

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86 / 2

452 SCOMM12: OIL & GAS TAXATION & PIPELINE 1972-77

expressly apparent in view of the fact that the State invited them to bid competitively for and purchase such oil and gas rights from the State, including, as stated in the leases, the right to "market" such oil and gas.

The point to be emphasized in our consideration of House Bills 294 and 313 is that their factual premise is inconsistent with their legal premise. Factually, they assume that the only practical way of getting the oil out of Alaska is by a pipeline and that pipeline must run across State controlled lands. If that were not the fact there would be no point to the bills for the price and conditions they exact would be avoided by using other lands. Thus, the premise is that the pipeline owners must contract with the State for right-of-ways. On the other hand, the legal premise is that the State, through its proprietary capacity, can achieve by right-of-way contracts what it could not achieve in its governmental capacity because the contracts will be entered into, it is claimed, by voluntary bargaining. It has been claimed that a state as proprietor can legally obtain unusual contract terms because others may contract with it on its terms or forego contracts with the state. That legal theory is plainly irrelevant where interstate commerce would be thwarted and property rights lost if the private parties declined the state's terms.

Instances of the federal government asserting conditions and requirements in the exercise of its contract functions are beside the point. Those are in fact instances where private parties may forego contracts with the federal government without loss of property rights, and it can hardly be claimed that the federal government is unconstitutionally restraining or burdening interstate commerce since the Constitution places the power over such commerce in the federal government.

The very factual premise of House Bills 294 and 313 that the pipeline owners must get right-of-way from the State, makes it apparent under U.S. Supreme Court cases, that such right-of-way cannot be withheld and cannot be used by the State to achieve results which are otherwise prohibited.

III. THE STATE OF ALASKA MAY CHARGE A RENTAL FOR THE USE OF ITS LAND, BUT SUCH RENTAL MUST BE REASONABLE AND CONSTITUTE NO MORE THAN JUST COMPENSATION TO THE STATE.

The State may properly charge rents for the right-of-way, even when there is no other practical way to conduct the interstate commerce involved. But, the Constitution requires that such rent be reasonable and not discriminatory and bear a true relation to the actual value of the land. The leading case in this regard is St. Louis v. Western Union Telegraph Company, 148 U.S. 92 (1893), rehearing denied, 149 U.S. 465 (1893). There, the City of St. Louis imposed an annual rental of \$5.00 per pole for the use of so much of its lands as were occupied by the telegraph poles of the Western Union Telegraph Company, and the Company claimed such charge could not be made at all and, in any event, was excessive. The court held that a rental charge could be imposed, but that it must be reasonable in relation to the value of the land used. The Court said:

"Indeed, it may be observed, in the line of the thoughts heretofore expressed, that this charge is one in the nature of rental; that the occupation by this interstate commerce company of the streets cannot be denied by the city; that all that it can insist upon is, in this respect, reasonable compensation for the space in the streets thus exclusively appropriated; and it follows in the nature of things that it does not lie exclusively in its power to determine what is reasonable rental. The inquiry must be open in the courts, and it is an inquiry which must depend largely upon matters not apparent upon the face of the ordinance, but existing only in the actual state of affairs in the city."

The Court did not have sufficient evidence before it to determine whether the rental was reasonable. But, upon remanding the case, it gave clear guidance that the rental had to bear a proper relationship to the value of the land occupied.

"The court cannot assume that such a charge is excessive, and so excessive as to make the ordinance unreasonable and void; for, as applied in certain cases, a like charge for so much appropriation of the streets may be reasonable. If within a few blocks of Wall Street, New York, the telegraph company should place on the public streets 1500 of its large telegraph poles, it would seem as though no court could declare that five dollars a pole was an excessive annual rental for the ground so exclusively appropriated; while, on the other hand, a charge for a like number of poles in a small village, where space is abundant and land of little value, would be manifestly unreasonable, and might be so excessive as to be void."

Thus, the rental must bear a proper relationship to the value of the land occupied.

Land value is most frequently determined in eminent domain cases where just compensation is based upon the value of the land taken. It is held that land value is determined by what the owner gives up, not by what the taker gains. In United States v. Miller, 317 U.S. 369 (1943), the party whose land was being condemned argued that the land should be valued in relation to the specific purpose for which it was to be used, a railroad right-of-way. The United States Supreme Court rejected this contention, and stated:

"Since the owner is to receive no more than indemnity for his loss, his award cannot be enhanced by any gain to the taker. Thus, although the market value of the property is to be fixed with due consideration of all its available uses, its special value to the condemnor as distinguished from others who may or may not possess the power to condemn, must be excluded as an element of market value." (p. 375).

The defect of the rental formulas of Senate Bills 294 and 313 is that they bear no relationship to the value of the particular land involved, and are not limited to the value of the land itself but seek to use some measure of gross revenues or the profitability of a pipeline built with private capital. This clearly goes beyond what the Supreme Court has said could be reasonably charged, and would constitute a prohibited burden on interstate commerce. Furthermore, since these unusual charges are wholly out of keeping with the general practice in other states and in Alaska, and are largely addressed to this pipeline project, they might also be viewed as violative of the prohibitions against discrimination against interstate commerce and as constituting discriminatory taxes upon interstate commerce.

IV. OTHER PROVISIONS OF THESE BILLS ARE UNCONSTITUTIONAL.

A. Court Jurisdiction.

The Bills provide that the lessee shall agree to the jurisdiction of state courts with regard to the interpretation of the lease or resolution of disputes concerning the lease provisions. (Section .020(1) of S.B. 313 and .410 of S.B. 294.)

We are not certain of the intent of this provision. If it is only designed to insure that state courts may readily obtain personal jurisdiction over the lessee, then a provision similar to that of Section .531 (designation of service agents) in S.B. 315 would be appropriate and avoid confusion.

Similarly, if the provision is only intended to mean that the law of Alaska governs interpretation of the lease, the provision appears unnecessary, but in any event should be more clearly worded to reflect that intention.

However, if this provision is intended to require the lessee to seek relief only in state courts and so prohibit it from invoking, in appropriate circumstances, the aid of federal courts, including the removal of cases to federal court where appropriate, it is clearly unlawful. As stated by the United States Supreme Court in the case of Terral v. Darke Construction Co., 257 U.S. 529 (1922):

"The principle established by the more recent decisions of this court is that a State may not, in imposing conditions upon the privilege upon a foreign corporation's doing business in a State, exact from it a waiver of the exercise of its constitutional right to resort to the Federal courts, or thereafter withdraw the privilege of doing business because of its exercise of such right, whether waived in advance or not."

Such a requirement, if imposed by the state police power, would be unconstitutional. Even a voluntary agreement having this result would be void. Roberts v. Lexington Insurance Co., 305 F.Supp. 47 (D.C. N.C. 1969).

B. Penalty Provision.

Section .023(4) of S.B. 313 would require the lessee to agree to penalties "that the Commissioner may determine to be appropriate." It provides no standard to guide the Commissioner in the exercise of this delegated authority and would place the lessee at the mercy of the Commissioner. Such a provision is contrary to the due process requirements of the Fourteenth Amendment of the Federal Constitution.

The apparent reason for the option requirement is the fear that the wellhead price and royalties of the state may be reduced by the imposition of excessive pipeline charges. This fear is unfounded. The pipeline's rates will be regulated by federal regulatory agencies in whose deliberations the State may fully participate.

F. The Savings Clause.

S.B. 313 purports to escape constitutional infirmities by specifying that the lease conditions be imposed only "to the extent not pre-empted by federal law." Also, the bill defines "transportation" to include activities only "to the extent that such transportation may constitutionally be subject to the provisions of this chapter." As indicated above, the application of such exceptions would leave little, if anything, of consequence in the bill. The unconstitutional matter in S.B. 313 is so pervasive that we believe it would be held unconstitutional in its entirety. The problem is that the basic premise of the bill, that the State can exact any conditions it desires by virtue of its landowner position, is constitutionally unsound.

V. CONCLUSION.

We have not attempted to deal with every provision of Senate Bills 294 and 313, and do not mean to imply that provisions not discussed would be valid. Rather, we have shown that the basic legal premise of these bills is wrong and would produce unconstitutional results in vital respects. We do not doubt the authority of the state to provide for leasing rights-of-way over the public domain for this pipeline project and others, to obtain reasonable rentals therefore, and to provide for reasonable conditions and terms relating to the protection of the State's lands and properties to the extent not inconsistent with or pre-empted by the federal authority. However, Senate Bills 294 and 313 are not proper vehicles for such purpose for they are permeated with unconstitutional provisions developed from an unsound legal premise.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

REMARKS OF CHARLES E. SPAHR
TO THE JOINT HEARING OF THE SENATE COMMERCE COMMITTEE
AND THE HOUSE STATE AFFAIRS COMMITTEE
ON PROPOSED ALASKAN LEGISLATION CONCERNING
PIPELINE REGULATION, RIGHT-OF-WAY AND
STATE OWNERSHIP -- MARCH 7, 1972

INTRODUCTION

GENTLEMEN: I APPRECIATE HAVING THIS OPPORTUNITY TO
APPEAR BEFORE YOU. MY NAME IS CHARLES SPAHR. I AM
CHAIRMAN AND CHIEF EXECUTIVE OFFICER OF THE STANDARD OIL
COMPANY (OHIO), HEADQUARTERED IN CLEVELAND ON THE SOUTHERN
SHORE OF LAKE ERIE. MY COMPANY HAS A SUBSTANTIAL INTEREST
IN THE PRUDHOE BAY FIELD. LIKE OUR ASSOCIATES IN THAT AREA
WE ARE ANXIOUS TO DEVELOP THE FIELD AND BRING ITS OIL TO
MARKET THROUGH THE PROPOSED TRANS-ALASKA PIPELINE SYSTEM AS
SOON AS POSSIBLE. OF PRUDHOE BAY'S TOTAL HYDROCARBON RESERVES
I BELIEVE THAT APPROXIMATELY 55% OF THE OIL AND 30% OF THE
GAS ARE UNDER OUR LEASES. WE HAVE AN APPROXIMATE 28% INTEREST
IN THE TAPS PROJECT.

AS YOU PROBABLY KNOW, THESE INTERESTS RESULT FROM THE
AGREEMENT BETWEEN OUR COMPANY AND THE BRITISH PETROLEUM COMPANY,
LIMITED OF JANUARY 1, 1970, WHEREBY PP ACQUIRED AN INITIAL 25%
INTEREST IN SOHIO (AS WE CALL OUR COMPANY), AND WE ACQUIRED
MOST OF PP'S INTERESTS IN PRUDHOE BAY, ITS MARKETING PROPERTIES
IN THE EASTERN SEABOARD STATES, AND TWO REFINERIES SERVING
THAT AREA.

UNDER THE TERMS OF OUR AGREEMENT WITH BRITISH PETROLEUM,
ITS SUBSIDIARY PP ALASKA INC. IS ACTING AS OUR AGENT IN THE

DEVELOPMENT OF PRUDHOE BAY, SOHIO AND BP ALASKA HAVE LABORED JOINTLY ON THE TAPS PROBLEM AND ALL MATTERS RELATED TO IT.

LAST OCTOBER WHEN GOVERNOR EGAN DISCLOSED HIS INTEREST IN STATE OWNERSHIP OF TAPS MY REACTION TO THAT DISCLOSURE RECEIVED SOME PUBLICITY. THERE ARE SOME WHO SAID I OVER-REACTED AND OTHERS WHO CHIDED ME FOR ATTEMPTING AN OVERKILL. I HAD NO SUCH INTENTION. RATHER, THE REACTION WAS ONE OF HONEST SHOCK. MORE COSTLY DELAY ADDED TO THAT ALREADY EXPERIENCED WAS ENVISIONED. THIS PIPELINE PROJECT IS TRULY A TREMENDOUS UNDERTAKING WITHOUT PRECEDENT, ALREADY PLAGUED, WITH EXTENDED DELAYS AND THEIR ATTENDANT COSTS THAT NO ONE COULD IMAGINE WHEN PLANNING BEGAN. THE SPECTER OF SUBSTANTIAL ADDITIONAL HURDLES ARISING AS A CONSEQUENCE OF THE ADMINISTRATION'S DESIRE TO FIND A WAY TO ACQUIRE THE LINE APPALLED ME AND I SAID SO. SUBSEQUENT STUDY HAS CONFIRMED OUR INITIAL BELIEF THAT A GOOD MANY PROBLEMS ARE POSED BY THE STATE OWNERSHIP QUESTION WHICH WE WANT TO DISCUSS WITH YOU AND WITH THE ADMINISTRATION IN AS COMPLETE AND OBJECTIVE A MANNER AS POSSIBLE.

OUR PRIMARY DESIRE, I AM SURE, PARALLELS YOUR OWN AND THAT OF THE GOVERNOR--IT IS TO BUILD THE LINE EXPEDITIOUSLY AND WELL IN ORDER TO BE ABLE TO BEGIN AND SUSTAIN PRUDHOE BAY PRODUCTION AT AN OPTIMUM RATE FOR THE MUTUAL BENEFIT OF ALASKA, ITS PEOPLE, THE NATION, AND THE PRODUCERS.

TODAY I AM SPEAKING FOR MY COMPANY AND BP ALASKA, AND ON BEHALF OF THOSE OTHER COMPANIES HAVING OWNERSHIP INTERESTS IN BOTH PRUDHOE BAY AND IN TAPS. THE IDENTITIES OF THESE

COMPANIES, AND THEIR CURRENT INTEREST IN TAPS ARE AS
FOLLOWS:

ATLANTIC RICHFIELD COMPANY	28%
THE HUMBLE OIL & REFINING COMPANY	25½%
MOBIL OIL CORPORATION	8½%
PHILLIPS PETROLEUM COMPANY	3½%
UNION OIL COMPANY	3½%
AMERADA-HESS	3 %

THE STATE OF ALASKA, BY VIRTUE OF ITS ROYALTY INTEREST AND
PROSPECTIVE SEVERANCE TAXES HAS A SUBSTANTIAL INTEREST
APPROXIMATING 20% IN ALL OF THIS OIL AND GAS.

TRADITIONALLY, AND WITHOUT EXCEPTION TO MY KNOWLEDGE,
COMMERCIAL OIL AND GAS FIELDS IN OUR COUNTRY HAVE BEEN DEVELOPED
BY THE COMPANIES POSSESSING THE RESERVES IN THOSE FIELDS. THEIR
DESIRE TO GET THE OIL TO MARKET HAS BEEN THE COMPELLING FORCE
TO GET THE JOB DONE--AS SOON AS POSSIBLE. THE SAME COMPULSION
HAS PRODUCED THE NECESSARY TRANSPORTATION, EITHER BY THE
PRODUCERS OR BY THOSE WHO HAVE WANTED ACCESS TO THE OIL AS
BUYERS.

FREQUENTLY, THE INITIAL TRANSPORTATION SYSTEMS HAVE BEEN
EXPANDED AND EXTENDED TO ACCOMMODATE THE OIL OR GAS FROM NEW
DISCOVERIES, WHETHER OR NOT IT BELONGED TO THE OWNERS AND
OPERATORS OF THOSE SYSTEMS.

THE PLANNING FOR THE TRANS-ALASKA PIPELINE BEGAN SOON
AFTER THE DISCOVERY OF THE PRUDHOE PAY FIELD AND CONTINUED
UNTIL MID-1970 UNDER THE GENERAL DIRECTION OF A COMMITTEE OF
THE CONCERNED COMPANIES' REPRESENTATIVES. EARLIER IN THAT

YEAR IT HAD BECOME APPARENT THAT CONTINUED COMMITTEE DIRECTION WOULD BECOME TOO CUMBERSOME TO BE PRACTICAL, SO ALYESKA PIPELINE SERVICE COMPANY WAS CREATED AS THE AGENT OF ALL THE COMPANIES WITH INTERESTS IN TAPS AND GIVEN BROAD AUTHORITY TO DESIGN, CONSTRUCT, OPERATE AND MAINTAIN TAPS AS A COMMON CARRIER, JOINT INTEREST PIPELINE. THE VIRTUES OF THIS ORGANIZATIONAL CHANGE HAVE CONTINUED TO MANIFEST THEMSELVES IN THE MONTHS SINCE THEN.

