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# COAL PIPELINE ACT OF 1978

GOVERNMENT

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## HEARINGS

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON PUBLIC WORKS

AND TRANSPORTATION

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

**H.R. 1609**

TO AMEND THE MINERAL LEASING ACT OF 1920, AND FOR  
OTHER PURPOSES

MARCH 22 AND APRIL 11, 1978

Printed for the use of the  
Committee on Public Works and Transportation



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WASHINGTON : 1978

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95TH CONGRESS  
1ST SESSION

**H. R. 1609**

## IN THE HOUSE OF REPRESENTATIVES

Mr. ECKHARDT (for himself, Mr. WRIGHT, Mr. WON PAT, Mr. SEBELIUS, Mr. YOUNG of Alaska, Mr. LAGOMARSINO, Mr. FOUNTAIN, Mr. SCHEUER, Mr. ROUSSELOT, Mr. FISH, Mr. CHARLES WILSON of Texas, Mr. JONES of Oklahoma, Mr. BOWEN, Mr. KETCHUM, Mr. MARTIN, Mr. MOORHEAD of California, Mr. MOORE, Mr. SCHULZE, Mr. MURPHY of Pennsylvania, and Mr. HUCKABY) introduced the following bill; which was referred jointly to the Committees on Interior and Insular Affairs and Public Works and Transportation

To amend the Mineral Leasing Act of 1920, and for other purposes.

5 DEFINITIONS

(a) "carrier" means any carrier of coal by coal pipeline that is subject to any of the provisions of this Act;



1 (b) "Department" means the Department of the  
2 Interior;

3 (c) "Secretary" means the Secretary of the De-  
4 partment of the Interior;

5 (d) "right-of-way" includes necessary land or other  
6 property for the location of pipelines, pumping stations,  
7 pressure apparatus, tanks, or other stations, equipments,  
8 or appurtenances required for the proper operation of a  
9 coal pipeline or pipelines; and

10 (e) "control" means the power to exercise control  
11 by whatever means: any person who (1) is a director  
12 of a carrier or of any other person, or (2) owns in excess  
13 of 5 per centum of the voting stock (or any like evidence  
14 of participation) of a carrier or of any other person shall  
15 be deemed to have the power to exercise control of such  
16 carrier or other person, as the case may be.

17 RIGHTS-OF-WAY ON FEDERAL LANDS

18 SEC. 3. Subsection 28 (a) of the Mineral Leasing Act  
19 of February 25, 1920, as amended by the Act of Novem-  
20 ber 16, 1973 (87 Stat. 567), is further amended by in-  
21 serting the word "coal" between "natural gas," and  
22 "synthetic".

23 EMINENT DOMAIN

24 SEC. 4. (a) Except as provided in subsection (b), when  
25 any carrier cannot acquire by negotiation the right-of-way



1 required to construct, operate, and maintain any proposed  
2 coal pipeline or pipelines, such carrier may acquire the  
3 same by the exercise of the power of eminent domain in  
4 the district court of the United States for the district in  
5 which such property is located or in the courts of the State  
6 in which such property is located.

7 (b) The power of eminent domain shall not be exer-  
8 cised to acquire (1) lands owned by the United States or by  
9 any State, or (2) lands held in trust by the United States  
10 for an Indian or Indian tribe.

11 (c) Nothing in this section shall be construed to permit  
12 acquisition of any right to use or develop water through the  
13 exercise of the right of eminent domain.

14 CERTIFICATION OF PUBLIC CONVENIENCE AND NECESSITY

15 SEC. 5. (a) The power of eminent domain granted  
16 pursuant to this Act may be exercised only by a carrier  
17 holding a certificate of public convenience and necessity is-  
18 sued by the Department of the Interior. The Secretary is  
19 authorized to issue such a certificate if the Secretary finds,  
20 with respect to the particular project of the carrier as to  
21 which said power is sought, that the project is in the na-  
22 tional interest and provides the capacity necessary to fulfill  
23 the requirement of a common carrier of coal, as determined  
24 by the Secretary. In addition to other factors customarily  
25 considered in determining common carrier status in the



1 case of pipeline common carriers, the Secretary shall con-  
2 sider contracts for the carriage of coal which are in exist-  
3 ence or proposed as of the date of the application for  
4 certification and may also consider such contracts for such  
5 carriage as may reasonably be anticipated, at the time of  
6 issuance of the certificate, to be entered into after such  
7 date. In determining the size of the pipeline to be certifi-  
8 cated, the Secretary shall take into account the resultant  
9 cost to ultimate consumers of services or products affected  
10 by such transportation.

11 (b) In making the findings required in (a) of this  
12 section the Secretary shall consider and make independent  
13 findings on the extent to which the project—

14 (1) would help meet national needs for coal utili-  
15 zation, considering, among other matters, alternate  
16 routes or means of transportation of coal and the rela-  
17 tive costs of such alternative routes or means;

18 (2) may be impeded or delayed unless granted the  
19 power of eminent domain;

20 (3) involves disruption to the environment, as  
21 compared with disruption from other routes or modes  
22 of transportation or other methods of utilization of the  
23 coal resources involved; and

24 (4) considers the balance between the energy needs  
25 of the area to be benefited by the project and the water



1 requirements and other impacts on the area from which  
2 the coal is to be transported.

3 The Secretary's findings as to whether a project is in the  
4 national interest shall be based on the record as a whole  
5 taking into consideration each of the criteria set forth in  
6 this subsection.

7 (c) The Secretary shall require as a condition of issu-  
8 ance of a certificate of convenience and necessity under this  
9 Act that any pipeline for which such certificate is issued be  
10 constructed, operated, and maintained as a common carrier  
11 as provided in the Interstate Commerce Act. Any violation  
12 of such condition shall be enforced as provided in such Act,  
13 and nothing in this paragraph shall be construed to limit,  
14 impair, or otherwise affect any provision of such Act.

15 (d) (1) No carrier granted the power of eminent do-  
16 main under this Act shall transport any coal mined by it or  
17 under its authority or which it may own in whole or in part,  
18 or over which it may have any control, direct or indirect.

19 (2) The prohibition contained in subsection (d) (1)  
20 shall not apply to the construction, ownership, and operation  
21 of a feeder line for the purpose of gaining access to a coal  
22 pipeline by any person who would otherwise be ineligible  
23 if—

24 (A) the carrier has declined a formal request to  
25 construct, own, and operate the feeder line;



1 (B) the owner of the feeder line will operate the  
2 line as a common carrier for any excess capacity in the  
3 feeder line; and

4 (C) the Secretary has determined that an exemp-  
5 tion from subsection (d) (1) is in the public interest

6 (3) (A) No certificate of public convenience and neces-  
7 sity may be issued to any carrier which controls, is controlled  
8 by, or is under common control with any person which uses  
9 or will use coal transported by the carrier or which supplies  
10 coal to the pipeline and (B) no carrier granted the power of  
11 eminent domain under this Act may control, be controlled  
12 by, or be under common control with any such person.

13 (4) The penalties and enforcement provisions of sec-  
14 tion 8 shall not apply to this subsection, but whenever, on  
15 the basis of any information available to it, the Interstate  
16 Commerce Commission finds that any carrier or other person  
17 is in violation of paragraph (1) or (3) (B), it shall notify  
18 such carrier or other person. If such violation extends beyond  
19 the thirtieth day after the date of such notice, the Com-  
20 mission shall, after notice and opportunity for hearing, issue  
21 an order requiring such carrier or other person to comply.  
22 Failure to obey any such order shall be subject to the same  
23 penalty as provided for in section 16 (8) of the Interstate  
24 Commerce Act (49 U.S.C. 16 (8)).



1       (e) No certificate of public convenience and necessity  
2 may be issued to any person engaged as a common carrier  
3 in interstate transportation of coal by any mode unless such  
4 person enters into a compact with the Secretary within two  
5 years from the date of enactment of this Act providing means  
6 whereby rights-of-way across the lines of such person may  
7 be acquired by a carrier on terms customarily employed with  
8 reference to other types of pipeline. Any Federal court of  
9 competent jurisdiction may entertain a suit by an interested  
10 party to enforce the provisions of such compact.

11       (f) If the Secretary determines, in the course of the  
12 consultations and findings required by subsection (b) or the  
13 hearings required by section 6 that the project right-of-way  
14 may be utilized for additional uses compatible with opera-  
15 tions of the project line, the Secretary may, in his discretion,  
16 require as a condition to the grant of a certificate of public  
17 convenience and necessity that the particular project right-  
18 of-way be subject to such compatible uses.

19       (g) The Secretary shall require the additional use de-  
20 scribed in subsection (e) only if he by rule (1) finds—

21           (A) the additional use is a compatible use, and

22           (B) conditioning the issuance of the certificate upon  
23 the availability of the right-of-way for the additional use  
24 is in the public interest, and



1 (2) establishes reasonable provisions for the payment of  
2 compensation for the additional use to the person otherwise  
3 entitled to the exclusive use.

4 PROCEDURE

5 SEC. 6. (a) Applications for a certificate of public  
6 convenience and necessity under this Act shall be filed with  
7 the Department pursuant to such regulations as it may pre-  
8 scribe. Each carrier applying for a certificate shall reimburse  
9 the Department for administrative and other costs incurred  
10 in processing the application as the Secretary shall prescribe.

11 (b) A certificate authorized by section 5 may be issued  
12 only after public notice and public hearings in accordance  
13 with this section.

14 (c) The carrier shall publish, in accordance with regu-  
15 lations promulgated by the Secretary, a notice that it has  
16 filed an application for a certificate of public convenience  
17 and necessity under this Act in a newspaper of general  
18 circulation in each county in which the project will be  
19 located. The notice shall, among other things, specify to the  
20 greatest extent practicable the land which would be subject  
21 to the power of eminent domain.

22 (d) The Secretary shall publish in the Federal Register  
23 a notice of the receipt of each application under this Act.

24 (e) The Secretary shall hold at least one public hear-  
25 ing in each State in which the project involved will be lo-



1 cated. Any interested person may present relevant material  
2 at any hearing. After all hearings in each State are con-  
3 cluded, the Secretary shall hold at least one public, formal  
4 adjudicatory hearing in accordance with the provisions of  
5 section 554 of title 5, United States Code, in the District  
6 of Columbia at which the Federal Energy Administration  
7 and the Environmental Protection Agency shall, and other  
8 Federal, State and local agencies may, participate.

9

## ANTITRUST REVIEW

10 SEC. 7. (a) The Department shall not issue any certifi-  
11 cate pursuant to section 5 of this Act unless it has received  
12 the advice of the Attorney General of the United States and  
13 the Federal Trade Commission that such action would not  
14 restrain trade, further monopolization, substantially adversely  
15 affect competition, or otherwise create or maintain a situ-  
16 ation in contravention of the antitrust laws. The issuance of  
17 a license under this Act shall not be admissible in any way  
18 as a defense to any civil or criminal action for violation of  
19 the antitrust laws of the United States, nor shall it in any  
20 way modify or abridge any private right of action under  
21 such laws.

22 (b) (1) Nothing in this section shall be construed to bar  
23 the Attorney General or the Federal Trade Commission from  
24 challenging any anticompetitive situation involved in the  
25 operation of a coal slurry pipeline.



1 (2) Nothing contained in this section shall impair,  
2 amend, broaden, or modify any of the antitrust laws.

3 (3) As used in this section, the term "antitrust laws"  
4 includes, but is not limited to, the Act of July 2, 1890, as  
5 amended; the Act of October 15, 1914, as amended; the  
6 Federal Trade Commission Act (15 U.S.C. 41 et seq.);  
7 and sections 73 and 74 of the Act of August 27, 1894, as  
8 amended.

9 ENFORCEMENT AND PENALTIES AND JUDICIAL REVIEW

10 SEC. 8. (a) At the request of the Secretary the Attor-  
11 ney General may institute a civil action in the district court  
12 of the United States for the district in which the affected  
13 operation is located for a restraining order or injunction or  
14 other appropriate remedy to enforce any provision of this  
15 Act or any regulation or order issued under the authority of  
16 this Act.

17 (b) If any carrier shall fail to comply with any pro-  
18 vision of this Act, or any regulation or order issued under  
19 the authority of this Act, after notice of such failure and  
20 expiration of any period allowed for corrective action, such  
21 person shall be liable for a civil penalty of not more than  
22 \$5,000 for each and every day of the continuance of such  
23 failure. The Secretary may assess and collect any such  
24 penalty.

25 (c) Any person who knowingly and willfully violates



1 any provision of this Act, or any regulation or order issued  
2 under the authority of this Act, or makes any false state-  
3 ment, representation, or certification in any application,  
4 record, report, plan, or other document filed or required  
5 to be maintained under this Act shall, upon conviction, be  
6 punished by a fine of not more than \$10,000, or by im-  
7 prisonment for not more than six months, or both.

8 (d) Whenever a carrier violates any provision of this  
9 Act, or any regulation or order issued under the authority  
10 of this Act, any director, officer, or agent of such corpora-  
11 tion or entity who authorized, ordered, or carried out such  
12 violation shall be subject to the same fines or imprisonment  
13 as provided for under subsection (c) of this section.

14 (e) Petitions for judicial review shall be filed in the  
15 court of appeals of the United States for the circuit in which  
16 the pipeline's originating point of coal transportation is  
17 located.

18 CONSTRUCTION OF LAW

19 SEC. 9. Nothing in this Act shall be construed—

20 (1) as affecting in any way any existing law gov-  
21 erning appropriation use, or diversion of water, or any  
22 Federal, State, or private right to water;

23 (2) as expanding or diminishing Federal or State  
24 jurisdiction, responsibility, or interests in water resources  
25 development or control;



1           (3) as displacing, superseding, limiting, or modify-  
2       ing any interstate compact or the jurisdiction or respon-  
3       sibility of any legally established joint or common  
4       agency of two or more States or of two or more States  
5       and the Federal Government; or

6           (4) as superseding, modifying, or repealing, except  
7       as specifically set forth in this Act, existing laws ap-  
8       plicable to the various Federal agencies which are au-  
9       thorized to develop or participate in the development of  
10      water resources or to exercise licensing or regulatory  
11      functions in relation thereto.

#### 12                               REGULATIONS

13       SEC. 10. The Secretary is authorized to promulgate  
14      such rules and regulations as he deems necessary to carry  
15      out the purposes of this Act.

#### 16                               UNDERGROUND CONSTRUCTION

17       SEC. 11. All coal pipelines subject to this Act shall, to  
18      the maximum extent practicable, consistent with environ-  
19      mental protection, safety, and good engineering and tech-  
20      nological practices, be buried underground.

#### 21                               RELATIONSHIP TO INTERSTATE COMMERCE ACT

22       SEC. 12. Except where otherwise provided by this Act,  
23      the provisions of part I of the Interstate Commerce Act (24  
24      Stat. 379) as amended (49 U.S.C. 1-40) shall be applicable  
25      to coal pipelines subject to this Act.



## 13

1        SEC. 13. Subsequent to the passage of this Act, no per-  
2 son shall engage in the transportation of coal by slurry pipe-  
3 line without first obtaining a certificate of public convenience  
4 and necessity under sections 5 and 6 of this Act unless such  
5 person enters into a compact with the Secretary within two  
6 years from the date of enactment of this Act providing means  
7 whereby rights-of-way across the lines of such person may  
8 be acquired by a carrier on terms customarily employed with  
9 reference to other types of pipeline. Any Federal court of  
10 competent jurisdiction may entertain a suit by an interested  
11 party to enforce the provisions of such compact.







## COAL PIPELINE ACT OF 1978

WEDNESDAY, MARCH 22, 1978

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON SURFACE TRANSPORTATION OF THE  
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,  
*Washington, D.C.*

The subcommittee met at 1:46 p.m. in room 2167, Rayburn House Office Building, Hon. James J. Howard (chairman of the subcommittee) presiding.

Mr. HOWARD. The Subcommittee on Surface Transportation will come to order.

We are meeting this afternoon for the purpose of receiving testimony on H.R. 1609, the Coal Pipeline Act. H.R. 1609 is a bill which is jointly to the Committee on Public Works and Transportation and the Committee on Interior and Insular Affairs.

Earlier this month, the House Interior and Insular Affairs Committee reported the bill with amendments. Because of our jurisdiction over coal pipelines, we intend to review H.R. 1609 as introduced and as amended by the Interior Committee. We have an extensive list of witnesses. Hopefully, we will be able to receive all their testimony today.

If, however, that is not possible, alternative arrangements will be announced at a later time by the Chair.

The Chair would like to state that the chairman of the Water Resources Subcommittee of our full committee, the Honorable Ray Roberts of Texas, had every intention of attending today's hearings and, of course, has a deep interest with regard to this legislation. Late last evening, he learned his mother had suffered a heart attack which has necessitated his making arrangements to return to Texas this morning. Mr. Roberts has prepared a statement; and without objection, it will be placed in the record at this point.

[Statement referred to follows:]

STATEMENT OF HON. RAY ROBERTS, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF TEXAS

Mr. Chairman, members of the subcommittee, I want to thank you for the opportunity that you have given me to make a statement concerning the Coal Pipeline Act of 1977, H.R. 1609.

Last year, the President set out goals for a national energy program, and the utilization of coal in place of oil and natural gas to generate electricity and other industrial power is a cornerstone of the energy policy. A responsible Congress must address this issue and develop workable solutions to meet our growing energy demands, in light of rapidly depleting domestic oil and gas reserves. The witnesses who are scheduled to testify will afford your subcommittee with insight into the various apprehensions as well as expectations for coal pipeline legislation such as the bill presently before you.



Certainly, as Chairman of the Water Resources Subcommittee, I am vitally concerned and extremely interested in this legislation. The bill as reported out by the House Interior and Insular Affairs Committee clearly addresses the water problems of the West. Surely nature was only trying to balance the bounty when she gave so much valuable coal to an area that she left thirsting for adequate water supplies.

The intent of section 9 of this bill is clear in stating that nothing in the act shall be construed as affecting in any way existing law governing appropriation or diversion of water or as expanding or diminishing Federal or State jurisdiction in water resource development. Finally, the effect of this section leaves no doubt that a State's rights to "grant or deny water use or establish or place terms or conditions regulating or limiting such use" is clearly unaffected.

All the answers to the water problems cannot be given at this time, but one overriding problem facing us must be addressed. That is to undertake affirmative action which will assure the future ability of this great Nation to utilize and develop its wealth of untapped coal reserves. No one bill can address the enormity of the problem, and all parties affected cannot always be appeased. But if we are to meet the President's goal of a  $\frac{2}{3}$ 's increase in coal production over our present production in the next 8 years, then the demands upon all modes of transportation will be strained to the utmost.

Any legislation that can fairly address our energy needs must be closely examined, and after weighing all aspects of economics and placing that alongside this Nation's energy needs for the future, we must not delay in action.

The time has come for statesmanship and a clear focus on the energy realities of the day. We cannot afford to unduly impede any needed energy legislation, nor can we continue to rely on tenuous foreign importation of oil and gas.

If this Nation is not geared to meet its future demands, there is a chilling reality ahead for all of us.

Mr. HOWARD. For our first witness this afternoon, we are very, very happy to have with us our esteemed colleague, the chairman of the Committee on the Interior and Insular Affairs, the gentleman from Arizona, Congressman Morris Udall.

Your prepared statement, Mr. Udall, will be made a part of the record at this point.

[Statement referred to follows:]

STATEMENT OF HON. MORRIS K. UDALL, A REPRESENTATIVE IN CONGRESS FROM THE  
STATE OF ARIZONA

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to testify today regarding H.R. 1609, the Coal Pipeline Act of 1978, which was reported by the Interior Committee on March 3. I urge you to give favorable consideration to this legislation, as it represents a crucial supplement to the President's national energy plan and will help this Nation make necessary conversions to coal in an economically, environmentally, and socially acceptable manner.

Despite the long, arduous climb through the legislative process this bill and its predecessors have experienced, H.R. 1609 is not a very complicated piece of legislation. This bill will not authorize the construction of a single coal slurry pipeline. It has one very simple purpose—to grant the right of eminent domain to carriers of coal by pipeline who are determined, on a detailed case-by-case analysis, to be acting in the national interest. Clearly, the legislation would facilitate the construction of coal pipelines, currently being prevented by many of the nation's railroads who are refusing to give them rights-of-way, but only in those limited circumstances where this alternative mode of coal transportation is truly in the public interest.

Coal pipelines are a proven technology that can supplement transportation of coal and save the consumer money. Recent ICC rate decisions involving unit-train coal shipments, one of which serves a utility co-op in my district, make coal slurry an even more attractive alternative, and point out the need for competition. At the present time, there is one coal slurry pipeline in operation. It is the Black Mesa pipeline in my own state of Arizona, which has operated successfully for the last seven years, and is owned, ironically, by the Southern Pa-



cific Railroad. I firmly believe that the coal slurry option should not be arbitrarily foreclosed by an industry unwilling to see a little competition. Fears that enactment of eminent domain legislation for coal slurry pipelines would deal a fatal blow to the railroad industry are entirely unwarranted. No one is advocating that coal slurry pipelines replace the railroads as the primary mode of transporting coal. This nation is now returning to the utilization of coal to meet a major portion of its energy needs. There is no question that the railroads will be carrying the bulk of this new coal. In H.R. 1609, we are only talking about making an alternative available, to carry a small chunk of this new coal.

Moreover, amendments to the bill were adopted in the Interior Committee which ensure that each pipeline proposal will be thoroughly analyzed in terms of possible adverse impact on the financial integrity of other common carrier modes of transportation, primarily railroads. In considering whether to issue a certificate of public convenience and necessity in a particular case, the Secretary of the Interior is required to make specific findings in this regard, based upon the recommendations of the Secretary of Transportation and the Interstate Commerce Commission.

The Interior Committee was also quite concerned over the issue of water use for coal pipelines. Proponents of the legislation, including a number of western Congressmen, were all willing to write the clearest possible language into the bill to guarantee that the decision to allocate water to a coal slurry pipeline will be left to the individual states themselves. In the West, water is a precious resource, and I have maintained throughout that the state should have the right to decide whether a single drop of its water is used to transport coal. We have written that kind of protection into H.R. 1609. As I think the 30-12 margin on final passage of this bill in the Interior Committee indicates, there is no longer any reason to oppose the coal slurry concept based on the water issue.

Opponents of coal slurry legislation have already used every known method of delay, but the merits of this idea have refused to let it die. Now that the OTA has issued its long-awaited report on coal slurry pipelines, there can no longer be any reason for delaying this decision of vital importance to the United States. It is my hope that you will recognize the need for this narrow piece of legislation so that the nation can make an orderly transition to coal with a minimum of financial and environmental difficulty.

Thank you very much.

Mr. HOWARD. Mr. Udall, please proceed as you wish.

#### TESTIMONY OF HON. MORRIS K. UDALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. UDALL. Thank you, Mr. Chairman.

One of the centerpieces of the President's energy program is to increase the production and consumption of coal. We are not going to get through the next 20 or 30 years unless we can double the production of coal by 1985 or shortly thereafter.

If we double the production of coal, it means we have got to double the transportation of coal. Most coal is not used at the mine mouth; it is used at some distance away. And so, we ought to use every possible technology and every possible means of moving coal, and we ought to decide the method of transporting the coal through competitive pressures and competitive operations. And that is why we are here.

It is very clear to me that 90 percent of the coal, or so, the additional coal that is going to be moved, is going to be moved by the railroads. In most cases, that is the practical way to do it; it is the most economical way to do it. But the railroads are not satisfied with that 90 percent. They have been determined throughout the course of this legislation before the Interior Committee that this bill is going to be defeated or that it is going to be watered down to the point that it is useless and no coal slurry lines will be built. In other words, they want it all. And I



do not think they ought to have it all; I think coal slurry ought to be available in those situations where it is the most economical and feasible way to move coal.

Let me give you the most immediate example that we have. We have said to big utilities in Houston, Little Rock, and Oklahoma City and throughout the Southwest, "Do not burn gas anymore; natural gas should not be used for boiler fuel. We are going to require you to switch to coal." It turns out that the most available coal for them is in Wyoming, and it turns out that since railroads do not go diagonally in most cases—they go either east-west along main trunk lines, or north-south—that the most practical way to move coal from Wyoming down to Texas and Arkansas would be by coal slurry pipeline.

Now, this bill is a very simple bill. It does not require any coal slurry lines to be built; it does not force any company to use them. It simply says that we are going to give coal slurry pipelines the right of eminent domain that all other kinds of transportation have. Today, if you are in Wyoming and I am in Texas, and you want to build an oil line, or a gas line or a railroad line, or a transmission line, or anything else, you can get eminent domain. But because these coal slurry lines would have to cross railroad rights-of-way, the railroads are using that fortuitous circumstance to try to defeat this bill or water it down, or encumber it to the point that it cannot be used.

I think this committee ought to approve, as our committee did, this kind of legislation, which simply and only gives eminent domain authority to those who want to build coal slurry pipelines. In this country, Mr. Chairman, we preach competition; we preach market forces—it is the best way to allocate; it rewards efficiency; it penalizes waste; it says let us do it the cheapest and best way in each case. Let me give you an example of just what the existence of the coal slurry alternative means to consumers. In my district in southern Arizona, we have a little electric co-op. This co-op had been burning natural gas for many years, and we cannot get natural gas in Arizona for boiler fuel anymore. And so, they embarked on a \$200 million or \$300 million program to build a new coal plant. They contracted for the coal through a coal producer in New Mexico, and because of the way the railroads are laid out, railroads were going to deliver this, but it would take about 500 miles; you would go all the way back to Albuquerque, and then down nearly to El Paso, and then back over to Arizona, on two different railroads.

Using the standard freight rate criteria, they understood that the cost would be something in the range of 7 mills per ton mile. Along come the railroads, after they had about finished the plant, and they go to the Interstate Commerce Commission and say: "Well, we have been losing money lately in the railroad business; we would like to get even, and here is a good chance." And the ICC effectively said, "Well, we will let you charge all the traffic will bear," and instead of 7 mills, it is 16.5 mills. Now, that money is going to come out of the hides of my consumers in southern Arizona. And if the coal slurry alternative had been available, they might well have said to the railroads, "Well, friends, in light of this judgment on your part, we are going to talk to a coal slurry outfit and see if we cannot have an alternative," and I suspect the railroads would have petitioned the ICC very quickly for a much more reasonable rate.



So, all we are trying to do in this legislation, as I say, is not to authorize any slurry lines, not to demand that they be built, not to penalize the railroads—the railroads are going to get 90 percent of the new business anyway—but to simply make coal slurry an available alternative. For the life of me, I cannot understand how any reasonable person could be against this. The railroads were unable to stop passengers moving in buses and airplanes; they were unable to stop freight and packages and mail from going onto airlines and buses, when times changed and it was not all moved on the railroads. And I do not think they ought to be allowed, on a selfish basis, simply using political power, lobbying power, to defeat legislation like this, which makes this new, technologically sound alternative available.

There is only one coal slurry line in the country, incidentally; it is in northern Arizona. It is 300 miles. It is owned by a railroad; the Southern Pacific built it. It was the cheapest and best way along another railway right-of-way to get the coal to Nevada where it can be burned for electricity.

So, that is all that is involved in this, and I trust that this committee and this subcommittee will approve this legislation very quickly, and that we can move on with it this year.

Thank you, Mr. Chairman.

Mr. HOWARD. Thank you very much, Mr. Udall. We are very grateful for your appearance and for your testimony.

The Chair recognizes the chairman of the full committee, the gentleman from California, Mr. Johnson.

The CHAIRMAN. Thank you, Mr. Chairman. Mr. Udall, I think you have given us a pretty good summary of your thoughts regarding this bill. It was perfected in your committee, both in subcommittee and full committee. We had it in the last Congress, and in this Congress. I hope that our committee can go along and perfect the bill, as we see fit; move it along and get it out of this committee without too much damage to the bill that was perfected in your committee.

According to your prepared remarks, the Interior Committee held full and complete hearings; and you went into it in detail. You heard from all, and the vote of final passage was like 30 to 13.

Mr. UDALL. That is correct.

The CHAIRMAN. So, I hope that our subcommittee and our full committee can perfect this bill and move it along. As I understand it, the Speaker of the House said that he was going to hold the bill after it cleared this committee for an additional 30 days to make certain that the Interstate and Foreign Commerce Committee has an opportunity to mark up their bill in their committee and move it out of their committee.

So, there will be consideration given to the bill that is pending in the Interstate and Foreign Commerce Committee, and this bill that was jointly referred to your committee, primarily, and to this committee. I hope it can move forward.

Mr. UDALL. I thank the gentleman.

Mr. HOWARD. The gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. Thank you. We certainly appreciate your testimony, Mr. Udall. Noting your distinguished record over the years in support of environmental causes, and also noting the testimony, which



I have already read, that we are about to receive from Congressman Roncalio, expressing his deep concern about the impact of water being taken from States which badly need water, would you care to comment on whether you see this as a significant issue or not?

Mr. UDALL. No; I think we have put this issue to bed for all reasonable people, and I hope Mr. Roncalio—I do not know what his testimony is going to be—but I hope he will support us, because in our committee we modified the bill to meet what I thought were all the legitimate objections about water. Water is very precious in the West; people get very romantic about water out there. And we have written this bill so that Wyoming, or Utah, or Colorado, or Montana have an absolute total veto; if for any reason any one of those States wants to keep a drop of their water from leaving the borders of that State for the purpose of moving coal, I want them to have the right to do that. And I think we have written our bill so that this is the case.

The water quantities are modest. The Powder River Basin, where much of this exportable coal is located—I think the OTA report suggested that if you built all the pipelines that anybody has talked about, you are talking about maybe 3 percent of the water in that river for that purpose. And my philosophy is this: Wyoming owns the water; if they want to use that water to grow alfalfa, they ought to have that right; if they want to use that water for the new cities that are being built up there, they ought to have that right; if they want to use it for coal gasification, or oil shale, or whatever, they ought to have that right. But if they decide, if the owners of that water, working through the government of Wyoming, decide that the best use of that water, the best economic use is to sell it—it has more economic value as a substance to move coal—they ought to have that right, too.

One of the ironic things about these people and some of my environmental friends who come down hard on this sacred defense of keeping every drop of water in Wyoming is that, right today, you can buy the coal—you can go from Wyoming to Houston, you can buy the coal, you can build a plant right there at the mine mouth, you can buy the water from the local owners and use it for cooling water—and, incidentally, you will use less water to move the coal by slurry pipeline than you will if you use it for cooling water there in Wyoming—and you can get a right-of-way across any railroad in America; you can get a right-of-way across anything to go all the way to Houston with the coal in the form of electricity, but they say to you, "Oh, the water is sacred, and you cannot use a drop of it to move that coal," even if the owners want to and even if the government of Wyoming, through its legislature and its Governor, wants to move it across for that purpose.

Most times, the small chunk of water that these lines will take will bring the best buck you can ever get, that is the best way to sell that water, better than crops, better than manufacturing, better than municipal uses; you will make more money off the customers in Houston selling them water than you will growing alfalfa or feed grains and feeding it to cattle and trying to sell the cattle, or some other economic use of it.



Mr. SHUSTER. Thank you.

Mr. HOWARD. The gentleman from Illinois, Mr. Fary.

Mr. FARY. No questions.

Mr. HOWARD. The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. I think that I could best serve the purpose of this committee if I were to withhold any comments that I would make until after we have had a chance to hear from my friend, Mr. Roncalio. But I think that our very distinguished chairman of the Interior Committee, Mr. Udall, has certainly presented his point of view. And, incidentally, while I serve on the Committee on Interior, I voted for the passage of the legislation when it left the committee, but I would suggest that all of you evaluate very carefully the contents of this legislation with regard to the possible impact on the States as it relates to the water questions.

Let me just take you to page 20 of the bill, where it says: "The Secretary shall not approve an application for a certificate of public convenience and necessity"—and this relates to the underground water—for any areas "west of the 100 meridian, unless"—and here, of course, is the key—"the U.S. Geological Survey has conducted a comprehensive study which demonstrates that the use of such underground water source over the life of the coal pipeline will not cause a significant adverse impact on the quality and quantity of the water table in surrounding areas or adjoining States." And, of course, the concerns of the people from that area, which I am sure will be expressed by Mr. Roncalio, are what will the impact of the coal slurry pipeline and the demand for water supply have on the Madison aquifer, which is in that area.

It has been my feeling and my contention that if we are going to be developing—if there is going to be a requirement for water, that it should be from surface water, either that which is developed or projects that have the potential for development.

But I think that the gentleman from Arizona has very ably, as he usually does, presented the case, which is the majority position of the House Interior Committee.

Mr. UDALL. Mr. Chairman, could I just add that the language that Mr. Clausen referred to was the so-called Roncalio amendment. We have repeatedly said to him and to the people in Wyoming, "Tell us how we can nail it down, so that we are not taking away Wyoming water that is needed, so that the State has an absolute veto." I thought we went too far; I personally thought this went too far. But I do not think you can really argue that Wyoming water is not protected with this kind of language in the bill.

Mr. CLAUSEN. Thank you.

Mr. HOWARD. Thank you, Mr. Chairman, for your appearance here. We certainly are grateful for your testimony, and we hope we can complete the hearings in this subcommittee on this subject and be able to take some action shortly after the Easter recess. Thank you very much.

Mr. UDALL. Thank you, Mr. Chairman.

[The following correspondence from Mr. Udall was received for the record:]



COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
U.S. HOUSE OF REPRESENTATIVES,  
Washington, D.C., April 4, 1978.

HON. JAMES J. HOWARD,  
*Chairman, Subcommittee on Surface Transportation, Rayburn House Office  
Building, Washington, D.C.*

DEAR JIM: Thank you for giving me the opportunity to testify before your Subcommittee on the coal slurry pipeline legislation. Your help is deeply appreciated.

During the hearings, I was caught a bit off-guard by the question raised by the gentleman from California, Mr. Clausen, concerning the so-called Roncalio amendment to H.R. 1609. With your permission, I would like to elaborate on my response at this time.

The Roncalio amendment requires the U.S. Geological Survey to make a comprehensive study of each groundwater source for a proposed coal slurry pipeline, regardless of the need for such information. I vigorously opposed this amendment when it came before my Committee, and as I told Mr. Clausen, I believe it went way too far. These studies will be time-consuming and extremely expensive. Moreover, the amendment prevents the issuance of a certificate of convenience and necessity unless the U.S.G.S. determines that the proposed water use will not "cause a significant adverse impact on the quality and quantity of the water table in surrounding areas or adjoining states." This standard may call for a subjective judgment the U.S.G.S. is not equipped to make. Finally, I see the language of this amendment as being inconsistent with the goal expressed by virtually every member of the Interior Committee—to protect states' rights to allocate or refuse to allocate water for a coal pipeline.

I was sincere in my statement to your Subcommittee that I had no present plans to purge H.R. 1609 of the Roncalio language on the House floor. However, I would hope that your Subcommittee would take a close, fresh look at some of the problems raised by the Roncalio amendment. Although I think coal slurry legislation can survive with language like this, the bill would be much better without it.

Sincerely,

MORRIS K. UDALL, *Chairman.*

Mr. HOWARD. Perhaps the only loss that was suffered in the Congress and in the Nation by the election early in this Congress of a majority leader was the loss that was suffered by the Committee on Public Works and Transportation, because the elevation of the gentleman from Texas did take from us perhaps the most effective Public Works and Transportation member that we have had in recent decades on this committee. We are very, very grateful and happy that the majority leader is with us today, and we on the Committee on Public Works and Transportation wish to welcome him back, although only temporarily.

The next witness, the Honorable Jim Wright from Texas. Mr. Majority Leader, please proceed as you wish.

**TESTIMONY OF HON. JAMES C. WRIGHT, JR., A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF TEXAS, AND MAJORITY  
LEADER OF THE U.S. HOUSE OF REPRESENTATIVES**

Mr. WRIGHT. Thank you very much, Mr. Chairman, and thank you for your gracious remarks, undeserved flattery, and all those other good things. Now, I know why I became majority leader by only one vote—all the people on Public Works were so loathe to see me leave that they voted against me.

I am here today on behalf of the Congress, the country, I think, and a very impelling national need. I feel very much at home in this room, as your chairman has observed, and I hope for maybe just a very few minutes we can reason together about this problem.



Last year, as you know, the President laid before the Congress and the American people a far-reaching energy program calling for a massive increase in the utilization of coal, our most abundant source of energy in this country. And that is going to be an enormous undertaking, calling into play all of the imagination and the ingenuity that we have at our disposal. I think this bill is an indispensable part of a comprehensive national energy plan.

This bill, the proposed Coal Slurry Pipeline Act, can make a substantial contribution toward realizing the President's goal and the Nation's goal. And I have come here today to ask that you give it favorable consideration and prompt approval. We have dallied too long. What President Carter asks is that we increase coal production on an annual basis by some 400 million tons in the next 7 years, and that is a two-thirds increase over our present production of 600 million tons. To move that much coal is going to tax all of our modes of transportation—our barges, our railroads, and all the rest. There is going to be enough business for everybody; do not make any mistake about that. Getting the job done for the Nation is going to be the challenge.

Now, I surely would not want to suggest that all the problems have been worked out with regard to coal slurry pipelines; they have not. I know there are problems, particularly water problems. It is one of the ironies of nature, I suppose, that 40 percent of the country's huge reserves of coal are to be found in a region which is water deficient. Congressman Roncalio knows about this. In the northeastern part of his State of Wyoming, I am told there are some 110 billion tons of coal awaiting extraction, but the annual rainfall is only about 12 inches.

Fortunately, this legislation does not attempt to decide such questions. In fact, as has been mentioned, it is very specific in stating that nothing in the act shall be construed as affecting, in any way, any existing law governing appropriation, use, or diversion of water, or as expanding or diminishing Federal or State jurisdiction over water resources, or affecting interstate compact or water resource programs of any kind. I think there is ample protection contained in the legislation.

And so, what I would personally say would be that I would like to see developed, ultimately, some means of recycling some of this water that would be used to transport this coal. But we have got to transport the coal. The great questions about the development of these coal resources may remain yet to be answered; in some cases, the answer may lie in gasification and liquefaction, and then transporting the final product by pipeline; in other cases, it may involve construction of mine-mouth powerplants. But no matter what answer we come up with, there is going to be a great need of water to make it work.

A slurry pipeline—let us understand this—a slurry pipeline is not the option requiring the most water; in fact, it would require considerably less water than some of the other options. I do not have the answer to the water problem, but I do not believe we need an answer to move forward with this legislation. All this bill would do would be to grant to coal slurry carriers the means of acquiring the right of eminent domain in a Federal or State court, and that is it. Every other mode of transporting energy products has that right, and the reason



we need this legislation is that it is impossible to construct a coal slurry pipeline, or any other pipeline of any length, without intersecting one or more railroad lines; you just cannot do it.

The railroads, seeing coal slurry pipelines as competition, just as they have opposed barge navigation because they saw it as competition, notwithstanding the fact that the most prosperous railroads today parallel bargelines, have been unwilling to grant crossing permits. Now, that is a bottleneck and an act of obstruction that I just do not think the Nation can tolerate.

The reason we need this legislation is that the future ability of this country to develop its coal resources will rest, at least in part, on breaking the legal barrier to the construction of coal slurry lines. That is all this bill deals with. In my State, in Texas, for example, we see how serious the problem could become. Currently, most utilities and industries in my State are using natural gas as boiler fuel. That is a waste of a precious product. Approximately 95 percent of the electric power generated in Texas is generated with natural gas. Now, the energy bill that is pending in the conference committee between the House and the Senate aims to put a stop to that. The purpose is to require a transfer from natural gas to the use of coal. Natural gas and petroleum in Texas are needed for higher uses elsewhere.

Well, what are the Texas users of natural gas, producing electricity—what are they going to do; what are they going to use in place of gas or oil? Texas just does not have sufficient coal reserves to make the complete transformation. The most dependable existing supplies are inaccessible by direct rail service. About 77 percent must be transported from the western part of this Nation if we are going to save the natural gas that is being wasted in my State and make it available to the rest of the country.

Now, similar problems exist in other States. In many cases, pipelines can be built to provide the solution. That will not happen if every intersecting railroad is able to block the issuance of crossing permits. We have got plenty of problems to solve; we have a myriad of natural barriers and physical limitations to overcome, but there simply is no reason in the world why we have to allow an arbitrary barrier of this kind to frustrate our attempts at transporting the coal the Nation needs to turn our turbines and run our industry.

I would just ask you this: If the railroads had been required to get the permission of entrenched right-of-way owners, like themselves, before laying their track, do you think we ever could have built the system of railroad lines that we have today? Of course, we could not.

All we are asking is that they have the same consideration of other modes of transportation, which the Nation now needs, as the Nation was willing to extend to them in the initial instance. Coal slurry pipelines give promise of a great breakthrough in energy transportation in coming decades. Once built, they are out of sight, clean, consistent with our environmental goals. They can move large volumes of coal over long distances cheaply, and once in place, they are far less susceptible to inflationary cost increases than most other forms of transportation.

So, Mr. Chairman and my colleagues, I think we need to remove that one legal stumbling block, which along with physical stumbling



blocks has been holding up progress on coal slurry pipelines in this country. I urge the subcommittee to vote out this bill and let us get on with the job.

Mr. HOWARD. Thank you very much, Mr. Wright, for both your appearance and your testimony. We are grateful to receive it.

The Chair recognizes the gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. Thank you, Mr. Chairman. Mr. Majority Leader, as I understand it, there would be no problem here if the States were to give the right of eminent domain to the pipeline, is that correct?

Mr. WRIGHT. There would be no problem?

Mr. SHUSTER. If the pipeline could get the right of eminent domain from the various States.

Mr. WRIGHT. Well, the problem with that is that you cannot build an interstate pipeline by individual actions on the parts of individual States. It would be like trying to build an interstate highway while letting each local subdivision decide which right-of-way you can buy. It is a national mode of transportation; you have to have a continuous—

Mr. SHUSTER. What I am driving at is if, indeed, the problem is that the States apparently have not seen fit to give the right of eminent domain to the pipeline, but if the States retain an absolute veto over water rights, might this, even if this bill should pass, simply be an inconsequential act, because the States' still could block it.

Mr. WRIGHT. That is not reason to vote against the bill. If you want it not to be an inconsequential act, if you want it to do something, if you want pipelines to be built, if you want coal to be transported, if you want the Nation's energy needs to be served, that is not an argument against the bill, certainly. I do not know that this bill is enough; we may need something else—I do not know—but I know this bill is a start and I know it is needed.

Mr. SHUSTER. But is it not reasonable that if a State is unwilling to provide the eminent domain that is necessary and, therefore, we would have, in effect, a Federal preemption, it is reasonable that that same State would not grant the necessary water rights that are required under this bill?

Mr. WRIGHT. Let me put it this way: Last year, we had a national shortage of gas in the winter—people were suffering. The Nation needed to move and transport gas. I do not think the gentleman from Pennsylvania would say that my State of Texas wanted to hoard all its gas and not share it with the rest of the country, and we did not do that; we did not want to do that. I voted for the Emergency Natural Gas Allocation Act. I think the same thing applies here.

I do not believe that States are going to be so unpatriotic and so blithely disinterested in the necessities of the Nation that they would deny the privilege of doing this. Now, I do think they have some legitimate problems to be solved, and one of them is water; one of them is water. And as I said to you a moment ago, I would like to see an arrangement made whereby any State that is water deficient will get some water back in return, and I would be willing to vote for whatever appropriations would be necessary to do that.



But all I am saying is, today, let us show a resolve; let us not sit around and wait for all the little questions to be answered before we take action. Let us take action and remove the roadblock that exists, so that we open up the avenues for the States to work out their problems and get on with the job.

Mr. SHUSTER. I have not decided where I stand on this issue yet, but it does occur to me that this bill either does not go far enough, because it gives an absolute veto on water rights, or it goes too far, because it preempts the States on eminent domain, and that is the quandary I face at this time, Mr. Chairman, but I will look forward to the other testimony in hopes that I can arrive at—

Mr. WRIGHT. Well, I think if the gentleman takes that position, there is no way to write a bill that pleases him. This bill just does one very simple thing; it just says that railroads are not going to be able to block the right of a coal slurry pipeline to go through. Now, they cannot block the right of an oil pipeline to go through; they cannot block the right of an interstate gas line to go through. What is the difference? It is one form of energy, and the other is another form.

Mr. SHUSTER. Well, the States could give the right of eminent domain to the pipeline, could they not, and there would be no problem?

Mr. WRIGHT. When we laid the Big Inch and the Little Inch pipelines because the Nation needed them in World War II, we did not wait around for the States to do that; the Federal Government took action. I say we have a crisis on our hands every bit as vital to the survival of the United States and our economy as we had then, and I think it behooves us in the Congress to move and to act, and not to wait around until we—just try to pass the problem off to the States.

Mr. SHUSTER. Well, on that basis then, following that logic, we should also remove the veto power over the water rights, it seems to me.

I thank the distinguished gentleman for his testimony.

Mr. HOWARD. The gentleman from Illinois, Mr. Fary.

Mr. FARY. No questions.

Mr. HOWARD. The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. It is always a pleasure to welcome our former committee colleague before the committee. Jim, you made reference to something that was a subject of discussion over in the Interior Committee; namely, the question of recycling. And then, I think there was, I guess, a tone of your voice, possibly—you did not know whether or not it would be economically feasible. Do you have any information on the economic feasibility of a recycling effort and whether it could be done? I am assuming that the state of the art would permit it. But do you have anything that would suggest that it would be economically feasible to move in that direction?

Mr. WRIGHT. The gentleman from California is every bit as good an authority as I on that subject and, undoubtedly, a better one. So far as I am concerned, moving water to places where it is needed is worth whatever it costs to do it. Water is a commodity that is worth whatever it costs to get it, when and where you need it. It is the cheapest and, yet, the most priceless commodity that we have.

And I think it would be a good investment in the long run, an investment in the great Northwest and those States that are water de-



ficient, to make some arrangements whereby they would be held harmless from the loss of that precious commodity. And I would vote for whatever costs would be necessary to achieve that objective.

From an engineering standpoint, of course, it can be done. Economically, I suppose people would argue about its economic feasibility. There are people, including some in the White House, who do not agree with me about what is economically feasible with respect to water projects.

But as far as I am concerned, getting water to the American people where it is needed for drinking water, for municipal use, for agriculture, for industry, is worth whatever it costs, so long as you do not waste money doing it.

Mr. CLAUSEN. Well, it is clear that you have put your finger on what was the thrust of the controversy, and you are going to hear a lot more from Mr. Roncalio over on the Interior Committee, and it addresses itself to this concept of water management, because certainly the areas of origin are going to have to have assurances that their present and future needs will be protected and that they will not be preempted.

The requirement for the coal slurry line—there is going to be an increasing water requirement if oil shale, in any volume, is going to be adding to the energy alternatives that we have. And so, I would just simply suggest that we are not going to resolve it here today, but we are going to have to address this whole concept of water, water resources, water management, conservation in a much more larger scale than we have ever addressed thus far, particularly in that area. And I would suggest that the emphasis is going to have to be on surface water development in order to protect the areas that have a concern over the impact on that so-called Madison Aquifer in the area.

Mr. WRIGHT. I agree. I do not think that is any reason to delay action on this bill.

Mr. CLAUSEN. Thank you.

Mr. HOWARD. The gentleman from Louisiana, Mr. Breaux.

Mr. BREAUX. No questions.

Mr. HOWARD. The gentleman from Minnesota, Mr. Hagedorn.

Mr. HAGEDORN. No questions.

Mr. HOWARD. Thank you very much, Mr. Majority Leader.

Mr. WRIGHT. Thank you, Mr. Chairman.

Mr. HOWARD. The next witness is a very respected colleague of ours. He serves not only on the Committee on Interior and Insular Affairs, but also on our Committee on Public Works and Transportation. He represents the entire State of Wyoming, and it will be a great loss to both the Congress and the State of Wyoming when he retires at the end of this session. Mr. Roncalio, welcome to the subcommittee. Thank you for your patience in waiting, and please proceed as you wish.

#### TESTIMONY OF HON. TENO RONCALIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Mr. RONCALIO. My dear colleague, thank you very, very much, Mr. Howard. I will miss the Congress immensely and this committee. It



is ironic that I had served on your subcommittee when it was yours and John Kluczynski's for 7 years, and the first time I get off of it, you get the most important bill that has ever affected my State. But we have been working with this bill in the other committee on which I serve, Interior, for 10, these many years, and I would like to follow the lead of my chairman there, Mo Udall, by taking my prepared statement and inserting it verbatim in the record, if I may, at this time and then comment on it.

Mr. HOWARD. Without objection, the statement will be made a part of the record at this point.

[Statement referred to follows:]

STATEMENT OF HON. TENO RONCALIO, A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF WYOMING

I appear before you to express my grave reservations about H.R. 1609, the Coal Pipeline Act, and its ramifications for my State of Wyoming.

I have been actively involved in the coal slurry debate for four years. My concern is and has always been the use of large quantities of ground water from the arid west and particularly from deep wells in Wyoming's Madison Formation for the transportation of coal.

The Public Works Committee has had joint referral of H.R. 1609 with the Interior Committee. This Committee has an obligation to fully review the provisions and implications of the bill before taking any action. Hopefully, the Committee will see fit to strengthen the bill or consider an unfavorable report.

Wyoming anticipates three coal slurry pipelines now and others will no doubt follow. The first of these is promoted by Energy Transportation Systems, Inc., ETSI, and it would deliver coal from the Fort Union coal formation of Northeastern Wyoming to a coal fired power plant at White Bluffs, Arkansas.

This one pipeline would consume up to 20,000 acre feet of Wyoming ground water a year, enough water to serve 20 communities the size of Gillette, Wyoming, a coal boom town that is today desperate for additional municipal water supplies. The ETSI line would average use of 15,000 acre feet of water a year, 4,888,500,000 gallons, enough water to meet the domestic needs of 96,000 people, to provide adequate water for 900,000 head of cattle or 9,000,000 sheep. Those figures are for one year's consumption and ETSI plans to pump and deliver to Arkansas Wyoming ground water for up to 5 years. In Wyoming and the arid west, that is a lot of water.

In 1974, ETSI went to the Wyoming State Legislature to secure approval for use of water from deep wells in the Madison Formation. Approval was given contingent upon review by the Wyoming State Engineer. Subsequently a permit was issued.

Not much was known about the Madison Formation then, and we are only finding out more about it now. The State Legislature understood that the water was brackish and was given assurances that mining 20,000 acre feet from it a year over 50 years would have no ill effects. We now know that at least some of the water in the formation is potable. Dan Miller, Wyoming's State Geologist, testified before the Interior Committee that "withdrawal from one area directly affects all other areas. . . If saline water is withdrawn in large quantities from depths of several thousands of feet, the fresher (pure) water above at a shallower level moves down to take its place." His department at the University of Wyoming has completed studies which show that after just 20 years of pumping, water tables at Edgemont, South Dakota, the closest community relying directly on Madison Formation water for municipal use, would drop by 250 feet.

The Madison Formation covers a huge geographic area underlying much of Northeastern Wyoming and Western South Dakota and Nebraska. We do not know how much water is in that formation, how quickly water enters the formation, nor how quickly it would re-charge with a continual extraction from one or more slurry lines.

In the 94th Congress, we appropriated \$2 million for a comprehensive study of the Madison Formation by the U.S. Geological Survey so that we might have this kind of information. That study is still underway.



Even once that information is in hand, many people question the kind of priorities which would pump that resource for coal transportation when municipal, agricultural and local industrial water needs cannot be met. In December, President Carter told the Cheyenne WYOMING EAGLE, "I have never endorsed and would be very cautious about endorsing, the use of the coal slurry concept of transportation when water at the origin was scarce. That would not be my highest priority for use of water."

In the meantime, though, the Congress is moving ahead on this legislation to authorize certificates of public convenience and necessity (Federal eminent domain authority) to coal slurry pipelines. Federal eminent domain is a broad sweeping power which is rarely given, and which may not even be necessary in this instance. The pipeline companies can and have gone directly to the individual states and to the courts to seek their right-of-ways.

By providing the Federal power of eminent domain and upon the issuance of a certificate of public convenience and necessity, we are giving Federal sanction to coal slurry pipelines, and in the case of ETSI and possibly other pipelines in the West, the use of ground water for slurry lines. If we are going to sanction that use of ground water, we had better take a good, long, hard look and provide the means for a complete assessment of the water requirements and impacts before issuance of a certificate.

Ideally, slurry lines in the arid west should be willing to recycle their water. Our distinguished Majority Leader, Jim Wright, a co-sponsor of this legislation, has even suggested this is his preference where water is in short supply. The slurry companies contend, though, that the cost is prohibitive and they would no longer be competitive with the railroads. Yet, they have failed to propose pneumatic lines which *are* competitive in cost.

I would hope this Committee would at least accept an amendment which would limit a slurry line to using only 50% of its water from a ground water source. That should not be an unbearable burden.

If we are to put a stamp of Federal approval on a coal slurry line and its use of ground water, we should at a minimum know the quantity and quality of water involved and the ramifications of use of water from that source. If other states share that water source, as is the case with the Madison Formation, they should have an opportunity to give their approval or denial as the case may be. During Interior Committee consideration, that Committee adopted my amendment which would do those two things. A certificate for public convenience and necessity could not be issued unless the U.S. Geological Survey demonstrates that there will be no adverse effects to water table quantity or quality and unless the slurry company has obtained any and all permits or authorizations required by the state or states having jurisdiction over the surface waters to be used, or having a valid legal interest in the underground waters to be used and beneath whose lands the underground aquifer lies which is the source for the proposed pipeline's water.

Both of these provisions protect the established state control of water in the West. If a water formation crosses state lines, then all states affected should have a say in the use of that water. If on the other hand, the U.S.G.S. cannot demonstrate that there will be no drawdowns, then the Federal government should not give its sanction through a certificate.

If the state wishes to proceed with conveyance of the water anyway, they may do so with the pipeline company going directly to the states and courts for its right-of-ways, but the Federal government should not be a party to approval of a project which over its life may prove to be detrimental to one or several states. I would hope that this Committee will concur with the Interior Committee's action on this amendment.

Elsewhere in Interior Committee amendments to the bill, we sought to protect existing water rights and responsibilities held in the individual states, and to assure that any conditions placed on water use by an individual state would not be affected by this legislation or Federal action.

However, I continue to have serious reservations. Once state approval is given for water use (ground water or surface water), a Federal certificate for public convenience and necessity is issued, a billion dollar slurry line is built, and a utility thousands of miles away and its consumers are depending upon the coal delivered and in turn the water source for transporting that coal, I doubt if the Federal courts will allow the shutting down of that pipeline because the supplying state has experienced adverse impacts from the water extraction. No matter what conditions or guarantees we incorporate into this bill, I fear that once



water enters interstate commerce, the source state has effectively lost control over its water and over its right to halt pumping should drawdowns occur. The message from the courts on similar questions involving the Commerce Clause is all too clear.

There is no great clamor to pass this legislation. The Administration is divided on the issue. The Interstate and Foreign Commerce Committee is seeking sequential referral. There is strong opposition to it from agricultural groups and several environmental groups. The slurry line companies have alternatives they have not yet fully considered.

I urge this Committee to exercise its jurisdiction, to consider the full impacts of the bill, to approve the strengthening water amendments added by the Interior Committee, and to make additional amendments as it sees fit to further protect the individual state's water rights and our ground water resources in the West.

Mr. HOWARD. Please proceed.

Mr. RONCALIO. Let me again assert that most of the comments about this legislation you have heard so far come from those who say the railroads are fighting it, the railroads are fighting it. I am not fighting it because the railroads would be hurt; I am fighting it because the people of Wyoming will not have the water they are entitled to in their reserves in the ground, which is the last reserve of potable water in Wyoming.

We have between 2 and 3 million acre-feet a year of surface water in the various rivers that flow out of Wyoming in all directions. We are a State of low multitudes and high altitudes. We have water flowing in all directions, and we have between 2 and 3 million acre-feet a year and, in some years, even more that flows out and becomes surplus water when it gets down the Missouri River, or surplus water down to the certain States on the Green River, or surplus water when it hits into the Platte. But we do not find the proponents of this line going to the Wyoming's surface water and buying some water to put in its system, or going to the oil companies and seeing if they can get some of their water that is used after it has recycled water in the oilfields and use it to move some some coal out of the State. They insist they want to drill a well field of 35 or 40 wells into the precious Madison limestone, on which there is no geologic proof that a drawdown of 20,000 acre-feet a year will do irreparable damage, and they say, "We know there is enough water there for us to do it."

Now, let us get to this point. If this company would take surface surplus water of 20,000 acre-feet a year, I would help them get it. I will quit the Congress and go try to buy them the water to get that thing started. I would care less if they compete with the dear old Union Pacific Railroad, for which my father worked for 30 years; I would care less about that; I would like some good competition in moving the coal out of Wyoming, but not at the cost of jeopardy to the last source of water, the last reserve of water in the State, which is the Madison limestone formation that we have got there. So, there is a difference.

You have heard my beloved leader say to you that there is no difference here between eminent domain for a gasline and why should we not have it here. There is a basic difference. A gasline, Mr. Chairman and my members, moves natural gas, and that is all it moves. Slurry lines move 1 ton of water from Wyoming for every ton of coal that is moved; one ton of water for every ton of coal. That is the basic difference, and that is why, in the State of Wyoming, we have this battle.



You have heard my beloved Chairman Mo Udall say to you, "The Roncalio amendment, which is in here now, we think even went a little too far," but it protects the State's interests because of the requirement which Mr. Clausen mentioned. If it knew that the leaders that want this legislation would leave the Roncalio amendment alone when it gets to the floor of the House, I might feel a little more secure about all of this, but we know, as a matter of fact, they are already preparing amendments to cut it all up to pieces when it gets to the floor of the House; they are not going to leave this bill alone in the form it is now. If they are, I would love to hear them say so.

If Mr. Udall will say now that he will support this bill verbatim, word for word, now, I would have to give serious thought to maybe going along with the bill. I voted against reporting it out of the Interior Committee because of my concern about what would happen on the floor.

MR. CLAUSEN. Do you want Chairman Udall to yield to you to respond to that question?

MR. RONCALIO. Does Chairman Udall wish to yield and respond to me on that question? I would be happy to yield.

MR. UDALL. I can live with the bill as it is written. I think we have overprotected water, but we accepted the Roncalio amendment, and I have no plans to try to undo it on the floor.

MR. RONCALIO. You would support it on the floor of the House?

MR. UDALL. That is my present position.

MR. RONCALIO. I am deeply relieved to know that, and I appreciate that.

MR. CLAUSEN. Are you not thankful that I got the question answered?

MR. RONCALIO. You are a good man, Don Clausen.

Now, to the other thing, Mr. Chairman, the recycling, I do believe that requiring a company to recycle 100 percent of its 20,000 acre-feet a year, with pumps—say that you have got a 36-inch line going down to Arkansas and an 18-inch line coming back with double pump capacity—the economics might put the program in jeopardy, but no one has ever shown us the figures. We have asked for figures in Wyoming over the years, and a figure that came up was one that it will cost \$3,000—that is for the electrical current on today's rates—to pump that acre-foot of water from Arkansas back up to Wyoming, but nobody tells us how many tons of coal that acre-foot of water will move back down to Arkansas, and what does it figure out—is it 25 cents a ton more, or 50 cents a ton more to recycle?

And I think, and I know, and I would swear on my word if I were under oath, under penalties of perjury, that I have had said to me from an official of the ETSI Corp., "Oh, we will recycle all right on the second or third slurry line. But on the first one, we want all the water, from where we know there is adequate water." And they may have a point—maybe there is adequate water, but there is no proof that there is or that there is no adequate water in the Madison Limestone. It is a source of municipal water. The Wyoming Legislature was not told that when they got their permission to get a permit for the 15,000 to 20,000 acre-feet a year. It is being used now as a source for industrial waters for oil company recycling for oil recovery. Edgemont, S. Dak., depends upon this water for its municipal system.



How can we set the precedent of allowing it to be used to flush coal out of our State when it is used to sustain life in the three-State area? That is the reason I have come asking you not to report this legislation, unless we can come up with some type of assurance, Mr. Chairman, that slurry companies would either recycle a substantial percentage of the water—35, 40, 50 percent should be recycled—or that they will be required to look elsewhere for some of their waters. One of my amendments which failed was that they should look for 50 percent of the water from surplus surface sources and the other half from underground or ground water sources. That was defeated by one vote, 20 to 19, in the full Interior Committee.

I am still insecure and uncomfortable with this legislation. I do not feel good about it, and I will continue to feel uncomfortable and insecure about it until they either recycle some of that water or find some surplus surface water. Otherwise, this is the most dangerous precedent for the people in the arid West that I have ever seen.

Thank you, Mr. Chairman.

[Whereupon, Mr. Breaux assumed the chair.]

Mr. BREAU. Teno, our committee, of course, appreciates your presentation. I am just getting into this, and I have been reading some of the material while you were making your presentation.

As I understand it, the certificate could not be issued if the underground water use would significantly affect the water table quality or the quantity of the water table.

Mr. RONCALIO. That is so. My amendment accepted by the Interior Committee requires the advance study by the U.S. Geological Survey before a certificate can be issued.

I very much fear what could happen in the absence of such protection, especially in Wyoming where the pipeline company already has permission to pump up to 20,000 acre feet of groundwater a year. Under the Wyoming law, if test facilities around the well field show that there has been a drawdown after a while, the company can be required to compensate those whose interests will be damaged. The company can be required to pay additional pumping charges incurred by the injured party. It can be required to find another water supply for the other party. Or, as a final resort, the Wyoming law says the State may go to court to seek a shutdown of the pumps.

But, realistically, I cannot see how this company is going to stop a billion operation; once they start pumping that water, there is nothing that is going to stop them, even if we have a drawdown, because they will have committed that water to interstate commerce; they will have put in jeopardy an investment of a billion dollars or more, and a drawdown on the reservoir is not going to stop them. In other words, as men of reason, I do not believe, and neither do you, that if you and I were running this company, that we are going to stop our pumps just because someone says there is a 25-foot drawdown in the area.

[Whereupon, Mr. Howard reassumed the chair.]

Mr. HOWARD. The gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. Let me be sure I understand you, Congressman, on what you are saying with regard to the so-called absolute veto that the distinguished chairman of the Interior Committee referred to.



Are you saying there is not an absolute veto that Wyoming, for example, would have, or did I understand you to say that Wyoming has, in fact, already granted the rights to drill?

Mr. RONCALIO. Wyoming's legislature has already, in fact, granted statutory permission—statutory machinery for a permit to issue to Energy Transportation Systems, Inc., and ETSI has, in fact, made application for their permit, looking to something between 15,000 and 20,000 acre-feet per year of water from the Madison Limestone in the Niobrara County field.

Mr. SHUSTER. Then, presumably, the State legislature feels that the water problem is no problem.

Mr. RONCALIO. The State legislature, 4 years ago, did feel that; that is true. And I do not want to gainsay them; there may be men in there of good will who felt this. But this is a whole different world on energy since that day.

Mr. SHUSTER. Well, can they not, then, repeal?

Mr. RONCALIO. You have no conception of how feisty a politician can get when you mention this in the Wyoming Legislature. First, you need a two-thirds vote to bring it on on the off years. Second, it has become a wholly partisan, political issue, and that is too bad. The incumbent Democratic governor agrees with me on this; the former Republican governor thinks there ought to be one test kind of a pipeline somewhere, somehow, and is inclined to favor deep water for this program. Everyone is a little uneasy about the thing, but that is your answer, Mr. Shuster.

Mr. SHUSTER. Thank you.

Mr. HOWARD. The gentleman from California, Mr. Mineta.

Mr. MINETA. No questions, Mr. Chairman.

Mr. HOWARD. The gentleman from Illinois.

Mr. FARY. No questions.

Mr. HOWARD. The gentleman from California, Mr. Clausen.

Mr. CLAUSEN. I think I have said most of what is needed to be said, but to backup some comments that were made by Mr. Wright, as well as Mr. Roncalio, I might point out that suggestions have been made that water for the pipeline could be pumped back from Arkansas in a parallel pipeline or brought in from a third point, such as the main stem on the Missouri. Now, rough cost estimates offered during congressional hearings are that water from planned ground water sources would cost about \$50 per acre, or 1.5 cents per million Btu's worth of coal transported; water supply from the Missouri River would roughly double the cost; recycling water back from Arkansas would increase the cost about eightfold.

I think it would be helpful for the committee to have that incorporated into the record to put in perspective what we are talking about.

Mr. RONCALIO. But there is no proof that that is still not economically feasible. That is the problem.

Mr. CLAUSEN. Yes, right.

Mr. HOWARD. The gentleman from Minnesota, Mr. Hagedorn.

Mr. HAGEDORN. No questions.

Mr. HOWARD. The gentleman from Minnesota.

Mr. STANGELAND. No questions.



Mr. HOWARD. Mr. Roncalio, thank you very much for your testimony and your appearance here today.

The next witness before the subcommittee, Mr. Russell W. Peterson, director of the Office of Technology Assessment, accompanied by Mr. Lionel S. Johns, program manager, and Mr. Brad Hollomon, professional staff member.

Thank you for your patience and your appearance, Mr. Peterson. You may proceed as you wish.

**TESTIMONY OF RUSSELL W. PETERSON, DIRECTOR, OFFICE OF TECHNOLOGY ASSESSMENT, ACCOMPANIED BY LIONEL S. JOHNS, PROGRAM MANAGER, AND BRAD HOLLOMON, PROFESSIONAL STAFF MEMBER**

Mr. PETERSON. Mr. Chairman and members of the Committee, thank you for the opportunity to be here today and to summarize the results of our coal slurry pipeline assessment. I have with me Mr. Lionel S. Johns, manager of the OTA energy program and Mr. Brad Hollomon, the slurry pipeline project director.

OTA undertook this study in mid-1976 at the request of the House Committee on Interstate and Foreign Commerce; the Senate Committee on Energy and Natural Resources; and the Senate Committee on Commerce, Science, and Transportation. Our analysis is intended to contribute to discussions of broader questions of transportation policy, western water use, and regional conflicts over energy development. We also hope that our findings will aid in congressional deliberation on several bills that propose granting the power of eminent domain at the Federal level to coal slurry pipeline enterprises for right of way acquisition, and that our report may be a useful source of information in any certification or regulatory process to which slurry pipelines might be subjected.

The assessment was managed by OTA staff with the help of an advisory panel composed of representatives of affected interests and experts in relevant fields of knowledge. The panel members are listed at the front of the report, and although our panels don't necessarily approve or endorse our findings, we are deeply grateful for their insight, perseverance, and the good will with which they participated.

Four major research tasks provided the background material on which the assessment is based. The first resulted in forecasts of coal production and utilization, which constitute the market assumptions underlying the rest of the analysis. Second, an investigation of the relative costs and potential economic impacts of coal slurry pipelines and unit trains was performed. The third task was to evaluate the environmental, social, and water resource impacts of slurry and rail transport of coal. Finally, an analysis was performed of the legal and regulatory issues related to transportation, water use, environmental protection, and eminent domain. Our summaries of these four investigations comprise chapters IV through VII of the report.

Some major findings arising out of the assessment are as follows: Without the power of eminent domain at either the State or Federal level, coal slurry pipelines will have great difficulty competing successfully with established railroads. On the other hand, if Federal emi-



ment domain legislation were passed without addressing the regulatory restrictions on railroads, pipelines would enjoy some significant advantages over railroads. Restrictions include for example, the ability to serve selected customers on a long-term contract basis, as railroads are now unable to do. Also, if regulation of gas and oil pipelines is a guide to the way coal pipelines would be treated, pipeline rates could yield a greater return on investment than those allowed to railroads. In this context, pipelines represent simply another potential competing mode of transportation to be considered in the larger debate concerning the best way to alleviate the problems of the railroad industry.

Another major problem concerns the allocation of western water resources among competing uses. Although transportation of coal by slurry pipelines will require much less of the mine region's water, per ton of coal, than onsite gasification or electric power generation, they do represent a substantial potential demand on limited, remaining unallocated resources. However, the prior appropriation system of water rights subordinates new uses to present ones, making water acquisition for energy development more difficult. Satisfactory resolution of this larger question of how the West allocates water for future needs would eliminate some of the contention over the desirability of slurry pipelines as a form of transportation.

Other elements of the dispute over coal pipelines reflect conflicting regional interests regarding coal development generally. If coal mining and transportation is expanded to control electricity costs or to reduce the dependence on foreign gas and oil in one part of the country, another part will suffer the adverse impacts of increased mining activity, expanded train traffic, or greater competition for water. Congress faces the unique challenge of striking the appropriate balance as it considers not only coal slurry pipeline legislation but other energy-related measures and the degree to which those determinations will be made at the Federal level.

I will now enumerate some of our more specific findings.

#### COMPARATIVE COSTS

We compared the costs of unit trains and slurry pipelines as part of four hypothetical case studies and concluded that depending on the specific conditions of a given route, either mode can represent the less costly means of transporting coal, if one ignores regulatory distortions and unquantifiable social impacts. Which mode is cheaper in a given instance can be determined only by a detailed economic and engineering evaluation, and the ranges of uncertainty associated with estimated rail and pipeline costs can be as great as the difference between the estimates.

#### REGULATORY DISPARITIES

As I mentioned earlier, the present regulatory framework does not guarantee that traffic would necessarily be allocated between rail and pipeline in practice in such a way as to minimize the cost to society of transporting coal. Distortions would stem from the difference between regulated tariffs and cost of service, the ability of pipelines to serve selected customers, and the prohibition of long-term rate and volume contracts between railroads and their shippers.



### RAIL INDUSTRY IMPACTS

The development of a substantial slurry pipeline industry would diminish the growth in future revenues of competing railroads, primarily in the West. However, the rail industry's financial health and the cost and quality of the service that railroads provide is probably more sensitive to rate regulatory policy and to continued productivity improvement within the industry than to the effect of pipelines on the level of coal traffic.

### COAL DEVELOPMENT IMPACTS

Although the argument has been raised that coal slurry pipelines would help to meet national energy goals by alleviating transportation capacity limitations, our view is that the introduction of this technology would not be likely to affect materially the rate of coal resource development and use on a national scale. The reason is that both rail and pipeline facilities can be expanded relatively rapidly, and the rate of coal development, especially in the West, is more dependent on other considerations, such as environmental restrictions. The pattern of coal distribution, however, is sensitive to transportation costs. Thus, any measure which reduces these costs will encourage the use of western coal at greater distances from where it is mined.

### WATER USE

Slurry pipeline development could foreclose other future use of remaining western water supplies. However, our analysis indicates that sufficient unused quantities of suitable water are physically present, although not necessarily legally available, for the operation of nearly 200 million tons per year of slurry pipeline capacity from western coal producing areas. Pipeline proposals therefore present a choice between slurry and other forms of future water use, which may be more or less desirable.

### CONTROL OVER WATER RESOURCES

Under the prior appropriation system for water allocation in many Western States, slurry pipelines, like any new applications of water, are accorded a lower priority relative to existing rights. This fact serves to protect present users from involuntary displacement of their water rights. As a result, pipelines may not be able to acquire water, even if they were able to put it to a more economically productive use. It should be noted that when levels of water use exceed present users' rights, as is the case during periods of relative abundance, issuance of new rights can displace present water dependent activities. Also, within limits that vary among States, water rights may sometimes be sold by one user to another, thereby making water available for slurry use through market forces. The Federal Government has substantial constitutional power to control water resource allocation for pipelines, notwithstanding State provisions. One of the questions our analysis raises is to what degree would State authority over water for pipelines survive Federal certification of a pipeline project. Even if pipeline legislation were to provide that State water authority would



remain unchanged, certification by a Federal agency that a pipeline would serve the national interest could under certain circumstances supercede State power in this area.

#### ENVIRONMENTAL IMPACTS

From an environmental standpoint, the water use and certain temporary construction impacts of slurry pipelines must be weighed against the noise, land use disruption, and rail-highway crossing accidents and inconvenience associated with moving the same coal by rail.

#### WASTE DISPOSAL

One environmental area of uncertainty involves the substances that will be present in the slurry water after it has been separated from the coal and perhaps reused, for example, for powerplant cooling. This water must eventually be disposed of. As a result of questions raised by OTA's environmental analysis, the Department of Energy is now sponsoring the experiments necessary to determine what substances will be leached from the coal under the anaerobic conditions prevailing in a slurry pipeline. This information should be useful for enforcing the provisions of present Federal statutes controlling the discharge of toxic and hazardous substances into surface and underground water, as well as for assessing the potential impacts of any coal slurry pipelines.

#### EMINENT DOMAIN

A coal slurry pipeline industry could develop if it had the power of eminent domain for right-of-way acquisition at the State, as opposed to Federal, level. All other pipeline systems except natural gas were built largely with State eminent domain authority. However, without this power at some level, slurry pipeline development would be difficult, and not all States have statutes granting the power for building this specific type of facility. Those that have such statutes require that a public purpose be served within the States. The practical difference between eminent domain at the State or Federal level lies in the degree to which national or local priorities are reflected in the conditions under which the power can be exercised.

It follows that Congress is in a position to facilitate or to retard coal slurry pipeline development through eminent domain legislation, as it deems appropriate, based on weights it assigns to the impacts I have just mentioned. Let me emphasize that this issue cannot be viewed in isolation. Broader problems, of which the coal slurry pipeline controversy is only one aspect, include the current railroad regulatory structure, the allocation of limited water resources in the West, and regional conflicts over energy development.

In conclusion, clarification of two issues which have heretofore been interrelated in the debate seems desirable. One revolves around the lack of eminent domain authority serving to permit one transportation mode to delay or deny the opportunity to a competing mode from entering the marketplace. The second issue concerns the perceived desirability of coal slurry pipelines and is drawn between those on the one hand who oppose Federal eminent domain for slurry on the basis of



water use, Federal incursion on State powers, protection of rail markets, or other bases, and on the other hand, those who support eminent domain legislation on cost, energy availability or environmental grounds. Our report outlines policy options which permit these issues to be viewed separately.

Thank you for the opportunity to testify. I hope our assessment is useful to you in your deliberations.

We would be pleased to answer any questions.

Mr. HOWARD. Thank you very much for your testimony and your appearance.

The Chair recognizes the gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. I thank you; we certainly appreciate your testimony. Let me be sure I understand what you have said, and please correct me if I am wrong. You said that you have seen no evidence that says that coal slurry pipelines would be more economical than railroads. They may or may not be, depending on the specific circumstance, so we have no evidence that justifies making a decision in favor of coal slurry pipeline because they are basically more economical.

Mr. PETERSON. Let me correct that, Mr. Shuster. I said that it depends upon the particular situation and the particular route.

Mr. SHUSTER. Let me put it another way. There is no inherent economic advantage to coal slurry pipelines over railroads that one can state as a general premise.

Mr. PETERSON. Not as a general premise, but you can pick specific routes and show that there is an economic advantage for slurry pipelines over railroads, and other cases where rails have an advantage over slurry pipelines.

Mr. SHUSTER. Further, that you do not know yet what the impact of discharges of toxic and hazardous substances into surface and underground waters might be; this is being studied now?

Mr. PETERSON. We have inadequate information on that; that is right.

Mr. SHUSTER. And, further, that even if we did proceed with coal slurry pipelines, unless action were taken to change the regulatory structure of the railroads, the railroads would be significantly injured and the coal slurry pipelines would be given an inherent economic advantage through the distortions resulting through the regulatory structure?

Mr. PETERSON. That is right.

Mr. SHUSTER. I also note from your testimony and from page 18 of your report:

The capacity of rail systems can be expanded faster than can coal mining or electric power generation using coal, providing the necessary investments in local rail facilities are made.

Therefore, can I accurately conclude that there appears to be no case for the need for coal slurry pipelines, because the railroads cannot handle the job? The suggestion here is that the railroad can handle the job, given adequate investment.

Mr. PETERSON. I think, again, you have to be concerned with a specific route. In certain areas where there is no existing roadbed, for example, there may not be any advantage, from a time standpoint, in



going with one mode over the other, that is if it calls for a major construction effort for building a new roadbed versus building a pipeline.

But where we already have an existing railroad in existence, then to increase the capacity on that railroad would be less of an assignment.

Mr. SHUSTER. Would you care, finally, to comment on Congressman Roncalio's statement that he made just a few moments ago, and I believe I am quoting him precisely: "This is the most dangerous precedent for the people of the arid West I have ever seen"—that is, this legislation.

Mr. PETERSON. I think, again, you have to be concerned with what particular application you are talking about for the coal slurry pipeline and what weight you want to put on the relative uses of the water supply. Congressman Roncalio, I believe, was focusing on the water problem, which is obviously of tremendous importance in the semiarid West.

Yet, in some of the areas, such as in eastern Wyoming, there is water available to handle 125 million tons of coal by slurry pipeline, and in the process use only 3 percent of the surface water available in the area. So, it depends upon what weight the authority handling the water allocation gives to future uses for slurry pipelines over future uses for irrigation, et cetera.

So, I think you have to face up to that critical problem, but that would not, in my judgment, rule out the possible use of some water for the coal slurry pipeline.

Mr. SHUSTER. Thank you very much.

Mr. HOWARD. The gentleman from Louisiana, Mr. Breaux.

Mr. BREAUX. No questions.

Mr. HOWARD. The gentleman from California, Mr. Mineta?

Mr. MINETA. No questions.

Mr. HOWARD. The gentleman from Georgia, Mr. Levitas.

Mr. LEVITAS. No questions.

Mr. HOWARD. The gentleman from Illinois, Mr. Fary.

Mr. FARY. No questions.

Mr. HOWARD. The gentleman from Minnesota, Mr. Hagedorn.

Mr. HAGEDORN. No questions.

Mr. HOWARD. The gentleman from Minnesota, Mr. Stangeland.

Mr. STANGELAND. Thank you, Mr. Chairman.

Mr. Peterson, who would be responsible for regulating rates of transporting coal through a slurry pipeline?

Mr. PETERSON. I will ask Mr. Brad Hollomon to answer that, if I may.

Mr. HOLLOMON. Unless there were legislation changing the situation, the coal slurry pipeline, since it does not carry natural gas or water, and to the extent that it is in interstate commerce, would be regulated by the Interstate Commerce Commission.

Mr. STANGELAND. Then I gather, Mr. Peterson, from your testimony that you are supporting legislation and supporting the right of eminent domain, because it is in the public interest?

Mr. PETERSON. I am not supporting anything. I am coming to you with this report to present these options and facts and will leave it up to you people who have the responsibility for making the decisions to make that choice.



Mr. STANGELAND. Based on the research that you have done, is it your opinion that it is in the public interest for the Federal Government to grant the right of eminent domain, as opposed to having the States take this on a case-by-case basis?

Mr. PETERSON. I would prefer to have you, the Congress, answer that question. The Office of Technology Assessment was established to provide objective analysis of technological issues, and my taking a position on the merits of specific legislation would be inappropriate in the light of our charter.

Mr. STANGELAND. I think maybe, Mr. Chairman, at this point, I do not have any further questions. [Laughter.]

Mr. HOWARD. Thank you very much, Mr. Peterson.

The next witness before the subcommittee is Mr. Jack Curran, legislative director, Laborers' International Union of North America.

Mr. Curran, thank you very much for your appearance here today. We do have a copy of your prepared statement which, without objection, will be made a part of the record at this point, and the statement of Mr. Robert A. Georgine, president of the Building and Construction Trades Department, AFL-CIO, which also will be made a part of the record at this point.

[Statements referred to follow:]

STATEMENT OF JACK CURRAN, LEGISLATIVE DIRECTOR, LABORER'S INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

Mr. Chairman and Members of the Committee, my name is Jack Curran, Legislative Director of the Laborers' International Union of North America. I am speaking on behalf of General President, Angelo Fosco, and over 600,000 members of our Union in support of H.R. 1609, the Coal Slurry Pipeline Bill of 1976.

This is not my first appearance in support of a Coal Slurry Pipeline Bill. Our Union has, from the beginning of the debate over this bill, participated in that debate and urged the passage of this legislation. I, and members of my staff, have closely followed the arguments which have been made in repeated hearings over Coal Slurry legislation, without discovering anything which would cause us to depart from our unwavering support for such legislation. It remains our conviction that slurry technology represents the best, most economical and least environmentally-damaging form of transportation for large volumes of coal.

As the debate over this legislation has progressed, our country has been fenced in to an ever narrowing circle of possibilities, which make the passage of this legislation immediately imperative. Our increasing dependence on foreign supplies of energy resources is an intolerable situation which cannot be permitted to continue indefinitely. Added to this, our national reluctance to continue development of nuclear energy cuts us off from the next most obvious source of power in the near term. Under the circumstances, it is imperative that we develop our rich national heritage of western coal as an energy source. Simultaneous with the development of the coal fields, however, is the necessity for developing a transportation system which will bring that coal from the sparsely populated west to the heavily populated markets of the east, midwest and southwest United States.

