MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 519, at the Statehouse at 3:30 a. m./p. m., on February 13, 1979.

All members were present except:

The next meeting of the Committee will be held at 3:30 a. m./p. m., on February 14, 1979.

These minutes of the meeting held on February 12, 1979 were considered, corrected and approved.

JOSEPH J. HOAGLAND
Chairman

The conferees appearing before the Committee were:

Rev. John Stitz, Catholic Rural Life
Henry Schulteis, General Counsel, Kansas Railroad Association
Pat Hubbell, Legislative Representative, Kansas Railroad Association
Jack McGlothlin, United Transportation Union
Brian Whitehead, Brotherhood of Airline and Railroad Clerks Union
Ivan Wyatt, Kansas Farmers Union
Joseph Goodman, an individual
Leo McElwain, Brotherhood of Maintenance of Way Employees
C. C. Walker, Brotherhood of Locomotive Engineers

Chairman Hoagland called the meeting to order at 3:30 p.m. The minutes of the February 12, meeting were approved by the committee.

Copies of the case involving the Mid-America Pipe Line Company vs. Missouri Pacific Railroad Company, were handed out to the committee by the Research Department staff member, along with a copy of Statute 17-618 on Eminent Domain. (SEE ATTACHMENTS # 1 and # 2). A letter from Walter Hale, Midwest Area Manager for ETSI, was also handed out to committee members. (SEE ATTACHMENT # 3).

Chairman Hoagland then introduced Rev. John Stitz, Catholic Rural Life representative who testified in opposition to HB 2193. (SEE ATTACHMENT # 4).

Henry Schulteis, General Counsel, Kansas Railroad Association testified next in opposition to HB 2193. Mr. Schulteis next introduced Pat Hubbell, Legislative Representative of the Kansas Railroad Association.

Mr. Hubbell gave lengthy testimony in opposition to the bill, including a slide showing to support his testimony. (SEE ATTACHMENT # 5 and # 6).

Brian Whitehead, Brotherhood of Airline and Railroad Clerks Union, testified before the committee next and reported on employment of Kansans by the railroad industry, number of Kansans receiving retirement benefits and the taxes paid to the state by the railroad industry. (SEE ATTACHMENT # 7).

Jack McGlothlin, United Transportation Union, then spoke in opposition to HB 2193, and stated some statistics involving water shortages in the future. Mr. McGlothlin also passed out copies of Section 6 (ENERGY TRANSPORTATION ALTERNATIVES)of "Northern Great Plains Coal Conflicts and Options in Decision Making" Book, a future choices project of the upper midwest council, April, 1976. (SEE ATTACHMENT # 9). A copy of the entire report is available in the Chairman's office. Atch. 8

Ivan W. Wyatt, with the Kansas Farmers Union, spoke in opposition and included in his written testimony is a copy of HCR 5021, and copies of photographs of a recent break in the Black Mesa Pipeline near Kingman, Arizona. (SEE ATTACHMENT # 10).

Chairman Hoagland then introduced Joseph Goodman, an individual who lives in Lawrence, Kansas and works for the student union. He testified in opposition to HB 2193, as a concerned private citizen. (SEE ATTACHMENT # 11).

Chairman Hoagland then asked if there were any others who wished to testify in opposition to HB 2193. Leo McElwain, Brotherhood of Maintenance of Way Employees and C. C. Walker, Brotherhood of Locomotive Engineers, each stood and indicated their opposition.

Chairman Hoagland asked for questions by the committee members and several questions were asked by most of the committee members.

Following questions and answers, Chairman Hoagland adjourned the committee hearing at 5:20 p.m.

ized them to limit production artificially in order to correct adverse market conditions. Such behavior, if manifested without government direction, would be contrary to federal antitrust legislation. Similarly, in Allstate Insurance Co. v. Lanier, D.C., 242 F.Supp. 73, 361 F.2d 870 (4 Cir. 1966), a case upon which defendant relies heavily as authority for its motion, the statute not only created the North Carolina Automobile Rate Administrative Office and provided for its regulation by the state insurance commissioner but also expressly authorized price-fixing, an activity proscribed under antitrust laws, in order to protect the people of North Carolina from excessive premiums. In E. W. Wiggins Airways, Inc. v. Massachusetts Port Authority, 362 F.2d 52 (1 Cir. 1966), the Massachusetts legislature not only created the Massachusetts Port Authority but also endowed it with certain sovereign powers (such as eminent domain) and enabled the Authority to operate the Boston airport as a monopoly. On the other hand, no case cited by the parties nor discoverable through extensive research reveals any authority ascribing "state action" immunity either to a private entity or to the transactions of a state agency which were not mandated or directed by legislative enactment. That regulation and supervision alone do not constitute a delegation of governmental authority is well established. United States v. Utah Pharmaceutical Association, D.C., 201 F.Supp. 29 (1962); California v. Federal Power Commission, 369 U.S. 482, 82 S.Ct. 901, 8 L.Ed.2d 54 (1962). Further, the Pennsylvania Non-profit Hospital Plan Act is completely silent in matters that have to do with restraint of trade. It is, therefore, deemed appropriate to apply the test suggested in Parker v. Brown, 317 U.S. 341, at p. 352, 63 S.Ct. 307, at p. 314, 87 L.Ed. 315, as follows:

"* * * It is the state which has created the machinery for establishing the prorate program. * * * The state itself exercises its *legislative authority* in making the regulation and in prescribing the conditions of its application. * * *" [Emphasis Added]

[3] Blue Cross fails to meet the apparent standards inherent in a "state action" exclusion from the scope of the Sherman Act in two respects. It is the creature of individuals—not the state—and it has not been extended valid governmental authority to engage in monopolistic practices.

Although Travelers has indicated a factual dispute concerning Blue Cross' assertion that the insurance commissioner directed or approved all the activities about which Travelers complains, this issue is deemed immaterial, and the Motion for Summary Judgment will be denied on the basis of those facts that are not in dispute.

An appropriate order will be entered.

MID-AMERICA PIPE LINE COMPANY, a corporation, Plaintiff,

v.

MISSOURI PACIFIC RAILROAD COMPANY, a corporation, Defendant.

Civ. A. No. W-3969.

United States District Court
D. Kansas.
Feb. 8, 1969.

Action brought by condemnor-pipeline company to enjoin railroad from interfering with construction of anhydrous ammonia pipeline and with operation of petroleum products pipeline. The District Court, Wesley E. Brown, J., held, inter alia, that with regard to eminent domain statute providing that "Lands may be appropriated for the use of * * * pipeline companies, and for the piping of gas * * *, and any * * * pipe-line company * * * de-

Atch. 1

siring the right to * * * conduct gas in pipes * * * may attain such right or the right of way for all necessary * * * pipes * * *", the conduct of anhydrous ammonia by pipeline came within meaning of term "conduct gas in pipes", and, accordingly, pipeline company had under the statute the power of eminent domain in securing rights-of-way for all necessary pipes.

Judgment for plaintiff.

1. **Courts** ⇐328(3)

In an injunctive action, amount in controversy is value of right to be protected.

2. **Courts** ⇐328(3)

Amount in controversy exceeded $10,000 exclusive of costs and interests and federal district court thus had jurisdiction, where pipeline company, which brought suit seeking to enjoin railroad from interfering with construction of anhydrous ammonia pipeline and with operation of petroleum products pipeline, could not complete its estimated $13,300,000 anhydrous ammonia pipeline unless it could protect its crossing rights at seven points where the line intersected easements of railroad in Kansas. 28 U.S.C.A. § 1332.

3. **Eminent Domain** ⇐64

Motive of railroad had no bearing whatsoever upon its standing to question power of condemnation by pipeline company. K.S.A. 17–618.

4. **Courts** ⇐359

In diversity action commenced in Kansas federal district court, the law of Kansas was controlling on substantive aspects of case.

5. **Eminent Domain** ⇐85

Railroad's ownership of right-of-way easements gave the railroad a land interest which would be compensable in condemnation proceedings. K.S.A. 17–618.

6. **Eminent Domain** ⇐166

Eminent domain proceedings in Kansas are in the nature of an inquest proceeding, and they are not classified as judicial actions. K.S.A. 17–618.

7. **Eminent Domain** ⇐274(1)

Under Kansas law, if owner of interest in land wishes to contend that condemnor is exceeding its powers, or that the condemnation is for an improper purpose, such as a private use, it must do so by bringing a separate injunctive action in a court of competent jurisdiction. K.S.A. 17–618.

8. **Eminent Domain** ⇐274(1), 286

Right of condemnation may be tested by injunctive action brought in federal district court.

9. **Eminent Domain** ⇐64

Railroad, in action brought by condemnor-pipeline company to enjoin the railroad from interfering with company's construction of an anhydrous ammonia pipeline and its operation of a petroleum products pipeline, had standing to raise as a defense the alleged impropriety of pipeline company's exercise of power of eminent domain. K.S.A. 17–618.

10. **Eminent Domain** ⇐4

Power to appropriate private property for public use is possessed by the sovereign. K.S.A. 17–618.

11. **Eminent Domain** ⇐7

Under law of Kansas, power of eminent domain can be exercised only by virtue of legislation, and in the absence of an express legislative grant, such power lies dormant in the state. K.S.A. 17–618.

12. **Eminent Domain** ⇐13, 56, 122

For valid exercise of power of eminent domain, three things are required: (1) provision must be made for payment of just compensation; (2) the property must be devoted to a public use; and (3) there must be a public need for such use. K.S.A. 17–618.

13. **Eminent Domain** ⇐8

Statutes granting power of eminent domain should normally not be enlarged by implication. K.S.A. 17–618.

14. **Eminent Domain** ⇐8

Under Kansas law, limitations will not be read into condemnation statute

simply because new trends, methods or uses have developed which were not within original contemplation of legislature. K.S.A. 17–618.

15. Eminent Domain ⇐34

With regard to eminent domain statute providing that "Lands may be appropriated for the use of * * * pipeline companies, and for the piping of gas * * *, and any * * * pipe-line company * * * desiring the right to * * * conduct gas in pipes * * * may attain such right or the right of way for all necessary * * * pipes * * *," the conduction of anhydrous ammonia by pipeline came within meaning of term "conduct gas in pipes", and, accordingly, pipeline company had under the statute the power of eminent domain in securing rights-of-way for all necessary pipes. K.S.A. 17–618.

See publication Words and Phrases for other judicial constructions and definitions.

16. Eminent Domain ⇐196

Evidence, including fact that anhydrous ammonia is of considerable importance to agriculture in the states of Kansas, Nebraska and Iowa, established that there was a public need for proposed construction of anhydrous ammonia pipeline. K.S.A. 17–618.

17. Eminent Domain ⇐196

Evidence established that use sought to be secured by pipeline company for proposed anhydrous ammonia pipeline would be a "public use", and that the company would operate as a common carrier of anhydrous ammonia. K.S.A. 17–618.

See publication Words and Phrases for other judicial constructions and definitions.

Hershberger, Patterson, Jones & Thompson, Wichita, Kan., Eugene G. Bell and John Chronister, Tulsa, Okl., for plaintiff.

Lilleston, Spradling, Gott, Stallwitz & Hope, Wichita, Kan., Gleysteen, Nelson, Harper, Kunze & Eidsmoe, Sioux City, Iowa, for defendant.

MEMORANDUM

FINDINGS OF FACT AND CONCLUSIONS OF LAW

WESLEY E. BROWN, District Judge.

This is an injunction action arising out of Mid-America Pipeline Company's construction of an anhydrous ammonia pipeline across defendant's railroad right of way at seven locations in the State of Kansas. It is before the Court for entry of findings of fact and conclusions of law following trial to the Court and oral argument. The temporary injunction entered in March 1968 remains in effect but by agreement of the parties the bond has been discharged.

[1, 2] Fundamentally this case involves the interpretation of K.S.A. 17–618, an eminent domain statute, as it applies to Mid-America, plaintiff at bar. Mid-America is a corporation organized under the laws of the State of Delaware with its principal place of business in Tulsa, Oklahoma. Defendant Railroad is a corporation organized under the laws of Missouri and having its principal place of business in St. Louis, Missouri. In an injunctive action, as the one at bar, the amount in controversy is the value of the right to be protected. Pyramid Life Ins. Co. v. Masonic Hosp. Ass'n of Payne Co., 191 F.Supp. 51 (W.D.Okl.1961). Mid-America cannot complete its estimated $13,300,000.00 anhydrous ammonia pipeline unless it can protect its crossing rights at the seven points where the line intersects the railroad's easements in Kansas. The Court thus finds that the amount in controversy exceeds $10,000.00 exclusive of costs and interest and the Court concludes that it has jurisdiction pursuant to § 1332.

FINDINGS OF FACT

1. Mid-America was organized in 1958 as a publicly owned common-carrier and commenced operations in the interstate transportation of natural gas liq-

uids through its petroleum products pipeline in 1960. The Railroad presently holds easements for railroad purposes throughout the State of Kansas. Pursuant to revocable license agreements executed in 1960, Mid-America's petroleum products pipeline crosses Railroad easements at several locations in Kansas.[1] Mid-America has begun construction of a second pipeline, running parallel to the petroleum products line, which will be used to transport liquid anhydrous ammonia.[2] In October 1967 the Railroad through one of its general managers, executed seven revocable license agreements granting Mid-America the right to cross defendant's easements with the anhydrous ammonia pipeline.[3] Then, by letter dated February 23, 1968, the Railroad gave Mid-America a 30-day notification that the aforesaid licenses were to be cancelled.[4] The Railroad is not faulted because it admits that competition played a role in the cancellation.[5] Following receipt of the cancellation letter, Mid-America instituted proceedings in the state district courts of Pratt, Reno, Saline and Washington Counties, Kansas for the purpose of condemning a 60-foot right of way across Railroad's easements at the seven locations noted in the cancelled license agreements.[6] On March 15, 1968 Mid-America filed this action seeking a restraining order and praying for a permanent injunction which would enjoin the Railroad from interference with (a) construction of the anhydrous ammonia pipeline and (b) operation of the petroleum products pipeline. The restraining order, currently in effect, was issued at that time.

2. We are not concerned with the question of damages, or with the right of Mid-America to condemn in connection with its petroleum products pipeline. The parties have stipulated as to damages. Mid-America's pipe line for petroleum products is in operation, and has been for some time. The sole issue for this court's determination concerns the right of Mid-America to condemn for purposes of the second pipeline, designed to carry anhydrous ammonia. Railroad concedes that the pipeline crossings which have already been constructed for the anhydrous ammonia line are in accordance with its requirements and specifications. [Tr. 7].

3. In its early stage Mid-America's petroleum products line was connected to twenty-eight gasoline plants and one refinery along with seven distribution terminals. Today the pipeline is joined with fifty-six gasoline plants, five refineries and has fourteen distribution terminals. The types of petroleum products transported by the line have increased from one to seven, while the number of shippers serviced has grown from twelve to ninety.[7] Among petroleum products transported by Mid-America as common carrier are propane, butane, raffinate and natural gasoline. The operations of the 2700 miles of petroleum products pipeline are confined to common carrier services in and through some ten states. Services on the line are governed by tariffs filed by Mid-America with the Interstate Commerce Commission (ICC). While Mid-America has no contracts similar to a "throughput agreement" with its propane shippers, it does have what are tantamount to "pipeage contracts" with shippers of specialty products on the petroleum products line.[8]

1. Complaint ¶¶ 1, 2; Answer 2nd Defense ¶¶ 1, 2; Trans. Pp. 52, 59–60.

2. Ex. 1; Trans. Pp. 61–73, 116.

3. Complaint ¶ 5 and Ex. 8 attached thereto; Answer 2nd Defense ¶ 5; Trans. Pp. 6–7, 25–26, 74–75.

4. Complaint ¶ 5 and Ex. 9 attached thereto; Answer 2nd Defense ¶ 5; Trans. Pp. 25–26, 78.

5. Trans. Pp. 236–237.

6. Complaint ¶ 6; Answer 2nd Defense ¶ 6; Trans. Pp. 6–9.

7. Complaint ¶ 2 and Ex. 1 attached thereto; Answer 2nd Defense ¶ 2; Ex. A; Trans. Pp. 41, 54, 59–62.

8. Complaint ¶ 2; Answer 2nd Defense ¶ 2; Trans. Pp. 26, 191, Ex. 5; Trans. Pp. 193–194.

4. Mid-America first considered utilizing the petroleum products pipeline for the transportation of anhydrous ammonia, but discarded the notion as not being economically feasible when it was discovered that the propane and anhydrous ammonia seasons overlapped.[9] Before undertaking construction of the second line, Mid-America made offers to three corporations to construct an anhydrous ammonia line.[10] On July 14, 1967 Mid-America entered into a twenty year "throughput agreement" with Hill Chemical Company (Hill). This was Mid-America's first firm commitment and the agreement, as amended, provides that Mid-America will ship anhydrous ammonia from Hill's plant at Borger, Texas to distribution terminals at Conway, Kansas, Beatrice and Greenway, Nebraska, and Whiting, Early, Gardner, Sandborn and Ogden, Iowa. Under an addendum, Hill may direct Mid-America to delete either the leg leading to Sandborn, Iowa or the leg going to Ogden, Iowa or both.[11]

5. Volumetrically, the agreement provides that Mid-America will transport a minimum of 1,200 tons per day from Hill's single plant at Borger, Texas or 2,000 tons per day if Hill should decide to construct a second plant. Mid-America may be required to shift around up to 8,000 tons per day among various storage facilities and terminals in Iowa.[12] The present capacity of the anhydrous ammonia line is 1,300 tons per day and it may be increased to 3,000 tons per day by the addition of five booster stations. The practical economic capacity of the line is 5,000 tons per day, although this capacity could be further increased by additional booster stations if the economics of the situation are ignored. Mid-America contemplates the addition of booster stations as traffic develops.[13]

6. Under the 1200 tons per day minimum contract with Hill, Mid-America's anhydrous ammonia pipeline is a "very marginal project financially." The line must have other business to be successful, and Mid-America has always planned to get additional business. Mid-America is and has been actively soliciting additional business for its new line from members of the public both producing, and using anhydrous ammonia.[14]

7. In late August or early September 1967 Mid-America contracted for the necessary tonnage of pipe for the construction of the anhydrous ammonia line. Mid-America submitted the design of the new line to the Federal Transportation Department and in January 1968 received a letter from that department to the effect that the design comported with the requisite safety standards.[15] The anhydrous ammonia line has now been installed at the seven crossing points in Kansas and some 225 miles of pipe have been laid in this state. Of the estimated $13,300,000.00 total cost of the line, some $5,500,000.00 has already been expended. In addition, each booster station on the line will cost about $150,000.00 to construct.[16]

8. Anhydrous ammonia, simply defined, is water-free ammonia. As such, it is composed of one part nitrogen, three parts hydrogen. In content, the nitrogen component represents 83–84% of the total weight. In America plants, most of the hydrogen content of ammonia is derived from natural gas, and it is classed as a petroleum product when so derived. The source of the nitrogen component is principally derived from the air, although some nitrogen may come from the gas stream itself. The raw materials used in producing anhydrous ammonia are natural gas, steam and air. The usual manner of production is by mixing the

9. Trans. Pp. 63–64, 102–103.

10. Trans. P. 67.

11. Ex. B; Trans. Pp. 69, 104, 110–111, 158.

12. Ex. B, Trans. P. 158.

13. Ex. 6; Trans. Pp. 70, 157, 200–205.

14. Tr. 70, 73, 118–119, 122–125.

15. Trans. Pp. 73–74, 127–129, 149–150.

16. Trans. Pp. 85, 201.

natural gas with steam at high temperatures; hydrogen is extracted from the hydrocarbons, and this hydrogen is then combined with nitrogen from the air, again at an elevated temperature, and then passed over a different catalyst to produce the ammonia. The principal component of the natural gas from which the hydrogen is taken in this process is the methane in the natural gas stream. After the hydrogen and nitrogen have been combined, as above described, ammonia is produced. Ammonia is a non-flammable gas that is standard at ordinary temperatures and pressures. Ammonia gas may be liquefied by applying either pressure, or by cooling it. Because of ease in transportation, ammonia is usually transported in liquid form.[17]

The molecules of anhydrous ammonia resemble those of methane, its principal constituent, in that they contain the same number of electrons. Anhydrous ammonia differs from methane only in that the carbon nucleus (charge +6) and one of the four hydrogen nuclei (charge +1) have been replaced by a nitrogen nucleus (charge +7). As a consequence of this less symmetrical distribution of charge, the ammonia molecule has an electric dipole moment which gives rise to strong attraction among the molecules, causing them in liquefy under a pressure of 8.8 atmospheres at 70° F. All gases may be converted to a liquid state. Most gases may be liquefied by pressure alone at ordinary temperatures. Propane may be so liquefied under pressure of 8.5 atmospheres, and butane under pressure of 2.2 atmospheres, at temperatures of 70° F.[18] Propane, butane, raffinate natural gasoline, and ethane-propane feedstock, all products which are being shipped by Mid-America through its present pipeline, are classified as hydrocarbons, and are used as a fuel or to produce fuels. Anhydrous ammonia is not classified as a hydrocarbon, and it is not used as a fuel.[19]

9. Anhydrous ammonia is principally used as an agricultural fertilizer, the nitrogen component being most useful in increasing crop production, with the hydrogen component making the substance soluable in water so that the nitrogen can be effectively assimilated by the plant life. While this product is often mixed with other fertilizers, it is widely used in direct applications to the soil. In less than the past decade, this direct application usage has enjoyed an annual increase of from 16% to 25% since 1960, or about 600% overall during that period. In the State of Kansas, the use of anhydrous ammonia increased from 16,000 tons in 1960 to 150,000 tons in 1967.[20] Overall production of the product in the states of Kansas, Nebraska and Iowa has perhaps exceeded agricultural consumption within those states, but it can not be determined from this record what portions of that production may have been absorbed by industry, export, or other non-agricultural uses. An important factor in meeting the demand for anhydrous ammonia is the ability to transport it to the farmer at the time of his greatest need, when weather, soil and other conditions are right for application. In this respect, distribution of liquid products through a pipe line, directly to the consuming area has proved more economical and efficient than some other forms of transportation, for even though there may be sufficient product in the area, extreme difficulty may be experienced in obtaining shipments into the area of need by ordinary forms of transportation.[21]

10. The principal sources of increase in the consumption of anhydrous ammonia in Kansas are in its use as an agricultural fertilizer, and also to more intensive farming efforts to increase land productivity due to government allotments that limit the amount of land to be farmed. [Tr. 66]. Kansas, being one of the prime states in the feed grain pro-

17. Testimony of Buess, Trans. Pp. 35 et seq.

18. Affidavit of Harris, Ex. 6, Complaint.

19. Trans. p. 49.

20. Trans. p. 65.

21. Trans. Pp. 217–232.

duction of the United States would figure dramatically in any future developments of increased agricultural production, because of its temperature and soil condition. Anhydrous ammonia would be a large contributing factor to the increased production of grain in Kansas. [Tr. 216–218].

