a) should be amended as proposed in S. 666.

Proposed amendment to section 4(e) of the Natural Gas Act: This proposed amendment would strike from 4(e) of the act the following:

* * * provided, that the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas and resale for industry use only; * * *

This proposed amendment is one of the most important changes which can be made. It would allow the Federal Power Commission to suspend rate changes affecting natural gas which is sold for resale for industrial use. The prohibition presently in the act, frustrates to a great extent efficient regulation of natural gas companies.

The impact of this prohibition against suspension of increased rates in the sale of natural gas for resale for industrial use only, has been felt very strongly in the State of Washington. For the year 1957 distributors selling gas to ultimate consumers in the State of Washington purchased 294,077,445 therms of industrial gas, as compared to 123,809,814 therms of other gas, at a cost of $7,850,252 for the industrial gas and $4,456,702 for the other gas. Of the total gas purchased for resale in the State of Washington during that year more than 70

percent in quantity and more than 63 percent in dollar cost was industrial gas. For the 12-month period ending July 31, 1958, industrial gas purchased was 68 percent of the total volume and 62 percent of the total cost.

In the State of Washington each distributor has a complete or limited monopoly in its service area or areas by reason of holding certificates of public convenience and necessity for such area or areas. The public interest requires that resale rates by these monopoly distributors to ultimate consumers be effectively regulated.

Regulation of resale rates for industrial gas by the Washington Public Service Commission has been completely frustrated where regulation of the prior sale of this gas in commerce by the Federal Power Commission has not been effectively regulated.

Because of the proviso in 4(e) of the Natural Gas Act prohibiting the Federal Power Commission from suspending any rate, change, classification or service for the sale of industrial gas, any rate increases for industrial gas permitted to be filed under 4(d) of the act must become effective 30 days from the date of filing. There is no way this result can be avoided no matter how unfair, unreasonable, or discriminatory such increased rates may be. The gas supplier can get itself a new legal rate for industrial gas by the mere act of filing and the expiration of the period of 30 days, without hearings, findings, opportunity to suspend or right of review.

Congress intended that the sale of industrial gas should be regulated to the same extent as other gas and the public interest requires that it be so regulated. It was intended to protect consumers against exploitation at the hands of natural gas companies. *Federal Power Commission* v. *Hope Natural Gas Co.* (320 U.S. at 610, 64 S. Ct. at 291); *Phillips Petroleum* v. *State of Wisconsin* (347 U.S. at 672, 683; 74 S. Ct. 794, 80–801). If a natural gas company is permitted to deal with rates for natural gas sold for resale and industrial use completely free of restraint, the State commission is helpless to protect consumers of industrial gas, and seriously hampered in endeavoring to protect consumers of other gas. It was the purpose of Congress in enacting the Natural Gas Act to enable the States to effectively regulate intrastate rates. These purposes cannot be carried out unless the proposed amendment to section 4(e) of the Natural Gas Act is enacted.

Proposed amendment to section 4(e) of the Natural Gas Act which seeks to prohibit consecutive rate increases resulting from the automatic operation of said section 4(e).

This proposed amendment would permit only one rate increase by the operation of law making such rates effective automatically after the statutory period, with all other rate increases by operation of law being barred until the Federal Power Commission had determined the reasonableness of the one increase. The amendment would only restrict the automatic operation of the statute. The Federal Power Commission could place a succeeding rate increase in effect by specific order and even though such rate increase had been suspended.

The urgency of the need for passage of this amendment is forcefully brought to our attention by a report of the National Association of Railroad and Utility Commissioners' Special Committee to Study

Natural Gas Rate Problems presented to its 1960 convention. This report, which was adopted by the assembly included a recommendation that the officers of the association be directed to convey to the proper congressional committee in the House and the Senate a request to the Congress to provide adequate funds to the Federal Power Commission by at least a 50 percent increase in their appropriation to obtain additional trained and qualified personnel for the purpose of making proper investigations and conducting speedy hearings in gas rate applications filed with the Federal Power Commission by all natural gas companies under their jurisdiction.

Pursuant to this direction, President Mitchell of the association has written to Members of Congress in which he declared:

> There is need for firm and decisive action to clear away the backlog of natural gas rate cases. Our association urgently requests your committee in its deliberations to approve the necessary appropriations to adequately staff the Federal Power Commission in order to get this job done.

The letter called attention to a study made by the National Association of Railroad and Utility Commissioners Committee during which it was found that during 1959 the Federal Power Commission decided only 240 gas proceedings although there were 1,265 other cases pending. Since that time, President Mitchell stated, the number of undecided proceedings has continued to pile up.

It is apparent, therefore, that the proposed amendment to section 4(e) should be passed in order to relieve the FPC from this great accumulation of cases which they cannot investigate, hear, and conclude within the statutory period where successive rate filings are made by the same company. The effect of the present law is to allow companies which do file these successive rate increases to have at least some of those rate increases become effective automatically by operation of law, without any determination by the regulatory body that such rates are fair, just, and reasonable. The public interest would therefore be greatly served by the enactment of the proposed amendment.

I should like to refer to the analysis of the proposed amendment to section 4(e), as presented by Senator Magnuson in answer to any arguments which may be made concerning its constitutionality.

Proposed amendment to section 7(e) of the Natural Gas Act: This would make it a prerequisite to the issuing of a certificate of public convenience and necessity that the Federal Power Commission find that the price at which natural gas would be sold pursuant to such certificate would be consistent with the public interest. The Commission could still thereafter find that such price is unreasonable in a proper proceeding.

The justification for this proposed amendment is really self-evident. Certainly the question of whether the initial price at which gas is to be furnished, is fair and reasonable, should be determined before a company is authorized to embark upon a large construction program and huge capital investments. If such initial price is not considered by the regulatory commission and its consistency with the public interest determined, the ratepayers will thereafter be saddled with such costs and rates from which there can be no relief.

This question of the materiality of the regulatory commission consideration of initial rates in connection with an application for operating authority, has resulted in varying opinions and decisions of commissions and the courts. Whatever treatment of this subject may be required as to other utilities or transportation companies, certainly with respect to the natural gas industry, the initial rates to be charged by a natural gas company, should be considered as to their reasonableness at the time that the applied-for operating authority is requested.

Proposed amendment to section 15 of the Natural Gas Act: This would require examiners and others conducting hearings to limit issues, evidence, cross-examination and argument, so as to eliminate unnecessary delays; requires all hearings to be concluded within 1 year; requires presiding officers report to be made to the Commission within 6 weeks; orders the Commission to render its decision within 90 days thereafter. These requirements, however, are not to be construed as jurisdictional.

It is evident that this proposed amendment is greatly needed to do away, as much as possible, with the so-called regulatory lag. I have previously called attention to the pileup of cases filed but not determined by the Federal Power Commission. Although this proposed amendment would not make void any proceeding which could not be determined within the time period mentioned, it is, in effect, a direction to the personnel of the Federal Power Commission to speedily handle and determine the cases before it.

I respectfully urge that the committee give consideration to this statement.

Mr. MITCHELL. Before I leave, Mr. Chairman, I would like to say that if satisfactory to yourself and the gentlemen of the committee, I would suggest that Mr. Austin Roberts, the general solicitor of the national association, be given the opportunity to give the background of this bill and then we would ask that the Honorable Everett McKeage, president of the California commission, be permitted to carry the full argument on the bill.

Senator ENGLE. That will be agreeable, and that is the order of the witnesses presently before the chairman.

Senator SCHOEPPEL. Might I inquire, Mr. Chairman. Do you expect those witnesses to conclude today?

Senator ENGLE. Yes, I do, Senator.

Senator SCHOEPPEL. It is beyond your control or mine with the happening of the events here today. I understand that the Senate will go into session at 9:55 this morning. I don't know how long we will run.

Senator ENGLE. We will run until somebody stops us.

Senator SCHOEPPEL. Then we have the joint session, of course. I have a number of questions that I want to ask of the succeeding witnesses. I don't want to leave the impression that there is not considerable interest in this measure. As a matter of fact I think the record ought to be made on this type of legislation, the reasons, the whys and wherefores, because some of us represent areas which include producers and landowners who also have an interest in these matters and

desire to know how the situation is progressing and what the various and sundry positions are.

I understand that you mentioned Mr. McKeage. Will he be here?

Mr. MITCHELL. Yes, he is here to carry the full argument of the bill. We also have other commissioners here, Senator, who, in the interest of time, of course would be willing to yield whatever time the committee would want to accord to them so that Mr. Roberts would make a very brief statement and could accord most of the time that you have available this morning to Mr. McKeage.

As you understand, it is difficult to bring these people in from the four corners of the United States and it is expensive.

Senator SCHOEPPEL. I understand that.

Mr. MITCHELL. We have here this morning the Honorable Leonard Bessman, chairman of the Wisconsin commission; the Honorable David M. Brackman, member, Massachusetts Department of Public Utilities; and the Honorable Norman A. Johnson, member of the Mississippi Public Service Commission; and we have the Honorable Joseph F. Nigro, chairman, Colorado Public Utilities Commission, all of whom were to follow McKeage. They would be prepared, sir, to follow the same procedure as I have requested on those men who are absent this morning.

Senator ENGLE. Thank you very much, Mr. Mitchell.

The next witness is Mr. Austin L. Roberts, Jr., general solicitor, National Association of Railroad & Utility Commissioners, Post Office Box 684, Washington, D.C.

STATEMENT OF AUSTIN L. ROBERTS, JR., GENERAL SOLICITOR, NATIONAL ASSOCIATION OF RAILROAD & UTILITIES COMMISSIONERS, WASHINGTON, D.C.

Mr. ROBERTS. Mr. Chairman and members of the committee, my name is Austin L. Roberts, Jr. I am general solicitor of the National Association of Railroad & Utilities Commissioners, with offices at 5310 ICC Building, Washington, D.C.

I appear here on behalf of the association in support of S. 666. The association is sponsoring this bill.

I have a brief statement which covers the developments within the association, including the appointment of a special committee to study natural gas rate problems. It covers the work of that committee and the report of that committee through out convention. The brief statement also covers the action of our executive committee in approving this legislation and the action of our convention in adopting the report of the special committee.

In there also are the results of the rollcall vote taken at the convention.

Because of the time factor this morning, and the desire to have Mr. McKeage and the other witnesses from out of town testify, I would like to have this statement included in the report as if read. And I would be happy, as a matter of fact, at a later time, to answer questions, because I am in the city.

Attached to my statement is a copy of the report of the special committee to study natural gas rate problems, which was presented to our convention last November and adopted by the convention. I would ask that that report, which is nine pages in length, be included in the record at the conclusion of my statement.

Senator ENGLE. Without objection the statement will be made a part of the record as if read, and the report of the special committee to study natural gas rate problems appended to the statement will follow the statement as an exhibit.

Inasmuch as you are here in town, Mr. Roberts, unless Senator Schoeppel has some questions right at the moment, or Senator Monroney, you can come back later to testify and we will get on with Mr. McKeage. Is that agreeable?

Senator MONRONEY. Yes.

I have just one question. You state that it was voted by 29 States, and you say it was opposed by 13 States. The others were either absent, evenly divided, or did not vote. The ones who were absent have had a chance to vote, I suppose, to support this or not?

Mr. ROBERTS. No; they have not. It was a vote on the floor of the convention and only the active members present can vote. I believe at that convention there were no representatives from the State regulatory commisions in two of the States.

Senator MONRONEY. But you had an affirmative vote of 29 out of the 50 States?

Mr. ROBERTS. Yes.

Senator MONRONEY. And you have members in 50 States?

Mr. ROBERTS. We have members in 49 States. The commission in Alaska have not as yet been designated, or not affiliated. We have not been able to find out their names as yet. Also the District of Columbia commission, and the commission in Puerto Rico.

Senator ENGLE. In other words, 29 out of 49 States affirmatively supported this position?

Mr. ROBERTS. That is correct.

Senator ENGLE. Senator Schoeppel?

Senator SCHOEPPEL. I have one question.

Did these delegates or representatives have the copy of this bill which is presently before us before them at the time that they voted on this matter? Had it been prepared? Had it been explained to them?

Mr. ROBERTS. As pointed out on page 3 of my statement——

Senator SCHOEPPEL. I saw your statement for the first time this morning.

Mr. ROBERTS. The language of these amendments were distributed to the State commissions on November 7, which was 3 weeks prior to our convention. This was done to allow each commisioner an opportunity to study the amendments prior to the convention, to determine their position in support or in opposition, to a proof of the proposed amendments, and to instruct their delegates to the convention if they so desired.

At the convention the matter came to a vote. The only change that was made by the committee at the time of the convention was the proviso on section 3 which reads:

Provided, however, That nothing in this amendment shall be construed as limiting the authority of the Commission to put into effect or to permit to go into effect, in whole or in part, any proposed change deemed necessary by the Commission.

As a result of the meetings of the committee at the time of our convention and at a meeting with industry representatives, that proviso was added by the committee at the time of the convention.

Senator ENGLE. Thank you very much, Mr. Roberts.

(Full text of statement follows:)

My name is Austin L. Roberts, Jr. I am general solicitor of the National Association of Railroad & Utilities Commissioners with offices at 5310 ICC Building, Washington, D.C. I appear here on behalf of the association in support of S. 666, a bill to amend sections 4(a), 4(e), 7(e), and 15 of the Natural Gas Act.

The National Association of Railroad & Utilities Commissioners is a voluntary organization embracing within its membership the members of the regulatory commissions and boards of the several States of the United States. These are the State agencies charged by statute with the duty of regulating the transporation agencies and public utilities operating in their respective States.

Expressing concern over the multiplicity of application by natural gas companies for rate increases, the executive committee of the NARUC at a meeting held in Washington, D.C., on February 4, 1960, adopted a resolution establishing within the association a special committee to study natural gas rate problems. The resolution charged the special committee "to investigate and study procedures under the Natural Gas Act" and to report back "with suggestions and recommendations as to such changes in the statute now in effect as to more adequately project the public interest." The full text of the resolution is set forth in pages 1 and 2 of the copy of the report of the special committee to study natural gas rate problems which is attached to this statement.

The special committee appointed a subcommittee to correlate and draft certain proposed amendments to the Natural Gas Act. The Honorable Everett C. McKeage, president of the California Public Utilities Commission, was named chairman of the subcommittee. The amendments developed by the subcommittee were the following:

(1) Amend section 4(a) of the Natural Gas Act to outlaw indefinite pricing clauses in natural gas contracts.

(2) Amend section 4(e) of the Natural Gas Act by striking the proviso which now prohibits the Federal Power Commission from suspending proposed rate changes applicable to natural gas sold for resale for industrial use.

(3) Amend section 4(e) of the Natural Gas Act so as to bar a natural gas company from having more than one rate increase go into effect automatically, by operation of law; the justness and reasonableness of which had not been determined by the Commission.

(4) Amend section 7(e) of the Natural Gas Act to provide that no certificate of public convenience and necessity shall be granted by the Commission unless the Commission has found that the initial price at which the gas is to be sold is consistent with the public interest.

(5) Amend section 15 of the Natural Gas Act to prescribe certain procedural requirements for the disposition of matters before the Commission.

After Chairman McKeage's subcommittee prepared these proposed amendments, the amendments were approved by the full Special Committee and, on September 8, 1960, were unanimously approved by the NARUC Executive Committee at a regular meeting held in St. Louis, Mo.

The annual convention of the NARUC was held on November 28, to December 1, 1960. On November 7, 3 weeks prior to the opening of the convention, each commission represented in the membership of the association was sent a copy of the proposed amendments. This was done to allow each commission an opportunity to study the amendments prior to the convention, to determine their position in support or in opposition to approval of the proposed amendments, and to instruct their delegates to the convention if they so desired. At the time of presentation of the matter to the convention, there was a full discussion of the

proposals and a diversity of opinion expressed. On a rollcall vote the regulatory commissions of the following 29 States voted in support of the proposed amendments:

Arizona	Michigan	Rhode Island
California	Mississippi	South Carolina
Colorado	Missouri	Tennessee
Connecticut	Nevada	Utah
Florida	New Hampshire	Vermont
Georgia	New Jersey	Washington
Hawaii	New York	West Virginia
Maine	North Carolina	Wisconsin
Maryland	Ohio	and also:
Massachusetts	Pennsylvania	District of Columbia

The regulatory commissions of the following 13 States voted in opposition:

Arkansas	Minnesota	Texas
Illinois	Nebraska	Virginia
Indiana	New Mexico	Wyoming
Kansas	North Dakota	
Kentucky	Oklahoma	

The delegates from the remaining commissions were either absent, evenly divided, or did not vote.

The report of the Special Committee to Study Natural Gas Rate Problems was accordingly adopted by the convention. Attached to this statemetn is a copy of that report. It is nine pages in length. If it meets with this committee's approval, we would like the text of the report included in the transcript of these hearings at the conclusion of my remarks.

This concludes my remarks covering the genesis and development of the associations' support for these amendments to the Natural Gas Act which are embodied in the bill S. 666. Our next witness, Hon. Everett C. McKeage, chairman of the subcommittee which drafted the proposals, will discuss in detail the justification and legal aspects of these amendments.

(Attachment follows: Report of Special Committee To Study Natural Gas Rate Problems:)

REPORT OF THE SPECIAL COMMITTEE TO STUDY NATURAL GAS RATE PROBLEMS

(National Association of Railroad and Utilities Commissioners, 1960)

To the National Association of Railroad and Utilities Commissioners:

The Special Committee to Study Natural Gas Rate Problems was created by the executive committee of the National Association of Railroad and Utilities Commissioners at a meeting in Washington, D.C., on February 4, 1960, in the following language:

"Whereas the members of the executive committee of the National Association of Railroad and Utilities Commissioners have learned of the pendency in many States of a multiplicity of applications by the natural gas industry for rate increases; and

"Whereas section 4(e) of the Natural Gas Act permits proposed rates to go into effect in 5 months subject to refund without a final determination by the Federal Power Commission as to the justness and reasonableness of the proposed rates; and

"Whereas in 1959, the Federal Power Commission disposed of only 240 cases involving rate increases, and there were 1,265 other cases which were pending hearing and decision; and

"Whereas the gas consumers in most of the States have had rate increase upon rate increase heaped upon them by the provisions of section 4(e) without a determination of the proper rate to be charged: Now, therefore, be it

"*Resolved*, That the executive committee of the National Association of Railroad and Utilities Commissioners hereby authorizes and directs the president of the association to appoint a special committee composed of a chairman and 10 members, from States having an interest in this matter, to investigate and study procedures under the Natural Gas Act and report back to the executive committee with suggestions and recommendations as to such changes in the

statute now in effect as to more adequately protect the public interest; and be it further

"*Resolved*, That the Congress of the United States be asked to provide the Federal Power Commission with adequate funds to staff itself with trained and qualified personnel for the purpose of making proper investigations and conducting speedy hearings on whatever rate applications may be filed with the Federal Power Commission by the interstate pipeline companies and the natural gas producers; and be it further

"*Resolved*, That each State commission be requested to cooperate with the special committee and to furnish such records and information as will be helpful in this investigation and study; and be it further

"*Resolved*, That a copy of this resolution be sent by the secretary of the association to each Member of Congress."

This special committee has held meetings in Savannah, Ga., and conferred with Judge Arthur Kline of the Federal Power Commission. The chairman of this special committee has visited Hon. Jerome K. Kuykendall, Chairman of the Federal Power Commission, in his office in Washington, D.C., in regard to the problems. Meetings were held in Chicago, Ill., and St. Louis, Mo., for the purpose of preparing proposed amendments to the Natural Gas Act.

At the Chicago meeting, the chairman of the special committee was authorized to name a subcommittee to correlate the proposed amendments to the Natural Gas Act for final action at our meeting in St. Louis, Mo., on September 7, 1960. Said subcommittee proposed certain amendments to the Natural Gas Act which were adopted by the special committee at said meeting of September 7, 1960, at St. Louis, Mo., and said amendments were thereafter unanimously approved by the executive committee of the National Association of Railroad and Utilities Commissioners on September 8, 1960, at St. Louis, Mo. Said proposed amendments, which were approved by the Special Committee to Study Natural Gas Rate Problems and the executive committee, are attached to this report as "Exhibit A."

The Honorable Everett C. McKeage, president of the California Public Utilities Commission, was named chairman of this subcommittee. I will therefore, at this time, ask the Honorable Everett C. McKeage to come forward and explain to this convention the proposed amendments to the Natural Gas Act that our special comimttee has proposed. President McKeage:

"JUSTIFICATION FOR PROPOSED AMENDMENTS TO THE NATURAL GAS ACT

"Proposed amendment to section 4(a) of the Natural Gas Act which seeks to outlaw these indefinite pricing clauses in natural gas contracts.

"Little need be said in justification of this proposed amendment. The Federal Power Commission has long advocated an amendment to the Natural Gas Act outlawing these inflationary pricing clauses in natural gas contracts. I know of no substantial support for them, except the support by the very parties who unjustly profit by their operation.

"The contention is made that these indefinite pricing clauses in natural gas contracts are void as a matter of law. Without undertaking to argue the merits of this position, surely it would be beneficial and desirable to have the Natural Gas Act categorically prohibit them so that no further possible legal argument could be made in their behalf.

"Proposed amendment to section 4(e) of the Natural Gas Act which strikes the prohibition against suspension of rate changes applicable to natural gas sold for industrial use for resale.

"The Federal Power Commission has sought this legislative remedy for a number of years. This proposed amendment would close the loophole now existing in the Natural Gas Act which prohibits the Federal Power Commission from suspending rate changes affecting natural gas which is sold for resale for industrial use. Experience has shown that this prohibition frustrates to a great extent efficient regulation of natural gas companies.

"Proposed amendment to section 4(e) of the Natural Gas Act which seeks to prohibit consecutive rate increases resulting from the automatic operation of said section 4(e).

"This proposed amendment would restrict the operation of section 4(e) to permit only one rate increase, as applied to a particular customer, by operation of law, all other such rate increases by operation of law being barred until the Federal Power Commission had passed upon the reasonableness of the one increase in question. This amendment would not prohibit the Federal Power

Commission from placing in effect a filed rate increase, even though it did not pass upon the reasonableness of such increase. The amendment would only restrict the automatic operation of the statute as is now the case. Should some emergency arise, the Federal Power Commission would still have authority to place in effect, by specific order, any filed rate increase it saw fit to so place in effect, even though such rate increase had been suspended. (Re Shamrock Oil & Gas Corp., 31 P.U.R. (3d) 84.)

"Some question has been raised as to the constitutionality of this proposed amendment. This objection on constitutional grounds is in the same category as the historical objection to any and all regulation upon constitutional grounds. Surely, the amendment is not unconstitutional upon its face. We must keep in mind the general rules applicable to testing the constitutionality of a statute. All presumptions of validity are indulged in support of the statute, and the law creates a presumption of a set of facts which will support the constitutionality of the statute. (Pacific States, etc., Co. v. White, 296 U.S. 176, 185–186, 80 L. ed. 138, 146; Alabama State Federation of Labor v. McAdory, 325 U.S. 450, 465–466, 89 L. Ed. 1725, 1737.) The burden rests strongly upon the person charging unconstitutionality to prove the charge.

"It is contended that this proposed amendment would be unconstitutional because the Federal Power Commission cannot get around to passing upon the reasonableness of this backlog of rate increase filings and, therefore, unconstitutionality would arise from that fact. The legal presumption is that the Federal Power Commission will discharge its duty in a lawful manner and that it will dispose of proceedings before it so as to comply with constitutional requirements. This is elementary constitutional law. This backlog of cases situation might be used as an argument if the amendment was an absolute bar to placing into effect more than one rate increase. I doubt the validity of such argument, even in such context. However, the proposed amendment is not an absolute bar because the Federal Power Commission, notwithstanding this proposed amendment, could place in effect any filed rate increase it desired to.

"In the State of California, there has existed, since 1912, a statute which prohibits a public utility from placing in effect any rate increase until a showing has been made before the Public Utilities Commission and a finding has been made by the Commission that such increase is justified. This statute reads as follows:

" 'No public utility shall raise any rate or so alter any classification, contract, practice, or rule as to result in any increase in any rate except upon a showing before the commission and a finding by the commission that such increase is justified.' (Section 454, Public Utilities Code of California.)

This statute prohibits even the Commission from authorizing the increasing of a rate, unless the mandate of this statute is complied with. Not even one increase may go into effect without the proof and finding of justification. This statute has been assailed many times but its validity has been upheld.

"If it be admitted that this backlog of rate increase proceedings constitutes a bar to relief from the present evil which exists, then, it must be conceded that we have become victims of an unwholesome situation; that it is our master.

"Should this amendment be enacted into law, I am convinced that events thereafter would prove, as has been the case in the past, that these arguments in terrorem will prove groundless. At all events, the public interest demands that we attempt to redress the existing evil.

"This amendment would cause both the natural gas companies and the Federal Power Commission to expedite hearings in rate proceedings as nothing else would.

"Proposed amendment to section 7(e) of the Natural Gas Act seeking to make it jurisdictional to the issuance of a certificate of public convenience and necessity that the Federal Power Commission make a specific finding upon the consistency with the public interest of the price at which natural gas is sold in interstate commerce pursuant to a certificate or certificates of public convenience and necessity.

"This proposed amendment would write into the statute the spirit of the holding of the Supreme Court of the United States in the CATCO case. Some thought is expressed that this amendment is not necessary, but I disagree. The Supreme Court of the United States may change its interpretation of this particular provision of the Natural Gas Act when new members should come upon that Court, or present members might entertain changed views. Our history is all too full of such regrettable changes of heart by the Supreme Court of the United States. In my judgment, this is a subject far too important to be left

in the insecurity of judicial quicksands. The public interest has a right to be safeguarded by specific statutory prescription. This proposed amendment would do exactly that.

"Proposed amendment to section 15 of the Natural Gas Act which would prescribe procedural requirements in the hearing and the disposition of matters before the Federal Power Commission.

"This proposed amendment to section 15 of the Natural Gas Act seeks to set up uniform requirements with regard to the hearing of matters before the Federal Power Commission and the disposition thereof. However, this proposed amendment contains a safeguarding provision which clearly provides that these procedural requirements are not to be construed as jurisdictional. In other words, the failure of the Federal Power Commission or of its Examiners to comply with these requirements would not, ipso facto, render void the action of the Commission or of its Examiners. The main purpose of this proposed amendment is to admonish the Commission and its Examiners and the interested parties to exercise all reasonable diligence to bring matters to a speedy hearing and to dispose of such matters thereafter with dispatch. Said proposed amendment attempts to do away as much as possible with the so-called regulatory lag."

The Special Committee to Study Natural Gas Rate Problems recommends to the National Association of Railroad and Utilities Commissioners that it be continued for an additional year for the purpose of a further study on a recommendation in regard to producer regulation and the proposed amendments of the regulation of direct sales, and for the purpose of making a study of amending the Natural Gas Act to give to the Federal Power Commission the authority to compel pipeline companies to expand their facilities to serve additional customers whenever the Commission finds the expansion to be economically feasible.

Mr. President, we move:

1. That the National Association of Railroad and Utilities Commissioners approves said proposed amendments to the Natural Gas Act which are attached to this report as exhibit A.

2. That the officers of the National Association of Railroad and Utilities Commissioners be hereby instructed to have the proposed amendments drafted in proper technical form and cause said proposed amendments to be introduced in the 87th session of the Congress of the United States; and

3. That copies of this committee report containing the proposed amendments be sent to the members of the Interstate and Foreign Commerce Committees of the U.S. Senate and the U.S. House of Representatives of the U.S. Congress; and

4. That each State commission solicit support of the congressional delegation of each respective State in behalf of said proposed amendments.

5. That the Special Committee To Study Natural Gas Rate Problems be continued for 1 additional year to make further study in regard to other amendments to the Natural Gas Act.

6. That the officers of the National Association of Railroad and Utilities Commissioners be directed to convey to the proper congressional committees in the House and the Senate, a request from this association to provide adequate funds to the Federal Power Commission, by at least a 50 percent increase in their appropriation, to obtain additional trained and qualified personnel for the purpose of making proper investigations and conducting speedy hearings on gas rate applications filed with the Federal Power Commission by all natural gas companies under their jurisdiction.

Respectfully submitted.

CRAWFORD L. PILCHER, *Georgia, Chairman.*
LEONARD BESSMAN, *Wisconsin.*
JOHN C. HAMMER, *Tennessee.*
EUGENE S. LOUGHLIN, *Connecticut.*
EVERETT C. MCKEAGE, *California.*
W. J. MURRAY, JR., *Texas.*
RAY C. JONES, *Oklahoma.*
JOSEPH NIGRO, *Colorado.*
MYRON R. RENICK, *West Virginia.*
ROBERT WEBB, *Indiana.*

EXHIBIT A

A BILL To amend sections 4(a), 4(e), 7(e) and 15 of the Natural Gas Act, relating to rates and contracts of natural gas companies and the granting of certificates of public convenience and necessity to such companies, and relating to hearings and procedure in proceedings before the Federal Power Commission involving natural gas matters

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4(a) of the Natural Gas Act (15 U.S.C. 717c(a)) is amended by adding thereto the following:

"It shall be contrary to public policy and unlawful to include one or more of any of the following types of indefinite pricing clauses in any contract, agreement, or arrangement to which a natural gas company is a party or to amend any such contract, agreement, or arrangement to which a natural gas company is a party by adding such indefinite pricing clause to its provisions, and any such indefinite pricing clause in any such contract, agreement, or arrangement shall be unenforceable for any purpose by or against any party to such contract, agreement, or arrangement or such amendment thereof:

"(1) The two-party favored-nation clause, under the terms of which the price of the natural gas is or may be increased in the event the purchaser shall pay or offer a higher price for natural gas in the same field or in any area specified in the contract;

"(2) The 'third-party favored-nation clause,' under the terms of which the price of the natural gas is or may be increased in the event some person not a party to the contract shall pay or offer a higher price for natural gas in the same field or in any area specified in the contract;

"(3) The 'better market clause' or 'price redetermination clause,' under the terms of which the price of the natural gas is or may be increased in the event the average of two or more prices which are paid by purchasers in a specified area is greater;

"(4) The 'spiral escalation clause,' under the terms of which the price of the natural gas is or may be increased in the event the resale rates of the purchaser under the contract are increased."

SEC. 2. That section 4(e) of the Natural Gas Act (15 U.S.C. 717c(e)) is amended by striking from the first sentence of subsection (e) the following proviso: "*Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only;"

SEC. 3. That Section 4(e) of the Natural Gas Act (15 U.S.C. 717c(e)) is further amended by adding at the end of the second sentence thereof the following: ", except that no proposed change, which would result in an increased rate or charge, shall go into effect while there is already in effect an increased rate or charge filed by such natural gas company, the resonableness of which the Commission has not determined and which affects any person affected by the proposed change; provided, however, that nothing in this amendment shall be construed as limiting the authority of the Commission to put into effect or to permit to go into effect, in whole or in part, any proposed change deemed necessary by the Commission."

SEC. 4. That section 7(e) of the Natural Gas Act (15 U.S.C. 717f(e)) is amended by adding thereto the following: "No certificate of public convenience and necessity, or other authority, to sell natural gas in interstate commerce for resale, or for any other purpose, shall be granted by the Commission, unless the Commission shall make a finding that the price at which such natural gas is to be sold is consistent with the public interest or shall find what price is consistent with the public interest and impose upon such certificate, or other authority, as a condition, the price so found to be consistent with the public interest. Such finding by the Commission shall not deprive the Commission of the authority, thereafter, to find that such price is unreasonable in a proceeding instituted pursuant to either section 4 or section 5 of this chapter. Upon the applicant for a certificate of public convenience and necessity, or other authority, rests the burden of proving each and every element of public convenience and necessity, including the consistency with the public interest of the price at which the natural gas is to be sold in interstate commerce."

SEC. 5. That section 15 of the Natural Gas Act (15 U.S.C. 717n) is amended by adding at the end thereof the following subsections:

"(c) The presiding officer at any hearing under this act shall have the right, and it shall be his duty, to so limit the issues, evidence, cross-examination and argument as to eliminate unnecessary delay, subject only to the requirement of due process of law.

"(d) In any proceeding under this act in which hearings are held and which is instituted or filed on or after the _____ day of _____, 196__, the hearings shall be concluded within one year from the date of the first hearing thereon.

"(e) The presiding officer's report shall be made to the Commission within six weeks after the conclusion of the hearings or the filings of briefs, whichever occurs later, and the Commission shall render its decision within ninety days from the receipt by it of the report of said presiding officer. Provided, however, that the requirements contained in subsections (c), (d) and (e) herein, shall not be construed as jurisdictional."

Senator ENGLE. If there are no further questions, the next witness is Mr. Everett C. McKeage, president, California Public Utilities Commission, San Francisco, Calif.

Mr. McKeage, we will be glad to hear you at this time.

STATEMENT OF EVERETT C. McKEAGE, PRESIDENT OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION

Mr. MCKEAGE. Mr. Chairman and gentlemen of the committee, my name is Everett C. McKeage. I am the president of the California Public Utilities Commission, as the chairman has indicated, and I represent that commission in my appearance before the committee today.

Prior to 1959 I was for 15 years the chief counsel of the California Public Utilities Commission and during World War II I was the chief hearing commissioner for the Office of Price Administration in the Pacific coast territory, including California, Oregon, Washington, Nevada, and Arizona. For a number of years I was a judge of the Superior Court of the State of California, serving in San Francisco, and I spent some 25 years in connection with regulatory matters. I have been closely connected with regulatory work for many years and have written a number of articles on that subject which have been published in such professional and industry journals as the American Bar Association Journal, Public Utilities Fortnightly, California State Bar Journal, California Law Review, Traffic World, and other such publications. I am the author of "Public Utility Regulatory Law," a textbook on that subject.

I greatly appreciate the privilege and opportunity of appearing before this committee in support of Senator Magnuson's bill, S. 666, which would amend the Federal Natural Gas Act in several respects.

As chairman of the subcommittee which wrote this bill at the direction of the National Association of Railroad and Utilities Commissioners, I can say that I am very familiar with its provisions and the objectives which this proposed legislation seeks to achieve.

I was the chairman of the subcommittee which wrote this proposed legislation at the direction of the National Association of Railroad and Utilities Commissioners, so I am fairly well versed with regard to the objective. I want to point out with regard to California in particular the problem that caused this bill, and the problem that caused the bill from the standpoint of the other consuming States to bring it before the Congress.

Prior to 1948 California imported no out-of-State gas. Between that time and the present time California is now importing out-of-State natural gas, the annual bill of which is something in excess of $420 million, and the amount of gas imported is something like

2,400 million cubic feet daily. Our engineers state that within 5 years it will run around 3,400 million cubic feet. California imports from 75 to 80 percent of the natural gas that it uses.

As was pointed out by Commissioner Mitchell, we have four unadjudicated rate increases by pipeline companies, going back as far as April 15, 1955, and the cumulative amount of those increases, no part of which has ever been found reasonable by the Federal Power Commission in their final decision, amounts to over $250 million, and it gets worse all the time.

I could go into some detail as to how these rate provisions have been handled and the frustration that we have experienced in trying to get them to trial, but there are four of them now pending, and the best that we have been offered by the Federal Power Commission—I do not say this in any particular criticism—is an attempt to negotiate settlements. That has application to one pipeline alone—El Paso Natural Gas Co.

We have recently had coming into California, in the last year and a half, another large pipeline, Trans-Western Pipeline Co. There has been certified another large pipeline bringing Canadian gas. That is the Pacific Gas & Electric Co. pipeline.

We have the Rock Springs project, another El Paso-Colorado interstate thing that is knocking at California's door, and we have this Pemex, Texas-Mexican-California pipeline which is now before the Federal Power Commission and before the California commission.

So you can see why California has this great interest in this problem.

Based upon some personal knowledge I would say that, generally speaking, that the case with California is the case with such States as New York, Pennsylvania, New Jersey, Wisconsin, and the New England States, and all of these consuming States are in the same position.

The problem which is created, Mr. Chairman and gentlemen, in our opinion comes from the section of the Natural Gas Act that allows these rate increases to be filed without hindrance and they go into effect by operation of the law at the end of a 5-month suspension period if they are suspended. I would like to underline that. These rate increases go into effect automatically—the Federal Power Commission has no jurisdiction to stop them. That is why California has four unadjudicated cases there with that huge amount of money, over $250 million.

I cannot too strongly emphasize that this natural gas problem is a national problem. Being a national problem, it is a matter of Federal concern and the solution of the problem necessarily lies in the hands of the Congress of the United States, and in no one else.

At the national level I would like to quote the picture as painted by the President of the United States in a recent message to the Congress. In referring to the situation that I have been discussing, he said with regard to these mounting rate increases, unadjudicated:

> Indeed the annual amount of rate increases so suspended is over $500 million. The total amount of rates collected pursuant to such increases is well over $1 billion (Congressional Record, House, p. 5385, Apr. 13, 1961).

That I think is a fair estimate of what is happening.

The Federal Natural Gas Act provides, as you gentlemen know, that these rates are collected with the understanding that they will be refunded if later found unreasonable. I want to point out this: You don't have to be a specialist in regulatory matters or an economist, or anything of the kind to understand that it would be next to impossible for the Federal Power Commission to realistically adjudicate from the standpoint of reasonableness a rate increase which went into effect April 15, 1955, to adjudicate it now as of then, particularly in light of the fact that this natural gas price is increasing all the time. In other words, inflation will have overcome, probably, the rate increase that was filed at that time. So the fact that we are here six years behind time certainly is an evil in my opinion that ought not to exist, and the only way in our opinion that it can be made not to exist is to enact legislation of this nature to prevent that sort of thing happening.

I say that the answer to this fantastic situation, of course, is section 3 of Senator Magnuson's bill. That provision is very simple and it simply says this: That after one increase has gone into effect, no other increase can go into effect by operation of law until the prior one has been adjudicated, with this important provision on which is written into the bill: That if for any reason because of the financial condition of the pipeline company or whatnot, the Federal Power Commission may nevertheless in its discretion allow it to go into effect, but it cannot continue that taximeter operation of going into effect by operation of law.

Section 1 of the bill would strike down, prospectively, of course, not retrospectively, but prospectively, these so-called favored-nation clauses. These favored-nation clauses, I think just a reading of it would give you an idea of the unfairness of it. To illustrate, the two-party favored-nation clause provides that the price of natural gas may be increased in the event that the purchaser shall pay or offer a higher price for natural gas in the same field or in any area specified in the contract.

The third-party favored-nation clause provides that the price of natural gas may be increased in the event some party not a party to the contract may pay or offer a higher price for natural gas in the same field or in any area specified in the contract. The "better market clause" or "price redetermination clause" provides that the price of natural gas may be increased in the event the average of two or more prices which are paid by purchasers in a specified area is greater. The "spiral escalation clause" provides that the price of natural gas may be increased in the event the resale rates of the purchaser under the contract are increased. The mere statement of the nature of these indefinite pricing clauses is sufficient to condemn them, in my opinion, particularly when it is realized that they affect a most important natural resource of this Nation.

I am fully aware of the fact that very recently the Federal Power Commission undertook to outlaw some of those clauses. But in our opinion the people of this country are entitled to have this written into the act and not left to the varying views of people who come and go in the Federal Power Commission. So if this legislation is enacted, these clauses will be outlawed prospectively.

There is another provision of the bill, section 2, that undertakes to apply the same rule with regard to suspension, with regard to indus-

trial gas for resale as for domestic gas, or sale to the average individual who buys gas in his home.

The Federal Power Commission has recommended that type of amendment as it has recommended over the years the type of amendment which would outlaw these indefinite pricing clauses.

Section 3 of the bill I have gone into. That has to do with stopping these pyramiding rate increases.

Section 4 of the bill seeks to write into the Federal Natural Gas Act the so-called CATCO decision of the Supreme Court of the United States. That merely is this: That every time an application is made for a certificate to sell natural gas in interstate commerce the Federal Power Commission is called on to find, make a finding, an affirmative finding, that the price at which the certificated sale is requested must be found to be consistent with the public interest or it will be denied. Or if the Federal Power Commission wishes to set a price which it does think is consistent with the public interest, it will set that price and grant the certificate with that condition.

We believe that it is not enough that the Supreme Court of the United States has so held. We know, with all due respect to the Supreme Court of the United States, that it does change its opinion as time goes on when new members come upon that board or the present members entertain changed views. So we say that the people of this country are entitled to have that type of security written right into the face of this act. It is no reflection, of course, upon this judiciary. With the matter of constitutionality, that has been raised about this, and I would say that I can see nothing unconstitutional about any of the provisions of this bill; certainly they are not unconstitutional upon their face. The cases are uniform that this sort of a thing leads to the most comprehensive regulation.

With regard to the fifth section of the bill, that is a procedural section. There is a provision on that that it is not jurisdictional. In other words, if the Federal Power Commission doesn't follow it, it will not invalidate the decisions in anyway. But if it be said that that section conflicts in anyway with the present Federal statute, of course, that could be very easily amended.

I will say this in closing: That in the State of California, my State, we have had a statute there since 1912 which provides very simply that no public utility can raise a rate, directly or indirectly without a showing before the Commission and a finding by the Commission that it is justified. In other words, you can't put in one rate increase without first getting the action of the Commission.

This bill would not only permit one increase to go into effect automatically by operation of law without the Federal Power Commission saying anything about it, but it would also permit the Federal Power Commission itself to put into effect or allow to go into effect an increased rate where it found some public necessity for it.

We take the position, gentlemen, that if this proposed legislation is enacted into law that it will in fact return the Federal Natural Gas Act back to the original intent of the Congress of the United States when it enacted it, and this is the language of the Supreme Court of the United States, "to protect the consumer interests against exploitation at the hands of private natural gas companies."

Senator MONRONEY. Mr. Chairman, I would like to ask one or two questions if I might.

You say that between a fourth and fifth of the gas used in California—that is a considerable amount—is produced in California?

Mr. McKeage. Senator, what I said—maybe I misunderstood your question—between 75 and 80 percent of the gas used in California is from out of the State—imported.

Senator Monroney. Then the other 25 or 20 percent is from California?

Mr. McKeage. Yes, sir.

Senator Monroney. What is your rate that you pay California producers?

Mr. McKeage. It, of course, varies. I will say that it is something, as a general proposition, just at the present time a little under what we pay as a general proposition for out-of-State natural gas.

Senator Monroney. Do you believe that is true?

Mr. McKeage. What?

Senator Monroney. Do you believe that is true?

Mr. McKeage. Well, the figures show it to be true.

Senator Monroney. Bureau of Mines table 15, page 313, "Minerals Yearbook, 1959," shows that the natural gas from California wells was 23.3 cents a thousand in 1958, and went by nearly 33⅓ percent to 24.6 percent in 1959; that the gas that you buy nationally is listed at 11.9 cents in 1958, and in 1959 it was 12.9. It went up 1 cent. You went up 1⅓ cents.

In Oklahoma, which supplies a good deal of gas in interstate commerce—I don't think any of it reaches California—it was 10.1 cents in 1958, and it was 10 cents in 1959.

I wonder if you have looked at the California gas price in your studies as you worried about the gas produced and imported into California, and what you have done to try to bring that down?

Mr. McKeage. Senator, I do not agree at all with those figures. Our figures that we have do not agree with that. If I may read to you our own figures with regard to price of this out-of-State natural gas, and, of course, what the California gas producers are trying to do is to get their gas tied to what is called the "border" price.

Senator Engle. What price?

Mr. McKeage. The border price, the price for the interstate, for the Pacific Lighting group—those are the large southern California gas distributing companies—the average price that they pay at the border, mind you now—I am not talking about out in the fields 2,000 miles away, but at the border—average 35.19 cents per thousand cubic feet.

I say "average" because these contracts have been negotiated over a period of time. In the earlier contracts it was cheaper than the present contracts.

The Pacific Gas & Electric Co. is the other large distributing company in California. Its average for the border price is 33.4 cents per thousand cubic feet.

As I say, our engineers who went over this for me said that the average, the average price paid to these California producers, is just a little bit under those prices. But they are seeking to get their gas tied to these prices that I am quoting. These are prices that come from records. So what you have read there, Senator, I cannot agree with at all.

Senator MONRONEY. In other words, what you want is your producers at the wellhead paid the same price that would provide for a 10-cent price at the wellhead in Oklahoma or a 12-cent price delivered to the boundaries of California?

Mr. MCKEAGE. We as a commission——

Senator MONRONEY. Do you support that?

Mr. MCKEAGE. We, as a commission, are not asking for those prices to be raised. What I was talking about is the gas producers of Californnia are asking that those prices be tied generally to the border price. That has not been done yet. Of course, when a rate case comes around we, as a commission, would have the authority to determine whether the price that our distributing companies are paying for any California natural gas is more than they should pay. That, of course, would be our authority to do that if we came to that conclusion. But we, ourselves, are not urging the increase in gas. It is the producers.

As I understand from our drug companies, the producers are asking in California that they get the price that these out-of-State pipelines are getting at the border. I am not underwriting that at all. I am stating what they say.

Senator MONRONEY. They are already getting twice the price at the wellhead of most of the States that export gas to you now. I am asking what action your commission is taking to try to bring that more in line with the 12-cent rate that is the national average of gas at the wellhead. It should have some general level of price. I can't see why California gas is twice as valuable at the wellhead as gas from all the other States that are producing it.

Mr. MCKEAGE. Of course, Senator, you are relying on the figures you quote.

Senator MONRONEY. The Bureau of Mines, sir, is generally regarded as being a fair and impartial group. You say that the imported gas is 35 cents at the border?

Mr. MCKEAGE. That is right.

Senator MONRONEY. That includes the long-line charge?

Mr. MCKEAGE. That is true.

Senator MONRONEY. The long-line charge ranges between 28.9 cents for southern California and 29.1 cents, according to the Federal Power Commission report of 1959. It seems to me that while you are here worrying about a 12.9-cent rate, or 10-cent rate in Oklahoma, you have a little homework you might be doing if this is going to be the pattern. Gas is gas, it has so many British thermal units, but gas is worth 24 or 25 cents, and we would like to know why we are going to have to continue to be compelled to sell ours at 10 cents.

Mr. MCKEAGE. Senator, I am sure, of course, that you are familiar with gas. Before you can compare prices of gas you must find comparability. There is some gas that has 1,100 British thermal units, a thousand British thermal units, some have 850 and so forth, and so on, and all that sort of thing. But you have to know comparability because——

Senator MONRONEY. I think I understand comparability.

Mr. MCKEAGE. Yes. And we adjust for that in California. If gas has 950 British thermal units we can't let them sell it for the same as 1,100 British thermal units.

Senator MONRONEY. This is all adjusted for standard British thermal units?

Mr. McKeage. Yes.

Senator Monroney. The Bureau of Mines takes into account variables for that and adjusts for it. I can't understand why the California Commission, which has 25 or 20 percent of its product locally, let's their gas rate go up, and now apparently are considering getting it up to 25 or 23.4 cents a thousand, the border price.

Why are you so absorbed in the 24.9 rate which is the national average?

Mr. McKeage. We, of course, naturally must be concerned with the border price. That is, of course, the price we face. And I do want to restate this California Commission is not concerning testimony about trying to advance the price of gas in California. That merely is what they are asking for. But they are selling it now less than the border price.

Senator Monroney. What have you done to roll it back, if your rate is twice what the national average is? This is your domain. This is intrastate gas and is not under this act. No matter what we do we cannot influence nationally the price of gas sold in California, that one-fourth or one-fifth that goes into California. What have you done to roll back this price which is double the cost of gas as a national average?

Mr. McKeage. Of course, Senator, you are quoting figures that I do not agree with. As far as rolling back the price of gas is concerned in California, I am very frank to tell you that we are here with regard to a Federal matter. As to rolling prices back in California, I can't see that that has anything to do, to be honest with you, about the situation at the national level because I can't agree with your figures on it. You are asking me a question based upon a premise that I do not agree with.

Senator Engle. Will the Senator yield?

Senator Monroney. Yes.

Senator Engle. Are you talking about the same figures? As I understand the figures quoted, those are the figures at the wellhead in Texas or Oklahoma.

Mr. McKeage. That is right.

Senator Engle. Whereas the figures Mr. McKeage uses are figures at the border?

Mr. McKeage. That is right.

Senator Monroney. He is talking about two different things. He is talking about a long-line figure when it comes into the border. The figures I quoted are double the national rate for California, which apparently is of no concern to the Commission there, and exactly double that at the wells, table 15, page 313, Bureau of Mines, if that has gone up by 1.3 cents from 1958 to 1959. I am trying to see what the Commission has done in its own domain to try to save the gas users this price which exceeds, considerably, the increase in price nationally.

Mr. McKeage. Senator, if you would look at it from the other side, you should hear the gas producers in California making the argument on the other side, that we are going out favoring Oklahoma gas and Texas gas, bringing it in here at a border price of 35 and some cents, when they can sell it cheaper in California. So we have the other side of the question to deal with, too.

Senator Monroney. What is the average cost of gas to the household consumer in California?

Mr. McKeage. I can give it to you. The general average per Mc.f. is 95.2 cents. That is for domestic service going into a person's home.

Senator Monroney. Has the rate of distribution been reduced or have you had any late cases in your Commission about this spread of about 50 cents between the delivered price at the city gate, which would be in the neighborhood of about the gas plus the transmission? The gas would be about 44.8 cents according to my figures. So you have about a 50-cent spread after the gas gets to the city gate at Los Angeles. Have you had any recent cases on what this cost of about five times the cost of the original gas is to take to the houses of Los Angeles after it reached the city gate?

Mr. McKeage. All I can say to that, Senator, is that based upon the long experience of the Public Utilities Commission in California—and we certainly are damned nationwide because we are claimed to be very parsimonious and skinflint about the rates of return—based upon the rates of return we give our distributing companies, that is our best judgment as to a fair rate of return and a fair price, of course, that is just with the domestic. With regard to the firm industrial customer it is 58.4 cents and the interruptible customer it is 43.3, and steam plants, 37.6 cents. Of course, while this is an involved thing, you have to get the figures out of the operating results. We maintain that the rates of return we give these utilities are on the low side of a reasonable return, and it works out to that average figure.

Senator Monroney. My question was, have you had any recent rate cases to determine whether this is a fair distribution rate?

Mr. McKeage. Yes. We have them about once every year, Senator.

Senator Monroney. Have they resulted in any lowering of the rate?

Mr. McKeage. Any lowering of the rate?

Senator Monroney. Yes.

Mr. McKeage. Well, no. It hasn't resulted in lowering the rate because we are in an inflationary period and they are asking for a rate increase. Of course, actually the rate is not being lowered, it is being gradually increased.

Senator Monroney. Don't you think that the producers and others who have to find oil are also in an inflationary period and that to be tied permanently to a 30-year contract therefore puts them against the same thing that your distributors are against?

Mr. McKeage. Certainly, I agree with you, Senator, that they have the same problem that everybody has. I would be the first to admit that.

Senator Monroney. Thank you very much.

That is all I have.

Senator Engle. Senator Schoeppel?

Senator Schoeppel. Mr. McKeage, this is the first time I have had an opportunity to look at your statement quickly, and to make some notes, and I note it has been devoted quite entirely to what you have to say about the successive gas prices by the pipeline companies.

Mr. McKeage. Yes.

Senator Schoeppel. These are the long lines which purchase gas in the gas fields of the Southwest and transport it over long distances to the borders, or within your own State where it is sold to distributors for resale to your domestic and industrial users.

Some of us on this committee, of course, unfortunately don't live in California. The Senator questioning you now happens to be from Kansas.

I am interested in what this bill is going to do to the Kansas producer, the landowner. We have a lot of landowners who have joined together in our State honestly and sincerely as landowners, royalty association people. They want to know, rightfully so, what this bill is going to do to them and their production costs in these contracts and in this relationship that is likely to follow.

You are aware, are you not, that under the present holdings of the courts, that any producer who sells gas to an interstate pipeline company for resale is a natural gas company as defined by the Natural Gas Act?

Mr. McKeage. Yes; I am aware of that.

Senator Schoeppel. I want to go through the different sections of the bill which you have testified to, and I know you have some great familiarity with it. It is my understanding that when a producer or a pipeline company has a rate increase on file, section 3 of the bill would prohibit any subsequent rate increase from being put into effect until a final determination by the Commission on an earlier rate increase that they may have on file is made; is that correct?

Mr. McKeage. No; that is not correct, Senator.

Senator Schoeppel. Where am I incorrect?

Mr. McKeage. By operation of law. In other words, these rate increases that come at the end of 5 months without any action of the Federal Power Commission, it would not prohibit the Federal Power Commission from allowing it to go into effect or putting it into effect by an order of the Federal Power Commission in its discretion, any and all rate increases. It merely puts a qualification on the present provision which says that at the end of the 5-month suspension, if it is suspended, that this thing shall automatically go into effect, and as interpreted by the courts it goes into effect by operation of law.

If you allow one of that type of increase, therefore, you are allowed it by operation of law. But if the natural gas companies apply to the Federal Power Commission, whatever reason it may be, the Federal Power Commission can allow it to go into effect.

Senator Schoeppel. I can't quite agree with you, according to the proposed bill before us here.

I am advised that the reason producers and pipeline companies have had to file successive rate increases while other proposed rate increases were undecided is because of the lag of the administration of the Natural Gas Act by the Commission.

Do you agree with me on that?

Mr. McKeage. That is one of the reasons, Senator.

Senator Schoeppel. Isn't that the big reason?

Mr. McKeage. That is a large reason; but I can't agree that that is the only reason, because I don't care who you have on the Federal Power Commission, with the law as it is now I don't see how it would be physically possible for them to pass upon those hundreds or probably thousands of high rate increases.

Senator Schoeppel. Those are the things that contributed to this lag.

Mr. McKeage. Yes.

Senator SCHOEPPEL. Now let us assume, if you will, that a producer or pipeline company which has filed a second rate increase now has had actual increases in cost equal to that rate increase. Tell me why should he be penalized by the Commission's lag for what he is not responsible for?

How do you get around it?

Mr. MCKEAGE. The way you put the question, that it is a justified rate increase, of course; naturally any person is entitled to a justified increase.

Let me put it this way: he is entitled to raise his rates where he has suffered a justified increase. But the Federal Power Commission figures show that most all of these filed increases are terrifically inflated, anywhere from 60 to 40 percent. So you just can't say that these rate increases are all justified. That is where regulation comes in.

Senator SCHOEPPEL. How do you handle it in California, in your local area?

Mr. MCKEAGE. What do we do?

Senator SCHOEPPEL. About these matters?

Mr. MCKEAGE. I don't want to appear critical of the Federal Power Commission by what I say, but we get after these things and we adjudicate them because they can't put it into effect in California until we have adjudicated it.

Senator SCHOEPPEL. Still you say that they have been going up, these allowable price increases have been going up even in your own State of California.

Mr. MCKEAGE. Of course it has, Senator, and everywhere, so far as I know.

Senator SCHOEPPEL. You agree, then, that these inflated costs are the natural results that have to be taken into consideration?

Mr. MCKEAGE. Yes. There is no doubt about that. We are in an inflationary period, from certainly as far back as 1955. But it is the question, assuming all this inflation assuming all of these increased costs, it is the matter of these things going into effect without any adjudication whatever.

Senator SCHOEPPEL. Let's turn to section 5(d).

I note that section 5(d) would purport to require the Commission to complete a hearing within 1 year from the date on which it is commenced; is that correct?

Mr. MCKEAGE. That is the provision, yes.

Senator SCHOEPPEL. But I note also that there is nothing in section 5 of this present act before us now which requires the Commission to start a hearing at any particular time; isn't that right?

Mr. MCKEAGE. Between the time of filing the application and the hearing, that's right.

Senator SCHOEPPEL. There is another glaring thing that ought to be taken into consideration here, don't you think?

Mr. MCKEAGE I will say to you very frankly, Senator, that there was a variety of opinion in our association on this very particular subject which you are talking about. Of course, it is a very important one.

You will notice that there is a proviso in section 5 there that does not make this jurisdictional. In other words, whether the Federal

Power Commission can get around to hearing these things would not invalidate the decision.

It's anybody's guess as to what the Federal Power Commission can do hereafter, and how soon they can get around to these things. Very frankly, section 5 was put in there more as a congressional admonition to the Federal Power Commission to get off the dime as much as you can and get these things adjudicated. That is just about what it amounts to.

Senator SCHOEPPEL. I am glad to have your explanation on that.

My advisers inform me that the Commission now has on file producers rate increases as far back as you mentioned a while ago, as far back as 1955——

Mr. MCKEAGE. Yes.

Senator SCHOEPPEL (continuing). On which the Commission has not yet set any hearings because of that terrific backlog.

Now tell me, please, if the Commission happened not to want to let a second-rate increase of a pipeline or producer to go into effect, what would prevent the Commission, as this is drawn here, from simply not starting a hearing on the first increase?

Mr. MCKEAGE. Senator, of course you raise there a fundamental question——

Senator SCHOEPPEL. I think it is very fundamental.

Mr. MCKEAGE (continuing). Of honesty and good faith in a regulatory body.

I do believe we are entitled to go on the assumption that the Federal Power Commission will operate within the law, will try to do a good job. But I must agree with you, we could do the same thing in California. We could sit on these things and not let them go into effect. They would take us into court and all that sort of thing, but that is about what would happen in this case if they just sat on them. These people would take them into court and try to force them to hold a hearing. That is about all I know that could be done, if they did that.

Senator SCHOEPPEL. I don't want to leave the impression here that I think the Federal Power Commission is doing anything illegal. I want to leave the impression here, factually speaking, that they have a tremendous backlog of cases, and that to interject this legislation as it is written now would compound the injustice all the way down the line. That is the reason why this thing cannot be hurriedly considered, as simple as it might appear to some of the folks. And I think you will agree with me, being as fairminded as I know you are.

Mr. MCKEAGE. Of course, in Government offices it is a question of people working hard on these things. If I might be allowed to say this, Senator, we have to start somewhere on this business. By allowing the Federal Power Commission nevertheless to order into effect, or to permit to go into effect, any of these rates increases, it seems to me like over the years this thing could be averaged out and could be brought to a position of reasonableness—it is certainly in a position of unreasonableness now—and work it out that way. That was the design of the proviso in the section 3 of the bill.

In other words, with the Federal Power Commission being allowed to put these things into effect, this thing could be worked out reasonably well. That was our thought.

Senator SCHOEPPEL. I want to go down the line and develop this further.

If the Commission's docket was crowded—and it is—won't this provision, as it now stands, requiring it to complete a hearing within 1 year from the date on which it is started, be an open invitation, if the Commission wanted to, to "drag its feet" and not start these proceedings, for injustices to follow? Have you given any consideration to that angle?

Mr. MCKEAGE. Yes. We have given consideration to it, sir, but the point that I would like to make is that this is a matter which is merely an admonition to the Commission to expedite these hearings. Of course, if they won't expedite these hearings and this sort of thing continues, then that becomes a matter, I would assume, for the Congress of the United States to increase the Federal Power Commission and give them more people.

I am not one who is an out-and-out critic of the Federal Power Commission, that they can't do anything right. They are faced with a tremendous problem there, and certainly the increasing of the membership of that Federal Power Commission would tend to help. That is what the Congress does with Federal judges whenever their dockets get heavy. They increase the judges.

Senator ENGLE. Will the Senator yield?

Senator SCHOEPPEL. I will yield to the Senator from California.

Senator ENGLE. What the Senator is driving at, of course, is not an unintentional dragging of feet, but just plain not doing anything. We had that problem, for instance, in our courts in California. They would sit and sit but wouldn't decide anything. So the California Legislature passed a law saying that any judge who had a matter pending before him for more than 90 days couldn't draw his salary. That expedited the legal business in California at a great rate.

Senator SCHOEPPEL. I might say to the distinguished chairman of this committee this morning that I do not agree the Federal Power Commission has just been sitting down there.

Senator ENGLE. I didn't mean to imply that, either.

Senator SCHOEPPEL. There was a certain decision made by the Supreme Court which put practically every producer of natural gas which goes into interstate pipelines in the framework of a utility. That has compounded this tremendous caseload down there on that Commission tremendously. And they have had some difficulty meeting it down there.

Mr. MCKEAGE. I agree with you on that, Senator. You and I are in complete agreement. That 1954 *Phillips Petroleum* decision certainly did throw a terrific load into the lap of the Federal Power Commission.

I agree with you on that.

Senator SCHOEPPEL. Now we have a number of pipelines that are going to be interested. They collectively gather gas all over the United States, in some of the States through which they pass. If this rate increase proposition would be rigidly enforced, as you indicate that it could be in here, we could have a lot of inequities developing on legitimate producers who are entitled to increases being left out for an undeterminable length of time.

Don't you think that that should be given some serious consideration in this type of legislation that we are asked to consider here?

Mr. McKeage. Senator, the only answer I can give to that is that the Federal Power Commission, in exercising its equitable attitude, its discretion, of course can allow those to go into effect without adjudicating them at all, allow them to go into effect. That is the reason the provision is in the bill. We recognize that, sir. That is why that was put in the bill.

We talked with the industry people and we recognized that as a problem. So we put it into the hands of the Federal Power Commission.

We might say there are a lot of people who didn't want to put that in. They said, "Why allow the Federal Power Commission to put that in? They will be rubberstamping these rate increases and let them go in under a general rule." I don't think they will do that.

Senator Monroney. Will the Senator yield for a question?

Senator Schoeppel. Yes.

Senator Monroney. Would this be put in without a hearing or with a hearing? What would be the process?

Mr. McKeage. Without a hearing.

Senator Monroney. It would just be rubberstamped "No" or "Yes." The man would have no knowledge of whether it was looked at carefully or not. He wouldn't have a chance to appear?

Mr. McKeage. I can't speak for the Federal Power Commission, Senator. But here is what I would assume would happen.

If a producer, as Senator Schoeppel refers to, needs a rate increase, he would file with his application certain justifying documentary evidence. And the Federal Power Commission under this would be authorized to look at that and say he has made a reasonable showing, we will let this thing go into effect.

That would be the sum and substance of it.

Senator Monroney. In the process of not having a hearing—and I quite agree that a hearing would further complicate and pile up the backlog further—if the man is losing money, as you say, and the inflationary cycle is getting worse, he would have no right then to protect his property under the constitution of confiscation of property without due process of law would he? He would have no way of going into court.

Mr. McKeage. Are you referring to the situation where the Federal Power Commission would permit this?

Senator Monroney. This proviso that they can, without a hearing, as you say, approve or deny the rate, or without any evidentiary proceeding?

Mr. McKeage. Senator, speaking as a regulator, if I may be permitted to say what I would do if I were there—and this is the only way that I can approach this—if I were there I would certainly put in effect, pursuant to this bill, if it becomes law, a general rule which will provide that with regard to this particular provision that certain reasonable standards would have to be met in a filing, and if those standards were reasonably met and there was an emergency or anything of that kind shown, I would certainly allow it to go into effect. That is the thought behind it and the way in my opinion, if I were there, that I would want to see it work.

So I don't see how you can say that that would be confiscating a person's property if the agency itself that has the lawful authority to regulate has it within its power to keep confiscation from happening.

Senator MONRONEY. Thank you. Senator Schoeppel.

Senator SCHOEPPEL. I think you are touching on what is called the "deemed necessary" phrase on this. How would you suggest that the Commission proceed prior to a hearing, or how could they determine what proposed change would be necessary without a hearing?

Mr. MCKEAGE. There are two aspects of this. The one I am speaking about now would be the Bureau matter of allowing the increase to go into effect.

Senator SCHOEPPEL. Automatically?

Mr. MCKEAGE. Yes. Without the Federal Power Commission saying we find this to be reasonable.

Of course if it did go into effect it would become a legal rate which could be charged. Naturally it could be attacked. The rate could be attacked by a consumer, as always is the case, where the Federal Power Commission has not found the increase reasonable. As the act now stands, the Federal Power Commission, by inaction, can allow any filed rate increase to go into effect at the expiration of 30 days. As the act now stands, any natural gas company, which of course as you point out, Senator, includes a producer, can file a rate increase, and if the Federal Power Commission does nothing about it at the end of 30 days it goes into effect, it becomes a legal rate, but it can be attacked on the grounds of reasonableness.

Senator MONRONEY. But it is refundable after the Commission finally holds on the rate if they cut the rate back?

Mr. MCKEAGE. If they suspend and hold a hearing, yes, Senator. But I was talking about a provision which just allows the thing to go into effect.

Senator MONRONEY. But the rates today are refundable until the Commission has acted?

Mr. MCKEAGE. That is true.

Senator MONRONEY. This doesn't apply to the automatic, what we are talking about in this proviso.

Mr. MCKEAGE. That is right.

Senator MONRONEY. Under your hearing procedure, or no hearing procedure, that cuts off any refunds to the consumer, if the Commission, after plenty of time, finally decides that the rate was excessive which they have previously approved, then that overcharge, on that rate would not be refundable to the consumer?

Mr. MCKEAGE. With regard to the 30 days I was talking about?

Senator MONRONEY. This is in regard to the proviso for the quicky hearing that you talked about without evidence or without hearing, if the Commission allows the rate to go into effect. Is that then refundable or not refundable? It is on lines 17 to 21 of the committee print, page 3.

Mr. MCKEAGE. As I understand it it would be in the same category, Senator, as one that they allowed to go into effect at the end of 30 days. It would not be subject to the section 4 provision where they suspend it and hold a hearing on it. But the fact is that a rate like that that you speak of going into effect is not a rate that is what is called a reasonable rate. That rate can be attacked by any-

one on the ground that it is unreasonable, and the Federal Power Commission would have to hold a hearing on it. But I will admit, sir, that it would not be one of what is called the suspension proceedings and holding of a hearing and getting a refund on it.

But that of course is an emergency matter. In other words, to take care of a situation where a company would find itself in some difficulty and the Federal Power Commission would allow it to go into effect.

Senator MONRONEY. But it would then be refundable, even though the Commission had acted in this quicky hearing?

Mr. MCKEAGE. Do you mean if this went into effect under what we might call this emergency condition?

Senator MONRONEY. A quicky action which we are talking about. I am trying to find out what happens to the consumers' money. If the Commission is going to pass on this in this matter, and you must consider that the Commission has given some thought to it.

Mr. MCKEAGE. Yes.

Senator MONRONEY. If they say OK, the rate can go into effect, then does that suspend further repayments for the rate increase pending the final action, or does the producing company or the pipeline then still have the liability of refunding the raise when the Commission finally gets around, after 2 or 3 years, of denying it.

Mr. MCKEAGE. It wouldn't be refundable any more than the act now provides for it going into effect at the end of 30 days. As I pointed out, the act now provides that any rate increase, or any rate change, as the act puts it, is filed, the Federal Power Commission by nonaction at the end of 30 days that goes into effect, and that is not refundable either, and that is done quite often now. The only point to this proviso is to take care of that area where the producers and pipeline companies were complaining that if they couldn't get the automatic thing they would be stymied. So we wrote into the act that the Federal Power Commission would nevertheless in those cases put the thing into effect just like it is provided now at the end of 30 days.

Senator MONRONEY. Thank you. Senator Schoeppel.

Senator SCHOEPPEL. I am trying to hit a few of these questions with reference to specific sections of this bill.

Let's turn to section 4 for a moment. That is a section that would require the Commission in a certificate proceeding to make findings that a proposed price for gas is consistent with the public interest.

Mr. MCKEAGE. That is right.

Senator SCHOEPPEL. Tell me, Mr McKeage, what factors in your judgment would the Commission have to consider in determining that a proposed price is consistent with the public interest?

Mr. MCKEAGE. Senator, I don't want to appear to oversimplify this, but the Supreme Court of the United States in the so-called *CATCO* decision pointed out the standards there, as I recall them. They were simply this: That if the price at which this gas is to be sold in interstate commerce is obviously higher than the general prevailing price in that particular field, then the Federal Power Commission ought not to certificate. In other words just piling inflation upon inflation.

Another thing: If by certificating that proposed sale of gas because of the provisions in the contracts of other gas sold in that

neighborhood, or elsewhere, it would trigger these so-called favored-nation clauses—in other words it would be like this:

If X pipeline company is going to buy gas from a particular producer, and this pipeline company has many contracts, as they usually have, with numbers of other producers—maybe in the same field or in other fields—if in the contract of this pipeline company with several producers the buying of this gas from this other producer at a particular price would trigger a lot of these favored nations clauses which would mean that the gas which this pipeline company is buying at a par price would be jumped up very substantially, the Supreme Court points out that would be a good reason for not allowing it to be sold at that, what they would call unreasonably increased price.

And there are several others that just don't come to me. That would be some of the reason, Senator, for putting a price ceiling on it, which of course the Federal Power Commission has done on several occasions.

Senator SCHOEPPEL. I take it that what you are attempting to do here is to give some of the specific reasons that the Commission must consider under that *CATCO* decision?

Mr. MCKEAGE. Yes.

Senator SCHOEPPEL. Do you think we ought to spell out some of the factors in this act?

Mr. MCKEAGE. Of course, the decision of the Supreme Court of the United States is there as an example, and the Federal Power Commission, knowing of course that this is written into the act, based upon that decision—whether they know it or not, they can turn to that decision and use that decision, which is of course the final authority at the present time, as a standard by which to judge whether it is consistent with the public interest.

I do believe that that would be better left with the Federal Power Commission than to make the statute inflexible by writing in specific provisions. I think it would be better.

Senator SCHOEPPEL. Under your understanding of this section 4, would a certificate case involve all the issues of a full-blown rate case?

Mr. MCKEAGE. No, sir.

Senator SCHOEPPEL. What issues tried in a conventional full-blown rate case would not be necessary in certificate cases under this section 4 of this bill?

Mr. MCKEAGE. You have brought up a very good question.

Senator SCHOEPPEL. It is an important question for us to know the answer to, sitting where we are.

Mr. MCKEAGE. I agree with you. That is a matter that has been discussed in many Federal Power Commission decisions and was particularly discussed by the Supreme Court of the United States in the so-called *CATCO* cases. All I can say is that I subscribe, in what I am about to say, to what the Supreme Court of the United States says, and that is that it is not necessary to go to a full-blown rate proceeding; that by a general view of the field and the prices that are paid for natural gas in that field, and in fields of comparability, the Commission can determine whether a price is so obviously out of reason without going into cost data or anything like that, so ob-

viously out of reason, as the Supreme Court points out, it could hold it is not consistent with the public interest. We had that in the *Transwestern Pipeline Company* case coming into California where we urged that the Federal Power Commission agree with us to put a price ceiling on the gas. And it reasoned that the price was obviously out of line, and if you allow that price the next price that came along would be a little more.

It is a good question and it certainly is one that would lend itself to regulatory experience.

Senator SCHOEPPEL. The very thing that you are answering here leads me to ask this next question. Assume that we have a certificate case that involves the sale of gas to a pipeline by, say, two producers—and that is common, as we all know.

Mr. MCKEAGE. Yes, sir.

Senator SCHOEPPEL. A and B are in the same field, let us say. Assume that A's cost is 15 cents per thousand cubic feet, and B's cost is 24 cents per thousand cubic feet. What price would you suggest that the producer be authorized to charge?

That is going to come up.

Mr. MCKEAGE. Yes. In these certificate cases, as for instance in the *Transwestern* case, I think that there were 10 different producers involved in that case. What the Federal Power Commission did was to consider each of these contracts separately, and they put a ceiling on one batch of gas and a different ceiling on another batch of gas, depending on the special circumstances of each case. That is the way they do it.

Senator SCHOEPPEL. What factors would be considered there?

Mr. MCKEAGE. Certainly you would have to consider the question of cost. I believe that cost is a very vital factor. Some people don't seem to think so. I think the question of cost is a vital factor. But I would assume that the Federal Power Commission would—and I think that is the way it does operate—follow a rule of reasonableness in that regard, and the admonition in the *CATCO* case decision of the Supreme Court to put on price ceilings only when they are obviously out of line.

Of course, it is like due process of law or anything else. They are general terms and that is why you have judges and regulators to trace in what should actually be done under the general rule.

Senator SCHOEPPEL. Mr. McKeage, you have mentioned the matter of cost. I can see very quickly why you do that because it would have to be taken into consideration. Let me ask you: I am sure that you and I both know that the Commission has spent almost 7 years trying to determine what producers' costs are, without a very great degree of success. It's a knotty problem, isn't it?

Mr. MCKEAGE. I certainly agree with you, Senator, it is a problem. All of us who practice in this field realize it is a great problem, but it is one that has to be met and admired if we are to proceed, but it is. Reasonable men violently disagree on it.

Senator SCHOEPPEL. I come back to the proposition: If the Commission has to consider costs in a certificate case you have then made every certificate case a full-blown rate case, in my humble opinion. Where would this Commission continue to land with a bog-down situation like that?

Mr. McKeage. Senator, many people agree with you, I will say in all candor. But the Supreme Court says that it is not necessary to go into a full-blown rate case, and in those cases where the Federal Power Commission actually has placed price ceilings it has not gone into a full-blown rate case. That is the best that I can say.

Senator Schoeppel. I have a few more questions but I don't want to monopolize the entire time here. Some of these sections, as I have pointed out here, to my way of looking at them, are very serious ones for us to consider if we are going to put them into legislative form.

I note, of course, that you represent the great State of California here.

Mr. McKeage. Thank you, sir.

Senator Schoeppel. And that you have had great experience along this line of activity. I notice here quickly, on page 2 of your statement, you say that California is now importing a daily average of 2 billion 400 million cubic feet of natural gas and it is conservatively estimated by our engineers that, 5 years from now, California will be importing 3 billion 400 million cubic feet of natural gas daily.

Mr. McKeage. Yes.

Senator Schoeppel. The way it looks to me, this large present demand and large expected increase in the near future is compelling evidence that consumers in California consider the import of natural gas at current import prices to be satisfactory and in some instances a bargain.

Mr. McKeage. I must agree with you; yes.

Senator Schoeppel. And that is true despite the fact that these increases have come down the line?

Mr. McKeage. Yes, that is quite true.

Senator Schoeppel. Millions of consumers are dependent upon natural gas, as my distinguished colleague, Senator Monroney, pointed out, from the Bureau of Mines statistics—which I have generally found very reliable. The Bureau of Mines report of 1959 and 1960 shows that there were some 33 million consumers of natural gas in this country.

As a representative of your State and a member of the State commission, do you believe it is in the public interest for Congress to take action which might jeopardize the continuing adequate supply of natural gas on the part of producers and suppliers and wildcatters, with their costs going up?

Mr. McKeage. Senator——

Senator Schoeppel. Shouldn't we have to take those things into consideration?

Mr. McKeage. Of course, you do. There is no doubt about that. But, of course, our position is that you can take those things into consideration and you can administer at the same time reasonable regulations that will have a tendency to keep this thing from getting out of hand. That is the sum and substance of it.

Senator Schoeppel. I was interested in what Olaf Nealson, Assistant Chief, Bureau of Rates and Certificates in the Federal Power Commission, had to say, I believe, on the fifth day of this month, to a section of your association. He stated that the natural gas reserves life index—that is the number of years, as you and I know, that the

present reserves will last at current production rates, and I say current production rates—is falling, and that the supply picture is not at all optimistic.

I want to ask you this question, and I ask myself this question: Do you believe that this bill will encourage the search for natural gas?

Mr. McKeage. Senator, I must say that it will not prevent the search for natural gas. I can remember well when the Natural Gas Act was being considered for enactment. The same argument was made then, that it would stifle initiative, that it would be calculated to cause gas not to be produced and that sort of thing. Certainly a good argument could be made. Btu this country seems to be of such dynamic quality, if you want to put it that way, it can suffer regulations and get along all right.

Senator Schoeppel. That is assuming that we can continue to discover more gas reserves through deeper wells which involve additional costs, and all of the things which pyramid some of the actual honest, sincere cost factors.

Mr. McKeage. Yes, there is no doubt that they suffer additional costs. But it looks as if this thing is going in the other direction, and something like the Canadian gas fields will happen, or something like the gas discoveries in northern California and southern California. It just seems like there is always something there that experience shows comes to hand.

Senator Schoeppel. I was interested in checking where your statement, at several places in your statement, I think pages 4, 5, and 6, you referred to the increased rates which have been collected.

Mr. McKeage. Yes.

Senator Schoeppel. At one point, I think on page 6, the first page, you do concede that these increases are subject to refund if found reasonable. I fail to find, however, that you mention that these refunds must be made with interest at the rate of 6 percent, and not too awfully long ago these refunds must be made on the basis of 7 percent.

Mr. McKeage. That is right, yes. No question about it.

Senator Schoeppel. I wonder, it kind of interests me that you made no reference to that. Who wants to pay a high rate of interest? In other words, isn't that a precautionary proposition on the part of a lot of these producers and distributors who might come in for rate increases, to be sure that they are in line with what actually can be shown to be justifiable?

Mr. McKeage. I agree with you that they upped the interest rate to 7 percent, and certainly that ought to have some effect on retarding the filing of obviously inflated rate increases.

Yes, I agree with that, it ought to have some effect.

Senator Schoeppel. I think you made reference to a number of increases by the pipeline companies serving California?

Mr. McKeage. Yes.

Senator Schoeppel. Would you be here today, Mr. McKeage, sponsoring specifically section 3 of this bill if the Federal Power Commission had disposed of each of these increase cases within 5 or 10 months after the increases were filed?

Mr. McKeage. I think the answer would be "No, I would not be here."

Senator SCHOEPPEL. Wouldn't you have been of the same view if, after hearing, the Commission had found each of the increases had been just and reasonable?

Mr. MCKEAGE. Well, I can't say that I always agree with the Federal Power Commission's findings as to whether a rate is just and reasonable, because we have taken appeals from the Federal Power Commission—I might say one—on this ground of just and reasonableness.

Senator SCHOEPPEL. Isn't the real crux of your complaint that the Commission has not acted expeditiously, and not the particular amounts of the increases really sought? Isn't that really the burden of your approach here?

Mr. MCKEAGE. It certainly is one of the reasons. There is no doubt about it. In other words, the situation is brought so forcefully to the attention of the public by the present situation. But I, nevertheless, believe that our procedure in California is better than this procedure of allowing these rates to go into effect subject to refund whenever they get around to it, because that sort of thing invites a regulatory board, I believe, to sort of let things go. If they are faced with the proposition of knowing that here is a company that maybe needs some relief, that before that company can get relief it will have to act, in my opinion, it will cause a regulatory board to act rather than to say we will let it go into effect and adjudicate when we get around to it.

Senator SCHOEPPEL. Looking at this bill as a whole, frankly, it seems clear to me that it would make the Natural Gas Act much more restrictive on producers and pipeline companies, and the Commission here as well.

Do you generally agree with me on that?

Mr. MCKEAGE. It certainly would restrict the, small, I say, ease with which these rate increases are filed, allowed to go into effect, and staying into effect for 5 or 6 years. Certainly, it is calculated to restrict that, yes.

Senator SCHOEPPEL. In touching on the gas price situation that Senator Monroney talked to you about, and questioned you about, in your own State of California, we know only what we read and what is reported in the newspapers. You, of course, follow it much closer and much more accurately than we do here. But I am advised that the average price received by California producers in 1959 was about 25 cents per thousand cubic feet, and that gas is now being contracted for in California in a number of places at prices in excess of 29 cents per thousand cubic feet, and that there is likely to be increases on that to 34 cents next year. I know you are familiar with these facts.

You can readily understand how producers of gas and developers of the gas reserves with these inflated costs are naturally interested in this bill and what Congress is going to do. We are not only legislating here for California or for Kansas or Oklahoma, but we are legislating here matters that are going to have to be lived with by the men in this industry who are putting out the money to explore and expect a reasonable rate of return. We find in the State of California—I don't mean to be critical about this—that your own producers in California, and explorers for gas in California, are getting these prices. Other producing States say to many of us: "Why should we be jeopardized in these producing States, and why should we sell our gas to the pipelines with these restrictions?"

How can you answer that?

Mr. McKeage. Senator, of course the matter of producing natural gas and selling it is a business proposition. One has to assume, as the Supreme Court said, the cost of the risk of the business. I understand the points that you make, that some of the people complain in these States, "Why should we allow California to gobble up all of our gas and in their own State the producers are probably getting more?"

Of course, you have the same difficulty there as you have with railroad rates, Senator. For instance, California gets a rate so it can compete with Florida grapefruit, although the shipment from Florida is only 800 miles and the shipment from California is maybe 2,500 miles. But the point is simply this: That we have to consider the price that we have to pay at the border. These pipeline companies are the ones that have to be concerned about what they pay the people in Kansas and Oklahoma and Texas. Of course, that is the supply. But we have to be concerned about what it costs our distributing companies at the border. And the prices, as I said, run around 33 or 34 cents, and it is constantly going up, there is no doubt about that.

If the pipeline companies are able to get the gas in these other States at prices which are even lower than in California, of course, we are faced with the practical proposition there of these people being able to deliver their gas right there close to us and at the same time our distributing companies are paying those prices at the border. So it is just a normal and natural business proposition that these gas producers of California are going to try to get as much as they can for their gas.

But, as I say, our figures show that they are not yet making the grade as far as the border price is concerned.

Senator Monroney. Will you yield?

Senator Schoeppel. Yes.

Senator Monroney. I thought a while ago you were talking about a fair price being based on the relative cost of the product. Now, you say because the gas is there, the California producer should, perhaps, be allowed to take an extra profit because there is no transmission cost. I don't see how you can ever arrive at any national gas policy if one State is going to stand out and say we are going to allow the border price because there is no transmission on this, and then roll back all other prices to a point that is a strict cost basis.

We are talking about being consistent with the public interest. This is a new rule of law that you are proposing in this bill. I don't know how you define it. It deviates considerably from the old "just and reasonable" rule laid down by the courts.

Now, because California gas is in place, without reference to cost, should it be doubled or perhaps tripled if these producers get what they wish from gas produced in other States?

Mr. McKeage. Cost is one element of a rate, and I am one of those who believe that cost ought to be a large element of rates.

Some people don't agree. You have to take, as I was trying to illustrate with the rail rates, you have to take into consideration competition, market availability, and many, many other items.

So you have to take into consideration all of those elements in finally arriving at what you would call a reasonable rate. That, of course, is in a rate case, when you are adjudicating it. But if you are referring

now to section 4, about consistent with the public interest, all I can say to you, sir, is what I said to Senator Schoeppel, that the rule laid down by the Supreme Court of the United States appears reasonable to me, and if that rule is followed, of course, you would be within the law.

Senator MONRONEY. But you are enacting that supposedly into law but in different language, are you not?

Mr. MCKEAGE. Yes.

Senator MONRONEY. Consistent with the public interest, is that a term of art with ratemaking cases?

Mr. MCKEAGE. Consistent with the public interest, yes.

Senator MONRONEY. I thought it was all just and reasonable?

Mr. MCKEAGE. That is a term of art which appears not only in regulatory statutes but it appears in many statutes consistent with the public interest, and it is left up to the particular agency of Government to define what that is and to act within it and to see that that is not an unlawful delegation of authority.

So it is a well-understood term that is said to be constitutional.

Senator MONRONEY. Consistent with the public interest, and replacing just and reasonable? Doesn't a rate have to be just and reasonable?

Mr. MCKEAGE. In section 4, where you are certificating the gas, you do not have to find that it is a just and reasonable rate. The Supreme Court points that out very definitely.

In other words, it is not a rate case.

Senator MONRONEY. Will you give us that citation?

Mr. MCKEAGE. That is the *Phillips Petroleum* case, decided in 1954 by the Supreme Court of the United States. I just do not have the citation here.

Senator MONRONEY. I can find it.

That is all that I have.

Senator SCHOEPPEL. Mr. McKeage, just one or two more questions.

Mr. MCKEAGE. Excuse me just a moment. You were asking me about section 4, Senator.

Senator MONRONEY. That is correct.

Mr. MCKEAGE. The decision is the CATCO decision, and not the Phillips decision, and that was decided by the Supreme Court. I think it is the *Atlantic Refining Co.* v. *Federal Power Commission*, and it was decided last year.

Senator MONRONEY. And the term of art consistent with the public interest in that case replaced the standard of just and reasonable?

Mr. MCKEAGE. They held that the finding must be that the price at which it is to be sold in interstate commerce will be consistent with the public interest, that is right.

Senator SCHOEPPEL. Do you think there is a difference between the two standards?

Mr. MCKEAGE. Well, I personally believe that there is. The Supreme Court says there is.

Senator SCHOEPPEL. According to my information, Mr. McKeage, and going back to your statement again where you talk about the El Paso successive rate increases, I have been advised that the average price paid by El Paso in 1960—that is last year—to producers outside of California for gas going into your State of California was 13.9 cents per 1,000 cubic feet.

Mr. McKeage. Senator, I have not those figures here. I suppose we have them in our office. I would say, just based upon what experience I have, that that might not be as an average figure out of line. Of course, that includes all these contracts starting back with 1949 and going on up.

Senator Schoeppel. It is this 13.9, or whatever actual figure would be calculated, and the rate increases which put it into effect, about which you are complaining now, and it is really not the California price of 25 or 34 cents; isn't that correct?

Mr. McKeage. Senator, I don't know how to answer that. You say your figures show that this price is around 13 cents, and that the California price is around 25 cents.

Senator Schoeppel. 25 to 34 cents. Let's leave some leeway; 13.9 outside, may be 14½. But I know within that range, from reliable sources, statistical information upon which our own Government relies, that is about the range in which it will fall.

Isn't that what you are really objecting to, and not the California price as such?

Mr. McKeage. Well, if we object to the California price we have a very good way of redressing that in a rate case. The Federal Power Commission, of course, has jurisdiction over the rates which these pipeline companies charge. But I do not believe it is quite correct to say that that is what I am complaining about.

What we are complaining about here is this business, whatever the price may be, of allowing these rate increases to go into effect every five months just like a taxi meter by operation of law. That is what we are complaining about.

Senator Schoeppel. Getting back again to the fundamental thing upon which price increases are based, it is the cost factor which people are interested in compensating for, when they come legitimately before the Federal Power Commission, for these increases. Do you agree with me on that?

Mr. McKeage. Yes.

Senator Schoeppel. Do you think that it costs only about half as much for a producer to find and produce gas in Texas, Oklahoma, Kansas, Louisiana, as it costs in California?

Mr. McKeage. Senator, I am not an engineer and I certainly am not a specialist on that. But I do generally know that it might be tremendously different in different places, according to the nature of the ground, the depth of the gas in the ground and all that sort of stuff. It might be tremendously different, the cost of producing.

Senator Schoeppel. That is all that I have.

Senator Engle. Mr. McKeage, I was interested in your answer to Senator Schoeppel that you would not be here if this Commission had made its decisions in a timely fashion, is that right?

Mr. McKeage. That I think would be a practical fact, yes, if this had not been brought to our attention so violently, if these things had been adjudicated and the prices of course at which they adjudicated it were considered by us to be reasonable, we would not have anything to be complaining of.

Senator Engle. But what you are saying is that the present procedures make it for all practical purposes impossible for the Commission to keep up; isn't that right?

Mr. McKeage. That is it.

Senator Engle. In other words, they can slap on these applications just as fast as they want to?

Mr. McKeage. That is right.

Senator Engle. And they will go into effect automatically?

Mr. McKeage. That is right.

Senator Engle. And so if the gas companies want to overload the Commission, all they have to do is load up the typewriters and fire in the applications, is that right?

Mr. McKeage. That is right. They can file a rate increase just according to their discretion. They can say it is 15 million or 50 million.

Senator Engle. So if they had 10 pending and that was not bogging the Commission down they could file another 10 and bog the Commission down, is that right?

Mr. McKeage. That could be done. I am not saying they are doing it.

Senator Engle. The problem seem to be that the Commission does not decide these cases fast enough. There are two ways to stop it: either you slow up the number of applications or you speed up the Commission, is that right?

Mr. McKeage. That is right.

Senator Engle. Maybe we ought to work on both ends of this horse?

Mr. McKeage. It could be.

Senator Engle. You have not seen the comment filed by the Federal Power Commission in its report on S. 666, have you?

Mr. McKeage. No, I have not, Senator.

Senator Engle. Without objection, at the beginning of these proceedings the record will reproduce a copy of the bill, and immediately following the copy of the Federal Power Commission report.

Senator Engle. Mr. McKeage, can you analyze the suggestions made by the Federal Power Commission, in which it makes suggestions with reference to each of the sections in this bill, and submit a supplemental statement?

Mr. McKeage. I would be very happy to.

Senator Engle. As to your comments on those?

Mr. McKeage. I would be happy to.

Senator Engle. I would ask you to do it now, but I realize that you probably would not have time to give it thought and preparation.

Mr. McKeage. No, I haven't the slightest idea what is in it.

Senator Engle. Any objection to that?

Senator Schoeppel. I have no objection.

Senator Engle. Without objection, you will be permitted to supplement your statement, with a comment upon the specific recommendations made by the Federal Power Commission in its report on this bill under date of May 23, 1961.

Senator Monroney?

Senator Monroney. I have one further question in regard to your earlier testimony.

Would you give us the dates of any rate cases that you have had regarding the producer's price of natural gas for the last 4 years, where you have considered it to be in the public interest for California?

You can put that in the record if you wish. I am sure your engineers would have it.

Mr. McKeage. Do you want rate cases decided by the California Commission?

Senator Monroney. I want rate cases decided by the California Commission regarding the continued escalation of your California wellhead price.

Mr. McKeage. That would only come in incidentally, Senator. The best I could do would be to give you copies of the decisions that we have rendered in these cases.

Senator Monroney. Would you say that the California Commission does not make any effort whatsoever to regulate the price of wellhead gas in California?

Mr. McKeage. You are asking a question of whether we have authority to do it?

Senator Monroney. If you do it, yes.

Mr. McKeage. We thought we had some authority to do it in a certain context, and we undertook to do that sort of thing. But the supreme court of our State held that it did not reach that sort of matter, and we of course are concerned about it, about getting some legislation on it.

Senator Monroney. So it is completely unregulated and if they wish to increase it to the border price and absorb as profits the transmission cost of other gas, under the California law they have the right to do it?

Mr. McKeage. No, I cannot agree with you at all, because when our distributing companies come to us for a rate increase, if we think they are paying too much to the California producers we could cut it down.

Senator Monroney. Then you would have to take off the high distribution cost you already have of about 50 cents a thousand from the city gate to the burner tip, one of the highest in the country, and that would have to come off of that?

What I am saying is that you are asking the Federal Government to pass laws and to change laws giving the Federal Power Commission the right to regulate everybody else's gas, but California today has no law with a regulation directly at the wellhead of the California——

Mr. McKeage. I agree we have no law. The supreme court said that that law did not apply. Although it said so, the supreme court said it did not mean that. We can get at it by the process, and we are certainly bearing down on our distributing companies. That is a matter of public record in public decisions.

We have told them if they do not get this California gas at what we consider to be a reasonable price, we will disallow it in their operating results.

Senator Monroney. Then they will take more 10-cent gas instead of the 25-cent gas?

Mr. McKeage. Senator, I suppose we just do not agree on the premise there. But we try to do the best we can in regulating all things.

Senator Monroney. Has the Governor of California, or your Commission, asked for this power and is there a bill pending in the California Legislature?

Mr. McKeage. There is no bill pending now. There is a bill pending that would approach it in some way, shall I say, in an indirect way, but we thought that the provision of our act did give us such authority, and we undertook to exercise it. But they took us into court and reversed us. And now we are face to face with the proposition—and I am free to tell you that the Governor has discussed it with me and with others about getting this there with what we might call a little Federal Gas Act.

Senator Monroney. But there has been no legislation brought to pass in either House in California to deal with this specific question?

Mr. McKeage. No.

Senator Monroney. Would your legislation be on a cost basis for regulation at the wellhead?

Mr. McKeage. All I can say, sir, is that the way the Commission in California regulates, it certainly takes cost into consideration very prominently and, generally speaking, it is referred to as a cost of service. That is the way we refer to it.

Senator Monroney. Cost of service basis? Then they would be under the same rule as the Federal Power Commission?

Mr. McKeage. Yes.

Senator Monroney. If that is an equitable way of deciding it?

Mr. McKeage. Yes.

Senator Monroney. Wouldn't it be a good idea, then, since the Federal Power Commission cannot touch intrastate gas in California, to incorporate your California gas in the same way you are asking to be incorporated in the Federal?