The elements of such a transportation system are both clear and obvious. First, it should be cheap, since the primary reason that western coal has remained so long undeveloped lies in the substantial effect that transportation had on the cost of that coal. It was not, in fact, until other energy sources increased in price by a factor of three or more than we began to seriously consider development of our western coal fields. Second, a transportation system should be enduring; again, for cost reasons, and should operate for the maximum amount of time with little or no maintenance cost. Third, it should be uninterruptable. And, fourth, it should do as little damage as possible to the surface environment. I submit to this Committee that the slurry pipeline meets all of these requirements and, in meeting them, exceeds the performance of any competing transportation form.



Previous hearings have clearly developed the information that the delivered cost of coal, by pipeline, is one-half to two-thirds that of coal delivered by rail. Given the conditions which make slurry pipeline delivery possible, that is, a large source at one end and a large user at the other, no one seriously contests the economy of pipeline transportation. Nor is this a theoretical claim based on mathematical models or engineering projections.

Transportation by slurry pipelines is a developed, tested and successful technology, currently in use in this country and others, which could immensely benefit the future development of energy production in the United States.

Of all forms of transportation, buried pipelines are demonstrably the most enduring over the long term. In the forty year anticipated life of a pipeline, maintenance costs, barring catastrophic accidents, are minimal and have little practical impact on the delivered price of coal, compared to the projected costs of upgrading and maintaining an operating rail system in this country, which were thoroughly explained during the debate over CONRAIL. This factor alone more than justifies investment in Coal Slurry Pipelines.

Goods transported by pipeline arrive in an uninterrupted supply-gain, barring catastrophic accidents. Neither derailments, road accidents, weather nor the multitude of other factors which can slow down or stop most forms of surface transportation affect a buried pipeline. Thus, a power plant at the receiving end of a coal slurry line, can minimize its stock piling requirements, which would not only reduce its inventory cost and the amount of land which it would occupy, but would open the possibility of making power plants a much more attractive member of the community.

There are several bases on which to question the argument that the Railroads not only can handle increased coal traffic, but that it should be reserved to them. Such a reservation violates the very principles of a competitive economy which we in this country depend upon as the principal regulator of prices and economic activities. It is true that Congress has ordered Federal regulatory agencies to preserve maximum competition in regulated industries such as Railroads and that the Railroad reorganization final system plan was drawn up with an objective of assuring that each major center would be served by at least two competing Railroads. Without going into my skepticism about competition in a regulated industry, I submit to you that even the limited competition Congress has preserved in the case of Railroads is inapplicable to delivery of coal. Coal is supplied to the power industry through the mechanism of long-term contracts between the power companies, mine operators and delivery systems. Coal is not delivered to major centers where congressionally mandated competition protects the consumer but rather to isolated delivery points over tracks controlled by the operator. The only effective competition that a Railroad could conceivably face in coal hauling would be from an alternative competing technology, such as coal slurry. The Railroads are already clamoring to raise their rates before making the investment in additional equipment and facilities repair that will be required by increased coal production and haulage. If that is the case now, what I ask you will be the result in terms of transportation prices if Congress puts its stamp of approval on the monopoly that obviously the Rail operation so desires?

It seems distinctly odd to me that the opponents of this legislation have made such an issue of the potential environmental damage associated with Coal Slurry Pipelines, when this country is literally laced with underground oil and natural gas lines which the majority of our population rarely even notices. A buried pipeline, unlike a highway or railroad line, ruins no farm land, pollutes no communities with noise, smoke or gas, interferes with no shipping, where it crosses rivers, and, generally operates as benignly as any piece of human engineering in the history of man. By comparison, one has only to look at the gravelly, oil-soaked, and weed-engorged Rail Rights-of-Way which crisscross our country to see real permanent and, apparently, incurable damage to the environment. Such damage as may be done by a pipeline during its construction phase is as quickly undone once the pipeline is buried and normal living and agricultural pursuits resume along the Right-of-Way. Although pipeline breakage is rare in the many years of experience this country has had with oil and natural gas pipelines, it can occur. Such risks, however, are insurable costs of operation of the pipeline company which can, and should, be covered to prevent losses by landowners along the Right-of-Way. In the case of slurry pipelines, as distinguished from oil or natural gas lines, such losses are unlikely to involve life or limb, since the explosive or combustible qualities of the material carried in the pipeline will be negated by the fact that it is 50 percent water.



Thus, in my opinion at least, the case for Coal Slurry Pipelines is complete, and certainly enough is known about them to justify the passage of this legislation. Especially, since not one foot of pipeline would be laid thereby.

This bill after all is neither an appropriation measure nor an authorization to build or operate a pipeline. It merely grants to pipeline companies those same rights of eminent domain in federal courts which Congress has given to all other forms of surface transportation and energy transmission that have to cross state lines. All that it would do would be to prevent the capricious or selfish denial by the Railroads of permission for pipelines to cross their Rights-of-Way. Failure to pass such legislation, will not only severely damage the prospect of using a valuable, proven transportation technology, but will set the dangerous precedent that those who are first on the ground have the power to deny the development of competing technologies. Somehow, I do not think that the Congress of the United States is prepared to accept such a precedent, for which all of us may be duly grateful. Our Union is fully aware, of course, to the relationship between slurry technology and water use, just as we are aware of the importance of water in the coal-rich states of the west. However, I do not think that the water issue should hold up consideration of this legislation. From a national point of view, the water can hardly be considered lost in any case since, once it is separated from the coal dust, it can be put to useful purposes at the receiving end of the pipeline. More to the point, however, is the fact that state sovereignty applies to water within their borders. Before one drop moves into a Coal Slurry Pipeline, the operators are going to have to satisfy the states' water conservation requirements. This aspect of state control is untouched by H.R. 1609.

More important, in this debate, is the principle which has already been enunciated. Congress should not permit a situation to develop in which new technology can be suppressed by the private action of individuals or corporations, acting in their own purely selfish interest. Such action would do violence to those traditions of innovation and experimentation in the free market which have been the primary driving force in our national economic progress. Passage of H.R. 1609 prevents that situation in this case and reaffirms our national commitment to progress in the private economy.

I deeply appreciate this opportunity to present our views on this very important legislation, and wish to thank you, Mr. Chairman and the Committee, for permitting us to do so.

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STATEMENT OF ROBERT A. GEORGINE, PRESIDENT BUILDING AND CONSTRUCTION  
TRADES DEPARTMENT, AFL-CIO

As President of the Building and Construction Trades Department, AFL-CIO, its 17 National and International affiliates, and their 4 million members, I greatly appreciate this opportunity to demonstrate support for H.R. 1609, The Coal Pipeline Act of 1978.

A few months ago, the delegates to our National Convention in Los Angeles unanimously approved a resolution urging prompt passage of this vital legislation. Building tradesmen have a vested interest in the construction of coal pipelines. It is an interest that should be shared by all Americans concerned with our energy crisis.

In one of his first addresses to the American people, President Carter articulated the need to develop domestic sources of energy. The major thrust in this area of the Administration's energy program is "to increase our coal production by more than two-thirds, to over one billion tons a year." With this explosion in the development and production of coal, a viable, efficient, economical, safe system of transporting coal is necessary to complement the present haulage by rail. We think coal slurry pipelines are the answer.

It is now obvious that the railroads alone cannot do the job. With the tripling of coal volume by 1981, hopper cars, rail lines, graded crossings cannot be built fast enough to satisfy the traffic demands. And the traffic demands will be enormous—almost ten times what they are today. Even if coal pipelines transport 20 percent of the mined coal, (a liberal estimate), railroads would still experience a tremendous increase in revenues and employment.

Expansion in the northern and western coal mines will begin in two or three years. It is urgent that we start construction now so that coal pipelines will be ready to haul a significant share of the added volume of coal.



The necessary manpower to build these pipelines is available in abundant supply. The building industry is in a depression with over 15 percent of its total work force unemployed. This Nation's largest industry, which is so crucial to the entire economy, will not be revived until the construction of energy supply and transport facilities is resumed. These skilled craftsmen stand ready to build these facilities which our country so desperately needs.

The Office of Technology Assessment has now concluded its thorough, meticulous study of the economic and environmental impacts of coal slurry pipelines. The findings demonstrate the feasibility of proposed pipelines:

Substantial reduction of energy costs to the consumer.

Efficient haulage of mined coal.

No adverse effects on water supplies.

No threat to loss of jobs in the railroad industry.

The verdict is in. Further delay would be a shameful injury to the economy and energy independence of this nation.

The unemployment of the building trades far exceeds that of the railroads in every state where coal pipelines have been proposed. With the anticipated increase in coal production, both railroad workers and building tradesmen stand to gain much.

The 4 million building tradesmen of America strongly urge your favorable consideration of H.R. 1609. Our country needs to get on with the job of preparing for future energy demands. Construction of convenient, safe, economical coal pipelines is a very necessary first step.

I respectfully request that a copy of this Department's Convention Resolution in support of H.R. 1609 be included in the record.

Thank you.

#### RESOLUTION No. 56

Re: Support for Coal Slurry Pipeline Act.

Submitted by: Executive council.

Referred to: State and local organizations.

Whereas, any solution to America's long-term energy problem depends on the increased use of coal to avert further dependence on foreign energy sources; and

Whereas, the key to such increased use of coal is efficient transportation; and

Whereas, transportation of coal by Slurry Pipeline is the lowest cost and least environmentally damaging means of moving large amounts of coal from the mine to a high-volume user; and

Whereas, American railroads have entered into a deliberate policy of sabotaging the developing of such pipelines by denying them the right to cross railroad Rights-of-Way; now, therefore, be it

*Resolved*, That the Building Trades supports and calls upon Congress to pass H.R. 1609, Coal Slurry Pipeline bill, which will give operators of coal slurry lines the right of Eminent Domain in Federal Courts enjoyed by all other interstate carriers of goods and services.

Mr. HOWARD. You may proceed as you wish.

#### TESTIMONY OF JACK CURRAN, LEGISLATIVE DIRECTOR, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO

Mr. CURRAN. Thank you, Mr. Chairman. I do appreciate your allowing me to appear here now, and as I indicated, it will only take me a minute or so. I do have to catch a plane in a very short time.

I am appearing here today in a dual capacity—that as chairman of the legislative task force of the Building and Construction Trades Department, speaking on behalf of President Bob Georgine and the 4 million members of the building trades; and in the capacity of legislative director of the Laborers' International Union of North America, speaking on behalf of President Angelo Fosco and our 600,000 members.



Let me just briefly say, in presenting the statements for the Building Trades Department and the statement of the Laborers' International Union, that I and my staff have been following the hearings and we have gone into all of the aspects of the need for a coal slurry pipeline in competition with the transportation of coal by other means.

It still remains our conviction that slurry technology represents the best, the most economical, and the least environmentally damaging form of transportation for large volumes of coal.

Second, we feel that simultaneous with the development of the coal fields, there is the necessity for developing a transportation system which will bring that coal from the sparsely populated West to the heavily populated markets of the East, Midwest, and Southwest United States. The elements of such a transportation system are both clear and obvious.

First, it should be cheap; second, transportation systems should be enduring; third, it should be uninterruptable; and, fourth, it should do as little damage as possible to the surface environment. I submit to the committee that the slurry pipeline meets all of these requirements, and in meeting them, exceeds the performance of any competing transportation form.

I leave the rest of our statements to the committee for its consideration. And, again, Mr. Chairman, many thanks for allowing me to appear before this body today.

Mr. HOWARD. Thank you very much for your appearance, Mr. Curran, and thank you for the testimony of both yourself and Mr. Georgine, which are a part of the record.

The gentleman from Pennsylvania?

Mr. SHUSTER. Thank you very much. No questions.

Mr. HOWARD. Questions by members of the subcommittee?

[No response.]

Mr. HOWARD. Thank you very much, Mr. Curran.

The next witness before the subcommittee is John F. O'Leary, Deputy Secretary of the Department of Energy.

Mr. O'Leary, thank you very much for your appearance and for your patience today before the subcommittee. If you do have testimony, it will be made a part of the record at this point, without objection.

[Statement referred to follows:]

#### STATEMENT OF JOHN F. O'LEARY, DEPUTY SECRETARY, DEPARTMENT OF ENERGY

Mr. Chairman and members of the Subcommittee, I appreciate this opportunity to appear before you to discuss some important issues associated with the transportation of coal, the potential role of coal slurry pipelines and specifically, H.R. 1609.

Last spring I testified on this bill before the House Interior and Insular Affairs Committee.

At that time, I was unable to comment definitively on the bill since the Administration was conducting an extensive review to determine its position with respect to H.R. 1609.

The Administration has completed its review and supports H.R. 1609. Proposed amendments have recently been submitted to you. The amendments reflect changes to H.R. 1609 as it was originally introduced. The Administration is currently reviewing H.R. 1609 as reported out by the House Interior Committee.

H.R. 1609 provides for Federal authority to grant certificates of public convenience and necessity for coal slurry pipelines upon a finding that they are in



the national interest. The granting of such a certificate would confer upon the project the right to seek rights-of-way by eminent domain when such rights-of-way cannot be attained by negotiation. Applicants granted certificates would be required to operate their certified pipelines as common carriers under the Interstate Commerce Act.

The Administration believes that as an important part of a balanced energy program, the Federal Government should provide a regulatory framework which will allow for fair competition between various modes of transportation in order to achieve the efficient movement of coal, our most abundant fossil fuel.

I would like to discuss briefly the elements of our energy program which are pertinent to today's hearings.

The cornerstone of the Administration's energy policy is to shift as much of the energy load away from oil and gas and to coal as rapidly as possible. We anticipate that coal production will increase from the current rate of 670 million tons per year to better than 1.2 billion tons annually within the next decade. The magnitude of this increase will place a tremendous burden on the transportation industry which must move the coal from mine to market.

Presently, the railroads account for 64 percent of all U.S. coal shipments; water or barge movements account for 11 percent; trucking accounts for 12 percent; and conveyor, tramway, and one slurry pipeline account for the remaining 13 percent. Historically, the distance from mine to consumer has been relatively short. The average train shipment for coal is 300 miles, while the average barge haul is 350 miles. However, this is changing. The distances over which coal is transported in the West are already longer than in the East, and are expected to increase. For example, it is approximately 1,600 miles from the Powder River Basin mines of Wyoming to major coal markets in Texas and Arkansas. The necessity of moving more coal over greater distances dictates the need to develop all available transportation methods to the fullest extent possible.

Coal slurry pipelines are not an untried technology. The first major coal slurry pipeline in this country was built in Ohio in 1957. It was 108 miles long and had a capacity of 1.5 million tons of coal per year. A decline in unit train rates made this slurry line uneconomical, and the coal that was handled in it is now delivered by rail. The coal slurry pipeline now operating between Black Mesa, Arizona, and a power plant in Nevada carries 4.8 million tons of coal per year a distance of 273 miles. It has operated successfully for several years.

I recognize that there has been substantial debate on coal slurry legislation over the past few years with the central issue being the granting of eminent domain" to these pipelines. The intensity of this debate has focussed on two principal concerns:

1. the competitive relationship between the proposed slurry pipelines and the railroads.
2. the availability and use of water in the Western United States where pipeline projects have been proposed.

I would like to touch briefly on each of these issues. It is our view that without the ability of slurry pipelines to obtain "eminent domain" authority, an artificial barrier results which arbitrarily denies the development of this transportation mode, even when it would otherwise be in the public interest to allow this development. This barrier does not exist for other coal transportation modes. Establishing a regulatory framework with appropriate safeguards will merely allow these projects to compete on an equal footing with other coal transportation modes. Such an arrangement would improve competition, not hinder it.

Much of our extensive pipeline system for transporting natural gas was constructed under the power of "eminent domain." Many of our electrical power line transmission systems were constructed pursuant to similar authority. We believe the same authority should be available for coal slurry pipelines.

The creation of a regulatory framework for evaluating site specific coal slurry pipeline projects and to offer the right of eminent domain subject to certain criteria and conditions, do not suggest that any particular proposed project is deemed to be in the national interest and thus assured approval. Rather a regulatory framework for evaluating a transportation project should seek to establish a hearing record which will allow the public interest to be served. When competition between different modes of transportation is involved, the economic interests of the regulated carriers and the public at large are often difficult to determine. This history of our transportation industry has shown that technology, trading patterns, and a variety of economic factors are



constantly changing the comparative utility among competing transportation modes. It is essential that our regulatory framework keep pace with these changes and maintain a proper balance between the desire of the consumer for low-cost, dependable transportation and the needs of the carriers for an adequate financial return.

Although we agree that in many cases it is physically possible for the anticipated increases in coal production to be moved to market by rail, we believe that when an alternative mode of transportation is in the public interest, that mode of transportation should be encouraged. The recently issued study of these pipelines by the Office of Technology Assessment supports our view that the public interest would be best served if "eminent domain" authority were made available to coal slurry pipelines.

The Administration recommends that the authority to issue certificates of public convenience and necessity should be placed in the Department of Energy, consistent with that Department's planned role in energy regulation, but that such certification must be preceded by concurrences from the Department of Interior and the Department of Transportation. The Department of Transportation concurrence would involve consideration of alternative transportation modes and impacts upon these other modes.

With respect to the water issue, I believe that we are again confronted with a complex question involving important environmental and economic consequences. As a former State official in New Mexico, a state vitally concerned with water resources, I am well acquainted with the legal precedents and regulatory framework which currently deal with water rights and usage in our Western States. These States have extensive experience, statutes and case law covering water rights.

The Department of Interior's review and concurrence would be with regard to natural resources and environmental impacts in connection with rights-of-way determinations. This review would also include the pipeline's impact on water resources.

We believe that this arrangement of authority among the three agencies would insure that the concerns expressed by many regarding the adverse impacts on railroads and the problem of water availability, will be substantially alleviated and that H.R. 1609, as amended by the Administration's proposals, will provide an effective regulatory framework within which to judge and decide upon coal slurry projects.

We recommend your favorable consideration of legislation to grant the right of eminent domain to coal slurry pipelines and assure you of our willingness to work with you to enact legislation which is fully responsive to the issues and concerns associated with coal slurry pipelines.

#### TESTIMONY OF JOHN F. O'LEARY, DEPUTY SECRETARY, DEPARTMENT OF ENERGY

Mr. O'LEARY. Mr. Chairman, thank you very much for making this opportunity available and for incorporating my prepared statement in the record. I would like to very briefly augment the prepared statement, if I may, first noting that we do now have administration amendments. They have been submitted to the committee and are reflected in the testimony that was prepared for my appearance before you this afternoon.

Mr. Chairman, we are here representing the administration in support of coal slurry pipelines for one reason, and one reason only: Because they have at least the potential for reducing cost to consumers of electric power, and for other products of our economy.

We do not have any particular brief for any of the projects that are now being discussed. As a matter of fact, any of the projects that are now being discussed under the terms of this bill would have to come through a full litigated proceeding before they could be passed upon.

But it seems to me that one of the key characteristics of the last



8 or 10 years with regard to energy has been the narrowing of options, and what is before the Congress here is the opportunity for a change to open up options.

Now, there is a lot of concern, I think, with regard to several points, Mr. Chairman. First of all, there is concern with regard to the impact of the railroads. I agree with Congressman Udall and with Congressman Wright in their assessment that there is going to be plenty of business for everyone. I think that particularly with the safeguards that are incorporated with the administration's amendments, that that should not be a concern of this committee.

Second, there is substantial concern over water. Now, I want you to understand, Mr. Chairman, as I am sure you do, that we are dealing here not simply with rights of the Federal Government that are allocated by the Federal Government or by State governments, but, in a very large sense, with property rights.

I think for us now to make an intrusion into a system that has been built up over the last three generations in the West for handling water disputes and for assessing priorities or water use would be really biting off more than, at this moment in time, at least, we should chew.

It seems to me, particularly from my recent experience in the State of New Mexico—which is, of course, one of the most water-short of all of the Western States—that the machinery in being in the West now is sufficient to take care of this and to safeguard all of the interests of the people of these affected States.

There is also a question with regard to water quality. As was pointed out earlier by Mr. Peterson, the Department of Energy is conducting research, taking a look at the sort of things that may occur in—and I want to repeat his word—the anaerobic—that is to say, oxygenless—environment of a pipeline. We do not think they are going to be serious, but the safeguard here is that in order for the water to be discharged, it must receive from EPA a discharge permit. And I believe that that provides adequate safeguards for the public interest.

With regard to cost, however, which is our primary concern, Mr. Chairman, we are going to see a wholesale conversion of the current electric base, which is natural gas in the Southwest, to coal over the next 15 years, or thereabouts. Indeed, if the conference report that will hopefully be before the Congress, dealing with the National Energy Act, ultimately becomes law, the southeastern utilities will be required to leave natural gas by 1993.

It seems to me, in these circumstances, Mr. Chairman, that we should do everything in our power to assure that consumers have the lowest possible cost of conversion when they go to alternative fuels.

We are concerned, similarly, with the continued reliance by the utility industry of the United States upon imported oil. And, here, I must tell you, Mr. Chairman, that I disagree with the OTA assessment that the capability of construction and operation of coal slurry pipelines will have no impact on the rate of expansion of coal supplies in this country. Coal will expand as is economically feasible, and to the degree that the economics are not present, coal will not be utilized and we will remain with the reliance that we now have on petroleum. We are seeing that already in the northeast, and I think we will see it in the southwest, as well.



So, Mr. Chairman, I think that from every standpoint, particularly with the safeguards that the committees have put into the bill and with the additional safeguards that the administration is recommending, that you can pass this piece of legislation; open up a new option; do yeoman's service for the consumers of electrical energy and of other industrial products of this country, and will have done a good day's work.

Thank you, Mr. Chairman. I would be glad to answer any questions you have.

Mr. HOWARD. Thank you, Mr. O'Leary. The basic thrust of the testimony that was submitted would be to make the Department of Energy the lead agency in the certification process, with the concurrence of the Departments of Interior and Transportation. Of course, when we look at this whole package, it is energy.

Mr. O'LEARY. Yes, it is.

Mr. HOWARD. It is business.

Mr. O'LEARY. Energy.

Mr. HOWARD. Environment.

Mr. O'LEARY. Dominantly energy, Mr. Chairman.

Mr. HOWARD. Transportation.

Mr. O'LEARY. Dominantly energy.

Mr. HOWARD. Dominantly energy, over transportation—a coal pipeline.

Mr. O'LEARY. Mr. Chairman, about the same relationship to transportation that a natural gas pipeline has, or an oil pipeline has—special purpose, not general purpose transportation facilities, and in the case of the regulatory activity of relating to both oil and gas pipelines, they are now lodged, by your act of Congress, in the Department of Energy.

Mr. HOWARD. It seems to me that moving something is pretty much transportation. You would have it with your certification and the concurrence of Interior and Transportation; that would mean that if you wish to certify something, Interior and Transportation may endorse it.

If you do not wish, originally, to certify something, then nothing can happen?

Mr. O'LEARY. That is correct.

Mr. HOWARD. That is all I need to know.

The gentleman from Pennsylvania, Mr. Shuster?

Mr. SHUSTER. Thank you.

That means that you should, with the same logic, regulate coal trucks.

Mr. O'LEARY. No, Mr. Shuster. You will find that that is a matter that is done largely at the State level.

Mr. SHUSTER. Well, the Interstate Commerce Commission regulates trucking to some extent.

Mr. O'LEARY. To some extent, when it is in interstate commerce and, of course, that is because trucking is a general purpose proposition. The predicate that I rely on here, Mr. Shuster, is the recent Organic Act of the Department of Energy that took the Interstate Commerce Commission's responsibilities with regard to oil pipelines, and the FPC responsibilities with regard to another special purpose type of pipeline—that is to say, natural gas pipelines—and lodged both of those sets of responsibilities in the new Department of Energy.



Mr. SHUSTER. Then the Department of Agriculture should regulate the movement of unprocessed foodstuffs.

Mr. O'LEARY. Mr. Shuster, I do not follow that logic, but I do think that the recent—

Mr. SHUSTER. It is your logic; it is not ours.

Mr. O'LEARY. No. It is your logic, Mr. Shuster. You are the ones that recently passed the Organic Act for the Department of Energy.

Mr. SHUSTER. Thank you.

Mr. HOWARD. The gentleman from Louisiana, Mr. Breaux.

Mr. BREAU. The gentleman

Mr. BREAU. Thank you, Mr. Chairman.

Thank you, Mr. O'Leary, for your testimony. I think one of the supreme ironies of the whole thing is that we are debating constructing a coal pipeline to bring coal from Montana to the South, and we in the South are sending natural gas from Louisiana back to Montana for them to use up there. It seems like we are missing something along the way.

Be that as it may, one of the sections in the bill that gives me a great deal of concern is section 5(d), subsection (3)(A), which prohibits a certificate from being granted to any carrier which controls, or is controlled by, or is under common control with any person which uses or will use coal transported by the carrier, or which supplies coal to the pipeline.

I take that very simply to mean that anyone who is going to use the end product cannot participate in owning, or building, or constructing in any way the pipeline. To me, that does not make any sense. It seems like we are saying it is all right for Sears, Roebuck to build a pipeline, but heaven forbid, an oil company or utility company which might be using the product to have any participation whatsoever in building it.

To me, that does not make any sense whatsoever, unless there is some other reason for that principle. Can you explain it to me?

Mr. O'LEARY. I am sorry, Congressman; I cannot explain the origin of this language. It is precedential; that is to say, I do not know of any precedent for it. For example, in the highly regulated natural gas transmission business, there is no such requirement. In many cases, you do find that the owning company is both the consumer and the producer of the gas.

It seems to me that as long as you have the strong regulatory input over rates that are incorporated in the Natural Gas Act, that that has not done violence to the system.

Mr. BREAU. Does the Department of Energy support section 5(d)(3)(A), or would you prefer or recommend that it be modified or deleted? Do you have a position on it?

Mr. O'LEARY. Mr. Breau, we do not have a position on it, but I would be more than pleased to study this carefully and provide a view for the committee. In my own very quick reading of it, it seems to me that it places unnecessary constraints on the system, but I would like to give it a little more consideration.

Mr. BREAU. Is it your testimony, also, that as far as you know, there is no other section of our Government in which we are in charge of regulating any aspects of development whatsoever, where a prohibition of this type exists?



Mr. O'LEARY. Commodity clauses are not unique. This is, in effect, a commodity clause, and they do arise with regard, particularly, to the Mineral Leasing Act of 1920, as I recall it, relating coal-producing activities to common carrier railroads.

But I know of no other direct precedent and, indeed, this would seem to be going in the face of precedent in the natural gas case, which I regard as analagous, that I just described.

Mr. BREAUX. I would hope the committee would take a very serious look at it, because I think we would end up losing people who would be interested in constructing a pipeline, if this section were to remain in the bill.

The last point I want to make is that we talked to Congressman Roncalio about the water rights question, and it seems to me that the amendment which the committee has adopted would prohibit the Secretary from issuing any certificate for a project to be started if it would have a severe adverse impact on the water table.

It seems like it goes further than just a water table in a particular State, but it could include surrounding areas and surrounding States. I am wondering if, in trying to protect the water rights of the States, we do not create a situation where we could have perhaps one State even objecting to the lessening of the water table in an adjoining State. I think we are opening the gates to a great deal of litigation.

I was wondering how you feel about that section.

Mr. O'LEARY. Well, again, we have not focused on this to the point where there is an administration position, but I think that you ought to seek the advice of the U.S. Geological Survey with regard to the ramifications of this before you place it into law. This would appear to me, on the face of it at least, to be a fairly far-reaching measure; one that, again, is not employed for alternative uses for water.

I think it is important that we note here that we are applying, in these sorts of conditions, requirements for coal slurry pipelines that simply do not apply to the multitude of other industrial uses of water. It may be that there is a philosophical point there that you would like to address, as well.

At any rate, I would urge that you seek some advice from the USGS with regard to their capacity to meet the mandate that is called for in this language.

Mr. BREAUX. Thank you. Thank you, Mr. Chairman.

Mr. HOWARD. The gentleman from Minnesota, Mr. Stangeland.

Mr. STANGELAND. Thank you, Mr. Chairman.

Just one question regarding water rights: In the area of geological survey, where it is determined that aquifer lies under two States and one State grants rights so that pumping is done in that State, what recourse does the other State have if it chooses not to have water pumped out of that aquifer?

Mr. O'LEARY. I will give you a very imprecise answer to that, Congressman. Generally speaking, the old common law of rule of capture applies here. We have situations analagous to this in the oil business, where a surface and subsurface owner will find himself drained by the activities of an adjacent owner or lessee. In that case, the protection is simply to drill a hole to offset.

I believe that we are finding very much this same sort of situation in the Southwest, where some aquifers do cross State lines and, here,



there is not a well developed body of law, although it is being developed over time, as this becomes a more serious set of concerns for the States.

I think that attempting to invoke in this particular piece of legislation a rule that might become generally applicable may be something that the committee would like to question. This is a very complex business and one that I think that we should not address superficially, as may have occurred in this particular instance.

Mr. STANGELAND. To clarify your answer, what you are saying is that the State that chooses not to grant the water rights would have, really, no recourse?

Mr. O'LEARY. It is not really clear how this legislation would impact upon that, because the particular section in question goes on to say that nothing currently in law or in private property rights will be affected by this legislation, so far as water is concerned.

Mr. STANGELAND. I have no other questions, Mr. Chairman.

Mr. HOWARD. The gentleman from California, Mr. Mineta.

Mr. MINETA. Thank you, Mr. Chairman.

Mr. Secretary you indicate that the pipeline system for transporting natural gas and the electrical power transmission systems were constructed under eminent domain. Was that under Federal or State eminent domain?

Mr. O'LEARY. It is under Federal statute; it is under the Natural Gas Act of 1938, which empowers the Federal Power Commission to issue to an applicant a certificate of public convenience and necessity which then authorizes the applicant to go into a Federal court to obtain right of passage over private lands.

Mr. MINETA. Now, the OTA report on coal slurry pipelines had indicated that the development of the coal slurry industry could advance, in the absence of the power of eminent domain at the Federal level. I am wondering if the department had a chance to see that report and go through it, and whether or not you agree with that, and if that is correct, why is this bill necessary?

Mr. O'LEARY. Well, I think that this is a theoretical possibility, given a great deal of time and two sets of circumstances: A series of successful court cases on the part of the applying company against the railroads, or other landowner, over whose property they would have to pass; or the passage of more or less identical legislation by a number of States.

I think you would have then the equivalent, in effect, of what we are seeking through this particular piece of legislation. I think it is important, however, for us to think about two elements here: Time and cost. That probably would be a more costly procedure, in the event that the court suit route were chosen and States were not to provide eminent domain.

And, certainly, from the standpoint of time, if we wait upon the States, each on its own timetable, to pass appropriate legislation, the closure is indefinite. So, although the OTA observation is probably at least theoretically accurate, as a practical matter, I think if we wish to move ahead in this business, we should be doing it with a statute very much like H.R. 1609.

Mr. MINETA. Fine. Thank you very much.



Mr. HOWARD. The gentleman from Georgia?

Mr. LEVITAS. Thank you, Mr. Chairman.

Mr. Secretary, on page 2 of your testimony, you state that you anticipate within the next decade that the current rate of coal production will increase from 670 million tons per year to better than 1.2 billion tons annually.

First of all, are those the estimates which are contained in the energy legislation now pending?

Mr. O'LEARY. These are the NEA estimates, Mr. Levitas.

Mr. LEVITAS. Now, if that is the case, and given the information that you provide on the next page about the percentage of coal shipped through various modes at the present time, do you have any estimate, first of all, of how many more coal cars would be needed to carry this increased tonnage, and is it likely that that can be supplied through the rail system?

Mr. O'LEARY. I think that there is no question about the capacity of American industry to make the necessary number of railcars and locomotives, and fix up the railroads, and make the overpasses that are going to be required to gain public acceptance of this in this sort of a time frame.

However, it is not going to be free. It is going to be a very, very expensive undertaking. And, again, I want to emphasize the point that I have been making time and time again. Our interest here is not in advancing one mode of transportation over another; it is getting costs to consumers down to the point where they are optimal.

It seems to me that if we deny one mode of transportation which has, in at least some circumstances, an inherent advantage, then we are simply saying to consumers, "You are going to have to pay more for your energy."

For example, in taking a look at the OTA analysis, in the four cases that they have chosen, there are two adverse cases for coal slurry and two favorable. The net favorable balance from that rather random sample is \$100 million a year of savings to consumers.

Although I know that that is not definitive, it seems to me it is something that we ought take quite seriously. If there is the possibility of significant savings, without doing violence to other very important elements—the existing transportation system, environmental concerns, water rights in the West, and the rest of it—then we ought to establish the predicate for taking advantage of those economies.

Mr. LEVITAS. I am going to return to that point in just a moment, because I think it is very important. But in your prepared testimony, the administration recommends that the public convenience and necessity certificates should be issued through the Department of Energy, rather than through the Department of Transportation.

My initial reaction is that the Department of Transportation—we are talking about a transportation mode—that it would be more reasonable for that to be the site of this. I would like you to comment on that, and on whether you have some idea what agency or commission within DOE would have this responsibility.

Mr. O'LEARY. The genesis for this recommendation flows from the final resolution of the same or related questions in the debate that led to the passage of the Department of Energy Act. In the course of



that act, responsibilities for oil pipelines that were in the Interstate Commerce Commission—the principle responsibilities were vested in the Department of Energy.

Mr. LEVITAS. I am familiar with that; it came through my Government Operations Committee and I remember that particular point.

Mr. O'LEARY. And you will recall that in the same piece of legislation, the FPC responsibility for the other special purpose type of transportation system that we have in this country, natural gas pipelines, was, with all of its other regulatory responsibilities, placed in the Department of Energy.

This bill follows that predicate on precisely the same grounds, and I assume that the Secretary would assign responsibility to FERC for most of the administration of the act.

Mr. LEVITAS. Now, just one final point, and it is what you referred to in your prepared remarks where you speak of the framework which will allow for fair competition between the various modes of transportation. I think the key word there is "fair."

In the statement of Governor Peterson, he touches upon the regulatory disparity. What are the elements of fairness that you see in this legislation, keeping in mind the fact that we all believe that a national rail transportation system is vital to our economy and our national security?

Would the imposition of this new mode of transportation, in the absence of some fairness, lead to the further economic deterioration of the rail system?

Mr. O'LEARY. No, I do not think so. I think that what we are going to find, first of all, because the absolute volume of coal moved by the railroads will go up appreciably under almost any set of circumstances over the next 10 or 15 years and, second, the length of a haul which now averages something in the range of 300 miles will go up appreciably, as well, that the total ton miles carried by the railroads of coal, under any conceivable set of circumstances, will rise and continue to rise, so long as we continue to rely, as I think we will for the remainder of this century, on coal as the base fuel.

The question then becomes one not of injuring the existing transportation industry, I think, because it quite evidently will be benefited by that, everything else being equal. It becomes our key concern for cost to consumers in this country.

Now, the mechanism in which this fairness will be assured is spelled out in the act; that is to say, a full adjudicatory hearing where all sides can make their presentations will be a requirement. And I am quite sure that FERC is not going to take an action, given the legislative history surrounding this bill, that would be in any way inimicable to the railroad or other transportation industries.

And further safeguards are in the bill, as a result of the administration's amendment, that require concurrence from the Department of Transportation.

Mr. LEVITAS. Thank you, Mr. Secretary. Thank you, Mr. Chairman.

Mr. HOWARD. Thank you very much, Mr. O'Leary.

Mr. O'LEARY. My pleasure, Mr. Chairman.

Mr. HOWARD. The Chair would like to announce that the hearings are extensive. We have a number of persons who are going to testify.



The subcommittee did get a very late start today, hence, we do not believe that we can complete hearing all of the witnesses that are scheduled for this afternoon.

Rather than have many of them who are located, to a great degree, in Washington waiting around, the Chair would announce that we will, this afternoon in these hearings, hear from Mr. Chester Davenport, the Assistant Secretary of Transportation for Policy and International Affairs, and we will hear from Mr. George W. Oprea, executive vice president of Houston Lighting and Power Co., who has come from Houston for these hearings.

The hearings will continue immediately upon the return after the Easter recess, 10 days from now. If there are any additional people who are not listed to be heard today, they will so inform the Committee on Public Works and Transportation, and we will be happy to hear their testimony in the continuation of these hearings.

But we do not wish to have people wait around for a long period of time, only to find out that we could not get to them today, due to the circumstances with which I am sure you are all familiar. So, the Chair makes that announcement for their information.

The next witness before the subcommittee is Mr. Chester Davenport, Assistant Secretary of Transportation for Policy and International Affairs of the Department of Transportation.

Mr. Davenport, we are very grateful for your appearance today. We wish to thank you for your patience in waiting. We have your prepared statement which, without objection, will be made part of the record at this point.

[The following was received for the record:]

STATEMENT OF CHESTER DAVENPORT, ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. Chairman and Members of the Subcommittee: I am very pleased to be here today to testify on H.R. 1609, "The Coal Pipeline Act of 1978," as reported by the House Committee on Interior and Insular Affairs. The Administration agrees with the Interior Committee that there is a need for legislation to establish a certification process which will ensure that eminent domain authority is granted to facilitate the construction of only those pipelines which are consistent with national energy, transportation, environmental, economic and social policy.

As I indicated in testimony on February 7 before the Subcommittee on Transportation and Commerce of the House Interstate and Foreign Commerce Committee, recent studies by the Department of Transportation and by the Office of Technology Assessment indicate that national efforts to increase the use of coal as an energy source would not be slowed down by a lack of coal transportation capacity. Particularly, the capacity of rail systems to carry coal can be expanded more rapidly than can demands which might be generated by increased coal mining or coal-fired electric power generation, provided the necessary investments are made in local rail facilities. The industries which supply necessary equipment as well as capital markets are adequate to meet the needs of either mode—rail or slurry pipeline. Thus, sufficient investment in either mode can keep transportation capabilities abreast of foreseeable needs. Thus, any choice made between these modes will not be determined by considering respective capacity limitations, but by considering whether rail or pipeline investment makes the most sense economically, environmentally and socially in any given situation.

One of the questions of primary concern to the Department of Transportation is whether investment in a particular mode of coal transportation makes sense economically. Whether slurry pipelines should be constructed depends, of course, upon the availability of existing alternative transport modes in areas where pipelines are proposed, the cost of alternative modes, and the potential impacts of slurry pipelines on competing modes.



Concerning cost comparisons, our reviews of cost estimates from various studies indicate that questions concerning the comparative costs of the rail and slurry pipeline modes do not lend themselves to generalized answers. Our analyses point to the need for route-specific cost comparisons, taking into account factors such as the size and geographic spacing of mines supplying the pipeline, the volume of coal to be transported, and the distance over which coal is to be moved. In addition, the terrain, soil conditions, land use, and any major water crossings along the route must be considered, as well as water availability, and the number of customers to receive coal from one pipeline.

On the question of the potential impact of slurry pipelines on competing carriers, the key issue is what effect the diversion of coal traffic would have on the financial viability of competing rail or water carriers, and the extent to which such financial impact would affect the shippers of commodities other than coal. We believe that this question must also be considered in the context of route-specific examinations. It should be noted that such financial analyses will always have to be made in the context of those rail rate regulatory practices that are in place at the time of a particular slurry pipeline project application.

In recognition of the route-specific nature of the trade-offs between slurry pipeline and rail transport of coal, the Administration supports H.R. 1609, with certain Administration-proposed amendments, which assure that necessary transportation analyses are undertaken before a proposed slurry pipeline is granted eminent domain authority.

The Administration proposes that the authority for granting the power of eminent domain be placed in the Department of Energy. DOE would evaluate the applications of prospective pipeline operators on a case by case basis. Because the issues involved in coal slurry pipeline decisions—energy, transportation, environmental, economic and social—are not matters on which DOE has all necessary expertise, the Administration believes that, while the authority to issue certificates of public convenience and necessity should be placed in DOE, such certification must be preceded by concurrences from the Department of Transportation and the Department of the Interior as to matters within the purview of those agencies.

The review and concurrence by the Department of Transportation would involve consideration of the availability of alternative modes, the comparative costs of alternatives, and the impacts of coal slurry pipelines on other modes of transportation. The review and concurrence by the Department of the Interior would involve natural resource and environmental impacts, including a pipeline's impact on water resources, in connection with review under the Mineral Leasing Act for right-of-way determinations.

Regarding the transportation issues, the Interior Committee has added two items to the list of findings which must be made before eminent domain authority can be granted to a proposed pipeline project. New section 5(b) (5) requires findings on the extent to which a proposed slurry pipeline project "would be likely to impair the financial integrity of other common carrier modes of transportation or the level and type of transportation services any such mode is able to offer." New section 5(b) (6) requires findings on the extent to which the project "will be likely to result in lower rates for the transportation of coal than would be in effect if such coal were transported by a common carrier by railroad under Part I of the Interstate Commerce Act." These findings are in addition to those required in Section 5(b) (1) of the original bill, concerning "alternative routes or means of transporting coal and the relative costs of such alternatives means."

However, although the Interior Committee has indicated that there is a need to address transportation issues before certifying proposed coal slurry pipeline projects, we do not believe that the Committee's bill sufficiently provides for consideration of relevant transportation issues by the agency with appropriate expertise. First, the Interior bill (section 6(e)) requires that the Secretary of the Interior merely request that the Secretary of Transportation make recommendations concerning only one of the three transportation findings required by the bill, regarding the impact of the proposed pipeline on other modes of transportation. As drafted, the bill leaves the Department of the Interior with responsibility for making the other transportation findings. By contrast, the Administration's version of H.R. 1609 would place transportation responsibilities within the Department of Transportation.

We do not believe that the Interior Committee's operative provision (section 6(e)) sufficiently assures that findings on transportation issues (section 5(b)) will be thorough or that those findings will be given adequate weight in the



certification process. Therefore, we support the Administration version of H.R. 1609 which would require the concurrence of the Secretary of Transportation on all matters of transportation economics. We feel that this is needed to assure that full weight is given to transportation issues in the certification process.

We also wish to bring to the Subcommittee's attention an apparent drafting error in section 5(e) of the Interior Committee version. The Interior Committee report indicates (at page 25) that section 5(e) is intended to require pipelines subject to this legislation to give easements over their routes to other such pipelines. As drafted, this provision inadvertently affects railroads as well, and would subject railroads to additional burdensome requirements whenever they apply to the ICC for authority to discontinue or extend rail service.

Lastly, for the benefit of the Subcommittee, I have attached to my statement a copy of the Administration's version of H.R. 1609. In this attachment, underlined words represent Administration-supported amendments to H.R. 1609 as introduced. I have also attached for the Subcommittee's benefit a separate list of those underlined items. That list was also drafted in reference to H.R. 1609 as introduced.

Thank you for the opportunity to present our views on coal slurry pipeline legislation. The Department is strongly committed to assuring the national transportation system's ability to move the greatly increased volumes of coal projected by the mid-1980's and beyond, and we stand ready to work with all interested parties in striving to achieve our national energy goals. I will do my best to answer any questions you may have.

[H.R. 1609, 95th Cong., 1st sess.]

A BILL to amend the Mineral Leasing Act of 1920, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Coal Pipeline Act of 1978".*

#### DEFINITIONS

SEC. 2. As used in this Act—

(a) "carrier" means any carrier of coal (*but not including synthetic oil or gas derived from coal*) by coal pipeline that is subject to any of the provisions of this Act;

(b) "Department" means the Department of *Energy*;

(c) "Secretary" means the Secretary of the Department of *Energy*;

(d) "right-of-way" includes necessary land or other property for the location of pipelines, pumping stations, pressure apparatus tanks, or other stations, equipments, or appurtenances required for the proper operation of a coal pipeline or pipelines; and

(e) "control" is defined as provided in the Interstate Commerce Act, 49 U.S.C. § 1(3)(b).

#### RIGHTS-OF-WAY ON FEDERAL LANDS

SEC. 3. (a) Subsection 28(a) of the Mineral Leasing Act of February 25, 1920, as amended by the Act of November 16, 1973 (87 Stat. 567), is further amended by inserting the word "coal" between "natural gas," and "synthetic".

(b) (1) Section 501(a)(2) of the Federal Land Policy and Management Act of 1976, (43 U.S.C. § 1761(a)(2)), is amended by adding the word "coal", after the words "oil, natural gas," and before the words ". . . synthetic liquid or gaseous fuels . . ."

(2) Section 501(a)(3) of the same Act is amended by adding after "emulsion systems," the words "other than with respect to coal".

(c) Except as provided in Sections 3(a) and (b) and 5(b)(2) nothing in this Act shall affect the authority of the Secretary of the Interior or other agency head under Section 28 of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. § 185), the Federal Lands Policy and Management Act of 1976, or any other Act with respect to issuance of rights-of-way over Federal lands.

#### EMINENT DOMAIN

SEC. 4. (a) Except as provided in subsection (b), when any carrier cannot acquire by negotiation the right-of-way required to construct, operate, and maintain any proposed coal pipeline or pipelines, such carrier may acquire the same by the exercise of the power of eminent domain in the district court of the United



States for the district in which such property is located or in the courts of the State in which such property is located.

(b) The power of eminent domain shall not be exercised to acquire (1) lands or any interest in land owned by the United States or by any State, or (2) lands or any interest in land held in trust by the United States for an Indian or Indian tribe.

(c) Nothing in this section shall be construed to permit acquisition of any right to use or develop water through the exercise of the right of eminent domain.

#### CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

SEC. 5. (a) The power of eminent domain granted pursuant to this Act may be exercised only by a carrier holding a certificate of public convenience and necessity issued by the Department. The Secretary is authorized to issue such a certificate if the Secretary finds, *subject to the concurrences required by Sec. 5(b)*, with respect to the particular project of the carrier as to which said power is sought, that the project is in the national interest and provides the capacity necessary to fulfill the requirements of a common carrier of coal, as determined by the Secretary. In addition to other factors customarily considered in determining common carrier status in the case of pipeline common carriers, the Secretary shall consider contracts for the carriage of coal which are in existence or proposed as of the date of the application for certification and may also consider such contracts for such carriage as may reasonably be anticipated, at the time of issuance of the certificate, to be entered into after such date. In determining the size of the pipeline to be certificated, the Secretary shall take into account the resultant cost to ultimate consumers of services or products affected by such transportation.

(b) (1) *The Secretary shall not issue a certificate as provided in Sec. 5(a) unless he has obtained the concurrence of the Secretary of Transportation with respect to finding 5(c)(1) below, and the concurrence of the Secretary of the Interior with respect to the finding required by 5(c)(4) below. Decisions regarding such concurrences shall be transmitted to the Secretary within a reasonable period of time.*

(2) *Section 28(h)(2) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. § 185(h)(2)), shall apply to any lands or interests in lands required for a coal pipeline right-of-way any part of which is to be acquired by eminent domain pursuant to this Act, and shall be administered by the Secretary of the Interior. Issuance of rights-of-way through Federal lands under Section 28 of the Mineral Leasing Act, as amended (30 U.S.C. § 185) and administration of the requirements of Section 28(h)(2) with respect to non-Federal lands shall be coordinated with the review of the Secretary for his certification to assure consistency in timing and to avoid duplication.*

(c) In making the findings required in (a) of this section the Secretary shall consider and make findings on the extent to which the project—

(1) would help meet national needs for coal utilization, considering alternate means of transportation of coal and the relative costs of such alternative means, and impacts upon other means of transportation;

(2) may be impeded or delayed unless granted the power of eminent domain;

(3) involves disruption to the environment as compared with disruption from other routes or modes of transportation or other methods of utilization of the coal resources involved; and considers the balance between the energy needs of the area to be benefited by the project and the impacts on the areas from which the coal is to be transported.

(4) *will not cause serious or otherwise unacceptable adverse impacts on the lands, waters, and other natural resources affected by the pipeline, including consideration of the requirement of Sec. 5(d).* The Secretary's findings as to whether a project is in the national interest shall be based on the record as a whole taking into consideration each of the findings required by this subsection.

(d) *No certificate shall be issued unless the Secretary of the Interior has obtained an adequate assurance from the Governor or other appropriate State authority of the State from which the water would be diverted or withdrawn that all necessary rights to the use of waters under State jurisdiction necessary for the purposes stated in the application have been acquired in conformance with applicable State laws and procedures.*

(e) The Secretary shall require as a condition of issuance of a certificate of convenience and necessity under this Act that any pipeline for which such



certificate is issued be constructed, operated, and maintained as a common carrier as provided in the Interstate Commerce Act. Any violation of such conditions shall be enforced as provided in such Act, and nothing in this paragraph shall be construed to limit, impair, or otherwise affect any provision of such Act.

(f) (1) No *coal slurry pipeline subject to Part I of the Interstate Commerce Act* shall transport any coal mined by it or under its authority or which it may own in whole or in part, or over which it may have any control, direct or indirect.

(2) The prohibition contained in subsection (f) (1) shall not apply to the construction, ownership, and operation of a feeder line for the purpose of gaining access to a coal pipeline by any person who would otherwise be ineligible if—

(A) the carrier has declined a formal request to construct, own, and operate the feeder line;

(B) the owner of the feeder line will operate the line as a common carrier for any excess capacity in the feeder line; and

(C) the Secretary has determined that an exemption from subsection (f) (1) is in the public interest.

(3) (A) No *coal slurry pipeline subject to Part I of the Interstate Commerce Act* shall be controlled by, or shall be under common control with any person which uses or will use coal transported by the carrier or which supplies coal to the pipeline and (B) no carrier granted the power of eminent domain under this Act may control, be controlled by, or be under common control with any such person.

(4) The penalties and enforcement provisions of section 8 shall not apply to this subsection, but whenever, on the basis of any information available to the Secretary, the Secretary finds that any carrier or other person is in violation of paragraph (1) or (3) (B), the Secretary shall notify such carrier or other person. If such violation extends beyond the thirtieth day after the date of such notice, the Secretary shall, after notice and opportunity for hearing, issue an order requiring such carrier or other person to comply. Failure to obey any such order shall be subject to the same penalty as provided for in section 16(8) of the Interstate Commerce Act (49 U.S.C. 16(8)).

(g) No certificate of public convenience and necessity may be issued to any person engaged as a common carrier in interstate transportation of coal by any mode unless such person has entered into a compact with the Secretary prior to the issuance of a certificate providing means whereby rights-of-way across the lines of such person may be acquired by a carrier on terms customarily employed with reference to other types of pipeline. Any Federal court of competent jurisdiction may entertain a suit by an interested party to enforce the provisions of such compact.

(h) If the Secretary determines, in the course of the consultations and findings required by subsection (c) or the hearings required by section 6 that the project right-of-way may be utilized for additional uses compatible with operations of the project line, the Secretary may, in his discretion, require as a condition to the grant of a certificate of public convenience and necessity that the particular project right-of-way be subject to such compatible uses.

(i) The Secretary shall require the additional use described in subsection (h) only if he by rule (1) finds—

(A) the additional use is a compatible use, and

(B) conditioning the issuance of the certificate upon the availability of the right-of-way for the additional use is in the public interest, and (2) establishes reasonable provisions for the payment of compensation for the additional use to the person otherwise entitled to the exclusive use.

#### PROCEDURE

SEC. 6. (a) Applications for a certificate of public convenience and necessity under this Act shall be filed with the Department pursuant to such regulations as it may prescribe. Each carrier applying for a certificate shall reimburse the Department for administrative and other costs incurred in processing the application as the Secretary shall prescribe.

(b) A certificate authorized by section 5 may be issued only after public notice and public hearings in accordance with this section.

(c) The carrier shall publish, in accordance with regulations promulgated by the Secretary, a notice that is has filed an application for a certificate of public convenience and necessity under this Act in a newspaper of general circulation



in each county in which the project will be located. The notice shall, among other things, specify to the greatest extent practicable the land which would be subject to the power of eminent domain.

(d) The Secretary shall publish in the Federal Register a notice of the receipt of each application under this Act.

(e) The Secretary shall hold at least one public hearing in each State in which the project involved will be located. Any interested person may present relevant material at any hearing. After all hearings in each State are concluded, the Secretary *notwithstanding Section 402(d) of the Department of Energy Organization Act (Pub. L. 95-91)* shall conduct at least one public, formal adjudicatory hearing in accordance with the provisions of section 554 of title 5, United States Code, in the District of Columbia at which the Environmental Protection Agency shall, and other Federal, State and local agencies may, participate.

#### ANTITRUST REVIEW

SEC. 7. (a) The Secretary shall not issue any certificate pursuant to section 5 of this Act unless it has received the advice of the Attorney General of the United States that such action would not create or maintain a situation inconsistent with the antitrust laws. Any advice under this subsection shall be rendered within a reasonable period of time, but in no event to exceed 180 days after the views of the Attorney General have been solicited by the Secretary. The issuance of a certificate under this Act shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws.

(b) (1) Nothing in this section shall be construed to bar the Attorney General or the Federal Trade Commission from challenging any anticompetitive situation involved in the operation of a coal slurry pipeline.

(2) Nothing contained in this section shall impair, amend, broaden, or modify any of the antitrust laws.

(3) As used in this section, the term "antitrust laws" includes, but is not limited to, the Act of July 2, 1890, as amended; the Act of October 15, 1914, as amended; the Federal Trade Commission Act (15 U.S.C. 41 et seq.); and sections 73 and 74 of the Act of August 27, 1894, as amended.

#### ENFORCEMENT AND PENALTIES AND JUDICIAL REVIEW

SEC. 8. (a) At the request of the Secretary the Attorney General may institute a civil action in the district court of the United States for the district in which the affected operation is located for a restraining order or injunction or other appropriate remedy to enforce any provision of this Act, any regulation or order issued under the authority of this Act or any provision of the *Interstate Commerce Act applicable to coal slurry pipelines*.

(b) If any carrier shall fail to comply with any provision of this Act, any regulation or order issued under the authority of this Act or any provision of the *Interstate Commerce Act applicable to coal slurry pipelines*, after notice of such failure and expiration of any period allowed for corrective action, such person shall be liable for a civil penalty of not more than \$5,000 for each and every day of the continuance of such failure. The Secretary may assess and collect any such penalty.

(c) Any person who knowingly and willfully violates any provision of this Act, any regulation or order issued under the authority of this Act or any provision of the *Interstate Commerce Act applicable to coal slurry pipelines* or makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or both.

(d) Whenever a carrier violates any provision of this Act, any regulation or order issued under the authority of this Act or any provision of the *Interstate Commerce Act applicable to coal slurry pipelines*, any director, officer, or agent of such corporation or entity who authorized, ordered, or carried out such violation shall be subject to the same fines or imprisonment as provided for under subsection (c) of this section.

(e) Petitions for judicial review shall be filed in the court of appeals of the United States for the circuit in which the pipeline's originating point of coal transportation is located.



## CONSTRUCTION OF LAW

SEC. 9. Nothing in this Act shall be construed—

(1) as affecting in any way any existing law governing appropriation use, or diversion of water, or any Federal, State, Indian, or private right to water;

(2) as expanding or diminishing Federal or State jurisdiction, responsibility, or interests in water resources development or control;

(3) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States or of two or more States and the Federal Government; or

(4) as superseding, modifying, or repealing except as specifically set forth in this Act, existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or regulatory functions in relation thereto.

## REGULATIONS

SEC. 10. The Secretary is authorized to promulgate, *after receiving the concurrences of the Secretary of the Interior and the Secretary of Transportation*, such rules and regulations as he deems necessary to carry out the purposes of this Act. *Such regulations are to be promulgated no later than one year after the effective date of this legislation.*

## UNDERGROUND CONSTRUCTION

SEC. 11. All coal pipelines subject to this Act shall, to the maximum extent practicable, consistent with environmental protection, safety, and good engineering and technological practices, be buried underground.

## RELATIONSHIP TO INTERSTATE COMMERCE ACT

SEC. 12(a) Except where otherwise provided by this Act, the provisions of part I of the Interstate Commerce Act (24 Stat. 379) as amended (49 U.S.C. 1-40) shall be applicable to coal pipelines subject to this Act.

(b) *There are hereby transferred to the Secretary such functions set forth in the Interstate Commerce Act and such functions vested by law in the Interstate Commerce Commission or the Chairman and members thereof as relate to transportation of coal by pipeline.*

SEC. 13. Subsequent to *two years after the date of enactment of this Act*, no person shall engage in the transportation of coal by *pipeline* without first obtaining a certificate of public convenience and necessity under sections 5 and 6 of this Act unless such person enters into a compact with the Secretary providing means whereby rights-of-way across the lines of such person may be acquired by a carrier on terms customarily employed with reference to other types of pipeline. Any Federal court of competent jurisdiction may entertain a suit by an interested party to enforce the provisions of such compact.

## SUGGESTED AMENDMENTS TO H.R. 1609

Page 1, line 4—Change “1977” to “1978”.

Page 1, line 7—Sec. 2, substitute definition of carrier:

(a) “carrier” means any carrier of coal (but not including synthetic oil or gas derived from coal) by coal pipeline that is subject to any of the provisions of this Act.

Page 2, line 1—Delete Sec. 2(b) and substitute new Sec. 2(b) as follows:

“Department” means the Department of Energy.

Page 2, line 3—Delete Sec. 2(c) and substitute new Sec. 2(c) as follows:

“Secretary” means Secretary of Energy.

Page 2, lines 10-16—Delete Sec. 2(e) and substitute new Sec. 2(e) as follows: “control” is defined as provided in the Interstate Commerce Act, 49 U.S.C. § 1(3).

Page 2, line 18—After “Sec. 3” add “(a).”

Page 2, line 22—Add new subsections (b) and (c) as follows:

“(b) (1) Section 501(a) (2) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (2) is amended by adding the word “coal” after the words “oil, natural gas,” and before the words “. . . synthetic liquid or gaseous fuels . . .”



(2) Section 501(a)(3) of the same Act is amended by adding after "emulsion systems," the words "other than with respect to coal".

(c) Except as provided in Sections 3 (a) and (b) and 5(b)(2) nothing in this Act shall affect the authority of the Secretary of the Interior or other agency head under Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. § 185), the Federal Lands Policy and Management Act of 1976, or any other Act with respect to issuance of rights-of-way over Federal lands."

Page 3, lines 8-9—After the word "lands" in each line insert, "or any interest in land."

Page 3, line 18—Section 5(a), after the word "Department" strike "of Interior."

Page 3, line 19—After the words "Secretary finds," insert "subject to the concurrences required by Sec. 5(b)."

Page 4, line 11—Substitute new Sec. 5(b) as follows:

"(b)(1) The Secretary shall not issue a certificate as provided in Sec. 5(a) unless he has obtained the concurrence of the Secretary of Transportation with respect to finding 5(c)(1) below, and the concurrence of the Secretary of the Interior with respect to the finding required by 5(c)(4) below. Decisions regarding such concurrences shall be transmitted to the Secretary within a reasonable period of time.

(2) Section 28(h)(2) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. § 185(h)(2)), shall apply to any lands or interests in lands required for a coal pipeline right-of-way any part of which is to be acquired by eminent domain pursuant to this Act, and shall be administered by the Secretary of the Interior. Issuance of rights-of-way through Federal lands under Section 28 of the Mineral Leasing Act as amended (30 U.S.C. § 185) and administration of the requirements of Section 28(h)(2) with respect to non-Federal lands shall be coordinated with the review of the Secretary for his certification to assure consistency in timing and to avoid duplication."

Page 4, line 11—Redesignate Sec. 5(b) as Sec. 5(c) and renumber provisions accordingly.

Page 4, line 12—Delete the word "independent."

Page 4, lines 14-17—New Sec. 5(c)(1) will read as follows: "would help meet national needs for coal utilization, considering alternative means of transportation of coal and the relative costs of such alternative means, and impacts upon other modes of transportation."

Page 4-5, beginning line 24—Delete number "(4)" and combine paragraph with (3); also delete the words "water requirement and other", so that the paragraph reads as follows:

"(3) involves disruption of the environment as compared with disruption from other routes or modes of transportation or other methods of utilization of the coal resources involved; and considers the balance between the energy needs of the area to be benefited by the project and the impacts on the area from which the coal is to be transported."

Page 5, after line 2—Insert new Sec. 5(c)(4) between lines 2 and 3, as follows: "will not cause serious or otherwise unacceptable adverse impacts on the lands, waters, and other natural resources affected by the pipeline, including consideration of the requirement of Sec. 5(d)."

Page 5, line 5—Change "criteria set forth in" to "findings required by."

Page 5, line 6—Add to Sec. 5 a new subsection (d); and re-letter succeeding subsections accordingly:

"(d) No certificate shall be issued unless the Secretary of the Interior has obtained an adequate assurance from the Governor or other appropriate State authority of the State from which the water would be diverted or withdrawn that all necessary rights to the use of waters under State jurisdiction necessary for the purposes stated in the application have been acquired in conformance with applicable State laws and procedures."

Page 5, line 15—Change Sec. 5(f)(1) to read as follows:

"No coal slurry pipeline subject to Part I of the Interstate Commerce Act shall transport any coal mined by it or under its authority or which it may own in whole or part, or in which it may have any interest, direct or indirect."

Page 5, line 19—Change "subsection (d)(1)" to "subsection (f)(1)."

Page 6, line 5—Change "subsection (d)(1)" to "subsection (f)(1)."

Page 6, line 6—Change Sec. 5(f)(3)(A) to read as follows:

"No coal slurry pipeline subject to Part I of the Interstate Commerce Act shall be controlled by or shall be under common control with any person which



uses or will use coal transported by the pipeline or which supplies coal to the pipeline."

Page 6, line 13—Amend Sec. 5(f) (4) to substitute the word "Secretary" for "Interstate Commerce Commission" or "Commision" wherever it appears in that section.

Page 7, lines 4-5—Change to read as follows: "person has entered into a compact with the Secretary prior to the issuance of a certificate providing means" (The Administration agrees that, as intended by sections 5(e) and 13 of the bill as introduced, a mechanism be developed to expedite acquisition of rights-of-way by certificated coal pipelines. We offer here technical corrections to those provisions. However, the Administration is continuing to review the possibility that section 5(e) of the original bill might require coal transporters other than pipelines to undergo unnecessary and duplicative certification procedures.)

Page 7, line 12—Change "subsection (b)" to "subsection (c)."

Page 7, line 20—Change "subsection (e)" to "subsection (h)."

Page 9, line 3—Delete the words "shall hold" and substitute the following: "notwithstanding Section 402(d) of the Department of Energy Organization Act (Pub. L. 95-91), shall conduct"

Page 9, lines 6-7—Delete "the Federal Energy Administration and"

Page 9, line 10—Change Sec. 7(a) to read as follows:

"The Secretary shall not issue any certificate pursuant to section 5 of this Act unless it has received the advice of the Attorney General of the United States that such action would not create or maintain a situation inconsistent with the antitrust laws. Any advice under this subsection shall be rendered within a reasonable period of time, but in no event to exceed 180 days after the views of the Attorney General have been solicited by the Secretary. The issuance of a certificate under this Act shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws.

Page 10, lines 15 and 18—Delete "or any regulation or order issued under the authority of this Act" and substitute the following: "any regulation or order issued under the authority of this Act or any provision of the Interstate Commerce Act applicable to coal slurry pipelines"

Page 11, lines 1 and 9—Delete "or any regulation or order issued under the authority of this Act" and substitute the following: "any regulation or order issued under the authority of this Act or any provision of the Interstate Commerce Act applicable to coal slurry pipelines"

Page 11, line 22—Change to read "Federal, State, Indian, or private right to water."

Page 12, line 13—Change Sec. 10 to read as follows:

"The Secretary is authorized to promulgate after receiving the concurrences of the Secretary of the Interior and the Secretary of Transportation, such rules and regulations as he deems necessary to carry out the purposes of this Act. Such regulations are to be promulgated no later than one year after the effective date of this legislation."

Page 12, line 22—Change "Sec. 12" to "Sec. 12(a)."

Page 12, after line 25—Add a new Section 12(b) to read as follows:

(b) There are hereby transferred to the Secretary such functions set forth in the Interstate Commerce Act and such functions vested by law in the Interstate Commerce Commission or the Chairman and members thereof as relate to transportation of coal by pipeline.

Page 13, line 1-11—Change Sec. 13 to read as follows:

"Subsequent to two years after the date of enactment of this Act, no person shall engage in the transportation of coal by pipeline without first obtaining a certificate of public convenience and necessity under sections 5 and 6 of this Act unless such person enters into a compact with the Secretary providing means whereby rights-of-way across the lines of such person may be acquired by a carrier on terms customarily employed with reference to other types of pipeline. Any Federal Court of Competent jurisdiction may entertain a suit by an interested party to enforce the provisions of such compact."

Mr. HOWARD. Please proceed as you wish.



**TESTIMONY OF CHESTER DAVENPORT, ASSISTANT SECRETARY OF  
TRANSPORTATION FOR POLICY AND INTERNATIONAL AFFAIRS,  
DEPARTMENT OF TRANSPORTATION**

Mr. DAVENPORT. Thank you very much. I am pleased to be here today. The administration agrees with the Interior Committee that there is a need for legislation for the certification process which would basically insure that eminent domain authority is granted to facilitate the construction of only those pipelines which are consistent with national energy, transportation, environmental, economic, and social policy.

Our recent studies and the study by OTA all indicate that there is no lack of capacity for the transportation of coal; that, more particularly, the capacity of the rail system to carry coal can be expanded much more rapidly than the increase in coal production that we expect over the next decade.

Thus, we believe that the choice of mode will not rest on capacity limitations of either mode, but on whether pipeline or railroad is most desirable, economically, environmentally, and socially, in any given situation.

One of the major concerns that we have had at the Department of Transportation is whether the investments are sensible. We think that the proposed amendments by the administration to the Interior Committee bill will give us the means to make sure that any pipelines approved make economic sense.

On the specific question of the potential impact of slurry pipelines on competing carriers, we think that the key issue is what effect the diversion of coal traffic would have on the financial viability of competing rail or water carriers, and the extent to which such financial impact would affect the shippers of commodities other than coal.

We believe this question must be considered in the context of route-specific examinations. We should note that such financial analysis will always have to be made in the context of those rail rate regulatory practices that are in place at the time a particular slurry pipeline project application is made.

In the recognition of the route-specific nature of the trade offs between slurry pipelines and rail transport of coal, the administration supports H.R. 1609, with the amendments that I previously mentioned. We propose that initial certification of pipelines as has been noted, be in the Energy Department, but that the Department of Transportation would have to concur in any certification after determining whether or not there would be any adverse impact on any particular mode.

Mr. HOWARD. Mr. Davenport, do you feel that there will be such an increase in the use of coal and the need for transportation that if this bill were to pass that it would not have a negative impact on any other mode?

Mr. DAVENPORT. We don't know that specifically. What we have tried to do to date is determine who would have certification authority and who would have veto authority over a particular proposed certification. We felt that in order to make sure that any particular transportation mode would not be adversely impacted, that any proposed certification by the Department of Energy, would come over to the Department of



Transportation for review. At that point, our analysts would make a determination as to whether or not they felt that the proposed pipeline would have an adverse impact. If we felt that it would have an adverse impact we would refuse to concur with the Department of Energy. Unless we were overridden by the President, the pipeline could not be built if we did not concur.

There are a couple of items in the Interior bill that we are concerned about, but rather than reading through my testimony I will summarize our concerns. The main thrust of our concern is that even though the Interior Committee recognized the fact that we should look at the transportation impact of proposed pipelines should be examined they lodged the responsibility for assessing that impact in the Interior Department. We believe that transportation impacts should be assessed by the Transportation Department and not by the Interior Department.

Mr. Chairman, I would be more than happy to answer any questions that you or any other member of the committee might have.

Mr. HOWARD. Thank you. You feel, then, that the certification ought to be with the Department of Energy and only concurrence by the Department of Transportation?

Mr. DAVENPORT. Well, we spent a great deal of time trying to determine who should certify coal slurry pipelines. The administration position is that we think the Department of Energy should certify the pipelines, subject to the concurrence of DOT and DOI. Thus DOE should make the initial determination as to whether or not there is a need to move particular coal from the mine to a particular place by pipeline.

Once that determination is made, the administration's position is that the Department of Transportation would then say whether or not we felt it could be more efficiently carried by another mode and whether movement by pipeline would have an adverse impact on other modes.

DOT could exercise a veto over any certification proposed by Energy if we found that there was an adverse impact on other modes.

Mr. HOWARD. However, if there were involved a severe transportation problem, not a major energy problem, let's say, the Department of Transportation would not be able to initiate any action on that; you would only be able to go to the Department of Energy and hope that they would agree with you because if they certify it—and you rubber-stamp it.

Mr. DAVENPORT. No, Mr. Chairman. I was personally involved in a long debate within the administration about this. DOE could propose certification. Once that certification is proposed but before it is finalized, we at DOT would have to concur. There can be no certification unless we were to concur in it. The only person who can override our nonconcurrence is the President.

Mr. HOWARD. But you couldn't initiate it yourself.

Mr. DAVENPORT. We could not initiate a certification of a pipeline.

Mr. HOWARD. That's right. Because even if you believed there was an overwhelming transportation need for it, you would have to convince Energy to initiate it, and then you would concur.

Mr. DAVENPORT. I don't think a problem like that would arise. Here is what I think would happen. Someone who wanted to build a particular pipeline would go to Energy for certification. Once a person or



a company came in to apply for certification, then Energy would start the application process, and that process would include getting concurrences from both the Department of Transportation and the Department of Interior.

Mr. HOWARD. Looking at it from the legislative viewpoint, over the past few years there have been some major changes in jurisdiction of committees here in the House of Representatives.

One of the major changes that was made was in the area of transportation. Before, a great deal of transportation jurisdiction was vested in many committees. Now almost all of transportation is vested in the Committee on Public Works and Transportation. We believe this is proper.

But this could be changed by the administration's position, which seems to favor spreading out jurisdiction among several committees.

It does concern us, because we believe that we have been able to improve all facets of surface transportation by having one subcommittee examining the broad picture, rather than limited areas as had been the case in the past.

Mr. DAVENPORT. We, of course, understand that concern. There was a rather active debate over which department should have certification authority. It was decided that Energy should have the certification under the conditions that I have mentioned.

Mr. HOWARD. I am sure that if we could change it around to have Transportation the top banana, at least you would be able to handle it in the Department of Transportation—if it were forced on you.

Mr. DAVENPORT. If you decided that the administration's position was not your preferred course of action and that the Department of Transportation were to take on this responsibility, I am sure we could handle it.

[Laughter.]

Mr. HOWARD. The gentleman from California, Mr. Mineta.

Mr. MINETA. Thank you very much, Mr. Chairman, and Mr. Secretary.

Under the present regulatory setup, the waterway carriers, as I understand it, have some kind of a bulk commodity exemption. Truckers have an exemption to the extent that they have an agricultural exemption.

I am wondering whether or not that kind of a bulk commodity exemption should be extended to the railroads since the railroads would be at a competitive disadvantage without such an exemption.

Mr. DAVENPORT. Well, we are concerned that all modes receive equal treatment.

One of our concerns, assuming that the pipeline legislation is passed in some form, is how we can make sure that the other modes receive equitable treatment when competing with pipelines.

For instance, there are some rate problems with the railroads, and we are looking at that. Specifically we must make sure that there is no built-in competitive disadvantage to any one mode resulting from a given treatment of any other mode.

We are looking at the whole question of exemptions, but we haven't made any determinations about the precise nature of any regulatory exemptions that will be recommended.



Mr. MINETA. The principle of equity amongst modes is part of our national transportation policy, is it not?

Mr. DAVENPORT. Yes, sir.

Mr. MINETA. And have you gone into this in depth at all within the Department discussion?

Mr. DAVENPORT. Yes. We are concerned that if one gets a competitive advantage, we want to make sure that the present rules with respect to carrying that same commodity by the existing mode are modified to remove that advantage.

We are studying what changes might be required in the regulatory structure to make sure that such situations are eliminated.

Mr. MINETA. It seems to me we are pouring a heck of a lot of money into the railroads right now as a result of our actions here in the Congress, and the railroads themselves aren't getting a proper return on their investment.

I wonder to what extent this would put them at even more competitive disadvantage.

Mr. DAVENPORT. Well, as I said, I think that there is a question about that. We are concerned about that, as to whether or not the present regulatory rate structure with respect to railroads and the rate structure which will eventually be applied to slurry pipelines will be equitable to both modes. We hope to assure that the two modes will have the same rights to compete. We hope to make sure that any changes that are necessary in terms of the railroad ratemaking authority are made in order that railroads are not put at that disadvantage.

Mr. MINETA. Thank you very much, Mr. Secretary, and thank you, Mr. Chairman.

Mr. HOWARD. Thank you. Mr. Davenport, are you familiar with the proposed pipeline where they would be now? They have—I notice I have a map here and I don't know whether you have one.

Mr. DAVENPORT. I don't have the map in front of me.

Mr. HOWARD. Well, basically they seem to go all over a great part of the United States, some from Canada down through Minnesota, Wisconsin, Michigan, the upper Midwest; we have them from Wyoming going in two directions, west and southeast; one in progress now, another one down to Texas from there, in the far West, and possibly a proposed one from the Midwest somewhere down to Florida.

I don't see any involving New Jersey. There is an Ohio pipeline. I don't see anything in the energy-short area of the Middle Atlantic or New England area at all. And I wonder if there is any contemplation—

Mr. DAVENPORT. My staff just gave me a copy of this map.

I don't know of any contemplated line that would take coal to the East.

Mr. HOWARD. But whether there is need for a pipeline because—I was going to say there is now. I received a pen from a colleague of mine today from Alaska, that says the oil in this pen, a little bit here, is from the first barrel pumped through the trans-Alaska pipeline.

And I am wondering if this is New Jersey's total share of the oil we might get? [Laughter.]



So often we talk about energy and I don't see much going to the New Jersey area or to the others. Now, perhaps there will be sufficient oil or there will be some consideration.

But I hope whoever gets the initial certification responsibility—I am sure that you will—consider all areas of the country, especially the New England and Middle Atlantic States.

Thank you very much. I did have some additional questions that might be rather long in answering, and rather than taking your time we will submit them to you and leave the record open, if you would respond in writing.

Mr. DAVENPORT. Yes; I would be more than happy to do that, Mr. Chairman.

Mr. HOWARD. Thank you very much.

[The following was received for the record:]





ASSISTANT SECRETARY

OFFICE OF THE SECRETARY OF TRANSPORTATION  
WASHINGTON, D.C. 20590

May 5, 1978

Honorable James J. Howard  
Chairman, Subcommittee on  
Surface Transportation  
Committee on Public Works  
and Transportation  
House of Representatives  
Washington, D. C. 20515

Dear Mr. Chairman:

As a follow-up to my testimony before your Subcommittee on H. R. 1309, the Coal Pipeline Act, I have enclosed our responses to the questions which were attached to your letter of April 24, 1978. Where appropriate, our comments address the bill as reported by the House Interior and Insular Affairs Committee as well as the Administration version of the bill which I submitted with my testimony.

If I can be of any further assistance, please let me know.

Sincerely,

Chester Davenport  
Assistant Secretary for Policy  
and International Affairs

Enclosure



QUESTION: 1. What is the current financial condition of the railroads? Please detail your answer so as to describe the condition on an individual rail line basis for all Class I railroads.

ANSWER: In 1977, the nation's Class I railroads experienced the lowest net operating income since 1932, dropping from \$442 million in 1976 to \$347 million. The industry's rate of return on investment also dropped, from 1.53 percent in 1976 to 1.28 percent in 1977. While operating revenues rose to \$20.1 billion in 1977, from \$18.6 the previous year, operating expenses also rose, from \$15 billion to 16.4 billion.

A carrier-by-carrier breakdown is attached.







Class I Railroads in the United States  
Calendar Year Ended December 31, 1976  
(Thousands of dollars)<sup>1</sup>

Association of American Railroads  
Economic and Finance Department  
Washington, D.C. 20036

Revised November 4, 1977

a - Represents average investment at beginning and end of year in road and equipment (less accrued depreciation and amortization), material and supplies (Acct. 712), and cash (Acct. 701).  
b - Net railway operating income after provision for deferred taxes.  
c - Income after fixed and contingent charges and before extraordinary and prior period (loss and Federal Reserve Bank of New York adjustment) (col. 18).

Source: Annual reports of the railroads to the Interstate Commerce Commission.

- \* Income after fixed and contingent charges and before extraordinary and prior period items and Federal income taxes thereon. Includes equity in undistributed earnings of affiliated companies (col. 19).
- \* Income after fixed and contingent charges and after extraordinary and prior period items and Federal taxes thereon. Includes equity in undistributed earnings of affiliated companies (col. 19).

\* Eastern District and United States totals include Conrail and its predecessor companies.  
† Southern By. System figures include Class II and switching and terminal companies not included in district totals.  
‡ Includes Louisiana and Arkansas.  
§ Includes Chicago and Eastern Illinois and Texas & Pacific merged with Missouri Pacific effective October 15, 1976.  
|| Includes Chicago and Eastern Illinois and Texas & Pacific merged with Missouri Pacific effective October 15, 1976.

**II - Includes**  
**Revised**



QUESTION: 2. Which railroads are directly competitive for Western coal traffic with the proposed coal pipelines?

ANSWER: The Burlington Northern, the Chicago and Northwestern, the Union Pacific, and the Atchison, Topeka and Santa Fe all serve western coal fields. However, many other railroads, particularly in the midwest, would be involved in any long distance movements of coal from this area. Railroads which would probably receive a good portion of the traffic, depending on destination, include the Rock Island, the Milwaukee, the Missouri-Kansas-Texas, the Southern Pacific, and the ICG.



QUESTION: 3. Please state which railroads own coal deposits. Does the commodities clause in Section 1(8) of the Interstate Commerce Act completely bar these railroads from transporting coal either owned directly by them or owned through their subsidiaries?

ANSWER: Several railroads own lands containing coal deposits, obtained either through land grants (in the case of western carriers) or through direct purchase. Carriers with substantial amounts of coal include the Burlington Northern and the Union Pacific in the west, and the Norfolk and Western and the Chessie System in the east. The Pennsylvania Railroad, later merged into the Penn Central, also owned substantial deposits, but these remained with the trustees of the bankrupt carrier, and were not passed on to Conrail.

Section 1(8) of the Interstate Commerce Act provides that it shall be unlawful for any railroad company to transport any article or commodity manufactured, mined or produced by it or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, with certain limited exceptions. The Supreme Court has held that a carrier owning coal or coal lands is not in violation of this clause if the coal is sold before it is transported (U.S. vs. Delaware Railroad Co., 238 U.S. 516). Since almost all coal is contracted for before shipment, it is likely that coal mined on land owned by a rail carrier will be marketed in this manner, and is not in violation of Section 1(8). If the coal is not sold before shipment, the degree of control the carrier has over the operations of the mining affiliate becomes the key factor. The courts have found that a violation occurs if a railroad, as the controlling stockholder in a mining company, operates the company as an agency of the railroad.



QUESTION: 4. Would you please state the effect increased coal production will have on rail rates if:

1. coal pipelines are constructed, and
2. coal pipelines are not constructed?

ANSWER: Since coal pipelines will not be built until after long term transportation contracts with users are negotiated, the potential existence of such pipelines will have a limited effect on rail rates in the immediate future. However, increased production of coal, especially in the volumes forecast for the west, would provide the carriers with more opportunities to offer unit train tariffs, the most economical and efficient form of rail transportation. Additionally, since most of the traffic will be of this type, the carriers would be able to attract financing for upgrading, rehabilitation, and maintenance projects at more attractive rates; these savings could be passed on to shippers.

To the extent that pipelines impair the ability of the railroads to attract this traffic, the carriers' ability to maintain a viable traffic base, and thus attract capital, will be reduced. Furthermore, the costs of maintaining the fixed plant would be spread over fewer shippers, thus raising transportation costs to shipper of other commodities. The response to Question 21 explains this last point more fully.



5. Do you construe H.R. 1609 as permitting the pipelines to file (1) contract rates and/or (2) long-term rates? Please explain.

Answer.

H.R. 1609 does not address rates and conditions of service and does not in any way alter or affect the existing legal authority under the Interstate Commerce Act and decisions rendered thereunder of pipelines to file contract rates and/or long-term rates.



6. If the answer to 5(1) and (2) is yes, please state what provisions of the Interstate Commerce Act provide for such filings?

Answer

The Interstate Commerce Act does not by its terms prohibit such filings for pipelines, and the Interstate Commerce Commission has allowed such filings.



QUESTION: 7. Do you believe the railroads are in a position to attract the necessary capital to expand their services to meet the increased demand for the transportation of coal?

ANSWER: As the report of the DOT Coal Transportation Task Force concluded, most railroads do have the capability to attract the necessary capital -- indeed, many carriers have already begun to initiate projects to help them handle this increased traffic. Some railroads in bankruptcy or in marginal financial condition, which may connect with lines directly serving the coal fields, may experience difficulty in attracting sufficient capital, but they can be assisted through Title V of the RRRRA, which provides loan guarantees and redeemable preference share funding.



8. What are the respective common carrier duties of railroads, and how would they differ from coal pipelines under existing law and under the provisions of H.R. 1609?

Answer

Because the question of common carrier obligations is intimately intertwined with the regulatory practices of the relevant economic regulatory agencies, those agencies could more appropriately respond to this question.



9. In Section 5(a) of the bill it is stated:

The Secretary is authorized to issue such a certificate if the Secretary finds, with respect to a particular project or the carrier as to which said power is sought, that the project is in the national interest and provides the capacity necessary to fulfill the requirements of a common carrier of coal, as determined by the Secretary.