ALYESKA ITSELF HAS NO OWNERSHIP INTEREST IN EITHER THE PRUDHOE BAY FIELD OR IN TAPS; THE OWNER COMPANIES HAVE RETAINED UNDIVIDED INTERESTS IN TAPS IN THE PERCENTAGES MENTIONED A FEW MOMENTS AGO.

THE SCOPE OF THE PROBLEMS

A MULTIPLICITY OF PROBLEMS IS ASSOCIATED WITH THE DEVELOPMENT OF PRUDHOE BAY AND THE ESTABLISHMENT OF TAPS. ALTHOUGH YOU ARE FAMILIAR WITH MANY OF THEM, I BELIEVE THEY SHOULD BE CITED BECAUSE DOING SO WILL ASSURE YOU THAT WE ARE VERY AWARE OF THEM TOO.

FOR EXAMPLE, WE KNOW OF ALASKA'S DESIRE TO DEVELOP ITS LAND AND ITS MINERAL RESOURCES. WE KNOW OF THE UNEMPLOYMENT AND REAL POVERTY OF SOME OF ALASKA'S PEOPLE, AND OF THE EXTREME DIFFICULTIES MANY ALASKAN BUSINESSMEN HAVE FACED AS A RESULT OF THE DELAYS WHICH HAVE PLAGUED TAPS. WE KNOW OF AND SHARE YOUR DESIRE TO PROTECT THE WILDERNESS AREAS AND NATURAL BEAUTY OF THE STATE; AND WE KNOW OF YOUR DESIRES FOR ADDITIONAL STATE REVENUES TO SUPPORT GOVERNMENT SERVICES TO ALASKA'S

PEOPLE, ITS INDUSTRIES AND COMMERCE.

THE OIL COMPANIES ARE FACED WITH THE TREMENDOUS UNPRECEDENTED TASKS OF DEVELOPING THE PRUDHOE BAY FIELD, ENGINEERING AND CONSTRUCTING TAPS, PROVIDING A MARINE TERMINAL AT VALDEZ, SHIPS, AND TERMINALS, AND POSSIBLY OTHER TRANSPORTATION FACILITIES IN THE LOWER 48 STATES IN ORDER TO MOVE AND PROVIDE MARKETS FOR PRUDHOE OIL. ALL OF OUR WORK MUST BE SUBSTANTIALLY FREE OF ERROR, AND IT MUST BE DONE SIMULTANEOUSLY. THE CHALLENGES WE FACE ARE UNIQUE AND GIGANTIC, AND THE RISKS THAT WE MUST ASSUME ARE SIMILARLY GREAT AND ARE NOT MITIGATED BY THE EXISTING MAZE OF LITIGATION AND GOVERNMENT REGULATION WHICH MUST BE SATISFACTORILY RESOLVED. THE REGULATORY ATMOSPHERE IS EXTREMELY COMPLEX AND DIFFICULT FOR US BECAUSE THE DEPARTMENT OF THE INTERIOR, THE INTERSTATE COMMERCE COMMISSION, THE DEPARTMENT OF JUSTICE, AND MANY OTHER INTERESTED FEDERAL AND STATE AGENCIES HAVE ASSUMED OR WILL ASSUME CONTINUING SUPERVISORY INTERESTS, SOME OF THEM OVERLAPPING AND PERHAPS CONFLICTING. REGULATION, PER SE, IS NOT NEW TO US, BUT THE MAGNITUDE AND EXTENT OF THE REGULATION IS NEW AND AWESOME.

HOWEVER, OUR COUNTRY'S GROWING ENERGY REQUIREMENTS AND RELATED CONSIDERATIONS OF NATIONAL SECURITY UNDERSCORE THE URGENCY OF OUR FINDING TOGETHER THE SOLUTIONS FOR MOVING AHEAD WITH PRUDHOE BAY DEVELOPMENTS AND TAPS CONSTRUCTION.

FIVE KEY FACTORS

THE PROBLEMS THAT I HAVE CITED CAN BE TRANSLATED INTO FIVE KEY FACTORS WHICH MUST BE TAKEN INTO ACCOUNT IN THE

DEVELOPMENT OF PRUDHOE BAY AND THE CONSTRUCTION OF TAPS, I BELIEVE THAT EACH ONE IS PERTINENT TO THE MATTERS BEFORE THIS LEGISLATURE AND ALL MUST BE CAREFULLY WEIGHED IN STRIKING THE ULTIMATE BALANCE. THE FIVE FACTORS ARE THESE:

- (1) THE IMMEDIATE PROBLEMS OF ALASKA AND HER PEOPLE.
- (2) THE DESIRE OF OUR COMPANIES TO DEVELOP AND PRODUCE THEIR DISCOVERED OIL AND GAS RESERVES IN ALASKA AS SOON AS POSSIBLE AND WITH A REASONABLE REWARD FOR THE RISKS THEY ASSUME.
- (3) THE ENERGY SHORTAGE FACING THE UNITED STATES.
- (4) THE ENVIRONMENTAL AND ECOLOGICAL CONSIDERATIONS FROM THE WELLHEAD TO THE MARKETPLACE.
- (5) THE LONGER RUN, OVERALL DEVELOPMENT OF ALASKA.

WE ARE CONSIDERING THESE FACTORS IN A SERIOUS MINDED WAY, AND DO NOT DOUBT THAT THIS LEGISLATURE AND THE ADMINISTRATION OF THE STATE ARE DOING SO TOO. I EXPECT THAT ALL OF US MAY FIND THAT THE BEST ANSWERS WILL NOT ALWAYS BE IMMEDIATELY APPARENT. I CAN ASSURE YOU, HOWEVER, THAT WE ARE WILLING TO WORK TO FIND THEM. WE MAY NOT ALWAYS AGREE BUT I HOPE THAT WE CAN FIND INTELLIGENT RESOLUTIONS OF OUR DIFFERENCES. THOSE OF US WHO ARE ASSOCIATED WITH THE OIL COMPANIES CANNOT AND SHOULD NOT PRESUME TO DIRECT THE AFFAIRS OF THE STATE, BUT

WE CAN AND WILL GIVE YOU CONTINUING AND, HOPEFULLY,
CONSTRUCTIVE COMMENT ON THESE MATTERS OF MUTUAL INTEREST,
NO OTHER APPROACH MAKES MUCH SENSE TO ME.

NOW, WITH YOUR PERMISSION, I WILL OUTLINE THE SUBSTANCE
OF THE PRESENTATION WE WILL MAKE TODAY ON THE PROPOSED LEGIS-
LATION BEFORE YOU. AFTERWARD I WILL SPEAK BRIEFLY ON TWO OR
THREE MATTERS ABOUT WHICH YOU MAY BE CONCERNED. THEN I'D
LIKE TO SUGGEST A GENERAL DIRECTION IN WHICH WE MIGHT MOVE.

THE PENDING LEGISLATION

WITH ME TODAY IS A GROUP OF MEN WHO ARE EXPERTLY QUALIFIED
TO DISCUSS THE FACTUAL, FINANCIAL AND LEGAL ASPECTS OF THE
LEGISLATION YOU ARE CONSIDERING. THEY ARE READY TO PROVIDE
YOU WITH INFORMATION AND COMMENTS DESIGNED TO BE USEFUL TO
YOU. AFTER TESTIFYING ON PRINCIPAL POINTS, EACH WITNESS WILL
BE GLAD TO ANSWER QUESTIONS AND WILL GIVE YOU A MEMORANDUM ON
HIS AREA OF EXPERT KNOWLEDGE WHICH MAY BE USEFUL TO YOU AS A
REFERENCE DOCUMENT.

ON THE SUBJECTS OF PIPELINE REGULATION AND RIGHT-OF-WAY,
OUR FIRST WITNESS WILL BE MR. V. J. WILLIAMSON, PROFESSOR OF
LAW AT THE UNIVERSITY OF HOUSTON, WHO SERVED IN THE GENERAL
COUNSEL'S OFFICE OF THE U. S. DEPARTMENT OF THE TREASURY
BEFORE JOINING THE SHELL OIL COMPANY IN 1941. HE WAS AN
ATTORNEY AND DIRECTOR OF SHELL PIPE LINE CORPORATION FOR 16
OF HIS 31 YEARS WITH THE SHELL COMPANIES. PROFESSOR
WILLIAMSON WILL DESCRIBE HOW JOINT INTEREST, COMMON CARRIER

PIPELINES OPERATE AND HOW A SHIPPER WHO HAS NO OWNERSHIP INTEREST IN A PIPELINE ARRANGES FOR TRANSPORTATION OF HIS OIL.

I WISH TO MAKE ONLY ONE POINT RELATED TO THIS GENERAL AREA OF DISCUSSION, WHICH IS THAT THE TAPS COMPANIES INTEND TO SEE TO IT THAT IT WILL BE POSSIBLE FOR ANY PRODUCER AT PRUDHOE BAY, WHETHER AN OWNER IN TAPS OR NOT, TO ARRANGE FOR TRANSPORTATION OF HIS OIL THROUGH TAPS AT ONE LOCATION IN ALASKA.

OUR SECOND WITNESS WILL BE MR. HARRY R. JONES, PARTNER IN THE LAW FIRM OF ANDREWS, KURTH, CAMPBELL AND JONES OF HOUSTON, TEXAS, WHO HAS PRACTICED LAW FOR MANY YEARS IN THE FIELDS OF STATE AND INTERSTATE COMMERCE. MR. JONES WILL DISCUSS THE EXTENT OF FEDERAL JURISDICTION OVER INTERSTATE SHIPMENTS OF OIL THROUGH FACILITIES SUCH AS TAPS. AS YOU PROBABLY KNOW, THE FEDERAL PREEMPTION INCLUDES ALL INTERSTATE OIL TRANSPORTATION, AND THE IMPORTANT QUESTION IS NOT WHAT DIFFERENCES MAY EXIST IN THE JURISDICTION EXERCISED BY THE INTERSTATE COMMERCE COMMISSION OVER DIFFERENT TYPES OF CARRIERS, BUT WHAT REMAINS IN THE CASE OF OIL PIPELINES THAT MAY BE PROPERLY REGULATED BY A STATE OR LOCAL AUTHORITY. YOU WILL ALSO HEAR THAT THE EXTENT OF THIS FEDERAL JURISDICTION IS CONSISTENT AND TOTAL WHETHER A CARRIER IS OWNED AND OPERATED BY AN INDUSTRIAL ORGANIZATION OR BY A STATE OR LOCAL GOVERNMENT. I AM AWARE OF THE CONCERN OF SOME ALASKANS THAT ICC REGULATION MAY NOT BE AS EFFECTIVE AS THEY THINK IT SHOULD

BE. I BELIEVE THAT THE ICC HAS SERVED THE PUBLIC INTEREST WELL OVER THE YEARS AND THAT IT IS PREPARED TO CONTINUE TO DO SO. PERHAPS THE ANSWERS TO THE STATE'S CONCERN ABOUT THE PUBLIC INTEREST LIE IN FINDING WAYS TO MAKE ALL NECESSARY INFORMATION AVAILABLE TO THE STATE FOR ITS TIMELY REVIEW AND IN ITS PARTICIPATION IN ANY ICC PROCEEDINGS THAT IT MAY THINK APPROPRIATE. I WOULD EXPECT THAT SUCH INFORMATION WOULD INCLUDE BOTH THE CAPITAL COSTS AND THE OPERATING COSTS OF TAPS. FRANKLY, WE DREAD ANY PROSPECT OF GETTING BOGGED DOWN IN A JURISDICTIONAL DISPUTE BETWEEN THE FEDERAL GOVERNMENT AND THE STATE WHICH WOULD FURTHER DELAY US ALL, AND HOPE TO FIND A WAY TO AVOID SUCH A COSTLY AND FRUSTRATING DIFFICULTY.

OUR THIRD WITNESS WILL BE MR. DONALD M. MARKHAM, ATTORNEY-AT-LAW IN WASHINGTON, D.C. MR. MARKHAM HAS BEEN ENGAGED IN GENERAL PRACTICE IN AVIATION, INTERSTATE COMMERCE, TRANSPORTATION AND CORPORATE LAW SINCE 1939. HE WAS AN ASSISTANT PROFESSOR OF LAW AT THE UNIVERSITY OF NORTH CAROLINA, AN ATTORNEY FOR THE U.S. TREASURY DEPARTMENT AND ASSISTANT GENERAL COUNSEL FOR THE AIR TRANSPORTATION ASSOCIATION OF AMERICA. MR. MARKHAM WILL COMMENT ON THE LEGAL REQUIREMENT OF JUST AND REASONABLE RATES AND DISCUSS THE HISTORICAL RECORD OF THE ICC IN THIS REGARD.

OUR FOURTH WITNESS IS GEORGE A. SEYMOUR OF DALLAS, TEXAS. MR. SEYMOUR IS MANAGER OF PART INTEREST PIPELINES FOR MOBIL PIPE LINE COMPANY, THE COMMON CARRIER PIPELINE AFFILIATE OF MOBIL OIL CORPORATION, AND HAS BEEN A DIRECTOR AND VICE PRESIDENT OF COOK INLET PIPE LINE COMPANY SINCE MARCH, 1970, WITH STAFF RESPONSIBILITY

FOR THE OPERATIONS OF THE COMPANY. A PROFESSIONAL ENGINEER, HE HAS BEEN ENGAGED IN PIPELINE ENGINEERING AND MANAGEMENT WITH MOBIL FOR 24 YEARS. HE WILL SPEAK TO YOU ABOUT THE FINANCIAL INFORMATION ON CAPITAL AND OPERATING COSTS THAT WILL BE AVAILABLE TO THE STATE ON TAPS.

OUR FIFTH WITNESS IS MR. EDWARD L. PATTON, THE PRESIDENT OF ALYESKA PIPE LINE SERVICE COMPANY, WHO HAS HAD 34 YEARS OF EXPERIENCE IN THE OIL INDUSTRY IN PIPELINE AND REFINERY MANAGEMENT AND CONSTRUCTION. HIS EXPERIENCE INCLUDES RESPONSIBILITY FOR BUILDING, STAFFING, STARTING UP AND OPERATING TWO COMPLETE MAJOR REFINING FACILITIES. MANY OF YOU KNOW HIM ALREADY. HE WILL SPEAK ON THE OPERATING ASPECTS OF THE PROPOSED PIPELINE REGULATION AND RIGHT-OF-WAY LEGISLATION. HE WILL ALSO GIVE YOU SOME INFORMATION ON INDUSTRY EXPERIENCE ON RIGHT-OF-WAY COSTS THAT WE HAVE BEEN ABLE TO COLLECT IN RECENT WEEKS.

OUR SIXTH WITNESS IS MR. JOSEPH R. CORTESE, A GENERAL PARTNER IN THE LAW FIRM OF SQUIRE, SANDERS AND DEMPSEY OF CLEVELAND, OHIO. MR. CORTESE IS A SPECIALIST IN THE AREA OF LAW CONCERNED WITH THE POWERS OF STATE AND LOCAL GOVERNMENTS AND IN TAX-EXEMPT FINANCING. OF THE 119 LAWYERS IN HIS FIRM, 20 DEVOTE FULL TIME TO THE PRACTICE OF LAW INVOLVING STATES, POLITICAL SUBDIVISIONS AND OTHER PUBLIC ENTITIES. SINCE 1900 THE FIRM HAS DRAFTED AND INTERPRETED MANY STATE STATUTES AND CONSTITUTIONAL PROVISIONS, CONDUCTED LITIGATION ON VALIDITY AND RENDERED APPROVING OPINIONS ON STATE AND LOCAL BOND ISSUES ALONG WITH THEIR TAX STATUS.

Mr. Cortese will discuss some of the legal problems in the legislation before you that give us real concern. For example, when the cost of right-of-way far exceeds any fair market value for the land, it probably becomes a tax and a burden on interstate commerce of doubtful validity. Historically, right-of-way acquisition has not been a revenue producing device. In addition, the proposed legislation would seem to seek jurisdiction over interstate carriers indirectly that cannot be exercised directly. Here, with respect to this issue, I again want to evidence my concern over the potential delay that a jurisdictional donnybrook can create.

Seventh, Mr. Raymond B. Gary of New York City will discuss the financial impact of the right-of-way legislation on TAPS.