Mr. McKeage. Of course, I don't know what the Legislature of California will do. But any bill that I would suggest would be a bill that would be just the same as our own act with regard to the distributing companies, that these things could not go into effect until after the Commission had found——

Senator Monroney. That is not what I asked.

I asked about the cost factor.

Mr. McKeage. Are you asking if we take into consideration the cost?

Senator Monroney. If you would recommend and support a proposal that the same cost factors that are used very carefully by the Federal Power Commission—and this is one reason for the regulatory lag, is the difficulty of ascertaining cost factors—if those were applied to California-produced gas as well as gas that you buy elsewhere.

Mr. McKeage. We certainly proceed in California upon the cost basis. There is no doubt about that.

Senator Monroney. And you would like to see the Federal Power Commission's methods brought into California pricing on the wellhead gas?

Mr. McKeage. Well, now, of course I don't agree with all that the Federal Power Commission does or says about that sort of thing, Senator. I certainly would say that if the Legislature of California saw fit to enact that type of regulation, certainly we would approach it upon a cost basis to start with. There is just no question about it.

Senator Monroney. And you would ignore the proximity factor and the desire of the producers to be credited with the border price? In other words, you are against a border price for California producers?

Mr. McKeage. Senator, of course it is difficult sitting here to answer a hypothetical question like that.

Senator MONRONEY. It is not very hypothetical.

Mr. MCKEAGE. Well, you are suggesting something that we don't have at least before us now. But the point is that if your question is what would we do if the Legislature of California enacted the so-called wellhead price regulation of gas, obviously we would do what we understand the Supreme Court and the courts have generally held, as in the *Detroit* case, that we would have to start—this is with regard to wellhead price—we would have to start with a theory of cost, to start with.

We might use some other thing in connection with that, but you have to start with cost. That would be my philosophy.

Senator MONRONEY. One other thing: I would like in reference to the line of questions by the distinguished chairman of the committee regarding the intention of the rate of filing cases, having a great many natural gas producers in my case, the continual complaint that I receive is that they would like to have their prices regulated and closed and know what they are doing. They are operating in an area of complete uncertainty. They are the ones who are pressing me in every way possible with letters saying why can't we get decisions on these cases. They have been pending 2, 3, or 4 years, and we would like to be off the hook and know what we are going to do because we are paying 6 and 7 percent on these collections. So I cannot agree that the State that I represent wants these rate increases to pile up—and I expect Senator Schoeppel gets the same kind of rather bitter mail—to try to clean up that backlog. Instead of cleaning up we are running behind. We have more cases to adjudicate this year than last year, and more last year than the year before. So we are digging ourselves into a hole.

It seems to me that this bill, instead of clarifying the matter, puts more duties and more work and more problems on the Federal Power Commission to increase the regulatory lag, rather than decrease it.

Senator ENGLE. Would the Senator yield?

Senator MONRONEY. Yes.

Senator ENGLE. I observe the Commission says in its report on the bill that—

The Commission has found that on the average nearly 40 percent in dollar amount of the claimed increases of interstate pipeline companies were improper and not allowed.

What I am saying is that it is possible to pile on these applications until you swamp the Commission. I am not saying you do it, but it is also possible, as Senator Schoeppel has said, for the Commission to just drag its feet and not do anything. That is the reason, as I mentioned earlier, that we passed a law about that saying a judge couldn't have a matter pending before him for decision more than 90 days, and we got some speed in the law out there. That is why I mentioned earlier that it seems to me that you either have to slow down the applications or you have to speed up the Commission. In any case you have to get even some place or other. That is why I said maybe we ought to work on both ends of this proposition.

Senator MONRONEY. I think the Senator refers to pipelines instead of producers. I am talking about the producers actually attempting, crying, using every legal means to speed this up so that they will know where they are. They can't get action because the backlog continues to

increase because of the complexities of the bill and sometimes the appeals that are made on every decision taken by the State regulatory bodies.

I don't think there are many cases that the Federal Power Commission has decided that this body that is appearing here today has not taken the appeal on through the courts.

One more question: You began importing gas only a few years ago, did you not? Most of your lines and big supplies have come in since that time?

Mr. McKeage. We started around 1949.

Senator Monroney. You know that because of the high amortization cost during the early years of the construction of a long line, the custom has been to make lower rates for the first 5 years to help absorb this amortization, and then as the amortization is cut down on the long line, the fixed price for periodic adjustment does occur in the commitment of gas from the producers.

Mr. McKeage. I know that the contracts are varied and have various provisions in them. They are certainly not all uniform, Senator.

Senator Monroney. They are bound not to be uniform because the long lines are combining the gas country trying to get the necessary supplies so that the people who are buying the gas at the other end will have not only an adequate supply but an adequate reserve for unusual weather conditions for increased consumption.

This bargaining, regardless of the Federal Power Commission, is going on by those who seek supplies for such States as California. So it is difficult to get uniformity.

Mr. McKeage. Yes.

Senator Monroney. When the bargaining occurs they have to take up with the Federal Power Commission approval of the rate as being a just and reasonable rate, consistent with the cost of production and gathering of this gas in these various fields.

I have no further questions.

Senator Engle. Let me ask this last question, if I may: You stated, Mr. McKeage, that some of these cases have been pending since 1955?

Mr. McKeage. Yes. As a matter of fact, the oldest one we have was filed in October 1954, and at the end of the suspension period, I know it went into effect on April 15, 1955. That is the oldest of the four.

Senator Engle. Let me ask you what would happen if I were running a gas company in 1955 and decided I would take a shot at a higher rate, so I filed it, and within the period of time it came automatically into effect? Six years went by and we got to a hearing and the Commission said the rate wasn't justified when you filed it, but in the 6-year interim inflationary increases and cost increases have made your rate justified now. What would they do? Would they require a refund as of a time during the 6-year period when the rate was unjustified? How would they determine the cutoff point?

Mr. McKeage. They have what is called a locked-in period. For instance, Mr. Chairman, the 1955 increase was supplanted, as I recall, by an increase that went into effect on January 1—I am recalling now—1957. So under the law, the way it is established, if the Federal Power Commission is undertaking to adjudicate, from the stand-

point of a reasonable rate, that first increase, they would compute that from April 15, 1955, up to, say, January 1, 1957. That is called a locked-in period. Then what they have to do under the law is to adjudicate that from the standpoint of reasonableness as of that date.

As I think you pointed out, Mr. Chairman, it makes it a little difficult as of today, when probably inflation has already overtaken that increased price, to say today, as of 6 years ago such and such would have been a reasonable rate. Of course, obviously it works favorably to the pipelines' interest and against the consumer interest. At least that is my humble opinion. It would be difficult to adjudicate it as of that date.

Senator SCHOEPPEL. Mr. Chairman, I would like to ask one other question.

The reason I ask you this is we have had some statement made here that the natural gas company had filed for and put into effect successive rate increases without any limitation except on their own self-restraint.

Mr. MCKEAGE. That is right.

Senator SCHOEPPEL. That statement may have been intended to be limited to the pipeline companies who sell to the distributors under the service agreements, but it was not so limited. I want to make that distinction for this record.

As to the producers, and they are the big ones in this field who stand the initial cost, isn't it a fact that the producer is limited by his contract?

Mr. MCKEAGE. Of course when you introduce that facet, obviously both the pipeline company and, if you want to call it, the producer—they are all of course natural gas companies, as you pointed out, Senator—they are of course limited by the contracts. There would be no doubt about that.

Senator SCHOEPPEL. The producers are limited by those contracts. Now, in order to get successive increases, even to put into effect, subject to refund—I think the record ought to be crystal clear on this—a producer must have a contract under which the purchaser has agreed to pay what? The increased price in addition to the limitation of this so-called self-restraint referred to here. Isn't that right?

Mr. MCKEAGE. Yes. Of course the practical effect of it is, as a result of decisions of the Supreme Court of the United States, most all of these contracts that these pipeline companies have with the producers are such that they can file rate increases. Of course that is what hits us, is the pipeline company. They can file rate increases even though the producer doesn't agree to the rate increase, and put them into effect subject, of course, to being later adjudicated and refunded.

What the producer, who is also a natural gas company, can do, likewise would be governed exactly by that same rule of the Supreme Court of the United States.

Senator SCHOEPPEL. But it is based exactly on a contract. If he hasn't got a contract he has no standing?

Mr. MCKEAGE. He would have to be bound by his contract under the ruling of the Supreme Court of the United States.

Senator SCHOEPPEL. I wanted that in the record because I think there was a misconception.

Senator MONRONEY. I would like to point out that the burden of this testimony seems to be that the bill is aimed at the pipeline rather than the producer. At the end of the fiscal year 1960 there were pending in the Commission 3,325 suspended applications by independent producers for a total of nationwide price increase of $170 million. On the same date there were pending in the Commission 110 suspended applications by pipeline companies for rate increases totaling $462 million. In other words, there were 33 times as many cases pending on the producers for about less than one-third of the cost increase, and the action on the pipeline companies apparently has been locked up, where the great increase is asked, by this difficulty in dealing with the individual producers who have generated 3,325 cases.

Senator ENGLE. Maybe we ought to broaden our net a little here.

Mr. MCKEAGE. Senator, the bill applies to all natural gas companies and that would include both pipelines and producers. There is no question about it.

Senator MONRONEY. Do you want it that way or would you be satisfied to deal with the pipeline companies?

Mr. MCKEAGE. Senator, let's put it this way: If I had to trade on the proposition——

Senator MONRONEY. I am not offering a trade. I don't think it will work either way. I am just asking.

Mr. MCKEAGE. I certainly would rather have it against the pipeline alone, if that is the best we could do. But I think it should apply to all of them, because if you apply it to a segment and leave out a segment, of course you have difficulty.

Senator MONRONEY. We already left out a pretty good 25 percent segment in California.

Senator ENGLE. We will stay within our own borders.

Senator MONRONEY. I have nothing further.

Senator ENGLE. Thank you very much, Mr. McKeage, for your very fine statement.

(The prepared statement of Mr. McKeage follows:)

My name is Everett C. McKeage, I am the president of the California Public Utilities Commission and have been since 1959. I represent that commission in my appearance before this committee today.

Prior to 1959, I was, for 15 years, the chief counsel of that commission. During World War II, I was the Chief Hearing Commissioner for the Office of Price Administration in the Pacific coast territory, including California, Oregon, Washington, Nevada, and Arizona. For a number of years, I was a judge of the Superior Court of the State of California, serving in San Francisco. I have been closely connected with regulatory work for many years and have written a number of articles on that subject which have been published in such professional and industry journals as the American Bar Association Journal, Public Utilities Fortnightly, California State Bar Journal, California Law Review, Traffic World, and other such publications. I am the author of "Public Utility Regulatory Law," a textbook on that subject.

I greatly appreciate the privilege and opportunity of appearing before this committee in support of Senator Magnuson's bill, S. 666, which would amend the Federal Natural Gas Act in several respects.

As the chairman of the subcommittee which wrote this bill at the direction of the National Association of Railroad and Utilities Commissioners, I can say that I am very familiar with its provisions and the objectives which this proposed legislation seeks to achieve.

Since about 1948, I have been closely associated with this natural gas problem at the Federal level, due to the fact that my State, California, began, about that time, to consider the importing of natural gas for the use of its inhabitants. Very probably California imports more natural gas than does any other State,

according to the Oil and Gas Journal, March 13, 1961, issue, and surely it will occupy such status in the very near future, if it is not actually in that category at the present time. Therefore, it readily can be seen why California has a vital interest in this natural gas problem.

Starting with the first importation of natural gas around 1948, the gas distributing companies of California are now importing a daily average of 2,400 million cubic feet of natural gas and it is conservatively estimated by our engineers that, 5 years from now, California will be importing 3,400 million cubic feet of natural gas daily. At the present time, California imports between 75 and 80 percent of all natural gas which is consumed within its borders. Gas, other than natural gas, used in California is relatively negligible in amount. The annual bill which California's gas distributing companies are paying for imported natural gas approximates the vast amount of $320 million.

Presently, two large pipelines are supplying this out-of-State natural gas to California. Another such pipeline has been authorized, and is now being constructed, which will bring huge quantities of natural gas to California from the Canadian fields in the Province of Alberta. Two other large pipelines are now seeking entrance into California's gas market. Judging the future by the past, it would be conservative to estimate that the gas distributing companies of California will be paying an annual bill of three-quarters of a billion dollars for out-of-State gas within a period of 10 years or less. When such staggering figures are translated into the cost to the ultimate gas consumer of California, they increase substantially because of the added margin of profit accruing to the distributing companies.

Four natural gas rate increase proceedings, affecting California, have been filed with the Federal Power Commission by one pipeline company. The earliest of such proceedings was filed October 15, 1954, and the increase of rates requested went into effect April 15, 1955, by operation of law. To date these increased rates in that proceeding have not as yet been finally passed upon from the standpoint of reasonableness. The first hearing in that proceeding was held in July 1956, an examiner's decision was issued in March 1958, and the decision by the Federal Power Commission was rendered in August 1959. From the date of the first hearing to decision by the Federal Power Commission, more than 3 years elapsed. The decision of the Commission was reversed on appeal and these increased rates are still being collected, although they have not been determined to be reasonable. I do not believe this to be an extreme case. It does illustrate, however, the present evil subsisting in the Federal Natural Gas Act. Natural gas companies profit by delay. While the Federal Power Commission may be asked to share some of the blame for such a situation, I assert that the real villain of the piece is the Natural Gas Act, itself. Certainly, the Commission should have, long ago, urged the amendment of the act calculated to remendy such evil consequences. It has not done so, although it has suggested other amendments to the act. The three other of the four rate increase proceedings referred to are undetermined and, as of now, no plans for hearing any of such cases, including the first case, have been put forward by the Federal Power Commission, although the California Public Utilities Commission has repeatedly urged such hearings. All that has been put forward is a proposed offer of settlement by negotiation of the parties. This is defeatism at its worst.

At the present time the gas distributing companies of California have paid the huge amount of approximately $250 million of increases in natural gas rates in these four pending cases, no part of such increases having been finally determined to be reasonable. I realize that this appears fantastic, but it is true. Of course, this vast amount increases as the volume of gas imported increases. The accumulation is progressive. The gas consumers of California are underwriting this burden plus a profit to the distributing companies.

To say that such a situation flowing from the operation of a Federal statute constitutes an evil is to put it mildly, indeed.

I assert that the major reason for the situation which I have described stems directly from the provisions of section 4 of the Natural Gas Act, which provisions permit a natural gas company (both pipeline and producer) to file rate increases with the Federal Power Commission without let or hindrance and put such increases into effect after the 5-month suspension period and collect such increases without any reference whatever to the reasonableness of such increases. The only restraint imposed is the natural gas company's own sense of self-restraint. Any increase may be filed and filed every 5 months, one increase piled upon the other, as California's situation illustrates.

I am aware that statutes somewhat resembling the Natural Gas Act exist in the Federal and other jurisdictions but, in actual operation, they do not offend as does the Natural Gas Act. The test of the wisdom of a statute is its actual impact upon the people. The Natural Gas Act has been tested since its enactment in 1938, and has been found to be sadly wanting in serving the public interest.

Senator Magnuson's bill has the overwhelming endorsement and support of the National Association of Railroad and Utilities Commissioners. In fact, this bill is a product of that association. As you probably are aware, the National Association of Railroad and Utilities Commissioners is composed of the regulatory commissions of the several States and the Federal regulatory commissions. Surely an association of that kind should be capable of discerning the public interest.

The situation regarding California applies to such States as New York, Pennsylvania, New Jersey, Ohio, Michigan, Illinois, Indiana, Wisconsin, the New England States, and many of the States of the South, the Middle West and the Mountain-Pacific area. As a matter of fact, the use of natural gas as a fuel is spreading so rapidly that there will be few localities in this Nation which will not be served, to some extent, by natural gas in the near future.

It cannot be too strongly emphasized that this natural gas problem is a national problem. Being a national problem it is a matter of Federal concern and the solution of the problem necessarily lies in the hands of the Congress of the United States.

At the national level, the picture is the same as I have painted with regard to California. Under date of April 13, 1961, in a special message to the Congress, the President stated with regard to these unadjudicated natural gas rate increases which are being collected:

"Indeed, the annual amount of rate increases so suspended is over $500 million. The total amount of rates collected pursuant to such increases is well over $1 billion."—(Congressional Record, House, p. 5358, Apr. 13, 1961.)

Here we have over a billion dollars in rate increases which have not been adjudicated by the Federal Power Commission and which the people of this Nation are paying because of the unfair and unjust operation of the Federal Natural Gas Act, aggravated, of course, by the failure of the Federal Power Commission to dispose of such rate increase proceedings. The situation existing is an evil which must be remedied and which only the Congress of the United States has the authority to remedy.

I am not unmindful of the fact that the Federal Natural Gas Act provides that these increased gas rates may be later adjudicated by the Federal Power Commission and, if found to be unreasonable, these pipeline companies and producers may be required to refund that portion of the rate increase found to be unreasonable. However, it must be remembered that the price of natural gas has been soaring and has doubled in the last 12 years. One does not have to be an expert in economics or history to know that it is most difficult for a regulatory body, however wise and fair, to realistically adjudicate the reasonableness of a natural gas rate as of 5 or 6 years ago, particularly when the fact is realized that the price of natural gas today has increased markedly over the price of natural gas at that time. In other words, it is difficult for a regulatory body to adjudicate the reasonableness of a natural gas rate which has long since been overcome by inflation. I do not believe that anyone could successfully contend that a natural gas rate which should have been passed upon, as to its reasonableness, in 1955 or 1956 may be as realistically adjudicated today as it could have been in 1955 or 1956. In an inflationary economy, a time lag in the adjudication of the reasonableness of consecutively increased utility rates will always work to the prejudice of the ratepayer, and no one need be reminded that we have been operating in an inflationary economy, at least since 1955. The tendency of such a situation, that is delayed adjudication, is to shortchange the ultimate consumer. Justice delayed is justice denied.

What is the answer to this fantastic situation? The answer is to be found in section 3 of Senator Magnuson's bill (S. 666). That section prohibits the going into effect by operation of law, of a filed rate increase, if there is then pending and undetermined by the Federal Power Commission a prior rate increase filed by the same company and affecting the same customers. However, this amendment would permit the Federal Power Commission to order or permit to go into effect any filed rate increase, where emergency or other conditions justified, in order to protect the lawful interests of a natural gas company or its customers. The discretion left to the Commission is broad and general. The amendment would not operate retroactively but it would bring lawful pressure

upon the Federal Power Commission and the natural gas companies to dispose of these accumulated rate increase filings and would bar, in the future, these repeated rate increases by operation of law.

There is nothing oppressive or unprecedented about this proposed amendment. In my State, California, there has existed for 50 years a statute which prohibits a public utility from putting into effect even one rate increase without first making a showing before the Public Utilities Commission and securing a finding by that Commission that such increase is justified. That statute has been held valid over and over again.

The proponents of this amendment to the Natural Gas Act are not asking for anything unusual or novel. They are merely asking for simple justice and equal protection of the law.

This bill would effect other vital reforms, long since overdue. Section 1 of the bill would outlaw these indefinite pricing clauses in natural gas contracts, often referred to as "favored-nation clauses." These clauses effect price increases without any relation to or causal connection with cost or value. They are simply special privilege instruments which feed the fires of inflation. The fact that the Federal Power Commission, at long last, has undertaken to outlaw some of these indefinite pricing clauses is no reason whatsoever that their outlawry should not be written boldly into the Natural Gas Act, so that we may not be left to the fortunes of uncertain judicial attitudes toward such Commission action.

By section 4 of this bill, the act would be amended so as to require the Federal Power Commission to find on the consistency with the public interest of the price of natural gas when it is first sold in interstate commerce. If the price is not found consistent with the public interest, the Commission is prohibited from certificating such sale at such price. The Commission must then put a price condition on a certificate if it is issued in such circumstances. This amendment writes the CATCO holding of the Supreme Court of the United States into the Natural Gas Act. I assert that the gas consumers of the Nation are entitled to have this salutary rule written into the statute and not be left to judicial constancy or the lack thereof. History proves that the Supreme Court changes its official view with great frequency. Hence, the need to make the voice of the statute unmistakably clear. Certificating a sale of natural gas in interstate commerce without taking action to assure that the initial price is consistent with the public interest makes regulation thereafter of such price like locking the stable door after the horse has been stolen.

Having generalized on the provisions of S. 666, I should like now to be specific as to its contents and, with your permission, shall take each section of the bill and discuss the objective and effect thereof.

Section 1 of the bill would amend section 4(a) of the Natural Gas Act so as to outlaw these indefinite pricing clauses in natural gas contracts.

Little need be said in justification of this proposed amendment. The Federal Power Commission has long advocated an amendment to the Natural Gas Act outlawing these inflationary pricing clauses in natural gas contracts. I know of no substantial support for them, except the support by the very parties who unjustly profit by their operation.

These indefinite pricing clauses absolutely guarantee inflation in natural gas prices without any relation whatsoever to cost or value of the product. Such a situation is indefensible and immoral. To illustrate: The "two-party favored-nation clause" provides that the price of natural gas may be increased in the event the purchaser shall pay or offer a higher price for natural gas in the same field or in any area specified in the contract. The "third-party favored-nation clause" provides that the price of natural gas may be increased in the event some person not a party to the contract shall pay or offer a higher price for natural gas in the same field or in any area specified in the contract. The "better market clause" or "price redetermination clause" provides that the price of natural gas may be increased in the event the average of two or more prices which are paid by purchasers in a specified area is greater. The "spiral escalation clause" provides that the price of natural gas may be increased in the event the resale rates of the purchaser under the contract are increased. The mere statement of the nature of these indefinite pricing clauses is sufficient to condemn them, particularly when it is realized that they affect a most important natural resource of this Nation.

The contention is made that these indefinite pricing clauses in natural gas contracts are void as a matter of law. Without undertaking to argue the merits of this position, surely it would be beneficial and desirable to have

the Natural Gas Act categorically prohibit them so that no further possible legal argument could be made in their behalf. The fact that very recently the Federal Power Commission has declared some of these indefinite pricing clauses unlawful constitutes no reason why this particular amendment should not be enacted, as I have heretofore pointed out.

Section 2 of the bill would amend section 4(4) of the Natural Gas Act by striking the prohibition against suspension of rate changes applicable to natural gas sold for industrial use for resale.

The Federal Power Commission has sought this legislative remedy for a number of years. This proposed amendment would close the loophole now existing in the Natural Gas Act which prohibits the Federal Power Commission from suspending rate changes affecting natural gas which is sold for industrial use for resale. Experience has shown that this prohibition frustrates to a great extent efficient regulation of natural gas companies.

Section 3 of the bill would amend section 4(e) of the Natural Gas Act so as to prohibit consecutive rate increases resulting from the automatic operation of said section 4(e).

This proposed amendment would restrict the operation of section 4(e) to permit only one rate increase, as applied to a particular customer, by operation of law, all other such rate increases by operation of law being barred until the Federal Power Commission had passed upon the reasonableness of the one increase in question. This amendment would not prohibit the Federal Power Commission from placing in effect a filed rate increase, even though it did not pass upon the reasonableness of such increase. The amendment would only restrict the automatic operation of the statute as is now the case. Should some emergency arise, the Federal Power Commission would still have authority to place in effect, by specific order, any filed rate increase it saw fit to so place in effect, even though such rate increase had been suspended. The proposed amendment contains a proviso specifically spelling out the authority of the Federal Power Commission to permit to go into effect or to place into effect rate changes where it deems such necessary.

Some question has been raised as to the constitutionality of this proposed amendment. This objection on constitutional grounds is in the same category as the historical objection to any and all regulation upon constitutional grounds. We must keep in mind the general rules applicable to testing the constitutionality of a statute. All presumptions of validity are indulged in support of the statute, and the law creates a presumption of a set of facts which will support the constitutionality of the statute. (*Pacific States, etc., Co.* v. *White*, 296 U.S. 176, 185–186, 80 L. ed. 138, 146; *Alabama State Federation of Labor* v. *McAdory*, 325 U.S. 450, 465–466, 89 L. ed. 1725, 1737.) The burden rests strongly upon the person charging unconstitutionality to prove the charge.

It is contended that this proposed amendment would be unconstitutional because the Federal Power Commission cannot get around to passing upon the reasonableness of this backlog of rate increase filings and, therefore, unconstitutionality would arise from that fact. The legal presumption is that the Federal Power Commission will discharge its duty in a lawful manner and that it will dispose of proceedings before it so as to comply with constitutional requirements. This is elementary constitutional law. This backlog of cases situation might be used as an argument if the amendment was an absolute bar to placing into effect more than one rate increase. I doubt the validity of such argument, even in such context. However, the proposed amendment is not an absolute bar because the Federal Power Commission, notwithstanding this proposed amendment, could place in effect any filed rate increase it desired to.

As I have pointed out heretofore, in the State of California there has existed since 1912 a statute which prohibits a public utility from placing in effect any rate increase until a showing has been made before the commission and an finding has been made by the commission that such increase is justified. This statute reads as follows:

"No public utility shall raise any rate or so alter any classification, contract, practice, or rule as to result in any increase in any rate except upon a showing before the commission and a finding by the commission that such increase is justified." (Section 454, Public Utilities Code of California.)

This statute prohibits even the Commission from authorizing the increasing of a rate, unless the mandate of this staute is complied with. Not even one increase may go into effect without the proof and finding of justification. As before noted, his statute has been assailed many times but its validity has been upheld.

If it be admitted that this backlog of rate increase proceedings constitutes

a bar to relief from the present evil which exists, then it must be conceded that we have become victims of an unwholesome situation; that it is our master.

Should this amendment be enacted into law, I am convinced that events thereafter would prove, as has been the case in the past, that these arguments in theorem will prove groundless. At all events, the public interest demands that we attempt to redress the existing evil.

This amendment would cause both the natural gas companies and the Federal Power Commission to expedite hearings in rate proceedings as nothing else would.

Section 4 of the bill would amend section 7(e) of the Natural Gas Act so as to make it jurisdictional to the issuance of a certificate of public convenience and necessity that the Federal Power Commission make a specific finding upon the consistency with the public interest of the price at which natural gas is sold in interstate commerce pursuant to a certificate or certificates of public convenience and necessity.

This proposed amendment would write into the statute the spirit of the holding of the Supreme Court of the United States in the "CATCO" case. Some thought is expressed that this amendment is not necessary, but I disagree. The Supreme Court of the United States may change its interpretation of this particular provision of the Natural Gas Act when new members should come upon that Court, or present members might entertain changed views. Our history is all too full of such changes of heart by the Supreme Court of the United States. In my judgment, this is a subject far too important to be left to the insecurity of judicial quicksands. The public interest has a right to be safeguarded by specific statutory prescription. This proposed amendment would do exactly that.

Section 5 of the bill would amend section 15 of the Natural Gas Act by prescribing procedural requirements in the hearing and disposition of matters before the Federal Power Commission.

This proposed amendment to section 15 of the Natural Gas Act seeks to set up uniform requirements with regard to the hearing of matters before the Federal Power Commission and the disposition thereof. However, this proposed amendment contains a safeguarding provision which clearly provides that these procedural requirements are not to be construed as jurisdictional. In other words, the failure of the Federal Power Commission or of its examiners to comply with these requirements would not, ipso facto, render void the action of the Commission or of its examiners. The main purpose of this proposed amendment is to admonish the Commission and its examiners and the interested parties to exercise all reasonable diligence to bring matters to a speedy hearing and to dispose of such matters thereafter with dispatch. Said proposed amendment attempts to do away as much as possible with the so-called regulatory lag. Should this proposed amendment be said to conflict with the provisions of the Federal Administrative Procedure Act, any such conflict, if there be such, can be readily resoluved by modifying language.

In concluding, I desire to point out one important aspect of this problem which has not been given much attention. That is the great expense to which the several States and political subdivisions and agencies of such States and the many gas distributing companies have been put to in defending against the unjust operation of the Natural Gas Act. California, through its Public Utilities Commission, many of its counties and municipalities and its gas distributing companies, has expended hundreds of thousands of dollars of the taxpayers' and ratepayers' money in trying to ameliorate the harsh operation of this statute. I am sure that other States have suffered likewise.

Sad and costly experience has taught us that here, gentlemen, is a problem which is not only ripe, but rotting, for solution. In fact, the solution is unpardonably long overdue. I urge you to write this bill into law and thus throw a wall of protection around the gas consumers of this country and thereby restore the Federal Natural Gas Act to its original purpose, that is, "to protect the consumer interests against exploitation at the hands of private natural gas companies."

Senator ENGLE. We have three telegrams. One is from the Governor of Colorado, one from the Public Service Commission of Georgia, and one from the Department of Public Utilities, State of Massachusetts, favoring the bill. Without objection, they will be made a part of the record.

(The telegrams follow:)

DENVER, COLO., *May 23, 1962.*

Hon. CLAIR ENGLE,
U.S. Senator from California,
Senate Office Building, Washington, D.C.:

Am advised the hearings on bill S. 666 will be held before your subcommittee May 24 and 25. Regret that I will be unable to appear in person to express my views on this bill. Joe Nigro, chairman of the Colorado Public Utilities Commission, will attend with pertinent information from the State of Colorado. I respectfully request that you permit the filing of this telegram as being indicative of my position. We are particularly interested in the provision prohibiting the pyramiding of rate increase upon rate increase. The ratepayers of Colorado in 1953 through 1959 were subjected to four rate filings by our principal pipeline company, without a final determination by the Federal Power Commission of any of these cases. Over $93 million was collected from the ratepayers. These rate filings were finally disposed of by settlement between the parties which resulted in a refund of over $54 million. We believe that such a situation is inimical to the welfare of both the ratepayer and the supplier.

We also urge favorable consideration on the other aspects of the bill, with particular attention to the provision requiring that rate cases be disposed of within the specified itme. Your consideration in allowing me to file this statement is sincerely appreciated.

Sincerely,

STEVE MCNICHOLS, *Governor of Colorado.*

ATLANTA, GA., *May 18, 1962.*

Senator CLAIR ENGLE,
Senate Office Building,
Washington, D.C.:

The Georgia Public Service Commission, on behalf of the citizens of Georgia who sell and use natural gas, heartily endorse Senate bill 666, introduced by Senator Magnuson, hearing on which will be heard May 24–25. We urge your favorable consideration of this important legislation.

CRAWFORD L. PILCHER,
Chairman.
ALLEN A. CHAPPELL,
Vice Chairman.
WALTER R. MCDONALD,
Commissioner.
BEN T. WIGGINS,
Commissioner.
WILLIAM H. KIMBROUGH,
Commissioner.

BOSTON, MASS., *May 18, 1962.*

Hon. CLAIR ENGLE,
New Senate Office Building,
Washington, D.C.:

The Massachusetts Department of Public Utilities wishes to be recorded in favor of Senate bill 666, future of supply of natural gas in New England depending on remedial legislation of the Natural Gas Act as contained in said Senate bill 666.

ROY C. PAPALIA,
Chairman, Massachusetts Department of Public Utilities.

The CHAIRMAN. We have several other witnesses here who have come a long way.

Mr. Joseph F. Nigro, chairman of the Colorado Public Utilities Commission, 1525 Sherman Street, Denver, Colo.

STATEMENT OF JOSEPH F. NIGRO, CHAIRMAN, PUBLIC UTILITIES COMMISSION, STATE OF COLORADO

Senator ENGLE. Mr. Nigro, would it be possible for you to file your statement and summarize it? I would like to get through with all the witnesses so that we can adjourn to hear the President.

I observe your statement is seven pages long. Would you have any objection to putting it in the record and summarizing it?

Mr. NIGRO. None at all.

Senator ENGLE. Without objection the statement will appear in the record as if read.

(Full text of statement follows:)

I am Joseph F. Nigro, chairman of the Public Utilities Commission of the State of Colorado.

The Colorado Commission is charged, by statute, with the responsibility of representing the State of Colorado before Federal regulatory agencies.

The State of Colorado is a large consumer of natural gas, as well as a substantial producer. The principal supplier east of the Continental Divide in an area generally described as the "Plains Territory" is the Colorado Interstate Gas Co., which is both a producer and purchaser of gas. Its principal sources of supply are from the Hugoton and Greenwood fields, in Kansas, the Keyes and Mocane-LaVerne areas in Oklahoma, and the Panhandle field, in Texas and Oklahoma.

This gas is transported to the cities of southern and eastern Colorado by virtue of main transmission lines, owned and operated by Colorado Interstate. This company has an additional source of supply for the Denver and northern Colorado area, through a line commonly denominated the "Rock Springs Line," which derives gas from the Table Rock field and other sources in the Green River Basin in Wyoming, and through interconnection with a line of the Pacific-Northwest Division of the El Paso Natural Gas Co. The gas in this line flows in an easterly direction toward Cheyenne, and southerly to Denver.

There are other suppliers of natural gas in the State of Colorado whose primary source of supply are from fields located within the State, although the Southern Union Gas Co., out of New Mexico, does render some service to several areas in southwestern Colorado. There are 350,000 customers, and well over 1 million people served by natural gas in the State of Colorado, as well as practically all of our major industries, including the Colorado Fuel & Iron Corp., major electric generating plants on the eastern slope of the Rockies, the Holly Sugar Co., the American Crystal Sugar Co., the Great Western Sugar Co., Gates Rubber Co., Shwayder Bros., manufacturers of Samsonite luggage, and Coors brewery.

The Public Utilities Commission of the State of Colorado unqualifiedly—in fact vigorously and earnestly—endorses bill S. 666, introduced by the Honorable senior Senator of Washington, Warren Magnuson.

We likewise agree, in substance, with and adopt what we consider to be very persuasive and able arguments of our distinguished colleagues, the president of the California Commission, the Honorable Judge McKeage, in outlining support of this bill.

A brief review of our experience with current Federal regulatory practices in regard to gas-rate proceedings involving our principal supplier will clearly demonstrate that this support is not merely an idle gesture of professional brotherhood, in rendering assistance to our national organization, but rather it is the result of a desperate and crying need, growing out of a situation that borders on the chaotic, and for which the people of my State feel they have no recourse other than by their earnest supplication to this honorable Congress for assistance and relief.

The Colorado Interstate Gas Co., was ordered by the Federal Power Commission, in docket G–1115, in 1952, to reduce rates to ratepayers of Colorado by $3 million. This decision ultimately was confirmed by the U.S. courts.

On August 31, 1953, the Colorado Interstate Gas Co. filed, under docket G–2260, a tariff proposing to increasing natural gas rates. After the usual suspension, these rates became effective January 1, 1954. Again, on July 30, 1954, under docket G–2576, the supplier filed for another increase in its gas rates, which became effective on February 1, 1955.

Applications G–2260 and G–2276 were consolidated for hearing, and a decision was finally issued by the presiding examiner, Samuel Binder, on May 8, 1957, which made substantial reductions in the rate-filings of the applicant.

On June 21, 1958, the Federal Power Commission issued its Opinion 313, modifying the order of the examiner in several important respects, on issues involving the treatment of several important hotly contested questions. The effect of this decision was to allow the supplier a substantially greater rate than that allowed by the examiner.

On December 17, 1956, in docket G–11717, the Colorado Interstate Gas Co. filed for a third rate increase. It will be noted that this new tariff filing was filed prior to the decision of the examiner in dockets Nos. G–2260 and G–2576. This third rate increase became effective July 1, 1957, approximately 2 months after the examiner's decision in the above dockets.

Hearings on docket G–11717 bgan on March 4, 1957, and were held at various times up and until April 29, 1958, when the hearings were concluded. No decision was ever issued in this docket by the Federal Power Commission, nor were there any final decisions in dockets G–2260 and G–2576, since all of these cases were disposed of by a settlement agreement between the parties. The refund hearing covered the period from January 1, 1954, through February 4, 1958.

A fourth rate increase filing was made by the Colorado Interstate Gas Co., in docket G–13541, which extended from February 5, 1958, through November 30, 1959. This docket was never set for hearing, and the matter again was disposed of by settlement between the parties on December 16, 1959, covering the period up to the end of 1959.

The moneys collected by Colorado Interstate Gas under the various dockets were as follows:

Docket G–2260, from January 1, 1954, through February 1958	$37,761,991
Docket G–2576, from February 1955, through February 4, 1958	34,141,082
Docket G–11717, from July 1, 1957, through February 1958	1,745,933
Docket G–13541, from February 5, 1958, through November 30, 1959	19,863,713

or a grand total of moneys collected under the company's undertaking of $93,512,719—all of which were subject to refund.

By virtue of the settlement agreements reached between the supplier and the parties, the company agreed to refund, under dockets G–2260, G–2576, and G–11717, a total of $38,957,126, of which $33,326,531 was principal, and $5,630,595 was interest.

Under docket G–13541, the company agreed to refund to the customers $12,036,825 in principal, and $647,686 in interest, or a grand total of $12,684,511. Total refunds under the settlement agreements amounted to $51,641,637. In addition, $2,699,121 was refunded by the supplier for the period from November 1959 through December 31, 1959, to cover earnings in excess of 6 percent.

The effects of pyramiding rate increase upon rate increase are obvious. The ratepayers of Colorado, at one time, had four pending rate cases, none of which had been finally determined, the increases under which, however, were all in force and effect. By conservative estimates, over $93½ million was collected from the ratepayers, which it subsequently was agreed was too high by over $54,300,000, and all of this over a period of better than 6 years.

In recounting these facts and figures to this honorable committee, we are endeavoring only to make an exposition of the situation. We, in no wise, are pointing the finger of blame at either the Federal regulatory agency involved, or the supplier. We do not believe that these issues are the issues properly before this committee. We do so only for the purpose of demonstrating by practical experience the impotence of the present law, the fantastic situation that derives therefrom, and the necessity for legislation such as that proposed by Senator Magnuson.

On the other hand, faced a contingent liability of over $93½ million, no expansion could be planned by the supplier, its credit standing was necessarily impaired, and its financial stability gravely jeopardized.

Parenthetically, I should like to point out that according to the annual report to stockholders for the year 1960 of Colorado Interstate Gas Co., the total capitalization of the company is approximately $126,800,000. Thus, this company, by virtue of these pyramiding rate increases, incurred a contingent liability of approximately 75 percent of its total capitalization.

Another facet that results from such a situation which, although not as serious as the evils I have portrayed above, is nevertheless important. The supplier, in making the refunds, is compelled to pay the cost of refunds. However, this cost

involves only the writing of a few checks to its few customers, who primarily are distributing companies, such as the Public Service Co. of Colorado, who are the direct suppliers to the public.

These distributing companies, upon the filing of various rate increases by the Colorado Interstate Gas Co. with the Federal Power Commission, appeared before the Public Utilities Commission of the State of Colorado and obtained authority, in most instances, to pass on the increase in their cost of gas to the ultimate consumer, subject to refund. When the settlement agreements were effected with the supplier and the distributing companies, these distributors were compelled to refund the moneys to their former customers. The problem of determining the amounts due to over 350,000 customers in Colorado, the locating of these customers, and the tremendous accounting problems arising as a result of these involved a cost of nearly $500,000. The cost of these refunds was borne by the interest component of the refunds. Thus, the rate-payers in Colorado, in effect, were injured to the extent of $500,000—simply by virtue of pyramiding of these rate cases.

It is to avoid such a situation that we in Colorado have experienced during the past 7 years that we strongly advocate the passage of S. 666.

The Colorado Commission is not here to assert that this bill provides the panacea that will be the cure-all to rectify all of the existent difficulties of Federal gas regulation, but we say that it will ameliorate conditions, and at the very least, will tend to eliminate chaotic conditions as they have existed in the past, and at the same time it will enable the regulatory agency to protect a supplier against its emergency needs that may arise as a result of inflation.

We cannot share the view of those who may find shortcomings in this bill, and, therefore, advocate that we remain in a state of catatonic paralysis. Those of us who are charged with the responsibility of assuring adequate utility service to our people do not concur in the theory that supine repose constitutes the best regulation. We do not believe that the ratepayers of Colorado should be compelled to pay over $93½ million in increased rates in a series of pyramided rate increases, and later be refunded $53 million. We do not believe that our supplier must continue for a period of over 6 years in a state of uncertain rates, uncertain credits, and uncertain future. We feel that our people are entitled to more. S. 666 will give us more. We, therefore, earnestly urge its passage.

Senator ENGLE. Mr. Nigro, would you summarize your statement, with particular emphasis on any differences you may have with reference to the testimony already given, or with reference to matters of particular geographic importance to your State?

Mr. NIGRO. Very well, Senator.

By your leave, Senator, there are a couple of typographical corrections which must be made.

In the third paragraph on the first page, the word "west" should be changed to "east."

Senator ENGLE. Is this in your prepared statement?

Mr. NIGRO. In the prepared statement. And the word "principal," of course, should not refer to money but should be spelled with an "le."

Senator ENGLE. Any clerical corrections that you desire to be made can be made, and the court reporter will see that they are properly produced.

Mr. NIGRO. The statement of Colorado commission simply outlines the history of four gas rate increases that were filed by our principal supplier, the Colorado River Gas Co., from 1953 through 1959, that involve a collection under refund, under the present provisions of the law, of over $94 million, and none of which were settled by the Federal Power Commission, but were settled by agreement between the parties, which involved refunds, including interest, of over $54 million. And I would like to point out parenthetically as well, that these refunds, when they trickled down to the distributing companies and on to the customers, cost $500,000 just to make those refunds because it

required the hiring of IBM's and that sort of thing, which had to be paid for out of the interest component.

We derive most of our gas from the Hugoton fields and Greenwood in Kansas, and Mocane-LaVerne in the panhandle of Texas and Oklahoma.

One of the primary things is that Colorado feels this is not a question of price, but it is a question of getting the rate questions settled. It isn't good for the supplier, the producer, or the customer. And it isn't good for the customer to pay out a lot of money and then 6 or 7 years later have it refunded, even though they receive some interest on it. There is this uncertainty that Senator Monroney talks about, and it is an intolerable situation.

We feel that this bill will ameliorate the situation. We don't say it will rectify it, but we think that it will get the job done.

I would also like to point out that the Commission has broad rulemaking powers and it could set up a procedure, if you want to leave the discretion with that Commission, to provide for the out-of-pocket expenses that the pipeline company and producer may incur when they want to file that second or third or subsequent rate increase, so that no hardship or confiscatory action would result by virtue of this type of a law.

If there are any other specific questions, gentlemen, I will be happy to answer them.

Senator ENGLE. I would like to ask you about the $500,000. As I understand it, these refunds are paid with interest. Your statement says, on page 6, that tremendous accounting problems arising cost nearly $500,000. Who pays that?

Mr. NIGRO. That was paid from the money of the customers, Senator, because the distributing companies were allowed to pass on these increases to the customers, to the consumers, and they were subject to refund. When the pipeline company made the refund to the distributing companies, we in turn required the distributing companies to make the refunds to the customers. And it cost these public utilities $500,000 to make those refunds.

Senator ENGLE. Thank you.

Senator MONRONEY. You would like to see the process of determination of all these cases speeded up?

Mr. NIGRO. Definitely.

Senator MONRONEY. That is what the Commissioners would like to see. So would the producers, I think, and so would the pipeline companies.

From this backlog that is continuing to grow, and the figures I put in a moment ago about 3,300 cases on producers, if they had a fair going price for the field that was assumed to be a ceiling which the price might not necessarily reach, that under the contracts which they are under, and under the present Power Commission's decisions, would still not necessarily be approved unless they were found to be just and reasonable. If they would clean up that particular portion by simplified formula pricing in the various fields, then this would help to get to the big cases, these 110 that are pipeline cases, would it not?

Mr. NIGRO. That is right.

Senator MONRONEY. So you would like to urge that any kind of simplified pricing that was just and reasonable would be allowed to

take place; that you would like to see the Commission come up with some kind of activity that would accomplish that?

Mr. NIGRO. I wouldn't say any kind, necessarily, Senator. I don't want to get specific. I might state that our committee is still working, and that is the very point which we are working on, and that is the question of this producer regulation. I hope that I can appear again before this committee in the very near future and that we will have a solution for those problems for you.

Senator MONRONEY. There is one point that disturbs me some about an application for a rate increase allowed to go into effect subject to refund. The way the bill is written it would occur to me that a company supplying gas, we will say, to New England, may be buying that gas in the Hugoton Field, which is a large field, and maybe there would be a half of 1 cent raw price increase included in that suspended rate pending, maybe, for several years. They need additional gas and they would have to go offshore, maybe, to Louisiana and buy the very high priced gas which I think goes into lines at about 22 or 25 cents. Would this not deny equity, that you have a half cent rate increase pending on 10-cent or 11-cent gas such as your producers in Colorado get, but needing the additional gas, they would feel compelled to pay the 22 cents or whatever it was for offshore gas? Therefore, they would have to file a second increase or go broke, or fail to purchase the gas from the new source.

Mr. NIGRO. Senator, this bill would not do that if the Federal Power Commission would act properly, and we must assume that they will; and, incidentally, I am a supporter of the Commission in that respect.

I posed this question to Chairman Kuykendall, whether or not under his broad rulemaking powers of the Commission they couldn't adopt rules that would allow these companies, simply by filing documents under oath in support of their second- or third-rate filings, to put into effect the out-of-pocket expenses such as the increased cost of gas, such as a new labor contract, such as depreciation for new plant added. All of these things that would be increased costs, let them go into effect just to that extent. And I think the Commission under its present rulemaking powers can do so.

And if you had the help of this bill I think it would ameliorate the situation tremendously and still take care of the constitutional things with which this Congress would be concerned.

Senator MONRONEY. It seems to me the thrust of this bill would be that if you had one rate pending in a very small field, and very insignificant, that you would still be crippled unless the Commission had a hearing and full Commission activity on disposing of that before the man could get another increase for new gas.

Senator ENGLE. Not if they adopted this rulemaking provision, because it would take care of those things, the out of pocket, and it would keep these pipelines and producers whole, which is, of course, what we want.

Senator MONRONEY. I have nothing further.

Senator SCHOEPPEL. Mr. Nigro, with respect to your Commission responsibilities, you are perfectly familiar with the increased cost factor and the increased cost of finding these gasfields and the necessity for some of these people making contracts with these producers

to go over a long period of time. Sometimes they have to go out and get additional gas to meet their contracts. That gas may be at different prices, and there is a legitimate area and field of activity where there is a justification for filing more than one application.

Mr. NIGRO. Very definitely.

Senator SCHOEPPEL. I think you just mentioned that a while ago.

Obviously we have got to be careful about any legislation we pass which will hamstring some of those very legitimate producers, because this inordinate delay in handling and processing these cases has caused undue hardship in many, many instances.

Those are things that we have to take into consideration when we consider this legislation and its effect on the overall general situation. It is very easy to say, on the part of certain sections of the country which are consuming areas only, that we want the cheapest gas possible, irrespective of what it costs. But it isn't that simple. And I am sure you know that.

Mr. NIGRO. We are fully cognizant of that.

What we want are to have these cases settled, and we want them settled in fairness to all—consumer, producer, and the pipeline company as well.

Senator ENGLE. Senator Yarborough?

Senator YARBOROUGH. Mr. Chairman, unfortunately I was testifying before another committee and missed the earlier evidence. I hesitate to ask questions for fear that they are repetitious.

Let me ask you, Mr. Nigro: I notice that you are a member of the National Association of Railroad & Utilities Commissioners. The regulatory commission for my State has not endorsed this bill, has it?

Mr. NIGRO. They have not, although Bill Murray is a member of the committee. They voted no, if my recollection serves me correctly, as the Las Vegas convention.

Senator YARBOROUGH. I want to ask you this question without having an opportunity to hear and read through all of the testimony.

I have been hearing these statements that the local utility companies that distribute gas are satisfied with this; that the long gaslines that transport the gas are satisfied with it, but that the producer gets squeezed. Is that a fair statement?

Mr. NIGRO. Do you mean by virtue of this bill?

Senator YARBOROUGH. Yes.

The statement has been made to me that it take a big operator to own an interstate pipeline; it takes a big operator to own a distributing system in a city. I hear criticism that the big operators, whether it be a utility distributing gas in a city or an interstate one transporting gas through pipelines, doesn't particularly object to this bill, but it is the little producer who sells gas at the wellhead who is being squeezed. Is that a fair statement? That statement was made over and over to me. Is that a fair summary of the situation, of the economic situation as it now stands as to who supports the bill and who doesn't?

Mr. NIGRO. I don't believe it is, Senator, for this reason: We must assume that the Federal Power Commission is going to act expeditiously and in a proper manner, and that they will exercise the broad rulemaking power that they have to alleviate any oppressive condition. If they do, then this bill will not do that.

In addition—this is going beyond the scope of this hearing—there is Senator Douglas' bill to exempt the small producer who produces 2 million a year. That would also alleviate this situation.

Senator YARBOROUGH. Too often I see in this situation the littles getting squeezed. The littles are the consumer at one end and the producer at the other end. Many of the producers are just about like the consumer, very small compared to the great amount of wealth it takes to put a distributing system in a big city, or the great amount of wealth it takes to build an interstate pipeline system.

We see the independent producer getting squeezed just as badly as the consumer does at the other end.

Mr. NIGRO. I understand it very well, since that is the only kind of producer I ever represented as a country lawyer. I am well aware of their problems.

Senator YARBOROUGH. I had a little experience like that, too, the shoestring man which I as a country lawyer represented from time to time. Coming to Washington was beyond his means. He couldn't hire a lawyer to come here. He wasn't economically strong enough.

Mr. NIGRO. I think we recognize those problems.

Senator YARBOROUGH. I have no further questions at this time.

Senator ENGLE. Thank you very much, Mr. Nigro, for your coming.

Next is Mr. Norman A. Johnson, member, Mississippi Public Service Commission, Jackson, Miss.

Mr. Johnson, I observe that you have a seven-page statement.

Mr. JOHNSON. Yes.

Senator ENGLE. In the interest of hearing the other two witnesses before we have to recess, would it be possible to put your statement in the record?

Mr. JOHNSON. Yes, sir.

Senator ENGLE. And then you can summarize briefly your points, with particular emphasis on any particular geographical factors involving the State of Mississippi.

If that is agreeable, without objection the statement will be a part of the record as if read.

STATEMENT OF NORMAN A. JOHNSON, JR., PHILADELPHIA, MISS., MEMBER OF THE MISSISSIPPI PUBLIC SERVICE COMMISSION

Mr. JOHNSON. Mr. Chairman and members of the committee, I am Norman A. Johnson, Jr., of Philadelphia, Miss., one of the three members of the Mississippi Public Service Commission.

Our offices are located at 1105 State Office Building, Jackson, Miss.

I appreciate the opportunity to appear before you and give you a brief statement of our reasons for supporting S. 666, a bill to amend sections 4(2), 4(4), 7(e), and 15 of the Natural Gas Act relating to rates and other matters mentioned therein.

In expressing my views, I wish to state they are also the views of my colleagues, Chairman Thomas Hal Phillips, and Commissioner W. E. "Bucky" Moore.

We wish to go on record here, as we did at the December 1960 convention of the National Association of Railroad & Utilities Commissioners, as favoring section 3 of the bill which would bar an increased rate or charge for natural gas, when an earlier increase was already

in effect, the reasonableness of which the Federal Power Commission had not determined. We favor the bill in whole, as well as section 3 thereof.

In Mississippi, our chief problem has been on account of periodic pipeline increases placed in effect, under bond, by United Gas Pipe Line Co. This company supplies a major portion of natural gas to industrial users and distribution companies in the State of Mississippi. Federal Power Commission docket numbers, and the effective dates of these pipeline increases are—

Docket No.	*Date effective*
G–9547	Apr. 1, 1956
G–10592	Nov. 16, 1956
G–12801	Dec. 1, 1957
G–15360	Dec. 1, 1958
G–18406	Oct. 1, 1959
RP–602	Aug. 13, 1960
RP–61–18	June 15, 1961

It was only a few months ago that the Federal Power Commission made a decision in the first two dockets numbers. I understand court appeals have been taken from the decision. So we still have no final adjudication.

At the time the *Phillips Petroleum* case was heard by the Federal Power Commission in September 1960, natural gas producers had on file with the Federal Power Commission 3,278 producer rate increase filings, and 33,231 supplements to such rate increase schedules. The opinion of the Federal Power Commission stated that it would take about 13 years to dispose of the cases pending on July 1, 1960.

The Supreme Court in the *Sunray Mid-Continent Oil Company* case stated that counsel for the Federal Power Commission confessed that no contested major producer's section 5 case had been finally adjudicated by the Commission in the 6 years since the Supreme Court's decision in the *Phillips Petroleum Co.* v. *Wisconsin* in June 1954.

The above facts demonstrate an intolerable situation. Pipeline companies file and place into effect periodic rate increases without waiting for decisions in previous rate filings. This means industrial users and distribution companies are subjected to many and various hardships when they have to pay as many as six or seven increases for gas. They do not know, and do not have the means of knowing how much, if any, of the rate increases will be held to be just and reasonable.

Industries in Mississippi are quite concerned over this situation. Increased rates are imposed upon industrial users who have no alternative except to pay the rates and hope to get a refund. Cost of gas in many instances is an important cost of the product of a plant. High rates or increased rates have had an adverse effect on the competitive situation of some of our industries. We fear and are advised that industrial development of the State has, to some extent, been retarded by the continuing increases in the cost of natural gas.

The problem in Mississippi can perhaps be illustrated best by a brief summary of our experience with two natural gas distribution companies which operate in the State.

United Gas Corp. is a natural gas distribution company which operates in 67 cities and towns and serves more than 70,000 customers. It purchases gas from United Gas Pipe Line Co. and other pipeline companies. On June 16, 1958, United Gas Corp. filed notice with the

public service commission of its intention to increase its rates effective August 1, 1958. Under a Mississippi statute this company was authorized to place into effect bonded rate increases as of said date of August 1. The increased rates aggregated $1,764,000 per annum or an overall average increase of 32 percent. These bonded rate increases were based, in part, on increased cost of gas to the company in the amount of $409,666 for the year 1957, and $457,902 for the first 6 months of 1958. This company does not have escalator clauses in its rate schedules.

On December 15, 1958, the public service commission denied the proposed rate increase in toto. An appeal was taken to the chancery court which affirmed the decision of the public service commission. On February 13, 1961, the Supreme Court of Mississippi reversed the case, in part, and held that the action of the commission in disallowing increased cost of gas as an operating expense was erroneous. It further held that the increased cost of gas should be allowed as operating expenses, even though the legality of the pipeline increases had not been adjudicated either by the Federal Power Commission or the courts.

The case has been remanded to the public service commission for further action. The effect of the Supreme Court decision will be that the increased cost of gas will be allowed as operating expense, and if in the future the pipeline increases are denied in whole or in part appropriate refunds will be made.

Willmut Gas & Oil Co., of Hattiesburg, Miss., is a small natural gas distribution company which serves nine cities and towns and numerous farm taps. It has 14,685 customers.

In accordance with the Mississippi statute Willmut Gas & Oil Co. placed into effect under bond increased rates, effective January 10, 1957. The increased rates aggregated more than $200,000 per year. This company purchases all of its gas from the United Gas Pipe Line Co. On January 10, 1957, the effective date of the increased rates, Willmut Gas & Oil Co. had already received pipeline increases in the cost of gas aggregating $284,905.46, none of which had been adjudicated by the Federal Power Commission. The company did not have escalator provisions in its rate schedules.

The Public Service Commission denied the rate increase and the company appealed to the chancery court. The case was remanded to the commission by the chancery court and a final order was entered by the commission on October 14, 1960. As of that date, due to the pipeline increases placed into effect, the increased cost of gas to Willmut Gas & Oil Co. aggregated $468,929.47, or a percentage increase of 84.9 percent over the pipeline rates in effect prior to Federal Power Commission docket No. G–9547, which became effective April 1, 1957.

The problems created by periodic pipeline increases being placed into effect without regard to previous adjudication of pending rate filings has caused many problems to the distribution companies, their customers, and the Public Service Commission. The Willmut Gas & Oil Co., for instance, put bonded rate increases into effect as of January 10, 1957, but the litigation was not terminated until October 14, 1960. In the meantime, it had paid $468,929.47 in increased cost of gas, not knowing how much, if any, would ever be refunded. What refunds ultimately will be received by Willmut is not known. If any refunds from the pipe line companies are made to Willmut

then Willmut, of course, will be required to make appropriate refunds to its customers. This of itself is a tremendous undertaking. It is well known that in such cases many customers entitled to refunds are never paid due to the fact that they move away and their addresses are unkown. Many customers will therefore never receive refunds despite the best efforts of the distribution company to make the refunds. The cost of making such refunds is considerable.

May I thank you again for permitting me to appear before you in support of S. 666. I sincerely trust my testimony will aid you in your consideration of this important bill.

As pointed out in my testimony, my prepared statement speaks for itself; I especially pointed out that the United Gas Pipeline Co. has now six rate increases under bond, and a seventh to go into force by June of this year. I would further like to point out that our chief objections to these—what I consider as excessive in number, in some cases unwarranted increases—is the effect on our industrial development in the State. For example, any industry which uses a large amount of natural gas, the cost of the raw product has to be considered in their final product.

My objection in no way relates to the producer of natural gas. We don't have any jurisdiction, we don't regulate the wellhead prices.

I have had some experience in bonded rates and refunds. It is practically an impossibility to properly make refunds. The cost is excessive, and you are never able to repay all of the people that are entitled to refunds.

Frankly, gentlemen, getting a little away from my prepared statement, if your business or mine were 13 years behind, we would be in bad shape. I imagine I am the only Commissioner here that is an elective official. I have every reason to believe if the Federal Power Commission were elected, like you and I, they wouldn't be 13 years behind in their business.

I think the first responsibility of any regulatory agency is to to the consumer. It is the duty of a regulatory agency to provide the opportunity for the ability to make a profit, and, in turn, they can do the best they can.

Frankly, the State regulatory agencies are having to carry the burden now as the law is at present.

I could go on and on, but I know your time is of the essence. If you have any questions that you would like me to take a shot at, I will be glad to try.

Senator ENGLE. Senator Schoeppel?

Senator SCHOEPPEL. You do not, as I understand your statement, Mr. Commissioner, regulate within your State your own producers?

Mr. JOHNSON. No, sir.

Senator SCHOEPPEL. And you say that you have no quarrel with reference to the prices? Did I understand you correctly?

Mr. JOHNSON. They are an unregulated industry in our State. Our business is good enough, by the time we get through with telephone and telegraph and electricity, natural gas, water, railroads, and motor carriers, we have all we can——

Senator SCHOEPPEL. I sympathize with you. I served in that capacity in the State of Kansas. I know something about it. It is not easy.

Mr. JOHNSON. I don't solicit business.

Senator SCHOEPPEL. I want to ask you this: Your State is a producer of natural gas?

Mr. JOHNSON. Yes.

Senator SCHOEPPEL. Do you also import into your State natural gas from the outside?

Mr. JOHNSON. Yes, and it is cheaper.

Senator SCHOEPPEL. That comes from Louisiana?

Mr. JOHNSON. Yes, sir, from the southern part of the State.

Senator SCHOEPPEL. Your objection, to where we find ourselves in the present situation, is due to this lag in the decision or determination in these cases?

Mr. JOHNSON. Yes, and I don't think there is any sense in being 13 years behind.

Senator SCHOEPPEL. You of course do know that sometimes decisions of courts increase loads.

Mr. JOHNSON. Yes, sir.

Senator SCHOEPPEL. If you had every producer in your State under a Supreme Court decision made a public utility, it would add to the load. I do agree that that load ought to be worked on.

Mr. JOHNSON. It tends to set precedents and makes negotiations easy.

In my opinion they could be expedited.

Senator SCHOEPPEL. I note you mentioned a number of rate increases. Over what period of time?

Mr. JOHNSON. Those begin in 1956. That is I believe on page 2 of my statement.

Senator SCHOEPPEL. I haven't had time to read your statement. It was just handed to me.

Mr. JOHNSON. We have six already, and another, RP–61–18 effective June of this year. That company serves 67 municipalities. We have just been reversed by our State Supreme Court for—this is in my statement—for not properly considering the increased cost of gas, even though it was in force on bond.

Senator SCHOEPPEL. Do you regulate distributing companies in your State?

Mr. JOHNSON. Yes.

Senator SCHOEPPEL. That is primarily——

Mr. JOHNSON. They are the ones who are hurting, yes, sir.

Senator SCHOEPPEL. Those are the ones wherein your problem arises?

Mr. JOHNSON. In fact, we have one distributing company which I believe serves 110 municipalities. We have smaller ones, one that serves nine, and several that just serve one and maybe farm families.

Senator MONRONEY. Could I ask, what percent of the gas used in Mississippi is produced in Mississippi?

Mr. JOHNSON. I am not prepared to answer that. I would assume that it would be in the neighborhood of 20 percent.

Senator MONRONEY. It must be a pretty good amount.

Mr. JOHNSON. Yes.

Senator MONRONEY. I notice that you have 144,227 million cubic feet a year, and it has gone up. It went up 10 percent. It went up considerably in the——

Mr. JOHNSON. I am sorry, I didn't anticipate your asking me that question. We don't regulate it and I have no occasion to be close to it.

Senator MONRONEY. You say it is about 20 percent?

Mr. JOHNSON. That is a rough guess.

Senator MONRONEY. You are not in favor of regulating Mississippi producers?

Mr. JOHNSON. Not until the people in my State want it. When they want it, I am in favor of it.

Senator MONRONEY. I think every Senator will concur with you in that general formula. You do feel that if the backlog that is created—and you mentioned the natural gas producers had on file this same number of cases that I put in the record—this is probably the bottleneck of the whole thing, and that the long and tedious full-blown rate cases on small producers and on the other producers——

Mr. JOHNSON. I know that the small producers are the ones that are hurt.

Senator MONRONEY. And they have to fight these cases through and it costs them a lot of money.

Mr. JOHNSON. And in some utilities the big ones bring in the small ones and it makes a better case out of it sometimes.

Senator MONRONEY. Would you feel that if the Federal Power Commission could come up with a formula for pricing the price of gas by fields, or other ways to give a just and reasonable return, that this would simplify the number of cases pending and therefore would enable them to get to the big cases which are pipeline cases?

Mr. JOHNSON. I guess I should be qualified to answer that question, but I don't believe I am.

Senator MONRONEY. If they have fewer cases pending then they can get to the cases.

Mr. JOHNSON. Certainly. But where the producer comes in, inasmuch as we don't regulate them, in all fairness I wouldn't want to get too far afield on that. I have a degree in geology but I don't want to get too far afield.

Senator MONRONEY. Do you know whether you export any gas from Mississippi?

Mr. JOHNSON. No, sir. We export some things, but not that.

Senator MONRONEY. I notice that the price of gas has gone up in 1 year from 13.9 at the wellhead to 15.5. Since this is a large increase, I presume because it is locally used gas and is exempt, under your idea it would be exempt from any regulation whatever?

Mr. JOHNSON. I don't want to regulate anything until you have to. I hope we don't ever have to regulate wellhead prices in our State.

Senator MONRONEY. In Mississippi?

Mr. JOHNSON. Yes, sir.

Senator MONRONEY. You wouldn't mind regulating it elsewhere?

Mr. JOHNSON. The wellhead prices?

Senator MONRONEY. Yes.

Mr. JOHNSON. No, sir; I am not proposing to regulate the wellhead prices anywhere.

Senator MONRONEY. You are not in favor of that?

Mr. JOHNSON. Sir?

Senator MONRONEY. You are not in favor of regulating wellhead prices anywhere?

Mr. JOHNSON. I am speaking for my State. These other gentlemen can speak for theirs. I am sure that they have problems that we don't have.

Senator MONRONEY. Those are all the questions that I have.

Senator ENGLE. Senator Yarborough?

Senator YARBOROUGH. Mr. Johnson, from the time that I have been here I take it that the burden of the requests for this law is the delay in handling of cases?

Mr. JOHNSON. Yes, in cases before the Federal Power Commission.

Senator YARBOROUGH. Can you tell me just what speedup will result from the enactment of section 1 of this bill which outlaws the two-party clause or the third-party clause or the better-market clause or the spiral escalation clause? Just how much will that speed up the Commission if we enact that section? How much will that speed up the administration of the law and how?

Mr. JOHNSON. If they don't have as many cases pending, it certainly ought to be that they could handle them faster.

Senator YARBOROUGH. In other words, if the royalty owners never get an increase in the price of gas, there would never be any change to regulate?

Mr. JOHNSON. You are getting me back to that argument that the Senator from Oklahoma was talking about, and I am trying to stay away from that.

Senator YARBOROUGH. Mr. Johnson, Mississippi is so close to east Texas and Louisiana——

Mr. JOHNSON. We have a lot of kinfolk there.

Senator YARBOROUGH. There is a great deal of affinity and community of interest. You are doubtless familiar with the location of the city of Carthage in Panola County.

Mr. JOHNSON. Yes, sir, I have some kinfolk there named Strippling.

Senator YARBOROUGH. Any kin to Judge Strippling of east Texas?

Mr. JOHNSON. I don't know.

Senator YARBOROUGH. I know his father well.

Mr. JOHNSON. I have been there to see him.

Senator YARBOROUGH. His father is a mighty good campaign manager.

Mr. JOHNSON. Yes, sir. I like politics, too.

Senator YARBOROUGH. So do I.

This escalator clause, let me point out here, in Austin, and Panola County, there was a unitization agreement because of the small farms in Panola County. As you know, it is a heavy gas field with very heavy production. One well would produce gas from one of four or five farms. They had actual cases where the royalty owner of one farm was getting paid 8 cents a thousand feet and coming out of the same well another owner was paid 4 cents a thousand feet, and another 5 cents. In hearings before the Texas Railroad Commission they were asked why one was paid as low as 4 cents, and it developed that she was a widow living in Carthage and didn't know enough to hire a lawyer to get a fair share.

It seems to me that all section 1 does here is just strip out the protection that royalty owners have under their contracts now to try to get a fair price for their gas. That this is an antiroyalty owner provision, section 1, when you provide the two-party favored-nation

clause. I don't see where the favored nation comes in when you deal with two little farmer-royalty owners in Texas. Under the terms of the two-party favored-nation clause, the price of natural gas is or may be increased in the event the purchaser shall pay or offer to pay a higher price for natural gas in the same field or in any area specified in the contract.

The well I am telling you about—there are lots of them in Panola County—there are big fields, supplying lots of gas—if one landowner has a share in one well and owns enough other farms to have bargaining power, and forces an increase in that, and that landowner has a fourth of the royalty under that well, should he be denied similar increases such as the widow in Carthage?

Mr. JOHNSON. It would be unfair to one producer adjacent to another, as you set out, to receive twice as much revenue.

Senator YARBOROUGH. And producing from the same well. The little ones who lack purchasing or bargaining power. The larger ones are able to take care of themselves. This strips out of the contracts provisions in there to protect the small royalty owner.

Mr. JOHNSON. Overall this bill, the help that the State agencies need, is that it puts us in a very desperate and delicate position in attempting to regulate something that keeps going up as it reaches our State line indiscriminately.

Senator YARBOROUGH. Isn't your problem tied in to hold the economy?

Mr. JOHNSON. Yes, but it is not true——

Senator YARBOROUGH. Do you think the price of gas should be frozen and not go up if everything else in the economy goes up because it causes commissioners some trouble to try to regulate?

Mr. JOHNSON. You have opened a new field. Utilities generally aren't going up.

Senator YARBOROUGH. Pardon?

Mr. JOHNSON. Look at electricity. It keeps being reduced.

Senator YARBOROUGH. I agree it has not all gone up. When I look at the average price of natural gas in Texas at the wells, it is ten and a fraction cents. I think the distinguished Senator from Oklahoma pointed out that it is 10 cents at the well where it is produced in his State. In California it is 24.6 cents at the well. It is 23 in Kentucky. Some States do much better than others on that. The Southwest seems to be looked at as a kind of a colonial province out there to keep it low and pay them little. We have a vital interest in this.

Oil sells for about $3 billion in Texas. Natural gas only $600 million. Cotton and cattle bring in more money. This natural gas is going out at a low price, 10 cents a thousand cubic feet.

I am sympathetic to having these commissions move. They are too slow in Washington. The first section, to strike down the protection for the little royalty owner, I can't see that that has any relationship to speeding up the slow dragging that goes on before the Federal Power Commission which says the first thing we do in section 1 is strike out this protection for the little royalty owner who hasn't the economic power to protect himself. He has it in his contracts. We will make the contracts illegal that protect him.

Can you tell me the justification for that?

Mr. JOHNSON. I have already said that I wasn't qualified to testify on that. All that I was saying about it was strictly the variations because we don't regulate the wellhead price.

Senator YARBOROUGH. You don't regulate it?

Mr. JOHNSON. No.

Senator YARBOROUGH. Thank you. I didn't intend to drag you over another field.

Mr. JOHNSON. After I have been here awhile I would probably argue with you.

Senator ENGLE. Thank you very much, Mr. Johnson.

Mr. JOHNSON. I appreciate the opportunity to appear before your committee.

Senator ENGLE. We will hear the two remaining witnesses. Can we agree to call them both to make their statements?

Mr. David M. Brackman, first vice president of the National Association of Railroad & Utilities Commissioners; and Mr. Leonard Bessman, chairman, Public Service Commission of Wisconsin, State Office Building, Madison, Wis.

Would you gentlemen come up?

Your statements will be put in the record as if read. Without objection they will be made a part of the record.

STATEMENT OF DAVID M. BRACKMAN, FIRST VICE PRESIDENT, NATIONAL ASSOCIATION OF RAILROAD & UTILITIES COMMISSIONERS

Mr. BRACKMAN. Mr. Chairman and members of the committee; I am David M. Brackman of Boston, Mass., and appear in support of S. 666.

I am first vice president of the National Association of Railroad & Utilities Commissioners, at whose request this bill was introduced by Senator Magnuson.

As you know, the NARUC, is an association of utility regulators whose membership includes the utility commissioners of the several States and members of the Federal agencies with responsibilities in the railroad and utility field. My own experience in the field of utility regulation dates from 1941, when I first became a member of the Massachusetts Department of Public Utilities.

S. 666 proposes five specific and limited amendments to the Natural Gas Act. These proposals were the subject of a resolution at the last annual meeting of our association in November 1960 and have the affirmative support of 29 out of the 42 State commissions voting on this matter.

I will not burden you with a description of the rapid growth of the natural gas industry since World War II, for its importance in the national economy and in the national fuel picture is well known to this committee.

I should like to emphasize, however, that natural gas is now distributed in practically every State in the continental United States. As a result, the problems of the natural gas industry are a matter of important concern to the State utility commissions in all sections of the country.

Now shall I impose on your time by cataloging the many regulatory problems, both real and imagined, that center on FPC regulation of the natural gas industry, and the extraordinary complexities that have risen since the Supreme Court's *Phillips* decision (*Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954)) brought under FPC jurisdiction the independent producers of gas and their sales to the interstate pipelines. These problems are a matter of continuing concern for this committee, and the background is already familiar to you.

I want to emphasize that the NARUC proposals in S. 666 are not intended to be panaceas for all the problems of the natural gas industry for, like myself, the great majority of the members of our association are not experts in the production and marketing of natural gas.

We are, nevertheless, responsible for regulating the distribution of natural gas to ultimate consumers, and are thus directly concerned with the regulatory problems that enter into the picture at the producer and pipeline level.

In addition, we believe that certain problems now confronting the Federal Power Commission are either unadministrable in nature or could be greatly simplified and improved by the amendments to the Natural Gas Act which we propose.

It is in this context that I should like to discuss the specific proposals contained in S. 666.

INDEFINITE PRICING CLAUSES

The first section of the bill calls for an amendment to section 4(a) of the Natural Gas Act, which now provides that all rates and charges for natural gas shall be just and reasonable. The effect of the proposed amendment is to make it unlawful to include any indefinite pricing clause in a contract for the sale of gas subject to FPC rate jurisdiction.

The upward spiral of natural gas prices in the past 10 years is a matter of common knowledge. So, too, is the important responsibility for this spiral that can be assigned to the open-ended escalation clauses commonly included in producer contracts.

A very considerable body of opinion would outlaw these clauses on the basis that they are contrary to public policy. I should prefer to rest my case on the fact that they produce a wholly unadministrable situation for an agency charged with the duty of regulating rates.

The problem here is not a matter of narrow concern with producer contracts alone, but goes to the fundamentals of rate regulation. Whatever may be the commercial justification for escalation clauses in ordinary business contracts, the entire frame of reference changes when a regulatory commission is given jurisdiction over rates.

No commission can claim to be performing its duties if it must give approval to a changing rate, for what may be a just and reasonable rate level at the time of approval may be subject to wide and unpredictable changes in the future. For this reason all types of formula rates have been suspect from a regulatory point of view, and advance approval of rates to be set by escalation clauses has been carefully limited by all regulatory commissions to situations where the need for flexibility is obvious and the consequences predictable within a narrow range.

In the present context, advance approval could properly be given to definite escalation clauses: for example, to a clause calling for a fixed increase per thousand cubic feet every 5 years. It is a complete abnegation of regulation, however, to require advance approval to be given to indefinite pricing clauses of the types described in S. 666; two- and three-party favored nation clauses; their close relative, commonly known as the better market clause or price redetermination clause; and the wholly indefensible spiral escalation clause.

The importance of outlawing these clauses has recently been recognized by the FPC, which in March of this year (after introduction of S. 666 and companion bills in the House), promulgated its General Order No. 232 (Mar. 3, 1961, amended Mar. 31, 1961) outlawing all types of indefinite pricing clauses—but only in future contracts.

This action of the FPC merely emphasizes the desirability of legislation on this subject, for the problem now and in the foreseeable future is concerned not with newly executed contracts, but with contracts already in existence that will continue to deny the FPC control over the automatic price spiral.

INITIAL PRICE CONDITIONS

I should like to turn now to section 4 of S. 666, since this also deals with a problem of producer prices.

This proposal would add a provision to section 7(e) of the Natural Gas Act, which requires a certificate of public convenience and necessity to be obtained before any jurisdictional sale is commenced or any construction of jurisdictional facilities is undertaken.

The present text of the act authorizes the FPC to attach reasonable terms and conditions to such a certificate. The proposed amendment would make it clear that in authorizing a jurisdictional sale of gas the Commission must either find that the proposed price is consistent with the public interest, or impose a condition in the certificate to insure such a reasonable price. The effect of this addition will be to insure the careful scrutiny of gas purchase contracts in every certificate proceeding, as called for by the Supreme Court's 1958 decision in the CATCO (*Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378 (1959)).

Until recently, the FPC has appeared to be in some doubt as to what circumstances would require such an initial price condition when new sources of gas are first brought into the interstate market. The proposed amendment would provide express legislative sanction for such rate conditions in all future cases.

I hardly need emphasize the importance of controlling prices at the outset by means of a rate condition and a certificate of public convenience and necessity. Initial rates are not subject to suspension by the Federal Power Commission.

The alternative to a rate condition in a certificate order, therefore, is to let clearly unreasonable rates go into effect subject to being reduced only prospectively and at the conclusion of a lengthy investigation brought by the Commission under section 5 of the Natural Gas Act.

SUSPENSION OF RATES FOR RESALE FOR INDUSTRIAL USE

Section 2 of S. 666 proposes the deletion of a wholly outmoded proviso in section 41(e) of the act.

This section provides for the filing of rate changes with the Commission before they become effective, and authorizes the Commission to suspend a proposed rate for up to 5 months, pending a hearing on its reasonableness. Thereafter, a jurisdictional rate may be made effective but only subject to a duty to refund any excess charges ultimately found to be unreasonable.

The anomalous proviso, which we believe should be stricken out, denies the Commission any right to suspend during hearing any rate for the sale of natural gas for resale for industrial use only. As a result, a distributing company purchasing gas earmarked for industrial use will have no assurance that a refund on this portion of its purchases will be received in the event the proposed increase is ultimately disallowed or reduced.

The original justification for this proviso is now lost in history and, fortunately, the number of pipelines that offer rate schedules for this type of service is limited. Nevertheless, the obvious injustice to a distributing company in leaving it unprotected with respect to refunds in this area is glaringly obvious when it is considered that the filing of a new rate is wholly within the control of its supplier, and that the reasonableness of the industrial rate schedule can normally be resolved only as a part of a general rate case which may require many months before final decision.

Our recommendation for the deletion of this wholly unjustified restriction on the Federal Power Commission's normal powers of suspension is generally accepted throughout the industry and has been the subject of repeated requests by the FPC itself.

PROVISIONS TO EXPEDITE HEARINGS AND DECISIONS

I should like to consider sections 3 and 5 of S. 666 together, for both proposals are designed to expedite formal hearings before the Federal Power Commission.

The basic assumption underlying these provisions is a simple variant of Parkinson's law: that work will be done within the time allowed, and that reasonable deadlines will be met.

Section 5 of the bill proposes the addition of three new subsections to section 15 of the Natural Gas Act, which deals with hearings and rules of procedure.

Subsection (c) is designed to curb the extraordinary proliferation of the hearing record that has distinguished FPC practice in recent years. Subsection (d) sets the deadline of 1 year for the conclusion of hearings in any particular case. This is designed to eliminate the pyramiding of recesses that has come to characterize FPC practice.

Finally, subsection (e) sets a 6-week deadline for the hearing examiner's intermediate decision, and 90 days thereafter for formal disposition of the case by the Commission itself.

We believe these are realistic deadlines that can be met in practice before the FPC, as they are in cases before our State utility commissions. But deadlines must be set before they can have any effect: this is the sole purpose of section 5 of the bill.

Section 3 of the bill relates solely to rate proceedings, and hence is a proposed addition to section 4(e) of the act.

This is a complementary proposal to that contained in section 5 of the bill, and forbids any natural gas company to put successive rate increases into effect under bond. If the deadlines of section 5 of the bill are met, the maximum interval between rate increases will be little more than a year.

This seems to us no more than a decent interval between rate filings, and one which cannot conceivably prejudice a natural gas company unless some gross error in forecasting has entered into its original request for a rate increase.

Indeed, numerous State utility commissions have refused, as a matter of discretion, to entertain a second rate request within a year after the close of a prior proceeding.

This proposal is complementary to section 5 of the bill in another way. Section 5 sets a deadline for the Commission; section 3 provides a real incentive for the natural gas company itself to expedite rate proceedings.

We believe that this proposal will go far toward eliminating the anomalous practice of pipelines living on borrowed funds, which have been collected from the distributing companies and their customers in the form of increased rates put into effect under bond.

In addition, it will avoid the occasional situation where the cumulative amount of refunds due under successive rate filings is so substantial as to restrain action by the FPC, in view of the heavy financial impact on the pipeline company.

Finally, it will eliminate much of the chain effect of rate increases by the individual distributing companies along the route of an interstate pipeline, and the exceedingly difficult problem of the State utility commissions in reestablishing rates and routing refunds through to consumers at the conclusion of an FPC pipeline rate case.

I should like to conclude by thanking Senator Magnuson for his courtesy in introducing S. 666 on behalf of the NARUC, and by thanking the committee for your generous allotment of time.

On behalf of the association and the individual State commissions who have supported this bill, I hope that our proposals will be favorably received and given a favorable report.

STATEMENT OF HON. LEONARD BESSMAN, CHAIRMAN, PUBLIC SERVICE COMMISSION OF WISCONSIN

Mr. BESSMAN. I am Leonard Bessman, chairman of the Public Service Commission of Wisconsin. I was appointed to this position November 2, 1959. I was a special attorney for the Antitrust Division, Department of Justice, during the years 1946 and 1947, and an assistant attorney general for the State of Wisconsin in charge of its State antitrust division from 1948 to 1952. In addition, I practiced law privately in the city of Milwaukee for 12 years.

The Public Service Commission of Wisconsin appears in support of bill S. 666 for the following reasons:

1. With respect to the proposed amendment of section 4(a) of the Natural Gas Act: The indefinite escalation clauses described in the amendment have been a major contributing factor in the escalation of natural gas prices at the producer level. It may be noted that the

average cost per thousand cubic feet at the wellhead has increased from 4.5 cents per thousand cubic feet in 1940 to 12.9 cents per thousand cubic feet in 1959, an increase of 163 percent over the period (statistics from Bureau of Mines). By order No. 232 issued March 3, 1961, the FPC found "these indefinite escalation provisions are contrary to the public interest." The order also stated:

> Such escalation provisions, therefore, are undesirable, unnecessary, and incompatible with the public interest * * *.

We think that for the future the above findings and statement should be implemented and made more certain by the proposed legislation.

2. With respect to the proposed amendment of section 4(e): At the present time there are no interstate natural gas pipelines making direct sales to industrial customers in Wisconsin. Therefore, we are not directly affected by the proposed amendment. However, we are cognizant of the cost allocation problem involved, and agree that the proposed amendment would be helpful.

3. With respect to the second proposed amendment of section 4(e): This amendment will remove the principal obstacle to the ability of State regulatory agencies to effectively perform their statutory duty of regulating the retail rates of natural gas distributing companies. Such regulation has been greatly impeded because of the inability of State regulatory agencies to actually know the level of city gate rates which are applicable. With annual consecutive rate increases in city gate rates being filed on top of each other without even hearings being held, it has been most difficult, if at all possible, for our Commission to accurately determine the adequacy or inadequacy of distribution company earnings over a period of years.

In the case of Michigan Wisconsin Pipe Line Co., the last city gate rate actually approved by the FPC was 35.75 cents per thousand cubic feet. Since 1957 this rate has been increased to 42.27 cents, an increase of 6.52 cents per thousand cubic feet or about 18 percent. There have been no hearings on the increases allowed since 1957. On the basis of projected 1961 sales by Wisconsin customers of Michigan Wisconsin Pipe Line, the dollar difference between the two rates is about $7,825,000 per year.

It also goes without saying that the time interval and the amount of money involved in pyramided undecided rate cases before the FPC greatly complicates the refunding process to ultimate consumers. It is practically impossible to make equitable refunds under such conditions due to changes in the number and identity of customers, their use of service, and the financial condition of the distributing company.

4. With respect to the proposed amendment of section 7(e): This amendment would materially assist in closing the other major loophole which has permitted the rapid increase in natural gas rates at the producer level. Unconditioned certificates containing no condition as to the price paid for new gas supplies have had a highly inflationary effect on the cost of both new and existing gas supplies. The proposed legislation would in effect implement the decisions of the U.S. Supreme Court in the CATCO case (*Atlantic Refining Co.* v. *Public Service Comm. of New York*, 360 U.S. 378) and subsequent cases following the same doctrine.

Senator ENGLE. Mr. Brackman, would you proceed to summarize your statement, with particular reference to any item that you wish

to emphasize, and any particular geographic problems that you have? Then I will ask Mr. Bessman to do the same thing. We will then ask question of either or both.

Mr. BRACKMAN. I will try to do that, Mr. Chairman.

STATEMENT OF DAVID M. BRACKMAN, COMMISSIONER OF PUBLIC UTILITIES FOR THE COMMONWEALTH OF MASSACHUSETTS

Mr. BRACKMAN. Mr. Chairman and members of the committee, my name is David M. Brackman. I am a commissioner of public utilities for the Commonwealth of Massachusetts. I am also vice president of our National Association of Railroad and Utility Commissioners.

I am not as familiar with all the details of national gas operation as some of my colleagues who appear here because one of our commissioners who handled this for the commission in past years has been fortunate enough to get into some other business. He is not now with the department.

I am familiar with the bill that is being sponsored by our association, and we are sold on its merits.

We in New England, of course, probably pay the highest price for natural gas of any State in the United States, and probably justifiably so because of our long distance from the supply sources. But we fear very much, gentlemen, that we may be priced out of the natural gas market, and we are getting awfully close to that line now. We would like to stay in the family of natural gas, if we can. Some of our operating companies are beginning to think about going back to manufacturing if prices succeed in going up.

But I am not now addressing myself primarily to price. I think I have covered in my statement, gentlemen, the various facets of the bill, and our reasons why we favor it. We think that it will untie the bottlenecks to some extent. It is not a panacea for all ills, but we feel that it will be helpful. We don't want to hurt anyone but we would like to help our people to be able to receive natural gas at some kind of reasonable price.

So I must refer you to our explanations as we have gone alone in our written statement as to our reasons why we are supporting this bill.

A lot of time and energy has been put into it by our subcommittee, as represented by Judge McKeage in whom we have a great deal of faith and confidence as an extremely able and competent man and an honest one.

I am personally of the belief, and our Commission is, that this would be helpful. From the standpoint of the time element, I think that primarily the Congress of the United States has set up these administrative boards, and so have the States of the Union set up administrative boards to cut across the long trials of cases in the courts and to bring justice quicker to the consumers of the product that are protected by our laws. I think our primary duty is to the consumer, of course, bearing in mind the rights of the parties who provide the commodity should be protected, and they are protected by the courts, and must be given an adequate and reasonable return.

If this bill is not acceptable fully to the Congress then I expect that they will amend it. But in general I believe it is a good bill, an attempt to cut across all the redtape that now ties up these cases, cases

that are capable of being tied up by constant pleas and constant hearings.

I urge the honorable members of this committee to recommend this bill, if you feel that it has merit.

Senator ENGLE. Thank you very much, Mr. Brackman.

Senator MONRONEY. Could we get to the questions before we go to the next witness?

Senator ENGLE. My only concern is that if we question Mr. Brackman long enough, Mr. Bessman won't get a chance to make such affirmative statements as he desires to make.

Will you be fairly brief?

Mr. BESSMAN. Yes.

Senator ENGLE. Then we will hear both.

STATEMENT OF LEONARD BESSMAN, CHAIRMAN, WISCONSIN PUBLIC SERVICE COMMISSION

Mr. BESSMAN. I am Leonard Bessman. Since 1959 I have been chairman of the Wisconsin Public Service Commission. I am a former special attorney for the Antitrust Division, Department of Justice, and former assistant attorney general in charge of the Antitrust Division of the State of Wisconsin.

Our great concern is our inability in Wisconsin to determine whether distribution of company earnings is adequate or inadequate under the present systems. With the successive rate increases piled one on top of another, none of which has been adjudicated by the Federal Power Commission, we find ourselves unable to determine whether city gate rates are just, and of course unable to determine whether the rates charged by our distribution companies are just.

Wisconsin on its own initiative, I assume like most commissions, periodically reviews the rates of return earned by its public utilities. When these rates suggest excessive return, on commission initiative we attempt to lower them by negotiation or hold a public hearing.

In the case of distribution companies of natural gas, that action is virtually impossible because we do not know whether the successive rate increases having been piled one on top of the other without a just case permit us to determine or to ask the distribution company to lower its rates.

We believe that this bill will go far toward correcting a situation that to us seems to have virtually taken out of regulation the gas distribution companies in my State.

My colleagues covered this matter thoroughly. I join in the position taken especially by Messrs. Nigro, McKeage, and Brackman.

Senator ENGLE. Thank you, and thank you for appearing.

Do you have any questions of Mr. Brackman or Mr. Bessman?

Senator SCHOEPPEL. I would like to ask Mr. Bessman: You come from Wisconsin?

Mr. BESSMAN. Yes.

Senator SCHOEPPEL. A great regulatory State out of which has come some very fine legislation—patterned on your State on a national scale.

You are primarily after this lag, aren't you?

Mr. BESSMAN. Yes, sir.

Senator SCHOEPPEL. Why do you want to go out and penalize and invalidate, throw overboard, some of the rights and some of the pro-

tections that are in these contracts of the two-favored-party clause and triparty-favored-nation clause, as Senator Yarborough pointed out and as is apparent in this type of legislation here?

Mr. BESSMAN. Our view is that these contracts are not compatible with the public interest. They merely encourage increased prices to the consumer. Various contracting parties, if they stipulate a price, we believe that price should endure until such time as the two parties change the contract and that the contract should not be changed by one party.

Senator SCHOEPPEL. Where is the great cost to the consumers in your State? Is it from the producer angle who initially sign these contracts? Isn't it in your pipelines and your distribution systems?

Mr. BESSMAN. Very likely, sir. Without adjudication by the Federal Power Commission I think it is quite hard for us to say where the cost is.

Senator SCHOEPPEL. I come from the State of Kansas. We are below the national average on the producer's prices: 11½, maybe 12, not over 12¾ cents of some of the finest gas coming out of the Hugoton field with a high B.t.u. content free of sulfur. It goes into a lot of your areas, by the way. That is the history.

In a lot of these cases, where we have these contracts, you would do irreparable injury to some of those producers who signed those contracts, when your problem has been with your distributing companies and your increased costs all the way down the line. Don't you think we should take a look at that when we pass legislation here, and not look at it lightly before we invalidate all of these contracts?

Mr. BESSMAN. Sure, but we seek to do no injury to anyone. We seek to regulate this industry as we think all industries subject to regulation should be regulated. Now we don't think it has been regulated at all because of the great backlog of cases and because of contracts of this nature.

Senator SCHOEPPEL. If some arrangement could be worked out, and I agree with you that the lag is tremendous and it should be worked out, but that hasn't been altogether the fault of the Commission. There have been some decisions of courts that have thrown that terrific load on that Commission. Maybe it is up to the Congress to share some of this responsibility because maybe we didn't anticipate what that lag would be and the way to eliminate it.

We have to take into consideration the producer's price. In my humble opinion this bill would freeze or throw out of consideration and cause a lot more activity or administrative procedures to be invoked to readjust to that, if we go this far this quick in this measure. I am being very frank with you. I haven't had a chance to look at your complete statement. But that is the way it seems to me.

We think that those of you who are interested in this legislation, who have presented it here for our consideration, should take into consideration what it will do in those areas and those contracts that are reasonable from the standpoint of the prices charged nationwide for some of the finest fuel and the cheapest fuel. But the intermediary cost is what is causing you the trouble in Massachusetts and Wisconsin and some of these other outlying areas.

I think you gentlemen are fair enough minded to understand and to know and to feel that those are some factors that we can't lightly consider on any type of legislation.

Senator ENGLE. Senator Monroney?

Senator MONRONEY. What is the average wellhead price for the gas that Wisconsin uses?

Mr. BESSMAN. I think I have, sir, only the city gas rate prices.

Senator MONRONEY. What?

Mr. BESSMAN. I don't have the wellhead price. I have only the city gas price.

Senator MONRONEY. The figures that I have from the Bureau of Mines, and I think it is quite in point——

Mr. BESSMAN. 12.9. I have it here.

Senator MONRONEY. This is grouped by Northwest Central; 12.9 would be a good figure. What is your consumer rate? Household consumer?

Mr. BESSMAN. I don't think I can give you that. I can give you the city gate rate. I cannot give you the consumer rate at the moment. I can tell you the dollar difference as a result of these pyramided price increases has amounted to $7,825,000.

Senator MONRONEY. The raw gas, the fuel that is burned, costs Wisconsin, of their consumer rate, 12.9 cents a thousand. Surely as a regulatory commissioner you know what the consumer—you are appearing here before a congressional committee—what the consumer pays for it. You say it is too high?

Mr. BESSMAN. No; I did not say it was too high. I did not say that, sir. I said we have been unable to regulate it. I am not quoting a price. There is no foundation to quote a price at this point. There is no basis for it, none whatsoever. I did not say that.

Senator MONRONEY. I think it would be very helpful to this committee to know what the price charged at the burner tip in Milwaukee——

Mr. BESSMAN. I don't recall at the moment and I don't want to take the liberty of saying that because I am not certain of it. I can furnish it readily. We just passed upon a matter very recently involving that. I just don't remember the exact amount.

Senator MONRONEY. How much has the wellhead rate increased in the last 3 years?

Mr. BESSMAN. The wellhead rate, according to the information supplied by our people, increased from 4.5 cents in 1940 to 12.9 cents in 1959, an increase of 153 percent.

Senator MONRONEY. How much has it increased in the last 5 years?

Mr. BESSMAN. I don't have that.

Senator MONRONEY. You don't know how much? You don't know how much the consumer pays for it?

Mr. BESSMAN. No.

I do know that, but I don't know it at the moment. Of course we have the figures.

Senator MONRONEY. I think it is a pretty important item in this hearing.

Mr. BESSMAN. Yes, sir.

Senator MONRONEY. Especially when we expect a man testifying for a public utility commission to be informed on that.