A. Do you regard this as empowering the Secretary to establish the common carrier obligations of the coal pipeline in the certificate of public convenience and necessity?

B. If you do, would this not preclude any authority of the ICC from imposing a common carrier duties upon the carrier that are not included in the certificate?

Answer

In the Interior markup of H.R. 1609, the common carrier obligations derive primarily from the Interstate Commerce Act, rather than from the certificate.

Since the common carrier obligation goes with the fact of being an interstate pipeline, the Secretary would not need to include common carrier obligations specifically as part of the certification process. However, in the event that a proposed pipeline would be too small to meet effectively its common carrier obligation to provide service to all users, H.R. 1609 would allow the Secretary to impose minimum capacity conditions in the pipeline certificate.



QUESTION: 10. What provisions of the Railroad Revitalization and Regulatory Reform Act provide railroads with new regulatory controls for rates? Would these help the railroads in competing with coal pipelines? Please comment on how these provisions have been construed by the ICC, especially those contained in Section 202, 205 and 206.

ANSWER: Although the Railroad Revitalization and Regulatory Reform Act does provide for some significant changes in the rail regulatory structure, few of these would have any direct impact on rail's competitiveness with potential slurry pipelines. Section 202 of the Act provides for peak and seasonal ratemaking and distinct service pricing. These new ratemaking procedures would not have an impact on coal transportation, since they are designed to ease rate-making for other types of traffic. The section also prohibits the ICC from finding rates unlawfully high when a carrier does not have 'market dominance' over the traffic in question. As interpreted by the Commission, market dominance has been construed so as to set narrow limits on the types of movements whose rates are exempt from suspension.

Section 205 directed the Commission to establish procedures for the achievement of adequate revenue levels for carriers. A case on this matter is currently before the Commission.

Section 206 directs the establishment of procedures for rate incentives for capital investment; this provides that, where a rate covers a movement for which the carrier or shipper invests at least \$1,000,000 in equipment or facilities, the rate, once approved, cannot be suspended for 5 years. Several cases on this provision are now pending before the the Commission; the determination of what is a permissible rate level for movements of this type will be the crucial factor in decisions by the carriers to use this provision.



QUESTION: 11. Do you believe that the new abandonment provisions of Section 802 of the RRRRA will help or hinder the railroads in meeting pipeline competition.

ANSWER: The new proceedings, which only streamline the abandonment process, will not have any direct effects on rail/pipeline competition. If the provisions enable the midwestern carriers to divest themselves of unneeded and costly service faster than would have been the case in prior years, then the provisions will have the indirect effect of strengthening the remaining rail network.



QUESTION: 12. Does the Department believe that the ICC has the necessary power to regulate the rates and common carrier responsibilities of coal pipelines?

ANSWER:

Yes, we believe that the Interstate Commerce Act does provide the necessary authority to regulate coal pipelines. However the Department supports the Administration version of H.R. 1609, which places certification authority in the Department of Energy, subject to concurrences of the Department of Transportation and the Department of the Interior. We believe that this arrangement will be conducive to development of coal slurry pipeline policy which is in consonance with Federal transportation, energy and environmental programs. The Administration version of the bill would transfer the regulatory authority over coal pipelines now vested in the ICC to the Department of Energy which would also have certification authority.



QUESTION 13: Do you have an opinion on whether or not the current regulatory provisions of the Interstate Commerce Act provide a means whereby that agency can properly assess the effects of rates for the transportation of coal between competing carriers?

ANSWER: The Interstate Commerce Commission is capable of assessing the effects of one mode's rates for the transportation of coal on the traffic and financial condition of competing modes. The examination by all agencies involved of the effects of a coal slurry pipeline on railroads is important prior to granting a permit to construct the pipeline. One should be sure that construction of the pipeline does not undesirably reduce the ability of railroads to render other services.



QUESTION: 14. In Section 5b(6), the Secretary is required to make findings on the extent to which the project is likely to result in lower rates for the transportation of coal than would be in effect if such coal were transported by railroad under Part I of the Interstate Commerce Act.

- (a) Do you regard this as requiring the rates to be included in the contracts that must be considered by the Secretary in 5(a)?
- (b) How could this be done before the pipeline is constructed?
- (c) What, if any, effect would this have upon ICC authority over the rate when it is filed with that agency.

ANSWER: Our understanding of the complexities surrounding slurry pipeline contracts is that a rate agreement with the utility is an integral part of the package presented to potential financial backers, as well as to the certifying agency. Pipelines will not be built on speculation, with the backers hoping the utility at the other end will agree to purchase the coal. Therefore, rates and volume of traffic to be carried must be agreed upon before construction. The Administration version of H.R. 160 recognizes this fact by having the certification and rate regulation powers reside in the same agency. Since both issues must be considered simultaneously, the rate question cannot be decided after the fact.



QUESTION: 15. Why is the definition of coal amended to exclude synthetic oil or gas derived from coal in the amendment proposed by the Administration?

ANSWER:

Synthetic oil and gas derived from coal have properties similar to natural oil and gas. Rather than being transported in slurry pipelines they would be transported in oil and/or gas pipelines and thus would be subject to regulations different from those in H.R. 1609.



16. Does the definition of control as set forth in section 1(3)(b) of the Interstate Commerce Act limit or broaden the control test set forth in H.R. 1609?

Why does the Department prefer to apply the "control" definition in section 1(3)(b) of the Interstate Commerce Act?

Answer

Neither definition of "control" is broader because each would encompass situations not touched by the other.

The Interstate Commerce Act definition of "control" is used in the Administration's version of H.R. 1609 because that definition is sufficiently broad and has been judicially tested in a variety of situations. Therefore, no benefit is seen in changing to an untested definition at this time.



QUESTION: 19. In the Department's opinion, does H.R. 1609 provide adequate means for determining the true ownership for coal pipelines?

ANSWER:

Yes. Section 10 of the Interior markup of H.R. 1609 authorizes the Secretary of the Interior "to promulgate such rules and regulations as he deems necessary to carry out the purposes of this Act." The Administration version of the bill authorizes the Secretary of Energy to promulgate, after receiving the concurrences of the Secretary of the Interior and the Secretary of Transportation such rules and regulations deemed necessary. The regulations provide a means for requiring that any application for certification include full information on ownership.



QUESTION 20: What effect will construction of coal pipelines have on domestic water carriers?

ANSWER: Although a pipeline could be built parallel to a waterway or in a manner that replaced a joint rail/water movement, thus, taking traffic from the waterways, the costs of carrying coal by water carrier are sufficiently low that pipelines may be built in a manner that would encourage transshipment by barge rather than in a manner that competes with waterways. For this reason, waterway traffic is most likely to remain constant or to increase as a result of construction of coal slurry pipelines.



QUESTION: 21. What effect would construction of coal pipelines have on rail rates for commodities other than coal?

ANSWER: Transportation of coal, particularly from the west, will help to improve the financial picture of the rail industry. Loss of such traffic, or uncertainty about rail's role in its carriage, would tend to make it more difficult, if not impossible, for some carriers to attract the necessary capital to rehabilitate and/or upgrade various portions of the system. In addition, revenues from such traffic would contribute to the fixed cost of maintaining the rail plant. Net losses of potential coal-related revenues must be made up by other shippers. The Office of Technology Assessment's finding in this matter was that the current rate of decline in average rail tariffs (after adjustment for inflation) would be reduced, especially for shippers with no alternative to rail transportation.



QUESTION: 22. To what extent does the Department participate in the construction of pipelines for natural gas and oil?

ANSWER:

The Department establishes safety regulations for the design, construction and operation of gas and oil pipelines. The Natural Gas Pipeline Safety Act of 1968 authorizes issuance and enforcement of regulations for the safety of onshore pipelines in the transportation of natural or other gases. The Hazardous Materials Transportation Act authorized issuance and enforcement of safety regulations for onshore pipelines used in the transportation of hazardous materials, other than pipelines subject to regulation under the Natural Gas Pipelines Safety Act. Section 21 of the Deepwater Port Act of 1974 provides that the Secretary of Transportation, in cooperation with the Secretary of the Interior, shall establish and enforce standards and regulations to assure the safe construction and operation of oil pipelines on the Outer Continental Shelf. With respect to pipelines which are part of a deepwater port, sections 5 to 10 of the Deepwater Port Act of 1974, which cover licensing procedures and regulation with respect to marine environmental protection and navigational safety, are administered by the U.S. Coast Guard.



QUESTION: 23. Does H.R. 1609 impose any new function upon the Department of Transportation that the Department is not now able to carry out under its existing authority?

ANSWER:

Based on our analysis to date, we believe that the authority granted to the certification agency under the Interior markup and the Administration version of H.R. 1609, in conjunction with this Department's existing authority should be sufficient for the Department to perform any new functions created by either version of the bill.



QUESTION: 24. What costs would be incurred by the Department of Transportation and for what purpose?

ANSWER: Under the Interior markup of H.R. 1609, analyses would have to be performed to develop recommendations to the Secretary of the Interior concerning the impact of each proposed pipeline on other modes of transportation. Under the Administration version of H.R. 1609 comparative cost analyses and impact study would be required as part of the Department's concurrence responsibility. Since the transportation economics of slurry pipelines vary with individual routes, site-specific cost analyses are believed necessary. The costs incurred will vary depending on the length of the route, the number of alternative rail or water lines, the complexity of the proposed pipeline design and other factors. It should be indicated that Section 6 (a) of the Administration bill provides that each carrier applying for a certificate shall reimburse the Department of Energy for administrative and other costs incurred in processing the application, as the Secretary of Energy shall prescribe.



QUESTION: 25. The Administration is recommending that authority for granting certificates of public convenience and necessity be vested in the DOE, subject to the concurrence by DOT and Interior. In your opinion does this mean that DOT would be able to veto projects? Would you have any objection to an amendment which would clearly give DOT a veto over the granting of certificates.

ANSWER:

Although we would not have any objection to an amendment which would state that DOT has a veto over the granting of certificates, the DOT concurrence authority in the Administration version of H.R. 1609 would be preferable.



QUESTION: 26. Recognizing that there are a number of important issues that must be addressed in making the determination of whether a proposed pipeline should be certified, do you agree with testimony before this Committee that transportation is the foremost issue? If not, what is the most important issue in deciding whether to grant a certificate?

ANSWER:

We agree that transportation is the foremost issue, since the coal slurry pipeline represents a means of transporting energy materials. However we believe that the transportation issue is very tightly intertwined with complex questions concerning among others, energy, environment, water use and antitrust matters.



The final witness this afternoon, Mr. George W. Oprea, executive vice president, Houston Lighting & Power Co., of Houston, Tex.

Mr. HOWARD. We do have your prepared statement, Mr. Oprea, and without objection that will be made a part of the record at this point. [Statement referred to follows:]

STATEMENT OF GEORGE W. OPREA, JR., EXECUTIVE VICE PRESIDENT, HOUSTON LIGHTING & POWER CO.

My name is George W. Oprea, Jr. I am Executive Vice President of Houston Lighting & Power Company, an investor-owned electric utility serving a 5,600 square mile area of Texas that includes 23 percent of the state's population. The area is highly industrialized. Our customers refine 12 percent of the nation's petrochemicals, and serve the nation's market for steel and other highly diversified finished products. They also supply fuels to the Midwest and East, rubber to Akron and Detroit, plastics to New England, textiles to Georgia and the Carolinas, and agricultural chemicals to the Atlantic states. Large quantities of oil and natural gas are processed in the region and it is a center for worldwide oil and gas exploration and production activities.

Mr. Chairman, we strongly support enactment of legislation authorizing and facilitating the development of coal slurry pipelines. Slurry pipelines are a proven technology. They will constitute a needed supplementary mode to help in transporting the very large volumes of coal required under the provisions of federal and state legislation mandating conversion to coal by utilities and industrial facilities.

Houston Lighting & Power historically has been wholly dependent upon natural gas to meet the massive power demands of its service area. Recently, nearly one-half of our existing capacity has been modified to burn some oil as well as gas. The crisis faced by our nation with regard to both of these fuels is well known and I will not belabor it here in the context of HL&P's particular problems other than to say that the problems in replacing our existing oil and gas facilities are indeed great.

To meet its public service obligations and to respond to the national objective or replacing existing oil- and gas-fired facilities with coal and other fuels. HL&P has committed nearly \$1 billion to a comprehensive coal conversion program. At the outset, I must stress that our willingness to spend nearly \$1 billion to burn coal was influenced greatly by calculations indicating that our coals could be transported at freight rates which, when adjusted to today's cost levels, would work out to approximately \$11.00 per ton. The \$15.60 per ton tariff recently authorized by the I.C.C. constitutes more than a 40 percent increase over the calculations upon which we relied and far exceeds the rates which should be charged on the basis of actual costs. This is an annual increase of \$23 million in our transportation costs, an increase which goes a long way in eliminating the reduction in fuel costs we had hoped to achieve.

We do not feel that our customers should bear a disproportionate cost of revitalizing the nation's railroads, the rationale of the I.C.C. in approving this tariff, especially since our customers must already bear a disproportionate cost of the national objective of reducing the use of natural gas and oil as boiler fuels.

Mr. Chairman, we are currently challenging the legality of the I.C.C. decision in court. Should we fail to reverse that decision on appeal, our customers have no alternative but to pay this unreasonably high rate. We believe that the situation faced by HL&P could be entirely different were there a viable coal slurry pipeline industry in operation today. For coal slurry lines would provide an alternative form of transportation that at the very least would create a competitive incentive for the establishment of more realistic rates by railroads. We are convinced from our own experience that such an incentive is urgently needed. We are equally convinced that without reasonable transportation rates, the national policy of developing and utilizing this country's vast coal resources will be seriously jeopardized.

The Office of Technology Assessment recently concluded that cost-based rates for transportation by slurry pipelines frequently will be lower than by rail. The use of slurry transportation by a utility may thus cut costs for its customers. In addition, since interfuel substitution, is extremely sensitive to the cost of



transportation, the availability of coal pipeline transportation at reasonable rates to certain areas of the country may provide important indirect benefits to other regions in the form of a reduced outflow of capital for imported oil.

Nevertheless, we believe that H.R. 1609, as reported by the House Interior and Insular Affairs Committee, should be modified to reflect three basic concerns of our industry:

1. Commodities clause: Section 5(d) would sharply limit the classes of persons who could participate substantially in the ownership of a slurry line. Excluded would be: (1) any coal producer or supplier who wished to deliver his coal by pipeline instead of railroad or barge; and (2) any electric utility or industrial user who wished to participate extensively in ownership of a coal slurry pipeline as a means of developing and using a reliable, low cost supply of coal. Apparently, only railroads, barge lines, natural gas pipeline companies, oil pipeline companies, and new entrants who neither mine nor use coal could qualify—assuming they have no ownership of the particular coal being transported. The restriction on potential slurry pipeline owners thus limits those with the most incentive to utilize such pipelines from participating in their development. There is no doubt that slurry lines will be extremely expensive to construct. Every possible source of potential financing should be encouraged to participate. We also believe that encouraging as many new entrants as possible will lead to greater competition within the slurry pipeline industry itself and with the railroad industry. Therefore, we recommend that the Committee modify the restriction of Section 5(d) on those who own or use the coal to be transported by the slurry pipeline. Otherwise, those who own competing forms of transportation shall be permitted exclusive control over coal slurry pipelines as well.

2. Roncalio amendment: Section 5(h) of the reported bill would require that before a certificate is issued with respect to a project utilizing underground water from a western state, the U.S. Geological Survey must conduct a comprehensive study which demonstrates that the use of water source will not cause a significant adverse impact on the quality and quantity of the water table in surrounding areas and adjoining states. This provision would make the entire licensing procedure unworkable. It should be deleted because other provisions of the bill provide strong water resource protection.

3. Antitrust review: Section 7(a) provides that no certificate shall be issued unless the Interior Department has received opinions from both the Attorney General and the Federal Trade Commission that the certification requested will not lead to specified anticompetitive effects. There is no question that competitive considerations are a significant factor to be taken into account in determining whether a particular application for certification should be granted. However, giving a veto power to both government antitrust-enforcement agencies attributes a disproportionate weight to the competition factor, and is inconsistent with the approach taken in other regulated industries such as that established by the Atomic Energy Act. We suggest that both agencies be permitted the opportunity to evaluate the competitive impacts of a particular application and to make non-binding recommendations to the Secretary of the Interior. We believe that extensive delays may result even from this provision, however, and will cause substantial financial burdens and uncertainties for applicants. Therefore, we suggest that the Federal Trade Commission and Justice Department be required to consider the anticompetitive effects contemporaneously with the Interior Department's own initial consideration of the application and to make their recommendations to the Secretary within specific time frames.

In addition, we understand the Administration will propose amendments to H.R. 1609 that would vest ultimate certification approval in the Department of Energy. This proposal would require both the Interior Department and the Department of Transportation to concur in the approval of any certificate. We believe that the involvement of three separate federal agencies, each with different statutory objectives and responsibilities, will result in an administrative procedure plagued by extensive delays and conflicts. We strongly recommend that the proposed Administration amendment be evaluated closely and modified to prevent such delays.

In summary, we strongly support enactment of H.R. 1609, provided it is modified to reflect the concerns we have raised here today. I would be pleased to answer any questions, Mr. Chairman, you or the Members may have.

Mr. HOWARD. Please proceed.



**TESTIMONY OF GEORGE W. OPREA, JR., EXECUTIVE VICE PRESIDENT, HOUSTON LIGHTING & POWER CO.**

Mr. OPREA. I would like, with your indulgence, Mr. Chairman, to give you an oral summary based on notes I have that will offer you some additional information, I hope, beyond what I have presented in my formal testimony.

We look with delight at this opportunity to talk with your subcommittee relative to the House bill 1609, and, of course, the enactment of legislation pertaining to coal slurry pipelines.

We feel that the technology is sound, environmentally strong; it is a clean, quiet, unseen operation of slurry pipelines, and we feel, because of our absence of interference of other forms of transportation, will incur from the general public full acceptance.

In addition to that, we feel that there is a definite need for a secondary delivery system of coal to supply the 900 million tons of coal by 1986 that the electric utility industry will consume.

And, mind you, that is 400 million tons over the consumption of 1977.

Today, Houston Lighting & Power Co. is fully dependent upon the use of natural gas to fire its boilers. Several years ago we converted roughly half of our capacity, about 5,500 megawatts of capacity, to burn oil continuously as well as gas.

We also installed a pipeline to service major parts of our system.

Now, the crisis faced by this Nation, as you gentlemen are aware, in regard to these fuels, gas and oil, plus the demand imposed upon us by the national energy policy, presents many drastic problems, immense problems, to our sector of the country.

Now, to meet our public service obligations and to do transition from gas and oil to coal and nuclear, our company has embarked and committed, starting this year through 1990, to a capital investment program of \$8.3 billion, of which roughly 75 percent of that capital investment will go toward the placement of new generating facilities in our system.

Part of that investment will be to supply 6,500 megawatts of coal-fired facilities that will consume 23 million tons of coal per year and the balance will take care of 2,000 megawatts of nuclear generation facilities.

Now, late in 1972 we commenced negotiations and various sessions with the Burlington Northern relative to establishing a tariff to deliver our coal from Wyoming and Montana to a plant we have in southwest Houston.

We felt that our deliberations with the Burlington Northern would lead to a basic tariff of between \$10 and \$11 per ton.

You gentlemen are aware of the recent edict by the Interstate Commerce Commission as of November 1977. They have invoked a rate of \$15.60 per ton on our company—and, mind you, using our own cars, which cost us \$35 million, under the capricious use of the capital incentive rate it provides under the Four-R Act enacted in 1976. We feel that provides in itself, served as a preemptive device, and on a ratemaking, and, to some degree, represents discrimination in regard to ratemaking.



The tariff of \$15.60 represents a 40-percent increase over the rate we anticipated, or an added \$23 million per year that the ratepayers from our service area will have to be burdened with.

We don't feel that our customers should shoulder the disproportionate share of the costs to revitalize the Nation's railroads, which obviously was the ICC's rationale.

The national objective of reducing the use of gas and oil as boiler fuel has already imposed drastic financial burdens on our ratepayers as of today.

Mr. Chairman, we currently are challenging the legality of the ICC's decision in court. Should our appeal fail, our customers will suffer the burden of the unreasonably high rates.

We have found the entire area of railroad rates for unit train operations exceedingly murky. Much progress is needed to develop equitable rates.

The situation faced by our company we feel would be drastically different were a viable coal slurry pipeline in operation today. Coal slurry pipelines, an alternate form of transportation at the very least, we feel would create a competitive incentive for not only the railroads but also for slurry pipelines.

Mr. HOWARD. Excuse me, are you saying that you feel that if this were in place today that the competition involved would have the rates lower than what you have to pay now without the competition?

Mr. OPREA. That would be my judgment, yes, sir. Now, without a reasonable transportation series of rates invoked by ICC and perhaps by other ratemaking agencies, the national policy for developing and utilizing the Nation's coal reserves we feel will be drastically curtailed.

We feel the use of slurry transportation can cut the cost to our customers.

As an example, we ran some estimates, kind of order of magnitude estimates, and our best estimate indicates that there could be a potential saving of \$2 billion over the lifetime of a 1,500-megawatt plant should it be served by a slurry pipeline.

Now, \$2 billion, gentlemen, represents an investment that we could utilize for 3,000 megawatts of additional coal-fired facilities, using scrubber technology.

We believe coal will be the pivotal fuel for our region. We feel this Nation must develop at least a second coal-delivery system in order to assure continuous delivery of coal throughout this country.

We would like to ask you to consider three modifications to the House bill 1609. And these three are as follows:

Under the commodities clause, section 5(b), we feel the ownership in slurry pipelines should be expanded to include those that own coal as well as those that ultimately will be the users.

We feel that pipelines will be expensive and every possible source of potential financing should be encouraged. New entrants to the ownership, we feel, will lead to greater competition within the slurry pipeline industry as well as with the railroads. It just doesn't make sense that bills with the most incentive to utilize slurry pipelines are indeed excluded from participating in their development.

The second area we would like you to consider is the Roncalio amendment, section 5(h). We feel the use of the USGS for compre-



hensive water studies within a State and adjoining States seems to border on intrusion on States' rights and their ability to conduct their own surveys, their own studies and evaluate the results, and the end action that would pertain to the State's operation.

We recommend deletion of this proviso.

The third item is the antitrust review, section 7(a). We suggest where the Federal Trade Commission and Justice Department have the opportunity to evaluate the competitive impact of a particular application, that it should be done with no binding recommendation to the Secretary of Interior. They should not be given veto power over an application. We feel the Federal Trade Commission and Justice should consider anticompetitive activities in parallel with the Department of Interior, and in turn make a recommendation within a specific period of time.

Lastly, we understand, through a recent letter that had gone out from the administration today, that the administration will propose an amendment that gives the Department of Energy ultimate certification approval. As we view this whole procedure, certification approval will then follow Department of Energy, Department of Transportation, and Department of Interior.

This mechanism in itself will be an instrument of delays and conflicts, and we encourage you to amend that consideration in order to prevent delays and the conflicts.

The use of slurry pipelines should not be circumscribed with artificial restrictions, but rather be given the opportunity in a competitive society to assume whatever role they can rightfully earn.

Thank you for the opportunity of testifying.

Mr. HOWARD. Thank you very much, thank you for your testimony.

You did state—we were discussing briefly about the fact that right now there is no competition—you have the railroads, they may bring it. If, however, there were a pipeline, you would then have competition with each one working out its costs and its profits and what not, and that would bring the price down because you would be able through competition to get the price as low as feasible.

Then in another statement you felt that perhaps it ought to be amended so that your company could own its own pipeline and operate it.

Would that, then, take away the lack of bias and still permit the free competition, if you owned one of the modes and didn't own the other?

Mr. OPREA. As I understand it, if we had the perhaps nerve and the opportunity that we could even own a railroad today. And some of us in Texas and other Southwestern States have been considering that approach.

So whether you owned a railroad or whether you owned an equity share in the transportation of coal, we feel are comparable types of activity. We feel the bias in this particular bill is such as to provide favoritism in the area of one or several other modes of transportation to the detriment of the other.

We feel that the people that have need of the coal, that indeed develop it—as an example, the railroads own coal reserves as well as ship the coal.



Now, why shouldn't that feature be included in the slurry pipeline bill? I think that is a position of equity.

Mr. HOWARD. The ultimate in competition would be, though, that if you were just standing back as the consumer or the buyer, letting the others fight out their own and their opposition's costs and profits and what not, and you taking the lowest offer—would probably be the ultimate in keeping down the price, more so than owning either the pipeline or the coal or the railroad or the coal company, for that matter.

Mr. OPREA. That is a fact, that's true.

Mr. HOWARD. Thank you. The gentleman from California, Mr. Mineta.

Mr. MINETA. No questions.

Mr. HOWARD. The gentleman from Minnesota, Mr. Hagedorn.

Mr. HAGEDORN. No questions.

Mr. HOWARD. The gentleman from Illinois, Mr. Fary.

Mr. FARY. No questions.

Mr. HOWARD. Well, thank you very much for your testimony. We certainly appreciate your taking the time to come here. We will set a date as soon as we can for after the recess to resume these hearings.

Thank all of you for your patience in spending the amount of time that you have with us today. And I wish to thank my colleagues and also the staff.

The subcommittee stands in recess pending call of the Chair.

[The subcommittee recessed at 3:50 p.m., pending the call of the Chair.]



## COAL PIPELINE ACT OF 1978

TUESDAY, APRIL 11, 1978

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON SURFACE TRANSPORTATION OF THE  
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:06 a.m., in room 2167, Rayburn House Office Building, Hon. Robert W. Edgar, presiding.

Mr. EDGAR. The subcommittee will come to order. We are meeting this morning for the purpose of continuing the hearings on H.R. 1609, the Coal Pipeline Act. The paramount question involved in these hearings is whether coal pipelines should be afforded a legal mechanism whereby they can exercise the Federal power of eminent domain.

Hopefully, the subcommittee will be able to complete the hearings on this issue today. We have a number of witnesses before us.

Our first witness is Mr. William H. Dempsey, president and chief executive officer of the Association of American Railroads.

Mr. Dempsey, we welcome you here this morning and appreciate your coming, and we will ask you to begin.

**TESTIMONY OF WILLIAM H. DEMPSEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS; ACCOMPANIED BY ALLAN BOYCE, ASSISTANT VICE PRESIDENT, EXECUTIVE DEPARTMENT, BURLINGTON NORTHERN RAILROAD, AND JOHN NORTON, COUNSEL, ASSOCIATION OF AMERICAN RAILROADS**

Mr. DEMPSEY. Thank you, Mr. Chairman. I am accompanied on my left by Mr. Allan Boyce, who is assistant vice president of the executive department of the Burlington Northern, and who has served as a member of the advisory panel for the Office of Technology Assessment on the study that they made of the coal slurry pipeline issue; and on my right by Mr. John Norton, an attorney with the staff of the Association of American Railroads.

I appreciate very much the opportunity to appear before the subcommittee and to express the views of the railroad industry with respect to this legislation that we regard as critically important to our industry. Our position, as is well known, is vigorous opposition to H.R. 1609.

I have submitted a rather detailed statement of the basis for our opposition which I would ask be made a part of the record, Mr. Chairman.



Mr. EDGAR. Without objection, so ordered.  
[The following was received for the record:]

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

My name is William H. Dempsey. I am President of the Association of American Railroads, with headquarters in Washington, D.C. The railroads which are members of the Association operate 92 percent of the line-haul mileage, employ 94 percent of the workers and produce 97 percent of the freight revenues of all railroads in the United States.

I appreciate the opportunity to appear before you today to present the views of the Association and its members on H.R. 1609, a bill which would grant the federal right of eminent domain to builders of coal slurry pipelines. The railroad industry vigorously opposes H.R. 1609.

I have brought with me statements on H.R. 1609 made on April 26, 1977, before joint subcommittees of the Committee on Interior and Insular Affairs by Mr. Louis W. Menk, Chairman of Burlington Northern Incorporated, Mr. James R. Wolfe, President and Chief Executive Officer of the Chicago and North Western Transportation Company and Mr. Hays T. Watkins, Chairman of the Board and President of the Chesapeake and Ohio Railway Company and President and Chief Executive Officer of the Baltimore and Ohio Railroad Company.

These three statements offer useful information regarding the plans and prospects of specific companies and regarding the impact the proposed legislation could have upon them. With your permission, I will submit them for the purpose of amplifying the record.<sup>1</sup>

The railroad industry's opposition to this legislation is, to be sure, based upon self-interest. The railroad industry believes that the introduction of coal slurry pipelines would bring about an inequitable competitive situation and cause serious financial harm to many railroads. But the important consideration is that in this instance the self-interest of the railroad industry parallels the public interest.

The railroads carry a wide range of essential commodities in addition to coal. Their financial stability is important to the Nation. Recognition of this fact was demonstrated by the enactment of the Railroad Revitalization and Regulatory Reform Act of 1976, which is an extremely comprehensive package of legislation aimed at improving and revitalizing the Nation's rail system. I find it paradoxical that the enactment of that measure should be followed by the consideration in Congress of a measure which would make that revitalization and equalization of federal policies all the more difficult and costly.

As the controversy over coal slurry pipelines has progressed a number of questions have been debated. These have included: the ability of the railroads to keep pace with increasing coal production and use, the water requirements of coal slurry pipelines, competitive equity, cost comparisons, and the impact upon existing transportation modes and their users.

In a long-awaited study, the Office of Technology Assessment addressed these questions—and has provided the Congress with information that should be extremely helpful in its consideration of the question whether the federal government should foster the development of a coal slurry pipeline industry.

If coal slurry pipelines were needed to insure that the Nation's energy goals be met, the answer might be affirmative. Certainly, pipeline advocates have striven mightily to make this case. Thus, on April 26, 1977, in testimony before joint subcommittees of the Committee on Interior and Insular Affairs,<sup>2</sup> W. Pat Jennings, President of the Slurry Transport Association, said: "Only two issues are involved . . . They are capacity and competition in coal transportation. Will there be adequate capacity to ship the great volumes of coal this nation needs?"

I don't know if Mr. Jennings was pleased, but I certainly was when the OTA reported that yes, indeed, there will be adequate rail capacity to keep pace with coal production.

<sup>1</sup> Statements referred to retained in Subcommittee Files.

<sup>2</sup> Similar testimony was also given by Mr. Jennings on February 7, 1978 before the Subcommittee on Transportation and Commerce of the Committee on Interstate and Foreign Commerce.



Quoting from the report: "The capacity of rail systems can be expanded faster than can coal mining or electric power generation using coal, provided the necessary investments in local rail facilities are made" and "The choice between transportation modes will not be determined by their respective capacity limitations." (p. 18)

Thus, the OTA has squarely refuted the oft-repeated charge that the railroads cannot meet the Nation's coal transportation needs—which means that coal slurry pipelines are not a matter of public necessity in terms of transportation of coal.

This past January, the Department of Transportation released report<sup>3</sup> by its Coal Transportation Task Force which echoed this finding. Estimating that the demand for rail transportation of coal will require an investment of over \$10 billion, the report said: "While some problems may exist, we believe that this investment can be made" and "In many instances . . . the rail coal hauling capacity already exists and the expected new traffic will allow the railroads to make better and more efficient use of their heavy past investments."

I would like to augment these findings with a matter of actual experience.

In the fall of 1977, when utilities and others were preparing for the coal miners' strike which did, in fact, come to pass, rail carloadings of coal soared to new highs. In a single six-week period, railroads were averaging better than 111,000 carloads per week. If you were to assume that level of demand for a full year—allowing for lessened activity during the annual coal miners' holiday and during the Christmas season—then the railroads' *present* coal-hauling capacity is close to 500 million tons per year, or about 23 percent over 1976 without any further equipment additions or improvements in car utilization.

This experience—and the findings of the OTA and the DOT's Coal Transportation Task Force—should not be startling. They are not materially different than those of at least three other studies done under government auspices.<sup>4</sup>

As noted, the testimony of Mr. Jennings also asserted a need for competition. He asked the Congress to consider whether there will be "the discipline of competition to control the significant cost of hauling coal long distances from mine to power plant."

Of course, the fact is that competition already exists in coal transportation—between railroads and other transportation modes, between coal from various regions and among the railroads themselves. In addition, railroads are regulated with regard to rates as though they enjoyed a monopoly.

The San Antonio case (ICC Docket No. 36180) involving unit train rates quoted by a western railroad is often cited in support of the contention that railroads need the discipline of competition with pipelines. But, if the San Antonio case proves anything, it is that the Interstate Commerce Commission stands as a protection—excessive protection sometimes, in my opinion—against arbitrary or unreasonably high rail rates.

Remember, too, that railroads are true common carriers. A railroad cannot say "here is our rate for hauling coal—accept it or do without." If a customer feels the rate is too high, he may appeal to the Commission. If he is successful, the railroad is required to deliver the coal—whether or not the railroad believes the rate to be properly compensatory.

What about slurry pipelines? What sort of competition would they provide? The answer is that there would be no equitable competition.

The OTA stated it rather succinctly: "Even if pipelines were required to be common carriers in name and subjected to the Interstate Commerce Act, they would still behave like contract carriers in practice due to the practical requirements imposed by the economics and mechanics of their operations." (p. 17)

The OTA also noted that pipelines would enjoy significant regulatory advantages over railroads, among these the ability to serve selected customers and the prohibition of long-term contracts between railroads and their shippers.

Not a mile of any pipeline will be built until the traffic that pipeline will carry is guaranteed by a long-term "take-or-pay" contract. The contract will then be used as a vehicle to finance construction of the pipeline.

<sup>3</sup> U.S. Department of Transportation, *Transporting the Nation's Coal—A Preliminary Assessment* 1978.

<sup>4</sup> Long-Distance Coal Transport: Unit Trains or Slurry Pipelines—Bureau of Mines Information Circular 8690; Railroad Freight Car Requirements for Transporting Energy, 1974-1985—prepared by Peat, Marwick, Mitchell and Company for the Federal Energy Administration, the Commerce Department and the Department of Transportation; Rail Transportation Requirements for Coal Movement in 1980—prepared by Input Output Computer Services, Inc., for the Department of Transportation.



I should note that a "take-or-pay" contract is a very different animal from the tariff publications under which railroads must provide service. It is not a simple statement attesting to provision of certain services at a specified rate. In a "take-or-pay" contract, the customer is committed to pay the price for services—whether or not he uses those services. As a specific example, let us say a utility company signs such a contract with a pipeline company for the delivery of 25 million tons of coal per year for 30 years. If, in any given year, the utility finds it cannot make use of all 25 million tons, it must nevertheless pay for transportation of 25 million tons. Contrast this with a typical unit train tariff rate which the utility could decide not to use at any time.

Through the "take-or-pay" device, competition is foreclosed for a period of perhaps 30 years at the instant the contract is signed. No railroad can win back the traffic lost to a pipeline—not by cutting rates, not through innovations, not by any means. Since a railroad may not enter into such a long-term "take-or-pay" contract, there is no real competition even at the outset. There cannot be competition when the so-called competitors operate under different and unequal rules.

A claim of pipeline proponents is, of course, that coal slurry pipelines can provide coal transportation more economically than can railroads. Those proponents point to certain passages in the OTA report bearing on this question, since they are about the only passages that can be said to provide any support at all for coal slurry advocates on any major issue involved in this controversy. But in fact, as I shall now indicate, an examination of the entire OTA analysis of this cost question demonstrates that here, too, the case for coal slurry pipelines has been dismantled.

The OTA did find that, under certain circumstances and after making a number of assumptions having to do, for example, with the mines, the markets, the distances, the terrain, the water supply, and rail service, the cost of slurry transportation might be less than the cost of rail transportation—if, as the OTA put it, "one ignores regulatory distortions and larger social costs."

I'll return to that phrase in a moment. But first I note parenthetically that one of the circumstances listed by the OTA as favoring pipelines is high anticipated rates of inflation. It surely seems incongruous that the same Administration that has pledged a reduction of inflation is being asked to endorse a concept that depends for success on high inflation.

In any event, the OTA examined four hypothetical cases in which pipelines and rails were considered. Two of the cases showed pipelines less expensive and two showed rails less expensive. In testifying before the House Committee on Interior and Insular Affairs on January 23, 1978, Governor Peterson, the new Director of OTA, emphasized that this should not be taken to mean that pipelines would prove economical in 50 percent of all situations. Rather, all four cases involved circumstances favorable to pipelines, and still they came out ahead in only two.

Beyond that, the OTA described its pipeline scenario as "highly conjectural. The necessity to predict factors such as future construction costs, labor productivity, and inflation rates added a major element of uncertainty to the OTA projections" (p. 16). Indeed, in testifying last month before the Committee on Interstate and Foreign Commerce, Governor Peterson acknowledged that the uncertainty was so great that one had to conclude that there was no evidence that pipelines would in fact be cheaper than railroads. How could it be otherwise when one reflects on the Alaskan pipeline experience, where costs ballooned from an original estimate of under one billion dollars to a final cost of nearly eight billion dollars in nine years. As the OTA noted, "Areas of particular uncertainty include future construction costs and the appropriate price for water" (p. 61). Indeed, OTA stated that "the range of uncertainty associated with predictions of rail and pipeline costs in a given case is often as great as the difference between them." As a matter of fact, it appears that what OTA did was simply to make arbitrary assumptions favorable to pipelines so that estimates of economic and environmental impact could be made. Consider this rather startling description of OTA's methodology:

"The second scenario [in which both pipelines and railroads would carry coal] is necessarily highly conjectural, depending not only on the simplified projections of the coal transportation market, but also on crude cost estimates and uncertain predictions of the behavior of transportation firms, their customers, and government regulatory bodies. However, the *purpose of this section is to de-*



rive a plausible if arbitrary set of market share and cost assumptions that are sufficiently favorable to pipelines to provide a basis for comparison with a 'no pipeline' alternative." (p. 59) (Emphasis supplied).

In short it has not been demonstrated that in the real world pipeline transportation would ever be less costly than rail transportation. Moreover, the OTA noted that under the long-term, "take-or-pay" contracts typical of slurry operations the "costs of errors in judgment will probably be borne largely by the public and not necessarily the utility investors." (p. 16). It is for this reason that OTA observed that "regulatory agencies governing utilities should scrutinize long-term contracts for pipeline transportation with great care" (p. 16).

But even assuming that in some cases pipeline costs might be less than rail costs, two other findings by the OTA cancel out any advantage this might be thought to confer upon coal slurry proponents. First, the public might well not benefit at all. As the OTA notes, "pipeline rate regulation would probably provide for a return on investment substantially higher than the ICC has historically allowed on direct rail investment. . . ." (p. 17).

Second, and even more important, because of the regulatory framework in which railroads must operate—in particular the common carrier status of railroads—"pipelines could capture coal traffic from railroads *even where the incremental rail cost is lower*" (p. 17) (emphasis supplied). To put it differently, because "rail rates contain an element of fixed system costs and losses which result from the requirement to maintain certain unprofitable services, e.g., low volume branch lines," and because "even if pipelines were required to be common carriers in name . . . they would still behave like contract carriers in practice due to the practical requirements imposed by . . . their operation," there would be "a distortion in relative rates, permitting selection of pipeline transportation in some cases where rail represents a lesser cost to society" (*ibid.*).

The short of it is, then, that even if in some circumstances slurry transportation would be cheaper, in others where it would be more expensive the traffic would move by pipeline anyway because of the regulatory constraints imposed on railroads. So it is impossible to say that in terms of cost of service, there would be a net gain to society even if one assumes conditions most favorable to slurry transportation.

This ought to end the matter. There is no need for slurry pipelines because railroads can carry the traffic; pipelines would compete unfairly with railroads; and slurry transportation would promise no net gain in terms of cost.

But there is more, much more. First, the OTA found adverse effects to railroads and rail customers through the introduction of coal slurry pipelines. While the OTA observed that railroads could also be damaged through adverse regulatory policy and declines in the rate of productivity gains—and I certainly agree—it also found that "the reductions in revenue threatened by pipelines could represent a threat to the financial health of a particular railroad" (p. 17). As to shippers, the OTA found that "the most probable effect . . . will be a lessening of the present rate of decline in average tariffs . . ." (p. 18). Finally, OTA noted that their foregoing findings were based on the assumption that pipelines would develop gradually and would divert only new coal, and that "diverting traffic rapidly from rail after substantial resources have been invested to expand service would clearly have an additional adverse impact on the rail industry." (*Ibid.*).

If one looks beyond OTA's general statements to its actual findings, the grim character of the prospective impact becomes even more clear. OTA concluded that, in the year 2000, the rail industry *would be deprived of \$687.87 million in net operating revenues and the western railroads alone would be deprived of \$628.3 million* (p. 92). This is considerably more than the entire net operating income for both the industry and the west in 1976; it exceeds the net operating income for the west in every prior year; and it exceeds the net operating income for the industry for every year since 1966 except 1974. Moreover, there have been recent developments in the Midwest that the OTA was not able to take into account. I'll return to that subject in a moment. First, let me say a word about rail shippers. We believe that the impact of pipeline development on rail shippers and communities served by rail would be great.

All railroads have high fixed costs—which can be both an advantage and a disadvantage. Fixed costs are not related to operations, so they do not rise when traffic rises. By the same token, however, fixed costs do not drop when



business drops. What this means is that—if the railroad is to remain solvent—it must charge more for the services it still provides. And that means that virtually all rail shippers will face increased rates.

Obviously, however, there are regulatory—and practical—limits to the amount by which rates can be increased. Railroads cannot simply pass their problems along to their customers.

There are now two bankrupt railroads in the Midwest. Fears have been expressed that the Midwest is following the pattern already seen in the Northeast. The biggest problem of some midwestern railroads is excess capacity. This, I might add, is a problem throughout the industry, but it is felt most keenly now in the Midwest.

A railroad in such a position has three options. It can disinvest—that is get rid of the excess capacity by abandoning track—but this is not a simple matter in a totally regulated industry. It can obtain new traffic which will make use of the excess capacity. Or it can go out of business.

I submit that the second option is preferable, because it expands, rather than contracts, railroad service—thus spreading the fixed costs out over more units to the benefit of railroad customers.

The goals for increased coal production and use outlined in President Carter's program seem made to order for this situation. Many of the Midwestern railroads now experiencing financial difficulties are not now major coal haulers. Coal represents new and profitable traffic for these railroads. Even one large-diameter pipeline could dash that promise. One pipeline, for example, might carry 25 million tons of coal per year. In 1976, the Rock Island's total tonnage was less than 41 million tons. The Milwaukee Road's total tonnage was less than 47 million tons. The traffic represented by a single pipeline could have increased the tonnage of either railroad by more than 50 percent. If pipelines do take the coal that could help the Midwestern railroads, it is difficult for me to see where a comparably profitable source of new traffic might come from.

One more issue has been prominently involved in this debate—western water. The OTA's findings on this subject are ominous.

In his earlier-noted testimony before joint subcommittees of the Committee on Interior and Insular Affairs, on April 26, 1977, Slurry Transport Association President, W. Pat Jennings characterized the bill pending before that committee as a simple and innocuous measure. It did not, he said, "provide water or customers for a single coal slurry pipeline." He was obviously seeking to allay the fears of many regarding the enormous water requirements of coal slurry pipelines—well-founded fears, when you consider that the pipeline furthest along in the planning stages would export six billion gallons of water each year from a region in which water is far from abundant.

The OTA found that, not only was there reason for concern about these water requirements, but that passage of federal eminent domain legislation could well guarantee water to the pipelines—regardless of the wishes of the states involved.

Specifically, the OTA said "the courts may rule that federal certification of a coal slurry pipeline will negate state attempts to restrict unallocated water to the project. . . ."

I leave it to others who are more directly affected to expand upon this issue—though railroads are affected too, for our prosperity depends upon the prosperity of the regions we serve. I note only that the OTA pointed out that "pipelines do compete directly with other possible *future* uses" of western water (p. 20), that "when levels of use exceed users' rights . . . new appropriations may displace present, as well as future, uses" (p. 20), that the future character of these regions will turn largely upon the development of these uses of water, and that the Congress ought not imperil that development by enactment of legislation that is not only unnecessary but that will undermine the rail system of the country.

It is instructive to look at some of the specific findings of OTA on the water issue. OTA concluded that "in all potential coal slurry pipeline origin areas except Tennessee, demand projected for the 1985–2000 period exceeds the legally available supply" (p. 111). The character of the impact of a pipeline is illustrated as follows:

" . . . [T]he Montana pipeline would take enough water to revegetate about 3,000 acres of surface-mined land in the Colstrip area in 1985. If all the water for the four pipelines carrying 74.5 million tons of coal per year were redirected,



it could be used to mine 160 to 220 million tons of coal, reclaim 16,000 to 21,000 acres of surface-mined land, serve up to 10 coal gasification plants or up to 5 coal liquefaction facilities, or provide cooling for 2 to 4 powerplants" (p. 111).

It is notable, I believe, that as this statement indicates, one of the consequences of the establishment of pipelines would be to inhibit the future mining of coal and shale—a consequence obviously at odds with national energy policy. Moreover, the OTA also found that rail transportation is much more energy efficient than pipelines—only 390 btu's per net ton mile for rail versus 610 btu's for pipeline. Thus, even on the basis of energy policy alone, pipelines make no sense.

Let me summarize the situation as it exists in the wake of the OTA report. On the important issues—those which bear on the public interest—the contentions of pipeline proponents have been refuted.

The Office of Technology Assessment has found that:

Enactment of federal eminent domain legislation could guarantee the right to drain away immense quantities of precious water, regardless of the wishes of the states involved.

Coal slurry pipelines are not necessary to guarantee adequate coal transportation.

The potential for cost savings is highly questionable and, in any case, would probably not accrue to society.

Whatever economic advantage pipelines might enjoy would be more a matter of inherent superiority.

Railroads and rail shippers would be adversely affected.

In addition, the report released by the Department of Transportation last January warned that: "There are several major unresolved issues that must be settled prior to any determination on construction of coal slurry pipelines. These issues involve a broad range of problems, including legislative and timing decisions, water resource and environmental impacts, ownership and competitive considerations, and the costs of construction and operation of the pipeline and ancillary systems".

Given these findings, there is no justification for a government decision to foster the development of coal slurry pipelines.

An illustration may place this matter in perspective.

Disregarding physical differences, the function of a coal slurry pipeline is, in essence, the same as that of a railroad unit train. That is, it moves coal from one place to another.

If a group of promoters were to come to the Congress seeking assistance in a scheme to build an extensive new railroad system to haul coal in the West—or in any other area—they would surely be laughed out of Washington.

Yet this is precisely what the coal slurry pipeline promoters are proposing to do—superimpose a redundant transportation system upon an area in which adequate transportation capability already exists.

I believe that the public interest requires rejection of this unwise proposal.

Mr. DEMPSEY. I will simply summarize the principal points that are made in the statement, and I would like, in particular, to address some of the issues that were the subject of colloques during the preceding day of hearings on this issue.

I also, however, before I do that, would like to submit, not as part of the record, in the interest of government economy, because they are extensive, but as part of the file so that they could be available to the subcommittee and its staff, two statements that were submitted in the April 1977 hearings before the Committee on Interior and Insular Affairs; one by Mr. Louis Menk, who is Chairman of the Burlington Northern, and another by Mr. James Wolfe, who is President of the Chicago and North Western.

What these statements do is to provide a good deal of detail with respect to the plans of particular companies for transportation of coal, and more detail than I do about the probable impact of coal slurry pipeline legislation upon individual railroads.

Mr. EDGAR. Without objection, they will be made a part of the committee file.



Mr. DEMPSEY. Thank you very much, Mr. Chairman.

There has been, of course, a prolonged debate and controversy over this coal slurry pipeline legislation. We and the Congress are now fortunate to have at our disposal a very extensive, elaborate, and I think carefully and well-considered report by the Office of Technology Assessment. That report addresses each and every one of the issues that are at the heart of this controversy.

Of course, as Governor Peterson said when he testified the other day, it is not the role of the Office to recommend either for or against legislation and, accordingly, the report refrains from making any recommendation, affirmative or negative, with respect to H.R. 1609, or any similar legislation.

But I do submit to the subcommittee that if this report is examined with care and with impartiality, the case against H.R. 1609 becomes overwhelming, and I would like to consider each of the important issues that are involved here, primarily in the light of the report of the Office of Technology Assessment.

Let me begin with what, at the outset of this extended argument, was asserted to be the principal reason for the enactment of this legislation, and that is the asserted need for coal slurry pipelines in order to meet the energy requirements that this country will face in the forthcoming decades.

For example, my good friend, Mr. W. Pat Jennings, the president of the Slurry Transport Association, in his testimony on April 26, 1977, said this:

Only two issues are involved; they are capacity and competition in coal transportation. Will there be adequate capacity to ship the great volume of coal this nation needs?

I should add that Mr. Jennings' position—namely, that the railroad industry was not up to the job of transporting the additional cost that will be mined under the President's energy program, if it is adopted by Congress—that position was shared by the Department of Energy until very recently. But I was pleased to note that in his testimony before this committee the other day, Mr. O'Leary, speaking on behalf of the Department of Energy, refrained from making any contention that the railroad industry would not be able in the future to transport all of the coal necessary to meet this country's energy requirements.

Rather, he said that the only issue now was one of price, and I mean to get to that issue in just a moment. But let me continue with this question of need; that is to say, are coal slurry pipelines essential if the coal that will be mined is to be moved.

OTA's report on this question is unequivocal. The report says, and I am quoting from page 18 of the draft report which is now in its final form and substantially unchanged:

The capacity of rail systems can be expanded faster than can coal mining or electric power generation using coal, provided the necessary investments in local rail facilities are made, and that the choice between transportation modes will not be determined by their respective capacity limitations.

The conclusion squares exactly with a report issued this past January by the Department of Transportation. Its coal transportation task force estimated that there would be required an investment by the railroads of somewhat over \$10 billion, and concluded that, "While some



problems exist, we believe that this investment can be made," and that, accordingly, there is no need to look beyond the rail system for capacity to move the coal that will be mined in the forthcoming decades in this country.

That conclusion is mirrored in the recent experience of the railroad industry. In the months before the recent coal strike, the utilities, of course, were storing up coal and during a single 6-week period, the railroads hauled somewhat over 23 percent of their average coal-hauling capacity as was experienced in the prior year, without any additions of equipment or track.

Now, the conclusions of the Office of Technology Assessment and of the Department of Transportation could hardly have been surprising, because they simply mirrored the findings of at least three other studies that have been made under Government auspices. Indeed, there is not a single disinterested party that has ever examined this issue that has come to a contrary conclusion.

So, the case for coal slurry pipelines, in short, cannot be made on the ground of need.

Let me then turn to the second question that Mr. Jennings raised, and that has been raised by other advocates of coal slurry pipelines. That is the contention that there is a requirement, or a desirability, in any event, for additional competition for the railroads in the transportation of coal. That ignores the fact, of course, that a great deal of competition already does exist in coal transportation between railroads and other transportation modes, between coal from various regions, and among the railroads themselves.

But, beyond all that, as this committee knows, the railroads are, in fact, regulated as though they enjoyed a monopoly. The so-called San Antonio coal rate case is often cited as evidence that something is needed in the way of competition for railroads. But if anything is demonstrated by the San Antonio case, or any of the other coal rate cases that are pending before the Interstate Commerce Commission, it is that the Commission stands as protection—indeed, in my view, often excessive protection—against arbitrary or unreasonably high rail rates.

I think the more interesting question is what kind of competition would the coal slurry pipelines confront the railroads with. I think the short answer to that, again, can be derived from the OTA report, and it is that that competition would be very unequal competition, indeed.

As the OTA stated the matter rather succinctly, and I am quoting now from page 17 of their report:

Even if pipelines were required to be common carriers in name and subjected to the Interstate Commerce Act, they would still behave like contract carriers in practice due to the practical requirements imposed by the economics and the mechanics of their operations.

What the coal slurry pipelines that are visualized would be, would be massive operations that would move 20 to 25 million tons of coal a year from large producers to large users. That would be their sole function; that would be moving the cream of the coal business. That is the kind of coal business that the railroads need badly. It is the kind of coal transportation that we do the best with our unit train operations.

The augmentation of this market is essential for the financial health of the railroad industry, a matter that I mean to get back to in more



detail in a moment. But, here, I simply want to point out that it really does not do much good calling a coal slurry pipeline a common carrier, because it would not, in fact, be a common carrier like the railroads are. Railroads have to serve the large suppliers and the small suppliers, and the large users and the small users, and the relatively profitable traffic and the relatively unprofitable traffic.

There is no way that legislation can be written that would impose those kinds of obligations upon a coal slurry pipeline, so that, in short, there would be competition, but what it would be, would be unfair competition.

The kinds of contracts that coal slurry pipelines have are most unusual. They are called "take or pay" contracts, and what they oblige the shipper to do is to pay for a specified tonnage of coal per year at a prescribed rate, whether or not that tonnage is moved. That is a signal advantage to a transportation enterprise. It is an advantage that the railroads have never been permitted to enjoy.

What happens, then, with such a "take-or-pay" contract—and they run for 25 or 30 years, and no coal slurry pipeline is built until that kind of business is assured by virtue of such a contract—what happens when that kind of a contract is signed is that competition is foreclosed. This is not a matter of introducing competition; this is a matter of foreclosing competition for these vast quantities of coal for periods of 25 or 30 years at the very instant that the signature is put on that contract.

No railroad could ever win back the traffic that is lost to a pipeline in this manner. They could not win it back by cutting rates; they could not win it back by innovations that would improve productivity; they could not win it back by improving service; they could not win it back by any means. Now, that is the kind of enhanced competition that would be brought about by the introduction of coal slurry pipelines.

Now let me come to the issue that Mr. O'Leary said really is the only issue that is involved—that is, the only basis upon which the Department of Energy insists that H.R. 1609 is justified in the public interest—and that is the question whether the building of coal slurry pipelines might, and probably would, reduce the cost of energy to the consumer.

Here, again, I invite the subcommittee to examine the careful analysis of the Office of Technology Assessment very carefully, because it seems to me that with a careful reading of that report and all of the features that relate to this question of cost, that the case for coal slurry pipelines has been dismantled.

The OTA examined four hypothetical cases involving pipeline and rail transportation, and I want to emphasize—and I will come back to this again—that they were hypothetical. We do not have any, and the OTA does not have any, actual cost data that comes off the drawing boards of coal slurry pipeline engineers.

Two of these hypothetical cases showed coal pipelines less expensive, and two showed rails less expensive. They were both very long operations, involving operations of 1,000 miles, approximately, more or less.

Now, Governor Peteron emphasized in his testimony before the House Committee on Interior and Insular Affairs a number of things.



First of all, he emphasized that this should not be taken to mean that in 50 percent of the cases, pipelines would be cheaper than rail, or that rail would be cheaper than pipeline, either, in 50 percent of the cases, because all of these four cases involved circumstances that were favorable to pipelines, and not to railroads.

Now, beyond that, OTA described its pipeline scenario as, and I am quoting from page 16 of the report:

highly conjectural. The necessity to predict factors such as future construction costs, labor productivity, and inflation rates added a major element of uncertainty to the OTA projections.

Indeed, in testifying before the House Committee on Interstate and Foreign Commerce last February, in response to a question by Representative Skubitz, Governor Peterson acknowledged that the uncertainty was so great that one really had to conclude that there was no real evidence that pipelines would, in fact, in any circumstances, be cheaper than railroads.

And I suggest for your consideration that one could hardly come to a contrary conclusion when one reflects, for example, on the experience of the Alaskan pipeline, where we had, initially, a projected cost of around \$1 billion and a final cost of nearly \$8 billion; an escalation from \$1 billion to \$8 billion in construction costs over only a 9-year period.

OTA pointed its finger at this particular element of doubt when it stated that:

Areas of particular uncertainty include future construction costs and the appropriate price for water.

I should add as an aside that I find it somewhat ironic that the administration is supporting coal slurry pipeline projects that, as OTA pointed out, depend for their success in pricing upon high rates of inflation, because it is only under circumstances involving high inflation rates that it is argued at some point during the 25- or 30-year or 40-year lifetime or cycle of coal slurry pipeline operations their costs would come below rail costs, and that is because of the undeniable fact that the fixed costs of coal slurry pipelines are less than the fixed costs of railroads, so that they are less subject to the pressure of inflation.

Again, I do want to underscore this element of enormous uncertainty in the projections that have been made in this area. OTA stated at another point:

The range of uncertainty associated with predictions of rail and pipeline costs in a given case is often as great as the difference between them.

I would like to read just one more quotation from the report, because it is really quite startling. What it says, quite plainly, is that what OTA did was simply to make arbitrary assumptions—I do not mean this in an invidious sense at all—but assumptions not grounded in any facts, in order to make estimates of economic and environmental impact that arise from the operation of coal slurry pipelines, because they felt they had to make those kinds of projections in order to deal with other issues that are involved in the case.

Here is the quote I would like to read—and this is a scenario in which both pipelines and railroads would carry coal—and this is from page 59:



The second scenario is necessarily highly conjectural, depending not only on the simplified projections of the coal transportation market, but also on crude cost estimates and uncertain predictions of the behavior of transportation firms, their customers, and government regulatory bodies. However, the purpose of this section is to derive a plausible, if arbitrary, set of market share and cost assumptions that are sufficiently favorable to pipelines to provide a basis for a comparison with a "no-pipeline" alternative.

In short, it has not been demonstrated—let me begin with my first point. It has been demonstrated that there is no need for coal slurry pipelines, and it has not been demonstrated that in the real world, coal slurry pipelines would ever be less costly than railroads.

I suggest that in those circumstances, when one is talking about legislation that would confer an extraordinary power of Federal eminent domain in place of State eminent domain, which is the direction in which, of course, the coal slurry pipeline advocates are free to go, that there has been a signal failure of proof.

I would like to make two other points, and they are important, about this question of cost of energy. Even assuming that in some cases, coal slurry pipeline costs might be less than rail costs, there are two other findings by OTA that negate that hypothetical advantage, in any event.

First, the OTA found that the public might well not benefit at all, because, as the OTA noted, and I am quoting now from page 17 of its report:

Pipeline rate regulation would probably provide for a rate of return on investment substantially higher than the ICC has historically allowed on direct rail investment.

So, it is unlikely that the public would benefit, in any case.

Second, and this is a terribly important point, because it goes to the inequity that would be brought about by the Federal sponsorship of coal slurry pipelines in competition with common carrier railroads, the point is this: Because of the regulatory framework in which railroads must operate—and, in particular, our common carrier status which obliges us to serve the small as well as the large and the poor as well as the rich and the relatively unprofitable traffic along with the relatively profitable—"pipelines could capture coal traffic from railroads, even where the incremental rail cost is lower."

Or, to put it differently, because "rail rates contain an element of fixed system costs and losses which result from the requirement to maintain certain unprofitable services, for example, low-volume branch lines," and because "even if pipelines were required to be common carriers in name . . . they would still behave like contract carriers in practice," there would be "a distortion in relative rates, permitting selection of pipeline transportation in some cases where rail represents a lesser cost to society."

I want to restate that point again. Even if, in some circumstances, coal slurry pipelines might be cheaper than railroads—first, that benefit might never go to the consumer, because of the regulatory framework in which they operate—but, second, they could capture traffic from railroads, even where their cost was higher than railroads, because of the obligation of the railroads to maintain this huge, fixed-cost transportation network in the United States.

It is that fundamental competitive inequity between these two modes of transportation that I suggest argues most strongly against Federal



endorsement of coal slurry pipelines, through the medium of this most unusual conferring of eminent domain upon this form of transportation.

Now, I suggest that really ought to end the matter. There is no need for coal slurry pipelines. There is no evidence that that they would transport coal more cheaply than railroads. It is clear that they would compete unfairly with railroads. That, as I say, should end the matter, but there is more.

I want to speak now about the impact of coal slurry pipelines upon railroads and upon those who depend upon railroads. I am frank to say that if the rail industry were earning a rate of return comparable to public utilities that they serve—10, 12, 14, or 15 percent on net investment—that I expect this committee would not listen to me very long on this point.

But, as this committee and the Congress knows, that is far from the fact. We are facing a serious crisis in the rail transportation system in the United States, and we have been facing it now for several years. The Congress is well aware of it. It evidenced its concern by the enactment, in 1976, of the 4-R Act, but I simply want to illustrate the point by referring to a few key figures.

We just issued the industry's 1977 financial data. The industry had its worst year since 1932. The industry had a rate of return on net investment of 1.28 percent. That was down, but only modestly, from 1976, when we had a rate of return on net investment of 1.51 percent. That, had been the previous worst year since the 1930's.

The railroad industry has not had a rate of return on net investment of higher than 3 percent since the 1960's; higher than 4 percent since the 1950's. As an industry, we have been in a state of chronically depressed earnings, which has affected our ability to render service to the public for the last 15 to 20 years.

Now, what did the OTA find with respect to the probable impact of coal slurry pipelines on railroads? Well, as you might expect, it found that there would be a threat to the financial health of railroads.

So far as shippers are concerned, OTA found, "the most probable effect will be a lessening of the present rate of decline in average tariffs." In other words, the shippers would have to pay more for railroad transportation than they otherwise would.

Now, I would like to go beyond OTA's general statements on this matter to their actual findings, because they are truly, truly startling. I direct the attention of the committee to page 92 of the OTA draft report.

OTA concluded that in the year 2000, the rail industry would be deprived of \$687.87 million in net operating revenues—not gross, but net—and the western railroads, alone, would be deprived of \$623.3 million. Now, this is much more than the entire net operating income for both the industry and the West in 1976, and much more, as I have just indicated, than in 1977.

Beyond that, these figures exceed the net operating income for the West in every prior year in history, and exceed the net operating income for the whole industry in every prior year in history since 1966, except for one relatively prosperous year in 1974.

The deprivation of net revenue of those magnitudes from this industry that is suffering such a chronically depressed state of earnings



would be truly catastrophic, and I really do not see how any other conclusion can be reached.

Now, I would like to direct the committee's attention to the problem that we face in the Midwest. Everyone is familiar with the problems that the railroads face in the Northeast, after the collapse of the Penn Central—the largest bankruptcy in the history of the American economy. And, now, we find ourselves with two major bankrupt railroads in the Midwest—the Milwaukee Road and the Rock Island.

I think it would be wise just to reflect for a moment on the fundamental character of the problem that we face. It is that our fixed plant is too large for the business that we carry.

The railroad system in some areas of the country, including the Midwest and the East, is radically overbuilt.

What has happened here, just to give you one figure, is that the entire industry is carrying only 50 percent as many tons per mile as we were at the end of the Second World War. We are over-invested, but because we are a regulated industry, it is terribly difficult for us to disinvest.

Now, the only answer here that would be a satisfactory one from the point of view of public policy is to have some disinvestment, but, at the same time, some increase in traffic. And if you do have that increase in traffic to cover your fixed costs—and our fixed costs, as I say, are a very large portion of our costs—then all of your shippers benefit.

It is as if you own a taxicab and you have to pay the carrying costs on the taxicab. Your gas and oil, of course, are variable costs and they do not go up if your traffic does not go up, but you have got to pay that carrying cost. So, if you can carry 100 passengers instead of 10, obviously you can have taxicab fares for the 100 that are much lower than they would be for the 10.

That is a vastly oversimplified illustration, but it does get to the heart of the problem that the railroad industry faces, particularly in the Midwest and the East.

Now, it is said that the coal slurry pipelines, after all, will only take a part, even though a substantial part, of the new coal that is going to be mined, and therefore the railroads should not have any concern about it; that is to say, that there will not be an erosion of their existing traffic base.

What I am trying to say, by the data that I am presenting to the committee now, is that that is of scant comfort to the railroad industry, and should be of scant comfort to the Congress and to the shippers that depend on the railroads, because what we need is not simply a maintenance of our present level of traffic—what we desperately need is a radical increase in our traffic.

The energy program that the President has submitted to the Congress seemed made to order, at least in this respect, for the financial plight of the midwestern railroads. When I say "at least in this respect," I am talking about one of the centerpieces of the program which has to do with the conversion to coal as the major bridge fuel for the United States between our present petroleum-based economy and whatever more exotic kinds of energy sources will develop in the next century.



I say that it seemed made to order because many of the midwestern railroads that are now experiencing financial difficulties are not now major coal haulers. Coal represents a new and potentially profitable traffic for these railroads, and even one large diameter pipeline could dash that promise.

For example, a pipeline could carry 25 million tons of coal a year, and that is generally what these pipelines are designed to do, within that range, so that they can be economical. In 1976, the Rock Island's total tonnage of coal was less than 41 million. The Milwaukee Road's total tonnage was less than 47 million, so that the traffic represented by a single pipeline could have increased the tonnage of either of these railroads by more than 50 percent.

Now, that is an enormous potential benefit for these struggling midwestern carriers. So, I say again, it really is not very comforting to say that, "Oh, well, there is going to be plenty for all." There is not plenty for all, not in the present state of the American railroad industry.

Let me address one final point; it has to do with water. Now, the committee is well aware that the question of the use of western water is one that has been heatedly debated. I think that it would be appropriate for me—and I mean to—to defer to others, such as Representative Roncalio, who stated the case most eloquently, because they are more directly affected by the water question than are the railroads.

The railroads are affected, too, because, after all, we serve these areas and we depend upon their future economic development for the health of the railroads that serve the West. The depletion of water resources, therefore, does have an important meaning for the railroads, and I therefore would like to say just a few words about what the OTA concluded with respect to the water issue.

First of all, OTA found that passage of Federal eminent domain legislation could well guarantee water to the pipelines, regardless of the wishes of the States involved. "The courts may rule that Federal certification of a coal slurry pipeline will negate State attempts to restrict unallocated water to the project." They cited a judicial decision which underlines that conclusion which I simply refer to the committee for examination.

Second, they pointed out the obvious fact that pipelines which use 1 ton of water for every ton of coal—they are enormous users of water and, of course, the problem here is that they need the water where the coal is and the coal is where the water is not; that is the problem. OTA pointed out that the establishment of coal slurry pipelines would compete with other important uses for water, both future and, under certain circumstances, present users.

I think it is useful here to try to quantify this, and OTA did. I will just give you one illustrative quotation. This is from page 111 of their report, and the OTA said:

"In all potential coal slurry pipeline origin areas except Tennessee, demand—that is, water demand—"projected for the 1985 to 2000 period exceeds the legally available supply."

And then they illustrated the character of the impact of a pipeline this way:

"The Montana pipeline would take enough water to revegetate about 3,000 acres of surface-mined land in the Colstrip area in 1985. If all the water for the four



pipelines carrying 74.5 million tons of coal per year were redirected, it could be used to mine 160 to 220 million tons of coal, reclaim 16,000 to 21,000 acres of surface-mined land, serve up to ten coal gasification plants, or up to five coal liquefaction facilities, or provide cooling for two to four power plants."

I think it is notable that one of the consequences that is identified here would be to inhibit the future mining of coal and shale. That consequence obviously seems at odds with national energy policy, and in that connection, I would like to point out that OTA found that rail transportation is much more energy efficient than pipelines—only 390 Btu's per net ton mile for rail, versus 610 Btu's for pipeline. Therefore, even on the basis of energy policy, alone, pipelines, I respectfully suggest, make no sense.

That concludes the points that I wanted to touch on in respect of my statment. I would like to make one or two comments about—

Mr. EDGAR. If I could interrupt you at this point, we have a number of witnesses that need to appear today, and a number of Congressmen that would like to approach you with some questions. So, if you could try to summarize those remaining points relatively quickly, I think some of the Members of Congress would like to have an opportunity to ask questions.

Mr. DEMPSEY. It will not take me but 30 seconds to make the one point that I wanted to make, Mr. Chairman, and that had to do with the structure of the authorizing power under H.R. 1609.

There was considerable debate at the last day of hearing as to why, in any event, the Department of Energy should be the certifying authority, and I would simply want to aline myself with those who would take the view that the transportation of coal slurry through a pipeline is fundamentally—I concede, obviously, that it is an energy problem, just as the transportation of grain is an agricultural problem—but, more fundamentally, it is a transportation problem, and therefore ought properly to be dealt with, if it is every dealt with, by an agency such as the Interstate Commerce Commission, where, I want to note, jurisdiction over coal slurry pipelines was left last year when jurisdiction over oil and gas pipelines was moved to DOE.

Conscious decision was made last year to keep coal slurry pipelines under the ICC. So, in any event, any dealings with coal slurry pipelines through Federal legislation ought to be by transportation agencies. We would suggest the Interstate Commerce Commission, but if not the Commission, then, surely, the Department of Transportation should be the certifying agency, and not the Department of Energy.

Mr. Chairman, that concludes what I had to say.

Mr. EDGAR. Thank you very much for your very comprehensive statement before our committee this morning. I am going to request that the Members of Congress try to hold their questioning to the 5-minute rule, and we will begin our questioning this morning with the chairman of the full committee, Mr. Johnson.

The CHAIRMAN. Thank you, Mr. Chairman.

Mr. Dempsey, you have given us a very passionate report stating your position. What type of contracts are now entered into by a railroad that is using the slurry system to furnish coal to a power facility?

Mr. DEMPSEY. The Southern Pacific does operate a coal slurry pipeline.



The CHAIRMAN. Are they not under a contract?

Mr. DEMPSEY. I am sorry. I am not familiar with that operation, Mr. Chairman, and I simply am not able to answer that question. I do not know, but are you talking about their coal slurry pipeline operation.

The CHAIRMAN. The most successful slurry line we have at the present time, as I understand it, is that one.

Mr. DEMPSEY. It is the only one.

The CHAIRMAN. And it is the only one that is of any major size. We have other slurry lines moving other types of commodities, such as minerals, but they are minor to the scope of the Southern Pacific's slurry line, in operation. I believe that they entered into a contract for the delivery of that coal to the generating facility.

By the same token, when they looked it over, as far as moving the coal and securing the right-of-way and the necessary authority to go ahead, this was negotiated, too, with another railroad company for the crossing of a railroad right-of-way.

Mr. DEMPSEY. Yes, I expect that is right.

The CHAIRMAN. Now, are they not, too, making a profit in that operation at the present time?

Mr. DEMPSEY. The Southern Pacific would have to answer that question, Mr. Chairman. I do not know. There was a pipeline in Ohio which closed down when the railroads introduced unit trains. The Black Mesa Pipeline represents a circumstance in which pipelines make sense.

We have never taken the position that where there are no existing railroads, where the terrain forbids the construction at a reasonable cost of a long, new railroad line, that pipelines should not be built. There would be no question involved here before Congress if those were the only kinds of situations where pipelines were to be constructed.

The CHAIRMAN. Are there not various types of considerations now being given to the transportation of huge amounts of coal by rail to an entity where a contract will be entered into, or a rate that will be agreed to between the railroad and the company and, if necessary, they will go before the ICC and request a rate for that particular operation?

Mr. DEMPSEY. That would be a typical kind of negotiation between a railroad and a user, yes. But, we cannot enter into contract rates; we cannot enter into 25- or 30-year rates.

The CHAIRMAN. In effect, you do about the same?

Mr. DEMPSEY. No; we cannot.

The CHAIRMAN. Well, you can go and make your case for the rate. Now, this was done in the case of other types of commodities.

Mr. DEMPSEY. No; the coal slurry pipeline contracts are "take-or-pay"; 25 million tons a year, whether they are shipped or not, at a prescribed rate. The railroads cannot enter into any contract of that sort.

The CHAIRMAN. That is true. But I mean as far as the rate for hauling the coal in huge amounts to service powerplants.

Mr. DEMPSEY. Well, so far as the rate is concerned——

The CHAIRMAN. We have utilities that are trying to negotiate various rates and contracts, or understandings of agreement, based upon the cost of transporting coal. Someone is going to have to go before the regulatory authorities and ask for a rate.

Mr. DEMPSEY. Well, if the railroad and the shipper can agree upon a rate, then they can agree upon a rate and there is no particular prob-



lem, unless some other shipper comes to the Interstate Commerce Commission and says that that is discriminatory or prejudicial.

The big difference here in this respect is that if they are unable to agree upon a rate, the railroad is still obliged to serve the shipper and the shipper can go to the Interstate Commerce Commission and say, "Prescribe a rate." That cannot be done with the coal slurry pipeline. The coal slurry pipeline would never be built.

The CHAIRMAN. If coal is going to be competitive with other fuels, I think there is some consideration being given to that at the present time to meet the energy needs of the country.

Mr. DEMPSEY. Let me say this about that. The Interstate Commerce Commission has been enjoined by the Congress in the 4-R Act to conduct a number of studies, all aimed at trying to analyze the problems of the rail industry and trying to increase the revenues of the railroads, because we have something in the way of \$4 billion deferred maintenance right now, for an example.

Now, coal rates ought to be fully compensatory. They ought to be reasonable. Those are the tasks that are set for the Interstate Commerce Commission in these rate proceedings. But I do respectfully suggest that if any element of American society is to be called upon to subsidize the use of coal in order to encourage conversion to coal, that about the last element of American society to look to for that task, in terms of their respective financial help, is the railroad industry.

The CHAIRMAN. I will not take any more time. Thank you, Mr. Chairman.

Mr. DEMPSEY. Thank you, Mr. Chairman.

Mr. EDGAR. The ranking minority member of the full committee, Mr. Harsha.

Mr. HARSHA. Thank you, Mr. Chairman.

Mr. Dempsey, you say that you represent the Association of American Railroads, and that the railroad industry opposes this particular legislation. Do all railroads oppose it?

Mr. DEMPSEY. To my knowledge, yes.

Mr. HARSHA. Does the N. & W. oppose it?

Mr. DEMPSEY. Yes, sir.

Mr. HARSHA. And this B. & O.—of course, they are part of the C. & O. now, I gather?

Mr. DEMPSEY. Yes, sir.

Mr. HARSHA. Do you have any statement from the N. & W.?

Mr. DEMPSEY. No, I do not have one from the N. & W. What happened here, Mr. Harsha, was that at a previous hearing, we appeared as a panel, and that is the reason that I have these statements available. I could have them from every president of every major railroad in the United States, if the committee wanted them.

Mr. HARSHA. If I understood you correctly, also, you said that the railroads now are carrying only 50 percent of the tonnage that they were carrying at the end of World War II?

Mr. DEMPSEY. Only 50 percent of tons per ton-mile.

Mr. HARSHA. And that is freight, only?

Mr. DEMPSEY. Freight, only.

Mr. HARSHA. And under the OTA report, it is estimated that the railroads will lose approximately \$688 million in revenues?



Mr. DEMPSEY. By the year 2000; net income. Gross would be much higher, of course.

Mr. HARSHA. Are you suggesting, then, that if the pipeline legislation goes into effect, we may wind up with something like an Amtrak, dealing freight only?

Mr. DEMPSEY. Yes. If one looks at the whole railroad situation, we see a struggling ConRail in the Northeast; we see genuine difficulties in the Midwest. We see some elements of the system that are relatively healthy. But unless there can be a recapture of the situation in these critically affected areas, nationalization is a distinct possibility, and I find it difficult to believe that we can run a system, in the end, that will be half nationalized and half privately owned.

Mr. HARSHA. Now, the administration, I believe, has argued that we need to encourage the development of coal slurry pipelines in order to hold down the cost of electricity for the consumer. If any of the other Members' mail from their constituency is like mine, that is the predominate question that is being asked by the voters in the country today.

Do you agree with this assessment that it will hold down the ultimate cost of electricity for the consumer?

Mr. DEMPSEY. No, I do not, Mr. Harsha. The OTA study is the most reliable study that we have on this subject. It points out that all that it had to operate upon in making its judgments were a variety of hypotheses. Even making hypotheses very favorable to coal slurry pipelines, it concluded that any cost benefits might never be passed to the consumer, because the regulatory agencies governing energy companies are much more generous than the Interstate Commerce Commission is, and also pointed out that because the railroads must necessarily try to get revenue from all the sources they can to cover their fixed costs, that coal slurry pipelines might be able to take traffic from railroads, even where the cost of rail transportation was higher.

Now, I would like to add this: While it is only conjectural, at best, that there would be any energy cost savings, it is perfectly clear that the shippers of grain, the farmers, and the people that depend upon railroads would have higher rates, and the Office of Technology Assessment concluded that very explicitly. I am sure that your mail with respect to food prices is running pretty heavily, too.

Mr. HARSHA. Mr. Dempsey, assuming that this committee would report a bill which would give the coal slurry pipeline the power of eminent domain, are there any amendments that you would suggest to the bill dealing with that subject of eminent domain, other than to strike it all out?

Mr. DEMPSEY. Well, that is a hard question, Mr. Harsha. We are fundamentally and strongly opposed to any bill, and I am sure I have made that clear. This bill is defective in many other respects. I mentioned one; for example, the certifying agency ought not to be, in our judgment, the Department of Energy. Beyond that, I could find many things wrong with the bill.

The procedure ought to be an adjudicatory procedure. It is said, for example, by proponents of the bill that the interests of the railroads are adequately taken care of, because the ICC and DOT are asked to give their views on adverse impact to the Department of



Energy. But there is nothing in the bill that requires that those views be heeded at all.

It is not, in short, an adjudicatory proceeding that has been set up here under which certificates would not issue if there were substantial adverse impacts on the railroads; under which certificates would not issue unless, in fact, it were demonstrated that rates to the consumer would be lower.

It is an infirm bill in many, many ways, and if I were asked to recast it, it would come out quite differently, Mr. Harsha. But I do not have anything specific to propose right now, because our fundamental position is one of opposition.

Mr. HARSHA. Well, the record will be open for a couple of weeks. If you have some suggestion of amendments, would you submit it for the record?

Mr. DEMPSEY. Of course, Mr. Harsha.

Mr. HARSHA. That is all I have.

Mr. EDGAR. Thank you, Mr. Harsha.

Mr. Hefner?

Mr. HEFNER. Thank you, Mr. Chairman.

Mr. Dempsey, you mentioned at the opening of your statement that competition already exists in the transportation of coal. Where is this competition in the areas we are talking about with the pipeline? Are there any other means? Do you have any barges that haul coal in these areas?

Mr. DEMPSEY. Barges do haul coal, as you well know, and so they provide—

Mr. HEFNER. I mean in the areas potentially affected by the pipeline; is there any competition in these areas, now?

Mr. DEMPSEY. The pipeline scenarios here involve transportation across the width and breadth of the United States, and there is a map here someplace that shows half a dozen projected pipelines and they run, as I say, across the whole country. One from Tennessee to Florida, for example, is one of those that OTA studied. So, I am not sure exactly what section of the country it is that you are speaking of.

Mr. HEFNER. I mean existing competition.

Mr. DEMPSEY. Well, there is a good deal of existing competition among railroads, for example, in all part of the country.

Mr. HEFNER. I mean other than railroads.

Mr. DEMPSEY. We haul about two-thirds of the coal that is mined in the United States. The balance is hauled by bargelines and trucks. So, there is competition between railroads and trucks, railroads and bargelines, among railroads, and then among coalfields.

Mr. HEFNER. But in the areas where these proposed pipelines would go, there is nothing other than railroads hauling coal?

Mr. DEMPSEY. Well, again, it would depend on which one you are talking about, Mr. Hefner. Certainly, there can be a pipeline built in which bargelines would not be effective competitors. If that is the point, I am sure that that is one of the possible scenarios.

Mr. HEFNER. I am talking about the area from Idaho to Wyoming, and this area. Currently, there is nothing, other than railroads, that haul coal in this area.

Mr. BOYCE. Mr. Hefner, could I comment on that point?

Mr. HEFNER. Yes.



Mr. BOYCE. There are several railroads that haul coal from that area and compete fiercely with each other. But the key point on competition is the choices that are available to the electric utility at the destination. Those choices include not only coal from this area, but coal from other coalfields; in the case of Arkansas and Texas, very substantial local lignite sources which would involve no transportation at all; nuclear power, gas, and oil. The choices available to the customer, which is the utility, are many.

Mr. HEFNER. If you had to project cost, assuming the pipeline were in place now, what would be the cost of moving coal by pipeline, compared to rail? What would be the competitive cost? Could the pipeline compete with you?

Mr. DEMPSEY. Well, one of the problems is that we do not have any way of making that kind of cross comparison, and OTA did not either, because we do not have the kinds of cost data that an economist would need to make that kind of a comparison.

Now, the ETSI people have been using cost data from 1974, and obviously that is not up to date. We have not had an opportunity to examine it, in any event.

Mr. Boyce?

Mr. BOYCE. There has only been really one definitive study of cost done by a pipeline company that I have seen, and that was the one done by Houston Natural Gas. They predicted that it would cost something like 12.2 mills per ton mile to ship coal by pipeline from Colorado to Texas, and at that time, we were charging about 7 mills to ship coal into Texas on that same route. They thought that sometime in the future, pipelines might become cheaper.

Mr. DEMPSEY. I think that that is one of the principal points that is made by the advocates. It has not often been contended that in the initial years of operation of coal slurry pipeline, it would be cheaper than rail transportation.

The contention has been that because inflation affects rails more than it does pipelines, at some point there would be a crossing of the lines and at the end of the 25- or 30-year period, the net advantage would be for the pipelines. Obviously, this is terribly conjectural.