Mr. Gary is a general partner of Morgan Stanley and Co. and a managing director of Morgan Stanley and Company, Inc. He has been with his investment banking firm since 1935. Morgan Stanley is engaged in all phases of underwriting and distribution of securities of industrial corporations, public utilities, transportation companies including airlines, railroads and pipelines, and foreign corporations and governments.

You will find that his remarks deserve some careful consideration.

ON THE SUBJECT OF STATE OWNERSHIP OF TAPS, WE HAVE FIVE WITNESSES WHO WILL SUMMARIZE THE EXTENSIVE STUDY WE HAVE CONDUCTED OVER THE LAST FEW MONTHS ON THE GOVERNOR'S PROPOSAL AND ON THE DRAFT LEGISLATION AFTER IT WAS INTRODUCED.

THE FIRST IS MR. GARY WHO WILL CONTINUE HIS TESTIMONY WITH A REVIEW OF THE FINANCIAL ASPECTS OF THE MATTER. FROM THE VERY OUTSET, OUR REVIEW OF THE GENERAL PROPOSAL CONFIRMED AGAIN AND AGAIN THAT THE FINANCIAL BACKING OF THE COMPANIES IN TAPS WILL BE REQUIRED TO BUILD THE LINE. I REALIZE THAT NO ONE LIKES TO BE TOLD "NO" ON WHAT TO HIM SEEMS A GOOD IDEA, BUT I HOPE YOU WILL APPRECIATE THE UNTERABLE POSITION WE EXPERIENCED WHEN WE WERE ASKED TO ASSUME A VERY LARGE RISK AND TO MAKE A MAJOR COMMITMENT OF OUR CREDIT, WITHOUT A PROSPECT OF A REASONABLE REWARD FOR THE RISK TO BE ASSUMED.

ANOTHER PART OF THIS STUDY CONCERNED THE RELATIVE PROFITABILITY OF PIPELINES AND WAS PARTICULARLY CONCERNED WITH THE VERY REAL PROBLEMS OF ADEQUATE CASH FLOW AND PROFITS DURING THE EARLY YEARS OF OPERATION. I BELIEVE THAT THIS IS INFORMATION THAT THE LEGISLATURE MAY WISH TO HAVE AND I HAVE ASKED MR. GEORGE A. SEYMOUR TO SPEAK ABOUT THIS.

OTHER QUESTIONS PERTAIN TO THE POSSIBLE TAX BENEFITS TO THE STATE AND TO THE COMPANIES NOW IN TAPS. A LOT OF HARD WORK INDICATED THAT THE TAX BENEFITS EITHER COULD NOT BE OBTAINED OR WERE TRIPPED UP BY MR. LEONARD B. MOORE AND, A SPECIALIST IN TAXATION AND A MEMBER OF THE FINANCIAL DEPARTMENT OF THE ATLANTIC RICHFIELD COMPANY, WHO LEFT HIS CITY TRAVEL FROM NEW YORK CITY TO LOS ANGELES, WILL REVIEW THESE MATTERS FOR YOU.

ONE VERY PRACTICAL PROBLEM CONCERNS THE STATE'S CAPABILITY TO MANAGE SUCH A COMPLEX OPERATION AS TAPS AND THE QUESTION AS TO HOW THE PRESENT TECHNICAL TEAM THAT WE HAVE ASSEMBLED COULD BE HELD TOGETHER UNDER SOME SORT OF CONTRACT WITH THE STATE. ON THE LATTER POINT, MR. PATTON HAS PUBLICLY EXPRESSED HIS DOUBTS AND WILL GIVE YOU HIS PERSONAL COMMENTS HERE.

THEN, THERE APPEAR TO BE SOME LEGAL PROBLEMS ASSOCIATED WITH THE PROPOSAL FOR STATE OWNERSHIP THAT MR. CORTESE WILL DISCUSS.

FINALLY, MR. RICHARD H. DONALDSON, VICE PRESIDENT AND GENERAL COUNSEL OF SOHIO WILL PRESENT SOME CONCLUDING REMARKS.

THREE GENERAL SUBJECTS OF INTEREST

BEFORE I TURN TO MY SUGGESTION AS TO THE DIRECTION THE STATE AND THE TAPS COMPANIES MIGHT TAKE, I WOULD LIKE TO COMMENT ON THREE SUBJECTS THAT I UNDERSTAND ARE OF CURRENT GENERAL INTEREST HERE.

THE FIRST IS A QUESTION: "WHAT WILL THE COMPANIES IN TAPS REALLY HAVE INVESTED IN THE LINE?" OR, MORE DIRECTLY, "ISN'T THEIR INVESTMENT LIMITED TO THE EQUITY AND SHOULDN'T THEIR RETURN BE BASED ON THAT?" IF AN EQUITY REPRESENTED THE ENTIRE RISK THAT A PIPELINE OWNER HAD IN A PROJECT, THE MATHEMATICS ON THE INVESTMENT RETURN WOULD RUN PRETTY HIGH. BUT PLEASE, MAKE NO MISTAKE, OUR RESPONSIBILITY IN TAPS IS THE ENTIRE FINANCIAL RESPONSIBILITY TO SERVICE ALL THE DEBT AS WELL AS TO PROVIDE THE EQUITY. OUR CREDIT MUST SUPPORT THE ENTIRE LIABILITY FOR THE PROJECT. THIS IS TYPICAL OF PIPELINE FINANCING AND THE REASON WHY THE ICC, THE JUSTICE DEPARTMENT, AND THE U.S. SUPREME COURT HAVE RECOGNIZED FOR MANY YEARS THAT A FAIR AND REASONABLE RETURN SHOULD BE BASED ON THE ENTIRE VALUATION OF THE LINE. OUR FINANCIAL EXPERT MR. GARY WILL COMMENT MORE SPECIFICALLY ON THIS POINT IN ORDER THAT

THIS MATTER MAY BE FULLY UNDERSTOOD.

THE SECOND SUBJECT IS ALSO A QUESTION: "WHY DO THE TAPS COMPANIES OBJECT TO A RIGHT-OF-WAY PERMIT FROM THE STATE THAT RUNS 5 OR 10 YEARS, SINCE AT PRESENT THE PERMIT THAT THEY EXPECT TO OBTAIN FROM THE FEDERAL GOVERNMENT WILL BE REVOCABLE AT ANY TIME IF THAT GOVERNMENT FINDS THE PIPELINE DOES NOT CONFORM IN SOME WAY TO ALL THE REQUIREMENTS THAT IT DECREES MUST BE MET?"

I DO NOT WANT TO SHRUG OFF SUCH A QUESTION, WHICH IS A VERY FAIR ONE. I AM CONCERNED ABOUT THE PROVISIONS OF FEDERAL LAW THAT ENABLE THE FEDERAL GOVERNMENT TO SHUT DOWN THE PIPELINE IF ITS REPRESENTATIVES BELIEVE THAT SOME TECHNICAL OR ENGINEERING REQUIREMENT IS NOT FULLY SATISFIED. AT THE SAME TIME I BELIEVE THAT THE FEDERAL GOVERNMENT WILL WORK HARD AND CONTINUOUSLY TO AVOID ANY SUCH SHUTDOWN.

OUR OBJECTION TO A LIMITED TERM PERMIT FROM THE STATE STEMS FROM THE REVELATION OF THE SUBSTANTIAL CHANGE IN PERMIT PHILOSOPHY THAT THE PROPOSED RIGHT-OF-WAY LEGISLATION IMPLIES. HISTORICALLY, PIPELINE COMPANIES HAVE SECURED PERMANENT RIGHTS-OF-WAY FOR RELATIVELY LOW COSTS. THIS WAS IN THE INTEREST OF THE STATES AND TERRITORIES GRANTING THE RIGHTS-OF-WAY BECAUSE IT HELPED STIMULATE THE ECONOMIC DEVELOPMENT OF NEW AREAS. THERE IS SOME PARALLEL IN ALASKA'S SITUATION TODAY. IT WAS ALSO IN THE INTEREST OF THE PIPELINE COMPANIES BECAUSE THIS COST WAS THEN DEFINED AND THE RISK MEASURABLE. THE PROPOSED RIGHT-OF-WAY LEGISLATION HOLDS OUT THE PROSPECT OF CONTINUING NEGOTIATIONS FOR VERY SUBSTANTIAL RIGHT-OF-WAY REVENUES OVER MANY YEARS, LONG AFTER THE PIPELINE IS IN PLACE, AND ADDS SUBSTANTIALLY TO THE

UNKNOWN RISKS IN THE PROJECT.

CONSEQUENTLY, THE PROSPECT OF IMMEDIATE HIGH COST RIGHT-OF-WAY PLUS THAT OF EVEN HIGHER COSTS BEING IMPOSED LATER, AFTER ALL INVESTMENTS HAVE BEEN MADE, MAKES A PROSPECTIVE INVESTOR OR LENDER VERY WARY. THIS MEANS HE WILL VIEW THE PROJECT AS AN EXTREMELY HIGH RISK ONE; THAT HE MAY NOT BE WILLING TO ACCEPT SUCH A RISK, OR, AT BEST, HE WILL IMPOSE A HIGHER INTEREST REQUIREMENT AND OTHER RESTRICTIONS AS HE MAY DEEM NECESSARY FOR HIS PROTECTION.

WHILE WE ARE AWARE OF ALASKA'S NEEDS FOR REVENUES, WE FIND THE LIMITED TERM, HIGH COST RIGHT-OF-WAY PERMIT OR LEASE A MOST DIFFICULT DEVICE TO ACCEPT.

THE THIRD SUBJECT CONCERNS ANTITRUST. FOR A GOOD MANY YEARS, THE DEPARTMENT OF JUSTICE HAS ROUTINELY INVESTIGATED ANY MAJOR PROJECT AFFECTING INTERSTATE COMMERCE AND PARTICULARLY INVOLVING COMPANIES OF SUBSTANTIAL SIZE. OUR INDUSTRY IS SELDOM OVERLOOKED AND THE DEPARTMENT OF JUSTICE HAS MADE AND IS MAKING A THOROUGH INQUIRY INTO TAPS, AS IT SHOULD. OUR COMPANY HAS RESPONDED AND IS CONTINUING TO RESPOND TO THE DEPARTMENT'S INQUIRY. I WOULD BE SURPRISED IF ALL THE OTHER COMPANIES IN THE PROJECT ARE NOT DOING LIKEWISE. I CAN SPEAK ONLY FOR MY COMPANY, HOWEVER ON THIS PARTICULAR SUBJECT. TYPICAL OF ANY SUCH ANTITRUST INQUIRY ARE THE QUESTIONS: "WHY IS YOUR COMPANY PARTICIPATING?" AND, IN THE PRESENT SITUATION, "WHY DO YOU PLAN TO SHIP YOUR OIL TO WEST COAST MARKETS?" I WILL ANSWER THESE QUESTIONS HERE, AS I HAVE ALREADY ANSWERED THE DEPARTMENT OF JUSTICE. STANDARD OIL OF OHIO IS INTERESTED IN PRUDHOE BAY AND TAPS BECAUSE IT WANTS OIL FOR ITS REFINERIES

AND WANTS TO REALIZE A REASONABLE RETURN ON ITS INVESTMENT FROM MARKETING ITS OIL. OUR COMPANY HAS ALWAYS HAD TO PURCHASE MORE OIL FOR ITS OWN NEEDS THAN IT WAS ABLE TO FIND AND PRODUCE. WITH AN EXPECTATION OF A GROWING ENERGY SHORTAGE IN THE UNITED STATES, WE SEIZED THE OPPORTUNITY TO COVER OUR FUTURE REQUIREMENTS BY OBTAINING A SIGNIFICANT INTEREST IN PRUDHOE. WE MAY OR MAY NOT REFINER ALASKAN OIL IN OUR MIDWEST, GULF COAST OR EASTERN REFINERIES, BUT WE DO EXPECT TO BE ABLE TO NEGOTIATE REASONABLE EXCHANGES BASED ON OUR ALASKAN PRODUCTION. THE WEST COAST STATES APPEAR TO US TO BE THE LARGEST, NEAREST MARKET WHERE SUBSTANTIALLY ALL OF OUR ALASKAN OIL CAN BE SOLD AT THE HIGHEST PRICE. THERE IS NO ANTITRUST MYSTERY TO OUR INTEREST, OR ALASKA'S, IN THIS MARKET. IT'S A MATTER OF ECONOMICS.

A SUGGESTION OF DIRECTION

IT IS UNDERSTANDABLE TO ME THAT THERE CAN BE A REAL AND CONTINUING TEMPTATION TO SOLVE ALL THE STATE'S FINANCIAL PROBLEMS WITH ONE OR MORE REVENUE MEASURES DIRECTED AT PRUDHOE BAY AND/OR TAPS. THE BUSINESS AND INDUSTRIAL COMMUNITY IN ALL OF THE LOWER FORTY-EIGHT STATES AS WELL AS ALASKA IS WATCHING TO SEE HOW ALASKA WILL ACT. I THINK IT'S FAIR TO SAY THAT INDUSTRY GENERALLY EXPECTS TO PAY FOR THE PRIVILEGE OF DOING BUSINESS HERE, AND THAT, IN THE CASE OF THE OIL INDUSTRY, IT EXPECTS TO CONTRIBUTE A REASONABLY SUBSTANTIAL PART OF ALASKA'S REVENUES.

THE MEMBERS OF THE OIL INDUSTRY ARE WILLING TO PAY THEIR FAIR SHARE, BUT IF THEY ARE REQUIRED TO PAY AN UNDULY LARGE AND BURDENSOME SHARE, TO TAKE HUGE RISKS WITH LITTLE PROSPECT

OF ADEQUATE REWARD FOR DOING SO, THEN ALASKA'S FUTURE DEVELOPMENT MAY BE SLOWED AND PARTICIPATION IN IT MAY BE LIMITED TO A FEW VERY LARGE COMPANIES THAT CAN ACCEPT THE HIGHER RISKS THAT STEM FROM HIGH TAX BURDENS.

CONSIDER, FOR EXAMPLE, THE PROBLEM AS VIEWED BY THE PROSPECTIVE EXPLORER FOR OIL AND GAS. HE IS ALREADY STALLED IN ALASKA, SPENDING VERY LITTLE IF ANY MONEY FOR DRILLING EVEN ON THE EXPENSIVE LEASES ACQUIRED IN THE 1969 SALE BECAUSE HE CAN MAKE NO RELIABLE ESTIMATE AS TO WHEN HE CAN GET ANY OIL THAT HE MAY FIND TO MARKET, OR AS TO THE COST OF DOING SO. THOSE WHO HAVE THE OPPORTUNITY OR THE COMPULSION TO MAKE A CHOICE BETWEEN ALASKA AND CANADA, WHERE A GREAT DEAL OF EXPLORATION IS GOING ON, WILL SURELY DECIDE IN FAVOR OF CANADA, ASSUMING EXPLORATION PROSPECTS THERE ARE COMPARABLE TO THOSE IN ALASKA, IF ALASKA, BY LEGISLATIVE ACTION MAKES THE COST-RISK PROSPECT HERE TOO HIGH BY COMPARISON, OR BY INACTION ARISING FROM AN INABILITY TO PUT SOME OF THE MATTERS THAT ARE CURRENTLY FACING IT TO REST, CAUSES THE COST-RISK PROSPECT TO CONTINUE TO BE UNDEFINED.