Mr. BESSMAN. Yes, sir. Nowhere in my statement did I say the price is too high. I said it was impossible to know whether it is too high because of these pyramiding prices. That is the point. I did not say it was too high.

Senator MONRONEY. Are you more concerned with pipeline figures, with transmission, or the wellhead price, or are you concerned with the cost of distribution?

Mr. BESSMAN. The cost of distribution, because of course we have no producers in our State.

Senator MONRONEY. How much spread is the cost of distribution from the wellhead?

Mr. BESSMAN. I can't tell you.

Senator MONRONEY. You don't know that?

Mr. BESSMAN. No, sir. We have all that material. I did not bring it with me. We have all that, certainly.

Senator MONRONEY. I would like to address my question to Mr. Brackman.

Do you know what the wellhead price is for Massachusetts gas?

Mr. BRACKMAN. No, sir. I am not familiar with any prices back of what it may cost our operating companies.

Senator MONRONEY. The figures I have for Lynn and Springfield from the Federal Power Commission, 1939—there are two reports—are 11.9 cents. The transmission cost to Lynn is 51.8 cents and to Springfield it is 58.6.

This makes a total cost for the fuel at the wellhead of 11.9 cents, the transmission cost of 51.8 cents, which delivers it to the city gate of Lynn or Springfield at a cost of 63.7 cents.

What is the burner tip rate in these two towns to the consumer?

Mr. BRACKMAN. I don't know that I can bring you up to date. I think that the rates for the first approximate hundred cubic feet were $1.25. Whether that has gone up recently—I think it has——

Senator MONRONEY. The figures we have, from the Federal Power Commission again, are $2.02?

Mr. BRACKMAN. I am talking about a hundred cubic feet.

Senator MONRONEY. I am talking about—very few people burn a hundred cubic feet.

Mr. BRACKMAN. No, I say the first hundred cubic feet, and then we average it out. I don't know what the average rate is to the normal consumer, which would be about 3,000 cubic feet, somewhere in there, a month.

Senator MONRONEY. Would $2.02 be somewhere in the neighborhood?

Mr. BRACKMAN. I think that is a little low.

Senator MONRONEY. You think that is a little low? It might be higher?

Mr. BRACKMAN. It might be higher than that.

Senator MONRONEY. It is always amazing to me that 11 or 12 cents gas can be too high, but that $2 gas at the burner tip, which shows $1.89 spread from the city gate to the consumer's home, is always justifiable. Yet this is nothing but service.

The fuel delivered to the city gate is less than half of what the ultimate consumer's price becomes. The area of the Federal Power Commission shows the $2 consumer rate is just double the total average rate for the whole United States, which is 96.8 cents.

Many States, including my own, go down in the neighborhood of a burner tip rate of 62 or 63 cents. We are burning the same gas. I don't know why we can distribute it from the city gate to the burner tip at such a lesser figure than it costs to do it in New England or

Wisconsin. It seems to me that maybe we have the wrong party at the bar. I just wondered what the utility commissions of these various communities do to protect the consumer's interest in the cost of the distribution of this gas.

Mr. BRACKMAN. Of course they have all been subject to strict regulation on a reasonable return, and there is no company in Massachusetts that probably earns over 6 or 6½ percent, somewhere in that neighborhood. It is nearer 6 percent.

Senator MONRONEY. What is that based on? Replacement cost less depreciation, replacement cost new less depreciation?

Mr. BRACKMAN. We proceed on original investment less depreciation as the rate base.

Senator MONRONEY. Original cost less depreciation?

Mr. BRACKMAN. Yes, sir.

Senator MONRONEY. Most of these were built for artificial gas, were they not, most of these distribution systems?

Mr. BRACKMAN. I beg your pardon?

Senator MONRONEY. Most of these distribution systems were built for artificial gas, were they not?

Mr. BRACKMAN. Oh, yes. These pipelines, these mains and valves, I suppose, were there, with the manufactured gas. They have had to accommodate themselves with some expenditures. They have had to go and fix the burners everywhere, so it would take the higher British thermal unit gas. Manufactured gas never exceeded much beyond 500 or 600, sometimes lower.

So all of the spouts, orifices and all the burners throughout the system had to be changed. There was considerable expense incurred there, plus all of the mains had to be reclamped because of the dryness of the natural gas as contrasted with the manufactured.

Meters had to be changed in many cases, different diagrams. They had to go to considerable expense to accommodate themselves to natural gas.

Senator MONRONEY. Let me ask you this: the present natural gas rate, how does it compare with your former manufactured gas rate per thousand cubic feet?

Mr. BRACKMAN. When we first got natural gas they cut the cost about in half. It cost them twice as much to make it as what they bought it for. Now the cost has crept up to not quite what it cost them to make it, but I would say two-thirds.

Senator MONRONEY. What I am asking is, from the time you got natural gas, did you reduce the rate to the consumer?

Mr. BRACKMAN. Yes, we did, in many cases. The companies, some of our companies at that time were not earning more than 3 percent or 2½ percent. They did not have the capacity and things of that sort. But many of our companies—and we have quite a number in Massachusetts, small variety-type companies—gave substantial reductions to the consumers.

Senator MONRONEY. How much? Just roughly. Five percent or ten percent?

Mr. BRACKMAN. This goes back to 1950 approximately. I don't quite remember. I would be guessing if I told you.

Senator MONRONEY. I don't want you to do that. You realize of course that when you get natural gas, it has double the B.t.u. capacity per thousand feet of gas as the artificial gas had?

In other words, to buy the same amount of B.t.u. the natural gas rate properly would have come down to about half the artificial gas rate.

By the same token, your lines, after they were repaired, because natural gas cleans the old coal tar out and allows the new lines to become more efficient and carry more gas after they have plugged up the holes, they have doubled the capacity without the expenditure of a single dollar except for repair and maintenance of the whole entire plant of your distribution system.

I wonder if that was taken care of in your reasonable return base, because if a line can carry twice the amount of gas it did before, B.t.u.-wise, it would seem to me that these people are then enjoying an improvement in their facility.

Mr. BRACKMAN. They did show an improvement in their earnings in the beginning. They came up from 3½ to 5½ or 6, and finally got up to what we considered a reasonable return, where they never did earn it in the old days, although they manufactured gas, they were able to make some money I guess on the residuals that came off from the burning of the coke, which of course they don't have now.

Senator MONRONEY. I have no further questions.

Thank you very much.

Senator ENGLE. Senator Yarborough?

Senator YARBOROUGH. I will ask both witnesses: This section 1 says it should be contrary to public policy and unlawful to include, and then it has the favored clause, the escalation clause, really, in the gas contracts. What is wrong with public morals to have such provisions in the contract? Why should the public policy be against that kind of clause for an increase in price to meet other prices increased, any more than these cost-of-living prices in labor contracts?

Mr. BRACKMAN. These so-called favored nation clauses, as I understand them——

Senator YARBOROUGH. Who invented that favored nation for a little bitty rancher in Texas?

Mr. BRACKMAN. We got to know them by those. They have different names, these adjustment clauses, whatever they are. They don't seem to be administerable. You don't know what the rate is going to be. It is a changing rate; it is not a firm rate, where you can establish the rate and know that is the rate. You can establish a rate today and you don't know what it will be tomorrow because these clauses start to take effect.

Senator YARBOROUGH. I don't know what my dollar will buy in the grocery store tomorrow, either.

Mr. BRACKMAN. Groceries may be, if I may be so bold as to say, in a different category. We have to regulate this thing. You have to have some basic rules to regulate it. You don't know what the rate is from week to week or month to month because of the action of something that you put into motion back here and now takes place up there.

We have some more definite clauses of that type like the fuel clauses, and some of the operating companies. But it is within a certain realm. You know what it is going to produce, approximately, because of the use of the gas, and you can figure approximately what they will recover on an increased cost of fuel. But from what I understand, in discussing these problems with our engineers, that is the principal bug about these things, Senator. You can't establish a rate that you

know is a firm rate. It seems that many people treat it as against public policy. It is a rate that doesn't have a skeleton, a substance. It doesn't depend on costs. I don't know what it depends on. It depends on collateral factors.

Senator YARBOROUGH. It depends on market value there. If you have somebody who is strong enough to go out and negotiate what it is worth, these people who are small royalty owners and small producers, not financially strong enough to hire a lawyer, they get the benefit of it, where if somebody is a big enough producer to own 50 gas wells, he has his lawyers and accountants and can negotiate and get the value. A man who owns two or three gas wells, or is the royalty owner, unless he is a big rancher he does not have the economic strength to hire lawyers. Those little ones are the ones who are depended on. It is not the big ones who depend on the little ones. These escalation clauses help to save the little ones.

I am unable to understand why we, as representatives of the Government, are asked to declare this as bad public policy or public morals. I just can't see anything wrong with it to have such provisions to protect these little producers who are unable to protect themselves. I have represented some of them.

I have seen royalty owners bring in checks of $3 a month or 75 cents a month, when they have gas wells on their farms.

That is the section that I couldn't understand. I am glad to get your explanation. It is the indefiniteness that the commissioners have. I don't have the figures with me this morning, but a year or two ago I studied the matter where some of the cities had gas selling at over $2 a thousand feet at the burner tip. But the producer in Texas was getting about 10 cents a thousand cubic feet. And the person selling it at the burner tip, the utility, was actually making a net profit of over a dime a thousand cubic feet. He was making more at the burner tip than both the landowner and the producer, the gas company that drilled it, both together were getting at the well for an irreplaceable natural resource that was being burned forever. They can't grow that.

For the commissioners to take after that 10 cents at the wellhead instead of the $2 at the burner tip looks to me like hunting rabbits and letting the lions and tigers roam around under the tent.

Mr. BRACKMAN. I guess our problem in Massachusetts would be with the pipeline companies, the common carriers of the product to us from the wells. They have a long way to go. Of course, there is considerable cost.

Senator YARBOROUGH. Those big pipeline companies are a sort of common enemy to the producer as they are to the purchaser at the other end. As I have studied it since coming up here, the big fight seems to be going to the local distributing company.

I will waive any further questions.

Senator ENGLE. Thank you, gentlemen, for appearing.

Thank all of you for being here this morning. I regret that you were delayed in getting on with your testimony.

Mr. BRACKMAN. May I express my appreciation, realizing the difficulty.

Senator ENGLE. We stand adjourned.

(Whereupon, at 12 : 05 p.m., the committee was adjourned.)

AMENDMENTS TO THE NATURAL GAS ACT

MONDAY, JUNE 5, 1961

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee was called to order, pursuant to adjournment, at 10 a.m., in room 5110, New Senate Office Building, Hon. Clair Engle presiding.

Senator ENGLE. The committee will be in order.

This is a continuation of our hearings on S. 666, a bill that would amend sections 4, 7, and 15 of the Natural Gas Act. On May 23 we heard various State commissioners representing their own States and the national railroad and utilities commissioners.

Today we will hear from the Federal Power Commission through its Chairman, Jerome K. Kuykendall, and from representatives of industry.

Chairman Magnuson has asked me to draw your attention to S. 1946, a bill which would also amend section 4(e) of the Natural Gas Act. It was introduced by Senator Carroll, for himself, and Senators Metcalf, Long of Missouri, Bartlett, Moss, Proxmire, and Douglas.

If you are familiar with this bill, and wish to comment on it during your testimony, we will be glad to hear you on that subject. If not, we would like you to submit a written statement for the record as soon as possible. We are requesting such a statement from last week's witnesses.

Mr. Chairman, we are glad to have you with us this morning, and we will be glad to hear your testimony. I assume you have a prepared statement.

STATEMENT OF JEROME K. KUYKENDALL, CHAIRMAN, FEDERAL POWER COMMISSION; ACCOMPANIED BY HARRY J. TRAINOR, EXECUTIVE DIRECTOR; CARL T. KALLINA, CHIEF, BUREAU OF RATES AND GAS CERTIFICATES; JOHN C. MASON, GENERAL COUNSEL; AND FREDERIC M. P. PEARSE, JR., OFFICE OF THE GENERAL COUNSEL

Mr. KUYKENDALL. Mr. Chairman, I did not prepare a statement. We have our report on the bill. Any prepared statement I would make would be in line with that, and merely duplicate it. So I don't have a written statement. I am prepared to summarize and answer any questions.

Senator ENGLE. That would be excellent.

91259—62——7

The report to which you refer has already been made a part of the record. You may proceed to summarize and then we will ask questions.

Mr. KUYKENDALL. Section 1 of the bill pertains to outlawing certain types of indefinite pricing clauses. The Commission has already achieved the purposes of this section. In fact, in 1955, I believe it was, we substantially achieved it by amending our regulations to prohibit favored-nations clauses in gas supply contracts that were presented to us in support of new pipeline projects, with the result that the pipeline companies did not thereafter, I don't believe in any cases, endeavor to support their projects with producer contracts containing that type of clause.

Recently this year we have banned, effective April 3, I believe, all of these indefinite pricing clauses, except that we did leave the door open for 5-year escalations, the redetermined prices to be based on prices approved or subject to our jurisdiction.

There would be no harm in enacting this section but I see no need of it in view of the action the Commission has taken. I might say that the Commission had considered taking this action that we did take this year in times past—taking it sooner. We had a fear, at least I did, that by doing so we might cause the price of gas to increase because the producers would demand a higher price in the first place if they did not have an indefinite pricing clause of any kind in the contract. I think perhaps that would have been the case, and it may still be the case. Time will tell that.

But from an administrative standpoint, it is not feasible or practicable or workable for the Commission to process these indefinite pricing clauses or the escalations that result from them when we don't know when they are coming. I think you all know how they work. If some new buyer in a gas field pays a higher price and the other producers have favored-nations clauses, then all their prices are triggered. They all file their increases with us.

It is true that these clauses gave the producer only the right to file for the increase and don't of themselves justify the increase. It remains for the Commission to pass on the increase. Administratively we can't handle all of these things, and we don't believe the industry needs these indefinite pricing clauses any longer.

I think there was a time years ago when they served a very useful purpose. But now the price of gas is much higher than it was then and I believe they can survive very well on contracts that provide only for fixed escalations at stated times. I further believe that the industry will get along all right with limitations of 5 years for their escalations.

Senator SCHOEPPEL. Did I understand you to say that they could get along with fixed escalation figures?

Mr. KUYKENDALL. Yes. Escalations containing a fixed price and a fixed date of escalation.

Senator SCHOEPPEL. I want to be sure I understand you.

Mr. KUYKENDALL. We are now carrying out or endeavoring to, to the best of our ability, our area pricing program. If we succeed in that, the producers will have periodic or, I would say, continuous opportunity to seek adjustments.

We can't be adjusting every day or every week or every year, but we should be able to adjust often enough so that the producing industry can stay healthy. But in summary I would say I don't believe this section 1 is necessary in view of the action the Commission has taken.

Turning to section 2, which would give the Commission authority to suspend increases in the rates of industrial sales for resale, that is something that the Commission has recommended to Congress for many years. We still recommend that that be done. We see no reason why that particular type of sale should be exempt from our power to suspend when we have the other rate control over it.

Perhaps it would be better to skip any comment on section 3 until the last, as I think we are all agreed that is the most difficult.

Section 4 would require the Commission to make a finding in each certificate issued that the price of the gas was a price which was required by the public convenience and necessity.

In other words, it is a proposal to enact into legislation the principle enunciated by the Supreme Court in the CATCO decision. There again the Commission feels that that legislation is not necessary. The Commission will do that anyway. However, we have had and no doubt will continue to have a great number of applications by producers where the price is not in dispute, where our staff feels it is a fair price, where the Commission feels it is a fair price, where both the buyer and the seller feel it is a fair price, and where no other party comes in to contest it.

I fear that this legislation might require the Commission to get evidence on that price every time, and I think that is unnecessary and just creates more redtape if it is obvious that it is within the zone of reasonableness. I don't believe it would be wise for Congress to enact section 4.

There is adequate protection there for any high price, and any party can always come in and make an issue of the price any time he wants to.

Section 5 provides certain procedural time limits. I don't believe that it is wise to put this into legislation. I appreciate the purpose that is endeavored to be achieved here, but I don't believe that legislation of this kind will necessarily achieve the purpose desired. The effort here is to try to cure the results of the problems we have. It is not trying to cure the causes. The causes have been inflation, increasing prices of gas, and the terrific expansion in the natural gas industry.

If we are going to deal with this problem let's deal with it in a substantive way. Let's give the Commission a comprehensive and clear statutory authority as to how to regulate the prices of producers. If that were clarified, most of these other problems would soon be out of the way, I believe. Merely putting arbitrary time limits on administrative action, with the substantive problems still remaining, is no solution at all.

The Commission has policies in regard to—we have targets which we observe and try to enforce with regard to various procedural steps. We can, when we choose, provide by regulation for time limits, but we haven't found it wise to be too arbitrary in this respect.

For example, limitations are put on the time in which an examiner shall act. We have had cases where an examiner, for example, would

have a very long, complicated, difficult case, and after that case is concluded and he may be the only examiner available for some other matter which is of extreme importance and urgency. He goes from one case to the other. It may turn out that the second case is more urgent and the public interest would be better served by concluding that case first. So he does do that. He postpones his study and writing of his decision on the first case in order to take care of the second case which is more impelling.

Those things are bound to happen. We have to adjust to those things. I don't believe they are adaptable to statutory time limits. Of course, there is a loophole in it anyway, so that it really doesn't have to be followed. I appreciate the purpose of this. I know the people who sponsored it hope that it would enable or force the Commission to act more promptly. But I don't believe it will serve any useful purpose and will just cause difficulty.

Furthermore, we point out in our report, if anything like this is to be done, it would probably be wiser to do it across the board with all the agencies and amend the Administrative Procedure Act.

I rather think that if legislation to do that were introduced, that the other commissions would take pretty much the attitude we do on this, that it is not wise to legislate in too much detail on scheduling and time limitations.

Turning to section 3, which I believe is the most controversial, there again we have before us proposed legislation which doesn't deal with the substantive problem which confronts the Federal Power Commission, but endeavors to stave off the effect of the conditions that have existed in the last few years, and that is a terrific demand for natural gas, inflation, and the rise of producer prices from a very low level to a much higher level.

This section as drawn merely tries to compel administrative action which doesn't deal with the substantive causes that have developed the problems that we now have. There again I say we ought to deal with the substantive causes rather than pass some legislation which probably will be largely futile in trying to cure the administrative difficulties that have arisen from the substantive reasons.

I have assumed, and I find now I may be incorrect, that section 3 was intended to apply only to pipeline companies. I am a member of the executive committee of the National Association of Railroad and Utilities Commissioners, and I have discussed this matter with some of them. Of course I did not attend the meetings of the committee which sponsored this legislation. I understand now that it was intended that this would apply to producers, too.

I would certainly want to recommend that if this section is enacted that it be made clear that it applies only to pipeline companies. I think that otherwise we will just have extreme havoc, with the method of regulating the prices of producers still being uncertain, and with our area pricing still in its infancy and still facing court test, with a great number of people trying to throw us back under the public utility type of regulation for producers; that it will be impossible permanently to fix a price without refund for all these producers for some time in the future, in the absence of substantive legislation by Congress dealing with that problem.

In the meantime I think it would be very dangerous, it would be unfair to the producers, to tell them they cannot file for an increase until

the Commission has disposed of the prior increase, when the Commission and nobody in this whole world knows precisely how to do that job and do it in an expeditious manner. I think it would be very foolish.

Getting back to its effect in its application to the pipeline companies, I do feel that history has shown that the pipelines have—and I don't speak of any one company—but the industry generally has abused its privilege of filing increases, and, after 5 months' suspension, collecting the entire increase, subject to eventual refund.

History has shown that the Commission has ordered, on the average, 40 percent of those increases to be refunded. That means that the customers and consumers are supplying and have supplied an awful lot of capital to these pipeline companies. Eventually it is repaid, of course. And so far as the jurisdiction of the Federal Power Commission is concerned, that is, dealing with the sales in interstate commerce for resale, we don't have very much difficulty in enforcing refunds.

The pipeline companies refund to other pipeline companies to whom they sell, or to distributing companies. At the most, the pipeline company doesn't have more than a hundred customers, but the distributing companies have thousands of customers, tens of thousands of customers; some of them probably have hundreds of thousands.

Those distributing companies are not under our jurisdiction, but you can all easily imagine the difficulties that the distributing companies have in making those refunds. And it is a very expensive proposition and involves a great amount of clerical work to make all those refunds. And consumers change. They move from one place to another. The person in Chicago, for example, who is entitled to a refund has moved to California. Maybe his check never does find him. The distributing company spends a great amount of money and time and effort in locating those people who have moved.

So I do feel that any legislation or any action that could be taken that will reduce the amount of these refunds is wholesome and good for the public.

I want to point this out: We opposed legislation along this line a year ago, because it didn't have any means at all for providing relief in hardship cases involving pipelines. We have had a great number of pipeline rate increases. We have processed a great number. But here again the bill seems to be endeavoring to cure an administrative problem which has a substantive cause, and it is not dealing with the substance, as I mentioned before. That, I will repeat, has been the increase in the cost of gas, the terrific expansion in the natural gas industry, and inflation in our economy.

This bill, however, does provide an out, so that a pipeline company which could show us that it definitely required additional money, at least some of its rate increase in order to stay healthy and able to render service, could be given relief. We have recommended in our report that if this section is enacted that it be clearly amended so that the commission will have summary authority to give relief as it sees fit in a hardship case.

If we don't have such a provision there are going to be terrific pressures on the Commission and particularly on its staff to dispose of these cases. We have no control over the number of cases we receive. Inevitably, I think that does not result in financial hardship to the

pipeline companies, it will force the staff of the Commission to do an inadequate job in appraising these rate increases; in analyzing them.

So let's not put any more pressure on our staff or on the Commission which is going to force us to grant relief here and there without being sure that we are doing what is right. But let's have an outlet here whereby the Commission can, summarily, grant relief when it seems imperative.

We know how to regulate pipeline companies. We regulate them on the original cost rate base and prudent investment theory, and allow a rate of return on that rate basis. We know what data we need in order to determine whether a pipeline company's rates are just and reasonable. It is quite a different situation from that which we have with the producers. We would know what information to require from the pipelines. In fact, we already require it. But if we wanted additional information we would know what to get. This is information of a rather tangible nature, not nearly so subject to dispute as the information that might be pertinent for producers.

We could get that information, and I think we could make fair decisions which would keep each and every pipeline company in healthy condition and yet cut down very substantially the amount of refunds that would eventually be paid. Certainly much less than the 40 percent that historically has been refunded.

In general that is my summary, Mr. Chairman, of our comments on this bill.

Senator ENGLE. Thank you very much.

Senator Schoeppel?

Senator SCHOEPPEL. Mr. Chairman, I have a number of questions here, some of which have already been answered in a general way.

I want to go back to section 3, with reference to the "necessary" proviso in section 3.

How would the Commission implement that?

Mr. KUYKENDALL. We recommend that that be put in another phrase—necessary or appropriate. We felt that the word "necessary" might—or might at least imply that nothing is necessary except a rate that is not confiscatory. We thought we should add the words "or appropriate" so the Commission would have a little more leeway.

Senator SCHOEPPEL. In other words, what would be the difference between an increase that was necessary and one that would be just and reasonable. Do you think your suggested change would cover that?

Mr. KUYKENDALL. Yes, I believe it would, Senator.

Senator SCHOEPPEL. I note the Commission also suggested adding the words "or appropriate" to the proviso in section 3 of the bill?

Mr. KUYKENDALL. Yes.

Senator SCHOEPPEL. That is what you had in mind a moment ago?

Mr. KUYKENDALL. Yes, that is it.

Senator SCHOEPPEL. In other words, what extra meaning would the word "appropriate" have in this section in a very general way?

Mr. KUYKENDALL. I think the pipeline companies could get some comfort from the use of those words. It would mean to me that we had authority to give them what we considered to be or found to be a just and reasonable rate, and not merely a rate that was not confiscatory.

Senator SCHOEPPEL. With respect to section 4 of this bill, some fears have been expressed that it would, if enacted, turn every certificate

case into a full-scale rate case. What would be your comment on this?

Mr. KUYKENDALL. I have pretty much the same fear. I don't think it is necessary at all.

Senator SCHOEPPEL. Taking the bill as a whole in relation to the present act, it would seem to me that there would be three separate standards, against which rates would have to be judged. Under the present law rates have to be found just and reasonable. Under the proviso in section 3, rates could be "deemed necessary" and in section 4 of the bill rates would have to be "in the public interest."

These three standards, Mr. Chairman, admittedly apply under different circumstances, do they not? But aren't they apt to lead to some confusion and needless controversy?

Mr. KUYKENDALL. I would agree with that, Senator.

We also have in section 7, the certificate section, a provision that the certificate must show that service would be rendered as required by the public convenience and necessity. We have to apply that phrase to rates in producer cases.

I agree, I don't think anyone knows exactly what the distinctions are between those criteria. Judge Brown, of the Fifth Circuit, commented on the difference between the language in section 4 and section 7 in a dissenting opinion a few weeks ago.

Senator SCHOEPPEL. Mr. Chairman, I want to be very frank in discussing this matter. Some of the statements which we had from witnesses who appeared previously questioned the administrative lags that they found in this Commission. I want to ask you just a few questions with reference to that. I think we ought to have it in the record.

What is the average length of time between the date a natural gas company files a rate case and the date the final order of the Commission is issued relating to that filing?

Mr. KUYKENDALL. I can't tell you offhand. Maybe Mr. Kallina can.

Senator SCHOEPPEL. You might be able to supply that for us. I think we ought to have that for the record because there has been some misconception about certain phases of that approach and some of the objections raised on it.

How long does your staff spend on field investigations of pipe rate cases?

Mr. KUYKENDALL. Of course we spend different amounts of time on different cases. None of us is satisfied with this situation. I have not been at any time since I have been on the Commission. I have, just within the last day or two, conferred with staff members on that point again. We are using a lot less time than we did a few years ago.

Can we give any figures on that, Mr. Kallina?

Senator SCHOEPPEL. You might be able to supply that for the record later.

About how many men represent an average order on a pipeline case? Do you have any information that you can furnish the Commission on that?

Mr. KUYKENDALL. That is the same question that you are asking about field examinations and audits.

Senator ENGLE. Without objection the material requested may be supplied for the record, and made a part of the record at this particular point.

(The material referred to follows:)

TIME REQUIRED FOR FIELD INVESTIGATION OF PIPELINE CASES

The last 24 dockets involving pipeline rate cases on which field work was completed required a total of 5,075 direct man-days or an average of 212 days per case. The size of the field parties, which vary from 2 to 10 members, average about 4 employees. This means that the average time spent at the company offices ranges between 2 and 3 months per docket. Since some companies have more than one pending rate matter, and customarily it is feasible to examine these cases at one time, the length of stay at one location will exceed the average, according to the amount of work involved.

TIME REQUIRED TO DISPOSE OF PIPELINE CASES

The last 10 pipeline suspension rate cases disposed of by the Commission required an average of 915 days between the filing date and the Commission order. Disposition of six of these cases was delayed pending the Supreme Court's decision in the so-called *Memphis* case which brought field investigations and hearings on pipeline rate cases to a virtual standstill. The four cases which originated subsequent to the Court's decision required an average of 664 days for disposition. Completion of these cases was also delayed in part by the *Memphis* decision which contributed to the backlog of undecided matters.

Senator SCHOEPPEL. Do you think that an independent audit firm could operate if it spent a similar time auditing each company for which it takes responsibility? The reason I ask you that question, that question has been asked of me several times.

Mr. KUYKENDALL. Personally, although I am not an accountant—I am a lawyer—I have always felt that we could use certified public accountants more than we do. We are using them more, and we are using them more in our hydroelectric work, too, and I believe we are going to be able to use them more in the future. But it should be pointed out that the work that is done to determine whether pipeline rates are just and reasonable, or are not, is quite different than a pure audit by a certified public accountant.

There are a lot of elements in ratemaking that the average certified public accountant does not and cannot deal with. He deals with the past, with what has gone on. We are looking to the future. We are using the past as the basis for making rates for the future. There have to be adjustments made to the figures in the test period we use. The expenses may all be accounted for perfectly properly and truthfully by a certified public accountant, that won't necessarily predict the future. It is those adjustments, largely, that constitute the differences in field examination and in preparation of a rate case, as distinguished from the auditing of a certified public accountant.

Senator SCHOEPPEL. Do you think that management is misrepresenting revenues and expenses in the average rate filing?

Mr. KUYKENDALL. No, I don't think that management of these companies are crooks. I think they are honest people. I know many of them.

I would say this, that I know some that will certainly get all they can get, but I don't think they are going to risk going to the penitentiary in order to do it. By and large they are honest and sincere people. But as I say, the past doesn't always indicate the future, the past financial record.

Senator SCHOEPPEL. Does your staff attempt to use the mass of data required to be filed and put into evidence, or does it generally go off on one of its own methods and make a separate and independent analysis?

Mr. KUYKENDALL. Yes. The staff I think generally makes an independent analysis, and as I say, I feel that has been overdone, but that is necessary in many cases.

For example, a pipeline company—and I assume, Senator, we are now talking about pipeline companies and are not talking about producers.

Senator SCHOEPPEL. That's right.

Mr. KUYKENDALL. A pipeline company might file a large rate increase. Perhaps one of the big items in it is an increased rate of depreciation. There would be no dispute about the figures if that rate of depreciation they think they should use would be accepted; the figures would fall into place largely. But our staff may feel that that rate of depreciation is too high. It probably would appear to be out of line with what the industry generally used. So there would have to be some investigation made to see whether that rate was proper or not.

A pipeline company may change methods of allocation over what were used in its last rate case. That can shift costs a great deal. It may change its method of zoning, which would shift costs greatly from one segment of its pipeline to another. Those are all matters that are above and beyond accounting and do require analysis and preparation of arguments against those proposals if it is deemed that they are not proper. It becomes complex and difficult. In this expanding and dynamic industry we can't look forward too soon, to stability and settlement of all these problems, perhaps as you might now find in railroads.

Senator SCHOEPPEL. I wondered, if your staff makes its own independent analysis, why you require the submission of substantial amounts of material to the Commission when a rate filing is made?

Mr. KUYKENDALL. I have heard reports that the staff were using the analyses and data submitted and were going out and compiling the same information. I have never been able to verify that. If I ever find that the staff is doing that, I will come to you or this committee, or I will take other drastic steps; I will assure you of that.

In the cases that have come to my attention and have been run down, it has been found that they were doing something in the nature of what I have described, rather than just recompiling that same data.

Senator SCHOEPPEL. Thank you.

Do you agree, Mr. Chairman, that pyramiding, which you mentioned in your report on the bill, is due to the long delays in deciding of rate cases?

Mr. KUYKENDALL. That is a contributing cause of it, the length of time it takes us to decide a rate case. But what causes the rate case to be filed at all? It is the conditions I mentioned previously.

Senator SCHOEPPEL. Frankly, I have wondered, the longer the delay, if there isn't any pyramiding as a result?

Mr. KUYKENDALL. Naturally if a case could be disposed of very speedily and then another case were filed, there wouldn't be a pyramid; there would just be the one case.

Senator SCHOEPPEL. That gets us to the $64 question. Whose fault is this?

Mr. KUYKENDALL. I don't mean to say that we are perfect in the Federal Power Commission. We have improved a great deal. We can give you figures to show how much more we have accomplished in given times than has been accomplished some years ago. But the basic cause of it is that our work has been multiplied many, many times by the decision by the Supreme Court in the *Phillips* case putting all the producing industry under our jurisdiction. Congress has failed to give us any standards by which we can regulate those producers, and it is almost an insolvable problem. We hope now that we have the solution in this area pricing.

That should be borne in mind. I would say our work has been multiplied at least 3 times, and maybe 10 times, by that *Phillips* decision. That is the primary cause of the delay in the processing of the pipeline applications.

Senator SCHOEPPEL. Might I say that, I have felt, as you indicated a while ago, that much of this work has been piling into your Commission by reason of some of the court decisions which require an entirely different approach to many of these problems that you have before you. Congress itself may have been too slow or derelict in furnishing the additional manpower that you need down there.

Here we are asked to pass on a piece of legislation. If we want to go to the heart of it, we should have some of these matters brought out in the open so we can find where the causes are and the effects, and then see what we can do about them. I am not one who will condemn a Commission, whether it is yours or anyone else's, unless we have a pretty fair review of the situation before us in relation to the legislation that is sought as a remedy. Maybe we haven't given you enough examiners down there; maybe we haven't given you enough additional skilled staff personnel. There also devolves upon you the responsibility to come before us at periodic times and make those requests. I think most times they will be honored.

Mr. KUYKENDALL. We have done it, and I am pleased to report and note here that the House Appropriations Committee gave us everything we asked for. I trust the Senate will do the same.

Senator ENGLE. Do you have any practical suggestions as to how we can work on both ends of this problem? We have to either cut down the workload that comes to you, or we have to speed up the handling of the workload that you have; otherwise you are bound to always be bogged down.

There are sections of this bill which contain some directions. They in effect put a limitation on your time for consideration. I notice that you do not care very much for that provision. But do you have any practical suggestions that you can put in the record as to what we can do to operate on both ends of this problem, that is, somehow or other trim down the number of applications that come in and at the same time move from the other end of it and expedite the handling of the applications that are pending? It seems to me that we can start in that way to the solution of the problem.

The witnesses who came here as proponents of this bill said that they wouldn't be here if present applications had been timely acted upon; that they would have had no case.

I can see that Senator Schoeppel has a point, that we ought to do something on the other end of it. If you don't like section 5 of the bill, tell us what we can do, aside from giving you more money, to help this situation along. I made the suggestion the other day that in the courts in California we had passed a law saying that no judge could draw his salary if he had a matter pending before him for 90 days. We observed that expedited business considerably. Perhaps we ought to undertake something of that sort.

This committee would be certainly glad to have your suggestions. Thank you very much.

Senator Schoeppel?

Senator SCHOEPPEL. Mr. Chairman, I draw your attention to this: In hurriedly going over your report, on page 9, the last paragraph, you say:

> The Commission would take this opportunity to renew its recommendations that the Federal Power Act and the Natural Gas Act be amended so as to give it authority to delegate to one or more commissioners, or subordinates, any portion of its work, business or functions now requiring Commission action. Under such an amendment, the Commission would be able to delegate responsibility for disposing of matters of lesser importance which now consume time that could be more profitably devoted to substantial questions of major significance. More importantly, the Commission again recommends the elimination of many of the public utility features of the regulation of independent producers carried in the Natural Gas Act. This change in the statutory requirements would be most helpful in the administration of the controls imposed by Congress, but, in our opinion, would not prejudice the protection of consumers which is the primary purpose of the regulation which Congress has provided. Furthermore, much of the difficulty in applying the Natural Gas Act to independent producers arises because that statute was not drawn with the operations of the producing phase of the industry clearly in mind. Among other things, Congress should consider specifically the question of a rate formula applicable to independent producers and to the production of natural gas for interstate transportation and sale. The other legislative recommendations which we have submitted are also of sufficient importance to justify consideration by the Congress, although we do not here repeat them.

Do you subscribe to that?

Mr. KUYKENDALL. Yes, I do, unequivocally.

In answer to your question, Senator Engle, as to what we would recommend, as Senator Schoeppel has just quoted, we recommended consideration of our legislative recommendations in our annual report. I think the most important of those by far is the first one which appears on page 17 of our annual report. It might be appropriate to insert that in the record at this point, if you are agreeable.

Senator ENGLE. Without objection it will be made a part of the record.

(Referenced material follows:)

ITEM 1 OF FEDERAL POWER COMMISSION'S LEGISLATIVE RECOMMENDATIONS IN ITS ANNUAL REPORT FOR 1960

Natural Gas Act—Regulation of independent producers.—That the pertinent sections of the Natural Gas Act be amended (*a*) to provide for elimination of any requirement for certificates of public convenience and necessity for producers of natural gas; (*b*) to clarify the Commission's authority to establish a standard for pricing or evaluating natural gas as a commodity which would not require use of a rate base or traditional utility ratemaking principles, and which would enable the Commission to weigh the interests of the consumer in low prices with the necessity of providing assurance of future gas supplies; (*c*) to clarify the

Commission's authority to disregard, in its discretion, costs of or revenues from other products sometimes obtained in conjunction with the production of natural gas, including oil and liquid hydrocarbons; (*d*) to clarify the present authority of the Commission to fix producer rates on an area basis; (*e*) to afford the same treatment of independent producers and pipeline producers with respect to pricing or evaluating natural gas; and (*f*) to clarify the Commission's power to eliminate clauses in independent producers' contracts of sale to interstate gas transmission companies which contain provisions for a change of price to the purchaser by reason of (i) changes in the price received by the purchaser on resale, or (ii) the payment or offer of payment of different prices by the purchaser or other purchasers to the seller or to other sellers.

Senator ENGLE. I might say that I asked Senator Metcalf the other day—the coauthor of this bill, as mentioned in the opening statement—he had a rule in Montana that judges had to act. They had to act in a specified period or not draw their pay. He was a member of the Supreme Court of Montana. There was one fellow on the court who was very rich. Since it was a multimember court and had to act in unison, the rich fellow would sit on the opinion while the other fellows were getting behind in their rent. I am not so sure that this would work well with the Commission if we had somebody on it who was pretty rich; but I am searching for practical methods of getting this job done.

Senator MONRONEY. Supposing, Mr. Chairman, that would be expanded to apply to Members of the U.S. Senate? This would be a horrifying example.

Senator ENGLE. That is one reason I am puzzled about it. It might be a bad precedent.

Mr. KUYKENDALL. Senator, I suggest that hereafter that this committee might examine all nominees as to their wealth before they are confirmed. As presently constituted, we have no trouble on that score.

Senator ENGLE. Senator Monroney?

Senator MONRONEY. Mr. Chairman, as I understand the testimony of the distinguished Chairman of the Federal Power Commission and members, they oppose section 1 because there is no need for it. Your present procedures have already made this moot, and you are performing under your own regulations the determinations to outlaw most of the indefinite pricing clauses excepting the two against which no objection has been raised; namely, the 5-year examination of the rates. Sometimes the rate is in a 30-year contract. It is very difficult to make a 30-year contract without reexamination.

Mr. KUYKENDALL. Redetermination?

Senator MONRONEY. Yes.

Mr. KUYKENDALL. Yes. I don't know whether all you people understand this or not, but we had a decision by the Supreme Court some years ago called the *Mobile* decision which, at least so far as I knew, changed the law considerably.

It had always been my understanding that a public utility had the right to file a rate increase any time it thought it necessary. Although I don't agree that the producers are public utilities, I thought that that principle would apply to them, and that regardless of the contract provisions, if a producer felt he did not have enough revenue he could file for an increase. That *Mobile* case is to the contrary and provides that—I am oversimplifying a little bit—that a pipeline company or producer cannot file a rate increase unless he has a contract provision for it. There is one exception, and that is if they are

not selling under contract but merely under a rate schedule which is the way the pipelines operate. They can then file for rate increases as deemed necessary.

Without some kind of a provision for escalation periodically the producers could only ask the Federal Power Commission to investigate their situation and give them some relief. When the Power Commission is overwhelmed with pending applications for rate increases and great sums are being collected subject to refund, it is not probable, I believe, that the Commission would take time out to go to try to relieve hardship cases of those who felt they needed more revenue. I think we would probably concentrate on our existing rate cases which were being collected subject to refund.

So I feel there is a need for some escalation provisions in these producer contracts.

Senator MONRONEY. Nothing that this bill does is not practically being done now by the Commission in its procedural operations?

Mr. KUYKENDALL. That is true.

Senator MONRONEY. So your summary of section 1 is that there is no need for it.

Mr. KUYKENDALL. No need for section 1.

Senator MONRONEY. Particularly in view of the fact that the way the language has been carelessly written, that could, as the language stands, outlaw contracts that existed prior to the enactment of the Natural Gas Act.

Mr. KUYKENDALL. I don't think it is clear at all as to that. We went into that question very thoroughly in the case we mentioned in our report, the *Pure Oil* case. I for one came to the conclusion that we would not be on solid ground if we tried to throw out those clauses retroactively.

Senator MONRONEY. But this bill does, if you read it as it is written?

Mr. KUYKENDALL. It seems to me it did. That could be clarified. I don't believe it would be wise for Congress to enact such legislation, because I don't believe it would be constitutional. I think we would just have a lot of litigation and confusion.

Senator MONRONEY. So as it now stands, there is no need for section 1, because it is already being done.

Section 2 you are for, which would give you the right to suspend the rates that are now prohibited from suspension by the Natural Gas Act; is that correct?

Mr. KUYKENDALL. That is correct.

Senator MONRONEY. That would apply only to pipelines?

Mr. KUYKENDALL. Yes.

Senator MONRONEY. Actually, does not the language of that also give you the right in the bill before us to suspend the end use of gas; that could, if you wished under this bill, deny the use of gas as boiler fuel?

Mr. KUYKENDALL. I didn't get that interpretation of it. I thought it was dealing only with section 4, which would be rates for service previously being rendered, an increase in rates for service already rendered. We do not have before us the question of whether to permit a particular service or not.

Senator MONRONEY. As I see it, the proviso here:

Provided that the Commission shall not have the authority to suspend the rate, charge, or classification for service for the sale of natural gas for resale for industry only.

You would be in favor of that withdrawal of the proviso?

Mr. KUYKENDALL. That is right. I think we ought to have the power to suspend those rate increases. I don't think it says anything that pertains to our jurisdiction over end use.

Senator MONRONEY. That service thing raised a question in my mind.

On section 3, you also feel that that is not properly drawn and is ineffective, and if the section were allowed to stay in it should be strictly limited to pipelines and not to producers?

Mr. KUYKENDALL. Yes.

Senator MONRONEY. In other words, this successive rate increase even on the pipelines might result, the way the bill is written, if the fact that a small rate increase might have been filed for from an existing field and the company then acquiring high-priced gas, we will say from offshore, could not ask for its increase while the small increase of normal escalation might be still pending; is that correct?

Mr. KUYKENDALL. That is correct.

Senator MONRONEY. It might come from an entirely different part of the country and an entirely different category of gas, and its production could be twice or three times the cost of gas in the old field; is that correct?

Mr. KUYKENDALL. You might have other increased costs which would require higher rates.

I don't want to predict this, because I don't know, but it does appear to me that a pipeline, in order to avoid the hazard of what you just mentioned, that is, filing a small increase and having it pending when some great amount of additional costs hit it, might guard against that by padding, by filing a very large increase or as large as it can make it, instead of a small one the first time. We never know how these things are going to work out.

I am sure you have all had experience with legislation which sometimes will have almost the opposite effect of what you thought it would have. Maybe that would be the case here, that we would find we are getting bigger increases by the pipelines in order to avoid that hazard you have mentioned.

Senator MONRONEY. In other words, since you couldn't come in for a second increase you would ask for a whopper in order to be sure that you asked for enough and wait for that to be settled, is that correct?

Mr. KUYKENDALL. That is right.

Senator MONRONEY. Section 4, I think you said there is no need for that, that it is apt to create more delay and confusion in what is already a rather confused and difficult area.

Mr. KUYKENDALL. Yes.

Senator MONRONEY. So this would not affect the supply of gas?

Mr. KUYKENDALL. No.

Senator MONRONEY. Section 5, requiring hearings to be completed in 1 year, you say there is no need for that, that this is a physical impossibility unless something is done to straighten out and facilitate

the handling of these by the area pricing methods or other things that the Commission is now attempting.

Mr. KUYKENDALL. I don't say it is impossible to comply with those time limits, and I think in most cases that we will and can, and in most cases we have. But it doesn't even scratch the surface of what the problem is. I don't see any sense in putting statutory time limits on administrative action like that. Let's deal with the substance.

Senator MONRONEY. This is a judicial determination. To say that the judicial determination must be made in x months is like saying to the Supreme Court that you must hand down a full load of cases every week and if you don't it is against the law.

I don't know of any other application. We have some 4- and 5-year applications before the Civil Aeronautics Board, for example, that pend for years and years before the Board can complete the hearings and render an opportunity for all to get their arguments and statements in the record.

Mr. KUYKENDALL. Our rate cases, many of them, are very complex. All the distributing companies and other pipeline companies which buy from the pipelines, the interested State Commissions, interested cities, sometimes the attorney general of the State will come in. We have, not infrequently, over a hundred parties.

Under our Constitution we have to give those people due process, under the Administrative Procedure Act, and under the Natural Gas Act. We can't just cut those people off. I sometimes feel I would like to. I wish we had more leeway to act in a more summary fashion. But under existing law we don't. They have to be heard. If they are not heard, they can probably reverse the case after we have made a decision.

I believe this is a case where we should make haste more slowly rather than trying to cut these constitutional corners.

Senator MONRONEY. Isn't it also a fact that in almost all of these rate cases that the very men who are demanding speed and completion of the case within 1 year always intervene? It is a rare time that these men who seek this legislation are not there after the processes are underway between the various parties, and they then are appealing, asking for more evidence, asking for more oral argument, and things of that kind?

Mr. KUYKENDALL. Yes, and those intervenors frequently ask for continuances.

Senator MONRONEY. On that, I might say, the Federal Power Commission is never allowed to intervene in State rate cases. The testimony here the other day showed, for example, that the price at the burner tip for the average household consumer is 10 to 20 times the cost of the original natural gas. Many times it doubles, quadruples, or more from the city gate to the burner tip. You are not allowed to intervene in that at all.

Mr. KUYKENDALL. I am sure we wouldn't be allowed to, and we haven't tried, either. We have other things to do.

Senator MONRONEY. You have only one pair of hands. This also puzzled me, that 10-cent gas can become $2 gas when it reaches the burner tip, and it is always the 10-cent gas that bears the burden of criticism.

Mr. KUYKENDALL. And I assume in most cases it is correct, that these States have competent regulatory commissions, and that those costs must be justified or they wouldn't be allowed by the State commissions.

But I think it does prove your point that the price of the gas, the producers' selling price, becomes a very minor part of the bill that the consumer pays, the domestic consumer.

Senator MONRONEY. As the bill now stands you see no need for section 1; you are for section 2; you see errors and much change in section 3; no need for section 4, because it would create more delays; and no need for section 5 because it is an impractical way of ordering a judicial body to arrive at a decision within a certain period of months.

Is that the summary of the Federal Power Commission's position?

Mr. KUYKENDALL. I think that is a fair summary.

Senator MONRONEY. That is all that I have.

Senator ENGLE. Senator Morton?

Senator MORTON. If we have that little of the bill left, why bother with the bill and why not pass on to something else?

Mr. KUYKENDALL. You flatter me, Senator. I don't think it is up to me to determine what is left of this bill.

Senator MORTON. I think if we had a vote right now we would get rid of this bill.

Mr. Chairman, during the testimony the other day, May 25, I think it was on this bill, at which the proponents of the bill were heard, they admitted that the principal problem confronting the State commissions was the delay by the Federal Power Commission in rendering its decisions in rate proceedings.

I think you have explained many of the reasons for this in the past.

Is it fair to say that one of the principal problems comes from the court decisions in connection with the Natural Gas Act?

Mr. KUYKENDALL. Yes, the *Phillips* case in the Supreme Court which brought the producers under our regulation.

Senator MORTON. You have commented on protracted field investigations by the Commission staff. You have indicated that steps are being taken to try to foreshorten that?

Mr. KUYKENDALL. And have been for a long time. I might point this out, too, that these intervenors rely very heavily on our staff, and it is very understandable that our staff does not want to take too many shortcuts because the consuming public is relying on us, too. There is a happy medium to be followed in this area. But I do not think the investigations are ever going to be as brief as the pipeline companies would like them, or maybe as some of the intervenors or State commissions would like.

I will take an oath that I will continue to do everything that I know how to do to expedite those investigations, and I do feel that they have been overdone in the past, not in the too recent past, at least to any great extent, but some years ago. Our staff certainly now does not have to worry about working itself out of a job. They are all so overwhelmed that I think we are making good progress in eliminating any unnecessary work that we can.

Senator MORTON. Then the number of intervenors in the rate proceedings—and I do not say that there should not be intervenors,

because they have their interests to protect, and the public interest to protect, in many cases—that is a factor in some of this delay, however.

Mr. KUYKENDALL. It is.

Senator MORTON. Probably a necessary factor but a factor.

Mr. KUYKENDALL. It is a very large factor. Let me point this out, and this is not a criticism of those intervenors. They all have their own State or their own sectional or local interests to represent. If we have a zoning problem the States or communities or parties in one section of the country in one zone will take a position, naturally, which will give them as low a price as they can support in any way, and the people in the next zone do likewise. They are fighting each other and we have to hear them.

Senator MORTON. Do you attribute any of this delay in reaching the final Commission decision to the pipelines themselves?

Mr. KUYKENDALL. Yes, I would. It is a funny thing that the pipelines, by and large—and this is not true of all of them—and I can think right now of one large company, and I saw an officer of the company in the room here, which has been very concerned and very anxious to get its rate cases settled. But I think it is true to say that, by and large, these pipeline companies have not worried too much about their rate cases, as long as they are collecting adequate revenue, even though subject to refund.

I think they would all rather have their decks clear. Their main concern, that they exhibit to us, is on their expansion programs. They want action on their certified cases. That is really where we hear their requests for speedy action, more than on the rate cases.

I know it is true that when a pipeline company has several rate cases stacked up, and a considerable amount of time goes by and the amount collected subject to refund is becoming large, that they get alarmed and they want to get that cleared up. But I think it is fair to say that by and large, up to a reasonable point at least, they are not too concerned about expedition on their rate cases. They would rather have us expedite their certificate cases.

Senator MORTON. But they are not putting any roadblocks in the way of adjudication of their rate cases?

Mr. KUYKENDALL. No. They would like to get them settled. They are not delaying them.

Senator MONRONEY. Would you yield right there for a clarifying question?

Senator MORTON. Yes.

Senator MONRONEY. They pay 6 percent interest, do they, on all the money collected?

Mr. KUYKENDALL. For many, many years they paid 6 percent and we raised it to 7 percent about a year ago. Interest rates had gone up generally, so we raised it to 7, hoping that would be some deterrent to the filing of excessive increases.

Senator MONRONEY. So this is in fact an interest penalty beyond their normal borrowing, is it not? I think they borrow on their long utility lines at around 4½ or 5, I would presume?

Mr. KUYKENDALL. Yes.

Senator MONRONEY. So they do not make as much money by borrowing from the public, you might say. This was brought out the

other day in charges, that they found it expeditious to delay because they were getting the public money. All of this money is impounded and until we determine the rate it draws interest at 6 percent, and on the new interest at 7 percent?

Mr. KUYKENDALL. That is true. Of course a company might not want to borrow the money that they can amass through collecting rates subject to refund. It would increase their debt ratio and diminish their equity ratio. Of course their equity money costs them considerable more than their debt money.

Senator MONRONEY. This does not show up as profit on their annual statement?

Mr. KUYKENDALL. No.

Senator MONRONEY. They would not be able to influence their stock movement by this in any way?

Mr. KUYKENDALL. At least not to anyone who would read their statement thoroughly. That is one thing that pipeline companies certainly do not like, I know, is the uncertainty of not knowing how much of this money they eventually will be able to keep.

Senator MORTON. I have had statements from industry saying that 70 percent of pipeline increases, about 70 percent, during the last 5 years, resulted from increases in costs of gas purchased by the pipelines.

Do you generally agree with that?

Mr. KUYKENDALL. I don't know offhand. I would not dispute it. I imagine that is pretty close.

Senator MORTON. Presently a pipeline company cannot include as a basis for rate increases costs which will incur more than 6 months from the date of the proposed effective rate?

Mr. KUYKENDALL. We have not been that arbitrary.

That is quite a problem, Senator, knowing how far in advance to look. Frequently one change in conditions will have an effect on others. For instance, if a pipeline company will tell us, "A year from now our expansion will be complete. We will have already spent, for example, say, $50 million. We hope these rates will be good for a good many years in the future. And we want you to consider that additional investment we soon will have made."

Of course the offsetting factor will be, that having spent that money for additional facilities, they are going to have additional revenues, too. So it is a hard problem. That is one of the many problems we have.

Senator MORTON. The thing that frankly disturbs me as much as anything else is if 70 percent of the rate increases requested by the pipelines result from increased costs of gas, and I will admit all the problems of the producer that you have in regulating the producer and that you have had to undertake this because of the court decision, at the same time if they can only file one increase at a time and they are subject to these increased costs in gas, thoroughly justifiable, perhaps, that to me seems to work a hardship on the pipelines under the terms of section 3 as proposed in this legislation.

Mr. KUYKENDALL. I agree. In a similar bill introduced last year there was no escape of any kind provided for the pipeline companies and we did not support it. In fact, we thought it would be unconstitutional. If section 3 is enacted, as I say, it certainly will have to provide some means of providing relief when it is needed.

Senator MORTON. In your testimony before the Appropriations Committee on April 26 of this year, you filed a written statement and then you were also interrogated by some of the members of the committee. In your written statement you said:

> Requests for rate increases are attributable primarily to an increased cost of operation, and claims for higher rates of return on investment. There is no indication of a leveling off of operating costs or appreciable decrease in costs of money. Also new supplies of gas are being offered to pipeline companies at ever-increasing prices.
>
> In view of the foregoing and the continued expansion of the pipeline facilities at higher costs there appears to be no grounds for assuming that the new rate cases in fiscal 1961 and 1962 will vary appreciably from the actual receipts of 1959 and 1960, which were 51 and 50 cases, respectively.

I assume that you were talking about rate cases of the pipelines?

Mr. KUYKENDALL. Yes, I was.

Senator MORTON. In your oral cross-examination in response to questions you said, about the load and so forth—

> We could not catch up overnight. We can do the pipeline job. I think we have been through a phase. I hope it is coming to an end.

You conclude that colloquy by saying:

> We have processed many this year and I do not advocate any change in the way we regulate the pipelines.

This bill, it seems to me, even with the proviso which you properly insisted on in section 3, does advocate quite a change in the way we handle pipelines, does it not?

Mr. KUYKENDALL. What I really had in mind is no change in the standards or the methods we use in determining what is a just and reasonable rate for them.

Senator MORTON. Thank you, Mr. Chairman.

Senator ENGLE. Senator Schoeppel?

Senator SCHOEPPEL. I have two more questions with reference to this statement.

In your report where you say: "Forty percent of the filed rate increases were not allowed," do you mean by that, Mr. Chairman, that 40 percent of the rates collected under bond are returned with the 7 percent interest?

Mr. KUYKENDALL. Yes.

Senator MORTON. Forty percent of the increase?

Mr. KUYKENDALL. That is correct. Of course, the 7 percent interest has only been in effect the last year. Six percent before that.

Senator MORTON. Would you yield?

Senator SCHOEPPEL. Yes.

Senator MORTON. Let me clarify that.

Senator Schoeppel's question was 40 percent of the rate.

Senator SCHOEPPEL. Of the rates collected.

Mr. KUYKENDALL. No. Forty percent of the increased rates in effect subject to refund.

Senator MORTON. That is a lot of difference.

Mr. KUYKENDALL. I have the figures here for the period June 1, 1948, through April 30, 1961; 41.6 percent was ordered refunded during that period.

Senator MORTON. Would you yield?

Senator SCHOEPPEL. Yes.

Senator MORTON. This means that if the rate increase were filed and went in, subject to the refund provision, and say it was 8 percent increase, then the refund would have been 40 percent of the 8 percent, which would be 3.2 percent of the gross rate.

Senator SCHOEPPEL. Do you agree with that?

Mr. KUYKENDALL. I don't know whether I followed your mathematics or not. But I agree with what you are saying in principle.

Senator MORTON. Make it 10 percent, because that is an easier figure. Suppose you allowed company X a 10 percent rate increase, and then after you got through with the determination determined that 40 percent had to be returned. That would be 4 percent—40 percent of 10 percent is actually 4 percent of the rate charged?

Mr. KUYKENDALL. That is right. The 40 percent applies to the increased portion of the rate, increased rates collected subject to refund.

Senator MORTON. I am afraid that some of my colleagues had the impression—not those on this committee but others with whom I have discussed this bill—that 40 percent of this whole rate was returned, and that the pipelines are living on the consumer's money. Of course I must say that the point Senator Monroney made impressed me very much. If you get money today for 4½ percent, why you want to pay 7 percent for it, I don't know.

Senator SCHOEPPEL. One final question, for the benefit of the record. When we talk about the producers of gas, I know that there is a great distinction between what the actual producer gets when he sells as against what the customer pays in the distributing end of a distributing area. Do you agree with me on that?

Mr. KUYKENDALL. Yes, sir.

Senator SCHOEPPEL. There is a common way of describing this. This is simply a shorthand method of totaling three different items, and I want this in the record. First, the cost of gas; second, the cost of transportation; and then the cost of local delivery. Those are the three fundamental things that you people have to wrestle with.

Mr. KUYKENDALL. Yes, except the third one is not under our jurisdiction.

Senator SCHOEPPEL. I realize that, but in discussing this whole picture, the average individual reading a newspaper article or some discussion of it, if he stopped to think of these three initial steps, it would take on an altogether different viewpoint and complexion?

Mr. KUYKENDALL. That is true. The industry falls into those three groups: the producers, the long distance transmission companies and the local distribution companies.

Senator SCHOEPPEL. Thank you very much.

Senator ENGLE. Thank you very much, Mr. Kuykendall, for your testimony. We appreciate your being here.

The next witness is Mr. W. N. Elmer, president of the Texas Gas Transmission Co., Ownesboro, Ky., and the first vice president, Independent Natural Gas Association of America, 918 16th Street, NW., Washington, D.C.

I note that you have a prepared statement of some length. Are you prepared to summarize the statement?

Mr. ELMER. Yes, sir.

Senator ENGLE. Without objection, the statement will be made a part of the record and Mr. Elmer may proceed with his summary.

STATEMENT OF W. M. ELMER, PRESIDENT, TEXAS GAS TRANSMISSION CORP., OWENSBORO, KY.

Mr. ELMER. My name is W. M. Elmer. I am president of Texas Gas Transmission Corp., which has its principal offices located in Owensboro, Ky. Texas Gas is an interstate natural gas pipeline company which sells approximately 400 billion cubic feet of gas annually. Our company is a natural gas company within the meaning of the Natural Gas Act, and is therefore regulated by the Federal Power Commission.

I am also a director and first vice president of the Independent Natural Gas Association of America, and have been designated as spokesman for that association to appear before your committee today in connection with Senate bill 666, and primarily sections 3 and 4 of that bill. I would like to point out that the Independent Natural Gas Association of America represents almost the entire natural gas pipeline industry.

This industry is greatly alarmed over the possibility of sections 3 and 4 of S. 666 being enacted into law. These sections, in my opinion, represent the most serious threat to the natural gas industry of any legislative proposal since I have been associated with that industry, a period of some 15 years. The consequences of such legislation, if enacted, could be very disastrous to the industry and to the public it serves. Although both sections are very serious, I believe section 3 presents, by far, the greater threat. Consequently, I will address the bulk of my remarks in that direction.

SECTION 3

THE PROPOSAL

Section 3 of S. 666 would prohibit any natural gas company from collecting an increase in rates if there is already in effect, subject to refund, an increased rate which is awaiting a determination by the Federal Power Commission as to its reasonableness. While there is a proviso in section 3 that would give discretionary authority to the Commission to permit the waiver of this provision, we definitely do not feel, as I will explain later, that such proviso can or will cure the evils that would be created by the section.

THE PURPOSE

The apparent purpose of the sponsors of the bill is to stabilize gas rates and prevent the pyramiding of rate increase applications. We in the pipeline industry are equally desirous of accomplishing these ends to the greatest possible extent. Our problem is that the proposal, as set forth in section 3, will not help the situation, but, on the contrary, will be very detrimental to both the industry and the public we serve.

THE PROBLEM

First, I would like to summarize briefly three factors which give rise to the bulk of the rate increase applications on the part of the pipeline industry.

Cost of gas: The first and most important cause of rate increase applications is the necessity of obtaining adequate rates to reimburse our supplies for the gas we must purchase to fulfill the present and growing needs of the consuming public. These gas costs can be segregated into two categories.

The first category represents increases in costs of gas under existing contracts and presently connected to our systems. These increases result, primarily, from various types of favored nations, price redetermination, and other escalation clauses included in those contracts. The Federal Power Commission, in its recent order in docket No. R–153 issued in May of 1961, has outlawed a substantial portion of these clauses in all new contracts. There is, however, a very serious question as to whether such clauses in existing contracts can be outlawed.

At this point, I would like to mention that if Congress were to outlaw all indefinite pricing clauses, as proposed in S. 666, without, at the same time, resolving the other problems which are related to producer regulation, the pipelines, the distributors, and the ultimate consumers would suffer. There would, under such circumstances, be no incentive for the producer to enter into long-term (20-year) contracts, which are so vital to our industry. However, I feel, as I will explain later, that there is a solution to the problem of stabilizing prices and minimizing increases resulting from the operation of these clauses.

The second category, and one which is of extreme importance to the consumer, the people whom you represent, is the cost of new gas already discovered and not contracted for, plus new gas to be discovered in the future, which will be required to fulfill the existing and growing needs of the public. Over the past years it has become increasingly difficult for the producer to discover adequate new reserves to keep up with the growing needs of the consumer. For example, 10 years ago, gas was plentiful at shallow depths in north Louisiana, east Texas, and south Louisiana. This shallow gas is now becoming depleted, and new replacement gas is being discovered, not at the shallow depths, of six, seven, and eight thousand feet, but at depths of fourteen, sixteen, and eighteen thousand feet. The ratio of successful wells to dry holes is much lower than it was years ago. We in the industry are convinced that the gas potential will be adequate to supply the growing needs of this country for many years to come, but it will have to come from these deeper depths, and a substantial portion from the Gulf of Mexico in areas which are 30, 40, to 60 miles offshore. This trend necessarily results in higher costs for new gas. When it is necessary for us to acquire new gas to meet the growing needs of the consumer, we are forced to raise the overall average cost of gas to our system. In other words, the acquisition of this new gas will necessitate rate increases.

Pipeline facilities necessary to meet growing consumer demands: A second factor necessitating changes in rates is the continual increase in cost of construction of new facilities. Main line facilities; that is, the facilities which bring the gas from a centrally gathered point to the consuming areas, now cost about twice as much as they did for the same size facilities 10 years ago. The cost of gathering the gas and bringing it to the main line is increasing to a greater degree than the

cost of main line facilities. For example, offshore lines in the Gulf of Mexico cost some 3½ times as much per mile as the same size lines which are built onshore. Most of the distributing companies recognize that we must make these added expenditures to bring gas to them, and recognize that these added costs will be reflected in their rates.

Labor and other operating costs: This third factor which increases costs is one common to all industries and well understood by the members of this committee. Therefore, I need not dwell on it.

PORTION OF RATE INCREASES NECESSITATED BY THESE FACTORS

We have made a study of rate increase applications filed since 1953 by 21 major pipeline companies. This involves some 79 different rate increase applications. More than 68 percent of the increases requested, in these applications, was to cover increased costs of gas purchased by the pipeline, and an additional 10 percent was to cover the costs of new facilities, labor, and other operating costs. In other words, almost 80 percent of these increases resulted from the three factors which I have just described.

In some cases the increases in rates have been attributable, entirely, to cost of gas. Our own company, Texas Gas Transmission Corp., has had five rate increases during the last 10 calendar years. During this period, our average cost of gas purchased increased 9.44 cents per thousand cubic feet, whereas the total increase in rates through the same period amounted to only 9.02 cents per thousand cubic feet.

FREQUENCY OF FILINGS

I will try to summarize briefly the factors which we believe to be the primary reasons for the frequency and pyramiding of filing which all of us, including the sponsors of this bill, are trying to minimize.

Under Federal Power Commission regulations, the pipeline may only file an application to increase its rates to reflect known increases in costs which will occur within 6 months of the date of filing.

The pipeline companies cannot control the frequency of the added costs which they face. For example, gas is purchased from many suppliers. Under contractual provisions, increased rates may be applied for by supplier A 3 months from today; by supplier B 4 months from today; by supplier C 8 months from today; and by supplier D 12 months hence. All of these increases, which the various suppliers have a contractual right to file for, cannot be included in one application by the pipeline.

In addition, it has been necessary for most pipelines to increase their facilities at least once each year to take care of the growing needs of the consumers. Each expansion program requires higher-cost gas and higher-cost facilities, and the date that these costs become effective does not necessarily coincide with other costs to be incurred because of increased gas costs in existing contracts.

Labor union contracts expire at still different dates, bringing still an additional element of increased cost which does not coincide with others.

We must keep our rates adequate to recoup these costs in order to meet the demands of the consumer and keep our companies in a position where we are able to compete in the financial market with other

regulated companies and nonregulated companies for the funds necessary to construct the facilities needed to meet the consumers' growing demands. We cannot absorb these costs.

For example, on the Texas Gas system, which is typical of the industry, a 1-cent increase in our average cost of gas per thousand cubic feet would cut our annual earnings approximately 25 percent, and a 2-cent average increase in such cost would put us in a position where we could not pay any dividends on our common stock or even meet all of our fixed debt requirements without compensating increases in our rates. The cost of gas purchased represents 60 percent of our total revenue dollar.

Faced with this problem of having to increase our rates to meet these added costs, and being limited to the inclusion of cost adjustments for a maximum of 6 months in the future, we find it impossible to keep from filing multiple rate increase applications.

This problem must be related directly to the delays that have occurred over the past several years in the final disposition of rate filings. I am confident that a substantial portion of the backlog of rate proceedings before the Federal Power Commission can be cured. Some portion can be cured by changes in procedures of the Federal Power Commission, which I will touch upon later.

However, the most important factor that has resulted in S. 666 and other proposed legislation, and in our being here today, is the problem of regulating the price of the gas of the independent producer. The Federal Power Commission cannot, nor could any group of men, no matter how capable, regulate the selling price of the producers' gas on the utility-type form of regulation similar to that used for the pipeline industry. The Commission, in its opinion No. 338 issued September 28, 1960, relative to Phillips Petroleum Co., made this point very clear.

Delays are also caused by intervenors, many of whom are one or more steps removed from the pipeline whose rates are subject to litigation.

Many pipeline rate cases that have been disposed of over the past several years have been done so through the settlement procedure; That is, negotiated settlements between the distribution companies, the State commissions representing the consumer, the pipelines, and the Federal Power Commission. Without such settlements the backlog would be considerably worse than it is today. These settlements, however, have not been the complete answer because Commission policy has generally been, in such settlement proceedings, to pare the pipelines' rates to the rock bottom bare bones, despite the fact that the Commission, its staff, and other parties to the proceeding had full knowledge of the fact that the pipeline would have to come back immediately for a rate increase to reflect a then known major increase in costs to the pipeline.

To give you an idea of the delay that has occurred, and using the same study of the 21 companies referred to, of the 79 cases filed since 1953 by those companies, 19 were disposed of by the settlement method, 20 through hearing procedures, and 40 are still pending. Of those disposed of through both the settlement and hearing routes, some 39 cases, an average of 27 months of time expired from the date of the filing of the application to the date of the final Commission order. Of the

40 cases still pending, there had expired at December 31, 1960, an average of 24 months for each case, and for many of those time is still running.

Thus, to summarize this frequency-of-filing problem, we are faced with continual increases in costs which must be reflected in our rates in order to do the job we have to do, and want to do, of meeting the demands for gas by the public we serve. We are limited, on a time basis, as to the items of costs that can be included in rate filings. An average of more than 2 years of time expires between the date of filing and the settlement of the case. We cannot wait this long. We must make filings before the previous case is finally disposed of.

CONSEQUENCES OF PROPOSAL IN SECTION 3

If section 3 is enacted into legislation, the financial health of the pipeline industry and, in turn, its ability to serve the general public, would be in the complete hands of the Federal Power Commission and intervenors, many of whom are one or more steps removed from the company involved in the rate litigation.

One intervenor, or group of intervenors, not particularly interested in having additional gas at the time the investigation takes place, could delay the proceeding and prevent many other intervenors, representing consumers desperately in need of additional gas, from getting that additional supply when required.

Where such a rate proceeding is delayed, the pipeline could not embark upon expansion programs to meet the needs of the customers, even though the customers desiring such gas recognize the need for some increase in their rates to bear the costs of the expansion program.

The proviso in section 3, giving the Commission an opportunity to waive this provision, is not the answer. We have no assurance that the Commission will grant a waiver for us to make multiple filings necessary to meet added costs of gas, labor, and other operating costs which have been heretofore described, which items would result in dire financial consequences to the company if not offset by increased rates. Neither would the waiver be an answer to preventing material delays in expansion programs which would result from the enactment of the section.

Let me tell you briefly the time involved in putting an expansion program together. From the time the customer makes a definite request for additional gas until the date that he new gas is ready for delivery to that customer, approximately 18 months to 2 years go by. First, it takes 4 to 6 months to contract for the gas; another month or so to prepare the application to the Commission; another 4 to 6 months, as a minimum, to process the application and obtain approval; and, following that, the necessary construction time.

Let us assume that we have a rate case pending and we want to embark upon such an expansion program, which will require an increase in rates. The pipeline company would not know whether a waiver would be necessary under section 3 until the existing rate case is finally disposed of. We could not go to the producers and say, "Maybe we want the gas next year, and maybe we don't. It will all depend upon whether some intervenors will delay the disposition of our present rate case and, if they do, whether or not the Commission will give

us a waiver of the requirements of section 3," if this section is enacted. The result would be that the pipeline could not take the risk and would just not go ahead with the program.

In addition to the harmful effect upon the consumer, this would be very serious to the general economy. The Federal Power Commission recently announced that, as of April 30, 1961, there were pending before it certificate applications for pipeline company additions aggregating $875 million. For the years 1956 through 1960, there were certificated for expansion, and constructed, over $3 billion of added pipeline facilities, and this does not include the hundreds of millions of dollars of additional funds expended for distribution facilities to take the new gas to the consumers' homes or businesses. I am confident that these expenditures would have been only a fraction of that amount had section 3 of the proposed bill been in effect during the past 5 years.

CONTRARY TO ENTIRE CONCEPT OF REGULATION

The advocates of the bill may say, "Well, someone must make a sacrifice. Why not let it be the pipeline companies?" In addition to putting us in a position where we could not raise capital necessary to build the facilities required by the gas-consuming public, this type of thinking overlooks the fact that the Commission and, indeed, the Congress, in our opinion, have a responsibility, in addition to seeing that adequate service is given to the consumer at reasonable rates, of keeping the industry financially healthy. The Supreme Court of the United States, in the famous *Hope* case (*FPC et al.* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944), stated that in fixing rates under the Natural Gas Act, it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business, which includes service on the debt and dividends on stock and, in addition, that such rates should provide a return to the equity owner commensurate with returns on investments in other enterprises having corresponding risks. Further, the Supreme Court stated that the rate—

> * * * should be sufficient to insure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

More recently, the Supreme Court, in the *Memphis* case (*United Gas Pipe Line Co.* v. *Memphis Light, Gas and Water Division*, 358 U.S. 103, 113), said that Congress in the Natural Gas Act was—

> manifesting its concern for the legitimate interest of natural gas companies in whose financial stability the gas-consuming public has a vital stake. Business reality demands that natural gas companies should not be precluded by law from increasing the prices of their product whenever that is the economically necessary means of keeping the intake and outgo of their revenues in proper balance; otherwise, procurement of the vast sums necessary for maintenance and expansion of their systems through equity and debt financing would become more difficult, if not impossible.

The pipeline industry is not asking for windfalls. We are not asking to borrow funds from the consumer to help finance our facilities. Contrary to what you may have heard, I know of no pipeline company that has ever used a rate increase for this purpose. It is preposterous for anyone to contend, seriously, that a pipeline company would be willing to pay 7 percent interest, as required by the Com-

mission, on all moneys refunded by the pipeline companies to its customers, when money can be borrowed through bank loans at less than 5 percent.

We ask only for an opportunity to recoup our costs and to earn a fair return on our investment. This is an accepted principle of constitutional law and the standard which regulatory commissions have universally applied. Yet, section 3 of S. 666 would place this constitutional guarantee within the complete discretion of the Federal Power Commission to grant or deny, without hearing or opportunity to be heard. As such, it is bound to result in extensive litigation which will necessarily delay the expansion of facilities to meet the needs of our customers.

SUGGESTIONS TO HELP SOLVE THE PROBLEM

We have just as great an interest and desire, as do the sponsors of this bill, to stabilize gas rates to the greatest possible extent, and to try to eliminate the pyramiding of rate filings. I have three suggested answers which I believe will be very helpful in accomplishing this end. They are as follows:

Give Federal Power Commission authority to regulate producer prices on other than utility-type cost of service basis: The Commission has recognized, in its opinion No. 338, heretofore referred to, issued September 28, 1960, that they cannot regulate the producer on a utility type of regulation basis. Under certain outstanding court decisions, the utility-type basis of regulations must be used by them as a point of departure. Without legislative help to clarify this problem, I am confident that the rate case backlog will continue to build up materially.

Improve procedures at Federal Power Commission: Mr. Parkes, the witness in this hearing for the American Gas Association, has several constructive recommendations along this line, which are contained in the report of the American Gas Association Special Committee of Executives on Regulatory Affairs, dated March 7, 1961. In order to save as much time as possible in our presentation, I will not go into these items in detail. We feel that his recommendations are good, and generally should be very helpful in reducing the time of processing cases before the Commission.

More restrictions on interventions and the scope of the intervenors' activities in proceedings: This is a change which may require legislation to accomplish. At the present time, parties one, two, three, and four times removed from the applicant are intervening in almost every rate case with which they can find any indirect connection. They are even using standard forms of interventions which can be prepared by a stenographer. The ultimate amount of gas that these several-times-removed intervenors may receive from the applicant, in many cases, is very minute. Yet, through long delays caused by them to grind an ax to use in some future case, they are depriving additional supplies of gas to those consumers who are solely dependent upon the applicant for their natural gas supply. Not only should there be some stricter rules on who can and who cannot intervene, but the hearing examiners should be more forceful in limiting the participation of such intervenors.

SECTION 4

THE PROPOSAL

Section 4 of Senate bill S. 666 provides that the Commission must find before authorizing any sale of gas that the price at which the gas is to be sold "* * * is consistent with the public interest * * *." Otherwise, the Commission must condition the sales authorization at a price which is consistent with the public interest. It further provides that each applicant for a certificate of public convenience and necessity shall have—

> * * * the burden of proving each and every element of public convenience and necessity, including the consistency with the public interest of the price at which the gas is to be sold in interstate commerce.

THE PURPOSE

It is apparent, at a mere glance, that the provisions of section 4 have been drafted to apply in certificate cases of independent producers. However, the language would also apply to certificate applications of pipelines.

THE PROBLEM

Several problems are created by the proposed language of section 4. First, and foremost, the Commission is prently under legal compulsion to find, in all producer certificate cases, that the proposed price is consistent with the public interest. This compulsion arises from the so-called *CATCO* decision of the Supreme Court and several subsequent decisions of the various courts of appeal which have remanded certificate proceedings involving the initial price of producers to the Commission for further consideration. In fact, the proposed legislation appears, to be much more vague in establishing standards for the Commission to apply than the various court decisions to which I have just referred. It therefore appears to be completely unnecessary at this time. If anything, it would tend to further confuse a situation which is confused enough.

If the language is designed to require something further than that which the Commission is already obligated to do, the result would be to make a rate case out of every certificate case. This would delay pipeline expansion programs indefinitely. Just refer to my previous statements as to the delays already occurring in rate cases, and then apply these to certificate cases, and you will see what could happen.

Another problem which will have the same effect is the requirement that every applicant for a certificate would have the "* * * burden of proving each and every element of public convenience and necessity * * *." What does this mean? Our lawyers tell us that an applicant, under the present statute, is required to establish that "* * * the present or future public convenience and necessity require * * *" the proposed service. They tell us that public convenience and necessity is the balancing of a complexity of factors which may vary from case to case. It is not a simple formula which has common elements in each and every case. If our lawyers are right, then what is the necessity for this language?

What does it mean, and how would the pipelines sustain this burden of proof? In our opinion, this provision is either unnecessary or unworkable, depending on how it is interpreted. In any event, it will solve nothing.

I appreciate the opportunity of talking to you gentlemen. I appreciate the desires of the NARUC group in trying to solve this problem which we all want to solve; but I repeat, S. 666 will not solve the problem. It would have a very serious adverse effect upon all pipeline companies, upon the gas consumers, and upon the general economy of our Nation.

As you stated, I am here representing the Independent Natural Gas Association of America, which is made up of the bulk of all of the long line transporters in the country.

We are very alarmed, the industry is very alarmed, about this bill. We think it is probably as serious a piece of legislation as we have seen introduced relating to our industry over the past many years. We think if it is enacted it can have very serious consequences to the consuming public as well as our pipeline industry. We are opposed to the entire bill. We are particularly opposed to sections 3 and 4, and I have directed my comments primarily to those sections, primarily section 3.

You have discussed at great length this morning what section 3 proposes. There is no point in going back into that.

We know the proponents of this bill and share their feeling. We want to find a way to stabilize gas rates to the greatest possible extent and prevent pyramiding of these rate increases. We share the same feeling and same desires. We do not feel that this proposed bill would do the job.

There are three primary causes of rate increases on the part of pipeline companies. I will summarize them briefly. First is the cost of gas. It isn't just the increases that are proposed contractually by the producer. That is only one element of the increase in the cost of gas. The other element in the increase in the cost of gas is a continuing need on the part of the pipeline company to acquire new gas to meet the growing needs of the consuming public. For the producer to furnish that gas they have to drill deeper, go offshore, and it is costing considerably more than it did in the past. In turn they have to charge us more for the gas. And that second element is very important in that portion of our rate increases relating to cost of gas. It isn't just the increases that the producers propose; it is also to a great extent the high cost of new gas to meet this fast-growing need of the public.

Second is the cost of new facilities. Again to meet the growing need of the consuming public, a pipeline today costs, on shore, about twice as much per foot of capacity as it did 10 years ago. We are beginning to have to go offshore in our gathering facilities. An offshore line costs 3 to 3½ times as much as a similar gathering line on shore. That is an element in these increased rate proposals.

A third, which I will touch briefly, is the continuing increase in labor and labor costs.

We made a study which doesn't go back as far as that of the Federal Power Commission. We went back to 1953 and summarized 79 rate increases of some 21 major gas transmitting companies. Our figures were substantially as Senator Morton stated. We found 68 percent of

the proposed increases resulted from this cost of gas, the increase, the contractual increases on the part of the producer, plus the cost of the new gas.

Another 10 percent related to increases in costs related to new facilities to take more gas to the consumer. In other words, about 80 percent of the overall increases filed during this period, 79 increases, came from those factors.

Some companies, including our own, the entire increase has been due to increased cost of gas. In our own company over the past 10 years we have increased our rates about 9.02 cents. During the same period our average cost of gas has increased about 9½ cents.

In the hearing the other day there were some statistics used—you referred to them, Senator Monroney—where they compared the dollar amount of rate increases of the producing segment and the pipeline segment. There are some 3,325 producer cases pending involving some $170 million a year, whereas in the pipelines there were only 110 cases pending but involving $462 million a year. From that you can infer the pipelines are really the culprits because they are in there four times as much. Those figures are really not correct and I would like to take a minute to explain why.

We prepared an oversimplified map which I would like you to look at.

Take, for instance, United Gas Pipe Line which is one of the major suppliers from the Gulf Coast gas. They sell gas to some 15 different pipeline companies that are regulated by the Federal Power Commission. Taking that map, oversimplified, we have shown that the producer in that illustrative case asks for $1 million increase in rates. He asks that of pipeline "A." Pipeline "A" in turn had to increase its rates a million dollars to pick it up so they increased their rates to pipeline "B" by a million dollars. Pipeline "B" had to increase its rates by a million dollars so it increased it to pipeline "C," and so it goes until it gets to the ultimate consumer. He doesn't pay the aggregate of all these pipeline increases. He only pays $1 million. So how they have come upon these figures, they have taken all the cases pending before the Federal Power Commission, they have added them all up and said there are $462 million. A great deal of that is duplication, using again United Gas Pipe Line as a prime example selling to 15 companies. I don't know how many times a million-dollar increase on United Gas Pipe Line is multiplied in these figures that have been presented to you. I thought it would be fair that we bring this out.

Senator MONRONEY. It is all the same million dollars, but it has to be allowed at each stage?

Mr. ELMER. Yes, because when you add up your cases, Senator Engle's, Senator Schoeppel's and all the others, you come up with 87 or 88 million, but there is only $1 million involved. And that is why the $462 million figure is really not comparable to the $170 million figure.

In our case, in the case of the pipeline industry generally, our rates—in our own company, 60 percent of our revenue dollar is the cost of gas, and that is pretty representative.

Senator SCHOEPPEL. I didn't hear that.

Mr. ELMER. Sixty percent of our revenue dollar is cost of gas.

As to the frequency of these cases, that is the problem or one of the problems we are here to talk about.

The pipeline buys from many, many producers, and those producers have contractual rights to increase their cost of gas on various bases from time to time. In addition to that the pipeline has to buy new gas to meet the growing needs of the public. They can't coordinate that with any particular increase in old gas purchases. We have to build new facilities at a much higher cost than old facilities. We get the approval of our customers to build them, knowing it will increase their rates in order to get added gas to them. We can't coordinate that with the other costs.

Labor union contracts terminate at various dates. There is no way to coordinate these all at one place, so they keep coming, 3 months, another 3 months and another 3 months.

The rules of the Commission say that we can only use in a rate filing an actual 12-month period plus known adjustments 8 months from that date or 6 months in effect from the proposed effective date of the rates.

Contrary to what the Chairman said, I have seen rate filings rejected by the Federal Power Commission for putting in a just amount that came further down the road than that.

There is no way that we can comply with the rules of the Federal Power Commission and project our known changes more than 6 months.

There we sit with these costs continuing to come, and we can only project them 6 months apart. We have to recoup them.

I gave you the figure on our company of 60 percent of our revenue dollar being gas cost. A 1-cent increase in the average cost of gas to the company, Texas Gas Transmission, for which I work, would decrease our net earnings 25 percent. A 2-cent average increase in our cost of gas would not only put us where we could not pay any common dividends, but we could not even service the interest charges on our debt. That is how important cost of gas is to us. We aren't complaining about the contractual rights the producers have. We entered into those contracts; we are not complaining about the cost of new gas. We know what it costs to find it. We are also in the producing business. But we have to be able to recoup these costs in our rates, and the only way we can do it under the present rules and regulations of the Federal Power Commission is when these cases lag is to make multiple filings.

The problem of delay was mentioned here this morning and has to be looked at. It is a bad one. Every person who testified who was a proponent of the bill brought this factor up. I wholeheartedly agree with Chairman Kuykendall, the principal case is this burden that is upon the Federal Power Commission of trying to regulate the producer on a utility type basis. The Federal Power Commission can't do it and no group of men can do it. You can't do it and we can't do it. It is physically impossible. They have tried for 5 or 6 years. They recently came out in an opinion that stated that they couldn't do it.

Another cause is the Federal Power Commission procedures. I know they are working on them but they could still be improved.

A third one which has been touched upon is these intervenors. I would like to add one thing to what has been said about the intervenors.

A lot of the intervenors in the pipeline cases are not customers of the pipeline. They are not the State commissions that represent the coustomers of the pipline. But they are customers three and four and five times removed, looking at the little chart we passed up there. Customer D, pipeline D, will intervene in pipeline A's case and may get a very, very minute amount of the increase. But it has gotten so that a lot of the east coast distributing companies that ultimately get gas through four or five chains from Louisiana will just put in a standard intervention in every case, one that a stenographer can file. And a great deal of this intervention, the intervention delay, is by these intervenors who are not direct customers but who are two, three, and four times removed.

Many of the cases that have been disposed of by the Federal Power Commission have been disposed of in what we call a settlement procedure, where the intervenors and State commissions representing the consuming public, the Federal Power Commission and its staff, and the pipeline company terminate a case through settlement. Without them I don't know how much backlog we would have had. It is very helpful in getting rid of a lot of cases. But it is still not the answer because when those cases are settled it has been the procedure to prepare the pipelines pretty much to the bare bones cost, even though it was recognized and known that 6 months or 9 months hence more costs would be coming in and the pipeline would have to refile.

So the settlement procedure is not the complete answer.

A question was asked about the timelag this morning. On the 79 cases we studied of the 21 pipeline companies since 1953, 19 of them were settled through the settlement procedure; 21 were disposed of through the hearing procedure; and 40 are still pending. Of those disposed of the average time from the date of filing to the effective date of the settlement was 27 months. A lot of them were shorter, a lot were several years. But it took 27 months average time to dispose of the 39 cases that have been disposed of. Of the 40 that have been pending at the end of 1960, an average of 24 months.

To summarize this, here we see that this continuance of increased costs is not brought about solely by the producer trying to increase his rates but because of the contractual right he has to request increases from time to time, by the need for us to buy new gas, the producer has to find higher prices to meet the growth of the consumer's needs.

Coupled with this, the rule of the Federal Power Commission, actually growth plus 6 months, and then with the timelag we are over it. We sit there for 18 months swallowing these costs and I have given you an example of what it will do to our pipe company. We couldn't operate or expand. We would have to sit back and wait.

If the bill were passed I do not know what it would do to the financial ability of our industry. It would be very serious. It would certainly hold back expansion programs.

It would leave intervenors wanting gas. Some of these intervenors, two or three or four steps removed, do not want any new gas. But the poor customer sitting on the line is screaming for gas. So the intervenor who does not want gas can delay the case and keep the new facilities from coming to the many, many customers representing many, many consumers who are in dire need of the gas.

The proviso that Chairman Kuykendall talked about is not the answer. It would not eliminate the delay at all.

Let me give you a quick example about how long it takes to put an expansion program together. Let us say our customers come to us and say we have a lot of new subdivisions, we need a lot of new gas. It takes us about 2 years from the time they tell us that until we get the gas to them. It takes about 6 months to get to the producers and buy the gas. It takes about 2 months to put an application together, and at a minimum it will take 4 to 6 months to process through the Federal Power Commission, and the balance of the time to build the facilities.

Let's say that a company has a rate case pending at the time the customers tell them they need more gas. So they go to the producer and they say, "Producer, we want to buy some gas from you." They will say, "When can you take it?"

"Well, if we can get rid of the rate case so we can go ahead to get the revenues to build the facilities, because we know it will need the rates we have or higher rates; if we can get rid of that rate case we ought to get that gas moving in 2 years."

But by the time we come to hearing, if our rate case isn't settled then we have to ask the Federal Power Commission for a waiver, and if they will give us a waiver we can proceed and file the second case. If they can't give us the waiver we have to go ahead and let the old case be settled and then we can't go ahead with the facilities. The producer will say, "Forget it. I will sell the gas to a pipeline company not involved in a rate proceeding." So it would be very detrimental, no matter how good the intent of the Commission is with their present personnel—and that personnel changes—it would be very detrimental to the expansion of the gas industry and the pipeline industry regardless of whether this proviso were in or not. It would also be real damaging to the general economy.

I think the Federal Power Commission reported at the end of April this year they had pending some $875,000 of certificate cases. From 1956 through 1960 there were over $3 billion of pipeline certificates. That doesn't give any consideration to the hundreds of millions of dollars of facilities that went with it, and appliances.

I am confident that had S. 666 been in effect during those 5 years, that that $3 billion would have only been a fraction of that figure.

I think also that this proposal is contrary to the concept of regulation.

The advocates are saying we have to do something about this; somebody may as well take the rap, why not the pipeline company?

I feel very strongly that you people, and the Federal Power Commission, in addition to having your responsibilities of seeing that adequate gas gets to the consumers at reasonable rates, have the responsibility of seeing that our industry remains healthy.

A couple of Supreme Court cases will take a few minutes.

The *Old Hope* case, where the Supreme Court said that the pipeline companies had to have enough revenues not only for operating expenses but also for the capital costs of the business, which includes service on the debt and dividends on stock and, in addition, that such rates should provide a return to the equity owner commensurate with returns on investments in other enterprises having corresponding risks.

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More recently than that, in the well-known *Memphis* case, I believe cited by the Supreme Court in 1958, they said the same thing. I will read one sentence.

> manifesting its concern for the legitimate interest of natural gas companies in whose financial stability the gas-consuming public has a vital stake, business reality demands that natural-gas companies should not be precluded by law from increasing the prices of their product whenever that is the economically necessary means of keeping the intake and outgo of their revenues in proper balance; otherwise procurement of the vast sums necessary for the maintenance and expansion of their systems through equity and debt financing would become more difficult, if not impossible.

Gentlemen, we don't want a windfall. Contrary to what some of the witnesses said the other day along the lines of Senator Monroney's statement this morning, I don't know of any company that ever overfiled a rate increase so they could get money at 7 percent when they can go to the bank and borrow for 4 or 4½. They just don't do it.

Chairman Kuykendall talked about the 40 percent. On our study, for a different period, we came up with 30. Let me tell you what that is. That 30 percent or 40 percent, whatever figure you take, that isn't the overfiling by a pipeline company. That is the amount that is disallowed of those filings by the Federal Power Commission.

To give you a few examples: Everybody doesn't do it. They take a composite. In some companies there were tremendous refunds, in others, very little. *Panhandle Eastern Pipeline* case decided a few weeks ago, a very substantial amount of refund was ordered. They didn't overfile. Panhandle produced a lot of gas in Oklahoma and Kansas. They spent money to find it, and filed rate increases years ago asking for a price of I think 10 or 10½ cents which they thought was a reasonable figure for their gas from Kansas and Oklahoma.

The Commission found they were only entitled to 4.1 cents. The result is a tremendous amount of refunds. Not that Panhandle overfiled. Panhandle felt, and will probably go to court to try to prove it, that they were right.

Rate of return, in the early forties the pipeline companies were given a 6½ percent return on their investment. Today we are lucky to get 6⅛ or 6¼, and we keep asking for 6½ but we don't get it. They keep turning it down, and that is a substantial amount. That is part of the 30 or 40 percent, to those of you in the producing States.

In our own company we have a 100-percent-owned subsidiary. We discovered a nice oilfield in Texas a year ago. You get discovery allowables there. We went through that, I think we drilled 20 wells, had a lot of depletion, and came up with a rate case. The Commission said the tax savings that you got on that oil—not on the gas but on the oil—should inure to your gas consumers, so you reduce your rates to reflect that tax saving.

Accelerated depression, we all felt that everyone was entitled to it, whether in the potato business or the gas business. Recently the Commission has come out and in a determination of rate of return wanted to penalize us on that.

I can go on with item after item. Gentlemen, these 40 percent are items that we believe we are entitled to. We aren't overfiling. As I say, it is preposterous to think we would borrow money at 7 percent.

Going back to the proviso, our ability to seek a rate increase to re-

coup our costs, which we have now as a principle of constitutional law and regulatory procedures, has been regularly applied. If this bill were enacted with the proviso, it would in effect take away from us that constitutional law guarantee and instead put it in the hands of intervenors, many of whom are several times removed, and the Federal Power Commission, which is going to change personnel from time to time. We just can't live under that sort of an operation.

We have three suggestions. They were mentioned this morning, but I will make them again because I feel very strongly that it is the heart of the problem.

I think that you people, your associates, have to give the Federal Power Commission and the industry help on these problems, and I think one of them particularly, if it is done, will solve a lot of things that we are talking about here today.

First, to repeat what Chairman Kuykendall said, there has to be legislation to get the Federal Power Commission off the hook in trying to regulate the producer in a utility type basis. It can't be done.

Senator ENGLE. Will you explain what that means? I notice you made that recommendation. Mr. Kuykendall also has it in the recommendations in the legislative proposals put in the record previously.

Mr. ELMER. Yes. I will do it as briefly as I can.

Let me take first the type of utility which it was meant for. When a pipeline company wants to build a new line or make extensions to the line, they go to the regulatory agency and the regulatory agency reviews all of the factors relating to that line, what it will cost, what customers it will serve, the engineering. They know before they approve the construction of that line that it is in the public interest and they are going to approve it. When it is approved and when it is constructed rates are set on the basis of giving that pipeline company back, supposedly, their costs of operations plus a fair return on the investment in that facility.