But, I would say this in that connection: It does seem to me that before the Congress should take action of this extraordinary type, because Federal eminent domain legislation is quite extraordinary, there ought to be the kind of cost demonstration by the advocates of coal slurry pipelines to the Congress that you are talking about, and there has not been.

Mr. HEFNER. Twenty or thirty years down the road, coal could become the main source of our energy supply; is that part of your argument?

Mr. DEMPSEY. Well, not really, except that from the consumers' point of view, should that happen, under the coal slurry pipeline contracts, the utility would be locked in. The consumers would be unable to take advantage of any alternate supplies of energy. They would have to keep using the coal at 25 million tons a year, or 30 million, or whatever the contract provided.

Mr. HEFNER. You cannot move anything by the slurry line except coal, is that right?



Mr. DEMPSEY. That is right. Passengers have not yet been suggested.

Mr. HEFNER. Your argument, then is that you can move the quantity of coal that is needed to meet the projected energy needs of the President's energy policy?

Mr. DEMPSEY. That is correct, Mr. Hefner, and our conclusions are supported by OTA, DOT, and three other independent Government studies.

Mr. HEFNER. What is the projected cost of the pipeline?

Mr. DEMPSEY. Which one?

Mr. HEFNER. Is it a very definite figure, like the Alaskan pipeline that was nailed down pretty close?

Mr. DEMPSEY. Well, if you are talking about the ETSI pipeline, again, I do not have those figures.

Mr. BOYCE. If those figures are available, they have not been made public. The original estimate was \$750 million. That was 4 years ago and we still hear the same number. I do not know what the current number is.

Mr. HEFNER. Thank you, Mr. Dempsey. Thank you, Mr. Chairman.

Mr. EDGAR. Thank you. Mr. Shuster, who is the ranking minority members of the Surface Transportation Subcommittee.

Mr. SHUSTER. Thank you, Mr. Chairman.

Mr. Dempsey, I want to compliment you on your statement, which I believe states the case against this legislation both comprehensively and eloquently. There is one question which troubles me and I do not think I have heard it addressed, and let me put it to you.

In the light of the fact that natural gas pipelines have been granted Federal power of eminent domain, why should we not do the same for coal slurry pipelines?

Mr. DEMPSEY. The situation was with respect to natural gas pipelines—this was essentially a wartime measure—but, in any event, is critically different, because, after all, there is no other way to transport natural gas. The public interest in having natural gas transported was critically important, so that I take it that it was concluded by the Congress, given the emergency character of the situation, that, one, it had to be done fast; and, two, since there was no other way to do it, one ought not to permit a single State to block the transportation of natural gas.

That simply is not the situation that we confront here at all with respect to coal slurry pipeline. One, there is no emergency; two, you can transport coal by many other methods, including railroad.

Mr. SHUSTER. Thank you very much.

Mr. EDGAR. Mr. Mineta?

Mr. MINETA. Thank you very much, Mr. Chairman.

Mr. Dempsey, first of all, assuming a 150-car unit train, how long would that be from the engine back to the caboose?

Mr. BOYCE. Could I answer that question?

Mr. MINETA. Surely.

Mr. BOYCE. There have been not unit train operations set up that long. We could answer hypothetically, if you like.

Mr. MINETA. How many cars would there be?

Mr. BOYCE. The typical train is 100 to 110 cars, which is approximately 1 mile long. There are regular freight trains of mixed freight—



Mr. MINETA. Given a train of let us say 110 cars, how long would grain and other commodities—which frequently run longer than that, perhaps up to 150 cars.

it take to pass a given point at, let us say, 25 miles per hour?

Mr. BOYCE. At 40 miles an hour, it is about 90 seconds. At 25 miles an hour, it would be in the neighborhood of 2 to 3 minutes.

Mr. MINETA. Mr. Dempsey, you mentioned a little while ago the long-term contracts which the coal slurry operators would have to have—let us say for 25 million tons per year. I take it that railroads are prohibited from these kinds of long-term contracts?

Mr. DEMPSEY. They have been, by the Interstate Commerce Commission, Mr. Mineta, yes.

Mr. MINETA. Are there any railroads that have any kind of “take-or-pay” contracts?

Mr. DEMPSEY. No.

Mr. MINETA. What was it in the Ohio situation that made the pipeline uncompetitive; what caused the pipeline not to be used and the railroad to come in?

Mr. DEMPSEY. Well, it was a much smaller pipeline, to begin with. I think it was a 6-inch pipeline, and that cuts against the economy of the pipeline. That is why these much larger ones are the ones that are now being proposed. Then, the railroads that served the area introduced the concept of the unit train, which enabled reduction of rail rates.

Mr. MINETA. Did they do that under an exemption from the ICC? Is it just by having a unit train, they are able to come in with a lower rate?

Mr. DEMPSEY. It is a very efficient operation. Your cars are constantly being utilized in a chain. They are just always operating, loading and unloading, and so you lose no utilization of your cars. It is the most efficient rail operation there is, really.

Mr. MINETA. There is no empty back haul?

Mr. DEMPSEY. Well, there is an empty back haul, but it is not an empty back haul that has the cars scattered all over the country and coming back from different points. As I say, it is the most efficient rail operation there is.

Mr. MINETA. As far as equity among modes, since the barge operators have a bulk commodity exemption and truckers have an exemption as far as agricultural commodities are concerned—and I guess that just about becomes a de facto exemption for them—suppose there was a bulk commodity exemption for railroads; what would happen in that instance?

Mr. DEMPSEY. I am not really prepared to answer that question, Mr. Mineta. We have been strongly in favor of regulatory reforms that would put us on competitive parity with bargelines. As you say, 90 percent of barge traffic, its bulk commodity traffic, is exempt. As for motor carriers, as you indicate, the agricultural exemption is terribly important to them.

On the other hand, if there were to be a total exemption with respect to all of these commodities, and if that were to mean that the rails would be free to enter into “take-or-pay” contracts of this sort, I would have to reflect with my colleagues for a long time before I would be able to express an opinion on that.



It could be argued, for example, that if the locking up of a market for 25 to 30 years in anticompetitive with respect to coal slurry pipelines, that it might be anticompetitive with respect to rails.

It is an interesting suggestion. It may very well be one that the industry would, in the end, endorse. It is certain that we seek further deregulation, but I regret that I am not in a position to respond firmly to that question, Mr. Mineta.

Mr. MINETA. What would be your estimate of the capital needs of the railroads to improve their roadbed? You mentioned the rate of return going from, let us say, 1.51 down to the 1.286 figure. What do you estimate the needs of the railroads to be, from now until the year 2000?

I would imagine you have done some estimating on whatever those figures are for whatever year it might be.

Mr. DEMPSEY. Well, the Department of Transportation has been charged with the responsibility of issuing a capital needs study which will be out shortly. There may be some differences of view as to the precise dimensions of the problem, but I think that if you talk in terms of \$7 to \$10 billion, you cannot be very far off.

Mr. MINETA. Over what period of years? Between now and when?

Mr. DEMPSEY. Between now and 1985 or 1990. We have \$4 billion, plus, in deferred maintenance right now, and I am excluding the new coal program, because for the new coal program, we will need to invest approximately \$10 billion, according to the Department of Transportation.

I may say in that connection that the only doubt that was raised in the OTA study's report about the capacity of the railroads to raise necessary capital has to do with the introduction of a new and threatening mode of competition from coal slurry pipelines. We must go to the financial community to raise capital. We feel that we will be able to do that with respect to coal transportation because it is profitable traffic. But, on the other hand, if there is the threat of coal slurry pipelines taking 25 million tons at a crack from that potential market, then I must say that there is thrown into doubt the capacity of the railroad industry to meet the coal transportation needs of this country.

Mr. SHUSTER. Would the gentleman yield?

Mr. MINETA. Yes.

Mr. SHUSTER. I want to be sure I understand correctly. When you say \$7 to \$10 billion, you are speaking, are you not, of roadbed improvement?

Mr. DEMPSEY. Yes.

Mr. SHUSTER. You are not speaking about the total capital requirements between now and 1980, which is substantially greater?

Mr. DEMPSEY. Of course.

Mr. MINETA. I was just speaking of the roadbeds.

Mr. DEMPSEY. Just to rehabilitate, we spent \$9 billion in capital investment last year, alone, in the railroad industry.

Mr. SHUSTER. What are the total capital needs, as you see them, for the railroads between now and 1990?

Mr. DEMPSEY. Could I submit that for the record.

Mr. SHUSTER. Please do.



Mr. DEMPSEY. I would like to be more accurate than I can be right now.

[The following was received for the record:]

ASSOCIATION OF AMERICAN RAILROADS,  
April 19, 1978.

HON. HAROLD T. JOHNSON,

*Chairman, House Public Works Committee, House of Representatives.*

DEAR MR. CHAIRMAN: During my appearance before the committee on April 11, I was granted permission to submit, for the record, information on the total capital needs of the railroad industry over the next decade.

I thank you for the opportunity to do so now.

Starting with the 1970 report of ASTRO (America's Sound Transportation Review Organization) a number of studies have been done of the railroad industry's future capital needs.

While the projections are not identical in every study, they have been relatively similar.

The original ASTRO study sponsored by the railroad industry based its estimates upon an assumption of an annual traffic growth of 3.5 percent. This study projected capital needs over the period 1971-1980 at \$33.2 billion. Adjusting for 1976 dollars, the capitalized portion of these needs average nearly \$5.3 billion per year.

The Department of Transportation, produced estimates, in 1972, of needs for \$3.3 billion per year. In 1976 dollars, the capitalized position of these needs come to \$5.2 billion per year.

In 1974, the ASTRO methodology was updated to provide estimates for the Interstate Commerce Commission. This railroad industry study, called ASTRO II, found that 10-year needs, in terms of 1973 dollars amounted to \$38.1 billion. In 1976, this becomes \$45 billion over the ten-year forecast period.

As part of its Ex Parte 271 proceeding, the Interstate Commerce Commission, reviewed the industry's capital needs in terms of 1975 dollars. This study produced 10-year equipment needs of \$27.8 billion—including an estimated \$2.9 billion for Conrail and bankrupt carriers. For fixed facilities—including the achievement of a normalized track maintenance level for carriers other than Conrail those undergoing reorganization—\$18.5 billion was estimated. Eliminating the portion of these needs which would be expensed rather than capitalized, the entire industry's 10-year needs are in the range of \$35.6 billion at 1976 price levels, according to the ICC figures and adjusting for the excluded carrier.

Thus, the four studies produce the following breakdown of average annual capital needs (stated in millions of 1976 dollars):

|               | Freight cars | Locomotives | Other<br>equipment | Fixed plant | Total   |
|---------------|--------------|-------------|--------------------|-------------|---------|
| ASTRO.....    | \$2,779      | \$890       | \$322              | \$1,257     | \$5,248 |
| DOT.....      | 2,810        | 840         | 288                | 1,222       | 5,160   |
| ASTRO II..... | 2,703        | 836         | -----              | 927         | 4,465   |
| ICC.....      | 1,933        | 689         | 213                | 723         | 3,558   |

To further amplify the record, I have enclosed a chapter from material filed in support of the railroad industry's current rate increase proposal. The information presented in brief in this letter is given in full detail in this document.

Again, I thank the Committee for the opportunity to present this information.

Sincerely,

WILLIAM H. DEMPSEY.

Mr. MINETA. Last summer when we returned from the August recess, I brought my family back by train from Oakland to Chicago, and we flew from Chicago to D.C. We found that the tracks of the Southern Pacific from Oakland to Ogden were not bad; Union Pacific from Ogden to Denver was excellent; from Denver to Chicago, it was a disaster.



I do not know how, frankly, you would be able to have unit trains running on that section. It seems to me we would be in the position of a Waverly-type of situation, with potential and dangerous derailments. We were going at 40 to 45 miles an hour on the bad tracks. On the Union Pacific, we were going as high as 90.

I understand the needs of the railroads for capital requirements to improve the roadbeds, but I do not know how you are going to get a 110-unit train, with the condition of these tracks as they are right now, with any degree of speed.

Mr. DEMPSEY. Well, the situation in the West is roughly this: By and large, the main lines are in good shape in the West. We are dealing with relatively prosperous railroads. I say "by and large"; there are some exceptions, undoubtedly.

The branch lines will have to be upgraded. We do not know exactly how many and how much mileage and where, because we do not yet have the market pattern of distribution of the coal, but that will have to be done. Now, the Burlington Northern, alone, has a capital investment—Allan, what is your capital investment program for dealing with the coal transportation?

Mr. BOYCE. Between now and 1981, we will spend approximately \$1 billion to provide for coal transportation, largely rebuilding many of these lines.

Mr. MINETA. I was thinking that if the condition of the tracks on a main line is like that, what would it be like on the feeder lines? I can well understand that there will be accidents, like the derailments in Tennessee and in Florida.

Mr. DEMPSEY. You are unquestionably right; the tracks are going to have to be upgraded, and the \$10 billion estimate by the Department of Transportation is essentially for that.

Mr. MINETA. One last quick question. Do you believe it is possible to achieve an equitable competitive situation in which railroads and pipelines could both participate on an equal basis in the transportation of coal?

Mr. DEMPSEY. No, it is not possible. It is not possible, no matter what is done, for example, with respect to exemptions for bulk commodities, for the simple reason that coal slurry pipelines—and it is not an invidious thing that I am saying about them—they cannot be made to operate like common carriers; they simply cannot.

They are designed, by nature, to serve only the large shipper and the large consumer. Whereas, the railroads, by virtue of their legal status, cannot do that. We cannot concentrate on the cream of the crop; we have got to carry everything. Because of that fundamental difference, which cannot be corrected in any legislation, it would not be possible to construct legislation that would bring about competitive equity between these two different modes.

Mr. MINETA. Thank you, Mr. Dempsey. Thank you, Mr. Chairman.

Mr. EDGAR. Mr. Dempsey, just in line with that question, and then I will go on to Mr. Stangeland, would you suggest that the railroads would not expend the kind of dollars you are talking about if this bill is passed?

Mr. DEMPSEY. The railroads will do their best. Mr. Chairman, and I do not mean to press the point beyond what the OTA said, but I think



what they said is almost unchallengeable. It is simply this: The railroads can get money for equipment, because equipment itself is excellent security.

But when the railroads must go to the financial community to get money for the kind of thing that Mr. Mineta is talking about, for rail rehabilitation, that is a wholly different matter. Their ability to attract that kind of capital depends upon the assessment of the financial community on the prospective success of the enterprise.

When one is talking about the transportation of coal, one is talking about good traffic, and therefore we should not anticipate any major difficulties. But if there is a threat to that market, and a serious one, by coal slurry pipeline operations, then, as the OTA report pointed out, one can only have doubts about the response of the financial community.

Now, some railroads will not have to face that problem, because they can generate the necessary amount of capital, by and large, internally. But a railroad like the Chicago Northwestern that wants to build with the Burlington Northern—how long is that line into the Powder River Basin, Allan?

Mr. BOYCE. About 116 miles.

Mr. DEMPSEY. A 116-mile new line into the Powder River Basin—has to go to the market for \$250 to \$275 million, and it is having difficulty doing that now. If it were faced with this kind of legislation, as Mr. Wolfe has testified, it would be undoubtedly faced with much more difficulty.

Mr. EDGAR. Mr. Stangeland?

Mr. STANGELAND. Thank you, Mr. Chairman.

Mr. Dempsey, just one question. If the railroads are going to be relied on to handle the coal, and looking at the future uses of coal in this country and the amount of coal that is going to be moved, do you see part of the railroads' role as providing assistance in grade separations to alleviate the jams and the autorail impacts that are created as a result of that?

Mr. DEMPSEY. We appreciate that the increased movement of these large-unit trains in areas of the West and Midwest and other parts of the country will create what can be called environmental problems. We do not think they are anywhere near as serious as the water problem. But, still, there are matters of inconvenience to residents of communities and, here, again, the Burlington Northern has been very concerned about this. And Mr. Boyce, you might want to say a word or two about that.

Mr. BOYCE. Well, of course, the problem of vehicle conflict is a problem not only of increased rail traffic, but also increased auto traffic at these crossings. To the extent to which our trains are responsible for the conflict and to the extent to which we could benefit from grade separations, we have been willing to participate in those.

We have done a study, for example, in Minnesota that shows that even with all the coal trains which will be moving through the St. Cloud-Fargo-Moorehead corridor, the total number of trains which will be operating in the early eighties will be about the same as were operating in 1929. And, yet, the vehicle traffic is dramatically increased during that time period. We think that should be taken into consideration in solving the problem.



[Whereupon, Mr. Hefner assumed the Chair.]

Mr. STANGELAND. Well, of course, the benefit of the grade separation is certainly, to a great extent, to the traveling public. But there is a side benefit to grade separations, in that there are tremendous lawsuits that are being decided through accidents, and this type of thing.

I guess the commitment that I would like to hear is that the railroads are willing to bear their share of the cost of grade separations, recognizing that they are a partial cause, at least, of the inconvenience that the excessive use of the railroads is going to cause.

Mr. BOYCE. We are willing to work with each community, individually, and we are working now. We have one man full-time and others part-time, working directly with the communities to solve these problems. To the extent that we are responsible, we are willing to participate in the solutions.

Mr. STANGELAND. No other questions.

Mr. HEFNER. The gentleman from Georgia, Mr. Levitas.

Mr. LEVITAS. Thank you, Mr. Chairman.

Mr. Dempsey, the prohibition against railroads entering into long-term contracts, is that provided by statute or by Commission rule?

Mr. DEMPSEY. That is provided by Commission rule and Commission interpretation, and it is my understanding from previous testimony by the Interstate Commerce Commission—and, perhaps, from what they may say today, although I would not want to anticipate them—that they may reconsider, to some degree, the rulings that they have made with respect to contract rates. That is all that I can say on that subject.

Mr. MINETA. Well, let me take it another step. It would just seem to me that even if the ICC were to change that rule, it may not be greeted enthusiastically by the railroads as a means of dealing with the problem that you are addressing.

Mr. DEMPSEY. There are different views in the railroad industry about this matter of contract rates, and I want to be frank with the committee about that. There are some who believe that just as it is contrary to the best interests of the industry and the public to have competition foreclosed for a 25- to 30-year period by coal slurry pipeline, so would it be contrary to the interests of the industry and the public to have that competition foreclosed by another railroad.

On the other hand, there are other railroads that would welcome the opportunity to have that kind of freedom. I may say that I have not heard the Commission suggest—perhaps they will—but I have not heard them suggest yet that they would permit the railroads to enter into “take-or-pay” contracts that would oblige the shipper to pay for 25 or 30 million tons a year, even though they did not ship it.

Mr. LEVITAS. I see. As I understand the jurisdiction of this committee under the legislation now pending, it is basically to determine whether eminent domain power should be provided to the coal slurry pipeline operators. Frankly, I have not resolved in my own mind the way I feel about the ultimate issue.

Leaving aside the question of water and environmental matters which are involved in other aspects of this consideration, to me, the two principal questions are, where does the consumer benefit the greatest, and in terms of our energy needs, what is the most efficient, least



costly way to provide coal to the end user, primarily the utilities for the generation of electricity.

Now, if a case can be made that the coal slurry pipeline is the most cost efficient way for doing that, should the committee not then, in terms of a national policy, encourage that?

Mr. DEMPSEY. I would like to answer it on several levels. My first answer is no, and let me use an illustration, if I might. The answer is no, simply because even though, under that hypothesis, some relatively small group of consumers might benefit, the larger public would be greatly disadvantaged.

Now, my illustration is this: Let me assume that someone came to the Interstate Commerce Commission, or to the Federal Government in one of its forms, and said:

Look, we want to build a new railroad and we want to build it only to serve this large coal field and these two or three large points of consumption. We do not want to have to serve anybody else, and we want to be able to move this coal just in these huge unit train operations and we figure we are going to be able to, therefore, cut rates below those railroads that are serving those areas now, because those railroads have got to serve everybody; they just cannot take the cream of the crop.

That really is all we are dealing with here, because coal slurry pipelines look like an exotic kind of technology. They look different than a railroad, but, really, they do the same thing that a railroad does; that is all they do. They move one commodity, coal, from one point to another.

Now, if that kind of group of railroad entrepreneurs were to come to the Congress and say, "We need the power of eminent domain," or to the Interstate Commerce Commission and say, "We need a certificate," I suggest, with all respect, that they would be laughed out of town.

They would be laughed out of town, because everybody in town—the Congress, the administration, the Department of Transportation, the Interstate Commerce Commission—has been saying to the industry for years; "What is your problem? Your problem is that you have got too much capital investment; somehow, you have got to find a way to increase your traffic, to constrict your fixed costs," and that sort of thing.

So what I am saying is that even if, in some circumstances, it could be demonstrated that this kind of special purpose project might benefit some limited class of consumers, it clearly would not be in the public interest, because everybody else would be paying more—everybody else using the railroads—and I am talking about the whole United States.

I am talking about the farmers who would be paying more to ship their grain, and the housewives who would be paying more to buy their loaves of bread; about the people who would be paying more for their automobiles, because automobile transportation costs would be up. That is the kind of broad public interest that I think ought to be paramount.

Now, beyond that, I say the case has not been made. I say the case has not been made because of the very, very foggy and vague kinds of data and hypotheses that the OTA had to engage in, because they did not have any real cost data before them.

So, I do not think you even get to your question, but if you get to it, my answer would be no.



Mr. LEVITAS. That last aspect of your response was that I was going to pursue next. Do you have available, other than the OTA report, any data which would quantify what are, in effect, the cross-subsidizing consequences of a coal slurry operation?

Mr. DEMPSEY. I am not sure that I understand the question.

Mr. LEVITAS. Well, are there any data available which would support your contention that the price of other freight would go up, and thereby be passed on to the consumer, which would offset any benefit which might be derived here?

Mr. DEMPSEY. Of course, we have the OTA conclusion on it. I really think if you consider the estimated lost revenue to the railroad system of \$680-some million a year in net revenue, the conclusion is self-evident. We are not dealing with an industry that can absorb that kind of deprivation of net revenue. Accordingly, the rate to the consumers will have to go up. Actually, they have been going down.

Or, as the OTA said, the downward slope of rail rates will be arrested.

Mr. LEVITAS. What is disturbing me is what lies at the heart of this issue. My guess is that over a century ago, there were wagons and teamsters who were hauling freight across the country. When the railroad industry was getting started, they were seeking land grants and eminent domain, and things like that.

I am sure the teamsters and the wagon haulers were objecting loudly to the State legislatures and the Congress, or whomever was involved in it, making the same argument, in effect, that the price of these other things we are doing is going to be affected, and whether or not it is our responsibility to recognize that there are new technologies and new modes always coming along, and while we should not legislate them and require them, that we should give them the tools to compete, and see whether modern or new technologies are better able to serve the public interest and let existing modes modify their operations to take into account new modes. The same would be true of air transportation or other modes of surface transportation.

Mr. DEMPSEY. Well, I think you state a principle that, apart from the concrete situation in which we find our national transportation system, has a lot to be said for it. I say again what I said before, that if the railroad industry now were in a healthy condition so that there would not be this spectre of a decreasing deterioration of the rail system and service to the shippers and consequent higher rates to the shippers—if we did not have that—second, if it could be established that the rail system either could not meet the need for the transportation of coal or clearly established that coal slurry pipelines were a superior technology and would be able to perform that kind of transportation service better than railroads, then I would say I agree.

But we do not have any of those situations here. We have a rail system that is expected to operate as a servant to the whole public that cannot disinvest and cannot say, "I want to pull out of this kind of transportation because I am not making any money there; I want to confine myself to the kinds of operations that are profitable."

We cannot do that, and when you have that kind of public charge that is given to a transportation industry like the railroad industry—the kind of regulation under which it must manage itself—then it



seems to me that there is an obligation on the part of the Congress to prevent that system from, in effect, going off the deep end.

I think Mr. Boyce would like to say something.

Mr. BOYCE. I would like to emphasize a point which was made in the OTA report. There is no legislation today and no set of circumstances which prohibits the construction of coal slurry pipelines. The line in Ohio which only lasted 6 years was built without Federal eminent domain. The Black Mesa line which is operating today was built across a railroad—not the railroad that owns it—without Federal eminent domain.

The sponsors of the proposal to build the ETSI line from Wyoming to Arkansas have publicly stated that they can build their line without Federal eminent domain. The States through which the lines Texas, through Colorado, would be building have individually granted the right of eminent domain.

What is being sought here is not a piece of legislation that would permit an industry that could not otherwise be developed. What is being sought is a special benefit—and extra push—from the Federal Government and from the Congress for an industry which can, on its own, develop, and is now developing without this power.

Mr. LEVITAS. The special push or the special benefit is to have a uniform Federal system of eminent domain, as opposed to seeking that authority, severally, from the different States through which it would traverse.

Mr. BOYCE. Which is what all other forms of transportation, except natural gas pipelines, have done.

Mr. LEVITAS. Thank you, Mr. Chairman.

Mr. HEFNER. Mr. Clausen from California.

Mr. CLAUSEN. Mr. Dempsey, are any of the railroads now, to your knowledge, involved in, or do they contemplate involvement in, the development of a coal slurry pipeline transportation system?

Mr. DEMPSEY. Well, the Southern Pacific operates the only existing coal slurry pipeline in the United States, the so-called Black Mesa Pipeline. It was built because there was no existing railroad there, and the features of terrain made it more economical to build a pipeline than it would have been to build a brandnew railroad.

There are no other railroads that operate coal slurry pipelines, because that is the only one. There are no other railroads, to my knowledge, that have any plans to operate coal slurry pipelines. [See supplemental response, page 135.]

I might say, and Mr. Boyce might want to elaborate on this, in the very early stages of exploration of the concept of coal slurry pipelines, the Burlington Northern did participate with others in a study of the feasibility of coal slurry pipelines, and it concluded that it would be far better to invest the money that is necessary in its own rail system than to invest the additional capital that would be needed in coal slurry pipelines. That represents its judgment as to the most efficient, economical method of transporting coal.

Mr. CLAUSEN. You make reference to the Office of Technology Assessment. You also noted that pipelines would enjoy significant regulatory advantages over railroads: among those, the ability to serve selected customers, and the prohibition of long-term contracts between



railroads and their shippers. Then, of course, it goes on to make reference to the common carrier aspect and the regulatory requirements you have.

Is there any way of developing legislatively an effort to assure equality of competition between the rail and/or the coal slurry transportation system, taking into consideration that you are a controlled, regulated organization?

Mr. DEMPSEY. I appreciate the importance and relevance of the question and, in a way, because it is such an important and relevant question, I am sorry to have to answer it so squarely, no, but that is the fact of the matter.

There is no way to fashion legislation that would permit these two modes of transportation to compete equally, except one, possibly, and that would be—this would not even do it, but the only step that could go part way toward it would be the abolition of the Interstate Commerce Act and the complete abolition of the obligation of railroads to operate as common carriers.

Now, even that would not do it, because of all of the difficulties that would be involved then in disinvesting the railroad industry that then would be part way down the road toward becoming a special purpose carrier. But, then it would have to disinvest and it would have to concentrate all of its efforts on serving only the most lucrative kinds of traffic, because that is what the coal slurry pipeline operation is.

If I were seeking to invest money in coal slurry pipelines, that is all that I would want it to be. I would want it to be a single-purpose carrier of highly profitable traffic. Now, there is no way that legislation can be fashioned that I can think of, and I suggest that anyone else can think of, to convert the railroad industry from what it is now—broad-based common carriers with obligations to serve everyone—into companies that specialize in serving only the most lucrative kinds of traffic.

Mr. CLAUSEN. Are you saying that you do not believe the slurry pipeline could serve in the category of a common carrier?

Mr. DEMPSEY. As a practical matter, no, and that is what the OTA concluded. It cannot, because it must be built to serve only one source of supply—perhaps two or three—and one point of distribution, or perhaps two or three at the end. There is no way that it can be built as an elaborate pipeline with arms scattered out to every little mine that wants to put a few tons into it, as we must do. That is what the railroads must do.

The problem here, Mr. Clausen, is that that is really why the OTA concluded that there would be circumstances in which the coal slurry pipelines would be able to capture this traffic, even where their costs were actually higher than rail costs. Now, that is a terribly important point. I have said it three or four times, but I will say it again.

The reason that that is so is that railroads, with this enormous fixed capital investment and this obligation to transport everything, must look to certain kinds of traffic to cover the losses that they suffer elsewhere, and bulk commodities like coal are among those kinds of traffic.

Now, what that means is that a coal slurry pipeline operator, as the OTA concluded, even with costs that are higher than rail, could



come in and undercut rail rates. That does not mean any long-term or broad-based advantage for the American public. It means a short-range, narrow advantage for a few consumers of electricity.

But really, what it means is that the higher cost mode of transporting coal is being used, instead of the lower cost. And the net is a disadvantage to the shipping public, because it means that the railroads have to make it up elsewhere.

Mr. CLAUSEN. Mr. Chairman, I may have some other questions, but I will probably submit them in writing, if you would be willing to respond.

Mr. DEMPSEY. Certainly.

Mr. HEFNER. Mr. Fary?

Mr. FARY. No questions.

Mr. HEFNER. I believe that is all the committee members present. I would like to thank you, Mr. Dempsey, for being with us through all the questions. We were happy to have you with us.

Mr. DEMPSEY. Thank you very much, Mr. Chairman.

[The following was received for the record:]

ASSOCIATION OF AMERICAN RAILROADS,  
Washington, D.C., April 20, 1978.

HON. JAMES J. HOWARD,

*Chairman, Subcommittee on Surface Transportation, Committee on Public Works and Transportation, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: During my testimony on April 11th before the Subcommittee on Surface Transportation of the Committee on Public Works and Transportation on H.R. 1609, the Coal Pipeline Act of 1978, Mr. Clausen asked me whether any railroads have been involved in plans to build coal slurry pipelines.

In response I stated that the Southern Pacific presently operates the Black Mesa pipeline which is the only such pipeline in the United States. I also mentioned the Burlington Northern's early participation in a study of the feasibility of coal slurry pipelines. The Burlington Northern, I said, concluded that it would be far better to invest in its own rail system rather than to invest that same capital in a coal slurry pipeline. I then stated that, to my knowledge, no other railroads have any plans to operate coal slurry pipelines.

In responding to Mr. Clausen's question I had simply forgotten the involvement the parent company of one of our member roads has had in a coal slurry pipeline proposal. I would like to correct the record in that regard.

The railroad involved is the Denver & Rio Grande Western. The D&RGW's parent company is Rio Grande Industries. Rio Grande Industries and Houston Natural Gas are studying the feasibility of constructing a coal slurry pipeline from Walsenburg, Colorado to Houston, Texas. It is my understanding the first 450 miles of the move will involve the D&RGW after which the coal will be transferred to the planned pipeline for the completion of the move to Houston.

I respectfully request that this letter be made a part of the record of the Subcommittee's consideration of H.R. 1609.

Sincerely,

W. H. DEWPSEY.

Mr. HEFNER. Our next witness is a colleague from Texas, Mr. Eckhardt.

# TESTIMONY OF HON. BOB ECKHARDT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. ECKHARDT. Thank you, Mr. Chairman.

Mr. Chairman, I should like to ask your consent to speak orally and put my complete statement in the record.



Mr. HEFNER. Without objection it is so ordered.  
 [Mr. Eckhardt's prepared statement follows:]

STATEMENT OF HON. BOB ECKHARDT, A REPRESENTATIVE IN CONGRESS FROM THE  
 STATE OF TEXAS

Mr. Chairman and members of the Subcommittee on Surface Transportation, I am most pleased to be able to appear before you to urge your favorable and expeditious action on H.R. 1609, the Coal Pipeline Act of 1977, which I authored.

This bill is scarcely a new proposal. In 1962, President Kennedy suggested coal pipeline legislation. The Senate, in September of 1974, enacted coal pipeline legislation which had been reported from Senator Jackson's committee. Extensive hearings have been held in the House Interior Committee in the 93rd Congress, the 94th Congress and again in the 95th Congress, when we had four days of hearings in Washington, as well as field hearings in the Far West. The Office of Technology Assessment has completed an extensive assessment on coal slurry pipelines with background and task reports on the market for coal transportation, economic considerations, an environmental study and an investigation of legal and regulatory issues. The combined report runs well over 1,000 pages. Clearly, this is not legislation which has been considered in haste or without adequate legislation which has been considered in haste or without adequate technological, environmental or legal study. On February 22 of this year, after four days of mark-up, the House Interior Committee voted 30 to 13 to report H.R. 1609.

H.R. 1609 is not a complex bill. The major objective of the Act is to facilitate the acquisition of easements by coal pipeline carriers across private land. The legislation authorizes the Secretary of the Interior, after consultation with several agencies, to issue certificates of public convenience and necessity with respect to coal pipeline projects. A carrier which has received such a certificate and which cannot acquire by negotiation the right-of-way required to construct the proposed coal pipeline may acquire the right-of-way by the power of eminent domain in a state or federal court.

The eminent domain authority of the Coal Pipeline Act is essential to overcome the refusal of the railroads to negotiate rights-of-way with coal pipeline carriers across their land. The magnitude of the problem is suggested by the case of one proposed slurry line which would cross railroads in 28 different locations. The intransigence of the railroads stems from the fact that they would in many instances be direct competitors with the pipelines in the coal transportation business. However, at the same time, a railroad subsidiary is operating the only existing coal pipeline and additional coal pipelines can be expected to be constructed by the rail carriers. Thus, it is clear that the Coal Pipeline Act is necessary to remedy a severe anti-competitive situation which adversely impacts consumers.

To those who might ask, "why should I support coal pipeline legislation", I would urge you to consider the relationship between coal pipeline development and utility costs and the implementation of this Nation's coal conversion program.

The Office of Technology Assessment Study has indicated that coal pipelines, in specific circumstances such as high-volumes and long-distances, may provide significant cost advantages over other modes of transportation. Thus, slurry lines could help hold down the user's cost for electric service.

The potential economic advantages of coal pipelines and the importance of such potential cost savings has been highlighted by recent developments. In the so-called Houston case (ICC Docket No. 36608), the Interstate Commerce Commission authorized in late 1977 a rate of \$15.60 per ton for hauling coal from Montana to Smithers Lake near Houston, Texas. This transportation cost is over 200 percent of the price of the coal, and under the rate schedule authorized by the ICC, the delivered cost of coal will exceed the cost of natural gas. A similar dramatic rate increase was issued at the same time for rail transportation of coal to a power cooperative in Arizona. (ICC Docket No. 36612). And just recently, the ICC reopened the San Antonio case (ICC Docket No. 36180) seeking a rate of \$18.23 per ton which would cost consumers \$20 million a year over present rates.

The Houston and Arizona cases are precedent-setting cases under the 1976 Railroad Revitalization and Regulatory Reform Act. They underscore the fact



that the development of coal pipelines is essential in moderating the utility rates of consumers in the Southwest and West where coal pipeline projects are currently planned.

In addition, as the National Association of Electric Cooperatives has recently stated:

The potential cost savings of coal pipeline transportation will not only directly benefit the regions served by these pipelines. Since interfuel substitution is extremely sensitive to the cost of transportation, the availability of coal pipeline transportation at reasonable rates to certain areas of the country may provide important indirect benefits to other regions. These benefits can be expected to accrue in the form of increased availability of natural gas and a reduced national outflow of capital for imported oil.

Statements from other quarters verify this point. For example, in a February 13 statement of the Department of Energy in the San Antonio case, the Department indicated that at the level of the proposed tariff, it was more economical to operate the utility on imported oil rather than coal. Moreover, while the Public Utility Commission in Texas has led the Nation's coal conversion program by refusing to certify any new natural gas generating units in recent years, the Chairman of the Commission has recently stated that "two and threefold transportation cost increases could well force us to seriously reconsider our position on conversion."

Thus, transportation of coal at reasonable prices is an integral part of our national energy policy. As it becomes more economical to convert to coal, more and more gas and oil will be freed for higher and better uses, such as the direct heating of homes. Without coal pipelines, it is entirely possible provisions of the proposed National Energy Act on coal conversion cannot be implemented. That bill contains exception authorities, if adequate transportation of coal is not available or transportation of coal at a reasonable price is not available. In many ways, coal pipeline legislation is a very necessary corollary to the successful implementation of the coal conversion policy contained in the National Energy Act.

These statements are however not intended to suggest that H.R. 1609 is not a controversial measure. I am certain you know otherwise by now. However, I believe that all the truly major concerns of Members regarding this legislation were effectively resolved by amendments adopted in the Interior committee.

One legitimate concern of Members had to do with competition between railroads and pipelines. Such competition should be on equitable terms. The bill provides that the pipeline shall be a common carrier, available to all customers. To guard against vertical monopoly and to ensure that the savings of coal pipelines accrue to consumers, the bill prevents common ownership between the pipeline and its coal suppliers or its coal customers. After a pipeline goes into operation, it becomes subject to Interstate Commerce Commission regulation as in the case of other carriers, such as railroads. Moreover, proponents of the legislation cited findings by the OTA that the potential impact of coal pipelines on the railroad industry "appear to be substantially less than that of possible adverse regulatory policy or a decline in the present rate of improvement in productivity." With the enormous increase of coal transportation anticipated, coal pipelines might reduce the growth in rail revenues but would clearly not result in a decrease of current rail revenues. Moreover, the railroads with which coal pipelines will compete are not the financially troubled eastern roads but economically sound western lines.

But critics of the Coal Pipeline Act still expressed concern about the impact of the legislation on competing transportation modes, such as railroads. To quiet these remaining doubts three amendments were adopted by the Interior Committee. They respond directly to the legitimate concerns expressed with respect to adverse railroad impact. It is conceivable that in a particular case it would be contrary to the national interest to issue a certificate for a coal pipeline because of the extreme adverse impacts on a particular railroad. Thus, the Florio amendment adopted by the Committee requires the Department of Transportation and the Interstate Commerce Commission to make recommendations with respect to the impact of the proposed pipeline on other modes of transportation. This amendment assures that evidence of adverse impact will be thoroughly investigated and presented.

A second amendment by Representative Seiberling requires that lead agency to consider, in determining whether or not to grant a certificate and related eminent domain authority, the impact of the proposed pipeline on the financial



integrity and services of competing modes of transportation. Thus, a coal pipeline project would not be authorized if undue adverse impacts on competing transportation modes were demonstrated.

A third amendment requires the Secretary to consider the extent to which the proposed pipeline is likely to result in actual coal transportation rate savings, an important protection for the public.

The Interior Committee also dealt directly with the water concerns of Western Congressmen. While export by coal pipelines would use less onsite water in the water scarce Western States than mine mouth electric power generation or coal gasification, Western State representatives are legitimately concerned about altering an age-old precedent that States shall order their own priorities of use of their surface and ground water. H.R. 1609 had stated unequivocally that none of its provisions would affect existing water law. Thus, though the bill permitted the pipeline to obtain right of way by eminent domain, it by no means permitted commandeering of water within a State.

There remained, however, the question of whether or not a State could make legitimate restrictions in water permits to a slurry pipeline which would permit that State at a later time to curtail water use under the conditions of the original permit. It was feared by Western representatives that, once the pipeline usage became entrenched and the energy supply of whole regions became dependent upon the flow of water through these pipelines, curtailment in accordance with the original conditions of the permit might be considered an unconstitutional burden on commerce. Therefore, the Marriott Amendment provided that legitimate conditions in the original permit could, as a matter of federal policy, be enforced at any time, even if they required curtailment of such entrenched water use.

However, there is one water amendment adopted in the Interior Committee which I hope this Committee will reconsider. Section 5(h) of the reported bill would require that before a certificate is issued with respect to a project utilizing underground water from a western state, the U.S. Geological Survey must conduct a comprehensive study which demonstrates that the use of the water source will not cause a significant adverse impact on the quality and quantity of the water table in surrounding areas and adjoining states. This provision would make the entire licensing procedure unworkable. It should be deleted because other provisions of the bill provide strong water resource protection. Moreover, there has been substantial concern expressed by several Western Representatives that this provision may limit traditional state water authorities.

In conclusion, I urge your prompt consideration of the Coal Pipeline Act. I would once again remind you of the extensive consideration in hearings, studies and mark-up sessions given to this legislation and urge you to utilize that record in making your own decisions. Time is growing short. I hope you will act quickly so we may move H.R. 1609 to the floor of the House.

I appreciate your courtesy in inviting me to appear before your Committee.

Mr. HEFNER. Please proceed.

Mr. ECKHARDT. Mr. Chairman, I never cease to be astounded at the audacity of the railroads. I know Mr. Dempsey from a considerable way back. I serve on the Interstate and Foreign Commerce Committee, as well as the Interior Committee, and I know he comes out slugging, but I never saw him slug so wildly as he has slugged today.

For instance, he points to my bill as being deficient in some respects, amongst which, he says, is the failure of the bill to provide an adjudicatory process with respect to certification. I would point to the procedural provisions of the bill in section 6 on pages 21, 22, and 23. I am reading from the latter part of it, but, of course, the committee may look at the whole.

The latter part of these provisions requires that hearings be held in the States affected.

After all hearings in each state are concluded, the Secretary shall hold at least one public, formal, adjudicatory hearing, in accordance with the provisions of Section 554 of Title V United States Code in the District of Columbia.



Mr. Dempsey, that happens to be the adjudicatory section of the Administrative Procedure Act, "at which the Secretary of Energy and the Environmental Protection Agency shall, and other Federal, State, and local agencies may, participate."

Also, in answer to one of your questions, Mr. Dempsey said it is not possible that coal pipelines and railroads could operate together under certifications, each taking a portion of the business which it may do the most efficiently. His position is that they may not share it unless the railroads own the pipelines.

Presently, the Black Mesa Pipeline, owned by Southern Pacific Railroad, shares the carriage of coal in an area in which it can produce most efficiently. Mr. Dempsey also said that the railroads had never taken the position—and I submit that this is somewhat contrary to the other statement—that where railroads cannot haul coal as efficiently as pipelines, because of difficult terrain or because of inadequate or insufficiently direct rail lines, that coal pipelines should not be built to haul coal.

That is what they have consistently argued against in this bill. They have consistently argued that coal pipeline operators ought not be permitted the mere right of eminent domain to build another means of haulage of coal under circumstances in which such haulage is more efficient than by railroads. That is the crux of their argument.

Now, Mr. Chairman, he also said that the railroads would be laughed out of two if they should ask to obtain certifications to build coal pipelines. I suppose they would; they would be laughed out of town because they have already got the right-of-way. Why should they ask any further authority to build such pipelines?

Enough of this rebuttal to my adversary's position in this case. I say he is an adversary; he represents the railroads, and I have been attempting to represent both my district, with its great needs for the haulage of about 10 times as much coal into that area within the next 10 years, and also the Nation at large, which needs gas out of our area—gas, which is now fueling boilers, for use in the rest of the country for residential and commercial purposes for which coal is not efficient.

Now, the summary by OTA, on page 3, states quite clearly that based on analysis performed in its assessment, coal slurry pipelines do represent, under some specific circumstances, the least costly available means for transporting coal, measured in economic terms. Whether this is true of any particular pipeline can only be determined by a detailed evaluation of the conditions specific to the route.

Now, I submit that is precisely what this bill does. It permits consideration by the Secretary of the specific circumstances under which pipelines may properly be built in order to best serve the public at the best price. Under such circumstances, pipelines could be certified.

I point here to the provisions of the act that set up the certification procedure. Section 5 on page 15 of the act provides that "the power of eminent domain granted pursuant to this Act may be exercised only by a carrier holding a certificate of public convenience and necessity." The Secretary of Interior can grant such a certificate if he makes certain findings. Those include a requirement that a pipeline provide the capacity necessary to fulfill the requirements of a common carrier. The act provides certain additional standards under which the findings



are to be made—a pipeline must help meet national needs. The Secretary has to consider whether a project would be likely to impair the financial integrity of other common carriers, such as railroads. He also has to take into account whether a pipeline will be more likely to result in lower rates for the transportation of coal than if such coal were transported by a railroad, and such matters.

So, what the act does is permit certification, and permits exactly the same standards for carriage of coal by a common carrier pipeline as are presently applicable to the railroads under their historic acquisition of railway lines, usually by State eminent domain. It puts them in the same position, as closely as possible with railroads in competition, and provides that if there are differences adverse to the financial security of the railroads, the certificate of convenience and necessity may be denied. Ultimately, the ICC determines the rate structure.

Now, over a long period of time, the railroads have created an impression that the ICC will not grant fixed contracts over long periods of time for the cost of haulage. I would like to point the committee to a publication of April 10, 1978, a publication called Inside DOE, which puts to rest this fable, I hope, for all time. If it were not true that the ICC could grant fixed contracts over periods of time, this would, if the ICC's staff recommendation is carried, clearly permit it.

It says:

The Commissioners also voted to take quick action to reverse an "impression" that the ICC considers fixed contract rates illegal. While noting that escalation clauses may be warranted in some instances, the Commissioners instructed the staff to make clear that fixed contract rates for long-term coal might be advisable. The railroads have complained that the ICC's rigidity on the fixed contract policy puts them at a competitive disadvantage with coal slurry pipelines,

and so forth.

Now, I would like to point out these salient points to the committee. No. 1, the issue here and the situation which could occur if pipelines are given eminent domain is not that coal pipelines would enter in and deprive railroads of existing profits now made by the haulage of coal. It is only that they might deprive railroads of the prospect of avoiding the sharing of additional revenue brought about by the haulage of a greatly enhanced quantity as coal, as coal replaces gas as a boiler fuel.

In my area, for instance, where approximately 90 percent of the electric generation is done by gas and where, by 1990, all but peak loading capability for generating electricity must move to coal, there will be an increase of tenfold in the coal imported from the Western coalfields.

So, the railroads' fight is not to retain business that they now have, but to take over a monopolistic position in that greatly enhanced amounts of revenue which may be derived from hauling coal under these circumstances. I am not just talking about an imaginary situation; this situation is already coming about.

For instance, the city of San Antonio, which, along with Austin is one of the two cities in the United States that pays the most for electric generation because of the extremely high price of gas in the intra-state markets, recently decided that it had to convert and build generating facilities for the use of coal.



The city thought it had something like a commitment from the railroads to haul that coal for \$7.90 per ton from Gillette, Wyo., to San Antonio. But after the utility had committed itself to building generating stations, the carrier refused to post any firm rate and, eventually in 1976, the ICC established a rate of \$10.90 a ton, which stands today, after several adjustments, at \$11.90. And I quote ICC Docket 36180.

Then, in the Houston case, in ICC Docket 36608 in late 1977, the ICC permitted a rate of \$15.60 per ton for hauling coal from Montana to Smithers Lake, near Houston. This transportation cost is over 200 percent of the cost of the coal itself. In addition to that, the Houston Lighting & Power Co. was required to purchase 1,100 coal cars to transport that coal. That is more than some railroads have in their entire fleet.

Moreover, the rate schedule approved by the ICC in the Houston case calls for minimum shipments of 4 million tons during the first 12 months of its use, notwithstanding the fact that the utility has advised the carriers that shipments totaling only 2.4 million tons could be made. Under the same schedule, the utility will be assessed \$22 million in penalty charges, making its effective freight rate \$24.83 per ton.

What we are running into here is an argument by the railroads—and I very sincerely point out that it is a very audacious one—that they should not be given what they will have with the building of all the coal slurry pipelines now on the books; that is, about 82 percent of the haulage of all coal by 1985. Rather, they argue that should have all of it.

Of course, if they have all of it, the rates of the type I have been reading here may be maintained. The ICC has permitted consideration in the base rate of the increased value of coal and the increased demand for its transportation. With the extreme increase in demand, prices are likely to go up. Of course, they do not want some other business entity, not controlled by the railroads, to constitute what really amounts to a competitive yardstick for the cost of carrying coal, even though that competitive yardstick will constitute only 18.2 percent of the total carriage. Now, that is a relatively small amount.

Of course, if the ICC determines that another means of determining rate base should be granted the railroads, ICC should do it, and can do it. But the argument against the coal slurry pipelines, as Mr. Dempsey has made very clear, is absolute. They are against them, no matter what we do with respect to a fair, competitive basis between railroads and coal slurry pipelines.

I was interested in Mr. Levitas' comments which I thought were very apt with respect to the carriage of certain commodities by wagon, instead of railroad. Of course, there was a time in my area of Texas where there was a really serious dispute as to whether or not "corduroy roads" should be built to facilitate carrying cotton out of the Brazos River bottom into Houston, or whether the Buffalo, Brazos & Colorado Railroad, which became the parent to the Southern Pacific in my area, should be built.

Of course, these arguments occurred in the past. They occurred with respect to the clipper ship. It could have been very well argued that all of the grain that needed to go to China could have been carried by clipper ship at that time, rather than by steamship.



The question of capability of railroads to carry all the coal, given enough price, is not at issue. The question is: Should the railroads have an absolute, noncompetitive monopoly position with respect to that carriage? Also, should they be able to insist that coal be carried by railroad and not by slurry pipeline, even if the slurry pipeline is cheaper and hauls the coal at a cheaper rate under the conditions provided under the bill?

We are not saying that it does in all instances. There is no question but that haulage of coal over relatively short lines where good rail exists and where the route is direct is a perfectly feasible and economic way to carry coal. It should and will continue long into the future.

The question is: Should we, in the area from which gas is being removed in tremendous quantities, and rightly so, to be shared with the rest of the Nation—should we be hampered by the fact that railroads want to carry all the coal, even though their lines are not direct, in not very good condition, and they are not able to give prices, to a city like San Antonio, competitive to the rates that could be obtained through the coal slurry pipelines?

I wonder what has happened to the whole concept of a free, competitive economy, when there is an argument here leveled by railroads that some other means of transportation should be studied by a Federal agency to determine whether it is the most efficient competition for the railroads. Why not just let it be tested in the marketplace?

There is capital available for building the coal slurry pipelines. Utilities want the capital to be expended; they want to be given the opportunity to contract to obtain their coal through a pipeline. They want another competitor with respect to the hauling of coal.

Why do we have to first determine, through a Federal agency, whether we should or we should not bring in a new, technologically feasible means of hauling coal, particularly in light of the fact that the Black Mesa line already proves its technological feasibility?

I think there is a perfectly valid argument, No. 1, that if we permit eminent domain for coal slurry pipelines, we should determine in a fair and equitable manner whether the pipeline is competing fairly with the railroad and whether or not its rate structure is in some way slanted or altered in such a way as not to reflect actual costs.

That is in the bill, and that is the authority that is exercised by the agencies in control of the pipeline. The argument has been answered.

The other question that I think needed an answer—and it has been adequately answered by several amendments, particularly the Marriott amendment to the Interior Committee bill—was the question of western water.

The chief engineer for the State of Wyoming testified before our committee—and, incidentally, he was testifying in opposition to the coal slurry pipeline—in answer to my question, that the percentage of Wyoming's water used under the permits for the planned coal slurry pipeline—that is, the ETSI line—would be infinitesimal, as compared to the use of water for other purposes. The OTA study has confirmed the conclusion that a relatively small amount of water is used.

But, even so, the original bill provided that we did not in any way impair a State's rights to determine its priorities with respect to water



use. The State could, in effect, veto the coal slurry pipeline by literally cutting their water off. We do not provide any means of obtaining water by eminent domain.

However, legitimate questions were raised by western members of the Interior Committee. And as you know, that committee is very heavily balanced toward the West, and I think properly so, because of the public lands in the United States. These members were very astute to protect water rights.

The Marriott amendment made it clear that not only were the States to be protected with respect to permitting them to control their water rights, theoretically, but, also, actually. The issuance of a certificate of convenience and necessity was not considered to alter what would be looked into, had the certificate not initially been issued. In other words, the certificate could not be used as a kind of left-handed way of getting through the door to command the States to deliver water.

The Marriott amendment is a good one, and I support it. There were also several amendments put on by your own colleague on this committee, Teno Roncalio. Most of those, I favor. There is one on which I raised a question with your committee. You should use your own judgment on that. However, I would support the bill as it came to your committee, and would hope that it would come out in that form.

I think that just about completes my statement, but I will be available for questions if the committee would like to raise them.

Mr. HEFNER. Thank you, Mr. Eckhardt.

The ranking minority member, Mr. Shuster.

Mr. SHUSTER. Thank you very much, Mr. Chairman.

I certainly want to commend the gentleman from Texas, particularly for acknowledging to this committee that his interest in this legislation at least, in part, stems from his attempt to represent his district's needs. Certainly, if I were a Representative from Texas, I would be very much interested in getting the coal and the water from Wyoming and Montana, and anyplace else I could get it from, for my State and my district, so I commend the gentleman.

In fact, I have before me a copy of legislation recently passed by the legislature in Texas, signed by the Governor on August 29, with regard to coal slurry pipelines. The gentleman might be aware of it.

It says in section 5(c) :

The right to eminent domain granted under this chapter to such pipelines shall not include and cannot be used to condemn water or water rights for use in the transportation of coal by pipeline, and provided further that no Texas water from any source shall be used in connection with the transportation, maintenance, and operation of coal slurry pipelines.

I would ask the gentleman: Does this not expose this issue for what it really is, and that is an attempt by one region to use the power of the Federal Government to grab valuable resources from another region?

Mr. ECKHARDT. No. If this bill were passed, and probably even without the passage of this bill, the State of Texas may not, in my opinion, make a discrimination between the use of water within the State and outside. That has been determined by a case some time ago



in connection with a Texas law that prohibited the use of irrigation water outside the State of Texas.

The State of Oklahoma, as I recall, brought an action in that case that overturned such a parochial attitude with respect to a particular use as an unconstitutional burden on interstate commerce.

I have been in the Texas Legislature. I know that kind of legislation, and I may say that that is one reason I am glad I am in the U.S. Congress today, and not in the Texas Legislature.

Mr. SHUSTER. I would also ask the gentleman: Is it not true that coal slurry pipelines can be built by receiving the right of eminent domain from the various States, just as the railroads did?

Mr. ECKHARDT. Well, when the railroads got their right of eminent domain, States were so anxious to get them there that, in my State, they even gave the railroads \$10,000 a mile—that was a Yankee legislature—to build an international railroad from Texarkana to Laredo. Fortunately, when we took over the State again from the carpet-baggers, we reversed that action.

That gives you an indication of how anxious we were to get railroads. As a matter of fact, we ultimately gave them alternative leagues of land in order to get them to build railroads. We not only gave them eminent domain, but we gave them a heck of a lot of oil. But that situation does not exist today with respect to coal slurry pipelines.

Mr. SHUSTER. For example, on page 135 of the Office of Technology Assessment report, it points out that the extensive network of interstate oil pipelines, ammonia fertilizer pipelines, and railroads has been built with only State eminent domain authority. Certainly, interstate oil pipelines and ammonia fertilizer pipelines have been built much, much more recently than the railroads.

Mr. ECKHARDT. Well, Mr. Shuster, if that is true, why are the railroads opposing this bill?

Mr. SHUSTER. Well, I certainly cannot speak for the railroads, but I am asking you.

Mr. ECKHARDT. They are opposing it because they know the pipelines cannot be built without Federal eminent domain.

Mr. SHUSTER. I am asking you: Why should not the coal slurry pipelines get their eminent domain from the States, and why should the Federal Government be used to circumvent a procedure which seems to have worked reasonably well be going to the States, as have the oil pipelines, for example?

Mr. ECKHARDT. Well, I thought I answered that, in that the railroads and the oil pipelines were built at a time when people very much wanted to move those commodities in those ways. But, today, it has been necessary, in the case of gas pipelines, and it will be necessary in coal slurry pipelines, to have some uniform national policy.

It does seem shameful to me that gas may be moved all over the country from the Southwest by gas pipelines granted Federal eminent domain, but the coal may not be brought in to replace that gas by coal slurry pipelines granted eminent domain in the same manner by the Federal Government.

Mr. SHUSTER. If the people of the States involved do not want to grant the right of eminent domain, why should the Federal Government stuff that down their throats?



Mr. ECKHARDT. Well, because the States, say, between the location in Montana of a coal mine and my area in Houston may say, "No, we are going to cut your water off. You are sending us gas through eminent domain-granted gas pipelines, but we are going to cut your water off, because we can do it." Now, is that fair? Do you really consider that to be a fair deal, to use gas as a matter of right from a pipeline granted eminent domain by the Federal Government, but to cut off pipeline-delivered coal to the State which is going to have to give up that gas because some State wants to shut the water off by refusing eminent domain?

Mr. SHUSTER. I think if there is one thing we have to be very sensitive to in this Congress, it is the concern of the American people about the Federal Government exercising more and more power, not only over the people, but over the States. I think this simply, in a broader context, is one more example of the Federal Government, or an attempt to use the Federal Government, to exercise its power, bypassing the States, to benefit one region at the possible expense of another.

There is one final question I would like to deal with, Mr. Eckhardt, and that relates to the OTA report and testimony that we had before this subcommittee from OTA in which they talked about the environmental problems with regard to waste disposal.

Governor Peterson testified that there is an area of uncertainty concerning the substances that would be present in slurry water after it is separated, and I know of your concern and long interest and leadership in the area of environmental protection. So, I just wondered if you would care to comment on their observation that the discharge of toxic and hazardous substances into the surface and underground water is something whose implications are really not known.

Mr. ECKHARDT. Yes, that was a very legitimate concern that the OTA raised. As a result, we added, in section 5(b)(7), that in making the findings required to grant the certificate. The Secretary would have to consider whether or not the pipeline would unduly impact on the surface and ground water at the point of destination, and what impact the disposal of such water would have on the environment.

I think that was a good amendment, and I think that was a good point to have been raised.

Mr. SHUSTER. Do you think that that adequately covers the problem?

Mr. ECKHARDT. Yes, sir.

Mr. SHUSTER. Thank you very much.

Mr. HEFNER. The gentleman from California, Mr. Mineta.

Mr. MINETA. Thank you very much, Mr. Chairman.

Mr. Eckhardt, thank you very much for your fine testimony. First of all, although Mr. Demsey stated it would not be possible, do you believe it would be possible to establish a regulatory framework which would treat each mode equally?

Mr. ECKHARDT. Yes, I surely do, and in that connection, we added several amendments to the bill. The amendments were by Mr. Seiberling, to require the consideration of the effect on other modes of transportation, and several others.

All in all, what the bill does is require a determination by that Agency which we consider to be somewhat neutral on the question—that is, the Department of the Interior. After all, the Secretary of Energy may be too anxious to move coal and, on the other hand, DOT



may be a little bit reluctant and ICC, particularly, may be somewhat reluctant to disturb the railroads position. We felt that Interior was a good Agency to make the ultimate determination, as a sort of a half-way point.

Mr. MINETA. It seems to me that one of the major points of contention in this bill has to do with the potential competitive advantage given one mode over the other. Could you discuss your reasons for not dealing specifically with the impact on the railroads in this legislation, that is, other than taking notice of whether the pipeline would be likely to impair the financial integrity of other common carrier modes of transportation.

Mr. ECKHARDT. Well, we did several things in the bill in that connection. The one you mentioned had a very important, direct effect on that question, but we had it in the original bill that the power of eminent domain may be exercised only by a carrier holding a certificate of public convenience and necessity issued by the Secretary of the Interior. The Secretary was authorized to issue such a certificate if the Secretary found, with respect to the particular project of the carrier for which said power is sought, the project was in the national interest and provided the capacity necessary to fulfill the requirements of a common carrier. Then we added the provision you refer to about the consideration of the effect on other carriers.

Then, of course, we left the ultimate determinations with respect to regulation of the pipeline to the ICC, as in the case of other carriers. There is one other thing we did and, incidentally, I insisted on this, even to the opposition of some of the coal slurry pipelines. That is I was insistent on keeping pipelines independent of the recipient of the coal which is hauled, say, the utility, and independent of the mining company, because I do not believe that we should create a vertical monopoly in which the comparative earnings of this common carrier cannot be determined, as against others.

I have even been accused by some of the oil companies of being for divestiture, and I do not understand how that applies. All I am saying is that they cannot acquire a vertical monopoly position under these circumstances.

All of these things look toward equality of the pipeline with the railroad.

Mr. MINETA. As you know, the Speaker has allowed the Commerce Committee to come in with their own bill within 30 days of the action of the Public Works and Transportation Committee to develop its own legislation to correct any problems that might be created by the passage of this bill.

Would you have any recommendations for the Interstate and Foreign Commerce Committee relative to that?

Mr. ECKHARDT. I think that simply leaving the traditional authority of the ICC to control this common carrier as it does others would be sufficient, and I think it is within the ICC's authority to so do.

If there is any contest made of the action of the ICC that I referred to—if there is any contest respecting their authority to permit fixed rates over long periods of time, then it might be necessary to give them that authority, legislatively. But I do not think that it will be.

Mr. MINETA. And, very quickly, one more question. During the consideration of this bill by your committee, did you obtain any com-



ments from the Department of Justice relative to whether or not this legislation would create a Federal preemption over State water rights?

Mr. ECKHARDT. Yes, as a matter of fact, that is the basis of the Marriott amendment. We wanted to be sure that the bill did not create, de factor, a contention under the Constitution that State water law could be overridden, subsequent to the granting of the certificate, by virtue of the granting of the certificate, alone. The Marriott amendment makes it clear that the granting of the certificate will not result in a situation in which changed situations after the granting of a certificate based on the certificate's authority, will provide for action based on the certificate's authority, which would prohibit the State from withdrawing water under its preferential standards for water use.

Mr. MINETA. Thank you very much, Mr. Eckhardt. Thank you very much, Mr. Chairman.

Mr. HEFNER. Thank you, Mr. Eckhardt.

We have a quorum call. The committee will stand in recess until 1:30 p.m.

[Whereupon, at 12:17 p.m., a recess was taken.]

#### AFTERNOON SESSION

[Whereupon, at 2:06 p.m., the subcommittee reconvened, Hon. Robert A. Edgar, presiding.]

Mr. EDGAR. The subcommittee will now come to order again, and we will continue, hearing Mr. Gary Wicks, Deputy Assistant Secretary, Land and Water Resources, Department of Interior.

#### TESTIMONY OF GARY J. WICKS, DEPUTY ASSISTANT SECRETARY, LAND AND WATER RESOURCES, DEPARTMENT OF THE IN- TERIOR; ACCOMPANIED BY THOMAS RODDA, BUREAU OF LAND MANAGEMENT, RICHARD WOODCOCK, SOLICITOR'S OFFICE, AND GEORGE DAVIS, GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

Mr. WICKS. Chairman, I am Gary Wicks, Deputy Assistant Secretary for Land and Water, Department of Interior. And I have with me today a couple of individuals who I think will help answer some questions that might come up regarding H.R. 1609. On my left, I have Thomas Rodda, who is a natural resource specialist in the Bureau of Land Management. On my right, I have Richard Woodcock from the Department of Interior's Solicitor's Office, and we have also with us George Davis from the Geological Survey.

My statement will be brief. We have appeared on this bill a number of times to date, but we are pleased to be here and present the views of the Department of Interior on H.R. 1609, which would provide for Federal review of prospective coal slurry pipelines under the leadership of the Department of the Interior and amend the Mineral Leasing Act of 1920.

The administration has given considerable attention to H.R. 1609. Although there are many features in the bill which the administration favors, the President decided last year that he would support legislation providing authority in the Department of Energy to grant



certificates of public convenience and necessity for coal pipelines. Since that decision, the administration has developed proposed amendments to H.R. 1609 which designate the Department of Energy as the authorizing and lead agency, subject to concurrence by the Department of Transportation with regard to the effect proposed pipelines would have on other transportation systems and by the Department of the Interior with regard to water, land use, and natural resource questions. Mr. Jack O'Leary, Deputy Secretary of the Department of Energy generally discussed the administration's amendments on March 22. I will address the amendments to H.R. 1609 from the aspect of the Department of the Interior's involvement.

We believe that, first of all, H.R. 1609, if amended as proposed by the administration, is an appropriate vehicle for Federal legislation on coal pipelines and would provide a balanced framework for expeditiously reaching a decision in the national interest without prejudice to the well-being of the railroads or other transportation systems.

The Department of the Interior would have a number of significant responsibilities under the administration proposal. First, it would clearly have the same authority to issue rights-of-way for coal slurry pipelines on Federal lands as it now does for oil and gas pipelines under section 28 of the Mineral Leasing Act, as amended. The Department's existing authority to review slurry pipelines under title V of the Federal Land Policy and Management Act would be repealed and would be consolidated under section 28 of the Mineral Leasing Act.

In the Department of the Interior's view, however, the most important requirement addressed by the administration's amendments is the need for a thorough review of water, land use, and natural resource questions involving slurry pipeline proposals. Section 28 would be further amended to extend the environmental requirements and controls of subsection h(2) of section 28 to private as well as Federal lands. Interior would have the lead role in the application of these provisions. We do not intend, however, that the Federal environmental review led by Interior would preempt the application of State and local requirements for environmental review, and permits or land use.

I think an important point—Mr. Dempsey, in earlier testimony, referred to the fact that there is no requirement that the Department of Transportation or other departments be involved in the decision-making, but under the administration's proposal, both the Department of Transportation and the Department of the Interior would have concurrent authority, so that we would have to concur in the issuance of a certificate on all questions of impacts on lands, waters, and other natural resources affected by the proposed pipeline.

This concurrence would be based upon the independent review conducted by the Department in these areas of concern to us and in connection with our Mineral Leasing Act responsibility. DOI's review would be coordinated with that of the Department of Energy to achieve maximum efficiency, cooperation, consistency in timing, and avoidance of duplication. We strongly believe that thorough review of environmental effects of any pipeline proposal is vitally important, particularly with regard to impacts on water use.



In that regard, I would like to point out one very significant feature of the administration's proposed amendments, and that is, before a Federal certificate could be issued, the Secretary of the Interior would be required to obtain assurance from the Governor or other proper authority of the State from which water would be diverted that all rights to water under State jurisdiction for pipeline use have been obtained according to applicable State laws and procedures. We believe that this amendment will provide the necessary assurance to State and local governments that State water laws will be respected and that the Federal Government will not interfere with whatever State authority exists for State water use decisions.

We share the belief of the administration that the development of specific coal pipelines might be in the national interest, and we believe that the administration's proposed amendments would best serve the purpose of balanced consideration of pipeline issues. I think it is important to point out that what we are supporting here is a procedure. There was much talk this morning about hypothetical facts and about conjectural facts and the OTA report, and some of the other testimony that has been presented. It seems to us that the way to get around the hypothetical and the way to get around the generalities is to have a particular application before the Department or before the Federal Government, and only then will be able to make a determination as to whether or not a particular pipeline will be the best mode of transportation, will have the least impact on the environment, and will have water use in a way that is acceptable to a particular State.

So, what we are supporting here is a process for reaching some kind of conclusion as to whether or not the coal slurry pipelines are a proper mode of transportation in a particular instance.

And with that, Mr. Chairman, I will close. We would be glad to answer any questions that you or other members of the committee might have.

Mr. EDGAR. Thank you very much for your testimony, and we will have a number of questions. I would like to ask unanimous consent to submit to the Department of Interior a list of questions which are raised by our testimony for answering for the record.

Mr. WICKS. That will be perfectly acceptable.

[The following was received for the record:]



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## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

JUL 12 1978

Honorable James J. Howard  
Chairman, Subcommittee on  
Surface Transportation  
Committee on Public Works and  
Transportation  
House of Representatives  
Washington, D. C. 20515

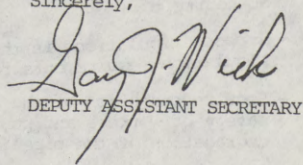
Dear Mr. Howard:

I have attached answers to questions relating to H.R. 1609, the coal pipeline bill recently considered by your Subcommittee. The questions were forwarded with your letter to me of April 24, 1978.

We regret any delay in providing these responses; however, as you can see from the attachment a great deal of work was involved. The answers have been compiled through a joint effort of this office, the Bureau of Land Management, the Office of the Solicitor, and the Office of Legislative Counsel, and they have been reviewed by the Administration.

Thank you for your interest. If you have any further questions please do not hesitate to call.

Sincerely,

  
DEPUTY ASSISTANT SECRETARY

Enclosures



Question: 1. At page 2 of your testimony, in the second full paragraph, you refer to section 28 of the Mineral Leasing Act of 1920 and Title V of the Federal Land Policy and Management Act of 1976. You conclude that H.R. 1609 would put coal slurry pipelines in the same category as rights-of-way for oil and gas pipelines.

Would you please state

(1) What the Department's powers are under section 28 of the Mineral Leasing Act, and how those powers have been exercised in the past?

Answer: 1. (1) The basic power exercised by the Department under section 28 of the Mineral Leasing Act, 30 U.S.C. 185, is the discretionary authority delegated to the Secretary to issue rights-of-way and temporary permits for pipelines for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, through the following "Federal lands", a term defined by the statute:

(a) all surface areas administered by the Secretary of the Interior:

(b) all surface areas administered by two or more Federal agencies (one of which may or may not be this Department), provided the Secretary consults with the interested agencies and otherwise complies with the requirements of the statute.

(c) OCS lands, National Park System lands, and lands in trust for an Indian or Indian tribe are not subject to the Act.

- Other supplemental powers are provided for, including authority to:
- Impose stipulations in the right-of-way grant or by regulation requirements for:
- Require operation of the pipeline and facilities to protect safety of workers and public from ruptures or slow degradation of the pipeline.
- Require environmental protection, adherence to air and water quality, and facility siting standards established by law.



- prevent damage to public or private property and hazards to public health and safety.
- Obtain the disclosure of the applicant's identity.
- Assure the applicant's technical and financial capability.
- Obtain reimbursement of administrative and other costs in processing applications and monitoring construction, operation, maintenance, and termination of pipeline.
- Require bonds.
- Suspend or terminate the right-of-way, and when protecting public health or safety or the environment is needed, abate such activities prior to administrative proceedings.
- Require joint use of the right-of-way as practical for compatible purposes.
- Require: common carrier status except for regulated natural gas pipelines; common purchaser status for all oil and gas pipelines; and prorating proceedings for oil or gas produced from Federal lands or from resources on the Federal lands in the vicinity of the pipeline.
- Impose liability and indemnification standards, including liability without fault, on holders of rights-of-way.

The Secretary has actively administered Section 28 since its inception in 1920. In 1973, the Secretary's authority under Section 28 was updated by Congress. Since the latter date the most notable example of the exercise of the Secretary's authority under Section 28 has been the right-of-way granted in connection with the Trans Alaska Pipeline. Proposed regulations were published on March 2, 1978, in the Federal Register to fully implement the act. A copy of the proposed regulations (43 C.F.R. Part 2800) is enclosed. The provisions of the rulemaking indicate how we intend to proceed. Comments will be in shortly, after which we will analyze those comments and formulate the final notice.



Question: 1. (2) What the Department's powers are under Title V of the Federal Land Policy and Management Act of 1976, and how those powers have been exercised in the past?

Answer: 1. (2) Under Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. 1761-1771, the basic powers conferred upon the Secretary of the Interior are:

(a) the discretionary authority to issue "rights-of-way as defined by the statute, as well as temporary use authorizations or permits, in relation to the "public lands" which, in general are defined by the Act as Federally owned lands administered by the Secretary through the Bureau of Land Management, including acquired as well as public domain lands. The types of rights-of-way that are authorized are specified by the Act. In general, they are of a lineal nature. Section 28, Mineral Leasing Act rights-of-way are excluded. "Coal pipelines" to the extent that they would constitute a "slurry" or an "emulsion" system for the transportation and distribution of solid materials are expressly included.

(b) the discretionary power to authorize the acquisition, construction and maintenance of roads within and near the "public lands", as that term is generally defined above. Other ancillary powers are conferred on the Secretary in this connection;

(c) the discretionary authority to permit the use of lands, administered by the Secretary, by another Federal department or agency, subject to appropriate terms and conditions;

(d) the Act requires disclosure of all plans and information pertinent to right-of-way applications, including effects on competition.

In many respects the powers in Title V are comparable to those in Section 28 of the Mineral Leasing Act of 1920, as amended. The Department is in the process of promulgating regulations to implement Title V of the Federal Land Policy and Management Act of 1976. Since FLPMA is a new Act we have had only minimal experience in administering these particular provisions. However, to the extent that previous law gave the Secretary discretion and flexibility in issuance of rights-of-way, we have had considerable experience with such authority and have exercised our discretion to consider environmental and other resource impacts in making right-of-way decisions.



THURSDAY, MARCH 2, 1978  
PART VI



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DEPARTMENT OF  
THE INTERIOR

Land Management  
Bureau

■

RIGHTS-OF-WAY  
UNDER THE  
MINERAL LEASING  
ACT

Management of Oil and  
Natural Gas Pipelines  
and Related Facilities  
on Federal Lands and  
Reimbursement of Costs



8770

## PROPOSED RULES

[4310-84]

## DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 2880]

RIGHTS-OF-WAY UNDER THE  
MINERAL LEASING ACTManagement of Oil and Natural Gas  
Pipelines and Related Facilities on  
Federal Lands and Reimbursement  
of Costs

## ACTION: Proposed rulemaking.

**SUMMARY:** The purpose of this proposed rulemaking is to establish procedures for the management of oil and natural gas pipelines and related facilities on Federal lands. Section 28 of the Mineral Leasing Act, as amended, places the management responsibilities with the Secretary of the Interior.

**DATE:** Comments by May 1, 1978.

**ADDRESS:** Director (210), Bureau of Land Management, 18th and C Streets NW, Washington, D.C. 20240. Comments will be available for public review in Room 5555 at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION  
CONTACT:

Robert C. Bruce, 202-343-8735.

**SUPPLEMENTARY INFORMATION:** The principal author of this rulemaking is Bruce Conrad of the Bureau of Land Management, Division of Lands and Realty, assisted by the staff of the Division of Lands and Realty and Dave Grayson of the Office of the Solicitor, U.S.D.I.

Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449) as amended (30 U.S.C. 185) was enacted on November 16, 1973. This amendment authorizes the Secretary to grant rights-of-way for the construction of oil and gas pipeline projects with stipulations regulating the construction, operation, maintenance, and termination of the pipeline system. The responsibility for implementing Pub. L. 93-153 was delegated by the Secretary to the Director, Bureau of Land Management under Secretarial Order No. 3003.

Where the surface of the Federal lands involved in a proposed right-of-way or temporary use permit is under the jurisdiction of two or more Federal agencies, the Secretary is authorized, after consultation with the agencies, to grant or renew rights-of-way or temporary use permits through the Federal lands involved. The Secretary may enter into cooperative agreements with the involved Federal agencies for processing applications for right-of-way grants and temporary use permits to avoid duplication, to assign

responsibilities, and to assure that decisions are based upon sound environmental, economic, and social considerations.

The Secretary is responsible for determining the right-of-way width, duration of grant, performance bonding, liability limits, safety and health requirements, and environmental protection stipulations. He also is responsible for the collection of administrative costs from the applicant for processing the application and monitoring of the right-of-way grant by the Government, in addition to land rental fees for the use of the right-of-way area on Federal lands. The existing cost reimbursement provisions of 43 CFR 2802.1-2 have been incorporated by reference into these proposed regulations. Subpart 2802.1-2(a)(1)(1)(12) of this title has been deleted to eliminate the duplication of bonding requirements. The Secretary determines the financial and technical capability of the applicant, export limitations, common carrier rules, and the joint use of rights-of-way corridors.

In order to make room for all of the provisions of the new subpart 2880 dealing with rights-of-way under section 28 of the Mineral Leasing Act, it is necessary to redesignate two subparts of Part 2880. We are, therefore, redesignating Subpart 2882 as Subpart 2887 and revising it slightly for clarity. We are also redesignating 2883 as Subpart 2888. These redesignations will not only allow space for the new rewrite, but also for any new subparts pertaining to rights-of-way that might be needed in the future.

**NOTE:**—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis under Executive Order 11821 and OMB Circular A-107.

It is hereby determined that publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

Under section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), hereinafter referred to as the Act, it is proposed to amend Part 2880, Group 2800, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations, as follows:

**Subpart 2882 [Redesignated Subpart 2887]**

1. Subpart 2882 is redesignated Subpart 2887, and is revised to read as follows:

Section 29 of the act of February 25, 1920 (41 Stat. 449, 30 U.S.C. 185), provides in part that any permit, lease, occupation, or use permitted under this act shall reserve to the Secretary of the Interior the right to permit upon

such terms as he may determine to be just, for joint or several use, such easements or rights-of-way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this act, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes. Application for such easements or rights-of-way shall be filed in accordance with applicable laws and regulations.

**Subpart 2883 (§§ 2883.0-3—2883.2-4) [Redesignated as Subpart 2888]**

2. Subpart 2883 is redesignated Subpart 2888.

3. The heading to Part 2880 is revised and the following new Subparts 2880, 2881, 2882, 2883, and 2884 supersede existing Subpart 2881:

**PART 2880—RIGHTS-OF-WAY UNDER  
THE MINERAL LEASING ACT**

**Subpart 2880—Oil and Natural Gas Pipelines  
and Related Facilities, General**

**Sec.**

2880.0-3 Authority.  
2880.0-5 Definitions.  
2880.0-7 Scope.

**Subpart 2881—Terms and Conditions of Right-of-Way Grants and Temporary Use Permits**

2881.1 Nature of interest.

2881.1-1 Nature of right-of-way interest.

2881.1-2 Nature of temporary use permit interest.

2881.1-3 Reservation of rights to the United States.

2881.2 Terms and conditions of interest granted.

2881.3 Unauthorized occupancy.

**Subpart 2882—Applications**

2882.1 Pre-application activity.

2882.2 Requirements for applications for right-of-way grants and temporary use permits.

2882.2-1 Applicant qualifications.

2882.2-2 Application filing.

2882.2-3 Other data required.

2882.3 Application processing.

**Subpart 2883—Administration of Rights  
Granted**

2883.1 General requirements.

2883.1-1 Reimbursement of costs.

2883.1-2 Rental payments.

2883.1-3 Bonding.

2883.1-4 Liability.

2883.1-5 Common carrier.

2883.1-6 Export.

2883.2 Holder activity.

2883.3 Construction procedures.

2883.4 Operation and maintenance.

2883.5 Immediate temporary suspension of activities.

2883.6 Suspension and termination of right-of-way grants and temporary use permits.

2883.7 Change in Federal jurisdiction or disposal of lands.

2883.8 Restoration of Federal lands.

**Subpart 2884—Appeals**

2884.1 Appeals procedure.



## PROPOSED RULES

8771

**Subpart 2330—Oil and Natural Gas Pipelines and Related Facilities, General**

**§ 2380.0-3 Authority.**

The provisions of this subpart are issued under the authority of Section 23 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), unless otherwise noted.

**§ 2380.0-4 Definitions.**

(a) "Act" means Section 23 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185).

(b) "Agency head" means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, who has jurisdiction over the surface of Federal lands.

(c) "Applicant" means any individual, partnership, corporation, association, or other business entity, or any State or local governmental entity or agency, which applies for a right-of-way grant or temporary use permit under the Act.

(d) "Authorized officer" means any employee of the Department of the Interior to whom has been delegated the authority to perform the duties described in this part.

(e) "Federal lands" means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf.

(f) "Holder" means any individual, partnership, corporation, association, or other business entity, or any State or local governmental entity or agency which has received a right-of-way grant or temporary use permit under the Act.

(g) "Oil or gas" means oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom.

(h) "Temporary use permit" means a revocable nonpossessory privilege to use specified Federal lands in the vicinity of a right-of-way in connection with the construction, operation, maintenance, or termination of a pipeline or for the protection of the natural environment or public safety.

(i) "Pipeline" means a line of pipe traversing Federal land for transportation of oil or gas. The term includes trunk lines, gathering lines and related facilities.

(j) "Pipeline system" means all facilities, whether or not located on Federal land, used by a holder in connection with the construction, operation, maintenance, or termination of a pipeline.

(k) "Related facilities" means those structures, devices, improvements, and sites, the substantially continuous use of which is necessary for the operation or maintenance of a pipeline, which

are located on Federal lands, and which are authorized under the Act, including but not limited to: Supporting structures; airstrips; roads; campsites; gathering lines; pump stations, including associated heliports, structures, yokes, and jacking valves, and other control devices; surge and storage tanks; bridges; monitoring and communication devices and structures housing them; terminals, including structures, yards, docks, fences, and storage tank facilities; retaining walls, berms, dikes, ditches, cuts, and fills; structures and areas for storing supplies and equipment.

(l) "Right-of-way" means the Federal land authorized to be occupied pursuant to a right-of-way grant.

(m) "Right-of-way grant" means a nonpossessory, nonexclusive right to use Federal lands for the limited purpose of construction, operation, maintenance, and termination of a pipeline.

(n) "Secretary" means the Secretary of the Interior.

**§ 2380.0-7 Scope.**

(a) These regulations apply to any application now on file or hereafter filed with Federal agencies for issuance, modification, or renewal of a right-of-way grant or a temporary use permit, except where the surface of the Federal land involved in the right-of-way or temporary use permit area is under the jurisdiction of a single Federal agency, including bureaus and agencies within the Department of the Interior, other than the Bureau of Land Management.

(b) In addition, the provisions of § 2333.5 of this title apply to all right-of-way grants and temporary use permits heretofore issued pursuant to section 23 of the Mineral Leasing Act by the Bureau of Land Management, and to permits, grants, and other authorizations heretofore issued by the Secretary or his delegate in connection with the Trans-Alaska Oil Pipeline System (TAOPS).