ON THE OTHER HAND, IF A BROADER BASE FOR DEVELOPMENT IS SOUGHT AND IS TO BE OBTAINED; IF THE STATE MUST HAVE MORE REVENUE DURING THE NEXT FOUR YEARS, BEFORE THE OIL FIELDS AND THE PIPELINE CAN GENERATE ANY INCOME, THE BURDEN OF MEETING ALASKA'S REVENUE NEEDS SHOULD BE SPREAD AS EQUITABLY AS POSSIBLE AMONG ALL INCOME PRODUCERS AND PROPERTY OWNERS. THIS IS MY SUGGESTION. IT IS NOT NOVEL. IT HAS WORKED IN THE PAST. AND

WHAT MAY MAKE IT MORE APPEALING TO ALASKA IS THAT IT CAN REVIEW AND RECONSIDER ITS JUDGMENT YEAR BY YEAR, AND, IF THE DEVELOPMENT DESIRED DOESN'T COME, IT CAN EITHER TAKE STEPS TO STIMULATE IT FURTHER OR DRAW ON THE VARIETY OF TAXING APPROACHES AVAILABLE TO IT. AT THIS POINT IN TIME, NO ONE KNOWS WHAT THE PIPELINE WILL COST. WE ONLY HAVE ESTIMATES. WE DON'T KNOW TODAY WHAT THE VALUE OF OIL IN THE MARKETPLACE WILL BE IN 1974 OR 1975 OR 1976. WE WILL KNOW MORE WHEN CONTRACTORS BIDS ARE OBTAINED AND CONTRACTS ARE LET. EVERYONE WILL ALSO HAVE A MUCH BETTER BASIS FOR DETERMINING FINANCING REQUIREMENTS AND COSTS, PIPELINE REVENUE REQUIREMENTS AND TAX BASES THAN THEY DO NOW. YOU WILL HAVE A BETTER FEEL OF OIL VALUES FOR 1976 A YEAR FROM NOW THAN YOU DO TODAY. SUCH INFORMATION SURELY WILL ENABLE THE LEGISLATURE, IN TIMELY FASHION, TO DEVELOP BETTER TAX LEGISLATION THAN IS POSSIBLE NOW, WITH LESS DISCOURAGEMENT TO BUSINESS PEOPLE WHO WANT TO HAVE A SHARE IN MAKING ALASKA'S FUTURE AS BRIGHT AS POSSIBLE.

HOWEVER, IF ANY PROGRESS IS TO BE MADE MEANWHILE, FINANCING MUST BE ACCOMPLISHED. SOME OF US HAVE ALREADY HAD TO DELAY PLANNED FINANCING BECAUSE THE THREE QUESTIONS OF STATE OWNERSHIP, THE STATE'S POWER TO FIX RATES AND THE STATE'S CONSIDERATION OF LIMITED TERM, HIGH COST RIGHT-OF-WAY LEASE PERMITS EXIST. IF WE ARE TO BE ABLE TO PROCEED WITH AND SUCCEED IN OUR EFFORTS TO ARRANGE FINANCING THESE ISSUES CAN NOT BE ALLOWED TO REMAIN AS A CLOUD HANGING OVER THE FINANCIABILITY OF THE ENTIRE PROJECT. THEY OUGHT TO BE ELIMINATED FROM FURTHER CONSIDERATION AS SOON AS POSSIBLE.

ONE PROBLEM IN THE SHORTER RUN SHOULD BE ACKNOWLEDGED. ALASKA LIKE OURSELVES WAS ANTICIPATING SUBSTANTIAL OIL REVENUES FROM THE NORTH SLOPE IN 1972. WE ARE BOTH BITTERLY DISAPPOINTED. IT MAY BE THAT ALASKA'S OTHER REVENUES WILL NOT BE SUFFICIENT TO COVER THE MINIMUM STATE SERVICES REQUIRED BEFORE THIS OIL ACTUALLY BEGINS TO FLOW. ONE ALTERNATIVE TO KEEP IN MIND IS THE POSSIBLE ASSISTANCE THAT ONE OR MORE COMPANIES IN TAPS CAN PROVIDE THE STATE BY ARRANGING AN ADVANCE SALE OR SALES OF CRUDE OIL FOR THE STATE OUT OF ITS ROYALTY INTEREST WHEN AND IF IT NEEDS IT FOR A FEW YEARS FROM NOW. SUCH TRANSACTIONS WOULD OBTAIN FOR THE STATE SOME OF THE OIL REVENUES IT EXPECTED IN 1972 AND THE FOLLOWING YEARS, DISCOUNTED ONLY BY THE COST OF MONEY REPRESENTED BY THE ADVANCE SALE. SUCH SOLUTIONS TO MONEY NEEDS OF THE PRESENT OR NEAR TERM FUTURE ALLOW TIME AND FLEXIBILITY TO THE STATE IN SOLVING ITS LONGER RANGE PROBLEMS AND DO NOT HAMPER THE DEVELOPMENT OF PRUDHOE BAY AND TAPS.

IN CLOSING MY REMARKS I WANT TO REPEAT WHAT I SAID IN THE BEGINNING: OUR PRIMARY DESIRE, I AM SURE, PARALLELS YOUR OWN AND THAT OF THE GOVERNOR--IT IS TO BUILD THE LINE EXPEDITIOUSLY AND WELL IN ORDER TO BE ABLE TO BEGIN AND SUSTAIN PRUDHOE BAY PRODUCTION AT AN OPTIMUM RATE FOR THE MUTUAL BENEFIT OF ALASKA, ITS PEOPLE, THE NATION, AND THE PRODUCERS.

I FEEL SUBSTANTIALLY ENCOURAGED IN THIS BELIEF BY THE KNOWLEDGE THAT ONLY LAST MONTH CHAIRMAN RETTIG OF THE SENATE COMMERCE COMMITTEE EXPRESSED HIS OWN PHILOSOPHY IN THE INVITATION

THAT HE EXTENDED TO THE MEMBERS OF THE OIL INDUSTRY TO
APPEAR BEFORE YOU. HE SAID:

"IN THE SPIRIT OF COMMON INTERESTS, WE IN THE
SENATE COMMERCE COMMITTEE ARE ESPECIALLY ANXIOUS
TO LEARN HOW THE LEGISLATURE AND THE STATE CAN
BE OF HELP IN YOUR COMPANY'S EFFORTS TO DEVELOP
THE RESOURCES OF ALASKA. ACCORDINGLY, YOU ARE
ESPECIALLY INVITED TO OFFER SUGGESTIONS AND ADVICE
CONCERNING OUR PRIME INTEREST: 'HOW CAN ALASKA
HELP?'. IT IS HOPED THAT THIS FEATURE OF THE
HEARINGS WILL PRODUCE SUFFICIENT IMPACT TO OFFSET
OR OVERSHADOW THE RESTRICTIVE CHARACTER OF SOME OF
THE PROPOSED LEGISLATION. MORE AND MORE OF US ARE
BECOMING KEENLY AWARE THAT THIS STATE MUST BE AND
REMAIN AN ATTRACTIVE AREA FOR BUSINESS AND INVEST-
MENT."

I APPRECIATE THIS OPPORTUNITY TO APPEAR BEFORE YOU AND
WILL BE GLAD TO ANSWER ANY QUESTIONS YOU HAVE, IF I CAN.
THANK YOU.

STATEMENT OF DONALD W. MARKHAM

My name is Donald W. Markham. I am a practicing attorney in Washington, D.C. Since graduating from law school, I have held legal positions with two government agencies and a trade association; I taught law for a brief period; and I have practiced law for a number of years, first with a law firm specializing in transportation matters and, since 1966, by myself. Virtually all of my professional activities for the past 30-odd years have been concentrated in the field of transportation law, and they have enabled me to devote considerable study to, and to acquire some familiarity with, the regulation of oil pipelines, as well as airlines, railroads, motor carriers and freight forwarders. (Let me interject, however, that although I am "from Washington", I do not claim to be an expert; in fact, I deny it, if anyone is thinking of the old Air Force definition of an expert.)

I understand that some of the people who have been studying the proposed Trans Alaska Pipeline have expressed concern as to whether, if the pipeline is privately owned and operated, the owners could be expected - or required under existing law - to maintain rates at a reasonable level. Questions have also been raised, I am told, as to whether shippers, who were not part-owners of the pipeline, would be served on a nondiscriminatory basis, and, more generally, whether the existing regulatory system, under which the pipeline would operate, is adequate and effective. I have been asked to comment on those questions,

with particular attention to the area of rate regulation.

As a premise for my discussion, I start with the proposition that Mr. Jones has developed at length: that, for the indefinite future, most, if not all, of the oil moving through the pipeline will be moving in interstate or foreign commerce, and that, as a result, the pipeline will be, both as a matter of law and by stipulation filed by the owners with the Department of the Interior, a common carrier within the meaning of the Interstate Commerce Act and subject to regulation by the Interstate Commerce Commission. (And I might add, parenthetically, that its status as a common carrier subject to regulation by the Interstate Commerce Commission would, I believe, be the same even if it were owned and operated by the State.) Our first inquiry, therefore, should be into the adequacy of the regulatory system under the Interstate Commerce Act.

The Interstate Commerce Commission has had long experience, and has developed great expertise, in dealing with rate and discrimination problems. It was created in 1887, and in an opinion handed down by the Supreme Court five years later,* Mr. Justice Brown listed the "principal objects" of the act creating it as follows:

" * * * to secure just and reasonable charges for transportation; to prohibit unjust discriminations in the rendition of like services under similar circumstances and conditions; to prevent undue or unreasonable preferences to persons, corporations, or localities; to

* Interstate Commerce Commission v. Baltimore & O. R. Co., 145 U.S. 263 (1892).

inhibit greater compensation for a shorter than for a longer distance over the same line; and to abolish combinations for the pooling of freights."

You will note that four of those five objectives relate directly to the maintenance of reasonable and nondiscriminatory rates and the elimination of other forms of discrimination. And Professor Sharfman, in his classic study of the Interstate Commerce Commission, noted that rate regulation "has constituted from the outset the Commission's central task and most prolific activity."*

Not only has the Commission devoted a large share of its time, over a period of more than 80 years, to an intensive study of transportation rates; it has been provided with a steadily growing arsenal of regulatory weapons which give it virtually complete control over the rates of regulated carriers. Professor Sharfman commented that

"The mandatory power over transportation charges expressly conferred by * * * [the Hepburn Act of 1906 - the same act, incidentally, which brought pipelines under the Interstate Commerce Act] was sufficient, in itself, * * * to elevate * * * [the Commission] to a position of practical authority enjoyed by few governmental agencies."**

But he went on to note that

"Subsequent grants of power, especially through the Transportation Act of 1920, extended its regulatory jurisdiction in striking fashion and rendered its dominating status secure."***

* IIIB Sharfman, The Interstate Commerce Commission 3 (1931).

** Ibid.

*** Ibid.

That was written in 1931, and there have been still further additions to the Commission's array of powers since that time.

To be sure that we appreciate the full significance of Professor Sharfman's conclusion, let me take a minute to review some of the specific controls to which a carrier's rates are subject under the Interstate Commerce Act.

Before a carrier can put a rate into effect, it must file it with the Commission, and publish it, at least 30 days in advance, unless the Commission gives special permission to file it on shorter notice. The rate must be just and reasonable and must not be unjustly discriminatory or unduly preferential or prejudicial to any person, locality, etc. Moreover, the rules and regulations governing the application of the rate must also be filed and published in the carrier's tariffs.

If anyone - including a state - thinks that the rate is unlawful in any respect, he may file a protest with the Commission, and if the Commission, either on the basis of a protest or on its own initiative, decides that there is a serious question as to the lawfulness of the rate, it may suspend the rate, before it takes effect, for a period of not more than seven months, while it conducts a formal investigation into the lawfulness of the rate. It may also decline to suspend, but still go forward with a formal investigation. And, if the Commission decides, neither to suspend nor to start an investigation, anyone - again including a state - may file a formal complaint and force the Commission to hold a full hearing on the issues raised by the complaint.

At the conclusion of a formal proceeding concerning the lawfulness of a rate, the Commission may, if it finds the rate unlawful, prescribe a minimum or a maximum rate for the future, or both; or it may prescribe the exact rate which the carrier must charge. It may also, in an appropriate proceeding, award damages to a shipper who has been charged an unreasonably high or an unlawfully discriminatory rate. And if a shipper or other party is dissatisfied with the Commission's final decision in any formal investigation, it can appeal the decision to the appropriate court for judicial review.

Not only does the Commission have this wide selection of powers directly over the carrier's rates; it has a large assortment of ancillary powers which enable it to keep itself and the public informed and to maintain surveillance over a carrier's affairs and financial practices. It may inspect a carrier's property and records, audit its books, require the carrier to submit regular and special reports and supply information in response to specific inquiries. It may - and does - prescribe a uniform system of accounts which the carrier must observe and prescribe the rates of depreciation which the carrier may charge. And it not only may, but is required to, make periodic valuations of the carrier's entire property and to give interested parties, including the states in which the property is located, an opportunity to be heard if they object to the Commission's determination.

Finally, there are both civil remedies and criminal penalties which are available for use in enforcing the Commission's orders and the carrier's obligations under the act.

It is apparent, therefore, that Professor Sharfman did not exaggerate when he referred to the Commission's "mandatory power" and its "dominating status" with respect to carrier rates. Indeed, it would be hard to conceive of broader regulatory powers than the Commission already has - unless one thinks in terms of direct governmental rate-fixing - and one could hardly hope to find an agency with more experience in regulating transportation rates than the Commission has acquired in the past 84 years.

There is another consideration, however, which should help to allay any lingering concern as to the Commission's ability to deal with any rate problem that might arise in the operation of Trans Alaska Pipeline. That factor is the relative simplicity of regulating the rates through a line that handles only one kind of traffic, from a single origin to a single destination, and - at least for the foreseeable future - with no competition from other forms of transportation. There would be none of the baffling complications with which the Commission is frequently faced in rate cases, involving, for example, questions as to the proper relationships between rates on different types of traffic, or between competitive producing areas or markets, or between competitive carriers of different types with different costs of operation, etc. If the Trans Alaska line were treated as a unit, as I think it should be (even though there may be

several owner-carriers providing service through it), the problem would not involve the regulation of a complex "rate structure" (where the Commission would be concerned with the relationships among the various rates making up the structure); instead, the problem would involve merely the regulation of the "rate level", or the level of the earnings produced by the rates in the aggregate. This would be a far less complicated and less difficult problem than the Commission is used to dealing with - but it is still not so simple that it can be answered automatically. Professor Sharfman describes the nature of the problem in the following words:

"A twofold purpose, each phase of which has played an important part in the definition of the Commission's powers and in the administration of its policies, is served by the regulation of the rate level. Negatively, the task is one of preventing the carriers from exacting excessive charges, and thus, indirectly, of restricting the earnings which the * * * [carriers] may realize at the expense of the users of the transportation service; positively, the task is one of initiating or approving such charges as will not only satisfy the constitutional guarantees against confiscatory adjustments, but will tend, through the resulting operating income, to preserve * * * [carrier] credit and attract necessary capital, in the interest of maintaining an adequate transportation system. Both of these ends appear to be indispensable and are definitely held in view * * *."

Obviously, the solution to such a problem calls for wisdom, experience and complete fairness - and the Commission has a record of all three.

* Id., at pages 6-7.

It is true that out of the thousands of rate cases which have been before the Commission during its 84-year history, only a few - perhaps 20 or 30 - have involved pipeline rates. To anyone not familiar with the history of pipeline regulation, that fact is sufficiently startling to call for some explanation. I believe that the explanation is basically twofold:

First: Once the extent of the Commission's jurisdiction over the pipelines had been clarified in some early litigation, the pipelines, in recognition of their status as common carriers and of the Commission's powers over them, adopted rates and other policies which, with only occasional exceptions, were accepted as reasonable by their shippers, their competitors and the Commission. As a result, very few complaints were filed with the Commission and the Commission rarely found it necessary to initiate formal proceedings on its own motion.

Second: Since December, 1941, many of the pipelines, and their owners, have been subject to a consent decree which was entered in an action brought by the Department of Justice. The decree, in effect, limits the dividends which can be paid by most pipelines to seven percent of the pipeline's valuation as determined by the Interstate Commerce Commission. If a carrier should have earnings above that level, they are to be "frozen" in a special reserve and can be used only for limited purposes and under severe restrictions. Compliance with the decree is monitored by the Department of Justice, both through annual reports which the carriers are required to file, and

through audits by the FBI. As was probably intended, the practical effect of the decree has been to hold the earnings of the pipelines at a level below seven percent of the value of their property, as determined by the Interstate Commerce Commission; and this earnings record, in turn, helps to account for the small number of pipeline rate cases which have come before the Commission during the last 30 years.

As we have seen, then, there have been at least three forces at work over the years - in addition to the ever-present stimulus of competition - which have affected the level of pipeline rates: (1) the comprehensive regulatory powers of the Interstate Commerce Commission; (2) the consent decree; and (3) the adoption of restrained and responsible rate policies by the pipelines themselves. And I think that a quick look at a few pertinent facts will demonstrate that these forces have combined to produce effective control over pipeline rates.