11. Mid-America has several subsidiary corporations which are engaged in other businesses. Among them is Thermo-gas which sells anhydrous ammonia in addition to other products at four locations in Iowa.[22] There is also a new acquisition named Indian Point Farm Supply which markets liquid fertilizer under the brand name of "Hopcaid" through a number of franchised outlets in Illinois, Indiana, Wisconsin, Missouri, Ohio and Iowa.[23] Mid-America, however, will not own any of the anhydrous ammonia transported through its pipeline, and it will not possess any interest in the terminals on the line.[24]

12. It has been stipulated that Mid-America is a common carrier in interstate transportation, and subject to regulation and control by the Interstate Commerce Commission in connection with its present operation of its first pipeline, referred to as the "products line." [Trans. Pp. 190–192]. Tariffs which have been filed with the Commission for operation of the products line, contain provision for pipeage contracts in those cases in which the shipper is outside of the regular pipe line system. Through these pipeage contracts, provision is made for extension of the line according to the needs of the shipper, in return for guarantees of shipments or other arrangements which would justify the extension. [Trans. Pp. 195–196].

13. Mid-America's evidence establishes that it is its intention to operate the anhydrous ammonia pipeline as a common carrier, similar in manner to that of the products pipeline now in use. In addition to the testimony of Mr. Roach in this respect, the Court finds that the contract with Hill Chemicals, Inc., Exhibit B, indicates that Mid-America entered into this agreement, as a common carrier, and assumed obligations, as a common carrier, for transportation of anhydrous ammonia. Specifically, provision is made that Mid-America shall maintain and operate the line as a common carrier (Clause 1); that Hill's ammonia may be commingled with that of other shippers (Clause 4); that minimum gross revenue, as guaranteed by Hill, will be credited with revenue derived from other shippers (Clause 8); that the line will be operated by Mid-America as a common carrier and "for the benefit of the shipping public"; that published tariffs will be filed and Hill's costs will not exceed these tariffs (Clause 11).

14. On May 29, 1968, Mid-America filed with the ICC its "Local Pipe Line Tariff, Number 2, ICC #3, applying to anhydrous ammonia shipped by pipeline from Borger, Texas to Iowa, Kansas, and Nebraska destinations, and from Beatrice, Nebraska to Iowa, and Nebraska destinations. Included in this tariff is provision for pipeage contracts which may be required by Mid-America before transportation of products not delivered by the shipper to the point of origin. [Ex. 1, Proposed Findings].

CONCLUSIONS OF LAW

The controversy between the parties centers upon three principal issues:

1. Does the Railroad have standing in this action to object to Mid-America's exercise of the power of eminent domain?

2. Does Mid-America have the power of eminent domain under the provisions of K.S.A. 17–618 for the purpose of gaining easements by condemnation for its anhydrous ammonia pipeline?

3. Does the use sought to be secured by Mid-America for its anhydrous

22. Trans. Pp. 54, 93–94.

23. Trans. Pp. 55–57, 95–100, Ex. A.

24. Trans. Pp. 71–72, 173.

ammonia pipeline, as disclosed by the evidence in this case, constitute a "public use?"

Upon the basis of the foregoing findings of fact, the Court makes the following conclusions of law.

A. *The Railroad's Standing*

[3] Throughout this case, Mid-America has questioned the motives of Railroad in its attempts to resist the pipeline's plans to carry anhydrous ammonia by underground system through Texas, Oklahoma, Kansas, Nebraska, and Iowa. It seems clear from the record that Railroad's primary concern is to prevent Mid-America from becoming an active competitor for transportation revenues which are derived from the shipment of anhydrous ammonia. While the question of loss of revenue to the railroad has no bearing upon the question of whether or not Mid-America possesses the power to condemn, the Court concludes that the motive of Railroad has no bearing whatsoever upon its standing to question that power of condemnation.

[4–7] In this diversity action, the law of Kansas controls the substantive aspects of the case. Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). The Railroad's ownership of right of way easements gives it an interest in land long recognized as compensable in condemnation proceedings. C. K. & W. Rld. Co. v. Comm'rs of Chautauqua Co., 49 Kan. 763, 31 P. 736 (1892). Eminent domain proceedings in Kansas are in the nature of an inquest proceeding, and they are not classified as judicial actions. Urban Renewal Agency of Kansas City v. Decker, 197 Kan. 157, 415 P.2d 373 (1966). Thus, under Kansas law, if the owner of an interest in land wishes to contend that the condemnor is exceeding its powers, or that the condemnation is for an improper purpose, such as a private use, it must do so by bringing a separate injunctive action in a court of competent jurisdiction. State v. Boicourt Hunting Ass'n., 177 Kan. 637, 282 P.2d 395 (1955).

[8] The right of condemnation may be tested by injunctive action brought in the federal district court. In Cline v. Kansas Gas & Electric Company, 182 Kan. 155, 318 P.2d 1000 (1957), the state court approved the *Boicourt* ruling, but reversed a jury award for condemnation damages and remanded the case for a new trial. While the second trial was pending, Cline filed suit in federal court to contest the exercise of eminent domain, and this issue was fully determined in accordance with Kansas law. Cline v. Kansas Gas and Electric Company, (10th Cir. 1958) 260 F.2d 271.

[9] In the present action, the condemnor has filed the injunction suit, and the owner of the interest in the land—the Railroad—has put in issue the right of Mid-America to exercise eminent domain powers in establishing crossing rights for its anhydrous ammonia pipeline. Since the Railroad could have raised the issue had it filed the suit, it may raise it in defense of the action brought by Mid-America.

B. *The Power of Eminent Domain Under K.S.A. 17–618.*

[10–13] The power to appropriate private property for public use is possessed by the sovereign. Under the law of Kansas, the power of eminent domain can be exercised only by virtue of legislation, and in the absence of an express legislative grant, such power lies dormant in the state. For a valid exercise of the power, three things are required: 1. provision must be made for payment of just compensation; 2. the property is to be devoted to a public use; and 3. there be a public need for such use. Under normal conditions, statutes granting the power of eminent domain should not be enlarged by implication. Cline v. Kansas Gas and Electric Company, *supra*, 260 F.2d 271, 273; Strain v. Cities Service Gas Co., 148 Kan. 393, 83 P.2d 124; Sutton v. Frazier, 183 Kan. 33, 325 P.2d 338; Isley v. Bogart (10th Cir. 1964) 338 F.2d 33.

Mid-America bases its power of condemnation upon the provisions of K.S.A. 17–618, which provides:

"Lands may be appropriated for the use of macadam-road, plank-road, hospital corporation or association, telegraph and telephone corporations, electric, hydraulic, irrigating, milling and manufacturing corporations using power, oil companies, pipe-line companies, and for the piping of gas in the same manner as is provided in sections 1 to 16 [26–501 to 26–516], inclusive of this act, and any macadam-road, plank-road, telegraph and telephone corporations, hydraulic, irrigating, oil company, pipe-line company, gas company partnership holding a certificate of convenience as a public utility issued by the state corporation commission, milling or manufacturing corporation using power desiring the right to dam or take water from any stream, to conduct water in canals or raceways or pipes, or to conduct compressed air in pipes, or to conduct oil in pipes or conduct gas in pipes, or transmit power or communications by shafting, belting, or belting and pulleys, or ropes and pulleys, or by electrical current, or by compressed air, may obtain such right or the right of way for all necessary canals, raceways, pipes, shafting, belting and pulleys, ropes and pulleys or wires or cables in manner as aforesaid * *."

Compressed into pertinent terms, the statute reads:

"Lands may be appropriated for the use of * * * pipe-line companies, and for the piping of gas in the same manner as is provided in sections 1 to 16 [26–501 to 26–516], inclusive of this act, and any * * * pipe-line company * * * desiring the right to * * * conduct gas in pipes * * * may obtain such right or the right of way for all necessary * * * pipes * * * in manner as aforesaid.[25]"

The Railroad contends that anhydrous ammonia is not a "gas" within the meaning of Section 17–618, in that the term must be construed to be limited to gas used for light, fuel and power.

The Kansas courts have never defined the words "gas" as used in 17–618. They have determined that companies organized for "the purpose of piping and distributing gas for light, fuel, and power are given authority to exercise the right of eminent domain." We do not construe this to be a definition of "gas" but merely a description of the corporation entitled to exercise the right of eminent domain.[26] They have also held that the "production and distribution of natural gas for light, fuel and power affect the people generally to such an extent that the business may be regarded as one of a public nature, * * * the control of which belongs to the state."[27] Again, this is a definition of the public nature of the business. We do not read these cases as definitions of or a limitation to the word "gas."

In 1917 the legislature amended the act which was interpreted in the *Natural-Gas* and *LaHarpe* cases by adding authority for "oil companies" and "pipe-line companies" to exercise the power of eminent domain for the purpose of conducting "oil in pipes" or "gas in pipes." The previous act had permitted the "conduct of gas in pipes" but had not included the conduct of oil in pipes.

In Ritchie v. Atchison T. & S.F. Rly. Co., 128 Kan. 637, 279 P. 15 (1929), the Kansas Court had before it the question of the power of the Railway Company to relocate its right of way across new portions of land. In holding that the power of eminent domain was not ex-

25. Sections 26–501—26–516 referred to above are procedural statutes and contain no grant of power.

26. The State v. Kansas Natural-Gas, etc., Company, 71 Kan. 508, 509, 80 P. 962, 963 (1905).

27. LaHarpe v. Elm Township Gas, etc., Company, 69 Kan. 97, 100, 76 P. 448, 449 (1904).

hausted by the original condemnation, the court made some observations which lend some light on our problem here.[28]

In noting the observation by O. W. Holmes, Jr. that "The life of the law has not been logic; it has been experience," the Court quoted with approval this language from C.B.U.P. Rld. Co. v. A.T. & S.F. Rld. Co. (1881) 26 Kan. 669, 677:

> "'All legislation must be construed in the light of existing facts, and while a grant like this is doubtless to be strictly construed, yet such rule of construction does not forbid giving just and reasonable force to all the separate provisions of the statute, nor prevent its being interpreted by the actual experiences and necessities of life. * * * Reading the grant in that way, it would seem that the power is given to condemn land for terminal facilities whenever deemed necessary, and that one exercise of the power did not exhaust it.'" [128 Kan. at 644, 279 P. at 18].

The *LaHarpe* and *Ritchie* cases were referred to by the Kansas Court in Strain v. Cities Service Gas Co., 148 Kan. 393, 83 P.2d 124 (1938). There the Court held that the condemnation of land for an underground storage reservoir for gas was not authorized by Section 17–618. In so holding, the Court reasoned at Pp. 396–397, 148 Kan., at p. 127, 83 P.2d:

> "Normally, at least, statutes granting the right of eminent domain should never be enlarged by implication. Appellant contends, and its reasoning leads to that end, that the statutes should be interpreted as giving it the right to condemn any property necessary, or which it deems necessary, in the conduct of its business. Obviously this contention is too broad. It would authorize appellant to condemn any land in which its officials thought gas might be found, if more gas than it had available was thought necessary to supply its demands. This would disrupt the whole theory of gas ownership, production and distribution which now prevails. Certainly our legislature never contemplated granting gas companies such authority.
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> "The use of the earth as a storage place for gas is an idea so novel, we cannot believe the legislature had such matter in contemplation when the power of eminent domain was given to pipe line companies. If the rights contended for by appellant are to be given to gas pipe line companies, it is a matter for the consideration of the legislature. To stretch the statute to cover the case here presented would be little short of judicial legislation."

[14] The rule of strict construction of eminent domain statutes where the state confers its powers on others is of course proper. However, the Kansas decisions disclose that limitations will not be read into the condemnation statute simply because new trends, methods or uses have developed which were not within the original contemplation of the legislature. Indeed, the Kansas court recognized this factor at an early date, when it remarked in the *Natural Gas* case, *supra*, 71 Kan. at pp. 509–510, 80 P.2d at p. 963:

> "Public highways are arteries of communication and of intertraffic in the commodities of the country. The means to accomplish these purposes change with the advance of civilization. * * *
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> * * * * * *
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> "The contention of the state is that the use which the gas company is making of the highway is exceptional, and may be exercised only under a franchise from the state, mediately or immediately. We think this is an overstatement of the proposition. The use is not exceptional. The transportation of commodities on the highway is one of the uses for which it has always been maintained. The means, how-

28. The history of eminent domain as stated by Justice Burch in the case is recommended reading.

ever, used by the gas company in the transportation of its gas are exceptional; [burying gas lines in the public highway]. *a demand for this method has not heretofore existed in this state.* But shall this fact alone deprive the defendant of the use of the highway for a usual and proper purpose, unless such use necessarily obstruct, seriously inconvenience, or endanger public travel?" [Emphasis supplied.]

The term "gas" as used in the condemnation statute is not defined or limited to any particular type of gas, natural, hydrocarbon, or otherwise. By the terms of the statute, it seems clear that a pipeline company could transport oil, water, compressed air, or gas, or any combination of those items. In Northern Natural Gas Company v. Grounds (1968) 292 F.Supp. 619, this Court ruled that the term "gas" as used in gas leases, without other qualification, would not be construed as being limited to gaseous hydrocarbons. In so ruling, the Court discussed the meaning of the word "gas" in its ordinary sense:

"The word, 'gas', has two different meanings with which we are concerned. As a general term used in a physicist's sense to describe a state of matter, it is defined typically as an 'aeriform fluid having neither independent shape nor volume but tending to expand indefinitely.' It is also used to describe natural gas, which is defined typically in mining and petroleum industry glossaries as 'a mixture of gaseous hydrocarbons found in nature. * * *' Nothing in the history of the word 'gas' itself supports the argument that it defines only gaseous hydrocarbons. The word 'gas' was coined in the early 17th Century by a Dutch chemist, J. B. Von Helmont, from the Greek word 'chaos' to signify a 'spirit not capable of being coagulated.' It later came to mean an 'aeriform fluid' used synonymously with air, and was subsequently restricted to permanently aeriform fluids such as oxygen and hydrogen, as opposed to vapors, such as steam. In the 19th Century, it became common parlance for a mixture of carbureted hydrogen used to give heat and light, i. e., artificial gas. Gas as used to define natural gas, did not appear as a dictionary entry until 1914, after which time natural gas was commonly described as combustible gas formed in and issuing from the earth's crust. The term, 'natural', became affixed to gas to differentiate its superior fuel and illuminating qualities from artificial gas." 292 F. Supp. at 661. [Footnotes omitted].

All of the evidence before this Court indicates that anhydrous ammonia is a "gas" in the ordinary and general sense of the word. We can not impute to the legislature an intent to limit the transportation of a commodity by pipeline to certain component parts of that commodity. This would be like saying a railroad may transport wheat, but not flour, because it was authorized to haul grain.

[15] The Court concludes that the conduction of anhydrous ammonia by pipeline is within the meaning of the term "to conduct gas in pipes" and that Mid-America therefore has the power of eminent domain in securing rights of way for all necessary pipes under the provisions of K.S.A. 17-618.

[16] The Court also concludes that the requirement that there be a public need for the proposed use is satisfied. All of the evidence establishes that anhydrous ammonia is of considerable importance to agriculture in the states of Kansas, Nebraska, and Iowa. Its use has enjoyed a tremendous growth over the past few years, and increased production and distribution has enabled the price to decline between 20% and 25% in the past year. The importance of transporting anhydrous ammonia in sufficient quantities to geographical areas where and when it is needed would appear to be a significant factor in its beneficial and economic use. By placement of strategic terminal locations, Mid-America should

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be able to expedite delivery to a particular area when weather, demand and planting conditions are right for proper application of anhydrous ammonia.

[17] The Court further concludes that the proposed use will be a "public use," and that Mid-America will operate as a common carrier of anhydrous ammonia. While Mid-America will begin operation of the anhydrous ammonia line with one shipper, it is committed to Hill for only ⅖ of the practical economic volume of the pipeline. It will own neither the products transported nor the terminals on the line. Like the early stages of Mid-America's petroleum products pipeline, the anhydrous ammonia line has room to grow in the number of shippers serviced. In furtherance of this goal, Mid-America has filed tariffs with the ICC, thereby holding itself ready to transport anhydrous ammonia for all shippers under the terms of that instrument. See State ex rel. Fatzer v. Sinclair Pipe Line Co., (1956) 180 Kan. 425, 439, 304 P.2d 930.

On similar evidence to that presented to this Court, Mid-America was recently successful in securing condemnation rights for its anhydrous ammonia pipeline in hearings before the Iowa State Commerce Commission. In the Matter of the Petition of Mapco, Inc. etc. Decision and Order August 21, 1968, Dockets P–657, P–660. (Appeal pending). In that proceeding the Commission held that the proposed use would satisfy a public need, and that the proposed use would be a "public use," available without discrimination to all shippers of anhydrous ammonia.

The Court concludes that the transportation of anhydrous ammonia by Mid-America, as a common carrier, constitutes a public use for which the power of eminent domain has been granted under the provisions of K.S.A. 17–618.

The temporary injunction heretofore granted will be made permanent. Prevailing counsel will prepare, circulate and submit a form of judgment consistent with the views expressed herein.

John Henry REDMON

v.

C. C. PEYTON, Superintendent of the Virginia State Penitentiary.

Civ. A. No. 5047.