Now let's says that you and I go into an oil deal and we want to drill some wells. How can we go to the Commission before we drill the well and tell whether it is economically feasible? We don't know whether they will hit oil. We probably won't hit anything. The oil business is a risk business. The people in it that have made our oil and gas reserves possible, they are gamblers. They have gambled hundreds of millions of dollars, or billions of dollars, to find this oil. They don't know when they go into it. One producer might hit a gas well the first well he drills. His partner might drill a hundred wells before he finds gas. There is no way to fix rates on this approach of knowing that the costs are right and then fixing the rates on those costs. You have allocation problems between oil, between liquid hydrocarbons. You have joint producers in the same well. Four of you gentlemen might all be producers in the same well. One of you might hit the first time; it might be your third; your fifth; and it might be Senator Monroney's 20th. There is just no way to make it work.

By the same token, I don't believe that the Natural Gas Act intended that the consumer should subsidize an unsuccessful producer. I think an unsuccessful producer should be allowed to go broke if he wants to. And by the same token the successful producer should reap

the benefits of his luck or ability. It takes a different type of regulation if they are to be regulated.

Chairman Kuykendall talked about the area approach. That certainly is a lot better approach than the utility type. But if they are going to regulate the producers' price, they must regulate it as a commodity and not as a utility. That is the whole basic problem. And they need help. They need help from Congress to do that.

The second recommendation——

Senator ENGLE. What you mean by that is that you have to legislate them out from under the *Phillips* decision?

Mr. ELMER. Right. Well, I wouldn't go that far. The great segment of the producing industry would like to be regulated out from under the *Phillips* decision.

No, I say that the minimum that has to be done is to legislate them out from under the unworkable standards of regulation that were fixed by the Supreme Court in the *Phillips* decision, and which had been supported by some other courts which state that the Federal Power Commission must at least use that approach as a basis for a point of departure in determining what the just and reasonable rate for the producer is.

They have tried 50 different methods of allocation. There is no way to allocate between oil and gas and liquid hydrocarbons. When you drill a well you don't know what you are drilling for. When it is all over you go back and say, now we will try to allocate what were gas costs, and what were oil costs; things that you can do ahead of time on an electric line.

Give the Federal Power Commission the authority if they are going to regulate the producer on any basis which they think is fair and reasonable, and don't tell them how to do it. That is what has caused 95 percent of these problems.

Senator MONRONEY. Isn't it a fact that although Congress has twice passed legislation seeking to establish a fair area pricing for producers' gas, that the opponents, among which have been sponsors of this bill, still insist upon utility type of regulation of producer prices, frustrated this simple but fair method of pricing?

Thus the burden of delay, confusion and inequities bears on all the regulatory process even though the pipeline transmission and the distribution facilities which are capable of utility type regulation are hamstrung by the unworkable features that have gotten into practice for trying to regulate under utility type regulation the hazardous search for and production of gas.

Those who still cry for utility type regulation are proceeding against the repeated findings and failures of the Federal Power Commission and everybody connected with the production of gas.

These opponents have created this situation of delays of which they now come here and complain and ask for some type of relief.

Mr. ELMER. You are right. They are not seeking the heart of the problem at all. They are getting at the fringes. I would like to say, Senator, that each year there is a group of us swinging over from the one column to the other. There are many, many proponents of the type of legislation that I am talking about. In the first Harris bill and in the second Harris bill they were on the other side of the bill. They are beginning to see that they can't live, the distributor can't

live and the pipeline can't live being hamstrung by the unworkable producer regulation.

Senator MONRONEY. The other two which form the established investments of the long-line transmission and the distributors can be very easily and carefully regulated on an adequate return on a fixed investment.

Mr. ELMER. That is what I have been trying to explain to Senator Engle. It is completely different.

Senator MONRONEY. Here you have the very bottleneck, where you are trying to establish a fair return on an operation that does not lend itself to any known fixed utility system of regulation.

You drill a well, you get an oil well. And you are in free enterprise. If you happen to hit gas you are a natural gas corporation subject to utility-type regulation. It just doesn't fit into the utility type picture, and you will continually have this delay process until you come to some type of fair field pricing on the value of the gas commodity in that particular area.

Mr. ELMER. If you can get such legislation through you will do great service to the consuming public.

Senator MONRONEY. It would actually, perhaps, lower prices. We are not asking for freedom from regulation.

Mr. ELMER. I think in the long run there is no question that if they stuck to a utility cost approach, with the continuing increase in the cost of finding gas, and particularly offshore, I am convinced that in 5 years the cost to the consumer would be much higher under the utility type approach than it would be under a commodity type approach. I don't think there is any question about that. What they might be today is a problem. But we have to look ahead. As Chairman Kuykendall said, I am convinced that not only is it not workable, but it will drive the price to the consumer up.

Senator MONRONEY. No one is asking for freedom from regulation. It is merely a workable type of regulation rather than one that was designed to apply to transit systems and to electric light distributors and other places where the investment is clearly ascertainable and a fair return can be defined.

Mr. ELMER. In 1938 no one envisioned when the Gas Act was written that it would apply to the producers.

Senator MONRONEY. The law exempted producers but failed to say for the gathering or for the placement in the pipelines.

Mr. ELMER. That is right. If I may move on, there should be improvement in the Federal power procedures. The staff and Commission are working toward it. I am not going into it. One of the witnesses, Mr. Ed Parks, who is representing the American Gas Association, has several recommendations on it. We endorse that.

The third is that on these intervenors, I believe the intervenors two or three times removed is a serious problem and I am not sure it would not take some legislation to correct it.

Chairman Kuykendall said this morning everyone should have the right to be heard. Under present legislation and regulations I just cannot tell you how some of these cases are delayed by these parties three and four times removed who may get only one-half of 1 percent of the gas of the company involved in the rate proceeding. I think there may be some need for some legislation along that line.

On section 4, I will repeat what Chairman Kuykendall said. The Commission has the authority to do the job now that section 4 proposes. If it is proposing something else, then it is proposing, I think, what you, Senator—one of you—stated this morning, a full-blown rate case in every certificate case, which would be absolutely unworkable. If it does not mean that, the Commission has all the authority they need right now.

To conclude this, S. 666 in our opinion definitely will not solve these problems. It will make them worse. Our answer is to get to the heart of the problems, the producer legislation principally which Senator Monroney has been discussing, improve the FPC procedures, try to modernize further the staff audit procedures, and do something about the intervenors.

I believe that with these steps we will make some real progress in getting rid of this backlog and preventing additional hearings and problems like we are here talking about today.

I think that it is hard to conceive of a piece of legislation, if enacted, which could be more dangerous to the consuming public and the pipeline industry than this. We have about $8 billion, the industry has, in pipeline facilities. There is about $12 billion in distribution facilities, and more than that, strange as it seems, in consumer appliances. That is an awful lot of money and we cannot pass legislation that will put this in jeopardy.

I think one important factor that we ought to keep in mind, of all the witnesses that have been here before, and all the witnesses on your docket coming up behind me, there is not one distribution company here proposing this bill.

They are the ones who are dealing with the ultimate consumer. If they felt that this would help them, they would certainly be here testifying. But there is not one distribution company here proposing this bill.

Second, as brought out earlier in the hearing, the first day, remember this was very controversial when they called for the vote at the NARUC. Many States voted against it. Many voted toward it and really were not sure what they were voting for.

That is all that I have to say. I appreciate the opportunity of giving the pipeline story to you gentlemen. I will be happy to answer any questions that you have.

Senator ENGLE. Senator Schoeppel?

Senator SCHOEPPEL. I have no further questions to ask. I merely want to comend you for a very clear statement. Some of us in years past tried to point out some of the very things that you are pointing out right here with reference to impressing a utility-type regulation upon the producer. It is coming out just about the way some of us anticipated that it would.

Senator MONRONEY. Two of the principal witnesses who appeared advocating this bill insisted on utility-type regulation of gas producers at the wellhead. It was interesting to note that they opposed regulation of locally produced gas, which in the case of California was well over double the national price of interstate gas at the wellhead.

In the case of Mississippi it was some 65 or 70 percent over the national price. But none of those wanted to regulate gas that came from their own State that went into lines and was up to 20 or 25 percent of the State use.

Certainly those of us who come from States that export gas, while we would favor regulation of a kind that would put some commodity value on a fair field rate, we do not believe any more than they did for their own gas that it is subject to utility-type regulation at the wellhead.

Mr. ELMER. It depends on whether you are talking about you or me.

Senator ENGLE. Senator Morton?

Senator MORTON. We are going to need a substantial amount of gas in Louisville in the next few years. If this bill were enacted what would you think of our chances of getting what we needed?

Mr. ELMER. There are two pipelines—speaking of our own first as the principal supplier. It would be very detrimental to them, if this were enacted today. I think we could definitely tell the city that they would just have to forget their requests for this winter and the coming winter. I don't see how the other pipeline company could tell them anything different. Both of us have rate cases pending. In our cases we went to Louisville and to our customers and said, "If you want this additional gas we have to go offshore to get it. Here is what the gathering lines will cost. It will mean an increase in rates. What do you say?"

They said, "Get it." So if we know we can't, we can't go ahead with the construction program until we get straightened out.

Senator ENGLE. Thank you very much, Mr. Elmer.

Without objection, the committee will stand in recess until 2 o'clock.

(Whereupon, at 12:03 p.m., the committee was recessed, to reconvene at 2 p.m. of the same day.)

AFTERNOON SESSION

Senator ENGLE. The committee will be in order for the further consideration of the bill S. 666.

Our next witness is Mr. Clayton L. Orn, representing the American Petroleum Institute, Mid-Continental Oil & Gas Association, and others, 1625 K Street NW., Washington, D.C.

Mr. Orn, we are glad to have you here. I assume you have a prepared statement?

STATEMENT OF CLAYTON L. ORN, REPRESENTING THE AMERICAN PETROLEUM INSTITUTE, THE WESTERN OIL & GAS ASSOCIATION, THE ROCKY MOUNTAIN OIL & GAS ASSOCIATION, AND THE MID-CONTINENT OIL & GAS ASSOCIATION

Mr. ORN. Yes, Mr. Chairman, I have a prepared statement. Since I prepared this statement the Rocky Mountain Oil & Gas Association has asked that I speak for them, too. And I would like to pass this statement on to the reporter so that it may be placed in the record.

Senator ENGLE. We would be glad to have you do so.

Are you prepared to summarize your statement?

Mr. ORN. Yes, I am.

Senator ENGLE. Without objection the statement will be made a part of the record, and you may proceed to summarize your statement. The committee members have been supplied a short digest of the statement by the staff.

You may proceed in your own fashion.

(The prepared statement is as follows:)

Mr. Chairman, my name is Clayton L. Orn. I am general attorney for the Ohio Oil Co. with offices at Findlay, Ohio. I appear today on behalf of the American Petroleum Institute, the Western Oil & Gas Association, the Rocky Mountain Oil & Gas Association, and the Mid-Continent Oil & Gas Association. My company is a member of each of these associations.

The proposed legislation under consideration in these hearings is S. 666, which would amend the Natural Gas Act in some five separate respects. The associations for whom I present this statement strongly oppose such of these proposed changes as adversely affect the gas-producing industry. I shall discuss them in the order in which they appear in the bill. However, before doing that, I would like to say that I am glad to see the National Association of Railroad & Utility Commissioners recognizes the need for some changes in the Natural Gas Act insofar as it applies to independent producers. They have made a strong showing of the impossibility of regulating independent producers of gas under an act which was designed for pipeline companies and not gas producers. The difficulties the Federal Power Commission is experiencing in attempting to apply to nonutilities—and gas producers are nonutilities—regulatory techniques applicable only to public utilities has been clearly shown by the witnesses appearing in support of S. 666.

Unfortunately, the measure which they advocate offers no solution to the problem. On the contrary, it will make more difficult the administration of a statute which Congress never conceived would be held by the Supreme Court to apply to gas producers. I would respectfully urge that the committee not deal with only one facet of this great problem. The Congress has twice enacted legislation which, but for vetoes by two different Presidents, would have solved on a much broader scale the regulatory difficulties which have been pointed out to this committee.

I respectfully submit that the proposed legislation would increase rather than decrease the already impossible burdens of the Federal Power Commission; it would increase rather than decrease the amount of litigation to which the Federal Power Commission always is a party; it would reduce the supply of natural gas to the consumers—to their great detriment; and it would constitute a grave injustice to the producers of natural gas and might well be held unconstitutional as confiscatory, or as a denial of due processes.

These matters will become more obvious as I discuss the sections of S. 666 to which we are opposed.

SECTION 1

Section 1 of the proposed legislation would amend section 4(a) of the Natural Gas Act by adding a provision which would make it unlawful for gas producers to include in their gas sales contracts with pipeline companies any one of the following four types of indefinite pricing clauses:

(1) The two-party favored-nation clause;
(2) The third-party favored-nation clause;
(3) The better market clause or price redetermination clause; and
(4) The spiral escalation clause.

It was stated by witnesses who support the bill that section 1 does not apply to indefinite pricing clauses in existing gas sales contracts. In my discussions I shall accept their interpretation because they testified they drew the draft which, when introduced, became S. 666. Before discussing this proposal on the merits, it seems appropriate to consider briefly the background of indefinite pricing clauses and the economic justification for their inclusion in gas sales contracts.

The sale and transportation of natural gas in interstate commerce for resale are predicated almost entirely upon commitments of gas supplies under long-term gas sales contracts between independent gas producers and interstate pipeline companies. These long-term contracts are more of a necessity to the pipeline companies than they are to the producers. Both the initial investment in an interstate pipeline and the numerous subsequent expansions of such lines require the investment of hundreds of millions of dollars. Before such investments are made, the pipeline companies, the holders of their securities, and the Federal Power Commission require that the pipelines obtain an assured supply of gas to transport and sell over a period of time, usually 20 years as a minimum. In many instances, however, the pipelines seek and obtain a commitment of gas for the life of the producing field. Furthermore, even after the terms of such

contracts have expired, deliveries may not terminate except with the permission of the Federal Power Commission.

The large growth in the size and operations of interstate pipeline companies began in the 1950's. When these pipelines undertook to contract for the necessary commitments of gas supplies to justify the construction of their interstate systems, many of the gas producers were unwilling to sell their gas for delivery over a period of 20 years or longer at the prices then being paid for gas. The prices then in effect, and for many years subsequent thereto, were distress prices resulting from the fact that only a few markets were available. Efforts to reach an agreement as to what the gas would be worth over the many years of the long-term contracts were unsuccessful, with the result that indefinite pricing provisions found in other contracts of even shorter duration were adopted with modifications in order that the positions of the contracting parties might be protected against changing economic conditions. By such provisions, the producers received a degree of protection from rising costs and the adverse effect of subsequent inflationary developments. The pipeline purchasers, on the other hand, were greatly benefited by being permitted to pay lower prices for gas during the early years of the contracts, these being the years during which the pipeline were required to make their highest payments toward the retirement of the debts incurred for pipeline construction.

There is strong economic justification for the inclusion of indefinite pricing provisions in contracts between producers and interstate pipelines. The pipelines and the public they serve are vitally interested in the maintenance of a continuing and, indeed, an expanding supply of natural gas, since the demands for natural gas by the consuming public are increasing at a phenomenal rate. Natural gas, however, is a wasting asset. Once it is removed from the ground and consumed as fuel, it is gone forever. If supplies available for sale to pipelines and for ultimate public consumption are to be maintained, the producers of gas must be constantly engaged in the expensive activity of exploring for and developing new supplies to replace those already sold and, if possible, to increase the reserves available for future consumption. Producers cannot do this, however, if the price they are to receive for the gas is to be frozen at the level in effect at the time they enter into a long-term gas sales contract, when future inflationary trends and costs of future exploration and development cannot be accurately predicted. If a producer is to have adequate funds available for future exploration and development, he must be permitted to enter into a contract which will enable him to receive a price commensurate with the economic conditions existing at the time such future expenditures may be required.

There is also an element of fairness which justifies the utilization of indefinite pricing clauses. It must be remembered that the natural gas sold by a producer in the field is a commodity and not a service. It is like coal in the mines, timber in the forests, and fruit on the trees.

The owner of such a commodity should not be expected to dispose of his property at anything less than a fair market price. When long-term contracts are required, however, many factors must be considered, particularly the inflationary factor.

For example, a producer contracting to sell his gas in 1940 under a long-term contract at a fixed price of 4 cents per thousand cubic feet—the distress price then in effect—would now be receiving only 1.7 cents per thousand cubic feet in terms of purchasing power. It is impossible to predict at this time what similar changes in economic conditions will take place within the next 20 years. The fairest solution to the problem, from the standpoint of both the producer and the pipeline, and particularly the consumer, is an indefinite pricing provision under which the price received by the producer will approximate, and the price paid in the field for the consumers' gas supplies will never exceed, the current market price for natural gas.

But more important than that, the proposal to outlaw indefinite pricing provisions overlooks entirely the function which the Federal Power Commission exercises under section 4 of the Natural Gas Act. Section 4(a) of the act provides that all rates and charges for gas sold in interstate commerce for resale shall be just and reasonable; section 4(c) of the act provides that all such rates and charges shall be on file with the Commission; section 4(d) provides that no change or increase in any such rate shall be made except after written notice to the Commission; and section 4(e) of the act empowers the Commission either to permit such an increased rate to go into effect or to suspend the effectiveness thereof for a period of 5 months, following which the increase may go

into effect subject to refund pending a hearing and an adjudication by the Commission as to the justness and reasonableness of such increased rate.

Under these provisions of the act, therefore, it is obvious that the inclusion of an indefinite pricing clause in a gas sales contract is no guarantee that the price to be paid under such a clause will ever be collected and retained by the producer. On the contrary, such a clause merely affords a producer a right to apply for the increased price by means of a filing with the Commission, and a right to obtain a hearing and determination by the Commission of the justness and reasonableness of the price. In the absence of a contract clause obligating the pipeline purchaser to pay a higher price, should the Commission approve such higher price, a producer may not even apply to the Commission for a price increase, or obtain a hearing as to its justness and reasonableness; and this is true even though the existing price by all fair standards is too low. *United Gas Pipe Line Company* v. *Mobile Gas Corp.*, 350 U.S. 332. It is only when the contract provides for an increase, or at least does not freeze the price at a fixed level, that a natural gas company can even be heard concerning the need for a price increase. *United Gas Pipe Line Company* v. *Memphis Light, Gas and Water Division*, 358 U.S. 103. As I have stated, however, the filing for such an increase, when permitted under a gas sales contract, is merely the beginning. The Federal Power Commission must always determine the justness and reasonableness of the proposed increased price and, even where an increase has gone into effect subject to refund, the seller is required to refund, with interest at 7 percent per annum, that portion thereof which is disapproved by the Commission. If the price increase is not justified, neither the pipeline purchaser nor the consuming public will be injured.

On the other hand, if a price increase arrived at by an indefinite pricing clause is found by the Commission to be a just and reasonable price, the statutory denial of an opportunity even to file for such an increase would result in a gross injustice and irreparable damage to all concerned, including the consuming public, which is vitally interested in the maintenance of a continuing supply of natural gas.

As I mentioned at the outset, the proposed amendment to section 4(a) of the act would specifically outlaw four types of indefinite pricing clauses. Three of these types, the "two-party favored-nation clause," the "third-party favored-nation clause," and the "spiral escalation clause," have already been proscribed by the Commission in its order No. 232A, issued March 31, 1961, in docket No. R–153 (26 F.R. 2850). Indeed, in this order, the Commission has outlawed all indefinite pricing clauses except (1) provisions for reimbursing the seller for increased taxes and (2) price redetermination provisions operating no oftener than once every 5 years during the contract period, under certain specified limitations.

While I do not agree that the public interest is best served by outlawing any type of indefinite pricing clause in a long-term contract, arrived at by arm's-length bargaining, I respectfully submit that, if any such clause is to be rendered invalid, the Commission should be left with the authority to make the determination. It is in a better position to observe the effect of its orders and to correct more quickly errors of judgment. However, as I have just said, I believe that the types of clauses to be included or excluded in contracts are matters which should be left to the contracting parties, and this is especially true where the price ultimately payable under the contract is subject to Commission approval.

If the contracting parties are to be denied the use of indefinite pricing clauses, they will be forced to attempt a forecast of economic and cost changes in decades ahead, and to provide for fixed and definite price increases to meet such anticipated changes. It is reasonable to believe that they will not always be able to make a forecast accurately enough to enable them, in advance, to adjust prices to changed conditions. Should they err in their forecasts, resulting in the contract prices being too low, the future supplies of gas for interstate consumers may be endangered.

In outlawing indefinite pricing provisions, the proposed amendment of section 4(a) of the act would declare such clauses to be against public policy. For many reasons, including those I have already mentioned, there is no basis for such a declaration. In this connection, it may be mentioned that the Supreme Court did not find such an indefinite pricing clause contrary to public policy when it decided the *Memphis* case, to which I have already referred. In that case, the contract, which was between a pipeline and a distributing utility, contained no

definite pricing clause but merely provided that the utility should pay to the pipeline whatever price the pipeline had on file with the Commission as an effective rate schedule. In other words, the price payable under the contract was any price which the pipeline company might file, provided such price was subsquently approved by the Commission. In view of the Supreme Court's approval of such an indefinite pricing provision, there is certainly no valid ground for suggesting that indefinite pricing clauses are, or should be declared, contrary to public policy.

Gentlemen, this proposed legislation would discriminate against interstate commerce. It would discourage gas producers from making interstate sales to the detriment of the consumers in nonproducing States. It would discriminate against producers who sell in interstate commerce, and would favor those who sell locally. It would put interstate pipelines at a great disadvantage in their competition with the local buyers for gas supplies.

It is the position of the associations for whom I speak that no legislation should be enacted which would prohibit entirely the utilization of indefinite pricing clauses in gas sales contracts; that, if any limitation on such provisions is to be made, it should be made by the Federal Power Commission which is in a position to maintain flexibility and to make such appropriate changes in its regulations as may be required from time to time by changing conditions. We therefore urge the Congress not to enact section 1 of the proposed legislation.

SECTION 2

Section 2 of S. 666 would amend section 4(e) of the Natural Gas Act by deleting the provision which denies to the Commission the power to suspend proposed rate increases on sales for resale for industrial use only. The associations for which I appear take no position with respect to this proposed amendment for the reason that it is a matter with which independent producers are not primarily concerned.

SECTION 3

Let us now turn to section 3 of S. 666. This section would further amend section 4(e) of the Natural Gas Act by providing that no proposed increase in price may go into effect, even under a bond or undertaking guaranteeing a refund of any excess charges, while and during the period that an earlier suspended price increase is in effect but undetermined as to reasonableness if the subsequently proposed increase would affect any person who was already affected by the prior undetermined increase, unless the Commission should deem the proposed increase necessary.

As I have already noted, the Natural Gas Act presently provides, in section 4(d) that a proposed price increase may go into effect, after 30 days' notice to the Commission, unless the Commission, proceeding under section 4(e) of the act, suspends such increase until it can determine the reasonableness thereof, in which event the proposed increase may, after the expiration of a period of 5 months and upon motion duly made, go into effect subject, however, to a bond or other undertaking by the producer guaranteeing a refund of any portion of the increase which the Commission may ultimately find to be unreasonable. The proposed amendment of section 4(e) would, therefore, constitute a material departure from existing law.

Under the regulations of the Federal Power Commission (18 CFR 154.66), no proposed price increase may now be filed by a natural gas company during the 5-month period of suspension of an earlier price increase, except by special permission of the Commission. While this regulation applies as written only to interstate pipeline companies, nevertheless the same policy has been followed by the Commission in its treatment of rate increase filings by independent producers. Under existing regulations, therefore, a proposed rate increase may not be filed with the Commission within a period of 30 days plus 5 months following the filing of an earlier suspended rate increase. If the proposed amendment of section 4(e) should be enacted, this period within which a natural gas company may be denied the right even to apply for a needed price increase would be extended indefinitely.

In view of the large backlog of independent producer rate filings now pending before the Federal Power Commission, it is safe to say that unless Congress soon relieves producers of the unreasonable and unworkable regulations now applicable to them, many years will be required for the Commission to determine the justness and reasonableness of the numerous rate increases presented to them each

year. Several independent producers presently have on file with the Commission proposed rate increases which have been suspended without a determination of reasonableness since 1954. Should the Commission dispose of these under public utility methods of regulation, as was done in its recent decision in the *Phillips Petroleum Company* case (opinion No. 338; 24 FPC 537), it will be many more years before the independent producer rate increases now pending are disposed of by the Commission. Indeed, the Commission recognized this in its *Phillips* opinion (mimeo. opinion, p. 9; 24 FPC 546).

Moreover, the same difficulty will be encountered in the Commission's recent undertaking to establish independent producer prices on an area basis. The presiding examiner in his recent report to the Commission following the conclusion of prehearing conferences in the Permian Basin area rate proceeding (docket No. AR61–1), indicated to the Commission that a period of from 2 to 3 years may be required, as a minimum, to conclude this first area rate proceeding (mimeo, report, p. 14). Since there are 22 similar areas established by the Commission for the purpose of attempting to simplify producer regulations, should each area proceeding take as much time as anticipated for the first, the effect of the proposed bill could be to deny to producers, for many years, greatly needed price increases otherwise provided for in their gas sales contracts.

These gas sales contracts between independent producers and the interstate pipelines customarily and necessarily provide for price increases, be they on the basis of fixed escalations or indefinite pricing provisions, at 4- or 5-year intervals during the life of the contract. In some instances, these contracts provide for such price increases at 1-year intervals. In addition, many producers have on file with the Commission a large number of contracts with the same purchaser involving sales in various parts of the country. In such a situation, the pipeline purchaser is a "person affected" by a change in any one of such contracts. Moreover, a large producer, with 100 or more contracts on file, may have as many as twenty-five 5-year price increases to file for within a single year.

If the Congress should enact the proposed amendment prohibiting the filing of successive increases under different contracts while earlier suspended increases remain undetermined by the Commission, the result would be a gross injustice to the independent producer, particularly when, under existing law, neither the pipeline purchaser nor the gas consumer is subjected to any real injury as a result of the producer's collection of his proposed increases subject to refund. Where the proposed increase is ultimately approved by the Commission, the pipeline purchaser and the consumer will have paid only that amount which in justness and fairness they should have paid. On the other hand, where the proposed increase is disapproved by the Commission, all excess moneys collected by the producer must be refunded with interest at the rate of 7 percent per annum. Under existing law, a producer may be irrevocably denied, for a period of 30 days plus 5 months, the right to collect a rate increase to which he is justly entitled. This unfair situation should not be extended indefinitely as would be done under S. 666.

It should also be mentioned that there is grave doubt as to the constitutionality of a proposal which would postpone indefinitely the right of a natural gas company to collect price increases to which it may be justly entitled. This is particularly true since the moneys representing the proposed increase, unless collected under bond subject to refund, are irrevocably lost by the party entitled to the increase. As a consequence, an indefinite deferral of an increase is, in effect, a denial thereof constituting confiscation prohibited by the Constitution. See, for example, *Smith* v. *Illinois Bell Telephone Company*, 270 U.S. 587, 591–592.

It is no answer to the constitutional question to rely upon the presumption of the validity of a statute enacted by the Congress. This measure has not yet been enacted into law. As the Supreme Court of Massachusetts has stated, "There is no presumption in favor of the validity of a proposed statute such as there is when we consider an enactment already in effect * * *." Opinion of the justices, 337 Mass. 777, 150 N.E. 2d 693 (1958). The courts are not the sole guardian of the Constitution. "That duty is shared with the other branches of the Government, who are under an equal obligation to observe the limitations of the fundamental instrument. It is not to be presumed that Congress will ignore its duty." *United States* v. *Bryan*, 72 F. Supp. 58 (D.C. D.C., 1947), affd. 167 F. 2d 241, cert. den. 334 U.S. 843.

I know that the problem of regulating utilities is not only complex, but it is difficult to explain, and even more than that it is difficult to understand, particularly when a highly competitive, nonutility industry, such as gas production,

is regulated under techniques historically applied to public utilities. However, I would like to take the time to discuss the practical operation of S. 666.

Quite frequently one gas producer sells to one interstate pipeline under several separate long-term contracts gas produced from different fields in the same State or in different States. Each of these contracts customarily contains clauses for periodic price increases in varying amounts. On the dates each of these increases occur the producer may, under the present law, notify the Commission that he intends to collect them, and he may thereafter do so, unless the Commission decides, upon receiving the notice, to investigate the reasonableness of the increases; in which event the producer is, by operation of the present act, denied the right to collect the contract increases for a period of 30 days plus 5 months, even though such increases may subsequently be found to be reasonable. He therefore is forced to forever lose the increases on gas sold and delivered during such period. However, at the end of this period, if the Commission has not decided whether the increases are reasonable or unreasonable, the producer may start collecting them as to gas thereafter delivered provided he agrees to refund to the pipeline purchaser any portion of the increases which the Commission may ultimately find to be unreasonable.

It is quite obvious that even this procedure works a great hardship on the producer in two different ways. First, although the Commission ultimately finds that the increases are reasonable, the producer forever loses, by operation of the Natural Gas Act itself, the increases payable under his contracts on all gas delivered during the period of 30 days plus 5 months. Second, in the event the increases are found to be unreasonable, the producer must refund not only the increases previously collected, but he also must pay interest thereon at the very high rate of 7 percent per annum. Such rate of interest is much greater than the producer would have paid on borrowed money, and should be sufficient to reimburse those who might incur expenses in making refunds to the ultimate consumers.

But, members of the committee, this injustice would be increased many times under S. 666. Under this proposed amendment to the Natural Gas Act, when a producer had under suspension and undecided by the Commission an increase on gas produced in Texas, he could not, as a matter of right, collect even subject to refund, an increase on gas produced in Oklahoma or in Kansas if the gas produced in all three States went directly or indirectly to the same pipeline company. It should be quite apparent that under the proposed bill, a producer might lose many thosuands of dollars by a statute which would deny him the right to collect, subject to refund, increases occurring under many different contracts for the sale of gas produced in different fields and different States, when the increases were reasonable and were subsequently found to be so by the Commission.

It must be remembered that many thousands of royalty owners participate in these contract increases, and there can be no logical reason why a royalty owner in Oklahoma or Kansas should lose his right to an increase under a contract for the sale of gas produced from his land merely because the producer holding a lease on his land already has under suspension an increase under a contract with the same pipeline company for the sale of gas produced in Texas.

It was said by some of the witnesses who drafted S. 666 that the proviso clause in section 3 would allow the Commission to put into effect a subsequent price increase due under a gas sales contract even though there was then in effect under suspension and subject to refund another price increase in a different contract with the same pipeline company. I respectfully submit that this proviso clause offers little or no relief to the producers. Moreover, it will in nowise speed up cases before the Commission, or lighten their workload. This proviso reads as follows: "*Provided, however,* That nothing in this amendment shall be construed as limiting the authority of the Commission to put into effect or to permit to go into effect, in whole or in part, any proposed change deemed necessary by the Commission."

All this clause does is authorize the Commission to put a contractual price increase into effect even though there may then be in effect, subject to suspension, other and different price increases under other and different contracts between the same producer and the same pipeline company. The clause does not state specifically whether the subsequent price increase may be suspended by the Commission for 5 months and thereafter put in effect subject to refund, or whether such increase may be put in effect only in the event the Commission concludes it is reasonable and consequently does not need to be put into effect

subject to refund. If the proviso means the latter, it would add nothing, because the Commission could, without the proviso, allow any increase to go into effect without a refund condition.

However, if we are to assume that the proviso means that should the Commission deem a subsequent price increase necessary, it may waive the earlier provision of the same sentence prohibiting subsequent price increases from going into effect while a prior increase is in effect and undetermined as to reasonableness, then serious constitutional and administrative questions are presented. A decision rendered by the Commission, without notice and hearing, that a subsequent increase was not necessary during the period that the reasonableness of the prior increase was under consideration would deprive the producer of his property rights without due process of law. Contrariwise, should the Commission afford the producer a constitutional hearing on whether the subsequent proposed increase is necessary, then the work of the Commission would be doubled, because it would have one hearing on whether it is necessary to permit the producer to collect the subsequent increase, and another and later hearing as to whether the subsequent increase is reasonable. In both hearings, the Commission would have to determine whether the subsequent increase is reasonable because, should it not be reasonable, its allowance would be uncessary in the first instance. Wherefore, the Commission, in order to meet the constitutional guarantee, would be forced to conduct two hearings wherein the same issue would be involved, i.e., the justness and reasonableness of the proposed increase, and, instead of taking a year or more to decide that issue, it would take twice that long.

Ultimately, the controversy before this committee boils down to this simple question: Shall Congress enact S. 666, which might forever deprive producers of their price increases under contracts on all gas delivered during a period when there is pending before the Commission and undecided an issue as to the reasonableness of a prior increase under a different contract—even though all such increases may ultimately be found to be reasonable by the Commission—or shall the Congress leave unchanged the present provisions of the Natural Gas Act which permit all such increases to be collected at the end of 30 days plus 5 months while the Commission is continuing an investigation of their reasonableness, subject, however, to the producers' obligation to refund, with 7 percent interest, any part of the increases found to be unreasonable? Common justice dictates that the present act should not be changed in this regard.

In connection with the foregoing, it may be noted that neither the Interstate Commerce Act, in parts I, II, and III thereof which relate, respectively, to railroads, motor carriers, and water carriers, 49 U.S.C. 1 et seq., 301 et seq., and 901 et seq.; nor the Federal Power Act, 16 U.S.C. 824 et seq.; nor the Civil Aeronautics Act, 49 U.S.C. 1301 et seq.; contains any provision prohibiting the filing of rate or tariff increases while previously filed rates are under consideration. There is no reason why an exception should be made in the case of the Natural Gas Act.

The witnesses supporting S. 666 argue that the proposed amendment to the Natural Gas Act should be adopted for two reasons. First, they say that the Commission is so far behind with its work that it does not have time to conclude a hearing on the reasonableness of an increase under one contract before another increase occurs under another and different contract between the same producer and the same pipeline company.

Second, they say that all of the price increases of producers may be unreasonable and, therefore, the subsequent increases occurring under different contracts should be invalidated until such a time as the Commission can catch up with its docket and determine the reasonableness of a prior increase under a different contract. Neither reason is valid and I shall show why.

As to the first reason, while it may be true that the Commission does have a large backlog of cases, nevertheless this should not be used as an excuse for penalizing producers, as would be done if S. 666 were enacted into law. An indefinite delay in deciding the merits of a prior increase would be tantamount to a denial of a subsequent increase under a different contract during the period of the delay, even though the subsequent increase could be proven reasonable were the opportunity given. Such punitive action is unjustified and unnecessary.

It is unheard of in a democracy for a court or a governmental agency to deny a person his property rights because the court or the agency does not have the time to conduct a hearing and determine such property rights.

A collection of the increases under the act as presently written, subject to refund, if subsequently found to be unreasonable, would hurt no consumer and

this is particularly true when the refund, if ordered, bears interest at the rate of 7 percent per annum.

Moreover, S. 666 would not lighten the workload of the Commission. It actually would increase the number of pending cases because, as previously pointed out, the Commission would hold one hearing under the proviso for the purpose of determining whether the subsequent increase is necessary, and another and later hearing to determine whether the increase is reasonable.

As a result of the *Phillips* decision, the size of the Commission's workload is now many, many times what it was in 1954. In that year, the Commission reported that it was regulating a total of 112 natural gas companies, which filed with the Commission a total of 241 certificate applications covering new and extended pipeline contraction and a total of 706 rate filings.

In 1960, there were some 3,468 natural gas companies with rates on file with the Commission, including 3,372 independent producers, plus over 15,000 nonfiling coowners whose rates were covered by the filings of others. During 1960, the interstate pipelines filed 240 certificate applications and 1,275 rate filings, while independent producers filed 1,637 certificate applications and 8,805 rate filings.

Most assuredly, if the *Phillips* decision has imposed upon the Commission such burdens that it cannot determine within a reasonable length of time the reasonableness of a price increase, it certainly could not, in less time, determine the necessity of permitting a price increase to go into effect and then thereafter the reasonableness of such increase.

We think what all of this shows is the necessity of Congress amending, at an early date, the Natural Gas Act so as either to eliminate gas producers from Federal price regulations or to simplify these regulations. Until this is done, the workload of the Commission cannot be reduced within the framework of the Constitution.

As to the second reason advanced by witnesses supporting S. 666, they would have the Congress, by a legislative act, invalidate as unreasonable many price increases provided for in numerous contracts between the same producer and the same pipeline company until such a time as the Commission could get around to holding a hearing and determining the reasonableness of a prior increase under a different contract.

I respectfully submit that the Congress does not have time to examine into the reasonableness of price increases under thousands of producer contracts. Wherefore, it should not declare, as S. 666 would do, any of these price increases prima facie invalid for any period of time, and this is true even though the Commission is given, by a proviso in S. 666, the right to veto such congressional declaration if it finds a price increase to be necessary.

The witnesses supporting S. 666 have implied, in effect, that all increases are unreasonable, but they have offered no proof. Some of them said that the average wellhead price of gas had advanced from 4.5 cents per thousand cubic feet in 1940 to 12.9 cents in 1959—an increase of almost 300 percent during such period—while other witnesses said that the average wellhead price has doubled in the last 12 years.

Of course, this does not show that the present price of gas is unreasonable. On the contrary, it merely shows that gas was underpriced in 1940 and still is selling at bargain basement prices, although our economy has gone through a period of great inflation.

I would like, for a few moments, to examine the gas prices during this period and see what has actually happened.

The year 1940 was selected by the proponents, because that happened to be the year when the wellhead price of gas was at an alltime low. The average price of gas at the wellhead had declined from 11 cents per thousand cubic feet in 1922 to 4.5 cents in 1940, because, during this 18-year period, huge volumes of gas were sold for the manufacture of carbon black or the extraction of natural gasoline at prices as low as 1 cent per thousand cubic feet at the wellhead.

Naturally, such large volume sales at these low prices tended to bring the average wellhead price down. However, in the 1930's and 1940's, when many of the State legislatures began prohibiting as wasteful the use of sweet gas for the manufacture of carbon black, or the flaring of residue gas after extracting the natural gasoline, these large volume sales at ridiculously low prices were necessarily discontinued.

This had the immediate effect of halting the decrease in the average price of gas and established the low point from which the average price increased in succeeding years. Moreover, the level prevailing in the 1920's has not yet been

reached. Had a comparison been made of 11-cent gas in 1922 with 12.9-cent gas in 1959, it would have shown, in terms of the 1922 dollar, that the wellhead price of gas actually declined during this 37-year period. Indeed, according to a Bureau of Mines publication, the average wellhead price of gas in 1957 was only 11.3 cents per thousand cubic feet and in 1958 was 11.9 cents per thousand cubic feet.

There are many economic factors which have caused the wellhead price of gas to increase since World War II. As a matter of fact, the cost of every item which necessarily goes into finding and producing gas has increased since the war. For example, with 1947–49 as the base, between that time and 1959 the average hourly wage of petroleum workers increased 71 percent; oilfield machinery and tools increased 54 percent; carbon field casing increased 91 percent; and line pipe increased 118 percent.

But even more significant than this, the Department of Commerce 1958 Census of Mineral Industries shows that the average depth of gas wells increased from 2,785 feet in 1939 to 5,431 feet in 1958—a 100-percent increase—and that the average cost of drilling and completing a gas well increased from $13,100 in 1939 to $97,400 in 1958—an increase in cost of 643 percent during the 20-year period.

With such great increases in the cost of finding and producing gas and with the many other inflationary forces at work, it would be reasonable to think that the price of gas delivered to the residential consumer would have increased proportionately—but it did not. The average price to residential consumers of gas increased only 42.2 percent between 1940 and 1959.

During the 4-year period between 1956 and 1959, the petroleum industry expended in excess of $10.5 billion in drilling and equipping wells, and in excess of $7.3 billion in wages to petroleum workers, in contrast to $4.9 billion in drilling and equipping wells and $3.7 billion in wages to petroleum workers for a similar 4-year period between 1947 and 1950.

The drilling cost per unit of all new hydrocarbon supplies added to reserves was 44 percent higher in 1959 than in 1954, and the wages of petroleum workers increased 24 percent during the same period.

In contrast, the revenues of producers from the sale of hydrocarbons were only 3 percent more in 1959 than they were in 1954. The drilling cost per unit of gas supplies added was 31 percent higher in 1959 than in 1954, and the wages of gas production workers increased 24 percent during this period. At the same time, the revenues of producers from gas sales were only 28 percent more than they were in 1954.

The revenues realized by producers from total marketed production of oil and gas averaged 32.3 cents per million British thermal units in 1948, 34.8 cents in 1957, and 32.3 cents in 1960.

It might also be interesting to take a look at what has happened to gas prices in California. The average price paid by all consumers—residential and industrial—increased from 40.9 cents per thousand cubic feet in 1949 to 57.4 cents per thousand cubic feet in 1959, an increase of 43 percent.

But looking at the period 1954–59, we find that the average price paid by residential consumers in California for gas at the burner tip was 70.4 cents per thousand cubic feet in 1954 and 89.5 cents per thousand cubic feet in 1959, an increase of 19.1 cents per thousand cubic feet, or 27 percent.

Needless to say, the whole of this increase cannot be attributed to the producers because, during the same period, the wellhead price of gas transported to California increased only 2.9 cents per thousand cubic feet, which was actually less than the average increase of 3.4 cents per thousand cubic feet on all gas sold in the seven southwestern producing States.

The comparison just made between the producers' price increase of 2.9 cents per thousand cubic feet during the period 1954–59 and the consumers' price increase of 19.1 cents per thousand cubic feet during the same period, should not be construed as an indication on my part that the difference of 16.2 cents per thousand cubic feet, which represents the increases by the pipeline carriers and the local distributors in California, is excessive or unreasonable. On the contrary, I believe their increases were reasonable and justified.

It must be remembered that the rates of the pipeline carriers are fixed by the Federal Power Commission, and the rates of the distributors by the California Public Utilities Commission. I have no reason to believe that either of these governmental agencies would allow unreasonable rates to be charged.

I merely wish to draw to the attention of the committee that, when related to the consumer, such increase as have occurred in the wellhead price of gas are not very significant.

Because of the advantageous long-term gas purchase contracts which the pipeline carriers have been able to make with the producers, the average price producers received for gas at the wellhead in 1959 was, as previously stated, only 12.9 cents per thousand cubic feet.

In contrast, consumers using gas in 1959 for residential purposes paid the distributors, on the average, 98.2 cents per thousand cubic feet. The difference of 85.3 cents per thousand cubic feet represents the cost of transportation and distribution which, as I have previously said, are costs approved by Federal and State regulatory agencies.

In 1959 the average monthly bill of consumers using gas for residential purposes was only $16.69. Of this sum, only $2.19 went to the producers for the gas, or approximately 7 cents a day—equivalent to the price of five cigarettes.

This merely shows that the cost of gas, like the cost of other raw products, is only a small percent of the total price paid by the consumer. I am quite sure that if the figures were available, they would show that the price the California farmer receives for his vegetables or his fruit is only a small portion of the price the New York consumer pays at the market for the same product.

The price of California oranges in March 1961 was 221 percent higher than it was during the base period 1947–49.

Again reverting to the California situation regarding gas, the pipelines supplying as to California in 1959 paid the producers, on the average, 11.8 cents per thousand cubic feet, compared with the national average of 14.3 cents per thousand cubic feet. This enabled the pipeline carriers to sell gas at the border to California distributors at an average price of 28.4 cents per thousand cubic feet in comparison to the national average of 34.5 cents per thousand cubic feet on gas sold to distributing companies over the Nation.

While it is true that, in 1959, California producers who sold their gas locally received at the wellhead an average of 24.6 cents per thousand cubic feet, and producers in other States who sold their gas for delivery to California received on the average, at the wellhead, 11.8 cents per thousand cubic feet, this should not be interpreted as an indication that the wellhead price of gas in California is unreasonable. A large volume of California-produced gas is used for peaking, and since these volumes are purchased to supplement the required supply on cold days, the price naturally must be higher.

California is one of the 28 States of the United States which produce gas, In 1959, 41 percent of the gas consumed and 27 percent of the gas sold in California was produced within its own boundaries. Furthermore, gas will soon be imported into California from Canada, and the price which the distributors must pay for such foreign-produced gas at the California border has been estimated to be about 6 cents per thousand cubic feet more than the price paid at the border for gas imported from the southwestern producing States.

As I stated earlier, some of the witnesses supporting S. 666 left the inference that the prices of producers are unreasonable and Congress should call a halt on future price increases until the Commission can catch up with its work. The testimony received by the Commission at public hearings has not shown the prices of producers to be unreasonable. On the contrary, most prices and most increases have been supported by the preponderance of the testimony.

One of the earliest hearings conducted by the Commission on producer prices was the *Phillips Petroleum Company* case. The hearing commenced on June 26, 1956, and was closed on December 18, 1957. It totaled 82 hearing days, and the record comprised 10, 620 pages of transcript and 235 exhibits. The presiding examiner's decision was rendered on April 6, 1959, and the Commission's opinion on September 28, 1960. Many pipeline companies, distributing companies, State utility commissions and State governments intervened in the proceeding and participated in the cross-examination of witnesses and the introduction of testimony. Neither the examiner nor the Commission found Phillips' prices to be unreasonable. On the contrary, the examiner found Phillips' revenues to be deficient by approximately $14 million, while the Commission found them to be deficient by approximately $10 million.

But even more than that, the Commission stated in its opinion in the *Phillips* case that it had held full hearings in 11 producer rate cases, and that the testimony in 10 of the cases showed the proposed price increases to be more than justified, and that in the 11th case it had been unable to make a

decision because of difficulties which it described. The Commission also said that it had concluded the hearings in three other producer rate cases involving the entire rate structure of each of the producers, and had found all of the rates to be just and reasonable.

Since the Commission rendered its decision in the *Phillips* case, it has concluded the hearings in two other producer rate cases, also involving the entire rate structure of each of the producers, and has found their rates to be just and reasonable.

The Commission has not, since the Supreme Court charged it with the duty of regulating independent producers, rendered a final decision holding that the prices charges by producers were unjust or unreasonable. In two cases, it held that the producers had not introduced sufficient testimony to support the increases, but both decisions were reversed by the U.S. Court of appeals.

Several producer rate cases are now pending before the Commission wherein the testimony introduced not only by the producers, but also by the staff of the Commission and by the intervening distributing companies, has shown that the producers' prices are not unreasonable.

I would like to point out some of the deleterious effects S. 666 would have on gas supplies. Should producers be denied their contractual price increases for a period of many years while the Commission is attempting to clear its docket of pending cases, they would be deprived of revenues necessary to replace the gas supplies now being rapidly depleted. New reserves must be found to replace the current production, otherwise shortages will develop. A price freeze such as that proposed by S. 666 would do the consumers no good if they could not purchase enough gas to heat their homes.

Gas consumption in the United States has increased at the rate of 8.6 percent each year from 1946 to 1959. It is forecast that the increase will continue at an annual rate of 4.7 percent until 1970. In contrast, the ratio of new supplies to net production decreased between 1946 and 1959. In 1946, 3.6 thousand cubic feet of new supplies was found to 1 thousand cubic feet produced; whereas in 1960 only 1 thousand cubic feet of new supplies was found to 1 thousand produced.

A tremendous effort must be made between now and 1970 to find new gas reservoirs if the market continues to grow as it has during the past decade. Should the experience in finding new supplies remain the same as it was during the period from 1946 to 1959, the total footage of wells drilled for new supplies must be tripled over the footage drilled in 1957–59; otherwise, shortages are inevitable. With the anticipated tremendous growth in demand, it is quite obvious that the effort to find new reservoirs must be stepped up in order to maintain the existing margin of safety between supply and demand.

Between the base period 1947–49 and the end of 1959, the volume of new gas reserves declined 22 percent per foot of hole drilled, and the volume of all hydrocarbons declined 36 percent per foot of hole drilled. The total footage drilled in 1959 to prove up and develop new gas reserves was double that drilled in 1947, and by 1970 2½ times the footage drilled in 1959 must be drilled to find and develop the quantities of gas reserves necessary to meet the anticipated demand.

Commissioner McKeage, president of the California Public Utilities Commission, testified before this committee that by 1966 California would be importing 3.4 billion cubic feet of gas daily. This would amount to 1.24 trillion cubic feet annually for 1966, an increase of 67 percent over the 742 billion cubic feet imported in 1959.

It should be quite apparent that, with this anticipated future growth, the gas-producing industry is confronted with a terrific job in finding and developing new supplies not only to replace the gas currently produced but to meet such future growth.

During the 4-year period from 1957 to 1960 inclusive the additions to natural gas inventories amounted to 73.8 trillion cubic feet, or 1.52 times the net production during the period. If, in the future, the new supplies added to inventory do not exceed 1.52 times the net production, there will be only enough gas during the next 20 years to take care of a growth of 2.6 percent annually. That, of course, would not be sufficient to take care of the anticipated national growth of 4.7 percent annually or the projected growth for the State of California. More money than has ever heretofore been spent annually must be made available to the producing industry if it is to do the job now facing it. Consequently, its revenues must not be reduced without it being given an opportunity of showing that its prices are reasonable.

It was stated by one witness supporting S. 666 that the rate increases being collected under suspension and subject to refund exceed $500 million annually. I should like to explain this figure. In 1960, the pipeline carriers collected from the distributors $419 million under suspension, subject to refund. This sum of of $419 million included $171 million which the pipeline companies paid the producers for increased prices of gas, likewise subject to refund by the producers in the event the increases are found to be unreasonable.

The difference between $419 million collected under suspension by the pipeline companies and the $171 million collected under suspension by the producers is $248 million, which represents increases put into effect by the pipelines for purposes other than the increased cost of purchased gas. Should we relate the $171 million collected by the producers, subject to refund, to the price ultimately paid by the residential consumers for gas, we would find that this sum resulted in an increase of approximately 35 cents per month in the total gas bill of a consumer which averaged $16.69 monthly. No consumer with a gas bill in this amount could suffer serious financial injury by such a small increase while the Commission is investigating its reasonableness, and this is particularly true where the consumer will be refunded, with interest, any portion of the increase which the Commission may find to be unreasonable.

In view of the grave injustice and irrevocable loss which it would inflict upon independent producers, and in the light of the doubt as to its constitutionality, the associations which I represent strongly recommend that section 3 of S. 666 not be enacted into law.

SECTION 4

Section 4 of S. 666 would amend section 7(e) of the Natural Gas Act by adding a provision prohibiting the granting of a certificate of public convenience and necessity for the sale of natural gas in interstate commerce for resale, or for any other purpose, unless the Commission shall make a finding that the price at which such natural gas is to be sold is consistent with the public interest. In our view, such an addition to section 7(e) of the act is unnecessary.

Section 7(e), in its present form, provides that a certificate for an interstate sale shall be issued to any qualified applicant, provided the Commission makes certain specific findings in respect thereto, one of which is a finding that the proposed sale "is or will be required by the present or future public convenience and necessity." This or similar language appears in almost all Federal regulatory statutes and experience has shown that such language adequately empowers the regulatory agencies to exercise their delegated functions in the protection of the public interest. Moreover, in instances where Commission action has been questioned in this respect, the courts have not hesitated to step in and set aside such action if, in their opinions, the Commission has failed to comply with the standards prescribed by the Congress. See, for example, *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378. In our view, therefore, the public interest is adequately protected by the provisions of section 7(e) in its present form.

Proponents of the proposed amendment of section 7(e) urge its enactment in order that a Supreme Court interpretation of the Natural Gas Act may be written into the text of the act, expressing an apprehension that the Supreme Court may change its mind. We are confident that the Members of the Congress will not take this suggestion seriously. If the Congress should undertake to freeze into statutory law all rulings made by the courts, it would have no time for the performance of its regular legislative duties.

SECTION 5

Section 5 of S. 666 would amend section 15 of the Natural Gas Act in certain procedural respects, among which would be a provision requiring that, in any proceeding under the act, the hearings held by a presiding officer shall be concluded within 1 year from the date of the first hearing, with the presiding officer's report to be made within 6 weeks following the conclusion of the hearings or the filing of briefs and the Commission's decision due within 90 days thereafter.

It is our view that procedural problems confronting the Commission can best be solved by the Commission itself in the exercise of its powers to issue rules and regulations. In connection with the proposed amendment to section 15 of the act, however, it may also be noted that the desired objective of expediting proceedings would not necessarily be accomplished by the proposed amendment. Even with the proposed 1-year provision in effect, the conclusion of

proceedings could still be delayed for a period of years by the simple device of postponing the date on which the hearings are commenced in such proceedings.

Mr. ORN. Mr. Chairman, committee members and staff, I am general attorney for the Ohio Oil Co., and I appear here today on behalf of the American Petroleum Institute, the Western Oil & Gas Association, the Mid-Continent Oil & Gas Association, and the Rocky Mountain Oil & Gas Association.

The American Petroleum Institute is composed of members in the oil industry who reside or operate in the 50 States in the United States. It has 10,500 members.

The Mid-Continent Oil & Gas Association operates in the mid-continent area and it is composed of 8,500 members.

The Rocky Mountain Oil & Gas Association operates in the western region of the United States, and it has 2,500 members.

The Western Oil & Gas Association operates in the States bordering on the Pacific Coast, including Alaska, and its members produce 80 percent of the oil that is produced in that area, and refine and market 80 percent of the products that are refined and marketed in the area. I appear on behalf of these associations in opposition to S. 666. I would also like to say that I also appear in opposition to S. 1946. I think what I have to say in regard to S. 666 will be equally applicable to S. 1946. I think that S. 1946 would be even much more difficult for the producers to operate under than S. 666.

Before discussing the bill, I would like to say that I am glad to see the National Association of Railroad and Utilities Commissioners recognizing the need for some changes in the Natural Gas Act insofar as it applies to independent producers. They have made a strong showing of the impossibility of regulating independent producers of gas under an act which was not designed for producers but was designed for pipeline companies.

The difficulties the Federal Power Commission is experiencing in an attempt to apply to nonutilities—and of course gas producers are nonutilities—regulatory techniques applicable only to public utilities, has been clearly shown by the witnesses appearing in support of S. 666. Unfortunately, the measure which they advocate offers no solution to the problem. On the contrary, it will make more difficult the admission of a statute which Congress never conceived would be held by the Supreme Court to apply to producers.

I would respectfully urge that the committee not deal with only one facet of this problem but deal with the problem in its entirety.

I submit that the proposed legislation would increase rather than decrease the already impossible burden of the Federal Power Commission; it would increase rather than decrease the amount of litigation to which the Federal Power Commission is a party; it would reduce the supply of gas to the consumers, to their detriment; and it would constitute a grave injustice to the producers of natural gas and might well be held unconstitutionally confiscatory or denial of due process.

I would like to discuss for just a few minutes section 1 of the act which would outlaw certain types of pricing provisions in producer contracts.

As I understand from the proponents of the bill, this is applicable only in the future and not to existing producer contracts.

There are four types of pricing clauses that would be outlawed: the two-party favored-nation, the third-party favored-nation, the price redetermination, and the spiral escalation. I would like, for the purpose of this record, to put in a brief statement about these clauses and what they mean.

The two-party favored-nation clause is a clause that is put in long-term gas contracts whereby the pipeline purchaser agrees that if it pays a higher price for gas to another producer in the area of the same quality that the pipeline will increase the price of the gas to that person from whom it is purchasing gas.

The third-party favored-nation clause is a clause whereby the pipeline agrees that if any other pipeline buys gas in the area at a higher price, then it will adjust the price to the producer.

The price redetermination clause is a clause in which the pipeline agrees periodically—usually once every 5 years or once every 10 years—to readjust the price, and the new price is calculated on the basis of the average of certain prices being paid in the area.

And the spiral escalation clause is one whereby the pipeline agrees to pay the producer a higher price if the pipeline in turn is allowed to charge a higher price by the Federal Power Commission.

It doesn't mean that all these clauses go in one contract. These are matters of negotiation between the pipeline and the producer as to what kind of clause would be included in the contract in order to protect the producer against increased costs.

There is a strong economic justification for inclusion of indefinite pricing provisions in contracts between the producers and an interstate pipeline. The pipelines and the public they serve are vitally interested in the maintenance of a continuing and indeed an expanding supply of natural gas, since the demand for natural gas by the consuming public is increasing at a phenomenal rate. If supplies are available for a sale to pipelines and for ultimate public consumption to be maintained, the producers of gas must be constantly engaged in the expensive activity of exploring for and developing new supplies to replace those already sold and if possible to increase the reserves available for future consumption. The producers cannot do this, however, if the price they are to receive for gas is to be frozen at the level at the time they enter into a long-term sales contract, when future inflationary trends and cost of future exploration development cannot be accurately predicted.

There is also an element of fairness which justifies the utilization of pricing clauses. It must be remembered that the natural gas sold by a producer in the field is a commodity, not a service. It is like coal in the mines, timber in the forests, and fruit on the trees. The owners of such commodities should not be expected to dispose of their property at anything less than a fair market price.

When long-term contracts are required, however, many factors must be considered, particularly the inflationary factor. For example, a producer can contract to sell his gas in 1940 under a long-term contract at a fixed price of 4 cents per thousand, which was a distress price then in effect, and would now be receiving only 1.7 cents per thousand cubic feet in terms of the 1940 dollar. It is impossible to predict at this time what changes and economic conditions will take place within the next 20 years.

It has been pointed out to the committee the power of the Federal Power Commission under section 4 of the Natural Gas Act. Of course, even when these indefinite pricing clauses are put into a contract and an increase becomes operational, it doesn't mean that that producer can get that increase. It simply means that he can get that increase if the Commission finds that the increase is just and reasonable. The pricing clause in a contract is simply a license to the producer to apply for a higher price if he can show that the higher price is just and reasonable. It is only when the contract provides for a higher price that the producer can make application to the FPC for authority to increase the price. So the price that goes in the contract is to some extent operating against the producer from indiscriminately asking for higher prices.

The Supreme Court has already decided that a producer or pipeline or any natural gas company cannot automatically increase its price acting unilaterally. There must be some contractual provision that would permit the producer to increase its price before it can go to the Commission and ask for permission to increase the price. So these pricing clauses are put in the contract for the purpose of permitting the producer to go to the Commission and ask the Commission for permission to put into effect a higher price.

Generally these clauses don't just operate every day or every year. The redetermination clauses usually don't operate but once every 5 years, and that is when the buyer and the seller take a look to see what the price should be. And, I again emphasize, no matter what they determine, the price finally must be approved by the Federal Power Commission.

I think it has been pointed out here that the Federal Power Commission has already proscribed some of these clauses. They did that recently and they prohibited all the clauses that are mentioned here except redetermination clauses. And they even limited those to where there could only be a redetermination once every 5 years.

I personally am opposed to prohibiting any of these clauses, but I simply say that if they should be prohibited, then I think it is a matter for the Federal Power Commission to decide which one should be prohibited because it can remain more flexible and see whether the exclusion of these clauses, the prohibition of these clauses, is operating properly, or whether they are going to need to relax their rules to let some of the rules go in.

These clauses are prohibited by an act of Congress. Of course, there is not the flexibility that there is in the administrative agency.

It was decided by some of the proponents of these bills that these clauses are against the public interest. One of the clauses went up to the Supreme Court of the United States recently in the famous *Memphis* case, and there it was between a pipeline and a distributing company, and the contract required the distributing company to pay the pipeline whatever price the pipeline might have on file as a tariff, of course always subject to the approval of the Federal Power Commission. That is a much more indefinite pricing clause than the kind we are talking about. The Supreme Court of the United States didn't condemn that clause. It simply held that it was a valid clause and that when the pipeline filed a new rate the distributor was obligated to pay it, subject, of course, to the Commission finding it ultimately to be a just and reasonable price.

I think, if the committee pleases, that this proposed legislation will discriminate against interstate commerce. It would discourage gas producers from making interstate sales to the detriment of the consumers in the nonproducing States. It would discriminate against producers who sell in interstate commerce, and would favor those who sell locally. It would put interstate pipelines at a great disadvantage in their competition with the local buyers for gas supplies.

It is the position of the association for which I speak that no legislation should be enacted which would prohibit entirely the utilization of indefinite pricing clauses in gas sales contracts, but that if any limitation on such provisions is to be made, it should be made by the Federal Power Commission which is in a position to maintain flexibility and to make such appropriate changes in its regulations as may be required from time to time.

I want to go to section 2, if the committee pleases, and state that while we are not supporting any part of the bill, section 2 concerns more pipelines and we leave that to the pipelines to handle.

Section 3 is the provision that we are greatly disturbed about, and I would like to discuss that for a few moments.

This is an amendment to section 4(e) of the act, and it provides that no proposed increase in price may go into effect, even under a bond or undertaking guaranteeing a refund of any excess charges, while and during the period that an earlier suspended price increase is in effect, but undetermined as to reasonableness, if the subsequently proposed increase would affect any person who was already affected by the prior undetermined price, unless the Commission should deem the proposed increase necessary.

In effect, this section would invalidate price increases under producer contract for the sale of gas during the period of time while the Commission was engaged in conducting a hearing for the purpose of determining the reasonableness of another price increase under another and different contract covering gas produced in another and different field but between the same producer and the same pipeline company.

In view of the large backlog of independent producer rate filings now pending before the Commission, it is safe to say that unless Congress soon relieves producers of the unreasonable and unworkable regulation now applicable to them, many years will be required for the Commission to determine the justness and reasonableness of the newest rate increases presented to them each year.

Gentlemen, I am in hopes that sometime or other the Congress will pass some type of legislation that will relieve the producers of these unworkable regulations.

Several independent producers presently have on file with the Commission proposed rate increases on gas sold in many different fields in different States which have been suspended since 1954, without a determination of reasonableness. Should the Commission dispose of these under public utility methods of regulation, as was done in its recent *Phillips* decision, it will be many more years before the independent producer rate increases now pending are disposed of by the Commission. Indeed, the Commission recognized that in its pending Phillips opinion.

I want to pause here just a minute and talk about the regulation that the Commission is attempting to dispose of these cases. They have attempted to dispose of them on the basis of determining the cost of producing gas and allowing the producer a reasonable rate of return after recovering his expenses, and that is the typical utility regulation. And any regulation of that kind anticipates that you are able to determine what the costs are. But here we are dealing with a joint product, and you cannot determine what it costs to produce gas with such degree of accuracy that you can fix rates on a cost basis. And that is true for this reason: that 75 percent of all of the petroleum products that are produced from a well are joint products, that is, it is either oil and gas or liquids and gas. And 75 percent of all of the expenses by the producing industry are incurred in connection with producing a joint product.

So it brings about this difficult problem, which I said is an unsolvable problem, of how to determine the cost of producing gas. And that is the thing that the Commission has been working on now for over 6 years, trying to determine how to allocate these costs between the oil and gas.

If you will pick up most any book on economics or joint cost accounting, you will find that practically all of the recognized writers are in agreement that you cannot determine the costs of a joint product with such a degree of accuracy that you can regulate an industry based upon costs. And that is the thing that I am in hopes that eventually Congress will give us some relief on.

I am not here to advocate any type of bill. At one time the Congress passed an act that would relieve producers completely of all regulations, and that bill was vetoed.

Again Congress passed another bill that would have relieved the producers of many of the regulations, but subjected them to additional review by the Federal Power Commission as to prices under new contracts and as to prices under indefinite pricing clauses and no contracts, and that bill was also vetoed. At the time it was vetoed the President recognized the need of legislation on this matter.

So I don't think an act of Congress that would, in effect, prohibit price increases is a solution to the problem.

The Commission had attempted here recently to solve the problem by area pricing, and I think we are all in hopes that it can work. It is a new, uncharted field. There is a grave question as to how far the Commission can go. But they are struggling and trying to find some solution to the problem within the framework of the act today.

So they have called area hearings. They have had a pretrial conference in one of the area hearings involving the Permian Basin, and the Examiner made a report to the Commission wherein he said that he thinks it will take about 3 years to complete the area hearing.

There are 23 areas that the Commission has set up, and you can readily see the amount of time, even if the Commission can validly fix area prices, that it will take to do that.

It should also be mentioned that there is grave doubt as to the constitutionality of a proposal which would postpone indefinitely the right of a producer to collect price increases to which it may be justly entitled. This is particularly true since the moneys representing the proposed increases, unless collected under bond subject to refund, are irrevocably lost by the party entitled to the increase.

The Supreme Court held that in the case of *Smith* v. *Illinois Bell Telephone Co.*, where the State Commission of Illinois deferred for 2 years passing upon an increase application of the Bell Telephone Co., the Supreme Court said that the delay in passing upon it was in effect a denial, and they granted an injunction and permitted the telephone company to put in an interim increase.

That is no answer to the constitutional question to rely upon the presumption of the validity of a statute enacted by the Congress. And that was suggested here in a paper filed by the National Association of Railroad Utility Agencies.

This measure had not been enacted into law. The Supreme Court of Massachusetts said, "There is no presumption in favor of the validity of a proposed statute such as there is when we consider an enactment already in effect." Of course, if this were enacted into law the court would approach it on the basis of it being presumptively constitutional. But Congress doesn't approach bills on that basis.

The Supreme Court of Massachusetts said, "That duty is shared with the other branches of the Government," and I know you know that Congress recognizes that, that it must determine in the first instance whether the bill may be unconstitutional or not.

The problem of regulating utilities is not only complex but difficult to explain, and even more than that, it is difficult to understand, particularly when a highly competitive nonutility industry, such as gas production, is regulated under techniques historically applied to public utilities. I would like to take just a moment here to discuss some of the practical operations of S. 666 if it were passed and became law.

Quite frequently one gas producer sells gas to one interstate pipeline under a long-term contract, produced from one field, and sells to the same interstate pipeline company gas produced in another field under a separate contract; two or more contracts to the same company involving gas produced in fields maybe hundreds of miles apart. These contracts, as I previously said, usually provide for periodic increases.

On the dates each of these increases occur, the producer may, under the present law, notify the Commission that he intends to collect them, and he may thereafter do so unless the Commission decided, upon receiving the notice, to investigate the reasonableness of the increases.

The investigation is the thing that brings on the suspension. In which event the producer is, by operation of the present act, denied the right to collect the contract increases for a period of 30 days plus 5 months, or about 6 months, while the Commission makes the investigation.

He therefore is forever forced to lose the increases on the gas sold and delivered during this period of time. However, at the end of the 6-month period, if the Commission has not gotten around to passing upon the reasonableness of the increase, then the producer may start collecting the increase, provided he gives a bond or other undertaking to refund any part of the increase found to be unreasonable. That is the operation of the present act.

But this produces grave hardships in many instances to producers and to the pipeline company. It is quite obvious that even this procedure works a hardship on the producer in two different ways. First, although the Commission ultimately finds that the increases are reasonable, the producer forever loses, by operation of the Natural

Gas Act itself, the increases payable under his contracts on all gas delivered during the period of 30 days plus 5 months. That is gone.

Second, in the event the increases are found to be unreasonable, the producer must refund not only the increases previously collected, but he also must pay interest thereon at the very high rate of 7 percent per annum. Such rate of interest is much greater than the producer would have paid on borrowed money, and should be sufficient to reimburse those who might incur expenses in making refunds to the ultimate consumers.

But now let's see here how much further these hardships would be increased if S. 666 were the law. Under this proposed amendment when a producer had under suspension and undecided by the Commission an increase on gas produced in Texas, he could not, as a matter of right, collect even subject to refund an increase on gas produced in Oklahoma or in Kansas if the gas produced in all three States went directly or indirectly to the same pipeline company. It should be quite apparent that under the proposed bill a producer might lose many thousands of dollars by a statute which would deny him the right to collect, subject to refund, increases occurring under many different contracts for the sale of gas produced in different fields and different States when the increases were reasonable and were subsequently found to be so by the Federal Power Commission.

Senator ENGLE. If you will let me interrupt, Mr. Orn, getting back to your previous point about the 6 months that they lose, if I were running a gas company I would get my filings in fast enough and big enough so that when the 6 months went by I wouldn't be hurt so bad—and keep filing them. So doesn't that very provision have a tendency to create a multiplicity of filings?

Mr. ORN. No, sir, Senator; I don't think it does.

Let me go back to the producers. Of course, we can only file when our contract provides for an increase. As I recollect, the Commission has a rule that you can only file a certain length of time before your increase goes into effect. In other words, you couldn't file in 1961 for some increases in 1963. They have a time limitation whereby you can't file earlier than a certain length of time before your increase goes into effect.

I hope that answers your question.

Senator ENGLE. I would keep piling them on, if I were running a gas company.

Mr. ORN. Senator, there has been some testimony here accusing the industry of doing that.

Senator ENGLE. The Commission said that 40 percent of them are turned down. So either they are not taking good aim or they are filing more than they need to.

Mr. ORN. They said that on the pipeline companies, Mr. Chairman.

I want to come a little bit later, if you please, to what is actually happening with reference to these increases so far as the producers are concerned.

Senator ENGLE. It occurs to me that the present procedure foments a multiplicity of filings, and thereby has a tendency to bog the Commission down. It would seem to me that the very result that you mention would encourage him to do that within all limits of the law. I am not criticizing them for it. I am just saying that if I were run-

ning a gas company I would have those filings moving pretty rapidly because of that 6 months.

Mr. ORN. It works a grave hardship because you lose your increase during this period.

Senator ENGLE. But you would file early enough to give them some leadtime. I would sort of figure out what the situation would be 6 months from now and take that into consideration in taking aim and trying to hit it. They don't hit it, because the Commission said that 40 percent of the time they miss. You can see how that provision would encourage a fellow running a gas company to be quite on the alert. They don't lose that 6 months. If they give it enough leadtime—let's assume they figure 6 months from now their costs will be so and so when they look at the economic trends. They just draw a bead on it and make it big enough and fire it. And as soon as that one is beyond time, they will pile another on. So we would sit here with the Commission just swamped with applications.

I'm just sitting here and listening to this, and I don't know anything about the gas company business, but if I were running the gas company, I would sure have my typewriters running.

Senator COTTON. Would the Senator yield?

If you filed an application now on what you estimated your costs would be 6 months from now, the Commission when it got around to deciding it would decide it on what your costs are now, when you filed it, and not consider what your costs would be 6 months later. Is that right or wrong?

Mr. ORN. They usually take a year as a test year, and assume that that is representative of the future. I would say that they certainly would not take a test year further along, because you couldn't tell what it was going to be, Senator Cotton.

Senator COTTON. Do you mean the test year would be a year which expired at the date of the filing of the application?

Mr. ORN. Yes. It has to be a prior year so that you can tell what your costs have been.

Senator COTTON. So if you anticipated your costs were going to increase and filed your application in advance, it wouldn't do any good because they would only be considering what your costs were in the year prior to the filing date; is that right?

Mr. ORN. I think that's right, Senator. And moreover, as far behind as they are, you might not get around to a hearing for 5 or 6 years on that.

Senator ENGLE. It would get pretty fuzzy after 5 or 6 years, too.

Mr. ORN. It does, of course, Senator; and the difficulty, as I said eralier with references to the producing industry, is these allocation problems. Of course, your books don't change. They remain there for examination if you can determine what the costs are.

Senator COTTON. Mr. Chairman, would you permit one question before we leave this.

If you don't get around for a hearing for 3, 4, or 5 years on the justification of an advance, when finally you come to hearing what does the Commission consider—the situation way back 4 years ago or the situation in regard to costs that prevail at the time of the hearing?

Mr. ORN. They go back to the situation that existed at the time the increase went into effect, and they look at that and pick out a test year

sometime in there and see if they think the costs of that year are representative of prior and future costs. That is about the best they can do, Senator.

Senator COTTON. Suppose, in simply studying the year prior to the date of filing, that it would not in the opinion of the Commission justify the advance, but actually during the time of the lapse until the Commission got around to the hearing, new situations had arisen which would perhaps not only justify that advance but justify an added advance, do they consider that in rendering their final decision?

Mr. ORN. They will test the year by some conditions in the future. However, I think what you are saying there—and these costs are changing—is that sometimes it causes one filing to be made before the Commission disposes of another one because the costs have been changing.

Senator COTTON. They snowball upward so that they may be considering one while there may have been two or three filed since?

Mr. ORN. Yes. That isn't true so far as the producers are concerned, you understand. So far as the producers are concerned we can only file when we have a contract that authorizes us to file. That is the thing that puts the brakes on us, is that contract.

Senator ENGLE. You represent producers?

Mr. ORN. Yes, sir.

Senator ENGLE. I understand that point. Of course, my friend, Senator Cotton, what I was driving at is that it occurred to me that the present system encourages a multiplicity of filings which snows the Commission under.

Mr. Orn says that it creates a hardship because they lose that 6 months. I can see how they would if they weren't right on the ball and arranged for a little leadtime. At least that is the way I would figure it out if I were in the gas company. That is just the way it occurs to me. I don't know anything about the gas business, and I am listening with great interest.

Go ahead.

Senator MONRONEY. Would you yield?

I think it is interesting to note that for the fiscal year 1960 the Commission had 3,325 suspended applications by independent producers for price increases, and yet on the same date there were only 110 suspended applications by the pipeline.

This doesn't look like a multiplicity of cases coming in from the pipelines. Yet the producers with their contracts in existence, with higher priced gas, maybe offshore or otherwise, have had to come in if they are going to be able to furnish the gas that the pipelines require to stay in business.

Senator ENGLE. I think the producers are in a different position than the pipelines, as Mr. Orn pointed out.

Senator MONRONEY. But only 110 pipelines. So if they got a fair field price, some simple way of handling this, they could keep up with their backlog.

Mr. ORN. Not only are there many producers, but generally each contract that a producer makes is for sale from a particular field. A producer may be operating in 50 or 75 fields, and he may have 50 or 75 contracts because of this operation. Those contracts, of course, are not all dated the same time. They are dated at different times and

the increases go into effect at different times. That, of course, is the thing that has made so many rate filings.

The pipelines—I am not familiar with all of them—maybe the pipelines will only have 25, 30, or 40 customers serving that many cities or maybe more than that. But so far as the producers are concerned, we have many contracts with different pipeline companies, and in many instances it involves a small batch of gas, maybe the gas from one well, or maybe the casinghead gas, a small volume, from 10 oil wells. So it is a terrific number of contracts that the Federal Power Commission is attempting to regulate is what has brought on the trouble.

I don't want anything I have said to be understood as criticizing the Federal Power Commission. I think that they have done as well as can be done with the tools they have had to work with. They have been trying to build a skyscraper with a hammer and saw, and they just can't do it. The law isn't designed for that kind of regulation.

It must be remembered that many thousands of royalty owners participate in these contract increases, and there can be no logical reason why a royalty owner in Oklahoma or Kansas should lose his right to an increase under a contract for the sale of gas produced from his land merely because the producer holding a lease on his land already has under suspension an increase under a contract with the same pipeline company for the sale of gas produced in Texas.

And Senator Monroney, that is precisely the way this would work.

Now, I want to direct attention for a few moments here to the proviso, apparently with some recognition on the part of the author that something had to be done so they put in here what they called a proviso, thinking that that might in some way or other eliminate the shock.

It was said by some of the witnesses who drafted S. 666 that the proviso clause in section 3 would allow the Commission to put into effect a subsequent price increase due under a gas sales contract even though there was then in effect under suspension and subject to refund another price increase in a different contract with the same pipeline company. I respectfully submit that this proviso clause offers little or no relief to the producers. Moreover, it will in nowise speed up disposition of cases before the Commission, or lighten their workload. This proviso reads as follows:

> *Provided, however,* That nothing in this amendment shall be construed as limiting the authority of the Commission to put into effect or to permit to go into effect, in whole or in part, any proposed change deemed necessary by the Commission.

And, Senator, that goes back to what you said this morning about necessity. I submit that the proviso clause offers little or no relief to the producers. Moreover, it will in nowise speed up disposition of cases before the Commission or lighten their workload.

All this clause does is authorize the Commission to put a contractual price increase into effect even though there may then be in effect, subject to suspension, other and different price increases under other and different contracts between the same producer and the same pipeline company. The clause does not state specifically whether the subsequent price increase may be suspended by the Commission for 5 months and thereafter put in effect subject to refund, or whether

such increase may be put in effect only in the event the Commission concludes it is reasonable and consequently does not need to be put into effect subject to refund. If the proviso means the latter, it would add nothing, because the Commission could, without the proviso, allow any increase to go into effect without a refund condition.

Many times the Commission lets increases go into effect without suspension or without a hearing.

It is only when the Commission decides they want to investigate to see whether this increase should go into effect that it is suspended.

Senator ENGLE. On that point, is it your contention that the proviso would not be an exercise of due process unless it was a full-fledged rate hearing to determine the reasonableness of the rate?

Mr. ORN. Senator, you anticipate the next point I was going to try to make here.

Senator ENGLE. Is that your point?

Mr. ORN. Yes, sir; it certainly is.

If we are to assume that the proviso means that, should the Commission deem a subsequent price increase necessary, it may waive the earlier provision of the same sentence prohibiting subsequent price increases from going into effect while a prior increase is in effect and undetermined as to reasonableness, then serious constitutional and administrative questions are presented.

A decision rendered by the Commission, without notice and hearing, that a subsequent increase was not necessary during the period that the reasonableness of the prior increase was under consideration would deprive the producer of his property rights without due process of law.

Contrariwise, should the Commission afford the producer a constitutional hearing on whether the subsequent proposed increase is necessary, then the work of the Commission would be doubled, because it would have one hearing on whether it is necessary to permit the producer to collect the subsequent increase, and another and later hearing as to whether the subsequent increase is reasonable.

In both hearings, the Commission would have to determine whether the subsequent increase is reasonable because, should it not be reasonable, its allowance would be unnecessary in the first instance.

Wherefore, the Commission, in order to meet the constitutional guarantee, would be forced to conduct two hearings wherein the same issue would be involved, that is, the justness and reasonableness of the proposed increase, and, instead of taking a year or more to decide that issue, it would take twice that long.

Ultimately, the controversy before this committee boils down to this simple question: Shall Congress enact S. 666, which might forever deprive producers of their price increases under contracts on all gas delivered during a period when there is pending before the Commission and undecided an issue as to the reasonableness of a prior increase under a different contract—even though all such increases may ultimately be found to be reasonable by the Commission—or shall the Congress leave unchanged the present provisions of the Natural Gas Act which permit all such increases to be collected at the end of 30 days plus 5 months while the Commission is continuing an investigation of their reasonableness, subject, however, to the producers' obligation to refund, with 7 percent interest, any part of the increases found to be unreasonable?

Senator ENGLE. Of course that statement of the issues presupposes that the proviso in the present section 3 would require a full-fledged rate hearing, rather than a summary action by the Commission.

Mr. ORN. I think that if the Commission is behind with its docket 7 or 8 years—and in the *Phillips* case they said it would take 82 years to catch up with the docket—then to not let the producer put into effect another price increase involving gas produced from another, different, field for 82 years I think is denying the producer due process.

Senator ENGLE. Would you object to this proviso of section 3 if you were convinced that a summary decision at that time met the requirements of due process? In other words, it is a legal issue, is it not?

Mr. ORN. If the Commission has to make a decision at the time the second increase comes up as to whether it is necessary, and the producer was afforded a hearing—is that your question?

Senator ENGLE. Yes. What if we put in the words "necessary or appropriate," as Mr. Kuykendall suggested this morning?

Mr. ORN. I think that takes us back to the question here, if you are going to be afforded a hearing, then you are back in the same length of time now. Whenever they suspend an increase for 5 months in theory they are supposed to have a hearing in that 5 months to see whether this increase is reasonable.

But they cannot have a hearing. So if you substitute the word "necessary" and you have a hearing where it is necessary or appropriate, then what is necessary or appropriate?

Certainly an increase that was not reasonable would not be necessary or appropriate, so you would be right back into the question of whether it is reasonable. And that is the ultimate issue always, is whether the increase is reasonable—just and reasonable.

Senator ENGLE. If I were a representative of the gas companies and I got a favorable decision I would call it due process. If I got the decision against me, I would protest that it was not due process.

Mr. ORN. I think that would be right, Mr. Chairman. But there are some distributors on the other side, when the producer got the decision and there was no hearing, they would say it was not due process and we would be hauled into court.

Senator ENGLE. I know. What you have to find out is just how much of a hearing the Commission has to give in order to meet the requirement of due process. If the requirement of due process can be met in a summary hearing under the proviso with the amendment suggested by the Commission, then it seems to me that your statement of the issue on page 27 of your statement does not cover the issue.

Mr. ORN. You are assuming, I take it, that you can have a short hearing under the proviso?

Senator ENGLE. That is correct. And that it would meet the requirement of due process?

Mr. ORN. Yes.

Senator ENGLE. If you take those assumptions, you would have to restate your issue, would you not?

Mr. ORN. Any time you go into a hearing the parties to the hearing have a right to introduce evidence. And so far as the producer is concerned, he would be entitled to introduce evidence to show that this increase was necessary.

Senator ENGLE. And appropriate?

Mr. ORN. And appropriate.

What kind of proof would it need? We go back then to the old question: Are you going to have to show that the costs have gone up? If it does, then you are looking at a year or 2 years to conclude a hearing, or whenever you can get to it.

Senator ENGLE. I am not sure that the Supreme Court would say a 2-year hearing is a prerequisite to due process, even in a rate case.

Mr. ORN. I don't know that the time is the criterion as to whether the producers or parties have been afforded an opportunity to present such evidence as is revelant or material. My point is that when you get into determining whether the increase is necessary and appropriate and you get into the matter of the parties presenting evidence, you get into this year or 2 years that I am talking about.

Senator ENGLE. Lawyers like to argue, engineers like to engineer, and scientists like to investigate. There has to be some terminal facility.

Mr. ORN. Yes, sir; that is right. But it looks, Mr. Chairman, when you get into one of these rate cases, there are no terminal facilities, because in the first place you are attempting to determine a reasonable price here by, in many instances, an industry or producer whose activities cover an immense area. You do not have a person who is engaged solely in the production of gas. And whenever you begin to go into the books and investigate all of these costs you find that it is a terrific job.

Mr. Chairman, the Federal Power Commission has had in the offices of some of the producers three and four and five accountants for 18 months investigating their books to get ready for just one hearing.

In connection with the foregoing, it may be noted that neither the Interstate Commerce Act, in parts I, II, and III thereof which relate, respectively to railroads, motor carriers, and water carriers, 49 U.S.C. 1 et seq., 301 et seq., and 901 et seq.; nor the Federal Power Act, 16 U.S.C. 824 et seq.; nor the Civil Aeronautics Act, 49 U.S.C. 1301 et seq.; contains any provision prohibiting the filing of rate or tariff increases while previously filed rates are under consideration. This would be a departure from the Federal regulatory scheme of industries that are regulated under the Interstate Commerce Commission Act.

The witnesses supporting S. 666 argue that the proposed amendment to the Natural Gas Act should be adopted for two reasons. First, they say that the Commission is so far behind with its work that it does not have time to conclude a hearing on the reasonableness of an increase under one contract before another increase occurs under another and different contract between the same producer and the same pipeline company.

Second, they say that all of the price increases of producers may be unreasonable and, therefore, the subsequent increases occurring under different contracts should be invalidated until such a time as the Commission can catch up with its docket and determine the reasonableness of a prior increase under a different contract. Neither reason is valid and I shall show why.

I want to discuss this backlog of cases first.

As to the first reason, while it may be true that the Commission does have a large backlog of cases, nevertheless this should not be used as an excuse for penalizing producers, as would be done if S. 666 were enacted into law. An indefinite delay in deciding the merits of a prior increase would be tantamount to a denial of a subsequent increase under a different contract during the period of the delay, even though the subsequent increase could be proven reasonable were the opportunity given.

Such punitive action is unjustified and unnecessary. It is unheard of in a democracy for a court or a governmental agency to deny a person his property rights because the court or the agency does not have the time to conduct a hearing and determine such property rights.

A collection of the increases under the act as presently written, subject to refund, if subsequently found to be unreasonable, would hurt no consumer and this is particularly true when the refund, if ordered, bears interest at the rate of 7 percent per annum.

Moreover, S. 666 would not lighten the workload of the Commission. It actually would increase the number of pending cases because as previously pointed out, the Commission would hold one hearing under the proviso for the purpose of determining whether the subsequent increase is necessary, and another and later hearing to determine whether the increase is reasonable.

As a result of the *Phillips* decision, the size of the Commission's workload is now many, many times what it was in 1954, the date of the *Phillips* decision.

In that year, 1954, the Commission reported that it was regulating a total of 112 natural gas companies, which filed with the Commission a total of 241 certificate applications covering new and extended pipeline contraction and a total of 706 rate filings.

That was the docket in 1954.

In 1960, there were some 3,468 natural gas companies with rates on file with the Commission, including 3,372 independent producers, plus over 15,000 nonfiling coowners whose rates were covered by the filings of others.

In other words, in 1960 there were 30 times as many natural gas companies as there were in 1954.

During 1960, the interstate pipelines filed 240 certificate applications and 1,275 rate filings, while independent producers filed 1,637 certificate applications and 8,805 rate filings, 13 times as many cases in 1960 as in 1954.

As of April 1, 1961, the Commission had pending 2,937 independent producer certificate applications for new sales, 3,806 producer applications for rate increases, and the Commission in the *Phillips* case said that it would take it to 2043 to bring its docket into current condition if its staff were tripled. And that is 82 years from now. And this bill would deny the producer—could deny the producers for 82 years increases because the Commission could not get its docket into current condition.

Congress appropriated the Federal Power Commission a total of $4,300,000 in 1954, of which the Commission spent $1,788,000 on gas regulation.

In 1960 Congress appropriated to the Commission $7,218,000, of which $3,686,000 was spent on gas regulation. And yet the Commission is getting further and further behind because they are attempting to apply utility regulation to all of the producers that have fallen under its jurisdiction.

Most assuredly, if the *Phillips* decision has imposed upon the Commission such burdens that it cannot determine within a reasonable length of time the reasonableness of a price increase, it certainly could not, in less time, determine the necessity of permitting a price increase to go into effect and then thereafter the reasonableness of such increase.

As to the second reason advanced by the witnesses supporting S. 666, they would have the Congress, by a legislative act, invalidate as unreasonable many price increases provided for in numerous contracts between the same producer and the same pipeline company until such a time as the Commission could get around to holding a hearing and determining the reasonableness of a prior increase under a different contract.

I respectfully submit that the Congress does not have time to examine into the reasonableness of price increases under thousands of producer contracts for the purpose of determining whether they are reasonable or unreasonable.

Wherefore, it should not declare, as S. 666 would do, any of these price increases prima facie invalid for any period of time, and this is true even though the Commission is given, by a proviso in S. 666, the right to veto such congressional declaration if it finds a price increase to be necessary.

The witnesses supporting S. 666 have implied, in effect, that all increases are unreasonable, but they have offered no proof. Some of them said that the average wellhead price of gas had advanced from 4.5 cents per thousand cubic feet in 1940 to 12.9 cents per thousand cubic feet in 1959—an increase of 163 percent during such period—while other witnesses said that the average wellhead price has doubled in the last 12 years.

Of course, this does not show that the present price of gas is unreasonable. On the contrary, it merely shows that gas was underpriced in 1940 and still is selling at bargain basement prices, although our economy has gone through a period of great inflation.

I would like, for a few moments, to examine into these prices that have been spoken of.

The year 1940 was selected by the proponents because that happened to be the year when the wellhead price of gas was at an all-time low. The average price of gas at the wellhead had declined from 11 cents per thousand cubic feet in 1922 to 4.5 cents in 1940 because, during this 18-year period, huge volumes of gas were sold for the manufacture of carbon black or the extraction of natural gasoline at prices as low as 1 cent per thousand cubic feet at the wellhead.

Naturally, such large volume sales at these low prices tended to bring the average wellhead price down. However, in the 1930's and 1940's, when many of the State legislatures began prohibiting, as wasteful, the use of sweet gas for the manufacture of carbon black, or the flaring of residue gas after extracting the natural gasoline, these large volume sales at ridiculously low prices were necessarily discontinued.

And, Senator Schoeppel, I know you are quite familiar with it because I think you were Governor of Kansas during that time and probably were chairman of the Interstate Oil Compact and know what the condition was with reference to large volumes of gas being sold for carbon black and being run through gasoline plants and the residue burned into the air.

It was through the efforts of your State and many States that this practice was stopped.

Senator SCHOEPPEL. It was an unconscionable waste of a natural resource.

Mr. ORN. Yes, sir. When that was stopped it had a tendency to slacken off the average price of gas because of these big volumes.

This had the immediate effect of halting the decrease in the average price of gas and established the low point from which the average price increased in succeeding years. Moreover, the level prevailing in the 1920's has not yet been reached. Had a comparison been made of 11-cent gas in 1922 with 12.9-cent gas in 1959, it would have shown—in terms of the 1922 dollar—that the wellhead price of gas actually declined during this 37-year period. Indeed, according to a Bureau of Mines publication, which Senator Monroney used here the other day, the average wellhead price of gas in 1957 was only 11.3 cents per thousand cubic feet and in 1958 was 11.9 cents per thousand cubic feet, compared with 11 cents in 1922.

There are many economic factors which have caused the wellhead price of gas to increase since World War II. As a matter of fact, the cost of every item which necessarily goes into finding and producing gas has increased since the war. For example, with 1947–49 as the base, between that time and 1959 the average hourly wage of petroleum workers increased 71 percent; oil field machinery and tools increased 54 percent; carbon field casing increased 91 percent; and line pipe increased 118 percent.

But even more significant than this, the "Department of Commerce 1958 Census of Mineral Industries" shows that the average depth of gas wells increased from 2,785 feet in 1939 to 5,431 feet in 1958—a 100-percent increase—and that the average cost of drilling and completing a gas well increased from $13,100 in 1939 to $97,400 in 1958—an increase in cost of 643 percent during the 20-year period.

With such great increases in the cost of finding and producing gas and with the many other inflationary forces at work, it would be reasonable to think that the price of gas delivered to the residential consumer would have increased proportionately; but it did not. The average price to residential consumers of gas increased only 42.2 percent between 1940 and 1959.

During the 4-year period between 1956 and 1959, the petroleum industry expended in excess of $10.5 billion in drilling and equipping wells, and in excess of $7.3 billion in wages to petroleum workers, in contrast to $4.9 billion in drilling and equipping wells and $3.7 billion in wages to petroleum workers for a similar 4-year period between 1947 and 1950.

The drilling cost per unit of all new hydrocarbon supplies added to reserves was 44 percent higher in 1959 than in 1954, and the wages of petroleum workers increased 24 percent during the same period. In contrast, the revenues of producers from the sale of oil and gas

and all hydrocarbons was only 3 percent more in 1959 than they were in 1954.

The revenues realized by producers from total marketed production of oil and gas averaged 32.3 cents per million B.t.u.'s in 1948, 34.8 cents in 1957 and 32.3 cents in 1960, not a very great increase during the period 1948 to 1960.

Senator, I want to talk just a minute about the California situation, if you please.

Senator ENGLE. Mr. Orn, we will have to recess these hearings at 4 o'clock. And we have Mr. Parkes here, who is from Shreveport, La. The Chair would like to hear the out-of-town witness. Mr. Jones is here from Washington. Can you complete your statement by 3:30 so that we can have a half hour for Mr. Parkes?

Mr. ORN. I don't think that I will be through with it, Mr. Chairman. I will do my best.

Senator ENGLE. I wish you would do that. Otherwise, we will have to miss Mr. Parkes. On Wednesday we have two other out-of-town witnesses. It is unfair I think to have these gentlemen come so far and not even get a chance to be heard at all.

If you can conclude by 3:30, then we will hear Mr. Parkes for a half hour, and we will have to defer Mr. Jones and take the other out-of-town witnesses on Wednesday.

Mr. ORN. Senator, I am from Ohio, but I will certainly do the best I can.

Senator ENGLE. I know you will. If we give an hour and a half for every witness, we will be here longer than a rate hearing.

Mr. ORN. It might also be interesting to take a look at what has happened to gas prices in California. The average price paid by all consumers, residential and industrial, increased from 40.9 cents per thousand cubic feet in 1954 to 57.4 cents per thousand cubic feet in 1959, an increase of 43 percent.