It is common knowledge that the pipelines have been, for many years, the principal means of overland transportation for crude oil and petroleum products - and that status could not, of course, have been achieved unless pipeline rates were substantially lower than those of other forms of transportation. But many people are not aware of the extent to which the pipelines have succeeded in developing their traffic and reducing their rates. According to figures published by the Transportation Association of America,* the pipelines, in 1969, carried

* Transport Facts and Trends, April, 1971.

21.6 percent (measured in ton miles) of all intercity freight of all kinds, moving by all modes of transportation in both for-hire and private carriage - the second largest share handled by any form of transportation. However, for handling more than 21.5 percent of the volume, the pipelines received only 1.5 percent of the amount spent for the movement of the total volume. Pipeline revenues during that year averaged only .266¢ per ton mile, as compared with 1.35¢ for railroads, 7.21¢ for trucks and 21.09¢ for air.

It is significant, also, that contrary to the trend in other forms of transportation and in business generally, pipeline rates have continued to decrease during recent years. According to official figures published by the Interstate Commerce Commission,* the average revenue yield per thousand-barrel miles decreased from 65¢ in 1955, to 60¢ in 1960, to 52¢ in 1965, and to 48¢ in 1969.

One final statistic may be of particular interest. Shortly prior to the entry of the consent decree, the Interstate Commerce Commission had decided that a return of eight percent on valuation was the maximum which could be regarded as reasonable for crude-oil pipelines under the circumstances existing at that time.** I am informed that, as compared with the eight

* Transportation Statistics in the United States for the Year Ended December 31, 1969, Part 6 Oil Pipe Lines, Bureau of Accounts, Interstate Commerce Commission.

** Reduced Pipe Line Rates and Gathering Charges, 243 I.C.C. 115 (1940).

percent allowable by the Interstate Commerce Commission, the seven owners of the Trans Alaska Pipeline, combined, have had earnings during the past five years which averaged only 5.6 percent per year.

These few facts are sufficient, I think, to demonstrate the effectiveness of the controls over pipeline rates which have been exercised by the Interstate Commerce Commission, the consent decree and the pipelines themselves. In view of the historical record, I do not believe that there is any real basis for concern as to the power and the competence of the Interstate Commerce Commission to deal with any rate problems which might arise in the operation of the Trans Alaska Pipeline. I should think that the chances are excellent that no such problems would even develop. The owners are large and responsible companies, and they have pledged themselves to operate the line as a true common-carrier enterprise. They certainly know the obligations they are assuming; they know the risks of disregarding them; and their past record offers solid assurance that they will endeavor to avoid controversies with their shippers and public agencies. But the record also offers assurance that if such controversies do arise, the Interstate Commerce Commission has ample power and the experience to settle them, wisely and fairly.

I should probably make one additional comment, however, to be sure that my earlier discussion is not misunderstood. If the Interstate Commerce Commission were to start an investigation

of the rates of the Trans Alaska Pipeline, either in response to a complaint or on its own initiative - or if the propriety of an eight-percent return for crude-oil pipelines were to be questioned in some other proceeding before the Commission -, I would not attempt to forecast how the Commission would decide the matter. The Commission would undoubtedly feel obliged to take into consideration all of the changes in economic factors (such as the cost of capital) which have taken place since the 1940's (when the eight-percent figure was established), as well as the elements of risk involved in the construction and operation of the particular line or lines in question. And, among the elements of risk to be considered, I should expect the Commission to examine, with care, a characteristic of the oil-pipeline business which has developed, largely if not entirely, since the 1940 decision and which, so far as I am aware, is not found in any other type of transportation or public-utility business. I am referring to the type of commitments which the owners of a pipeline are required to give in order to borrow the necessary capital with which to construct the line. As Mr. Gary will, I believe, explain in more detail, the owners of a pipeline company must, in order to raise debt capital, in effect guarantee repayment of the debt in full, with interest. The necessity to make such commitments in order to borrow capital is a factor which unquestionably affects the risks assumed by pipeline carriers, and would, I feel sure, be taken into consideration by the Commission in determining what rate of return

pipelines should be permitted to earn. But, I repeat, I could not - and I don't believe that anyone could - give you a reliable forecast as to what conclusion the Commission would reach.

So much for the subject of rate regulation.

Let me add just a word on the question of discrimination against shippers who do not own an interest in the pipeline. If any such discrimination were to be reflected in the rates filed with the Interstate Commerce Commission, it would have to face the battery of powers and remedies I have already discussed. If the discrimination were to take some other form - refusal to provide equal service or equal facilities, for example -, there are equally broad powers and effective remedies which the Commission has and knows how to use in eradicating such abuses. Again, it is well to remember that the various forms of discrimination practiced by the railroads during the period following the Civil War were among the principal targets of the Interstate Commerce Act when it was originally enacted, and the Commission has had long experience and has been provided with ample powers for dealing with all forms of discrimination. I cannot believe, therefore, that any problem of this sort could arise, or could remain uncorrected very long if it did.

Thank you for the opportunity to appear before you and for your courtesy.

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State Jurisdiction and Regulation

Senate Bill 315

Testimony of
Harry R. Jones
Andrews, Kurth, Campbell & Jones
Houston, Texas

Senate Bill 315 would subject to regulation by a newly created Alaska Oil and Gas Transportation Commission (the "Commission") "every oil or gas transportation facility engaged or proposing to engage in such a business inside the state." This raises the question of the extent to which, if at all, the proposed Trans Alaska Pipeline System (TAPS) will be subject to the jurisdiction of the Commission with respect to the regulatory matters contained in the proposed statute. The question of jurisdiction for regulatory purposes will first be treated and, in light of the conclusions there drawn, consideration will be given to some of the provisions of the proposed regulatory statute.

Jurisdiction - Nature of the Commerce

Jurisdiction over transportation of crude oil by TAPS will be governed by whether the commerce is intrastate or interstate in nature. This requires consideration of the facts relating to the proposed transportation.

During 1968, oil was discovered on the North slope of Alaska. Through further development since that time it has

been established that this is a tremendous reservoir or reservoirs. There are no refineries and no consumption of crude oil in Alaska of any consequence. To market the oil, it is essential that it be moved from the remote areas of production to refineries in the South 48 states in the United States. For this purpose, the participants and owners of interests in TAPS plan to construct a pipeline some 800 miles in length, extending from Prudhoe Bay on the North slope of Alaska southward across Alaska to the Port of Valdez. Adequate storage will be provided by the participants to permit receipt of crude oil at Valdez, and to provide storage there in common carrier storage pending accumulation of cargoes and arrival of vessels. From Valdez the oil will move by tank vessels to ultimate destinations outside the State of Alaska. There will be no delivery of oil to any shipper or consignee at Valdez for local use or consumption.

TAPS will be a joint ownership line in which each participant will own an undivided interest. Of necessity there will be unit operation of the line, which Alyeska will provide, but each participant will receive tenders from its own shippers, will fix its own rates for the transportation and will file and publish its own tariffs, rules and regulations. Each participant will be responsible for the transportation to its own shippers and will

collect its own charges. The rules and regulations contained in the tariff will permit (in the nature of a transit privilege) storage for the purpose of accumulating cargoes and pending arrival of vessels, and for subsequent reshipment by water, subject, of course, to reasonable restrictions. Vessels for the movement of the tonnage beyond Valdez will be provided by the shippers.

These facts demonstrate that the situation here presented is one in which tremendous volumes of oil will be tendered to the pipeline carriers involved, all of which is intended at the outset for movement to points beyond the borders of Alaska, and none of which, either now or in the foreseeable future, will be diverted to a state destination for use or consumption. After a thorough review of the decisions, it seems clear that this movement should and would be regarded as interstate commerce within the meaning of Coe vs. Errol, 117 U.S. 517, decided in 1886, and the many cases that have since followed it. The movement constitutes literally a great stream of oil moving to and through the Port with a manifest certainty of a destination outside the state, a situation comparable to the stream of grain in Lemke vs. Farmers Grain Co., 258 U.S. 50, the stream of oil in Ureka Pipeline Co. vs. Hallanan, 257 U.S. 265, and the stream of gas in United Fuel Gas Co. vs. Hallanan, 257 U.S. 277.

The nature of the transportation is virtually identical to that considered in the Lake Cargo Coal case, Railroad Commission of Ohio vs. Worthington, 225 U.S. 101. That case involved the validity of an order of the Ohio Commission establishing rates on lake cargo coal moving from a state origin by common carrier rail lines to a lake port in Ohio for transportation by water in vessels supplied by the shipper to interstate points. In striking down the order, the Court described the interstate nature of the commerce as follows:

"There is testimony to the effect that when the coal leaves the mines it is not known in what vessel it will be loaded, nor to what particular ultimate destination it will go; and that sometimes such coal is sold and vessels arranged for after the coal is at Huron, but it is subject to demurrage charge if it remains on the cars beyond a specified time.

"All coal thus loaded in vessels is, and must practically be, carried to points in other states - or to Canada."

"It is true, as argued by the learned counsel for the commission, that this coal may be accumulated in large quantities at Huron, and only taken out of the accumulated lots from time to time, when it is to be put upon vessels and shipped out of the state, but it must always be remembered that this 70 cent rate applies solely to such coal as is in fact placed upon vessels for carriage to beyond the state points; and, as the circuit court said, the substance of things is not changed by the fact that a small part may be unloaded at one of the Ohio Islands in Lake Erie. The situation then comes to this: that the rate put in force is applicable only to coal which is to be carried

from the mine in Ohio to the lake, there placed upon vessels, and thence carried to upper lake ports beyond the state. By every fair test the transportation of this coal from the mine to the upper lake ports is an interstate carriage, intended by the parties to be such, and the rate fixed by the commission, which is in controversy here, is applicable alone to coal which is thus, from the beginning to the end of its transportation, in interstate carriage, and such rate is intended to and does cover an integral part of that carriage, the transportation from the mine to the Lake Erie port, the placing upon the vessel, and the trimming or distributing in the hold, if required, so that the vessel may complete the interstate carriage."

It is clear, of course, that any oil moving locally within Alaska and having its ultimate and final destination there would unquestionably be intrastate, would be subject to the jurisdiction of the State of Alaska, and of any state regulatory agency which may be established by the legislature and vested with jurisdiction. As an illustration, if refineries should be constructed along the TAPS line, and oil should be delivered through TAPS to them, the movement would be clearly intrastate in character. But there are no such refineries now and none may ever be constructed. Even if and when a refinery may be constructed along the line to which deliveries might be made, this could not and would not affect the essential nature of the great stream of tonnage moving to and through the Port. In United Fuel Gas Co. vs. Hallanan, 347 U.S. 277, the Court said:

"In short, the great body of the gas starts for points outside the state and goes to them. That the necessities of business require a much smaller amount destined to points within the state to be carried undistinguished in the same pipes does not affect the character of the major transportation. Neither is the case as to the gas sold to the three companies changed by the fact that the plaintiff, as owner of the gas, and the purchasers, after they receive it, might change their minds before the gas leaves the state, and that the precise proportions between local and outside deliveries may not have been fixed, although they seem to have been. The typical and actual course of events marks the carriage of the greater part as commerce among the states, and theoretical possibilities may be left out of account. There is no break, no period of deliberation, but a steady flow, ending, as contemplated from the beginning, beyond the state line."

Under many decisions it has been made plain that the temporary stoppage and storage of oil at the port for the accumulation of cargo or awaiting the arrival of vessels does not affect or interrupt the interstate nature of the movement. Texas & N.O. RR Co. vs. Sabine Tram Co., 227 U.S. 111; Southern Pac. Terminal Co. vs. I.C.C., 219 U.S. 498; Carson Petrol. Co. vs. Vial, 279 U.S. 95; Railroad Commission vs. Texas & Pac. Ry. Co., 229 U.S. 336; State vs. Anderson Clayton & Co., 92 F.2d 104.

The Interstate Commerce Act, 49 U.S.C. §1(b), as amended, applies to:

"The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water

* * *

"From one State or Territory . . . to any other State or Territory of the United States . . . or from or to any place in the United States to or from a foreign country"

Based upon the facts relating to the transportation involved and application of the constitutional precepts set forth in the cases above cited, TAPS will be clearly subject under this Section to the jurisdiction of the Interstate Commerce Commission.

There is no question that the Interstate Commerce Commission would also have jurisdiction even though the pipeline were owned and operated by the State of Alaska or any authority or instrumentality created by the state for that purpose. California v. Taylor, 353 U.S. 553; Schmitt v. War Emergency Pipelines, Inc. 72 F.Supp. 156, aff'd 175 F.2d 335, cert denied 338 U.S. 869. In California v. Taylor, the Court considered whether the State Belt Railroad, an interstate common carrier owned and operated by the State of California, was subject to the Interstate Commerce Act:

"The Interstate Commerce Act, 24 Stat. 379, as amended, 49 USC §1(1), applies to all common carriers by railroad engaged in interstate transportation. The Belt Railroad concededly is a common carrier engaged in interstate transportation. It files its tariffs with the Interstate Commerce Commission, and the Commission has treated it and other state-owned interstate rail carriers as subject to its jurisdiction. See California Canneries Co. v. Southern Pacific Co. 51 ICC 500, 502, 503; United States v. Belt Line R. Co. 56 ICC 121; Texas State R. Co. 34 ICC Val. R. 276. Finally, this Court has recognized that practice. United States v. California, 297 US 175, 180, 80 L.ed. 567, 573; 56 S.Ct. 421. See also, New Orleans v. Texas & P.R. Co. (CA5th La.) 195 F.2d 887, 889."

State Regulation - Senate Bill 315

In light of the foregoing conclusion and faced as the project has been and still is with a multitude of problems from many directions, it would be regrettable if the State of Alaska should further cloud the picture at this juncture by the adoption of Senate Bill 315. Such action would pose troublesome problems of dual control, state and interstate, and of the extent to which the Act was intended to apply, and could legally be applied, to TAPS. If any regulatory measure is to be adopted, the Legislature should endeavor to remove doubts and uncertainties in these areas. Senate Bill 315 falls far short of the mark in these respects.

To begin with no effort is made in Senate Bill 315 to draw a distinction between pipelines engaged solely in interstate commerce on the one hand, and those performing an intrastate service on the other. As previously noted, the Alaska Oil and Gas Transportation Commission is empowered and directed to regulate "every oil and gas transportation facility engaged or proposing to engage in such a business inside the state." (Sec. 42.06.141(1)). The Act nowhere contains any limitation of this broad statement.

Yet it is clear that state action insofar as an interstate carrier is involved is subject to paramount federal

authority. The doctrine of federal preemption of interstate commerce is well defined by the Circuit Court of Appeals for the 8th Circuit in Haskell vs. Cowham, 187 Fed. 403, which invalidated state legislation the effect of which was to prevent the interstate sale and movement of gas by preventing the laying of pipelines across highways in the state. In an opinion by Judge Sanborn the Court said:

"The power to regulate commerce among the states was carved out of the general sovereign power when the national government was formed and granted by the people by means of the Constitution to the Congress of the United States. Article I, §8. That grant is exclusive. The nation may exercise the power thus given to its utmost extent, and no state may lawfully restrict or infringe this grant or the plenary exertion of this power, for they are paramount to all the powers of the state, and they inhere in the supreme law of the land. Interstate commerce in natural gas including therein its transportation among the states by pipe line is a subject national in its character and susceptible of regulation by uniform rules. The silence or inaction of Congress relative to such a subject is a conclusive indication that it intends that interstate commerce therein shall be free, and any law or act of a state or of its officers which prohibits it or substantially restrains its freedom is violative of the Constitution and void."

Substantially the same question was presented in West vs. Kansas Natural Gas Co., 221 U.S. 229. Citing Haskell vs. Cowham, the Court said:

"We place our decision on the character and purpose of the Oklahoma statute. The state, as we have seen, grants the use of the highways to domestic corporations engaged in intrastate transportation of natural gas, giving such corporations even the right to the longitudinal use of the highways. It denies to appellees the lesser right to pass under them or over them, notwithstanding it is conceded in the pleadings that the greater use given to domestic corporation is no obstruction to them. This discrimination is beyond the power of the state to make. As said by the circuit court of appeals in the eighth circuit, no state can by action or inaction prevent, unreasonably burden, discriminate against or directly regulate, interstate commerce or the right to carry it on. And in all of these inhibited particulars the statute of Oklahoma offends." [Emphasis added.]