United States District Court
E. D. Virginia,
Richmond Division.
April 30, 1969.

Habeas corpus proceeding. The District Court, Merhige, J., held that where circuit court for county in state of Virginia knew that petitioner was juvenile before he was ever brought before it but did not transfer case to juvenile court for hearing to determine if petitioner should be certified to the circuit court to be tried as an adult, the circuit court lacked jurisdiction to try petitioner and his conviction was null and void.

Order accordingly.

1. Habeas Corpus ⇐45.3(1)

Requirement that state remedies for relief from deprivation of federal constitutional rights be exhausted before relief is sought in federal courts is a rule of comity not of law.

2. Habeas Corpus ⇐85.5(11)

Evidence failed to sustain petitioner's claim of ineffective representation of counsel.

3. Criminal Law ⇐641.13(7)

Where at conclusion of trial accused communicated his desire for his attorney to do something else, failure of his attorney to perfect appeal or advise him of requirements amounted to denial of right to appeal from conviction.

4. Infants ⇐68

Virginia statute authorizing circuit court in certain circumstances to perform certification function of the juvenile court was intended to provide a means whereby the court of record could continue process of justice in an orderly

17-618. Eminent domain, exercise by sundry corporations and partnerships. Lands may be appropriated for the use of macadam-road, plank-road, hospital corporation or association, telegraph and telephone corporations, electric, hydraulic, irrigating, milling and manufacturing corporations using power, oil companies, pipeline companies, and for the piping of gas in the same manner as is provided in sections 1 to 16 [26-501 to 26-516], inclusive of this act, and any macadam-road, plank-road, telegraph and telephone corporations, hydraulic, irrigating, oil company, pipeline company, gas company, partnership holding a certificate of convenience as a public utility issued by the state corporation commission, milling or manufacturing corporation using power desiring the right to dam or take water from any stream, to conduct water in canals or raceways or pipes, or to conduct compressed air in pipes, or to conduct oil in pipes or conduct gas in pipes, or transmit power or communications by shafting, belting, or belting and pulleys, or ropes and pulleys, or by electrical current, or by compressed air, may obtain such right or the right-of-way for all necessary canals, raceways, pipes, shafting, belting and pulleys, ropes and pulleys or wires or cables in manner as aforesaid; and such canals, raceways, pipes, shafting, belting, belting and pulleys, ropes and pulleys or wires or cables may be laid, carried or stretched on, through or over any land or lot, or along or upon any stream of water, using so much of the water thereof as may be needed for any of the purposes aforesaid, or through any street or alley or public ground of any city of the second or third class: *Provided,* That no such canal or raceway shall be located through any street or alley or any public ground of any city without the consent of the municipal authorities thereof: *Provided further,* That it shall be unlawful for any person or corporation to locate or construct any irrigating canal or raceway along or upon any stream of water or take and use the water of any stream in such manner as to interfere with or in any wise hinder, delay or injure any milling or irrigating improvements already constructed or located along or upon any stream of water, or to diminish the supply of water flowing to or through any established irrigating canal: *Provided further,* That in case of the erection of a dam, the report of the commissioners, instead of defining the quantity and boundaries of the land overflowed, shall designate particuarly the height of such dam. [G. S. 1868, ch. 23, § 88; L. 1871, ch. 64, § 1; L. 1876, ch. 58, § 1; L. 1891, ch. 85, § 1; L. 1899, ch. 95, § 1; L. 1901, ch. 128, § 1; L. 1917, ch. 122, § 1; R. S. 1923, 17-618; L. 1947, ch. 183, § 1; L. 1963, ch. 234, § 37; Jan. 1, 1964.]

Atch. 2

Energy Transportation Systems Inc.
220 West Douglas
Suite 140, Page Court
Wichita, Kansas 67202
Telephone (316) 264-0686

ETSI

February 13, 1979

Hon. Joe Hoagland, Chairman
House Judiciary Committee
Capitol Building
Topeka, Kansas

Dear Mr. Chairman:

We would like to correct an apparent erroneous statement made yesterday by one of our witnesses before your committee.

In response to a question by Representative Sullivan, Mr. Farmer quoted the figures of $7.90 per ton for pipeline and $28.00 per ton for railroads to transport a ton of coal.

These are accurate estimates prepared in 1975 by ETSI research but represent the average cost over a 30 year period to transport 25,000,000 tons of coal per year to a point in the mid-south region. This was based on a projected 1036 miles of pipeline and a comparable route of in excess of 1200 miles by rail.

An average yearly inflation factor of 4% was used in these computations. As you know, that has been an extremely low figure so the margin should be even wider. Approximately 30% of the pipeline operation, after it is in place, would be subject to inflation. Approximately 70% of railroad costs are subject to inflation.

If I understood the answer correctly, Mr. Farmer may have created the impression that these figures represented differences that would exist today.

Again, we wish to emphasize these figures represented 1975 projected averages over a 30 year period. I will appreciate your sharing this information with the committee.

Most Sincerely,

WALTER HALE
Midwest Area Manager

dsm/

Atch. 3

(4)

To: Chairman Joseph Hoagland and the House Judiciary Committee
From: John M. Stitz, Director, Rural Life, Archdiocese of K.C. in Kansas.

Remarks concerning HB 2103.

I am opposed to this bill. Passage would raise some very serious questions of morality. First, in a democracy, should such a sacred and awesome power as eminent domain be granted to any private profit-making corporation under any conditions? Second, Does Kansas have any moral responsibility to citizens of other states?

My first question is based upon the principle that in a democratic economy, no special privileges should be awarded to a profit-making private institution. Private corporations should be subject to the same constraints of an open and free market just as individuals. The history of Kansas land policy is tarnished with scandals of privileges granted to special interests. Too many times acquisition and control of natural resources has been determined by power relationships rather than by democratic formulas in which all competing parties have equal opportunity.

If you grant this special privilege, I envision a state legislature subjected to repeated requests from private corporations for this same favor. They can anticipate favorable response because by what principle do you grant privileges to one corporation and not to another? A corporation seeks to condemn land in Leavenworth county. If they can link their business to any national need, whether in energy, food, or industry, does this entitle them to the power of eminent domain? If not, why not? You granted the favor once; you will do it again. In two years, perhaps other legislators fill these chairs. How can you assure the citizens of Kansas that they will not imitate your example? What protection do we have?

This same type of bill, LB 270, is in the Nebraska legislature. Nebraska Senator Sam Cullan describes the bill as a " foot in the door". The Omaha World Herald on January 14, 1979 described the bill as

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a form of pressure to influence passage in Kansas. The article predicts that once granted, the corporation would push for a more favorable bill in that state. Is Kansas exempt from this same procedure? The rights of citizens and the common good must be protected from special interests. I believe that this is the purpose of government.

My second question is based upon the relationship of this bill to the use of water for morally questionable purposes. Water is not private property. Our Creator gave us water long before state boundaries were formed. Rights to use water can be bought, but water is common property. Is it morally permissible to use water for this purpose when Wyoming and all our neighbor states are suffering low water supplies? Governor Herschler said that this water would be taken from an area annually subject to drought. He won election campaigning on an anti-pipeline ticket. Farmers and citizens are concerned about the impact of the drawdown on the Madison formation. The same is true of Nebraska farmers and citizens. Organizations of resistance have been established in both states. In Kansas, two studies, High Plains Aquifer System Analysis and the High Plains Study Project, fail to provide conclusive evidence that the Ogallala acquifer can be recharged. Maybe they will request water from the Madison. Both acquifers are within Wyoming borders. You may think this foolish. It is possible to solve water needs. Once in Israel I viewed a water project -largely paid for by U.S. dollars- which moved water from Lake Tiberias west to Haifa, south over hills to a desert, now growing agricultural products. I saw a beautiful field of Kansas sunflowers there. My question is, does agricultural, municipal and human needs have any priority on water resources, when 1. there is a shortage of water and 2. other alternatives are available to move the coal?

Moral responsibility requires us to think of the future of Kansas and the foreseeable needs of the people. That vision must extend to others.

Kansas Railroads Oppose the Passage of H.B. 2193

H.B. 2193 represents a desperate attempt to make it appear that a coal slurry pipeline would operate as a common carrier in both intrastate and interstate commerce, and thus be subject to regulation by the Kansas Corporation Commission and the Interstate Commerce Commission in the same manner as other common carriers are now regulated. They desperately want to be designated as common carriers since that would be the only basis for the granting of eminent domain power.

From the wording of the bill and proponents own propaganda, it is clear they are not a common carrier and do not intend to serve Kansas. Rather, they want the power of eminent domain from Kansas to enable them to serve in interstate commerce without regulation from either the Kansas Corporation Commission or the Interstate Commerce Commission. Otherwise, if they really intended to serve Kansas as a regulated common carrier, they could do so under existing Kansas law (K.S.A. 66-105 and 66-131). Under that law, they would be required to apply to the Kansas Corporation Commission for a Certificate of Convenience and Necessity and if they were granted such certificate, they would then have the right of eminent domain under the provisions of K.S.A. 17-618. Such is the procedure required of other common carriers.

The proposed bill limiting the power of eminent domain to apply only against those who have that power is really no different than past bills and is nothing more than a foot in the door to be used as a vehicle for future amendment to the full right of eminent domain and the resultant right to condemn the lands of thousands of landowners. This is borne out by the fact that proponents' attorneys have consistently maintained the need for eminent domain power to deal with thousands of small landowners. Moreover, last year in Congress, Mr. Udall, in opposing an amendment to proponents eminent domain bill forbidding the exercise of that power against small landowners, made these remarks:

> "If the Members want to wreck this bill, and I think there are some who do, the perfect way to do it is to vote for this amendment, because what the amendment offered by the gentleman from Nevada (Mr. Santini) says is that if we have a pipeline going from Wyoming to Texas, if we have eminent domain we can get across a railroad, but we cannot go across private property except a railroad. I suspect that is why he offered the amendment, to kill the bill."

The truth is that proponents are seeking the eventual full power of eminent domain yet would operate as an unregulated carrier in competition with fully regulated common carriers.

Common Carrier Regulation

An examination of common carrier regulation clearly demonstrates that proponents do not intend to operate as common carriers. Under the present federal and state law, common carriers are required to serve the public indiscriminately - anyone who requests public transportation regardless of the size or volume of the shipment.

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Many years ago the Kansas Legislature delegated to the State Corporation Commission the power to determine the public need to regulate and to balance public transportation between points and places in Kansas (intrastate commerce). Likewise, the U.S. Congress delegated the same powers to the Interstate Commerce Commission (interstate commerce). The purpose of such regulation is to keep each mode of transportation strong and financially sound, and thus insure adequate and sufficient services for the public.

Under the Kansas law, before a railroad or other common carrier can commence a new service within Kansas, it must first file an application with the Kansas Corporation Commission for an intrastate Certificate of Convenience and Necessity. The federal law requires a similar application before a common carrier can operate in interstate commerce. Such certificate, if granted by the Commission, means the legal authorization to commence business.

Before a certificate is granted, applicant must prove, under oath, the existence of a public need for such a service; that the existing service is inadequate and that there are bona fide customers who testify under oath as to the need for such service. If after such proof a certificate is granted, the carrier is thereafter regulated as to service, rates and joint rates, safety, deletion or modification of its service.

Under H.B. 2193 proponents would not be required to obtain a Certificate of Convenience and Necessity as required of railroads and other common carriers. The provision in Section 3 that proponents file a certificate and the provisions in Section 7 that they are a common carrier flies in the face of K.S.A. 66-105 and 66-131. As explained, under that law it would be the Corporation Commission that issues the Certificate of Convenience and Necessity and not the carrier. This is just an attempt to make it appear that the word "certificate" means a Certificate of Convenience and Necessity which it is not.

Eminent Domain

Since proponents would not operate as a regulated common carrier, the issue becomes clear. Should the Kansas Legislature grant to a private company the Kansas sovereign power of eminent domain where Kansas is not served but is used solely as a right-of-way; and where convenience and necessity has not been determined by any state or federal agency.

Eminent domain is a sovereign power of the state. It rests upon the premise that the state can take property from its people when needed for the public good of its people. It must only be granted to a non-governmental entity if the power exercised is necessary for the public use. In the past, this power has only been granted to those industries who are regulated and have been granted a certificate and who have a duty to serve the public indiscriminately such as in the case of common carriers, public utilities and pipelines.

The push for enactment of H.B. 2193 in Kansas is without precedent. It is a first attempt to induce this Kansas legislature to grant part of its sovereign power to an unregulated private business operating for its own private benefit, and not providing a Kansas public use.

The law limits the power of a state to grant the power of eminent domain. In 26 Am Jur 2d, Sec. 14, reads as follows:

> "One state cannot take or authorize the taking of property within its limits for the use of another state, since any employment of the power of eminent domain for such a purpose cannot be rested upon the justification and basis which underlie the power. In other words, it has generally been held that property cannot be condemned for the purpose alone of serving a public use in another state. * * * "But it is apparently settled that property cannot be condemned by virtue of the state's power of eminent domain if no direct benefit from its proposed use is to accrue to the state in which it is located or to at lease a few inhabitants thereof. An indirect benefit to the people of a state, such as results from the industrial activities, population, and wealth of a neighboring state, is not sufficient to justify the taking of private property within the borders of one state for the benefit of the people of another."

This law is supported by Kansas Supreme Court decisions, and in this connection, no Kansas Court has ever held that Kansas could grant the power of condemnation if no area of Kansas is to receive a benefit. Since proponents will not serve Kansas as common carriers, they do not qualify for eminent domain power.

Transportation Charges

Proponents have attempted to sell the idea that enactment of a coal slurry pipeline bill would result in lower coal transportation charges and hence lower electric bills. Such claims are based on hypothetical and non-existing facts. Since low rates are based on high volume and few destination points, proponents have used the entire volume of 25 million tons with delivery to interested possible customers outside the State of Kansas, with no delivery to intermediate points in Kansas, as a rate basis. Two years ago, in their attempt to justify using such a basis, they even referred to a contract with a power company calling for the delivery of that much coal to one plant in Arkansas. The facts are there never was such a contract nor a power plant in all of Arkansas capable of using 25 million tons per year. In fact, there is only one plant in existence today capable of using as much as 5 million tons per year. Proponents have no facts to support low rates based on high volume to but few long distance destinations.

Rates are also based on construction costs - high construction costs mean higher rates. In their attempt to keep construction costs down, proponents have been using 750 million dollars as the construction cost for the last three or four years for a pipeline extending to Arkansas. They are now using 1 billion dollars for a pipeline extending all the way to Louisiana, not bothering to consider inflationary factors; not adding the cost of financing the project which could double or possibly triple their estimate. In fact, construction costs have

now become an unknown factor as proponents apparently have no solid idea where to get rid of 25 million tons of coal; who their customers will be, or where such customers will be located. Moreover, it is questionable whether proponents have taken into consideration the cost of upkeep and repair, the cost of processing coal for shipment at point of origin, or the cost of processing watered coal for use at final destination. As a result, proponents are not equipped with information which would justify their contention that pipeline rates are cheaper than rail rates. The fact is, they are not.

Proponents estimate in connection with the proposed pipeline appears to be no better than their estimate was concerning construction cost of the Alaskan pipeline. That pipeline cost an estimated eight times more than proponents had originally estimated.

The Lawsuit Story

Proponents original contention was they needed eminent domain because railroads would not permit crossing under railroad right-of-way property. They made this claim even though they knew or should have known that if they obtained leases from abutting landowners, they would have a legal right to cross under railroad property, provided they did not interfere with the construction, maintenance and operation of the railroad. This is so because ordinarily, when railroads cease operation, the right-of-way reverts to the abutting landowner. Proponents real purpose was to blind the public as to their real desire, and that was and still is, to obtain the power to condemn or take farm property throughout the State without the consent of the owner.

To promote this smoke screen, proponents filed a number of lawsuits against the railroads. There was no opposition by the railroads in all but a few of the lawsuits filed. In cases where there was no opposition, the court, by agreement of the parties, simply entered a routine declaration of the law that proponents could put pipes under the right-of-way so long as it did not interfere with the right of railroads.

As to the contested lawsuits, the law is not clear. Those cases involve land grants from the United States Government to the Union Pacific Railroad. In these cases, the question of law is whether the reversionary right is in the abutting landowner or in the United States Government. If it is in the abutting landowner, then the settled law, as above stated, would apply. If it is in the United States Government, then proponents would be required to obtain permission to cross railroad right-of-way from the Congress of the United States, and not from the railroads.

These cases will soon be decided and if proponents prevail, and if railroads are their only obstacle as claimed, proponents would then have no need for the power of eminent domain as they allegedly do not seek eminent domain against landowners.

Projected Coal Volume

Proponents propaganda concerning the volume of coal to be moved is speculative.

Various government studies in the 1975 - 1976 period were projecting 300-400 million tons from the Powder River basis by 1985. Current analysis shows it more in the 175-200 million ton range by 1990 - a substantial reduction. This is borne out by the fact that large mining companies are now starting to close some mines, and a few small companies are in such bad shape they may go out of business. The apparent reason for this is the present surplus of natural gas; the failure of power plants to convert to coal; power plants seeking closer coal supplies, and the development of new energy sources. These factors have affected railroad coal planning efforts. Several times in the past few years, some railroads have had to adjust their own coal projections downward.

Scarcity of Water

Proponents testimony and propaganda of an ample water supply is without foundation. A coal slurry pipeline, such as the one in question, requires an enormous supply of water variously estimated to meet the requirements of an entire city of 40 thousand inhabitants. It takes more than 200 gallons of water to move one ton of coal. Water in our western states, including Kansas, is already in short supply, and it is claimed by Wyoming geologists that the recharge in the Madison formation is insufficient to retain water levels necessary for domestic uses in Wyoming cities and communities.

This fact is practically admitted by proponents as evidenced by their attempt to obtain water from the headwaters of the Missouri River in South Dakota. Last year, in a losing effort, proponents caused legislation to be introduced in South Dakota to gain such water rights. Their plan was to pipe water across South Dakota to the mines in Wyoming for use in flushing coal to Arkansas. This bill was opposed by Missouri River cities, including Kansas City, Missouri. It would be foolhardy to use scarce western water for transportation purposes when railroads are totally capable of transporting any and all expected new coal traffic.

Coal Slurry Pipelines - Environmental Problems

Scarce water is not the only problem. Another environmental problem is the potential for leakage which can contaminate ground water. Also, a malfunction means that the pipeline must be drained, lest the slurry mixture settle and block the pipe. This presents the problem of large environmental damaging coal "lakes" all along the pipeline route. Huge dump ponds could become common sites if coal slurry pipelines are granted eminent domain. During a pipeline rupture or power failure, the slurry must be flushed from the pipe into ponds or into the ground. When the water evaporates, there is the danger of thousands of tons of coal dust blowing across the countryside. A recent break in the Black Mesa pipeline near Kingman, Arizona, the only such line in the United States, resulted in slurried coal pouring into natural water courses. This contamination was spread over miles of desert terrain. This could happen to Kansas farmlands.

Railroads - An Economic Force in Kansas

Railroads maintain over 7,500 miles of railroad in Kansas - sixth in the Nation. They employ approximately 14,000 people with an annual payroll of 240 million dollars, and plans call for additional capital investment and employment to meet the anticipated demands for new coal traffic. In addition, railroad supply industries also contribute to the State's economy and provide jobs for approximately 1,200 Kansas residents. Annual expenditures in Kansas for salaries, taxes and supplies total approximately 350 million dollars. Taxes alone paid by railroads in Kansas provide enough funds to educate some 14,000 public school children each year.

Railroads Need and Can Handle Transport Projected Coal Traffic

Railroad plants have a tremendous capacity for hauling freight, but a large amount of freight revenue must be generated to sustain the plant and buy new equipment. It is therefore clearly in the public interest to assure a high volume of freight business to enable railroads to finance themselves and thus provide good service. Once the revenue level is reached that is necessary to meet expenses, railroads can develop funds very quickly for capital improvement. For example - the M-K-T Railroad has had a real financial struggle in recent years, yet because of the unit coal train business they handled last year, they have announced they can now devote funds to completely upgrade their railroad between Parsons and Paola. This is an illustration of why the new coal traffic is vital to railroads and why it is important to Kansans and this Legislature to see that they have it.