But looking at the period 1954 to 1959, we find that the average price paid by residential consumers in California for gas at the burner tip was 70.4 cents per thousand cubic feet in 1954, and 89.5 cents per thousand cubic feet in 1959, an increase of 19.1 cents per thousand cubic feet, or 27 percent. Needless to say, the whole of this increase cannot be attributed to the producers because, during the same period, the wellhead price of gas transported to California increased only 2.9 cents per thousand cubic feet, which was actually less than the average increase of 3.4 cents per thousand cubic feet on all gas sold in the seven southwestern producing States.

The comparison just made between the producers' price increase of 2.9 cents per thousand cubic feet during the period 1954–59 and the consumers' price increase of 19.1 cents per thousand cubic feet during the same period—those increases I am talking about—should not be construed as an indication on my part that the difference of 16.2 cents per thousand cubic feet, which represents the increases by the pipeline carriers and the local distributors in California, are excess or unreasonable. On the contrary, I believe their increases were reasonable and justified. It must be remembered that the rates of the pipeline carriers are fixed by the Federal Power Commission, and the rates of the distributors by the California Public Utilities Commission. I have no reason to believe that either of these governmental agencies would allow unreasonable rates to be charged. I merely wish to draw to the at-

tention of the committee that, when related to the consumer, such increases as have occurred in the wellhead price of gas are not very significant.

Because of the advantageous long-term gas purchase contracts which the pipeline carriers have been able to make with the producers, the average price producers received for gas at the wellhead in 1959, are costs approved by Federal and State regulatory agencies. In contrast, consumers using gas in 1959 for residential purposes paid the distributors, on the average, 98.2 cents per thousand cubic feet. The difference of 85.3 cents per thousand cubic feet represents the cost of transportation and distribution which, as I have previously said, are costs approved by Federal and State rebgulatory agencies. In 1959, the average monthly bill of consumers using gas for residential purposes—space heating, cooking, and water heating—was only $16.69 over a yearly period. That was the average per month. The average for those who used gas for all purposes, which would include heating, cooking, and water heating, was $8.13. Of this sum only $2.19 went to the producers for the gas, or approximately 7 cents a day, equivalent to the price of five cigarettes. That is what the producer got out of a gas bill that on the average cost the consumer $16.69 per month.

This merely shows that the cost of gas, like the cost of other raw products, is only a small percent of the total price paid by the consumer. I am quite sure that if the figures were available, they would show that the price the California farmer receives for his vegetables or his fruit is only a small portion of the price the New York consumer pays at the market for the same product.

These figures that I have just given you, as I previously said, are not to be construed as indicating that the price being charged for the transportation and distribution is excessive. It simply shows the raw product itself bears a very small percent of what the consumer pays.

Skipping down here, to try to get through as early as I can, I would like to call your attention to some of the hearings that the Commission has held with reference to producer prices.

As I stated earlier, some of the witnesses supporting S. 666 left the inference that the prices of producers are unreasonable and Congress should call a halt on future price increases until the Commission can catch up with its work. The testimony received by the Commission at public hearings has not shown the prices of producers to be unreasonable. On the contrary, most prices and most increases have been supported by the preponderance of the testimony.

One of the earliest hearings conducted by the Commission on producer prices was the *Phillips Petroleum Company* case. The hearing commenced on June 26, 1956, and was closed on December 18, 1957. It total 82 hearing days, and the record comprised 10,620 pages of transcript and 235 exhibits. The presiding examiner's decision was rendered on April 6, 1959, and the Commissioner's opinion on September 28, 1960. Many pipeline companies, distributing companies, State utility commissions and State governments intervened in the proceeding and participated in the cross-examination of witnesses and the introduction of testimony. Neither the examiner nor the Commission found Phillips' prices to be unreasonable. On the contrary, the examiner, in attempting to use a utility formula, found Phillips revenues to be deficient by approximately $14 million, while the Commission found them to be deficient by approximately $10 million.

But even more than that, the Commission stated in its opinion in the *Phillips* case that it had held full hearings on 11 producer rate cases, and that the testimony in 10 of the cases showed the proposed price increases to be more than justified, and that in the 11th case it had been unable to make a decision because of difficulties which it described. The Commission also said that it had concluded the hearings in three other producer rate cases involving the entire rate structure of each of the producers, and had found all of the rates to be just and reasonable.

Since the Commission rendered its decision in the *Phillips* case, it has concluded the hearings in two other producer rate cases, also involving the entire rate structure of each of the producers, and has found their rates to be just and reasonable.

The Commission has not, since the Supreme Court charged it with the duty of regulating independent producers, rendered a final decision holding that the prices charged by producers were unjust or unreasonable. In two cases, it held that the producers had not introduced sufficient testimony to support the increases, but both decisions were reversed by the U.S. circuit court of appeals.

Several producer rate cases are now pending in the Commission wherein the testimony introduced not only by the producers, but also by the staff of the Commission and by the intervening distributing companies, has shown that the producers' prices are not unreasonable.

If I had time I would like to talk with the committee about the effect that this bill may have upon the future gas supply. And after all, the consumer is not only interested in price, but the consumer is interested in having adequate supply. I am frank to tell this committee that in my opinion if this bill were enacted into law we would see, within not too long a future, shortages developing in parts of the country which are now actually being supplied by gas. Any time these shortages develop the price is going to go up to the consumer because you are going to have the same sized pipeline with the same fixed costs carrying less gas. I think the testimony has amply shown that the big cost is in the transportation and distribution of the gas. The reason gas is being delivered to the consumer at the prices that it is is because there have been ample supplies to keep these lines full through mass production where the price can be brought down.

Anything that can be done by the Congress that will have a tendency to reduce these supplies inevitably is going to mean higher costs.

I have made a statement here directed to some of the testimony introduced by Mr. McKeage, of the California Commission. He testified about the amount of gas produced in the State of California and the amount they anticipated would be imported into California in the next 10 years. I have received a telegram from the Western Oil & Gas Association which has reviewed my filed statement and has reviewed Mr. McKeage's testimony, and they state that while they anticipate that considerable gas will be imported into California in the next 10 years, that they are finding additional quantities of gas in California and if they continue meeting with the success in finding new supplies in California this may have a tendency to reduce the amount of gas imported into California. But they all concede that there is not much likelihood of finding enough gas in California to satisfy this rapid expanding market that California is having.

There is one other thing that I want to say on this section 3, and that is something about the figure that was used here of $500 million being under suspension annually. I made some investigation of that and I have here a report by the Federal Power Commission which shows that in 1960, at the end of 1960, there was $419 million under suspension. Mr. Elmer did a very excellent job this morning in explaining that this $419 million really is bookkeeping on top of bookkeeping, and I will not go through that to explain it again, because I think it is very apparent that this $419 million doesn't represent increases that have been passed along to the consumer.

Of this $419 million, $171 million represents only increases that have been under suspension by the producers. If we relate that $171 million back that is under suspension to the producers, and see how much that affects the consumer, we would find that it only affects a consumer, who uses about $17 worth of gas a month, the sum of 35 cents a month.

The $17 figure that I have used includes just the consumer who uses gas for space heating as well as cooking and hot water heating. The average of the consumers who don't use it for space heating, too, is only about $8 a month. So if you would cut that 35 cents a month in two and it would be about 16 or 17 cents.

If the committee please, I hope that the supplies of consumers are not jeopardized by some drastic legislation where, really, if you trace this down to the ultimate consumer, the amount is very small. I don't believe that any consumer who uses $16 worth of gas a month on the average is being hurt by his bill increasing 35 cents per month during the period of time that the Commission is trying to do a job for him, and that is to see whether this 35 cents should be allowed to ultimately go into effect.

I want to go to section 4, and there is very little I want to say about that, except this: The proponents recognize that all they were doing with section 4 was trying to write into an act a construction of section 7 of the Natural Gas Act as it had been interpreted by the Supreme Court. They expressed some fear that the Supreme Court might sometime or other back up and change its construction. I am sure that some members of this committee would like to see the Supreme Court back up and change its construction in the *Phillips* case. But I don't think that it is the policy of Congress to amend acts to make them conform with the construction of the Supreme Court because, after all, what the Supreme Court said is, "This is what the act means as you have already written it." So we see no need for that.

The last section, section 5, is to speed up the decisions. Everyone would like to see these decisions speeded up. But I don't think this will speed up the decisions. It simply requires the Commissioner to conclude a hearing within a year after he starts it. It doesn't say when he will start the hearing. It also requires him to make his report within 6 weeks after he concludes the hearing, and the Commission to make a decision within 90 days after the Commissioner's report.

I don't believe that the type of regulation prescribed by the Natural Gas Act can be administered that quickly.

That concludes my statement.

Senator ENGLE. Thank you very much, Mr. Orn, for your statement. If you will stand by, we will ask Mr. Parkes to come up and

summarize his statement, and then perhaps we will have time for questions, if there are any.

The next witness is Mr. Ed Parkes, president of United Gas Corp., Shreveport, La., representing the American Gas Association, 1725 Eye Street NW., Washington, D.C.

I assume you have a prepared statement. I regret the limitations of time, but if you can summarize your statement, perhaps the committee will have questions of you and Mr. Orn before 4 o'clock.

STATEMENT OF ED PARKES, PRESIDENT, UNITED GAS CORP., SHREVEPORT, LA., REPRESENTING THE AMERICAN GAS ASSOCIATION, WASHINGTON, D.C.

Mr. PARKES. I certainly can summarize it, sir, and I will be delighted to do so.

(The statement follows:)

My name is Ed Parkes. I am president of United Gas Corp., located at Shreveport, La. I am also chairman of a special committee appointed by the American Gas Association in June 1960 known as the Special Committee of Executives of Regulatory Affairs, which is composed of 10 members, each of whom is the president or chairman of the board of a gas company member of the American Gas Association.

I appear at this committee hearing today in connection with Senate bill 666 in behalf of, and as a member and representative of, the American Gas Association.

The American Gas Association is a national trade association of the natural gas industry. Its 385 members are drawn from the distribution, transmission, and production segments of our industry. American Gas Association member companies serve over 97 percent of the gas meters in this country. In 1960 our member companies were serving gas to over 32 million customers. The association serves an industry which is, in terms of net plant investment, fifth largest in these United States.

This special committee of the American Gas Association was to study problems of regulation, and especially to recommend proposals for correcting and removing those causes which the special committee found to be delaying and obstructing the administrative process and the proper and efficient administration of the Natural Gas Act.

In a series of meetings this special committee studied this problem from the date of its creation in June 1960 until it issued its report in March 1961. In the course of its study, the special committee reviewed and considered reports and proposals of other organizations, agencies, and bodies dealing with administrative delays and inefficiency, including the report of Dean James M. Landis, the report of Representative Harris' Special Subcommittee on Legislative Oversight of the Committee on Interstate and Foreign Commerce of the House of Representatives, the report of the staff of that special subcommittee, Judge Prettyman's administrative conference, the Annual Report of the Federal Power Commission for the year 1960, the report of the National Association of Railroad & Utilities Commissioners' Special Committee To Study Natural Gas Problems, and the various bills which had been introduced into Congress for the purpose of implementing the proposals of that special committee.

On March 7, 1961, our special committee of the American Gas Association issued its report on "Suggestions for Improving the Regulation of the Natural Gas Industry" at the Federal level. In this report we have endeavored to get at the root of the problem of regulatory delays in proceedings before the Federal Power Commission and to suggest means of eliminating or minimizing those delays. Some of these suggestions deal with procedural and administrative matters which can be accomplished by the promulgation of new or revised rules, regulations, or statements of policy by the Federal Power Commission, the establishment of new procedures under existing rules and regulations, or by better policing and enforcing of existing rules, regulations, and procedures by the Commission.

Other suggestions deal with matters which can only be accomplished through legislation. Those we have suggested will enable the Commission to effectively cope with the workload, including more efficient utilization and supervision of its staff, and more effective development of policy and long-range planning.

The special committee of the American Gas Association feels confident, as stated in the preamble of its report, that the materialization of its recommendations would result in decreased delays and costs in processing adjudicatory proceedings; modernized, efficient, and equitable administrative procedures; improved Commission organization and capacity; the attraction and retention of highly qualified personnel; the encouragement of the Federal Power Commissioners to engage in advance planning and policy making to implement the broad policies prescribed by Congress in the statutes; and the separation of the prosecutory function from the decisionmaking function within the Commission, while deterring the unethical conduct of all parties.

Senate bill 666, which is the subject of this hearing, was introduced by Senator Magnuson at the request of the National Association of Railroad & Utilities Commissioners. That organization will hereafter be referred to as NARUC for convenience. The draft of this bill as prepared by NARUC, and the analysis of its provisions by NARUC, which was printed on page 1313 of the Congressional Record for Monday, January 30, 1961, as well as the "Report of the Special Committee of NARUC To Study Natural Gas Problems," which was printed on page A1124 of the Congressional Record for Tuesday, February 21, 1961, were among the material which our American Gas Association special committee studied and analyzed and which are reviewed in detail in our special committee's report.

Our special committee therefore feels that it is familiar with the NARUC proposals as set forth in Senate bill 666 and we wish to comment on these proposals and their effect. I am attaching to this statement a copy of the printed report of the American Gas Association Special Committee of Executives on Regulatory Affairs, dated March 7, 1961.

The report of the NARUC Special Committee To Study Natural Gas Rate Problems quotes the resolution adopted by the executive committee of NARUC showing that NARUC is concerned with the large number of undecided rate cases which are pending before the FPC and with the successive cases being filed without a determination of the rates in the prior cases. The report points out that the NARUC special committee was created to investigate and study procedures

under the Natural Gas Act and make recommendations for changes in the act "to more adequately protect the public interest" and to ask Congress to provide FPC with "adequate funds to staff itself with trained and qualified personnel for the purpose of making proper investigations and conducting speedy hearings on whatever rate applications may be filed with FPC by interstate pipeline companies and the natural gas producers."

That resolution indicated that NARUC was concerned with the large backlog of undecided rate cases and with the delays that are inherent in the processing of cases before the FPC. The American Gas Association shares that concern, as do many other organizations, individuals, and governmental bodies.

To the American Gas Association it seems that a comprehensive approach must be taken in order to remove the concern over regulatory delay, a concern we share with regulators, the informed public and the members of this committee. Comprehensiveness was the aim of our report. After all, delay is caused by a number of factors. To cure delay we must attack each of the factors contributing to it. For example, the special committee has advocated reform of field audits, elimination of immaterial cross-examination, limitation on intervenors, and other important measures as means to reduce regulatory delay at its source—the working level of the regulatory process.

The most important aspect of the special committee's recommendation is that they do attack the numerous sources of regulatory delay. Taken together, the recommendations constitute a blend of procedural improvement and needed legislation which will succeed better than a program that attacks merely the results of regulatory delay.

Successive rate cases from one company, for example, is a result of regulatory delay, not a cause. To solve the problem by inhibiting the filing for rate relief is to attack the results, not the cause. These successive applications for rate relief came about as a result of regulatory delay. Find the causes of this delay, correct them, and the problem disappears. The whole approach of our committee has been consistently directed to identifying causes and to recommending action to remove these causes.

It appears to the American Gas Association that S. 666 is directed more to the results of delay than to the causes. In fact, the only provision that deals directly with causes is section 5 which proposes to amend section 15 of the Natural Gas Act.

Sections 1, 2, and 3 of the bill contemplate amendments to section 4 of the Natural Gas Act dealing with rates and rate changes, and section 4 of the bill proposes an amendment to section 7 of the act to require a rate condition to be included in certificates of public convenience and necessity. These provisions deal not with delays or expedition of rate cases, but solely with the matter of limiting rates and rate increases, the delays in handling such proceedings will be eliminated. That approach fails to attack the roots of the problem.

Section 1 of the bill prohibits the use of indefinite pricing clauses by producers of gas, and section 2 of the bill would give the Commission authority to suspend rates for the sale of gas for resale for industrial use. Substantially the same objective sought by section 1 was accomplished by Order No. 232A, issued by the FPC on March 31, 1961, in Docket No. R–153, which provides that indefinite price escala-

tion and favored-nation clauses contained in producer contracts shall be inoperative and of no effect at law.

Section 3 of the proposed bill inhibits a natural gas company from making effective new increased rates or charges—

> while there is already in effect an increased rate or charge filed by such natural gas company, the reasonableness of which the Commission has not determined and which affects any person affected by the proposed change.

NARUC's justification for this proposed amendment to section 4(e) of the Natural Gas Act is its statement that "the public interest demands it," and that it "would cause both the natural gas companies and the FPC to expedite hearings as nothing else would."

I have these comments on section 3:

(1) NARUC says that "the public interest" demands this amendment in order to keep down rate increases. The intent of Congress in enacting the Natural Gas Act, as shown by the U.S. Supreme Court in the recent decision in the *Memphis* case, 358 U.S. 103 (1958), was that the "public interest" requires that natural gas companies not be precluded from filing rate increases. The *Memphis* case involved the right of natural gas companies to file rate increases. The Supreme Court said:

> It seems plain that Congress, in so drafting the statute, was not only expressing its conviction that the public interest requires the protection of consumers from excessive prices for naural gas, but was also manifesting its concern for the legitimate interests of natural gas companies in whose financial stability the gas-consuming public has a vital stake. Business reality demands that natural gas companies should not be precluded by law from increasing the prices of their product whenever that is the economically necessary means of keeping the intake and outgo of their revenues in proper balance; otherwise procurement of the vast sums necessary for the maintenance and expansion of their systems through equity and debt financing would become most difficult, if not impossible. This concern was surely a proper one for Congress to take into account in framing its regulatory scheme for the natural gas industry.

(2) NARUC says the amendment would cause both the natural gas companies and the FPC to expedite hearings. The major purpose of regulation is to insure that rate requests are not unreasonable and that, therefore, the consumer is not imposed upon. Should an attempt be made to frustrate the purpose of regulation, it seems to us the Federal Power Commission has the authority and the investigative means to prevent any such attempt. The way to get expedited hearings then, is through improvement in the practice and procedure of the Federal Power Commission.

Despite implications to the contrary, natural gas companies and the Federal Power Commission are interested in obtaining final approval of rate increases at the earliest possible moment. Until a rate increase is approved, a company's obligation to refund the increased rates it has collected overshadows all of its operations and its planning for the future. The company's relationship with its customers, shareholders and bondholders is clouded; and uncertainty exists in its activities because of the possibility of refund.

(3) The only premise on which this amendment restraining successive rate increase filings can be validly based is that such filings are frivolous, unwarranted and unjustified, and that the filing company is using them merely as a device to improperly benefit itself and to victimize its customers, and that the proposed increase would be ultimately disallowed. It forecloses any consideration that the claim

and need for a rate increase is valid and can be justified, that the filing company is acting in good faith, and will be in financial difficulty if it is not permitted to increase its rates to cover increased costs of operation.

There is prevalent a misconception that a rate increase filing can be made with the FPC without support or justification or showing of need, merely because the filing company wishes more money to use as it sees fit. It has been said that a rate filing is a cheap way for a company to finance future expansion. This is inaccurate. The Commission's rules and regulations require that every rate increase filing be supported, at the time of filing, with voluminous data, frequently comprising two volumes of material containing hundreds of pages so that the Commission has immediately available to it information necessary to review the filing and determine its validity.

Section 154.63 of the Commission's rules and regulations sets forth the material which must be submitted with a change in rates. The statements which are required to be filed must set forth the nature, reasons and basis for the change, and contain detailed information and statistics relating to overall cost of service, rate base and return, cost of plant, accrued depreciation, depletion and amortization, working capital, the rate of return claimed and the basis therefor, gas operating revenues and sales volumes, revenue deductions, income and other taxes, allocation of overall cost of service, allocation of cost of service by zones, comparison of estimated revenues with cost of service, balance sheet, income statement and other principal determinants essential to test the reasonableness of the rate.

This material must be served on each of the customers and State regulatory bodies at the time of filing so that they, as well as the FPC, have available all information which the regulations call for as reasons for and justification of the new rate. Opportunity to investigate the filing is thus afforded all affected parties since the new rates will not become effective for 30 days unless the Commission otherwise orders. Almost without exception FPC suspends the effectiveness of rate filings for an additional 5-month period.

Section 154.63 specifically provides that the material furnished in support of a rate increase must be based—

> upon a test period consisting of 12 consecutive months of most recently available actual experience, adjusted for changes in revenues and costs which are known and are measurable with reasonable accuracy at the time of filing and which will become effective within 8 months of the last month of actual experience.

The Commission has authority to reject any filing not complying with its requirements and it has not hesitated to use this authority.

Section 154.63 also provides that a natural gas company filing for an increase in rates or charges shall be prepared to go forward at a hearing on reasonable notice and sustain the burden of proof imposed by the Natural Gas Act of establishing that its proposed changes are just and reasonable and not unduly discriminatory or preferential. Thus a company is required to justify its proposed rate increase at the time of filing and to be prepared to go forward and sustain the burden of proof. Those requirements of the regulations refute the misconception previously referred to.

In a period of sharply rising costs, as has existed for some time and is still going on, a natural gas company, in order to survive, must be able to recover, through increased rates, the increased costs and ex-

penses which it has actually and legitimately incurred and paid in rendering service. The U.S. Supreme Court in the *Memphis* case, from which I have previously quoted, set forth the congressional concern for the financial stability of natural gas companies and emphasized that business reality demands that natural gas companies should be permitted to keep the intake and outgo of revenues in proper balance in order to maintain their economic health and to protect the public interest.

(4) While it may not have been intended, section 3 of S. 666 will prevent a producer, who has a rate increase pending in connection with a sale of gas to a pipeline company from a particular field, from filing increases for sales to the pipeline company from other fields, no matter where the other fields may be located, or how many there may be, and regardless of whether the increases for such sales are justified and needed.

(5) A natural gas pipeline company could suffer disastrous consequences as a result of this amendment in a situation which does not seem to have been considered by the proponents of the amendment. A pipeline company buys gas from many suppliers. These suppliers have the right, in accordance with the procedures specified in the Natural Gas Act and by complying with the Commission's rules and regulations, to make effective price increases provided for in their rate schedules covering the sale of their gas.

An increase in price thus put in effect by one supplier for the gas it sells to the pipeline company could be so substantial that the pipeline company, in turn, would immediately have to file with the Commission an increase in its rates to offset its increased purchased gas costs. Then, if the price of gas purchased by the pipeline company from other suppliers should also be increased by filings with the Commission, the pipeline company would have to absorb these increased costs, with probable financial loss, if it were unable timely to place into effect reasonable rates to cover such costs.

(6) The proposed amendment would provide an incentive for intervenors and parties who would be affected by a rate increase to delay rate proceedings. They might well consider it to be to their interest to use all available means, including delaying procedures and tactics in the hearings and by court actions and appeals, to delay a rate case and prevent it from being concluded so that additional rate filings could not be made. The NARUC amendment could promote, rather than eliminate, delay.

(7) The proviso contained in section 3 of the bill that nothing in the amendment shall be construed as limiting the authority of the Commission to put into effect any proposed changes deemed necessary by the Commission is not mandatory. There could be no assurance that the Commission would exercise its authority no matter how meritorious or necessary a second-rate increase might be. There is no time specified in the proviso within which the Commission would be required to act, the grievous harm could result to the company before the Commission acted on its second filing and permitted it to go into effect. In addition, court proceedings and appeals by intervenors and affected parties could nullify and hold in abeyance for long periods of time any action by the Commission allowing a second increase to go into effect.

Section 4 of the bill amends section 7(e) of the Natural Gas Act to require that before a certificate of public convenience and necessity to sell gas in interstate commerce is granted, the Commission shall make a finding that the price at which such gas is to be sold is consistent with the public interest or shall find what price is consistent with the public interest and impose upon such certificate, as a condition, the price so found to be consistent with the public interest.

The analysis of this amendment proposed by NARUC shows that the purpose of the amendment is to write into the statute the spirit of the holding of the U.S. Supreme Court in the *CATCO* case (360 U.S. 378). It is, therefore, apparent that the amendment was intended by the proponents to apply to producer certificates. However, the amendment applies equally to certificates sought by natural gas pipeline companies for the transportation and sale of gas in interstate commerce.

In many cases authority to make deliveries is urgently required and delay would be harmful and not in the public interest. Even after the Federal Power Commission made the price determination required under the proposed amendment, additional lengthy delays could result. Based on past experience, intervenors and parties affected by the price determined by the Commission to be in the public interest could take legal steps, including court appeals, to contest the quality of the Commission's determination. These procedures could involve an appeal to the circuit courts of appeal, rehearings, application to the Supreme Court for review, remand to the Commission for further hearings, additional hearings, rehearing of the Commission's order, another apepal, and another rehearing, before a final order on the price determination could be made. Of course, during such protracted proceedings, no facilities could be constructed and no gas can be delivered.

These delays which a pipeline company could experience in attaching new sources of gas could seriously jeopardize its supply of gas and deny the market gas which producers had available and were ready to deliver and which customers were eager to obtain.

The amendment removes the Federal Power Commission's discretion as to whether the pipeline company can increase the capacity of its facilities without needing new rates or making a rate showing. Is this the proponents' intent? If so, it would open the door to delays.

It does not appear that severe restrictions on the filing of applications for rate relief are directed to the basic conditions. The slow pace at which Federal Power Commission regulation has proceeded and not the need to file for rate relief has been primarily responsible for dissatisfaction by regulators, the informed public, and the regulated companies alike. A way must be found at the working levels of regulation to reduce delay.

We think that the described special committee of the American Gas Association has found a way to remove the cause of dissatisfactions through a blend of improved practices, revised procedures, and essential legislation aimed at forward planning, reduction of regulatory lags, and expedition of judicious decisions.

If the elimination of delays is attained, then the need for legislation such as Senate bill 666 disappears. Assuming that the attainable reduction in delays does not materialize rapidly, S. 666 still would

not cure the ailment of delay, and it would damage the public interest by obstructing the performance of adequate and dependable gas service at reasonable and compensatory rates.

Mr. PARKES. I would like to direct your attention to the credit report which is a part of our statement and is filed with it. That is one of the main recommendations that we have. I want to be sure it didn't get separated from the statement.

I represent the American Gas Association, which represents all segments of the industry: producers, distributors, and pipelines.

AGA is opposed to S. 666. We feel that we are qualified by the work that was done in the preparation of that report that I just mentioned to speak on the subject of regulatory delay and the problems of the Commission.

Now as to S. 666, what is the purpose of the bill? Is it intended to reduce delay or to reduce rates by inhibiting increases? In our opinion the bill will do neither, since it is directed to the results and not to the causes of delay.

This legislation apparently proposes to reduce the money collected subject to refund by inhibiting the filing of increases.

Sections 1, 2, and 3 deal with rates and rate changes. Section 4 requires a rate determination before the issuance of a certificate. These do not deal with delay, nor do they expedite rate cases.

Section 5 is aimed at delay, but will accomplish little. Commissioner McKeage himself told you on May 25 that section 5 was put in there more as a congressional admonition to the Federal Power Commission.

Now to the details. Section 1 is unnecessary because the Federal Power Commission already has the power and has already acted with their order 232–A.

Section 2: Industrial rates are competitive, and we see no reason at this time to change the original intent of Congress.

Section 3 says that a gas company cannot make effective a new increase while one is pending, with a proviso permitting the Federal Power Commission to do so if necessary, and the Federal Power Commission has suggested the addition of the word "appropriate." This cannot reduce rates or rate frequency of filing or delay. Most of the increases by pipeline companies consist of increased gas and labor costs.

It is apparent that the Federal Power Commission, by their own suggestion, intends to put this sort of increase into effect. If they do, the rates will go up. It will not reduce the number of filings nor expedite the conclusion of cases.

Further, on section 3: The implications about pipeline companies filing cases without support or justification are inaccurate. Some people have said that it was a cheap way to finance. The Commission rules require detailed statements based on actual experience which must contain the support and justification for the increase.

This stack, these two volumes right here, are a good example of what I am talking about. That is the information that my company must file each time it asks for a rate increase. We must make 67 copies of that, serving one on each customer and on each local State commission. When they talk about financing, why go through this for the privilege of borrowing money at 7 percent when I can go to the

bank and get it in 24 hours on a one-page loan agreement at 4½ percent—a prime rate?

Section 3 also applies to the producer, and will limit his rate filings. The effect on the producer is just as dangerous because a producer selling to a pipeline company in several fields can have only one increase pending, and not one for each point of sale through their company.

The thing that disturbs me about the Commission's proviso on "appropriate and necessary," is that it is not mandatory, and this can introduce more delay which may be destructive. It offers opportunity, unfortunately, for intentional delay, not on the part of the Commission. But we can have first inaction of the Commission itself due to a bogdown as they have here, which would delay action on the appropriateness or the necessity.

It would also give intervenors an opportunity to disagree with the Commission on their determination of "necessary or appropriate." If they don't like their determination, they can appeal to the courts for stay orders. And if you get a stay order on that type of an increase, then it will be disastrous to the pipeline company which has rising gas costs.

Section 4 requires a rate determination before the issuance of a certificate. It is intended for the producers, apparently, but also affects the pipeline companies. This is subject also to court review. We could all run out of gas before we could get a valid certificate. Today we can get a certificate and worry about the price later.

Under section 4 we would have to wait for the courts to decide the final price before we could plow a new field or enlarge any facilities.

Briefly, it all boils down to this: If we eliminate the delay, no one needs S. 666.

At AGA we believe that the best course would be internal action by the Federal Power Commission along the lines suggested in our report, and, two, the passage of legislation similar to that proposed by our Committee. This legislation basically enlarges the Commission and provides specific moneys for them to have a better internal organization.

I thank you for the opportunity and I will be glad to answer any questions.

Senator ENGLE. Mr. Parkes, you heard the questions I asked of Mr. Orn?

Mr. PARKES. Yes, sir.

Senator ENGLE. Would you comment on the suggestion that I have made that perhaps the present rules make it expedient and even wise for gas operators to file these applications?

Mr. PARKES. Yes, sir.

I would like, if I may, to explain two of the Commission's rules that I think may help you understand it a little bit. It is complicated.

First, by the rule of the Commission, the producer cannot file a rate increase earlier than 90 days from the effective date. The Commission then has the right to suspend, and the suspension would be 30 days plus 5 months, or 6 months. So the producer would lose, automatically, 3 months of his contracted price increase, and there is nothing that he can do about it under the present rules.

The pipeline company rules are entirely different. The pipeline company can file a subsequent increase as long as there is not one under suspension. That means that a pipeline company can file a rate increase every 6 months. That is, the 5 months' suspension time plus the 1 month.

Senator ENGLE. I have suggested here time and again that, from where I sit, not knowing too much about it, I would probably have an application in there every 6 months.

Mr. PARKES. That is what we do. You are absolutely right. We get them in there just as fast as we can.

Here is what the Commission says to us under the rules: that we must present the last 12 months of actual experience—that is what this is [indicating]—adjusted 8 months forward for known changes. You cannot estimate a change; you can't guess at something that is going to happen. You have to have a piece of paper that shows this is going to happen in 8 months. It takes you about 2 months to prepare it. As a result, you end up with a suspension ending just about the time you have estimated your 8 months to come out on it.

Senator ENGLE. That is the point I was getting to.

Mr. PARKES. You are absolutely right; and that is what they do.

Senator ENGLE. The present system has built-in expediters as far as applications are concerned, which then, of course, bog the Commission down.

What would you suggest that we do to fix that situation?

Mr. PARKES. What we need to do is to give the Commission—in fact, I would recommend strongly increasing the size of the Commission to seven men, permitting them to sit in panels of three, setting them up with a better internal organization in which they would have an executive director who could take over the administrative duties that the Chairman is trying to do now, and then give them sufficient appropriation—they have gotten all the money they have asked for, I will grant you that, there is no argument there—and then let them build their staff up to where they can dispose of these cases.

I would go along with my friend Orn on the producer legislation. If you can get the producer away from the utility-type legislation, which I hope they will do, you will have relieved an awful lot of work. But you don't cure it. You don't cure the problem by prohibiting anything. What we helped to do is to help them understand what to do the work on.

Senator ENGLE. Mr. Kuykendall said they got all the money they asked for, but I am not so sure they didn't have the Bureau of the Budget looking down their necks. If you ask them confidentially what they asked for, and officially what they asked for, the figures might be different.

Mr. PARKES. I don't think they have enough money, frankly. I don't think the Commissioners——

Senator ENGLE. With the caseload in back of them as they have—I don't know what they asked for, but I know that when they go before the Bureau of the Budget, the Bureau of the Budget says, "This is the figure that you are going to get, and you go tell the Congress that is what you asked for."

Once in a while you ask what did you really ask for and we start getting some answers.

I agree with that, that they ought to have the money, and I am not sure, although the Chariman of the Commission testified this morning they got what they asked for; I assumed what they meant is that they got what the Bureau of the Budget permitted them to ask for.

The second question, if we should enact section 3—that is the guts of this bill—and if a summary proceeding under the proviso met the requirements of due process of law, and we added the other things we suggested, do you think we would get out of the fix we are in? Mr. Orn doesn't think that a summary proceeding, which doesn't amount to a full-blown rate case, would meet the requirements of due process. I am not sure about that. If we assume that it would, and we did the other things that you have suggested, do you think that would get us out of the trouble we are in?

Mr. PARKES. I might say this, sir: I think that what you are talking about, and assuming again that it is so prepared and so handled that the Commission will act—in other words, that every time a pipeline company makes a filing which is appropriate and necessary that the Commission will permit it to go into effect, and they don't drag their feet and we don't have an intervenor who can stop them, then I think you will expedite the handling of cases for the pipeline companies only because the pipeline company can come in with a very simple showing and show that we have spent so much money and we have contracts that are going to cause us to spend more money, or we have had a labor increase, or whatever it is. The producer, coming in on a separate type of filing—this is a different filing, just like a railroad—a producer coming in on a separate type of filing does not have any immediate way to show that he is actually incurring the additional expenses in connection with that sale. And I don't think you would help the producer a bit. You would expedite the pipeline companies to some extent. It would hurt the pipeline companies because as long as the Commission was working on the first one, trying to determine what the rate of return was, for example, you couldn't bring up the issue of a new rate of return until they got through with that one. But you could get your immediate out-of-pocket cash cost.

Senator ENGLE. As I understand this bill, they could operate under the proviso as to a second and third application if they found it to be appropriate and necessary, to use their language.

Mr. PARKES. Yes. But what they would give you and what they intend by that is to give the company the out-of-pocket costs that the company can prove that they have incurred or will incur in the period. But that other first docket, where they are trying to determine what the rate of return and depreciation rate and other intangible items should be, is still hanging fire, and they would not permit you to put in a new one for a new rate of return unless you could prove confiscation in the meanwhile, and you can't do that.

Senator ENGLE. Senator Monroney?

Senator MONRONEY. I was just going over the printed program for your regulation. I believe orally you said that you felt that the establishment of some kind of a fair field price or some mechanism other than utility regulation for producers, was the prime requisite to catching up on the backlog.

Mr. PARKES. I think that is right. In other words, as long as you have to regulate the producer on the utility concept, the producer is going to take up all of the time that the Commission has available. It just takes time to sit down and go through the necessary paper to go through the case.

Senator MONRONEY. The Commission at this time is regulating new gas that is being allowed to go into the lines on a field basis.

Mr. PARKES. Yes; on an area pricing policy. That is a forward-going step.

Senator MONRONEY. That is already established and apparently the industry agrees.

Mr. PARKES. Yes.

Senator MONRONEY. On the old cases, where the gas has been hooked up to lines for 15 or 20 years and under a contract that sometimes predated the Natural Gas Act, still these increases have to be completed and adjudicated more or less on a utility basis.

Mr. PARKES. That is my understanding.

Senator MONRONEY. So we have two rules applying to the same commodity, one on the new gas base going in on a fair field price, but on the other going back to what has proven to be, and everyone practically has testified to, a hopeless morass of legalistic investigations without any firm rule on the normally fair and reasonable price of the gas.

Mr. PARKES. That is correct.

Senator MONRONEY. Thank you, sir.

Senator ENGLE. Senator Schoeppel?

Senator SCHOEPPEL. Your testimony is based upon your experience, ability, and background of being before the Federal Power Commission generally with rate increases. Is it your considered judgment that this measure, if enacted, would bog us down further rather than get us out from under?

Mr. PARKES. Yes, sir.

Senator SCHOEPPEL. How long have you been in the gas business?

Mr. PARKES. Thirty-three years.

Senator MONRONEY. Does your company produce gas or merely buy and transport?

Mr. PARKES. We produce, we transport, and we distribute.

Senator MONRONEY. What portion of it is production?

Mr. PARKES. About 15 percent of the gas we handle we produce with a producing subsidiary.

Senator MONRONEY. But you then act as a purchaser on 85 percent of all the gas you transport?

Mr. PARKES. Yes, sir.

Senator MONRONEY. Therefore, you, with 85 percent, I would presume, of your assets tied up in transportation, primarily are interested in getting gas as cheaply as it is possible to get it?

Mr. PARKES. Naturally.

Senator MONRONEY. The supply being important, also.

Mr. PARKES. We know we have to meet competition, sir.

Senator MONRONEY. So you are not a "patsy" for high rates?

Mr. PARKES. No, sir.

Senator MONRONEY. You don't rush out with hundred-dollar bills in your hands asking somebody to raise your rates because you happen to have 15 percent and you have to buy 85 percent?

Mr. PARKES. No, sir.

Senator MONRONEY. So, of all the people, you have a great deal to lose if the price of gas is not properly regulated, but you feel that it can't be properly regulated on an individual utility base, well by well, or producer by producer?

Mr. PARKES. That is right, sir.

Senator MONRONEY. And this bill would just add confusion and compound the delay if it were enacted—and I think it would, myself.

Mr. PARKES. I think so.

Senator MONRONEY. In the era that we are in today, where all companies are searching out sources of more gas, such bills as this that are pending and being considered by the Congress would have a tendency to hold off contracting with the producers for these supplies until ground rules had been established.

Mr. PARKES. I can speak from experience now, sir, and I am not now wearing the American Gas Association hat but I am wearing the hat of my own company. One of my worst competitors in the Houston area for the sale of industrial gas, and a man who undercuts me the most, is a producer who will not sell his gas in interstate commerce because of the utility type regulation.

Senator MONRONEY. You have that individual competition particularly on industrial?

Mr. PARKES. Yes, sir.

Senator MONRONEY. Which is unregulated?

Mr. PARKES. That is right.

Senator MONRONEY. And he must meet it unregulated?

Mr. PARKES. That is right.

Senator MONRONEY. Any widespread change of the ground rules would make these producers who are holding off quantities of gas, waiting for some settlement of the methods of pricing, to not commit their gas for long periods of time to pipeline contracts; is that right?

Mr. PARKES. Yes, sir.

Senator MONRONEY. Those contracts normally run what, about 30 years?

Mr. PARKES. You made that remark this morning, sir. Most of them are 20 years.

Senator MONRONEY. Twenty years?

Mr. PARKES. Twenty years, yes.

Senator MONRONEY. Subject to 5-year annual reviews?

Mr. PARKES. You have all types. They have 4-year or 5-year. But about the average would be a 5-year review, yes, sir.

Senator MONRONEY. If the costs have gone up, it would be likely about the same in the field among all producers?

Mr. PARKES. Right.

Senator MONRONEY. And wage increases and increases in material supplies all have to be reflected?

Mr. PARKES. Yes, sir.

Senator MONRONEY. Can you give the committee any idea of what the price is today vis-a-vis gas and other types of fuels per B.t.u.?

Mr. PARKES. Well, sir, I could not give you that as a general statement for the reason that the price of the competitive fuel and the price of gas at the customer varies according to the location.

Senator MONRONEY. I am just looking for a rule of thumb about what it was. Is it twice other fuels such as oil and coal? Could it reasonably be said to be twice as high per B.t.u.? It seems to me that is a figure that we used a good many years ago.

Mr. PARKES. I just don't know, sir. I can give you the example of what is worrying me. Fuel oil will sell for $1.25 to $2 a barrel in large lots down in our part of the country in the South. Gas is selling for 20 cents in B.t.u. quantities equivalent to $1.20 oil.

Senator MONRONEY. Wait a minute. Let me get that again.

Mr. PARKES. Let me give it to you this way: If you take the price of the gas and multiply by six, you will have the B.t.u. equivalent for oil.

Senator MONRONEY. In other words, oil is six times as expensive as gas per B.t.u.?

Mr. PARKES. It has six times as many B.t.u.'s is the way you put it. If you take the thousand cubic feet of gas, the price of it, and multiply by six, you will have the equivalent B.t.u. price of fuel oil.

Senator MONRONEY. And both of those prices are to consumers?

Mr. PARKES. Anywhere you take it, yes, sir. You would have the equivalent price of it.

Take coal, and the only thing I can say is where we get into competition with coal and we lose business to coal in the Pensacola area, coal competes with gas there at about 26 or 27 cents a thousand, delivered at the burner tip.

Senator MONRONEY. I don't quite understand.

Mr. PARKES. If our gas at the burner tip on Pensacola costs the customer more than 26 cents, he can get Alabama coal delivered by barge for less money.

Senator MONRONEY. I still don't get it: 26 cents equals the British thermal unit content?

Mr. PARKES. Twenty-six-cent gas is equal to when you take the ton of coal and convert it from its price to the equivalent British thermal unit, it will come out at just about 26 cents, equivalent to gas.

Senator MONRONEY. That is all that I have.

Senator ENGLE. Thank you very much, Mr. Parkes, for your statement; and thank you, Mr. Orn, for yours.

The statement of Mr. J. F. West, president of the Texas Independent Producers and Royalty Owners Association, will be made a part of the record. Senator Yarborough especially wanted to be here to present that for the record, but because of other commitments he couldn't be here this afternoon.

(The statement follows:)

STATEMENT OF JAMES F. WEST, PRESIDENT, TEXAS INDEPENDENT PRODUCERS AND ROYALTY OWNERS ASSOCIATION, AUSTIN, TEX.

Mr. Chairman, members of the committee, we appreciate this opportunity to offer comments on S. 666 on behalf of the Texas Independent Producers and Royalty Owners Association.

Our approximate 6,000 members are divided almost equally between nonintegrated independent producers of natural gas and crude oil and owners of royalty or mineral interests. We do not represent the integrated companies which, though small in number, produce most of the gas entering interstate commerce.

Before addressing our remarks specifically to provisions of S. 666, may we offer some preliminary comments.

We believe that serious students of this matter agree that the Congress never intended utility controls to apply to independent producers of natural gas.

Moreover, subsequent to the unfortunate *Phillips* decision in 1954, the Congress on two separate occasions passed legislation intended to remove the approximate 7,000 independent producers and the tens of thousands of royalty owners from utility controls on a cost-of-service rate base concept.

It has now become clear that a workable utility method of regulating wellhead prices for all producers of natural gas is a sheer impossibility. And even if it were possible, we submit that the results would prove contrary to the public interest. The millions of consumers of this vital and preferred fuel increasingly share with small producers and royalty owners the conviction that some modification of the present chaotic situation is in order.

We hold, moreover, that the Natural Gas Act of 1938 was intended to protect not only the consumer from exhorbitant or monopoly directed prices, but it also contemplated protection to independent producers from unfair or discriminatory treatment by the long-line transmission systems which, before the *Phillips* decision, were recognized to be utilities properly subject to controls necessary to prevent the harsh results of monopoly. For example, the Supreme Court prior to the *Phillips* decision in *Federal Power Commission* v. *Hope Gas Co.*, 320 U.S. 591, discussed the Natural Gas Act, saying:

"The primary aim of this legislation was to protect consumers against exploitation at the hands of natural gas companies. Due to the hiatus in regulation which resulted from the *Kansas Gas Co.* cases and related decisions State commissions found it difficult or impossible to discover what it cost interstate pipeline companies to deliver gas within the consuming States; and thus they were thwarted in local regulation. (H. Rep. No. 709, supra, p. 3.) Moreover, the investigations of the Federal Trade Commission had disclosed that the majority of the pipeline mileage in the country used to transport natural gas, together with an increasing percentage of the natural gas supply for pipeline transportation, had been acquired by a handful of holding companies. State Commissions, *independent producers*, and communities having or seeking the service were growing quite helpless against the combination. These were the types of problems with which those participating in the hearings were preoccupied. Congress addressed itself to those specific evils." [Emphasis supplied.]

We believe there remains a need for protection both to consumers and to independent producers, and that these considerations merit equal attention in any measures coming before Congress.

In a great many cases small producers find themselves helpless in the face of tremendous obstacles posed by pipeline companies purchasing practices on the one hand and the Federal Power Commission regulatory practices on the other. Our gas is very often subjected to price discrimination. Even in cases where escalation is provided in the contract, it may be disapproved by the Commission, and the cost of pursuing a favorable decision may prove greater than the return that would be realized from the increase. Upon expiration of a contract by its own terms the producer is denied an opportunity for renegotiation because the FPC construes this as an "abandonment of service."

It is too little recognized that gas producers, particularly small producers, were compelled in years past to contract their gas long-term at prices which were ridiculously low. They had no option because their reserves would otherwise have been shut in or drained by neighboring production. There was a serious oversupply during this period, resulting from the fact that much gas was discovered in the normal search for oil. As demand caught up and even began to exceed the rate of new discoveries, independents found their gas committed for long periods of time—generally 20 years but often for the lifetime of the lease—at inordinately low prices. Even those who thought they had protected themselves by providing escalation provisions, which are in effect equalization or nondiscriminatory provisions, are now being denied the effect of these clauses by virtue of the scheme of utility regulation which was subsequently imposed by court edict.

A detailed analysis of current price patterns throughout the State of Texas for gas sold interstate reveals the following:

1. In 1959, the latest year for which price data is available, Texas producers sold 3,588,055,481 thousand cubic feet interstate at an average price of 12.51 cents per thousand cubic feet.

2. Of this total, 166,151,703 thousand cubic feet were sold for less than 8 cents at an average of 6.45 cents. Most of this gas was sold in the Panhandle and Valley.

3. A total of 858,633,229 thousand cubic feet were sold for 8 to 11 cents at an average price of 9.60 cents. Most of this total was sold in east and west Texas.

4. The remaining 2,563,270,649 thousand cubic feet were sold at an average price of 13.88 cents.

PROVISIONS OF S. 666

This association feels that the bill before this committee deals with one of the most complex and pressing problems confronting any industry in our Nation. We concur in the broad intent of the bill, namely to break the logjam in the Federal Power Commission proceedings to obtain just and reasonable prices for natural gas necessary to protect consumer interests and provide sufficient supplies of this fuel.

With respect to most provisions in the bill, we take no position and offer no suggestions. This includes provision for subjecting industrial sales to Commission jurisdiction, putting time limits on hearings, examiner's rulings, and FPC decisions, and limiting the issues, evidence, cross-examination and arguments in order to speed hearings.

With respect to section 3 prohibiting any price increase if at the time a previous price increase had not been finally acted upon, we believe that care should be taken to avoid making independent producers an unintended target. The record seems clear that this provision is aimed primarily at a privilege enjoyed by pipeline companies which might not adequately protect the consuming public. We have long contended that more stringent controls at the pipeline level could adequately protect the public interest while rendering unnecessary any direct jurisdiction at the wellhead level when the gas is produced by independent producers and sold under arm's-length contracts.

ESCALATION PROVISIONS

With respect to section 1, we question that the public interest would be served by outlawing these types of indefinite pricing clauses. However, if an appropriately drawn antidiscrimination section is added, we believe the adverse effect upon true independent producers of this provision could be nullified.

This association would emphasize that the favored-nation clause in private contracts is as much a part of the contract as the initial price or quantity of gas sold. A producer generally would not contract to sell his gas at the initial prices except for the fact that he is assured equity with other producers in later years by means of the favored-nation provision.

All the small producer seeks through the favored-nation principle is a right to FPC consideration of the same or similar prices which it has granted to his competitors. Rejection of this principle would in actual effect amount to official recognition of the right of large companies with better bargaining power to higher rates than that afforded small independents. We believe this is contrary to the principle of equity which must prevail in Government regulation of any enterprise.

In the first place, an actuating rate is required to trigger a favored-nation clause. If the FPC refuses, upon review of merits, to award a rate in actuating cases, there can be no rate increase resulting from favored-nation clauses. Assuming that the Commission acted properly in granting the actuating rate, there is reason to believe that comparable rates to small producers should receive consideration.

If for some peculiarity in operation or inadequacy in case presentation, a producer applying for a rate increase through his contractual favored-nation provision is unable to prove his increase to be just, fair, and reasonable, he may be denied that increase by the Commission. Therefore, the Commission enjoys a double opportunity to check favored-nation applications for reasonableness and appropriateness in individual cases.

For the small producer to be denied a free market price, on the one hand, and denied by Government action an equal opportunity for price consideration, on the other, is to assure monopoly.

The monopoly implications of any provision outlawing indefinite escalation clauses, therefore, seems quite obvious to us. These clauses are often the only means for avoiding unjustified discrimination in prices paid, discrimination which is distinctly adverse to the public interest.

Additionally, without favored-nation escalation provisions, independent producers would be placed at a serious disadvantage in the production of gas with

interstate transmission companies. This is true because such companies are permitted under Commission regulations the privilege of constant review of their rates. Pipeline companies by unilateral action can obtain FPC review of the prices they pay their own affiliates at any time, a privilege which is denied independent producers. Only where favored-nation clauses exist and are actuated can independent producers enjoy this privilege of price review.

If favored-nation escalation provisions are denied, pipeline companies would then be in a position to freeze prices paid independent producers while assuring themselves no less than reasonable prices for their own gas production at all times.

While members of this association are cognizant of the necessity to protect the consuming public from excessive or unreasonable pricing, we feel equally strongly that the Congress must assure protection to the independent producers and royalty owners against grossly discriminatory pricing for natural gas at the wellhead—and against the anticompetitive trends now in full sway in the natural gas industry.

We believe the truly independent natural gas producer, as the Nation's small businessman of this industry, will soon be eliminated unless provision is made for containing present trends toward monopoly represented in part by increased FPC-encouraged pipeline ownership and production of reserves with consequent disadvantages to the unintegrated producers.

Specifically, we believe an antidiscrimination provision should be provided to read as follows:

"No natural gas company shall, with respect to any purchase, transportation, or sale of natural gas subject to the jurisdiction of the Commission (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) subject any producer or royalty owner to undue discrimination or prejudice, or (3) maintain any unreasonable differences in prices paid, rates, charges, services, facilities, or in any other respect, either as between producers, localities, or as between classes of services."

We submit that if some such antidiscrimination provision is included, the interests of both the consumer and the independent producer, who discovered some three-fourths of the natural gas reserves in this country, would be safeguarded and advanced. In the event S. 666 is favorably reported, we earnestly urge this committee to give serious consideration to the inclusion of such antidiscrimination provision.

In summation, we concur in the objective of breaking the logjam in the Federal Power Commission proceedings to the end that adequate supplies of this preferred fuel can be made available to consumers at reasonable prices. We question, however, that legislation of this limited character is warranted, unless appropriate amendments are provided to assure protection of both consumers and producers or this vital resource.

We appreciate the opportunity to present this testimony.

Senator ENGLE. Statement of Mr. L. Dan Jones, counsel for the Independent Petroleum Association of America, 1110 Ring Building, Washington, D.C., will be made a part of the record.

Mr. Jones, we will try to get back to you for a summary of your statement and questions at a later date.

(The prepared statement is as follows:)

My name is L. Dan Jones. I am counsel of the Independent Petroleum Association of America which is a national trade association representing more than 6,000 producers of crude oil and natural gas, including royalty owners, whose membership is representative of every producing area of the United States located in the more than 30 oil- and gas-producing States.

The proponents of S. 666 have testified that their principal concern and the purpose of the bill is to correct the "regulatory lag" which has engulfed the Federal Power Commission with resulting great confusion, uncertainty, and chaos. All parties concerned with and adversely affected by this situation, including the consumer, the distributor, the pipeline, and the producer, are suffering hardships caused thereby. The proposed bill, however, looks upon this existing situation without taking into consideration the fact that the producer is one of the parties involved. S. 666 would not solve the "regulatory lag" problem.

Although it would insulate the consumer and the distributor from the immediate effects thereof, it would do so by further penalizing the producer. And in our opinion it would do so to the long-range disadvantage of all. The bill, therefore, is unrealistic in that it does not consider the broad public interest which must rest upon fair treatment being accorded all parties.

By penalizing the producer, S. 666 would have far-reaching adverse effects upon the natural-gas-producing industry and the future supply of gas. The ultimate victims would be the millions of consumers throughout the United States.

The proponents of S. 666 have failed to recognize the basic underlying cause that is the source of trouble. The "regulatory lag" is merely a symptom. The basis cause of the trouble grows out of the attempts of the Federal Government to regulate a local producing and gathering function. This "regulatory lag" problem has been materially aggravated by unlimited interventions by various parties, including State commissions that are advocating this bill. The FPC last September admitted in its *Phillips* case decision that its efforts of 7 years to regulate this local function had been futile and that it was impracticable and impossible to continue them. These efforts of the past 7 years were characterized by the Commission itself as "unworkable," "fallacious," "inexact," "complex," "unsatisfactory," "time consuming," "fraught with controversy," "ridiculous," and "impossible."

Since its decision in the *Phillips* case, the FPC has been searching for a more feasible approach. So far, however, little practical progress has been made. The result of this continued effort of the Federal Government to regulate a local producing function is that the uncertainty, the confusion, and the chaos that has existed now for 7 years continues.

The harmful effects of this situation upon all parties—the consumer, the distributor, the pipeline and the producer—is revealed by a review of pertinent available evidence, particularly the damaging effects upon the long-range supply of natural gas.

The damaging results of the Federal Government attempting to regulate the local function of producing gas is revealed by an examination of the gas reserve position.

Prior to 1950, the Nation had about a 30-year supply of known gas reserves. Today we have a 20-year supply. Last year was one of the poorest in many years for the finding and development of reserves.

Unless the basic cause of the "regulatory lag" problem is corrected, this downward trend will continue.

For the total oil and gas industry, the year 1960 represents a new low:

1. Total wells drilled declined about 20 percent from a 1956 high of 58,160 wells to 46,751.
2. Wildcat wells declined more than 25 percent from a 1956 peak.
3. The number of rotary rigs active in 1960 was the lowest since 1946.
4. Employment has declined steadily since 1957.

As to crude oil, this downward trend can be explained. The historical rate of growth in demand has dropped off substantially. There's a world surplus of oil. Imports are now absorbing more than 25 percent of the domestic market. Our reserve producing capacity has been more than maintained.

In contrast, as to natural gas there has been a continued sharp increase in demand. Our reserves in relation to demand have been deteriorating. In other words, as to natural gas, every ingredient of our economic system for incentive and growth is present, yet exploration and developing activity has been declining. Some artificial element is interfering with the normal operation of supply and demand forces. This we are convinced has resulted from Federal regulation of independent gas producers.

Patchword approaches such as S. 666, which serve the interest of some of the parties affected by penalizing others, would only serve to heap additional disruptions upon the effort to develop gas reserves to meet the ever-growing consumer demand. All concerned and the public interest would suffer. The legislative need, therefore, is much broader and more fundamental than S. 666.

Analysis of the piecemeal approach of S. 666 reveals that even from its limited viewpoint it is defective and erroneously founded.

There is nothing basically unfair or wrong with indefinite pricing clauses dealt with in section 1 of the bill. To the contrary, these pricing provisions are a logical and prudent means of selling into a market that requires long-term contracts.

Producers are told that it is essential for pipeline purchasers to obtain long-term contracts usually for 20 years. For the most part, commodity producers are not faced with the unique problems involved in such long-term contracts. The FPC has recognized that these long-term contracts are in the public interest. In its Order No. 232–A issued March 31, 1961, it said:

"We reaffirm our earlier findings that the use of long-term contracts for the sale of natural gas by producers to pipelines or to others is desirable and appropriate in the public interest. * * *"

In this order, the Commission further stated: "* * * it also appears that elimination of all indefinite escalation provisions would be too restrictive to enable the industry adequately to cope with possible changing economic conditions over the span of long-term contracts."

Equity and practical business economics require that producers of natural gas when entering into such long-term contracts have the freedom to protect themselves from unforeseen economic conditions such as the rising and unpredictable increases in cost of operation which have been experienced during the inflationary trend of recent years.

The provisions of S. 666 would substantially strip producers of this freedom and right to protect themselves from normal business hazards through the exercise of ordinary prudence.

Under the posture of present law, a producer cannot unilaterally file for an increase in rate unless his contract contains a pricing clause mechanism that gives him the right to an increase. *United Gas Pipeline Co.* vs. *Mobile*, 350 U.S. 332; *United Gas Pipeline Co.* v. *Memphis*, 358 U.S. 103.

It is only fair and equitable that under this situation the producers should have the right to include price increase mechanisms in his contracts. The preservation of such right is essential if the public interest, through long-term contract, is to be preserved. It is submitted, therefore, that this secion of the law deny producers substantive contractual rights which have served well the consuming public.

The basic objective in serving the public interest by assuring long-term adequate supplies of gas would be defeated if section 1 of the bill were enacted. This purpose can most directly be served through the elimination of the existing burdensome Federal regulation of the nonutility competitive local function of producing and gathering natural gas.

The proposal in section 3 of the bill, has as its announced objective correction of the "regulatory lag" problem. As pointed out above, this constitutes an attempt to correct the problem by attacking the symptoms rather than the basic cause thereof. If this provision became law, it would impose an intolerable burden on the producers' operations by prohibiting any consideration of rate increases under however many contracts he may have in various producing areas so long as the FPC has not reached a final decision on a single contract previously filed.

Proponents complain that because of the "regulatory lag" consumers are required to pay increased rates before such rates have been finally adjudicated by the FPC. Under the law, however, consumers are guaranteed full restitution of any payment in excess of what the FPC finally determines to be the just and reasonable price, plus interest. No substantive right is taken away from the consumer or the distributor. They have the full protection of the law with the assurance that they will be made whole for any overpayment.

In contrast to this treatment under the present law, proponents would deny producers the right to seek an increase in gas rates even though fully justified. In addition, no provision whatever is made to restore the producer to his rightful position even though the FPC might determine that the producer was entitled to an increase in rate. The proposal is not remedial in effect but punitive. This section purports to redress an alleged evil being suffered by consumers and distributors but it provides no redress whatsoever for a like evil that would be imposed upon producers. It is manifestly unfair.

It should be further noted that this provision would invite intervenors to further harrass and delay rate proceedings. So long as a final decision in a pending case is prevented, rate increases, irrespective of the merits therefor, could not be applied for.

Proponents refer to the proviso of this section which authorizes the Commission in its discretion to permit proposed rate increases to go into effect as being a solution to the producer problem. By so proposing proponents are asking

the producer to accept as a solution to his problem the very same Commission discretion that is now fully available to protect the consumer and distributor.

Under present law, the Commission has full authority to act on proposed increases when and if it desires. It has complete authority to provide protection through the refunding procedure. The timing and the degree of protection all are within the discretion of the Commission. It is peculiarly strange that proponents find it imperative to now seek relief from this discretionary authority of the Commission while citing to to the producer as assurance that when applied to him it will provide full protection.

The inherent characteristics of the production function coupled with the long-term requirements involved in the sale of natural gas makes it essential that every possible uncertainty be removed. No matter how benevolent administrative discretion might be, the uncertainty involved would defeat the producer in performing his function of supplying natural gas. This proposal would place the producer's future at the discretion of the Commission. He would be subject to changing administrative decisions, to changing philosophy of Commissioners, and to changing personnel on the Commission. Because of these uncertainties, the producer would be seriously hampered if the proposal were enacted in the law.

The proposal set forth in section 4 of the bill would give congressional sanction to a recent Supreme Court decision which broadened the certificate authority of FPC over producers.

There is no justification for the FPC to have any certificate authority over producers. The production function has none of the characteristics of a public utility and there is no need for the FPC to exercise any authority over the right of persons to enter into the activity of producing and gathering natural gas.

The FPC itself for many years has recommended the amendment of pertinent sections of the Natural Gas Act so as to provide for the elimination of any requirement for certificate of public convenience and necessity for producers. Any broadening of authority is unnecessary and inappropriate.

Senator ENGLE. The Chair would like to make a part of the record a letter written to Senator Talmadge which he requested to have placed in the record by a constituent of his, Mr. Fritz Rauschenberg, evangelist, in Decatur, Ga., addressed to Senator Talmadge.

(The letter follows:)

DEAR BROTHER TALMADGE: In this morning's Constitution there was an article headed "Halt Rising Gas Rates, Pilcher Asks Senate Unit." Please speak a word where it will do the most good. In 1950 my electric bill was $160.40 and in 1950 my gas bill was $117.21.

My coal bill for heating had reached such magnitude, $17.50 per ton, I was priced out of the market and installed a gas heating system—in the summer of 1951.

In 1952–53, my gas bill went from $117 to $220.41. November 1960, electric bill, $179.42; gas bill, $345.52 (winter of 1959–60).

Gas bill so far winter of 1960–61, 10 months, $365—for only 10 months.

Bills payable in June and July complete the 12-month period.

If the electric power company can pretty well hold the line, why the ungodly increase by the gas company?

Please pass this letter along to the proper committee, and rest assured you and what you stand for are highly satisfactory to us folks here.

Cordially,

FRITZ RAUSCHENBERG.

Senator ENGLE. An identical letter was written to Senator Russell.

Senator SCHOEPPEL. Does he say what gas company supplies his gas?

Senator ENGLE. No, that is not a part of the letter.

Senator MONRONEY. Or which electric company?

Senator ENGLE. At the request of Senator Talmadge the letter will be made a part of the record and the clerk will so advise the Senator.

Senator MONRONEY. I have a letter from E. A. Smith, president of the Oklahoma Independent Petroleum Association, addressed to Chairman Magnuson, which reads:

GENTLEMEN: The Oklahoma Independent Petroleum Association, with its 900-plus members, strongly opposes Senate bill 666 that is to come before your committee on June 5–6, 1961. The association opposes this bill because it adversely affects the independent producers in the State of Oklahoma, and other gas-producing States. It also restricts the operations of a free enterprise system, and tends to put the producers and the purchasing companies in a Federal "straitjacket," that will restrict and depress the development and growth of the natural gas industry in the United States.

I would also like to ask that Mr. Dan Jones, who represents the National Association of the Independent Petroleum Co., be reserved some time. He has been waiting here through all these hearings, and I do not believe it would suffice to hear all the other representations of the industry and to ignore the very vast and vital interests that the independents have, because they are the ones who really get caught in the crossfire with only the gas pipelines to serve as their purchasers and the Federal Power Commission to serve as their pricing agent.

Senator ENGLE. The Chair intended to indicate that to Mr. Jones. His statement will be made a part of the record, but we will find time for him to summarize his statement and to answer questions if that is agreeable.

Senator SCHOEPPEL. Before we finally recess, I understand until 10 o'clock Wednesday morning, do I understand that there is a desire to limit these hearings just to the next session?

Senator ENGLE. We will try to hear the two out-of-town witnesses, if that is agreeable with the committee, on Wednesday, and then reserve Mr. Jones and the others for a subsequent hearing.

Senatr MONRONEY. That would be all right, because this is an important enough major industry to not summarily adjourn the hearings or end them until we have had a chance to hear from the parties who are interested in the vital segments of this industry that they represent.

Senator SCHOEPPEL. That covers the point that I want to be sure we have in the record, so as to preserve the right to present statements.

Senator ENGLE. The Chair intends to do that.

As to those witnesses who come from great distances, we will try to expedite it for them.

The committee will stand in recess until 10 o'clock. Wednesday.

(Whereupon, at 4:05 p.m., the committee was adjourned, to reconvene at 10 a.m., Wednesday, June 7, 1961.)

AMENDMENTS TO THE NATURAL GAS ACT

WEDNESDAY, JUNE 7, 1961

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee was called to order, pursuant to adjournment, at 10:50 a.m., in room 5110, New Senate Office Building, Hon. Clair Engle presiding.

Senator ENGLE. The committee will be in order for the further consideration of the bill S. 666 and related bills.

The first witness this morning will be Mr. John W. Partridge, representing Columbia Gas System, Inc.

Mr. Partridge, I observe that you have a statement of some length. Without objection your statement will be made a part of the record. It will be appreciated if you would summarize it.

(The prepared statement follows:)

STATEMENT OF JOHN W. PARTRIDGE, PRESIDENT, THE COLUMBIA GAS SYSTEM, INC.; WILMER & BROWN, TRANSPORTATION BUILDING, WASHINGTON, D.C.

My name is John W. Partridge, president of the Columbia Gas System, Inc. Columbia Gas System is a major producer, transporter, and distributor of natural gas. The majority of its revenues come from its sales at retail to the public and industrial users.

We appreciate the opportunity of appearing before your committee to present our views with respect to Senate bill 666.

I have been an operating gasman for 30 years. As an operating man, I am concerned with the serious practical effect on the gas industry of the legislation being considered.

Something must be done promptly to eliminate regulatory delay. In this connection the Congress is urged to consider carefully the March 7, 1961, report of the Special Committee of Executives on Regulatory Affairs of the American Gas Association submitted by Mr. Parkes, which seeks to deal constructively and practically with this problem of delay.

Contrary to popular belief, we in the gas business realize that rates must be kept as low as possible consistent with good quality service so as to meet the vigorous competition which we face from the electric, oil, and coal industries.

In my presentation I will refer briefly to sections 1, 2, 4, and 5 of S. 666. However, it is section 3 which we feel constitutes a grave threat to the future welfare of our business. We firmly believe the enactment of that section is most certainly not in the interest of the public or our customers. On the contrary, section 3, if enacted, will increase regulatory delay and more seriously, if possible, impair our ability to meet the demands for domestic and industrial gas service, including possible national emergency situations which might demand large volumes of gas for industrial uses.

COLUMBIA GAS SYSTEM'S INTEREST

Nine subsidiaries of the Columbia Gas System are subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act. Columbia Gas System is also one of the major purchasers of gas from southwestern pipeline companies and the rates paid to such pipelines are subject to the juris-

diction of the Commission. Accordingly, the Columbia Gas System has extensive interest in the substantive provisions of the Natural Gas Act and the administration of the act.

Columbia Gas System is in a somewhat unique position.

Producer: Stretching back prior to 1900, subsidiaries of the system, or their predecessors, have been substantial producers of natural gas in the Appalachian area—in fact, prior to 1944 they produced or purchased locally their entire requirements.

Purchaser: As mentioned, the system is one of the major purchasers of natural gas from the five large pipelines serving the northeastern part of the United States. In 1960 it purchased 479 billion cubic feet from these pipelines at a cost of about $162,250,000.

Wholesaler: The system wholesales natural gas under the jurisdiction of the Federal Power Commission to approximately 117 other utility companies, with approximately 1,900,000 retail customers in 600 communities.

Distributor: The system is a distributor at retail in about 1,300 communities in 7 States, with approximately 1,500,000 residential, commercial, and industrial customers.

A population of approximately 15 million people and some of the most highly concentrated industrial areas of the United States depend upon Columbia Gas System directly or indirectly for gas service. Thus, we experience the problems of the producer, the pipeline, and the distributor and must approach the problems of the gas industry in an objective and comprehensive fashion.

Slightly more than $1 billion of securities of Columbia Gas System, consisting of debentures and common stock, are owned by the public. There are over 200,000 stockholders in the Columbia Gas System which is the 10th largest number of stockholders of stocks listed on the New York Stock Exchange. Finally, some 12,000 men and women and their dependents look to the system for their livelihood.

COLUMBIA GAS SYSTEM'S POSITION

Columbia's primary interest in this hearing is to record its objection to section 3 of the bill. However, the committee may be interested in our views with respect to the other sections.

As to section 1, we believe that the purpose of the amendment proposed is now being effectuated by the Federal Power Commission's procedures and is, therefore, not necessary. More important, the proper way of handling this kind of contractual problem is through administrative procedures, rather than incorporating a rigid type of formula in the Natural Gas Act.

Section 2, which would give the Commission authority to suspend all rate schedules, including those covering sales for resale for industrial use only, is not objectionable. In the few cases where sales for resale for industrial use are involved, we, as a matter of practice, do not collect a higher rate until we commence collecting the higher rates for all other types of sales.

Section 4, which would write into the statute the spirit of the Supreme Court decision in the *Catco* case, is also very objectionable, because it is clearly applicable to all types of certificate proceedings, including the expansion of pipeline facilities to render additional service. The tendency to make a rate case out of every certificate application would further delay the process of making gas supplies available to the consuming public. The argument of the proponents that the Supreme Court might change its mind is not a valid reason for the enactment of this section. Under the present Court interpretation of the Commission's duty, the Commission can carry out the intent of the Natural Gas Act with some degree of flexibility.

With respect to section 5, namely, the procedural amendment to section 15 of the Natural Gas Act, we are in agreement with the recommendation of the Federal Power Commission as it appears at the bottom of page 17 of vouume 1 of the hearing before your committee on May 25, 1961. The amendment does not offer a practical solution to the problem of delay. For this reason it should be rejected.

We think that the enactment of section 3 of Senate bill 666 would be detrimental to the Nation's over 30 million consumers of natural gas and future consumers; such legislation would be detrimental to the stockholders in gas companies, and to the public interest of our Nation by substantially retarding the growth of the natural gas industry, which today constitutes the fifth largest industry in terms of plant investment in the United States. Today, when there

is great need for economic growth in every segment of this country's economy, the growth of one of America's major industries would literally be stifled by this proposed section 3.

We share the concern that the President, the House Legislative Committee on Oversight, the Dean Landis report to the President, and the NARUC report have expressed with respect to delay in processing rate proceedings before the Commission. Delay in its own proceedings before the Commission has twice within the past 9 years had very adverse effects upon Columbia's ability to finance essential construction economically and by usual methods.

The long delay in the adjudication of rate proceedings by the Commission is the reason for the proposed legislation. As its proponents have stated in these hearings, they wouldn't be here if the Commission disposed of rate proceedings expeditiously. But the proposed legislation wholly fails to attack the causes of delay—instead it increases them by giving added duties to an already overburdened and undermanned Commission, and it would penalize the natural gas industry for a situation completely beyond its power to control—the inability of the Commission to keep its work current.

We do not object to regulation, but if the natural gas industry is to remain healthy and the public interest is to be served, regulation must be realistic, efficient, and expeditious. Columbia Gas System recognizes the undesirability of contingent and pyramided rate increases, but the solution is not to try to bar them as the proposed legislation would do. The solution is to eliminate the delay which necessitates the pyramided increases.

Reduced to its simplest terms, the proposed legislation would deny the right of companies to attempt to recoup higher current costs being experienced for long periods of time while the Commission determined the propriety of a previous rate filing. This is merely punitive action against the gas industry; it does not attack the root causes of the problem of delay.

A distinguishing characteristic of the natural gas transportation and distribution business is the very high investment required to provide the servce rendered. The result of this is that financing through the issuance of securities to the public is the normal and continuing requirement of the business. Our ability to get such financing depends in turn upon our earnings. Accordingly, unless the Columbia Gas System and other natural gas companies similarly situated can promptly recoup higher costs which actually exist, their earnings will deteriorate to such low levels that they will not be able to finance construction to meet the continuing demands for gas service. It is bad enough to have contingent earnings, some part of which may be subject to refund at a penalty interest rate of 7 percent, but that is certainly better than having no earnings at all.

We are confident that this committee and Congress desire that the natural gas industry be in a position to meet the needs of the public. If this legislation were passed, pipeline companies would be—

(*a*) Forced not to expand facilities;

(*b*) Forced not to seek new gas supplies; and

(*c*) Forced not to meet the demands of the consuming public until rate relief is available.

Thus, the proposed legislation is basically against the best interests of the consumers and the general economic health of our Nation. Such legislation would be the first step toward reducing the natural gas industry to the plight now being experienced by the American railroads.

The proviso of section 3 of S. 666 would permit the Commission to allow a second increase to go into effect if "deemed necessary by the Commission." This proviso, however, does not afford sufficient assurance that necessary rate relief will be available when needed nor remove the threat posed by section 3 to the financial integrity of the natural gas industry.

We do not believe that a management can plan its financial arrangements and undertake long-range expansion programs needed for the welfare of its consumers on the basis of a hope that the Commission may permit it to collect increased costs.

Furthermore, this proviso would add to the burdens of a Commission which cannot presently cope with existing burdens. To prevent the rejection of a rate increase filing, the filing natural gas company must now furnish the Commission with extensive financial data, under oath, to support the increase. The nature and extent of this data is apparent from section 154.63 of the Commission's regulations under the Natural Gas Act (a copy of such is appended to this testimony as appendix A) which devotes 10 pages to the description of data which must be filed. I might add at this point that there have been suggestions

that gas companies could make repeated filings to add to the burden of the Federal Power Commission and thereby prolong the delays already experienced. Our companies do not enter lightly upon the initiation of a rate increase. A rate increase has many bad public relations aspects. Moreover, furnishing the data required by the Commission's rules is a costly undertaking. To prepare the data required by the Federal Power Commission requires 45 to 60 days of work by our rate department.

If this extensive data is required to prevent rejection of a rate filing, the showing needed to warrant exercise of the discretion granted by the proviso defies imagination.

If section 3 is enacted, pleas for the exercise of this discretion are inevitable. There would be counterpleadings, and hearings in each case on this interim question alone. We know the Commission would be confronted with all types of arguments and maneuvers by protestants and intervenors to delay action by the Commission and to prevent a second increase from going into effect or to delay the effective date thereof.

The proviso to section 3 will not lessen the adverse impact of S. 666 on natural gas companies and the public they serve. It will only add to the existing burdens on the Commission and to existing delays in the determination of rate increase proceedings.

THE REASONS FOR REGULATORY DELAY

All persons acquainted with the regulatory process recognize that there are lengthy delays in the final determination of proceedings before the Federal Power Commission. The proponents of this legislation have used such delay as one of the reasons in support of it. As I have suggested, this proposed legislation does not attack the root causes for such delay and, therefore, does not in any way meet our present problems. I have attached hereto as appendix B a short statement setting forth the basic causes for delay in processing cases before the Federal Power Commission, and some examples. These are the problems with which Congress should seek to deal.

ADVERSE EFFECT OF PROPOSED LEGISLATION UPON A GAS COMPANY'S ABILITY TO SERVE

I would like to demonstrate the adverse effect this legislation would have had upon Columbia Gas System companies if it had been enacted in December 1954. If you will look at tabulation 1 (p. 195), your attention is directed to docket No. G–5475, which was instituted in November 1954: After some preliminary hearings and settlement conferences, there was a limitation of issues in that proceeding which resolved all problems except three important tax issues. This limitation of issues was approved by the Commission in its order of October 1956 and hearings ordered on the reserved tax issues. The following transpired:

Hearings held during October to December 1956.

Final briefs filed February 1957.

Examiners' decision issued December 17, 1958—about 1 year and 9 months after it was submitted on briefs.

Commission's Opinion No. 334 issued January 22, 1960—14 months after the Examiner's decision.

Commission Opinion No. 334A issued March 18, 1960. This one proceeding, which was not finally determined by the Commission until March 18, 1960, would have foreclosed under the proposed legislation the collection of any sums involved in the subsequent filings shown on the tabulation. Between the Examiner's decision and the Commission's order, almost 3 years were taken up in the decisionmaking process. This was not a delay caused by the gas company. Yet, United Fuel and the Columbia Gas System would have been penalized by this delay by not being able to collect the higher costs which United Fuel incurred between 1954 and 1960.

Tabulation 2 shows the effect on United Fuel's income if section 3 had been enacted prior to December 15, 1954. On page 2 there are set forth the reasons for the filings made by United Fuel subsequent to docket No. G–5475, which is still pending in the courts and which had not been finally determined by the Commission prior to March 18, 1960. You will note the increased costs of United necessitating the filings include increased gas purchased costs from suppliers, increased Louisiana gathering tax, increased wages, increased property taxes, and the effect on the cost of gas of changing purchase patterns.

All these increased costs were actually experienced. They had to be paid. As indicated on page 3 of tabulation 2, if United Fuel had not been able to recoup these increased costs promptly, United Fuel would have lacked funds to pay $6,100,000 of actual operating costs and $2,800,000 of interest on outstanding debt, for a total shortage of $8,900,000 of current costs which had to be paid.

For the whole period commencing with 1957 we estimate that United Fuel would have lost $86,477,000 in revenues. It would have saved however approximately $29,451,000 of gas purchased costs because of the effect of the proposed legislation on its suppliers. Thus, United Fuel would have been short $57 million of revenues needed to pay its operating costs. There are two important sidelights of this fact. First, the U.S. Government would have lost approximately $15 million of income taxes paid by United Fuel during this period. Second, United Fuel would not have had enough money to pay its interest on its bonds.

The seriousness of the problem of not recovering promptly higher costs is a matter with which we have had considerable experience. Commencing early in 1951 our system had a sharp increase in gas purchase expense. At that time the system was not in a position to file rate increases quickly enough and to have commissions act quickly enough on needed rate relief. The result was that there was a severe drop in the earnings of the Columbia System in 1952, 1953, and 1954. The earnings went from about $1.16 a share in 1951 to 83 cents in 1952, and 76 cents in 1953, both of these being substantially below the established dividend on the common stock.

If a company is subject to severe drops in its earnings from time to time by reason of failure to recoup promptly higher costs, a serious question is presented as to how the company or the industry can meet the demands for the public service. Between 1950 and 1960 the net plant in the Columbia Gas System has nearly tripled. This expansion in facilities was necessary to meet Columbia's public utility obligation to serve the surging demands for gas service. There were times during this period when we could not meet all the requests for service. Many times during this period the financial strain of such expansion upon the system caused us to hope for a breathing spell in the demand for service.

In 1951, 1952, and 1953, despite our best efforts, we did not have enough gas or facilities to serve all people demanding gas service. In 1954 we were able to obtain additional gas, but it required over $100 million of new plant to distribute that gas within our service area. At that time the earnings of the system were so depressed and uncertain the system could not use traditional methods of financing this expansion.

It is increasingly important in our operations that we recoup higher costs promptly. The reason for this is that more and more our operations resemble those of a middleman, a wholesaler, or a distributor. We buy gas all year round. In the summer we store a great deal of it. In the winter we sell it. Almost half of our costs are for the purchase of gas. When the price we pay for gas or the taxes associated with it go up, we must recover the higher cost promptly. If we do not, we get in serious financial difficulties, such as we experienced in 1952 and 1953.

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MULTIPLE SOURCES OF GAS SUPPLY

As I have previously mentioned, Columbia subsidiaries purchase gas from all the major pipelines supplying the northeastern part of the United States. One Columbia subsidiary, the Ohio Fuel Gas Co., for example, purchases from Panhandle Eastern Pipe Line Corp., Texas Gas Transmission Corp., Tennessee Gas Transmission Co., Texas Eastern Transmission Corp., and, in addition, purchases under the wholesale rate of its affiliate United Fuel Gas Co. Each of these pipelines might file a rate increase at different times and it might be necessary for Ohio Fuel to make a simultaneous filing in order to recoup the increased gas purchase costs it would incur as a result of these filings. Under this proposal, after the first pipeline had filed its increase and Ohio Fuel had filed an offsetting increase, Ohio Fuel could not as a matter of right make effective higher rates to recoup increases that might subsequently be collected by one or more of the other pipeline sources. This is a real and practical problem of the Columbia Gas System since Ohio Fuel Gas Co., the Manufacturers Light & Heat Co., United Fuel Gas Co., and Atlantic Seaboard Corp. have two or more sources of gas supply.

FUNDAMENTAL MISCONCEPTIONS OF S. 666 PROPONENTS ABOUT PIPELINE INCREASES

A. The 40-percent figure

Numerous proponents of punitive legislation directed toward the natural gas industry have accepted as a fact the allegation that 40 percent of rate increases collected subject to refund by natural gas companies are excessive.

The allegation that 40 percent of all revenues collected subject to refund are excessive is based solely upon "Tabulations of Gas Rate Increases to Gas Pipeline Companies as of March 1, 1960," dated April 15, 1960, and prepared by the Bureau of Rates and Gas Certificates, Federal Power Commission, at the request of the House Subcommittee on Legislative Oversight. The statistics relied upon have been grossly misinterpreted because of the failure of analyzing properly the information included in the tabulation:

(i) The tabulation includes a total of 142 rate cases of which 40 are shown as never having been placed into effect subject to refund. The totals used in computing the percentage of amounts found excessive include these 40 cases.

(ii) The tabulation shows five rate cases as having been withdrawn or disallowed in full. They were withdrawn or dismissed for lack of jurisdiction—not because they were excessive.

(iii) Twelve cases were allowed in their entirety. This leaves 85 of the 142 cases shown were excess revenues were collected. As indicated below, there were infirmities with respect to these cases.

The tabulation shows with respect to *United Fuel Gas Company*, docket G–1781, that only 74.5 percent of revenues collected by United Fuel was allowed. In fact, all of the revenues collected were allowed, and the company experienced a substantial deficiency in revenues.

We do know that the dollars shown in the columns headed "Amount proposed annually" and "Amount suspended annually" do not represent revenues collected from the customers.

In some of the cases, the amount originally filed for was substantially reduced before the rates were placed in effect subject to refund. For example, United Fuel Gas Co.'s docket No. G–2451 is listed in this tabulation and shows the total amount filed for as $17,542,000 per year. Actually, a substantial part of this increase was based upon increased rates of Tennessee Gas Transmission Co. in docket G–2434, which was withdrawn before the rates became effective. Consequently, United Fuel reduced its rates and only collected $12,800,000 subject to refund. However, the difference of $4,700,000 per annum is considered in developing the 40-percent figure.

Tennessee Gas Transmission Co.'s rate increase in docket No. G–2434 in the amount of $13,600,000 was withdrawn completely and no revenues were collected in that docket subject to refund. In lieu of this docket, Tennessee filed on November 3, 1954, increased rates of $8,600,000 in docket No. G–5259, which were placed in effect subject to refund and approximately 89 percent of which was allowed. But both dockets were included, which statistically has the effect of having Tennessee collect approximately $22 million per year from its customers and only retain $7,600,000. In fact, it collected only $8,600,000 and retained all except $975,000.

There is a further reason why the tabulation relied upon may be misleading to one not thoroughly familiar with the natural gas industry. Gas produced in the Southwest moves in many cases through the facilities of two or more companies subject to the Commission's jurisdiction before it is sold to the distributor for resale to consumers. Because of this, the filing of a rate increase by one company purchasing gas in the Southwest can result in numerous filings by various companies who help to move this gas to market, each of which reflects portions of the first company's increase in the cost of this gas.

For example, as shown in the "Tabulations of Gas Rate Increases to Gas Pipeline Companies," on April 30, 1954, Tennessee Gas Transmission Co. filed a rate increase in docket No. G–2434 of $13,616,000. Portions of this increase are reflected in the following rate increases listed in the tabulations filed by customers of Tennessee and their customers who were also subject to the Commission's jurisdiction:

	Docket No.	Filing date
Direct customers of Tennessee:		
Hope Natural Gas Co	G–2437	Apr. 30, 1954
Tennessee Natural Gas Lines, Inc	G–2438	Do.
East Tennessee Natural Gas Co	G–2440	Apr. 29, 1954
United Fuel Gas Co	G–2451	May 12, 1954
Alabama-Tennessee Natural Gas Lines	G–2441	Apr. 30, 1954
Manufacturers Light & Heat Co	G–2453	May 14, 1954
Direct customers of United Fuel:		
Central Kentucky Natural Gas Co	G–2450	May 14, 1954
Atlantic Seaboard Corp	G–2452	May 13, 1954
Manufacturers Light & Heat Co	G–2453	May 14, 1954

Accordingly, in the tabulation there is pyramiding and duplication. If any part of the $13 million increase filed by Tennessee was disallowed, similar proportionate reductions would be made in the increases of the other companies in the tabulation.

It is also important to note that the tabulation pyramids the dollars increases requested through each step of the process of moving the gas to the ultimate consumer. As a result, an increase of $1 million by Tennessee can be pyramided in a tabulation so as to appear that $4 or $5 million of increases are being paid by the consumers. Actually, it is only the $1 million which the consumer pays and this is passed down the supply chain. This pyramiding casts serious doubt on the validity of the tabulations as to the amount of refunds ordered to be paid consumers.

Thus, the charge that 40 percent of rate increases collected subject to refund are excessive is highly inaccurate. The correct figure would be much lower and can be determined only by a careful and proper reanalysis of the statistics.

As an example from our own experience, your attention is now directed to columns 10 and 11 of tabulation 1. You will note that in United Fuel's settlements as finally approved by the Commission, the amount of increases sought have in four cases been approved in full; and in two cases relatively small re-

ductions compared with the total revenues being collected were ordered. For example, in docket G–12195, the Commission reduced the requested increase of $10,965,600 by $1,750,000 or approximately 15 percent. I hardly think that the applications shown on the tabulation could be considered as being padded. If refunds are related to total revenues collected, we find that industry, on an average, has been very close to designing rates to match its costs.

I think that our industry can seriously challenge and, in fact, prove the fallacy of statements to the effect that pipelines have used unjust rate increases as a source of capital to finance construction.

The facts are (a) the money collected subject to refund is a contingent liability until the rate cases are terminated; and (b) the 7 percent interest which must be paid on refunds is substantially higher than interest rates on borrowed money and higher than the return allowed to gas companies by the Commission.

The gas companies do not collect excess revenues to finance construction—they can raise money more cheaply elsewhere.

B. The refund issue

A misconception of the proponents of this type of legislation frequently mentioned is that the consumers do not receive the refunds from the pipelines. The fact is that there are adequate safeguards to assure that refunds reach ultimate consumers, and they do, in fact, reach the consumer.

Columbia operates distribution companies in seven States. In each of such States the Public Utilities Commission requires that refunds received from wholesale suppliers be passed on to ultimate consumers whenever such refunds would otherwise result in excessive revenues to the distribution companies. We do not know of any State jurisdiction where distribution companies are permitted to retain such refunds as a windfall. If such situation exists in any jurisdiction, it is because the local commission is not doing its job and not because of any defect in the Natural Gas Act.

Closely related to the refund issue is the assumption that the consumers are being imposed upon. The statistics in tabulations 3 and 4 are strong evidence that the consumers of natural gas have no valid basis for concern. A superior fuel is sold on a reasonable basis compared with other fuels. The consumer demand reflects this situation.

Tabulation 3. It shows that natural gas, despite rate increases, is sold on a very favorable basis with oil and is competitive with a much inferior domestic fuel—bituminous coal.

Tabulation 4. Despite increasing rates, the consumers have shown a strong preference for gas for heating. There has been an 128-percent increase in the number of space heating customers on our lines in the last 10 years.

In his testimony before this committee, Chairman Sharfsin, of the Pennsylvania Public Utility Commission, testified that if a provision such as section 3 of S. 666 had been in effect since 1957, the pipeline companies would not have been permitted to collect some $34.5 million in pyramid rate increases applicable to Pennsylvania. Mr. Sharfsin did not suggest that the $34.5 million was in excess of the cost of serving consumers in his State. He merely suggests a way to avoid the payment.

Despite these higher rates, customers of Columbia in Pennsylvania showed a great interest in gas for space heating. In the 10 years 1950–60 the number of customers increased 151 percent. The important point, however, is that if these higher rates had not been recouped by our Pennsylvania company, we might have been unable to construct the facilities and obtain the gas for these additional 100,000 customers who desired gas for space heating.

C. Gas companies not interested in having cases decided

It has been suggested by some that natural gas companies have no incentive to have rate cases acted on. This completely overlooks the fact that so long as a rate case is pending, there is complete uncertainty as to the firm earnings

of the company. For example, in 1953, out of earnings of 76 cents per share on Columbia common stock, 38 cents were contingent on the outcome of pending rate cases. No one could appraise with any accuracy the firm earnings of the Columbia. This had a very depressing effect on the market value of the common stock and made it improvident to market stock under those conditions. As recently as 1959, 20 cents per share of the earnings on Columbia's common stock were contingent on the outcome of rate cases. Anyone who suggests that we have no interest in settling our Commission rate proceedings does not understand the financial problems and needs of our business.

D. No limit on filings

It is suggested that gas companies have unlimited power to burden the Commission with rate filings. The committee's attention is directed to appendix A of my statement. It outlines the detailed information which must be filed by a gas company in support of a rate filing. The allegation overlooks completely several facts:

1. The gas industry is highly competitive with electric power, oil and coal. We must control our prices.
2. Rate filings create poor customer and public relations.
3. There is considerable expense and time involved in making a filing, and then in prosecuting it.

I respectfully say that there is no merit to the charge that in general the gas industry files unwarranted or padded rate increases.

CONCLUSIONS

First, the delay in processing rate proceedings is detrimental to the gas companies. There has been a substantial uncertainty as to Columbia Gas System's earnings in 6 out of the 10 years. This uncertainty of earnings makes it very difficult to finance on an economical basis. The investor does not know the real earnings when a substantial amount is contingent upon the outcome of rate proceedings. Therefore, Senator Gore was misinformed when he made the statement on April 18 on the Senate floor that there is no real inducement for natural gas companies to settle rate cases, or seek positive Commission action. To the contrary, based on our experience with our pipeline suppliers as well as our own, we know that every segment of the natural gas industry seeks prompt settlement of rate cases. The proposed amendment does not strike at the causes of such delay.

Second, despite our most intense efforts to expedite the settlement of rate proceedings, the termination of rate cases is a matter beyond our control. In large part it results from the delay in instituting staff field audits and the time taken in making them.

Third, where there are many factors entering into the costs of an enterprise, such as increases from five pipeline suppliers whose increases are not synchronized, increases in State taxes on the gathering of gas, increases in construction costs and increased labor costs, it is essential that our companies be able to recoup promptly the higher costs being incurred. If we cannot, our earnings will deteriorate to such an extent that we will not be able to finance needed facilities. Our only safeguard is to be allowed to place higher rates into effect as a matter of right, subject to refund with interest at 7 percent, so customers are fully protected.

Fourth, the sums of money collected subject to refund have in large measure been fully justified. Without those sums, we would have not been recouping current costs as experienced. These funds, collected subject to refund, were not designed or adequate to finance construction, as alleged on the floor of the Senate and in various congressional reports. It would be ridiculous for our companies, or other gas companies, to file unwarranted increases and collect money, subject to refund at 7 percent interest, when money can be borrowed at a lower rate.

In the case of Columbia Companies, the amounts needed for financing construction exceeded many times the amounts collected subject to refund. The amounts collected subject to refund were significant only in one respect: they maintained some adequacy of earnings for the Columbia System so that it could attract capital to finance expansion.

The present provisions of section 4(e) provide not only adequate safeguards to the public interest, but actually are in the public interest for four reasons:

(*a*) Through its rules and regulations, the Commission requires detailed supporting data at the time a rate increase is filed. If this supporting data is frivolous or inadequate, the filing can be rejected.

(*b*) If the filing is accepted and subsequently placed in effect, subject to refund, the consumer is protected because any unwarranted part of the filing will be refunded to the consumer with interest at 7 percent. In that connection, I would point out that the 7 percent is, in effect, a penalty since the Commission does not allow rates of return of that magnitude.

(*c*) The company is protected since it recoups relatively promptly (after 6 months) increased costs which it is incurring.

(*d*) Finally, the public interest is served because the natural gas industry will be reasonably able to maintain financial integrity in order to continue the major investment needed for growth and increased service and energy which the public is seeking and the national economy requires.

In closing, I would like to commend to your most serious consideration the AGA report, dated March 7, 1961, given to you by Mr. Parkes as a sound, practical plan of lessening regulatory delay as compared with Senate bill 666, which would not ease the delay but add to it, and which also could cause irreparable damage to service to the gas consuming public. The AGA recommendations provide practical methods for the FPC to decide rate cases expeditiously within the time limits set forth in the Natural Gas Act. If this were done, there would be no question of collecting subject to refund and both the financial integrity of our industry and service to the public would not be subjected to the jeopardy that it has in the past by reason of regulatory delay.