TAPS is not exempt from all state action by reason of its interstate character. Any requirements, however, must serve a legitimate state purpose and they cannot directly regulate or unduly burden the carrier. As an illustration, in Atlas Pipe Line Co. vs. Sterling, 4 F.Supp. 441, a three judge court sustained the validity of an order of the Railroad Commission of Texas requiring certain metering and reporting procedures upon movements that were admittedly interstate in nature. The Court did so upon the ground that the orders were necessary or appropriate to control the movement of contraband oil during the hot oil problem in Texas, and upon a finding that the orders imposed no undue burden upon Interstate Commerce or upon the carriers involved. In so holding the court said:

"We think it perfectly clear that, as applied to plaintiff, the complained of statutes are valid; that the requirements they make in no manner infringe upon any of its constitutional rights. They merely provide for such regulatory steps and measures as are reasonable, necessary, and proper to prevent the handling of oil made by the statute contraband for handling, and their terms in no sense impose any burdensome restrictions upon interstate commerce, or take plaintiff's property without due process, or deny it the equal protection of the laws. Plaintiff's broad position comes in the end to no more than an insistence upon its right to transport, in violation of the express prohibitions of the statute, oil which has been illegally produced. No reason presents itself to our minds for believing that the legislature, having the authority to conserve the natural resources of the state, is without power to impose upon common carriers by pipeline, interstate and intrastate, police regulations to make its prohibition against wasteful production effective."

At the other extreme, in Lemke vs. Farmer's Grain Co., 258 U.S. 50, the court struck down a statute of the State of North Dakota which sought to regulate the buying of grain, requiring state licensing of dealers and fixing the profit that they might realize. The court said:

"It is contended that these regulations may stand upon the principles recognized in decisions of this court which permit the state to make local laws under its police power, in the interest of the welfare of its people, which are valid, although affecting interstate commerce, and may stand, at least until Congress takes possession of the field under its superior authority to regulate commerce among the states. This principle has no application where the state purges beyond the exercise of its legitimate authority, and undertakes to regulate interstate

commerce by imposing burdens upon it. This court stated the principle and its limitations in the discussion of the subject in the Minnesota Rate Cases (Simpson v. Shepard) 230 U.S. 352 In the course of the opinion in that case, we said (p. 400):

'The principle which determines this classification [between Federal and state power] underlies the doctrine that the states cannot, under any guise, impose direct burdens upon interstate commerce. For this is but to hold that the states are not permitted directly to regulate or restrain that which, from its nature, should be under the control of the one authority and be free from restriction, save as it is governed in the manner that the national legislature constitutionally ordains.'"

Thus, while of necessity under the law, state action under Senate Bill 315 would be limited to areas that the state can legally control or regulate, the statute leaves for later judicial determination the nature and extent of those limitations. The participants in TAPS could find themselves involved in burdensome and troublesome litigation as a result of proposed action by the Commission under the Act, or efforts to apply the terms of that Act to TAPS.

For example, the Commission is directed by the Act to "make or require just, fair and reasonable rates, classifications, rules, regulations, practices, services and facilities for an oil or gas transportation facility," Section 42.06.141 (4), and its authority in this regard is detailed in Article

5 of the Act, "Rates and Rate Schedules." If it is the legislative purpose to vest the Commission with authority to fix rates to be observed by TAPS, such action is clearly beyond the State's power to so provide. If the Commission should endeavor to establish rates to be applied to the movement of crude oil to and through Valdez it would find itself in precisely the same position as was the Ohio State Commission in the Lake Cargo Coal case previously referred to. After determining that the transportation involved was interstate in nature, the Court considered the effect and validity of the state order fixing rates:

"It is contended that this transportation of the coal under the rate fixed by the Railroad Commission is not within the power and authority of the Interstate Commerce Commission under §1 of the act to regulate commerce, which makes the provisions of the act inapplicable to the transportation of property wholly within one state and not shipped to or from a foreign country, from or to a state or territory; and, furthermore, that a transportation of the character here in question is only within the jurisdiction of the Interstate Commerce Commission when it is a transportation partly by railroad and partly by water, when both are used under a common control, management, or arrangement for a continuous carriage or shipment; and therefore that the subject matter in question is left within the state jurisdiction. On the other hand, it is contended that this transportation is within the jurisdiction of the Commission under the act to regulate commerce. It is enough to now hold, as we do, that the establishing of the rate in question is an attempt to regulate interstate commerce, and is therefore beyond the power of the state or a commission assuming to act under its authority."

The Act further requires that a pipeline make application and obtain from the Commission a "certificate of convenience and necessity", the issuance of which is conditioned upon a finding that "the services are required for the efficient production and marketing of oil or gas." Section 42.06.241. The Commission's approval is also required before any pipeline "may discontinue or abandon a service for which a certificate has been issued" Section 42.06.261(A). Of course, a carrier must secure the right to cross all lands its line will traverse. TAPS is now engaged in obtaining a permit to cross federal lands from the Secretary of the Interior, and it will be necessary for it to obtain a lease or permit to cross any state lands the line may traverse. The crossing of state lands and legal and practical considerations relating to the proposed State Right of Way Leasing Act, Senate Bill 313, will be detailed in later testimony. Senate Bill 315 in effect provides, however, that even though the right to cross such lands has been obtained, the carrier must still apply to the Commission for a certificate, and obtain its approval, before operating or abandoning its lines, and issuance of such certificates is conditioned upon various findings, including the equivalent of a finding of public convenience and necessity. In this respect the state is

invading areas that have been reserved exclusively for federal control. The decision of the Supreme Court of Kansas in State vs. Sinclair Pipeline Co., 304 P.2d 930 is in point. There the State of Kansas sought by mandamus to compel an interstate pipeline carrier to obtain State Commission approval before abandoning operation of a part of its line. In denying relief the Supreme Court of Kansas said:

"Once we have established that the Pipe Line Company was engaged exclusively in transportation of crude oil in interstate commerce, the conclusion is inescapable that the commission has no power or authority to regulate it. The third clause of article 1, section 8 of the federal constitution places the control of commerce among the several states in congress. About as many opinions have been written about that clause as any other. Among the early ones was Gibbons v. Ogden, 9 Wheat 1, 6 L.Ed 23. To come to a more recent date we have State of Missouri ex rel. Barrett v. Kansas Natural Gas Co., D.C., 282 F.341 and Central Trust Co. of New York v. Consumers Light, Heat & Power Co., D.C., 282 F. 680. These cases were affirmed by the United States Supreme Court. See Missouri ex rel. Barrett v. Kansas Natural Gas Co., 265 U.S. 298, 44 S.Ct. 544, 545, 68 L.Ed 1027. There the Court said:

* * * "If a state enactment imposed a direct burden upon interstate commerce, it must fall, regardless of federal legislation. The point of such an objection is not that Congress has acted, but that the state has directly restrained that which in the absence of federal regulation should be free.

* * *

"The contention that, in the public interest, the business is one requiring regulation, need not be challenged. But Congress thus far has not seen fit to regulate it, and its silence, where it has the sole power to speak, is equivalent to a declaration that that particular commerce shall be free from regulation. * * *"

"By the Hepburn amendment the interstate commerce act was extended to include common carriers engaged in the transportation of oil by pipe line from one state to another. 49 U.S. C.A. §1. This amendment did not impose upon carriers by oil by pipe line the requirement that they obtain certificates of public convenience and necessity, neither did the amendment impose upon such carriers the requirement that they obtain a permit to discontinue the use of interstate pipe line facilities although such permits were at the time of the amendment required of carriers by rail. This is indicative that congress did not intend to make such requirements."

In Buck vs. Kuykendall, 267 U.S. 307, the Court struck down a statute of the State of Washington which would have required a common carrier engaged exclusively in interstate commerce in the operation of a bus line, to first obtain a permit from the state based upon a finding of public convenience and necessity. The Court said:

"Thus, the provision of the Washington statute is a regulation, not of the use of its own highways, but of Interstate commerce. Its effect upon such commerce is not merely to burden but to obstruct it. Such state action is forbidden by the commerce clause."

See also Castle vs. Hayes Freight Lines, 348 U.S. 61. It seems clear that as applied to TAPS, both the certificate to operate

and abandonment provisions of the Act would fall within the condemnation of these authorities.

Article 4 of Senate Bill 315, dealing with "Services and Facilities", authorizes the Commission to prescribe by order, extensions and improvements in facilities that are "reasonable, necessary and proper for the safety, accomodation and convenience of the public and the users." Section 42.06.291 (b), To the extent that the Commission may seek to utilize this authority to compel a transportation facility to extend its lines beyond the area it has committed itself to serve, such action would be ineffective even as to an intrastate carrier. In Interstate Com. Comm'n vs. Oregon Wash. R & N Co., 288 U.S. 14, the Interstate Commerce Commission entered an order requiring the Railroad Company to extend its line to serve an area of some 33,000 square miles within the State of Oregon. The substance of the case before the Commission was thus stated by the Court:

"The failure and refusal to provide railroad facilities to a large area of central Oregon was the gravamen of the complaint. Consequences of the neglect to build this line were enumerated as prevention of the development of a vast area, hindrance of exploitation of the natural resources of the State, unreasonably circuitous routes, with consequent delays, and car shortages, all causing losses to the people of Oregon."

In striking down the order, the Court said:

"The cases above cited, dealing with the powers of state authorities in the matter of extensions of lines and service, furnish a background which must have been in the minds both of the Commission and of the Congress at the time of the passage of the Transportation Act. Those decisions show that due process is denied by requiring service which goes beyond the undertaking of the carrier. Orders for extensions of line were sustained whenever reasonably required in the interest of car service and for interchange of traffic. No extension order for the service of new territory has been approved."

* * *

"The railroads, though dedicated to a public use, remain the private property of their owners, and their assets may not be taken without just compensation. The Transportation Act has not abolished this proprietorship. State courts have uniformly held that to require extension of existing lines beyond the scope of the carrier's commitment to the public service is a taking of property in violation of the federal constitution. The decisions of this court would be searched in vain for the announcement of any principle of constitutional interpretation which would support the order of the commission."

* * *

"Assuming, without deciding, that the Commission was entitled to treat the Oregon-Washington company as an instrument of the Union Pacific System, and the required extension, therefore, as one adding only a small percentage to the present mileage of the system, still the purpose is to compel a new investment for the development of a new area at the request and in the interest of the State of Oregon, whose desire is that its natural resources shall be exploited."

See also Atchison, T & S.F. Ry. vs. Railroad Comm'n, 160 Pac. 828, cert. denied 245 U.S. 638.

As applied to TAPS the invalidity of the Section is even more readily apparent. Engaged as it is in interstate commerce, an order requiring it to extend its lines would constitute an obvious effort to directly regulate, and would impose a direct burden upon, interstate commerce and would therefore fall within the condemnation not only of the cases above cited, but those previously referred to in this memorandum relating to state efforts to regulate, or which impose burdens upon, interstate commerce.

This same infirmity inheres in other provisions of the Act, to the extent that the Commission may seek to apply them to a transportation facility which is engaged in interstate commerce. For example, the Act authorizes the Commission, in case of discrimination, to "prescribe rules to end the discrimination or the commission may itself manage the allocation of the service until it determines the discrimination can be avoided by appropriate rules or agreements." Section 42.05.311. The Commission is empowered to order "the joint use or interconnection of oil or gas transportation facilities" Section 42.06.321. These are matters specifically covered by the Interstate Commerce Act, 49 U.S.C. §§1 (4), 3 (4), as amended. Further, any corrective order by the Commission under its authority to

"investigate the management of an oil and gas transportation facility, including but not limited to staffing patterns, wage and salary scales and agreements, investment policies and practices and payment arrangement with affiliated interests . . . ," Section 42.06.511, would necessarily fall within the condemnation of the Commerce Clause.

Conclusion

The foregoing analysis is not exhaustive, nor have we sought to elaborate upon those areas in which the legitimate local concern may justify requirements of the interstate carrier which only "incidentally affect" but do not unreasonably burden or directly regulate interstate commerce. Generally, to the extent that the Commission may utilize authority granted by the Act to adopt regulations or prescribe orders the effect of which, directly or indirectly, would be to regulate, burden or obstruct the interstate operations of TAPS, such regulations or orders in light of the Commerce Clause precepts previously discussed would be invalid.

March 3, 1972

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REMARKS OF GEORGE A. SEYMOUR
TO ALASKA SENATE AND HOUSE COMMITTEES
WEEK OF MARCH 6, 1972

I AM GEORGE A. SEYMOUR. I AM MANAGER OF PART INTEREST PIPELINES FOR MOBIL PIPE LINE COMPANY. I WOULD LIKE TO REVIEW THE TYPE AND FORMAT OF PIPELINE INDUSTRY FINANCIAL REPORTING WHICH COULD SERVE THE NEEDS OF THE STATE OF ALASKA IN CONNECTION WITH THE TAPS PROJECT.

THE TYPE AND DETAIL OF FINANCIAL DATA ON PIPELINES THAT THE OWNER COMPANIES HAVE TRADITIONALLY FURNISHED AND THAT SHOULD SERVE ADEQUATELY FOR TAPS CAN BE ILLUSTRATED BY THE USE OF SOME REPORTS THAT ARE REQUIRED BY OTHER REGULATORY COMMISSIONS. ATTACHED IS A COPY OF COOK INLET PIPE LINE COMPANY'S 1970 ANNUAL REPORT TO THE INTERSTATE COMMERCE COMMISSION. THIS REPORT, ALONG WITH IDENTICAL REPORTS FROM ALL OTHER COMMON CARRIERS SUBJECT TO THE JURISDICTION OF THE ICC, IS ON FILE IN WASHINGTON AND IS AVAILABLE TO ANYONE WHO WISHES TO SEE IT. A COPY OF THIS REPORT, KNOWN AS THE FORM P, IS ALSO REQUIRED BY MOST STATE REGULATORY AGENCIES WHICH HAVE JURISDICTION OVER COMMON CARRIER PIPELINE COMPANIES. IN FACT, FORMS P FOR COOK INLET PIPE LINE COMPANY WERE, UPON REQUEST, TRANSMITTED TO MR. GREG M. ERICSSON OF THE ALASKA JOINT PIPELINE IMPACT COMMITTEE IN SEPTEMBER, 1971, FOR THE YEARS 1967 THROUGH 1970. WE WOULD EXPECT THAT ALASKA WILL ALSO REQUIRE THIS REPORT TO BE FILED WITH THE APPROPRIATE STATE AGENCY BECAUSE ITS 56 PAGES WOULD CONTAIN RATHER DETAILED CORPORATE, FINANCIAL AND OPERATING INFORMATION CONCERNING TAPS.

IF YOU HAVE NOT PREVIOUSLY SEEN ONE OF THESE REPORTS, YOU ARE INVITED TO REVIEW IT IN ITS ENTIRETY TO SEE WHAT INFORMATION IS INCLUDED. I WOULD LIKE NOW, HOWEVER, TO DISCUSS SOME OF THE

SCHEDULES AND RELATE THEM TO POSSIBLE TAPS REPORTS. ON PAGES 20 AND 21 IS A DETAIL OF INVESTMENT IN CARRIER PROPERTY. CARRIER INVESTMENT MUST BE REPORTED FOR GATHERING, TRUNK AND GENERAL FACILITIES AND EACH OF THESE CATEGORIES MUST BE BROKEN DOWN INTO THE VARIOUS TYPES OF INVESTMENTS, SUCH AS LAND, RIGHT-OF-WAY, LINE PIPE, PIPELINE CONSTRUCTION, ETC.

IF YOU WILL TURN TO PAGE 24, YOU WILL SEE ANOTHER SCHEDULE QUITE SIMILAR TO THE ONE WE JUST REVIEWED. YOU CAN SEE THAT THE BASIC FORMAT OF THIS PAGE IS ESSENTIALLY THE SAME. HOWEVER, THE COLUMNS CONTAIN DEPRECIATION INFORMATION RATHER THAN ORIGINAL INVESTMENT COST.

BOTH OF THESE SCHEDULES WE HAVE JUST REVIEWED WERE FOR THE COMPANY'S TOTAL INVESTMENT. HOWEVER, I WANTED TO GO THROUGH THESE SCHEDULES BECAUSE THE DETAIL SEEMS TO BE VERY SIMILAR TO THAT WHICH MIGHT BE REPORTED TO THE STATE FOR TAPS.