Coal is by far the railroads largest single source of traffic and revenue, and the prospect of increased coal transportation promises to greatly improve the financial health of the Kansas Railroads and at the same time keep the burden of maintaining the railroads from falling entirely upon the agricultural economy of this State.

Two recent studies by the Office of Technology Assessment made by Congressional request, and the Coal Transportation Task Force, under sponsorship of the U. S. Department of Transportation, have shown that rail coal hauling capacity is sufficient to transport any expected new coal traffic. These studies found existing rail systems with unit train operations to be totally capable of keeping pace with all projected increases in the demand for coal transportation. These studies found that "the capacity of rail systems can be expanded faster than can coal mining or electric power generation using coal".

In conclusion - since this bill and proponents propaganda clearly show that proponents seek only the right to operate in interstate commerce with no public service in Kansas, there can be no regulation by the State of Kansas and eminent domain should not be granted.

Moreover, since the Slurry Transportation Association, the industry's chief lobbying organization, now admit this is a national issue, and since they are now in Washington planning legislation which would grant them federal eminent domain, federal laws should be amended to provide the Interstate Commerce Commission with jurisdiction to regulate coal slurry pipelines the same as other common carriers are now regulated, H. B. 2193 should be defeated and this entire issue left to Congress for handling.

The Kansas Railroad Association
H.S.

and does not violate U. S. Const., 14th amendment. Kansas Gas & Elec. Co. v. City of McPherson, 146 K. 614, 617, 618, 72 P. 2d 985.

30. Cited; pipe-line company without authority to condemn underground stratum for gas storage. Strain v. Cities Service Gas Co., 148 K. 393, 400, 83 P. 2d 124.

31. Discussed; term "public utility corporation" in another statute includes common carriers. Edwards County Comm'rs v. Simmons, 159 K. 41, 51, 151 P. 2d 960.

Annotations to L. 1949, ch. 335, § 1:

32. Mentioned; procedure for hearings before commission and appeals therefrom fixed by statute. City of McPherson v. State Corporation Commission, 174 K. 407, 408, 257 P. 2d 123.

33. Mentioned; authority of city to grant to utility right to use streets determined. Kansas Power & Light Co. v. City of Great Bend, 172 K. 126, 128, 238 P. 2d 544.

34. Pipeline company carrying own oil not "common carrier" or "public utility." State, *ex rel.*, v. Sinclair Pipe Line Co., 180 K. 425, 438, 439, 304 P. 2d 930.

35. Section not applicable to oil pipe lines engaged in interstate commerce. State, *ex rel.*, v. Sinclair Pipe Line Co., 180 K. 425, 426, 427, 433, 304 P. 2d 930.

36. Commission cannot by approval limit liability of telegraph company for error in intrastate message. McNally Pittsburg Mfg., Corp. v. Western Union Telegraph Co., 186 K. 709, 713, 353 P. 2d 199.

37. Foreign electric utility company authorized to obtain right of way by condemnation; statutes construed. Cline v. Kansas Gas and Electric Company, 260 F. 2d 271, 272, 273.

38. Where utility is subject to control of one city, city's powers must be considered as liberally as those of corporation commission. Kansas Public Service Co. v. State Corporation Commission, 199 K. 736, 737, 738, 739, 741, 746, 747, 748, 433 P. 2d 572.

39. Jurisdiction of the commission over certain corporations not determined by court because of absence of findings on the subject. Cities Service Gas Co. v. State Corporation Commission, 201 K. 223, 225, 226, 227, 230, 236, 242, 246, 440 P. 2d 660.

40. Noncompliance herewith; contract void; parties not in *pari delicto;* action maintainable thereon. Wycoff v. Quick Way Homes, Inc., 201 K. 442, 445, 446, 441 P. 2d 886.

66-105. Common carriers defined. The term "common carriers," as used in this act, shall include all railroad companies, express companies, street railroads, suburban or interurban railroads, sleeping-car companies, freight-line companies, equipment companies, pipe-line companies, and all persons and associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state. [L. 1911, ch. 238, § 4; May 22; R. S. 1923, 66-105.]

Research and Practice Aids:

Hatcher's Digest, Carriers § 1; Railroads §§ 1 to 3; Street Railway § 1.

Law Review and Bar Journal References:

Discussed in note on the corporation commission and regulation of intrastate air rates, 3 K. L. R. 370, 371, 372 (1955).

Case in annotations Nos. 5 and 6 below discussed and analyzed in 1956-57 survey of oil and gas law, W. F. Schell, 6 K. L. R. 213, 220 to 222 (1957).

CASE ANNOTATIONS

1. Section legislative construction that railroads, street railroads, etc., distinctive organizations. O'Malley v. Riley County, 86 K. 752, 757, 121 P. 1108.

2. Interurban railway; local service within city; control of utilities commission. *In re* Wright, 102 K. 329, 331, 170 P. 28.

3. Cited; pipe-line company without authority to condemn underground stratum for gas storage. Strain v. Cities Service Gas Co., 148 K. 393, 400, 83 P. 2d 124.

4. Discussed; term "public utility corporation" in another statute includes common carriers. Edwards County Comm'rs v. Simmons, 159 K. 41, 51, 151 P. 2d 960.

5. Pipe-line company carrying own oil not "common carrier" or "public utility." State, *ex rel.*, v. Sinclair Pipe Line Co., 180 K. 425, 438, 439, 304 P. 2d 930.

6. Section not applicable to oil pipe lines engaged in interstate commerce. State, *ex rel.*, v. Sinclair Pipe Line Co., 180 K. 425, 426, 304 P. 2d 930.

RULES, REGULATIONS AND PROCEDURE

Cross References to Related Sections:

Costs and expenses of investigation and regulation, see ch. 66, art. 15.

66-106. Rules and regulations by commission; duties of attorney general. The commission shall have power to adopt reasonable and proper rules and regulations to govern its proceedings including the assessment and taxation of costs on any complaint provided for in Session Laws of 1911, chapter 238, section 33 [66-133], and to regulate the mode and manner of all investigations, tests, audits, inspections and hearings not specifically provided for herein. The commission may confer with officers of other states and officers of the United States on any matter pertaining to their official duties: *Provided,* No person desiring to be present at any investigation or hearing by said commission shall be denied admission. The attorney general, when requested, shall give the state corporation commission or the attorney for the commission such counsel and advice as they or the attorney for the commission may from time to time require; and it is hereby made his duty to aid and assist them and said attorney for the commission in all hearings, suits and proceedings in which said commission or attorney for the commission may request his assistance. [R. S. 1923, 66-106; Dec. 27.]

such public utilities and common carriers. The accounts shall be closed annually on the 30th day of June, and a balance sheet of that date promptly taken therefrom. [L. 1911, ch. 238, § 29; May 22; R. S. 1923, 66-129.]

Research and Practice Aids:

Hatcher's Digest, Public Utilities Regulation § 18; Railroads § 7.

CASE ANNOTATIONS

1. Examination and inspection does not violate bill of rights. State, *ex rel.*, v. Railway Co., 115 K. 3, 221 P. 259.

66-130. Charges in excess of 1911 schedule. Unless the commission shall otherwise order, it shall be unlawful for any common carrier or public utility governed by the provisions of this act within this state to demand, collect or receive a greater compensation for any service than the charge fixed on the lowest schedule of rates for the same services on the 1st day of January, 1911. [L. 1911, ch. 238, § 30; May 22; R. S. 1923, 66-130.]

Research and Practice Aids:

Hatcher's Digest, Public Utilities Regulation §§ 32 to 40.

CASE ANNOTATIONS

1. Telephone rates prescribed in ordinance remain effective until action taken. City of Emporia v. Telephone Co., 88 K. 443, 446, 129 P. 187.

2. Refusal of commission to grant increase; power of courts; injunction. Telephone Co. v. Utilities Commission, 97 K. 136, 137, 154 P. 262.

3. Rate fixed confiscatory; what rates effective until new rate promulgated. Telephone Co. v. Utilities Commission, 97 K. 136, 137, 154 P. 262.

4. Regulation of natural gas rates; jurisdiction of courts to change. The State v. Gas Co., 102 K. 712, 716, 172 P. 713.

5. Special contract with landowner only changed by commission. Alderson v. Natural Gas Co., 116 K. 501, 504, 227 P. 347; Empire Natural Gas Co. v. Stone, 121 K. 119, 121, 245 P. 1059.

6. Cited in construing reparations statute. State, *ex rel.*, v. Public Service Comm., 135 K. 491, 499, 11 P. 2d 999.

7. Evidence insufficient to prove rate in effect January 1, 1911; recovery for alleged overcharges denied. Tri-State Hotel Co., Inc., v. Southwestern Bell Telephone Co., 155 K. 358, 359, 360, 364, 370, 371, 372, 125 P. 2d 728.

8. Commission cannot by approval limit liability of telegraph company for error in intrastate message. McNally Pittsburg Mfg. Corp. v. Western Union Telegraph Co., 186 K. 709, 713, 353 P. 2d 199.

66-131. Permit to transact business required; exceptions; limitations on commission's authority and jurisdicton. No common carrier or public utility, including that portion of any municipally owned utility defined as a public utility by K. S. A. 66-104 as amended, governed by the provisions of this act shall transact business in the state of Kansas until it shall have obtained a certificate from the corporation commission that public convenience will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in this state: *Provided*, That in no event shall such jurisdiction authorize the corporation commission to review, consider or effect the facilities or rates charged for services or in any way the operation of such municipally owned or operated electric or gas utility within the corporate limits or outside but within three (3) miles of the corporate limits of any city, or facilities, or rates charged for services or in any way the operation of facilities or their replacements now owned by any such utility. No prescribed rates, orders or other regulatory supervision of the corporation commission shall be contrary to any lawful provision of any revenue bond ordinance authorizing the issuance of revenue bonds to finance all or any part of the municipally owned or operated electric or gas utility so subjected to the jurisdiction of the corporation commission. This section shall not apply to any common carrier or public utility governed by the provisions of this act now transacting business in this state, nor shall this section apply to the facilities and operations of any municipally owned or operated utility supplying electricity or gas outside of the corporate limits of any municipality where such facilities and operations are in existence on the effective date of this act, but any extension of such facilities or any new facilities located outside of and more than three (3) miles from the municipality's corporate limits, shall be subject to the requirements of this section, nor shall this section apply to any municipally owned or operated electric or gas utility furnishing electricity or gas to a facility owned or jointly owned by such municipality and located outside the corporate limits of such municipality. [L. 1911, ch. 238, § 31; R. S. 1923, 66-131; L. 1968, ch. 333, § 7; March 30.]

Revisor's Notes:

Referred to in 58-2334.

Other provisions of 1968 act, see 12-806, 12-808, 12-808a, 12-808b, 12-820, 12-821, 13-1223 and 66-104.

Cross References to Related Sections:

Recording on books of corporation, see 66-134.

Exception hereto, see 66-1,150.

17-609. [G. S. 1868, ch. 23, § 31; R. S. 1923, 17-609; Repealed, L. 1939, ch. 152, § 154; June 30.]

Revisor's Note:
Corporation code, see 17-3502, 17-3506.

17-610. [G. S. 1868, ch. 23, § 15; L. 1889, ch. 109, § 1; R. S. 1923, 17-610; L. 1931, ch. 135, § 1; Repealed, L. 1939, ch. 152, § 154; June 30.]

Source or prior law: L. 1866, ch. 57, § 21.

Revisor's Note:
Corporation code, see 17-3001.

CASE ANNOTATIONS

1. Corporation has power to borrow money and execute obligations therefor. Capital Co. v. March, 10 K. A. 40, 47, 61 P. 876.

2. Corporation cannot retain money or property and repudiate obligation therefor. Capital Co. v. March, 10 K. A. 40, 47, 61 P. 876.

3. Corporation cannot sell or mortgage franchise granted for its existence. The State v. Water Co., 61 K. 547, 558, 60 P. 337.

4. Corporation may sell or mortgage secondary franchise granted by city. The State v. Water Co., 61 K. 547, 558, 60 P. 337.

5. Franchise granted to water company by city may be alienated. The State v. Water Co., 61 K. 547, 558, 60 P. 337.

6. R. S. 1923, 17-610 cited in determining what constitutes bonds bank may purchase. First State Bank v. Bone, 122 K. 493, 501, 252 P. 250.

7. Cited in discussing power of corporation to dispose of property. First National Bank v. Paramount Transit Co., 139 K. 808, 812, 33 P. 2d 300.

17-611. [L. 1907, ch. 140, § 32, L. 1917, ch. 118, § 1; R. S. 1923, 17-611; Repealed, L. 1939, ch. 152, § 154; June 30.]

Source or prior law: L. 1866, ch. 57, § 22; G. S. 1868, ch. 23, § 41; L. 1898, ch. 10, § 13; L. 1901, ch. 123, § 4.

Revisor's Note:
Corporation code, see 17-2805, 17-3601.

CASE ANNOTATIONS

1. Effect of failure to begin business within one year considered. Wickham v. Bank, 95 K. 657, 658, 149 P. 433. Rehearing denied: 96 K. 350, 352, 150 P. 341.

17-612. [L. 1917, ch. 118, § 2; R. S. 1923, 17-612; Repealed, L. 1939, ch. 152, § 154; June 30.]

Revisor's Note:
Corporation code, see 17-3608.

17-613. [L. 1917, ch. 118, § 3; R. S. 1923, 17-613; Repealed, L. 1939, ch. 152, § 154; June 30.]

Source or prior law: G. S. 1868, ch. 23, § 32; L. 1898, ch. 10, § 14.

Revisor's Note:
Corporation code see 17-3608.

17-614. [L. 1874, ch. 3, § 1 (Special Session); R. S. 1923, 17-614; Repealed, L. 1939, ch. 152, § 154; June 30.]

Source or prior law: L. 1866, ch. 57, § 16; G. S. 1868, ch. 23, § 8.

Revisor's Note:
Corporation code, see 17-4401.

CASE ANNOTATIONS

1. Effect of election of all nonresidents by cumulative voting considered. Horton v. Wilder, 48 K. 222, 223, 225, 29 P. 566.

2. Three directors, at least, must be residents of Kansas. Horton v. Wilder, 48 K. 222, 223, 224, 29 P. 566.

3. Forfeiture of charter for failure to comply herewith considered. The State v. Water Co., 59 K. 151, 154, 52 P. 422.

4. General office shown to be in Kansas; corporation presumed domestic. Parker v. Railway Co., 70 K. 168, 170, 78 P. 406.

5. Corporation deemed resident of city wherein general office maintained. Parker v. Railway Co., 70 K. 168, 169, 171, 78 P. 406.

6. Lease of Missouri office space by Kansas corporation held valid and enforceable. National Carbon Co. v. Bankers Mortgage Co., 77 F. 2d 614, 615.

17-615. [L. 1874, ch. 3, § 2 (Special Session); R. S. 1923, 17-615; Repealed, L. 1939, ch. 152, § 154; June 30.]

CASE ANNOTATIONS

1. Forfeiture of charter for failure of corporation to comply considered. The State v. Water Co., 59 K. 151, 154, 52 P. 422.

2. Lease of Missouri office space by Kansas corporation held valid and enforceable. National Carbon Co. v. Bankers Mortgage Co., 77 F. 2d 614, 615.

17-616. [G. S. 1868, ch. 23, § 36; R. S. 1923, 17-616; Repealed, L. 1939, ch. 152, § 154; June 30.]

CASE ANNOTATIONS

1. Forfeiture of charter for failure to comply herewith considered. The State v. Water Co., 59 K. 151, 154, 52 P. 422.

2. Lease of Missouri office space by Kansas corporation held valid and enforceable. National Carbon Co. v. Bankers Mortgage Co., 77 F. 2d 614, 615.

17-617. [G. S. 1868, ch. 23, § 37; R. S. 1923, 17-617; Repealed, L. 1939, ch. 152, § 154; June 30.]

Source or prior law: L. 1866, ch. 57, § 9.

17-618. Eminent domain, exercise by sundry corporations and partnerships. Lands may be appropriated for the use of macadam-road, plank-road, hospital corporation or association, telegraph and telephone corporations, electric, hydraulic, irrigating, milling

and manufacturing corporations using power, oil companies, pipe-line companies, and for the piping of gas in the same manner as is provided in sections 1 to 16 [26-501 to 26-516], inclusive of this act, and any macadam-road, plank-road, telegraph and telephone corporations, hydraulic, irrigating, oil company, pipe-line company, gas company, partnership holding a certificate of convenience as a public utility issued by the state corporation commission, milling or manufacturing corporation using power desiring the right to dam or take water from any stream, to conduct water in canals or raceways or pipes, or to conduct compressed air in pipes, or to conduct oil in pipes or conduct gas in pipes, or transmit power or communications by shafting, belting, or belting and pulleys, or ropes and pulleys, or by electrical current, or by compressed air, may obtain such right or the right of way for all necessary canals, raceways, pipes, shafting, belting and pulleys, ropes and pulleys or wires or cables in manner as aforesaid; and such canals, raceways, pipes, shafting, belting, belting and pulleys, ropes and pulleys or wires or cables may be laid, carried or stretched on, through or over any land or lot, or along or upon any stream of water, using so much of the water thereof as may be needed for any of the purposes aforesaid, or through any street or alley or public ground of any city of the second or third class: *Provided,* That no such canal or raceway shall be located through any street or alley or any public ground of any city without the consent of the municipal authorities thereof: *Provided further,* That it shall be unlawful for any person or corporation to locate or construct any irrigating canal or raceway along or upon any stream of water or take and use the water of any stream in such manner as to interfere with or in any wise hinder, delay or injure any milling or irrigating improvements already constructed or located along or upon any stream of water, or to diminish the supply of water flowing to or through any established irrigating canal: *Provided further,* That in case of the erection of a dam, the report of the commissioners, instead of defining the quantity and boundaries of the land overflowed, shall designate particularly the height of such dam. [G. S. 1868, ch. 23, § 88; L. 1871, ch. 64, § 1; L. 1876, ch. 58, § 1; L. 1891, ch. 85, § 1; L. 1899, ch. 95, § 1; L. 1901, ch. 128, § 1; L. 1917, ch. 122, § 1; R. S. 1923, 17-618; L. 1947, ch. 183, § 1; L. 1963, ch. 234, § 37; Jan. 1, 1964.]

Cross References to Related Sections:

Disposal of oil-field or gas-field brines, see 55-1[illegible]

Certain corporations and partnerships, see 17-1[illegible] 26-101.

Research and Practice Aids:

Corporations⇐370(1); Eminent Domain⇐10[illegible]

C. J. S. Corporations § 941; Eminent Domain §

Bar Journal References:

Eminent domain law revision, Blatchford Down[illegible] 13 J. B. A. K. 140 (1944).

Eminent domain procedural statutes, Franklin C[illegible] rick, 13 J. B. A. K. 147 (1944).

INDEX TO CASE ANNOTATIONS

CASE ANNOTATIONS

Annotations to L. 1899, ch. 95, § 1:

1. Courts determine whether use prescribed public use. Irrigation Co. v. Klein, 63 K. 484, [illegible] 65 P. 684.

2. Legislature determines when power may exercised for public use. Irrigation Co. v. Klein, K. 484, 491, 65 P. 684.

3. Power of eminent domain is conferred by section. Irrigation Co. v. Klein, 63 K. 484, 491 P. 684.

Annotations to L. 1901, ch. 128, § 1:

4. Production and distribution of natural business of public nature. La Harpe v. Gas Co., K. 97, 101, 102, 103, 76 P. 448.

5. Legislature may grant right of eminent do[illegible] to gas company. La Harpe v. Gas Co., 69 K. 97, [illegible] 102, 103, 76 P. 448.

6. Title to act sustained; act held valid. La H[illegible] v. Gas. Co., 69 K. 97, 101, 102, 103, 76 P. 448.

7. Consent of cities of second or third class unnecessary. La Harpe v. Gas Co., 69 K. 97, [illegible] 102, 103, 76 P. 448.