**Subpart 2331—Terms and conditions of right-of-way grants and temporary use permits**

**§ 2331.1 Nature of Interest.**

**§ 2331.1-1 Nature of right-of-way interest.**

(a) The United States retains a right to use a right-of-way or authorize the use of it to others in any manner not inconsistent with pipeline construction, operation, maintenance, and termination. The holder of a right-of-way grant has no right to any of the products of the land including, but not limited to, timber, forage, mineral, and animal resources. The holder may not allow the use of a right-of-way by others except its contractors, subcontractors, or agents for purposes of construction, operation, maintenance, or termination of the pipeline.

(b) A holder shall not use a right-of-way for any purpose other than for the construction, operation, maintenance, and termination of the pipeline specified in the holder's right-of-way grant. A holder shall not locate or construct any other pipelines, including looping lines, or other improvements within a right-of-way without first securing appropriate authorization therefor.

(c) The width of a right-of-way shall be the width of the pipeline plus 25 feet on each side thereof unless the authorized officer determines that a greater or lesser width should be allowed.

(d) An applicant may apply to the authorized officer for a wider right-of-way in limited areas, if necessary: (1) for the operation and maintenance of the project after construction; (2) to protect the environment; or (3) to provide for the public safety. If the authorized officer finds that the additional width is necessary for one of the above reasons, he may authorize a wider width. Such authorization shall include a written report reciting the reasons why the additional width is necessary.

(e) A right-of-way grant issued or renewed under these regulations shall be limited to a reasonable term, not to exceed 30 years. No term shall be longer than is necessary to accomplish the purpose of the grant. The authorized officer shall determine the duration of each right-of-way grant, taking into consideration, among other things: (1) The cost of the facility, (2) its useful life, (3) any public purpose it serves, and (4) potentially conflicting uses of the land.

(f) Except where a right-of-way grant has terminated by its terms upon the occurrence of a fixed or agreed upon condition, event, or time, it shall be renewed if the project is being operated and maintained in accordance with all provisions of the right-of-way grant, these regulations and the Act.

(g) No purported transfer of an interest in a right-of-way grant, a right-of-way, or any portion of a pipeline system located within a right-of-way, shall be valid without the prior written approval of the authorized officer. Applications for such approval shall be directed to the authorized officer. Transferees must meet all the requirements of an original pipeline right-of-way grantee and must assume all of the transferor's responsibility to the United States with respect to the transferred interest and shall agree to be bound by all terms of any outstanding right-of-way grant or temporary use permit. Applications shall be accompanied by a nonrefundable fee of \$50.



### § 2881.1-2 Nature of temporary use permit interest.

(a) A temporary use permit does not grant any interest in land and is revocable at will by the authorized officer.

(b) The area covered by a temporary use permit shall be no greater than is necessary to accommodate the authorized use or to protect the environment or provide for public safety.

(c) The duration of a temporary use permit shall ordinarily be short and never longer than is necessary to accomplish the authorized purpose.

(d) A temporary use permit may be renewed at the discretion of the authorized officer, but the permittee has no right of renewal.

(e) A temporary use permit is not transferable.

### § 2881.1-3 Reservation of rights to the United States.

All rights in land subject to a right-of-way grant or temporary use permit not expressly granted are retained by the United States. These rights include but are not limited to: (a) a continuing right of access to all Federal lands (including the subsurface and air space); (b) a continuing right of physical entry to any part of the pipeline system for inspection, monitoring, or for any other purpose or reason consistent with any right or obligation of the United States under any law or regulation; and (c) the right to make, issue, or grant right-of-way grants, temporary use permits, easements, leases, licenses, contracts, patents, permits, and other authorizations to or with third parties for compatible uses on, under, above, or adjacent to the Federal lands subject to a right-of-way grant or temporary use permit.

### § 2881.2 Terms and conditions of interest granted.

(a) All right-of-way grants and temporary use permits issued, renewed, or amended under these regulations shall contain such terms, conditions, and stipulations as may be prescribed by the authorized officer regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination. The authorized officer shall impose stipulations which shall include but shall not be limited to: (1) requirements for restoration, revegetation, and curtailment of erosion of the surface of the land; (2) requirements to insure that activities in connection with the right-of-way grant or temporary use permit will not violate applicable air and water quality standards or related facility siting standards established by or pursuant to law; (3) requirements designed to control or prevent damage to the environment (including damage to fish and wildlife habitat), damage to public or private property, and hazards to public health and safety; and (4) requirements to protect the interests of

individuals living in the general vicinity of the right-of-way or temporary use permit area who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.

(b) Right-of-way grants or temporary use permits issued, renewed, or amended under this Act shall include requirements that will protect the safety and health of pipeline workers and the general public, including, but not limited to, protection against the sudden rupture and slow degradation of the pipeline. Applicants and holders shall design, construct, operate, and maintain all facilities in accordance with all Federal, State, and local laws and ordinances governing pipelines and pipeline construction.

### § 2881.3 Unauthorized occupancy.

No holder of a right-of-way grant or temporary use permit shall use or allow any other person to use the right-of-way or temporary use permit area for any purpose not authorized by the right-of-way grant or temporary use permit. Any person occupying or using Federal land without authorization is subject to prosecution and liability under applicable status prohibiting trespass.

## Subpart 2882—Applications

### § 2882.1 Pre-application activity.

(a) Upon determining that a proposed pipeline project is contemplated which would cross Federal lands under the jurisdiction of the Department of the Interior, or two or more Federal agencies, the proponent of such project is encouraged to promptly notify the appropriate office identified in § 2882.2-2 or the Secretary.

(b) The authorized officer will provide guidance to the pipeline project proponent as to: (1) routing constraints which exist because of current land status as reflected in land use plans and land status records; (2) necessary information to be included in applications for right-of-way grants or temporary use permits; (3) qualifications required of applicants; and (4) identification of on-the-ground investigations which will require temporary use permits.

(c) No right-of-way application processing work, other than that incurred in the processing of temporary use permits under paragraph (d) of this section shall be undertaken by the authorized officer prior to the filing of an acceptable application together with advance payment as required by § 2802.1-2 of this title. Such work includes, but is not limited to, special studies such as environmental analyses, environmental impact statements, engineering surveys, resource inventories, and detailed land record analyses.

(d) No surveys or other preconstruction activities may be conducted on

Federal lands prior to the issuance of a right-of-way grant except pursuant to temporary use permits or other appropriate authorizations.

### § 2882.2 Requirements for applications for right-of-way grants and temporary use permits.

#### § 2882.2-1 Applicant qualifications.

(a) An applicant for a right-of-way grant or temporary use permit must be a citizen of the United States, an association of such citizens, a corporation organized under the laws of the United States, or of any State or Territory thereof, or a State or local government. Each applicant, other than individual citizen applicants, or State or local governments or agents or instrumentalities thereof, shall state that no citizen of another country whose laws, customs, or regulations deny similar or like privileges to citizens of corporations of this country, shall by stock ownership, stockholding, or stock control, own any interest in the right-of-way if it is authorized. Each applicant corporation shall identify, to the extent of its knowledge, all foreign individuals or entities who directly or indirectly own over 1 percent of its voting shares, or who would by law, directly or indirectly, own any interest in the right-of-way if it were authorized, and shall provide the name, address, and country of citizenship of each such individual or entity.

(b) An application by a private corporation shall be accompanied by a copy of its charter or articles of incorporation, duly certified by the proper State official where the corporation was organized and a copy of its bylaws, duly certified by the secretary of the corporation.

(c) A corporation, other than a private corporation, shall file a copy of the law under which it was formed and provide proof of organization under the same, and a copy of its bylaws, duly certified by the secretary of the corporation.

(d) When a corporation is operating in a State other than that in which it is incorporated, it shall submit a certificate from the Secretary of State or other proper official of that State indicating that it has complied with the laws of the State governing foreign corporations to the extent required to entitle the company to operate in such State, and that the corporation is in good standing under the laws of that State.

(e) A copy of the resolution by the directors of the corporation, authorizing the filing of the application shall also be filed.

(f) If the corporation has previously filed with the Department the papers required by this subsection, the requirements shall be held to be met if, in making subsequent applications,



specific references are made to such previous filing by date, place, and case number, and if there have not been any amendments or revisions of the corporation's charter, articles of incorporation, or bylaws.

(g) If the applicant is a partnership, association, or other unincorporated entity, the application shall be accompanied by a certified copy of the articles of association or other similar document creating the entity, if any. The application shall be signed by each partner or member of the entity, and each shall furnish the evidence of qualification which would be required if the partner or member were applying separately.

(h) If the applicant is a State or local government, or agency or instrumentality thereof, the application shall be accompanied by a statement to the effect and a copy of the law, resolution, order, or other authorization under which the application is made.

(i) Each application by a partnership, corporation, association, or other business entity shall disclose the identity of the participants in the entity and shall include where applicable: (1) The name, address, and citizenship of each participant (partner, associate or other); (2) the name, address, and citizenship of each shareholder owning 3 percent or more of each class of shares, together with the number and percentage of any class of voting shares of the entity which each shareholder is authorized to vote; and (3) the name and address of each affiliate controlled by, or that controls, the entity, either directly or indirectly. Where an affiliate is controlled by the entity, the application shall disclose the number of shares and the percentage of each class of voting stock of that affiliate owned, directly or indirectly, by the entity. If an affiliate controls the entity, the number of shares and the percentage of each class of voting stock of the entity owned, directly or indirectly, by the affiliate shall be included. In the case of an affiliate that directly or indirectly controls the entity, the application shall include the name and address of each participant (partner, associate, or other) in the affiliate or, if the affiliate is a corporation, the name, address and citizenship of each shareholder owning 3 percent or more of all shares together with the number and percentage of each class of voting shares of the entity which each shareholder is entitled to vote.

#### § 2832.2 Application filing.

(a) Applications for right-of-way grants and temporary use permits shall be filed as follows: (1) Where the Federal lands involved are under the jurisdiction of the Bureau of Land Management, Department of the Interior, application shall be filed with any State Office of the Bureau of Land Management that has jurisdiction over the Federal lands involved.

(2) Where the Federal lands involved are under the jurisdiction of two or more agencies of the Department of the Interior, or where the Federal lands involved are under the jurisdiction of one or more agencies of the Department of the Interior and one or more other Federal agencies, or where the Federal lands involved are under the jurisdiction of two or more non-Interior agencies, the initial application may be filed at the most convenient State Office of the Bureau of Land Management, at locations listed in § 1821.2-1 of this title. The Director, Bureau of Land Management, will, upon notice of the application by field officials, assign a lead official and notify the applicant where all future communications concerning the project should be directed.

(3) Where the Federal lands involved are under the jurisdiction of but one Federal agency, including Bureau and agencies within the Department of the Interior other than the Bureau of Land Management, applications should be directed to that agency.

(b) Applications filed with Federal agencies, such as the Federal Energy Regulatory Commission, to obtain a license, certificate, or other authority for a project which involves rights-of-way over, upon, under, or through Federal lands must be simultaneously filed with the Bureau of Land Management in accordance with the provisions of § 2832.2-3(a).

(c) Each application for a right-of-way grant or temporary use permit will show that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the project for which the right-of-way grant or temporary use permit is requested. The application shall state the facts and contain supporting documents which demonstrate the applicant's capabilities.

(d) If there are any related right-of-way grant or temporary use permit applications pending, or if the applicant's plans include application for additional pipeline rights-of-way or temporary use permits, the application for a right-of-way grant or temporary use permit shall so indicate and refer to any previous applications.

(e) Applications for right-of-way grants and temporary use permits shall be filed on forms approved by the Director or appropriate agency head, shall be legible, and shall set forth the information required by § 2832.2(f).

(f) Each application for a right-of-way or temporary use permit shall contain the following:

(1) The name and address of the applicant and, if the applicant is not an

individual, the name and address of the applicant's agent who is authorized to receive notice of actions pertaining to the application.

(2) A general description of the proposed pipeline system, including elements of the project which may be constructed on non-Federal lands.

(3) A general description of all Federal lands which would be involved in the pipeline system, with a statement identifying the Federal agencies concerned.

(g) Following the filing of an application for a right-of-way grant or temporary use permit, the authorized officer may require the applicant to furnish such additional information as he deems necessary.

#### § 2832.2-3 Other data required.

(a) Each application for a right-of-way grant or temporary use permit shall include high quality and detailed maps of the project.

(b) Each application for a right-of-way grant or temporary use permit shall include a project description which contains plans for construction, operation, maintenance, and termination of the pipeline. The project description shall be in an acceptable format as determined by the authorized officer, and in sufficient detail to enable the authorized officer to determine the feasibility of the pipeline, the benefits to the public from the proposed pipeline, the pipeline safeguards, and whether the proposal complies with these regulations and the Act. The project description shall include at least the following data:

(1) A detailed description of the proposed pipeline system.

(2) A detailed schedule for construction of all facilities including manpower requirements.

(3) A plan for the protection and rehabilitation of the environment during construction, operation, maintenance, and termination of the pipeline.

(4) An oil spill contingency plan to repair any rupture during operation and for containment of effluent and for restoration of damage.

(5) A detailed description of the pipeline construction techniques to be used.

(6) Total estimated construction costs.

(7) A description of the applicant's alternate route considerations.

(c) Each applicant for a right-of-way grant or temporary use permit shall furnish sufficient data to enable the authorized officer to identify the impacts on the environment of the construction, operation, maintenance, and termination phases of the proposed pipeline system, including, but not limited to:

(1) The changes in the surface of the land;



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- (2) The effect on air quality;
- (3) The effect on water quality;
- (4) Damages to or changes in vegetation;
- (5) Changes in fish and wildlife habitat;
- (6) The risk of damage to public or private property;
- (7) The risk of hazards to public health and safety;
- (8) The effect of the proposed pipeline on individuals living in its general vicinity who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes.

(d) After review of the applicant's project description required under § 2882.2-3(b), the authorized officer may require the applicant to perform additional studies or submit additional environmental data, or both, so as to enable the agency head or the Secretary or his authorized representative to prepare an environmental statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and comply with the requirements of the National Historic Preservation Act of 1966 (16 U.S.C. 470); the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.); Executive Order 11593, "Protection and Enhancement of the Cultural Environment" of May 13, 1971 (36 FR 8921); "Procedures for the protection of historic and cultural properties" (36 CFR Part 300) and other laws and regulations as applicable.

(e) If the proposed right-of-way or temporary use permit area is within a Federal reservation, the applicant shall submit additional data as required by the authorized officer to assist the Secretary in determining whether the right-of-way grant or temporary use permit would be inconsistent with the purposes of the reservation.

#### § 2882.3 Application processing.

(a) The Secretary shall notify the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources promptly upon receipt of an application for a right-of-way grant for a pipeline 24 inches or more in diameter and no right-of-way grant for such a pipeline shall be issued until 60 days (not counting days on which the House of Representatives or the Senate has adjourned for more than 3 days) after a notice of intention to issue the right-of-way grant, together with the authorized officer's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

(b) Upon receipt of an application for a right-of-way grant, the authorized officer shall publish a notice of

the application in the *FEDERAL REGISTER* and an announcement in a newspaper or newspapers having general circulation in the vicinity of the lands affected or, if in the opinion of the authorized officer, the pipeline impacts are of a minor nature, the notice of application may be waived or published only in a newspaper having general circulation in the area or areas in the vicinity of the affected Federal lands. The notice shall contain a general description of the application and the Federal lands to be affected, together with such other information as the authorized officer deems pertinent. The notice shall state where the application and related documents will be held available for interested persons to review. Copies of the notice shall be sent to the Governor of each State within which the pipeline system would be located, the head of each local government or jurisdiction within which the pipeline system would be located, and each agency head.

(c) Where an application for a right-of-way grant or temporary use permit is incomplete or not in conformity with the law or regulations, the authorized officer may reject the application or notify the applicant of the deficiencies and afford the applicant an opportunity to correct them. Where deficiency notices have not been adequately complied with, the authorized officer may reject the application or notify the applicant of the continuing deficiencies and afford the applicant an opportunity to correct them.

(d) The authorized officer may require the applicant for a right-of-way grant or temporary use permit to submit such additional information as he deems necessary for review of the application.

(e) An application for a right-of-way grant or temporary use permit which meets the requirements of the Act and of these regulations entitles the applicant only to full review of the application. Such application may be denied if the authorized officer determines that the right-of-way or use applied for would be inconsistent with the purpose to which the Federal lands involved have been committed, or would otherwise not be in the public interest.

(f) The authorized officer shall hold public meetings or hearings on an application for a right-of-way grant or temporary use permit if he determines that sufficient public interest exists to warrant the time and expense of such meetings or hearings. Notice of any such meetings or hearings shall be published in the *FEDERAL REGISTER* and in local newspapers.

(g) If the application involves a right-of-way through lands under the jurisdiction of two or more Federal agencies, the authorized officer shall refer the application to the agency

heads for consultation and other appropriate actions.

(h) The authorized officer shall consult as appropriate with other agencies as to the application, any additional information which should be required from the applicant, conditions or stipulations which should be imposed, and whether the right-of-way grant or temporary use permit should be issued.

(i) No right-of-way grant or temporary use permit over lands under the jurisdiction of two or more Federal agencies and not within the jurisdiction of the agency by which the authorized officer is employed will be issued by the authorized officer without the concurrence of the heads of the agencies administering such lands or his authorized representative.

(j) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary may, after consultation with the non-Interior agencies involved, grant or renew a right-of-way or temporary use permit through the Federal lands involved, with or without the concurrence of the heads of the agencies administering such lands. A right-of-way through a Federal reservation shall not be granted if the Secretary determines that it would be inconsistent with the purposes of the reservation.

(k) A right-of-way grant or temporary use permit need not conform to the applicant's proposal, but may contain such modifications, terms, stipulations or conditions including changes in route site location as the authorized officer may deem appropriate.

(l) No right-of-way grant or temporary use permit shall be considered as being in effect until the applicant has accepted in writing the terms and conditions of the grant or temporary use permit. Written acceptance shall constitute a contract between an applicant and the United States that, in consideration of the right to use Federal lands, the applicant shall abide by all terms and conditions contained therein and the provisions of applicable laws and regulations.

(m) At the discretion of the authorized officer, a provision may be placed in a right-of-way grant or temporary use permit requiring that no construction or use shall occur until detailed construction or use plans have been submitted to the authorized officer and a notice to proceed has been issued. This requirement may apply to the entire pipeline or segments thereof.

(n) The authorized officer shall take into consideration and, to the extent practical, comply with applicable State standards for right-of-way construction, operation, and maintenance.



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## Subpart 2333—Administration of rights granted

## § 2883.1 General requirements.

## § 2883.1-1 Reimbursement of costs.

Reimbursement of costs for application processing and administration of right-of-way grants and temporary use permits shall be made in accordance with § 2802.1-2 of this title.

## § 2883.1-2 Rental payments.

Holders of right-of-way grants and temporary use permits shall pay annually, in advance the fair market rental value of the right-of-way or temporary use permit area as determined by the authorized officer.

## § 2883.1-3 Bonding.

The authorized officer may require a holder of a right-of-way grant or temporary use permit to furnish a bond, or other security satisfactory to him, to secure all or any of the obligations imposed by the right-of-way grant and temporary use permits and applicable laws and regulations.

## § 2883.1-4 Liability.

(a) Holders of right-of-way grants or temporary use permits shall pay the United States the full value for all injury or damages to Federal lands or other property of the United States caused by the holder or by its employees, contractors, or employees of the contractors, and shall indemnify (or hold harmless) the United States against any liability for damage to life or property arising from the authorized occupancy or use. *Provided, however,* That where a right-of-way grant is issued to a State, or local government or any agency or instrumentality thereof, which has no legal power to assume such liability with respect to damages caused by it to lands or property, such State or local government or agency in lieu thereof will be required to repair all damages.

(b) Holders of right-of-way grants and temporary use permits issued under these regulations shall be subject to liability without fault for injury and damage to the land and property of the United States and for costs, such as fire control, abatement of oil spills, etc., up to a specified maximum limit commensurate with the foreseeable risks or hazards presented. The amount of no-fault liability for each occurrence is hereby limited to no more than \$1,000,000. Liability for damage, injury, and costs in excess of this amount will be determined by ordinary rules of negligence.

## § 2883.1-5 Common carriers.

(a) Pipelines shall be constructed, operated, and maintained as common carriers. The owners or operators of pipelines shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipe-

line without regard to whether such oil or gas was produced on Federal or non-Federal lands. In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported, or purchased.

(b) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality. Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipeline companies is offered for sale, each pipeline company shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(c) The authorized officer shall require, prior to issuing or renewing a right-of-way grant, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which the authorized officer deems necessary to determine whether a right-of-way grant shall be issued or renewed and the terms and conditions which should be included in the grant. Such information may include, but is not limited to:

- (1) Conditions for, and agreements among, owners or operators regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand;
- (2) Conditions for adding or abandoning intake, offtake, or storage points or facilities; and
- (3) Minimum shipment or purchase tenders.

## § 2883.1-6 Export.

With certain exceptions, domestically produced crude oil transported through a pipeline is subject to the provisions of Section 28(u) of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 U.S.C. 185), and the Export Administration Act of 1969 as amended (50 U.S.C. 2401), and may not be exported without Presidential and congressional approval.

## § 2883.2 Holder activity.

(a) The actions of holders of right-of-way grants or temporary use permits shall be regulated by the appropriate agency head having jurisdiction over the Federal lands involved, unless other arrangements are agreed to by the authorized officer and agency head.

(b) An applicant shall promptly notify the authorized officer of any changes in its plans, financial condition, or other factors relevant to the application, and shall modify the application promptly to reflect any such changes. If the requirements of this subsection are not complied with in the opinion of the authorized officer, he may reject the application.

(c) Any proposed change in the route of the pipeline or change in the use of Federal lands under the Act will require an amended or new right-of-way grant or temporary use permit from the authorized officer. Any unauthorized activity may be subject to prosecution under applicable statutes and liability for trespass.

(d) Holders of pipeline right-of-way grants issued before November 16, 1973, must apply under the Act and these regulations for modifications of the route or change in the use of Federal lands in connection with such right-of-way.

(e) The authorized officer may ratify or confirm a right-of-way grant or temporary use permit that was issued under any provision of law if the right-of-way grant or temporary use permit is modified to comply with the provisions of the Act and regulations. Such modifications are subject to the joint approval of the right-of-way holder and the authorized officer.

## § 2883.3 Construction procedures.

(a) Unless otherwise stated in the right-of-way grant or temporary use permit, construction may proceed immediately after delivery to the authorized officer of the applicant's written acceptance of the right-of-way grant or temporary use permit.

(b) If a notice to proceed requirement has been imposed under § 2882.3(m), the holder shall initiate no construction, occupancy, or use until the authorized officer issues an appropriate notice to proceed.

## § 2883.4 Operation and maintenance.

(a) Prior to the beginning of pipeline operations, the holder shall submit to the authorized officer a certification of construction, verifying that the pipeline system has been constructed and tested in accordance with the terms of the right-of-way grant, and in compliance with any required plans and specifications, and applicable Federal and State laws and regulations.

## § 2883.5 Immediate temporary suspension of activities.

(a) If the authorized officer determines that any activity being conducted or tolerated by a holder within a right-of-way or temporary use permit area is endangering public health or safety or the environment, he shall order the immediate suspension of that activity.



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(b) The authorized officer may order immediate suspension of an activity in respect of any section that has been or is being taken by another Federal agency or a State agency.

(c) The authorized officer may give an immediate suspension order orally or in writing at the site of the activity to the holder or a contractor or subcontractor of the holder, or to any representative, agent, employee, or contractor of any of them, and the suspended activity shall cease at that time. As soon as practicable, the authorized officer shall confirm the order by a written notice to the holder addressed to the holder or the holder's designated agent.

(d) An order of temporary suspension of activities shall remain effective until the authorized officer issues an order permitting resumption of activities.

(e) At any time after an order of suspension has been issued, the holder may file with the authorized officer a request for permission to resume. The request shall be in writing and shall contain a statement of the facts supporting the request.

(f) The authorized officer may render an order to either grant or deny the request to resume 5 working days of the date the request is filed. If the authorized officer does not render an order on the request within 5 working days, the request shall be considered denied, and the holder shall have the same right to appeal the denial as if an order denying the request had been issued.

**§ 283.6 Suspension and termination of right-of-way grants and temporary use permits**

(a) If the right-of-way grant or temporary use permit provides by its terms that it shall terminate on the occurrence of a fixed or agreed-upon condition or event, the right-of-way grant or temporary use permit shall thereupon automatically terminate by operation of law, unless some other procedure is specified in the right-of-way grant or temporary use permit.

(b) The authorized officer may institute procedures for suspension or termination of a right-of-way grant or temporary use permit if he determines that:

(1) The holder is unwilling, unable or has failed to comply with any term,

condition, or stipulation of the right-of-way grant, temporary use permit or applicable laws or regulations.

(2) The holder has deliberately failed to use the right-of-way for the purpose for which it was granted or renewed for a continuous 2-year period.

(c) Where the authorized officer determines that a situation under § 283.6(b) exists, he shall give notice to the holder, and refer the matter to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge pursuant to 43 CFR Part 4. The authorized officer shall suspend or terminate the right-of-way grant if the Administrative Law Judge determines that grounds for suspension or termination exist and that such action is justified.

**§ 283.7 Change in Federal jurisdiction or disposal of lands.**

(a) Where a right-of-way administered under these regulations traverses Federal lands that are transferred from one Federal agency to another, the transfer shall not operate to terminate or modify the right-of-way or the right-of-way grant, unless otherwise provided by law. The Secretary shall continue to administer the right-of-way and the right-of-way grant, including renewals thereof, and collection of rentals and other payments, unless the transfer instrument provides otherwise. Temporary use permits shall likewise continue under the Secretary's administration, except where otherwise provided by law or by the instrument of transfer.

(b) Where a right-of-way administered under these regulations traverses Federal lands that are transferred out of Federal ownership, the transfer shall not operate to terminate or modify the right-of-way, unless otherwise provided by law, and the new owner of the land shall take title thereto subject to the right-of-way. Unless otherwise provided by law or by the instrument of transfer, the Secretary shall continue to administer the right-of-way and the right-of-way grant, including renewals thereof and collection of rentals and other payments. Temporary use permits shall terminate upon such transfer.

**§ 283.8 Restoration of Federal lands.**

(a) Upon termination of a right-of-way grant or temporary use permit

and in the absence of any agreement to the contrary, if all moneys due the Federal Government thereunder have been paid, the holder of the right-of-way grant or temporary use permit shall be allowed 6 months or such additional time as may be granted in which to remove from the right-of-way or temporary use permit area all property or improvements of any kind placed thereon; but if not removed within the time allowed, all such property and improvements may be removed and disposed of by sale or otherwise by the authorized officer at the holder's sole expense. The holder of the right-of-way grant or temporary use permit shall be liable for all costs incurred by the United States to dismantle and/or remove the property and improvements from Federal lands and to restore the lands to a condition acceptable to the authorized officer.

(b) Upon termination of a right-of-way grant or temporary use permit by expiration or by cancellation, the holder shall restore the lands to a condition satisfactory to the authorized officer. The holder shall furnish the United States security sufficient to assure performance of this obligation; the security shall not be released by the authorized officer until he determines that there has been satisfactory compliance with this obligation.

**Subpart 2834—Appeals**

**§ 2834.1 Appeals procedure.**

(a) All appeals under this section shall be taken in accordance with Part 4 of 43 CFR from any final decision of the authorized officer to the Office of the Secretary, Board of Land Appeals.

(b) All actions taken under this section shall remain effective pending any appeal taken unless the Secretary or his delegate rules otherwise, and the provisions of 43 CFR 4.21(a) shall not apply to such appeals.

**§ 2802.1-3 [Amended]**

4. Section 2802.1-2(a)(11) and (12) of Subpart 2802 of this title are hereby deleted.

GUY R. MARTIN,  
Assistant Secretary of  
the Interior.

FEBRUARY 27, 1978.

(FR Doc. 78-6313 Filed 3-4-78; 8:45 am)



Question: 1. (3) Under the above laws, what type of interest is conveyed by the Department?

Answer: 1. (3) Section 28 of the Mineral Leasing Act of 1920 does not define the term "right-of-way". However, the term as applied to section 28 rights-of-way has been defined in the Department's regulations at 43 C.F.R. 2800.0-5 (i) as including a "... license, permit or easement, as the case may be, and where applicable, includes 'site'." The same regulations also provide at 43 C.F.R. 2801.1-1 that: "No interest. . . shall give the holder thereof any estate of any kind in fee in the lands. The interest granted shall consist of an easement, license or permit in accordance with the terms of the applicable statute; no interest shall be greater than a permit revocable at the discretion of the authorized officer unless the applicable statute provides otherwise". The regulations in Part 2800 currently are under revision. The revised regulations which have been published as proposed rulemaking, define the grant as "a nonpossessory, nonexclusive right to use Federal lands for the limited purpose of construction, operation, maintenance and termination of a pipeline." Section 2881.1 of the proposed regulations sets forth the "nature of interest" granted at some length. See the enclosed copy.

The Federal Land Policy and Management Act of 1976, in section 103(f) thereof, 43 U.S.C.A. 1702(f), defines a right-of-way as including "an easement, lease, permit, or license to occupy, use, or traverse public lands granted for the purpose listed in Title V of this Act." Regulations implementing this provision have not been issued to date. The definition of "public lands" is generally discussed above in item 2. (1)(a). A specific definition of that term will be found in the statute at section 103(e), 43 U.S.C.A. 1702(e).

We are granting rights-of-way and other interests for a maximum of 30 years, subject to renewal in appropriate cases.



- Question: 1. (4) (a) What is the extent of the Federal Government's ownership of coal deposits? Where are they?
- (b) How much of the coal deposits are leased for mining purposes?
- (c) Who controls the leases?
- (d) What companies are now leasing those deposits for mining purposes?
- (e) Could you give us some idea on the terms of the outstanding leases?
- (f) Do you have any data on the market distribution of the coal being mined subject to government leases?

Answer: 1. (4) (a) The United States has mineral interests in over 100 million acres of land prospectively valuable for coal. Of this 100 million acres, approximately 12 million acres are in known recoverable coal resource areas. This is predominantly concentrated in the States of Colorado, Montana, North Dakota, New Mexico, Utah, and Wyoming. Due to checkerboarding and complex land ownership patterns in the west, it would be reasonable to assume that 85 percent of all coal in known recoverable coal resource areas in the above States (including Federal and non-Federal coal) is influenced or controlled by the Federal Government. Federal ownership of coal in the midwestern and eastern states is relatively minor although several million acres of coal land are owned by the Federal Government on eastern acquired land.

We have attached two charts designated Tables 1-28 and 1-31 that set out the estimated tonnage of recoverable coal reserves on Federal lands committed to leasing and that indicate where the Federal coal is located.

(b) Nearly 800,000 acres or 8 percent of the 12 million acres in known recoverable coal resource areas are under lease representing about 16.9 billion tons of coal. Approximately 76 percent of the existing 531 leases are in Utah, Colorado, Wyoming.

(c) Twenty lease holders hold 65 percent of the Federal acreage under lease. The remainder of leases are held by numerous corporations, partnerships and individuals. The top 20 leases and percentage of leased acreage are listed in an attached chart and additional lessees are shown on a second list attached.



(d) There are 41 producing companies operating 28 underground and 29 surface operations involving Federal leases. The following companies may or may not be subsidiaries of the companies listed as major holders under question (c) above. The following list includes only producing companies. There are other outstanding leases which are not producing.

|                              |                           |
|------------------------------|---------------------------|
| Kaiser Steel Corp.           | Republic Steel Co.        |
| Peabody Steel Co.            | Western Slope Carbon      |
| U.S. Steel Corp.             | Atlantic Richfield Co.    |
| Utah Power & Light           | Roult Mining Corp.        |
| Plateau Mining Co.           | Henry L. & Eugene WE      |
| Swisher Coal Co.             | Energy Fuels Corp.        |
| Franklin Real Estate         | Mid-Cont. Coal & Coke     |
| Sunoco Energy Development    | Henrietta Mines, Inc.     |
| Wyodak Resources Development | Knife River Coal Mine     |
| Meadowlark Farms, Inc.       | Divide Coal Mine Co.      |
| Arch Mining Corp.            | Decker Coal Co.           |
| Rosebud Coal Sales           | North Amer. Coal Corp.    |
| Energy Development Corp.     | Western Energy Co.        |
| Pacific Power & Light        | Western Coal Co.          |
| Medicine Bow Coal Co.        | Pittsburg & Midway (Gulf) |
| Stansbury Coal Company       | Garland Coal & Mining     |
| Kemmerer Coal Co.            | Mamdrone Mining Co.       |
| Bridger Coal Co.             | California Portland       |
| Peavely-Smith                | Westmoreland Resource     |
| Leeco, Inc.                  | Utah International I      |
| Gulf Oil Corp.               |                           |

(e) Outstanding leases have been issued over a period of 50 years. They are subject to readjustment in 20 year intervals from the date of issuance. Leases issued under the Federal Coal Leasing Amendments Act of 1975 are adjusted at 10 year intervals after one 20 year primary term. New terms and conditions are put on them at this time. Many existing leases require royalties of 17.5¢ or 22.5¢ per ton. More recent leases have ad valorem royalties approaching 8% for underground leases and 12½% for surface mines. A 12½% royalty for surface mines is required by the Federal Coal Leasing Amendments Act of 1975. All leases must be producing in commercial quantities prior to August 4, 1986 or be terminated. Even before enactment of the Surface Mining Control and Reclamation Act of 1977 environmental stipulations on old leases as well as recent leases required reclamation and proper land restoration. Now all leases are also subject to the additional requirements and enforcement mechanisms of "The Surface Mining Control and Reclamation Act of 1977."

Enclosed are copies of a lease offer and a lease form including routine terms and conditions. Other special terms and conditions are developed to address particular concerns or land use conflicts that arise in connection with issuance of each individual lease.



(f) Much coal mined under a Federal lease is distributed to electric power facilities in the west. Frequently, a Federal lease comprises only a portion of a producing logical mining unit. Federal coal is also distributed to California and export markets, as well as to Eastern and Southern states such as Tennessee and Texas. The Department of Energy keeps data on the market distribution of coal. Approximately 42% of western production for fiscal year 1977 is attributable to Federal leases.



**Table 1-28**  
**Recoverable Coal Reserves on Federal Lands Committed to Leasing and**  
**Projected Production from Federal Coal Lease Lands**  
**for 1975 through 1990**

| State                     | Total                                                 | Production                  | Production                  | Production                  | Production                  |
|---------------------------|-------------------------------------------------------|-----------------------------|-----------------------------|-----------------------------|-----------------------------|
|                           | Recoverable                                           | 1975                        | 1980                        | 1985                        | 1990                        |
|                           | Tons                                                  | Estimated                   | Estimated                   | Estimated                   | Estimated                   |
|                           | Committed<br>to Lease<br>Million<br>Tons <sup>1</sup> | Million<br>Tons<br>Per Year | Million<br>Tons<br>Per Year | Million<br>Tons<br>Per Year | Million<br>Tons<br>Per Year |
| Colorado                  | 2,540                                                 | 8.4                         | 21.6                        | 32.0                        | 39.2                        |
| Montana                   | 1,973                                                 | 12.0                        | 24.6                        | 47.2                        | 62.3                        |
| New Mexico                | 897                                                   | 2.1                         | 3.5                         | 4.7                         | 5.3                         |
| North Dakota              | 268                                                   | 3.0                         | 6.3                         | 27.4                        | 41.5                        |
| Utah                      | 4,203                                                 | 3.2                         | 20.2                        | 21.7                        | 35.3                        |
| Wyoming                   | 16,510                                                | 15.5                        | 65.0                        | 84.5                        | 97.7                        |
| Other States <sup>2</sup> | 260                                                   | 2.6                         | 2.1                         | 2.7                         | 3.4                         |
| <b>Total</b>              | <b>26,651</b>                                         | <b>96.8</b>                 | <b>143.3</b>                | <b>220.2</b>                | <b>284.7</b>                |

<sup>1</sup>Total surface and underground minable recoverable coal under Federal coal lease and preference right lease applications for which coal reserves have been calculated. Includes no reserves for coal prospecting permits.

<sup>2</sup>Other states include Alabama, Alaska, California, Kentucky, Ohio, Oklahoma, Oregon, Washington and West Virginia.

Source: BLM January 27, 1974, Coal Lease Analysis, 1974.

**Table 1-31**  
**States with Major Federal Coal Acreages**

| State         | Federal Coal <sup>1,2</sup> |         | Non-Federal Coal |         | Total <sup>2,3</sup> |
|---------------|-----------------------------|---------|------------------|---------|----------------------|
|               | Million<br>Acres            | Percent | Million<br>Acres | Percent | Million<br>Acres     |
| Alaska        | 23.4                        | 97      | .8               | 3       | 24.2                 |
| Colorado      | 8.7                         | 53      | 7.9              | 47      | 16.6                 |
| Montana       | 24.6                        | 75      | 8.2              | 25      | 32.8                 |
| New Mexico    | 5.5                         | 59      | 3.9              | 41      | 9.4                  |
| North Dakota  | 5.6                         | 25      | 16.8             | 75      | 22.4                 |
| Oklahoma      | .4                          | 4       | 8.9              | 96      | 9.3                  |
| Utah          | 4.1                         | 82      | .9               | 18      | 5.0                  |
| Wyoming       | 11.8                        | 65      | 10.7             | 35      | 30.5                 |
| <b>Totals</b> | <b>92.1</b>                 |         | <b>58.1</b>      |         | <b>150.2</b>         |

<sup>1</sup>Southwestern Energy Study, Appendix J, p 48, 1972.

<sup>2</sup>BLM State Office Estimates

<sup>3</sup>Averitt, Paul, Coal Resources of the U.S., January 1, 1967: U.S. Geological Survey Bulletin 1275, p. 32, 1969.



|                                                                   |        |
|-------------------------------------------------------------------|--------|
| 1. Peabody Coal Co.<br>(Kennecott cooper Co.)                     | 10.7%  |
| 2. Garland Coal & Mining Co.                                      | 5.9    |
| 3. Consolidation Coal Co. (Continental Oil Co.)                   | 5.8    |
| 4. Resources Co. et al (Ariz. Pub. Serv. & San Diego Gas & Elec.) | 5.0    |
| 5. Pacific Power & Light                                          | 4.5    |
| Top 5 Total                                                       | 31.9%  |
| 6. El Paso Natural Gas                                            | 3.5%   |
| 7. Utah International, Inc.                                       | 3.1    |
| 8. Kemmerer Coal Co. (Lincoln Corp.)                              | 2.9    |
| 9. Richard D. Bass                                                | 2.6    |
| 10. Atlantic Richfield                                            | 2.5    |
| 11. U.S. Steel Corp.                                              | 2.4%   |
| 12. Consol. Coal & Kemmerer coal Co. (Cont. Oil                   | 2.4    |
| 13. Carter Oil Co. (Exxon Corp.)                                  | 2.0    |
| 14. Industrial Resources, Inc.                                    | 1.9    |
| 15. Sun Oil Co.                                                   | 1.9    |
| Top 15 Total                                                      | 57.0%  |
| 16. Kaiser Steel Corp.                                            | 1.9%   |
| 17. Decker Coal Co.                                               | 1.7    |
| 18. Kerr McGee Corp.                                              | 1.7    |
| 19. Evans Coal Co.                                                | 1.6    |
| 20. Western Coal Co.                                              | 1.6    |
| Top 20 Total                                                      | 65.5%  |
| U.S. Total                                                        | 100.0% |



The Pacola Company  
P.O. Box 186  
Ft. Smith, Arkansas 72901

Mandrones Mining Co., Inc.  
Route 1 Box 337  
Molalla, Oregon 97038

Pacific Power & Light Co.  
Public Service Building  
Portland, Oregon 97204

American Colloid Co.  
5100 Suffield Court  
Skokie, Illinois 80076

Baukol-Noonan, Inc.  
P.O. Box 248  
Minot, North Dakota 58701

Big Horn Coal Company  
P.O. Box 724  
Sheridan, Wyoming 82801

Atlantic Richfield Co.  
Suite 1500  
Security Life Building  
Denver, Colorado 80202

Usibelli Coal Mine, Inc.  
P.O. Box 3018  
Fairbanks, Alaska 99701

Washington Irrigation & Development  
1015 Big Hanaford Road  
Centralia, Washington, 98531

Mr. Wayne Brannan  
Bill, Wyoming 82631

The Carter Oil Company  
P.O. Box 2180  
Houston, Texas 77001

Consolidation Coal Company  
Mr. Mike Thurman  
P.O. Box 200  
Stanton, North Dakota 58571

Coteau Properties Co.  
12800 Shaker Blvd.  
Cleveland, Ohio 44120

Decker Coal Co.  
P.O. Box 12  
Decker, Montana 59025

Divide Coal Mining Co.  
P.O. Box 342  
Round Up, Montana 59702

Georesources Exploration Inc.  
P.O. Box 1505  
Williston, North Dakota 58801

Gulf Oil Corporation  
Attn: J.P. Gregory  
1720 S. Bellaire Street  
Denver, Colorado 80222

Mr. Glenn Johnson  
Roundup, Montana 59702

Kerr-McGee Corp.  
Drawer 1500  
Gillette, Wyoming 82716

Knife River Coal Mining Co.  
400 N. Fourth Street  
Bismarck, North Dakota 58501

Mobil Oil Corporation  
P.O. Box 5444  
Denver, Colorado 80217

Mr. Glenn Mock  
Bayon, Wyoming 82836

Mr. Richard D. Bass  
1150 Mercentile Dallas Bldg.  
Dallas, Texas 75201

Mr. Adolph Bugni  
1906 Massachusetts Ave.  
Butte, Montana 59701

Rosebud Coal Sales Co.  
Box 724  
Sheridan, Wyoming 82801

Shell Oil Company  
Attn: A. J. Rubbo, Mining Vent  
P.O. Box 2099  
Houston, Texas 77001



Sunoco Energy Development Company  
12700 Park Central Place  
Suite 1500  
Dallas, Texas 75251

Mr. John P. Logan, Jr.  
Texaco Inc.  
P.O. Box 980  
Buffalo, Wyoming 82834

US Steel Corporation  
Room 2215  
600 Grant Street  
Pittsburg, Pennsylvania 15230

Western Energy Co.  
40 E Broadway  
Butte, Montana 59701

Western Nuclear, Inc.  
Suite 387, One Park Central  
1515 Arapahoe Street  
Denver, Colorado 80202

Wyodak Resources Development Corp.  
Garner Lake Road  
Gillette, Wyoming 82716

Mr. Robert L. Davis  
Bell Route  
Raton, New Mexico 87740

*7/11/81 L. P. Kelley*  
*7/11/81 L. P. Kelley*  
*7/11/81 L. P. Kelley*  
Elena Mining Corp.  
1760 Paycon Drive  
Mesa, Arizona 85205

Pittsburg & Midway  
Coal Mining Company  
Ten Main Center  
Kansas City, Missouri 64105

James L. Simmons  
8907-8th Street, NW  
Albuquerque, New Mexico 87114

Thermal Energy Company  
4681 First National Bank Building  
C/O E. B. Larve, Jr.  
Dallas, Texas 75202

Texas Industries, Inc.  
Executive Offices  
8100 Carpenter Freeway  
Dallas, Texas 75247

Barney Urtado  
P.O. Box 12  
Raton, New Mexico 87740

Leo Warren  
Starr Route Box 48  
Waterflow, New Mexico 87421

Western Coal Co.  
P.O. Box 509  
Farmington, New Mexico 87401

Arch Mineral Corp.  
500 N. Broadway  
St. Louis, Missouri 63102

Belden Enterprises  
R.R. 1, Box 167  
Cedar Edge, Colorado 81413

CF & I Steel Corp.  
P.O. Box 316  
Pueblo, Colorado 81002

~~Commonwealth Coal Co.~~  
~~C/O American Fuels Corp.~~  
~~2917 Carlisle N.E.~~  
~~Albuquerque, New Mexico 87110~~

Empire Energy Corp.  
Suite 2003  
5610 Crawfordsville Road  
Indianapolis, Indiana 46224

Peabody Coal Company  
301 North Memorial Drive  
St. Louis, Missouri 63102

Franklin Real Estate Co.  
C/O William B. Collister  
3120 Security Life Building  
Denver, Colorado 80202

Garland Coal & Mining Co.  
P.O. Box 186  
Fort Smith, Arizona 72901

Henrietta Mines, Inc.  
The King Coal Mine  
Rt. 1, Box 199  
Hesperus, Colorado 81326

James Bros. Coal Company  
South Main Street  
Magnolia, Ohio 44643



Ferne M. James  
P.O. Box 546  
Craig, Colorado 81625

Ewing, Shaw, Petersen & Zinkl  
C/O Mr. Jerry W. Uhrlaub  
345 Main Street, P.O. Box 1874  
Grand Junction, Colorado 81501

The Kemmerer Coal Company  
Frontier, Wyoming 83121

Mr. Andrew Maneotis  
Maneotis Sheep Company  
890 Barclay  
Craig, Colorado 81625

Mr. Albert Martinez  
Box 205  
Cokedale, Colorado 81032

Mid-Continent Coal & Coke Company  
105 W. Adams Street  
Chicago, Illinois 60603

Mid-Continent Limestone  
Drawer 790  
Glenwood Springs, Colorado 81601

Medicine Bow Coal Company  
Suite 1800  
500 N. Broadway  
St. Louis, Missouri 63102

Mr. Mack R. Peterson  
Box 338  
Palisade, Colorado 81526

Mr. Joe Petroanovich  
P.O. Box 64  
Oak Creek, Colorado 80222

Pitkin Iron Corp.  
P.O. Drawer 790  
Glenwood Springs, Colorado 81601

Thompson Creek Coal & Coke  
C/O Mr. Albert M. Keenan  
8893 West 0th Avenue  
Lakewood, Colorado 80215

Utah International, Inc.  
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Craig, Colorado 81625

Western Slope Carbon, Inc.  
1650 University Club Building  
Salt Lake City, Utah 84111

Cameron Coal Company  
P.O. Box 186  
Fort Smith, Arizona 72901

Evans Coal Company  
P.O. Box XYZ  
Middletown, Ohio 45042

Lone Star Steel Company  
Land Department  
Lone Star, Texas 75668

Midwest Mining Company  
P.O. Box 190  
Poteau, Oklahoma 74953

Petroleum International Inc.  
1605 National Bank of Tulsa  
Tulsa, Oklahoma 74354

Hiko Bell Mining and Oil Company  
P.O. Drawer AB  
Vernal, Utah 84078

Mr. John L. Bell  
P.O. Box 356  
Orangeville, Utah 84537

Bridger Coal Company  
P.O. Box 2068  
Rock Springs, Wyoming 82901

California Portland Cement  
C/O Soldier Creek Coal Company  
P.O. Box I  
Price, Utah 84501

Carbon Emery Bank  
P.O. Box 111  
Price, Utah 84501

Carroll County Coal Company  
1100 Superior Avenue, Suite 180  
Cleveland, Ohio 44114

Coal Search Corporation  
Attention: Mr. David Groves  
P.O. Box 1407  
Denver, Colorado 80201



Coastal States Energy Company  
Attn: Mr. R. D. Baalman  
Five Greenway Plaza East  
Houston, Texas 77046

Columbine Mining Company  
P.O. Box 158  
Carbondale, Colorado 81623

El Paso Natural Gas Company  
P.O. Box 1492  
El Paso, Texas 79978  
Attn: Mr. Henry Samaniego

FMC Corporation  
Box 750  
Kemmerer, Wyoming 83101

Mr. George H. Frandsen  
P.O. Box 683  
Washington, Utah 84780

Granite Creek Coal & Uranium  
C/O A. J. Noker  
73 West 900 North  
Bountiful, Utah 84010

Heiner Coal Company  
C/O Island Creek Coal Company  
8301 East Prentice Avenue  
Englewood, Colorado 80110

Intermountain Exploration  
P.O. Box 473  
Boulder City, Nevada 89005

Kaiser Steel Corporation  
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Oakland, California 94666  
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Kanawha & Hocking Coal & Coke Co.  
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Cleveland, Ohio 44116

Kennecott Coal Company  
P.O. Box 11200  
Salt Lake City, Utah 84147  
Attn: Mr. C. M. Daily, Adm. Engin.

King Cannel Coal Company  
C/O R. A. Gillis  
Rockville, Utah 84763

Nevada Electric Investment Co.  
P.O. Box 230  
Las Vegas, Nevada 89101

Resources Company, et. al.  
P.O. Box 20824  
Phoenix, Arizona 84036

John F. Sanders  
P.O. Box 133  
Fairview, Utah 84629

Stansbury Coal Company  
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Rock Springs, Wyoming 82901

Swisher Coal Company  
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Price, Utah 84501

U.S. Fuel Company  
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136 E. South Temple Street  
Salt Lake City, Utah 84111

Utah Power and Light Company  
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Salt Lake City, Utah 84110  
Attn: Mr. David R. Neilson

Wasatch Coal Company  
1322 Chandler Drive  
Salt Lake City, Utah 84103

Western America Energy Corporation  
6900 East Camelback Road  
Suite 1020  
Scottsdale, Arizona 85281

Lloyd A. Wilberg and  
Eliza Wilberg  
P.O. Box 206  
Castle Dale, Utah 84513

Leeco, Inc.  
P.O. Box 306  
Manchester, Kentucky 40962

E. T. Smith & Peavely Coal  
P.O. Box 7  
Williamsburg, Kentucky 40769



McKinnon C/O Mr. Frank Armada  
1300 Walker Bank Building  
175 South Main Street  
Salt Lake City, UT 84111

Energy Fuels Corp.  
4567 Coal Spring Road  
Indianapolis, IN 46208

Centennial Resources Company  
Suite 1720  
Beneficial Life Tower  
Salt Lake City, UT 84111

S. H. West  
P.O. Box 165  
Pleasant Grove, UT 84062

C. O. Kingston, Et. Al.  
C/O Best Distributing  
3753 South State Street  
Salt Lake City, UT 84115

Mrs. Fred A. Silva  
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Westminster, CO 80030

Plateau Mining Company  
Box 539  
Price, UT 84501

Republic Steel Corp.  
P.O. Box 6778  
Cleveland, Ohio 44101

Reliable Coal & Mining Company  
79 West Monroe Street  
Chicago, IL 60603

Aaron H. Rasmussen and  
Veola H. Rasmussen  
Veyo Star Route, Box 80  
Central, UT 84722

Northwestern Resources Company  
40 East Broadway  
Butte, MT 59701

North American Coal Corp.  
12800 Shaker Blvd.  
Cleveland, Ohio 44120

John Sackett  
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Albuquerque, New Mexico 87110

Moon Lake Electric Association  
188 West 2nd North  
P.O. Box 278  
Roosevelt, Utah 84066

Monolith Portland Midwest  
P.O. Box 65677  
Glass El Station  
Los Angeles, California 90065

Florentino Padilla  
Box 413  
Cuba, New Mexico 87013

Mr. James Reese  
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Douglas City, CA 96024

Alaska State Bank  
P.O. Box 769  
Fairbanks, Alaska 99707

Aquarius Resources Corporation  
Herbert B. Kleinstick  
C/O Norman J. Bleamer  
LaBarge, Wyoming 83123

Kemmer & Consolidation Coal Company  
Frontier, Wyoming 83121

Sun Oil Company  
P.O. Box 1798  
Denver, Colorado 80201

Walker Bank and Trust Company  
Administrator of the Estate of  
Frank V. Colombo  
175 South Main Street  
Salt Lake City, Utah 84111

Black Butte Coal Company  
1000 Kiewit Plaza  
Omaha, Nebraska 68131

Ceasar Fulton  
C/O the Alton Shakespear Estate  
4671 W. 109 Place  
Westminster, Colorado 80030

~~Mr. Frank Armstrong~~  
~~Executor of the Malcolm McKinnon Estate~~  
~~1300 Walker Bank Building~~  
~~175 Main Street~~  
~~Salt Lake City, Utah 84111~~

*Sold.*  
*Frank Armstrong Co.*  
*Suite 445*  
*Three Park Avenue*  
*1515 ADAMS ST. N.*



Charles & Paul Silengo  
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Energy Development Company  
P.O. Box 36  
Hanna, Wyoming 82327

Eileen Tolley Clausen  
C/O Shirley Wiggins  
P.O. Box 42369  
Las Vegas, Nevada 89104

Helen Mining Company  
P.O. Box 61  
Seward, Pennsylvania 15954

Collins Mining Company  
1005 Kent Lane  
Ironton, Ohio 45638

Leroy E. Bonsness  
Columbus, North Dakota 58727

Routt Mining Corp.  
C/O Sunland Mining Company  
3000 S. Yosemite Street  
Denver, Colorado 80237

Summit Explor. & Dev. Company  
C/O Sunoco Eng. & Dev. Co.  
12700 Park Central Place  
Suite 1500  
Dallas, Texas 75251

Meadowlark Farms, Inc.  
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Indianapolis, Indiana 46225

Majorie B. Mann  
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Salt Lake City, Utah 84115

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C/O Colowyo Coal Company  
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Building 40  
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L. M. Cooley  
C/O Paul Riebold  
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Rangely, Colorado 81648

Kim  
C/O Peabody Coal Company  
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St. Louis, Missouri 63102

Kermit L. James  
C/O Pitkin Iron Corp.  
P.O. Drawer 790  
Glenwoodsprings, Colorado 81601

Industrial Resources Inc.  
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Suite 301  
Lakewood, Colorado 80215

Henry L. & Eugene Weaver  
Box 772  
Gunnison, Colorado 81230

United Electric Coal Company  
C/O Freeman United Coal Company  
300 West Washington Street  
Chicago, Illinois 60606

A. James Gordon  
P.O. Box G  
McAlester, Oklahoma 74501

Mr. Paul Rees Coal Company  
Mining System Corporation  
P.O. Box 847  
Kent, Washington 94031

Belco Petroleum  
C/O Arch Minerals Corp.  
500 N. Broadway  
St. Louis, Missouri 63102

Jerome Cruze  
C/O M. J. Purcell  
Route 4, Box 407  
Rigby, Idaho 83442

Cumberland Coal Company  
1000 Keiuit Plaza  
Omaha, Nebraska 68131

Eastern Assoc. Coal Corp.  
1728 Koppers Building  
Pittsburg, Pennsylvania 15219

Mountain States Resources  
1399 S. 700 East  
Suite 11  
Salt Lake City, Utah 84105



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
MONTANA STATE OFFICE  
222 North 32nd Street  
Billings, Montana 59101

TERMS OF LEASE OFFER AND OF COAL LEASE  
THAT MAY BE ISSUED AS A RESULT OF THIS OFFER

M 35740

On the date and at the hour specified herein, an authorized officer of the Bureau of Land Management, Montana State Office, Granite Tower, 222 North 32nd Street, P. O. Box 30157, Billings, Montana 59107, will offer the lands hereinafter described for competitive coal lease as one leasing unit by sealed bid, followed by oral auction, to the qualified bidder of the highest cash amount per acre, as a bonus for the privilege of leasing the lands in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437), as amended and the regulations in 43 CFR 3521.2-2(c)(1) and 3521.2-3. Only those bidders who submit sealed bids will be permitted to bid orally.

**LANDS OFFERED:** The lands are located in Rosebud County near the community of Colstrip, Montana. Colstrip is located 29 miles south of Interstate 94 and 36 miles from Forsyth, Montana. The lands are described as follows:

T. 2 N., R. 41 E., P.M.M.  
Sec. 32: E $\frac{1}{2}$ E $\frac{1}{2}$ , SW $\frac{1}{4}$ SE $\frac{1}{4}$   
200 acres

**WHEN-AND WHERE TO SUBMIT BIDS:** Sealed bids must be submitted on or before 1 p.m., M.S.T., February 1, 1977, to the Cashier, 2nd Floor, Bureau of Land Management, Granite Tower, 222 North 32nd Street, P. O. Box 30157, Billings, Montana 59107. Bids received after the hour specified will not be considered.

**BIDDING REQUIREMENTS:** Each sealed bid must be accompanied by, and the successful oral auction bidder on the day of the sale must deposit with the authorized officer conducting the sale, the following:

1. A bid deposit of one-fifth of the amount bid in cash, cashier's check, certified check, bank draft, or money order payable to the order of the Bureau of Land Management;
2. A statement over the bidder's own signature with respect to citizenship and interests held, similar to that prescribed in 43 CFR 3502, and a statement as to sole party in interest as specified in 3502.7;
3. A completed and signed Form 1140-8, Equal Opportunity Compliance Report Certification, as required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended.

Bidders are warned against violation of Sec. 1860, Title 18 U.S.C., prohibiting unlawful combination or intimidation of bidders. No special form of sealed bid is required but all bids must show the total amount bid, the amount submitted with the bid, and be signed by the applicant or a person authorized to act for the applicant. The bid should also show the amount bid per acre.

The envelope used by the bidder must be plainly marked that it is not to be opened before the hour and date of the sale and must show that the bid is for coal lease M 35740. Sealed bids may not be modified or withdrawn unless the modifications or withdrawals are received before the date, time, and place set for the opening of such bids.

**BID OPENING:** At 2 p.m., M.S.T., in the 6th Floor BLM Conference Room, Granite Tower, 222 North 32nd Street, Billings, Montana on February 1, 1977, the authorized officer will open and read all of the sealed bids. Anyone interested in attending the sale is welcome to do so.



**ORAL AUCTION:** After all the sealed bids have been read and recorded, the authorized officer will receive oral auction bids from those bidders who submitted sealed bids. The oral bidding will begin at the level of the highest sealed bid received which must at least equal the fair market value determination of the U. S. Geological Survey. The bid deposit submitted with the sealed bid by the low bidders will be returned to them after the high bid is determined.

**SPECIAL INFORMATION:** The successful bidder, as a condition of lease award, will be required to sign Form 1140-6, Independent Price Determination Certificate, to the effect that the bid was arrived at by the bidder independently and was tendered without collusion with any other bidder.

In accordance with the Federal Coal Leasing Amendments Act of 1975, prior to issuance of a lease it will be necessary that BLM consult with the Attorney General to determine whether issuance of the lease could create or maintain a situation inconsistent with the antitrust laws.

A lease will be offered to the qualified bidder submitting the highest acceptable bonus bid per acre. If the qualified bidder is not the applicant, he must demonstrate that he meets the short-term coal leasing criteria set out by the Secretary of the Interior in his coal leasing policy statement of January 26, 1976. A period of 60 days will be allowed during which time the bidder may submit evidence. The Government reserves the right to reject any and all bids whether sealed or oral.

**PAYMENTS AND BONDING REQUIREMENTS:** Prior to the issuance of a lease, the successful bidder will be required to furnish the balance of the bonus bid, the first year's rental, the advertising costs of this offering, and a lease bond in the amount of \$5,000. The bond requirement prior to leasing will be satisfied if the successful bidder has an approved nationwide or statewide coal bond (43 CFR 3504.5 and 3504.6) issued pursuant to the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), as amended. In addition, the successful bidder will be required to execute four copies of a coal lease form and the attached lease conditions which provide for the protection and reclamation of the surface resources of the lands in the offering.

**RENTAL AND ROYALTY:** A lease issued as a result of this offer will provide for payment of an annual rental of \$3 per acre or fraction thereof and a royalty payable to the United States at the rate of 12½ percent of the value as defined in 30 CFR 211.63.



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

Serial Number

## COAL LEASE

This lease, is entered into on \_\_\_\_\_  
Land Management, and \_\_\_\_\_

, by the United States of America, the lessor, through the Bureau of

and shall become effective on \_\_\_\_\_

, (effective date).

, the lessee

Sec. 1. STATUTES AND REGULATIONS - This lease is issued pursuant and subject to the terms and provisions of the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. Sections 181-263, hereafter referred to as the Act. This lease is also subject to all regulations of the Secretary of the Interior (including, but not limited to, 30 CFR Part 211 and 43 CFR Group 3000) which are now or hereafter in force and which are made a part hereof, except that no amendment to the regulations made subsequent to the effective date of this lease shall alter the rental and production royalty requirements in Section 5 and 6 of this lease.

## WITNESSETH:

Sec. 2. RIGHTS OF LESSEE - The lessor, in consideration of the bonus, rents, and royalties and other conditions hereinafter set forth hereby grants and leases to the lessee the exclusive right and privilege to mine and dispose of all coal in the following-described tracts (leased lands) situated in the State of \_\_\_\_\_

containing \_\_\_\_\_ acres, more or less, together with the right to construct all works, buildings, structures, equipment, and appliances which may be necessary and convenient for the mining and preparation of the coal for market, and, subject to the conditions herein provided, to use so much of the surface as may reasonably be required in the exercise of the rights and privileges herein granted for a period of 20 years and so long thereafter as the condition of continued operation is met.

Sec. 3. DILIGENCE - The lessee shall engage in the diligent development of the coal resources subject to the lease. After diligent development is achieved, the lessee shall maintain continued operation of the mine or mines on the leased lands. The terms diligent development and continued operation are defined in the regulations.

Sec. 4. BOND - The lessee shall file with the appropriate Bureau of Land Management office a lease bond in the amount of \$ \_\_\_\_\_, for the use and benefit of the United States, to insure payment of rentals and royalties and to insure compliance with all other terms of this lease, the exploration and mining plans, the regulations and the Act. An increase in the amount of the lease bond may be required by the lessor upon approval of the exploration or mining plan or upon approval of a change in either plan, or at any other time during the life of the lease to reflect changed conditions.

Sec. 5. RENTAL - An annual rental of \_\_\_\_\_ for each acre or fraction thereof shall be paid in advance on or before the anniversary date of this lease. The anniversary date is the anniversary of the effective date of this lease.

Sec. 6. PRODUCTION ROYALTY - The lessee shall pay a production royalty of \_\_\_\_\_ percent of the value of coal produced by strip or auger mining methods and \_\_\_\_\_ percent of the value of coal produced by underground mining methods. The value of coal shall be determined as set forth in the regulations. Production royalties paid for a calendar month shall be reduced by the amount of any advance royalties paid under this lease to the extent that such advance royalties have not been used to reduce production royalties in

a previous month. However, production royalties payable after the 20th year of the lease shall not be reduced by advance royalties paid during the first 20 years of the lease. Production royalties shall be payable the final day of the month succeeding the calendar month in which the coal is mined.

Sec. 7. ADVANCE ROYALTY - Upon request by the lessee the mining supervisor may accept, for a total of not more than 10 years, the payment of advance royalties in lieu of the condition of continued operation for any particular year. Any payment of advance royalties in lieu of continued operation shall be pursuant to an agreement, signed by the lessee and lessor, which shall be made a part of this lease. The agreement shall include a schedule of payments and shall be subject to the advance royalty conditions set forth in the regulations.

Sec. 8. METHOD OF PAYMENTS - The lessee shall make rental payments to the appropriate Bureau of Land Management office until either production royalties or advance royalties become payable. Thereafter, all rentals, production royalties and advance royalties shall be paid to the mining supervisor. All remittances to Bureau of Land Management shall be made payable to the Bureau of Land Management, those to the Geological Survey shall be made payable to the United States Geological Survey.

Sec. 9. EXPLOSION PLAN - As specified in the regulations, the lessee shall submit to the mining supervisor an exploration plan before conducting any exploration on the leased lands, except casual use, between the effective date of this lease and the date of approval of the mining plan. The lessee shall not commence exploration until the mining supervisor has approved the exploration plan. Thereafter



the lessee shall conduct all exploration in accordance with the approved exploration plan.

**Sec. 10. MINING PLAN** - As specified in the regulations, the lessee shall submit a mining plan to the mining supervisor not more than 3 years after the effective date of this lease. Until the mining supervisor has approved the mining plan, the lessee shall not conduct any operations on the leased lands except casual use or exploration if an exploration plan has been approved. Thereafter, the lessee shall conduct all operations in accordance with the approved mining plan.

**Sec. 11. LOGICAL MINING UNITS (LMU)** - This lease is automatically considered to be an (LMU) and may be combined with other land, including other Federal leaseholds and non-Federal interests in coal, to form a larger (LMU). The mining plan for the (LMU) must include a production schedule that provides for the mining of all the (LMU) reserves, both Federal and non-Federal, within 40 years from the date of the approval of the plan. The definition of (LMU) and (LMU) reserves and other conditions applicable to them are set forth in the regulations.

**Sec. 12. OPERATIONS ON LEASED LANDS** - In accordance with the conditions of this lease, the exploration and mining plans, the regulations and the Act, the lessee shall exercise reasonable diligence, skill, and care in all operations on the leased lands. The lessee's obligations shall include, but not be limited to, the following:

- (a) The lessee shall conduct all operations on the leased lands so as to avoid injury to life, health, or property.
- (b) The lessee shall conduct operations in such a manner as may be needed to avoid or, where avoidance is impracticable, to minimize and, where practicable, to repair damage to: (i) any forage and timber growth on Federal or non-Federal lands in the vicinity of the leased lands; (ii) crops, including forage and timber, or improvements of a surface owner; or (iii) improvements, whether owned by the United States or by its permittees, licensees, or lessees. The lessor must approve the steps to be taken and the restoration to be made in the event of the occurrence of damage described in this subsection.
- (c) The lessee shall minimize to the maximum extent possible wasting of the mineral deposits and other resources, including, but not limited to, surface resources which may be found in, upon, or under such lands.

**Sec. 13. CULTURAL RESOURCES** - (a) Before the approval of a mining plan, the authorized officer may require a survey of all or part of the leased land to provide an inventory of any historical, cultural, and archeological values. The survey shall be conducted by a qualified professional archeologist, approved by the authorized officer, and a report of the survey shall be submitted to the authorized officer. The approval of an exploration or mining plan or the continuation of lease operations may be conditioned on the approval of the survey report and the approval of measures to protect the historical, cultural, and archeological values. The cost of any survey or measures to protect such values discovered as a result of the survey shall be borne by the lessee and items and features of historical, cultural, or archeological value shall remain under the jurisdiction of the United States.

(b) If any items or features of historical, cultural, or archeological value are discovered during lease operations, the lessee shall immediately notify the mining supervisor and shall not disturb such items or features until the mining supervisor issues instructions. If the lessee is ordered to take measures to protect any items or features of historical, cultural, or archeological value discovered during lease operations, the cost of the measures shall be borne by the lessor and such items and features shall remain under the jurisdiction of the United States.

**Sec. 14. AUTHORIZATION OF OTHER USES AND DISPOSITION OF LEASED LANDS** - (a) The lessor reserves the right to authorize other uses of the leased lands by regulation or by issuing, in addition to this lease, leases, licenses, permits, easements, or rights-of-way, including leases for the development of minerals other than coal under the Act. The lessor may authorize any other uses of the leased lands that do not unreasonably interfere with the exploration and mining operations of the lessee, and the lessee shall make all reasonable efforts to avoid interference with such authorized uses.

(b) The lessor reserves the right: (i) to sell or otherwise dispose of the surface of the leased lands under existing law or laws hereafter enacted insofar as said surface is not necessary for the use of the lessee in the extraction and removal of the coal therein; or (ii) to dispose of any resource in such lands if such disposal will not unreasonably interfere with the exploration and mining operations of the lessee.

(c) If the leased lands have been or shall hereafter be disposed of under laws reserving to the United States the deposits of coal therein, the lessee shall comply with all conditions as are or may hereafter be provided by the laws and regulations reserving such coal.

**Sec. 15. EQUAL OPPORTUNITY CLAUSE** - During the performance of this lease, lessee agrees to comply with the following:

(a) Lessee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Lessee will take affirmative action to ensure that applicants are employed, and that employees

are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other level of compensation; and selection for training, in substantially equal pay. Lessee agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the lessor setting forth the provisions of this Equal Opportunity clause.

(b) Lessee will, in all solicitations or advertisements for employees placed by or on behalf of the lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) Lessee will send to each labor union or representative of workers with which he has a collective bargaining agreement and other contract or understanding, a notice, to be provided by the lessor, advising the labor union or worker representative of the lessee's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) Lessee will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Secretary of Labor and the Secretary of Labor for purposes of an investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the lessee's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this lease may be cancelled, terminated or suspended in whole or in part and the lessee may be declared ineligible for further Government contracts or leases in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed as remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(g) Lessee will include the provisions of paragraph (a) through (e) of this section 15 in every contract, subcontract, or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each contractor, subcontractor, or vendor. Lessee will take such action with respect to any contract, subcontract, or purchase order as the Secretary of the Interior may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that if the event the lessee becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or vendor as a result of such direction by the Secretary of the Interior, the lessee may request the United States to enter into such litigation to protect the interests of the United States.

**Sec. 16. CERTIFICATION OF NONSEGREGATED FACILITIES** - By entering into this lease, the lessee certifies that he does not and will not maintain or provide to his employees any segregated facilities at any of his establishments, and that he does not and will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The lessee agrees that a breach of this certification is a violation of the Equal Opportunity clause of this lease. As used in this certification, the term "segregated facilities" means, but is not limited to, any waiting rooms, work areas, rest rooms, wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. Lessee further agrees that (except where lessee has obtained identical certifications from proposed contractors and subcontractors for specific time periods) lessee will obtain identical certifications from proposed contractors and subcontractors prior to award of contracts or subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that lessee will retain such certification in lessee's files; and that lessee will forward the following notice to such proposed contractors and subcontractors (except where proposed contractor or subcontractor has submitted identical certifications for specific time periods). Notice to prospective contractors and subcontractors of requirement for certification of nonsegregated facilities. A *Certification of Nonsegregated Facilities*, as required by the May 14, 1967 order (32 F.R. 7439, May 19, 1967) on *Elimination of Segregated Facilities*, by the Secretary of Labor, must be submitted prior to the award of a contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. Certification may be submitted either for each contract and subcontract or for all contracts and subcontracts during a period (i.e., quarterly, semiannually, or annually).

**Sec. 17. EMPLOYMENT PRACTICES** - The lessee shall pay all wages due persons employed on the leased land at least twice each month in lawful money of the United States. The lessee shall grant all miners and other employee complete freedom to purchase goods and services of their own choice. The lessee shall restrict the workday to not more than 8 hours in any one day for underground workers except in case of emergency. The lessee shall employ no person under the age of 16 years in any mine below the sur-



face. If the laws of the State in which the mine is situated prohibit the employment, in a mine, of persons of an age greater than 19 years, the lessee shall comply with those laws.

**Sec. 18. MONOPOLY AND FAIR PRACTICES** - The lessor reserves full authority to promulgate and enforce orders and regulations under the provisions of Sections 30 and 32 of the Act (30 U.S.C. Sections 187 and 189) necessary to insure that any sale of the production from the leased lands to the United States or to the public is at reasonable prices, to prevent monopoly, and to safeguard the public welfare, and such regulations shall upon promulgation be binding upon the lessee.

**Sec. 19. ASSIGNMENT** - This lease may be assigned, upon approval of the authorized officer, in accordance with the provisions of 43 CFR Subpart 350b. An assignment will become effective on the first day of the month following approval by the authorized officer or, if the assignee requests, the first day of the month of the approval.

**Sec. 20. RELINQUISHMENT OF LEASE** - The lessee may file a request to relinquish all or any legal subdivision of this lease. The request shall be filed in duplicate with the authorized officer. The authorized officer shall approve the relinquishment if he determines that the lessee has complied with the requirements of the lease, the exploration and mining plans, the regulations and the Act. Upon approval, the relinquishment shall be effective as of the date it is filed, subject to the continued obligation of the lessee and his surety to pay all accrued rentals and royalties and to comply with all other requirements of the lease, the regulations, the exploration and mining plans, the regulations and the Act.

**Sec. 21. NONCOMPLIANCE** - Any failure to comply with the conditions of this lease, the exploration and mining plans, the regulations, or the Act shall be dealt with in accordance with the procedures set forth in the regulations.

**Sec. 22. WAIVER OF CONDITIONS** - The lessor reserves the right to waive any breach of the conditions contained in this lease, except the breach of such conditions as are required by the Act, but any such waiver shall extend only to the particular breach so waived and shall not limit the rights of the lessor with respect to any future breach, nor shall the waiver of a particular breach prevent cancellation of this lease for any other cause, or for the same cause occurring at another time.

**Sec. 23. READJUSTMENT OF TERMS AND CONDITIONS** -

(a) The lessor may propose the reasonable readjustment of any conditions of this lease, including royalty rates, the first readjustment to be effective on the 24th year after the effective date and subsequent readjustments to be effective at 10-year intervals thereafter. The lessor shall notify the lessee whether he intends to readjust conditions and, if he intends to readjust, the nature of the readjustments. If it is feasible, the lessor shall give such notice 120 days before the effective date of the readjustment. In any event, until the lessee has been notified either that the lease terms will be readjusted or that they will not be readjusted, the lessor reserves the right to require readjustment. Unless the lessee, within 30 days after receipt of such notice, files with the lessor an objection to the proposed readjusted conditions or relinquishes the lease as of the effective date of the readjustment, the lessee shall be deemed conclusively to have agreed to such conditions.

(b) If the lessee files objections to the proposed readjusted conditions with the lessor, and agreement cannot be reached between the lessor and the lessee within a period of 60 days after the filing of the objection, the lease may be terminated by either party upon giving 30 days' notice to the other party; however, the lessor's right to terminate the lease shall be suspended by the lessee's filing of a notice of appeal pursuant to section 29 of this lease, and if the lessee is ultimately successful in his appeal, the lease shall continue without the change in the provisions, the imposition of which, the lessee appealed. If the lessee is unsuccessful in his appeal and, within 30 days of the decision on appeal notifies the lessor that he accepts the decision rendered upon such appeal, then the lease shall continue as amended by the decision.

**Sec. 30. Special Stipulations**

(c) If the lessee files objections to the proposed readjusted conditions, the existing conditions, except those concerning royalties, shall remain in effect until there has been an agreement between the lessor and the lessee on the new conditions to be incorporated in the lease, or until the lessee has exhausted his rights of appeal under section 29 of this lease, or until the lease is terminated; however, the readjusted royalty provisions shall be effective until there is either agreement between the lessor and the lessee or until the lease is terminated. If the readjusted royalty provisions are subsequently rescinded or amended, the lessee shall be permitted to credit any excess royalty payments against royalties subsequently due to the lessor.

**Sec. 24. DELIVERY OF PREMISES** - Upon termination of this lease for any reason, or relinquishment of a part of this lease, the lessee shall deliver to the lessor in good order and condition all or the appropriate part of leased lands. Delivery of the leased lands shall include underground timbering and such other supports and structures as are necessary for the preservation of the mine or deposit, and shall be in accordance with all other applicable provisions of the regulations for the completion of operations and abandonment.

**Sec. 25. PROPRIETARY INFORMATION** - Geological and geophysical data and information, including maps, trade secrets, and commercial and financial information which the lessor obtains from the lessee shall be treated in accordance with 43 CFR Part 2.

**Sec. 26. LESSEE'S LIABILITY TO LESSOR** - (a) The lessee shall be liable to the United States for any damage suffered by the United States in any way arising from or connected with the lessee's activities and operations under this lease, except where damage is caused by employees of the United States acting within the scope of their authority.

(b) The lessee shall indemnify and hold harmless the United States from any and all claims arising from or connected with the lessee's activities and operations under this lease.

(c) In any case where liability without fault is imposed on the lessee pursuant to this section, and the damages involved were caused by the action of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damages occurred.

**Sec. 27. INSPECTIONS AND INVESTIGATIONS** - (a) All books and records maintained by the lessee showing information required by this lease or regulations must be kept current and in such manner that the books and records can be readily checked, upon request, by the mining supervisor or his representative at the place where they are customarily maintained.

(b) The lessee shall permit any duly authorized officer or representative of the lessee at any reasonable time (1) to inspect or investigate the leased lands and all surface and underground improvements, works, machinery, and equipment, and all books and records pertaining to the lessee's obligations to the lessor under this lease and regulations and (2) copy, and make extracts from any such books and records.

**Sec. 28. UNLAWFUL INTEREST** - No member of, or Delegate to, Congress, or Resident Commissioner, after his election or appointment, either before or after he has qualified and during his continuance in office, and no officer or employee of the Department of the Interior, except as provided in 43 CFR 7.4(a)(3), shall hold any share or part in this lease or derive any benefit therefrom. The provisions of Section 3741 of the Revised Statutes, as amended, 41 U.S.C. Section 22, and the Act of June 25, 1948, 62 Stat. 702, as amended, 18 U.S.C. Sections 431-433, relating to contracts, enter into and form a part of this lease insofar as they may be applicable.

**Sec. 29. APPEALS** - The lessee shall have the right to appeal (a) under 43 CFR 3000.4 from an action or decision of any official of the Bureau of Land Management (b) under 30 CFR Part 290 from an action, order, or decision of any official of the United States Geological Survey, or (c) under applicable regulation from any action or decision of any other official of the Department of the Interior arising in connection with this lease, including any action or decision pursuant to Section 23 of this lease with respect to the readjustment of conditions.



Special Stipulations (con.)

THE UNITED STATES OF AMERICA

By \_\_\_\_\_  
(Signing Officer)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

WITNESS TO SIGNATURE OF LESSEE

\_\_\_\_\_  
(Signature of Lessee)

\_\_\_\_\_  
(Signature of Lessee)

\_\_\_\_\_  
(Signature of Lessee)

(If this lease is executed by a corporation, it must have the corporate seal.)



Question: 2. Under the proposal submitted by the Administration, you state that the concurrence of the Department of the Interior would be required on all questions of impacts on lands, waters, and other natural resources affected by the proposed pipeline.

Could you please elaborate on this point; that is, could you tell me what specific considerations the Department would have to examine?

Answer: 2.

The Department would consider impacts upon the environment including, but not limited to, socioeconomic conditions, water, aquatic habitat, geology, minerals, topography, soils, climate, air quality, land use, aesthetics, noise, cultural resources, and consistency with land use plans. This examination would be primarily conducted during the environmental assessment of the proposed project.

These are the same kinds of matters that are within the Secretary of the Interior's authority and responsibility with respect to public lands. Pursuant to the stewardship role specified in FLPMA, particularly Section 102(a) and Sections 201 and 202, the Bureau of Land Management must ascertain the nature and likelihood of effects of such proposals on the public lands. These potential effects and their consequences must be assessed for the impact they would have on attainment of the goals and objectives established by law as guidelines for public land use. In addition, the Secretary of the Interior has an overall responsibility for cultural resource management and Endangered Species on Federal lands. Finally, in a broader context of NEPA and other laws, executive orders, and international accords linked to the environmental assessment process, there would be a responsibility to discover and disclose beneficial and adverse impacts including those that would go beyond the public lands. Thus we believe that this Department has expertise to examine the issues included within its responsibility under the Administration's position.



Question: 3. Some concern has been expressed about section 5(h) of the bill as reported by the House Committee on Interior and Insular Affairs. The concern focuses on the study that must be made by the U.S. Geological Survey.

(1) Does the Department have any reservations on that section as to how it may affect the certification process, and, more importantly, about the effects, if any, this may have on existing law?

Answer: 3.

(1) Certainly the issuance of a certificate of public convenience and necessity must be consistent with findings of water supply and quality impact studies. Protection of State water rights has been a major theme of this Administration and a major assumption on which our support for coal pipeline legislation has been based. We believe that section 9 fully protects those rights.

As a matter of general policy, we would prefer that section 5(h) refer to the Secretary of the Interior rather than one of the Bureaus under his jurisdiction and that it be left to the Secretary's discretion as to whether a separate water study might be required. However, the Survey would be involved in any such study, and we do not question the need for full information on impacts on water.

The type of study required by Section 5(h) is within the field of competence of the Geological Survey, and such studies are being carried out presently in connection with other types of water development projects. Indeed, ground water studies currently underway in the Northern Great Plains, when completed, are expected to meet the requirements of Section 5(h)(1). Similarly, an already completed study of the San Luis Valley, Colorado, should also suffice under Section 5(h)(1) with modest additional work. Thus, the requirements of Section 5(h)(1) for two principal slurry line proposals involving ground water as a supply will be substantially met by studies already completed or underway. Major new studies would require additional time and effort.

It is conceivable that the water table may be impacted in some cases without impacting water rights. For example, this would be so in States which do not regulate ground waters.

There may also be a question of subsidence in the surface over the aquifers being pumped. In some locations, subsidence caused by the settling of the earth surface to fill the void left by removal of the water has caused significant damage to the area. The report would presumably also address this problem where relevant.

The requirements of Section 5(h) do raise the issue of the time it might take to complete necessary studies prior to certification. There is an additional issue as to whether 5(h)(2) might require not only the obtaining of all state permits, but the resolution of all possible interstate water disputes among affected states before a certificate could be issued. That result could infinitely delay a decision.



Question: 4. Does the Department of the Interior now have the authority to issue any type of license requiring the type of considerations that are set forth in section 5(b) of the bill?

Answer: 4.