TABULATION 1.—*United Fuel Gas Co.—FPC rate case experience since 1954*

Docket No.	Date of filing (1)	Date rates effective (2)	Staff examination: Date started (3)	Staff examination: Date ended (4)	Date of initial hearing or conference (5)	Date hearing or conference concluded (6)	Date FPC order issued (7)	Status at May 15, 1961 (8)	Annual gross revenue before increase (9)	Annual amount of increase requested (10)	Annual amount finally received (11)
G-2451 [1]	May 12, 1954	Nov. 1, 1954	July 26, 1955	Oct. 25, 1956	Dec. 1, 1954	Aug. 21, 1956	Oct. 19, 1956	In the courts on tax issues relating to rates from Jan. 1, 1956.	$86, 139, 600	$12, 802, 800	$11, 300, 000
G-5475 [1]	Nov. 4, 1954	Dec. 15, 1954	do	do	do	Dec. 3, 1956	Mar. 18, 1960		86, 139, 600	2, 668, 400	2, 668, 400
G-12195	Feb. 13, 1957	July 14, 1957	Jan. 12, 1959	Sept. 15, 1960	May 3, 1960	July 1, 1960	Sept. 15, 1960	2 separate appeals, have been filed in the courts.	110, 131, 600	10, 965, 600	9, 212, 900
G-16316	Aug. 22, 1958	Sept. 23, 1958	do	do	do	do	do		138, 065, 900	1, 296, 700	1, 296, 700
G-16815	Oct. 7, 1958	Apr. 7, 1959	do	do	do	do	do		139, 362, 600	6, 629, 300	6, 629, 300
G-18420	Apr. 10, 1959	May 15, 1959	do	do	do	do	do		145, 991, 900	4, 271, 300	4, 271, 300
G-20270	Nov. 4, 1959	Apr. 5, 1960	Sept. 16, 1960	Apr. 17, 1961	Apr. 17, 1961	May 11, 1961	----------	Limited issues to be tried.	157, 498, 900	14, 614, 400	----------

[1] These cases were consolidated for hearing. Initially, the Commission held hearings on a proposed change in rate form in United Fuel's tariff. Hearings on this were concluded in April 1955. Thereafter, hearings were held with respect to rate level. They were adjourned for settlement conferences which concluded in August 1956. Commission order dated Oct. 19, 1956, approved the settlement which reserved certain tax issues that the parties could not agree upon. Hearings on these reserved tax issues were concluded in December 1956. This matter is still pending, as indicated.

TABULATION 2

UNITED FUEL GAS CO.

THE EFFECT OF INCOME IF SECTION 3 OF S. 666 HAD BEEN ENACTED PRIOR TO DECEMBER 15, 1954

The effect of such proposal can be demonstrated by the experience of United Fuel Gas Co., a Columbia company.

On December 15, 1954, Tennessee Gas Transmission Co. placed increased rates in effect subject to refund in docket No. G–5259. United Fuel concurrently placed increased rates in effect subject to refund in docket No. G–5475 to recover the increases paid to Tennessee. Tennessee's rate increase was finally determined in October 1957.

In 1956, during the course of hearings on the United Fuel increase, an agreement was entered into settling all issues except three in order to expedite the proceeding.

These three issues were heard, and the record, a comparatively short one, was closed in December 1956. The presiding examiner's decision was issued in December 1958. His decision was appealed to the Commission, and oral argument was heard on March 17, 1959. The Commission's decision was issued in January 1960. The Commission's decision was appealed to the U.S. Court of Appeals for the Fourth Circuit, and oral argument was heard before that court on January 4, 1961. The case has not yet been "finally determined."

In the meantime, 6 years of rising costs and inflation have had the following effect on United Fuel's costs:

1. In January 1957, Tennessee filed rates (docket No. G–11980) increasing United Fuel's gas cost by approximately $6,893,000 per year. Such rates were placed in effect by Tennessee subject to refund on July 14, 1957. (This increase to United Fuel would have been delayed by only 3 months by the proposed legislation, but United Fuel would still be unable to increase its rates.) United Fuel concurrently placed increased rates in effect, subject to refund (docket No. G–12195) to recoup the Tennessee increase of $6,893,000; increased costs incurred by Gulf Interstate Gas Co., which transported gas for United Fuel's account; and other increased costs, making a total of approximately $10,965,000 per year.

2. On October 23, 1958, United Fuel placed in effect an annual rate increase (docket No. G–16316) of $1,300,000 to recover only increased gathering taxes imposed by the State of Louisiana on gas purchased by United Fuel Gas Co. from producers in that State.

3. On April 7, 1959, United Fuel placed rates in effect (docket No. G–16815) to recoup increased costs of $600,000 per year. Such increase was necessitated by increased operating costs resulting from inflation, increased plant investment necessary to meet the growing requirements of its customers, and the increased unit cost of gas purchased.

4. On April 5, 1960, United Fuel placed into effect increased rates (docket No. G–20270) to recover the increased cost of transporting gas from Louisiana to United Fuel's system in Kentucky, higher gas purchased costs, higher property taxes, and increased labor costs, amounting to $8,300,000 per year. (In addition to the foregoing increases, United Fuel placed in effect rates on May 15, 1959, in docket No. G–18420 and on Apr. 5, 1960, in docket No. G–20270, totaling $10,600,000 designed to recoup increased costs of gas purchased from Tennessee Gas Transmission Co., which Tennessee would not have placed in effect if the proposal now before the committee had been law during this period. However, the fact should not be overlooked that during this period Tennessee constructed additional facilities necessary to increase deliveries to United Fuel by 120 million cubic feet per day, commencing Nov. 1, 1959. Without rate relief Tennessee might not have been able to construct such facilities.)

If the proposed prohibition against increasing rates before a pending case is finally determined had been in effect during the 12 months ended March 31, 1960, United Fuel would have lacked funds to pay $6,100,000 of actual operating costs and $2,800,000 of interest on outstanding debt, or a total shortage of $8,900,000 of current costs which had to be paid.

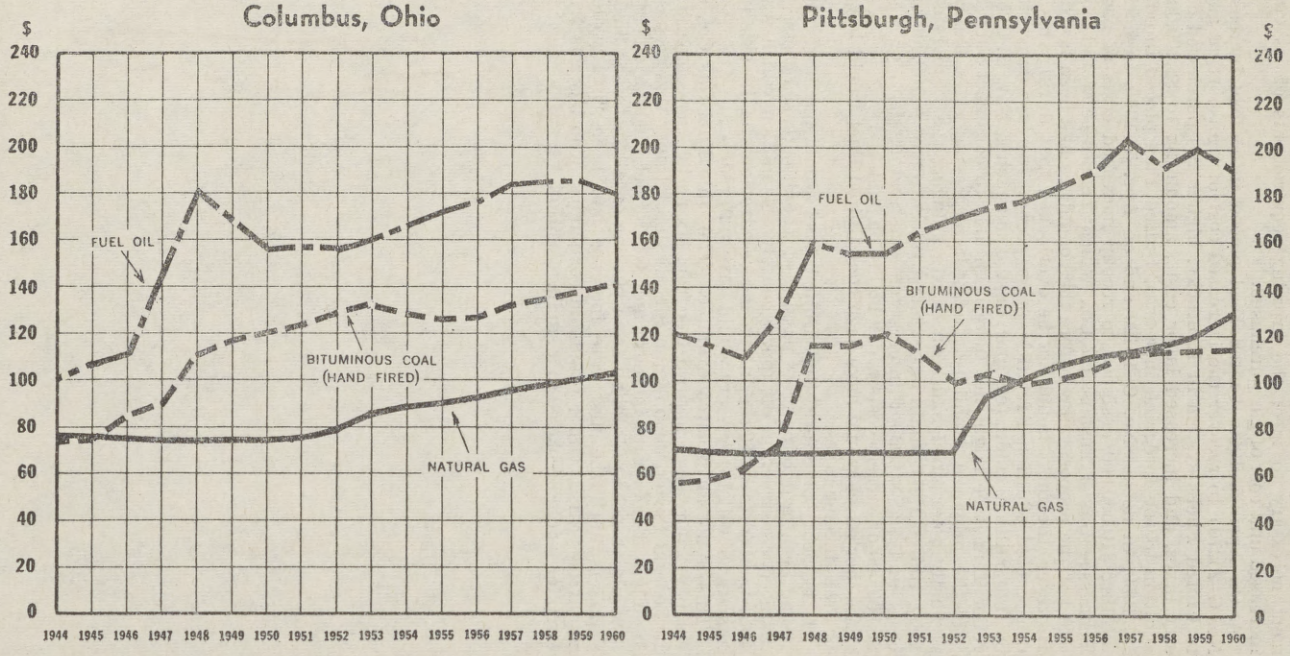
Another effect would have been that United Fuel would have paid no Federal or State income taxes.

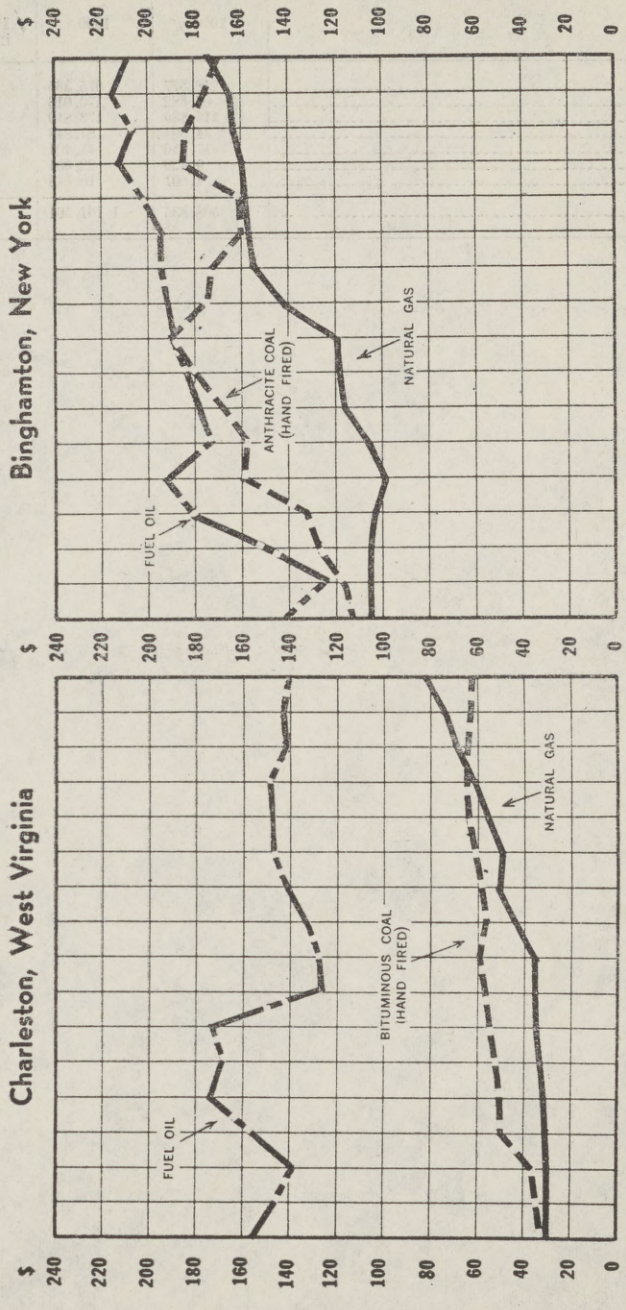
It is clear, therefore, that United Fuel would not have remained solvent if it had been prohibited from passing on these increased costs. It could not have financed construction of approximately $83 million which was necessary from 1954 to 1960 to meet the increasing requirements of its existing markets. Consumers as well as investors would have suffered.

This is not an isolated example. The Ohio Fuel Gas Co., another Columbia company, purchases natural gas from six major gas companies at rates subject to Federal Power Commission jurisdiction. Under this proposal, if one of these suppliers filed a rate increase and Ohio Fuel filed an offsetting rate increase, it would then be prohibited from passing on all increases filed by the other five suppliers until the first rate increase had been "finally determined," which might be years. Other Columbia companies, who buy gas from more than one supplier would be placed in a similar position.

COMPARISON OF DOMESTIC HEATING COSTS* IN COLUMBIA GAS SYSTEM TERRITORY

1944 - 1960





*The fuel costs shown above represent those for an average dwelling based on the normal degree day experience in each year.

TABULATION 4.—*Columbia Gas System—Growth in space heating customers, 1950–60*

	1950	1960	Percent increase
Ohio	258,877	675,335	160.9
Pennsylvania	67,682	170,018	151.2
West Virginia	115,839	173,810	50.0
Kentucky	34,594	67,848	96.1
New York	17,816	41,401	132.4
Virginia	9,420	22,531	139.2
Maryland	4,607	10,648	131.1
Total	508,835	1,161,591	128.3

APPENDIX A

154.63 Material submitted with changes in a tariff, executed service agreement or part thereof

(a) With the filing of any tariff, executed service agreement or part thereof which changes or supersedes any tariff, contract or part thereof on file with the Commission, there shall be included a letter of transmittal containing a list of the material enclosed, the date on which such filing is proposed to become effective, and a list of the purchasers to whom it has been mailed: *Provided, however*, That the provisions of this section shall not be applicable to filings made pursuant to §§ 154.81 through 154.86, unless such filing results in a change in rate, charge, classification or service.

(b) In addition, the following material is to be submitted where applicable:

(1) *Statement of reasons for change in tariff, contract, or part thereof.* A statement of the nature, the reasons and the basis for the proposed change. Data submitted in response to subsequent items may be included by reference as part of the response to this item.

(2) *Comparison of sales and revenues if change in rate or charge involved.* A comparative statement of sales made or transportation performed and revenues therefrom, by months, under the present and proposed tariff, contract, or part thereof, each applied to the transactions for the twelve months immediately preceding and for the twelve months immediately succeeding the proposed effective date of the change in tariff, contract or part thereof. Actual data shall be used as far as possible, and any estimated data should be designated as such. The statement shall be subdivided by rate schedules, classes of service, customers, and delivery point when more than one is involved.

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Such data shall include actual and billing quantities that are used to compute the charges, such as actual demands, billing demands, volumes, heat content and other determinants.

(3) *Rate increase filings*—(i) *Rate increases.* (*a*) If the proposed change in tariff or rate schedule will result in a major increase in rates or charges, there shall be submitted Statements A to M, inclusive, described hereafter: *Provided, however*, That Class B, C and D companies, as defined in the Uniform System of Accounts for natural gas companies, need file only Statements L, M and N. Proposed increases are major when (*1*) the changes relate to a general increase in revenues for the purpose of obtaining a fair return on the jurisdictional sales, (*2*) where they extend to all, or substantially all, of the jurisdictional sales, or (*3*) where an increase in rates is associated with the delivery of substantially increased volumes of gas to existing customers: *Provided, however*, That a natural gas company filing another major increase in rates or charges within a period of twelve months after the filing of Statements A through M, or the end of the test period used therein including the period of adjustments shown on Statements A through M, may submit for such other increase Statements L, M, and N in lieu of Statements A through M if:

(*i*) The proposed new rate increase is filed to compensate only for an increase in the cost of purchased gas; and

(*ii*) There has been no material change in the natural gas company's facilities, sales volumes, and cost of service other than cost of purchased gas since such prior rate increase was filed.

[Subparagraph (*a*) amended by Order 185, 21 F. R. 1485, Mar. 8, 1956]

(*b*) If minor increases are proposed, then Statements L, M and N shall be filed. Minor changes are those which are not designed to provide general revenue increases, such as to offset increased costs or otherwise achieve a fair return on the over-all jurisdictional business. Minor changes usually relate to a few schedules and are designed to bring such schedules into harmony with general tariff policy, to eliminate inequities and to achieve other formal adjustments, in cases where any increase in revenue is subordinate to some other purpose. For the purpose of compliance with these rules, proposed increases in rates or charges which, for the test period, do not exceed the smaller of $100,000, or 5 percent, of the revenues under the jurisdiction of the Commission shall be considered minor.

(*c*) If the natural gas company has relied on data other than those in Statements A through N in support of its rate increase, such other data, appropriately identified and designated as such and separately stated, shall be submitted with the data required by Statements A to N but limited to the test period referred to below. Ten sets of the

statements and of the additional information, if any, shall be submitted, each set securely bound in a cover.

[Subparagraph (*c*) amended by Order 185, 21 F. R. 1485, Mar. 8, 1956]

(*d*) Where the data submitted in Statements A to N do not comply with the requirements of the rules, the rate filing is subject to rejection: *Provided, however,* That if the proposed rate increase is filed at least 45 days before the effective date proposed therefor and such filing does not comply with the requirements of the rules, the natural gas company will be notified of the deficiencies, and if such deficiencies are properly cured within 10 days from the date of such notice, the requisite supplementary material will be deemed to have been filed as of the same date as the initial submittal of the proposed rate increase.

[Subparagraph (*d*) amended by Order 185, 21 F. R. 1485, Mar. 8, 1956]

(*e*) Test period: (*1*) If the natural gas company has been in operation for 12 months at the time of the filing, the Statements A to K, inclusive, or N, as appropriate, shall be based upon a test period consisting of 12 consecutive months of most recently available actual experience, adjusted for changes in revenues and costs which are known and are measurable with reasonable accuracy at the time of the filing, and which will become effective within eight months of the last month of available actual experience: *Provided, however,* That, for good cause shown, upon application of the natural gas company made to the Commission 30 days in advance of the rate filing, the Commission may allow reasonable deviation from the prescribed test period. The 12 months of experience shall be adjusted to eliminate nonrecurring items, but this shall not preclude the replacement of the nonrecurring item with another item of nonrecurring nature which the natural gas company anticipates will be realized, including the provision for the normalizing of such items as rate case expenses. If the natural gas company has had less than 12 months' experience, the test period may consist of 12 consecutive months ending not more than one year from filing date.

[Subparagraph (*1*) amended by Order 185, 21 F. R. 1485, Mar 8, 1956]

(*2*) Adjustments to experience, or estimates where 12 months' experience is not available, may include the amounts for facilities for which a permanent or temporary certificate is outstanding, provided such facilities will be in service within the test period, but shall not include any amounts for facilities in respect to which a certificate of public convenience and necessity must be obtained but which has not been issued at the date of filing, nor shall adjustments or estimates include any amounts for other facilities associated therewith. The bases and procedures, including significant data, used in the derivation of adjustments or estimates shall be submitted in sufficient detail on sup-

porting statements as to permit ready analysis of such adjustments or estimates.

(*f*) Joint facilities: If the natural gas company operates other departments in addition to the natural gas operations involved in the subject rate increase and has allocated to such natural-gas operations any of its investment in joint or other department facilities and the operating, maintenance, or depreciation costs associated therewith, it shall show on the following statements, or the schedules in support thereof, the amounts so allocated together with the methods used in making such allocations: *Provided*, That if such allocations are recorded in the natural gas company's books on the basis of current accounting procedures the submittal may be confined to a brief description of the methods followed.

Statement A—Over-all cost of service. This statement shall summarize the over-all gas utility cost of service (operating expenses, depreciation, taxes and return) developed from the supporting statements described below.

Statement B—Rate base and return. This statement shall summarize the over-all gas utility rate base from the figures contained in Statements C, D, and E, with an appropriate deduction for Contributions in Aid of Construction, if any. The statement shall also include the claimed rate of return and shall show the application of the claimed rate of return to the over-all rate base.

Statement C—Cost of plant. This statement shall show in summary form the amounts of gas utility plant classified by Accounts 100.1, 100.2, 100.3, 100.4, 100.5 and 100.6 as of the beginning of the 12 months of actual experience, the book additions and reductions during such 12 months, together with the balances at the end of such 12 months. In adjoining columns there shall be shown the adjustments, if any, to the book balances and the total cost of the plant.

A supporting schedule in similar columnar form shall be submitted showing for each of the above accounts the amounts by detailed plant accounts as prescribed by the Commission's Uniform System of Accounts for Natural Gas Companies (§§ 201.301 to 201.392 of Subchapter F of this chapter) with subtotals thereof by functional classifications, i. e., Intangible Plant, Manufactured Gas Production Plant, Natural Gas Production Plant, Products Extraction Plant, Underground Storage Plant, Local Storage Plant, Transmission Plant City Gate and Main Line Industrial Measuring and Regulating Station Plant, General Distribution System Plant, and General Plant: *Provided, however*, That to the extent plant costs are not available by detailed plant accounts they may be shown by functional classifications. All adjustments shall be fully and clearly explained.

The supporting schedule for Account 100.1 shall include appropriate adjustments to exclude major items of plant which are expected to be retired from service during the period.

The supporting schedule for Account 100.3 shall include adjustments to exclude such plant as in process of construction which is not expected to be placed in service by the end of the test period.

The major plant additions and retirements, together with associated costs, for the test period shall be described and the approximate dates of commercial operation or retirement from service shall be given.

Statement D—Accrued depreciation, depletion and amortization. This statement shall show the depreciation, depletion and amortization reserves by functional classifications of gas utility plant as of the beginning of the 12

months of actual experience, the book additions and reductions during such 12 months, together with the balances at the end of such 12 months. In adjoining columns there shall be shown the adjustments, if any, to the book figures and the total. Such adjustments shall be clearly and fully explained. If it is necessary to allocate an over-all gas plant reserve by functions, a complete explanation of the method, procedures and significant data used in making the allocation shall be set forth.

Statement E—Working capital. This statement shall show the computation of the working capital claimed as a part of the gas utility rate base. The statement shall show the respective components of the claimed working capital and be in such detail as to show how the amount of each component was computed. The balances for Materials and Supplies and Prepayments for gas utility operations shall be shown at the beginning and at the end of each of the 12 months of actual experience.

If the cost of natural gas in storage is claimed as a part of the rate base, a separate supporting schedule shall be submitted showing the quantities and the respective costs of natural gas stored at the beginning of the test period, the input and output in Mcf and associated costs by months, and the balance at the end of the 12 months of actual experience.

Any necessary adjustments shall be shown in columns adjoining the amounts reported in the books. Such adjustments shall be clearly and fully explained.

Statement F—Rate of return—(1) *Rate of return claimed.* This statement shall show the percentage rate of return claimed and the general reasons therefor. In addition, the following information shall be submitted: [1]

(2) *Debt capital.* (i) Show for each class and series of long-term debt outstanding according to the balance sheet as of the end of the 12-months actual experience:

(*a*) Title.
(*b*) Date of issuance and date of maturity.
(*c*) Interest rate.
(*d*) Principal amount of issue:
Gross proceeds.
Underwriters discount or commission:
Amount.
Percent gross proceeds.
Issuance expense:
Amount.
Percent gross proceeds.
Net proceeds.
Net proceeds per unit.
(*e*) Cost of money:
Yield of maturity based on the interest rate and net proceeds per unit outstanding determined by reference to any generally accepted table of bond yields.
(*f*) If issue is owned by an affiliate, state name and relationship of owner.

(ii) Show weighted average cost of debt capital as determined from the foregoing detail.

[1] Where a substantial portion of the common stock of the natural gas company is not held by the public but is owned by another corporation, whose principal business is the holding of the securities of gas utilities, the information required by this section in respect of debt capital and preferred stock capital shall be submitted to the extent applicable, and in addition the data described shall be submitted with respect to the debt, preferred stock and common stock of the parent company.

(3) *Preferred stock capital.* (i) Show for each class and series of preferred stock outstanding according to the balance sheet as of the end of the 12-months actual experience:

(*a*) Title.
(*b*) Date of issuance.
(*c*) If callable, call price.
(*d*) If convertible, terms of conversion.
(*e*) Dividend rate.
(*f*) Par or stated amount of issue:
Gross proceeds.
Underwriters' discount or commission:
Amount.
Percent gross proceeds.
Issuance expenses:
Amount.
Percent gross proceeds.
Net proceeds.
Net proceeds per unit.
(*g*) Cost of money:
Dividend rate divided by net proceeds per unit.
(*h*) Whether issue was offered to stockholders through subscription rights or to the public.
(*i*) If issue is owned by an affiliate, state name and relationship of owner.

(ii) Show weighted average cost of outstanding preferred stock capital as determined by detail submitted under Subpart (2) (i) above.

(4) *Common stock capital.* (i) Show for each sale of common stock during the five-year period preceding the balance sheet as of the end of the 12-months actual experience:

(*a*) Number of shares sold.
(*b*) (*1*) Gross proceeds at offering price.
(*2*) Underwriters' discount or commission:
Amount.
Percent gross proceeds.
(*3*) Proceeds to applicant.
(*4*) Issuance expenses:
Amount.
Percent gross proceeds.
(*5*) Net proceeds:
Offering price per share.
Net proceeds per share.
(*c*) Book value per share at date immediately prior to issuance:
Closing market price at latest trading date prior to date of issuance.
Latest published earnings per share available at date of issuance.
Dividend rate at date of issuance.
(*d*) Whether issue was offered to stockholders through subscription rights or to the public.

(ii) Submit information respecting any stock dividends, stock splits or changes in par or stated value during five-year period preceding date of the balance sheet and by months for the twelve-month period ended that date.

(iii) Submit following information on outstanding common stock for the five calendar years preceding the date of the balance sheet and by months for the twelve-month period ended that date:

	Average number of shares outstanding [1]	Book value (per share)[1]	Annual earnings (per share)[2]	Annual dividend (rate per share)	Dividends (percent earnings)	Average market price, basis monthly, high-low	Earnings (price ratio)[3]	Dividend (price ratio)[4]
Years:								
1								
2								
3								
4								
Months:								
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								

[1] This information need not be submitted by months.
[2] For monthly figures, show latest reported 12-month average.
[3] Relationship of annual earnings per share to average of the 12 monthly high-low market values of stock. In the case of monthly data use latest reported earnings in computing ratio of earnings to average high-low market value for month.
[4] Relationship of dividend per share to average high-low market value of stock.

(iv) If the applicant relied upon ratios or other data concerning the common stocks of other specific companies in reaching its conclusion as to a fair allowance for earnings on common equity, submit the following information to the extent available from published sources respecting the common stock of such other companies:

(*a*) With respect to recent issuances, the same information as submitted under (3) (i).

(*b*) With respect to outstanding issues, the same information as submitted under (3) (iii).

(v) Show the earnings per share of common stock which the claimed rate of return would yield.

Statement G—Gas operating revenues and sales volumes.—This statement shall show the revenues from gas sales, other gas-operating revenues, and sales volumes classified as between jurisdictional and non-jurisdictional sales and services as follows:

(*a*) Revenues by months and the totals thereof for the 12 months of actual experience from jurisdictional sales as computed under the presently effective and proposed rates together with the differences in the annual revenues, and the actual annual revenues from the non-jurisdictional sales.

(*b*) Revenues by months and the totals thereof for 12 months of actual experience as adjusted for changes which are known and measurable and which are expected to be realized within 8 months of the last month of available actual experience from jurisdictional sales as computed under the presently effective and proposed rates together with the differences in the

annual revenues for the test period, and the annual revenues from the non-jurisdictional sales under the rates effective during the test period. Each jurisdictional sale for resale, and each jurisdictional transportation service, shall be shown separately but the main line non-jurisdictional sales and non-jurisdictional field sales may be separately grouped and the other sales may also be grouped by the classifications prescribed by the Commission's Uniform System of Accounts for Natural Gas Companies. For each revenue item shown separately, there shall be shown the points of delivery, the billing quantities for each month and their determinants or adjustments (demands, volumes, Btu content, Btu adjustment, etc.), and the maximum single day's delivery in each month if available. In the event any sale shown separately is made through more than one delivery point, and conjunctive billing is provided by the tariff, the above data may be combined for all delivery points.

This Statement G shall be included, in full, in the submittal to the Commission and to all State commissions having jurisdiction over the affected customers of the natural-gas company. The submittal to each of the affected customers may be limited to exclude the above details by months except with respect to the gas sales to, or transportation service for, that particular customer, provided a copy of Statement G, in full, is promptly submitted to any affected customer upon such customer's request.

The data supplied in this statement shall be in lieu of the data called for by section 154.63 (b) (2) of these rules.

[Statement G amended by Order 185, 21 F. R. 1485, Mar. 8, 1956]

Statement H—Revenue deductions—(1) *Operating expenses.* This statement shall show the gas operating expenses according to each account of the Uniform System of Accounts for Natural Gas Companies. The operating expenses shall be shown under appropriate columnar-headings, as follows, with sub-totals for each functional classification: (a) Actual operating expenses by months for the 12 months of actual experience, and the total thereof, (b) adjustments, if any, to such total actual operating expenses, and (c) total adjusted operating expenses for the test period. Detailed explanations of the adjustments, if any, and the manner of their determination shall be supplied, specifying the month or months during which the adjustments would be applicable.

On a separate supporting schedule, the total annual cost of gas purchased for the most recent 12 months, of actual experience, the adjustments thereto for the test period, and the total adjusted cost shall be detailed for each purchase source of supply, provided, however, that with respect to field and gasoline plant outlet purchases, as designated in the Uniform System of Accounts for Natural Gas Companies, the data, except that relating to purchases from affiliates, may be grouped by fields and prices. The schedule shall also show the volumes in Mcf, pressure base, and the components of the purchase gas costs as between demand costs, commodity costs, etc. Field purchases of 100,000 Mcf or less annually from individual vendors may be grouped by field or production areas.

(2) *Depreciation, depletion, and amortization expense.* This statement shall show the gas plant depreciation, depletion, and amortization expense by functional classifications for the test period. These expenses shall be shown in separate columns, as follows: (a) Expenses for the 12 months of actual experience, (b) adjustments, if any, to such expense, and (c) the total adjusted expense for the test period. All adjustments shall be fully and clearly explained. The amounts of depreciable plant shall be shown by the functions specified in Account 503.1, Depreciation of the Commission's Uniform System of Accounts for Natural Gas Companies, and, if available, for each detailed plant account, together with the rates used in computing such expenses. Any deviation from

the rates used in the applicant's last annual report on file with the Commission shall be explained showing the rate or rates previously used together with supporting data for the new rate or rates used for this statement.

(3) *Income taxes.* This statement shall show the estimated income taxes and the computation thereof separately as between Federal and State, for the test period, based on the claimed return applied to the overall gas utility base. If the natural gas company has income from other departments, there shall be shown the total estimated corporate income tax for the test period and the methods employed in allocating such total tax to the several departments. If the natural gas company joins in a consolidated tax return, there shall be given the total estimated tax savings expressed as a percentage, resulting from the filing of the consolidated return, as well as a full explanation of the method of computing the tax saving for the natural gas company and its natural gas utility department.

Any abnormalities (such as non-recurring income, losses, deductions, etc.) affecting the income tax for the test period shall be explained and the tax effect thereon set forth.

(4) *Other taxes.* This statement shall show the gas utility taxes, other than Federal or State income taxes, applicable to the test period. These taxes shall be shown in separate columns, as follows: (a) Tax expense per books for the 12 months of actual experience, (b) adjustments, if any, to such taxes, and (c) the total adjusted taxes for the test period. The taxes shall be shown by states and by kind of taxes. All adjustments shall be fully and clearly explained.

Statement I—Allocation of over-all cost of service. This statement shall show the allocation of the over-all cost of service (Statement A), between the jurisdictional and the non-jurisdictional sales and services. The statement shall show the allocation of the operating expenses (by functional classifications), depreciation, depletion and amortization expenses, income taxes, other taxes and return, and for each such cost of service item the statement shall show the allocation ratio or ratios used, including the derivation of such ratios. The methods and the procedures used in allocating the costs shall be set forth in such detail as to readily disclose the principles and steps followed. Where a demand factor is used in allocating costs, full details of the classification of costs to that factor and of the bases of allocation, such as respective loads during peak period, etc., shall be given. The deliveries to jurisdictional and non-jurisdictional customers on the three continuous days of maximum transmission system deliveries during October, November, December, January, February, and March within the 12 months of actual experience shall be shown and classified as between firm, interruptible, exchange, emergency, etc., gas deliveries. In addition, there shall be shown the estimated three-day corresponding data for the test period, if expected to be different from actual experience.

This statement shall include a schedule showing by months, and total thereof, for the same twelve months of actual experience, the company's Gas Account, in the form required by the Commission's Annual Report Form No. 2, page 121. In addition, there shall be shown corresponding data estimated for the test period, if expected to be different from the actual experience.

Statement J—Allocation of cost of service by zones. If the rates on file are zoned, or if it is proposed to establish zone rates, the cost of service for the test period shall be further allocated to the existing or proposed rate zones. A detailed description of methods and procedures used to allocate cost to zones shall be given. Where zones are sought to be established for the first time, the reasons for this establishment and for the zone boundaries selected shall be set forth.

Statement K—Comparison of estimated revenues with cost of service. This statement shall consist of a comparison of the total jurisdictional revenues with the allocated cost of service for the test period. Where zone rates are in existence or are proposed, this statement shall also include a comparison of revenues and costs by zones.

Statement L—Balance sheet. A balance sheet in the form prescribed by the Commission's Uniform System of Accounts for Natural Gas Companies as of the beginning of the 12 months of most recently available actual experience and as of the most recent date available, including therein the notes, if any, applicable to the balance sheet.

Statement M—Income statement. An income statement in the form prescribed by the Commission's Uniform System of Accounts for Natural Gas Companies for the 12 months of most recently available actual experience, including therein the notes, if any, applicable to the income statement.

Statement N—This statement shall contain the principal determinants essential to test the reasonableness of the proposed rate or charge. Any adjustments to book figures, for the items shown below, shall be separately stated and the basis for the adjustment shall be explained. The following data for the test period shall be submitted:

1. Cost of plant by functional classification as of the beginning and as of the end of the test period.
2. Accrued reserve for depreciation, depletion and amortization by functional classifications as of the beginning and as of the end of the test period.
3. Average working capital by components of the claimed working capital using the averages of the amounts as of the beginning and as of the end of each month of the test period.
4. Rate of return claimed with a brief statement of the basis therefor.
5. Operating expenses by functional classifications.
6. Depreciation, depletion, and amortization expense by functional classifications.
7. Income taxes computed on the basis of the rate of return claimed.
8. Other taxes.
9. Cost of service allocated to the sales or services for which the increase in rate, or charge is proposed, including the principal determinants used for allocation purposes.
10. Comparsion of cost of service with revenues under proposed rates.

When this statement is filed pursuant to the second proviso of section 154.63 (b) (3) (i) (*a*) and the beginning of the 12 consecutive months of the most recently available actual experience is more than one month beyond the 12 months of actual data used in the prior rate-increase filing, the natural-gas company shall also show separately in this statement the actual data for the intervening period for items 1, 2, 5, 6, and 8 above and total sales volumes and revenues for such period broken down between jurisdictional and non-jurisdictional sales.

[Above paragraph added by Order 185, 21 F. R. 1485, Mar. 8, 1956]

(ii) *Preparation for hearing.* A natural-gas company filing for an increase in rates or charges shall be prepared to go forward at a hearing on reasonable notice and sustain the burden of proof imposed by the Natural Gas Act of establishing that its proposed changes are just and reasonable and not unduly discriminatory or preferential.

[Subparagraph (3) amended by Order 165, 18 F. R. 3037, May 27, 1953 and as otherwise noted]

(4) *Submission of material by reference.* If all or any portion of the information called for by this section has already been submitted to the Commission, specific reference thereto may be made in lieu of resubmission in response to these requirements.

[Subparagraph (4) amended by Order 202, 23 F. R. 3715, May 29, 1958]

(5) *Change in executed service agreement.* Agreements intended to effect a change or revision of an executed service agreement shall be in the form of a superseding executed service agreement only. Service agreements shall not contain any supplements.

APPENDIX B.—REASONS FOR DELAY IN PROCESSING CASES BEFORE THE FEDERAL POWER COMMISSION

1. Workload. Because of the tremendous expansion of the natural gas industry in the years following World War II, and because of inflation and its effect upon the costs of the gas industry, the Commission has been flooded with series of rate cases. In addition, applications for certificates of public convenience and necessity for major pipeline expansions are filed continuously. This workload is in addition to the Commission's responsibilities of administering the Federal Power Act. On the assumption that the members of the Commission are responsible for deciding this caseload, we seriously question whether any five men, no matter how dedicated or assisted by competent staff, can effectively handle the workload presently assigned to the Commission by Congress.

2. Field audits. We, of course, recognize the propriety of field audits by the Commission staff but the record clearly shows that the unnecessary delay in starting and completing audits constitutes a major bottleneck in the expeditious disposition of rate proceedings. Despite the fact that since 1951 the Commission has been engaged almost constantly in examining in the field the books and records of major pipeline suppliers, a new proceeding results in a new field audit consuming many months and in most cases years of time.

The industry has repeatedly urged the Commission to expedite and shorten field audits and has suggested remedies. These suggestions are spelled out in the AGA report which you have. Some examples of our actual experience with delay are shown on tabulation 1, attached to this statement:

(*a*) Opposite docket No. G–2451, a comparison of column 1 with column 3 shows that the staff did not commence its field audit until 1 year and 2 months after the case was filed, and 8 months after the effective date of the rate. Opposite docket No. G–12195, you will note that the field staff examination began almost 2 years after that proceeding was instituted. Certainly this delay in instituting the field examination was not caused by the regulated company.

(*b*) In connection with the four docket cases starting with G–12195 and ending with docket No. G–18420, early in 1959 it became apparent that unless some of these cases could be settled, the Columbia Gas System would not be able to issue any debentures to finance part of its 1959 construction program. Our staff did everything possible to assist in expediting the field examination and to expedite a final resolution of the issues involved.

Despite the urgency of settling these cases, it was not until May 1960 that they were set down for conference. This was more than 3 years after the initial docket was filed and a year and 5 months after the staff commenced its field examination. It was not until September 1960 that an order approving the outcome of these conferences was issued by the Commission. In fairness to the Commission, I should say that one indirect customer, purchasing less than 1 percent of the sales volume of United Fuel, and some municipalities opposed the settlements. As indicated on the tabulation, appeals by these parties have been filed with the courts. I am advised that these appeals will be argued before the court on June 22, 1961.

3. Impact of *Phillips* decision. The decision of the Supreme Court in the *Phillips* case, requiring the regulation of several thousand independent gas producers, imposed upon the Commission a tremendous mechanical problem and completely new regulatory problems which the Commission has not satisfactorily solved—even as of today, 7 years after the *Phillips* decision.

4. Interventions. One of the causes of delay at the Federal Power Commission is the large number if interventions. In rate cases customer companies intervene to see that they are not overcharged. Even though the staff of the Federal Power Commission participates in such hearings to protect the consumers' interests, State commissions also intervene. But this is not all. Frequently large numbers of municipalities intervene so that the Federal Power Commission staff, the State commissions, and municipalities are all representing the same interest. This is one of the principal causes of delay in rate proceedings.

The five-man Federal Power Commission is charged with regulating a nationwide, dynamic industry in great detail. This industry is in an increasingly competitive situation. Delay in Commission proceedings poses a serious problem for the Commission and the industry.

The question arises whether the proposed amendments attack effectively these causes for delay. They do not. The restriction on natural gas companies to collect higher rates will not stop inflation. The amendments will not

reduce the surging demand for natural gas. They will not expedite staff audits. They will not encourage intervenors and protestants to expedite the settlement of rate proceedings; in fact, the amendments would encourage them to delay settlements. The amendments will not reduce the caseload of the Commission.

Mr. PARTRIDGE. Thank you, Mr. Chairman.

As you have said, I am John Partridge, president of Columbia Gas System. We are producers of natural gas, transporters and distributors. Our major revenue comes from the distribution part of our business through sales to the domestic and industrial customers.

I have been with Columbia in this business for 30 years as an operating man. My prepared statement, which you graciously allowed to be filed, goes into considerable detail as to our position on the bill S. 666. I would like to confine my summary to section 3 of that bill. I would also like to add that everything that I say regarding section 3 would equally, or even more so, apply to S. 1946.

I might say that S. 1946 would create utter chaos in the distribution end of our business, which is some 70 percent of our business.

Senator ENGLE. You say, in effect, that S. 666 would be disastrous, but the other bill you mentioned would be catastrophic; is that right?

Mr. PARTRIDGE. Thank you, sir. I appreciate that. It is very well put.

Gentlemen, our problem is regulatory delay. Section 3 isn't going to lessen regulatory delay. Section 3 is going to increase regulatory delay. In addition, section 3 is going to force us not to expand our facilities, not to seek new gas supplies, and not to meet the demands of the consuming public. Furthermore, it could greatly impair our ability to meet the demands of a possible national emergency situation as regards industrial uses.

Why? Because section 3 would deny us the right to attempt to recover increased costs.

I can't possibly conceive of how any business can exist, being denied that right.

I think that the record should show that our natural gas industry has greatly contributed to our national economy. It is just a relatively short while ago—15 years—when the natural gas industry was tiny. Now it is the fifth largest industry in the United States. And it has contributed greatly to the national economy.

If section 3 is enacted, then that contribution in this time when everybody is trying to strengthen our national economy, is going to go in the opposite direction.

Gentlemen, don't legislate us into the very sad plight of the eastern railroads which, to me, is the horrible example of what happens to a utility and its service when its earnings are greatly impaired.

I would like to go into an example of what section 3 would do to us. If you would be good enough to turn to tabulation 1, which is attached to my prepared statement, you will see that this is a tabulation of actual Federal Power Commission rate case experience of United Fuel Gas Co., which is one of our major companies; in fact, United Fuel Gas Co. is really the main supply company for Columbia Gas System.

If you will look at the second line on this tabulation, docket G–5475, you will note that that application was filed November 4, 1954. Then, all the way over to column 7, the final FPC order was not issued until March 18, 1960, or better than 6 years. If section 3 had been in effect

during this period, we would have been denied the right to have collected the increased costs filed for in the cases listed below docket G–5475. This would have been the result. For example, for the 12-month period ended March 1960 we would have failed to recover during those 12 months over $8 million of out-of-pocket expenses. This would have meant that we could not have met the interest on our bonds. In addition, we would have lacked something better than $6 million for operating costs such as labor, materials, gas purchased, and so forth.

Senator ENGLE. Mr. Partridge, let me interrupt for a question.

Section 3 of the bill has a proviso in it that says—

that nothing in this amendment shall be construed as limiting the authority of the Commission to put into effect or to permit to go into effect, in whole or in part, any proposed change deemed necessary by the Commission.

Mr. Kuykendall, when he was here, suggested that we add the words, "appropriate and necessary." With that proviso in the bill, if it is enacted into law, you would have been permitted, or could have been permitted, could you not, to have made the increased earnings?

Mr. PARTRIDGE. That is possible, but we don't know, and I don't think we ever would know. And certainly I think one thing that is very significant about this proviso is that it is just going to further regulatory delay, because every intervenor and protestor will do everything that he can to force the Commission to hear their side and to try to get the Commission to delay a decision on whether to allow filing or not.

Senator ENGLE. You are a producer?

Mr. PARTRIDGE. Yes.

Senator ENGLE. You are not in the pipeline business?

Mr. PARTRIDGE. Yes, we are. We are in all phases of the natural gas business.

Senator ENGLE. In other words, you have pipelines as well as wells?

Mr. PARTRIDGE. Yes.

Senator ENGLE. Do you discern some difference in the application of this proposed amendment to pipelines and to producers?

Mr. PARTRIDGE. No, sir.

Senator ENGLE. Do you think it operates with equal inequity upon both the producer and the pipeline?

Mr. PARTRIDGE. Yes.

Senator ENGLE. I got the impression from Mr. Orn, who testified here the other day, that there was a distinction in the way this bill would apply to producers and to the pipelines. Was I mistaken about that? Do you recall his testimony?

Mr. PARTRIDGE. No, sir; I do not.

Senator ENGLE. Go ahead with your statement.

Mr. PARTRIDGE. I would like to give you one more example on tabulation 1. For the period 1955 through 1960, again if section 3 had been enacted, in effect, during this period, United Fuel would have lacked net revenues of $57 million. During this same period United Fuel spent $83 million on additional plant necessary to meet demands for service. And certainly we could not have spent this $83 million if we had lacked $57 million of revenues.

This tabulation is just one example, and similar situations would apply to our other companies.

One sidelight on that lacking $57 million of revenue, and that is that the Federal Government would not have received some $15 million of Federal income taxes which they received from this company during that period.

Gentlemen, that is why, if section 3 is enacted we would not be able to render proper service.

While I am on tabulation 1, I would appreciate your looking at columns 10 and 11. Column 10 is the annual amount of increase requested; column 11 is the annual amount finally received. You will note that of the six cases that have been finalized, listed on this tabulation, in four of them we received the entire amount applied for. And the total of these six cases, we applied for $38,600,000; we received $35,400,000. The amount disallowed was less than 10 percent.

I would like to make two observations about this. One, it indicates that the need for these increases was real; two, it indicates the 10 percent disallowance, instead of the 40 percent disallowance which the proponents of this bill have made several statements about. Our prepared statement goes into quite some detail on the inaccuracies of this 40-percent figure. It is definitely overstated, and I hope that you will take a look at our prepared statement on that.

Senator ENGLE. Would you summarize the reasons for saying the 40-percent figure is overstated? That figure came out in the report prepared by the Federal Power Commission.

Mr. PARTRIDGE. That is correct sir. The figures that appear in that tabulation mathematically are correct. And the 40 percent is arrived at by merely adding a couple of columns of those figures in that report and then getting the percentage. But for example the tabulation puts a total of 142 cases—this is page 15 of my prepared statement—of which 40 are shown as never having been placed into effect subject to refund. But the totals used in computing the percentage of amounts found excessive include these 40 cases.

Here are 40 cases where not one penny was collected from customers, and yet this is included as a part of this 40 percent figure.

Senator ENGLE. How did that happen? How would they get 40 cases in there that were never in effect subject to refund?

Mr. PARTRIDGE. Again, that is the difficulty with this tabulation. This is just a compilation of cases filed before the Federal Power Commission. And to get accurately the 40-percent figure you would have to go to each individual case and see actually what happened to that particular case, as to what amounts were collected, and then finally what portion of that was disallowed.

This is just a tabulation of all the cases that were filed before the Federal Power Commission during this period. And that is why that tabulation is inaccurate. I only wish that we had the time to properly analyze it and give you the correct figure. Of course that is a major job because you are going to have to go through that case by case. And I am in hopes that somewhere along the line we can find the time to do that and to give you the correct figure. But it is a major job, and I am not sure that it can be done.

Senator ENGLE. One other thing intrigues me about this tabulation 1. I observe that the first application was filed in 1954, in May, and the second one in December 1954. The first case was decided within approximately 2 years, in 1956, and all other cases, commencing with

the one filed in December 1954, were decided very close together, and four of them on the same date, September 15, 1960. In other words, they apparently decided the case G–18420, filed on April 10, 1959, within a little over a year, whereas they had these other cases pending since 1957.

Do I assume that when they get into the rate cases they take the whole ball of wax and after the first one the rest are pretty easy to work through. Is that correct?

Mr. PARTRIDGE. Yes, substantially that is correct, because what you have is, once having filed a case, and then having to file another case, when that second case becomes effective then you have what we call a locked-in period for the first case. In other words, the rates, figures and so forth, are frozen for that particular period.

What actually happened on these four dockets that you mentioned was that they were consolidated for settlement purposes. These cases were never heard. But because of carrying these terrific contingent earnings with its resulting disastrous effects on our ability to finance, we went to the Commission and urged them to let us try to get our customers together, and the Commission staff, and see if we could settle these cases.

So we were all consolidated and we went through the whole ball of wax, as you said, and settled them. That is why they were all settled as of this one date.

Senator ENGLE. Were these all cases that were producer cases, or were they pipeline cases, or were they a mixture?

Mr. PARTRIDGE. They were a mixture.

I would say the primary increases in these cases were increased gas purchase costs, of gas being purchased from the Southwest. But there were other things in there, such as increased labor, materials, and so forth.

Senator ENGLE. This was, in effect, a summary hearing, was it not?

Mr. PARTRIDGE. What, sir?

Senator ENGLE. A summary action by the Commission. You say they were never really heard, they were brought up——

Mr. PARTRIDGE. Yes, sir, but I wouldn't call it a summary hearing. These resulted from days and days of conferences of all the customers, intervenors, and so forth, involved, and the Federal Power Commission staff. And of course the staff had their auditors in these particular cases, and their figures. And then, after all that, a settlement agreement is drawn saying that all the parties who participated agree to thus and so in connection with these. That is then submitted to the Commission for their final approval.

But even though it was not a formal hearing, what went on pretty much was a hearing.

Senator ENGLE. You may recall the question that was raised with reference to section 3, and the proviso in section 3 particularly, as to whether or not a full-fledged rate case would have to occur under the proviso of section 3 of the bill. The contention was made that in the absence of such a full-fledged hearing and rate case, the applicant would not be given the benefit of due process. You raised some questions about that.

My question was whether or not the Commission could not act under the proviso, in a summary fashion, without a full-fledged rate case and still comply with the requirement of due process.

You made the observation at the time that if the applicant got what he wanted he wouldn't raise the question of due process. But if he didn't get what he wanted, he would conclude he didn't have due process and probably the court would have to test whether or not due process in fact occurred.

I observe on your application filed in February 1957, that the requested increase was cut about $1,700,000. You nevertheless went on with it; is that right?

Mr. PARTRIDGE. That is one of the disastrous results of having to settle these cases. I sincerely believe that if we had gone to hearing on these cases, that we wouldn't have lost that $1,700,000.

That is the trouble, when you are forced into this sort of thing by this regulatory delay, when you are forced into it because of its effect on your financing, then you have to give up some of your hard-earned money. We just couldn't afford to go through a long-drawn-out hearing. The Commission wouldn't even tell us when they could set the things down for hearing.

Senator ENGLE. Of course, you could continue to collect the rates, because they weren't involved.

Mr. PARTRIDGE. Yes, sir.

Senator ENGLE. What difference does it make whether you ever had a hearing, provided you are on sound ground?

Mr. PARTRIDGE. Because all of these increases requested, shown under column 10, we have to carry on our books as contingent on the earnings resulting from these increases, even though we know, though our experience shows, that we get 90 percent or better of these increases, we have to carry the entire amount as contingent.

In our indenture we have a provision that says that our earnings have to be two and a half times our bond interest. That is firm. So that these contingent amounts that the Commission has not acted upon cannot be included in that. And that resulted in 1959, for example, when we went to the Commission on several of these cases, and told them we had to sell some bonds in the fall, and we urged them to try to give us a decision on these cases so that we could firm up at least a portion of these earnings, and he didn't do it. That made us go to other means of financing that we had to pay through the nose for.

Senator ENGLE. Proceed with your statement.

Mr. PARTRIDGE. I would like to say that I read a good portion of the record of the first day's proceedings before this committee and I want to say that I was, I might say, shocked, or even startled by the fact that the proponents of this bill, insofar as I could see, did not once mention in any way what the effect of this bill would be on the industry. I can't understand why the gentlemen with the regulatory experience that the people who were testifying have evidently could ignore the fact that in order to provide proper service to the consuming public you are going to have to have financially healthy utilities.

The proponents indicate that S. 666 will lessen delay. I can find no place in their testimony anywhere where section 3 of S. 666 attacks the fundamental causes of delay. That is what we have got to do.

We can go into detail in our prepared statement. But those fundamental causes are: (1) the tremendous workload that has been thrust upon the Commission due to the great expansion in demand for gas; (2) inflation; and (3) regulation of the producer.

Gentlemen, I am sure we would all be much better off if we would direct our attention toward these causes of delay, rather than legislation being proposed here which is simply penalizing industry and the consumer because of the breakdown and the delay of the regulatory process.

Senator ENGLE. I raised the point the other day that it looked to me like the present setup had a built-in compulsion on pipeline companies to file reoccuring applicatoins. I made the statement that if I were running one of those outfits, and with the limited knowledge that I have, and from where I sit, I would file a new application every 6 months and 5 minutes. The last witness on the stand at the last hearing said that was exactly right, that just as soon as he got one application put together they had another one ready to go at the end of the 6 months' period. It seems to me that where you have a situation in the law or in the regulations that just automatically as a pro forma matter compels the industry to file, as I say, an application every 6 months and 5 minutes, because that is the limitation, that we have created a situation in which we are bound to snow this Commission under.

Do you have any comment on that? Perhaps you didn't hear that testimony the other day.

Mr. PARTRIDGE. No, I didn't hear it. I don't know what that particular gentleman's situation is, but that is certainly not our situation.

Senator ENGLE. He said that is exactly what he did. He said we get one application going and as soon as we get it finished—the witness was Mr. Ed Parkes, president of the United Gas Corp., Shreveport, La.—he said that is precisely correct, that they just keep a stream of them coming. It is perfectly obvious that if you have that kind of situation in your regulatory law, there is no conceivable way to get this Commission out from under the deluge of applications that are pending and will continue to pend. This is the thing that intrigues me about this situation. I think that we have a regulatory situation in which we simply compel these pipeline operators as a matter of self-protection to file a new application every 6 months and 5 minutes.

You tell me how to get around that.

Mr. PARTRIDGE. All I know is that our companies cannot and do not file until we have to file for increased costs, which we must recover. In the first place, you have to supply voluminous data with each filing in order to justify whether or not the Commission will allow the filing. I don't know whether or not they will allow the increase or anything like that, but just to justify the filing. Of course if our costs keep going up to the point where we have to file one on top of another we will do it. But the only time we ever file a rate increase is to recoup increased costs which we can justify.

I don't understand you about something being built in there. I think the law is very clear on that.

Senator ENGLE. I suggest that you read the testimony of this fellow Parkes.

Mr. PARTRIDGE. I will be glad to.

Senator ENGLE. He is the first one who came along and said, "I guessed right" and therefore I was very pleased, and remembered it.

Mr. PARTRIDGE. Incidentally, I would like to commend to you the

report of the Special Committee of Executives on Regulatory Affairs, which Mr. Parkes filed as a part of his prepared statement. I believe there is a good, practical sound approach toward lessening regulatory delay.

One thing I would like to say is that contrary to popular belief, we are extremely aware of the necessity for holding our rates down as low as possible; if for no other reason than to meet this vigorous competition that we face from the electric, oil, and coal industry.

Gentlemen, we have a real problem there, and I say to you that this common conception that utilities just file for rate increases is wrong, because we are very aware of this competition, and realize that we are going to have to do something about it.

Senator SCOTT. Mr. Chairman, may I ask a question?

Senator MONRONEY (presiding). Yes, sir.

Senator SCOTT. I have been looking at the tabulations of the United Fuel Gas Co. on the FPC rate cases from 1954. On that tabulation, in reading the groups of cases that were filed from the 13th of February, 1957, until the 10th of April, 1959, I notice that the FPC did not issue an order until September 15, 1960. So that from the time the first rate case was filed there was about a 3-year delay; is that right?

Mr. PARTRIDGE. Yes, sir.

Senator SCOTT. The argument I gather here is that you file claims and they are often disallowed, and claims are continually filed which don't have merit. Yet, as I read this whole list of claims, I notice that although it took 3 years to act on some of them, that in most of the claims for rate increases you got what you asked for, sometimes the exact amount you asked for; in fact what you got here, you asked for $10,965,600, and you got $9,212,000. Then you asked for $1,296,700, and that is what the company got. The next one you asked for $6,629,300, and that is what you got. Next you asked for $4,271,300, and that is what you got.

So in three out of the four cases, notwithstanding the long delay, up to 3 years, you were allowed what you asked for. In the other one there was only $1.7 million disallowed.

So that these cases, notwithstanding the long time that they were held up by examiners in the field, for the most part they were found to be proper and reasonable requests, were they not?

Mr. PARTRIDGE. Yes, sir.

Senator SCOTT. If section 3 of the bill were in effect—I am not always happy that they are proper and reasonable, I may add, because I am a consumer and it costs me, and I hate to see the price go up.

Mr. PARTRIDGE. We are not happy about it either.

Senator SCOTT. I don't like it, but everything else goes up, too, and your applications are carefully examined to make sure that you aren't running ahead of the ordinary rise in the cost of living; is that right?

Mr. PARTRIDGE. Yes, sir.

Senator SCOTT. That is in keeping with the character of service and the cost to you. These things are among the elements considered.

If section 3 of the bill was in effect at the time of the initial filing, docket G–12195, on February 13, 1957, could you estimate what the loss in revenues would have been to your company, that is, that you couldn't have any increases until the FPC acted? What would that have cost you?

Mr. PARTRIDGE. I gave that a little bit earlier, sir, when you weren't here.

Senator SCOTT. I am sorry. I was in executive session.

Mr. PARTRIDGE. For the period 1955 through 1960, if section 3 had been in effect, this one company—and this is just one example, and the same would apply similarly to our other companies—would have lacked net revenues of $57 million.

Senator SCOTT. Were these revenues used as a part of your corporate profit, or were they used as operating expenses, or what capacity?

Mr. PARTRIDGE. They were just revenues that we would lack to meet our costs of doing business.

Senator SCOTT. Does that mean that you used them to expand your services? Is that a part of the use?

Mr. PARTRIDGE. Very little. We have to finance for the major portion of our expenditure.

Senator SCOTT. What would be the effect of section 3 on your being able to give expanded services, then, if any?

Mr. PARTRIDGE. I think it would stop it entirely.

Senator SCOTT. Why would it stop it?

Mr. PARTRIDGE. Because we wouldn't be able to finance.

Senator SCOTT. In other words this gives you the basis on which you establish your financing?

Mr. PARTRIDGE. Yes, sir.

Senator SCOTT. And with the increasing number of customers you are expected to extend your services?

Mr. PARTRIDGE. Yes, sir, and right there I would like to say that despite our increasing costs, and so forth, which you mentioned, from 1950 through 1960 our system has grown from 500,000 space-heating customers to about 1,200,000; or an increase of about 128 percent. In your own State I believe that figure was 150 percent increase, in Pennsylvania.

Senator SCOTT. So that if you could not increase your rates until after somebody chose to act 2 or 3 years later, you would be unable to give the service to all these additional customers because you would be deprived of the revenue involved in furnishing the service; is that a fair statement?

Mr. PARTRIDGE. That is exactly correct.

Senator SCOTT. Thank you very much.

Senator MONRONEY. Could I ask you, sir, in these cases, that were decided, on consolidation, in which the four were allowed, were any of those based on the acquisition of new gas sources?

Mr. PARTRIDGE. No, sir.

Senator MONRONEY. These were an escalation or upward movement in the present gas sources that you have? I thought perhaps with new files and new higher priced gas coming in from offshore areas, that perhaps some of these might have been for the higher priced gas that had to be taken into the line to serve these new customers.

Mr. PARTRIDGE. I don't believe so. I believe this was all from contracts that had been in effect before these cases were filed.

Senator MONRONEY. Some of those favored-nations clauses, or did some of these antedate the passage of the Natural Gas Act?

Mr. PARTRIDGE. No, I think they are principally fixed escalation.

Senator MONRONEY. Fixed escalation?

Mr. PARTRIDGE. That is with regard to our own supply. I believe in the case of our major supplier, Tennessee Gas Transmission, that there are probably some favored-nations involved there.

Senator MONRONEY. You buy a good bit of your gas from Tennessee?

Mr. PARTRIDGE. Yes, sir.

Senator MONRONEY. So you are the second purchaser. You have it delivered to the south end of your line from Tennessee and whatever Tennessee has to pay for its sources, then you have to pay them for whatever escalation they have suffered?

Mr. PARTRIDGE. That is correct.

Senator MONRONEY. And Tennessee probably has another case in there to raise its rates, and then when its rates are raised you have to follow that. So actually we are talking about one price raise that may have generated four or five requests for increases, all on the one basic rate?

Mr. PARTRIDGE. Very definitely. In other words, when Tennessee suppliers increase their rates to Tennessee, Tennessee as quickly as possible has to attempt to recover that from us. We have to attempt to recover that from our customers, and some of them have to recover from their customers. It just touches off a chain reaction, and you have to act as promptly as you can.

Senator MONRONEY. It doesn't mean that the gas consumer is paying five different raises, but maybe five interconnected pipelines have to ask for increases. If the source pipeline asks for an increase, and gets it, then all the others connected with it have to ask for the increase to pass along without perhaps any increment in their cost of the gas. This one raise to the consumers can sometimes look like four or five different raises when it is actually only one.

Mr. PARTRIDGE. That is very true, sir, and that is another place in which in PFC tabulation from which the 40 percent figure was taken is distorted.

Senator MONRONEY. In other words if all the lines connected were one corporation, there would be only one rate increase?

Mr. PARTRIDGE. Yes, sir.

Senator MONRONEY. If you have five that are interconnected, then on one rate increase there come five cases and five so-called raises, but actually it is just the original raise being extended to all the interconnected lines?

Mr. PARTRIDGE. That is right, and the consumer only pays the one.

Senator MONRONEY. That is the point I was trying to make, that he gets the original raise, and there were not five raises to him.

Mr. PARTRIDGE. That is right, sir.

Senator MONRONEY. Thank you.

Senator Schoeppel?

Senator SCHOEPPEL. Mr. Chairman, I am glad to hear you bring this out again, but in my mail I have received letters to the effect why should a customer be required to pay four or five of these raises as reported in the press. Unfortunately that is an erroneous picture that these well-meaning people have gotten, and a lot of people really think that. Those are things that ought to be brought out.

Mr. Partridge, I am sorry we were in executive session on other matters and were unable to be here during the beginning of your testimony. You may have covered some of these things, and if you have be frank to say so. I note that the Federal Power Commission

has endorsed section 3 of the bill, but has suggested that it should be limited to pipelines and not applied to independent producers. What do you think of this suggestion?

Mr. PARTRIDGE. That has been covered, sir. Do you want me to go into it again?

I can't see why it should be limited to pipelines alone because it isn't going to do the producer any good if the pipelines are too broke to buy gas from the producers.

Senator SCHOEPPEL. I understand that your companies distribute gas directly to consumers in a good many States?

Mr. PARTRIDGE. Seven States.

Senator SCHOEPPEL. It has been intimated that the amounts collected from the ultimate consumers are not refunded to them when the Federal Power Commission orders refunds. What has been the experience of your company in making these refunds?

Mr. PARTRIDGE. Every one of our seven States has very rigid rules that we must pass along any refunds that we receive, plus the interest, to the ultimate consumer. And we have done that.

I can't imagine any State where that wouldn't be a requirement. I just can't conceive of how these refunds do not get back to the ultimate consumer.

Senator SCHOEPPEL. I wanted your experience in the record because there have been intimations that those refunds haven't always been returned. I can see some very legitimated reasons for difficulty in doing this, with the transient population in the United States, and the problem of finding the individual entitled to the refund. But as you indicated, a vigorous effort is being made to find that customer and to see that he gets that refund.

Mr. PARTRIDGE. That is correct.

Senator SCHOEPPEL. I think you have covered one question that I had in mind on section 3 if it was enacted, how it would benefit the ultimate consumer of gas. I think Senator Scott covered that.

Mr. PARTRIDGE. Yes, sir.

Senator SCHOEPPEL. I understand that one or another of your companies sells gas in the great Keystone State of Pennsylvania?

Mr. PARTRIDGE. Yes, sir.

Senator SCHOEPPEL. Mr. Sharfsin, who is the chairman of the Pennsylvania Commission, through a statement which has been filed and inserted in the record here, has suggested that if section 3 of this bill had been in effect, the consumers of Pennsylvania would have saved $34.5 million since 1957.

What is your comment on that?

Mr. PARTRIDGE. I don't understand the chairman's statement because he is referring to again the total amount of increases that were filed for. I think that where the chairman is missing the point is that if that $34.5 million of rate increases—that doesn't all apply to our company, but certainly the portion that applies to our company, if we had not received that, the people in Pennsylvania would not be getting the service that they have demanded from us.

Senator SCHOEPPEL. And many of them probably wouldn't have been connected as gas customers.

Mr. PARTRIDGE. That is correct, sir; as I told Senator Scott. We just wouldn't be able to take care of this demand for gas if we were denied the right to recover these costs.

Senator SCHOEPPEL. You have been experienced in this business; you have been operating for a long while. Generally speaking would not that condition prevail with a lot of gas companies?

Mr. PARTRIDGE. It would have to prevail. There isn't anything they could do about it. How could they possibly stay in the business in which they are losing money? It couldn't be otherwise.

Senator SCHOEPPEL. Some testimony we have received here has been pretty positive, to the effect that gas companies have padded these rate increase requests with the Federal Power Commission by an average of 40 percent. I want to get this in the record again. Your testimony here is exactly the opposite. And you have offered proof. So that the record will be entirely clear on this point I want to ask you to summarize, and unless your summary on the distinguished Senator from Oklahoma covered the point. Do you have anything to add to the discussion of the 40-percent figure?

Mr. PARTRIDGE. No, sir, I think I pretty well covered that. But it is an error. There is just no question about it.

Senator SCHOEPPEL. In your judgment what would be the minimum information that the Federal Power Commission could receive in order to have a sound basis for deciding whether to invoke the "necessary" proviso in section 3?

Mr. PARTRIDGE. Minimum information?

Senator SCHOEPPEL. Yes. What would be in your judgment the minimum information that the Federal Power Commission could receive in order to have a sound basis for deciding whether to invoke the "necessary" proviso in section 3?

Mr. PARTRIDGE. I don't know what the minimum would be, but here is an example of what they require right now [indicating]. This is the data that must accompany a filing so that the Commission can decide whether or not to accept the filing; not to judge the merits of the case, but whether or not the filing is justified.

How much of this could be eliminated I don't know.

Senator SCHOEPPEL. Then your judgment for your company, on one application that you might make, would be that you would consider what would be the minimum that you wanted to submit to the Commission at the time you filed, is that right?

Mr. PARTRIDGE. Well, as a practical matter, I think a lot of this could be eliminated and still they could get what they wanted. The point I want to make is that if the Commission properly studies this, and the other data which we have to report to them periodically, they could certainly tell whether or not an application is padded.

Senator SCHOEPPEL. Let me ask you another question, and I know the time is short here and other witnesses want to be heard. What has been your experience when you file a rate application, with reference to the parties who intervene? Has that caused an inordinate amount of delay a lot of times?

Mr. PARTRIDGE. Yes, sir. That is one of their prime tactics, is to delay.

And certainly if this proviso, if section 3, with the proviso, goes in, that would just open up an unlimited new field for those fellows who employ their delay and harassing tactics.

Senator SCHOEPPEL. It was mentioned here by one of the witnesses that some of the intervenors just run stock objections or interventions, that are maybe four or five or six times removed from the increase

in a practical way. Of course they have a right to intervene, obviously. But the attendant delays that followed were rather time consuming and delayed the entire application for a good many months. Has that been your experience?

Mr. PARTRIDGE. Very definitely. That is one of the prime causes for delay. This report of the American Gas Association, which Mr. Parkes filed with his statement, goes into that quite extensively.

Senator SCHOEPPEL. Thank you, Mr Chairman.

Senator ENGLE (presiding). Thank you, Mr. Partridge, for that very fine statement.

Mr. PARTRIDGE. Thank you, gentlemen.

Senator ENGLE. The next witness is Mr. N. Knowles Davis, vice president, Tennessee Gas Transmission Co.

Mr. Davis, we are very glad to have you here. I observe that you have a statement of some length. Without objection the statement will be made a part of the record.

In the time available, if you can go ahead and summarize it, we would very much appreciate it.

STATEMENT OF N. KNOWLES DAVIS, VICE PRESIDENT, TENNESSEE GAS TRANSMISSION CO., WASHINGTON, D.C.

(The prepared statement of Mr. Davis follows:)

My name is N. Knowles Davis. I am vice president and head of the rate department of Tennessee Gas Transmission Co., Houston, Tex. I appreciate the opportunity you have granted me to appear before your committee and explain the hardships that would face Tennessee Gas and the natural gas pipeline industry as a whole if the proposed Senate bill S. 666 were enacted into law in its present form.

Tennessee Gas Transmission Co. operates a natural gas transmission system beginning at the Mexican border, serving markets in Louisiana, Mississippi, Tennessee, Kentucky, West Virginia, Ohio, Pennsylvania, New York, New Jersey, and New England.

I have been associated with Tennessee Gas for 5 years, and prior thereto I was chief engineer of the Georgia Public Service Commission for over 20 years. As you probably know, the Georgia commission is the utility regulatory body of that State, and occupies a comparable position to the Federal Power Commission insofar as rate regulation is concerned.

As chief engineer I was in charge of the utility division of the commission's staff, which was responsible for recommendations to the Commission on all utility rate case matters.

During my period of service with the Georgia commission, I was an active participant on numerous committees of the National Association of Railroad and Utilities Commissioners, which committees were concerned with regulatory principles related to accounting, depreciation, and cost allocation.

The NARUC, as it is generally referred to, is the national organization of all regulatory commissions, including the Federal Power Commission. With this background, I feel that I can speak not only from the industry viewpoint, but with a realistic understanding of the views and the problems of the State commissions, some of whom are endorsing this bill and recommending its passage.

S. 666 proposes five individual amendments to the Natural Gas Act. My discussion will be limited to one of these proposed amendments, which, if adopted, would create an undue hardship on Tennessee Gas. The item of which I refer is section 3 of the bill proposing an amendment to section 4(e) of the Natural Gas Act which would prohibit a pipeline company from obtaining rate relief if at the time of the needed relief an undecided case was pending before the Commission.

This provision, if enacted into law, would create a very serious situation for natural gas pipelines, particularly those such as Tennessee Gas, which purchase practically all of their natural gas requirements from others. Due to the extended delays in the trial and disposition of rate cases before the Federal Power

Commission the proposed amendment to section 4(e) would likely prohibit the filing of a subsequent rate increase over a period of years.

The proposed amendment is intended to reduce the backlog of rate cases pending before the Federal Power Commission and also to put a brake on rate increases. Everyone would wholeheartedly support any measure or procedural changes which would speed up the regulatory process.

In fact, the uncertainty resulting from delays is detrimental to the industry as well as the public. The backlog of undecided pipeline and independent producer rate cases before the Federal Power Commission is the outgrowth of the *Phillips* decision of the Supreme Court several years ago. That decision resulted in literally thousands of producer rate cases in a field which had not been regulated theretofore and, therefore, one in which there were no rules, regulations, or guiding principles. It should be noted that these thousands of producer rate cases have a direct bearing on the pipeline rate cases, most of which have been necessitated by producer rate filings.

Instead of dealing with the problem directly, that is, by going to the basic causes, the remedy proposed is a substantive one rather than a procedural one which could cause great hardship to natural gas pipeline companies. Its chief fault is that it completely ignores just and reasonable rates, and therefore, fair and equitable results. It may take the Commission 5 years to conclude a rate filing and under the proposal, during this time the pipeline properties could be confiscated without recourse. In fact, the greater the delay by the Commission, the greater the confiscation, through no fault whatsoever of the company. This hardly accords with our American concept of fair play, and due process.

Let me illustrate the problem. In January 1957 Tennessee found it necessary to file a rate increase due to increases in the cost of operation. The trial of this rate filing is still in process today, and in fact, has not yet reached the cross-examination stage of the cost of service as developed by Commission staff witnesses. Accordingly, another year or more will elapse before a final decision by the Commission is reached in this case.

On or about October 1, 1958, while the above case was pending, some 25 independent producers located in southwest Louisiana made rate filings with the Federal Power Commission increasing rates for gas sold to Tennessee. These rate increases were suspended by the Federal Power Commission, but became effective 6 months later, subject to refund of the amount thereof which the Commission should find not to be justified, together with interest on the amount refunded. This refund provision in the Natural Gas Act adequately protects the ultimate consumer, in my opinion.

Another price increase on gas sold to Tennessee was filed with the Federal Power Commission on or about December 1, 1958, by some 150 independent gas producers located in Texas Railroad Commission Districts 2 and 3. These filings were likewise suspended by the Commission, but later became effective, subject to the same guarantees of refund with interest I have described. The total increase in cost of gas from both the October and December filings by independent producers was about $20 million per annum.

Significantly, these independent producers would have been entitled to file these separate rate increases even though the presently proposed amendment to the Natural Gas Act had then been in effect. The provisions of S. 666 would allow such filings. Tennessee, however, under the proposed amendment would have been precluded from recouping any of this increase in cost of gas purchased for our customers, aggregating some $20 million a year.

On or about October 1, 1959, an entirely different group of about 200 independent producers from whom Tennessee purchases gas filed increased rates with the Federal Power Commission for gas sold to Tennessee in southeast Louisiana and Texas Railroad Commission Districts 1, 4 and 6. These also were suspended by the Commission, but became effective 6 months later, subject again to the same guarantee of refund with interest.

While there are some instances where the same producer sells gas to Tennessee in different areas, who would be precluded from making a second rate filing under the terms of the proposed amendment, the vast majority of the gas purchased in these various districts is from completely different groups of producers.

The total increase in cost of gas to Tennessee from this third group of filings by independent producers amounted to approximately $15 million a year.

Under the proposed amendment, these producers also would have been entitled to file the rate increases with the Federal Power Commission since most of them were not involved in the earlier filings.

Again, Tennessee would have been unable to recoup this additional $15 million per annum of additional cost of purchased gas, if the above amendment had then been effective. In other words, beginning in early 1959 and to a greater extent in 1960, Tennessee would be required to pay from $20 to $35 million a year to increased cost of gas, but would be denied any relief for years under the provision of this bill. Obviously, such a situation could spell serious financial difficulty. To me it would amount to confiscation.

Another situation relates to new service or increased service. There are instances in which large additions to, or extensions of pipelines can be made only at increased cost. These extensions may go into service while a rate increase is pending, but it would be necessary to file for another increase in order to save the company whole. Where substantial extensions of, or additions to, facilities are made at the request of customers and where the increase in service involves substantially increased costs, it would result in such service either being rendered at inadequate rates and at an inadequate return because the company had another rate case pending before the Commission, or more likely, it would delay materially the increase in service proposed to the detriment of the public interest.

There are innumerable out-of-pocket increases in the cost of service which occur from time to time. Some of these, if not too large, might be absorbed without a rate increase, but there are others which either by themselves, or which cumulatively, are so large as to require rate relief.

I have in mind such items as a tax increase on gas purchases such as the Governor of Texas has advocated to the current session of the legislature, an increase in tax rates, or a general wage increase to all company employees. If the proposed amendment restricting rate filings were effective, such wage increases might have to be delayed materially due to the delay in obtaining rate relief when needed. Items such as these require an out-of-pocket expenditure which, under the proposed amendment, could not even be the subject of a rate proceeding until the last case before the Commission was finally concluded.

As a matter of fact, the increase in cost of gas which is purchased from independent producers for delivery to our customers has the same effect on Tennessee as an increase in our rates has on the distribution companies to whom we sell the gas. I am sure the State commissions who are recommending the proposed amendments to the Natural Gas Act would not insist that distribution companies, subject to their regulation, be penalized by some provision of law which would prohibit them from obtaining rate relief which was made necessary by an increase in the cost of their gas supply, or increases in other costs over which they have no control. Yet that is precisely what would happen to Tennessee and other natural gas pipeline companies under the circumstances I have outlined, if the proposed amendment were enacted into law.

As in the case of distributing companies, Tennessee has found it necessary to obtain rate relief to offset increases in the cost of gas. This cost alone has increased about 12 cents per thousand cubic feet over the last 10-year period and represents 75 percent of the total of the increases in rates which have been made effective by Tennessee over this period. When combined with increases in wages the added cost becomes 13.4 cents per thousand cubic feet, or about 84 percent of Tennessee's rate increases in this period.

Substantially all of the remainder of the rate increases is represented by revising our depreciation charge to conform more closely to the deductions generally allowed the pipeline industry for both corporate and income tax purposes.

The three items described above aggregate 15.2 cents per thousand cubic feet which is 95 percent of the total rate increases. The other 5 percent is represented by a number of miscellaneous increased costs which Tennessee has experienced.

Thus, the entire amount of increases in Tennessee's rates has been due to actual increased costs of operation, particularly higher costs for gas purchased and higher wages paid to employees.

It is assumed that the sponsors of S. 666 believe by prohibiting the filing of an increase in rates while one increase is pending before the Commission, that the only person to be adversely affected would be the seller at the source; namely, the independent producer and in that event, speedy consideration of the producer's rate filing would probably solve many of the rate increase difficulties.

This would be true if each pipeline company purchased from a single producer. But instead of one producer selling to a pipeline company, there are literally hundreds of producers who sell to each company transporting gas in interstate commerce.

Under the proposed amendment, each producer could file one increase in rates but could not file another until the first had been determined. It is manifest, however, under the amendment, that if a pipeline were to file to recoup an increase of the first producer or group of producers, it would be prohibited from filing for increases by the many other producers from whom it purchases gas. Under these circumstances, the pipeline company could soon get into serious financial difficulty. The financial problem could be a most serious one, not only for an individual company, but for the entire pipeline industry.

Thus, if Tennessee were required to pay increased costs of over $35 million a year for several years with no recoupment, and no possibility of recoupment, this would be a serious financial blow to Tennessee. It would deny to Tennessee, and other pipeline companies, what heretofore have been considered their basic rights; namely, the right of the opportunity to earn a fair return. It must be obvious to any person familiar with the problem that the failure of a large pipeline company to earn a fair return for several years would not only be a hardship to the company and its stockholders, but could be a very great hardship to its customers as well because of the inability during this time to make the desirable extensions and improvements to its service.

Such a provision could have a deleterious effect upon our national economy. Today the national administration is striving to increase business activity, to achieve fuller employment, and to add to our gross national product. Rather drastic tax changes have been suggested in order to stimulate business activity.

The denial of a fair return to the natural gas pipeline industry, which is a most important segment of the American industrial enterprise, would constitute a movement in the very opposite direction to that designed to stimulate business activity. Considerations of national economy would seem to make the proposed amendment an unwise piece of legislation.

The proviso at the end of section 3 states, "*Provided, however*, That nothing in this amendment shall be construed as limiting the authority of the Commission to put into effect or to permit to go into effect, in whole or in part, any proposed change deemed necessary by the Commission."

It has been argued that this proviso grants the Commission the power to permit a rate filing to go into effect and thereby grant such relief as might be required in those cases where the proposed change is "deemed necessary by the Commission."

While it may have been intended that this proviso would meet the serious problem which section 3 of this bill raises, it does not and will not, in my opinion, accomplish the desired results. The principal difficulty arises from the fact that the proviso establishes no standard by which to measure the necessity for the rate change.

Under the Natural Gas Act a proposed rate change which is filed with the Commission becomes the established rate on 30 days' notice first, if the filing is accepted by the Commission, and second, if it is not suspended and made the subject of a hearing.

I believe it has been the consistent practice of the Commission to suspend all pipeline rate increase filings and make them the subject of investigation.

However, the rules of the Commission governing rate filings are quite meticulous and require the filing of a vast amount of supporting data in justification of the proposed rate increase. If this preliminary showing does not support the level of the rates filed, the filing is subject to rejection by the Commission.

For example, in a rate filing involving an increase in cost of gas to Tennessee we are required to develop the volumes of gas purchased from each of several hundred independent producers, the price in effect prior to the increase filed with the Commission by independent producers, the price level being filed with the Commission by such producers and the effect in dollars on the cost of gas to Tennessee from each of the several hundred producers from whom gas is purchased. Evidence is required as to operating revenues and expenses from all sources and in reality, a complete cost of service to show the Commission not only the amount of the increase in cost of gas, but also its overall effect on the operating costs of the company.

In effect, therefore, the Commission's rules now require pipeline companies to show the justification for all rate increases filed with the Commission by requiring comprehensive cost data before the natural gas company is permitted to make the rates effective, subject to refund. If this is to be the standard by

which the Commission is to judge the necessity for a proposed rate change, then section 3 of the proposed bill will serve no purpose. If, however, it is construed that a final and complete determination, after investigation by the Commission, is required before the Commission may determine the necessity for the proposed rate filing, then, in effect, no such rate changes can be made until after the expiration of several years currently required by the Commission to process a rate case. Under these circumstances section 3 becomes of serious and severe consequence inasmuch as the proviso would offer no relief in the situations which I have outlined above.

I am fully aware that section 5 of S. 666 proposes to amend section 15 of the Natural Gas Act so that it would stipulate that hearings before the Federal Power Commission shall be concluded within 1 year from the date of first hearing thereon, that the initial decision of the presiding examiner shall be made within 6 weeks after the filing of briefs, and that the Commission shall render its decision within 90 days after that initial decision.

In the first place, this proposed schedule does not in reality place any time limit on the regulatory process inasmuch as if the current backlog of cases continues the Commission merely would delay "the date of the first hearing" so that it could process the case within the time limit specified.

In this connection, no hearing has yet been scheduled on a rate filing Tennessee made about 2½ years ago on November 14, 1958. In the second place, no compulsion is placed on the Commission to comply with the proposed schedule. In fact, the framers of this amendment were concerned with the fact that if the Commission should not comply, it might lose jurisdiction of the specific rate filing, so a proviso was added to be sure that this did not happen.

This proviso reads, "*Provided, however*, That the requirements contained in subsection (c), (d), and (e) herein, shall not be construed as jurisdictional."

Under the circumstances, there is nothing in the amendment to section 15 of the Natural Gas Act which would speed up the regulatory process, and thereby clear the Commission's calendar so that a subsequent rate filing could be made by natural gas companies where costs increase and a rate change is necessary.

Your attention is called to the attached chart. This is a reproduction of page XIV of the Statistics of Natural Gas Companies for the year 1959 as published by the Federal Power Commission.[1]

This chart illustrates two significant points. One is that natural gas companies have made very substantial construction expenditures over the past 10 years, increasing the net plant investment from about $1.5 billion to almost $7 billion. Actually the total expenditure was much greater since these figures reflect the deduction of depreciation reserves from the total plant constructed.

Secondly, the chart shows that natural gas companies realized a rather uniform rate of return over the 10-year period. This is shown by the line across the bottom of the chart which is labeled "Gas Operating Income Percent of Average Net Gas Investment."

Regardless of what is said about the extent of rate increases filed by pipeline companies, this chart indicates to me that the increases were necessary to cover increases in cost of gas and other operating costs, and that such rate increases did not result in abnormal rates of return to this group of pipelines.

I sincerely believe that if section 3 of S. 666 is enacted into law it would be a serious blow to the health and well-being of the entire natural gas industry. It would inevitably have the effect of slowing down or eliminating future expansion, because so long as a rate case is pending before the Federal Power Commission there would be a freeze on natural gas rates.

Under these conditions and the resulting loss in earnings, investors would be unwilling to risk additional capital in expansion programs. If we are going to freeze wages, interest rates, steel prices, and all other components of our national economy, then the proposed amendment would be consistent therewith. However, simple fairness, simple equity requires that, if pipeline costs go up, the pipeline should be permitted to recover such costs.

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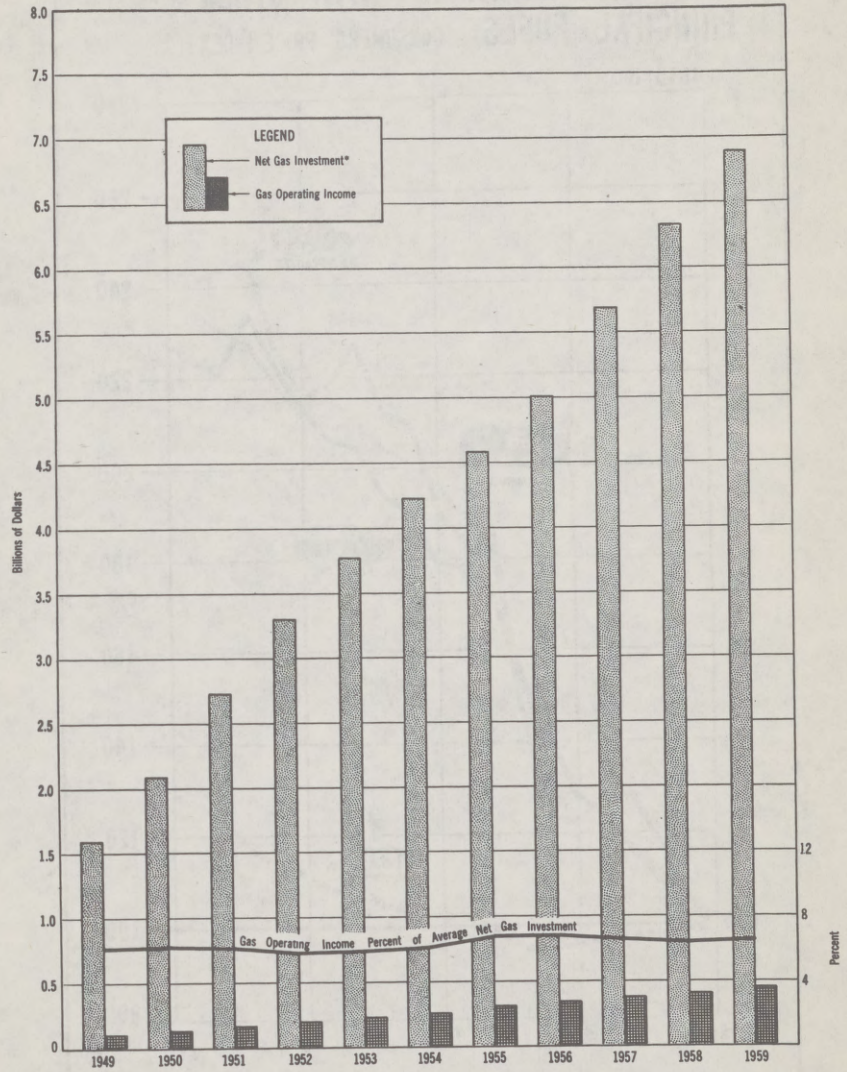
[1] The preface in this publication defines the group of companies included in the data underlying this chart as those "companies having transmission line mileage in excess of 250 miles and sales for resale in excess of 50 percent of total sales. Also included are certain natural gas storage companies which although not meeting the foregoing criteria entirely, have the characteristics of pipeline companies. There were 42 such companies in operation at the end of 1959."

STATISTICS OF NATURAL GAS COMPANIES FOR YEAR ENDED DECEMBER 31, 1959

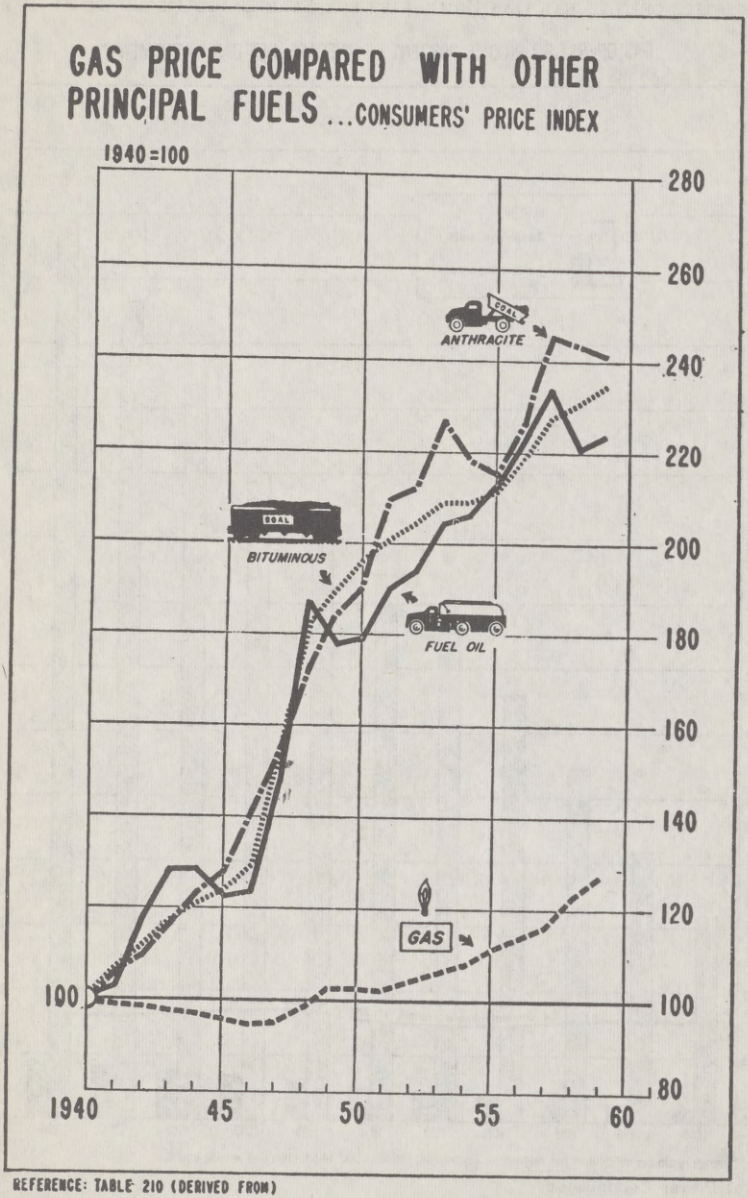
GAS OPERATING INCOME PERCENT OF AVERAGE NET GAS INVESTMENT*



*Average gross gas utility plant less reserves for depreciation, depletion, and amortization plus working capital.

Federal Power Commission

AMERICAN GAS ASSOCIATION PRICES



REFERENCE: TABLE 210 (DERIVED FROM)

Mr. DAVIS. Thank you, sir.

I would like about 15 minutes, if I may, to summarize the statement.

Senator ENGLE. That will be fine.

Mr. DAVIS. As you stated, I am N. Knowles Davis, and I am vice president of Tennessee Gas Transmission Co. I have with me Mr. Charles Webb, who is a technical assistant, and also an employee of the company.

I might mention that I have been with Tennessee Gas approximately 5 years, and that for some 23 years prior to that I was head of the Utility Division of the Georgia Public Service Commission, which commission regulates rates, as you probably know, in Georgia and in very much the same way as the Federal Power Commission regulates natural gas rates.

I am concerned that three implications may have developed which should be cleared up. One is that the FPC does not regulate rates effectively. If anything, the Commission regulates too effectively, in my opinion. They may be slow, but I guarantee you they are sure.

When you have convinced the Commission that a rate is reasonable and just, you have done a real day's work.

Another implication is that natural gas companies may not require the increased rates completely that are filed with the Commission. Let me assure you that such increases are necessary and are required by increased costs, principally increased costs of gas, as I will go into in a minute.

A third implication that may have developed is that the price of natural gas has increased an unreasonable amount. May I call your attention to a chart which has been reproduced and distributed. This chart appears in the publication of the American Gas Association entitled "Gas Facts." The data underlying the chart was compiled by the Bureau of Labor Statistics of the United States Department of Labor. These fuel costs that are shown on this chart are components of the well-known Consumer's Price Index which is often referred to as the cost of living.

It is obvious from this chart that although the retail price of natural gas has increased about 25 percent over the last 20 years, the prices of anthracite and fuel oil have increased from 120 to 140 percent over the same period.

I might also point out that the base year of 1940 which is used on this chart is that year which Mr. Clayton Orn, on Monday, emphasized was one of seriously depressed field prices of gas.

My appearance before your honorable committee today is concerned solely with section 3 of S. 666, which proposes to amend section 4(e) of the Natural Gas Act in a manner which would prohibit a pipeline company from obtaining rate relief if at the time of the relief an undecided rate case was pending before the Federal Power Commission.

Such a provision, if enacted into law, would create a very serious situation for natural gas pipelines, such as Tennessee Gas, which purchase their natural gas requirements from hundreds of separate independent gas producers.

Our two last rate filings were required by increased cost of gas sold to Tennessee.

In 1958 independent producers in southwest Louisiana and Texas Railroad Commissions, Districts 2 and 3, filed increased rates with the Federal Power Commission which were suspended by the Commission but became effective 5 months later, subject to refund, with the customary interest on the refund.

The increasing cost of gas from these filings to Tennessee amounted to something like $20 million a year. Since we had a rate case before the Commission in 1958, which has not yet been decided, we could not then nor could we today file the rate changes to compensate us for this increased cost of gas, had S. 666 then been law.

Again, in the latter part of 1959, an entirely different group of independent producers in southeast Louisiana, and different Railroad Commission Districts in Texas, filed rate increases with the Federal Power Commission. These increases were likewise suspended for the statutory period of 5 months but became effective thereafter, subject to refund with interest.

These rate increase filings by some 200 independent producers made the cost of gas to Tennessee go up about $15 million on an annual basis.

Again, if S. 666 had been in effect, we would have been unable to file a compensating rate increase with the Commission because there was an undecided case before the Commission at that time.