8. Statute not invalid because no compensatio[illegible] city provided for. La Harpe v. Gas Co., 69 K. 101, 102, 103, 76 P. 448.

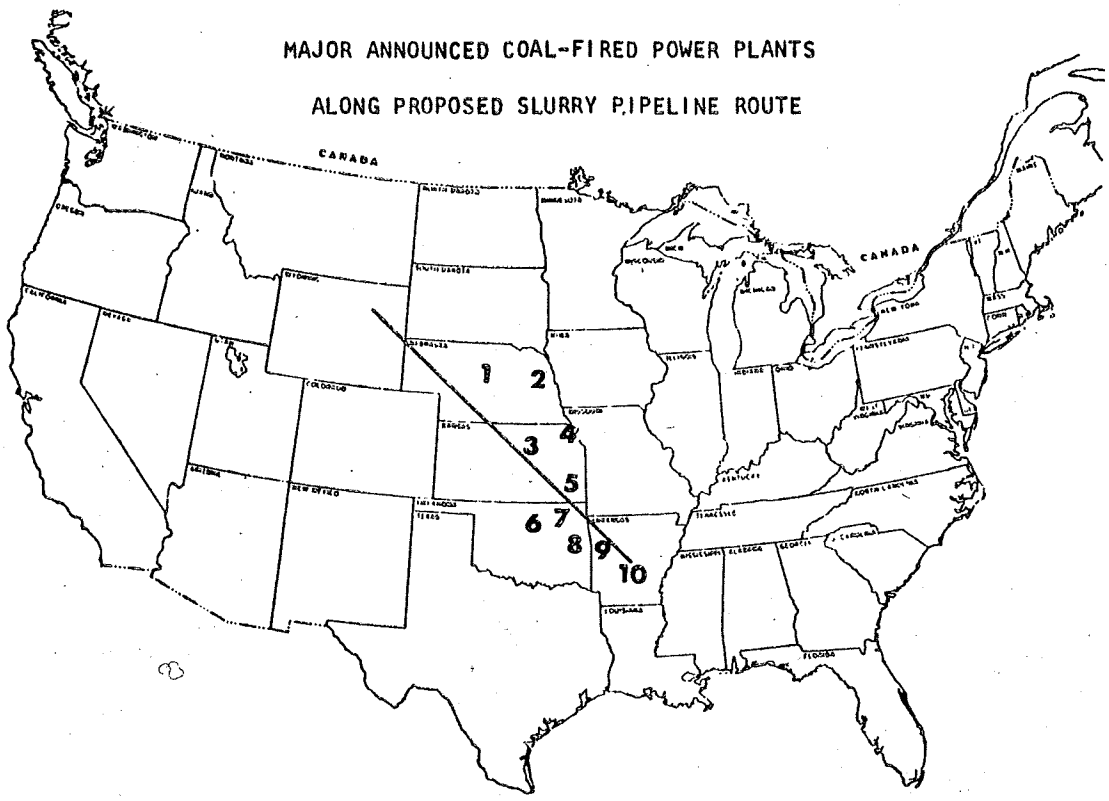
9. Injunction held proper remedy to prevent in[illegible] ference with statutory right. La Harpe v. Gas [illegible] 69 K. 97, 101, 102, 103, 76 P. 448.

10. Section considered in discussing right to [illegible] propriate water for irrigation. Clark v. Allaman, K. 206, 238, 80 P. 571.

11. Company piping and distributing gas has r[illegible]

MAJOR ANNOUNCED COAL-FIRED POWER PLANTS

ALONG PROPOSED SLURRY PIPELINE ROUTE



	Utility	Date	Annual Coal Tonnage	Location
1.	Nebraska Public Power*	1978-81	3.8 million	Wallace
2.	Omaha Public Power+	1979	1.8 million	Arbor
3.	Kansas Power & Light*	1978-82	7.5 million	Jeffery
4.	Kansas City Power & Light+	1980	1.8 million	Iatan
5.	Kansas City Power & Light*	1977	1.8 million	Amsterdam
6.	Oklahoma Gas & Electric+	1979-81	3.0 million	Red Rock
7.	Public Service of Oklahoma+	1979-80	3.5 million	Oologah
8.	Oklahoma Gas & Electric*	1977-78	3.0 million	Ft Gibson
9.	Southwestern Electric Power*	1978	1.75 million	Flint Creek
10.	Arkansas Power & Light*	1979-81	5.0 million	Redfield AR

*Rail cars already purchased. Plant will have rail unloading facilities.

+Rail facilities planned.

SOURCE: Steam Electric Plant Factors-1975 National Coal Association and BN projections.

Atch. C

COMPARISON OF F.O.B. MINE REALIZATION AND RAILROAD RATES ON BITUMINOUS COAL—UNITED STATES—

Year	U.S. coal production (million tons)	Average realization coal f.o.b. mine	Average rail rates	Total	Percent of destination value	
					Coal	Rail rates
1931	382.1	$1.54	$2.22	$3.76	41.0	59.0
1932	309.7	1.31	2.26	3.57	36.7	63.3
1933	333.6	1.34	2.20	3.54	37.9	62.1
1934	359.4	1.75	2.15	3.90	44.9	55.1
1935	372.4	1.77	2.24	4.01	44.1	55.9
1936	439.1	1.76	2.25	4.01	43.9	56.1
1937	445.5	1.94	2.17	4.11	47.2	52.8
1938	348.5	1.95	2.27	4.22	46.2	53.8
1939	394.9	1.84	2.23	4.07	45.2	54.8
1940	460.8	1.91	2.22	4.13	46.2	53.8
1941	514.1	2.19	2.22	4.41	49.7	50.3
1942	582.7	2.36	2.31	4.67	50.5	49.5
1943	590.2	2.69	2.30	4.99	53.9	46.1
1944	619.6	2.92	2.21	5.13	56.9	43.1
1945	577.6	3.06	2.20	5.26	58.2	41.8
1946	533.9	3.44	2.27	5.71	60.2	39.8
1947	630.6	4.16	2.49	6.65	62.6	37.4
1948	599.5	4.99	2.74	7.73	64.6	35.4
1949	437.9	4.88	3.00	7.88	61.9	38.1
1950	516.3	4.84	3.09	7.93	61.0	39.0
1951	533.7	4.92	3.16	8.08	60.9	39.1
1952	466.8	4.90	3.35	8.25	59.4	40.6
1953	457.3	4.92	3.33	8.25	59.6	40.4
1954	392.0	4.51	3.23	7.74	58.3	41.7
1955	464.6	4.50	3.24	7.74	58.1	41.9
1956	500.9	4.82	3.45	8.27	58.3	41.7
1957	492.7	5.08	3.57	8.65	58.7	41.3
1958	410.4	4.86	3.58	8.44	57.6	42.4
1959	412.0	4.77	3.45	8.22	58.0	42.0
1960	415.5	4.69	3.40	8.09	58.0	42.0
1961	402.9	4.58	3.40	7.98	57.4	42.6
1962	422.1	4.48	3.32	7.80	57.4	42.6
1963	458.9	4.39	3.21	7.60	57.8	42.2
1964	486.9	4.45	3.11	7.56	58.9	41.1
1965	512.0	4.44	3.13	7.57	58.7	41.3
1966	533.8	4.54	3.01	7.55	60.1	39.9
1967	552.6	4.62	3.00	7.62	60.6	39.4
1968	545.2	4.67	3.01	7.68	60.8	39.2
1969	560.5	4.99	3.10	8.09	61.7	38.3
1970	602.9	6.26	3.41	9.67	64.7	35.3
1971	552.2	7.07	3.70	10.77	65.6	34.4
1972	595.4	7.66	3.67	11.33	67.6	32.4
1973	591.7	8.53	3.71	12.24	69.7	30.3
1974	603.4	15.75	4.71	20.46	77.0	23.0
1975	648.4	19.24	5.25	24.49	78.6	21.4
1976	678.7	19.43	5.82	25.25	76.9	23.1
1977 [1]	672.0 [2]	21.00	6.17	27.17	77.3	22.7

[1] U.S. Department of Energy forecast.
[2] Estimated.

Source: U.S. Department of Energy as noted.

our own Federal Government. The construction of this pipeline would be another prime example of this. Following are other examples of how the Federal Government spends millions to destroy our most productive land. We must make every attempt to retain this country's food production abilities. This amendment will help. Let me give you examples of present Federal policy.

In Suffolk County, N.Y., we find the Veterans' Administration proposing the condemnation of about 600 acres of prime farmland for a new national cemetery. This acreage represents 2 percent of the county's prime farmland base and nearby the Government already owns thousands of acres of nonprime farmland which could be used for this purpose. This is the county which has voted millions of dollars to purchase development rights to protect its dwindling farmland.

In spite of objections from local governments, local farmers, several concerned organizations, and agencies it appears the VA will move ahead with condemnation rather than use other land already in Federal hands.

This type of Federal irresponsibility must stop.

Another illustration is in Boise, Idaho where, during 1973 and 1974, hundreds of acres of irrigated cropland and desert rangeland near Boise were converted to subdivisions through the financing programs of Farmers Home Administration.

Stung by criticism from the State government and other Federal officials, Farmers Home has revised their guidelines so that now they discourage subdivisions that are not located within or next to a town or village or that take prime farmland when other feasible options exist.

In New Jersey, a regional sewer system was proposed that would have gone down the middle of a prime agricultural valley with a new trunk sewer. State officials complained loudly pointing out that the sewer would make the farmland so valuable for urban development that it could no longer stay in agriculture. The first response of the Federal officials was that they had no responsibility for determining land use. They just paid for the sewer line, then local government could control the land use through zoning. The State argued back, saying that if the sewer were built, local zoning could never withstand the pressure for urbanization, and that the Feds were essentially making the land use decision that the valley should be urban just by financing the sewer. The State won out, and the sewer was not built. Today, the Environmental Protection Agency is trying to develop a policy for making those kinds of decisions, in an attempt to prevent program from causing the conversion of prime farmland. I commend their efforts, and think Congress should back them up with a policy statement that would make all Federal agencies do likewise.

I could go on and on listing examples where our Federal Government is negligent in this area. The passage of this amendment certainly is a step in the right direction in an effort to turn this situation around. Much more needs to be done, however, is this Nation's farmlands are to be preserved.

Mr. BLOUIN. Mr. Chairman, I thank my colleague.

With respect to one of the very good points he has made, I would like to quote briefly from a report of the Office of Technology Assessment.

They said:

Construction of a pipeline requires trenching by blasting and excavation with backhoes, stockpiling of soil, installation of pipe, and backfilling.

Since 100 percent rights-of-way are required, as much as 12 acres per mile of pipeline can be impacted.

Mr. Chairman, that is right from their 1978 report. A hypothetical pipeline from Wyoming to Texas could require 11,000 acres of land in 40 rural counties.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. BLOUIN. I yield to the gentleman from Texas.

Mr. ECKHARDT. Mr. Chairman, I want to commend the gentleman for what seems to me to be a useful addition to the bill and one deserving reasonable and valid consideration by the agencies.

Mr. LUJAN. Mr. Chairman, will the gentleman yield?

Mr. BLOUIN. I yield to the gentleman from New Mexico.

Mr. LUJAN. Mr. Chairman, I also want to commend the gentleman for offering this amendment, I think that all points are to be considered when approving a project if it is in the national interest and that we should move ahead with it. If it is not in the national interest to do away with these farmlands, then the project should not go ahead.

Mr. BLOUIN. Mr. Chairman, I thank the gentleman.

Energy is important and limited resource; so is farmland.

Mr. SKUBITZ. Mr. Chairman, will the gentleman yield?

Mr. BLOUIN. I yield to the gentleman from Kansas.

Mr. SKUBITZ. Mr. Chairman, I want to commend the gentleman on his amendment. I support it.

Mr. UDALL. Mr. Chairman, will the gentleman yield?

Mr. BLOUIN. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Chairman, in light of the definition which the gentleman gave in answer to the question of the gentleman from Texas (Mr. KAZEN) as to what is important farmland, I think the amendment sets forth the purposes of the bill and is consonant with the language of the bill. Therefore, Mr. Chairman, I am prepared to vote for the amendment.

Mr. BLOUIN. Mr. Chairman, I thank my colleague.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Iowa (Mr. BLOUIN).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. SANTINI

Mr. SANTINI. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SANTINI: Section 4(a), immediately after the phrase "coal pipeline or pipelines", insert the phrase "across properties of common carriers by railroad".

(Mr. SANTINI asked and was given permission to revise and extend his remarks.)

Mr. SANTINI (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Nevada?

There was no objection.

[Mr. SANTINI addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. UDALL. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, we have had this fundamental concept in this country, and I think most countries have it, of eminent domain. It is a power that belongs to the sovereign, and in this case to the people. It says that if we have got oil and that the best way to get it to where it is needed in Ohio is a pipeline, then we give them the power to cross anyone's land and condemn a right-of-way across anyone's land—State, private, railroad, any land.

It is a very common right that is exercised in this country. It is what we gave the good old friendly railroads when they built the railroads West. We gave them power to cross anybody's land because it was in the public interest to open it up, to build railroads to get commodities back and forth between East and West.

This is the last amendment I know of that is pending and we are going to vote in a minute. If the Members want to wreck this bill, and I think there are some who do, the perfect way to do it is to vote for this amendment, because what the amendment offered by the gentleman from Nevada (Mr. SANTINI) says is that if we have a pipeline going from Wyoming to Texas, if we have eminent domain we can get across a railroad, but we cannot go across private property except a railroad. I suspect that is why he offered the amendment, to kill the bill.

We were very generous with the railroads when they were opening up the country. We gave them all kinds of land, we gave them every other section of land across the western part of the country.

And now the time has come for us to give help to other carriers, so they may compete with the railroads, and the railroads do not want us to give eminent domain to the other carriers.

Mr. ECKHARDT. Mr. Chairman, if the gentleman will yield, for instance, if the T. & P. Railroad has a T. & P. Oil Company, what happens to them? If there is a strip of land that runs along the T. & P. Railroad, held by a subsidiary, the subsidiary is not a common carrier and condemnation cannot apply under this amendment.

Mr. UDALL. That is precisely the point. The railroads have alternate sections of land across the West. The amendment does not apply to all railroad property. It applies to railroads. One cannot run a pipeline anywhere across the West with-

out running into some of this railroad property.

Mr. ECKHARDT. The gentleman knows very well the right of eminent domain gives him the right to go into court and establish that it is in the public interest to acquire that land. The pipeline [illegible]ot simply go and take land wit[illegible]tablishing that there is a public [illegible]l necessity for that land.

Mr. SANTINI. Mr. Chairman, will the gentleman yield?

Mr. UDALL. I yield to the gentleman from Nevada.

Mr. SANTINI. The point is they have that right now in the individual States if they want to pursue it. But they want the Federal power to intercede because they have been rejected in the individual States because it is not in the public interest. Now the pipeline company wants the Federal Government to bail them out.

If the gentleman will yield further, the Federal Government has never conferred this power where there is an alternative mode of transportation. It is a most dangerous precedent.

Mr. UDALL. The reason they need the Federal eminent domain is this: If they have coal in Montana which is to be burned in Louisiana and it is to go across five States, that may not be in the public interest of any of those intervening States to have the pipeline go across. It is in the interest of the country to have the coal go to Louisiana and to have the coal burned there, but we would not let them use the most efficient way to get it there.

Mr. SANTINI. That is a valid point, but that issue is addressed in the OTA report. They are not in an isolated context where they cannot get the coal there now. They have an alternative mode of transportation available.

Mr. UDALL. But we are going to double the production of coal and the railroads are going to get most of it and the pipeline carriers are going to get maybe 5 percent. The railroads want that extra 5 percent, so they will have a monopoly and then they can fix the prices through their agent, the ICC. And this bill is not going to let them do that, and I think we ought to reject the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Nevada (Mr. SANTINI).

The question was taken; and on a division (demanded by Mr. SANTINI) there were—ayes 23, noes 25.

So the amendment was rejected.

Mr. ROONEY. Mr. Chairman, yesterday, in his closing remarks, Congressman UDALL made reference to an article in yesterday's newspaper reporting the fact t[illegible] Burlington Northern Railroad [illegible]d the largest profits in its histo[illegible]ing the second quarter of this calendar year. He then went on to interpret this fact to mean that the railroads do not need additional coal traffic as they are already viable.

My good friend and colleague has completely misinterpreted the news about the Burlington Northern Railroad. As the article points out, the company made a profit of $36.7 million during the quarter from all of its operations. But the railroad operations, however, accounted for only $12 million of this amount. Last year, the company lost $10.7 million from railroad operations. It was because of this large turnaround from a sizable deficit to a reasonable profit that made the news.

Nevertheless, even record breaking profits for railroads are inadequate. The Burlington second quarter profit represents a 1½ percent return on investment. With such a low rate of return from one of the major carriers in the industry, imagine what the others are like.

The recent turnaround in Burlington's profitability is reportedly due to increases in coal and grain traffic. The increase in grain traffic is due to the fact that very little grain was transported last year. Thus, the amount of profit received last quarter is not anticipated to be repeated.

Last year the railroad industry had an average rate of return of 1.26 percent. No other industry had such a low rate of return. Burlington's current rate of 1.5 percent is not much above average for the industry. Moreover, the railroad industry ranks last in a listing of 73 industrial groups. Considering just major transportation groups, a comparison shows why railroads have difficulty competing. In 1976, the last year for which statistics are available, the railroads had a rate of return of 1.8 percent whereas motor carriers had a rate of return of 23.7 percent, water carriers 1.8 percent, and pipelines 26 percent. Moreover, for the 12 months ending in March, the rail industry rate of return slipped to 0.6 percent.

The pipelines' rate of return should also be compared to the Houston Power & Light Co. which had a rate of return in 1977 amounting to 14.4 percent and San Antonio Power Co. which had a rate of return of 13 percent.

It is the power companies and the pipelines that believe the railroad charges are too high. Power company rates are controlled by public utility commissions and railroad rates are controlled by the Interstate Commerce Commission. The major difference between the two is that the power companies are guaranteed a minimum rate of return usually amounting to 6 percent. The railroads, on the other hand, have no such guarantee. As I said, even record breaking profits by a major railroad such as the Burlington Northern do not approach a 6-percent rate of return.

Yesterday another colleague, my friend, Mr. KRUEGER, mentioned that the railroads had increased rates to the San Antonio Power Co., by unconscionable amounts after the company had committed itself to conversion to coal. Again, this matter should be put into perspective. First, as I just mentioned, the rates charged by railroads are regulated by the Interstate Commerce Commission. Second, in the matter of the rates charged to San Antonio, this matter is in court and has not been settled as yet. Regardless of the outcome of the court case, it should be noted that the matter is being settled in the normal democratic manner, and the existence or threat of a coal slurry pipeline would have minimal effect on this particular case. Allegations have been made by the proponents that with pipelines the price of electricity to the consumer would be reduced. I remind my colleagues that the opponents to this legislation have repeatedly pointed out that this is not the case. No evidence has been given to indicate that the prices will be reduced.

The difference for Burlington between a $10.7 million loss last year and a $12 million profit is indicative of the sensitivity of railroads to the traffic proposed to be carried by pipelines. As I said in my statement Monday, the railroads need this additional coal traffic in order for them to receive a minimum of profit. If they are denied this traffic, we will have a rash of bankruptcies similar to those we experienced earlier in this decade in the Northeast. The next group of bankruptcies will probably include a number of railroads such as ConRail that have already taken considerable Federal funds to reorganize.