Both Title I of the Mineral Leasing Act of 1920, as amended, and Title V of the Federal Land Policy and Management Act of 1976 give the Secretary authority and responsibility to examine some of the types of considerations as are set forth in Section 5(b) of H.R. 1609. Specifically, Section 501(b)(1) of the Federal Land Policy and Management Act of 1976, and Section 28(r)(6) of the Mineral Leasing Act of 1920, as amended, provide for the submission of information reasonably related to the use or intended use of the right-of-way.

In addition, the NEPA process, with which this Department has considerable experience, has required Federal agencies to examine a vast range of concerns in detail, not all of which have been directly related to their traditional responsibilities. Thus we feel a familiarity with all of the subjects mentioned in Section 5(b). However, we would not object to having primary responsibility for some of these assessments in other agencies. Those provisions on which our expertise is most relevant are Sections 5(b)(3), (4), and (7).



Question: 5. Are you satisfied that the provisions of the bill do not affect existing property rights in water? Please address your answer to

(1) Rights of the Federal Government

(2) Rights of the States

(3) Private rights

Answer: 5. In our opinion the provisions of H.R. 1609 do not affect existing property rights in water. The bill makes clear that water is to be obtained independently of the certification process. This would, in effect, preserve the status quo with regard to the acquisition and use of water.

Section 9 of the Bill clearly provides that nothing in the Act shall be construed as affecting any Federal, State, or private rights to water. We think this section makes clear Congress' intent that this Bill, in and of itself, shall not create any rights to the use of water which would not have existed before its passage or would not exist independently of the bill.



Question: 6. In Section 5(a) of the bill it is stated:

The Secretary is authorized to issue such a certificate if the Secretary finds, with respect to a particular project of the carrier as to which said power is sought, that the project is in the national interest and provides the capacity necessary to fulfill the requirements of a common carrier of coal, as determined by the Secretary.

(1) Do you regard this as empowering the Secretary to establish the common carrier obligations of the coal pipeline in the certificate of public convenience and necessity?

(2) If you do, would this not preclude any authority of the ICC from imposing a common carrier duties upon the carrier that are not included in the certificate?

Answer: 6. (1) Section 5(a) would implicitly authorize the Secretary to condition each certificate on actual construction of a certificated pipeline so as to meet the physical capacity requirements that must be found and approved by the Secretary prior to certification. In only this limited sense, the Secretary would be empowered by section 5(a) to establish common carrier obligations in the certificate of public convenience and necessity.

6. (2) The limited authority described in item 6(1) above, would not preclude any authority of the ICC from enforcing common carrier duties on a pipeline carrier that are not specifically included in the certificate. Absent a clear expression of Congress' intent to vest in the Secretary of the Interior the regulatory duties that normally would be discharged by the ICC under the Interstate Commerce Act, 49 U.S.C. 1 et seq., this Department would not view H.R. 1609 as authorizing its intrusion into that regulatory area and would not wish to do so. See, Chapman v. El Paso Natural Gas Co. 204 F. 2d 46, 51 (D.C. Cir. 1953).

See also S. Rept. No. 93-207, 93d Cong. 1st Sess. 90-91 (1973); S. Rept. No. 93-1072, 93d Cong. 2d Sess. 26-27 (1974); Market Performance and Competition in the Petroleum Industry, Hearings pursuant to S. Res. 45, A National Fuels and Energy Policy before Special Subcommittee on Integrated Oil Operations of the Committee on Interior and Insular Affairs, U.S. Senate, 93d Cong. 1st Sess. 896-897 (1973); Coal Slurry Pipeline Legislation, Hearings before Committee on Interior and Insular Affairs, U.S. House of Representatives, 94th Cong. 1st Sess., on H.R. 1863 and other bills, 465, 621-623, 631 (1975).



Question: 7. In Section 5b(6), the Secretary is required to make findings on the extent to which the project

"(6) will be likely to result in lower rates for the transportation of coal than would be in effect if such coal were transported by railroad under Part I of the Interstate Commerce Act."

(1) Do you regard this as requiring the rates to be included in the contracts that must be considered by the Secretary in section 5(a)?

(2) How could this be done before the pipeline is constructed?

(3) What, if any, effect would this have upon the ICC authority over the rate when it is filed with that agency?

Answer: 7. (1) & (2) We do not interpret section 5 b(6), itself, to require that ICC approved rates be included in the carriage contracts that are referred to in section 5(a) of the bill. The actual rates could not be fixed until ICC approval. (The Administration position gives this authority to the Department of Energy.) However see the attached answer of the Department of Transportation to question 14 propounded to it by your Committee. To the extent that it would be customary for any charges, rate data or formula clauses to be made a part of such contracts, the Department's study could be expected to take those elements of the several contracts into account.

Section 5(b)(6) is intended to insure "... that the Secretary will consider whether cost savings will be reflected in the actual rates charged for coal transportation, consonant with the purpose of the Act to foster competition in the coal transportation market." H. Report 95-924 Part I, to accompany H.R. 1609, 95th Cong. 2d Sess., 24 (1978).

7. (3) None.



QUESTION: 14. In Section 5b(6), the Secretary is required to make findings on the extent to which the project is likely to result in lower rates for the transportation of coal than would be in effect if such coal were transported by railroad under Part I of the Interstate Commerce Act.

- (a) Do you regard this as requiring the rates to be included in the contracts that must be considered by the Secretary in 5(a)?
- (b) How could this be done before the pipeline is constructed?
- (c) What, if any, effect would this have upon ICC authority over the rate when it is filed with that agency.

ANSWER: Our understanding of the complexities surrounding slurry pipeline contracts is that a rate agreement with the utility is an integral part of the package presented to potential financial backers, as well as to the certifying agency. Pipelines will not be built on speculation, with the backers hoping the utility at the other end will agree to purchase the coal. Therefore, rates and volume of traffic to be carried must be agreed upon before construction. The Administration version of H.R. 1609 recognizes this fact by having the certification and rate regulation powers reside in the same agency. Since both issues must be considered simultaneously, the rate question cannot be decided after the fact.



Question: 8. In your testimony you stated that a significant feature of the Administration's proposed amendments was that "before a Federal certificate could be issued the Secretary of the Interior would be required to obtain assurance from the Governor or other proper authority of the state from which water would be diverted that all rights to water under state jurisdiction for pipeline use have been obtained according to applicable state laws and procedures." You went on to state that "... this amendment will provide the necessary assurance to state and local governments that state water laws will be respected and that the Federal Government will not interfere with whatever state authority exists for state water use decisions."

(1) How does this position fare when placed alongside the ruling in the Supreme Court case of First Iowa Hydro-Electric Cooperative v. Federal Power Commission (1946) 328 U.S. 152?

(2) Is it conceivable that First Iowa could be construed by the courts in such a way as would result in a Federal certificate of convenience and necessity overriding state imposed conditions in water permits, in as much as this Federal certification would indicate a Federal determination that an operative coal slurry pipeline is in the public interest?

(3) First Iowa and other cases deciding similar issues suggest that statutory language which preserves in general terms state control over water resources are to be narrowly construed. In light of this does DOI believe that H.R. 1609 should specify precisely what control is left in the hands of the state, if it is the Congressional intent to preserve state control over water resources allocation?

Answer: 8. (1) We feel that our position regarding respect of state water laws is not incompatible with First Iowa. The two situations are distinguishable. In First Iowa the Supreme Court found that the Federal Power Act superseded conflicting state laws because a dual system of regulation had developed, and that of the incompatible dual regulation the Federal Power Act was paramount as a Federal law enacted pursuant to constitutional authority.

H.R. 1609, and the Administration's proposed amendments, are intended to divorce entirely the question of granting a certificate from the question of acquisition of water rights. Because of the wording of Section 9(a) state water permits can be expressly conditioned by the



state. Also, section 4(c) of the Act states that the Act, in and of itself, should not provide a basis for acquiring water rights by condemnation. These features of H.R. 1609 make it clear that Congress is avoiding conflicting regulatory schemes. Rather, the scheme of the Act is to divorce entirely questions of water use and acquisition from certifications of public use and necessity.

(2) While it is always dangerous to anticipate that a court would or would not construe a statute in a particular manner, the language of section 9(a) states very clearly that the states may impose legitimate conditions on the use of water and may even require curtailment of use. If a similar provision had been placed in the Federal Power Act the First Iowa case would most likely not have arisen.

(3) We agree that First Iowa and other cases involving state control over Federal activities construe very narrowly the manner in which states can place restrictions on constitutionally authorized Federal programs. However, Congress can make the states' role clear and we believe the language of H.R. 1609 clearly indicates that it is Congress' intent to allow the states to condition the uses of water under state permits for coal slurry purposes. Our proposed amendment would serve the same purpose.



Question: 9. (1) Are the functions delegated to the Department the types of functions that can be carried out under existing law?

(2) Does Section 6(a) provide the Department the means to recoup the additional costs incurred as a result of the new duties imposed upon the Department by H.R. 1609?

(3) Under the Mineral Leasing Act, is the Department able to recoup costs incurred as the result of granting rights-of-way across Federal lands?

(4) What, if any, nonreimbursable costs would be incurred by the Department and for what purpose?

Answer: 9. (1) Most of the functions that would be performed by the Department under H.R. 1609 are the types of functions that ordinarily may be conducted by an administrative agency when authorized to do so by law. The functions require consideration of many of the same kinds of factors and impacts as are required under existing law.

The principal function that would be delegated by H.R. 1609 to the Secretary would be the authority and duty to determine whether a specific pipeline carrier who has applied for a certificate of public convenience and necessity should be certificated for the purpose of exercising the Federal Government's power of eminent domain in relation to a particular pipeline project.

The courts have recognized that it is within the power of Congress to delegate to an officer or agency of the Federal Government the power to determine the necessity for taking of private or public property by a publicly regulated, private corporation upon which the Federal Government's power of eminent domain has been generally conferred by statute, State of Missouri v. Union Electric Light and Power Co., 42F. 2d 692 (D.C. Mo. 1930) (construing section 21 of the Federal Power Act). A similar statutory scheme under subsections (c) and (h) of section 7 of the Federal Natural Gas Act was upheld in Thacher v. Tennessee Gas Transmission Co., 180F. 2d 644 (5th Cir. 1950), certiorari denied 340 U.S. 829 (1950). See, also, Martin v. Portland Pipeline Co., 158 F. 2d 848 (1st Cir. 1946) (construing the scope of the required Presidential findings of necessity under the Act of July 30, 1941, c. 333, 55 Stat. 610).



Under Title V of FLPMA, the Secretary presently has authority to grant rights-of-way over BLM administered, Federal lands for coal pipelines (slurry and emulsion systems). Section 28 Mineral Leasing Act pipelines are omitted from the scope of Title V of FLPMA. The Secretary has no authority to issue right-of-way grants over non-Federal lands and no authority to issue certificates to enable pipeline applicants to use eminent domain to acquire private lands. To the extent that a right-of-way applied for under Title V of FLPMA would also involve non-Federal lands, the Secretary should consider the impacts of the project on those lands through the application of the NEPA process and other laws which consider the impact of the Federal action.

To the extent that BLM administered Federal lands are involved, the provisions of H.R. 1609 that would amend Section 28 of the Mineral Leasing Act to cover coal slurry pipelines duplicate or supersede the Secretary's authority under Title V of FLPMA. Our proposed amendments would correct that.

From another point of view, the Secretary already has authority to issue right-of-way grants for oil, gas and several other types of pipelines over certain land under his administration or, where two or more agencies are concerned, over other Federal lands, under Section 28 of the Mineral Leasing Act. H.R. 1609 would expand this authority to cover all coal pipelines, thus enabling the Secretary to exercise authority over coal pipelines wherever two or more Federal agencies are concerned rather than just on BLM administered, Federal lands.

Answer: 9. (2), (3), and (4). With respect to cost reimbursement, Section 6(a) would provide only for reimbursement of administrative and other costs incurred in the processing of the application for a certificate of public convenience and necessity.

The reimbursement of administrative and other costs incurred in processing a right-of-way application, and the subsequent monitoring of the construction, operation and maintenance, and termination of any pipeline or related facility on Federal lands would be provided for in Section 28(1) of the Mineral Leasing Act of 1920, as Section 28(a) of the same Act would be amended by H.R. 1609 to include coal pipelines.



The Department has been able to recoup costs incurred as the result of granting pipeline rights-of-way across Federal lands pursuant to its authority under Section 28 of the Mineral Leasing Act of 1920.

The cost associated with monitoring and enforcement of the certificate of public convenience and necessity after issuance is not clearly provided for.

Costs incurred by the Department in the ordinary course of business in running its operations are not recoverable.

Costs incurred because of a particular application, and directly related overhead costs, are recoverable. This format may be analogized to the running of a fire house. The costs of operating and maintaining the fire house are not recoverable. The costs of putting out a fire are, however, recoverable as well as any overhead cost directly related to putting out the fire.

The decision of the United States District Court, Utah, in the case of Alumet v. Cecil Andrus et. al. (attached) has added new uncertainty to the question of recoverable costs. Pending the outcome of the Department's appeal of the Alumet decision, holding that the Department may not recover the cost of processing environmental statements, some of the costs mentioned above may become nonreimbursable.

For this reason, we urge that the legislative history of Section 6(a) of H.R. 1609 reflect that like Section 28(1) of the Mineral Leasing Act of 1920, as amended, administrative and other costs "include the costs of any reports or studies required by law, including environmental assessments and impact statements."



APR 1 1978  
 NATIONAL SOUNDR  
 Salt Lake City, Utah

UNITED STATES DISTRICT COURT  
 DISTRICT OF UTAH  
 SALT LAKE CITY, UTAH

UNITED STATES ATTORNEY

DATE: March 13, 1978

TO:

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- ( ) Limb \_\_\_\_\_
- ( ) Smith \_\_\_\_\_
- ( ) McPhee \_\_\_\_\_
- ( ) Wright \_\_\_\_\_
- ( ) Tolson \_\_\_\_\_
- ( ) \_\_\_\_\_
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RE: C 76-287 - Almet vs Cecil D. Andrus, et al.

TAKE NOTICE, in accordance with Rule 77(d) of the  
 Federal Rules of Civil Procedure, you are hereby notified that:

ORDER AND JUDGMENT (copy enclosed)

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (copy enclosed)

was signed by Honorable ROCK J. ANDERSON on the  
8 & 7 day of March, 19 78, and entered in the  
 Docket as of the 10th day of March, 19 78.

PAUL L. PRYER, Clerk  
 United States District Court

By:

*Deana L. Smith*

Deputy Clerk



## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Court, District of Columbia

CENTRAL DIVISION

MAR 10 1971

PAUL L. BADA  
Clerk

ALUMET,

Plaintiff,

ORDER AND JUDGMENT

C 76-287

v.  
CECIL D. ANDRUS, CURTIS J.  
BERKLAND, PAUL HOWARD, and  
the UNITED STATES OF AMERICA,

Defendants.

In the above-captioned case the court, having entered a memorandum opinion and order, now enters its judgment there:

## IT IS ADJUDGED, DECREED AND ORDERED that:

1. The Reimbursement Regulations as presently construed and enforced exceed the authority granted defendants under the relevant acts of Congress, in that

2. Under the circumstances in question the proper measure of a fee is value to the recipient. Fees assessed in accordance with this measure may not exceed the actual costs incurred by defendants, and

3. As presently structured and enforced, in connection with the applications for rights-of-way, defendants' fee structure does not exhibit the necessary nexus between value to the recipient and fees assessed, in that

4. There must be a fair and rational nexus between fees charged and services rendered by the agency. Therefore connection with the applications for rights-of-way, the defendants may only assess as costs those items which provide special b



to plaintiff beyond those which accrue to the public at large.

5. IT IS THE COURT'S JUDGMENT, THEREFORE, that under the present circumstances the completion of environmental assessments and impact statements is not a service which provides special benefits to plaintiff beyond those which accrue to the public at large, and plaintiff may not be assessed for such costs.

6. Indirect or overhead costs may be included in the fee. However, defendants must first demonstrate that such services provide special benefits to plaintiff beyond those which accrue to the public at large.

7. The Independent Offices Appropriation Act and the Public Lands Administration Act are not violated by charges for otherwise proper costs and regulations promulgated pursuant to those acts continue to be valid under the Federal Land Policy and Management Act.

8. Defendants and their subordinates and agents are hereby enjoined from enforcing the reimbursement regulations in this case to the extent that it reimburses the government for public benefit. It is the court's opinion that in such respect they would exceed the authority provided by the Independent Offices Appropriation Act, the Public Land Administration Act, or the Federal Land Policy and Management Act.

9. Defendants and their subordinates and agents shall comply with the terms of 43 C.F.R. § 2802.1-2(a)(8) to the extent of any excess payments made by plaintiff. Defendants are ordered to process the applications in accordance with this opinion.

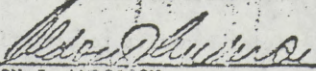
10. With respect to other relief plaintiff sought,



court does not believe, under present circumstances, that it is warranted at this time.

11. Plaintiff is awarded its costs under the terms of 28 U.S.C. 2412.

DATED this 8 day of March, 1978.

  
ALDON J. ANDERSON  
United States District Judge



IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
 CENTRAL DIVISION

MAR 10 1978

PAUL L. BADGER  
Clerk

ALUMET,

Plaintiff,

v.

 CECIL D. ANDRUS, CURTIS J.  
 BERKLAND, PAUL HOWARD, and  
 the UNITED STATES OF AMERICA,

Defendants.

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT

C 76-287

This case involves a dispute over the validity and application of certain regulations adopted by the Secretary of the Interior [Secretary]. These regulations, 43 C.F.R. § 2802.1- (1975) [hereinafter reimbursement regulations], permit the Bureau of Land Management [BLM] to obtain reimbursement for administrative and other costs incurred in processing applications for rights-of-way across federal lands for power lines, railroad spurs, water pipelines, etc. See 43 U.S.C. § 959 & § 961.

In connection with the proposed development of an alunite mine and processing plant in Beaver County, Utah, plaintiff applied for certain rights-of-way. Defendants, upon the recommendation of the Utah State office of the BLM, undertook preparation of an environmental statement [EIS] of the entire alunite project in accordance with the terms of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq. Defendants have undertaken to act upon plaintiff's right-of-way applications but have conditioned such action upon reimbursement to defendants by plaintiff of all costs incurred in processing the applications, including the cost



of the EIS. Plaintiff has also been billed for "indirect costs" incurred in processing the applications.

Plaintiff brought this action challenging the reimbursement regulations and requests declaratory and injunctive relief. Both parties subsequently filed motions for summary judgment requesting that the court determine the validity of the regulations. The issues have been extensively briefed in supporting and reply memoranda filed by both parties and at oral argument before the court.

Plaintiff attacks the reimbursement regulations on two grounds. First, they do not apply to the alumite project, a minerals project, and hence any costs incurred in connection with the drafting of an EIS on the entire project are not subject to reimbursement under the regulations. Second, the reimbursement regulations and the reimbursement demands pursuant thereto are unlawful and invalid because they exceed the statutory authority upon which they are based. Defendants argue that the regulations are valid and were adopted pursuant to proper statutory authority and that the preparation of an EIS was a necessary expense in connection with processing the right-of-way applications.

The validity of the reimbursement regulation rests on the claimed statutory basis pursuant to which they were adopted. They are based on the policy expressed in three acts of Congress: The Independent Offices Appropriation Act [IOAA], 31 U.S.C. § 48; the Public Land Administration Act [PLAA], 43 U.S.C. § 1371 & § 1374; and the 1973 amendments to the Mineral Leasing Act, 30 U.S.C. § 185(1).

Section 185(1) of the Mineral Leasing Act applies only to oil and gas pipelines. Since the rights-of-way at issue are

Why not FLPMA and 1978 Offshore Act?

Who claimed this?



not for oil or gas pipelines, it is clear that the Mineral Leasing Act is not a proper basis for the reimbursement regulations. It is apparent that § 204a of the PLAA, 43 U.S.C. § 1374 is not a proper basis for the regulations since it deals only with refunds for overpayments made by applicants. It is manifest to the court however, that § 201 of the PLAA, 43 U.S.C. § 1371 and the IOAA, 3 U.S.C. § 463a do provide a proper basis for some type of reimbursement regulation. It is likewise apparent that the application of the regulations at issue here exceed the statutory authority claimed.

Section 201 of the PLAA, 43 U.S.C. § 1371 provides in part:

Notwithstanding any other provision of law, the Secretary of the Interior may establish reasonable filing fees, service fees and charges, and commissions with respect to applications and other documents relating to public lands and their resources under his jurisdiction, and may charge and abolish such fees, charges, and commissions.

A superficial examination of the statute appears to support the reimbursement regulations. However, as Judge Finesil has noted in construing the same regulations:

The force of the language [of 43 U.S.C. § 1371] is diminished . . . when one consults the legislative history of the statute. . . . The Legislature's understanding of Section 201 is partially revealed in . . . 2 U.S. Code Cong. and Admin. News p. 3147 (1960).

There a letter from Roger Ernst, Assistant Secretary of the Interior, was reproduced, which indicated the anticipated effect of Section 201. Mr. Ernst indicated that the bill involved only five percent of the business volume covered by BLM fees. He also noted that "receipts from fees, etc., accruing to the Bureau approximate \$1 million annually. It is estimated that this bill, if enacted, will increase these receipts by approximately \$50,000 annually."



The Senate understanding of Section 201 was obviously intended to allow the Secretary some flexibility in setting fees for services rendered for the primary benefit of the requesting individual. Nonetheless, it can hardly be maintained that the Senate intended to thereby allow the Secretary to impose fees ranging into the tens and hundreds or thousands of dollars such as those imposed in this case.

Public Service Co. of Colorado v. Andrus, 433 F. Supp. 144, 149-50 (D.C. Colo. 1977). The House of Representatives apparently had a similar understanding of the scope and impact of § 201.

Defendants also argue that the IQAA authorizes the reimbursement regulation. Essentially the IQAA, 31 U.S.C. § 483, provides that federal agencies "shall be self-sustaining to the full extent possible . . ."

The Supreme Court has recently examined the intent and scope of § 483a and found that it does authorize the imposition of fees by federal agencies. National Cable Television Ass'n, Inc. v. United States, 415 U.S. 336, 340 (1974). The Court, however, narrowly limited the scope of the IQAA. The Court stated:

The public agency performing those services normally may exact a fee for a grant which, presumably, bestows a benefit on the applicant, not shared by other members of society. It would be a sharp break with our traditions to conclude that Congress had bestowed on a federal agency the taxing power that we read 31 U.S.C. § 482a narrowly as authorizing not a "tax" but a "fee." A "fee" connotes a "benefit" and the Act by its use of the standard "value to the recipient" carries that connotation.

The Court stated that the proper standard for determining what fees should be charged is the "value to the recipient."

Id. at 344. In a companion case the Court stated:

It is true that the Act includes services rendered "to or for any person (including



groups . . .).” But if we are to construe the Act to cover only “fees” and not “taxes”—as we held should be done in the National Cable Television case, ante, P. 336—the “fee” presupposes an application whether by a single company or by a group of companies. The Office of Management and Budget (then known as the Bureau of the Budget) issued a circular in 1959 construing the Act. That circular stated that a reasonable charge “should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit.” (Emphasis added.) The circular also states that no charge should be made for services rendered, “when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefiting broadly the general public.”

We believe that is the proper construction of the Act.

Federal Power Commission v. New England Power Co., 415 U.S. 345, 349-51 (1974). (Citations omitted, emphasis in original.)

Defendants also argue that the reimbursement regulation is authorized by the Federal Land Policy and Management Act of 1 [FLPMA], 43 U.S.C. § 1701 et seq. The FLPMA provides that the Secretary of the Interior may promulgate regulations requiring reimbursement “for all reasonable administrative and other costs incurred in processing an application for such right-of-way . . . .” 43 U.S.C. § 1764(g). The FLPMA further provides that:

As used in this section “reasonable costs” include, but are not limited to, the costs of special studies; environmental impact statements; monitoring construction, operation, maintenance, and termination of any authorized facility; or other special activities. In determining whether costs are reasonable under this section, the Secretary may take into consideration actual costs (exclusive of management overhead), the monetary value of the rights or privileges sought by the applicant, the efficiency to the government processing involved, that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant, the public service provided, and

DISCRETION  
ACT.



other factors relevant to determining the reasonableness of the costs.

43 U.S.C. § 1734(b).

While this language provides something less than a precise guideline, the intent of the provision appears to be that "reasonable costs" should be determined on a benefit to the applicant basis. The court concludes that "reasonable costs" assessed pursuant to the FLPMA are subject to the analysis adopted by the Supreme Court in construing the IOAA in National Cable, supra, and New England Power, supra.

Plaintiff argues that there can be no requirement of reimbursement of costs after October 21, 1976, the effective date of the FLPMA, since the enactment of the FLPMA revokes all prior legislation dealing with right-of-way applications. This so plaintiff argues, because the Secretary has not yet promulgated regulations regarding right-of-way applications. The FLPMA, however, provides that "[p]rior to the promulgation of such rules and regulations, such lands shall be administered under existing rules and regulations concerning such lands to the fullest extent possible." 43 U.S.C. § 1740. The legislative intent is clear: the court sees no compelling reason to depart therefrom.

It is proper, therefore, that the BLM may require fees in connection with applications for rights-of-way over federal land where a "service (or privilege) provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large . . . ." Public Service Company, supra at 151.

Defendants argue that the cost of the EIS is properly reimbursable under the reimbursement regulation since the right-of-way applications could not be processed without an EIS on the

*didn't we also argue it on*

incl. A/W Cost Recovery REGS.



whole alunite project. As Judge Finesilver noted "[s]uch reasoning . . . would permit an agency to charge for all services rendered to an applicant for a license or privilege, since presumably all services rendered are the result of the voluntary application for a right of way. . . . We reject this contention Public Service of Colorado at 152-53. The court concurs in Judge Finesilver's statement that:

The costs of environmental analyses and impact statements developed pursuant to the mandate of the National Environmental Policy Act are not of primary benefit to the right of way applicant, and thus cannot properly be charged as fees under either the Independent Offices Appropriation Act of 1952 . . . or the Public Land Administration Act . . . .

Public Service Company of Colorado, at 153.

The court also finds, notwithstanding the language in the FLPMA, 43 U.S.C. § 1764(g), that the cost of an EIS may constitute a "reasonable cost" under the Act, that other language in that same section providing that a factor in determining reasonable costs is whether "the cost incurred [is] for the benefit of the general public interest" precludes defendants from requiring reimbursement for the preparation of an EIS. This is so because the BLM undertook the preparation of the EIS in order to meet the requirements of NEPA, an Act passed by Congress manifestly for benefit of the general public. But for NEPA, the BLM would not have undertaken such environmental studies. Such a cost falls within the Supreme Court's holding in New England Power, *supra*, that "no charge should be made for services rendered, where the identification of the ultimate beneficiary is obscure and the service can be considered primarily as benefiting broadly the general public." Id. at 350.



With respect to the other costs, such as administrative overhead plaintiff complains of, there can be no precise delineation of which costs are subject to reimbursement and which are not. The court is inclined to agree with the standard adopted in the Public Service Company of Colorado case.

As a fee, the BLM must measure its reimbursement demands only by the actual costs to the agency. To include the ultimate value to the applicant in its consideration taints a reimbursement plan into a revenue scheme. In National Cable Television Ass'n, Inc. v. F.C.C., 554 F.2d 1094 at 1107, the court observed:

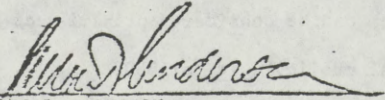
[T]he agency must not look at the value which the regulated party may immediately or eventually derive from the regulatory scheme but at the value of the direct and indirect services which the agency confers. This means, for example, that a fee, in order not to be a tax, cannot be justified by the revenues received or the profits which cable operators have made from their franchises, but must be reasonably related to those attributable direct and indirect costs which the agency actually incurs in regulating (servicing) the industry.

The Court was more direct in National Ass'n of Broadcasters v. F.C.C., supra, at 1129-1130 n. 28 "When the cost of the benefit conferred is exceeded by any material amount, one immediately gets into the taxing areas and the result is a revenue and not a fee." It is the cost to the agency which determines the value to the recipient. The fee schedules should be structured accordingly.

Id. at 153. (Emphasis added.) Accordingly,

IT IS HEREBY ORDERED that defendant's motion for summary judgment is denied and plaintiff's motion for summary judgment is granted in accordance with the above opinion. A judgment reflecting the court's order is filed in a separate document.

DATED this 4 day of March, 1978.

  
ALDEN J. ANDERSON



Question: 10. What existing Federal laws apply to the source and supply of water used in a coal slurry pipeline?

Answer: 10. While it is impossible to list all Federal statutes which may, in some way, apply to the source and supply of water for coal slurry purposes the act with most application is the National Environmental Policy Act of 1969. Normally, private rights to the use of water in western states are acquired pursuant to state water laws.

Question: 11. What existing Federal laws apply to the use and disposal of water at the discharge end of a coal slurry pipeline?

Answer: As in number 10, it is impossible to list all Federal laws which might affect, in some way, the use or disposal of water for coal slurry purposes; however, the Federal acts of major consequence would be the Federal Water Pollution Control Act and the National Environmental Policy Act.

Question: 12. Does the National Environmental Policy Act apply? How? Will it continue to apply in the same way if this bill is passed?

Answer: In responding to this question, we presume that your concern is directed to the need for the preparation of a NEPA impact statement.

There is nothing in H.R. 1609 that would indicate an intent to exclude the provisions of the bill from the requirements of the National Environmental Policy Act, 42 U.S.C. 4321, et seq.

An application for a certificate of public convenience and necessity, as provided for in H.R. 1609, would require a determination by the Secretary of the need for a pipeline carrier's exercise of the Federal government's eminent domain power in relation to the construction and operation of a specific pipeline project. If a determination of need were found and if, after all of the other requirements of the bill relating to the certification process were met, the Secretary concluded that a carrier should be certified, the act of certification, per se, would not have an impact on



the environment. However, that action could have the effect of enabling the pipeline project itself to be constructed or completed or it might facilitate to a considerable degree such construction or the timely completion of the project. Thus, an application for certification should be considered in terms of the "enablement", or "but for", test for purposes of impact statement compliance. Given this ground rule, the fact that major pipeline projects are likely to generate considerable public controversy and the fact that other Federal licensing actions would be generated (as for example navigable stream crossing permits), we believe it can be assumed that an environmental impact statement would have to be prepared before the Secretary could act on an application for certification involving a major pipeline project. CF., H. Rept. 95-924 Part 1, to accompany H.R. 1609, 95th Cong. 2d Sess., 18, 24 (1978).

The requirements of the National Environment Policy Act would not be altered by the passage of H.R. 1609.

Question: 13. Does the Water Pollution Control Act apply? How? Will it continue to apply in the same way if this bill is passed?

Answer: As in the case of the Resource Conservation and Recovery Act of 1976 (see item 14), we do not find any direct connection between the provisions of H.R. 1609 and the Water Pollution Control Act, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217, Act of December 27, 1977, 91 Stat. 1566, and H.R. 1609. Water pollution would, of course, be of concern in connection with the environmental review requirements of NEPA and of section 5(b) of the bill.

Generally, the Federal Water Pollution Control Act (FWPCA) will apply if there is a discharge of pollutants into any waters of the United States. If this were to occur all the necessary permits for discharges required by the FWPCA would have to be obtained. The Environmental Protection Agency would be able to furnish more specific information concerning all the possible ways the FWPCA might apply. The passage of H.R. 1609, in our opinion, would have no effect on the applicability of the FWPCA.



Question: 14. Does the Resource Conservation and Recovery Act apply? How? Will it continue to apply in the same way if this bill is passed?

Answer: The purging of accumulated sludge in a coal slurry pipeline can result in environmental and property damage unless properly contained and disposed of. For these reasons, the sludge might well be held by the EPA to be a "hazardous waste" as defined in section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5) and thus subject to the provisions of Subtitle C of the Act, including location, design and construction standards of disposal or storage facilities and facility permitting requirements.

However, we find no direct connection, in terms of implementing the provisions of H.R. 1609, between the Resource Conservation and Recovery Act of 1976 and H.R. 1609. Obviously solid waste disposal would be of concern in connection with the environmental review requirements of NEPA and of section 5(b) of the bill.

The requirements of the Resource Conservation and Recovery Act of 1976 would not be altered by H.R. 1609.

Question: 15. Does Interior have jurisdiction over any aspect of the operations of the Black Mesa coal slurry pipeline? If so, please explain.

Answer: 15. The Department has granted a right-of-way across public lands and Indian reservation lands for the Black Mesa coal slurry pipeline. Accordingly, the Department, through the Bureau of Land Management, is monitoring the operation and maintenance of the pipeline to ensure compliance with the terms and conditions of the right-of-way grant.

Question: 16. Does Interior regulate the use and disposal of the discharge water of the Black Mesa pipeline? If not, what Federal agency does?

► Answer: The Bureau of Land Management has no role in regulating or monitoring use and control of discharge water. The water is trapped in ponds to assure that it does not enter the Colorado River. The Geological Survey does have a role in monitoring ground-water sources for Black Mesa water. The Department does not monitor discharges.



Question: 17. Doesn't the Federal Land Policy and Management Act of 1976 authorize the granting of rights-of-way? And if so, what is the need for H.R. 1609?

Answer: 17. FLPMA does authorize the granting of rights-of-way over "public lands" (BLM administered Federal lands) for a variety of purposes, including coal slurry pipelines. However, it covers only those situations in which authorization to cross these public lands is involved. It does not cover other Federal lands (with the exception of National Forest System lands) or non-Federal lands and does not give the Secretary any authority over non-Federal lands for coal slurry pipeline purposes or to enable private entities to exercise the power of eminent domain. We see the main purpose of H.R. 1609 as a guarantee that major pipelines are not held up or stopped because of inability to acquire a right-of-way in non-Federal lands, and as a means to assure that companies acquiring rights by eminent domain exercise those rights in the public interest. See also answers to questions 1, 2, and 9 above.

Question: 18. What existing laws or regulations relate to safety requirements for coal slurry pipelines to guard against ruptures, both on public and private lands?

Answer: 18. We will confine our remarks to Federal law administered by this Department. The Department of Transportation may also have an interest in this issue.

To the extent that "coal pipelines" are encompassed within Title V of the Federal Land Policy and Management Act of 1976 (see our remarks under item 2 (1) (a) above), sections 504 and 505 of the Act would be applicable to those pipelines or to the portions of them traversing BLM administered Federal lands or National Forest System lands. Section 505 of the Act requires that each grant of a right-of-way contain, among other provisions, terms and conditions which will: minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment; require compliance with applicable air and water quality standards; require compliance with state standards for public health and safety, environmental protection, and siting, construction, operation and maintenance of or for a right-of-way if those standards are more stringent than applicable Federal standards. Section 505 also directs that each grant of a right-of-way contain terms and conditions as the Secretary concerned deems necessary to: protect Federal property and economic interests; protect lives and property and; among other matters, otherwise protect the public interest in the lands traversed by the right-of-way and adjacent thereto. Section 504(c) authorizes the Secretary concerned



to impose terms and conditions with regard to the construction and maintenance of each right-of-way. Section 504(d) requires an applicant to submit a plan of construction, operation and rehabilitation for a right-of-way which must comply with stipulations or with regulations issued by the Secretary including the terms and conditions required under Section 505 of that Act. Section 504(e) authorizes regulations to be issued in relation to the terms and conditions that will be included in right-of-way grants pursuant to Section 505. Taken as a whole, we believe that these provisions afford ample authority to incorporate in coal pipeline right-of-way grants that are subject to Title V of the Act appropriate stipulations to guard against ruptures, caused by plugging or otherwise, on BLM administered or National Forest System lands. However, it is our view that terms and conditions imposed upon a right-of-way grantee for crossing Federal lands under FLEMA cannot be extended to private lands. There are other statutes under the administration of other agencies that would also have a bearing on safety.

Question: 19. H.R. 1609 as reported from the House Interior Committee only mentions subsection (a) of Section 28 of the Mineral Leasing Act of 1920. The other 25 subsections of Section 28 cover such important subjects as pipeline safety, environmental protection and right-of-way limitations, among others. In your opinion, would the other subsections of Section 28 apply to coal slurry pipelines? If not, should they be made applicable?

Answer: 19. Subsection (a) of Section 28 of the Mineral Leasing Act of 1920, after conferring the authority to grant pipeline rights-of-way to the extent prescribed, states that a grant must be made "in accordance with the provisions of this section". The term "section" is used throughout Section 28 to refer to the entire section and not just to the subsection in which the term happens to be employed. Consequently, if "coal" pipelines are added to subsection (a) of Section 28, all of the provisions of Section 28 would be applicable to coal pipeline right-of-way applications and grants except as otherwise expressly provided in Section 28, as for example, in subsection (r) which in certain respects is limited to only oil pipelines or gas lines or a combination of only oil or gas pipelines.



Question: 20. We have had testimony and discussions on the potential of recycling water to the point of origin. Is this or is this not a feasible thing to do? If so, would you object to an amendment to require that a certain percentage of the water be recycled.

Answer: 20. We have no reason to doubt the technological feasibility of recycling, although we are not aware of specific studies on the point. The potential economic impact of such a requirement could obviously be very substantial.

Question: 21. Would an environmental impact statement be required prior to the issuance of a certificate of public convenience and necessity for coal slurry pipelines? Would you have any objections to an amendment which declared the issuance of a certificate a major Federal action for the purpose of NEPA?

Answer: 21. The preparation of an environmental statement (ES) regarding a proposed coal slurry line would probably prove to be appropriate in most cases, in order to be consistent with the National Environmental Policy Act of 1969. See the answer to question 12, above. However, the normal process in determining if an ES is needed should be followed. It would not be good management to legislate such a requirement. Procedures for determining where an ES is required are well established in the Department and the Bureau of Land Management.

Question: 22. On page 2 of your testimony, you indicated that the Department of the Interior would conduct a thorough review of water, land use, and natural resources questions. Please explain what land use questions would be reviewed.

Answer: 22. Please refer to the response to question 2, above.

Question: 23. On page 3 of your testimony, you indicate that the Department of Interior's concurrence would be required in the issuance of a certificate. Do you feel that Interior would have a veto over a proposed pipeline? Would you support an amendment making it clear that Interior would have a veto?

Answer: 23. The testimony mentioned in this question was offered in reference to the Administration's proposed substitute for H.R. 1609.



Under section 5(b)(1) of the substitute bill, a certificate could not be issued by the Secretary of Energy if the Secretary of the Interior refused to concur in the finding required by section 5(c)(4) of the bill.

Under the Administration's proposed amendments, the requirement for concurrence of the Department of the Interior is intended as a veto power over a certificate for a proposed project. We would have no objection to including an amendment to clarify this power. That question is not presented by the version of H.R. 1609 that was reported by the House Interior Committee since the Department of the Interior would be the lead agency and would issue the certificates.

Question: 24. The OTA report indicates that almost no information exists on what materials will be leached from coal by water in the anaerobic conditions that will be encountered in a coal slurry pipeline. Do you agree? Has Interior or EPA done any studies on this subject? Are any studies underway or contemplated?

Answer: 24. The Department of Energy might have information on this. Otherwise, see attachment, relating to pre-DOE work.

Question: 25. (1) Isn't it true that a pipeline crossing a navigable water would require a permit under Section 10 of the River and Harbor Act of 1899, which requires permission of the Secretary of the Army for any structure in or alteration of such waters?

(2) And, isn't it also true that any pipeline crossing of a water of the United States would require a permit under Section 404 of the Federal Water Pollution Control Act which requires a permit from the Secretary of the Army for any activity involving the discharge of dredged or fill material into such waters.

Answer: 25. (1) Yes, a pipeline crossing the channel of a navigable waterway would require a permit under Section 10 of the River and Harbor Act of 1899, 33 U.S.C. 403, which in part requires that the excavations, alteration or filling in of the channel of any navigable water of the United States is not lawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to the beginning of the work. If a pipeline crosses over navigable waters, certain U.S. Coast Guard responsibilities come into play.



25. (2) Yes, the discharge of dredged or fill materials, in connection with the construction, operation or termination of a pipeline, into the navigable waters, in general would be subject to the permit requirements and provisions of Section 404 of the Federal Water Pollution Control Act, 33 U.S.C. 1344, as amended by Section 67 of the Clean Water Act of 1977, Pub. L. 95-217, Act of December 27, 1977, 91 Stat. 1566, 1600. The discharge of dredged or fill materials in connection with maintenance work may not, however, require a permit. If an approved state program exists, the relevant state authority rather than the Secretary of the Army, acting through the Chief Engineers, may issue the appropriate permits.



Attachment to Question 2

ANSWERS TO QUESTIONS PERTAINING TO COAL PIPELINE TECHNOLOGY  
PURSUANT TO THE HEARING ON JANUARY 29, 1976, BEFORE THE  
HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY  
SUBMITTED BY THE DEPARTMENT OF THE INTERIOR



1. Question:

Please describe to us any research and development work that has been or is being performed since FY 1970 by the Federal Government in using pipelines for the transportation of coal over long distances, indicate which agency or agencies have done this work directly or by contract, identify the contractors, indicate the amount of funds (Federal and non-Federal) expended on such work since FY 1970. Please provide similar data concerning any such R&D work performed by non-Federal organizations during this period. Also, provide to us a complete bibliography of any pertinent reports of such work.

Answer:

To the knowledge of the Bureau of Mines, no Federal agency has conducted R&D work specifically on long distance coal slurry pipelines. The Bureau conducted studies relating to the abrasive and erosive characteristics of a slurry mixture on the pump and pipe interiors; however, all of these records have been transferred to ERDA. Outside R&D work was done by the Black Mesa Pipeline, Inc., the details of which are not available to us.

Attached is a list of projects funded inhouse and by contract by the Division of Mining Research and a bibliography of pertinent reports related to hydraulic transportation of coal in pipelines. All of the research by the Division of Mining Research to date has been directed towards hydraulic transportation of coarse coal within coal mines. These research results are applicable to pipeline systems for transporting coal in sizes up to four inches in diameter and for relatively short distances of about ten miles. The Mining Research Division's current effort is aimed towards demonstrating a coal pipeline transport system in an underground coal mine in five years.

No programs related to long distance overland pipeline transportation of fine coal slurries are being considered by the Department in the near future.

To a substantial extent, the small amount of R&D work in this area must be considered a reflection of a lack of need. Coal pipeline technology is established and proven. In allocating limited R&D dollars, it does not seem wise to place coal pipeline technology high on the list, whereas a model to study the comparative economics of various power or fuel transmission modes was lacking and entirely relevant and necessary for assessing and planning future energy transportation developments.



Hydraulic Pipeline Transportation of Coal Research  
Under the Assistant Director-Mining, Bureau of Mines

1976-1977

Attached is a list of projects funded inhouse and by contract by the Division of Mining Research and a bibliography of pertinent reports related to hydraulic transportation of coal in pipelines. All of the research by the Division of Mining Research to date has been directed towards hydraulic transportation of coarse coal within coal mines. These research results are applicable to pipeline systems for transporting coal in sizes up to four inches in diameter and for relatively short distances of about ten miles. The Mining Research Division's current effort is aimed towards demonstrating a coal pipeline transport system in an underground coal mine in five years.

Up to the present time the Division of Mining Research has not done any research related to long distance overland pipeline transportation of fine coal slurries.



## Hydraulic Transportation of Coal Research Projects--Bureau of Mines

| <u>Title</u>                                                                             | <u>Contractor/Inhouse</u>                   | <u>Funding (\$1,000) and Fiscal Years</u> |             |             |             |             |             |             |
|------------------------------------------------------------------------------------------|---------------------------------------------|-------------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
|                                                                                          |                                             | <u>1970</u>                               | <u>1971</u> | <u>1972</u> | <u>1973</u> | <u>1974</u> | <u>1975</u> | <u>1976</u> |
| Hydraulic Transportation Pilot Plant and Laboratory Studies                              | Inhouse                                     | 75.0                                      | 175.3       | 102.4       | 73.0        | 158.9       | 201.6       | 251.0       |
| Slurry Data Bank                                                                         | Colorado School of Mines                    | -                                         | 19.9        | -           | -           | -           | -           | -           |
| Properties of Coal-Water Slurries                                                        | Colorado School of Mines                    | -                                         | 40.2        | -           | -           | -           | -           | -           |
| Numerical Model for the Study of Particle Interaction in Relation to Hydraulic Transport | Carnegie Mellon Institute                   | -                                         | 22.3        | -           | -           | -           | -           | -           |
| Feasibility of Hydraulic Transportation in Underground Coal Mines                        | Colorado School of Mines Research Institute | -                                         | -           | -           | 127.0       | 2.4         | 9.6         | -           |
| Solids Injector for Closed Loop Hydraulic Haulage                                        | Ingersoll-Rand Research Inc.                | -                                         | -           | -           | -           | -           | 38.9        | -           |
| Coal Injector for Coarse Slurry Transport                                                | Foster-Miller Associates, Inc.              | -                                         | -           | -           | -           | -           | 95.2        | -           |
| Design of a Hydraulic Transport Research Facility                                        | Stone and Webster Engineering Corp.         | -                                         | -           | -           | -           | -           | 287.4       | -           |
| Total                                                                                    |                                             | 75.0                                      | 257.7       | 102.4       | 200.0       | 161.3       | 633.7       | 251.0       |



## Bibliography

Colorado School of Mines. A Mineral Slurry Data Bank

NTIS <sup>1/</sup> No. PB220565

Carnegie Mellon Institute. A Numerical Model for the Study of Particle Interactions in Relation to Hydraulic Transport.

NTIS No. PB221097

Gerg, Joanne S. Analysis of Williams Brothers Engineering Company Coal Slurry Pipeline Tests.

<sup>2/</sup>  
Bureau of Mines OFR 66-73.

Colorado School of Mines Research Institute. Feasibility of Hydraulic Transportation in Underground Coal Mines.

NTIS No. PB244711.

Wang, Richard C., and J.J. Seman. Solid-Liquid Flow in Noncircular Pipes. 1973. Bureau of Mines Report of Investigations 7725.

1/ National Technical Information Service.

2/ Bureau of Mines Open File Report.

2. Question:

Please describe any R&D work concerning the use of pipelines for the transportation of coal planned by any Federal agency for the next three fiscal years. Please provide all pertinent details, including funding, timetable, etc.

Answer:

No such work is being planned in the Department of the Interior. See our answer to question 1. This question might well be referred to ERDA.



Mr. EDGAR. You talk about the Interior and Department of Transportation concurrence being required. Could you elaborate on that statement, and reflect on whether or not that gives either the Department of Transportation or the Department of Interior veto power?

Mr. WICKS. In response to the last part of your question, Mr. Chairman, it is my understanding that the concurrence required in the administration amendments does mean that the Department of Interior—that a certificate would not be granted if the Department of Interior and the Department of Transportation refused to concur in the findings and the recommendation by the Department of Energy. So, the answer is yes, to the veto question.

In terms of elaboration, the amendments proposed by the administration were submitted on March 21, I think it is section 5 where we talk about the certification procedures. "The Secretary of Energy shall not issue"—to quote some of the language—"a certificate unless he has obtained the concurrence of the Secretary of Transportation with respect to findings"—5(c)(1), which deal with the impacts on other means of transportation and the relative costs of railroads—"and the concurrence of the Secretary of Interior with respect to the finding required by 5(c)(4)," and that deals specifically with the environmental impacts, the impact on water and other natural resources that might be affected by the pipeline.

Is that the kind of elaboration you wanted?

Mr. EDGAR. Yes, that is helpful. Let me speak just to the question of the water impact. We were discussing here informally before the hearing started this afternoon the process of piping coal with water and, when it gets to the other end, whether or not that water is disposed of in an environmentally sound way. Is there any experience on the panel there of exactly what happens when the coal is again separated from the water and what, in fact, happens to the water?

Mr. WICKS. Mr. Davis, do you have any comments on that?

Mr. DAVIS. Yes, Mr. Chairman. In the one existing pipeline situation, water is separated from the coal mechanically, and then the water is routed into the cooling system of the powerplant that is served with the coal. In this particular situation, the blowdown from the powerplant ultimately is disposed of in evaporation ponds, so there is no release of water or mineral matter to the environment that way.

Mr. EDGAR. Would this be one of the considerations of the Department of Interior?

Mr. WICKS. Very definitely, Mr. Chairman, and I think the concern is expressed by some of the amendments the committee had to H.R. 1609 and, certainly, it is a concern that we have. It would be one of the specific things we would come up with findings in making a determination as to whether or not to concur in the Department of Energy decision.

Mr. EDGAR. Thank you. Mr. Nowak?

Mr. NOWAK. Thank you very much, Mr. Chairman. I wondered if you could give us any type of broad timetable as far as getting through the procedures that you have outlined here in the bill.

Mr. WICKS. Well, I think that when we discussed it within the administration, there was, of course, an understanding that we would



have to do an EIS. We have had to do that before on pipeline applications. And I think we are looking at a period of about 18 to 24 months, once an application is received, to process it and go through the findings required in the law and go through the proper hearings and come up with a determination as to whether or not a certificate should be issued.

Mr. NOWAK. And I assume you would have to follow that process for every one of these pipelines that is submitted?

Mr. WICKS. Yes; under the terms of the bill, that is correct. Depending on the situation, the complexity of the applications makes a lot of difference as to what time period is required to complete it.

Mr. NOWAK. But you would still have to fully investigate every aspect as outlined in the bill not only on the public lands, but see that it is done on the private lands as well, and get the concurrence of the Governors in respective States and other agencies?

Mr. WICKS. That is correct.

Mr. NOWAK. Have you had any indication of the desirability of this proposal to the Governors of the respective States?

Mr. WICKS. Of the administration's proposal, or H.R. 1609?

Mr. NOWAK. Of either.

Mr. WICKS. No; we have not had any indication, that I know of. Of course, many Governors have testified on coal slurry pipelines, and there is some concern about water and, I am sure, some other aspects of coal slurry pipelines. But we have not made any specific contact, that I know of, which would indicate a feeling one way or the other.

Mr. NOWAK. The question was asked—we were discussing it here—about the end result of this water after it is mechanically separated—I believe that is the term you used. Can you tell me where that existing facility is right now?

Mr. DAVIS. That facility I referred to is the Mojave Power Plant at the southern tip of Nevada, which is served by the Black Mesa Pipeline.

Mr. NOWAK. And do you know how much water is being pumped through there at the present time?

Mr. DAVIS. It is approximately 3,200 acre-feet per year; it is roughly 50 percent water, 50 percent coal by weight.

Mr. NOWAK. And after it is separated, you say it is put into a pond, a storage area?

Mr. DAVIS. Well, initially, it goes into the regular power plant cooling system, where it makes up only a small proportion—say, one-sixth. But in every cooling system, you have to permit a certain amount of blowdown to carry away concentrated mineral matter. This, in that powerplant situation, is then routed to an evaporation pond for final disposal.

Mr. NOWAK. You say an evaporation pond. How much water is pumped in, and how big are these ponds; how fast does this evaporate?

Mr. DAVIS. Well, in that particular climate of southern Nevada, the evaporation rate would be in the neighborhood of 6 feet per year. There is a pond area there of several tens of acres to dispose of that amount of water. In a different climate, of course, you would have different conditions.

Mr. NOWAK. Then the water would just stay there and evaporate?



Mr. DAVIS. Yes, it goes into the air in that desert climate of southern Nevada. In a more humid location, perhaps it might be necessary to dispose of water in a different fashion.

Mr. NOWAK. You could not do it that way if you were in a different climate?

Mr. DAVIS. That is correct.

Mr. NOWAK. I have no further questions.

Mr. EDGAR. Thank you. Mr. Shuster?

Mr. SHUSTER. Thank you. Mr. Wicks, I just have one question. Would an environmental impact statement be required prior to the issuance of a certificate of public convenience and necessity for coal slurry pipelines?

Mr. WICKS. Yes.

Mr. SHUSTER. Thank you.

Mr. EDGAR. I just have one farther question. In Mr. Dempsey's statement, he quotes from the OTA study on the issue of the findings; they concluded, "In all potential coal slurry pipeline origin areas except Tennessee, demand projected for 1985 to the year 2000 period exceeds the legally available supply." And he goes on to say that the "character of the impact of a pipeline is illustrated as follows," and he has a quote in terms of the Montana pipeline. I think you were present when he was making that statement.

Does the Department of Interior have any statistics or information about the question of water supply as it relates to the areas that are being projected for pipeline use?

Mr. WICKS. Mr. Chairman, the Department is currently involved, together with a lot of other departments, in a water for energy study that I think will be completed later this year to give us a more definitive answer. But there are a number of studies that have been done, and we could review that and make them available to the committee if you would like.

But in response to the general question, Mr. Dempsey's statement, it seems to me, raises the difficulty of trying to deal with this in a general situation, when water problems, generally, are very specific to a location. And so that, while you might have a general problem in the West, there are certainly some areas of the West—for instance, some of the Federal reservoirs—where the Federal Government has determined that water is available for industrial uses, including slurry pipeline, assuming the State goes along with that use.

So, my answer to your question is that in a macro sense what Mr. Dempsey said may be accurate, but in terms of the specifics, there seems to be water available for the transportation of coal in some of the Western States, if you talk about a specific location for the coal and a specific source for the water.

Mr. EDGAR. I yield to the gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. Thank you, Mr. Chairman. I would like to follow up on my previous question. Is it true, Mr. Wicks, that if this legislation were not passed and coal slurry pipelines relied on the State eminent domain and, therefore, did not rely on the legislation such as this, an



environmental impact statement would not be required unless it crossed Federal land?

Mr. WICKS. Well, it has been my experience that most of the States now have some kind of environmental requirements—

Mr. SHUSTER. Yes, those are State. I am speaking about Federal environmental impact statements.

Mr. WICKS. But what I am saying is that I expect that there is no way we are going to get away from environmental impact statements, and even at the Federal Government level, we have section 404 permits that are required when we cross a stream or a body of water, and under that, I expect that we would see an environmental statement.

I just cannot anticipate, or could not foresee a major coal slurry pipeline not crossing a stream at some point and not requiring a section 404 permit.

Mr. SHUSTER. But would that not require a specific statement relative to that point where is crossed the stream, as opposed to one comprehensive Federal environmental impact statement that covered 1,000 miles?

Mr. WICKS. Well, I guess the problem that you run into in doing environmental impact statements is that you have to look at secondary impacts in most of them, and that is what we do in most of the impact statements the Department of Interior does. And I expect that you might get away with a narrow look at a particular river crossing, but it seems to me you would probably, and at least in a general sense, have to take a look at the broader impacts. But I would say that it would not be the kind of study we are looking at here with the various findings by the different departments required.

Mr. SHUSTER. And if this law is passed and the massive environmental impact statement, Federal statement, that would then, obviously, be required, would it not be of a nature that it would just lend itself to litigation in the courts for years and years and years?

Mr. WICKS. No; I think the answer to that is no.

Mr. SHUSTER. A 1000-mile Federal EIS?

Mr. WICKS. Well, we have had those kind before; we have had the Alaskan Pipeline EIS.

Mr. SHUSTER. Well, that was tied up, the Alaskan Pipeline was. In fact, Congress had to pass a law to shake loose the Alaskan Pipeline.

Mr. WICKS. We have had Sohio, where we got an EIS done. We have had a number of different pipelines; in fact, we have a list of 17 pipelines here that we have been involved in and, so far, I do not think there have been any major problems with the EIS's.

The question of whether or not an EIS is legally defensible, of course, depends on what kind of job is done on the EIS. If you do a good job, I think you can sustain an EIS legally. It is always going to be subject to some legal challenge; I think that occurs fairly often, obviously. But the type of job you do, the quality of the job, determines what kind of outcome you are going to have legally.

Mr. SHUSTER. I am surprised we do not have the American Bar Association in here testifying in favor of this legislation.

Thank you.

Mr. EDGAR. Are there any other questions?

[No response.]



Mr. EDGAR. We appreciate your patience, Mr. Wicks, and thank you for your testimony. We look forward to getting responses to the questions that we have submitted to you.

Mr. WICKS. Thank you, Mr. Chairman.

Mr. EDGAR. Our next witness will be the Honorable Rupert L. Murphy, Commissioner, Interstate Commerce Commission. I believe there is a panel to accompany Mr. Murphy.

Thank you for coming today, and I would appreciate it if you would introduce your associates with you today, and you can begin your testimony.

**TESTIMONY OF HON. RUPERT L. MURPHY, COMMISSIONER, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY JAN ROSENAK, DEPUTY DIRECTOR, OFFICE OF PROCEEDINGS; HANFORD O'HARA, ASSOCIATE GENERAL COUNSEL FOR LEGISLATION; DAVID JONES, ECONOMIST, BUREAU OF ECONOMICS; AND CHESTER NAUMINOW, SPECIAL ASSISTANT TO COMMISSIONER MURPHY**

Mr. MURPHY. I have the introduction of them in the prepared brief statement I will be making.

The Commission appreciates the opportunity to appear before you today and present the views of the Commission on H.R. 1609, the Coal Pipeline Act of 1978, as recently reported by the House Committee on Interior and Insular Affairs. We have a more comprehensive statement prepared which I would request at this time be included in the record. I would also ask that the statement reflect that Commissioner Christian did not participate in the statement.

Mr. EDGAR. Without objection, so ordered.

[Statement referred to follows:]

**STATEMENT OF A. DANIEL O'NEAL, CHAIRMAN, INTERSTATE COMMERCE COMMISSION**

Mr. Chairman, Members of the Subcommittee:

I welcome the opportunity to appear before you today and present the views of the Interstate Commerce Commission on H.R. 1609, the "Coal Pipeline Act of 1978," as recently reported by the House Committee on Interior and Insular Affairs.

The proposed bill delegates to operators of coal pipelines the Federal power of eminent domain if the operator obtains a certificate of public convenience and necessity from the Department of the Interior (Department). Such a certificate can be issued if the Secretary of the Interior (Secretary) determines that the proposed pipeline project is in the national interest. This determination is to be based upon national needs of coal, alternative routes or means of transportation and their relative costs, delay which denial of eminent domain would cause, possible environmental harm, and water requirements in the origin area.

Additionally, the determination takes into account the likelihood of impairment of the financial integrity or services of other common carriers, the likelihood of lower rates for coal transportation than would be provided if the coal were transported by railroad, and any existing, proposed, or anticipated contracts for the carriage of coal. The Secretary is directed to request this Commission and the Department of Transportation to make recommendations with respect to the impact of the proposed pipeline on other modes of transportation. The Secretary's determination involves, at least in part, many of the considerations this Commis-



sion takes into account when it issues licenses to surface carriers other than pipelines.

The bill also contains a "commodity clause" restriction prohibiting any coal pipeline granted the power of eminent domain from transporting any coal in which it has a proprietary interest except where necessary to achieve transportation and storage economies through commingling of coal from several producers or for several users, and except for some feeder lines. There is also a required finding by the Department that such interest is also in the public interest. The Commission is authorized to investigate possible violations of the commodity clause.

Further, section 5(e) provides that no certificate of public convenience and necessity may be issued to any person engaged as a common carrier in interstate transportation of coal by any mode unless such person agrees with the Secretary to grant rights-of-way across its lines. The bill does not specifically annul or abridge any of the Commission's existing authority, and specifies that any pipeline constructed pursuant to a certificate of public convenience and necessity will be operated as a common carrier under the Interstate Commerce Act (ICA). Nor does the bill require a license to construct such pipelines if the owners do not desire to obtain the Federal power of eminent domain.

The apparent purpose of this bill is the conservation of oil and natural gas resources through further utilization of coal, the nation's most abundant fossil fuel. We at the Commission find this purpose highly commendable. It is certainly clear to everyone after the President's energy messages that coal must play an increasing role in our national effort to attain energy independence since it is the country's only available fuel with long-term reserves. In some circumstances, the expeditious construction of coal pipelines should help us make the most efficient use of our domestic coal resources.

However, we feel that in attempting to encourage the construction of coal pipelines, this bill contains certain provisions which we believe could affect national transportation policy and, perhaps, national goals concerning economy, environment and energy.

In accordance with the National Transportation Policy, as established by Congress in the Interstate Commerce Act (49 U.S.C. preceding section 1), the Commission is charged with the responsibility of providing "fair and impartial regulation of [surface] transportation . . . so . . . as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical and efficient service and foster sound economic conditions in transportation and among the several carriers." Congress' purpose in granting us this mandate was to assure the development, coordination and preservation of a national transportation system, "adequate to meet the needs of the commerce of the United States, of the Postal Service, and the national defense." Congress has frequently enunciated the need for a national transportation policy, and for avoiding pitting one mode of transportation against another.

In our view, land-use, environment, and transportation are all very important considerations in the coal slurry pipeline issue. However, we view transportation as the foremost issue. While H.R. 1609 as now written does provide for Commission input to the Department on the impact of a proposed pipeline on other carriers, we believe that it would be preferable for the Commission to make the ultimate determination of whether the pipeline should be certified.

In addition to its authority over pipelines, the Commission currently licenses railroad construction and extension, motor carrier entry into the field and extension, joinder of transportation operations through corporate consolidation, and numerous other aspects of instituting and enlarging for-hire surface transportation service. In exercising our jurisdiction over surface transportation, our procedures require that we analyze and weigh the public need, environmental impacts, and effects on competition. Under these procedures, the Department and any other government entity would be entirely free to participate in any proceeding for the purpose of expressing their views as to the findings which are required before any certificate of public convenience and necessity can be issued.

Economics, of course, is a major factor in choosing any transportation system. To be economically competitive with a unit coal train, it is believed by some that a pipeline must transport in excess of 5 million tons of coal a year. The



first long-distance coal slurry pipeline in this country (Consolidation Coal Pipeline from Cadiz, Ohio to Cleveland) had to close down when it could not profitably compete with lowered railroad rates. Today, the significance of the cost of transporting coal by rail has diminished in terms of determining delivery price. As Appendix A demonstrates, the rail rate percentage of the average total coal destination value has been reduced from 63.3 percent in 1932 to an estimated 22.7 percent in 1977. Moreover, it is likely that increased use of large coal cars will further lower rail transportation costs.

Currently, about two-thirds of all coal moves by rail. Trucks and water carriers each transport about 11 percent of the coal mined and most of the remaining coal is delivered to mine-mouth generating plants. Only a small percentage of coal is presently transported by pipeline in slurry form because there is only one slurry pipeline now operating. Even with the advent of additional pipelines, most of the coal which is expected to be mined in the near future will have to rely on existing forms of transportation. Therefore, it is and will be necessary to allow those existing forms to make the necessary expenditures and improvements needed to meet the anticipated demand. The Department of Transportation has recently estimated that it will take an investment of about \$10 billion by the railroads to meet the demand for rail transportation of coal through 1985.

Substantial diversion of the railroads' coal traffic which would occur even with rate regulation of pipeline transportation would plainly have a serious impact on an already financially troubled industry. At a time when Congress has committed billions of dollars in an attempt to maintain a workable railroad system in this country, it is important to note that railroads derive more revenue from coal than from any other commodity—in 1976 over \$2.2 billion annually, or about 11.7 percent of their gross revenue. Diversion of coal traffic could result in railroads having to reduce their service to coal producing areas, further depriving them of revenue and perhaps forcing them to increase their rates on other commodities to cover operating costs.

Of course, the Commission cannot and would not protect any mode of transportation from competition when that mode is not providing the public with adequate service at reasonable prices. By balancing all considerations, our intention is, however, to provide an integrated surface transportation system in which each mode complements every other mode so as to maximize America's logistical capability to move potentially larger volumes of coal from mine to market.

In summary, the question of whether the Federal power to eminent domain should be extended to coal pipelines is a matter of Congressional policy. However, should it be so extended, we feel that control over certification by the Commission is desirable to help preserve uniform regulation of all surface common carriers with the objective of maintaining an adequate, integrated transportation system.

We would now like to mention some of the specific provisions of H.R. 1609 which we believe raise problems or require clarification. Section 5(a) requires the Secretary "in addition to other factors customarily considered in determining common carrier status in the case of pipeline common carriers . . ." to consider certain existing or proposed contracts for the carriage of coal. The language of this section leaves unclear what contracts are covered—whether contracts between common carriers by rail and shippers, conditional contracts between pipeline operators and the shippers, or both. While the report of the Interior and Insular Affairs Committee suggests that shipper-pipeline conditional contracts are at issue, we would suggest that the language of this section be clarified.

Section 5(b) directs the Secretary to make certain findings in the course of analyzing the proposed pipeline pursuant to subsection (a). Of special interest to this Commission are those findings on the pipeline's impact on other common carriers and the likelihood of the pipeline's resulting in lower rates than would be in effect if the coal was transported by railroad. Both of these findings were added during the Interior and Insular Affairs Committee's markup of H.R. 1609. These findings, like other amendments adopted by the Committee, are intended to address many of the concerns raised in the report of the Office of Technology Assessment (OTA) on coal slurry pipelines. While these changes effect a slight improvement in the legislation, we do not believe that they sufficiently address the concerns we have raised here today nor those raised in the OTA study.



The OTA study concludes that the relative economics of rail and slurry pipelines in the transportation of coal will vary considerably with the characteristics of the specific coal movement under consideration. It also concludes that a determination of whether a coal slurry pipeline is the "least costly available means for transporting coal measured in economic terms" can only be made "by detailed evaluation of the conditions specific to the route." The economic evaluation contemplated by the study is like that now performed by the Commission in licensing railroad construction and extension and authorizing motor carrier entry and extension.

Additionally, the OTA study concluded that "with the power of eminent domain, coal pipelines would enjoy significant regulatory advantages over railroads." It attributed such advantages to the ability of the pipelines to engage in long-term contracts, to serve selected shippers, and to obtain more favorable rates of return on investment. While we do not believe that these findings by the OTA tell the full story about ICC policies and rate regulation, we do think they amply demonstrate that coal slurry pipelines are primarily another competing mode of transportation, and that this Commission is the better forum for balancing the effects of eminent domain power on two potentially competing modes.

Section 5(b) (6) requires the Secretary to consider and make a finding on the extent to which the pipeline "will be likely to result in lower rates for the transportation of coal than would be in effect if such coal were transported by a common carrier by railroad under part I of the Interstate Commerce Act." The purpose of this amendment is to ensure that the Secretary will consider whether cost savings will be reflected in the rates to be charged and to require the proponents of the proposed pipeline to be realistic in their cost estimates. The latter is important, especially in light of OTA's statement that "the costs of errors in judgment will probably be borne largely by the public and not necessarily the utility investors." We agree with the OTA study that since the public may be asked to bear these costs, that long-term contracts for pipeline transportation should be scrutinized with great care by the agency charged with this responsibility. We believe the Commission, with its substantial expertise in considering rate proposals, is the logical forum to deal with this matter. As now drafted, this section does not even provide for comments by this Commission. We would suggest that if this Committee does not deem it appropriate that the Commission be assigned responsibility for certifying coal slurry pipelines, that at the least, sections 5(b) (6) and 6(e) should be modified to direct the Secretary to consider a recommendation by the Commission on this matter.

The "commodities clause" of section 5(d) (1) is intended primarily to prevent pipelines from achieving unfair competitive advantages in non-transportation industries by shipping coal they own or control at rates lower than they would ship coal owned by their competitors. Two exceptions were added by the Committee during markup so as to promote flexibility, to avoid additional storage requirements, and to minimize transportation costs.

We strongly endorse the application of the commodity clause to slurry pipelines. However, this provision, as reported, is different than that applicable to the railroads under section 1(8) of the ICA. We would suggest that any commodity restriction on one mode should be equal to those on the other. In addition, the "commingling" exception could enable pipelines to give price advantages to selected users. Further, we believe that the "public interest" finding required by the second proviso is one that would be more within the expertise of this Commission, rather than the Secretary, to make. Finally, if the pipeline is in operation at the time it seeks authority to acquire the coal, the Secretary will be undertaking regulatory responsibilities simultaneously with the Commission.

We are also concerned about section 5(e), which states that no certificate of public convenience and necessity may be issued to any person engaged as a common carrier in interstate transportation of coal by any mode unless such person enters into an agreement with the Secretary providing means whereby rights-of-way across the lines of such person may be acquired by another carrier. Since, under section 1(18) (a) of the Interstate Commerce Act, a railroad is required to obtain a "certificate of public convenience and necessity" in order to extend a line of railroad, this section as presently written might be read as precluding such an extension unless the railroad enters into such an agreement with the Secretary. We believe that, when read in context, the intention of this provision



is to apply the requirement to a person seeking a *pipeline* certificate of public convenience and necessity. If this is indeed the intention, the provision should be clarified by adding the words "under this Act," so that the sentence would read: "No certificate of public convenience and necessity under this Act may be issued to any person engaged as a common carrier in interstate transportation of coal by any mode unless such person enters into a compact with the Secretary within two years from the date of enactment of this Act providing means whereby rights-of-way across the lines of such person may be acquired by a carrier on terms customarily employed with reference to other types of pipelines."

Under section 12 of the bill pipelines would be regulated by this Commission as common carriers under part I of the Interstate Commerce Act. As common carriers, they are subject to the requisite duties and obligations set out in part I except to the extent provisions are specifically applicable only to railroads. In brief, pipelines are subject to reporting, valuation, and accounting requirements; must set rates and charges within the statutory requirement of justness and reasonableness; and are required to serve, on an equal basis, all similarly situated persons requesting pipeline transportation. Pipelines are not subject, however, to the commodities clause of section 1(8) of the Act nor its entry, acquisition, addition, extension or abandonment requirements. Additionally, there are some rate provisions which apply only to the railroads, and the requirement that the Commission approve issuance of securities does not apply to pipelines. We have attached as Appendix B to our statement a list of the comparable provisions applicable to each mode.

Some questions are raised with respect to the Commission's regulatory responsibilities for the pipelines.

The matter of contract rates appears to be one area of particular concern. The OTA study concluded that "due to the practical requirements imposed by the economics and mechanics of their operation" pipelines will arrange contracts with shippers binding them to transport a specified volume of coal through the pipeline for a long, fixed period of time. The prospect that pipelines and shippers will make contract arrangements for the carriage of coal, naturally raises questions over the present restrictions against long-term contracts between railroads and shippers. There is, of course, no statutory requirement that prohibits Commission approval of railroad contract rates. Rather, the restriction rests on the Commission's traditional policy of trying to reduce destructive competition and to provide a measure of market stability. Thus, contract rates have been viewed as imposing a restraint on trade by foreclosing participating shippers from use of competing modes of transportation and foreclosing the use of the committed railroad capacity by other shippers. Despite this general policy, it now appears that there are some commodities and some situations where contract rate agreements may be justifiable. Specifically, one of the questions expected to be raised in our soon-to-be-instituted investigation of rail transportation of coal in the western States is whether railroads should be allowed to enter into contract rate agreements. Whatever the outcome of our investigation, we think it would be difficult to preclude the railroads from entering into contract agreements if their new competitors, coal slurry pipelines, are permitted such arrangements. Of course, when either type of carrier is allowed to enter into contract rate agreements for the carriage of coal, the Commission would still have to ensure that the objectives of the National Transportation Policy are met.

As stated above, pipelines are not subject to the acquisition, addition, extension or abandonment requirements of the ICA. The proposed legislation says nothing on how these matters are to be handled. Presumably, each acquisition, addition, and extension could be considered a "particular project" requiring a separate certificate by the Secretary. However, it is by no means clear that this is the intent of the bill. We believe this matter needs to be clarified.

Lastly, we believe the language contained in section 13 of the bill requires some clarification. As it now reads, it could be construed to mean that no person may engage in the transportation of coal by slurry pipeline without obtaining a certificate from the Secretary, even if the pipeline were intrastate and/or the operator did not use the right of Federal eminent domain to construct the pipeline. Looking at the bill as a whole, we do not believe this was the intent of this section.

Thank you for the opportunity to comment upon this proposed legislation.



COMPARISON OF F.O.B. MINE REALIZATION AND RAILROAD RATES ON BITUMINOUS COAL,  
UNITED STATES—1931-75

| Year:                   | U.S. coal<br>production<br>(million tons) | Average real-<br>ization coal<br>f.o.b. mine | Average rail<br>rates | Total  | Percent of destination value |            |
|-------------------------|-------------------------------------------|----------------------------------------------|-----------------------|--------|------------------------------|------------|
|                         |                                           |                                              |                       |        | Coal                         | Rail rates |
| 1931.....               | 382.1                                     | \$1.54                                       | \$2.22                | \$3.76 | 41.0                         | 59.0       |
| 1932.....               | 309.7                                     | 1.31                                         | 2.26                  | 3.57   | 36.7                         | 63.3       |
| 1933.....               | 333.6                                     | 1.34                                         | 2.20                  | 3.54   | 37.9                         | 62.1       |
| 1934.....               | 359.4                                     | 1.75                                         | 2.15                  | 3.90   | 44.9                         | 55.1       |
| 1935.....               | 372.4                                     | 1.77                                         | 2.24                  | 4.01   | 44.1                         | 55.9       |
| 1936.....               | 439.1                                     | 1.76                                         | 2.25                  | 4.01   | 43.9                         | 56.1       |
| 1937.....               | 445.5                                     | 1.94                                         | 2.17                  | 4.11   | 47.2                         | 52.8       |
| 1938.....               | 348.5                                     | 1.95                                         | 2.27                  | 4.22   | 46.2                         | 53.8       |
| 1939.....               | 394.9                                     | 1.84                                         | 2.23                  | 4.07   | 45.2                         | 54.8       |
| 1940.....               | 460.8                                     | 1.91                                         | 2.22                  | 4.13   | 46.2                         | 53.8       |
| 1941.....               | 514.1                                     | 2.19                                         | 2.22                  | 4.41   | 49.7                         | 50.3       |
| 1942.....               | 582.7                                     | 2.36                                         | 2.31                  | 4.67   | 50.5                         | 49.5       |
| 1943.....               | 590.2                                     | 2.69                                         | 2.30                  | 4.99   | 53.9                         | 46.1       |
| 1944.....               | 619.6                                     | 2.92                                         | 2.21                  | 5.13   | 56.9                         | 43.1       |
| 1945.....               | 577.6                                     | 3.06                                         | 2.20                  | 5.26   | 58.2                         | 41.8       |
| 1946.....               | 533.9                                     | 3.44                                         | 2.27                  | 5.71   | 60.2                         | 39.8       |
| 1947.....               | 630.6                                     | 4.16                                         | 2.49                  | 6.65   | 62.6                         | 37.4       |
| 1948.....               | 599.5                                     | 4.99                                         | 2.74                  | 7.73   | 64.6                         | 35.4       |
| 1949.....               | 437.9                                     | 4.88                                         | 3.00                  | 7.88   | 61.9                         | 38.1       |
| 1950.....               | 516.3                                     | 4.84                                         | 3.09                  | 7.93   | 61.0                         | 39.0       |
| 1951.....               | 533.7                                     | 4.92                                         | 3.16                  | 8.08   | 60.9                         | 39.1       |
| 1952.....               | 466.8                                     | 4.90                                         | 3.35                  | 8.25   | 59.4                         | 40.6       |
| 1953.....               | 457.3                                     | 4.92                                         | 3.33                  | 8.25   | 59.6                         | 40.4       |
| 1954.....               | 392.0                                     | 4.51                                         | 3.23                  | 7.74   | 58.3                         | 41.7       |
| 1955.....               | 464.6                                     | 4.50                                         | 3.24                  | 7.74   | 58.1                         | 41.9       |
| 1956.....               | 500.9                                     | 4.82                                         | 3.45                  | 8.27   | 58.3                         | 41.7       |
| 1957.....               | 492.7                                     | 5.08                                         | 3.57                  | 8.65   | 58.7                         | 41.3       |
| 1958.....               | 410.4                                     | 4.86                                         | 3.58                  | 8.44   | 57.6                         | 42.4       |
| 1959.....               | 412.0                                     | 4.77                                         | 3.45                  | 8.22   | 58.0                         | 42.0       |
| 1960.....               | 415.5                                     | 4.69                                         | 3.40                  | 8.09   | 58.0                         | 42.0       |
| 1961.....               | 402.9                                     | 4.58                                         | 3.40                  | 7.98   | 57.4                         | 42.6       |
| 1962.....               | 422.1                                     | 4.48                                         | 3.32                  | 7.80   | 57.4                         | 42.6       |
| 1963.....               | 458.9                                     | 4.39                                         | 3.21                  | 7.60   | 57.8                         | 42.2       |
| 1964.....               | 486.9                                     | 4.45                                         | 3.11                  | 7.56   | 58.9                         | 41.1       |
| 1965.....               | 512.0                                     | 4.44                                         | 3.13                  | 7.57   | 58.7                         | 41.3       |
| 1966.....               | 533.8                                     | 4.54                                         | 3.01                  | 7.55   | 60.1                         | 39.9       |
| 1967.....               | 552.6                                     | 4.62                                         | 3.00                  | 7.62   | 60.6                         | 39.4       |
| 1968.....               | 545.2                                     | 4.67                                         | 3.01                  | 7.68   | 60.8                         | 39.2       |
| 1969.....               | 560.5                                     | 4.99                                         | 3.10                  | 8.09   | 61.7                         | 38.3       |
| 1970.....               | 602.9                                     | 6.26                                         | 3.41                  | 9.67   | 64.7                         | 35.3       |
| 1971.....               | 552.2                                     | 7.07                                         | 3.70                  | 10.77  | 65.6                         | 34.4       |
| 1972.....               | 595.4                                     | 7.66                                         | 3.67                  | 11.33  | 67.6                         | 32.4       |
| 1973.....               | 591.7                                     | 8.53                                         | 3.71                  | 12.24  | 69.7                         | 30.3       |
| 1974.....               | 603.4                                     | 15.75                                        | 4.71                  | 20.46  | 77.0                         | 23.0       |
| 1975.....               | 648.4                                     | 19.24                                        | 5.25                  | 24.49  | 78.6                         | 21.4       |
| 1976.....               | 678.7                                     | 19.43                                        | 5.82                  | 25.25  | 76.9                         | 23.1       |
| 1977 <sup>1</sup> ..... | 672.0                                     | 21.00                                        | <sup>2</sup> 6.17     | 27.17  | 77.3                         | 22.7       |

<sup>1</sup> U.S. Department of Energy forecast.<sup>2</sup> Estimated.

Source: U.S. Department of Energy as noted.

## APPENDIX B

ANALYSIS OF PART I OF INTERSTATE COMMERCE ACT: APPLICABILITY OF  
PROVISIONS TO PIPELINES AND RAILROADS

Below is a list of the provisions of part I of the Interstate Commerce Act. As indicated, some provisions are applicable to all common carriers, while others are applicable only to common carriers by rail.

*Jurisdiction*

Sec. 1(1)(a)—Provides that the provisions of Part I of the act shall apply to common carriers engaged in transportation of passengers or property by railroad.

Sec. 1(1)(b)—Similarly provides for jurisdiction over the transportation of oil<sup>1</sup> or other commodities, except water and gas, by pipeline.

<sup>1</sup> Department of Energy Organization Act, Pub. L. No. 95-91, 91 Stat. 565, effective Aug. 4, 1977, transferred all functions of the I.C.C. as they relate to the transportation of oil by pipeline.



Sec. 3(a)—The term "common carrier" as used in this part shall include all pipeline companies.

*Duty.*—Applicable to all common carriers.

Sec. 1(4)—Duty "to provide and furnish transportation upon reasonable request . . . and to establish reasonable through routes with other such carriers . . ."

*Justness and reasonableness of charges.*—Applicable to all common carriers.

Sections 1(4), 1(5),<sup>2</sup> and 1(6)—Rates, fares, charges, and classifications must be just and reasonable.

*Market Dominance provisions.*—Applicable to railroads.

Sec. 1(5)(b)—In part, states that "no rate shall be found to be unjust or unreasonable . . . unless the Commission has first found that the proponent carrier has market dominance . . ."

*Free transportation prohibited.*—Applicable to all common carriers—Sec. 1(7).

*Commodities clause.*—Applicable to railroads.

Sec. 1(8)—In part, states that no railroad may transport "any article or commodity, other than timber . . . , manufactured, mined, or produced by it . . . except such articles . . . intended for its use in the conduct of its business as a common carrier."

*Duty to construct and operate switch connections; "car service," defined; character of required car service.*—Applicable to railroads—Sections 1(9)—1(11).

*Duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it.*—Applicable to railroads—Sec. 1(12).

*Filing of car-service rules.*—Applicable to railroads—Sec. 1(13).

*Rates of compensation for use of rail freight cars.*—Applicable to railroads—Sec. 1(14)(a).

*Existence of emergency; routing of traffic; carrier compliance with rail service orders.*—Applicable to railroads—Section 1(15)—1(17).

*Certificate required for the extension or construction of any additional line.*—Applicable to railroads.

Sec. 1(18)—A certificate of public convenience and necessity must be issued by the Commission.

*Discontinuance and abandonment of rail service.*—Applicable to railroads.

Sec. 1a—A certificate of public convenience and necessity must be issued by the Commission.

*Special rates and rebates prohibited.*—Applicable to all common carriers.

Sections 2 and 6(7)—Common carriers are prohibited from demanding or collecting any different compensation for transportation than that specified in their tariffs.

*Undue or unreasonable preference or advantage; undue or unreasonable prejudice or disadvantage.*—Applicable to all common carriers.