As you see, Tennessee Gas is very much in the same position as a natural gas distributing company with more than one source of gas supply. The bill proposing to restrict rate adjustments whenever an undecided case is pending before the Commission prohibits a purchaser of the gas from obtaining rate relief to cover a rate increase which is filed and which relates to a second or subsequent source of supply; thus after one rate filing had been made to recoup the first increase in cost of gas, a subsequent increase in gas costs from a wholly different source could not be recouped under the philosophy of the proposed bill. I feel sure that the State commissions, many of whom are endorsing this legislation, would not favor legislation in their own jurisdictions which would effectively prohibit a natural gas distributing company from obtaining relief due to a second and consecutive increase in the cost of gas to that company.

A great deal has been said concerning the fact that the so-called proviso in section 3 of the proposed bill will offer the necessary relief under emergency or abnormal conditions. This proviso will not, in my opinion, give the necessary relief which the proponents of this bill seem to indicate that it offers. The Commission now requires a very extensive showing of increased costs in justification of all rate filings made by pipeline companies, and a rate filing is subject to rejection by the Commission if the necessity for the filing is not adequately shown. Consequently, any further requirement before the rates are made effective could only be an investigation by the Commission as is now conducted in the final determination of the reasonableness of rates and which requires such a long time as to offer no relief.

I would like to call your particular attention to the chart which is attached to my statement, which has been distributed. This chart was taken from page 14 of the statistics of natural gas companies for the year 1959 as published by the Federal Power Commission.

A great deal has been said about the filing of rate increases by pipeline companies in dollar amounts substantially in excess of the increased revenue requirements. The chart disproves this contention completely in my opinion.

You will notice a line running along the lower section of the chart which is marked "Gas Operating Income, Percent of Average Net Gas Investment." This is essentially the so-called rate of return. It reflects the ratio of the net revenue of the gas pipeline companies to the total net gas investment, including working capital.

The figures supporting this chart appear elsewhere in the Commission report and show that the overall rate of return for 1959 was 6.5 percent.

Incidentally, the gas operating income included in this rate of return calculation includes the very substantial amounts which the proponents of this bill have stated are being collected subject to refund and to a great extent without justification. In the first place, in my opinion, 6½ percent cannot be said to be an abnormal rate of return in this day of very high interest rates. It follows, therefore, that the increased rates which the pipeline companies have filed have been made necessary by increased costs and do not represent excessive rate filings.

In the second place, if we eliminate from the gas operating income shown on this chart the amounts which the Commission reports show as being collected subject to refund, the rate of return to these pipeline companies would be only 4.7 percent, according to our calculations. I think anyone with an objective viewpoint will agree that this would be a confiscatory rate of return and would result in a cessation of practically all natural gas pipeline construction.

I am not sure whether the proponents of this legislation feel that its purpose is to speed up the regulatory process or whether their position is that it is wrong for a natural gas company to endeavor to obtain rates which will cover its legitimate costs of operation. If the objective is the former, that is, to speed up the regulatory process, I can see nothing in this legislation which will accomplish that objective. In fact, if the Commission had the power to forestall additional rate increase filings by delaying the action on the current case, this proposed bill might even serve to increase the regulatory lag.

On the other hand, if the applicants of this bill claim there is something wrong in a natural gas company seeking to recover its justifiably increased costs of doing business through a rate increase, this bill would not cure it. For on that basis the first increase would be just as wrong as the second, and this bill would only ban the second.

When a rate increase is justified, it is just as much warranted whether or not a prior filing is before the Commission. In fact, the justification for a rate filing cannot be measured by the state of the Commission's calandar when it becomes necessary to make such a filing. Yet this bill, if enacted into law, would do just exactly that.

Senator Engle, you invited the comments at the meeting on Monday pertaining to S. 1946, which had been introduced by Senator Carroll. I would like to say that the remarks which I make apply equally to that bill. In fact, all of the problems which I have discussed and those outlined in my statement would be presented if S. 1946 were enacted.

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Senator ENGLE. You could even be more vehement about it, couldn't you?

Mr. DAVIS. Yes, sir; I think you have stated my position correctly.

Both bills prohibit rate filings becoming effective except as deemed necessary by the Commission and the retroactive feature of S. 1946 can't offer any relief.

I sincerely believe that if section 3 of S. 666 is enacted into law it would be a serious blow to the health and well-being of the entire natural gas industry. And when I say that, I mean the producers, the pipeline companies, and all of the distributing companies. It would inevitably have the effect of slowing down or eliminating future expansion to the detriment of the ultimate consumer for whose benefit S. 666 is intended.

Thank you very much.

I would be happy to answer any questions.

Senator ENGLE. Perhaps you heard the question I asked Mr. Partridge, that it seems to me the present situation has an automatic incentive in it for these companies, in their own interest, and for their own protection, to file a new application every 6 months and 5 minutes.

As I stated, Mr. Parkes, from Shreveport, La., who was on the witness stand, said that is exactly what they do.

It seems to me if that is the case, we have created a situation in which we are bound to bog the Commission down. They are just bound to get a multiplicity of applications.

Do you have any comment as to how we can get around that situation and do equity to the producers and the consumers?

Mr. DAVIS. Yes, sir, I certainly have some comments on that.

I was in the room when that statement was made by Mr. Parkes. I frankly must say I was quite surprised at his statement.

Senator ENGLE. You don't agree with the correctness of it?

Mr. DAVIS. I do not agree with it. It is not the situation as far as Tennessee Gas is concerned. And it raised my curiosity. So since we had a day off yesterday, due to the committee having other business, it gave us an opportunity to go to the Federal Power Commission library and look into the situation.

We went over the past 10 years in the reports of the Commission to Congress and determined the average number of pipeline companies which the Commission regulated in that 10 years, and determined the average number of rate increases which were suspended by the Commission during that 10 years. We found that there were 297 pipeline rate increases over the 10 years, which is an average of 30 rate filings by these pipeline companies a year, which were suspended by the Commission.

During this same period the Federal Power Commission had jurisdiction over an average of 120 pipeline companies. With 30 rate increases a year from 120 companies, it is a simple calculation to see that the average of the group is one rate increase filing, suspended by the Commission, every 4 years for each company.

Senator ENGLE. What about the ones that they didn't suspend? Did you count those?

Mr. DAVIS. The information was not readily available on the number which were not suspended. However, if I may say so, sir, it is most unusual for the Commission not to suspend a major pipeline rate

increase filing. In fact, I don't know of my own knowledge of a major filing which has not been suspended by the Commission for the full statutory period of 5 months beyond the 30 days.

So, while there could be some—and I acknowledge that this does not include them—I can't believe that they would be so sufficient importance to change the overall picture.

I would like to also say that we looked at the calendar year 1960, during which there were 96 companies over which the Commission had jurisdiction, and there were 27 rate increase filings which were suspended by the Commission during the calendar year 1960, which is a frequency of one filing per company for each 3½ years. And that seems to be the record according to the report of the Federal Power Commission for the natural pipeline industry as a whole.

As far as Tennessee Gas is concerned, I am sorry our record is not quite that good. We have been a growing company, probably one of the fastest growing in the industry, which has brought on higher costs of construction than those pipelines have incurred prior to World War II, for example, and higher costs of new gas supply. We have filed seven rate increase applications which have been suspended by the Commission since the company was formed over a period of approximately 16 years. It is an average of approximately one rate increase in a little over 2 years, maybe 2½ years.

Our last filing was made on October 5, 1959, and we have no plans at the moment for making another filing.

Senator ENGLE. Thank you very much.

Senator Schoeppel?

Senator SCHOEPPEL. Mr. Davis, at our earlier hearings we had an implication that natural gas rate increases were permitted to go into effect under bond without much justification.

Do you have any comment on that? Would you outline briefly what the FPC requires of you when you file a rate application?

Mr. DAVIS. Yes, sir. This is getting to be almost monotonous, I am afraid, because everyone else is impressed with the same thing. But I do want to call the attention of the committee to the vast amount of information which the Commission requires pipeline companies to file in order to justify a rate filing with the Commission.

Senator SCHOEPPEL. Describe what you have in one of those, briefly.

Mr. DAVIS. This volume one, which is approximately an inch or an inch and a half thick, has a letter of transmittal to the Commission, the proposed change in each and every rate schedule, and the terms and conditions of the change, if any, a statement of all of the reasons and bases, and the nature of the changes in the tariff; a number of statements labeled from statements labeled from statement B through statement M, showing the cost of service which the pipeline company has actually incurred in the most recent 12-month period prior to the rate filing. These costs are taken from the books of the company and are adjusted only for known changes which are apt to occur within a period of 8 months beyond the end of the test period or the year for which the costs are shown.

Each and every schedule shows in minute detail, generally by months and year, information on operating expenses, depreciation, depletion, income tax, working capital, rate of return claimed.

By the way, we are required to show for each and every security issue that a company has issued in the past the cost of money from that security issue, cost of gas from each of several hundred producers, by producer, the cost experience during the period, the increase which has been filed against Tennessee, and the resulting increased cost of gas, all calculated by each of about 400 separate producers.

There is other information here on cost allocation and rate derivation which show in complete detail the necessity for the rate filing. I have personal knowledge of instances where filings made with the Commission have been rejected because the rates which were proposed were not supported and justified by the filing of the company.

Senator SCHOEPPEL. That is very useful for us to have in the record. One of the key sections of this bill is the proviso in section 3, and many earlier witnesses have said that the Commission would just go ahead and allow "necessary rate increases" under it. While your statement here discusses this proviso, would you care to amplify on your comments, since you have abbreviated your testimony?

Mr. DAVIS. I guess it boils down to this, actually. The Commission now has the power to let rate increases go into effect without suspension under the Natural Gas Act. As I stated a moment ago, I don't have knowledge of an instance where they have failed to suspend any major pipeline rate increase. As a result, in my view the same situation would be experienced, that is, if we had this proviso, the Commission would continue to feel that the thing must be investigated thoroughly before they could decide whether it was deemed necessary by the Commission.

In my view that would mean a prolonged rate investigation.

I can see nothing else. For when Congress acts and amends a bill, that is an important step, and people are going to say why did Congress do this. The bill formerly provided for this showing.

Apparently it wasn't sufficient. So we believe that Congress intended that only under the most adverse conditions or circumstances should the Commission permit rates to go into effect subject to refund with interest.

Senator SCHOEPPEL. Mr. Davis, I note that you were formerly a member of the Georgia Public Service Commission. Did that commission have power to permit rate increases to go into effect subject to refund?

Mr. DAVIS. No, sir; it did not.

Senator SCHOEPPEL. How did the Georgia Commission provide the necessary rate relief to companies within its jurisdiction within your State for the cost of gas they purchased?

Mr. DAVIS. Senator Schoeppel, the Georgia Commission undertook to decide the rate cases within the 6-month period which the Natural Gas Act provides for the suspension of natural gas rate increases, so that the distributing companies rates were reviewed and decided within that 6-month period in order that they would not suffer by reason of the increased cost of gas from the pipeline companies.

Senator SCHOEPPEL. In other words, you put full steam ahead to see that that was done?

Mr. DAVIS. That is correct.

Senator SCHOEPPEL. This may be the $65 question. Could the Federal Power Commission accomplish the same results in your opinion?

Mr. DAVIS. That is a hard question. Frankly, and sincerely, I don't

believe they could, with the terrific burden they have in the regulation of independent producers as with some 8,000-odd rate cases they have before them by independent producers. That situation was not present before the Georgia Commission.

Senator SCHOEPPEL. Why are rate increases filed? In other words, based upon your experience as a man who has served both a State commission, and a pipeline company, are rate increases used as a means of raising capital funds, and are they padded to accomplish this? I would like to have your judgment for the record.

Mr. DAVIS. Thank you, sir. I would be very glad to give it to you as best I can.

As far as Tennessee Gas is concerned, our rate increases are absolutely not padded. I was impressed with Mr. Kuykendall's statement that some 40 percent was refunded. As I see that situation, he has merely taken raw data, cumulating the amount of increases filed with the Commission by pipeline companies, and then cumulating the dollar amounts that finally are approved by the Commission, taking a difference and calculating a result. I don't believe that you can do it that way.

An illustration, one that strikes me at the moment, that is possibly the simplest, is in April 1954, before the Supreme Court issued its decision in the *Phillips* case, Tennessee anticipated some price increases under its contracts with independent producers and filed a rate increase with the Federal Power Commission.

In June 1954 the Supreme Court said that the Commission has regulation over independent producers. We were advised by the Commission that, therefore, the rates filed by the independent producers would be subject to suspension and refund, and, therefore, our rate case was premature, as a result of the *Phillips* decision of the Supreme Court.

Therefore, we withdrew that case. It was about $13 million a year in total cost of service.

In November 1954 the independent producers filed their rate increases and we filed another rate increase to compensate Tennessee Gas for that. It turned out the total then was $10 million, and we filed for $10 million, approximately, of increased rates to cover the increased cost of gas to us by these producers.

In the Federal Power Commission tabulation they show the $13 million which was filed, and the $10 million, or a total of $23 million. Actually we ended up only asking for $10 million, and we got 90 percent of that; we got $9 million out of that case when it was finally decided by the Commission in November 1957.

To take the raw data it would appear that 60 percent of the request was padded. But to me that raw data can't be used that way. It just doesn't prove what the Chairman of the Commission would seem to think it does, with all due respect to Mr. Kuykendall.

Senator SCHOEPPEL. Thank you very much, Mr. Davis. Those are the only questions that I have.

Senator ENGLE. Senator Moroney?

Senator MONTONEY. What portion of your rate increase that you have had over the past 2 or 3 years has resulted in the purchase of higher priced gas for additional supply?

Mr. DAVIS. The last two rate increases have been made necessary by increased cost of gas to us from independent producers, Senator.

Senator MONRONEY. Whereabouts do you get most of them?

Mr. DAVIS. It is from both Texas and Louisiana. Slightly larger volume in total from Texas, but a very substantial amount of our gas supply comes from Louisiana, and an increasing quantity, I might add.

Senator MONRONEY. Offshore?

Mr. DAVIS. Yes. The new supply is coming from offshore sources.

Senator MONRONEY. If the second increase were denied by this bill, while one is pending, you would be very loath to go out and acquire higher priced gas supplies to meet additional needs of your consumers at the other end, would you not, because you would have to raise your rates if the gas supply coming in from offshore or other high priced areas were required. So to protect yourself you would have to wait before obtaining this gas and thus disappoint many thousands of people who were waiting for additional supply?

Mr. DAVIS. Yes, sir. We could not afford to contract for higher cost gas if we had no assurance——

Senator MONRONEY. If you had absolute assurance that you couldn't because maybe you would have had one rate increase pending for independent producers in Texas, for example, unrelated to the increases in gas from offshore Louisiana, so you would be very reluctant to add to the total cost of your gas supply by the high priced gas.

Mr. DAVIS. That is correct.

Senator MONRONEY. This would then diminish or lessen the expansion of gas service to many of the tens of thousands of people who are waiting for it in the eastern part of the country?

Mr. DAVIS. Yes, sir. I might add that it would not only diminish the available gas supply because of the restrictions of putting in rate increases, but it would also cease construction of additional capacity. The natural gas market is a growing market. It is growing by leaps and bounds and the demands of customers are increasing. It takes an awful lot of capital funds to produce the pipeline capacity necessary to get the gas to them. Without reasonable earnings, which is all the natural gas industry is earning, without reasonable earnings it wouldn't be possible to finance the additional capacity requirements.

Senator MONRONEY. You mentioned using 1940 as a basis in which to show the increase in prices to the consumers.

As a matter of fact there were very few long lines operating in those days, were there not? Practically all gas produced intrastate was used intrastate.

Mr. DAVIS. The number of gas pipelines was less then than today, and the total pipeline capacity was less. Most of the gas was consumed in the States in which it was produced. But there were several pipelines in operation at that time.

Senator MONRONEY. Isn't it a fact that about 1940, when I was in the lower House, gas from the west Texas field, Amarillo, was actually being blown in the air in order to extract the casinghead gas from the gas, that the conservation people had long sought to solve this tremendous wastage of natural resources, and in order to have the gasoline extraction they sought markets that probably priced the gas at almost a price far less than its value in order to be able to extract the byproduct?

Mr. DAVIS. That is correct.

Senator MONRONEY. This gives then a false picture of the normal economic usage of gas, when it had been produced for burner-tip use in the past.

Mr. DAVIS. That is correct.

Senator MONRONEY. Here they were faced with a large supply of gas, no pipelines into the field, therefore no market, and it was a choice either of locking up the gas and losing the byproduct extraction of natural gasoline from it, or to make some kind of a bargain deal to get the lines built and to have this gas finally find its way into consumer usage.

Mr. DAVIS. That is entirely correct.

Senator MONRONEY. Today with the long lines there is an overdemand for gas and therefore the search for new fields at deeper depths and high cost production is going on at a reasonably rapid pace in order to be able to supply the lines that are being built to the Pacific coast and more and more to the northeast coast as well.

Mr. DAVIS. Yes; particularly the offshore deep drilling for gas is most expensive. The new sources of supply just must be more costly than the old sources.

Senator MONRONEY. What do you pay for offshore gas?

Mr. DAVIS. In the neighborhood of 20 cents, 20 or 21 cents.

Senator MONRONEY. And your price in Texas is about 11 cents?

Mr. DAVIS. It is a little bit more than that now. I believe it is around 13. I haven't looked at the figures recently.

Senator MONRONEY. Are you bringing in any gas from Mexico?

Mr. DAVIS. No.

Senator MONRONEY. We are bringing in some.

Mr. DAVIS. Let me say we do have a few off-system gas producing properties, where I think we have some gas wells in Mexico, but it is not a part of our gas pipeline system.

Senator MONRONEY. That——

Mr. DAVIS. You said Mexico? I was thinking of New Mexico. I beg your pardon. We do not bring any gas in from Mexico.

Senator MONRONEY. There is some coming in from Mexico, as well as from California?

Mr. DAVIS. Yes.

Senator MONRONEY. As well as Canada?

Mr. DAVIS. Yes, that is correct.

Senator MONRONEY. That comes in and has to be priced at whatever the price it costs at the border. We have no right to regulate the basic price of the gas beyond our border.

Mr. DAVIS. That is right.

Senator MONRONEY. So, any foreign gas that is bought to supply certain areas, there is no way in the world to regulate the cost of the produced gas until it is delivered in the United States.

Mr. DAVIS. That is correct. At the northern end of our midwestern system, they buy gas from Canada, importing and selling the majority to the American natural gas company and Michigan and Wisconsin companies.

Senator MONRONEY. What is the price of the Canadian gas as it comes in?

Mr. DAVIS. Something less than 30 cents as I recall. If you would like the exact figure——

Senator MONRONEY. Would you furnish that for the record? This is another example that this could not be bought and added to your line if you were denied the right to apply for rate increases for additional quantities of gas; is that not correct?

Mr. DAVIS. Yes.

COST OF CANADIAN GAS

During the hearing session on June 7, 1961, Senator Monroney asked that Mr. Davis supply for the record the cost of natural gas imported from Canada.

Mid-Western Gas Transmission Co. purchased during the year, 1960, 12,485,400 M c.f. of Canadian gas at a cost of $3,522,595.64, for an average cost of 28.21 cents per M c.f. The source of this information is Mid-Western's annual report to the FPC for the year 1960, page 89.

Senator MONRONEY. That is all that I have.

Senator ENGLE. Senator Morton, do you have any questions?

Senator MORTON. Just one, Mr. Chairman.

Mr. Davis, you have submitted, here, an exhibit which is a chart, consumer's price index of principal fuels. I want to point out that this is the price that the ultimate consumer pays for anthracite, bituminous, oil, or gas, and you take it back to 1940 and bring it up to 1959. This was attached to your statement.

Mr. DAVIS. Yes, that is correct. That is the retail price paid by the ultimate consumer.

Senator MORTON. That is the point I want to make; that is the retail price paid by the ultimate consumer. I didn't want the impression to be left in the record—I glanced at this chart without proper identification—that this represents the return to the original producer of the products involved.

Mr. DAVIS. You are eminently correct.

Senator MORTON. For example, in the case of bituminous coal, the price at the face of the mine varied practically not at all since 1948. It is, of course, a declining produce insofar as its use as a household fuel is concerned, and the cost of distribution, because of the declining volume and increased cost of distribution generally, account for most of the increase in 1948 to date on this chart.

I am sympathetic to your position on this bill, but I am also sympathetic to a good many soft-coal miners.

Mr. DAVIS. I can understand that, since your are from Kentucky.

Senator MORTON. The chart is an accurate chart of the price to the ultimate consumer. The factors that go into this increase in bituminous coal since 1948 are not because of any increase in the price of coal at the face of the mine. I want to make that point. I commend you for an excellent statement.

Mr. DAVIS. Thank you.

Senator ENGLE. Senator Schoeppel?

Senator SCHOEPPEL. I have no further questions of this witness.

Senator ENGLE. Thank you very much for your fine statement and your appearance here.

Mr. DAVIS. Thank you very much for the opportunity to be with you. I sincerely appreciate it.

Senator SCHOEPPEL. I would like to second the chairman's suggestion in that regard, Mr. Davis.

Mr. Chairman, I would like to have offered, for the record, a statement on behalf of the Midwest Industrial & Commercial Gas Users Association, signed by Mr. D. A. Riley, by direction of the board of directors of the association, and the exhibits attached thereto. I would like to have that inserted in the record at this point.

Senator ENGLE. Without objection, it is so ordered.

(The statement and exhibits follow:)

THE MIDWEST INDUSTRIAL & COMMERCIAL GAS USERS ASSOCIATION,

June 1, 1961.

Re amendment of the Natural Gas Act to provide for suspension and refunds upon industrial resale rates for natural gas.

Chairman and Members of the Senate and House Committees on Interstate and Foreign Commerce, U.S. Congress, Washington, D.C.

GENTLEMEN: The membership of this association is interested in legislation to amend the Natural Gas Act by striking from section 4(e) of the act the proviso making industrial resale rates nonsuspendable and nonrefundable.

The proposed bill would need only to provide that "subsection (e) of section 4 of the Natural Gas Act is amended by striking therefrom the following: '*Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only.'"

We respectfully urge that this amendment of the Natural Gas Act is of vital concern to industrial consumers of natural gas, is not controversial, and is necessary for the effective regulation of natural gas companies by the Federal Power Commission.

The Federal Power Commission has itself requested this amendment of the Natural Gas Act for the past 10 years as a desirable and noncontroversial amendment; see the 39th annual report of the Federal Power Commission (1959), page 19.

Over 100 major industrial and commercial consumers of natural gas, with their plants located in the Kansas-Missouri area, are members of and represented by this association. Their concerns have their manufacturing and processing plants in the territory served by Cities Service Gas Co., a natural gas pipeline company regulated by the Federal Power Commission under the Natural Gas Act. In behalf of its members, this association has intervened in recent rate increase applications of Cities Service Gas Co., including FPC dockets G–2410 and G–9468 (pending from March 1954 until settled by FPC order of May 25, 1956), and G–18799 (pending from June 23, 1959, until settled by FPC order of March 27, 1961), and actively participated in those proceedings. In large part, through the efforts of this association, these rate cases were settled by agreement of the parties—the lengthy negotiations actively participated in by the association resulting in reduction of the rate filings by about 50 percent, and substantial reduction in filed industrial resale rates.

As major users of natural gas in offpeak periods, the concerns represented by this association have a direct and substantial interest in natural gas legislation, and are particularly affected by the proviso of section 4(e) above mentioned.

As section 4(e) of the Natural Gas Act now reads, industrial rates are not subject to suspension by the Commission; in this way they are treated differently and discriminatorily from any other rates regulated by the Federal Power Commission. The result is, as our members experienced in the Cities Service Gas Co. rate cases referred to above, that higher rates became payable by industrial consumers of natural gas months prior to the effective date of other rate increases. An amendment of section 4(e) of the act in the form set forth above would correct this inequity and permit the Federal Power Commission to suspend industrial rates to the same extent it may other filed rates.

The discrimination does not stop there. When it exercises suspension authority, the Federal Power Commission normally permits increased rates to go into effect only under bond providing for refunds of charges in excess of rates eventually found to be reasonable. The Commission has deemed its bonding and refunding authority to rest upon its power to suspend rates and permit them to go into effect conditionally and concluded it had no authority to require refunds upon industrial rates even though those rates were ultimately found excessive and reduced. This has the result of leaving excess charges in the

gas companies' pocket, induces such companies to file high industrial rates, and discriminates against industrial gas consumers. This lack of refund power was recently upheld in a case brought by this association, *Gas Service Co. et al.* v. *FPC*, 282 F. 2d 496 (C.A. D.C., 1960).

While as a result of the negotiated settlements of the Cities Service rate cases some refunds to industrial gas consumers were obtained, overcharges not refunded amounted to $672,268.94 in G–2410 and $986,715.58 in G–18,799. Thus industrial customers have suffered financial losses of $1,658,984.52 plus the interest thereon from the discriminatory effect of the proviso in section 4(e) of the act.

The proposed amendment would not otherwise affect the jurisdiction of the Federal Power Commission. Six pipeline companies supplying natural gas to parts of 17 States, of which Cities Service Gas Co. which supplies our territory is one, now file separate industrial gas rates within the proviso of section 4(e) of the Natural Gas Act. Only when there is a separate industrial rate does the situation to which we object arise. This further illustrates the discriminatory effect of the proviso in section 4(e).

Our research indicates the proviso may have been included in the original legislation because then most industrial gas rates were contract rates, and it was believed undesirable to give the Commission power to suspend contractual rates. Now there are filed general "industrial rates," and the result is to permit, as to this class of natural gas customers, rates to become effective 5 months prior to other rates due to lack of suspension authority and without legal right to refunds. Thus the regulated company is favored at the expense of consumers whom the act is designed to protect.

Similar legislation to that we request has been introduced from time to time. H.R. 2754 and 2781 (87th Cong.) and S. 666 sponsored by the National Association of Railroad and Utility Commissions (87th Cong.) delete the proviso of section 4(e), but also contain other amendments to the Natural Gas Act. H.R. 6645 passed by the House on July 28, 1955, and S. 1853 passed by the Senate on February 6, 1956 (the Harris and Fulbright bills), by section 4 deleted the proviso, but were vetoed by the President.

H.R. 6790 (1957) as reported from committee and H.R. 8528 (1960) also contained this amendment, but were never brought to floor vote. These bills, however, generally contained as their major provisions controversial measures, as limitation of FPC regulation of producing companies (under the *Phillips* decision, 347 U.S. 672), or fair field pricing of gas. The cleanest version of the amendment we desire was in S. 2251 (86th Cong., 1959), introduced by Senator Magnuson.

We earnestly solicit your support of an amendment to the Natural Gas Act in the form attached, which is nearly identical to S. 2251 in the 86th Congress. We should be glad to supply any further data or information which you might desire.

By direction of board of directors:

D. A. RILEY.

MIDWEST INDUSTRIAL AND COMMERCIAL GAS USERS ASSOCIATION

Re deletion of the proviso to section 4(e) of the Natural Gas Act, 15 U.S.C., section 717c(e)

This proviso reads:

"*Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only;".

From this language, the FPC has concluded it was not only without authority to suspend industrial rates, but, from the placement of the proviso in the section, that it also lacked authority to condition nonsuspendible industrial rate increases upon bond insuring refunds, or to provide for refunds of excessive charges at the conclusion of a rate case. This interpretation of the statutory language was affirmed (by a two-to-one decision) in the case of *Gas Service Co. et al.* v. *FPC*, 282 F. 2d 496 (C.A. D.C. 1960).

The FPC, however, has recognized that its interpretation to the effect of this proviso results in a "windfall" to regulated natural gas companies and excess charges to industrial users of natural gas, thus in a "regulatory gap" in its control of rates of natural gas companies, and has consistently recommended amend-

ment of the Natural Gas Act to remove the proviso. For example, in its 34th annual report (1954), the FPC's legislative recommendations include (p. 170):

"6. Natural Gas Act. Sales for resale for industrial use only: That section 4(e) of the Natural Gas Act be amended so that the Commission will have authority to suspend rate schedules covering sales of natural gas for resale for industrial use only. This would require the deletion of the proviso now contained in that section."

Similar legislative recommendations of the FPC itself appear in—

Thirty-first annual report (1951), page 144.
Thirty-second annual report (1952), page 152.
Thirty-third annual report (1953), page 154.
Thirty-fifth annual report (1955), page 181.
Thirty-sixth annual report (1956), page 18.
Thirty-seventh annual report (1957), page 24.
Thirty-eighth annual report (1958), page 16.
Thirty-ninth annual report (1959), page 19.
Fortieth annual report (1960), page 17.

6/1/61.

Cities Service Gas Co.—Results of settlements on industrial rates

FPC Docket No.	Effective date of increase	Date of settlement	Payment in excess of settled rates	Industrial refund as result of settlement	Excessive gas charges unrecovered
G-2410	Apr. 23, 1954	Apr. 23, 1956	$1,332,268.94	$660,000.00	[1] $672,268.94
G-9468	Oct. 23, 1955				
G-18799	June 23, 1959	Feb. 23, 1961	1,973,431.16	986,715.58	[1] 986,715.58
Total			3,305,700.10	1,646,715.58	1,658,984.52

[1] Exclusive of interest; gas company having use of funds in addition to amounts not refunded.

PUBLIC UTILITIES REPORTS

UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT

GAS SERVICE COMPANY ET AL.

v

FEDERAL POWER COMMISSION

Intervenor: Cities Service Gas Company

No. 15401

282 F2d 496

July 21, 1960; rehearing En Banc denied September 19, 1960

PETITION *by industrial resale customer for review of Federal Power Commission order permitting rate increase applicable to gas for resale for industrial use to go into effect without requiring bond for customer protection; affirmed.*

Rates, § 13—Federal commission power—Bond requirement as to industrial rates—Natural Gas Act

1. The commission has no power under § 4(e) of the Natural Gas Act, 15 USCA § 717c(e), to require a bond to refund any part of increase of new rates for resale for industrial use only which ultimately may be found to be unlawful, since a bond may be required only with respect to rates which have been suspended, and the suspension power is expressly withheld as to industrial rates, p. 3.

Constitutional law, § 15—Deprivation of property—Lack of bond protection for industrial gas service—Natural Gas Act

2. Section 4(e) of the Natural Gas Act, 15 USCA § 717c(e), which does not empower the commission to require a refunding bond as a condition precedent to the effectiveness of newly filed industrial rates, does not thereby unconstitutionally deprive the industrial gas purchaser of property without due process of law, since the Constitution grants no right to the protection of such bond, p. 5.

Constitutional law, § 9—Delegation of legislative power—Rate making—Natural Gas Act

3. Section 4(e) of the Natural Gas Act, 15 USCA § 717c(e), in allowing industrial gas rates to go into effect without the protection of a bond for refund of charges ultimately found to be unlawful, does not thereby delegate legislative authority to fix rates to a natural gas company, since the companies had that power before the enactment of the Natural Gas Act and the act neither conferred nor enlarged the power, p. 5.

(BASTIAN, CJ., dissents.)

APPEARANCES: J. David Mann, Jr., Washington, D.C., with whom William W. Ross and William J. Curtin, Washington, D.C., were on the brief, for petitioners; Peter H. Schiff, Attorney, Federal Power Commission, with whom Willard W. Gatchell, General Counsel, Federal Power Commission, and Howard E. Wahrenbrock, Solicitor, Federal Power Commission, were on the brief, for respondent; Harry S. Littman, Washington, D.C., with whom Jack Werner, Dale A. Wright, and Harold L. Talisman, Washington, D.C., were on the brief, for intervenor; Reuben Goldberg, Washington, D.C., filed a brief on behalf of Mississippi Valley Gas Co., as amicus curiae, urging reversal.

Before Wilbur K. Miller, Danaher, and Bastian, CJJ.

WILBUR K. MILLER, CJ.: Cities Service Gas Company, which transports and sells natural gas in interstate commerce for resale, is a "natural gas company" within the meaning of the Natural Gas Act.[1] Schedules showing its rates and charges for any transportation or sale subject to the jurisdiction of the Federal Power Commission are on file with the commission and are incorporated into the service agreements with distributors. Cities Service, like any other wholesaler, is authorized by § 4(d) of the act, 15 USCA § 717c(d), to change its rates and charges by filing new schedules, which are subject, however, to investigation and regulation by the commission as provided in § 4(e), 15 USCA §717c(e).[2]

On May 21, 1959, Cities Service tendered to the commission for filing revised rate schedules to become effective June 23, 1959, which increased its prices generally, including the price of gas sold for resale for industrial use only. On June 19, 1959, the commission ordered a hearing to be held concerning the lawfulness of such increased rates, and suspended the operation of the newly filed schedules and deferred the use of the rates fixed thereby for a period of five months

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[1] 15 USCA, § 717 et seq.

[2] The pertinent portion of § 4(e) is as follows:

"Whenever any such new schedule is filed the commission shall have authority, either upon complaint of any state, municipality, or state commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the commission, upon filing with such schedules and delivering to the natural gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided*, That the commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the commission may, by order, require the natural gas company to furnish a bond, to be approved by the commission, to refund any amounts ordered by the commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. * * *"

beyond the time when they would otherwise have gone into effect; except that, because of the prohibitory provision of § 4(e), it did not suspend the rates for the sale of gas for resale for industrial use only. The schedules for sales for resale for industrial use were permitted to become effective on June 23, 1959, prior to the hearing which had been ordered, and without a bond or other provision for refund of the portion thereof which might be found not justified.

The Gas Service Company, a local distributor which purchases natural gas from Cities Service, some of which it resells for industrial use only, petitioned for intervention before the commission and for rehearing. Similar petitions were filed by others who alleged they were aggrieved by the order. Intervention was permitted but rehearing was denied. Gas Service and the others who had intervened in the proceeding before the commission have petitioned for judicial review of the commission's order under § 19(b) of the Natural Gas Act, 15 USCA § 717r(b).

[1] The question before us is, therefore, whether the commission has the power under § 4(e) to require Cities Service to file a bond to refund any part of the increased industrial rates ultimately found to be unlawful.

The section provides that, pending a hearing and decision concerning the lawfulness of newly filed schedules, the commission may suspend them for not longer than five months, except *it may not suspend rates for resale for industrial use only.* The statute also provides: "If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect." Immediately following the sentence just quoted, the statute provides: "Where increased rates or charges are *thus*[1] made effective, the commission may . . ." require a bond. The word "thus" is the key that locks the commission's bonding privilege into the preceding sentence and confines its exercise to the situations there described. These two statutory sentences should, therefore, be read together. They mean, we think, only what they say: That where increased rates have been suspended and are made effective at the end of the suspension period, the commission may require a bond.

There is no provision permitting the commission to require a bond as a prerequisite to the effectiveness of new industrial rates. Had Congress intended to give the commission such authority, it could easily have done so. Instead, it chose to authorize a bond only with respect to rates which had been suspended, having first expressly withheld the power of suspension with respect to industrial rates. We regard § 4(e) as unambiguous, so we do not need to consider the legislative history which both parties urge upon us as supporting their opposing contentions. We think "this is a case for applying the canon of construction of the wag who said, when the legislative history is doubtful, go to the statute."[4]

That history show, however, that Congress had a rational basis for making the distinction between industrial and other rates as to suspension and refund—a distinction which we think clearly appears from the statute. We agree with the following statement in *Pacific Nat. Gas. Co.* v. *Federal Power Commission* (CA 9th 1960) 33 PUR 3d 295, 301, 276 F2d 350, 354:

"When the bill [which became the Natural Gas Act] was reintroduced at the next session of the Congress, the proviso exempting industrial gas from all regulation had been deleted. However, on the floor of the House an amendment was offered, which is presently found in 15 USCA § 717c (e), exempting industrial gas from the Federal Power Commission's power to suspend rates, and *exempting industrial gas from the discretionary power of the commission to require security from the supplier to make reparations in cases where new rates are set aside by the commission as unreasonable after the period of suspension has expired.* See 81 Cong. Rec. 6727 (1937). This compromise provision apparently was acceptable to those who originally had opposed any and all regulation of industrial gas. Moreover, Representative Lea, the draftsman of both bills, noted that contracts for industrial gas were, at that time anyway, usually of short-term duration, and that the effect of the proviso was to prevent suspension when such short-term contracts were involved. See id. at pp. 6727, 6728. We cannot escape the conclusion that the Congress had a rational basis for saying that industrial gas needed less regulation than nonindustrial gas." [Emphasis added.]

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[3] Our emphasis.

[4] *Greenwood* v. *United States* (1956) 350 U.S. 366, 374, 100 L. ed. 412, 76 S. Ct. 410, 415.

Our interpretation of § 4(e) is buttressed by the fact that, since the beginning, the commission's consistent construction has been that the section does not grant authority to require a bond and refunding procedure before permitting a change in industrial rates to become effective; and by the further fact that the commission thinks it should have that power and has unsuccessfully requested Congress to confer it.[5]

The question before us as to the meaning of § 4(e) has not been squarely presented to the Supreme Court. But on two occasions that Court has implied or assumed the commission cannot require a refunding bond with respect to new industrial rates while they are being investigated. These indications of the Supreme Court's view appear in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.* (1956) 350 U.S. 332, 12 PUR 3d 112, 100 L. ed. 373, 76 S. Ct. 373, and *United Gas Pipe Line Co.* v. *Memphis Light, Gas & Water Div.* (1958) 358 U.S. 103, 26 PUR 3d 314, 3 L. ed. 2d 153, 79 S. Ct. 194.

In the Mobile case, the Court said, 350 U.S. at p. 341, 12 PUR 3d at p. 118, 76 S. Ct. at p. 379:

"The powers of the commission are defined by §§ 4(e) and 5(a). The basic power of the commission is that given it by § 5(a) to set aside and modify any rate or contract which it determines, after hearing, to be 'unjust, unreasonable, unduly discriminatory, or preferential.' This is neither a 'ratemaking' nor a 'ratechanging' procedure. It is simply the power to review rates and contracts made in the first instance by natural gas companies and, if they are determined to be unlawful, to remedy them. Section 5(a) would of its own force apply to *all* the rates of a natural gas company, whether long-established or newly changed, but in the latter case the power is further implemented by § 4(e). All that § 4(e) does, however, is to add to this basic power, in the case of a newly changed rate of contract (except 'industrial' rates), the further powers (1) to preserve the status quo pending review of the new rate by suspending its operation for a limited period, and (2) thereafter to make its order retroactive, by means of the refund procedure, to the date the change became effective. * * *"

We observe that "the further powers" added to the basic power of the commission by § 4(e) apply "in the case of a newly changed rate or contract (except 'industrial' rates). * * *" Therefore, the Supreme Court was saying that, as to industrial rates, the commission cannot "make its order retroactive, by means of the refund procedure, to the date the change became effective."

The Supreme Court indicated the same view in the Memphis case, when it said, 358 U.S. at p. 113, 26 PUR 3d at p. 320, 79 S. Ct. at p. 200:

"* * * The act comes into play as to rate changes only in (1) imposing upon the seller the procedural requirement of filing timely notice of change, (2) giving the commission authority to review such changes, and (3) authorizing the commission, in the case of rates for sales of gas for other than exclusively industrial use, to suspend the new rates for a 5-month period and thereafter to require the posting of a refund bond pending a determination of the lawfulness of the rates as changed. * * *"

[2, 3] Petitioners argue that if § 4(e) does not empower the commission to require a refunding bond as a condition precedent to the effectiveness of newly filed industrial rates, it is unconstitutional because it deprives them of their property without due process of law, and unlawfully delegates to Cities Service the legislative authority to fix its own industrial rates.

Deprivation of property is visualized because it is said industrial customers *must* pay the newly filed rates without the protection of a refunding bond. The customers of Cities Service agreed, we observe, to pay the rates contained in schedules filed with the commission for such industrial and other gas as they might buy; and they agreed that Cities Service might change its rates as it has done here. But they are not contractually bound to purchase gas under the new industrial schedules: They may use standby facilities, which they agreed to maintain, employing some other fuel if they find it cheaper than natural gas. Moreover, the statute does not require that a bond be exacted even in regard to the rates which are subject to refund procedure; it merely permits the exaction.

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[5] See e.g., Annual Reports of the Federal Power Commission for 1951–1959 at pp. 144, 152, 154, 170, 181, 18, 24, 16, 19, respectively. As these reports show, numerous unsuccessful bills have also been introduced to accomplish this purpose. For other recommendations to the same effect, see also the commission's report to Congress on H.R. 5070, 76th Cong. (not published); Hearings before the Special Senate Committee to Investigate the Fuel Situation in the Middle West, 78th Cong., 1st sess. 748; S. Rept. No. 1234, 78th Cong., 2d sess. 4; Hearings before a Subcommittee of the Senate Committee on Interstate and Foreign Commerce on H.R. 4051, 80th Cong., 2d sess. 97–99.

So, if the bond and refund provisions applied to industrial rates, they would do no more than confer discretion on the commission and would not give petitioners a right to the protection of a bond. Certainly the Constitution itself grants no such right. We think the unconstitutional deprivation theory is not well founded.

We cannot accept the argument that § 4(e), as construed by the commission, unlawfully delegates to a wholesaler such as Cities Service the legislative authority to fix its own rates. The Natural Gas Act does not delegate ratemaking power to natural gas companies. The companies had that power before the passage of the act and it was neither conferred nor enlarged by the legislation. This is seen in the *Mobile* case where the Supreme Court said, 350 U.S. at p. 343, 12 PUR 3d at p. 119, 76 S. Ct. at p. 380:

"All of the relevant provisions of the act can thus be fully explained as simply defining and implementing the powers of the commission to review rates set initially by natural gas companies, and there is nothing to indicate that they were intended to do more. Admittedly, the act presumes a capacity in natural gas companies to make rates and contracts and to change them from time to time, but nowhere in the act is either power defined. The obvious implication is that, except as specifically limited by the act, *the ratemaking powers of natural gas companies were to be no different from those they would possess in the absence of the act:* to establish *ex parte*, and change at will, the rates offered to prospective customers; or to fix by contract, and change only by mutual agreement, the rate agreed upon with a particular customer. * * *" [Our emphasis.]

Constitutional arguments substantially the same as those made by the petitioners were urged upon and rejected by the ninth circuit in the *Pacific Natural* case, *supra*, 33 PUR 3d 295, 276, F 2d 350. We are of the view that the opinion in that case is correct and, therefore, we regard it as dispositive of those arguments here.

The order of the Federal Power Commission will be upheld.

Affirmed.

BASTIAN, CJ., dissents, believing that the Natural Gas Act, § 4(e), provides authority in the Federal Power Commission to require a bond to refund excess charges collected under the revised schedules in question, and that the legislative history, as well, so indicates.

COMPANIES FOR AND ON BEHALF OF WHICH THE MIDWEST INDUSTRIAL AND COMMERCIAL GAS USERS ASSOCIATION IS AUTHORIZED TO ACT IN PROCEEDINGS INVOLVING RATE INCREASES OF CITIES SERVICE CO. (AS OF JUNE 1, 1961)

Purchasers under industrial rate

KANSAS

Armour & Co., 18 Central Avenue, Kansas City, Kans.
Gas Service Co., 1958, 1,184,675 M c.f.

The Atchison, Topeka & Santa Fe Railway Co., Topeka, Kans. (usage at Arkansas City, Topeka, Newton, and Wichita).
Gas Service Co., 1958, 862,816 M c.f.

Beatrice Foods, Inc., Second and Polk Streets, Topeka, Kans.
Gas Service Co., 1958, 166,928 M c.f.

Bennett Creamery Co., Post Office Box 13, Ottawa, Kans.
Gas Service Co., 1958, 91,534 M c.f.

Board of Public Utilities, City Hall, Kansas City, Kans.
Gas Service Co., 1958, 4,294,168 M c.f.

Cessna Aircraft Co., 5800 Pawnee Road, Wichita, Kans.
Gas Service Co., 1958, 97,852 M c.f.

Colgate Palmolive Co., 17th and Kansas Avenue, Kansas City, Kans.
Gas Service Co., 1958, 489,565 M c.f.

W. S. Dickey Clay Manufacturing Co., Post Office Box 2028, Kansas City, Mo. (for Pittsburg, Kans., plant).
Gas Service Co., 1958, 906,237 M c.f.

Downey Box Division, Packaging Corp. of America, 3111 Fiberglas Road, Kansas City, Kans.
Gas Service Co., 1958, 5,667 M c.f.

Excel Packing Co., Inc., 900 East 21st Street, Wichita, Kans.
Gas Service Co., 1958, 62,558 M c.f.

Griffin Wheel Co., 7155 Kaw Drive, Muncie, Kans.
Union Gas System, 1958, 73,378 M c.f.

KANSAS—continued

Gustin Bacon Manufacturing Co., 210 West 10th Street, Kansas City, Mo. (for Kansas City, Kans., plant).
Gas Service Co., 1958, 992,622 M c.f.
Hill Packing Co., 323 West Fifth Street, Topeka, Kans.
Gas Service Co., 1958, 118,601 M c.f.
International Paper Co., 2100 Kansas Avenue, Kansas City, Kans.
Gas Service Co., 1958, 72,553 M c.f.
Jones & Laughlin Steel Corp., Funston and Chrysler Road, Kansas City, Kans.
Gas Service Co., 1958, 25,288 M c.f.
Kansas City Southern Railway Co., 114 West 11th Street, Kansas City, Mo. (usage at Pittsburg, Kans., shops).
Gas Service Co., 1958, 14,203 M c.f.
Kansas Soya Products Co., Inc., Emporia, Kans.
K. P. & L. Co., 1958, 136,296 M c.f.
Krause Corp., Inc., 305 South Monroe, Hutchinson, Kans.
Gas Service Co., 1958, 36,376 M c.f.
The LFM Manufacturing Co., Inc., Third and Park Streets, Atchison, Kans.
K. P. & L. Co., 1958, 240,381 M c.f.
The Lock Joint Pipe Co., Post Office Box 196, Turner, Kans.
McNally Pittsburg Foundries, Inc., 12th and Walnut, Pittsburg, Kans.
Gas Service Co., 1958, 17,505 M c.f.
Mauer-Neuer, Inc., 100 Meyers Avenue, Kansas City, Kans. (also Arkansas City plant).
Gas Service Co., 1958, 205,831 M c.f.
Midwest Solvents Co., 1300 Main Street, Atchison, Kans.
K. P. & L. Co., 1958, 755,929 M c.f.
Nemaha Cooperative Creamery Association, Sabetha, Kans.
Gas Service Co., 1958, 99,810 M c.f.
City of Osawatomie, Osawatomie, Kans.
Gas Service Co., 1958, 93,435 M c.f.
The City Water and Light Department of City of Ottawa, Fourth and Walnut Streets, Ottawa, Kans.
Gas Service Co., 1958, 417,820 M c.f.
Owens-Corning Fiberglas Corp., Fairfax District, Kansas City, Kans.
Gas Service Co., 1958, 2,237,088 M c.f.
The Procter & Gamble Co., 19th and Kansas Avenue, Kansas City, Kans.
Gas Service Co., 1958, 1,273,709 M c.f.
Pure Carbonic Co., 2201 Grand Avenue, Kansas City, Mo. (for Kansas City, Kans., plant).
Gas Service Co., 1958, 202,006 M c.f.
Sealright Co., Inc., 2935 Fairfax Road, Kansas City, Kans.
Gas Service Co., 1958, 32,743 M c.f.
Seymour Foods, Inc., Post Office Box 116, Topeka, Kans.
Gas Service Co., 1958, 56,672 M c.f.
Standard Rendering Co., 635 Adams, Kansas City, Kans.
Gas Service Co., 1958, 76,357 M c.f.
Steffen Dairy Foods Co., 700 East Central, Wichita, Kans.
Gas Service Co., 1958, 33,295 M c.f.
Sunshine Biscuits, Inc., 801 Sunshine Road, Kansas City, Kans.
Gas Service Co., 1958, 166,111 M c.f.
Swift & Co., Packers Station, Kansas City, Kans.
Gas Service Co., 1958, 961,711 M c.f.

MISSOURI

American Alloys Corp., 4446 Belleview, Kansas City, Mo.
Gas Service Co., 1958, 128,692 M c.f.
Archer-Daniels-Midland Co., St. Joseph, Mo.
Gas Service Co., 1958, 176,697 M c.f.
American Can Co., 911 East 14th Avenue, North Kansas City, Mo.
Gas Service Co., 1958, 103,574 M c.f.
Ash Grove Lime & Portland Cement Co., 101 West 11th Street, Kansas City, Mo. (Springfield, Mo., plant).
Springfield City Utilities.

MISSOURI—continued

Battenfeld Grease & Oil Corp., 3148 Roanoke Road, Kansas City, Mo.
Gas Service Co., 1958, 93,288 M c.f.
Beaty Grocery Co., Inc., 424 Mitchell Avenue, St. Joseph Mo.
Gas Service Co., 1958, 42,860 M c.f.
Bemis Bros. Bag Co., 925 Wyoming, Kansas City, Mo.
Gas Service Co., 1958, 19,960 M c.f.
Black, Sivalls & Bryson, Inc., 7500 East 12th Street, Kansas City, Mo.
Gas Service Co., 1958, 30,939 M c.f.
Butler Manufacturing Co., 7400 East 13th Street, Kansas City, Mo.
Gas Service Co., 1958, 92,781 M c.f.
Continental Baking Co., 1108 East 30th Street, Kansas City, Mo.
Gas Service Co., 1958, 58,784 M c.f.
Cook Paint & Varnish Co., 1412 Knox, North Kansas City, Mo.
Gas Service Co., 1958, 107,393 M c.f.
Corn Products Co., 1001 Bedford, North Kansas City, Mo.
Gas Service Co., 1958, 1,916,938 M c.f.
Desert Gold Feed Co., 620 East 16th Avenue, North Kansas City, Mo., (Liberty, Mo., plant).
Gas Service Co., 1958, 76,710 M c.f.
Doyle Packing Co., of Missouri, 1302 Jasper Street, North Kansas City, Mo.
Gas Service Co., 1958, 23,699 M c.f.
J.A. Folger & Co., 330 West Eighth Street, Kansas City, Mo.
Gas Service Co., 1958, 22,240 M c.f.
M. K. Goetz Brewing Co., 601 Albemarle Street, St. Joseph, Mo.
Gas Service Co., 1958, 245,238 M c.f.
City Power & Light Plant, 215–217 West Kansas, Independence, Mo.
Gas Service Co., 1958, 353,827 M c.f.
Interstate Bakeries Corp., 12 East Armour Boulevard, Kansas City, Mo.
Gas Service Co., 1958, 57,173 M c.f.
Liquid Carbonic Division, General Dynamics Corp., 1339 Liberty, Kansas City, Mo.
Gas Service Co., 1958, 42,775 M c.f.
The Kansas City Star Co., 1729 Grand Avenue, Kansas City, Mo.
Gas Service Co., 1958, 99,190 M c.f.
Manor Baking Co., 4050 Pennsylvania, Kansas City, Mo.
Gas Service Co., 1958, 55,125 M c.f.
Missouri Portland Cement Co., North River Boulevard, Independence, Mo.
Gas Service Co., 1958, 1,822,483 M c.f.
Mapes Molded Pulp Division, Packaging Corp. of America, 10th and Erie, North Kansas City, Mo.
Gas Service Co., 1958, 253,891 M c.f.
Pet Milk Co., 1401 Arcade Building, St. Louis, Mo. (for Neosho plant).
Gas Service Co., 1958, 168,432 M c.f.
Pittsburgh Corning Corp., Sedalia, Mo.
Missouri Public Service Corp., 1958, 642,089 M c.f.
H. T. Poindexter & Sons Merchandise Co., 801 Broadway, Kansas City, Mo.
Gas Service Co., 1958, 23,253 M c.f.
The Quaker Oats Co., 345 Merchandise Mart Plaza, Chicago, Ill. (for St. Joseph and Joplin plants).
Gas Service Co., 1958, 206,255 M c.f.
Ruberoid Co., 7600 Truman Road, Kansas City, Mo.
Gas Service Co., 1958, 498,124 M c.f.
St. Joseph Light & Power Co., 520 Francis Street, St. Joseph Mo.
Gas Service Co., 6,897,519 M c.f.
Seitz Packing Co., Inc., Post Office Box 347, St. Joseph, Mo.
Gas Service Co., 1958, 56,994 M c.f.
Sheffield Division, Armco Steel Corp., Sheffield Station, Kansas City, Mo.
Gas Service Co., 1958, 4,657,207 M c.f.
Stahl Speciality Co., Kingsville, Mo.
Gas Service Co. 1958, 23,468 M c.f.
Standard Milk Co., 2–8 West College Street, Aurora, Mo.
Gas Service Co. 1958, 89,321, M c.f.
Trumbull Asphalt Co. of Delaware, 833 Armour Road, North Kansas City, Mo.
Gas Service Co., 1958, 243,941 M c.f.

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MISSOURI—continued

Union Wire Rope Corp., 21st and Manchester, Kansas City, Mo.
Gas Service Co., 1958, 287,299 M c.f.
United States Gypsum Co., 1115 Armour Road, North Kansas City, Mo.
Gas Service Co., 1958, 497,902 M c.f.
The Vendo Corp., 7400 East 12th Street, Kansas City, Mo.
Gas Service Co., 1958 72,484 M c.f.
Whitaker Metals Corp., 110 East 13th Avenue, North Kansas City, Mo.
Gas Service Co., 1958, 39,763 M c.f.

OKLAHOMA

The B. F. Goodrich Co., Post Office Box 31, Miami, Okla.
Gas Service Co., 1958, 689,672 M c.f.
Reda Pump Co., 509 West First Street, Bartlesville, Okla.
Gas Service Co., 1958, 58,611 M c.f.

Purchasers under commercial rate

KANSAS

American Beauty Macaroni Co., 501 Funston Road, Kansas City, Kans.
Boss-Wichita Hotel Co., Inc., (Allis Hotel), Wichita, Kans.
Broadview Hotel, 400 West Douglas, Wichita, Kans.
Meyer Division, Hawthorne-Mellody Farms Dairy, Fifth Street and Barnett Avenue, Kansas City, Kans.
St. Elizabeth's Mercy Hospital, 500 West 20th Street, Hutchinson, Kans.
Town House Hotel, Seventh and State, Kansas City, Kans.
Winchester Packing Co., Inc., 521 South Main, Hutchinson, Kans.

MISSOURI

The Associated Laundry Owners of Greater Kansas City, Inc., Suit M–2, President Hotel, Kansas City, Mo.
The Benson Manufacturing Co., 1811 Agnes Avenue, Kansas City, Mo.
Colonial Baking Co., 1028 St. Louis Street, Springfield, Mo.
Columbian Steel Tank Co., 1509 West 12th Street, Kansas City, Mo.
The Connor Hotel, Fourth and Main, Joplin, Mo.
Hallmark Cards, Inc., 25th and McGee Trafficway, Kansas City, Mo.
Kansas City Coca-Cola Bottling Co., 2540 West Pennway, Kansas City, Mo.
Lily Tulip Cup Corp., 122 East 42d Street, New York, N.Y. (for Springfield, Mo., plant).
The LFM Manufacturing Co., Inc., St. Joseph, Mo.
Gas Service Co., 1958, 21,965 M c.f.
Railbow Bread Co., 23d and Frederick Avenue, St. Joseph, Mo.
Research Hospital, 2300 Holmes Street, Kansas City, Mo.
Gas Service Co., 1957, 38,375 M c.f.
St. Joseph's Hospital, 923 Powell Street, St. Joseph, Mo.
St. Luke's Hospital, 4400 J. C. Nichols Parkway, Kansas City, Mo.
Schreiber Mills, Inc., Eighth and Mitchell, St. Joseph, Mo.
Sears, Roebuck & Co., 1500 Cleveland, Kansas City, Mo.
Sterm-Slegman-Prins Co., 3122 Gilham Plaza, Kansas City, Mo.
Tranin Egg Products Co., 217 Oak Street, Kansas City, Mo.
Twin Oaks, Inc., care of Assured Realty Co., 300 Lathrop Building, Kansas City, Mo.
Columbian Steel Tank Co., 15009 West 12th Street, Kansas iCty, Mo.

NEBRASKA

Falls City Creamery Co., Sixth and Stone, Falls City, Nebr.
1958, 19,917 M c.f.

Senator SCHOEPPEL. Mr. Chairman, I would like to have offered for insertion into the record at this time a telegram which I have received from Richard C. Byrd, chairman, Kansas Corporation Commission, under date of May 23, 1961, with reference to the Kansas Corporation

Commission's position; in fact, urging me to vote against the passage of S. 666, and other matters set forth in this telegram.

Senator ENGLE. Without objection, it will be made a part of the record at this point.

(The telegram follows:)

TOPEKA, KANS., *May 23, 1961.*

HON. ANDREW F. SCHOEPPEL,
Senator from Kansas,
New Senate Office Building, Washington, D.C.:

The Kansas Corporation Commission respectfully urges you to vote against the passage of Senate bill 666. Our commission opposed the resolution adopted by the NARUC at Las Vegas last November which included many of the recommendations set forth in this Senate bill. We feel that the advantages to be gained by such legislation are greatly outweighed by the detrimental effect that this legislation will have on Kansas producers and the State of Kansas.

RICHARD C. BYRD,
Chairman, Kansas Corporation Commission.

Senator ENGLE. Without objection the statement of Mr. Samuel Joseph, of H. Zinder & Associates, Inc., Washington, D.C., representing the Phillips Petroleum Co., Washington, D.C., will be made a part of the record.

(The statement follows:)

STATEMENT OF SAMUEL JOSEPH, MEMBER OF THE FIRM OF H. ZINDER & ASSOCIATES, INC.

Mr. Chairman, my name is Samuel Joseph. I am a member of the firm of H. Zinder & Associates, Inc. We are consultants in the field of regulation and employ a variety of specialists experienced in regulatory matters. We have offices in six cities. Some of us are alumni of the staff of the Federal Power Commission and other Federal and State agencies and a large part of our work consists in aiding gas pipelines, gas producers, and gas distributors with their regulatory problems before Federal and State regulatory commissions.

I am appearing here at the request of Phillips Petroleum Co., but I am satisfied that my testimony serves the interest of the entire natural gas industry including producers, pipelines, and distributors and the gas-consuming public.

My testimony is directed toward Senate bill 666 in its entirety rather than particular sections thereof. It is clear that the bill is intended to and, if enacted, will provide for additional restrictions, limitations, and burdens upon producers and pipelines; it will also, I believe, add to the difficulties of the Federal Power Commission in its administration of the Natural Gas Act. These additional restrictions, limitations, burdens, and difficulties will not achieve any offsetting gains for consumers and distributors but, on the contrary, will greatly increase the prospect of a critical shortage of gas supply to the great detriment of all segments of the industry and to consumers and the national economy.

A producer of natural gas who sells gas in interstate commerce must commit his gas under long-term contracts, generally for 20 years or longer or for the life of the field. This long-term commitment arises from the requirements of the financial community, insurance companies and others, who insist that long-term supply arrangements be firmly established as security for making investments in the pipelines.

The Federal Power Commission, exercising certificate control over the pipeline industry, also requires long-term supply arrangements adequate to render service for 20 years or more. Under these circumstances, wellhead prices for gas over the long term were frequently left indefinite to protect the buyer and seller against deflation and inflation and on the theory that increase in price of unpredictable amount would be necessary to furnish funds for additional exploration, discovery, and development of new supplies necessary to keep pace with increasing demand.

The first section of the proposed bill would outlaw certain of these indefinite pricing provisions. FPC Chairman Kuykendall's statement tells you that "the purpose of the amendment proposed by section 1 of the bill is now being effectuated by our procedures and is therefore not necessary."

Section 3 of the bill would make it extremely difficult for a producer or pipeline company to obtain any price increases, except the first one, even where such price increases are on a definite basis.

Section 4 virtually expands every certificate proceeding to include a full-blown rate hearing, a procedure which has always been very complicated in all utility regulation.

Section 5 confronts producers and pipelines with the virtual impossibility of obtaining certificates because of the practical impossibility of the Commission's completing these complicated proceedings within the time limit prescribed.

If the bill is enacted into law, I have no doubt that producers, gas pipeline companies, and gas distributors will give serious consideration to investing their funds in ventures other than the gas industry. I believe that institutional investors and the general investing public would find the gas industry less attractive than many other prospects. The inevitable effect of the bill will be to greatly discourage further exploration for necessary new supplies of gas.

Gentlemen, if there was ever a time in the history of the natural gas industry when the national economy, the public interest, and the interest of consumers and investors required that further exploration be encouraged rather than discouraged, that time is now.

The present gross investment in gas pipeline and gas distribution facilities is approximately $21 billion, and of this amount only approximately $5 billion has been recovered through depreciation charges, leaving approximately $16 billion still to be recovered. The investment by consumers in gas-burning equipment has not been officially reported, but it seems safe to say that such investment amounts to at least another $16 billion.

The American Gas Association has estimated that gross investment in pipeline and distribution facilities must increase from the present $21 billion to $48 billion by 1970 in order to adequately serve consumers' requirements. By 1970 the additional investment by gas consumers in ranges, furnaces, and other gas-burning equipment will also be very large, possibly as great as the estimated $27 billion of new investment by the utilities. All of this investment approximating $75 to $100 billion, and in any case an amount so large as to constitute a significant portion of the total national wealth, would be seriously jeopardized in the event of an inadequate supply of gas.

Generally the depreciation practices of gas pipelines and gas distributors assume that investment will be recovered over 33 years or longer (3 percent or less per year), and bonds issued in financing construction of pipeline and distribution facilities are generally for a term of 20 years or longer.

The present remaining net investment of $16 billion in pipeline and distribution facilities and the additional investment of $27 billion estimated to be made by 1970 can be recouped at present depreciation rates only if the gas supplies remain adequate for a very long period of time. Once the specter of inadequate supplies of gas appears and the functional life of gas properties is shortened, depreciation rates and gas prices to consumers must be increased if the investment is to be recovered. The result of a shortage of gas supply is that the consumer must pay more for gas in order to amortize the investment over a shorter period of time. Thus, if legislation results in a freeze of wellhead prices for gas and a consequent reduction in exploratory activity, the consumer does not thereby automatically escape increases in the burner tip price for gas.

The trends in the search for and discovery of gas supplies during the past 5 or 10 years have not been reassuring in the matter of maintaining the quantity of gas reserves necessary to assure a long functional life for the gas pipelines and gas distributors. Without assurance of adequate functional life the pipelines and distributors must face a revision of their financial and depreciation practices. Such revisions, if required, would have an adverse and serious impact upon the pipelines and distributors and their consumers and investors. Before showing you why the gas pipelines and distributors do not today enjoy a reassuring prospect of adequate functional life, I want first to make a brief comment on the matter of wellhead gas prices as compared with costs.

There appears to be a very strong belief, or at least one that is strongly and loudly asserted by some distribution companies and State regulatory agencies, that producers' wellhead prices for gas have had an inordinate increase wholly unjustified by any corresponding increase in cost. The Supreme Court seems to subscribe to that idea in its *GATC* decision and some of the Federal circuit courts in several recent decisions seem to be influenced by the same belief.

Dean Landis, in the singularly extreme condemnation of the Federal Power Commission contained in his report on regulatory agencies to the President, referred to the "Commission's past inaction and past disregard of consumer interest" and stated that "fixed area prices come close to approximately current maximum prices, which have more than doubled in the last 5 years."

If the Supreme Court, the Federal circuit courts, and Dean Landis are expressing a conviction that the price of gas has been permitted to rise inordinately as compared with cost of the gas, then I believe they have been misinformed.

The job of finding the huge new reserves of gas which this country needs is truly tremendous. But, gentlemen, the job of finding the cost of finding the gas is, I assure you, more difficult than finding the gas itself. A law which would discourage exploration for new reserves of gas through limitation on price and the consequent probability that costs could not be recovered would damage the consumer interest more than the producer interest because producers would be financially compelled to limit their losses by the simple expedient of limiting or abandoning their exploratory activities.

As to prices, the facts are that more than 5 years ago on the Louisiana Gold Coast gas was being sold to pipeline companies for as much as 20 cents per thousand cubic feet plus reimbursement of a part of the State production tax, while many new sales are now being made in that area for 21.5 cents per thousand cubic feet plus reimbursement of a part of the taxes.

More than 5 years ago in the Panhandle-Hugoton area, gas was being sold to pipeline companies for as much as 15 cents per thousand cubic feet, while many new sales are now being made for about 17 cents per thousand cubic feet.

In 1955, the average price in the United States paid by pipeline companies to producers was slightly less than 11 cents per thousand cubic feet; now it is about 15 cents per thousand cubic feet. Certainly none of these prices has doubled in the last 5 years. I do not dispute the fact that wellhead prices for gas have been rising rapidly in the recent past. I simply make the point that the cost of finding and producing gas has also been rising rapidly in the same period. Actually, the average price paid to the producers in the United States has only slightly more than doubled in the last 10 years; but look at the differences in where the gas was coming from 10 years ago and where it is coming from now.

In 1950, a total of a little over 1 trillion cubic feet of gas was produced in Louisiana. Of that volume, more than half was produced in north Louisiana and a large part of the north Louisiana gas was produced from the old Monroe Field at a depth of about 2,000 feet, from wells costing not more than $20,000. Now Monroe is nearly all gone.

In 1950 the average depth of exploratory wells looking for new supplies in north Louisiana was about 4,800 feet and cost about $50,000 each. In 1959, a total of almost 3 trillion cubic feet of gas was produced in Louisiana, and about 80 percent of that volume was produced in south Louisiana, and a large part of the south Louisiana gas came from depths greater than 10,000 feet. In 1959, the average depth of exploratory wells looking for new supplies in south Louisiana was greater than 11,000 feet. The average cost of a well at 11,000 feet in this area is approximately $250,000.

In the Panhandle-Hugoton area in 1950, virtually all of the gas was produced from the old Panhandle-Hugoton Reservoir at a depth of about 3,000 feet from wells costing $25,000 to $30,000. Now, the new supplies of gas in that area are being found at and produced from depths of around 7,000 feet; the average cost of wells of 7,000 feet is approximately $90,000.

I have furnished this very brief comparison of the change of some prices for gas during the past decade along with the change in the physical conditions of production in the belief that you will conclude, as I have, that there has been a very considerable increase in the cost of finding and producing gas during the time when gas prices were going up. While the thousands of hours of hearings and tens of thousands of pages of testimony in producer rate cases before the Federal Power Commission have not yet established the cost of finding and producing gas, the cases in my view leave no doubt that the trend of cost of finding and producing gas is sharply upward.

Now, let us return to my statement that, in view of the trends shown in the search for and discovery of gas supplies during the past decade, the pipe lines, distributors, and the consuming public do not now have the requisite or desirable assurance of adequacy of future gas supply. I have two charts which I believe will make that fact quite obvious to everyone.

CHART I

The solid line extending from the left side of this chart upward and to the right shows the actual annual production of gas in the United States during the last 11 years. The broken line, which continues upward and to the right from that solid line, is the American Gas Association's 1958 forecast of U.S. production required to meet the increasing demands in future years. Some of the more recent AGA forecasts of U.S. demands would indicate that the production rate may have to be even higher than this in order to meet demand.

The bars on the left of this chart show the annual gross additions to proved gas reserves during the last 11 years. The broken line in the upper right half of the chart, which parallels the line showing the AGA forecast of production, shows the annual gross additions to proved gas reserves which we must have if we are to maintain proved reserves equal to 20 times the annual production rate.

Actually, reserves equal to 20 times the production rate do not mean a 20-year life. Due to the fact that the ability of wells to produce declines as gas is withdrawn, reserves equal to 20 times the annual production rate mean a full line supply for a much shorter period. Competent engineers have calculated that delivery can continue at the full rate for only 13 or 14 years even when the reserves are 20 times the initial annual rate of production.

Now note that, if we are to keep up with the AGA forecast of production and maintain reserves at 20 times the annual production rate, our gross additions during the next 10 years must average 26.5 trillion cubic feet per year and must reach 29 trillion by 1970. But note that the gross reserves added since 1956 have fallen far short of those figures and that the trend since 1956 has been sharply downward.

In 1960, we barely found as much as we produced. This chart shows that, during the last 4 years, we have been falling further and further behind in finding enough gas to give the pipelines, distributors, and consumers assurance of their needed future gas requirements.

CHART II

Now, let us see what has happened to the total search for new reserves.

In searching for new oil and gas reservoirs, one of the first steps to be taken is to search for subsurface folds or structures capable of trapping accumulations of oil or gas. The principal method now used in searching for such geological structures is based on the science of geophysics. Having located a new structure, the next step is to drill a "rank" or new-field wildcat well in an effort to tap an oil or gas accumulation on the structure.

The left-hand panel of this chart II shows the total geophysical search in the United States by years, measured in crew-months worked. It will be seen that the geophysical search for new structures has been on a more or less steady decline ever since 1952. Actually, the total in 1960 was the lowest since World War II. Clearly, the downward trend in this geophysical search means that we have been finding fewer and fewer new geological structures to explore with wildcat wells.

On the right-hand panel of this chart II, we show the total exploratory wells drilled by years during the last 11 years. The new-field wildcat wells are a part of these total exploratory wells and are shown in the same columns on this panel. From this chart it will be seen that both the total exploratory wells and the new-field wildcat wells are running far behind the all-time high of 1956. It is thus clear that the total search for oil and gas reserves has declined far below the rate necessary to find the new reserves required to meet the increasing demands for gas.

The world oversupply of oil means that we can hope for only limited additions to our gas supply as a byproduct of the search for oil. If we are to find the needed increased supplies of gas in the United States, it must be through increased emphasis upon the search for gas. In this connection, it is of considerable interest to know that geologists now generally agree that in many areas and under many circumstances in the United States it is entirely feasible for the producing industry to direct its search specifically toward gas as distinguished from oil. A recent edition of the Oil and Gas Journal contains panel discussions

and several articles by geologists in which it is generally agreed that the search can be directed toward gas and, in many areas in the United States, gas is the primary target of the search.

However, in the exploration business no one looks for something unless he thinks he can make a profit out of selling it. Indeed, I think that we would be foolhardy to expect the producing industry to continue and to expand its search for gas unless that search offers the incentive of adequate profits. So it is clear that if the producing industry is to reverse the trends shown by this chart and to conduct an adequate increased search for new gas supplies, it will be only because the prices for gas appear to be sufficiently attractive. Gentlemen, Senate bill 666 will in my opinion legislate against adequate incentives and hence against an adequate supply of gas.

SUMMARY

The charts I have furnished, I think, make clear that the Nation is falling farther and farther behind in finding enough gas to give pipelines, distributors and consumers adequate assurance of ability to meet their future gas requirements. Parenthetically, I should add that manufactured gas substitutes and supplemental supplies of gas from outside the United States offer little hope for solving the problem of gas supply. The cost of manufactured gas from whatever source is far above the cost of natural gas. Canada's potential gas reserves are located in the western part of that nation and its proved reserves are only about 10 percent as large as the proved reserves of the United States, while its population is also about 10 percent as great as that of the United States, and both its population and its industries are growing rapidly.

There will be additional imports of gas from Canada and Mexico but there is little reason to believe that such imports can become sufficiently large to offer substantial relief in our problem of gas supply. Plainly, if we are to have gas supplies adequate to meet the existing and increasing demands, those supplies must be located almost entirely within the United States.

Of course, one way to protect the present pipelines, distributors and consumers would be to stifle further expansion by denying certificates for new projects. In a recent public address, a prominent member of the Federal Power Commission staff referred to some of the same trends and figures that I have given you and concluded that there is serious danger of inadequacy of supplies of gas to meet future increasing demand. He appeared to suggest that only curtailment of demand rather than augmenting supply had any promise of alleviating the problem. His conclusions were, I believe, more pessimistic than is warranted. He said, "Although the discovery and development of supply cannot be controlled, the market can and should be."

His solution that expansion be curtailed by denying certificates would mean that a large portion of the estimated $27 billion investment in new pipeline and distribution facilities between now and 1970 would never be made and a comparable expenditure in gas burning equipment by consumers would also be eliminated. This goes contrary to the present administration's emphasis on expansion of our national economy and I cannot believe that members of this senatorial committee or of Congress itself would adopt a policy of stifling expansion of the natural gas industry so long as there is any reasonable possibility of providing adequate supplies to meet expansion. Certainly no one can guarantee adequate supplies of gas. But we do know that huge quantities still remain to be discovered and it is certainly much too soon to abandon the hope that the producing industry given the proper incentives can and will do the job of finding large new supplies.

The fact that the search for and finding of new gas reserves have been on the decline ever since 1956, shortly after the famous *Phillips* decision in the middle of 1954, may or may not be a coincidence. In any event, the decline in the search for and finding of gas reserves ever since 1956 in the face of a constantly and rapidly increasing national demand for gas makes it clear that if there was ever a time when the producers needed an incentive for an increased search, that time is now.

Most assuredly, this is no time to discourage producers by removing price incentives and by making the Natural Gas Act more burdensome on the producers, pipelines and Federal Power Commission than it already is.

CHART I

COMPARISON OF U.S. GAS PRODUCTION WITH GROSS ADDITIONS TO RESERVES

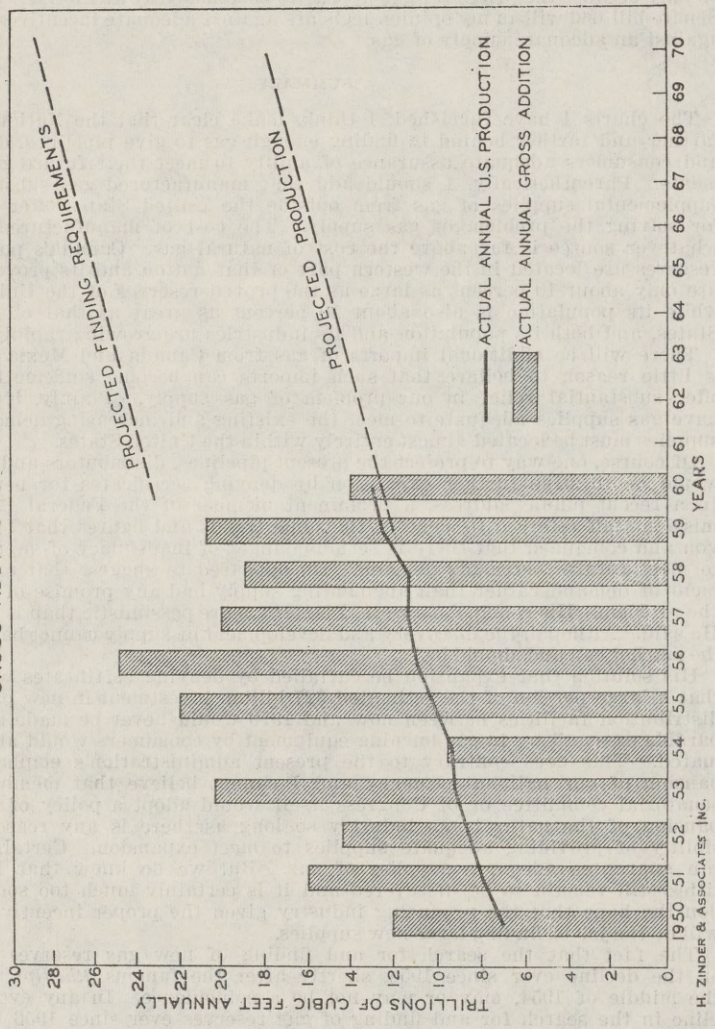
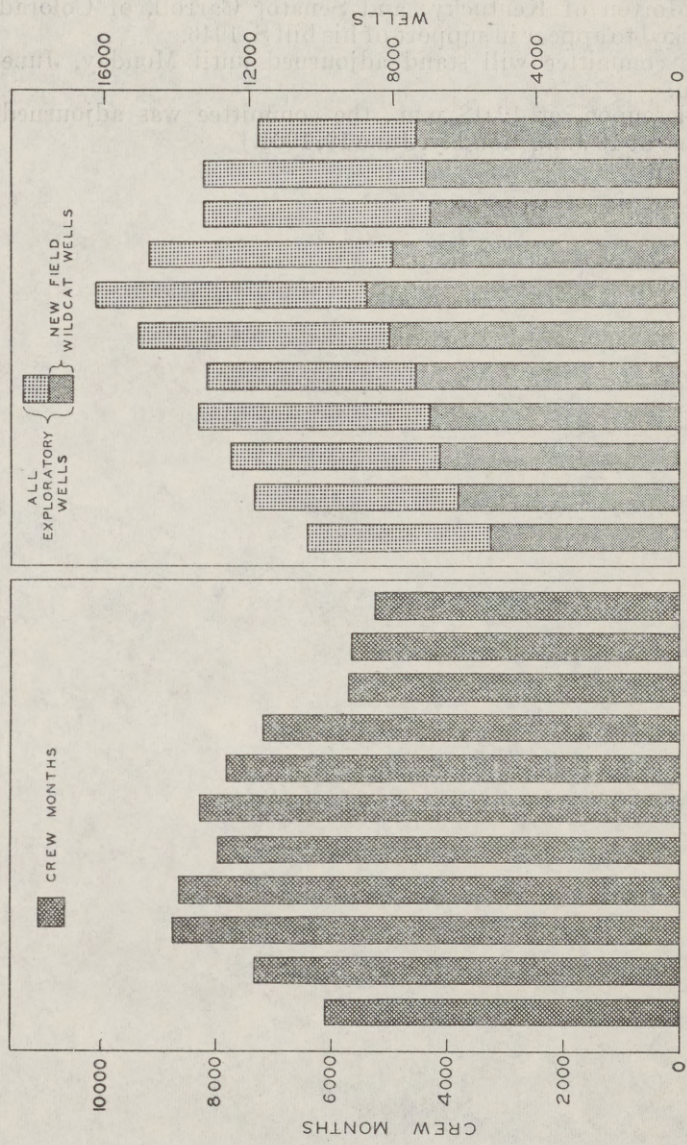


CHART II


U.S. GEOPHYSICAL OPERATIONS
CREW MONTHS
CREW MONTHS
10000
8000
6000
4000
2000
0
1950 51 52 53 54 55 56 57 58 59 60
YEARS
U.S. EXPLORATORY DRILLING
ALL EXPLORATORY WELLS
NEW FIELD WILDCAT WELLS
WELLS
16000
12000
8000
4000
0
1950 51 52 53 54 55 56 57 58 59 60
YEARS
H. ZINDER & ASSOCIATES INC.

Senator ENGLE. We will recess the hearings until Monday, June 19, at 10 a.m., when we will call back those witnesses who have not been heard at this time, to receive summary statements and for questioning.

In addition, if we can, we will hear the witness suggested by Senator Morton of Kentucky; and Senator Carroll, of Colorado, who has asked to appear in support of his bill S. 1946.

The committee will stand adjourned until Monday, June 19, at 10 a.m.

(Thereupon, at 12:18 p.m., the committee was adjourned to reconvene at 10 a.m., Monday, June 19, 1961.)

AMENDMENTS TO THE NATURAL GAS ACT

MONDAY, JUNE 19, 1961

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C.

The committee met, pursuant to adjournment, at 10:08 a.m., in room 5110, New Senate Office Building, Hon. Clair Engle presiding.

Senator ENGLE. The committee will be in order for the further consideration of S. 666 and S. 1946, for the purpose of amending the Natural Gas Act.

This is our third try to finish open hearings on S. 666, but it now appears we cannot do this for reasons beyond the control of all of us.

Senator Carroll had to go west to his State of Colorado, so we will hear his testimony at a later date. A member of this committee, who is out of town, specifically wants to hear the witness representing Phillips Petroleum Co. Therefore, Mr. Joseph will also be heard later.

We have three witnesses this morning. We have our colleague from West Virginia, Congressman Ken Hechler, who we will be glad to hear at this time.

Congressman, it is a pleasure to have you here with us this morning.

STATEMENT OF HON. KEN HECHLER, REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. HECHLER. Thank you, Mr. Chairman.

I appear this morning to support S. 666 and the related legislation.

In my State of West Virginia, we produce more natural gas than we consume. However, because of the need of transporting gas over long distances—particularly from the Southwest to the northeastern seaboard—and the "zone formula" used by the Federal Power Commission in fixing rates, West Virginians have been among the many victims of the inflationary temporary-increase spiral. This has been true even though, from a strict standpoint of supply and demand, we ought to be in pretty good shape under the current practices and procedures and workings of the economic system.

Mr. Chairman, I would like to confine my remarks rather narrowly to section 4(e) of the act, and more particularly to legislation which was recently introduced by my colleague in the U.S. Senate, Senator Carroll, S. 1946.

Under the present law, rate increases may be suspended by the Federal Power Commission for up to 5 months. I submit that this is too short a period, and it is highly unrealistic under present-day circumstances. It works a hardship on all those involved in gas production and consumption except the transmission companies.

This 5-month provision of the law is simply an invitation to the pipeline operators to seek exorbitant rate increases and, before the cases are decided or are dragged out through the courts, to ask for more and more increases and to collect the extra money from the consumers while these cases are pending.

Mr. Chairman, it is a fact which this committee well knows that because of the tremendous case backlog which has piled up on the FPC's docket in the past few years, it will take many more years before a majority of these pending cases will be finally resolved. And while these cases are pending, consumers and distributors are paying through the nose.

Unless some sharp changes are made in the current situation, the big natural gas producers and transmitters are going to grow fatter and fatter at the expense of the consumer and distributor.

Mr. Chairman, when it takes months and years for the Federal Power Commission to get down to action on these rate increase applications, often followed by lengthy court tests, the pipeline operators are during this delay period collecting at the requested higher rate from the consumer. Suppose the FPC or the courts disallowed the increase; then the over-charged amounts collected must be returned to the consumer plus 7 percent interest. This may sound fair, but 7 percent is a very mild rate of interest for the pipeline companies to pay when you consider that the normal return on equity capital is 10 or 11 percent. So it is easy to see that even if a rate increase petition is disallowed, the pipeline operator is making a clear profit of 3 or 4 percent on the transaction. Thus he is making a neat return through the use of cumbersome delaying tactics of the rate increase procedure.

If his petition is disallowed, he makes 3 or 4 percent in the clear. But think how much more gravy he can wipe up in equity capital if the rate increase is approved. All the time, mind you, he can forcibly borrow these funds from the consumer and invest them as he pleases in plant expansion or anything you please. The hapless consumer provides a constant source of capital, sort of like a captive bank.

Mr. Chairman, for a number of years the gas pipeline companies of America have enjoyed a "dream" situation. It seems to me it is high time this "pipe dream" is shattered.

Mr. Chairman, it is time we give more consideration to the consumer, who has for too long been the forgotten man in the long-drawn-out battles over natural gas rate increases. In effect, the taxpayers of the Nation through decisions of the Federal Power Commission have been subsidizing holders of common stock in the natural gas transmission companies.

Now what is the solution? Of course, we will have to take steps administratively to cut down the huge backlog of cases and to develop a formula to arrive at quicker decisions on rate applications before the Federal Power Commission. I am not one who feels this is simply a matter of spending more money to add more staff. I think it is important to sweep out all the minor cases which now clutter the desks of the FPC. In other words, we should free small producers from regulation.

But I believe it is important—and this is where I would go beyond the proposals recommended in S. 666—to establish in the statute itself the time-honored principle that once a decision has been made, it

ought to stand until a possible change in conditions may demonstrate that the decision is unfair or should be revised. Stated another way, I firmly believe that the pipeline companies should not be allowed to collect any money from consumers, until the FPC has ruled that the proposed rate is sound and justifiable.

These principles I have outlined are contained in a bill which has been introduced by Senator Carroll of Colorado, S. 1946. It may sound like it goes beyond the bill you are discussing, S. 666. Actually, it provides sufficient protection for the pipeline companies because it contains this sentence: "If it shall finally be determined that such schedule is lawful, the Commission shall have the authority to make such schedule effective retroactively to the date of its filing."

Furthermore, if the pipeline companies can show that the power to make rates retroactive is not a sufficient remedy, the Commission may also authorize a rate to go into effect temporarily while the consumer contributions are deposited in escrow until the matter has been decided.

Mr. Chairman, I believe we have reached a crisis in skyrocketing natural gas rates, and pyramiding and delayed rate increase cases, which demand sharp and decisive action. I hope that this action will be forthcoming through legislation similar to S. 666.

Thank you, Mr. Chairman.

Senator ENGLE. Do you have any questions?

Senator MONRONEY. Mr. Hechler, I enjoyed very much your statement, and also your consideration of the problem, particularly in pointing out the ever-increasing backlog of cases that are being filed. As you perhaps know, they are receiving a great many more cases by the thousands than they dispose of. So, instead of a 1-year or 2-year time lag, we come to about a 4-year time lag. Various evidence before the committee has pointed out that producers' cases outnumber nearly 10 to 1 the pipeline cases, although it is the pipeline cases in which the magnitude of the increase and the charges are collected.

I wonder if you would elaborate a little bit on this idea, which many people who have studied this as carefully as you have come up with, that maybe we could arrive at some new system, as you say on page 3: "* * * to develop a formula to arrive at quicker decisions on rate applications before the Federal Power Commission."

Mr. HECHLER. I think one of the ways, possibly, Senator Monroney, that this could be done would be to amend the act to exempt those smaller producers from regulation, because I believe at the present time a good deal of time is expended by the Federal Power Commission in handling such cases which, if these smaller companies were removed from regulatory provisions of the act, would free the Commission for concentrating on those larger cases that involve larger amounts of money.

Senator MONRONEY. Would you consider the proposal that has been urged by the Federal Power Commission and others of the establishment of an area pricing system, claiming that the utility pricing method in which you try to establish the capital invested and then a fair return on the capital invested seems to be unworkable, and has proved to be so through the years, because the man who drills a lot of dry holes will have a higher capital investment for his thousand cubic feet of gas than the man who drills one and gets a well? Generally speaking, it has been impossible to arrive, short of 4 or 5 years, at any

utility type of return on investment theory under which the Supreme Court decision placed gas regulation. You would have under your proposal, I think, for the small producers, which would probably be very good, some disparity for the same quantity of gas that may be produced in the same field. If the market has set a reasonable price for gas for that area, the Federal Power Commission, carefully investigating the fairness of that and general applicability to a reasonable return, would not have to go through the imponderables of utility price fixing.

Mr. HECHLER. The phrase you used was "area pricing system"?

Senator MONRONEY. Area pricing system. In other words, a field in West Virginia, the Commission would go in and study the pricing there of maybe a hundred or two hundred suppliers. If that came out at a reasonable rate, or if it were a few cents too high, or some were high and some low, it would establish an area pricing system for that field.

Mr. HECHLER. All I can say that now, under what the Federal Power Commission has ruled is a zone area , we in West Virginia get it in the neck, despite the fact that we produce more gas than we consume. I don't know, without investigating it more thoroughly, how to answer your question concerning an area pricing system.

Senator MONRONEY. What is the zone price which West Virginia gets?

Mr. HECHLER. I wish I could furnish sufficient data to the committee. I would be glad to submit this for the record, explaining in more detail exactly how this operates. But despite the fact that we produce in West Virginia a great deal more than we consume, we apparently have to pay the transportation costs through West Virginia to the Atlantic seaboard. That is stating it roughly. I will be glad to submit for the record a more detailed statement.

Senator MONRONEY. Is it that your gas goes out of West Virginia and somebody else's comes in and you get charged for the long haul instead of the gas in place?

Mr. HECHLER. That is essentially it.

Senator MONRONEY. Is that because, being a very heavy coal State, that coal was used locally and the gas was exported in the earlier days and contracts are still in effect?

Mr. HECHLER. That may well be.

Senator ENGLE. Do you have any questions?

Senator SCHOEPPEL. I have no questions. I am sorry I was late getting here. I will be very happy to read your statement.

Senator ENGLE. Thank you very much, Congressman. We appreciate your appearance here today.

Mr. HECHLER. Thank you, Mr. Chairman.

Senator ENGLE. Is Mr. J. David Francis, chairman of the Public Service Commission, Frankfort, Ky., here?

Mr. FRANCIS. Yes, sir.

Senator ENGLE. Do you have a prepared statement?

Mr. FRANCIS. Yes, sir; I have.

Senator ENGLE. I observe it is relatively short. You may proceed with it, Mr. Francis.

STATEMENT OF J. DAVID FRANCIS, CHAIRMAN, THE PUBLIC SERVICE COMMISSION, FRANKFORT, KY.

Mr. FRANCIS. My name is J. David Francis. I am chairman of the Kentucky Public Service Commission.

I would like to first point out that my testimony only relates to section 3 of the proposed bill, and as a little background to my testimony I think you should know that the Kentucky Public Service Commission is a member of the National Association of Railroad & Utility Commissioners. At the time the association was considering the legislation that is now before you, our commission advised the special committee of the National Association of Railroad & Utility Commissioners that we opposed it. We joined with numerous other commissions in opposing its adoption by the association at its annual meeting last November in Las Vegas.

Senator SCHOEPPEL. May I interject here. I understand that the commission from my own State of Kansas took the same position.

Mr. FRANCIS. I recall that; yes, sir.

As I understand it, the main purpose of section 3 of the proposed legislation is to provide a process assuring the completion of hearings on applications for increases made by those covered by the Natural Gas Act as expeditiously as possible. Frankly, it is my opinion that (1) section 3 will not accomplish the desired result; (2) section 3 could be and become detrimental to the consuming public; and (3) there should be a better means and method of accomplishing the desired result.

(1) SECTION 3 WILL NOT ACCOMPLISH THE DESIRED RESULT

As I understand it, one of the main things bringing about the delay in the final determination of rate applications is the number of interventions on the part of municipalities and gas companies supplied by the various pipeline companies. Were section 3 to become the law, it would invite a multiplicity of interventions just for the purpose of delay with the realization that with one hearing in process, yet undecided, that there could be no subsequent application. For this reason the proposed legislation could actually make the hearing process a longer and more cumbersome one.

May I depart from my statement to point this out. I used the term "another application could not be made." I realize that another application could be made but that the rate could not go into effect. As a practical matter you are saying that application could not be made.

(2) SECTION 3 COULD BE AND BECOME DETRIMENTAL TO THE CONSUMING PUBLIC

Should section 3 be enacted into law, I feel that it is altogether possible to make it impractical if not impossible for the pipeline companies that supply Kentucky with natural gas to expand their facilities to meet our growing needs. Under the leadership of Lt. Gov. Wilson W. Wyatt, Kentucky's Department of Industrial Development has been most aggressive in its efforts to establish new industry in Kentucky as well as to expand presently existing industrial plants.

The availability of natural gas is one of the first questions raised by representatives of industry when contacted with regard to location of plants in Kentucky. I believe that enactment of section 3 will seriously hamper Kentucky in attracting industry and will curtail plant expansion for the reason that it is possible for the pipeline companies to be placed in a position where they would be unable to expand in order to provide the necessary facilities to meet the requirements of Kentucky's industrial expansion. When I speak of industrial expansion or of attracting industry into Kentucky, I do not necessarily mean to limit my statement to the direct use of natural gas by industry, for the records indicate that when a new industry locates in Kentucky there is a general increase in other uses for gas, particularly those related to residential use.

In recognition of the situation of the pipeline companies and their relation to the wholesale suppliers of natural gas in Kentucky, the Kentucky Public Service Commission has adopted a policy approving the use of gas purchase adjustment clauses. This has permitted the local utility companies to recoup promptly these higher operating costs. This procedure has several important advantages:

First, it assures that our local utilities will maintain adequate earnings so as to be able to finance their necessary construction.

Second, it reduces considerably the expenses of regulation both from the standpoint of the commission and companies in that there are substantial savings to the consumer in our State.

Third, it permits the prompt allowance of increase costs, but at the same time the commission retains complete control to assure that the consumer is not paying any more for his gas service than he should. We require the company at the time of filing for the adjusted rate to submit detailed cost data.

Fourth, it assures prompt downward adjustment in rates when the gas purchase costs of a distributing company are decreased.

And, finally, we require that if the local utility receives any refunds from the pipeline, that it work out with the commission the means and methods of refunding this amount to the consumer.