The CHAIRMAN. If there are no further amendments, the question is on the amendment in the nature of a substitute offered by the gentleman from Arizona (Mr. UDALL) as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. GIAIMO, Chairman of the Committee of the White House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 1609) to amend the Mineral Leasing Act of 1920, and for other purposes, pursuant to House Resolution 1252, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

Mr. HARSHA. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 161, nays 246, answered "present" 1, not voting 24, as follows:

[Roll No. 566]

YEAS—161

Addabbo	Biaggi	Burton, John
Akaka	Bingham	Burton, Phillip
Alexander	Boggs	Chappell
Ambro	Bolling	Chisholm
Anderson, Calif.	Bowen	Clausen, Don H.
Anderson, Ill.	Breaux	Cochran
Andrews, N.C.	Breckinridge	Collins, Tex.
Archer	Brooks	Conable
Ashley	Brown, Calif.	Corman
Badham	Broyhill	Cornwell
Bellenson	Burke, Calif.	Cotter
Bennett	Burke, Mass.	Danielson
	Burleson, Tex.	

de la Garza	Livingston	Roybal
Delaney	Lloyd, Calif.	Runnels
Dellums	Long, La.	Ruppe
Dodd	Lott	Ryan
Eckhardt	Lujan	Sarasin
Edwards, Okla.	Lundine	Sawyer
English	McClory	Scheuer
Ertel	McCloskey	Schulze
	McCormack	Sebelius
[illegible]	McFall	Selberling
[illegible]	Mahon	Sharp
[illegible]tain	Marriott	Sisk
[illegible]quua	Martin	Smith, Iowa
Gammage	Meeds	Solarz
Garcia	Meyner	Stark
Gaydos	Michel	Steed
Gephardt	Milford	Steers
Glickman	Miller, Calif.	Steiger
Goldwater	Mineta	Stratton
Gonzalez	Mitchell, N.Y.	Stump
Gudger	Montgomery	Thompson
Hammer-schmidt	Moore	Thornton
	Moorhead, Calif.	Treen
Hanley		Tucker
Hannaford	Myers, Gary	Udall
Harrington	Myers, John	Vanik
Harris	Myers, Michael	Waggonner
Hollenbeck	Neal	Walgren
Horton	Nix	Watkins
Howard	Panetta	Waxman
Huckaby	Patterson	Weiss
Johnson, Calif.	Pattison	Whitten
Jones, Okla.	Pettis	Wiggins
Jordan	Pickle	Wilson, Bob
Kazen	Pike	Wilson, C. H.
Kemp	Pritchard	Wilson, Tex.
Kostmayer	Quayle	Winn
Krebs	Risenhoover	Wright
Krueger	Roberts	Wydler
Lagomarsino	Roe	Young, Alaska
Leggett	Rosenthal	Young, Mo.
Lehman	Rousselot	Zeferetti

NAYS—246

Abdnor	Dicks	Hyde
Ammerman	Diggs	Ichord
Andrews, N. Dak.	Dingell	Ireland
	Downey	Jacobs
Annunzio	Drinan	Jeffords
Applegate	Duncan, Oreg.	Jenkins
Armstrong	Duncan, Tenn.	Jenrette
Aspin	Early	Johnson, Colo.
AuCoin	Edgar	Jones, N.C.
Baldus	Edwards, Ala.	Jones, Tenn.
Barnard	Eilberg	Kastenmeier
Baucus	Emery	Keys
Bauman	Erlenborn	Kildee
Beard, R.I.	Evans, Colo.	Kindness
Beard, Tenn.	Evans, Del.	LaFalce
Bedell	Evans, Ga.	Latta
Benjamin	Evans, Ind.	Leach
Bevill	Fenwick	Lederer
Blanchard	Findley	Lent
Blouin	Fish	Levitas
Boland	Fithian	Lloyd, Tenn.
Bonior	Flippo	Long, Md.
Bonker	Flood	Luken
Brademas	Florio	McDade
Brinkley	Flowers	McDonald
Brodhead	Foley	McEwen
Broomfield	Ford, Mich.	McHugh
Brown, Mich.	Ford, Tenn.	McKay
Brown, Ohio	Forsythe	McKinney
Buchanan	Fowler	Madigan
Burgener	Fraser	Maguire
Burke, Fla.	Frenzel	Mann
Butler	Glaimo	Markey
Byron	Gilman	Marks
Carney	Ginn	Marlenee
Carr	Goodling	Mathis
Carter	Gore	Mattox
[illegible]anaugh	Gradison	Mazzoli
[illegible]berg	Grassley	Metcalfe
	Green	Mikulski
[illegible]and	Guyer	Mikva
[illegible]en	Hagedorn	Miller, Ohio
Coleman	Hall	Minish
Collins, Ill.	Hamilton	Mitchell, Md.
Conte	Hansen	Moakley
Conyers	Harkin	Moffett
Cornell	Harsha	Mollohan
Coughlin	Hawkins	Moorhead, Pa.
Cunningham	Heckler	Moss
D'Amours	Hefner	Mottl
Daniel, Dan	Heftel	Murphy, Ill.
Daniel, R. W.	Hightower	Murphy, N.Y.
Davis	Hillis	Murphy, Pa.
Derrick	Holland	Murtha
Derwinski	Holt	Natcher
Devine	Holtzman	Nedzi
Dickinson	Hughes	Nichols
Nolan	Roncalio	Teague
Nowak	Rooney	Thone
O'Brien	Rudd	Traxler
Oakar	Russo	Trible
Oberstar	Santini	Ullman
Obey	Satterfield	Van Deerlin
Ottinger	Schroeder	Vander Jagt
Pease	Shuster	Vento
Pepper	Sikes	Volkmer
Perkins	Simon	Walker
Poage	Skelton	Walsh
Pressler	Skubitz	Wampler
Preyer	Slack	Weaver
Price	Smith, Nebr.	Whalen
Pursell	Snyder	White
Quillen	Spellman	Whitehurst
Rahall	Spence	Whitley
Railsback	St Germain	Wirth
Rangel	Staggers	Wolff
Regula	Stangeland	Wylie
Reuss	Stanton	Yates
Rhodes	Stockman	Yatron
Richmond	Stokes	Young, Fla.
Rinaldo	Studds	Zablocki
Robinson	Symms	
Rogers	Taylor	

ANSWERED "PRESENT"—1

Bafalis

NOT VOTING—24

Ashbrook	Edwards, Calif.	Patten
Burlison, Mo.	Flynt	Quie
Caputo	Frey	Rodino
Clawson, Del	Gibbons	Rose
Corcoran	Hubbard	Rostenkowski
Crane	Kasten	Shipley
Dent	Kelly	Tsongas
Dornan	Le Fante	Young, Tex.

The Clerk announced the following pairs:

On this vote:

Mr. Kelly for, with Mr. Rostenkowski against.

Mr. Shipley for, with Mr. Le Fante against.

Until further notice:

Mr. Burlison of Missouri with Mr. Dent.

Mr. Flynt with Mr. Patten.

Mr. Gibbons with Mr. Quie.

Mr. Rose with Mr. Kasten.

Mr. Tsongas with Mr. Dornan.

Mr. Ashbrook with Mr. Caputo.

Mr. Del Clawson with Mr. Corcoran of Illinois.

Mr. Edwards of California with Mr. Frey.

Ms. OAKAR, and Messrs. RINALDO, YATES, and RHODES, and Mrs. HECKLER changed their vote from "yea" to "nay."

Mr. KEMP and Mr. BELLENSON changed their vote from "nay" to "yea."

So the bill was not passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just considered.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

ANNUAL REPORT OF THE ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION FOR 1977—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Public Works and Transportation:

To the Congress of the United States:

I herewith transmit the Annual Report of the St. Lawrence Seaway Development Corporation for 1977. This report has been prepared in accordance with Section 10 of the St. Lawrence Seaway Act of May 13, 1954.

JIMMY CARTER.

THE WHITE HOUSE, *July 19, 1978.*

PROVIDING FOR CONSIDERATION OF H.R. 11983, FEDERAL ELECTION COMMISSION AUTHORIZATION, FISCAL YEAR 1979

Mr. SISK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1172 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1172

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11983) to amend the Federal Election Campaign Act of 1971 to extend the authorization of appropriations contained in such Act. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on House Administration, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on House Administration now printed in the bill as an original bill for the purpose of amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to the final passage without intervening motion except one motion to recommit with or without instructions. After the passage of H.R. 11983, it shall be in order in the House to take from the Speaker's table the bill S. 3035 and to move to strike out all after the enacting clause of the said Senate bill and insert in lieu thereof the provisions contained in H.R. 11983 as passed by the House.

The SPEAKER. The gentleman from California (Mr. SISK) is recognized for 1 hour.

Mr. SISK. Mr. Speaker, before yielding, let this Member state that he will be yielding only for debate, and not for amendments or for any other purpose.

Having made that clear, Mr. Speaker, I yield 30 minutes to the gentleman from Illinois (Mr. ANDERSON), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 1172 provides for the consideration of the bill H.R. 11983; the Federal Election Commission authorization for fiscal year 1979.

This is a simple, open rule. It grants no waivers of points of order. General

(7)

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

AFL-CIO — CLC

KENNETH O. RICHARDSON
Regional Legislative Director
1010 Lavaca Street, Suite 308
Austin, TX 78701
Office Phone: (512) 472-6719
Home Phone: (512) 441-7404

BRYAN K. WHITEHEAD
Assistant Regional Legislative Director
4917 Haskell
Kansas City, KS 66104
Phone: (913) 287-9062

Kansas City, Kansas, February 10, 1979

STATEMENT RE: HOUSE BILL NO. 2193 AN ACT relating to certain interstate pipeline companies; granting the right of eminent domain thereto ...

PRESENTED TO: HOUSE JUDICIARY COMMITTEE February 13, 1979

Mr. Chairman, and members of the Committee, my name is Bryan Whitehead and I am the Kansas Legislative Director for the Brotherhood of Railway & Airline Clerks (BRAC). My organization represents approximately 8,000 active and retired employes of the transportation industry in Kansas.

It is estimated that over 16,000 Kansans residing in every county and in the majority of cities are employed by Kansas railroads.

The majority of this Committee represent Districts which have major rail terminals or centers: Kansas City, Topeka, Emporia, Newton, Wichita, Hutchinson, Arkansas City, Parsons, Pittsburg, Fort Scott, Osawatomie, Marysville, Atchison, Herington, Salina, Liberal, Dodge City, Horace, Belleville, Goodland, Hoisington, McPherson, Garden City, Concordia and others.

Conservatively, it is estimated that more than 30,000 Kansans are receiving railroad retirement annuities.

Nationwide, in November, 1978, Class I railroads reported the highest employment since 1975: 509,922 total employment in the industry - over 15,000 new jobs mainly

attributable to increased revenues resulting from coal-haul tonnage on the western railroads.

One million six hundred thousand retired employes are currently receiving railroad retirement benefits which means that for every employe working and paying the railroad retirement payroll tax there are 2.6 retirees receiving benefits.

I cite these statistics to impress the Committee with the importance of current railroad employment rates as they relate to the steadily increasing number of railroad retirement beneficiaries.

Our retired railroad employes are entitled to the comfort and peace of mind which results from a secure retirement system.

I note that nine members of this Committee reside in counties which are served by the Rock Island railroad. Three generations of my family have worked for the "ROCK" and I hold thirty-six years seniority. The first twenty-five years I worked on the Panhandle Division at the Pratt terminal and watched the Rock Island's steady progress into bankruptcy which culminated with loss of my job in 1968.

Fortunately, I had sufficient seniority to move to another job at Kansas City but it's traumatic after 25 years to lose your job, your home, pull up your "roots" and move anywhere for whatever reason.

I cite this personal experience to assure the Committee that a railroad is like any other business to the extent that when they lose business and do not make a profit they will cut employment and services.

In 1946, the Rock Island ran six passenger trains daily through Pratt. Twenty years later they cut off the famous Golden State Limited and went out of the passenger train business.

In the early 1960s they got out of the carload merchandise business and later shifted to less-than-car-load truck delivery. Last year, the Rock Island Motor Transit went bankrupt!

Look at Pratt today - running one or two trains a day or less and in 1946 it was not unusual to run 65 trains every 24 hours! We had over five hundred employes - now there are less than fifty. Most of us owned our homes and supported a strong Pratt county tax base. The income level was high and we railroaders are famous for "spending all we make". Now Pratt is in serious economic difficulty.

Although the ROCK has paid the first half of their 1978 property taxes they still owe over four million dollars to forty Kansas counties in back taxes due and unpaid since 1974.

I cite this history of the Rock Island to remind the Committee of the massive effect on the Kansas economy when a major Kansas railroad goes bankrupt. The Frisco, the Katy, and even the Kansas City Southern have been on the edge of bankruptcy but are currently being revived by increased revenue from coal traffic. In fact, the Katy is rebuilding its main line through Kansas in anticipation of further increases in coal tonnage.

Every member of this Committee resides in a city or a county where a Kansas railroad has abolished or reduced their agency services. There are numerous reasons for these reductions but generally they are inflated operating costs and net income reductions. Some of you have also seen line abandonments in your Districts or at least curtailment of branch line service for the same cost and income reasons.

One of the principal responsibilities of my position is to represent employe interests before the Interstate Commerce Commission and before the State Corporation Commission of Kansas. I am, therefore, painfully aware of the regulatory problems of the industry but I am not convinced that deregulation will result in less problems - there are many ahead!

So, after this "gloom and despair" dissertation let me turn to the "rosy" prediction that rail-haul of coal tonnage in the midwest is projected to increase as much as ten times its present volume by 1985!

The Union Pacific, one of the best service railroads in the nation, is now handling 36% of its total tonnage in unit-coal trains. The Burlington Northern, although not a Kansas main line railroad, is setting coal-haul records daily and is delivering to Kansas railroads at the Kansas City rail hub. The Santa Fe, another of the top service railroads of the west, has up-graded its line to Superior, Nebraska, and is ready to handle its share of the increased coal-haul tonnage. The Missouri Pacific, The Frisco, The Katy, and the Kansas City Southern can handle all the connecting traffic they can get at the Kansas City rail hub.

Even the ROCK is currently negotiating with the Denver & Rio Grande Western for track rights through Kansas which would permit them to rebuild their north main line to handle unit-coal trains out of Colorado. Revenue from this coal-haul tonnage alone could easily bring them out of bankruptcy!

As a professional, lifetime railroader I rise to assure the Committee that the railroad industry can handle all the coal-haul needs of Kansas and I dispute any claims to the contrary.

"WE CAN HANDLE IT" is more than just a television slogan. The Union Pacific surveyed their operation of coal trains to the Jeffrey Energy Center at St. Marys and determined that more than fifty jobs have originated as a direct result of delivering coal to this new Kansas industry.

As an elected representative of railroad employes I want to assure the Committee that we regret the division in the ranks of labor caused by the coal slurry controversy. But, we respect each others right to disagree, hopefully agreeably.

I also want to dispel any doubt that any percentage of reduction in coal-haul tonnage and the consequent reduction in net income to Kansas railroads will most certainly result in an equal percentage of lost jobs and services.

These are not transient or temporary jobs. They are held by Kansans living in our cities and communities and they are paying their share to support the Kansas tax structure, to finance our schools and to pay the costs of local and state government. Railroads and their employes are a vital segment of the Kansas economy.

The total payroll for Kansas railroad employes will exceed 250 million dollars in 1979!

Property tax paid by Kansas railroads will vary from less than $10,000 in Morton county to over $2 million in Wyandotte county - a statewide total of $13,600,000 paid in 1978!

Annual miscellaneous expenditures by Kansas railroads contribute another $30 million to the economy. A grand total of almost $300 million annually!

Now concerning the issue of jobs, let me share this opinion as to who will get the coal slurry pipeline jobs if the line is ever constructed in Kansas. My brother has been a Journeyman Pipefitter working out of the Denver local for over 25 years. He has worked on hundreds of transient "Pipefitter" construction gangs in the western states. He was amused when I told him that Kansas construction and building trade unions were supporting the coal slurry legislation as a new job source for Kansans. He tells me that either the Seattle, Washington, or the Muskogee, Oklahoma, "Pipeliner" locals will have jurisdiction and they will man the gangs traveling from the beginning to the end of the construction of such a pipeline.

On July 19, 1978, the 95th Congress disposed of the coal slurry issue by defeating H. R. 1609 in the U. S. House of Representatives by a vote of 161-yes to 246-no!

The railroad industry faces some "rough track" in the years ahead and I respectfully urge the Committee to not permit this unneeded coal slurry transport system to "derail" our Kansas railroads.

Thank you for this opportunity to express opposition to H. B. 2193 on behalf of Kansas railroad employes. If I can, I will respond to questions.

BRYAN K. WHITEHEAD,
Kansas Legislative Director,
Bro. of Railway & Airline Clerks

JACK A. McGLOTHLIN
STATE LEGISLATIVE DIRECTOR
2809 NORTH BROADWAY, SUITE F
BRANCH P. O. BOX 1008
PITTSBURG, KANSAS 66762

R. E. (RON) CALBERT
ASSISTANT STATE
LEGISLATIVE DIRECTOR
1116 HARRISON
NEWTON, KANSAS 67114

united transportation union

KANSAS STATE LEGISLATIVE DEPARTMENT

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I appreciate the opportunity to appear and discuss House Bill 2193.

I am Jack McGlothlin, State Legislative Director, United Transportation Union. I am a duly elected officer and representative of our approximately 7,000 active and retired railroad operating members and their families.

I doubt if there is a member of this committee who would have 15 years ago predicted that in 1979 this nation would be talking of $1.00 per gallon gasoline and even rationing. The supply of oil was thought to be unlimited. Now we are hearing the same thing about water.

The propaganda has it that unlimited amounts of water for slurry coal is available in the Madison Aquifer. The cost of using water from the Madison formation is prohibitive for irrigation and for human consumption. We also heard that $1.00 per gallon gasoline was prohibitive, 15 years ago. For the maintenance of human life, what is the prohibitive cost of water? The railroads neither use nor directly affect water. The proposed slurry line would permanently remove 15,000 acre-feet of water annually from the Madison Aquifer. Multiply that by the 5 to 10 additional slurry pipelines, either on the drawing boards or being planned and you have an idea of the staggering amount of water proposed to be used by an unnecessary transportation mode. The proponents have circularized the legislature with a letter from William Hambleton, Director of the Kansas Geological Survey which states in part . . .

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"The Madison Formation does not underlie Kansas . . . . the withdrawal of 15,000 acre-feet of groundwater annually from the Madison Formation would have no discernable effect on the Ogallala Formation in Kansas." However, in one of a series of articles being carried in the Wichita Eagle Beacon (2/04/79) it says:

> "More than 800,000 city dwellers in 200 towns across Kansas will be affected by water supply shortages during the next five to 10 years, Kansas Water Resources Board surveys show. The Ogallala aquifer - the intravenous life-support system for western Kansas fields - will be exhausted in broad areas of the high prairie.
>
> In the next 10 years or less, individual water rights will have to be cut off or reduced across the board to stretch a paucity of supplies, one Kansas geologist predicts. Local groundwater district managers admit that water allocation may become necessary.
>
> Kansas is living on borrowed time as a utopia where the water will last forever, state planners and water resource officials say.
>
> The state has no contingency plan setting priorities for who will have water when supplies will no longer meet demands and must be allocated."

Governor James J. Exon of Nebraska, in a statement to the Missouri River Basin Governors' Conference May 3-5, 1977, relative to a published "water study" said in part, ". . . . Basically, the Congress has asked the Department of Commerce to study the High Plains Area to determine the economic impact of water shortages in the future. The area that has been designated is the area underlain by the Ogallala aquifer that stretches from Texas to South Dakota. Of course, it is a well-known fact that many of the wells in the Texas High Plains are already going dry. Reportedly, already thousands of once irrigated acres have reverted to dryland farming dependent upon cyclical rainfall to produce relatively low yields. One spokesman has said of the High Plains area, 'Without irrigation, this country will produce nothing at all one-third of the time, marginal crops one-third of the time, and excellent crops one-third of the time.'"

The point is, water is our most precious resource. It certainly is not unlimited. In discussing this with one of your House members, he said, perhaps we should be proposing legislation to lay a water pipeline from Wyoming to Kansas as a supplemental source for our failing water tables.

Our own Ozark Regional Commission held a Coal/Rail Conference in New Orleans, Louisiana, May 4,5, 1978. I was privileged to attend as a representative from Kansas. The Commission's Proceedings Report has this to say, (pages 42-43):

Impacts of Coal Slurry Pipelines

One alternative to long distance transportation of coal by unit train is the coal slurry pipeline. Proponents of slurry pipelines cite a number of environmental advantages of slurry pipelines over railroads. However, the large requirements for water to make the slurry and a number of uncertainties regarding the interactions between coal and water result in a number of major environmental issues.