IF YOU WILL TURN BACK TO PAGE 23, YOU WILL SEE A FORM THAT MIGHT BE USED TO REPORT TO THE STATE. THIS PAGE, WHICH IS INCLUDED TO REPORT ON ANY SYSTEM SPECIFIED BY THE ICC, IS BLANK IN THE CASE OF COOK INLET. HOWEVER, WE HAVE RECEIVED AN INDICATION THAT THE ICC WILL REQUIRE THIS PAGE TO BE COMPLETED FOR TAPS, AND THE ICC CURRENTLY REQUIRES THIS PAGE TO BE COMPLETED BY SOME OTHER COMPANIES WHICH PARTICIPATE IN UNDIVIDED INTEREST PIPELINES.

IF YOU WILL NOW TURN TO PAGE 25, YOU WILL SEE ANOTHER BLANK PAGE -- ONE WHICH COULD BE USED IN CONNECTION WITH THE ONE WE JUST REVIEWED

TO REPORT CURRENT YEAR'S AND CUMULATIVE DEPRECIATION.

BY REQUESTING THESE TWO SCHEDULES TO BE COMPLETED, OR SCHEDULES SIMILAR TO THEM, IT WOULD SEEM THAT THE STATE WOULD RECEIVE EVERYTHING IT WOULD WANT REGARDING THE OWNER COMPANIES' INVESTMENT IN TAPS.

IF YOU WILL TURN TO PAGE 42, WE WILL TALK ABOUT THE REPORTING OF TAPS EXPENSES. IN THE SCHEDULE AT THE BOTTOM OF THE PAGE YOU WILL SEE THAT EXPENSES MUST BE BROKEN DOWN INTO OPERATIONS, MAINTENANCE AND GENERAL CATEGORIES AND FURTHER DETAILED BY TYPE OF EXPENSE, SUCH AS SALARIES AND WAGES, SUPPLIES AND EXPENSES, OUTSIDE SERVICES, ETC. AGAIN, THIS SCHEDULE CONTAINS TOTAL COMPANY INFORMATION BUT IT IS AVAILABLE AND COULD BE REPORTED FOR TAPS AT THE REQUEST OF THE STATE.

TURNING BACK TO PAGE 41, THIS SCHEDULE IS THE COMPANY'S TOTAL INCOME STATEMENT. NOTICE THAT THE AMOUNT OF EXPENSES SHOWN ON THE SECOND LINE IS THE TOTAL SHOWN ON THE SCHEDULE WE JUST REVIEWED. IN ADDITION TO OPERATING EXPENSES, THIS SCHEDULE SETS OUT OPERATING REVENUES, INCOME FROM NONCARRIER OPERATIONS, INTEREST AND DIVIDEND INCOME, MISCELLANEOUS INCOME, INTEREST EXPENSE, MISCELLANEOUS INCOME CHARGES, INCOME BEFORE FEDERAL INCOME TAXES, FEDERAL INCOME TAXES, AND TOTAL NET INCOME. AS WITH INVESTMENT AND EXPENSE INFORMATION WE HAVE PREVIOUSLY DISCUSSED, THIS SCHEDULE COULD BE USED TO REPORT ONLY THE INFORMATION RELATING TO TAPS.

AS TO REVENUE, THIS SCHEDULE WOULD SET OUT TAPS REVENUE SEPARATELY. IF FURTHER DETAIL WOULD BE DESIRED BY THE STATE, A SCHEDULE THAT SUMMARIZED SUCH DATA COULD BE PREPARED.

ANY NECESSARY ADDITIONAL OPERATING INFORMATION DESIRED BY THE STATE COULD ALSO BE PROVIDED ON THIS OR A SIMILAR PAGE.

THE STATE WOULD ALSO BE INTERESTED IN THE VALUATION OF TAPS CARRIER PROPERTY. AS YOU KNOW, THE INTERSTATE COMMERCE COMMISSION DETERMINES A COMPANY'S ORIGINAL VALUATION AND TRADITIONALLY BRINGS IT DOWN TO DATE EACH YEAR. A COPY OF A COMPANY'S VALUATION REPORT, WHICH SETS OUT THE VALUATION OF PROPERTIES LOCATED IN EACH STATE, IS SENT TO EACH STATE BY THE ICC. IN ADDITION, BECAUSE OF THE MAGNITUDE OF INVESTMENT IN TAPS, WE EXPECT THAT THE ICC WILL DETERMINE THE VALUATION OF TAPS FACILITIES SEPARATE FROM THE VALUATION OF THE OTHER COMPANIES' OTHER CARRIER FACILITIES. THIS INFORMATION WOULD ALSO BE PROVIDED TO THE STATE OF ALASKA BY THE ICC.

TO SUMMARIZE, WE HAVE REVIEWED SCHEDULES OR SAMPLES OF SCHEDULES WHICH COULD BE USED TO REPORT REQUIRED TAPS FINANCIAL AND OPERATING INFORMATION TO THE STATE. THE TAPS OWNER COMPANIES HAVE PREVIOUSLY STIPULATED THAT IT WAS THEIR INTENT TO ARRANGE TO PROVIDE THE STATE WITH COMPLETE FINANCIAL AND OPERATING STATISTICS ON TAPS. INFORMATION OF THE TYPE WE HAVE JUST REVIEWED--WHICH SEEMS TO BE CONSISTENT WITH WHAT THE TAPS OWNER COMPANIES HAVE OFFERED TO FURNISH--APPEARS ADEQUATE TO FULFILL THE STATE'S TOTAL NEED FOR CORPORATE, FINANCIAL AND OPERATING DATA.

CARRIERS BY PIPE LINE
Annual Report Form P

BUDGET BUREAU
No. 60-R0108
Approval expires 12-31-74

ANNUAL REPORT

OF

COOK INLET PIPE LINE COMPANY

ANCHORAGE, ALASKA

TO THE

INTERSTATE COMMERCE COMMISSION

FOR THE

YEAR ENDED DECEMBER 31, 1970

AGO 531718

NOTICE

1. This Form for annual report should be filled out in triplicate and two copies returned to the Interstate Commerce Commission, Bureau of Accounts, Washington, D.C. 20423, by March 31 of the year following that for which the report is made. Attention is specially directed to the following provisions of Part I of the Interstate Commerce Act:

SEC. 20. (1) The Commission is hereby authorized to require annual, periodical, or special reports from carriers, lessors, * * * (as defined in this section), to prescribe the manner and form in which such reports shall be made, and to require from such carriers, lessors, * * * specific and full, true, and correct answers to all questions upon which the Commission may deem information to be necessary, classifying such carriers, lessors, * * * as it may deem proper for any of these purposes. Such annual reports shall give an account of the affairs of the carrier, lessor, * * * in such form and detail as may be prescribed by the Commission.

(2) Said annual reports shall contain all the required information for the period of twelve months ending on the 31st day of December in each year, unless the Commission shall specify a different date, and shall be made out under oath and filed with the Commission at its office in Washington within three months after the close of the year for which report is made, unless additional time be granted in any case by the Commission.

(7) (b). Any person who shall knowingly and willfully make, cause to be made, or participate in the making of, any false entry in any annual or other report required under this section to be filed, * * * or shall knowingly or willfully file with the Commission any false report or other document, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction to a fine of not more than five thousand dollars or imprisonment for not more than two years, or both such fine and imprisonment: * * *

(7) (c). Any carrier or lessor, * * * or any officer, agent, employee, or representative thereof, who shall fail to make and file an annual or other report with the Commission within the time fixed by the Commission, or to make specific and full, true, and correct answer to any question within thirty days from the time it is lawfully required by the Commission so to do, shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto.

(8) As used in this section * * * the term "carrier" means a common carrier subject to this part, and includes a receiver or trustee of such carrier; and the term "lessor" means a person owning a railroad, a water line or a pipe line, leased to and operated by a common carrier subject to this part, and includes a receiver or trustee of such lessor, * * *

The respondent is further required to send to the Bureau of Accounts, immediately upon publication, two copies of its latest printed annual report to stockholders. See Schedule 105A, page 103.

2. The instructions in this Form should be carefully observed, and each question should be answered fully and accurately, whether it has

been answered in a previous annual report or not. Except in cases where they are specifically authorized, cancellations, arbitrary check marks, and the like should not be used either as partial or as entire answers to inquiries. If any inquiry, based on a preceding inquiry in the present report form, is, because of the answer rendered to such preceding inquiry, inapplicable to the person or corporation in whose behalf the report is made, such notation as "Not applicable; see page —, schedule (or line) number —" should be used in answer thereto, giving precise reference to the portion of the report showing the facts which make the inquiry inapplicable. Where the word "None" truly and completely states the fact, it should be given as the answer to any particular inquiry or any particular portion of an inquiry. Where dates are called for, the month and day should be stated as well as the year. Customary abbreviations may be used in stating dates.

3. Every annual report should, in all particulars, be complete in itself, and references to the returns of former years should not be made to take the place of required entries except as herein otherwise specifically directed or authorized.

4. If it be necessary or desirable to insert additional statements, typewritten or other, in a report, they should be legibly made on durable paper and, wherever practicable, on sheets not larger than a page of the Form. Inserted sheets should be securely attached, preferably at the inner margin; attachment by pins or clips is insufficient.

5. All entries should be made in a permanent black ink. Those of a contrary character should be indicated in parenthesis. Items of an unusual character should be indicated by appropriate symbol and footnote.

Money items throughout this annual report form should be shown in units of dollars adjusted to accord with footings.

6. Each respondent should make its annual report to this Commission in triplicate, retaining one copy in its files for reference in case correspondence with regard to such report becomes necessary. For this reason three copies of the Form are sent to each company concerned.

7. Except where the context clearly indicates some other meaning, the following terms when used in this Form have the meanings below stated:

Commission means the Interstate Commerce Commission. Respondent means the person or company in whose behalf the report is made. The year means the year ended December 31 for which the report is made. The close of the year means the close of business on December 31 of the year for which the report is made; or, in case the report is made for a shorter period than one year, it means the close of the period covered by the report. The beginning of the year means the beginning of business on January 1 of the year for which the report is made; or, in case the report is made for a shorter period than one year, it means the beginning of the period covered by the report. The preceding year means the year ended December 31 of the year next preceding the year for which the report is made. The Uniform System of Accounts for Pipe Lines means the system of accounts in Part 1204 of Title 49, Code of Federal Regulations, as amended.

FOR THE INDEX SEE THE INSIDE OF BACK COVER

AGO 531719

ANNUAL REPORT

OF

COOK INLET PIPE LINE COMPANY

ANCHORAGE, ALASKA

FOR THE

YEAR ENDED DECEMBER 31, 1970

Name, official title, telephone number, and office address of officer in charge of correspondence with the Commission regarding this report:

(Name) E. R. THOMPSON (Title) SECRETARY-TREASURER

(Telephone number) 202 754131
(Area code) (Telephone number)

(Office address) 100 South Alameda Street Dallas, Texas 75202
(Street and number, City, State, and ZIP code)

AGO 531720

INSTRUCTIONS FOR MAKING RETURNS ON OPPOSITE PAGE

There should appear on the opposite page entries or notations sufficient to show that no question or item has been overlooked. If returns are not made as required, some reference, as, "See page 100", should be made to this page, on which a statement of the reason for the variation or omission should be given.

Answers to the questions asked should be made in full, without reference to data returned on the corresponding page of previous reports. Only changes during the year are required, under items 4, 5, and 6.

1. Give in full the exact name of the respondent. Use the words "The" and "Company" only when they are parts of the corporate name. The corporate name should also be given uniformly throughout the report, notably on the cover, on the title page, and in the "Verification" (p. 533). If the report is made by receivers, trustees, a committee of bondholders, or individuals otherwise in possession of the property, state names and facts with precision.

2. If incorporated under a special charter, give date of passage of the act; if under a general law, give date of filing certificate of organization; if a reorganization has been effected, give date of reorganization. If a receivership or other trust, give also date when such receivership or other possession began. If a partnership, give date of formation and also names in full of present partners.

3. Give specific reference to laws of each State or Territory under which organized, citing chapter and section. Include all grants of corporate powers by the United States, or by Canada or other foreign country; also, all amendments to charter.

4. Give specific reference to special or general laws under which each consolidation or merger or combination of other form was effected during the year, citing chapter and section. Specify Government, State, or Territory under the laws of which each company consolidated or merged or otherwise combined during the year into the present company was organized; give reference to the charters of each, and to all amendments

of them. Distinguish carefully between mergers and consolidations. For the purpose of this report, a merger may be defined as the absorption of one of two existing corporations by the other in such wise that the absorbed or merged corporation ceases to exist as a legal entity, its property passing to the merging or absorbing corporation, which assumes all of the merged corporation's obligations. A consolidation may be defined as the union of two or more existing corporations into a new corporation, which, through the consolidation, acquires all of the property of the uniting corporations, assumes all of their obligations, and issues its capital stocks in exchange for those of the uniting corporations in ratios fixed in the agreement for consolidations, after completion of which both or all of the consolidating corporations cease to exist as legal entities. Combinations that are not classifiable as mergers or consolidations should be fully explained. Cases in which corporations have become inactive and have been practically absorbed through ownership or control of their entire capital stock, through leases of long duration (under which the lessor companies do not keep up independent organizations for financial purposes), or otherwise, so that no distinction is made in operating or in accounting by reason of the original separate incorporation, should be included here in a separate list and fully explained in answering this and the next following inquiry.

6. State the occasion for the reorganization, whether by reason of foreclosure of mortgage or otherwise, according to the fact. Give date of organization of original corporation and refer to laws under which organized.

EXPLANATORY REMARKS

SPECIAL NOTICE

The attention of the respondent is directed below to certain particulars, if any, in which this report form differs from the corresponding form for the preceding year. It should be understood that mention is not made of necessary substitutions of dates or, in general, such other things as simple modifications intended to make requirements clearer, other minor adjustments, and typographical corrections.

Page 200: Schedule 200A. Comparative Balance Sheet Statement - Asset Side

Instructions have been amended to provide for inclusion of accrued depreciation of system property in account 31, Accrued Depreciation - Carrier Property.

Page 212: Schedule 230. Carrier Property

Instructions amended to include system property investments.

Page 214: Schedule 231. Accrued Depreciation - Carrier Property

Schedule renumbered 232 and Transferred to new page 214B.

Page 214A: Schedule 231A. Depreciation Base and Rates - System Property

214C: Schedule 232A. Accrued Depreciation - System Property

There are new pages and schedules provided for disclosure of depreciation data related to carrier investments in system property.

Page 215: Schedule 232. Depreciation Base and Rates

Schedule renumbered 231, redesignated Depreciation Base and Rates - Carrier Property, and transferred to page 214.

Page 226: Schedule 270. Capital Stock

Instructions have been amended to assist in furnishing clearer and more complete data.

Page 304: Schedule 330. Pipe-Line Taxes

Reference to Federal transportation tax has been deleted.

101. IDENTITY OF RESPONDENT

3.

1. Exact name of pipe-line company making this report. (See Instructions, p. 100)..... Cook Inlet Pipe Line Company

2. Date of incorporation..... March 21, 1966

3. Under laws of what Government, State, or territory organized? If more than one, name all. Give specific reference to each statute and all amendments thereof, effected during the year. If previously effected show the year(s) of the report(s) setting forth the details. If in bankruptcy, give court of jurisdiction and dates of beginning of receivership or trusteeship and of appointment of receivers or trustees.....

4. Organized under the "General Corporation Law of the State of Delaware".

5. If a consolidated or a merging company, name all constituent and all merged companies absorbed during the year. Give specific reference to charters or general laws governing organization of each, and all amendments of same.....

Not applicable

6. Date and authority for each consolidation and for each merger effected during the year.....

Not Applicable

7. If a reorganized company, give name of original corporation, refer to laws under which it was organized, and state the occasion for any reorganization effected during the year.....

Not Applicable

8. State whether or not the respondent during the year conducted any part of its business under a name or names other than that shown in response to inquiry No. 1, above; if so, give full particulars.....

Business conducted under above name only.

AGO 531723

4.