Sec. 3—Prohibition against subjecting any shipper, locality or territory to any undue or unreasonable prejudice or disadvantage.

*Long and short haul charges.*—Applicable to all common carriers.

Sec. 4(1)—Prohibition against charging or receiving "any greater compensation in the aggregate for the transportation . . . of like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates . . ."

*Rates reduced to meet water competition.*—Applicable only to railroads—Sec. 4(2).

*Pooling of freight and division of earnings forbidden except on approval.*—Applicable to all common carriers—Sec. 5(1).

*Consolidation or merger of carrier; joint acquisition, lease, or contract; acquisition of control of two or more carriers by a noncarrier, or of one carrier by one already in control of a carrier.*—Applicable to railroads, express companies, sleeping car companies, motor carriers under Part II, and water carriers under Part III—section 5(2)-(14).

*Interest in competing carrier by water prohibited, except as provided in Section 5(17).*—Applicable to all common carriers—Sec. 5(15)-(17).

<sup>2</sup> Section 1(5)(a) does not apply to rail carriers, but would apply to pipelines. Section 1(5)(b), which applies only to rail carriers, also requires that each railroad rate must be just and reasonable.



*Agreements between carriers regarding rates, classifications, divisions, allowances, etc., or rules pertaining thereto.*—Applicable to all common carriers except railroads—Sec. 5a.

*Agreements between carriers subject to Part I.*—Applicable only to railroads—Sec. 5b.

*Schedules of all rates, fares, and charges must be open to the public.*—Applicable to all common carriers—Sec. 6(1).

*Freight carried through a foreign country.*—Applicable to all common carriers—Sec. 6(2).

*No change in rates, fares, or charges can be made unless notice is given to the public at least 30 days before its effective date, except where the Commission by rule or by order in an individual proceeding provides a different notice period.*—Applicable to all common carriers.

Sec. 6(3) (The Commission has provided in its regulations that tariffs for services over newly laid pipelines may be filed on 10 days' notice (49 CFR 1300.57)).

*Joint tariffs to specify participating carriers; copies of traffic contracts and arrangements to be filed; prescribed form.*—Applicable to all common carriers—Sections 6(4)-(6).

*Rates, fares, and charges must be filed and published in accordance with the provisions of the act.*—Applicable to all common carriers—Sec. 6(7).

*Freight carriage treated as continuous unless stoppage in good faith.*—Applicable to all common carriers—Sec. 7.

*Liability in damages.*—Applicable to all common carriers.

Sec. 8—Imposes civil liability for the full amount of damages caused by violation of any provision of Part I of the Act.

*Filing of complaints.*—Applicable to all common carriers.

Sec. 9—Claimant may file complaint with Commission or sue in United States court.

*Penalties for violations of regulations.*—Applicable to all common carriers—Sec. 10.

*Interstate Commerce Commission; Duties; Complaints to and investigation by Commission.*—Not applicable—Sec. 12-13.

*Discontinuance or change of certain operations or services.*—Applicable to railroads—Sec. 13a.

*Reports and Decisions of Commission.*—Not applicable—Sec. 14.

*Determination of rates, routes, divisions, and authority to suspend.*—Applicable to all common carriers.

Sec. 15(1)—The Commission, after full hearing upon a complaint or on its own initiative, may prescribe the maximum, minimum, or precise rate if the rate in question is or will be unjust, unreasonable, unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of the act.

Sec. 15(7)—Pending the hearing and decision, the Commission may suspend the operation of the tariff for as long as 7 months.

*Rule of ratemaking; factors for consideration; proceeding where competition of different modes.*—Applicable to all common carriers—Sec. 15a.

*Orders of Commission and enforcement thereof; Commission procedure; employees; office and sessions.*—Not applicable—Sections 16-19.

*Valuation of property of carriers.*—Applicable to all common carriers—Sec. 19a.

*Reports, records, and accounts of carriers.*—Applicable to all common carriers—Sec. 20.

*Commission approval for issuance of securities.*—Applicable to railroads, and by section 214 to motor carriers under Part II—section 20a.

*Modifications of railroad financial structures.*—Applicable to railroads—Sec. 20b.

*Railroad equipment.*—Applicable to railroads—Sec. 20c.

*Annual Report of Commission.*—Not applicable—Sec. 21.

*Restrictions.*—Applicable to all common carriers—Sec. 22.

*Mandamus; Enlargement of Commission; Safety; Tax Exemption, Office of Rail Public Counsel; Discriminatory State Taxation; Citation.*—Not applicable—Sections 23-29.

Mr. EDGAR. Please proceed.

Mr. MURPHY. Chairman O'Neal requested that I appear here today in his place. Accompanying me are Mrs. Rosenak, on my right; Mr.



Jones, on my extreme left; Mr. Nauminow, on my right, and our legislative counsel, Mr. O'Hara, on my left.

The proposed bill delegates to operators of coal pipelines the Federal power of eminent domain if the operator obtains a certificate of public convenience and necessity from the Department of the Interior, hereinafter referred to as the Department. The apparent purpose of this bill is the conservation of oil and natural gas resources through further utilization of coal. In some circumstances, the expeditious construction of coal pipelines should help this country make the most efficient use of our domestic coal resources.

However, we feel that in attempting to encourage the construction of coal pipelines, this bill contains certain provisions which we believe could adversely affect national transportation policy and, perhaps, national goals concerning economy, environment and energy.

In our view, the most important consideration in the coal slurry pipeline issue is transportation. While H.R. 1609 does provide for Commission input to the Department on the impact of a proposed pipeline on other carriers, we believe that it would be preferable for the Commission to make the ultimate determination of whether the pipeline should be certified.

In addition to its authority over pipelines, the Commission currently licenses railroad construction and extension, motor carrier entry into the field and extension, and numerous other aspects of instituting and enlarging for-hire surface transportation. In exercising our jurisdiction over surface transportation, our procedures require that we analyze and weigh the public need, environmental impacts, and effects on competition. A balancing of all considerations allows us to provide an integrated surface transportation system in which each mode complements every other mode.

We would now like to mention some of the specific provisions of H.R. 1609 which we believe raise problems or require clarification. Section 5(a) requires the Secretary to consider certain existing or proposed contracts for the carriage of coal. The language of this section leaves unclear what contracts are covered. We would suggest that this be clarified.

Section 5(b) directs the Secretary to consider the pipelines' impact on other common carriers and the likelihood of the pipeline's resulting in lower rates than would be in effect if the coal was transported by railroad. Both of these findings were added during the Interior Committee's markup of H.R. 1609, and are intended to address concerns raised in the report of the Office of Technology Assessment (OTA) on coal slurry pipelines. While these changes effect a slight improvement in the legislation, we do not believe that they sufficiently address the concerns raised here today, nor those raised in the OTA study.

The OTA study concludes that the relative economics of rail and slurry pipelines in the transportation of coal will vary considerably with the characteristics of the specific coal movement under consideration, and that a detailed evaluation of the conditions specific to the route is necessary. The economic evaluation contemplated by the study is like that now performed by the Commission in licensing railroad construction and extension and authorizing motor carrier entry and extension.



Additionally, the OTA study concluded that "with the power of eminent domain, coal pipelines would enjoy significant regulatory advantages over railroads." While we do not believe that these findings by the OTA tell the full story about ICC policies and rate regulation, we do think they amply demonstrate that this Commission is the proper forum for balancing the effects of eminent domain power on two potentially competing modes of transportation.

The purpose of section 5(b) (6) is to insure that the Secretary will consider whether cost savings will be reflected in the rates to be charged by the proposed pipeline, and to address a finding by the OTA that "the costs of errors in judgment will probably be borne largely by the public and not necessarily the utility investors." We believe the Commission, with its substantial expertise in considering rate proposals, is the logical forum to deal with this matter. As now drafted, this section does not even provide for comments by the Commission.

The "commodities clause" of section 5(d) (1), as reported, is different than that applicable to the railroads under section 1(8) of the ICA. We would suggest that any commodity restrictions on one mode be equal to those on the other. In addition, the "commingling" exception could enable pipelines to give price advantages to selected users.

Section 5(e), as written, might be read as precluding an extension of a railroad unless it enters into an agreement with the Secretary. However, the intention apparently is to apply the requirement to a person seeking a pipeline certificate. If this is indeed the intention, the provision should be clarified by adding the words "under this act."

Under section 12 of this bill, pipelines would be regulated by this Commission as common carriers under part I of the Interstate Commerce Act. As common carriers, they are subject to the requisite duties and obligations set out in part I, except to the extent provisions are specifically applicable only to railroads.

The prospect that pipelines and shippers will make contract arrangements for the carriage of coal raises questions over the present restrictions against long-term contracts between railroads and shippers. There is no statutory requirement that prohibits Commission approval of railroad contract rates. Rather, the restriction rests on the Commission's traditional policy of trying to reduce destructive competition and to provide a measure of market stability. Despite this general policy, it now appears that there are some commodities and some situations where contract rate agreements may be justifiable. Specifically, in the April 5 open conference, the Commission directed the staff to prepare a policy statement on railroad contract rate agreements. We expect to issue the statement in 60 to 90 days, or earlier, if possible.

Our original intention was to raise this issue in our soon-to-be instituted investigation of rail transportation of coal in the Western States. However, we determined that the issue was sufficiently important and well-developed that it should be treated separately and more expeditiously. Whatever policy we adopt now, we think it would be difficult to preclude the railroads from entering into contract agreements if their new competitors, coal slurry pipelines, are permitted such arrangements. Of course, when either type of carrier is allowed



to enter into contract rate agreements for the carriage of coal, the Commission would still have to insure that objectives of the national transportation policy are met.

Pipelines are not subject to the acquisition, addition, extension or abandonment requirements of the Interstate Commerce Act. The proposed legislation says nothing on how these matters are to be handled. Presumably, each acquisition, addition, and extension could be considered a "particular project" requiring a separate certificate by the Secretary. However, it is by no means clear that this is the intent of the bill. We believe this matter needs to be clarified.

Mr. Chairman, that concludes the brief statement.

Mr. EDGAR. Thank you for your statement, Mr. Murphy. We will begin our questioning with Mr. Shuster.

Mr. SHUSTER. Thank you, Mr. Chairman. Mr. Murphy, I want to compliment you on your testimony, and particularly one point that I think deserves emphasis, and that is, from a transportation policy point of view, this represents a further splinter of responsibility within the Federal Government, unless the ICC or the Department of Transportation is given the lead responsibility in this, and we would now find what is essentially a transportation matter being over in another agency of Government.

Do you see this as being one of the long-term flaws of this legislation, or do you think, perhaps, I am over-emphasizing?

Mr. MURPHY. Do you mean a further splintering of authority?

Mr. SHUSTER. Yes.

Mr. MURPHY. Yes, sir, I do.

Mr. SHUSTER. Thank you. That is all I have, Mr. Chairman.

Mr. EDGAR. Mr. Nowak?

Mr. NOWAK. Thank you, Mr. Chairman. You talk about the contract arrangements for the carriage of coal; you said that they "raise questions over the present restrictions." And later in that paragraph, you stated that your staff is now preparing a policy statement on railroad contract rate agreements.

Did the one precipitate the other, or you do not allow the rate contract now for the railroads?

Mr. MURPHY. No, sir, we do not at the present time. As I explained in the statement, it has been the policy of the Commission to try to reduce destructive competition and to provide, to the extent possible, market stability.

Now, we have, over the years—for example, with these train load movements of coal, had some rates that depended on tonnage. The train lot movement is very similar to a contract, but it is not one of the long-term contracts referred to in the pipeline bill.

Mr. NOWAK. Do you see any problems with a 30-year contract?

Mr. MURPHY. Sir?

Mr. NOWAK. Do you see any problems arising because of a 30-year contract, if a pipeline entered into one, as far as problems that could possibly arise down the line from those 30 years?

Mr. MURPHY. You could have problems. My personal view is that over an extended time, 20 or 30 years, there undoubtedly will be problems. It is unclear whether we can address these problems, or foresee them. For example, there could be a development whereby the cost



of the operation could be greatly reduced. It is also unclear whether we would have the authority to protect the public's interest and come in with a study and alter the contract rates. That would be a difficult problem under what is proposed.

Mr. NOWAK. You do not have that authority now in the bill, do you?

Mr. MURPHY. No, sir, I do not believe it is in there.

Mr. EDGAR. Will the gentleman yield?

Mr. NOWAK. Yes, I yield.

Mr. EDGAR. Speaking to that very question, where you indicate that you expect to issue a statement in 60 to 90 days, can you give the committee some indication as to why it is going to take 60 to 90 days to put this particular statement together?

Mr. MURPHY. Well, Mr. Chairman, I was trying to be a little bit—not conservative, but taking what I think would be the maximum time, and I marked in red to tell you that we would try to do it in less time. I would prefer giving you the maximum, outside time that I honestly think it will take, and then present it to you at an earlier date, rather than asking for an extension of time.

Mr. EDGAR. Thank you.

Mr. NOWAK. I have no further questions.

Mr. EDGAR. Mr. Fary?

Mr. FARY. No questions, Mr. Chairman. Thank you.

Mr. EDGAR. In section 5(a) of the bill, it is stated that "the Secretary is authorized to issue such a certificate, if the Secretary finds with respect to a particular project of the carrier, as to which said power is sought, that the project is in the national interest and provides the capacity necessary to fulfill the requirements of a common carrier of coal, as determined by the Secretary."

I have two questions. First, do you regard this as empowering the Secretary to establish the common carrier obligations of the coal pipeline in the certificate of public convenience and necessity?

Mr. MURPHY. I think I would have to say yes to your question, Mr. Chairman.

Mr. EDGAR. The second question: If you do, would this not preclude any authority of the ICC from imposing a common carrier duties upon the carriers that are not included in the certificate?

Mr. MURPHY. I do not believe I caught your question there, Mr. Chairman.

Mr. EDGAR. Let me just read the question again, which we are going to ask all of the people testifying. If the answer to the first question is yes, would this not preclude any authority of the ICC from imposing a common carrier duties upon the carriers that are not included in the certificate?

Would it set a limit of the common carrier limitations?

Mr. MURPHY. It would raise questions, certainly. However, under the act, as it is written, there is a common carrier duty and responsibility. But this could raise a controversial question if my answer in the affirmative is correct.

Mr. EDGAR. Let me ask you several other questions, then. What type of regulatory controls would exist for initial rate filings by coal pipelines under the provisions of the Interstate Commerce Act?



Mr. MURPHY. The initial rates would be subject, in my opinion, to suspension; that is, if there was a reasonable basis to figure that they were not on a level of just, reasonable, and equitable rates, the Commission would have authority under the present provisions of the act to suspend, investigate, and determine what would be the proper rate to apply. Then, from thereon, the contract rate would be applicable, subject to any additional increases or modifications that might be approved at some later date as a result of petitions or investigations that might be made.

Mr. EDGAR. In determining rate levels, the Interstate Commerce Commission has certain guidelines in section 15(a) of the act. Would you please explain the factors the Commission can consider with respect to both pipelines and railroads? What are some of the facts that you use?

Mr. MURPHY. I will ask Ms. Rosenak, our Deputy Director of the Office of Proceedings, to answer that.

Ms. ROSENAK. We would look at a number of factors, including cost of service, rate comparisons, value of service; anything that might be applicable traditionally would be applied to the same extent to pipelines as to our rate regulations of other modes.

Mr. EDGAR. In the Office of Technological Assessment's report, they state:

The major differences between the ICC's railroad ratemaking and its pipeline ratemaking is that the reasonableness of railroad rates is judged without reference to a fair rate of return.

Would you please comment on that?

Ms. ROSENAK. Well, that is no longer true, in a sense. We have had amendments under the 4R Act, and we do look at a fair rate of return. We have always looked at a rate of return on net investments for railroads.

The determination of pipeline rates is similar, except that we have looked at the actual valuation. This has grown up traditionally, and it has been continued, but it does not necessarily result in any differences between the two.

Mr. EDGAR. Are there any further questions? Mr. Mineta?

Mr. MINETA. Mr. Chairman, I apologize for not having been here during the testimony of Commissioner Murphy, and I apologize for that. I would like to ask a couple of questions.

First, of all, the OTA concluded in its report on coal slurry pipelines that "if Federal eminent domain legislation were passed without provisions for equalizing the regulatory restrictions on each mode, pipelines would enjoy a significant advantage over railroads." And I am wondering whether or not the Commission would be in favor of equalizing the regulatory restrictions in that case?

Mr. MURPHY. I think the tenor of the testimony on behalf of the Commission throughout is that we do not believe that one rule should apply against one mode of transportation and not the others. One example is the commodity clause. We think what applies to the pipelines should apply to the rail carriers. Further, we think if contract rates are permitted for the pipelines as common carriers, then the railroads should be permitted to make similar rates, under similar conditions.



Mr. MINETA. So that in the case of equity amongst modes then, would, let us say, a bulk commodity exemption for waterways and agricultural exemptions for the truckers—do you think that the railroads should be eligible for a commodity exemption of some nature?

Mr. MURPHY. You have asked me, and I will give you my personal opinion. No, sir; as a matter of fact, I do not think we are ever going to solve some of our transportation problems until all transportation comes under regulation.

Mr. MINETA. Could you repeat that?

Mr. MURPHY. I said, no, sir; I do not think we ought to extend the exemptions. We should bring more transportation under regulation for a more stabilized form of transportation. That is my personal view.

Mr. MINETA. Well, assuming that H.R. 1609 were enacted into law in its present form, with eminent domain granted for coal slurry companies, do you think that the railroad companies would be placed at a further disadvantage against the competing mode?

Mr. MURPHY. No, sir; I do not see how they would be.

Mr. MINETA. You do not feel that the railroads would be at a disadvantage if eminent domain were given to the coal slurry lines?

Mr. MURPHY. I would say the answer would be no, but that is assuming what we have suggested here; that the railroads, at the same time, be given the right to make contract rates.

Mr. MINETA. Do you feel that the "take-or-pay" contracts would be the way to go?

Mr. MURPHY. Sir?

Mr. MINETA. The "take-or-pay" contracts, the long-term contracts—would that be one way to solve the problem of equity amongst modes?

Mr. MURPHY. If that is what the Congress sees fit to do, in passing this bill, then I would say, yes, sir; the railroads should be permitted to make contract rates.

Mr. MINETA. Now, would you consider equity amongst modes as being part of a sound national transportation policy?

Mr. MURPHY. Yes, sir.

Mr. MINETA. But you feel that to fulfill that portion of it, the long-term contracts is enough to have equity amongst modes?

Mr. MURPHY. If each mode is given similar rights on this particular commodity, yes, sir.

Mr. MINETA. But you do not think it ought to be done through a bulk commodity exemption?

Mr. MURPHY. No, sir. My personal opinion is that it should not.

Mr. MINETA. As I understand it, the 4R Act permits railroads to file rates for 5 years if there is a capital investment in excess of \$1 million, and once approved by ICC, this rate will be in effect for 5 years and cannot be challenged.

Mr. MURPHY. That is correct, yes, sir.

Mr. MINETA. Now, in addition, the 4R Act amended section 15(a) of the ICC Act by adding a new rule of ratemaking, and it seems to me that that might change ICC's method of determining the rate of return for railroads. Could you explain those guidelines, or if it has already been covered, I will just read it in the testimony. I would like to have you explain those new guidelines and what their impact will be on railroads.



Mr. MURPHY. I will ask Ms. Rosenak to give you that from the record.

Ms. ROSENAK. Our regulations were promulgated in ex parte 338 in February. There are presently petitions pending. But, basically, under those guidelines, we are going to have a revenue proceeding every year, in which we will determine the revenue needs of the railroads nationwide, on a territorial basis, and for the individual roads. Then, this will be taken into consideration in any general increase proceeding that is filed.

In addition, in a particular rate case, if a carrier's revenue is inadequate, this will then be a consideration. In the past, it has not necessarily been so; we have considered the cost of the particular movement rather than the overall needs of the carrier. So that would be one of the major changes under the 4R Act. For the first time, we have a duty not only to determine the carriers' revenue needs, but also to assist the carriers, to the extent we can, in achieving these revenue needs.

We are hoping, also, to encourage the carriers to price more selectively, rather than simply using general increases for their revenue needs.

Mr. MINETA. Are you considering, at the same time then, these long-term contracts?

Ms. ROSENAK. We have been directed——

Mr. MINETA. When you look at revenue needs, do you look at it also in terms of long-term contracts?

Ms. ROSENAK. In the past, we have not because of some old cases in 1961, but we are reassessing it now. We hope to issue a statement very shortly that contract rates are not, per se, unlawful, and we will then look at contract rates on coal or other commodities.

Mr. MINETA. If contract or long-term rates were permitted, would this permit rates charged by the railroads to be increased, and would this give added impetus to the pipelines?

Ms. ROSENAK. Well, we cannot say at this time whether it would be an increase or a decrease; for competitive reasons, it may well be a decrease. Each case would be judged on its own merits.

Mr. MINETA. With regard to the criteria for determining whether a rate is legal for railroads; how would that differ, let us say, in its application toward pipelines?

Ms. ROSENAK. There would be no difference, except that the 4R Act amendments do not apply to pipelines.

Mr. MINETA. So that once a rate goes into effect for pipelines—the criteria would be the same for whether you are applying it against railroads or pipelines?

Ms. ROSENAK. That is generally correct.

Mr. MINETA. And how long would it stay in effect, as far as those rates are concerned?

Ms. ROSENAK. Well, we cannot really answer that at this time. In the past, most rates have been filed on an annual volume basis. There have been some that have been filed with 3-year provisions, and then, of course, as you mentioned, under the new rate incentive statute, we have rates for 5 years. This would remain to be determined depending on the type of legislation enacted.

We at the Commission have some problems with 25- to 30-year rates.



Mr. MINETA. Would you be allowed to make long-term ratemaking for pipelines under H.R. 1609?

Ms. ROSENAK. If we are upheld, should there be any judicial challenge, I think that we could permit long-term rates for railroads under H.R. 1609.

Mr. MINETA. Thank you very much, Commissioner Murphy. Thank you, Mr. Chairman.

Mr. EDGAR. Are there any other questions?

[No response.]

Mr. EDGAR. If not, we will recess for 10 minutes to vote on the establishment of the Lowell Historical Park, and we will return in 10 minutes for our next witness.

We appreciate your coming here today.

Mr. MURPHY. Thank you.

[Whereupon, a brief recess was taken.]

Mr. EDGAR. The subcommittee will come to order. The next witness is Pat Jennings, president of the Slurry Transport Association. Pat, we welcome you to the committee this afternoon, and we invite you to testify.

**TESTIMONY OF W. PAT JENNINGS, PRESIDENT, SLURRY TRANSPORT ASSOCIATION; ACCOMPANIED BY HENRY R. TALIAFERRO, COUNSEL TO LEGISLATIVE POLICY COMMITTEE, AND ROBERT B. McNEIL, ASSISTANT TO PRESIDENT**

Mr. JENNINGS. Thank you, Mr. Chairman. I have with me Mr. Henry Taliaferro, who represents the STA Legislative Policy Committee, and Mr. Robert McNeil, who is my assistant. I think, perhaps, that I can read my statement, because it is not too long.

My name is Pat Jennings. I am president of the Slurry Transport Association, an organization of companies that will produce, transport, or use coal that can be delivered by pipeline in a liquid slurry. I appreciate this opportunity to appear before you today and to thank you, first, for your promptness in scheduling this important matter, and then to urge your favorable consideration of the bill before you, H.R. 1609.

The purpose of this bill is to promote the economical transportation of coal by giving the right of eminent domain to those coal pipeline projects that qualify under the bill for certificates of convenience and necessity. Your committee shares jurisdiction over H.R. 1609 with the Committee on Interior and Insular Affairs. That committee devoted many hours during the past 3 years to consideration of this bill and its predecessors, and last month, the Interior Committee, by a vote of more than 2 to 1, recommended its passage.

The report on H.R. 1609 filed by the Interior Committee is a document that deserves the thoughtful consideration of everyone concerned with the rising cost of electrical energy. The committee describes how rapidly the cost of coal transportation by rail is escalating and expresses its conviction that the cost savings of coal pipelines in specific circumstances may be crucial in making the coal conversion program work. I commend this report to you. It is one of the best, most concise summaries available of the benefits that coal pipelines can provide.



For your additional consideration, I have copies of statements on coal slurry pipelines and their benefits that were made before a special joint subcommittee of the Interior Committee last April by Mr. Joe H. Foy, president of Houston Natural Gas Co.; Mr. Frank Odasz, vice president, Energy Transportation Systems, Inc., and Mr. Howard Cowan, former senior vice president of the Public Service Co. of Oklahoma.

These statements offer useful information on the issues before you, especially as they relate to the approval by the Wyoming Legislature of water for a coal slurry pipeline and to the difficulties utilities have experienced in getting coal transportation by rail at reasonable prices. With your permission, I would like to submit these for the record, Mr. Chairman.

Mr. EDGAR. How extensive are they?

Mr. JENNINGS. They are very short.

Mr. EDGAR. Without objection, they will be made a part of the record.

[The following was received for the record:]

TESTIMONY OF FRANK B. ODASZ, VICE PRESIDENT, ENERGY TRANSPORTATION SYSTEMS, INC.

I am Frank B. Odasz, Vice President, Energy Transportation Systems Inc. I am a chemical engineer and live in Casper, Wyoming. I would like to give the subcommittee members a perspective on water for coal slurry pipelines that is based on what is happening in the area supplying the water. My observations this morning grow out of three years of work with ETSI in the Rocky Mountain and Plains States but they also are formed from living, working, and owning property in Wyoming since 1947 when I first came to Cody to work in the energy industry.

What I have learned over those years is that the people of Wyoming and surrounding states value their water highly and they are quite sensible in deciding how to use it. They know there are vast water resources available, but there are serious problems involving distribution and management of their resources. Most westerners want to proceed with caution before authorizing water projects. They want to complete information on the cost and benefits of each proposal. This traditional attitude will be an important element in the development of the West's vast energy resources, because water is essential to every method now under consideration. The final decisions on the merits of water projects have been made by the people of the area. This works. I believe that this successful procedure should be protected.

Slurry pipelines are one of the methods proposed for helping develop western coal resources. I know that the eminent domain legislation has no bearing on water rights, but many questions have been raised about water in the course of previous hearings. Perhaps a review of what has happened in the states will serve to make it clear that water decisions are being made at the state level, where the authority resides, and that those decisions are not unfavorable to slurry pipeline development.

Among the various energy development systems requiring water, slurry pipelines are the lowest consumers. Every ton of coal requires only a ton of water to form the slurry that is pumped into the pipeline. A mine-mouth power plant would require seven to eight times as much water for the same amount of coal. Hence, compared with a mine-mouth power plant, transporting coal from the West represents an important contribution to the nation's new conservation ethic.

There are socio-economic factors to be balanced as well. Power generation, gasification and similar industrial processes will require large work forces to construct the plants and operate them. The influx of large numbers of new residents into a state as sparsely populated as Wyoming is viewed with alarm. We are very protective of our unique life style and are working to preserve it.



While recognizing a responsibility to help the nation solve its energy problems, the people of Wyoming generally would like to make that contribution with as little impact as possible on our present way of life. Our legislature has worked hard and skillfully to develop the nation's finest set of state environmental, impact, and severance laws to achieve this objective—and appear ready to continue to do so.

#### ENERGY EXPORT

The desire to minimize the impact of energy development has led many to favor exporting coal from Wyoming. Although some conversion of coal within the state is progressing, by far the largest portion of coal will be moved out of the state to conversion plants much closer to the urban areas where the consumers and workers live.

Buried pipelines are aesthetically attractive. No roads or fences are required. The land is restored to its original use. Railroads now have a monopoly on coal shipping in the West. As a matter of fact, access to a particular mining area usually is by a single railroad. The Union Pacific, for example, is the only way to ship coal from the fields in southwestern Wyoming. Burlington Northern is virtually the only way to get coal out of the vast area of northeastern Wyoming, Montana, and North Dakota.

Rail coal traffic is steadily building, and the environmental costs are rapidly becoming apparent. There are more range fires and greater interference with the movement of livestock and wild life. There is more air and noise pollution. Perhaps the greatest impact is in the form of interference with community life. So many towns are built around railroad tracks that they find themselves increasingly invaded by coal trains with all the safety hazards, noise, pollution and traffic interruption that goes with it. Lusk, Wyoming has been told to expect 50 trains a day. The State of Colorado conducted a study which showed coal traffic could rise from two or three trains a day to 14 to 21 daily through the front range cities by 1985. As a result, Governor Lamm of Colorado obtained an agreement from the Burlington Northern to bypass these cities, but the new route wasn't defined. It appears that Torrington, Wyoming might become the new railroad corridor. Like Lusk, all crossings are at the same grade as pedestrians, autos, fire engines, ambulances and school buses.

A single coal slurry pipeline delivering 25 million tons annually will replace 5,000 unit train trips.

#### APPROVAL BY WYOMING

Evaluating these factors, the State of Wyoming in 1974 approved a water supply for the pipeline ETSI is developing to deliver 25 million tons annually to power plants in Arkansas and adjacent states. People in Wyoming saw the advantages and, I should add, many of them admired the technological innovation involved. We still believe strongly that innovation and competition are important elements of our free enterprise system. The slurry pipeline concept has been steadily winning acceptance in that light.

In developing a water supply for the pipeline, ETSI sought a source not already in use or likely to be developed soon for other purposes. The ETSI project preferred a system that was in harmony with nature and the environmental sensitivity of Wyoming residents. The answer was deep underground water, specifically the Madison Formation in eastern Wyoming. It has been estimated that the Madison contains as much as a billion acre feet, which is enough to refill Lake Erie 27 times or Yellowstone Lake 56 times. Natural recharge is estimated at between 100,000 and 150,000 acre feet annually, roughly ten times the amount ETSI needs to operate the slurry pipeline. We should all recognize that this natural recharge system is an efficient example of solar energy at work. In contrast to a man-made recycle system, the natural recycle system burns no fuel and requires no steel. For the ETSI pipeline, this conserves 52,000 horsepower and 290,000 tons of steel. Furthermore, the underground reservoir eliminates waste water by evaporation, inundates no hay meadows or home sites, and interferes with no free-flowing fishing streams.

Encouraged by this harmony with nature, we applied for production well permits in December 1973, and the Wyoming Legislature took up the question of exporting water when it met the following month. After considerable debate, a law was enacted which asserted state control over underground water resources, required legislative approval for the export of water and specifically stated that the ETSI project was the first approved under the new law. That authorization



was contingent on approval of the State Engineer, and it stipulated several protective clauses to be included in the water permits.

ETSI already had begun a test well drilling and pumping program, and this was continued under supervision of the State Engineer and the U.S. Geological Survey. Additional drilling and pumping were required, and the results were fully discussed at a public meeting conducted in July 1974. In September, well permits were issued which authorize our company to withdraw an average of 15,000 acre feet of water from the Madison aquifer. It was concluded that the impact of such a withdrawal would be limited only to general area of the well field.

#### OTHER WATER USES PROTECTED

The permits contain 19 limitations which protect other users of Madison water. If there is a case of interference, ETSI must deepen the affected well and pay additional pumping costs, or provide the affected user with equivalent water from another source, or stop pumping and supply the slurry pipeline from another source, or cease and desist.

In addition, ETSI entered into an unprecedented contract with the State of Wyoming which incorporates the protections already in the well permits and extends those protections to future use of the Madison by several existing communities and a new city planned for the coal mining area. Performance is guaranteed by a \$1 million bond posted by ETSI. A network of at least five monitor wells outside the ETSI well field was required in order to detect any impact from the company's operations. The contract eliminates any fears that protections could be evaded through conflicting claims of interstate commerce.

There have been subsequent attempts to reverse the decision of the legislature, and court challenges have been threatened during political campaigns. Two repeal attempts were overwhelmingly rejected, and the legal challenges never materialized.

A question of constitutionality was resolved in 1975 when Governor Ed Herschler confirmed its constitutionality. Although the formal arrangements cover only Wyoming water users, ETSI has voluntarily offered similar protections to South Dakotans living near the production well field.

#### POTENTIAL OF THE MADISON

The Madison aquifer is an attractive source of water for a coal slurry pipeline because of its vast size and the fact that it is virtually untapped for other purposes. The basic reason is the cost of raising the water from the depths of 3,000 to 4,000 feet. A single well can cost a quarter of a million dollars. ETSI will face a cost of \$400 an acre foot for its pipeline water, while typical irrigation water in that area costs about \$10 an acre foot. Most of the water now pumped from the Madison is used for secondary recovery of oil. The high cost explains why industrial users are likely to continue to be the only major developers of Madison water in the future.

Efforts are under way to learn more about the potential of the Madison as a source of water for energy development. The ETSI test program produced the first substantial data on the aquifer. The U.S.G.S. subsequently launched a five-year drilling and testing program to develop a broad profile which will be valuable but which, according to the agency, will not produce the detailed information on specific areas of the type already recorded by ETSI and placed on the public record. In that sense, we already know more about the aquifer in the area of the well field than we will find out from the U.S.G.S. study.

In a practical sense, the only way to really analyze the capacity and characteristics of the Madison is to begin using it. A long-term production program of the type planned by ETSI will provide invaluable data on which to base more comprehensive plans for development of the aquifer.

Meanwhile, ETSI is exploring other sources of pipeline water, many of them involving joint use. We are looking into the possibility of supplying Madison water to the city of Gillette, Wyoming, where it would be used in the municipal system and then treated before going into the slurry pipeline. Another study involves taking and treating waste water from Torrington, which would eliminate the need for that city to spend \$1.5 million on a new treatment plant and obtain a discharge permit. We also are exploring the use of industrial waste water from various sources. Although none of these sources are now available for pipeline use, they demonstrate the approach taken from the outset—ETSI is not looking for sources which would interfere with other water users.



## SHARING WATER IN SOUTH DAKOTA

The Missouri River system is another very large source of water which can be tapped for energy development without interfering with the needs and rights of others. As a matter of fact, ETSI has helped South Dakotans develop a plan which would provide industrial water while simultaneously fulfilling a long-standing and increasingly critical need for more water in the western part of the state.

South Dakota west of the Missouri has been chronically short of water. The quality, in general, does not meet U.S. Public Health standards for drinking water. Despite the millions of acre feet available in the Oahe Reservoir, there never has been a system developed to make the water available where it is needed for domestic, municipal and agricultural purposes. A solution emerged from an engineering study, completed in late 1975 and financed by the Black Hills and West River Conservancy Sub-Districts and the Federal Energy Administration. The solution involved a shared pipeline system called the West River Aqueduct.

The West River Aqueduct is to be a large water line running about 200 miles from the Oahe Reservoir westward to the Wyoming border. It would carry 10,000 acre feet of water annually to the 17 towns and five rural water users' districts which have applied for the water through the Black Hills and West River Conservancy Sub-Districts. In addition, the aqueduct would deliver 20,000 acre feet annually to ETSI at the Wyoming border. ETSI would use the water for a future pipeline, or to expand the first pipeline and to protect the users of the Madison Formation in accord with one of the alternatives of the Wyoming law as mentioned previously.

Involvement of an industrial user was essential because ETSI could be charged rates sufficiently high to subsidize low rates for South Dakota users. Studies indicated rates within the state would be prohibitive, about \$585 an acre foot or \$1.80 per thousand gallons, if a smaller pipeline were built to serve South Dakota users alone. ETSI was committed to paying a surcharge of \$100 an acre foot, which would have provided an annual profit of \$2 million to the South Dakota Conservancy District, proposed operator of the aqueduct. That sum was to be available as seed money for the state's other water projects.

There is no question about the availability of the water. More than 18 million acre feet flow past the Oahe Dam every year; so the withdrawal of 30,000 acre feet—on the order of 0.1 percent—from the Oahe Reservoir would have little impact. The U.S. Bureau of Reclamation has estimated that 3 million acre feet can be made available for industrial use alone, and the 20,000 acre feet for ETSI would stake a claim for South Dakota on a small portion of the industrial allocation.

## APPROVAL IN SOUTH DAKOTA

The West River Aqueduct concept was reviewed by a variety of state officials and groups. Some agreed with it while others did not. But the ultimate decision by law had to be made by the South Dakota Legislature. After hearings and debate, both houses voted approval and sent the enabling legislation to the governor.

The enabling bill contained changes in water marketing, contracting and bonding authority as well as provisions dealing directly with the West River Aqueduct concept. Included in the bill was a conditional permit for 20,000 acre feet to be delivered to ETSI with provisions that engineering and economic studies be completed and that a satisfactory contract be negotiated. Final approval was reserved to the legislature. As in Wyoming, the concept was approved by the legislature with a host of restrictions protecting the interests of the state and its people.

Governor Richard F. Kneip vetoed the bill. An override attempt was successful in the House but was narrowly unsuccessful in the Senate. Simultaneously, he signed into law a separate bill that his staff prepared containing provisions for feasibility studies under his direction. He has announced his intention to request funds from the Old West Regional Commission to finance these studies. The governor also said he thought that the state of Wyoming should participate.

This might mean a delay in development of the aqueduct. But it needn't because both the legislature's bill and the governor's bill recognized that the next logical step is a careful technical and economic feasibility study. We are prepared to assist in any reasonable way the governor's office determines would be most helpful.



What is important to all of us is that in both Wyoming and South Dakota, the legislatures saw the advantages which coal slurry pipelines can bring the people the legislators represent. They were willing to authorize the use of a small portion of their water, which is carefully safeguarded, as a contribution to the national energy program and because there were distinct benefits to state residents. In each case, the legislators and other state officials surrounded the authorization with restrictions which protected their constituents.

#### ACTION IN OTHER STATES

I understand other western states also are examining this issue. Colorado is considering how to approach the use of its water in coal slurry pipelines, and Montana is including coal slurry pipelines in its new energy study. The Montana Legislature passed a law a few years ago which prohibits the use of the state's water in slurry pipelines, but the governor recently asked the legislature to re-examine the potential benefits of transporting some of Montana's vast coal reserves by pipeline.

Consistent with the actions of states which would be a source of water for coal slurry pipelines, the consumer states also are protecting their rights. Eminent domain legislation recently enacted by the Texas and Oklahoma legislatures contained provisions to protect state water rights. And, of course, federal, state and private rights are preserved intact by H.R. 1609 and similar bills.

Members of the slurry transport industry have determined that there is adequate water available to operate coal pipelines without harm to the interests of other users. Each project must be examined on its merits, including an analysis of the proposed water source and its ability to sustain pipeline pumping without prejudice to others. When that is done with care and dispassion, it is our experience that the states welcome the prospect of coal slurry pipelines and are prepared to approve a reasonable and well-documented proposal.

On the federal level passage of H.R. 1609 will help implement our natural commitment to assure energy for our future; and do it in a way that is in harmony with the new national awareness of a Conservation Ethic:

Conservation of resources: steel, diesel fuel, water.

Conservation of dollars for imported energy.

Conservation of the consumer's energy budget.

Conservation of creative ingenuity by coordinating with developing coal technology.

Conservation of our unique life style.

I respectfully urge prompt passage of the Coal Pipeline Act of 1977—H.R. 1609.

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#### STATEMENT OF JOE H. FOY, PRESIDENT AND CHIEF OPERATING OFFICER, HOUSTON NATURAL GAS CORP.

My name is Joe H. Foy. I am President and Chief Operating Officer of Houston Natural Gas Corporation. I appreciate the opportunity to appear in support of H.R. 1609.

Houston Natural is a diversified energy company which, among other activities, produces, purchases, transports and sells natural gas within the State of Texas. We mainly serve large industrial consumers such as refineries, petrochemical plants, in the vital Gulf Coast complex, as well as electric utilities and gas distribution companies. In view of developments in the last decade—the dwindling supplies of natural gas and their increasing cost, government restraints on the use of natural gas for industrial purposes, the high cost and unreliability of foreign oil supplies—we began, several years ago, to look for another primary source of energy for our area. This means coal, which in turn means we must quickly and substantially increase the capacity to transport coal to a region which presently uses no coal. We therefore became one of the first companies to study the feasibility of, and ultimately to plan and actively pursue, a coal slurry pipeline project.

We propose to build a coal slurry pipeline from a point near Walsenburg, Colorado, to the Texas Gulf Coast, a distance of over 900 miles. The line is scheduled to be thirty inches in diameter and will move approximately 15 million tons of coal annually, from reserves in both Colorado and New Mexico. We estimate that



this project will require an initial investment of \$500 million, all of which will be raised from private sources. Four other companies have announced plans to build slurry pipelines to transport Rocky Mountain coal to points of large consumption in the Gulf Coast, the South, and the Pacific Northwest.

When I appeared before you in November, 1975, our Nation's crude oil imports were running at about 40 percent of our requirements. We had already undergone the Arab embargo and suffered a 500 percent increase in the price of foreign oil. Domestic natural gas and oil reserves were known to be severely limited and on the decline. A massive switch to coal as a primary energy source was already foreordained. Now, a year and a half later, our foreign oil dependency is running at about half our requirements, up nearly 25 percent from when I was last here and up over 100 percent from 1973. And, in 1976, both domestic oil reserves and natural gas reserves declined by about 5 percent. In Texas, after adding new discoveries, proven oil reserves declined over 8 percent last year; Texas' natural gas reserves, after discoveries, declined 9 percent in 1976.

Despite the depressing statistics on oil and gas reserves, experts have estimated that the energy value of our western coal equals or exceeds the known crude reserves of the Arab countries. Some coal has started to move by rail from the Rocky Mountains to central Texas, but none of the planned coal slurry pipelines has been built nor has construction begun. We must await eminent domain legislation, for the simple reason that the railroads, who now have a monopoly on the transportation of western coal, refuse to grant permission for coal pipelines to cross their rights-of-way—which were acquired by their own exercise of the governmentally—conferred power of eminent domain.

The power of eminent domain has been granted for natural gas pipelines, crude oil and petroleum product pipelines, railroads, electrical transmission lines, and a number of other products being moved for public benefit. Indeed, I think it is correct to say that any other method for transporting coal or energy directly produced from coal, would enjoy the right of eminent domain except coal pipelines. As a national policy, this makes no sense whatsoever.

H.R. 1609 would permit, under carefully controlled circumstances, a common carrier coal pipeline, which qualifies for and is issued a certificate of public convenience and necessity, to exercise a limited power of eminent domain. Detailed public interest and environmental protection findings must be made prior to certification. Above all, no authority whatsoever is granted the certifying agency, nor may any be conferred upon the pipeline applicant, with respect to water supplies necessary for a slurry line. Water for a slurry project can only be obtained after full compliance with the involved states' own water laws.

Also, if it becomes necessary for the coal pipeline to acquire easements across private lands by exercising the power of eminent domain, such right-of-way would be obtained by full compliance with state law and procedure.

I think most of the Members of the combined Subcommittees are familiar with coal slurry technology and its advantages. However, for the benefit of the newer Members, I would like briefly to review some of the critical facts concerning slurry technology. It is not a new technology. It was first patented in 1891 and a slurry pipeline was carrying coal in London in 1914. The first modern system was established in Ohio in 1957. It operated successfully for a number of years, transporting coal from southern Ohio to an electric generating plant on Lake Erie. Then, the railroads cut their tariffs and succeeded in making the line uneconomic and it ceased operations.

In 1970, the Black Mesa pipeline, located in Arizona and owned by the Southern Pacific Railroad, commenced operations through an 18-inch line over a distance of 273 miles. It has a 99 percent reliability record. Recently, it experienced the first known break of a coal pipeline. The railroad opponents of coal slurry legislation hastened to the scene with photographers and publicized the event. However, the real news was that the break was repaired within 36 hours without any permanent environmental damage. We are thus dealing with a proven and essentially uncomplicated technology.

To prepare the slurry, coal is pulverized and mixed with an equal volume of water. It is then transported by pipeline, which typically will be buried beneath plow depth. After construction, the right-of-way can be returned to its original use within a matter of months. The pipeline operates silently and efficiently, without the disruptions to farmers, townspeople and travellers caused by frequent unit trains and without the blow-off of coal dust along the route.



Virtually everyone who has studied the question believes that coal slurry pipelines offer significant savings to consumers. This is because most of the investment is made up front, and so most of the cost of operation is represented by capital charges (the interest on bonds and the dividends to shareholders). But once the investment is made, the capital charges do not continue to increase along with the rate of inflation of the economy at large. Railroads, however, being more labor intensive, are unusually susceptible to inflationary pressures.

The experience of the San Antonio Public Service Commission is illustrative. In a statement to be filed on behalf of the City of San Antonio, it is pointed out that two coal fired generating plants are coming onstream, which necessitated contracting for long-distance transportation of coal. Without competition from coal pipelines, the Burlington Northern rates for coal transportation have increased from a 1973 quotation of \$7.90 per ton to a proposed rate as high as \$17.34 per ton this past October. San Antonio filed a complaint with the Interstate Commerce Commission which reduced the rate, but it is still over \$11 per ton at the present time. And this rate is exclusive of the estimated one dollar per ton cost associated with San Antonio's having to purchase and maintain a fleet of 810 coal cars.

For similar reasons, a number of the electrical utilities which must purchase and transport coal over long distances to supply new power plants have concluded that their customers could experience substantial savings from pipeline transportation of coal. In fact, a major electric utility in the State of Texas has concluded that it would save in excess of \$2 billion over the 40-year useful life of a coal slurry pipeline serving only one of its new generating stations.

In light of the President's energy message, preceded by a number of Congressional initiatives, it is now clearer than ever that large volumes of western coal will be shipped to the South and Southwest regions where electrical utilities and large industrial users of oil and gas will have no choice but to burn coal. Our concern that coal soon be available, upon economic terms, to Gulf Coast industries is really a national concern. This is because 29 percent of our Nation's refining capacity and about 46 percent of our primary petrochemical capacity is located in Texas, and a substantial part of the balance of such capacity is located in such states as Louisiana and Oklahoma. The location of these industries was selected because of the proximity of cheap and plentiful supplies of natural gas. Almost all of the newer anhydrous ammonia plants, which supply most of the fertilizer for our agricultural output have been built in the same area. These industries use large quantities of natural gas both as fuel and as feedstock. Even if natural gas continues to be available for essential feedstock uses, petrochemical and fertilizer plants cannot run without large amounts of energy devoted to fuel uses. They also require large amounts of electrical energy. So, the industrial complex located on the Gulf Coast, upon which the Nation as a whole is dependent, is energy intensive and interdependent. It is therefore clearly in the national interest that coal promptly be made available for Gulf Coast utility and industrial furnaces.

Thus, coal slurry pipelines are needed: they offer a proven technology, the possibility for significant cost savings to consumers, and an environmentally acceptable method of transporting coal. And what is sought by H.R. 1609 is nothing more than what has been granted for similar methods of energy transportation. So why all the uproar? Stated most charitably to the railroad point of view, it has to do with their "economic health." Stated more starkly, it has to do with the abuse of economic power and government privilege. Burlington and Northern and the Union Pacific railroads rank first and third, respectively, among the holders of coal reserves in the United States. These coal reserves are in lands given them by the federal government in the 19th century. The same railroads, but primarily Burlington and Northern, also dominate the transportation of western coal. As best we can tell, the railroads have no opposition to coal pipelines as such as long as they are not owned by a competitor. The only coal pipeline now operating in the U.S. is owned by a railroad, and Burlington Northern conceded in hearings before this Committee that it has studied the feasibility of coal pipelines. If the results of such study were completely negative, why are they trying so hard to defeat this legislation? If passage of this legislation continues to be withheld, only the railroads will be able to build coal pipelines.

The claims of financial ruin and lost jobs by the railroads and the brotherhoods are exaggerated. In fact, the future coal transport needs of our country will tax the best efforts of all who would participate. In Texas alone it is estimated that by 1985, use of coal must increase to between 83 and 127 million



tons per year. Nationwide, President Carter has correctly called for coal production to increase by over 400 million tons by 1988. A large portion of our increased coal requirements, and almost all of the coal required for the Gulf Coast will come from the Rocky Mountains. Our coal pipeline project is initially planned for a throughput of 15 million tons per year. Even if optimistic projections are met for coal pipeline transportation, the railroads will still have an opportunity to haul the bulk of the new coal supplies to the Gulf Coast and other regions, and probably all of the new coal in the East. From this, it follows that the often expressed concern for railroad profits and jobs is misplaced. There obviously will be no less coal hauled in the future and hence no jobs lost; the probability is that rail employment will increase irrespective of what happens with coal pipelines.

Under these circumstances, failure to pass eminent domain legislation would be to continue the monopoly of the railroads. On the other hand, passage of this legislation will not guarantee that a single coal pipeline will be certificated or built. No federal money is sought. It merely affords an opportunity for those willing to risk their funds and ingenuity to put together a coal pipeline project. The ultimate test of feasibility will be the market place where, in our economy, it should be.

I know there is great concern, which is properly expressed by Members of these Committees, for scarce water supplies in the western United States, particularly during this year of drought. As I emphasized earlier, the bill grants no rights whatsoever with respect to state or local water supplies. An applicant must obtain his water supplies in full compliance with state law or else the pipeline will not be built. Houston Natural's experience in Colorado is illustrative. In anticipation that the necessary eminent domain legislation will ultimately be passed, we have undertaken to find acceptable and adequate supplies of water in Colorado. We have located what we think is such a source which could not be economically used for agricultural or domestic purposes. We have purchased the necessary lands and have drilled test wells. However, water rights are public property under Colorado law and permission to use and export water from the state must be obtained from appropriate state authorities. This has necessitated our filing a petition in Colorado Water Court. The State Engineer and 29 protestants have intervened. We will have to establish by satisfactory proof each of the statutory requisites. I can assure you from our experience, that Colorado is quite capable of looking after its own interests as concerns water rights. The bill before you would not change Colorado's or any other state's rights and powers with respect to control of their own water resources.

This concludes my statement. I will be happy to answer your questions.

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#### TESTIMONY OF HOWARD COWAN, PUBLIC SERVICE CO. OF OKLAHOMA

I am Howard Cowan. I would like to discuss the coal transportation situation from the perspective of 20 years as an electric utility executive in Oklahoma. I retired January 1 as Senior Vice President of Public Service Company of Oklahoma, and I remain a Consultant to that company.

Eighty-five percent of Oklahoma's electric energy today is generated in natural gas-fired plants. Hydro accounts for 13 percent and fuel oil 2 percent.

We forecast that by 1985, natural gas will fuel only 40 percent of our generating capacity. Coal burning plants will generate 40 percent, hydro 7 percent, fuel oil 2 percent.

There is a distinct possibility that federal authorities will ban the use of natural gas for boiler fuel before 1985. If that happens, we may be watching coal leapfrog from zero to 80 percent of our fuel base for generation in just eight years.

And we'll have company. May I refer you to a report from the Bureau of Power to the Federal Power Commission in January 1977. Actual coal shipments to utilities in Oklahoma, Texas, Louisiana and Arkansas in 1975 were a little over 9 million tons. Based on generation units under construction or scheduled for service, the demand for coal in these four states will soar from 9 million tons to more than 124 million tons by 1985.

And these figures were provided by electric utilities in those states before the full impact of the President's energy program and its emphasis on coal was known.



We are concerned about getting sufficient coal to maintain an adequate power supply. We are more concerned about getting coal delivered at a cost that won't impose an unbearable burden on our electric customers.

This explains our interest in coal slurry pipelines. When this fuel crisis started building in 1975, we thought we might have some options.

Oklahoma has 7 billion tons of bituminous coal resources. About half of this is recoverable but the sulfur content is 2.2 percent. The Environmental Protection Agency won't let us burn it in Oklahoma.

Two million tons of Oklahoma coal are mined each year and shipped to electric utilities in Missouri and Iowa. EPA says it's okay to burn it in Kansas City, but not in Oklahoma.

So our company and others in the Southwest are relying on Wyoming, Colorado or New Mexico for coal. The sulfur content is one half of one percent, acceptable to EPA.

We have contracted for 50 million tons from Kerr McGee's Jacobs ranch mine near Gillette, Wyoming. The distance by rail to Oologah, in northeastern Oklahoma, is 1,329 miles with Burlington Northern handling about 80 percent of the haul, Missouri Pacific 20 percent.

They quoted a rate of \$6.48 a ton when we started negotiating in 1975 after bowing to their ultimatum that we spend \$20 million for our own coal cars. This added \$2.26 a ton to the rate for a total of \$8.74 a ton.

We signed on the dotted line last month and the \$6.48 base rate had jumped 32 percent to \$8.57 a ton or a total of \$10.83, including the cost of owning and maintaining our own cars. Up 32 percent in two years.

Incidentally, the tariff obligates us to take or pay for a minimum of 2.6 million tons a year for 20 years, despite their claims that they are unable to make long term contracts.

Again, we thought we had an option that would trim our coal transportation costs and benefit our customers with lower electric rates. There was a proposal for a 38-inch coal slurry pipeline to deliver 25 million tons a year to generating plants in Nebraska, Kansas, Oklahoma and Arkansas.

Initial pipeline rates compared favorably with rail but more important, projections over the 30-year life of the plant indicated savings of billions of dollars to our electric customers.

Escalation factors in the rail rate pointed to annual increases of 15 or 16 percent. We had already seen that. In the coal pipeline rate, escalation was minimal, one or two percent.

The weighted average rate comparison over 30 years showed rail three times higher than pipeline. If Oklahoma generating plants could utilize the full capacity of the pipeline, ultimate savings could reach \$12 billion over 30 years.

That's why Public Service Company and Oklahoma Gas and Electric Company, that state's major electric utilities, and the Oklahoma Association of Electric Co-operatives, 28 of them, joined hands against the railroad lobby to get an eminent domain bill passed in the current session of the Legislature. The vote was 31 to 13 in the Senate, 62 to 36 in the House.

But we have won a battle, not a war. The potential savings I mentioned are speculative because long distance coal slurry pipelines are still blocked by the railroad monopoly in Kansas and Nebraska.

The wetsern railroads, principally Burlington Northern, have waged a ruthless campaign based on amazing contradictions. On one hand, they insist the railroads can haul it cheaper. In the next breath, they warn railroad workers they'll lose their jobs that the railroads will go broke if coal slurry pipelines are built. They warn wheat farmers they'll either have no rail transportation at all or the rates will be doubled or tripled, if coal pipelines are built.

We heard the voices of doom from the railroads and then watched Burlington Northern spending tens of thousands of dollars on prime time TV to perpetuate their coal-hauling monopoly.

Yet security analysts sav Burlington Northern's revenue this year will exceed \$2 billion, up from \$1½ billion in 1975; that net income will hit \$93.7 million, up from \$51½ million in 1975.

Last week they reported a 67 percent increase in first quarter profits over a year ago and BN stock hit a new high, \$53 a share, up 11¼ since the first of the year.

The question is not whether they'll go broke, it's whether their profits will quadruple rather than triple over the next 8 or 10 years; whether they will continue to haul 100 percent of the coal, or share a fraction of it with coal pipelines.



The sobering part of this picture is that there'll probably be more business than the railroads and the slurry lines can handle as coal replaces natural gas for electric generation. Projections are that 300 million tons of coal annually will be moving out of Wyoming by 1985. The Wyoming-Arkansas pipeline can move 25 million tons.

If the Congress had made a coal slurry pipeline possible in 1975 and our Oologah plant was operational today, fuel cost would be 98 cents per million BTU. Our actual fuel cost in March was \$1.33 per million BTU.

Electric rates have gone out of sight, due principally to soaring fuel costs which account for 50 cents out of every dollar our customers pay for electricity.

Without legal authority for a coal pipeline to cross under railroad right of way, we are deprived of the most efficient and economical method of moving coal from Wyoming to Oklahoma.

It takes about four years to build a coal-fired generating plant. It must be designed to receive coal either by rail or by pipeline. There is no practical way to switch in midstream.

That's why it is critical that this choice be available now. Texas is enacting an eminent domain law and that will bring to seven the number of states providing authority for coal slurry pipelines.

It is an encouraging demonstration of awareness at the state level but is far from providing the authority needed to penetrate railroad obstruction of long distance pipelines.

The process of winning state-by-state approval is lengthy and laborious. Eminent domain authority on a federal basis is the sensible way to accomplish this within a reasonable time. We urge the Congress to enact H.R. 1609.

Mr. JENNINGS. In that connection, I would like to call attention to one part of the statement that was made by Mr. Cowan, who is the former senior vice president of the Public Service Co. of Oklahoma. He said:

We signed on the dotted line last month, and the \$6.84 base price has jumped 32 percent to \$8.57 a ton, or a total of \$10.83, including the cost of owning and maintaining our own cars; up 32 percent in two years. Incidentally, the tariff obligates us to 'take-or-pay' for a minimum of 2.6 million tons a year for 20 years, despite the claims that they"—talking about the railroads—are unable to make long-term contracts.

These three statements that I have submitted for the record represent only a small portion of the positive record that has been built for H.R. 1609. Some of the other supporters of coal slurry pipelines have been invited to testify here and others will, or can, supply you with statements. For the moment, it is sufficient to say that coal slurry pipelines enjoy a broad base of support, ranging from the 4 million members of the 17 national and international unions affiliated with the Building and Construction Trades Department of the AFL-CIO to the United States Chamber of Commerce. In addition, H.R. 1609 is supported by the National Coal Association, representing the coal producers, and by the three organizations that represent those who generate electricity—the National Association of Electric Companies, the National Association of Rural Electric Co-operatives, and the American Public Power Association.

Much time and attention has been given to the question of coal slurry pipelines. The concept of moving coal underground economically and efficiently by pipelines has been endorsed by four Presidents—Kennedy, Nixon, Ford and, most recently, Carter. Since 1975, the Interior Committee has conducted extensive hearings, compiling a record of more than 1,700 pages. In addition, the Office of Technology Assessment has just completed a lengthy study of coal pipeline technology.

The issue is not that complicated. It has been made to appear difficult by the railroads who are opposing coal slurry pipelines with the



same ferocity they have exhibited toward every innovation in transportation.

Essentially, the Coal Pipeline Act of 1978 is a simple bill. It provides, first, that certified coal pipelines may exercise the right of eminent domain to acquire the rights-of-way needed for their construction. Second, it establishes a process for the thorough examination of each individual pipeline proposal on a case-by-case basis. This certification process, as the Interior Committee points out, will, quote, "insure that only those pipelines which represent sound economic, environmental, and social policy are granted eminent domain authority."

Finally, H.R. 1609 preserves the States' rights over their own water supplies. The water issue was fully and carefully considered by members of the Interior Committee. Section 9 of the bill recommended by that committee makes it clear that H.R. 1609 does not change any of the traditional procedures relating to the allocation of water.

In its report, the Interior Committee says, quote, "The States have retained the power to control their waters, and there is no intent to alter that arrangement." That statement clearly expresses not only the view of the Interior Committee, but the position of the Slurry Transport Association and its members.

In summary, H.R. 1609 does not authorize a single pipeline. It does not provide a cent of Federal money, and it does not appropriate a drop of water. Instead, H.R. 1609 establishes a process for the examination of each pipeline proposal on its own merits. Those proposals that can demonstrate they will serve the public's convenience and necessity will be permitted to use the right of eminent domain to obtain rights-of-way they cannot get by negotiation. This is necessary primarily because the railroad industry, one of the large landholders, refuses to permit coal pipelines to cross their rights-of-way, although such passage is routinely granted to other pipelines.

To overcome this opposition, we are asking for the same right of eminent domain that has been extended to natural gas pipelines and to the oil pipelines when the first long distance lines were constructed. The Federal eminent domain was granted to oil pipelines for a brief period during World War II, but the major trunk lines constructed under that right served for many years after the war.

The need for coal slurry pipelines arises from this country's need to make use of its abundant supplies of coal to reduce its dependence on expensive foreign oil and diminishing supplies of natural gas. The President's national energy plan calls for increasing coal production in the next 8 years by two-thirds, from the present 670 million tons a year to more than a billion tons by 1985.

While the final details of the energy bill are not settled, the conferees have agreed already that there will be a stringent conversion program mandating the increased use of coal. Since transportation represents oftentimes more than 40 percent of the cost of coal, it is natural that the companies who must switch to coal are seeking the least expensive means of transportation. In many cases, the least expensive means of coal transportation is a coal slurry pipeline.

From other witnesses, this committee has heard already of the growing concern that the high cost of rail transportation will limit the extent that national coal conversion goals can be met. The report of



the Interior Committee on H.R. 1609 describes how high coal tariffs can be, especially where long distances are involved, and how fast they escalate. In Houston, for example, the rail tariff is twice the cost of the cost itself, and in San Antonio, a rate is being considered that is 130 percent higher than the original one quoted just 5 years ago.

Without coal slurry pipelines, there will be no competitive force whatsoever in many parts of the country to help stabilize the cost of coal transportation.

Slurry pipelines have two significant advantages. They offer economies of scale and can carry large volumes of coal over long distances for long periods of time. This makes them a convenient link between mines and power companies. The other advantage of pipelines is that they are capital intensive, with about 70 percent of their costs related to the initial capital investment. This makes them highly resistant to inflation. Contrasted with the railroads, whose rates have more than doubled in just a few short years, pipeline rates are relatively stable.

There is nothing new or experimental about coal slurry pipelines. The first commercial coal pipeline in this country was built 20 years ago in Ohio, and that first pipeline not only produced significant savings in coal transportation, but, as we have heard from the railroads themselves, it encouraged the development of the unit train. Right now, a coal pipeline is delivering coal from a mine in northeast Arizona to a powerplant in southern Nevada.

The technology of slurry pipelines is simple and straight forward. The coal is pulverized to the consistency of sugar, mixed with water or other liquid carrier, and pumped through underground pipes to its destination. At the receiving end, centrifuges spin the water out of the coal, and then the water is available for use in the cooling processes associated with the combustion of the coal.

Much has been written and said about coal slurry pipelines. The recent OTA study covers the major points of contention and, hopefully, it will clear away much of the confusion created by the railroads and their supporters. The OTA, for example, confirms that slurry pipelines can indeed transport coal more cheaply than rail under certain circumstances. The circumstances that favor slurry pipelines are high annual coal volumes and long distances, which are exactly the conditions that exist in the areas that historically have burned oil and gas.

The OTA says there is adequate water for several coal pipelines. The report confirms that slurry pipelines will use only a small fraction of the available water and, even so, will use less than either electric generating stations or coal conversion processes. The report does question whether adequate water is legally available, but we believe, and the majority of the Interior Committee does too, that this is a matter for local authorities to decide on a case-by-case basis.

So far as the environmental impact is concerned, the only significant impact identified with slurry pipelines was during the brief period of construction. This is temporary and restoration is not only feasible, but required by H.R. 1609.

On the other hand, OTA said the increased coal traffic by rail will have a major negative impact on the lives of individuals living or working near the tracks. This includes, quote, "the increased exposure to train noise, interruption of commuting and other automotive traffic,



additional accidents at grade crossings, and interference with cattle movements on rangelands."

The OTA report also destroys the myth that coal slurry pipelines will eliminate existing railroad jobs, or have a serious impact on the railroad industry. Railroad employment in the next decade or so, the report says, will remain constant, or even decline, whether any coal pipelines are built or not. At the same time, construction of pipelines will generate their own economic benefits, especially in the building and construction trades where unemployment far exceeds the national average. So far as the rail industry is concerned, the OTA report says the overall potential impact of coal slurry pipelines, quote, "appears to be substantially less than that of possible adverse regulatory policy or a decline in the present rate of improvement in the productivity."

The spokesmen for the railroads talk a lot about regulatory policy and quote the OTA as saying that coal slurry pipelines, given the right of eminent domain, will enjoy a regulatory advantage over the railroads because the pipelines could enter into long-term contracts and the railroads cannot, or they say they cannot. This question, however, is not an issue in H.R. 1609. Representatives of the Interstate Commerce Commission have testified elsewhere that they are considering long-term contracts for unit train shipments of coal in the West, and if legislation is required to accomplish this purpose, it should originate in the committee with jurisdiction over railroad legislation.

The railroad spokesmen also talk about the capacity of the railroads to carry all of the new coal production that is expected. The point is not how many trains you can put on a given stretch of track, but whether the trains can get where they are going in a timely fashion. The capacity of the rail system to handle the constant pounding from long, heavy coal trains must be questioned by anyone who has read a newspaper recently.

Another question that has been raised about the capacity of the railroads to deliver coal in a timely and reliable manner is the possibility of a strike, a possibility that is hinted at from time to time in the press and greatly feared by those who produce our electricity. It has been pointed out that if the railroads are the sole transporters of coal, they could become, in a few years, the lifeline of the Nation, controlling the flow of basic energy, and that the president of the United Transportation Union, representing all the railroad workers, would be able to turn out the lights in this country and have more power than the President of the United States. In such an eventuality, I would not want to be the one who said we did not need an alternate method of coal transportation.

Coal slurry pipelines can provide both the discipline of competition needed to produce reasonable transportation rates and an alternate transportation system to guard against any type of breakdown or stoppage of rail transportation.

We believe that conversion of our energy base to coal will require the best of all our transportation systems: Pipelines, trains, barges, and trucks. We also believe that H.R. 1609 provides for more restrictions than are imposed on any other system of transportation, but we



are confident that coal pipelines, examined on a case-by-case basis, can demonstrate their utility and their benefits. We urge you to recommend the passage of H.R. 1609.

I would be pleased to answer any questions, Mr. Chairman.

Mr. EDGAR. Thank you for your statement. Before yielding to Mr. Shuster I would just like to comment on this Office of Technology Assessment report. We have heard the railroads and we have heard yourself use the report to justify two different positions and, therefore, the report must be fairly accurate.

I yield to the gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. I thank you. I certainly want to compliment you, Mr. Jennings, for a very, very persuasive presentation.

Mr. JENNINGS. The proof of the pudding will be in the eating.

Mr. SHUSTER. Not at all; you are doing an outstanding job with such a weak case.

[Laughter.]

Mr. SHUSTER. Let me get more serious for a moment. You talk about the U.S. Chamber of Commerce in support of coal slurry pipelines. Now, do I infer from that that they have come out in support of H.R. 1609, or are they just generally in support of the idea of coal slurry pipelines?

Mr. JENNINGS. They came out in support of the concept of coal slurry pipelines. It would not be fair to say that they have come out specially for every part of 1609. What they did come out for was the right of eminent domain for coal slurry pipelines.

Mr. SHUSTER. The Federal right of eminent domain, you are saying?

Mr. JENNINGS. Yes.

Mr. SHUSTER. They have not necessarily endorsed 1609?

Mr. JENNINGS. No. Back when they came out—I believe it was 1863—they addressed themselves to that.

Mr. SHUSTER. Is that the bill number or the year?

Mr. JENNINGS. I am a little at a loss to tell you. This issue has been before Congress for quite some time, but that is the bill number from the last Congress.

Mr. SHUSTER. Thank you very much.

Mr. EDGAR. Thank you, Mr. Shuster. I have a couple of questions I would like to ask you, Mr. Jennings.

If H.R. 1609 is enacted, what is your estimate on how long it would take to construct the first coal slurry pipeline?

Mr. JENNINGS. That would depend, of course, on how long it would take to get an environmental impact statement and how long it would take to get the rights-of-ways and how long it would take to litigate any court proceedings that might ensue.

Mr. EDGAR. When would you anticipate beginning contract negotiations?

Mr. JENNINGS. They have already begun.

Mr. EDGAR. Could you give us just a brief outline of what is contained in the ideal contract that you are seeking to negotiate?

Mr. JENNINGS. Well, no, very frankly, I cannot. Let me express how, in my opinion, it would work. First of all, the utilities, or the large users of coal would go to a coal company and make a contract for the coal, just as they do today. Then, they would contract with the trans-



porting agency, whether it would be the railroads or whether it would be the pipelines. And those are the details that would have to be worked out by negotiation between the receiver and the owners of the pipeline.

Mr. EDGAR. In relationship to the pipelines specifically, you would be looking for how many year contracts?

Mr. JENNINGS. Well, there again, that would be a part of the contract, in all probability. Floyd Lewis, who is president of Mid South Utilities, testified before the Interior Committee that over the life of a boiler, which is approximately 30 to 35 years, that if he could receive coal by coal slurry pipeline, 25 million tons of coal a year, that it would provide a savings of about \$14 billion in transportation costs, all of which would be passed on to the consumer.

Mr. EDGAR. Can you tell the committee what happened to the pipeline that was established in Ohio 20 years ago?

Mr. JENNINGS. Yes. It is now mothballed. At the time that was put into operation, the railroads were charging \$3.47 a ton to haul coal from Cadiz, Ohio, over at the edge of West Virginia, to the Cleveland Electric Illuminating Plant on Lake Erie.

Mr. EDGAR. What was the distance there?

Mr. JENNINGS. The distance was about a hundred miles—108 miles. After this pipeline went into operation, the railroads approached the company. At that time, they had the pipeline set up, as I recall, on about a 15-year amortization. They had operated it about 6 or 7 years. The railroads agreed to pay for the entire cost of the amortization of the remaining portion of that pipeline and to cut the transportation cost of coal to \$1.88 a ton, and it was such an attractive proposition that the coal company bought it. And the Ohio pipeline is there in mothballs today. With very few improvements and with the increased technology, it could go back into operation. It had a significant effect in keeping the price of transportation down in coal.

Mr. EDGAR. Did it have any initial problems over the 6 or 7 years it was operating?

Mr. JENNINGS. Many of them. It had many problems, but they were able to overcome all of them. It was a small line; it was only 10 inches in diameter, and it was somewhat of a guinea pig in this country for coal slurry pipelines.

Those original operating problems were overcome to the extent that Southern Pacific Railroad, or one of their subsidiaries, decided to build one. It has been in operation now going on its eighth year; they say it has better than a 99 percent efficiency of delivery. The problems that were encountered initially in the little Cadiz line have been overcome, and so have additional problems that have been encountered since then. As a matter of fact, it is stated today that it would probably not be necessary at all, because of the efficiency of the Black Mesa line and the additional experience, to build holding ponds along the way.

Mr. EDGAR. Could you describe what you mean at the end there? I have another question, but holding ponds along the way would be for—

Mr. JENNINGS. In case of a rupture, they had it so they could cut off the valves and pump the coal out into the holding pond, and then re-slurry it and put it back into the line. The efficiency rate has been so great, and with the one or two little ruptures they have had, they have



not used the holding ponds, and they say, today, that it would not be necessary to build holding ponds along the way.

Mr. EDGAR. This next question may be a bit technical, but it comes to mind in light of a visit that I made yesterday to a resource recovery plant here in Washington, D.C., that is taking trash and putting it through a process. It was indicated that the abrasiveness of some of the particles going through the machinery and equipment, and pulleys and different belts that are in that process, causes a wearing on the process. And I wonder if you have had any experience of the coal passing through the pipelines, as to its wearing on the inner lining of the pipeline and therefore causing a problem downline in terms of replacement of that pipeline.

Mr. JENNINGS. They have taken the pipeline out; they have checked it with micrometers; they found that there is practically no wear on it at all. If the grind is correct and if the rate of travel is correct, there is very little wear on the pipe at all. They have found if they grind it real fine, suspend it and move it at about 4 miles an hour, that there is no wear on the pipeline at all, and they now consider that the pipeline will far outlive the life of the boilers.

Mr. EDGAR. If, in fact, there was a rupture or a loss of water to the system, and the coal does not have a holding pond to place it in, what happens in the pipeline process?

Mr. JENNINGS. First of all, there are a series of valves so you can cut it off, and you would not have a great, large quantity of coal. But it is nonflammable; it is nontoxic. In the one little rupture that they had, the wildlife people and the environmental people in the State of Arizona said that it was not necessary to even clean it up.

Mr. EDGAR. What kind of problems have they experienced in cleaning out the pipeline? Have they had to call in Roto-Rooter, or any body like that, to clean out the residue of coal?

Mr. JENNINGS. No. I was just at the Black Mesa pipeline a week before last. It was shut down for the simple reason that they had delivered so much coal to the generating plant in anticipation of a coal strike, which did not last very long in that particular case—they get their coal from the Peabody Coal Co.; they were able to make a contract. The miners went back to work in a couple of weeks after the coal strike was called, and because of the large volume of coal at the power stocked station, they asked that the pipeline be shut down. And so, it is a very simple matter just to flush the line out with water and then start it back up again.

Mr. EDGAR. In light of my visit yesterday on resource recovery, maybe sometime in the future we will be having you come back for trash slurry pipelines of some kind to take trash from New York City or Philadelphia or Washington to a boiler someplace in the same way you take the coal.

Mr. JENNINGS. Congressman, if it takes as long to get the legislation through as it does on coal, I think we would be inundated with that trash before we could get it done.

Mr. EDGAR. Well, it was just very interesting to me to see pellets being made out of the trash that can be used as supplemental fuel in a coal-fired process, and it makes a lot more sense than trucking the trash off to a landfill to utilize it for energy. Hopefully, we will learn



how to recover energy and other resources out of our trash and stop either incinerating it or landfilling it, eventually.

Are there any other questions? Mr. Fary?

Mr. FARY. No questions, Mr. Chairman.

Mr. JENNINGS. One thing that was brought up this morning I would like to comment on, and that is energy. The energy use is very close between the two systems, between the pipeline system and the railroad system, and I think the fact that they fail to take into consideration the preparation of the coal and the dewatering, and so forth, and the preparation has to be done regardless of the method of transporting it. But there is one real significant point, and that is, that this energy that will be used in a pipeline is our own electrical energy that will be generated by coal or nuclear, or some other type, while the railroads will be using imported oil, which is adding a great deal to our deficit balance of payments, which, in turn, is probably adding more to our inflationary rate than any other one single thing.

Mr. EDGAR. Do you plan to ship the pipes to the place of construction by rail?

Mr. JENNINGS. Probably so, if they provide the economics of distance and volume and price.

Mr. EDGAR. Are there any further questions?

[No response.]

Mr. EDGAR. Thank you for your testimony.

Mr. JENNINGS. Thank you.

Mr. EDGAR. Our next witness will be Marshall Sage, who will be representing the Railway Labor Executives' Association. Welcome to the committee this afternoon, and if you will just introduce your associate there, we can begin.

**TESTIMONY OF MARSHALL SAGE, LEGISLATIVE RESEARCH DIRECTOR, UNITED TRANSPORTATION UNION, SPEAKING ON BEHALF OF JAMES R. SNYDER, CHAIRMAN, LEGISLATIVE COMMITTEE, RAILWAY LABOR EXECUTIVES' ASSOCIATION, AND NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION, ACCOMPANIED BY WILLIAM G. MAHONEY, COUNSEL, RAILWAY LABOR EXECUTIVES' ASSOCIATION**

Mr. SAGE. Mr. Chairman, my name is Marshall Sage. I am the legislative research director of the United Transportation Union, and I am today representing Mr. James R. Snyder, who is the chairman of the Railway Labor Executives' Association's Legislative Committee and also national legislative director of the United Transportation Union. With me, I have Mr. William G. Mahoney, who is counsel for the RLEA.

I will read Mr. Snyder's statement, and then any technical questions may be directed to Mr. Mahoney, and we do have, I would say, a rebuttal statement we would like to make on some of the comments previously made.

Mr. Chairman and members of the subcommittee, on March 20, 1978, I submitted to the subcommittee a copy of short prepared remarks, to which was attached as exhibit 1 the statement of Mr. C. J. Chamber-



lain, then chairman of the Railway Labor Executives' Association, who testified on this subject on April 25, 1977. Mr. Chairman, I respectfully request those statements be copied into the record of this proceeding and I would like, if I may, to make a very short statement summarizing the evidence both for and against coal slurry pipeline legislation, as that evidence has been developed before this subcommittee, the Subcommittees on Mines and Mining and on Indian Affairs and Public Lands of the Committee on Interior and Insular Affairs, as well as before the Subcommittee on Transportation and Commerce of the Committee on Interstate and Foreign Commerce, all of the U.S. House of Representatives.

Mr. EDGAR. Without objection, so ordered.

Mr. SAGE. Thank you.

[Statements referred to follow:]

STATEMENT OF J. R. SNYDER, CHAIRMAN, LEGISLATIVE COMMITTEE, RAILWAY LABOR EXECUTIVES' ASSOCIATION AND NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION

Mr. Chairman and Members of the Subcommittee: On behalf of the Railway Labor Executives' Association, its members and the employees of the nation's railroads whom they represent, I would like to express our appreciation for the opportunity to present to you their views on a most important legislative matter.

My name is J. R. Snyder. I am Chairman of the Legislative Committee of the Railway Labor Executives' Association and the National Legislative Director of the United Transportation Union. My office is located in the Railway Labor Building at 400 First Street, N.W., Washington, D.C. Accompanying me is Mr. William G. Mahoney, counsel to the Railway Labor Executives' Association.

The Railway Labor Executives' Association is an unincorporated association with which are affiliated the chief executive officers of all of the standard national and international railway labor unions in the United States. The organizations whose chief executive officers are members of the RLEA are listed below:

- American Railway Supervisors Association.
- American Train Dispatchers Association.
- Brotherhood of Locomotive Engineers.
- Brotherhood of Maintenance of Way Employes.
- Brotherhood of Railroad Signalmen.
- Brotherhood Railway Carmen of the United States and Canada.
- Brotherhood of Railway, Airline and Steamship Clerks.
- Brotherhood of Sleeping Car Porters.
- Hotel & Restaurant Employees & Bartenders Int'l Union.
- International Association of Machinists & Aerospace Workers.
- International Brotherhood of Boilermakers & Blacksmiths.
- International Brotherhood of Electrical Workers.
- International Brotherhood of Firemen & Oilers.
- International Organization of Masters, Mates & Pilots of America.
- National Marine Engineers' Beneficial Association.
- Railroad Yardmasters of America.
- Railway Employees' Department, AFL-CIO.
- Sheet Metal Workers' International Association.
- Seafarers International Union of North America.
- Transport Workers Union of America.
- United Transportation Union.

On April 25, 1977, Mr. C. J. Chamberlain, then Chairman of the Railway Labor Executives' Association, testified before the Subcommittee on Mines and Mining and the Subcommittee on Indian Affairs and Public Lands of the Committee on Interior and Insular Affairs of the House of Representatives in opposition to the enactment of H.R. 1609, which sought to extend the power of federal eminent domain authority to slurry pipeline companies. I have attached Mr. Chamberlain's statement to my prepared remarks as Exhibit 1 and respectfully request it be copied into the record.



I attach that statement because it was made well before the issuance of the Office of Technology Assessment report on coal slurry pipelines and is largely confirmed by that report.

The OTA report notes that the major impetus for the construction of coal slurry pipelines occurred in 1962 when President Kennedy suggested "coal slurry pipelines might represent a way of transporting coal more economically thereby improving the depressed condition of the coal mining industry \* \* \*." We need no longer search for a means of revivifying the coal mining industry. That was accomplished by our finally becoming aware of the seriousness of our dwindling petroleum reserves and our increasing dependence upon foreign oil.

Absent the necessity of revitalizing the coal mining industry to what do we look to determine whether a need exists for the development of coal slurry pipelines? It seems clear to us that the OTA report found no such need. Indeed, as I just noted, the OTA report confirms in most major respects the testimony presented by Chairman Chamberlain.

The OTA report finds that under certain circumstances pipeline economies would result in savings beneficial to the coal mine operators, the electric utilities, and the pipeline operators, but the extent to which those benefits would reach the consumer is unknown. Also, pipelines would divert traffic from the rails even where the incremental rail costs would be lower; pipelines may impede future railroad expansion; water in the state of Wyoming could be reduced by 3 percent at a time when agricultural uses already had depleted flows to a point where water quality had seriously declined; and, shipping costs of electrical utilities may be lowered while those of non-coal rail users could be increased. These are but a few of the conclusions of the OTA report which appear to indicate that, on balance, legislation promoting construction of coal slurry pipelines would not be in the public interest. However, of most direct importance to the RLEA are those conclusions of the Report which indicate that from 1985 to the year 2000 some 12,000 to 18,000 railroad jobs would be lost, while some 12,800 individual employees would be unemployed. While the number of jobs in the construction industry would be increased, these jobs would be temporary in nature as compared with railroad jobs and would, of course, cease with completion of the construction of the pipeline. Such jobs would contribute but temporarily to the region in which they were located, whereas those employed by the railroads normally settle permanently in a particular region thereby contributing permanently to the development of the community in which they are found.

As I said a moment ago, there has been shown no need, either present or future, for the construction of coal slurry pipelines. Certainly there has been no justification presented for the promotion of the construction of coal slurry pipelines by the Federal government through enactment of federal eminent domain legislation. As confirmed by the OTA report, construction of such pipelines would serve little or no public purpose and, considering the liabilities involved, could be detrimental to the overall public interest.

Thank you for your kind attention to my remarks and for inviting the RLEA to present its position on these issues.

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STATEMENT OF C. J. CHAMBERLAIN, CHAIRMAN, RAILWAY LABOR EXECUTIVES' ASSOCIATION

My name is C. J. Chamberlain. I am Chairman of the Railway Labor Executives' Association and President of the Brotherhood of Railroad Signalmen. I present this statement on behalf of the Railway Labor Executives' Association in opposition to the enactment of H.R. 1609.