The major potential impacts of coal slurry pipelines are summarized below:

Water Availability - Generally, the slurry will require approximately one ton of water per ton of coal. Since much Western coal is likely to be produced in areas where water is a scarce resource, water availability is one of the key issues.

Water Quality - It has been claimed that saline water or primary sewage treatment effluent could be used for the slurry. While this may be viable from the view point of water availability and cost, it may create disposal problems. Also, there may be serious problems because of coal-water interactions.

Coal-Water Interactions - Coal suspended in a slurry may interact with the water in a number of different ways. Coal constitutents may leach into the water; water contaminants may be absorbed by the coal; and a complex array of chemical reactions may take place. All of these potential effects are much more likely to occur with slurry coal than with other coal uses because of the small size of the coal particles and the extended period of time, often many days, during which the coal and water are being vigorously mixed. For one ton of coal with particles of the size distribution of slurry coal, there are 220,000 square meters of surface area. This is about 55 acres.

Coal Fines - During the dewatering process, some fine coal particles will remain in the water. These may create problems if the water is used for cooling or other purposes.

Effects of Chemical Additives - In order to reduce the friction losses and corrosion in the pipeline, certain chemicals may be added to the slurry. These chemicals may pose environmental hazards at disposal time.

Effects of Spills - In case of a pipeline rupture, a substantial amount of slurry may be released to the environment, creating some impacts.

Construction/Decommissioning Impacts - Since slurry pipelines will have to be constructed and eventally decommissioned, the environmental impacts of these activities must be taken into account.

More detailed information on these impacts can be found in studies by Rogozon and Faddick."

Another aspect of the proposed pipeline is the ecological impact inherent in its building. Although this has been "soft-pedaled" the truth is that a 38 inch pipeline, buried below a 41 inch frost line and crossing under all of the Kansas gas, oil and water lines running southwest to northeast, is going to be a miniature canal across Kansas. In no way will it be comparable to laying a water line from your house out to the backyard garden spot.

A rail system required today to move perhaps 12 million tons of coal will not create any new land-use problems, because the existing rail system between Wyoming and Arkansas-Louisiana is adequate to carry this volume.

Once a slurry line is built underground, the right-of-way can be returned to prior use and will be affected only because of a line break or other maintenance. But pumping stations and access roads to them will require some land, and slurry lines have a unique land impact of their own. Unlike natural gas or oil pipelines, slurry lines cannot be built to follow natural gas or oil pipelines, slurry lines cannot be built to follow natural terrain, particularly where the terrain is rugged and rises and falls quickly. Slurried coal causes friction in the pipe and; to reduce it, the line would have to be

built more level than some of the terrain it might cross in Arkansas and Louisiana. To do this will require moving in additional earth to smooth out natural terrain. Land use impacts will occur where this earth is obtained and also in those areas where filling in must be done. Furthermore, a report from the Office of Technology Assessment says: "Construction of a pipeline requires trenching by blasting and excavation with backhoes, stockpiling of soil, installation of pipe and back filling. Since 100 percent rights-of-way are required, as much as 12 acres per mile of pipeline can be impacted."

Mr. Chairman, that is a quote from the O.T.A.'s 1978 report. The proposed 1400 mile slurry line could require 16,800 acres of land through this country's best grain, cotton and fruit land.

Last, but far from least, no matter how well constructed, pipelines could break. Despite precautions such as shut-off valves and holding basins for the coal slurry, some damage to the land could occur. A 25-million-ton-per-year pipeline using 6.5 billion gallons of water per year could spill nearly 1,500 tons of coal and 375,000 gallons of water through a major break in only 30 minutes.

Give serious thought to what that would do, if it occurred crossing the Arkansas River or moreso in or near the Cheyenne Bottoms.

We have proven rail transportation is the most public serving, energy conserving and the least ecologically disturbing form of transportation known.

I respectfully request that you vote against H.B. 2193 and help bring full solvency to our Kansas and National railroad system.

Thank you, Mr. Chairman, for allowing me to appear against H.B. 2193. I would attempt to respond to any questions.

J.A. McGlothlin, Director
Kansas State Legislative Board
United Transportation Union

SECTION 6

energy transportation alternatives

- a comparison of rail, slurry and transmission line movement of coal or energy from it; an analysis of major policy questions - national rail transportation, water, energy and land use policy; restructuring transportation decision making processes.

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FINDINGS AND RECOMMENDATIONS

There is no single, simple answer to whether a railroad, a pipeline slurry or a transmission line is the best way to move energy. Overall, in relation to broad energy transportation requirements, any of the three systems is viable technologically and could be made feasible economically.

But when a particular utility is considering which transportation system is best for its particular needs, there are clear-cut choices, and a "best" system can be chosen for that particular situation.

Fragmented Planning and Decision Making

FINDINGS: Fundamental arguments over the impacts, costs and benefits of the three systems stem from the fragmentation of our analysis and decision-making processes. Each vested interest - government, utility, transportation company, landowner, environmental organization, etc. - draws its own conclusions based upon its own narrow list of important criteria. Each interest group is uncertain of its responsibility for evaluating alternative costs and benefits and assigning priorities to them.

This fragmentation exists between regions of the country, also. A decision to operate a pipeline slurry in one area could have major impacts on a rail system elsewhere. A decision by one state to allow an electric generating plant within its borders - and exportation of the energy to another state - creates a particular problem for the importing state. It has no influence on the choice of the best way to transport the energy.

RECOMMENDATIONS: Appropriate state agencies could exchange future energy supply and demand plans and projections and propose specific energy-related ideas. Such coordination could facilitate the evaluation of alternatives. Where possible, states could coordinate their review processes to insure that a decision in one state does not foreclose options for another state.

Where broader regions or two or more regions are involved and, in particular, where slurry development could have a major effect on the rail industry nationally or in other regions, the question of integrated national rail transportation policy must be examined at the federal level.

Necessity for Coal Transportation Alternatives

FINDINGS: Projections of coal exports from the Northern Great Plains in the next 8 to 10 years indicate that railroads will be capable of meeting demands provided they can be assured of long-term business - 30 years or more.

Contrary to proponents of pipeline slurry systems, railroads should be able to meet coal transportation demands through 1985 based upon current data. Even if they couldn't, alternative development of pipeline slurry systems would not necessarily be justified. The potential adverse economic impact slurries may cause for the railroads and, hence, on the general economy is more serious than the need for another transportation alternative.

RECOMMENDATIONS: Any decision to allow construction of pipeline slurry systems (granting of eminent domain, in particular) should be delayed until questions relating to economic impact on the rail industry are answered. A commitment today of $750 million[1] for the construction of one slurry system from Wyoming to Arkansas would be, for all practical purposes, irreversible. Others would no doubt follow. There is ample time to study the implications of pipeline slurry operation for the rail industry between now and about 1980; if warranted, slurry systems could be placed in operation by 1985.

The states of the Northern Great Plains and Midwest should support efforts to delay development of slurry systems until such time as these major rail transportation policy and impact questions are answered.

The choice is very clear. Where there are alternatives to slurry systems (rail and transmission lines) and where there is no demonstrated urgent need for another transportation system,

the potential risks of developing slurry systems far outweigh the possible benefits. To delay a decision today does not foreclose the development of slurry systems in the future; it merely allows time to resolve key issues and to minimize the risks of making an early and not thoroughly examined decision.

Rail Transportation Policy

FINDINGS: Although it is important in a free enterprise system to allow equal opportunity for various organizations to pursue economic activity, questions of national interest often arise. They must be resolved even if, in some cases, the proposals of some organizations must fall by the wayside.

Development of a new system - a slurry pipeline in this case - will not always be of overall economic benefit to the nation. Proposed slurry systems do have the potential for providing economic returns to their investors, but they also can adversely affect other segments of society, in addition to the rail industry.

Development of the slurry pipeline industry will not necessarily mean increased competition for alternative systems. Once a slurry system has entered into a long-term coal movement contract (the only kind of contract it can have if it is to obtain the necessary capital) the rail industry can no longer compete for that segment of business on an annual basis.

RECOMMENDATIONS: If there is to be a rational decision-making process in which the national interest plays a relevant role, the U.S. Department of Transportation should determine whether slurry pipeline systems are compatible with continued and improved economic viability of the nation's rail systems. Pressures to move ahead with slurry pipelines could saddle the nation with an even more critical problem - deterioration of the rail industry's financial health and the possible need for more federal support not unlike recent actions to maintain eastern railroads. It is a federal responsibility to evaluate the alternatives and their costs and benefits, working closely with the states and with private sector interests directly involved in related energy and transportation matters.

Transmission Lines

FINDINGS: There are logical instances where it is more economical for utilities to build transmission lines from coal mine areas on the Northern Great Plains to load centers in other areas. Disputes over these transmission lines most often arise because proponents - the utilities - do not consider in their initial feasibility studies the power lines' costs and benefits in relation to land use and environmental impact. This evaluation is left, for the most part, to the states which nearly always must react to basic decisions already made by the utility. And those decisions usually are irreversible or, at best, minimally changeable.

When a transmission line carries electrical energy from one state to another and when the decision to build a generating plant is made by a utility without review by both states, state involvement in the initial decision-making process is reduced markedly. In addition, people living between the plant and the load center almost always have no input to these initial decisions, even though they bear the brunt of the transmission line's impact and receive little, if any, benefit.

RECOMMENDATIONS: Multi-state decision making may be unrealistic to expect, but if involved states used consistent analytical methods, individual states' decision-making processes could be coordinated and some current disputes resolved. Alternative costs and benefits relating to land use, impact of rail traffic on communities and net energy costs to consumers could be more clearly evaluated.

Water Policy

FINDINGS: Water demands for energy production in the Northern Great Plains are small compared with the total supply, but if that supply is allocated without a broader understanding of the cumulative effects of individual water decisions or allocations, the region's long-range economic flexibility could be jeopardized; water could become unavailable in some areas and for some uses other than energy.

Slurry pipeline systems represent just one of many energy-related and other demands for water. Providing water for slurry systems might decrease the total number of energy conversion facilities sited in the Northern Great Plains. However, slurry lines also would cause large volumes of water to be transferred from one river basin or region to another - the potential adverse effects of which little is known today.

RECOMMENDATIONS: While water is a critical issue in the West, it is but one of MANY critical factors that must be addressed before decisions are made about transporting energy. Certainly states with a common watershed should join in evaluating water allocation alternatives, including inter-basin transfers of water.

The fact that slurry pipeline operations would reduce the number of potential coal conversion facilities located in the Northern Great Plains must be contrasted with the impacts on the coal region's water supply and the implications of inter-basin transfers. Solving one problem does not justify creating another.

One obvious example of inter-basin water transfer would be sending water and coal from Wyoming to Arkansas, followed by bringing water from South Dakota to Wyoming for further use in coal slurry operations to other locations. These kinds of water transfers should be examined under criteria other than economical or technological feasibility of the water transfer or slurry system itself. Such decisions can have widespread ramifications on land use, economic development and social and cultural values. Considered individually, such proposals seem innocuous; considered together, they take on the appearance of a "borrow from Peter to pay Paul" plan which begs questions of logic, feasibility and sound long-range planning.

These various proposals beg the question of total resource efficiency and common sense. It is somewhat undesirable to have all decisions made at the federal level, but when such proposals affect state, regional and national interests, there is merit in federal development of an overview of direction

and general intent in order to guide and facilitate state and regional planning.

Energy Policy

FINDINGS: Federal policy since the oil embargo of 1973 has been to rapidly increase the domestic energy supply and to attempt to manage demand through higher prices. Neither has succeeded very well, even though proposals to accelerate energy development and availability have taken highest priority - to the point of becoming "crash" programs.

Short of a radical change in present circumstances, energy from coal will increase at a rather constant and predictable rate over the next 8 to 10 years because the resource is limited to the numbers and size of the conversion facilities being built.

RECOMMENDATIONS: Instead of taking the approach that we need to implement any and all possible mechanisms for utilizing western coal, we should begin comprehensive comparisons of the net costs and benefits of alternatives, emphasizing two elements: 1) Efficient use of the energy source and other critical resources; 2) Reductions of growth in energy demand which might allow for choosing one system over another rather than developing some of every kind of system. Increased energy efficiency can buy the nation time to consider alternatives carefully. By not using this element of time, we risk making hasty decisions under the guise of a "national emergency."

Land Use Policy

FINDINGS: The right of eminent domain and powers of condemnation have, in essence, placed a higher value on land for transmission lines and other energy-related systems than on land for farming and recreation. Today, landowners are questioning the appropriateness of such a values system.

Protecting land for agriculture, recreation or other uses must be an early consideration when determining energy transportation or conversion alternatives.

RECOMMENDATIONS: Before any utility chooses a plant site or an energy transportation mode, it should thoroughly evaluate potentially affected land resources. Ideally states should develop a land classification system to guide utilities. Before such a system could function, however, energy companies must recognize different public economic and social values about land and land use.

How Important Is the "Lowest-Cost" Way?

FINDINGS: Utilities receive pressure from one government agency to minimize consumer costs and from other agencies to build-in all environmental and other costs. One transportation system could, over 30 years, provide substantial savings to all consumers served. On the other hand, such savings could be minimal on a monthly or yearly basis for the individual.

Alternately, a higher cost transportation system could help reduce inefficiency, land-use disruption, some environmental impacts, etc. The difficulty in making transportation choices lies in determining which costs and benefits should be included in any analysis and what their values or weights should be. Numerous tradeoffs must be considered. The timing of decision making is critical, particularly if more than one state is involved.

RECOMMENDATIONS: Historical pressures on utilities and some regulatory agencies to hold energy costs as "low as possible" should be reassessed to consider the proper elements of energy costs.

If all costs of energy production are not reflected in consumer prices, we fail to utilize the market function properly. The net effects are two-fold: 1) The cost of energy (from coal in this instance) remains at an artificially low level, because many of the costs are transferred elsewhere or are scattered throughout other commodities and taxes; consumers cannot make real decisions about energy use because of skewed costs. 2) Disputes over costs, benefits and social values can be both disruptive and expensive for the utility industry.

Dollars potentially saved through a more carefully weighed decision can disappear in lengthy, difficult litigation and in construction and operational delays.

INTRODUCTION/PURPOSE

The purpose of this section is to examine three methods of moving coal, or energy from it, between the coal fields of the Northern Great Plains and major demand centers outside that area. The three methods are: rail transport, transmission line and pipeline slurry.

Precise and extensive statistical comparisons of the three systems are difficult and, in some cases, impossible. Comparable operating systems are not available to provide actual points of reference. Data are available, however, on many critical factors relating to the three transportation systems - data which can be adjusted to provide meaningful comparisons.

Considering transportation alternatives is a two-fold task: 1) Keeping energy transportation costs to a minimum to hold down consumer energy costs; 2) Determining actual transportation-related costs and including them in the total costs of energy consumed. This second task is complicated by uncertainties in the strength and sources of coal demand. Nor is it certain which social costs - environment, community, land use, etc. - should be included in the analyses of alternatives. As a result, no costs are assigned. Because we don't know the probability or extent of alternative uses of primary resources like land and water, we don't know fully how to price them in terms of present demand and use.

This section is divided into three parts: 1) A set of hypothetical cases or alternative transportation systems; 2) A discussion of the major policy and decision-making issues of energy transportation; 3) A discussion of transportation decision making. In the hypothetical cases, numbers are presented wherever possible to draw precise comparisons. Where

numbers are not available, the relative importance of cause-effect relationships and tradeoffs among critical factors and impacts is discussed.

Aside from making critical environmental, economic, social, cultural, land use and other decisions, there are significant policy questions to address in energy transportation decisions. Those major policy issues are: national rail transportation policy, water policy, energy policy and land use policy.

Jurisdictional issues arise when the choice of a transportation system affects mining and energy-conversion impacts in one state while the energy produced is used in another state. Also involved are people living between the plants or mines and points of consumption, or those living downstream or downwind from conversion plants - even though they receive no direct benefits either from the mining and conversion operations or from the usable energy produced.

This section addresses major decision-making functions and organizations charged with looking at some of these local, regional and national issues. It also examines the interaction between the public and private sectors and between public agencies within and among states. Key questions include: How do public and private agencies and organizations evaluate cost/benefit tradeoffs? What kinds of mechanisms are available - or should be - to improve decision making by more broadly assessing critical impacts and integrating points of view regarding them?

The purpose of this section is not necessarily to conclude that any transportation system alternative is preferable. There is no "rule of thumb" or standard to draw that conclusion. Each of the three alternatives may be suitable, depending upon a complex set of variables.

Choosing one alternative over another will result in different problems and benefits. But case-by-case evaluation of transportation alternatives, while initially necessary, is not totally acceptable. The development of each new power

plant and energy-supply system must be analyzed for its particular costs and benefits to all parties involved or affected to determine the most effective operating method. But often the cumulative effects of these decisions are even more important. One transmission line or unit train to and from one power plant may seem to have little effect on the environment and on society; several lines or unit trains for several power plants will produce radically different consequences. Likewise, one pipeline slurry is much different from several slurries.

It is important to realize there is no "best" decision. No matter which transportation method is chosen in any supply/demand situation, costs and benefits are given different priorities depending upon how they are perceived and who perceives them. This section tries to show the interrelationship of critical factors and policy questions and to point out the need for additional information that could help to minimize adverse consequences later.

As with most major questions about the development and use of Northern Great Plains coal, analysis, planning and decision making are fragmented among public and private institutions with real or expressed interests in the subject. Before many key issues can be resolved, the involved parties must first better understand the available alternatives and their costs and benefits. Then, they must apply this information to their own decision-making processes and assume responsibility for informing each other.

ALTERNATIVE ENERGY TRANSPORTATION METHODS

The utility's choice of an energy transportation method is a function of the kind and location of fuel to be used, location of the conversion plant, broad economic considerations, regulatory implications and financing capability. Other key elements include system reliability and efficiency, consumer demand, system load characteristics, timing, environmental

impacts, price and availability of other fuels and other critical resources. The major problem in making a decision in this manner is that public and state interests are not included early in the evaluation process. The utility's decision is based solely on its set of economic criteria.

Rail Systems

Within current "state-of-the-art" systems for coal movement by rail, the unit-train concept is most often discussed. A unit train consists of 100 to 110 coal cars that travel between the mines and the demand centers (most often large energy generating plants or coal trans-shipment facilities like barge and ship loading docks). The purpose of the unit train is to move large amounts of coal efficiently and economically over long distances. The unit train concept has been improved effectively by high-speed loader and unloader systems that greatly reduce time spent handling the coal. Several unit trains leave the Northern Great Plains coal fields daily, carrying coal to markets throughout the Midwest and Middle South. Unit trains also move coal to major shipping and barge terminals where it will be transferred to water-borne transport systems for completion of the trip to areas like Michigan and Indiana.

Transmission Lines

Transmission of electric power via high-voltage and extra high-voltage power lines is a proven technology that has advanced markedly over the years. Today, direct current systems, as opposed to alternating current systems, can move large blocks of electric energy over very long distances with increasing efficiency and economy. These direct current lines, like unit trains, are efficient where energy is to be moved between two points without dropping off any amount of energy at points in between. But direct current lines require converter stations at both the generating plant and the demand area for plants produce and consumers use alternating current energy.

Other, alternating current, high-voltage transmission lines are operating or are planned from the Northern Great

Plains: lines out of North Dakota and a proposed 500,000 volt line from Colstrip across Montana where it would connect with an existing high-voltage transmission system, operated by both private utilities and the Bonneville Power Administration throughout the Northwest.

Pipeline Slurries

Slurry transportation is a well-proven technology, developed largely in the United States, but used in several foreign countries as well.

Coal is pulverized to the consistency of sugar and is mixed with water. The resulting slurry is pumped through an underground pipeline at about three and one-half miles per hour. At its destination, the coal is removed from the water with a filter; coal does not absorb much water, and the two can be separated. The coal then can be used as boiler fuel to generate electric power, and the water can be employed in the electric generation cooling process.