There should appear on these pages entries or notations sufficient to show that no question or item has been overlooked. The word "None" may be used where applicable.

recognized as in the controlling management of the company or of some department of it, give also their names and titles, and the location of their offices. If the duties of an officer extend to more than one department, or if his duties are not in accordance with the customary acceptance of his given title, state briefly the facts under Explanatory Remarks below.

EXPLANATORY REMARKS

Name of director (a)	Office address (b)	Date of beginning of term (c)	Date of expiration of term (d)	Remarks (e)
L. E. Cheney	445 South Figueroa St. Los Angeles, Calif. 90017	3/16/70	6/15/71	The annual meeting of the stockholders scheduled for
R. G. Dulaney	600 - 5th Avenue New York, N.Y. 10020	3/16/70	6/15/71	the third Tuesday in March, according to the By-Laws,
W. P. Bush	539 South Main St. Findlay, Ohio 45840	3/16/70	6/15/71	has been postponed and tentatively rescheduled for
A. D. Lodge	539 South Main St. Findlay, Ohio 45840	3/16/70	6/15/71	June 15, 1971.
G. A. Seymour	108 S. Akard Street Dallas, Texas 75202	3/16/70	6/15/71	
E. J. Wacker, Jr.	108 S. Akard Street Dallas, Texas 75202	3/16/70	6/15/71	
John M. Hopkins	P.O. Box 7600 Los Angeles, Calif. 90054	3/16/70	6/15/71	
W. S. McConner	200 East Golf Road Palantine, Ill. 60067	3/16/70	6/15/71	

Chairman of Board Name Secretary (or clerk) of Board C. R. Thompson

22. Name the members of the executive committee of the Board of Directors of the respondent at the close of the year (naming first the chairman), and state briefly the powers and duties of that committee:

4244

AGO 531724

103. PRINCIPAL GENERAL OFFICERS

5.

No.	Title of general officer (a)	Department or departments over which jurisdiction is exercised (b)	Name of person holding office at close of year (c)	Office address (d)
1	President	Executive	E. J. Wacker, Jr.	108 S. Akard Street Dallas, Texas 75202
2	Vice President	Executive	W. P. Bush	539 S. Main Street Findlay, Ohio 45840
3	Vice President	Executive	R. G. Dulaney	600 - 5th Avenue New York, New York 10020
4	Vice President	Executive	W. S. McConnor	200 E. Golf Road Palatine, Ill. 60067
5	Vice President	Executive	G. A. Seymour	108 S. Akard Street Dallas, Texas 75202
6	Vice President	Operating	D. L. Dennard	P. O. Box 4-XX Anchorage, Alaska 99503
7	Secretary-Treasurer	Secretarial and Fiscal	G. R. Thompson	108 S. Akard Street Dallas, Texas 75202
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				

108. CORPORATE CONTROL OVER RESPONDENT *

51. Did any corporation or corporations, pipe line or other, hold control over the respondent at the close of the year? Yes

If control was so held, state:

- (a) The form of control, whether sole or joint Joint
- (b) The name of the controlling corporation or corporations Atlantic Richfield Co., Mobil Pipe Line Co.,
Marathon Oil Co. and Union Oil Co. of California
- (c) The manner in which control was established Stock ownership
- (d) The extent of control Atlantic and Mobil Pipe Line 70% each; Marathon and Union 30% each
- (e) Whether control was direct or indirect Direct
- (f) The name of the intermediary through which control, if indirect, was established None

52. Did any individual, association, or corporation hold control, as trustee, over the respondent at the close of the year? No

If control was so held, state:

- (a) The name of the trustee
- (b) The name of the beneficiary or beneficiaries for whom the trust was maintained
- (c) The purpose of the trust

108A. STOCKHOLDERS REPORTS

1. The respondent is required to send the Bureau of Accounts, immediately upon preparation, two copies of its latest annual report to stockholders.

Check appropriate box:

☒ Two copies are attached to this report.☐ Two copies will be submitted

(date)

☐ No annual report to stockholders is prepared.

AGO 531725

6.

6. State the total voting power of all security holders of the respondent at the date given in answer to inquiry No. 5, if within 1 year of the date of such preparation; if not, state as of the close of the year 40,000 votes, as of March 16, 1970 (Date)
7. State the total number of stockholders of record, as of the date shown in answer to inquiry No. 6. 4 stockholders.
8. Give the names of the 30 security holders of the respondent who, at the date of the closing of the stock book or compilation of list of stockholders of the respondent (if within 1 year of the preparation of this report), had the highest voting powers in the respondent, showing for each a address, the number of votes which he would have had a right to cast on that date had a meeting then been in order, and the classification of the number of votes to which he was entitled, with respect to securities held by him, such securities being classified as common stock, second preferred stock, first preferred stock, and other securities, stating in a footnote the names of such other securities (if any). If any such holder held in trust, give (in a footnote) the particulars of the trust. If the stock book was not closed or the list of stockholders compiled within each year, show such 30 security holders as of the close of the year.

[illegible]

AGD 531726

9. State the total number of votes cast at the latest general meeting for the election of directors of the respondent: 40,000 votes cast.
10. Give the date and place of such meeting: March 16, 1970 at Pebble Beach, California.

110. GUARANTIES AND SURETYSHIPS

7.

1. If the respondent was under obligation as guarantor or surety for the performance by any other corporation or other association of any agreement or obligation, show for each such contract of guaranty or suretyship in effect at the close of the year, or entered into and expired during the

year, the particulars called for hereunder.

This inquiry does not cover the case of ordinary commercial paper maturing on demand or not later than two years after date of issue.

(a) Line No.	(b) Names of all parties principally and primarily liable	(c) Description of agreement or obligation	(d) Amount of contingent liability	(e) Sole or joint contingent liability
1	None			
2				
3				
4				
5				
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2. If any corporation or other association was under obligation as guarantor or surety for the performance by the respondent of any agreement or obligation, show for each such contract of guaranty or suretyship in effect at the close of the year, or entered into and expired during the year, the particulars called for hereunder.

This inquiry does not cover the case of ordinary commercial paper maturing on demand or not later than two years after date of issue, nor does it include ordinary surety bonds or undertakings on appeals in court proceedings.

(a) Line No.	(b) Description of agreement or obligation	(c) Names of all guarantors and sureties	(d) Amount of contingent liability of guarantors	(e) Sole or joint contingent liability
29	Throughput Agreement dated December 1, 1967 which requires Guarantors to provide surety with sufficient amount of cash revenue bonds, when added to existing bonds, such amount will be sufficient to pay and discharge any and all obligations which may be incurred by the respondents in carrying out of the Throughput Agreement.	Atlantic Richfield Company Marathon Oil Company Union Oil Co. of California Shell Pipe Line Company	See conditions set forth under Section (A) hereof.	Joint
30				
31				
32				
33				
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AGO 531727

200A. COMPARATIVE BALANCE SHEET STATEMENT—ASSET SIDE

B.

For instructions covering this schedule, see the text and instructions pertaining to Balance Sheet Accounts in the Uniform System of Accounts for Pipe Lines. The entries in this balance sheet should be consistent with those in the supporting schedules on the pages indicated.
All contra entries hereunder should be indicated in parentheses.
On line 31, column (a) and short-column (b), include depreciation applicable to investment in system property.

Balance at beginning of year (a)			Item (b)	Balance at close of year (c)		
\$	xx	xx		\$	xx	xx
376	694				605	734
570	678			2	669	353
1	239	333		1	806	766
137	098				266	655
	032				5	265
174	795				180	931
25	146				91	642
113	897				114	371
2	633	243		5	740	717
xx	xx	xx		xx	xx	xx
xx	xx	xx		xx	xx	xx
						</

AGO 531728

206L. COMPARATIVE BALANCE SHEET STATEMENT—LIABILITY SIDE

9.

For instructions covering this schedule, see the text and instructions pertaining to Balance Sheet Accounts in the Uniform System of Accounts for Pipe Lines. The entries in this balance sheet should be consistent with those in the supporting schedules on the pages indicated. All contra entries hereunder should be indicated in parentheses.

Line No.	Balance at beginning of year (a)			Item (b)	Balance at close of year (c)		
	\$	11	11		\$	11	11
				CURRENT LIABILITIES			
1				(50) Notes payable (p. 219)			
2	102	911		(51) Payables to affiliated companies (p. 219)	55	710	
3	40	212		(52) Accounts payable (p. 219)	20	210	
4				(53) Salaries and wages payable			
5	267	534		(54) Interest payable	226	356	
6				(55) Dividends payable			
7		360		(56) Taxes payable		465	
8	11	000	000	(57) Long-term debt payable within one year (pp. 220, 221)	3	500	000
9	21	093		(58) Other current liabilities			
10	11	432	110	TOTAL CURRENT LIABILITIES	3	802	741
				NONCURRENT LIABILITIES			
11	25	000	000	(60) Long-term debt payable after one year (pp. 222, 223)	*32	500	000
12				(61) Unamortized premium on long-term debt			
13				(62) Other noncurrent liabilities			
14	25	000	000	TOTAL NONCURRENT LIABILITIES	32	500	000
15	30	432	110	TOTAL LIABILITIES	36	302	741
				STOCKHOLDERS' EQUITY			
16	4	000	000	(70) Capital stock (p. 226)	4	000	000
17				(71) Premiums on capital stock			
18				(72) Capital stock subscriptions			
19				(73) Additional paid-in capital (p. 228)			
20				(74) Appropriated retained income (p. 229)			
21	114	887		(75) Unappropriated retained income (p. 300)	2	225	820
22	4	114	887	TOTAL STOCKHOLDERS' EQUITY	6	225	820
23	40	546	997	TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	42	528	561

1. Estimated accumulated net Federal income tax reduction realized since December 31, 1949, under section 168 (formerly section 121-A) of the Internal Revenue Code because of accelerated amortization of emergency facilities in excess of recorded depreciation None

2. Estimated accumulated net Federal income tax reduction realized since December 31, 1953, because of accelerated depreciation of facilities in excess of recorded depreciation under provisions of section 167 of the Internal Revenue Code and depreciation deductions resulting from the use of guideline lives since December 31, 1961, pursuant to Revenue Procedure 67-21 in excess of recorded depreciation None

3. Estimated accumulated net income tax reduction realized since December 31, 1961, because of the investment tax credit authorized in the Revenue Act of 1962 compared with the income taxes that would otherwise have been payable without such investment tax credit None

4. Estimated amount of future earnings which can be realized before paying Federal income taxes because of unused and available net operating loss carryover on January 1, 1971 270,822

*Due within one year but is expected to be refinanced.

GENERAL INSTRUCTIONS CONCERNING RETURNS IN SCHEDULES 220 AND 221

11.

1. Schedules 220 and 221 should give particulars of stocks, bonds, notes, advances, and miscellaneous securities of affiliated and nonaffiliated companies held by respondent at close of year specifically as investments, investments made or disposed of during the year; and dividends and interest credited to income. They should exclude securities issued or assumed by respondent.

2. Two companies are affiliated, as the term is here used, when one directly or indirectly controls the other, or when they are subject to a common control.

3. By "control," as the term is here used, is meant the ability to determine the action of a company. Attention is specifically directed to section 1 (3) (b) of Part I of the Interstate Commerce Act which provides that, "For the purposes of sections 5, 12 (1), 20, 204 (a) (7), 210, 220, 301 (b), 310, and 313 of this Act, where reference is made to control (in referring to a relationship between any person or persons and another person or persons), such reference shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation, through or by common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or through or by any other direct or indirect means; and to include the power to exercise control.

4. For the purposes of this report, the following are to be considered forms of control:

- (a) Right through title to securities issued or assumed to exercise the major part of the voting power in the controlled company;
 - (b) Right through agreement or through sources other than title to securities to name the majority of the board of directors, managers, or trustees of the controlled company;
 - (c) Right to foreclose a priority lien upon all or a major part in value of the tangible property of the controlled company;
 - (d) Right to secure control in consequence of advances made for construction of the property of the controlled company.
- Indirect control is that exercised through an intermediary.

5. A leasehold interest in the property of a company is not for the purpose of these accounts to be classed as a form of control over the lessor company.

6. These investments should be subdivided to show the par value pledged, unpledged, and held in fund accounts. Under "pledged" include the par value of securities recorded in accounts Nos. 20, "Investments in affiliated companies," and 21, "Other investments," which are deposited with some pledgee or other trustee, or held subject to the lien of a chattel mortgage, or subject to any other restriction or condition which makes them unavailable for general corporate purposes. "Unpledged" should include all securities held by or for the respondent free from any lien or restriction recorded in the accounts mentioned above. Under "In sinking, insurance and other funds" include the par value of securities recorded in account No. 22, "Sinking and other funds."

7. List the investments in the following order and show a total for each group and each class of investments by accounts in numerical order:

- (A) Stocks:
 1. Pipe-line companies--active.
 2. Pipe-line companies--inactive.
 3. Non-pipe-line companies--active.
 4. Non-pipe-line companies--inactive.
- (B) Bonds (including U. S. Government Bonds).
- (C) Other secured obligations.
- (D) Unsecured notes.
- (E) Investment advances.

8. The subclassification of classes (B), (C), (D), and (E) should be the same as that provided for class (A).

9. By an active corporation is meant one which maintains an organization for operating property or administering its financial affairs. An inactive corporation is one which has been practically absorbed in a controlling corporation, and which neither operates property nor administers its financial affairs, if it maintains an organization it does so only for the purpose of complying with legal requirements and maintaining title to property or franchises.

12.

Give totals for each class and for each subclass, and a grand total for each account.

Entries in column (c) should show date of maturity of bonds and other evidences of indebtedness. In case obligations of the same designation mature serially, the date in column (c) may be reported as "Serially 19..... to 19....." In making entries in this column, abbreviations in common use in standard financial publications may be used where necessary on account of limited space.

Indicate by means of an arbitrary mark in column (c) the obligation a support of which any security is pledged, mortgaged, or otherwise numbered, giving names and other important particulars of such obligations in footnotes.

[illegible]

AGO 531732

13.

Particulars of investments made, disposed of, or written down during the year should be given in columns (j) to (n), inclusive. If the cost of any investment made during the year differs from the book value reported in column (k), explain the matter in a footnote. By "cost" is meant the consideration given minus accrued interest or dividends included therein. If the consideration given or received for such investments was other than cash, describe the transaction in a footnote.

This schedule should not include issued securities or assumed by respondent.

[illegible]

14.

5. Entries in column (c) should show date of maturity of bonds and other evidences of indebtedness. In case obligations of the same designation

AGO 531734

221. OTHER INVESTMENTS—Concluded

15.

mature serially, the date in column (c) may be reported as "Serially 19..... to 19.....". In making entries in this column, abbreviations in common use in standard financial publications may be used where necessary on account of limited space.

6. For non-par stock, show the number of shares in lieu of the par value in columns (d), (e), (f), (g), (i), and (k).

7. In reporting advances, columns (d), (e), (f), (g), (i), and (k) should be left blank. If any advances are pledged, give particulars in a footnote.

8. Particulars of investments made, disposed of, or written down during the year should be given in columns (i) to (m), inclusive. If the cost of any investment made during the year differs from the book value reported in column (j) explain the matter in a footnote. By "cost" is meant the consideration given minus accrued interest or dividends included therein. If the consideration given or received for such investments was other than cash, describe the transaction in a footnote.

INVESTMENTS AT CLOSE OF YEAR			INVESTMENTS MADE DURING YEAR						INVESTMENTS DISPOSED OF OR WRITTEN DOWN DURING YEAR						DIVIDENDS OR INTEREST			Lin No		
Total book value			Par value		Book value				Par value		Book value				Selling price		Rate		Amount credited to income	
(h)			(i)		(j)				(k)		(l)				(m)		(n)		(o)	
			\$		\$			\$		\$			\$		\$		%	\$		
																				1
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AGO 531735

AGO 531735

16.

223. COMPANIES CONTROLLED THROUGH NONREPORTING INTERMEDIARIES

AGD 531736

18.

Entries in column (g) should be the sums of corresponding entries in columns (d) and (e), less those shown in column (f), and the sum of entries in columns (h), (j), and (l) should equal those in column (g).

All conversions of cash into securities, or vice versa, shall be treated as withdrawals from the fund in column (f) and as additions to the fund in column (e).

[illegible][illegible]