The membership of the Railway Labor Executives' Association consists of the chief executive officers of twenty-one standard national and international railway labor unions. These organizations are:

- American Railway Supervisors Association.
- American Train Dispatchers' Association.
- Brotherhood of Locomotive Engineers.
- Brotherhood of Maintenance of Way Employees.
- Brotherhood of Railroad Signalmen.
- Brotherhood Railway Carmen of the United States and Canada.
- Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees.
- Brotherhood of Sleeping Car Porters.



Hotel & Restaurant Employees & Bartenders International Union.  
 International Association of Machinists and Aerospace Workers.  
 International Brotherhood of Boilermakers and Blacksmiths.  
 International Brotherhood of Electrical Workers.  
 International Brotherhood of Firemen & Oilers.  
 International Organization of Masters, Mates and Pilots of America.  
 National Marine Engineers' Beneficial Association.  
 Railroad Yardmasters of America.  
 Railway Employees' Department, AFL-CIO.  
 Sheet Metal Workers' International Association.  
 Seafarers International Union of North America.  
 Transport Workers Union of America.  
 United Transportation Union.

I appear before you today to express the unanimous opposition of the membership of RLEA to H.R. 1609, which seeks to extend the power of federal eminent domain authority to privately owned coal slurry pipeline companies.

The private carriers thus advantaged by this grant of federal eminent domain authority would direct their efforts at capturing the most profitable long-haul, high-volume coal traffic; traffic traditionally transported by this nation's railroads.

It is our conviction, a conviction we believe buttressed by President Carter's energy message to the Congress on April 20, that the passage of H.R. 1609 in these times would not be in the public interest.

Coal slurry pipelines are not needed; they are environmentally unsound; they represent a specialized, inflexible use of energy; their construction would contradict established Congressional policy of revitalizing the nation's railroads; and, would provide private carriers the combined advantages provided private and common carriers without the attendant disadvantages of either.

Testimony and documentary evidence will be presented to these Subcommittees which will demonstrate that railroads can meet the increased demands for coal transportation at rates probably lower, but at least comparable to pipeline rates. Railroads are at least as, if not more, energy efficient than pipelines.

However, if pipelines are afforded eminent domain authority under H.R. 1609, railroads will be placed at a regulatory disadvantage that seriously will handicap their ability to compete. The only way to avoid the destructive competition which would result from private coal slurry pipeline companies' use of eminent domain authority is to recognize now that pipelines do not offer improved coal transportation, but—at the very best—merely comparable coal transportation, while at the same time, undermining the financial stability and service availability of the nation's railroads. We respectfully submit that such is too high a price to pay for an alternative system of transportation that can produce no measurable improvement over what can be provided by the existing railroad system.

As the representatives of virtually all employees in the railroad industry, the members of the Railway Labor Executives' Association are intensely concerned with the ultimate effect of the enactment of H.R. 1609 upon present and future job opportunities in the railroad industry. There of course would be lost job opportunities in construction and maintenance on the railroads as well as in carbuilding and car repair if the pipelines rather than railroads are to transport high-volume coal traffic between certain points in this country. It is obviously difficult to determine with any precision the number of job opportunities which will be lost in the railroad industry due to the enactment of H.R. 1609, however, we know that there will be direct losses of employment due to rail cutbacks brought about due to the loss of high-volume coal business.

The industry is now expanding to meet the growing need for hopper cars and diesel engines, the railroad equipment used in high-volume coal transportation unit-trains. This expansion will cease to a great extent if the railroads are deprived of any substantial amount of high-volume coal business. If this expansion is retarded, job opportunities will be lost.

Despite the adverse effects upon the railroad industry of the enactment of H.R. 1609, that legislation might be acceptable were it not for five vital considerations.

First of all, coal slurry pipelines are not needed. As will be demonstrated in greater detail by other witnesses, the railroads of this nation can meet the increased demands for coal traffic without difficulty. For example, coal traffic has been expected to double in the next ten years.



With the energy problems now upon us that traffic may very well triple within the next ten years. Coal is the railroad industry's highest volume commodity representing 16% of the ton miles transported by rail. Were that traffic to double in the next ten years, it would increase the total rail traffic by only 16% over a full ten year period or perhaps, if traffic tripled, it would be increased by 32% over ten years. Total rail traffic has increased by 15% over the past three years. Consequently, on the basis of volume of traffic alone, there is no reason to think that the railroads could not expand sufficiently to meet coal transportation demands.

The recent intensive increase in the use of coal brought about following the so-called "Arab boycott" is an indication of the ability of the railroad industry readily to handle increases in coal traffic under emergency conditions. Surely under a predicted growth policy the railroads would have no material problem in providing the necessary facilities to transport all our coal needs in the future.

A second consideration which renders the enactment of H.R. 1609 unacceptable is, we respectfully submit, its devastating effects upon our environment. A coal slurry pipeline requires two hundred to two hundred and fifty gallons of water per ton of coal transported. The proposed Wyoming-Arkansas pipeline would require between 5 and 6¼ billion gallons of water annually to transport 25 million tons of coal, the minimum amount required to maintain profitable pipeline efficiency. The result of this enormous drain of valuable water resources from arid western states would be incalculably harmful to human, agricultural and industrial needs. At the other end of the pipeline, half of the water must be drained off before the coal can be burned. Only one-third of the water could be used in the power generating plant for cooling purposes. Therefore, over 2 billion gallons of contaminated waste water would be discharged into Arkansas streams, or held in specially constructed Arkansas reservoirs. Ground water pollution resulting from seepage of this coal-contaminated water and air pollution resulting from the evaporation of this water are very real, very serious, and very great risks intimately intertwined with the use of a coal slurry pipeline. We submit that there simply is no justification for such waste and pollution.

A third consideration is the reversal of Congressional policy which would be evidenced by the enactment of H.R. 1609. In 1973 Congress enacted the Regional Rail Reorganization Act in order to rescue the Northeastern section of this country from economic chaos following the collapse of the Penn Central Railroad. During the course of the hearings on that legislation, it became apparent that the railroad industry was in need of revitalization and so, following extensive hearings in both Houses of Congress, there was enacted the Railroad Revitalization and Regulatory Reform Act of 1976. That Act provides certain direct grants of funds but mostly loan guarantees to the railroad industry to revivify it in order to insure to this nation the essential service provided by the railroad industry. It seems to us contradictory of that policy to provide a type of competition which would skim the cream from the traffic carried by the railroads for the benefit of private companies and very few members of the public, thereby further weakening the railroads and very probably necessitating greater amounts of Congressional aid to the railroads in the forms of direct monetary grants and loan guarantees.

Finally, it seems to us that a coal slurry pipeline represents an irrational use of energy at a time when all our energy resources must be most prudently utilized. High-powered diesel locomotives pulling unit-trains are considered 98 percent fuel efficient, i.e., they use as fuel 2 percent of the coal they carry. Indeed, the diesel locomotive is generally regarded as the most fuel efficient transportation equipment available today. On the other hand, coal slurry pipelines are supposed to be approximately 96 percent fuel efficient as they burn up about 4 percent of the coal which they transport. In addition, of course, the railroad locomotive provides a much more flexible use of energy than does the pipeline as it stands ready to transport virtually all commodities to all points in this country.

In closing, I wish only to add that we believe H.R. 1609 does not provide adequate regulation of coal slurry pipelines. It simply provides no effective regulation of their operation. Legislative inability to create comparable regulatory schemes between the two competing modes of rail and pipeline for the transportation of coal seems to us to stem directly from the fact that coal slurry pipelines will never willingly be true common carriers in the common



law sense. They will never hold themselves out to transport the coal of anyone who wants to ship through pipelines unless they are compelled to do so. Coal simply cannot be shipped by pipeline at all unless ground to the fine consistency required by the slurry process. The ordinary coal producer would not have coal in that form and slurry pipeline operators would not voluntarily accept unground coal because to do so would require the pipeline operators to grind that coal, thereby interfering with the grinding and transport of their own coal.

Coal slurry pipelines, by their very nature, are intended only for the transportation of coal to particular heavy volume consumers at electric generating plants to which the pipeline is directly extended. Large volume users must plan to contract for their entire coal requirements from one, or from a very few, large supply sources thereby foreclosing the opportunity of all other producers to sell to them unless those other producers can obtain the right to use the coal slurry pipeline owned by their competitors. The expensive and complicated processing plants and operations required by the coal slurry process will severely restrict the possibility of a small producer attempting to use pipeline service to transport its coal. Coal slurry pipelines are private, speciality carriers which, if permitted federal eminent domain authority without realistic, effective governmental regulation, threaten the nation's railroads—and therefore the shippers of all other commodities by rail—with destructive competition.

We respectfully submit that H.R. 1609 should be rejected by your Subcommittees.

Thank you.

Mr. SAGE. As I listened to the testimony presented to these committees and examined the OTA report, it became very clear to me, at least, that no need has been shown for the construction of coal slurry pipelines anywhere in the United States today or in the foreseeable future. As a matter of fact, the only benefit of a public nature which is even tentatively claimed for pipeline construction is that given by Secretary O'Leary when he testified before this committee and stated that the reason the administration supported construction of coal slurry pipelines was to be found in the possible potential lower costs which might be provided consumers of electricity.

There have been other arguments to the effect that to block construction of the pipeline is to block development of a particular type of technology, as if the use of a particular technology was in itself a public good, regardless of the public injury such use might inflict.

It seems to me that these reasons given to support coal slurry pipelines would not support a feather on a breeze. On the other hand, as reported by the OTA, use of such pipelines will foreclose all other future uses of our remaining western water supplies. We should have an awfully strong need, or at least be guaranteed one tremendous overriding public benefit, to be willing to shut off all other future possible water uses in our Western States. We have been shown no need nor offered any guarantee.

After the water has carried that slurry to its destination, a great deal of it is just contaminated waste water. In Arkansas alone, over 2 billion gallons of this contaminated waste water would be discharged into streams or have to be held in specially constructed reservoirs. The OTA has testified that it does not know the answer to the problem. When the water evaporates and that fine coal dust starts blowing around, it seems to me that air pollution would become a very serious problem. Certainly, any contaminated coal slurry waste water that seeps out of the reservoirs would create quite an environmental mess.

Closer to home, from my point of view, is the fact that railroads



would lose a great deal of business. Development of railroad business would be retarded at a time when Congress is spending a great deal of money trying to save the railroads. Now, unlike most essential industries in this country, employment in the railroad industry has declined from 1.2 million in 1950 to approximately 500,000 today. The rate of decline exceeds any rate of decline of any class of employees anywhere in this country. Obviously, that rate should not be increased or even continued by unnecessary congressional action.

I respectfully submit, Mr. Chairman and members of this committee, that legislation which would encourage the construction of coal slurry pipelines is unnecessary legislation, and the RLEA opposes permitting the development of a transport vehicle for coal—and we respectfully submit that is all the pipeline is—which has all the inherent dangers to the public interest listed in the OTA report solely because it may possibly lower costs to some consumers to some unknown degree at some future time.

And to keep the record straight, at this point I want to say that the AFL-CIO has taken no position on this legislation, contrary to some implications which have been made by the supporters of the pipeline.

Thank you very much for your invitation to speak to you today and to present our views and for your attention to my remarks.

Mr. EDGAR. Thank you for your comments. Unfortunately, with the bells ringing, it means that we must run off to our duties on the House floor, and we will come back in about 10 minutes, if you will wait.

Mr. Shuster?

Mr. SHUSTER. I have no questions. I think it is an excellent statement.

Mr. EDGAR. We appreciate your statement.

Mr. MAHONEY. If I may make just one comment on the statement which was made in the last paragraph of Mr. Jennings's prepared remarks. I think it should be replied to on the record at this time.

Mr. EDGAR. OK. If you will take 1 minute, we can wait for that.

Mr. MAHONEY. Yes, sir. As I read Mr. Jennings's statement, I was reminded of one of Winston Churchill's comments: Never in the annals of the Congress have so many mistakes been made about so many things in so few words as Mr. Jennings made about the power of the railroad labor unions and the United Transportation Union, in particular. If anyone had taken the time during the preparation of this statement of Mr. Jennings, to look at the history of railroad labor strife in this country, he would find that there has not been a railroad strike on a nationwide basis since 1922 and there could be one today. Consequently railroad labor strikes would have no effect whatever on transportation of coal even if no coal slurry pipelines were built.

Mr. EDGAR. Thank you for that comment. I hope that you understand that our not grilling you with questions does not, in any way, indicate our lack of interest in the statement that you have prepared and we appreciate your patience throughout the day. It is difficult when we have long days of testimony and other responsibilities that we keep coming in and out of the situation.

We appreciate your testimony today, and we will excuse you. We will be back in about 10 minutes with our final witness.

Mr. SAGE. Thank you, sir.



[Whereupon, a brief recess was taken.]

[Whereupon, Mr. Fary assumed the Chair.]

Mr. FARY. Substituting for the chairman, the temporary Chairman Edgar, the Committee will come to order. Our next witnesses are Mr. Turner and Mr. John J. Brown; Mr. Turner is the general president, International Union of Operating Engineers AFL-CIO, and Mr. Brown is the legislative director.

**TESTIMONY OF JOHN J. BROWN, LEGISLATIVE DIRECTOR, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, SPEAKING ON BEHALF OF J. C. TURNER, GENERAL PRESIDENT, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO**

Mr. BROWN. Mr. Chairman, to set the record straight, J. C. Turner was called out of town, and he is the general president of the International Union of Operating Engineers. And it is on his behalf that I will present the statement on behalf of our members for our international union.

Mr. FARY. Thank you.

Mr. BROWN. Mr. Chairman and members of the subcommittee on Surface Transportation of the House Public Works and Transportation Committee, let me express my appreciation for being given the opportunity to appear before you today. On behalf of the 425,000 members and officers of the International Union of Operating Engineers, AFL-CIO, we welcome the chance to appear before you to briefly explain our interest in slurry pipelines and what effect they have on our international union.

The interest in slurry pipelines stems from the need to convert our energy base from oil and gas to coal. If we must use more coal, then we must produce more and deliver more. The ability to move large quantities of coal underground in silent, dust-free pipelines that do not interfere with surface activities is an attractive option to many in the West who want to minimize the adverse effects of coal development. The fact that pipelines are reliable and economical make them interesting also to both the producer and the user of coal, as well as to the ultimate consumer, who, in the long run, pays all the bills.

Once coal is mined, it can be transported in many ways. It can be converted at the mine into electricity and transmitted over high voltage transmission lines. It can be converted into gas or synthetic fuel and flow through pipelines. Or, it can be hauled in a railroad hopper car, a truck, or a barge for conversion at some distant point. But coal in its natural unprocessed state cannot move through a pipeline because the railroads say it cannot.

In the West, where the distances from the mine to the consumer are greater, coal slurry pipelines are the only practical alternatives. There are no waterways for barges. The distances are too great for trucks. Water requirements and environmental consideration discourage mine-mouth conversion in the West. The only alternative then to the overland transportation of coal by unit train is the coal slurry pipeline.

Since the coal pipeline uses less water than any conversion process and produces less social and environmental disruption than a train,



coal pipelines should be part of a balanced coal delivery system. Slurry pipelines require only one-eighth of the water needed for an electric generating station, and one-half of that used in a gasification plant. Without slurry pipelines, there are no real options for reducing the adverse effects of massive overland shipments of coal in the mile-long unit trains.

In the West, a recent study found that the coming impact of coal trains will be so severe that existing local and State resources and Federal programs are entirely inadequate for the needs along the front range. It is the same in States such as Wyoming, Kansas, Nebraska—the States that are destined to be coal transportation corridors, whether they like it or not. The anticipated growth in western coal production will increase rail traffic so substantially and change the relationship of the railroad to the corridor communities so radically that an environmental impact statement should be required for each new coal train.

There is nothing new or experimental about coal slurry pipelines. The first patent for a coal pipeline was issued back in 1891. Slurry pipelines are in use in various parts of the world. The first coal pipeline in this country was built 20 years ago in Ohio. That pipeline operated successfully for 6 years. It not only produced significant savings in the cost of coal transportation, but it stimulated the railroads into improving their efficiency and introducing the unit train. But there is a limit, after all, to the efficiencies that can be produced by modifying a century-old concept. The unit train may be the last innovation. The ultimate extension of the unit train is the pipeline, but that extension is being denied. Why?

The major constraint to the construction of other pipelines is the hostility of the railroad industry, in general. Five major pipelines are proposed to carry western coal to the energy-hungry population centers that historically have used oil and gas. But the railroads, who enjoy an effective monopoly on the transportation of western coal, have turned their rights-of-way, many of which were given to them, into an impassable barrier for coal slurry pipelines.

To overcome this barrier and to obtain the same rights enjoyed by every other form of energy transportation, we are asking for the right of eminent domain. This is the same right that was advocated first by President Kennedy as long ago as 1962; by President Ford, who foresaw the need to increase coal utilization; and most recently by President Carter. The bill we support does not authorize a single pipeline, as stated earlier here today. It does not provide 1 cent of Government money, and it does not appropriate a drop of water. It simply establishes the machinery for the examination of each specific pipeline proposal on its merits.

The interest of our members and that of every citizen is at stake in this issue. We respectfully request that you review the 1978 report by OTA, wherein it is stated that coal slurry pipelines will not cause a loss of railroad jobs, but will put paychecks into the hands of construction workers—paychecks instead of welfare and unemployment checks. The construction worker today has a rate of unemployment that, in some areas of this country, doubles and triples the average unemployment rate in the Nation. That is the interest of our mem-



bers. For the citizens of our country, it means, as previously stated, a new way to transport energy to all parts of an energy-starved nation. We ask that you support this bill and move for its adoption without any crippling amendments.

Again, on behalf of the members and officers of the International Union of Operating Engineers, let me express my thanks for the consideration and kindness shown to me by the members of your subcommittee here today.

Mr. FARY. Thank you, Mr. Brown.

The Chair recognizes Mr. Shuster.

Mr. SHUSTER. Thank you, Mr. Chairman. Mr. Brown, thank you for your statement.

How many jobs, roughly, would be created by the six proposed pipelines?

Mr. BROWN. Depending upon the amounts of moneys or the lines that will be constructed, Congressman, you can roughly figure, on 1 billion dollars' worth of construction work, somewhere around 58,700 in jobs. Then, if you go into your related jobs, if I could use this building that we are now in, you can see the pictures on the walls, and if you look at this, you can see the curtains and you can see the tables. You can just appreciate the wiring, and the glass, and everything that goes into a building. You can see the amount of related jobs that will go into any given structure, once construction is completed.

I think you will find in the last two winters, where we have had severe shortages of commercial and residential gas, the difference that coal slurry will mean to the United States, jobwise, as far as construction is concerned, you are also talking about permanent jobs, because you are talking about the pumping of coal slurry.

Mr. SHUSTER. Thank you very much.

Mr. FARY. Mr. Mineta?

Mr. MINETA. Thank you, Mr. Chairman.

Thank you, Mr. Brown, for your testimony. I can understand that you have taken a look at this from the viewpoint of how it creates jobs for operating engineers, but have you looked at it in terms of the loss of jobs in the railroads?

If slurry lines go in, would the railroads then lose this potential income that they might have otherwise had for improving their roadbeds, for buying capital equipment, and for doing a lot of other things?

Mr. BROWN. I think, very seriously, as was mentioned, there is a difference of opinion within the AFL-CIO, as such. You will notice in the testimony presented by my brother, Jim Snyder, many of the names that are listed as part of his association are also part of the building trades—the sheet metal people, the Brotherhood of Electrical Workers.

We are not so far apart that we are trying to create unemployment by creating employment. I think we should recognize today, and everyone has been talking about it, that our modes of transportation are changing. I think the railroad, if anything, is coming back into its own, both for freight and for passengers.

One only has to look at the amounts of money that Congress has spent over the last 3 or 4 years, especially in 1975 in the 4-R Act, on



exactly what you are doing for ConRail. I do not find that you are going to create unemployment. The OTA report says that you will not create unemployment.

Let me basically say that as the West expands—and there is no two ways about it; there will be expansion. I do not think we are going to sit with 220 million Americans. The population will definitely increase, and our need for transportation in all phases, whether it be by airplane, by rail, or by truck, will increase. We are producing more for our own people.

So, I do not see, Congressman, how we are going to create unemployment within the railroad system itself. I do not find that to be.

Mr. MINETA. Well, I think we have seen a drop in the number of rail passengers. I know that at the hearings we had on Union Station here in Washington, testimony showed that there has been a drop in passengers, even though we have poured a lot of money into Amtrak and ConRail operations.

Has there been any discussion on the extent of, let us say, the water rights and whether or not there is a preemption on the part of the Feds over the State water rights issue.

Mr. BROWN. I think that if the bill created the problem, then I would say we have to address ourselves to it. But, the bill itself gives the States the rights to control their own water. I think it was brought up here by Congressman Eckhardt this morning that we are not a Nation of separate, individual States. You are talking about a United States, and I think that is what it should stand for.

Surely, if we had something in one section of the country that could benefit another section—and let me again use Congressman Eckhardt's own words of transporting coal to Texas so that they can release the necessary gas and oil that the Northeast needs.

I was reminded not too long ago of how long this fight goes on between who transports any given goods in this country. It was in about the year 1875 that the railroads denied oil pipelines. In fact, in the State of Pennsylvania, they actually ran their oil pipeline—I think it was called the Columbia Conduit—up to the railroad, emptied it out by mule, carried it across the railroad, and put it back in the pipeline.

Is this what we are talking about today, in 1978, 103 years later? We are talking about transporting energy in an energy-starved nation. The whole administration that you are a part of, Congressman, has been geared to the reduction of oil imports and yet we are laying out there with 400 years of good, God-given energy.

You talked this morning of a unit train only 110 cars long. Well, if they do not increase the 110 cars, that means they cannot transport any additional coal. So, we are going to have less coal, or the same coal. We are not going to have more coal, which is what we are looking for, unless they add another 110 cars right behind it. Then you are not talking about the 2, 3, or 4 minutes to pass a given station. You are talking about 4 or 5 units of 110 cars each and, surely, this is not what we are looking for in the western section of our Nation. At least, I do not see it.

I would say to the Congressman today that when it comes to the mining of the coal in the West, the operating engineers, because of the strip mining that has gone on out there, we are deeply involved in it, and that is why we are deeply involved in the coal slurry.



Mr. MINETA. Thank you very much, Mr. Brown. Thank you Mr. Chairman.

Mr. FARY. Thank you, Mr. Mineta.

Mr. BROWN, I have one question. Does your statement reflect the opinion of the AFL-CIO, or the International Union of Operating Engineers?

Mr. BROWN. I think it was well put by the previous speaker who represented the brotherhood. My statement reflects only those unions that would be involved in the construction of the pipeline. As I said to you before, we are part of the building trades.

My statement, as of today, reflects the position of the International Union of Operating Engineers and its 425,000 members. Jack Curran, who testified here at the last public hearing, his statement represented 600,000 members of the Laborers International.

Again, Mr. Chairman, there are many people on both sides of the table. As I said, you will see members here who are also members of the building trades. The AFL-CIO has adopted a position of complete neutrality, as the parent organization between two sons who are fighting. Let me put it that way to you—a difference of opinion.

Mr. FARY. Thank you.

Are there any other questions of the witness?

[No response.]

Mr. FARY. This concludes the hearings on House Resolution 1609. The record in these proceedings will be held open until April 26, 1978 for the submission of any additional views.

There being no other witnesses, the committee will stand adjourned, subject to the call of the Chair. Thank you very much.

[Whereupon, at 4:18 p.m., the hearings were adjourned subject to the call of the Chair.]



Mr. [Name] [Address] [City] [State] [Zip]  
Dear Mr. [Name]:  
I am writing to you in response to your letter of [Date] regarding [Topic].  
I am sorry that I cannot provide you with a more definitive answer at this time.  
The situation is somewhat complex and requires further investigation.  
I will be sure to keep you informed as soon as I have more information.  
Thank you for your patience and understanding.  
Sincerely,  
[Signature]  
[Name]  
[Title]  
[Organization]



## APPENDIX

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DEPARTMENT OF JUSTICE  
Washington, D.C., May 2, 1978.

HON. JAMES J. HOWARD,  
*Chairman, Subcommittee on Surface Transportation,  
House of Representatives,  
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your letter of April 24, 1978, inquiring as to (1) whether H.R. 1609 would impose any new function on the Department of Justice which it is not able to carry out under its existing authority, and (2) what costs would be incurred by the Department (presumably under that bill) and for what purpose.

(1) We are not aware of any new function created by H.R. 1609 which the Department would lack authority to carry out.

(2) H.R. 1609 would require the Department of Justice to review any application for a certificate for public convenience and necessity under the Act in order to provide advice as to whether the issuance of such certificate would have anti-competitive effects. [Amendments to H.R. 1609 supported by the Administration retain the requirement for this review under a slightly reworded standard.] Costs incurred by the Department in performing this function will depend on the number of applications for certificates and the complexity of the antitrust analysis required for each. The Department does not expect the number to be great. Other costs incurred as a result of litigation which H.R. 1609 might develop are unknown but are not anticipated to be great.

Sincerely,

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PATRICIA M. WALD,  
*Assistant Attorney General.*

DEPARTMENT OF JUSTICE  
Washington, D.C., May 11, 1978.

HON. JAMES J. HOWARD,  
*Chairman, Subcommittee on Surface Transportation, Committee on Public Works  
and Transportation, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 1609, the Coal Pipeline Act of 1977.

H.R. 1609, both as introduced and as reported by the House Committee on Interior and Insular Affairs ("Interior Committee"), would grant the power of eminent domain to carriers of coal by pipeline operating under certificates of public convenience and necessity issued by the Secretary of Interior. Coal pipelines not requiring eminent domain authority would not be obligated to secure a certificate of public convenience and necessity. All certificated coal pipelines would be subject to regulation according to the common carrier provisions of the Interstate Commerce Act. The bill also would amend subsection 28(a) of the Mineral Leasing Act of 1920 (30 U.S.C. §§ 181 *et seq.*) to insure that coal pipelines would be eligible for rights-of-way across Federal lands under the terms of that Act.

H.R. 1609 as introduced contained a "commodities clause" (Section 5(d)(1)) prohibiting pipelines that have been granted the power of eminent domain from transporting coal which they mine, own, or in which they have a direct or indirect interest. H.R. 1609 as reported by the House Interior Committee would qualify this prohibition by permitting a pipeline to own coal in order to achieve transportation and storage economies by commingling the coal received from more than one shipper. A second qualification would permit the Secretary to allow ownership of coal during shipment to effectuate similar economies. In the original H.R. 1609, the commodities clause further prohibits the issuance of a certificate of public convenience and necessity to any pipeline which controls, is



controlled by, or is under common control with suppliers and customers of the coal pipeline. No carrier granted the power of eminent domain under the bill could control, be controlled by, or be under common control with suppliers and customers. The commodities clause of H.R. 1609 is not applicable to all coal pipelines, but applies only to those pipelines that are certified to operate pursuant to the Secretary's grant of eminent domain authority.

H.R. 1609, both as introduced and as reported by the Interior Committee, contains two provisions, Sections 5(e) and 13, that would condition the grant of a certificate and the right to operate a coal slurry pipeline without a certificate upon the making of an agreement within two years of the date of enactment with the Secretary of Interior that the person engaged in transporting coal will permit other carriers to acquire rights-of-way across its pipeline.

H.R. 1609, both as introduced and as reported by the Interior Committee, would prohibit the issuance of a certificate of public convenience and necessity unless the Secretary of Interior received the advice of the Attorney General and the Federal Trade Commission that the issuance of a certificate "would not restrain trade, further monopolization, substantially adversely affect competition, or otherwise create or maintain a situation in contravention of the antitrust laws" (Section 7). Also, the bill would preserve antitrust jurisdiction in the Attorney General and the Federal Trade Commission to challenge any anticompetitive situation involved in the operation of a coal slurry pipeline. Finally, the bill provides for the civil and criminal enforcement of any of the provisions of the Act or regulations promulgated thereunder.

On March 21, 1978, Secretary of Energy James R. Schlesinger transmitted to both the House Committee on Interior and Insular Affairs and the House Committee on Public Works and Transportation the Administration's recommendations concerning H.R. 1609. The Department of Justice supports those recommendations. In the remainder of this letter, we indicate which of those recommendations are of particular concern to this Department and transmit on behalf of the Administration one additional recommendation.

The commodities clause as drafted in the original H.R. 1609 would apply only to those pipelines granted the power of eminent domain through certification and not to pipelines that do not require eminent domain authority and certification. We suggest that the commodities clause be extended to all coal slurry pipelines, regardless of whether they are certified. Our recommendation is based on the fact that the competitive problems sought to be cured by the proposed commodities clause are not limited to those pipelines exercising the power of eminent domain. The Administration's amendments to H.R. 1609 would make the commodities clause prohibitions applicable to all coal slurry pipelines subject to Part I of the Interstate Commerce Act. Since H.R. 1609 specifically makes coal slurry pipelines subject to the requirements of Part I of the Interstate Commerce Act (Section 12) and since the common carrier provisions of the Interstate Commerce Act appear to apply to coal slurry pipelines (Section 1(1)(b) of the Interstate Commerce Act), the Administration amendments would cure the present infirmity in this provision.

H.R. 1609, as amended by the House Interior Committee, added qualifications to Section 5(d)(1), the commodities clause prohibition. The qualifications would permit ownership of coal by pipelines after it was mined but prior to and during shipment in order to effect storage and shipping efficiencies through commingling coal from more than one shipper. Also, the Secretary of Interior has been given the discretion to waive the commodities clause proscription during shipment in order to effect these same efficiencies. The Committee report concerning these qualifications indicates that they were inserted to avoid the unintended effect of requiring pipelines to batch coal that might be shipped through the pipeline by more than one shipper, thereby increasing storage and transportation costs (H. Rep. No. 95-924 Part I, 24-25). The Department is of the view that the provision as originally drafted would not have this effect, since the proscription is against vertical integration and not against efficient pipeline operation. Moreover, the proposed qualification could overreach its stated purpose and, in fact, operate to vitiate the commodities clause provision by giving back to the pipeline the ownership of the coal it would transport.

The Department believes that the commodities clause as amended by the Interior Committee is insufficient for its purposes and supports instead the commodities clause endorsed by the Administration.

Sections 5(e) and 13 of H.R. 1609, both as introduced and as reported by the Interior Committee, would create inadvertent barriers to entry of either new



certificated or non-certificated pipelines that have failed to enter certain agreements with the Secretary of Interior concerning access across rights-of-way within two years of enactment of H.R. 1609. Such barriers would result from the fact that all future competitors would have had to make the necessary compact or agreement within the two year period or be barred thereafter from entering the industry. The Department is of the view that the provisions were not intended to have this adverse affect. The Administration's amendments would eliminate the problem by requiring, in Section 5(g) of the Administration's version of the bill, that the compact be made prior to the issuance of a certificate rather than within the two year period and, in Section 13, by providing that subsequent to two years after the date of enactment of the Coal Slurry Pipeline Act non-certificated pipelines may commence operations only after entering into a compact. Both changes are essential to avoid the inadvertent effects of the original provisions.

Furthermore, as indicated in Secretary Schlesinger's letters of March 21, Section 5(e) (Section 5(g) of the Administration version) was undergoing further review at that time. That review has been completed and the Administration now recommends an additional change. According to the House Interior Committee Report on H.R. 1609, Section 5(e) was intended to require certificated coal pipelines to enter into compacts with the Secretary of the certificating Department, so that "certificated carriers cannot unfairly deny access to other carriers." H. Rep. No. 95-924, Part I, 25. However, as presently worded, the section places requirements on interstate coal transporters other than pipelines. Particularly, Section 5(e) would require railroads to enter into compacts with the coal slurry pipeline certificating Department whenever they obtain certificates of public convenience and necessity from the ICC (such certificates are required whenever an extension or abandonment of rail service is sought). Therefore, whenever railroads obtain certificates of public convenience and necessity they would have to grant coal slurry pipelines easements over their entire system. Therefore, the section should be reworded to clearly indicate that only certificated coal slurry pipelines have to enter into such compacts. We recommend the following substitute for Section 5(e) of the bill as introduced and reported by the Interior Committee, and for the earlier Section 5(g) of the Administration version of the bill:

"No certificate of public convenience and necessity may be issued to any carrier unless such carrier has entered into a compact with the Secretary prior to the issuance of a certificate providing means whereby rights-of-way across the lines of such carrier may be acquired by another carrier on terms customarily employed with reference to other types of pipeline. Any Federal court of competent jurisdiction may entertain a suit by an interested party to enforce the provision of such compact."

The antitrust review provision of H.R. 1609, both as introduced and as reported by the Interior Committee, ought to be changed to reflect the proper standard for review—the probable competitive effect of the pipeline. The bill should be amended to provide an antitrust test in language similar to other antitrust review statutory provisions such as those contained in the Atomic Energy Act (Section 105c, 42 U.S.C. 1473) or the Federal Coal Leasing Amendments Act of 1975 (Section 15, 30 U.S.C. 184). Those statutes condemn actions which would be "inconsistent" with the antitrust laws. The Administration's amendments reflect this change (Section 7(a)).

The Department also is of the view that an antitrust review by both the Attorney General and the Federal Trade Commission is duplicative and unnecessary. The Administration's amendments have suggested mandatory review only by the Attorney General and have added a 180-day time limit on this review.

H.R. 1609, both as introduced and as reported by the Interior Committee, places certificate jurisdiction over coal slurry pipelines in the Department of Interior and rate regulation in the Interstate Commerce Commission. The Department prefers the Administration position, which would place certificate authority in the Department of Energy, with concurrences by the Departments of Interior and Transportation, and rate authority in the Federal Energy Regulatory Commission. In the past, the Interstate Commerce Commission had jurisdiction over all pipelines, except those specifically exempted from its jurisdiction (water and gas pipelines). The enabling act creating the Department of Energy transferred the responsibility for regulating oil pipelines to the Depart-



ment of Energy, leaving virtually no pipeline subject to the Interstate Commerce Commission's jurisdiction. In our view, regulation of coal pipelines also should be vested in the Department of Energy in order to maintain consistency in regulation and enforcement.

H.R. 1609, both as introduced and as reported by the Interior Committee, provides for dual enforcement by the Department of Interior and the Interstate Commerce Commission. The Department of Interior would enforce the provisions of H.R. 1609 by requesting the Attorney General to institute enforcement actions under proposed Section 8 and the Interstate Commerce Commission would enforce the commodities clause prohibition. Moreover, it is not clear which agency would enforce the common carrier provisions of the Interstate Commerce Act. We would suggest that H.R. 1609 be amended to vest responsibility for the regulation of coal pipelines in the Department of Energy and that all regulatory and enforcement powers with respect to such pipelines be removed from the Interstate Commerce Commission. The Administration's proposed amendments to H.R. 1609 reflect this transfer of regulation and enforcement.

The Department of Justice has no objection to the proposed legislation if amended as suggested and in conformance with the Administration's proposed amendments.

The Office of Management and Budget has advised that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

PATRICIA M. WALD,  
Assistant Attorney General.

INTERSTATE COMMERCE COMMISSION,  
Washington, D.C., May 3, 1978.

Hon. JAMES J. HOWARD,  
Chairman, Subcommittee on Surface Transportation, Committee on Public Works  
and Transportation, House of Representatives, Washington, D.C.

DEAR CHAIRMAN HOWARD: Thank you for your letter of April 24, 1978, requesting answers to questions on contract rates, unit train rates, and the general ratemaking authority of the Commission.

Because I perceive the questions to be essentially the type that might be put to me as a witness before your subcommittee, I am forwarding these answers to you without review by the other members of the Commission in order to meet the requested date which has been extended to today.

I am circulating copies of this exchange of correspondence to the Commission. I hope these answers which have been developed by our staff will be helpful to you. Should any of the members desire to supplement the answers, I will be pleased to forward that material to you as soon as possible.

Sincerely yours,

A. DANIEL O'NEAL,  
Chairman.

[Enclosure.]

## QUESTIONS

### ICC CONTRACT RATES

1. There has been much discussion about the issue of long-term contract rates for pipeline operators and for railroads. I think that the Subcommittee should clarify this issue. I, therefore, would like to ask you a series of questions on this point.

(a) Do you construe H.R. 1609 as permitting long-term contract rates for coal pipelines?

(b) If you do, under what sections of the Interstate Commerce Act would these rates be regulated and how would they be regulated?

(c) If you do not consider H.R. 1609 as permitting long-term contract rates, how would the ICC regulate the rates?

(d) Other than as provided for in section 15(19) of the Act, are railroads permitted to negotiate long-term rates or contract rates for any service they provide? Please explain. Could it include "take or pay" contracts?

(e) Would you please explain section 15(19) of the Interstate Commerce Act, and explain how that section has been utilized and to what effect?



(f) Presently, there is only one coal pipeline carrier. What type of rates does carrier file, and, how are they regulated by the ICC?

#### UNIT TRAINS

2. Would you please explain to the Committee how rates for unit train shipments are established?

- (a) Could a coal pipeline operator challenge a rate filed for unit trains?
- (b) Could a railroad challenge a rate filed by a coal pipeline?
- (c) Briefly, could you explain how the ICC would handle a rate contest between railroads and coal pipelines?

#### RATEMAKING

3. Would you please state which provisions of the Interstate Commerce Act

- (a) Provide a basis for remedies by shippers;
- (b) Provide a basis for remedies by competing carriers.

#### CONTROL QUESTIONS

4. Section 5(d) (1) of the bill imposes a "commodities clause" type restriction on coal pipelines, except in two types of situations. Do you interpret this as a ban on any ownership interest by the pipeline in the coal being transported? Please explain.

(a) A similar prohibition for railroads is set forth in section 1(8) of the Interstate Commerce Act. Would you explain to the Committee

(1) How it differs from the one in H.R. 1609, and

(2) How section 1(8) has been applied?

(b) If the ban on pipelines is broader do you believe that it is necessary? If so, why?

(c) Subsection 5(a) (4) prohibits the issuance of a certificate to any carrier that controls, is controlled by, or is under common control with any person which uses coal transported by the pipeline carrier, of which supplies coal to the pipeline. In addition, the same ban applies to any carrier that has been granted the power of eminent domain.

(1) Do you believe that this type of ban is necessary. If the answer is yes, then why?

(d) Enforcement of the control issue contained in section 5 is vested with the ICC.

(1) What enforcement powers do you have at disposal for this purpose?

(2) Do you believe that the ICC has adequate powers to ascertain whether or not a "control" violation exists?

#### GENERAL RATEMAKING

1. Why type of regulatory controls would exist for initial rate filings by coal pipelines under the provisions of the Interstate Commerce Act?

2. In Section 5(a) of the bill it is stated:

"The Secretary is authorized to issue such a certificate if the Secretary finds, with respect to a particular project of the carrier as to which said power is sought, that the project is in the national interest and provides the capacity necessary to fulfill the requirements of a common carrier of coal, as determined by the Secretary."

a. Do you regard this as empowering the Secretary to establish the common carrier obligations of the coal pipeline in the certificate of public convenience and necessity?

b. If you do, would this not preclude any authority of the I.C.C. from imposing a common carrier duties upon the carrier that are not included in the certificate?

3. In Section 56(6), the Secretary is required to make findings on the extent to which the project (6) will be likely to result in lower rates for the transportation of coal than would be in effect if such coal were transported by railroad under Part I of the Interstate Commerce Act.

(a) Do you regard this as requiring the rates to be included in the contracts that must be considered by the Secretary in section 5(a)?

(b) How could this be done before the pipeline is constructed?

(c) What, if any, effect would this have upon the ICC's authority over the rate when it is filed with that agency?



## RATEMAKING

1. In determining rate levels, the Interstate Commerce Commission has certain guidelines in section 15a of the Act. Would you please explain the factors the Commission can consider with respect to coal pipelines and railroads. Please indicate where the two might differ.

2. The Office of Technology Assessment's Report at page 160 states that "The major difference between the ICC's railroad ratemaking and its pipeline rate-making is that the reasonableness of railroad rates is judged without reference to a fair rate of return." Would you please comment on that? How has this been affected by the issuance of Ex Parte No. 338?

3. Does H.R. 1609 impose any function upon the I.C.C. that the agency is not now able to carry out under its existing authority? What costs would be incurred by the Interstate Commerce Commission and for what purpose?

## RESPONSES

## CONTRACT RATES

1(a). The certification of coal pipelines described in section 5(a) of the bill suggests that long-term contract rates will be permitted. There is no explicit language however, which describes what types of contracts are contemplated, or whether the rate will be immune from regulatory provisions regarding reasonableness, discrimination, or other regulatory safeguards.

1(b). Section 5(c) of the bill requires that any pipeline "be constructed, operated, and maintained as a common carrier as provided in the Interstate Commerce Act." By way of dicta in a 1961 decision, a plurality of the Commission stated that contract rates are illegal per se.<sup>1</sup> The Commission is currently examining its position on contract rates, and will shortly issue a policy statement to the effect that contract or contract-like rates will be considered individually on their own merits under Part I of the Act. Moreover, despite the prior statement as to per se illegality, the position of the Commission has been that tariffs containing exclusive dealing provisions (i.e. contract-like rates) are illegal only where they constitute a "destructive competitive practice" (against other carriers) or where other shippers would be competitively disadvantaged.

Notwithstanding a possible reexamination of the Commission's policy on contract rates, very long-term contract rates for coal pipelines could be inconsistent with the obligations of common carriers under Part I of the Act and with the Commission's regulatory jurisdiction over such common carriers.<sup>2</sup> With respect to applicable sections of the Act, a pipeline common carrier has a duty "... to provide and furnish transportation upon reasonable request therefore ..." (Section 1(4)) and to establish "... just and reasonable rates, fares, charges, and classifications ..." (Section 1(4), (5), and (6)). Among other powers, the Commission has authority to review all pipeline rates and, if it determines that such rate is unjust or unreasonable or unjustly discriminatory or unduly preferential, to suspend such rates and determine and prescribe the just and reasonable rate (Section 15(1) and (7)). Moreover, the Commission has held that a contract between a carrier and shipper to institute a particular rate level is not binding. See, e.g., *Farley Terminal Company v. Atchison, Topeka And Santa Fe Ry.*, 522 F.2d 1095 (9th Cir. 1974), cert. denied, 423 U.S. 996 (1975). Therefore, under the present regulatory scheme, a pipeline operator could not necessarily rely on the stability of a negotiated long-term contract rate.

1(c). Not applicable in light of preceding answer.

1(d). While nothing in the Act prohibits railroads from negotiating with shippers and agreeing on the terms of the service to be provided, such agreements are not binding and they may be challenged by any interested person after their terms are filed and published in a public tariff with the Commission. However, rail tariffs containing trainload or unit-train rates with minimum annual vol-

<sup>1</sup> *Guaranteed Rates—Sault Ste. Marie, Ont., to Chicago, Ill.*, 315 I.C.C. 311 (1961). (In this case, a railroad published a tariff which, in effect, required a shipper to use the railroad for all its transportation requirements in order to be eligible for the reduced rate.)

<sup>2</sup> A single company-owned pipeline transporting only its own products is a common carrier for reporting purposes only and cannot be required to file rates with the Commission or to transport the products of others. See *Champlin Refining Co. v. United States* 329 U.S. 29 (1946). See also answer to question 1(f) below.



umes (i.e., quantity discounts) are similar to contract rates and are widely used. They are contract-like rates in that they are designed primarily to meet the specific needs of a particular shipper. Such tariffs have been approved by the Commission in the past where they were found necessary to meet unregulated competition, where the rate was compensatory to the carrier, and where other shippers would not be discriminated against. The Commissions has not permitted such tariffs, however, where the "exclusive dealing" aspects were found to effectively capture the traffic of a particular shipper to the possible disadvantage of other carriers who might be able to provide the service more economically. The provisions regarding minimum annual volume in unit-train tariffs are also similar but not identical to "take or pay" contracts. If a shipper fails to meet the minimum annual volume, the shipper must pay the higher "fall back" rate which is normally a trainload or single-car rate.

1(e). Section 15(19) is designed to encourage investment in rail-related facilities and innovative rail technology. The section provides incentives for individual carriers and shippers to negotiate rates (and other transportation terms) for new or innovative service. Such rates presumably would reflect the capital investment made by the shipper or carrier.

Examples of the type of investment contemplated include railroad investment in the development of a new type of freight car to service a particular shipper or shipper group or investment in a spur track from a shipper's manufacturing plant to the main line of a railway. Such investments might not otherwise be made, either because of the railroads' difficulty in generating investment capital or shipper uncertainty over the stability of the transportation terms (including the rate) on which the capital investment decision is based.

The section contains two incentives to encourage such investments—an expedited Commission determination of the lawfulness of rate schedules premised on the investment and an effective five-year ban on regulatory interference with that rate once it has been found lawful. To the extent that Section 15(19) is successful in achieving its purpose, better service will be available to shippers and additional traffic (and revenues) to the railroads.

To date, three capital incentive schedules have been filed with the Commission. In all three, railroads have used Section 15(19) to propose unit-train tariffs on movements of Wyoming coal to newly constructed coal-fired electric generating facilities. The terms of the schedules reflected the particular transportation requirements of electric utility shippers. Capital incentive treatment was based upon the railroads' investment in new rolling stock and track improvements which would be needed to accommodate the heavy unit-trains.

The Commission approved the first two schedules over the protests of the electric utilities which the schedules were designed to serve.<sup>3</sup> Prior negotiations between the carriers and the utilities broke down because they could not agree on a rate. Hopefully, the absence of cooperation between shipper and carrier in these cases reflects an economic battle over the western coal rate structure rather than a failure of Section 15(19). After a western coal rate structure starts to develop, it can be expected that protests will more likely come from competing shippers or carriers who feel that a negotiated capital incentive rate is discriminatory or prejudicial.

1(f). Presently, this Commission has jurisdiction over the Black Mesa Pipeline Company which is the only coal slurry pipeline known to be subject to its regulation. This is an eighteen inch pipeline of 273 miles running in a south-westerly direction from the Black Mesa coal area in Northeastern Arizona to near Davis Dam in Nevada where the fuel is used to generate electricity at the Mohave Power Plant. Black Mesa Pipeline does file annual reports with the Commission, and is subject to our system of accounts.

Black Mesa Pipeline has a contract rate with a single shipper. Since there were no other shippers involved or competitively disadvantaged, the Commission has not to date taken action to require a tariff to be filed.

<sup>3</sup> Docket No. 36608, Incentive Rate on Coal-Cordero, Wyoming to Smithers Lake, Texas, — I.C.C. — (Decided November 30, 1977, Docket No. 36612, Incentive Rate on Coal—Gallup, New Mexico to Cochise, Arizona, — I.C.C. — (Decided November 28, 1977). The third case, Docket No. 36792, Incentive Rate on Coal—Belle Ayr, Wyoming to Council Bluffs, Iowa, is currently pending before the Commission. The case is perhaps distinguishable from the first two in that it is not for new service; coal is already moving over the route which the capital incentive schedule is designed to serve.



## UNIT TRAINS

2. Unit-train rates are normally established through negotiation between the carrier and shipper. The rates and terms of unit-train service reflect the particular characteristics of the shipper's transportation requirements. Normally, the rates would be considerably lower than the carload rate to reflect economies of transporting large volumes in a virtually continuous movement of the shippers' freight. The negotiated terms of the service are then published in a public tariff (which is subject to challenge by any interested person) on file with the I.C.C. While any person theoretically could ship under the tariff, as a practical matter, it would usually apply only to the shipper who negotiated the rate.

In the absence of agreement by the shipper on the carrier-proposed rate, the Commission may be asked to prescribe a just and reasonable rate for the service.

2(a). Yes.

2(b). Yes.

2(c). Upon complaint of either a railroad or pipeline, the Commission would begin an investigation and decide the matter in an adversarial proceeding. The Commission would be called on to consider any "inherent advantages" which one mode might have the other in providing the particular coal service at issue; e.g., the ability to provide the service at a lower cost. If the challenged rates were found to be below the variable cost (out of pocket costs) of providing the service, or if the tariff (or contract) terms would prevent the competing mode from fairly competing for the traffic, the Commission would have to determine whether the rate or tariff constituted a "destructive competitive practice." A new Section 15a(4) with regard to railroads has been added by the 4R Act. The last sentence of that provision may have a bearing on intermodal rate controversies. However, it has not to date been considered in a formal proceeding.

## RATEMAKING

3. Shippers and carriers alike are protected under the National Transportation Policy, 49 U.S.C. preceding § 1. Under the NTP, the Commission has an obligation to preserve the "inherent advantages" of each mode of transport and to "encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices."

3(a). Shippers' primary remedies under Part I of the Act are contained in Sections 1(5), 2, 3, 4, 15(1) and (7).

3(b). A competing carrier's primary remedies are contained in Section 15 (in conjunction with the National Transportation Policy) and Section 3(4). Section 1 is also available to competing carriers.

## CONTROL QUESTIONS

4. The first part of this question is whether section 5(d)(1) would ban any ownership interest in the coal being transported. By the very terms of section 5(d)(1), the ban extends to coal mined by the pipeline or under its authority, or which it may own in whole or in part, or over which it may have either direct or indirect control. This language appears to contemplate a complete ban on ownership (aside from the two exceptions provided by section 5(d)(1)).

Control may be distinguished from ownership. If, for example, coal is mined by a company affiliated with the pipeline, that would not be ownership—though it may or may not be control. "Control" is defined by section 2(e) as the power to exercise control. Such power exists where there is a common director or 5 percent ownership of voting stock of the carrier. Section 5(d)(1) does not speak to the latter; rather, "control" as used in section 5(d)(1) refers to control by the carrier over the coal. Even so, the ban on control would effectively reach coal mined and owned by a carrier affiliate, where the carrier has power to exercise control over the affiliate. More important, under section 5(d)(3) a control relationship between a certificated pipeline carrier and any user or supplier of coal is prohibited.

4(a)(1). Section 1(8) of the Act has never applied to carriers by pipeline; the so-called commodities clause applies only to railroads. It applies to all commodi-

\* The term is contained in the National Transportation Policy, 49 U.S.C. preceding § 1.



ties other than timber; whereas section 5(d)(1) of the bill applies only to coal. Section 1(8) applies only to interstate or foreign commerce. The draft bill is apparently not limited but would also apply to intrastate pipelines. The purpose of section 1(8) is to prevent a railroad from becoming a dealer in commodities which it transports. Such power would give a railroad the ability to favor certain shippers along its lines by deciding from whom it would buy and to whom it would sell, and thereby give such shippers undue advantage over other shippers. Apparently section 5(d)(1) of the bill is designed for the same purpose. This is a natural corollary to the common carrier duty, which is spelled out in section 5(c) of the bill. Unlike the bill, however, the Interstate Commerce Act contains no prohibition upon control of a railroad by a holding company which also controls shippers.

4(a)(2). Cases decided pursuant to the commodities clause of the Act find that control exists where the railroad is an alter ego of the holding company. Existence of control would be a question of fact in each instance. See, e.g., *Cambria & Indiana R.R. Control*, 275 I.C.C. 360; *Ark. & La. Midland R. Control*, 282 I.C.C. 254; and *Rockdale, Sandow & Southern R.R. Operations & Control*, 282 I.C.C. 297.

4(b). The ban on pipelines does not appear to be broader except as it may apply to intrastate pipelines and to traffic of holding company affiliates.

4(c). A ban on common control does not appear necessary provided that the pipeline carrier is subject to the normal safeguards against discrimination, rebating, and other forms of predatory pricing designed to enforce the long recognized duties of common carriers. No such ban applies to railroads nor to other pipelines. In fact, oil pipelines are almost universally owned, either directly or indirectly, by their shippers.

4(d). The commodities clause is enforced by a proper court action. As previously noted, however, the question of control has been adequately determined in Commission proceedings.

#### GENERAL RATEMAKING

1. Assuming that coal pipelines are regulated under Part 1 of the Interstate Commerce Act, initial rate filings would be subject to protest and suspension and/or investigation. (As provided for in section 15(7), the Commission can institute an investigation of a new rate on its own motion.) The rates would then be subject to the various regulatory safeguards provided for in the Act, i.e., reasonableness of the rate, unjust discrimination, undue preference and prejudice, long-and-short haul clause, etc. The rates proposed by the coal pipelines would have to be filed as a tariff publication in accordance with section 6 of the Act.

2(a). Section 5(a) of the bill does not, as it is written, suggest that the Secretary shall delineate the common carrier obligations of a coal pipeline in its certificate of public convenience and necessity. If this provision was construed to empower the Secretary to qualify or limit the common carrier obligations of a pipeline, such construction appears to conflict with the intent underlying section 5(c) of the bill, which conditions the issuance of a certificate upon a pipeline assuming all the common carrier obligations as provided in the Act.

2(b). If the Commission and the courts chose to interpret section 5(a) as enabling the Secretary to establish common carrier obligations, it would presumably preclude the Commission from exercising its authority to impose common carrier duties not included in the certificate.

3(a). If the Commission were making this finding, it is contemplated that the rates would be required to be included in the contract. In our view, the Secretary would consider the matter in a broad sense, while the carrier would consider the lawfulness of particular rates.

3(b). Most contracts that are negotiated prior to pipeline construction involve close examination of the transportation rate, since it determines in large part the type and amount of financing necessary. Inclusion of the proposed rate would also afford the Commission time to examine the lawfulness of the contract terms as they interrelate with the projected cost of service and the proposed rate.

3(c). Absent a statutory provision insulating the contract rate from being suspended or set aside as unlawful under sections 1, 2, 3, or 4 of the Act (as provided for capital incentive rates filed under section 15(19)), the filing of the contract rate would have no effect upon the Commission's authority over the rate.



## RATEMAKING

1. The factors which the Commission must consider with respect to railroad ratemaking are implicit in section 15(a) (4), and have been delineated in Ex Parte No. 338. Generally, in addition to the traditional ratemaking criteria which apply in evaluating rates, the Commission must look at the revenue needs of railroads sufficient to cover expenses plus a fair, reasonable, and economic profit or return on capital employed in the business.

With respect to coal pipelines, the factors mentioned in section 15(a) (2) must be given due consideration, e.g., effect of the rate on the movement of traffic, the need of adequate and efficient railway transportation service, and the need of revenue sufficient to provide such service.

Sections 15(a) (3) and 15(a) (4) differ, however, in that section 15(a) (4) provides that no rate of a common carrier by rail can be held up to a particular level to protect the traffic of any other carrier or mode unless it is found that such a rate reduces or would reduce the going concern value of the carrier charging the rate. This proviso regarding going concern value is not contained in section 15(a) (3).

2. Pipeline rates have traditionally been based on the theory of fair return on value, which required valuation reporting and studies. Although the Commission at one time in the past undertook such valuation studies of railroad plant, these proceedings were subsequently considered too inexact and burdensome for the Commission to perform on a continuing basis.

As provided in Ex Parte 338, one of the factors to be considered by the Commission in determining rail revenue needs will be the calculation of a fair return on net investment. It was determined in Ex Parte No. 338, therefore that a return on net investment equal to the cost capital would be conducive to the retention and attraction of capital. In this manner the reasonableness of a railroad rate, will take into consideration the factor of whether the railroad has sufficient revenues, which in turn is calculated in part on whether the return on net investment is equal to the railroad's cost of capital.

3. The HR 1609 does not impose any new functions on the Commission that it is not able to carry out under its existing authority. It would create an additional workload, however, which might necessitate a small increase in staff during the initial period.

FEDERAL TRADE COMMISSION,  
Washington, D.C., May 3, 1978.

HON. JAMES J. HOWARD,  
*Chairman, Subcommittee on Surface Transportation, Committee on Public Works and Transportation, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your letter dated April 24th in which you asked two questions regarding H.R. 1609, the "Coal Pipeline Act." I am enclosing for your reference a copy of the letter which the Commission sent to Chairman Udall regarding this bill last year.

You first asked whether H.R. 1609 would confer any new authority upon the Federal Trade Commission. H.R. 1609 would indeed confer new authority upon the Commission because the Secretary's issuance of a certificate would be conditioned upon advice by the Commission that such action would not "restrain trade, further monopolization, substantially adversely affect competition, or otherwise create or maintain a situation in contravention of the antitrust laws." In addition, the mandatory "Antitrust Review" of Section 7 contemplates that the Commission will have both adequate advance notice and adequate information from the Interior Department in order to make the review.

Your second question concerns the costs of H.R. 1609 to the Commission. It is not possible to make an estimate of such costs at this time. This is because we do not have enough information to estimate the number of such reviews which would be necessary under H.R. 1609 nor the level of review necessary in each situation.

We appreciate your interest in the work of the Commission.

Sincerely yours,

MICHAEL PERTSCHUK,  
*Chairman.*

Enclosure.



FEDERAL TRADE COMMISSION,  
Washington, D.C., June 7, 1977.

HON. MORRIS K. UDALL,  
*Chairman, Committee on Interior and Insular Affairs,*  
*House of Representatives,*  
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your requests for the views of the Federal Trade Commission on H.R. 1609, a bill "To amend the Mineral Leasing Act of 1920, and for other purposes."

The general purpose of H.R. 1609, which has the short title "Coal Pipeline Act of 1977", is to provide a statutory basis for the authorization, regulation, ownership, construction, and operation of coal slurry pipelines, under the aegis of the Secretary of the Interior.

H.R. 1609 provides that after its enactment no person shall engage in the transportation of coal by slurry pipeline without obtaining a certificate of public convenience and necessity from the Secretary of the Interior, unless within two years after enactment such person enters into an agreement with the Secretary of Interior to permit the acquisition of rights-of-way across his pipelines by other carriers of coal by pipeline. Persons granted certificates would be required to make the same agreement within the same two-year period.

The Secretary would be authorized to issue a certificate to a carrier upon his determination that its pipeline project would be in the national interest and of adequate capacity to fulfill requirements. Carriers granted such certificates would be authorized to acquire rights-of-way by eminent domain when such rights are not attainable by negotiation, and applicants granted certificates would be required to operate their certificated pipelines as common carriers pursuant to the Interstate Commerce Act. In determining whether to grant a certificate the Secretary would be required to make findings indicating the extent to which the project (a) would help to satisfy the national needs for coal, (b) would be delayed unless granted the power of eminent domain, (c) would disrupt the environment when compared with other modes of coal transportation, and (d) affects the balance between the energy needs to be served by the project, and the water requirements of the area from which the coal would be carried.

The bill contains a number of restrictive provisions which would prohibit those having control of certified pipelines from carrying coal in which they have an interest—no carrier granted a certificate would be permitted to transport in the line coal which it controls or is mined under its authority; no certificate could be issued to a carrier which controls, is controlled by, or is under common control with any person using coal carried by, or supplying coal to, the pipeline; and, no pipeline granted eminent domain authority could carry coal mined by it or under its authority, or which it may own or control.

Section 7 of the bill provides for antitrust review, the issuance of a certificate by the Secretary would be conditioned upon advice by the Attorney General and the Federal Trade Commission that such action would not "restrain trade, further monopolization, substantially adversely affect competition, or otherwise create or maintain a situation in contravention of the antitrust laws." It is also provided that the issuance of a "license" under the bill would not be a defense for violations of the antitrust laws, and would not bar the Attorney General or the Commission from challenging any anticompetitive condition involved in the operation of a pipeline.

#### COMMON CONTROL OF PIPELINE AND COAL

The provisions of the bill which prohibit the owners of a coal slurry pipeline from having an interest in the coal which is transported in the line are wisely intended to insure fair and non-discriminatory treatment of all coal shipped in the pipeline, and to provide an incentive for maximum utilization and any necessary future expansion of the facility. The Commission supports this objective, but believes that some modification of the bill is needed to achieve this result.

The bill prohibits a carrier which is granted the power of eminent domain from carrying coal which it mines or owns; this prohibition would not extend to a certificated line having a right-of-way obtained solely through negotiation. It is possible, but not entirely clear, that the provision which disqualifies for certification a carrier which controls, is controlled by, or under the common



control of, a user or supplier of coal transported in the line would be construed as completing the separation of ownership or control of the line from ownership or control of an interest in the coal carried by the line. To resolve this uncertainty a clarifying amendment is suggested to prevent a certificated carrier which does not utilize the power of eminent domain from carrying coal which is owned or mined by itself or by persons under its authority or control. In any event, the manner by which a pipeline may obtain its right-of-way appears irrelevant to the goal of preventing unified control of both the line and the coal it transports.

#### TWO-YEAR CLAUSES

Section 5(e) conditions the granting of a certificate, and Section 13 conditions the right to operate a coal-slurry pipeline without a certificate, upon the making of an agreement "within two years from the date of enactment" with the Secretary that the person engaged in transporting coal will permit other carriers to acquire rights-of-way across his pipeline. These provisions create a total entry barrier to either new certificated, or non-certificated, oil pipelines two years after enactment, because no provision is made for such an agreement after that time. An amendment to prevent this result is necessary.

#### ANTITRUST REVIEW

The antitrust review provisions of H.R. 1609 as drafted require the assessment of the future effects of the issuance of a certificate. As the actual effects cannot be determined until the project in question has been in operation, it is recommended that section 7(a) be amended to provide that the antitrust findings required of the Attorney General and the Commission be expressed in terms of probable effects. It is also anticipated that there could be instances in which the application may cover an operation which, although not involving a violation of the antitrust laws (even in terms of probability), raises serious antitrust questions or is inconsistent with antitrust policy. It is therefore recommended that the antitrust advice required by the bill be expressed in terms of "probable effects on competition" or "consistency with the policies of the antitrust laws."

In addition, requiring antitrust findings from both the Commission and the Attorney General may be needlessly duplicative. It is suggested that the bill permit either agency to refer a particular application to the other for review, utilizing the same informal clearance procedure which is employed in other antitrust matters. Moreover, since the bill permits mere inaction by the Commission or the Attorney General to prevent the issuance of a certificate by the Interior Department, it is recommended that the antitrust review be required to be completed within a fixed time, such as six months.

Another problem arises from an inconsistency between the numbered paragraphs of section 7(b) of H.R. 1609, particularly when read in the light of sections 5 and 6 of the Federal Trade Commission Act. Paragraph (1) of section 7(b) of the bill appears to authorize the Attorney General and the Commission to maintain competition oversight over the operations of coal slurry pipelines. Paragraphs (2) and (3) read together indicate that section 7 of the bill is intended to make no change in the antitrust laws nor the Federal Trade Commission Act. Section 5(a) (6) and paragraphs (a) and (b) of section 6 of the Federal Trade Commission Act all restrict the jurisdiction of the Federal Trade Commission over "common carriers subject to the Acts to regulate commerce."

Since a pipeline certificated under the bill would, by virtue of section 5(c) thereof, be "constructed, operated and maintained as a common carrier as provided in the Interstate Commerce Act", it would be subject to the provisions of sections 5 and 6 of the Federal Trade Commission Act, *supra*, restricting the Commission's jurisdiction over common carriers.

To remedy this situation, and to carry out the intention of paragraph (1) of section 7(b) of the bill, the following amendments are suggested:

(a) In section 7(b) (1), strike "Nothing in this section shall be construed to bar the Attorney General or the Federal Trade Commission from challenging" and substitute in lieu thereof "Notwithstanding subparagraph (2) or the status of a coal slurry pipeline as a common carrier subject to the Interstate Commerce Act, the Attorney General or the Federal Trade Commission are authorized to challenge".



(b) In section 7(b)(2), strike "Nothing" and substitute in lieu thereof "Except as provided in paragraph (1) of this subsection, nothing".

Referring again to the carrier who, pursuant to Section 13, exempts himself from the certification requirements of the bill by agreeing to grant rights-of-way across his pipeline, such a carrier would not be subject to antitrust scrutiny before being authorized to operate his pipeline. Because the need to examine the antitrust implications of a pipeline operation should not be dependent on whether or not the operator is certificated pursuant to this bill, it is recommended that all proposed slurry pipelines be subjected to antitrust review.

As a technicality, the word "license" should be "certificate" in line 17 on page 9 of the bill, and the figure "567" in line 20 on page 2 should be "576".

In conclusion, the Commission would have no objection to the enactment of H.R. 1609 if amended in accordance with the foregoing recommendations.

By direction of the Commission.

JOHN F. DUGAN,  
*Acting Secretary.*

U.S. ENVIRONMENTAL PROTECTION AGENCY,  
*Washington, D.C., May 5, 1978.*

HON. JAMES J. HOWARD,  
*Chairman, Subcommittee on Surface Transportation, Committee on Public Works and Transportation, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your April 24, 1978 letter requesting answers to three questions concerning the coal pipeline bill H.R. 1609.

Our responses are enclosed. If I can be of further assistance, please let me know.

Sincerely yours,

CHARLES S. WARREN,  
*Director, Office of Legislation.*

[EPA RESPONSES TO QUESTIONS ON H.R. 1609]

*Question 1.* Does H.R. 1609 impose any new function upon EPA that EPA is not able to carry out under its existing authority?

*Answer.* In section 6(f) the bill requires the Agency to participate in any public, formal adjudicatory hearing held by the Secretary of the Interior on the proposed issuance of a certificate of public convenience and necessity for a coal pipeline once State hearings are held. While the requirement would of course be new, the Agency presently is authorized to take part in such a hearing.

*Question 2.* What costs would be incurred by EPA and for what purpose?

*Answer.* EPA costs incurred by the bill would include those of taking part in the public hearings referred to above; and the cost of advising the Secretary of the Interior if our advice should be sought by him pursuant to the requirements in section 5(b)(3), (4), and (7) to make a determination of the effect of a proposed pipeline on the environment. While the Secretary is not required to consult with this Agency on such matters, we expect we will be requested to advise him.

Further, certain EPA functions are involved in the bill: National Pollutant Discharge Elimination System permit issuance to water pollution point-sources; comment on environmental impact statements; and permit-application reviews under section 404 of the Clean Water Act (see answer to 3 below).

However, none of these roles will increase appreciably our present workload, so costs will increase only slightly.

*Question 3.* Isn't it true that a pipeline crossing a navigable water would require a permit under section 10 of the Rivers and Harbors Act of 1899, which requires permission of the Secretary of the Army for any structure in or alteration of such waters? And, isn't it also true that any pipeline crossing of a water of the United States would require a permit from the Secretary of the Army for any activity involving the discharge of dredged or fill material into such waters?

*Answer.* (a) Yes.

(b) Yes. However, the Environmental Protection Agency plays a key concurrence role in the issuance of such permits under section 404 of the Clean Water Act (Federal Water Pollution Control Act 33 U.S.C. 466 et. seq.), which provides among other things that the Administrator may prohibit the specification of a disposal site if he determines that discharge of materials will have an unacceptable adverse effect on a wide range of water uses.



Further, the section provides for transferring permit-issuance authority to a State if the Administrator, advised by the Secretary by the Fish and Wildlife Service, determines that the State has authority to carry out a program as specified in section 404(h)(1). The Administrator retains a strong oversight role over State programs under section 404(j).

U.S. ENVIRONMENTAL PROTECTION AGENCY,  
Washington, D.C. April 10 1978.

HON. JAMES J. HOWARD,  
*Chairman, Subcommittee on Surface Transportation, Committee on Public Works and Transportation, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN. This is in response to a recent request for comments from EPA on H.R. 1609 which proposes to amend the Mineral Leasing Act of 1920 with relation to coal slurry pipelines.

I am pleased to provide you with EPA's views on the possible environmental impact of coal slurry pipelines, the construction of which would be facilitated by the proposed legislation before this Subcommittee.

We at the Environmental Protection Agency are well aware of the need for domestic energy production. We are committed to a policy which, while seeking increased domestic energy production, is consistent with the need for environmental protection.

The proposal before the Subcommittee with respect to coal slurry pipelines may well provide us with another alternative in determining the best means to convey coal from its source to the point of consumption. Every reasonable means should be explored.

We are optimistic that coal slurry pipelines can be built and operated in an environmentally acceptable manner. Coal slurry pipelines can have environmental advantages. By providing a means of conveying coal from the origin to a remote point of use, the mined area is spared the additional environmental problems attendant to mine mouth power generation including air pollution and a far greater degree of water consumption, a limiting factor in the West.

Two direct environmental concerns which can be posed by a coal slurry pipeline are its impact on water supply and on water quality. Water supply impacts can in turn have an effect on water quality, as for example where use of surface water depletes the volume of flow of a stream to the point that the pollutant load which the stream can carry is greatly reduced, threatening maintenance of the stream's ecological integrity; or where use of underground water, whether saline or potable, affects the quality of the potable water aquifers.

As presently designed, coal slurry pipelines can be generally assumed to utilize slurries in the proportion of 50 percent water and 50 percent pulverized coal, give or take 10 percent. They are, therefore, a water intensive means of transporting coal. The use of surface waters or the mining of ground waters for this purpose may have secondary and cumulative impacts well beyond the geographic scope of the pipeline itself. Careful and scientific investigation is needed before commitment of scarce water resources to slurry pipeline should be made. It has been found that only 64 percent of the slurry carrier is available for re-use.

Quantitative determination of the availability of water for large coal slurry pipelines requires extensive hydrologic investigation and assessment of requirements which closely approximate the recharge of the ground water aquifer tapped. Thus, it is important that the effects of withdrawing water be assessed prior to construction of the pipeline. In the case of the proposed Wyoming to Arkansas pipeline, the investigations to define the available water in the ground water aquifer system have been considerable and are continuing. Not only are ground water investigations to determine aquifer characteristics necessary, but water measurements to define recharge rates and responses of the surface water system to demands made on the ground water system are also an integral part of the investigations.

While overall water consumption by a pipeline may not be great, on a local scale withdrawal of any significant amount of water can be serious and means lost opportunity for other uses, especially in the arid West, and should be evaluated. Proposals have been made in the West to use water from saline



aquifers and thereby avoid depletion of fresh water. This should be analyzed for ground water effects in detail on a site-by-site basis. The removal of such water from equifers underlying viable ground water aquifers containing usable water may result in reduction in storage in the overlying higher quality aquifers through subsidence and compaction of the upper aquifers.

Salinity may also be a water quality problem at the discharge point. After coal has been slurried to its destination it is separated from the water and the water can be evaporated, discharged into a stream, or used in the power plant. Our analysis indicates that pollutants in the water can be removed under most conditions without prohibitive costs. However, if saline water is used to slurry the coal, the salinity of the water may be a problem.

A major concern is whether the water will contain some exotic or toxic contaminants, perhaps trace elements and heavy metals in dissolved form. This will depend on the chemical properties of the specific coal being used. This factor should be examined carefully well before a certificate-issuance decision is made.

Additional considerations include coal and water interaction and corrosion. According to the Office of Technology Assessment report on "Coal Slurry Pipelines", chemical interaction between coal and the carrier liquid is an important factor because of "possible adverse environmental impacts from: (1) a slurry spill or pipeline rupture; (2) slurry dewatering process and water reuse or waste disposal; and (3) alteration of combustion characteristics of the end-product coal." Little is known about the nature of the chemical combination which will result between coal and water in pipeline transit. The assumption is that leaching of the solid by the liquid will occur; however, the extent of leaching that will take place is not clear. Wastewater from the slurry will be affected by corrosion and corrosion inhibitors. The Office of Technology Assessment study points out that the amount of iron in the slurry will elevate as corrosion increases. This iron will generally remain in the wastewater. As corrosion inhibitors are added, such as hexavalent chromium, possible environmental problems increase in the event of a spill. Wildlife could be poisoned by drinking spilled slurry wastewater with the anti-corrosion additive.

EPA feels that adequate water treatment methods are available to control the potential hazardous chemical constituents of the water or other fluid removed from the coal after use for transportation. In order to evaluate the availability, the potential contaminants must be identified and the mechanisms available to neutralize the contaminants must be evaluated both technically and economically.

We believe that research into these is essential prior to large-scale use of coal slurry pipelines. The major coal slurry pipeline now in use (the Black Mesa line, from Arizona to Nevada) discharges into a water-short, arid climate where evaporation of contaminated water is commonly practiced. Furthermore, there are incentives to reuse as much of the water as possible. More recent proposals for slurry pipelines proposed to transport coal and water to more humid climates where the incentives to conserve water are not so significant and evaporation is less feasible. We are concerned about the "residual pollutants" of coal slurry waters. These potentially include total dissolved solids, chlorides, sulfates and carbonates, trace elements present in the coal such as arsenic, cadmium, chromium, copper, fluorine, lead, manganese, nickel, selenium and zinc; and corrosion inhibitor additives such as chromates, phosphates and various organic compounds. Also various as yet unidentified organic compounds must be carefully analyzed to determine the production rates in the pipelines, their toxicity if discharged, and their treatability if present in hazardous amounts.

EPA is investigating these concerns. One particular study of interest is an investigation of the chemical characteristics of coal slurry waters and equilibrium rate relationships under pipeline operating conditions. Under an EPA grant, the amount of contamination which can be expected to remain in water used as a transport medium in a coal slurry pipeline is being studied. Evaluations will be made using both fresh and saline water.

Investigations to chemically characterize coal slurry waters should be followed with investigations into the treatability and costs associated with the ultimate disposal of coal slurry waters in an environmentally acceptable manner.

Several methods are available for dewatering the coal slurry at the end of the pipeline: (1) centrifugation; (2) chemical flocculation; (3) vacuum filtration; and (4) heating.



The type of re-use for wastewater from slurry pipelines is dependent upon the chemical quality as it leaves the slurry system and the economic and technical feasibility of treatment for re-use. Three major possible re-uses are: makeup water for a powerplant cooling system, discharge to surface waters, and agricultural irrigation. Under the last two possible re-uses, a discharge permit from EPA would be required under the National Pollution Discharge Elimination System of the Clean Water Act. No standards exist at present for slurry discharge, so "engineering judgment" as to best available technology would apply.

There are also indirect concerns which necessitate adequate pre-planning. For example, coal slurry pipelines entail a large initial investment which in turn requires long-term contracts and a large demand in a relatively confined area. These factors can affect the flexibility of air quality planning in an area and close off alternatives by binding that area to use of coal over a long period.

The design of the pipeline can have land use, aesthetic, and wildlife impacts, although underground lines normally would have less impact than construction of a rail line.

We fully support the Administration version of this legislation which lists certain factors which must be considered prior to reaching a finding on the issuance of a certificate of public convenience and necessity. We feel that joint-DOE-DOI consultation and concurrence by DOI prior to issuance is a procedure which adequately safeguards environmental interests affected by the construction and operation of a coal slurry pipeline.

We are of the opinion that granting of a certificate of public convenience and necessity is a "major Federal action" within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969. In addition to safeguards to ensure full public participation included within the proposal, the advantages of an environmental impact statement under NEPA would be realized because a comprehensive overview would be provided of the effects of all coal slurry pipeline projects in an area on an area's water supply and other natural resources.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

DOUGLAS M. COSTLE.

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ASSOCIATION OF AMERICAN RAILROADS,  
Washington, D.C., April 20, 1978.

HON. JAMES J. HOWARD,

*Chairman, Subcommittee on Surface Transportation, Committee on Public Works and Transportation, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: During the hearings held by your Subcommittee on April 11, 1978 on H.R. 1609, the Coal Pipeline Act of 1978, one of the witnesses, W. Pat Jennings, President of the Slurry Transport Association, received permission to file testimony certain other witnesses had offered on H.R. 1609 during earlier hearings held by a joint subcommittee of the House Committee on Interior and Insular Affairs in April, 1977. One of those witnesses was Howard Cowan for the Public Service Company of Oklahoma, who appeared on April 26, 1977. Mr. Jennings stated that, according to Mr. Cowan's testimony, the Public Service Company was required by the Burlington Northern to sign a "take-or-pay" contract for the transportation of coal.

Back in April, 1977 when Mr. Cowan initially made the assertion that his company was required to sign a "take-or-pay" contract, the railroads responded in the form of an April 29, 1977 letter from Louis W. Menk, Chairman and Chief Executive Officer of Burlington Northern, Inc. to the Honorable Abraham Kazen, Chairman of the Subcommittee on Mines and Mining and the Honorable Teno Roncalio, Chairman of the Subcommittee on Indian Affairs and Public Lands. That letter refuted Mr. Cowan's allegation that his company was required to sign a "take-or-pay" contract with the Burlington Northern.

It is a simple fact that the railroads do not have authority to make contract rates. William H. Dempsey, President of this Association, stated as much a number of times in his testimony before your Subcommittee on April 11, 1978. But since the Public Service contract rate allegation has been raised again, we feel



obligated to submit a copy of Mr. Menk's April 29, 1977 letter in response. I respectfully request that this letter and the attached letter from Louis W. Menk, Chairman and Chief Executive Officer of Burlington Northern, Inc., be made a part of the record.

Very truly yours,

HARRY J. BREITHAUP, Jr.

Attachment.

BURLINGTON NORTHERN,  
St. Paul, Minn., April 29, 1977.

Re H.R. 1609—Coal pipeline legislation.

HON. ABRAHAM KAZEN,  
*Chairman, Subcommittee on Mines and Mining, House Committee on Interior and Insular Affairs, Washington, D.C.*

HON. TENO RONCALIO,  
*Chairman, Subcommittee on Indian Affairs and Public Lands, House Committee on Interior and Insular Affairs, Washington, D.C.*

GENTLEMEN: During the hearings on April 26 there was a colloquy as to what the railroads regard as the grossly unfair advantage which the slurry pipelines would enjoy over our industry if, as they intend, they are permitted to make long-term through-put or "take or pay" contracts patterned on those employed in the petroleum pipeline business. The discussion was precipitated by the prepared testimony submitted by Mr. Cowan in which it was stated that the rail "tariff obligates us (Public Service Company of Oklahoma, which the witness serves as a consultant) to take or pay for minimum of 2.6 million tons a year for 20 years, despite their claims that they are unable to make long-term contracts."

During the questioning I denied that there is any such contract or obligation since the railroads do not have authority to make contract rates. I suggested that reliance was apparently mistakenly placed on a short letter of understanding confirming arrangements under which a proposed tariff establishing freight rates would be employed. On checking, I find that my understanding was correct. The letter referred to, dated November 9, 1975, was addressed to Mr. B. J. Harris, Vice President, Administration, of the Public Service Company of Oklahoma, Tulsa, the officer of that company who is charged with the procurement of transportation services for his firm and who negotiated the rate in question. The first paragraph of the mentioned letter reads as follows:

"The attached tariff marked Exhibit A covers transportation of coal by unit train from the Gillette, Wyoming area to Oologah, Oklahoma for Units No. 3 and 4 which are scheduled to commence receiving coal about September, 1978 and September, 1979, respectively. Shipments will be handled via Burlington Northern Inc. to Kansas City, Missouri, thence Missouri Pacific Railroad Company to the plant site near Oologah, Oklahoma, with the coal movement to continue for approximately 20 years."

The letter went on for a page to deal with such subjects as the time at which the tariff would be made effective, a memorandum covering possible rate escalation, the provision of cars, etc.

In light of these circumstances, I wish to supplement my testimony by advising the committee as follows:

(1) On April 28, two days after my appearance before you a conference telephone call was placed to Mr. Harris and Mr. Cowan's testimony respecting the alleged 20-year contract of carriage was read to him. Mr. Harris stated that neither the mentioned letter, the proposed tariff or anything else obliges the Public Service Company of Oklahoma to use the services of the railroads for 20 years or for my other specific period.

(2) Mr. Harris is correct in his view—and it corresponds with the one which I expressed before the committee—for the reason that rail rates can be established only by tariff. The one referred to in the mentioned letter is a complex nine-page document which will be furnished on request. It will apply for no stated period and makes no mention of a 20-year or any other term and can be used by any shipper of coal between the named origin and destination at the stated rate of \$8.57 per ton if 2.6 million tons are shipped per calendar year. Shippers are otherwise free to use or abandon our services at will.

(3) I am advised by counsel that my representations to the committee respecting the subject were correct, specifically, that Public Service Company of Oklahoma



has no contractual or other obligation to use the services of either Burlington Northern or Missouri Pacific for any term whatever either before or after publication of the tariff. However, once the tariff becomes effective and shipments begin freight charge higher than \$8.57 per ton would be incurred should minimum annual tonnage requirements not be met before shifting to other transport or to other fuel sources. Counsel suggests that for a brief description of the basis for rail freight charges I refer you to Williston on Contracts, Section 1102, Carriage by Rail and Motor Vehicle. It reads:

"By virtue of the statute (Interstate Commerce Act) as amended, it (the carrier) can make no contracts relating to such transportation of goods unless it has previously filed with the Commission schedules (tariffs) stating the terms thereof, including the rate for the carriage services, and this rate must be payable in money. The carrier and the shipper, therefore, can only choose which of the contracts filed in the carriers' schedules they will adopt. No further freedom of contract is open to them; and how far such obligations should be called contracts may be questioned, for one entering into an agreement for service thus enumerated in the carriers' schedules becomes liable to the carrier, irrespective of the agreement and in spite of any provision therein to the contrary, to pay the rate specified in the schedule. Nor may the carrier bind itself by contract to a greater obligation than permitted under its tariffs."

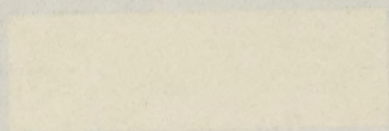
I repeat and emphasize, the through-put contracts used by slurry lines would be monopolistic devices by which to place the transportation business covered by them beyond the competitive reach of any other carrier.

Respectfully yours,

LOUIS W. MENK,  
*Chairman.*

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