We adopted this method of permitting gas purchase adjustment because we recognized that unless a company could recover higher costs of doing business promptly, its financial situation would quickly deteriorate. This very same thing could happen to pipeline companies if section 3 were enacted. We believe this would be detrimental to the interest of our State. If the pipeline companies have higher costs and must wait for several years before they can start recovering these higher costs, it is our opinion that they would soon not be able to finance the very extensive expansions that have taken place in recent years.

(3) THERE SHOULD BE A BETTER MEANS AND METHOD OF ACCOMPLISHING THE DESIRED RESULT

Instead of denying the company the right to make an application—and I use that phrase again—it occurs to me that it would be more equitable and also more in the public interest for means to be provided by which hearing applications to a final conclusion could be expedited and, frankly, my opinion of this is that it could best be accomplished by (*a*) an increase in the membership of the Federal

Power Commission and a proportionate increase in staff personnel, and (*b*) to allow the Commission to sit in panels whereby as many as three cases could be heard at one time rather than one, as I understand it to be under the present conditions.

While I recognize that there has been a great deal of pyramiding of rate cases before the Federal Power Commission, and while we are not at all happy with this situation and certainly recognize that some steps should be taken immediately to remedy the situation, I do not feel that section 3 is the answer and that some other means should be adopted, preferably as I have outlined in this testimony.

Senator ENGLE. Senator Schoeppel?

Senator SCHOEPPEL. Mr. Francis, with reference to your suggestions as to how this could be expedited, I attended the Subcommittee on Appropriations last week, wherein a member of the Federal Power Commission and its Chairman were before the committee. They testified that the Federal Power Commission itself is practically current on applications that have come before the Commission. Where the difficulty has been is in the staff and in this tremendous backlog which has developed by reason of the Supreme Court decision.

I thought that would be interesting to get in the proceedings here. We can get the actual testimony and have it inserted in the record, but I thought it was well to point that out.

I appreciate what you have to say with reference to section 3 of this bill that is before us, and I think your points are well taken and that we should give serious consideration to them.

Our problem has been to help expedite in some practical manner without doing violence to the overall concept, to get rid of this backlog of cases so that the Commission could take timely action on its cases.

Senator ENGLE. Senator Monroney?

Senator MONRONEY. I notice in the Minerals Year Book of the Bureau of Mines the fact that the statistics bear you out—that your utilization and consumption of gas is increasing. As a matter of fact, from 1958 to 1959 you had an 8-percent increase, and it has been going up every year. This would mean, then, that unless there was some way found to expedite acquisition of gas, new gas purchased, that it would be impossible for the pipelines or the distributing companies to acquire extra supplies of gas, would it not?

Mr. FRANCIS. I believe it would, sir.

Senator MONRONEY. What you are testifying to is that anything that would expedite the final settlement of what the price of gas should be at the producer level, the pipeline level, is rather well fixed because what they buy at one end comes out at the other plus the fair return on the capital investment of the carrier. Unless some way of speeding up the determination of the cost of this gas and giving a final price to the producer occurs, then it would be necessary to go on and on with allowing the pipelines, after 6 months, to have an emergency price increase refundable if that increase were found to be excessive on final determination by the Federal Power Commission; is that correct?

Mr. FRANCIS. I think so, sir.

Senator, I might say this, though I know little of the regulations of producing gas. It occurs to me that unless some relief is given, probably in the nature of relieving the small producer from the juris-

diction of the Federal Power Commission, that the backlog—even if you were to increase the membership of the Commission and staff—would continue to increase because there are some real problems, as I understand it, involved in trying to regulate on a utility basis the production of gas.

The gentleman who testified before me mentioned that if you drill a dry hole, then you have to put the cost of it into the producing well, and you have an endless situation there of investigation as to costs.

Senator MONRONEY. The cost of the thousand feet of gas at the wellhead would vary pretty much in direct proportion with the good luck of the driller in finding gas or oil or dry holes. So it is a variable matter with almost every producer.

Do you produce gas in Kentucky?

Mr. FRANCIS. Yes, sir.

Senator MONRONEY. That is what I thought. The rate on that, according to the figures I have here from the Bureau of Mines, has actually gone down in Kentucky from 24.1 to the producers, apparently to 23.7 in 1959—between 1958 and 1959.

Mr. FRANCIS. I might point out there, Senator, that there is a good deal of natural gas produced in Kentucky—not as much as there once was, I am sure. But most natural gas that is produced in Kentucky really is more of a byproduct of the exploration for oil. A lot of times they hit gas. I know of no area in Kentucky, to my own personal knowledge, where they actually explore for natural gas. A lot of times they drill for oil and hit natural gas.

Senator MONRONEY. That is the general constant when you drill for oil and find a gasfield, and you are a public utility instead of a free enterprise by just the luck of drilling.

Mr. FRANCIS. That is right.

Senator MONRONEY. You don't attempt to regulate the price of gas at the wellhead in the commission?

Mr. FRANCIS. No, sir.

Senator MONRONEY. Have you ever discussed it or considered it?

Mr. FRANCIS. Not to my knowledge.

Senator MONRONEY. The general feeling would be, I assume, that it would be an impossible matter to apply general ratemaking tests to the production of natural gas.

Mr. FRANCIS. I know that if we were to be faced with that situation our present staff would be hopelessly—and the commission as well—bogged down, because it is a scattered process, a little here and a little there. It would be a hopeless process to undertake.

Senator MONRONEY. You don't find it too difficult, however, to regulate the distributor's spread because he has a fixed capital asset, depreciation being charged, and you can come up with a fair utility return on that segment of the gas industry.

Mr. FRANCIS. That is right, and then, too, over the years there has been built up a good set of auditing and accounting records in the Public Service Commission. When they come before us for a rate increase or something of that kind with their figures we have their past figures that we and our staff have compiled to check against. So it is not a real big regulatory problem.

Senator MONRONEY. In other words, your supplier of the long lines, interstate lines, seeking an additional supply of gas because all of his

present gas is presumably committed to users now, if he had pending a small rate increase due to some increase in his present supply, he would be reluctant to go out and contract for new quantities of gas which, because of higher drilling costs and sometimes offshore gas in the gulf, would have to come into the line at a greatly increased value.

Mr. FRANCIS. I don't think there is any question about that.

Senator MONRONEY. Therefore, they would be reluctant if they couldn't recoup this and pass on this higher rate as to the portion of the new gas bought, and they would just say they couldn't afford to take this kind of gamble. They would just keep on supplying the customers with that amount of gas which they already have, and we will have a static supply rather than an ever-increasing supply to serve the needs of your industry and your new people.

Mr. FRANCIS. I think the expansion would be greatly curtailed, yes, sir.

Senator MONRONEY. Thank you.

Senator ENGLE. Senator Morton?

Senator MORTON. I am sorry, Mr. Francis, that I wasn't here to properly introduce you, as one Kentuckian to another, to the committee. You handled yourself well and I appreciate your coming up here to present your testimony.

Mr. FRANCIS. Thank you.

Senator MORTON. I might say that there was natural gas in Kentucky, where gas was being sought, not oil, around Salyersville in Magoffin County a few years ago. I hit four dry holes myself, so I am familiar with that. We were after gas.

Senator ENGLE. You didn't get oil?

Senator MORTON. We were not after oil. We were after gas.

Senator ENGLE. You might hit oil if you go after gas.

Senator MORTON. They have that in Green County. We are getting some gas there. As you know, Louisville's requirements for gas are going up rather rapidly. I think that negotiations are underway now for substantial additional amounts as we look 2 years ahead.

As I gather from your testimony, and it is my own opinion, and you can verify this, if this bill passes with section 3 in it, I imagine we will have difficulties in the Louisville area getting this gas, don't you?

Mr. FRANCIS. I believe we will, sir. If not immediately, within a reasonable time I believe we would.

Senator MORTON. The point that you bring out here in your testimony is that the industrial expansion, were we able to get it in Kentucky—and we are all working for it as hard as we can—does bring additional residential requirements for gas.

Mr. FRANCIS. Yes, sir.

Senator MORTON. When you put a line in Louisville, whether it is in Russellville or whether it is in Mayfield, we get additional sales of household appliances, stoves and so forth, that require gas. So there becomes an added need for us; and we are a substantial net importing State of natural gas.

Mr. FRANCIS. Yes, sir, that is right now.

Senator MORTON. The gas we do produce in eastern Kentucky, most of it goes to the pipelines and comes to the East.

Mr. FRANCIS. That is right.

Senator MORTON. It doesn't back-flow into the populous areas of Kentucky where the gas is consumed?

Mr. FRANCIS. You are entirely correct about that.

Senator MORTON. Thank you very much.

Senator ENGLE. Senator Schoeppel?

Senator SCHOEPPEL. Mr. Commissioner, do you regulate the price of gas that is produced in your own State?

Mr. FRANCIS. No, sir, we do not. Do you mean at the well?

Senator SCHOEPPEL. Yes.

Mr. FRANCIS. No, sir, we do not.

Senator SCHOEPPEL. In some of your production in your own State do you have dual production of both oil and gas?

Mr. FRANCIS. Oh, yes, sir.

Senator SCHOEPPEL. You are following, of course—I know you used to have in your State and I know you have not changed in that respect—good conservation matters with reference to the conservation of the utilization of natural gas in connection with the production of oil. In other words, you do not vent a lot of your gas to the air in Kentucky?

Mr. FRANCIS. I am not sure that I can answer that question, sir. I have the very definite impression that we have not followed good conservation practices relative to the production of oil. But just how much gas goes into the air, I would say probably quite a bit. But my answer is just a guess, and not an informed guess.

Senator SCHOEPPEL. Thank you very much.

Senator ENGLE. Do you have any objection to section 2 which would permit the Commission to suspend the rate charged for classification or service for the sale of natural gas for resale for industrial use only? Are you prepared to comment on that?

Mr. FRANCIS. I don't care to comment on that. I have not particularly studied it, frankly.

Senator ENGLE. Senator Monroney?

Senator MONRONEY. I have no further questions of him. I want to make a statement?

Senator ENGLE. Thank you very much, Mr. Francis, for your statement, and for appearing before us today.

Senator MONRONEY. At the time that the Honorable Ken Hechler testified, I didn't have the figures for the record on West Virginia. West Virginia gas at the wellhead in 1958 was priced at 24.8 cents, and in 1959 at 26 cents per thousand cubic feet of gas. This is, as near as I can tell, about the fourth highest rate paid in the Nation for gas at the wellhead in 1959.

Senator ENGLE. The next listed witness is Mr. L. Dan Jones, counsel for the Independent Petroleum Association of America. Mr. Jones is ill and cannot be here today. His statement was submitted for the record at a previous hearing. However, he requests that an additional page be submitted for the record showing the groups that wish to be on record in support of his statement. Without objection, the additional page, with the list of various associations, nine associations supporting his position and his statement, will be made a part of the record in connection with the statement previously filed.

Senator MONRONEY. This will not preclude him from appearing? As I understand we have to have some more hearings for Senator

Carroll and for some of the gas-consuming States which also have indicated they wished to be heard.

Senator ENGLE. It is not the Chair's intention to preclude him, if he desires to appear.

Senator MONRONEY. Thank you, sir.

(The document follows:)

Independent Oilmen & Landowners Association of North Dakota, Post Office Box 62, Bismarck, N. Dak.

Independent Producers & Royalty Owners Association of New Mexico, Petroleum Building, Roswell, N. Mex.

Kansas Independent Oil & Gas Association, 226 Union Center Building, Wichita, Kans.

Louisiana Independent Producers & Royalty Owners Association, 703 Louisiana National Building, Baton Rouge, La.

North Texas Oil & Gas Association, 405 City National Building, Wichita Falls, Tex.

Ohio Oil & Gas Association, Post Office Box 1008, Newark, Ohio.

Oklahoma Independent Petroleum Association, 728 Petroleum Club Building, Oklahoma City, Okla.

San Joaquin Valley Oil Producers Association, 1230 17th Street, Bakersfield, Calif.

Southwestern Pennsylvania Producers Association, 27 South College Street, Washington, Pa.

Senator ENGLE. Mr. Jerome J. McGrath, National Coal Association, 1130 17th Street NW., Washington 6, D.C.

Is Mr. McGrath here?

Mr. McGrath is not here. His statement will be submitted for the record.

We have exhausted the list of witnesses for the day. We will announce at a later time the next date of hearing.

Senator SCHOEPPEL. I understood, apropos of what Senator Monroney has stated, that there are a number of these State regulatory commissions that take a different position than those advocating the passage of this bill. I assume that if they desire to be heard at some later date when we hear some of these other witnesses, that they can be heard if they so desire.

Senator ENGLE. That is correct. None has requested time thus far. The Chair would hope that if they do wish to appear that they get in a timely request, and that if possible they consolidate their testimony to the extent that it is cumulative or repetitious.

This committee would certainly be glad to hear them if they request such a hearing.

If there is nothing further, the committee will stand in recess.[1]

Thank you very much.

(Thereupon, at 10:46 a.m., the committee adjourned.)

(Letters and statements submitted follow:)

STATEMENT OF ANDREW J. BIEMILLER, DIRECTOR, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. Chairman, my name is Andrew J. Biemiller. I am director, department of legislation, American Federation of Labor and Congress of Industrial Organizations. I am also chairman of the AFL–CIO Staff Subcommittee on Atomic Energy and Natural Resources.

[1] There was no further action on S. 666 or S. 1946 and the hearings thereon were not resumed prior to the adjournment of the 87th Congress.

I wish to state the position of the AFL–CIO on S. 666, a bill which would amend certain sections of the Natural Gas Act in order to improve Federal Power Commission's regulation of natural gas companies in the interest of sounder regulation for the consumer and the general public.

The AFL–CIO heartily endorses the principles of S. 666 and urges that this kind of legislation be reported by the Senate Interstate and Foreign Commerce Committee for passage by the Senate and House of Representatives.

Specifically, S. 666 would amend the Natural Gas Act in these respects:

Section 1 would outlaw certain types of "indefinite pricing clauses" in contracts for the sale of natural gas. These clauses are specifically named—the two party and third party favored-nation clauses: the better market, or price redetermination clause, and the spiral escalation clause.

Section 2 of the bill would repeal the existing prohibition against the Federal Power Commission's being enabled to suspend rate changes where natural gas is being resold for industrial use only.

Section 3 prohibits a successive rate increase from being put into effect by a natural gas company under FPC regulation before the Commission has rendered a decision on a previously pending rate increase application.

Section 4 would require the Federal Power Commission to make a specific finding on any application to sell natural gas in interstate commerce that the proposed selling price of that natural gas is consistent with the public interest, and if not, to set the price in consistency with the public interest. This section placed the burden of proof squarely upon the applicant to prove every element of the certificate applied for including the price of the natural gas to be sold.

Section 5 requires that any hearing held in any proceedings under the Natural Gas Act must be concluded within 1 year after its beginning. This section also sets a 6-week time limit on the presiding officer's report after the conclusion of hearings or filing of briefs, whichever occurs later, and would require the Commission to render a decision within 90 days after receiving the presiding officer's report.

The first four sections of S. 666 are intended to eliminate the practice by natural gas pipeline companies of pushing for special contracts to get all the market can bear, of allowing the pyramiding of one rate increase application on another while previous applications are still under Commission adjudication, and the natural gas company in the meanwhile is using the extra money for its own corporate purposes. Also provided is direction to the Commission to equate any initial price quoted in an application for a certificate of necessity filed by a gas company as to whether it is consistent with the public interest before allowing this initial price to be certified.

The interest of the AFL–CIO in supporting the intent of S. 666 is that of the interest of 13 million families, a large part of whom are ultimate users of natural gas. Furthermore, thousands of workers in unions affiliated with the AFL–CIO hold jobs in industries using natural gas as their energy source. Still others work in the fields and refineries, or in the manufacture of gas appliances and equipment.

As consumers, organized labor is well aware of the continual rise of the price of natural gas at the pipeline for many years, resulting in such increases being passed on to the gas distributing utility and finally to the ultimate user.

In our judgment a great part of such increases are completely unjustified and the record of the Federal Power Commission in carrying out its mandate to protect the consumer is both weak and ineffective.

Authority to regulate the natural gas industry as to field and pipeline under the Natural Gas Act was sustained by the U.S. Supreme Court decision in the *Phillips Petroleum Co.* case in 1954.

Since that time Federal Power Commission regulation has been far short of effective, particularly in attempting to meet the problem of prices in the field before the gas is put into the pipeline. The FPC has not attempted to use the cost-of-business foundation of all proper regulation (with whatever variation might be required by the peculiarities of petroleum products production) to establish firm regulation of field prices.

Instead, the Commission is apparently waiting for the Congress to devise such a formula. Passing the buck to Congress is nothing short of a failure to carry out the intent of the Natural Gas Act as fortified by the previously mentioned *Phillips Petroleum* case decision. All attempts by FPC staff to obtain cost figures from the producing companies have been met with attitudes all the way from non-cooperation to defiance.

What has happened to FPC regulation of natural gas companies? The situation which would be remedied by enactment of S. 666 revolves around the present manner in which applications for rate increases are handled.

Such applications are suspended for no more than 5 months pending investigation. Thereafter, the application must be allowed to go into effect, possibly subject to refund, if reduced or disallowed by Commission decision. Sometimes a bond is required of the applicant as good faith that the money collected from rate payers would be returned if the Commission ruled against the application. Generally, however, a "corporate undertaking" (promise by the company) is deemed sufficient.

As of April 30, 1961, the FPC had on its docket an astonishing total of nearly 4,000 suspend applications for rate increases yet not acted upon. This involves 131 applications by pipeline companies and 3,840 applications by independent producers.

These 4,000 suspended rate increase applications involve $560 million collected by the pipelines and producers from the consumer against the hope, in a majority of cases, that the Commission will in the end act favorably and no refund will be necessary.

Even if about 40 percent or $224 million would be subject to refund, it would involve $224 million of ratepayers' money.

If these were only original rate increase bids to the Commission, it would reveal a serious situation, but in many instances, there are three, four, and as high as six additional applications piled on top of the first one.

Most of the $560 million in suspended rate applications is involved in the 131 applications by the pipelines, aggregating $388.2 million. In our judgment, S. 666 would not have allowed 80–90 percent of the aggregate amount represented by these suspensions.

There is an interesting and profitable gimmick for the natural gas companies involved in this entire matter as the law now stands.

The Federal Power Commission has made no concerted attempt to regulate field prices. They have no regulatory yardstick to determine if increasing the price of natural gas in the field is a result of legitimate cost factors, or a device used by producing companies to offset drop in crude oil prices, or limitation of production of wells because of an excess of supply in relation to demand. Between 65–70 percent of suspended rate increase applications lie in this area.

The FPC has not to this date decided on how to regulate field prices. They have not required producers not involved in interstate pipelines to keep their books in accordance with the FPC system of accounts. While we make no attempt to suggest a method of arriving at proper and equitable field price evaluation criteria, it would seem that the situation required a price freeze at the beginning, after which the burden of proof would lie on the applicant to convince the Commission that the application for rate increase is based on actual costs and not compensating price increase for natural gas to offset a drop in the price of crude petroleum.

Once the company has possession of the money collected from the consumer on the rate increase or increases applied for under the 5-month suspension rule allowed by the Natural Gas Act as it stands, still another advantage is lying ripe and ready for picking.

The company can plow this money into its rate base at whatever rate of return is allowed by the Commission, usually around 6 percent. If the entire rate increase or pyramided increase is allowed, the company has enjoyed an interest-free loan sanctioned by the Commission and paid for by the consumer while the case is being adjudicated. If the application is disallowed by the Commission, the company pays back the principal at a 7-percent annual interest charge (it was 6 percent per annum until 1960).

But the pipeline companies have been making up to 15 percent per annum on their equity capital. How do they do this?

The companies are fully aware of the deplorable regulatory lag in the FPC which sometimes delays final adjudication of cases for as long as 4 years. The companies take advantage of this situation in two ways: (1) They ask for more than they need; (2) they collect funds on such proceedings ahead of the final decision. In this fashion they can repay at 7 percent and still realize 7–8 percent per year or, if the whole increase is approved, they realize 15 percent per year. What with liberalized depreciation of facilities put on the line since the enactment of section 157 of the Internal Revenue Code, the unwillingness or inability of the Commission to devise an adequate formula and use it to

regulate field prices, the 27½ percent depreciation writeoff for producers, plus the process described above, the pipeline companies in particular have been able to avoid practically all financial risk.

Now, nobody would argue that regulation is intended to erase financial risk by utilities but rather to secure proper rules and regulations whereby rates truly reflect costs of providing the utility.

It is difficult to determine whether the companies that take advantage of this situation or the Federal Power Commission which has failed to rise to its regulatory responsibilities under the Natural Gas Act should be subject to the greatest censure.

In checking recent FPC statistics on gas and electric rate cases pending before the Commission, the best conclusion is that the Commission is still sinking beneath a torrent of suspended rate increases and has little or no rate business with the electric utilities under FPC regulation.

The following table will show this:

Suspensions and other rate matters	As of Apr. 30, 1961		As of Oct. 30, 1960	
	Number	Amount	Number	Amount
Pipelines	131	$388,216,000	132	$421,812,000
Independent gas producers	3,840	171,027,000	3,587	169,450,000
Electric companies	4	26,000	4	26,000

Many of these suspensions can be disposed of in a single docket, but unfortunately there seems little indication that the Commission has made substantial inroads on this Homeric backlog. We would be less than fair to the Commission, however, if we did not acknowledge its recent attempts to streamline hearing proceedings by improved regulations. We hope that this will be helpful in enabling the Commission to bring its work to a more current status.

The following table will illustrate the pyramiding involved in 110 rate increase applications by the pipelines in suspended status as of April 30, 1961.

Suspended rate increase applications by pipeline companies before the Federal Power Commission by number of rate increase applications and companies and by aggregate amounts involved as of Apr. 30, 1961

Number of suspended applications for rate increase	Number of companies	Aggregate amount
7	3	$70,831,700
6	1	66,303,500
5	2	46,676,000
4	4	29,371,800
3	6	101,137,500
2	11	20,561,700
Subtotal	27	334,882,200
1	18	53,333,700
Grand total	45	388,215,900

Twenty-seven of the 45 companies with suspended gas rate increase applications before the Commission have from 1 to 6 subsequent applications piled on the first one in time and still before the Commission. These companies are asking for about 83 percent of the aggregate increases being requested of the Commission.

We strongly believe this outrageous situation would in large part have been avoided had sections 2 and 3 of S. 666 been in effect and vigorously administered by the FPC.

Millions of consumers who have invested heavily in gas-burning equipment, furnaces, stoves, refrigerators, water heaters, laundering equipment and the

like are entitled to full protection under the Natural Gas Act by the Federal Power Commission. By that full protection, we mean simply the lowest possible retail gas rates.

Suspensions and other rate matters	As of Apr. 30, 1961		As of Oct. 30, 1960	
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Pipelines	131	$388,216,000	132	$421,812,000
Independent gas producers	3,840	171,027,000	3,587	169,450,000
Electric companies	4	26,000	4	26,000

Natural gas has whirled into the energy field formerly ruled by coal because of its flexibility of use, ease of transportation and lower unit costs. Yet, even with these advantages plus (1) liberalized depreciation, (2) guaranteed rates of return, (3) inadequate Federal regulation of the distributors, of the producers and pipeline companies (often one and the same), and (4) other subsidies, natural gas prices are spiraling upward to the point where the cost of coal-derived energy is once again becoming competitive with it in several areas.

In addition to the principles embodied in prohibitions of sections 2 and 3 of the instant legislation, labor supports the banning in section 1 of various special second and third party spiral escalation clauses, the net effect of which in practice is to provide just another means of artificially pricing natural gas higher than either the economics or the public interest can justify.

We are convinced that section 4 of S. 666 would make it plain to the Commission that Congress is laying down the policy that requires the most careful attention to all factors dealing with an application for a certificate of convenience and necessity before allowing an initial price on natural gas to be established by the company.

Although the U.S. Supreme Court in a recent case (*Atlantic Refining Co.* v. *Public Service Commission*) decided that such powers were vested in the Commission under the act, a plainly stated amendment to the act would relieve any doubts in the matter.

We sympathize with the act's purpose in setting time limits on certain stages of rate increase or other proceedings under the Natural Gas Act to provide a goal to the FPC to get rid of its appalling backlog. This is stiff medicine and raises the question of whether the public interest would be best served if the record of a hearing or its consideration within FPC had to be fitted within an arbitrary time limit for disposition.

With this caveat, however, I wish to conclude by urging the most rapid possible action by this committee and the Congress to enact this kind of legislation to fill a long-felt consumer need in a field of tremendous importance to the consumer, the worker, and to the general economy.

STATEMENT OF JEROME J. MCGRATH ON BEHALF OF FUELS RESEARCH COUNCIL, INC., NATIONAL COAL ASSOCIATION, UNITED MINE WORKERS OF AMERICA, AND NATIONAL COAL POLICY CONFERENCE, INC., ON S. 666, A BILL TO AMEND THE NATURAL GAS ACT

My name is Jerome J. McGrath. I am a partner in the law firm of McGrath & McGrath, Washington, D.C., and general counsel of Fuels Research Council, Inc. I appear on behalf of Fuels Research Council, Inc., National Coal Association and United Mine Workers of America. I am also authorized to state that the National Coal Policy Conference, Inc., supports the views expressed in this statement.

Our firm or its predecessor has actively been engaged in natural gas matters before the Federal Power Commission almost since the Natural Gas Act was placed into law. During that time we have continuously represented coal, railroad, and labor interests with respect to the extension and expansion of natural gas pipelines into coal competitve areas.

Fuels Research Council, Inc., is a voluntary, nonprofit organization whose members are for the most part coal producers or associations representing producers of coal, both bituminous and anthracite; various of the major coal-hauling railroads; and other shippers and marketers of coal, all of whom have a direct interest in natural gas competition.

National Coal Association is the trade organization of sales companies and American bituminous coal mine owners and operators whose total production is approximately two-thirds of all the commercial bituminous coal mined in the United States.

United Mine Workers of America is a voluntary, unincorporated, nonprofit association organized for the protection and welfare of the mineworkers belonging to and affiliated with it. Its members number approximately 250,000 persons.

National Coal Policy Conference, Inc., is an incorporated, nonprofit association organized to promote the interest of the coal industry, including among its members United Mine Workers of America, coal producers, coal consuming utility companies, coal carrying railroads, and manufacturers of equipment used in the mining and handling of coal.

We appear in opposition to S. 666, not so much for what it contains as for what it lacks. On its face, the bill gives the appearance of correcting the multiple problems facing the Federal Power Commission because of the regulation of independent producers and the backlog of cases pending before it, both producer and pipeline. However, close analysis of the various sections of the bill leads to the conclusion that the amendments proposed are, at best, stopgap measures and do not in any way relieve the Comission from nor give it guidance in the solution of the regulatory difficulties imposed upon it by the tremendous expansion of the natural gas industry since the end of World War II. Reappraisal of the entire situation from all aspects, i.e., taking into account the interests of consumers, pipelines, producers and competitive fuels, is obviously necessary.

The committee, I am sure, is well aware of the numerous and diverse amendments to the Natural Gas Act which are now and have been pending before Congress over the years. Some of these measures relate to substantive matters, while others deal with the procedural aspects of the Commission's functions under the act. Most of these amendments, however, raise questions of serious proportion which are not answered or even reached by the bill which is the subject matter of this hearing. Our principal concern with this legislation is that it does not take into account the inequitable features in the Natural Gas Act as it is now written which give the natural gas industry an unwarranted competitive advantage over coal. We believe that more extensive amendments to the Natural Gas Act are needed than those embodied in S. 666.

Mr. Nigro, a member of the Colorado Public Utilities Commission, testified a few weeks ago before the committee that he hoped to appear before the committee again in the very near future on a proposed amendment to the act dealing with producer regulation. Chairman Kuykendall of the Federal Power Commission also stated in the Commission's report on S. 666 that other legislative recommendations have been made which are worthy of consideration, but are not included in the present bill. Among other things, the FPC report said that Congress should consider specifically the question of a ratemaking formula applicable to independent producers and to the production of natural gas for interstate transportation and sale.

It is our position that Congress must go even further and consider legislation which would remedy some of the ratemaking and pricing practices of the pipeline companies as they pertain to the dumping of off-peak interruptible gas with resultant displacement of coal in the industrial and utility markets. In brief, S. 666 falls short of coming to grips with the real problems which plague the Commission, the consuming public, the gas industry and the coal industry.

Having suffered greatly in the marketplace as a result of gas expansion over the last decade and a half, coal is particularly sensitive to this piecemeal method of amending the Natural Gas Act. As the act now stands, direct sales of natural gas to industrial consumers are not subject to the Commission's jurisdiction with the result that pipeline companies are free to negotiate prices with industrial consumers at a level dictated by "what the traffic will bear" or, to put it another way, whatever it takes to underprice coal. Additionally, because of the lack of direction by Congress, the pricing practices of the pipeline companies in establishing their rates for resale are such that, notwithstanding the fact that the price of natural gas has been increasing steadily over the years, interruptible

industrial consumers are given practically a "free ride" on the pipeline at the expense of the homeowners and other firm users.

Increasingly prevalent is the practice of the pipelines, particularly those serving coal competitive areas and operating under two-part rates, of imposing most, if not all, of the increased costs of rendering service on the demand charge of the rate, which, in turn, is passed on to the firm users where service is not subject to interruption, while keeping the commodity component of the rate at arbitrarily low levels in order to provide for extremely low interruptible or off-peak industrial rates. The end result of this practice, which is commonly referred to as "rate tilting"; i.e., loading a disproportionate share of the costs on one component of the rate rather than apportioning such costs on an equal basis to both components, is higher costs to the firm users and bargain rates for the large volume industrial users even though the latter may use the pipeline facilities for a much greater period of time than the small consumer.

While it is true that the Federal Power Commission has not as yet sanctioned rate tilting, we think that Congress should give serious consideration to writing into the act a ratemaking formula which would require all classifications of service to carry their fair and equitable share of all costs incident to the service rendered.

We hasten to add that the coal industry is not seeking, nor does it want, any special favors. What it does seeks is a law which does not grant to the regulated competitor an unfair competitive advantage over the unregulated competitor. It is certainly not our purpose to stifle gas competition, but rather to assure that coal and gas companies be placed on more equal footing in marketing their products.

The members of the committee are aware of the fact, I am sure, that the discoveries of natural gas have not kept pace with demand. Data published annually by the American Gas Association reveals that in 1946 the reserve life index of the then recoverable reserves of natural gas, and based upon 1946 production, was 32½ years; by December 31, 1960, and despite the fact that tremendous volumes of gas have been discovered in the interim period, the reserve life index declined to 20 years. However, this tells only part of the story. The Oil and Gas Journal, a highly regarded trade publication, in a recent issue featuring natural gas, noted the opinion of engineers that due to physical limitations inherent in the production of gas, the deliverable life of today's known reserves is more in the neighborhood of 14 years.

Contributing to this truly disastrous situation is the present restrictive regulatory control over independent producers which places an artificial ceiling on the prices allowed producers for gas sold to interstate pipeline companies. Much of the competitive difficulty encountered by coal is due to the fact that the price of gas at the wellhead fails to include gas' proper share of the overall cost of exploration, development and production. Oil is, in effect, carrying gas' burden and as a result the latter fuel is making serious inroads into both coal and oil markets. A more realistic approach to this problem than is provided for in S. 666 is needed if the United States is to enjoy a healthy fuel economy.

Contrasted to the limited supply of natural gas are the tremendous reserves of coal in the United States. The U.S. Bureau of Mines estimates, on the basis of 1959 production, that recoverable reserves of coal are sufficient to last over 2,000 years. Coal has been the prime victim of natural gas expansion and has lost markets continuously to gas, not only in the residential and commercial space-heating market, but more importantly, in the large volume industrial market. Off-peak, interruptible sales of gas at prices dictated by what the market will bear have driven coal from some of its most important outlets. How much coal tonnage has been displaced by gas is difficult to ascertain although it is substantial, running into millions of tons annually.

In the large industrial and utility boiler fuel market, which, apart from space heating, is the largest single use of gas, the inroads of natural gas have been most severe. The principal reasons for this are:

(1) Dumping of natural gas on an off-peak or interruptible basis during the warmer periods of the year when demands for space-heating gas are at their lowest;

(2) The pricing practices of the pipeline companies have been such that most, if not all, of the increased costs of operation have been imposed upon the small firm users with only as much of the cost included in the interruptible or off-peak rates, both direct and resale, as competition will allow;

(3) The price of natural gas at the wellhead has not been permitted to rise to a level commensurate with its intrinsic value as a fuel due to the artificial controls on the producers as a result of Federal regulation;

(4) Onerous take-or-pay-for clauses in contracts between pipeline purchasers and producer-sellers which require pipelines to pay for certain minimum amounts of gas whether taken or not, thus creating pressure on pipelines to dump gas during off-peak periods rather than having to pay for gas for which they otherwise would not have a market; and

(5) A lack of incentive in the act to encourage the pipeline companies to develop to the fullest extent possible underground gas storage facilities, thereby minimizing the need for dump loads during warmer periods of the year and extending the life of the reserves by conserving the gas for later higher purpose uses.

To accomplish the objectives which we believe are in the public interest, we respectfully urge the committee not to act upon S. 666 at this time, but first to give consideration to amendments that would correct the existing inequities in the act. In this regard we respectfully suggest that several ways to alleviate these competitive problems would be:

First, a statutory admonishment that pipeline expansion projects contemplating maximum development and use of underground storage would be given priority consideration over those which propose the sale of large volumes of off-peak or interruptible gas in industrial markets. This would work to the advantage of the consuming public because of the lower costs of storage as compared to the high cost of main-line expansions in capacity. Second, by establishing a ratemaking formula applicable to interstate pipeline companies which would assure that all classifications of service, firm as well as interruptible, bear their fair share of the costs of the pipeline operation; and, third, close the regulatory gap which now exists by putting direct sales of gas under the jurisdiction of the Federal Power Commission.

In closing, we repeat our opinion that S. 666 does not reach the core of the vexatious problems confronting the Commission today in its administration of the Natural Gas Act. Nor would the provisions of the bill eliminate the workload with which the Commission is confronted. Indeed, section 5 of the bill would put the Commission in such a straitjacket that it is difficult to see how it could evaluate properly the complex proposals that come before it and stay within the proposed statutory time limits. Furthermore, the bill does not cover the more glaring defects in the act relative to the competitive aspects of natural gas and their important effects on coal. We urgently and respectfully request, therefore, that the committee not pass favorably on S. 666 unless it first takes into account the various other amendments now pending, and include amendments along the lines above. If it so desires, we would be pleased to submit to the committee, as an aid in resolving these problems, statutory language which we feel would accomplish the recommendations set out above.

We appreciate very much the courtesy of the committee in giving us this opportunity to present our views.

STATEMENT OF THE CALIFORNIA FARM RESEARCH AND LEGISLATIVE COMMITTEE IN SUPPORT OF SENATE BILL 666, TO RESTRICT THE POWER OF NATURAL GAS COMPANIES TO INVOKE RATE INCREASES WITHOUT FEDERAL POWER COMMISSION APPROVAL OF PRIOR APPLICATIONS

Hon. Warren G. Magnuson, chairman, Hon. Clair Engle, subcommittee chairman, Senate Committee on Interstate and Foreign Commerce, Washington, D.C., and members of the committee, the California Farm Research and Legislative Committee wholeheartedly supports Senate bill 666, which would restrict the power of natural gas companies to invoke rate increases without Federal Power Commission approval of prior applications.

At its annual meeting March 31, 1960, our committee unanimously adopted a resolution supporting Federal legislation to amend the Natural Gas Act to this effect.

At that time we called attention to the fact that under section 4(e) of the Natural Gas Act, producers are permitted to put increased rates into effect (subject to possible refund), if the Federal Power Commission does not act upon these applications within 5 months after filing. This has enabled natural gas companies to file applications based on an unscrutinized rate structure for increases which go into effect without hearings with the result that both distributing utilities and their customers are unjustly forced to pay pyramided rates.

For example, since 1955, four rate increases have been imposed upon California ratepayers by the El Pasto Natural Gas Co. None of these has been adjudicated by the Federal Power Commission. On the basis of these undecided cases, Californians have already paid at least $225 million in higher gas rates.

These increases became part of the expenses of distributing utilities, who, in turn, come before the California Public Utilities Commission and ask that they be passed on to their farm, domestic, and industrial consumers.

On May 6, 1960, Pacific Gas & Electric Co. filed an application to increase natural gas rates by a total amount of $26,615,000, as follows:

1. Effective August 25, 1960, to increase gas rates by $9,810,000, subject to refund, as an interim offset to the annual increase which El Paso Natural Gas Co. announced that it would charge applicant on that date, pursuant to the higher rates which El Paso filed with the Federal Power Commission under docket No. RP60–3.

2. Effective at the earliest possible date, to increase its charges for gas, under a general rate proposal, by an additional $16,805,000 to permit applicant to realize 6.80 percent return on its gas operations.

Our committee entered this case as a protestant, application No. 42225, for itself on behalf of its affiliated members, and also representing the Northern California Citizenship Council, United Automobile Workers, AFL–CIO, Oakland, Calif.

We subsequently became the coordinating group through which 12 cities and 4 counties in P.G. & E.'s service area presented separate and joint testimony in an unsuccessful attempt to prevent P.G. & E. from passing through to the ratepayers this $9,810,000 increase charged P.G. & E. by El Paso.

No other recourse was available to the California Public Utilities Commission because legislation at the congressional level, such as is now proposed under S. 666, was lacking.

We are informed that at a recent conference in Washington, between El Paso and representatives of the California Public Utilities Commission, the company proposed to refund to California distributing utilities the sum of $18,400,000 applied to rate increases imposed between April 15, 1955, and August 24, 1960.

In contrast to the proposed refund, El Paso collected from these California utilities some $205 million during this period and this was exclusive of the $20 million allowed August 25, 1960, of which the $9,810,000 was P.G. & E.'s share.

The proposed refund carries with it a stipulation on the part of El Paso that it will not lower present rates and will not consider any rate reduction until the Federal Power Commission has rendered an opinion on the August 25, 1960, increase of $20 million.

We are informed that the California Public Utilities Commission is rejecting this offer as being far below the amount rightfully due California distributing utilities.

California's experience is just one case in support of Federal legislation such as Senate bill 666.

According to the Congressional Record of April 13, 1961, President John F. Kennedy made the statement that some 4,000 rate increases imposed by natural gas producers are pending before the Federal Power Commission. The total amount of rate increases collected as a result of these pass-throughs is well over $1 billion annually.

There seems little chance that the Federal Power Commission can render decisions on these pending cases for many years. In the interim, new requests for rate increases continue to accumulate.

We therefore urge a favorable vote on S. 666 and assure your committee of our full cooperation in getting this measure enacted by the 87th Congress.

On behalf of the California Farm Research & Legislative Committee:

Mrs. Grace McDonald, *Executive Secretary.*

California Public Utilities Commission, San Francisco, Calif.

San Francisco, June 1.—The California Public Utilities Commission today voted to reject a proposed compromise settlement of three natural gas rate increase proceedings under which El Paso Natural Gas Co. has collected from California customers approximately $205 million in raises which are subject to refund. These raises were in effect from April 15, 1955, until August 24, 1960, at which time they were superseded by a fourth raise.

Commission President Everett C. McKeage said the California Commission will demand public hearings before the Federal Power Commission (FPC) on each rate increase to determine the amount of raise which was reasonable and justified and the amounts which should be refunded.

The California Commission staff has estimated that the $18,400,000 refund offered to customers in this State under the El Paso proposal is far below the amount due. Final staff investigations are still to be completed.

Under the El Paso proposal the refund would not lower rates now in effect, but it would continue to charge the raises which Californians are paying at the rate of $80 million per year on the volume of gas purchased in 1960. If the El Paso proposal were accepted rates would not be determined until the fourth raise, which went into effect last August 25, was acted upon by the FPC, at which time rates would be decided and the refund, if any, on the 1960 raise would be set.

Rate increases went into effect as follows: April 15, 1955, $31 million per year at present usage; January 1, 1958, $21 million; August 1, 1959, $28 million; August 25, 1960, $20 million.

NEW YORK, N.Y., *May 29, 1961.*

HON. WARREN G. MAGNUSON,
Chairman, Interstate and Foreign Commerce Committee,
The Senate, Washington, D.C.

DEAR MR. MAGNUSON: In connection with the hearings you are having respecting gas rate increases, may I ask that you include in the record the letter which I wrote to General Counsel last April 13, which describes what I believe you will find to be an outstanding example of the abuse on cumulative rate increases in the face of delayed Commission action.

Very truly yours,

PERCIVAL E. JACKSON.

NEW YORK, N.Y., *April 13, 1960.*

WILLARD F. GATCHELL, Esq.,
General Counsel, Federal Power Commission,
Washington, D.C.

DEAR MR. GATCHELL: I am a director of Central Indiana Gas Co. I have had an extensive legal experience with administrative bodies. Rarely have I seen a more shocking situation than your Commission has permitted to build up in the gas distribution industry.

Central Indiana Gas takes its gas from Panhandle Eastern. It is a small company with a net of approximately $1 million—presently less. We had a rate increase from Panhandle in 1952 from which we received a partial refund. The proceeding is not yet wholly completed. We had another increase in 1955, the issues in which are wholly undetermined. We had a third in September 1958, a fourth in March 1960, and now at the last meeting of the board I was told that Panhandle has filed a fifth application for an increase.

Based on the Commission's determination in the 1952 proceeding and in spite of reduced earnings, we withheld making any application for a consumer rate increase. However, the fourth application simply forced us to do so and we have such an application now pending before the Indiana Commission. On its heels comes this fifth application from Panhandle which will require a supplemental application for a consumer increase.

Had there been some determination in the earlier—now hoary—second proceeding, we might have known where we stood respecting consumers and stockholders and molded our corporate practices accordingly. Instead, we have been floundering in a morass of uncertainty and indecision, accompanied by a growing disrespect for the law and, in particular, for your Commission and its processes.

I happen to know, since I am a director of a number of other utilities, that the entire gas distribution industry flounders in the same maze of uncertainty. Here in the East, as you know, some of these pipeline people have begun to get some sense and feeling that reliance on bureaucracy is hopeless have undertaken to put through voluntary compromises. Panhandle, apparently, is still dominated by the McGuire psychology which I witnessed many years ago here in New York when he was fighting for control.

You and I attend Bar Association meetings and hear the pundits talk about the law and their efforts to reform its processes. Here we have an agency that

has been sitting on top of a very difficult situation that calls for action either by that agency or, finding itself impotent, by Congress.

It seems to me the whole situation is a howling shame and a disgrace and, in justice to yourself and your profession, you ought to do something about it.

Very truly yours,

PERCIVAL E. JACKSON.

PIPE LINE CONTRACTORS ASSOCIATION,
Dallas, Tex., May 19, 1961.

Re S. 666.

Hon. WARREN G. MAGNUSON,
Senate Interstate and Foreign Commerce Committee,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: We understand that hearings will be held by your committee on the above bill, May 24 and 25. This letter is for the purpose of setting forth our views with respect to some of the problems involved, and we request that you incorporate this letter in the record of the hearings.

The Pipe Line Contractors Association is composed of contractors who build cross-country oil, gas and products pipelines throughout the United States, and of manufacturers, suppliers and dealers in the equipment and materials required to build such pipelines. While the members of this association are not engaged in the production, transmission and distribution of natural gas, the pipeline contractors can properly be looked upon as an important segment of the oil and gas business. It is quite apparent we have a direct stake in the success of these enterprises.

At the present time our members are being delayed on many projects, to a large extent through the regulatory policies and actions affecting the natural gas industry. While we fret about the slow progress of certificate cases by the Federal Power Commission, we cannot enter into these matters directly because they quite often involve competing companies for which our members do construction work. Although we cannot aline ourselves in regulatory matters in the interest of any one company, we are vitally interested in the welfare of the entire natural gas industry.

There are other major problems in which we are unable to fully exert our interest in a direct manner. Among them is the matter of prompt disposal of rate cases by the Federal Power Commission. Delay in the disposal of these cases is a stumbling block to the further development of the natural gas industry. Unless our customers can sell their products at a profit, they cannot continue to build the facilities necessary. We think the disposition of these cases by the Federal Power Commission has been hampered to a large extent by lack of adequate directions from the Congress in the regulatory laws under which the Commission operates.

It is our understanding that the chief purposes of the bill under consideration are to stabilize consumer prices for natural gas, and to eliminate the regulatory hiatus which has made it necessary for natural gas companies to file for rate increases before prior rate filings have been finally determined by the Federal Power Commission. The Pipe Line Contractors, of course, are not comprised of rate experts, but we greatly fear that the proposals pending before your committee, if enacted, would result in the natural gas companies not being able to adjust their rates so as to be able to currently recover costs. This in turn would, of course, inevitably result in curtailment of the growth and development of individual companies and to the detriment of the entire industry.

It would be our hope that the committee would seriously consider this phase of the problem, with a full understanding that any curtailment of expansion and development of natural gas deprives the consumer of the use of this valuable fuel, and at the same time slows down the general economy by preventing the many thousands of workers who earn their livelihood in the construction and related industries from achieving full-time employment.

Very respectfully submitted.

M. S. WILLIAMS,
President.
RICHARD A. GUMP,
Executive Secretary.

THE COLUMBIA GAS SYSTEM, INC.,
New York, N.Y., July 26, 1961.

HON. WARREN G. MAGNUSON,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR MAGNUSON: As you will recall, I testified before the Interstate and Foreign Commerce Committee in opposition to Senate bill 666, with particular reference to section 3. An important basis for our objection is that the proposed legislation does not attack the causes for the serious delays presently experienced in proceedings before the Federal Power Commission.

I am forwarding herewith Columbia Gas System's outline for a plan of reorganization of the FPC which we believe is an essential step in curing such delays. The Columbia plan for reorganization of FPC follows in broad outline the one set forth in the AGA report which was made a part of the record on S. 666. We believe, however, that our memorandum is in short form and therefore might be a more handy reference for you.

In addition to the suggested reorganization of the Commission, we recognized that significant internal procedural reforms are needed. Currently, all segments of the gas industry, together with committees of the NARUC, are considering various procedural reforms suggested in the aforementioned AGA report for ultimate presentation to the Commission for its consideration.

If you desire any additional information or data, we would be pleased to obtain it for you.

Very truly yours,

JOHN W. PARTRIDGE.

THE FEDERAL REGULATORY PROCESS—REORGANIZATION OF FPC (REVISED)

There is a ground swell demanding that immediate attention be given to reorganizing the so-called industry regulatory bodies such as the FPC, ICC, CAB, SEC, and FCC. The ground swell is evidenced by (*a*) Mr. Landis' report to the President concerning such agencies; (*b*) recent hearings before Senator Carroll; (*c*) the creation by President Kennedy of an administrative conference; and (*d*) the report of the Harris Subcommittee on Legislative Oversight.

In addition to the foregoing, there is particular dissatisfaction throughout the gas industry and bodies such as NARUC with the delays of FPC regulation. Unquestionably, the criticism of the regulatory process under the Natural Gas Act is fully justified. It is imperative that Congress, the industry, State regulatory bodies as represented by NARUC, and all other interested parties consider the type of reorganization which would meet the problem.

THE PROBLEM

There are two fundamental criticisms of the Federal Power Commission. First: Delay. Second: Too frequently the decisions do not reflect a clear understanding of the record made on the issues presented. Both of these criticisms are caused by the same problem; namely, the workload confronting the Commission is so great that it cannot cope with it expeditiously or effectively.[1]

This workload stems from numerous circumstances:

(i) The tremendous expansion of the natural gas industry during the last 15 years. Today it is the fifth largest industry in terms of plant investment in the Nation.

(ii) Inflation has brought about the need for many rate increases. The Commission has been confronted almost continuously since 1951 with a large backlog of important rate proceedings.

(iii) The *Phillips* decision requiring the regulation of several thousand independent gas producers imposed a tremendous mechanical problem and, more important, completely new regulatory problems which the Commission has not satisfactorily solved even as of today, 7 years after the *Phillips* decision.

If these circumstances are the reasons for the delay and ineffectiveness, the remedy is not by the types of amendment to section 4(e) of the Natural Gas

[1] It should be noted that the Commission was created in 1930 as a panel of five Commissioners to license hydroelectric projects. In 1935 the Commission was given jurisdiction over electric utility companies engaged in interstate commerce. In 1938 the Natural Gas Act gave it jurisdiction over the transportation and sale of natural gas in interstate commerce, which at that time was a relatively small industry.

Act, recommended by NARUC and embodied in Senate bill 666 and by the report of the Special Subcommittee on Legislative Oversight of the House Committee on Interstate and Foreign Commerce (H. Rept. 2238, 86th Cong., 2d sess.). The remedy is in a fundamental reorganization of the Commission which will enable it to cope effectively with the workload.

A. Suggested reorganization

Generally, it is believed that the reorganization of the Federal Power Commission should proceed along the following lines:

(*a*) Increase the number of Commissioners.[2]

(*b*) Increase the tenure of office of the Commissioners.[3]

(*c*) Increase the compensation of the Commissioners; improve retirement provisions.

(*d*) The President will designate a Chairman who will be the Chief Executive, to serve at the pleasure of the President.

(*e*) As Chief Executive, the Chairman will be responsible for the administration of the agency (FPC). He will have authority to approve and sign orders in noncontested matters.

(*f*) The Chairman will appoint to serve at his pleasure an Executive Director who would be responsible for the organization, administration, and activities of the Commission staff.

(*g*) The Chairman will have authority to designate Commissioners, including himself, to sit in panels. A panel will have all jurisdiction and powers of the Commission with respect to matters assigned to it, including applications for rehearing. Orders of a panel for all purposes, including appeal, will be deemed orders of the Commission. In cases of unusual importance the Chairman may direct the Commission to sit en banc (the whole Commission) on the initial hearing or the application for rehearing.

(*h*) When a case is contested, the Chairman will designate a Commissioner to follow the progress of the case so that he will be fully familiar with the record when it comes before the Commission or panel for decision. The Commissioner so designated will not supervise the trial of the case. He will be one of the Commissioners who will ultimately decide the case.

(*i*) All opinions of the Commission will be signed by the Commissioner delegated the responsibility for the preparation of the opinion.[4]

(*j*) Each Commissioner will be assigned a small staff of technical and legal associates to assist him in research and the preparation of opinions and orders.

B. In support of reorganization

Under the present organization a difficulty is that the voluminous and detailed records which are developed in connection with many cases cannot be given proper consideration by the Commission. This results primarily from the workload rather than from any disposition on the part of the Commissioners not to give the parties fair consideration.

The problems confronting the Commission will become more complex as time goes on. In fact, there are no easy answers to many major problems confronting the Commission. Thus, it can be expected that there will be lengthy hearings and voluminous records. The problem is how to handle these matters intelligently and effectively. The suggested reorganization would assist the Commission in doing this.

The appointment of a Chairman to serve at the pleasure of the President and the appointment of an Executive Director to serve at the pleasure of the Chairman, each with adequate authority, establishes a necessary measure of executive control. Strong executive direction will result in the development of realistic procedures and sound administration which can eliminate much of the current delay in processing proceedings.

It may be argued, in view of Reorganization Plan No. 9 of 1950, which transferred the executive and administrative functions from the Commission to the Chairman, that these particular reorganization measures are not necessary.[5] However, under the provisions, of the Reorganization Plan No. 9, the extent

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[2] "Report of the Special Committee of Executives on Regulatory Affairs of AGA" (hereafter called the AGA report) and H.R. 5868 recommend seven Commissioners.

[3] The AGA report and S. 1842 suggest 10 years; H.R. 5868 suggests 7 years.

[4] The Commission has on its own initiative ruled that Commission decisions be signed by the Commissioner responsible for their preparation.

[5] See Federal Power Commission Annual Report for 1960, p. 6, under "Organization and Staffing."

of the Chairman's executive and administrative control is unclear. Also at present the power of the President to replace the Chairman prior to the expiration of his term on the Commission, but without removing him from the Commission, is unclear. Further, it is understood that the Executive Director now serves at the pleasure of the Commission, and not at the pleasure of the Chairman.

Manpower with the ability to become experts in their chosen field of regulation is essential. It has been suggested that the so-called "expertise" of the Commissioners on regulatory agencies is not present in many cases. It can be created, first, by the wise selection of men for these important positions; second by lengthening the tenure so as to attract men into this field on a career basis; and third, by raising the compensation, including fringe benefits, to a higher level.

OTHER SUGGESTIONS WHICH WOULD IMPROVE PERFORMANCE

A. Amendments to Natural Gas Act

Certain amendments to the act would expedite the Commission's work. For example, the requirement for a hearing on all certificate applications should be eliminated by amending the act to provide that there should be an opportunity for hearing by those desiring it after due notice of the application. This would eliminate a considerable amount of unnecessary work now connected with handling the so-called abbreviated hearing procedure which is followed by the Commission to meet the standards of the present act.

B. Procedure reform

A serious bottleneck in the handling of rate proceedings is the time required to make field audits. There are many theories why the field audits take so long. The men in the field maintain that there are not enough people in Washington through whom they can clear their work. Until they have cleared their work with the Washington office, they are not in a position to terminate the investigation and move on to another job. This complaint of the field staff personnel seems a valid one. Further, many of the field audits seem unnecessary. After a company's records have been subjected to a complete and careful audit, which has been either approved by the Commission or utilized in formal proceedings as the basis for regulatory action, there should be no reason to retraverse this same ground. When another proceeding involving the same company is before the Commission, it would seem sufficient to audit only additions and retirements made subsequent to the original field investigation. It is believed, too, that in determining reasonable rates more use can be made of the voluminous data which the Commission constantly receives from each natural gas company in monthly and annual reports and of the comprehensive data which is required in an application for a rate increase. Analysis of these reports and data, which are submitted under oath, should reduce materially the matters requiring a field audit.

C. Ex parte communications

The occasion for ex parte (private) communications would disappear to a large extent if the proceedings before the Commission were handled expeditiously. Furthermore, if contact between staff personnel who assisted in formulating the policy and participated as adversaries in the proceeding were eliminated, it would help to restore confidence in the decisionmaking process and also eliminate a further reason for ex parte communications.

It is improper for either the staff or industry representatives to discuss the merits of a case which has been submitted to the Commission for decision.

Dated July 1961.

BOSTON, MASS., *May 18, 1961.*

Hon. WARREN G. MAGNUSON,
U.S. Senator, New Senate Office Building,
Washington, D.C.:

The Massachusetts Department of Public Utilities wishes to be recorded in favor of Senate bill 666. Future of supply of natural gas in New England depending on remedial legislation of the Natural Gas Act as contained in said Senate bill 666.

ROY C. PAPALIA,
Chairman, Massachusetts Department of Public Utilities.

ATLANTA, GA., *May 18, 1961.*

Senator WARREN MAGNUSON,
Senate Office Building, Washington, D.C.:

The Georgia Public Service Commission on behalf of the citizens of Georgia who sell and use natural gas heartily endorse Senate bill 666 introduced by you in the Senate, hearing on which will be held May 24–25.

CRAWFORD L. PILCHER,
Chairman.
ALLEN A. CHAPPELL,
Vice Chairman.
WALTER R. MCDONALD,
Commissioner.
BEN T. WIGGINS,
Commissioner.
WILLIAM H. KIMBROUGH,
Commissioner.

DENVER, COLO., *May 23, 1961.*

Hon. CLAIR ENGLE,
U.S. Senator from California,
Senate Office Building, Washington, D.C.:

Am advised the hearings on bill S. 666 will be held before your subcommittee May 24 and 25. Regret that I will be unable to appear in person to express my views on this bill. Joe Nigro, chairman of the Colorado Public Utilities Commission, will attend with pertinent information from the State of Colorado. I respectfully request that you permit the filing of this telegram as being indicative of my position. We are particularly interested in the provision prohibiting the pyramiding of rate increase upon rate increase. The ratepayers of Colorado in 1953 through 1959 were subjected to four rate filings by our principal pipeline company without a final determination by the Federal Power Commission of any of these cases. Over $93 million were collected from the ratepayers. These rate filings were finally disposed of by settlement between the parties which resulted in a refund of over $54 million. We believe that such a situation is inimical to the welfare of both the ratepayer and the supplier. We also urge favorable consideration on the other aspects of the bill with particular attention to the provision requiring that rate cases be disposed of within the specified time. Your consideration in allowing me to file this statement is sincerely appreciated.

Sincerely,

STEVE MCNICHOLS,
Governor of Colorado.

THE STATE OF WYOMING,
Cheyenne, July 20, 1961.

Re U.S. Senate bill No. 666, introduced by Senator Magnuson to amend the Natural Gas Act.

U.S. SENATE COMMERCE COMMITTEE,
U.S. Senate, Washington, D.C.

GENTLEMEN: The above captioned bill promulgated by the NARUC has caused considerable controversy and speculation in the industry. This commission recognizes the problems which the bill seeks to alleviate, but, from its experience and determinations, must conclude that there are certain pitfalls in the proviso which might render its application more detrimental then helpful to both the consuming public and the industry as a whole.

The most outspoken proponents of this proviso are the gas-consuming States who hope thereby to prevent pyramiding of rate increases. They seek to accomplish this through the most important provision in the bill, section 4(e), which would prohibit natural gas companies from effecting new increases in rates while there is in effect an increased rate filed by such company.

It is our opinion that proponents of this proviso do not properly consider the fact that this pyramiding is due largely to the delaying tactics of State and municipal governmental interests, which—and properly so—try to postpone as long as possible, the burden to their respective citizenry of unjustifiably increased rates. It is apparent that under law, these processes are necessary and proper since it is a basic tenet that no utility can impose a greater burden on its

consumer until it has, by good and competent evidence, proven that the increase in rates is necessary. It is our opinion that this proposal would add a tremendous burden to the Federal Power Commission since the Commission would be constantly called upon to implement the proviso, thus preventing it from getting on with the rate hearing. These ancillary administrative procedures would require almost as much time and evidence as the definitive rate hearing.

It is not difficult to visualize that companies faced with the possibility of confiscation resulting from an indefinite suspension period would necessarily resort to injunctive relief. Conversely, although a limited suspension is constitutionally proper, it would behoove the imperiled company to question the constitutionality of a law, which, in application, effects an indefinite and unlimited suspension. To alleviate these impending problems, it is our opinion the Commission would be obliged to: (1) Adopt an automatic method of implementing the provision, in which event nothing is changed by legislation, or; (2) constantly divert its attention from the basic rate cases to the problem of whether or not interim rates should be allowed; a problem as complex as the present rate cases.

Another problematic provision of the bill is found in section 5, amending section 15, by providing time limits within which hearing and decisions must be concluded. It is questionable that this proviso is little more than a reproof or admonition to hurry up, since it provides that the time limits imposed are not jursdictional. Conversely, a strict construction of this proviso would provide limits that may be arbitrary or inadequate in many cases. Lastly, this proposal does not make provision for the time in which the first hearing must be held.

In summation it may be stated that if rate increases cannot be obtained by due process when, all proper circumstances considered, they are necessary and proper, it is doubtful if this industry will be capable of attracting and maintaining proper investment capital to sustain its operations and to allow proper leeway for development and expansion. Any law that has a tendency to stymie development of our gas resources will unavoidably have a tragic effect on the public welfare. It is a well-known fact that the public is now consuming more gas than is being found; consequently, in a short time, if more reserves are not found, the domestic market will eventually be forced to pay rates higher than ever anticipated, as the advantage of an "interruptible" schedule will be a thing of the past.

We hope these few comments may be given your fullest consideration in arriving at a fair determination as to the effectivity of the proposed bill. If we can be of any assistance, please do not hesitate to call on us.

Very truly yours,

PUBLIC SERVICE COMMISSION OF WYOMING,
ALBERT P. BRUCH, *Chairman.*

NEW MEXICO PUBLIC SERVICE COMMISSION,
Santa Fe, N. Mex., July 12, 1961.

Hon. WARREN J. MAGNUSON,
Chairman, Committee on Interstate and Foreign Commerce,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: In relation to S. 666, the New Mexico Public Service Commission has the following to submit since we were unable to attend hearings before your committee which were reportedly held the week of June 5.

We are opposed to all provisions of the bill except the one which would "require FPC examiners and Commissioners to act within a specified time after a case is opened."

As commissioners fully aware of their responsibilities to the public (as well as to the consumer) we find no merit in additional regulatory power being given to FPC as proposed in S. 666 (or H.R. 4095).

When we learn that New Mexico producers receive 13 cents per thousand cubic feet of natural gas at the wellhead and the State of Massachusetts gets 13 cents as the same is transported across its State line plus 42 cents in other taxes, we feel that the FPC and the NARUC are working on the wrong end of the pipeline to provide cheaper gas for eastern consumers.

We do not agree that FPC should have any jurisdiction over the price of natural gas at the wellhead and we do not generally agree with recommendations of the National Association of Railroad & Utilities Commissioners (NARUC).

Sincerely,

L. J. CHAMBARD, *Chairman.*
R. R. SPURRIER, *Commissioner,*
A. M. ULIBARRI, *Commissioner.*

PUBLIC UTILITIES COMMISSION,
STATE OF CALIFORNIA,
San Francisco, Calif., May 29, 1962.

Subject: Senate bill No. 666, amending Federal Natural Gas Act.

Hon. CLAIR ENGLE,
Chairman, Subcommittee of Senate Commerce Committee,
Senate Office Building, Washington, D.C.

MY DEAR SENATOR: Pursuant to the privilege you extended to me to comment on the statement of the Federal Power Commission respecting the above-subject bill, I set out hereinafter such comments.

Preliminarily, let me say that, in my opinion, this report is most constructive and exhibits a sympathetic understanding of the problem presented. I cannot agree with all the suggested modifications of the bill, but I do agree with several of them.

SECTION 1 OF THE BILL

I cannot agree that the prohibition of these indefinite pricing clauses should not be written into the Natural Gas Act. The rule recently promulgated by the Federal Power Commission in this regard may not pass judicial muster. The courts may hold that the Commission has no such authority. This is too important a subject to be left to judicial interpretation or construction. I can see nothing in section 1 which would prohibit the type of price redetermination clause which the report of the Federal Power Commission refers to in the first full paragraph at page 3. Such a clause could be so worded as to take it out of the provisions of section 1 of the bill. The legislation is prospective, as applied to these indefinite pricing clauses. The legal presumption is that a statute operates prospectively unless the specific language thereof clearly evinces an intent that the statute shall operate retrospectively. No such language is to be found in section 1. However, should specific language negating retrospective operation of section 1 be desired, it could be easily written into the section as a proviso at the end of said section.

SECTION 2 OF THE BILL

We are in agreement on this section of the bill.

SECTION 3 OF THE BILL

I have no objection to adding the words "or appropriate" after the word "necessary" at line 21, page 3 of the bill. This is a good suggestion. It is not readily perceived why the words "in whole or in part" at line 20, page 3, are not helpful. This language was inserted to prevent the contention being made that the Commission could not suspend a part of an increase and let the remainder go into effect. In other words, the language negatives the "all or nothing" contention. Should the committee perceive reason for deleting this language, I would offer no objection, although I believe the language desirable and that it should be kept in the bill. I cannot agree that section 3 should apply only to pipeline companies, as suggested by the Commission. Both pipeline companies and producers are natural gas companies under the act; the law makes no distinction. Many pipeline companies are also producers. The Commission, under the act, will have sufficient flexibility to fashion a rule which could meet the problem suggested. Failure to regulate at the source, in my opinion, would create an intolerable condition.

In connection with section 3 of the bill, Senator Monroney correctly pointed out that there is nothing specific in that section which provides for refunds where the Commission permits a rate increase to go into effect pursuant to the proviso beginning at line 17, page 3, of the bill. The fact is that the Commis-

sion, as a condition to permitting such an increase to go into effect under the proviso, may require a hearing and refund if the increase or any part thereof, subsequently, is found unreasonable. The Commission has so proceeded in the past. Should there be any doubt on this point, the bill could be amended readily by adding after the word "Commission" at line 21, page 3, the words: "subject, however, to subsequent hearing and determination by the Commission of the reasonableness of such proposed change and subject to refund should the Commission find that any proposed change results in an unreasonable increase in any rate or charge." The same objective could be achieved by adding after the word "Commission" at line 21, page 3, the words: "subject, however, to such terms, requirements or conditions as the Commission, in its judgment, may find that the public interest may require."

SECTION 4 OF THE BILL

I cannot concur in the report of the Commission that the requirement of section 4 of the bill be left to the discretion of the Commission guided by the decision of the Supreme Court of the United States in the *Atlantic Refining Co.* case (360 U.S. 378). The gas consumers of this Nation are entitled to specific statutory protection. Their interest should not be left to the changing views of judicial interpretation or construction. This is a far too important subject to be consigned to such a frame of reference. The suggestion that this section apply only to producers, in my opinion, is unsound. The flexibility desired by the Commission may be achieved pursuant to a rule or by remedial action in each case. The remedy provided by section 4 of the bill is so fundamental that the wholesome result to be achieved should not be left to implication or be rested upon inference.

Its operation should fall alike upon the producer and the pipeline.

SECTION 5 OF THE BILL

The contention of the Commission that the remedy sought to be achieved by section 5 of the bill should be achieved by the amendment of the Federal Administrative Procedure Act is sound, as a general proposition. However, the Federal Power Commission presents a special situation, as regards regulatory lag. This has been pointed out by the Landis report. In my opinion, existing conditions require, as a minimum, the enactment into law of subsections (c) and (e) of section 5 of the bill with the Commission being given the authority to extend for good cause shown, the time period provided for in subsection (e) for filing the presiding officer's report, as suggested by Judge Kline.

The suggestion by Senator Engle that salaries of Hearing Officers and Commissioners be withheld where cases remain undecided for a specified period of time would prove most effective; provided that such requirement is actually enforced. Nothing could be more efficient or more effective.

In all fairness, let me say that the bill, as the Commission would change it, would represent a tremendous improvement over present conditions. However, I believe that the people are entitled to the protection which the bill, in its present form, would award, subject to the clarifying changes set out in this letter.

Respectfully yours,

EVERETT C. MCKEAGE, *President.*

DECATUR, GA., *May 26, 1961.*

Hon. RICHARD B. RUSSELL,
U.S. Senate,
Washington, D.C.

DEAR BROTHER RUSSELL: In this morning's Constitution there was an article headed "Halt Rising Gas Rates, Pilcher Asks Senate Unit."

Please speak a word where it will do the most good.

In 1950 my electric bill was $160.40; my gas bill was $117.21.

My coal bill for heating had reached such magnitude, $17.50 per ton, I was priced out of the market and installed a gas heating system—in the summer of 1951.

In 1952–53, my gas bill went from $117.00 to $220.41.

November 1960, electric bill, $179.42; gas bill, $345.52 (winter of 1959–60).

Gas bill—so far, winter of 1960–61, $365 for only 10 months. Bills payable in June and July complete the 12-month period.

If the electric power company can pretty well hold the line, why the ungodly increase by the gas company?

Please pass this letter along to the proper committee, and rest assured you and what you stand for are highly satisfactory to us folks here.

Cordially,

FRITZ RAUSCHENBERG.

THE MIDWEST INDUSTRIAL & COMMERCIAL GAS USERS ASSOCIATION,
Kansas City, Mo., June 1, 1961.

Re amendment of the Natural Gas Act to provide for suspension and refunds upon industrial resale rates for natural gas.

Chairmen and Members of the Senate and House Committees on Interstate and Foreign Commerce,
U.S. Congress, Washington, D.C.

GENTLEMEN: The membership of this association is interested in legislation to amend the Natural Gas Act by striking from section 4(e) of the act the proviso making industrial resale rates nonsuspendible and nonrefundable.

The proposed bill would need only to provide that "subsection (e) of section 4 of the Natural Gas Act is amended by striking therefrom the following: ': *Provided*, That the Commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only.'"

We respectfully urge that this amendment of the Natural Gas Act is of vital concern to industrial consumers of natural gas, is not controversial, and is necessary for the effective regulation of natural gas companies by the Federal Power Commission.

The Federal Power Commission has itself requested this amendment of the Natural Gas Act for the past 10 years as a desirable and noncontroversial amendment; see the 39th Annual Report of the Federal Power Commission (1959, p. 19).

Over 100 major industrial and commercial consumers of natural gas, with their plants located in the Kansas-Missouri area, are members of and represented by this association. Their concerns have their manufacturing and processing plants in the territory served by Cities Service Gas Co., a natural gas pipeline company regulated by the Federal Power Commission under the Natural Gas Act. In behalf of its members, this association has intervened in recent rate increase applications of Cities Service Gas Co., including FPC dockets G–2410 and G–9468 (pending from March 1954 until settled by FPC order of May 25, 1956), and G–18,799 (pending from June 23, 1959, until settled by FPC order of March 27, 1961), and actively participated in those proceedings. In large part through the efforts of this association, these rate cases were settled by agreement of the parties—the lengthy negotiations actively participated in by the association resulting in reduction of the rate filings by about 50 percent, and substantial reduction in filed industrial resale rates.

As major users of natural gas in "offpeak" periods, the concerns represented by this association have a direct and substantial interest in natural gas legislation, and are particularly affected by the proviso of section 4(e) above mentioned.

As section 4(e) of the Natural Gas Act now reads, industrial rates are not subject to suspension by the Commission; in this way they are treated differently and discriminatorily from any other rates regulated by the Federal Power Commission. The result is, as our members experienced in the Cities Service Gas Co. rate cases referred to above, that higher rates became payable by industrial consumers of natural gas months prior to the effective date of other rate increases. An amendment of section 4(e) of the act in the form set forth above would correct this inequity and permit the Federal Power Commission to suspend industrial rates to the same extent it may other filed rates.

The discrimination does not stop there. When it exercises suspension authority, the Federal Power Commission normally permits increased rates to go into effect only under bond providing for refunds of charges in excess of rates eventually found to be reasonable. The Commission has deemed its bonding and refunding authority to rest upon its power to suspend rates and permit them to go into effect conditionally and concluded it had no authority to require refunds upon industrial rates even though those rates were ultimately found excessive and reduced. This has the result of leaving excess charges in the gas companies' pocket, induces such companies to file high industrial rates, and discriminates against industrial gas consumers. This lack of refund power was recently

upheld in a case brought by this association, *Gas Service Co. et al.* v. *FPC*, 282 F. 2d 496 (C.A., D. of C., 1960)).

While as a result of the negotiated settlements of the Cities Service rate cases some refunds to industrial gas consumers were obtained, overcharges not refunded amounted to $672,268.94 in G–2410 and $986,715.58 in G–18,799. Thus, indstrial customers have suffered financial losses of $1,658,984.52 plus the interest thereon from the discriminatory effect of the proviso in section 4(e) of the act.

The proposed amendment would not otherwise affect the jurisdiction of the Federal Power Commission. Six pipeline companies supplying natural gas to parts of 17 States, of which Cities Service Gas Co. which supplies our territory is one, now file separate industrial gas rates within the proviso of section 4(e) of the Natural Gas Act. Only when there is a separate industrial rate does the situation to which we object arise. This further illustrates the discriminatory effect of the proviso in section 4(e). Our research indicates the proviso may have been included in the original legislation because then most industrial gas rates were contract rates, and it was believed undesirable to give the Commission power to suspend contractual rates. Now there are filed general "industrial rates," and the result is to permit, as to this class of natural gas customers, rates to become effective 5 months prior to other rates due to lack of suspension authority and without legal right to refunds. Thus the regulated company is favored at the expense of consumers whom the act is designed to protect.

Similar legislation to that we request has been introduced from time to time. H.R. 2757 and 2781 (87th Cong.) and S. 666 sponsored by the National Association of Railroad & Utility Commissions (87th Cong.) delete the proviso of section 4(e), but also contain other amendments to the Natural Gas Act. H.R. 6645 passed by the House on July 28, 1955, and S. 1853 passed by the Senate on February 6, 1956 (the Harris and Fulbright bills), by section 4 deleted the proviso, but were vetoed by the President. H.R. 6790 (1957) as reported from committee and H.R. 8528 (1960) also contained this amendment, but were never brought to floor vote. These bills, however, generally contained as their major provisions controversial measures, as limitation of FPC regulation of producing companies (under the *Phillips* decision, 347 U.S. 672), or fair field pricing of gas. The cleanest version of the amendment we desire was in S. 2251 (86th Cong., 1959), introduced by Senator Magnuson.

We earnestly solicit your support of an amendment to the Natural Gas Act in the form attached, which is nearly identical to S. 2251 in the 86th Congress. We should be glad to supply any further data or information which you might desire.

By direction of board of directors:

ELDON SLOAN.

PUBLIC UTILITIES REPORTS

UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT

GAS SERVICE COMPANY ET AL.

v.

FEDERAL POWER COMMISSION

Intervenor: Cities Service Gas Company No. 15401—US App DC—282 F2d 496 July 21, 1960; rehearing En Banc denied September 19, 1960

Petition by industrial resale customer for review of Federal Power Commission order permitting rate increase applicable to gas for resale for industrial use to go into effect without requiring bond for customer protection; affirmed.

Rates, § 13—Federal commission power—Bond requirement as to industrial rates—Natural Gas Act.

1. The commission has no power under § 4(e) of the Natural Gas Act, 15 USCA § 717c(e), to require a bond to refund any part of increased new rates for resale for industrial use only which ultimately may be found to be unlawful, since a bond may be required only with respect to rates which have been suspended and the suspension power is expressly withheld as to industrial rates, p. 3.

Constitutional law, § 15—Deprivation of property—Lack of bond protection for industrial gas service—Natural Gas Act.

2. Section 4(e) of the Natural Gas Act, 15 USCA § 717c(e), which does not empower the commission to require a refunding bond as a condition precedent to the effectiveness of newly filed industrial rates, does not thereby unconstitutionally deprive the industrial gas purchaser of property without due process of law, since the Constitution grants no right to the protection of such bond, p. 5.

Constitutional law, § 9—Delegation of effective power—Ratemaking—Natural Gas Act.

3. Section 4(e) of the Natural Gas Act, 15 USCA § 717c(e), in allowing industrial gas rates to go into effect without the citation of a bond for refund of charges ultimately found to be unlawful, does not thereby delegate legislative authority to fix rates to a natural gas company, since the companies had that power before the enactment of the Natural Gas Act and the act neither conferred nor enlarged the power, p. 5.

(Bastian, CJ., dissents.)

Appearances: J. David Mann, Jr., Washington, D.C., with whom William W. Ross and William J. Curtin, Washington, D.C., were on the brief, for petitioners; Peter H. Schiff, Attorney, Federal Power Commission, with whom Willard W. Gatchell, General Counsel, Federal Power Commission, and Howard E. Wahrenbrock, Solicitor, Federal Power Commission, were on the brief, for respondent; Harry S. Littman, Washington, D.C., with whom Jack Werner, Dale A. Wright, and Harold L. Talisman, Washington, D.C., were on the brief, for intervenor; Reuben Goldberg, Washington, D.C., filed a brief on behalf of Mississippi Valley Gas Co., as amicus curiae, urging reversal.

Before Wilbur K. Miller, Danaher, and Bastian, CJJ.

Wilbur K. Miller, CJ.: Cities Service Gas Co., which transports and sells natural gas in interstate commerce for resale, is a "natural gas company" within the meaning of the Natural Gas Act.[1] Schedules showing its rates and charges for any transportation or sale subject to the jurisdiction of the Federal Power Commission are on file with the commission and are incorporated into the service agreements with distributors. Cities Service, like any other wholesaler, is authorized by § 4(d) of the act, 15 USCA § 717c(d), to change its rates and charges by filing new schedules, which are subject, however, to investigation and regulation by the commission as provided in § 4(e), 15 USCA § 717c(e).[2]

On May 21, 1959, Cities Service tendered to the commission for filing revised rate schedules to become effective June 23, 1959, which increased its prices generally, including the price of gas sold for resale for industrial use only. On June 19, 1959, the commission ordered a hearing to be held concerning the lawfulness of such increased rates, and suspended the operation of the newly filed schedules and deferred the use of the rates fixed thereby for a period of five

[1] 15 USCA, § 717 et seq.

[2] The pertinent portion of § 4(e) is as follows:

"Whenever any such new schedule is filed the commission shall have authority, either upon complaint of any state, municipality, or state commission, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the commission, upon filing with such schedules and delivering to the natural gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect: *Provided,* That the commission shall not have authority to suspend the rate, charge, classification, or service for the sale of natural gas for resale for industrial use only; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the commission may, by order, require the natural gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified. * * *"

months beyond the time when they would otherwise have gone into effect; except that, because of the prohibitory provision of § 4(e), it did not suspend the rates for the sale of gas for resale for industrial use only. The schedules for sales for resale for industrial use were permitted to become effective on June 23, 1959, prior to the hearing which had been ordered, and without a bond or other provision for refund of the portion thereof which might be found not justified.

The Gas Service Co., a local distributor which purchases natural gas from Cities Service, some of which it resells for industrial use only, petitioned for intervention before the commission and for rehearing. Similar petitions were filed by others who alleged they were aggrieved by the order. Intervention was permitted but rehearing was denied. Gas Service and the others who had intervened in the proceeding before the commission have petitioned for judicial review of the commission's order under § 19(b) of the Natural Gas Act, 15 USCA § 717r(b).

[1] The question before us is, therefore, whether the commission has the power under § 4(e) to require Cities Service to file a bond to refund any part of the increased industrial rates ultimately found to be unlawful.

The section provides that, pending a hearing and decision concerning the lawfulness of newly filed schedules, the commission may suspend them for not longer than five months, except *it may not suspend rates for resale for industrial use only.* The statute also provides: "If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect." Immediately following the sentence just quoted, the statute provides: "Where increased rates or charges are *thus*[3] made effective, the commission may * * *" require a bond. The word "thus" is the key that locks the commission's bonding privilege into the preceding sentence and confines its exercise to the situations there described. These two statutory sentences should, therefore, be read together. They mean, we think, only what they say: That where increased rates have been suspended and are made effective at the end of the suspension period, the commission may require a bond.

There is no provision permitting the commission to require a bond as a prerequisite to the effectiveness of new industrial rates. Had Congress intended to give the commission such authority, it could easily have done so. Instead, it chose to authorize a bond only with respect to rates which had been suspended, having first expressly withheld the power of suspension with respect to industrial rates. We regard § 4(e) as unambiguous, so we do not need to consider the legislative history which both parties urge upon us as supporting their opposing contentions. We think this is a case for applying the canon of construction of the wag who said, "when the legislative history is doubtful, go to the statute."[4]

That history shows, however, that Congress had a rational basis for making the distinction between industrial and other rates as to suspension and refund—a distinction which we think clearly appears from the statute. We agree with the following statement in *Pacific Natural Gas Co.* v. *Federal Power Commission* (CA9th 1960) 33 PUR 3d 295, 301, 276 F2d 350, 354:

"When the bill [which became the Natural Gas Act] was reintroducted at the next session of the Congress, the proviso exempting industrial gas from all regulation had been deleted. However, on the floor of the House an amendment was offered, which is presently found in 15 USCA § 717c(e), exempting industrial gas from the Federal Power Commission's power to suspend rates, and *exempting industrial gas from the discretionary power of the commission to require security from the supplier to make reparations in cases where new rates are set aside by the commission as unreasonable after the period of suspension has expired.* See 81 Congressional Record 6727 (1937). This compromise provision apparently was acceptable to those who originally had opposed any and all regulation of industrial gas. Moreover, Representative Lea, the draftsman of both bills, noted that contracts for industrial gas were, at that time anyway, usually of short-term duration, and that the effect of the proviso was to prevent suspension when such short-term contracts were involved. See id. at pp. 6727, 6728. We cannot escape the conclusion that the Congress had a rational basis for saying that industrial gas needed less regulation than nonindustrial gas." [Emphasis added.]

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[3] Our emphasis.

[4] *Greenwood* v. *United States* (1956) 350 U.S. 366, 374, 100 L. ed. 412, 76 S. Ct. 410, 415.

Our interpretation of § 4(e) is buttressed by the fact that, since the beginning, the commission's consistent construction has been that the section does not grant authority to require a bond and refunding procedure before permitting a change in industrial rates to become effective; and by the further fact that the commission thinks it should have that power and has unsuccessfully requested Congress to confer it.[5]

The question before us as to the meaning of § 4(e) has not been squarely presented to the Supreme Court. But on two occasions that court has implied or assumed the commission cannot require a refunding bond with respect to new industrial rates while they are being investigated. These indications of the Supreme Court's view appear in *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.* (1956) 350 U.S. 332, 12 PUR 3d 112, 100 L. Ed. 373, 76 S. Ct. 373, and *United Gas Pipe Line Co.* v. *Memphis Light, Gas & Water Div.* (1958) 358 U.S. 103, 26 PUR 3d 314, 3 L. Ed. 2d 153, 79 S. Ct. 194.

In the *Mobile* case, the court said, 350 U.S. at p. 341, 12 PUR 3d at p. 118, 76 S. Ct. at p. 379:

"The powers of the commission are defined by §§ 4(e) and 5(a). The basic power of the commission is that given it by § 5(a) to set aside and modify any rate or contract which it determines, after hearing, to be 'unjust, unreasonable, unduly discriminatory, or preferential.' This is neither a 'rate-making' nor a 'ratechanging' procedure. It is simply the power to review rates and contracts made in the first instance by natural gas companies and, if they are determined to be unlawful, to remedy them. Section 5(a) would of its own force apply to *all* the rates of a natural gas company, whether long-established or newly changed, but in the latter case the power is further implemented by § 4(e). All that § 4(e) does, however, is to add to this basic power, in the case of a newly changed rate or contract (except 'industrial' rates), the further powers (1) to preserve the status quo pending review of the new rate by suspending its operation for a limited period, and (2) thereafter to make its order retroactive, by means of the refund procedure, to the date the change became effective. * * *"

We observe that "the further powers" added to the basic power of the commission by § 4(e) apply "in the case of a newly changed rate or contract (except 'industrial' rates). * * *" Therefore, the Supreme Court was saying that, as to industrial rates, the commission cannot "make its order retroactive, by means of the refund procedure, to the date the change became effective."

The Supreme Court indicated the same view in the *Memphis* case, when it said, 358 U.S. at p. 113, 26 PUR 3d at p. 320, 79 S. Ct. at p. 200:

"* * * The act comes into play at to rate changes only in (1) imposing upon the seller the procedural requirement of filing timely notice of change, (2) giving the commission authority to review such changes, and (3) authorizing the commission, in the case of rates for sales of gas for other than exclusively industrial use, to suspend the new rates for a 5-month period and thereafter to require the posting of a refund bond pending a determination of the lawfulness of the rates as changed. * * *"

[2.3] Petitioners argue that if § 4(e) does not empower the commission to require a refunding bond as a condition precedent to the effectiveness of newly filed industrial rates, it is unconstitutional because it deprives them of their property without due process of law and unlawfully delegates to Cities Service the legislative authority to fix its own industrial rates.

Deprivation of property is visualized because it is said industrial customers *must* pay the newly filed rates without the protection of a refunding bond. The customers of Cities Service agreed, we observe, to pay the rates contained in schedules filed with the commission for such industrial and other gas as they might buy; and they agreed that Cities Service might change its rates as it has done here. But they are not contractually bound to purchase gas under the new industrial schedules: They may use standby facilities, which they agreed to maintain, employing some other fuel if they find it cheaper than natural gas. Moreover, the statute does not require that a bond be exacted

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[5] See e.g., Annual Reports of the Federal Power Commission for 1951–1959, at pp. 144, 152, 154, 170, 181, 18, 24, 16, 19, respectively. As these reports show, numerous unsuccessful bills have also been introduced to accomplish this purpose. For other recommendations to the same effect, see also the commission's report to Congress on H.R. 5070, 76th Cong. (not published); Hearings before the Special Senate Committee to Investigate the Fuel Situation in the Middle West, 78th Cong., 1st sess. 748; S. Rep. No. 1234, 78th Cong., 2d sess. 4; Hearings before a Subcommittee of the Senate Committee on Interstate and Foreign Commerce on H.R. 4051, 80th Cong., 2d sess. 97–99.

even in regard to the rates which are subject to refund procedure; it merely permits the exaction. So, if the bond and refund provisions applied to industrial rates, they would do no more than confer discretion on the commission and would not give petitioners a right to the protection of a bond. Certainly the Constitution itself grants no such right. We think the unconstitutional deprivation theory is not well founded.

We cannot accept the argument that § 4(e), as construed by the commission, unlawfully delegates to a wholesaler such as Cities Service the legislative authority to fix its own rates. The Natural Gas Act does not delegate rate-making power to natural gas companies. The companies had that power before the passage of the act and it was neither conferred nor enlarged by the legislation. This is seen in the *Mobile* case where the Supreme Court said, 350 U.S. at p. 343, 12 PUR 3d at p. 119, 76 S. Ct. at p. 380:

"All of the relevant provisions of the act can thus be fully explained as simply defining and implementing the powers of the commission to review rates set initially by natural gas companies, and there is nothing to indicate that they were intended to do more. Admittedly, the act presumes a capacity in natural gas companies to make rates and contracts and to change them from time to time, but nowhere in the act is either power defined. The obvious implication is that, except as specifically limited by the act, *the ratemaking powers of natural gas companies were to be no different from those they would possess in the absence of the act:* to establish *ex parte*, and change at will, the rates offered to prospective customers; or to fix by contract, and change only by mutual agreement, the rate agreed upon with a particular customer * * *." [Our emphasis.]

Constitutional arguments substantially the same as those made by the petitioners were urged upon and rejected by the ninth circuit in the *Pacific Natural* case, *supra*, 33 PUR 3d 295, 276 F. 2d 350. We are of the view that the opinion in that case is correct and, therefore, we regard it as dispositive of those arguments here.

The order of the Federal Power Commission will be upheld.

Affirmed.

BASTIAN, CJ., dissents, believing that the Natural Gas Act, § 4(e), provides authority in the Federal Power Commission to require a bond to refund excess charges collected under the revised schedules in question, and that the legislative history, as well, so indicates.

Cities Service Gas Co.—Results of settlements on industrial rates

F.P.C. docket number	Effective date of increase	Date of settlement	Payment in excess of settled rates	Industrial refund as result of settlement	Excessive gas charges unrecovered
G-2410	Apr 23, 1954	Apr. 23, 1956	$1,332,268.94	$660,000.00	[1] $672,268.94
G-9468	Oct 23, 1955				
GS-18,799	June 23, 1959	Feb. 23, 1961	1,973,431.16	986,715.58	[1] 986,715.58
Total			3,305,700.10	1,646,715.58	1,658,984.52

[1] Exclusive of interest. Gas company having use of funds in addition to amounts not refunded.

STATEMENT BY LEO A. LARKIN, CORPORATION COUNSEL, NEW YORK CITY, IN SUPPORT OF S. 666

Mr. Chairman and members of the committee, my name is Leo A. Larkin. I am corporation counsel of New York City and chairman of the committee on electric, gas and telephone rates of the National Institute of Municipal Law Officers (NIMLO). I appear here as the official representative of NIMLO to express the support of the organization for S. 666.

The National Institute of Municipal Law Officers is an organization composed of more than 1,200 municipalities located in all of the 50 States, the District of Columbia, and Puerto Rico, which act through their chief legal officers who have various titles ranging from city attorney, corporation counsel, city solicitor, etc. NIMLO represents the city law departments and all of the institute's funds are received from the tax funds of cities. NIMLO represents no private interests whatever, and its sole reason for existence is to enable cities to exchange informa-

tion on their mutual experiences as a guide for future action and to represent the interests of their city members on matters of concern to these members as a group.

Since the adoption of the Natural Gas Act, members of NIMLO have been active in representing the interests of the ultimate consumers before the Federal Power Commission in rate and certificate proceedings. Consequently, any proposed amendments to the Natural Gas Act are of vital interest to municipalities and their residents.

On September 25–29, 1960, at NIMLO's annual conference in Denver, Colo., the members of the organization adopted the following resolutions:

"RESOLUTION REQUESTING THE FEDERAL POWER COMMISSION TO EXPEDITE ITS DISPOSITION OF NATURAL GAS CASES

"Whereas some of the natural gas cases before the Federal Power Commission are more than 8 years old and the increasing number of undecided cases is of concern to all segments of the industry affected thereby, and

"Whereas over $600 million per year in increased rates is being paid to interstate pipeline companies for natural gas that is consumed in the United States, and

"Whereas said increased rates are subject to refund orders by the Federal Power Commission, and

"Whereas the uncertainty as to the cost of gas purchased by local natural gas distribution companies from interstate transmission companies generated by this delay unnecessarily burdens the municipal law officers with the task of estimating refunds that will be ordered by the Federal Power Commission in order to discharge their obligation to advise their councils as to the proper rates for said distribution companies: Now, therefore, be it

"*Resolved by the National Institute of Municipal Law Officers:*

"Section 1. That NIMLO requests the Federal Power Commission to expedite the disposition of its natural gas rate cases.

"Section 2. That the secretary be and he hereby is directed to transmit six copies of this resolution to the Secretary of the Federal Power Commission, with a request that a copy be forwarded to each member of the Federal Power Commission."

"OPPOSING NEW RATE INCREASES WHILE OLD RATE INCREASE APPLICATIONS ARE PENDING

Whereas there is legislation pending before the Congress which would prohibit the Federal Power Commission from putting into effect any additional rate increases for any particular interstate pipeline company in natural gas rate cases while that particular company has pending a prior undecided pending rate case application; and

"Whereas in general principle such legislation is necessary and desirable to protect the interest of the consuming public: Now, therefore, be it

"*Resolved*, That the National Institute of Municipal Law Officers urges the Congress to enact such legislation."

The adoption into law of the five specific amendments proposed in Senator Magnuson's bill, S. 666, is in the public interest, and has the support of the National Institute of Municipal Law Officers. This bill will protect consumers of natural gas and restore to the Natural Gas Act its original intent, i.e., to protect consumer interests against exploitation by private natural gas companies.

In particular, section 3 of the proposed bill, if enacted, will serve to alleviate a troublesome difficulty confronting municipalities and their residents created by the application of, and practice under, section 4(e) of the Natural Gas Act. At the present time there are over $600 million in rate increases which have not been adjudicated by the Federal Power Commission but which, nevertheless, consumers of natural gas have been forced to pay, because the Natural Gas Act does not provide for the determination of the reasonableness of a rate before it is allowed to be placed into effect. Based upon what has been happening, 40 percent or more of rate increase filings will be disallowed by the Federal Power Commission as unjust and unreasonable, thus requiring refunds to the consumers by the companies. From the standpoint of the ultimate consumers of natural gas, the present situation which permits uncontrolled price increases is unjust and undesirable and should be remedied. In at least one instance, although the Federal Power Commission found the rate increase to be unjust, it felt it could not order the full refund required, because the amount was so large that repay-

ment in full might jeopardize the financial integrity of the company. As a result, the ultimate consumers did not receive the full return of the sums of money which were rightfully theirs. Moreover, the refund procedures of the Federal Power Commission are unrealistic against the background of our inflationary economy, in which refunds of rate increases collected for periods of time as far back as several years ago are presently inadequate. The procedures are unfair to the ultimate consumers, who are not always the same to receive refunds from an earlier period of time, and who, in any event, ironically, must eventually bear the considerable costs in passing the refunds from pipeline to distributing companies to consumers. The adoption of section 3 of this bill, which prohibits any natural gas company from putting successive unresolved rate increases into effect under bond, would beneficially alter the current practice under section 4(e) of the Natural Gas Act, and give needed relief to the ultimate consumers of natural gas.

Section 5 of S. 666 is complementary to section 3 of the bill. It would amend section 15 of the Natural Gas Act with procedural requirements in the hearing and disposition of proceedings before the Federal Power Commission in order to eliminate as much as possible the so-called regulatory lag. The time periods prescribed in section 5 appear to be workable and realistic, and in conjunction with the prohibition of section 3 against successive rate filings appear to establish more reasonable time limits for filing rate increases.

On behalf of the National Institute of Municipal Law Officers, I earnestly support the adoption of S. 666.

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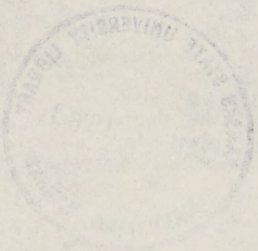

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