One nationally prominent proposal is a 38-inch slurry from northeast Wyoming to central Arkansas. When operated at full capacity and when enough generating capacity is constructed in the Middle South of the United States, this line would move about 25 million tons of coal per year. The distance from the coal mines in Wyoming to central Arkansas is about 1,000 miles.

One coal slurry line is operating in the southwestern United States. This 273-mile line moves about 4.8 million tons of coal per year.[2] Another coal slurry in Ohio operated successfully until rail shipment costs fell, making the slurry uneconomical.

A HYPOTHETICAL CASE

In order to make reasonable comparisons of the three transportation alternatives, a hypothetical situation had to be devised, for no regional systems are available in the Northern Great Plains.

OBJECTIVE: To move enough coal or electric energy to provide 3 million kilowatts of electric energy at a Minnesota load center at 1975 costs. Delivery into a Minnesota system would be made at a point near Becker, Minnesota, northwest of the Twin Cities.

ALTERNATIVES: The amount of coal to be moved would total 12 million tons per year. Enough energy would be generated at a North Dakota mine-mouth plant to assure a net delivered amount of 3 million kilowatts of electric capacity.

1. Move 12 million tons of coal annually from Sarpy Creek, Montana, to Becker, Minnesota, via rail - about 700 miles.
2. Move 12 million tons of coal annually from Sarpy Creek, Montana, to Becker, Minnesota, via slurry line - about 700 miles.
3. Deliver 3 million kilowatts of energy capacity via three ± 450 kilovolt direct transmission lines (each 410 miles) from central North Dakota to Becker, Minnesota, on separate rights-of-way.

BASIC ASSUMPTIONS: Three major assumptions were made to simplify the comparison.

1. The existing rail system was assumed to have the capacity in terms of time and track to handle the trains necessary. A new line would not be needed.
2. The economic viability of moving 12 million tons per year of coal via a 700-mile slurry was ignored. Water was assumed available.
3. The reliability of three large direct-current lines and the effect of these lines on the reliability of the region's electric pool were ignored.

Additionally, it was assumed the railroads would own the engines and coal cars; the coal companies would own the loading facilities; the utilities would own the coal unloading facilities and any necessary rail spurs; the slurry company would own both the coal preparation and coal de-watering facilities; the utility would own and operate the transmission system, including converter stations at each end.

Several "critical factors" were examined and compared. The results are included in the following tables.

CAPITAL INVESTMENT: All amounts include initial expenditures to place an energy transportation system into operation and to replace major equipment over a 30-year period.

CAPITAL INVESTMENT (1975 Dollars)

RAILROAD: Initially need 65 engines and 1573 coal cars. All would be replaced at the 15-year mark. Figure includes cost of initial equipment in 1975 plus dollars needed today to replace all equipment in 15 years discounted at 7% interest[3]	$86,900,000
SLURRY: Includes construction and materials for coal preparation facility, a 38" pipeline and associated pumping and emergency storage systems, de-watering facility and right-of-way acquisition. Also includes cost of replacement materials over 30-year period[4].	$505,000,000
TRANSMISSION: Includes construction and materials for converter stations (2), three entire lines, and right-of-way acquisition. Also includes cost of replacement materials over 30-year period[5].	$510,000,000

ENERGY LOSSES: All three transportation modes were analyzed in terms of the energy consumption needed to deliver either 12 million tons of coal per year or 3 million kilowatts of electrical capacity to the Minnesota load-center location. Figures are given in British Thermal Units (BTUs). In addition, total BTUs lost by each mode are presented in terms of gallons of diesel oil for railroads; tons of coal for the slurry (it would be powered by electric energy) and tons of coal burned at the mine-mouth plant to offset line losses.

ANNUAL ENERGY LOSSES

RAILROAD: It takes 250 BTUs/ton-mile, including empty return of cars[6]. . . . . 1.93×10^{12} BTUs

SLURRY: 980 BTUs/ton-mile, including energy used in coal preparation and de-watering[1] . . . . . 8.23×10^{12} BTUs

TRANSMISSION: Calculated at 10% line losses thus requiring an additional 333,333 kilowatts of generating capacity. Load factor = 80% . . . . . 7.98×10^{12} BTUs

ANNUAL VOLUMES OF VARIOUS FUELS CONSUMED FOR TRANSPORTATION

RAILROAD: Gallons of diesel fuel at 140,000 BTUs/gallon plus energy used in refining - 4500 BTUs/gallon of diesel oil produced . . . . . 14,300,000 gals.

SLURRY: Tons of Sarpy Creek coal at 16,800,000 BTUs/ton times 2.85 due to electric generating plant efficiency of only 35% . . . . . 1,470,000 tons

TRANSMISSION: Tons of North Dakota lignite at 13,900,000 BTUs/ton times 2.85 due to electric generating plant efficiency of only 35% . . . . . 1,722,000 tons

OTHER RESOURCE REQUIREMENTS: Each system makes a particular demand on other critical resources, primarily steel and aluminum. These resource requirements have been translated into total tons of steel.

OTHER RESOURCE REQUIREMENTS

RAILROAD: Initial system development and component replacement over 30-year period[3]. . . . . 112,050 tons steel

SLURRY: Initial system development and component replacement over 30-year period[7]. . . . . 304,000 tons steel

TRANSMISSION: Initial system development and component replacement over 30-year period[8]. . . . . 60,000 tons steel
. . . . . 20,550 tons aluminum

About 95 percent of the steel used by the railroads can be recycled when removed from use. This recycling has been ongoing for several years. Buried pipelines are hardly ever removed from the ground because the cost of removal is greater than the price of scrap steel. Metal transmission towers are recycled, can be sold intact or can be used at other locations. Electric power lines can be recycled or reused.

COSTS TO CONSUMER: The costs of transporting coal or electric energy were analyzed using information from organizations that operate or propose to operate systems similar to those in this hypothetical comparison. The costs are, again, based upon 1975 dollars.

TRANSPORTATION COSTS TO CONSUMERS - 1975

RAILROAD: Based upon 1975 tariff quote from Burlington Northern to Becker, Minnesota. Tariff quoted was $4.99 per ton[9]	2.9 mils/kwh
SLURRY: Based upon estimates developed for the proposed Wyoming-Arkansas coal slurry by Bechtel, Inc.[1]	4.4 mils/kwh
TRANSMISSION: Based upon data drawn from the feasibility study for one ± 450 kilovolt direct current line from Underwood, North Dakota, to Big Lake, Minnesota, a distance of just over 400 miles[10]	3.7 mils/kwh

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ENVIRONMENTAL IMPACTS

Environmental data are not available for existing or proposed systems for each of the three transportation alternatives. As a result, the comparisons are presented in narrative.

AIR: The rail system will produce emissions from diesel combustion. The slurry line will cause emissions from power plants that produce the electric energy used to power the system.

Air emissions from generating plants producing electricity for slurry systems will disperse pollutants along the line route. This will introduce pollutants to some areas in Montana or North Dakota where air quality now is quite high. A transmission line will cause the discharge of air pollutants from electric generation entirely in central North Dakota where air quality is good as opposed to the Twin Cities, where air quality already is a problem. Another consideration is the cumulative effects of air pollution from the proliferation of electric generating plants in North Dakota. Choosing either rail or slurry transportation means the pollutants resulting from electric generation will be discharged near the Twin Cities metropolitan area, closer to those persons benefitting from the energy produced.

Concerns have been raised over ozone production from extra-high voltage transmission systems. The validity of these concerns is yet to be proved and further study clearly is needed.

WATER: The railroad alternative neither uses nor directly affects water. The slurry line would permanently remove about 3.9 billion gallons or about 9,000 acre-feet annually from a Montana watershed and deliver it into a Minnesota watershed. Indications are that all of this water used in the slurry can be used in the generating plant water systems, thus somewhat lowering demand for plant cooling water in Minnesota. But Montana coal areas already are markedly "water poor" compared with Minnesota. A transmission line uses no water, but it indirectly impinges on water supplies if a generating complex is situated in North Dakota. Concern is growing over increasing and conflicting demands for North Dakota water for energy production, agriculture and other activities.

In terms of water quality, the effects differ. Removing water from the Northern Great Plains region will increase salinity in some areas. Energy conversion in North Dakota will introduce additional heat and some trace minerals into the watershed there. Energy conversion near Becker, Minnesota, will

require fully closed systems under Minnesota law, and will use very little water and will discharge few pollutants into Minnesota waters.

NOISE: Rail transportation produces noise day and night. Three unit trains per day would be required, a frequency not unusual for communities along the line. Additional trains to serve other coal shipment demands could pose cumulative problems. Slurry lines create minimal noise problems - and those mostly at pumping stations every 80 to 100 miles along the route.[1] Transmission lines make humming noises, but audible only from a short distance.

VISUAL EFFECTS: Railroads can create some visual aesthetics problems depending upon individual sensitivities. Because slurry pipelines are buried, the only visible parts of the system are pumping stations and emergency storage basins along the route and the coal preparation and de-watering facilities at the ends of the line. After construction, when foliage has grown back along the pipeline, there should be no appreciable visual disturbance. A major break in the line could spill considerable volumes of coal, creating a blight. Transmission lines are highly visible, for the towers are 75 to 100 feet high, placed about four to a mile.

SYSTEM RELIABILITY

Each transportation alternative is vulnerable to natural and man-caused disruptions that could cause a major, prolonged shutdown of a generating plant, create an energy shortage or disrupt the environment.

Railroads are subject to strikes, snow and flood blockages, bridge failures and fuel shortages. To counter these problems and such events as coal mine strikes, utilities always stockpile 30 to 90 days' worth of emergency coal supplies. Railroads also can switch traffic to alternative routes if necessary.

Slurries are subject to breaks in the pipelines or to failures in the coal preparation or de-watering facilities.

Slurry lines are highly inflexible, because the generating plant on one end is linked to only one coal source at the other end. Because slurried coal is pulverized to about the consistency of sugar, it is virtually impossible to stockpile because of potential combustion and wind dispersion.

Transmission lines also are highly inflexible. To counter a possible major outage, utilities build in ties with other utilities through which they can draw emergency power. They also hold a percentage of their generating capacity in reserve for such emergencies. Direct current lines present particular reliability problems because they serve to move energy only from the plant to one designated location. Alternating current systems are much more flexible because they can be interconnected at any number of locations with other utilities.

LAND USE AND IMPACTS

A rail system required today to move perhaps 12 million tons of coal will not create any new land-use problems, because the existing rail system between Montana and Minnesota is adequate to carry this volume. The cumulative effects of several other coal-hauling contracts and additional unit trains could disrupt auto traffic and create a need for additional sidings, overpasses, underpasses, etc. Increased rail traffic could affect community development, for residential expansion would be unlikely toward any location that has heavy rail traffic.

Once a slurry line is built underground, the right-of-way can be returned to prior use and will be affected only because of a line break or other maintenance. But pumping stations and access roads to them will require some land, and slurry lines have a unique land impact of their own. Unlike natural gas or oil pipelines, slurry lines cannot be built to follow natural terrain, particularly where the terrain is rugged and rises and falls quickly. Slurried coal causes friction in the pipe and; to reduce it, the line would have to be built more level than some of the terrain it might cross in

southeastern Montana and parts of South Dakota. To do this will require moving in additional earth to smooth out natural terrain. Land use impacts will occur where this earth is obtained and also in those areas where filling in must be done.

Transmission lines create a variety of real and potential land-use impacts. The land under the towers will remove small amounts of land from present uses. Towers for the three hypothetical lines would remove about 135 acres from present use. All along the rights-of-way, the utility will need access to the line. During construction, some land will not be farmable or, in the case of wooded and wet lands, natural habitat for wild animals and birds will be disturbed. This disturbance will dissipate gradually following construction if proper precautions are taken.

Some farmers and ranchers indicate that transmission lines will cause them to lose the use of their lands. Those farmers who now spray irrigate with radial systems (or plan to), will not be able to do so after the line is built. These landowners have suggested that the lines be routed along section lines and roads to minimize impacts on usable land. This kind of routing is more costly, however, because large, stronger and more expensive towers are needed each time the line makes a sharp turn in its route.

SOCIO-ECONOMIC IMPACTS

CONSTRUCTION WORKERS: There should be no significant impacts from construction workers, for they do not take permanent residence while working. They move along as the systems are built. The exception would be for construction of the direct current converter stations at the North Dakota plant and the end of the line in Minnesota where construction would occur over at least one year. In North Dakota, there could be some community impacts. In Minnesota, workers on these kinds of jobs likely would commute from large communities nearby such as St. Cloud or Minneapolis.

OPERATING WORKERS: For transmission lines, there would be no noticeable increase in new employees and families. The railroad would employ about 750 additional people scattered all along the route.[3] The slurry system would employ about 250 additional people with about 30 to 40 located at both the mine and the plant end.[1] The remainder would be scattered along the line.

REGULATORY OBSTACLES

Railroads are not regulated the same way that slurry and transmission alternatives are. The major regulatory concern for the railroad industry is gaining assurance that it will have opportunities for continued coal hauling over the long-term. For this reason, primarily, the rail industry has opposed granting rights of eminent domain to slurry interests.

Slurry system proponents need rights of eminent domain to gain authority to construct the slurry line through lands owned by the railroads. In addition, slurry systems must receive water appropriation and use permits and meet appropriate water quality regulations.

Those who build transmission lines historically have had the right of eminent domain and power of condemnation. These rights and powers are being challenged, however, as landowners and regulators, together, increasingly are questioning whether granting rights-of-way for transmission lines through some areas represents wise land-use decisions.

MAJOR POLICY QUESTIONS

Four major policy issues must be addressed in any consideration of energy transportation alternatives. Although other important policy issues should not be ignored, these four - national rail transportation, water, energy and land use - should be considered most significant. Selective emphasis - whether

by subsidization, favored regulation, decontrol or restrictive controls - on any one of the three alternative transportation methods could markedly affect the viability of the others, particularly in terms of their economic feasibility. In addition, decisions made either at the federal level or at the individual state level could have a significant effect.

Emphasized utilization of one system can affect the continued viability of the other systems. Special regulations or advantages for transmission lines can reduce use of rail systems or introduction of slurry lines. Special considerations given to slurry lines could impact existing rail systems. Favored treatment of rail systems could rule out use of the other two methods. As a result, major long-term transportation policy issues are being raised, and the net effect could be short-term decisions that result in long-term, largely unforeseen problems.

For purposes of this policy examination, the terms short-term and long-term need clarification. Short-term will include, in general, the period of 1976 through 1985. Long-term will encompass that period beyond 1985.

Several examples exist where long-term effects are unknown. If eminent domain is permitted for slurry lines, railroads argue they will suffer economically. Large amounts of water will be transferred from one region to another at a time when we know very little about actual water availability in the West and the effect of such transfers. Increasing numbers of transmission lines from the Northern Great Plains affect more agricultural and other acreage. Little attention is being given to the actual efficiency of moving energy via any one of the three methods. Which method is more energy-efficient?

In short, a simple problem resolved historically by immediate economic considerations has mushroomed into a major, complex set of national, regional and local policy questions which require a reassessment of our traditional philosophies regarding transportation systems, water availability and use, energy efficiency and land use. If we don't test these

historical policies or investigate the short- and long-term impacts of past, present and future decisions, we risk making poor and potentially irreversible decisions.

It makes little sense at this point to continue haphazard decision making for energy transportation under the banner of "the urgent need for energy." Clearly, no one has demonstrated that we face an energy shortage during the next 5 to 10 years because coal is unavailable. Because planning, review and construction of generating plants take about 8 to 12 years, the ability to utilize our coal resources is quite well known between now and 1984. Data from the railroads, from slurry system proponents and from utilities indicate that adequate rail transportation capacity exists to meet projected needs until then. During this period, energy transportation alternatives and more coordinated policies and impact management tools could be studied to resolve many uncertainties. Between now and 1980 we can study. Between 1980 and 1981 we could decide. Between 1981 and 1985 we could implement.

NATIONAL RAIL TRANSPORTATION POLICY

National transportation policy is critical to the decision of whether to build slurry systems as an alternative to rail shipment of coal 1,036 miles from Wyoming to central Arkansas.

Proponents of slurry lines have requested the right of eminent domain to allow their systems to cross railroad rights-of-way not now accessible to them. This right of eminent domain is not just for one pipeline (Wyoming to Arkansas), but for any and all slurry pipelines.

The railroads contend they do not want to eliminate competition but that their financial future is at stake. Slurry lines would take away the high-volume, long-term coal-hauling business that would enable the rail industry to finance its future expansion. In addition, the railroads argue they would be forced to make major investments to meet short-term demands

for service, only to see those demands disappear when volumes of coal movement become large enough to make a slurry line economical to operate.

Although the Wyoming-Arkansas line is the center of the argument between these two competing transportation interests, and although 25 million tons of coal is a small part of the projected hauling levels, the uncertainties of future business for the railroads have broad implications. Already, the stability of the rail industry has been questioned within the financial community, making some investment groups uncertain whether the railroads can attract enough long-term business to warrant the large investments for additional equipment necessary to expand and improve the rail network.

Slurry system proponents argue quite the opposite. They see the two alternative systems being compatible. They also question whether the rail industry can expand sufficiently to meet projected demands for coal movement. To date, slurry proponents have been unable to document their beliefs that the rail industry cannot expand sufficiently. When asked about this, representatives of Bechtel Incorporated indicated they lack documentation on the rail industry but still believe their statement to be true.[11]

While the Wyoming to Arkansas slurry line is far removed from the Upper Midwest and Northern Great Plains in terms of transportation policy, its implementation could affect this region. Likewise, if a similar line were proposed between Montana and Minnesota, for instance, an identical transportation policy controversy would exist.

The Wyoming-Arkansas slurry line, according to its proponents, would be economical at a haul rate of 15 million tons per year or more. Currently, demands for that volume of coal do not exist in the Arkansas area at any one site. In fact, the State of Arkansas limits coal burning to 5 million tons per year at any one location. As always in utility industry expansions, demands for coal grow on a plant-by-plant basis, and the plants are built in different locations. A single plant

with generating capacity of about 4 million kilowatts would have to be built to accommodate the 15 million tons per year the slurry system needs to operate economically. A central generating station with that much capacity probably could be built, but the task would require several years because a utility system's demands could not grow rapidly enough to warrant placing in service 4 million kilowatts of capacity at one site all in one year.

As a common carrier, railroads are required to provide service to customers who demand it. The railroads argue they would be required to provide service from Wyoming to Arkansas for hauling coal up to about 15 million tons per year, at which point the slurry system could begin operation economically. The railroads point out they would have to make major investments in coal cars, engines, trackage and associated equipment and systems, add new employees and other supportive activities, only to have their business - and revenue - disappear when the slurry began operation.

Although some of this railroad investment could be transferred to other lines to meet other demands for coal-hauling service, the railroads argue that <u>their</u> economic foundation - the prospects for future business that allow them to borrow money to expand their services - would be undermined. Railroads are not permitted by law to sign contracts for coal movement. They publish tariffs on request from businesses seeking rail service. Therefore, they argue, they have no guarantees or protection to provide a sound basis for investors to back financing of rail expansion.

Slurry system proponents argue that slurries too would be common carriers, but whether they would operate that way is subject to question. Supporters say that other utilities with generating plants located generally along the route of the slurry could obtain access to coal being moved. This, however, would require smaller slurry lines or other transportation methods to move coal from the trunk line to the plants. The cost of these other transportation methods has not been estimated.

The slurry, like the direct-current, high-voltage transmission line, operates best when it is designed to move large blocks of energy from one point to another at a steady volume. This limitation makes the slurry lines and direct-current lines inflexible to changing demands of utilities. Railroads, on the other hand, through unit trains, can deliver varying amounts of coal to virtually any point accessible to rail service.

Rail Capacity Expansion

Experience has shown that existing rail systems moving coal from the Northern Great Plains can expand services significantly. In 1974, Burlington Northern Inc. shipped nearly 19 million tons[11] of coal from the West, in 1975, about 29 million tons. By 1980, Burlington Northern projects it will move more than 142 million tons[12] of coal from the West.

Questions have been raised relating to the rail industry's ability to expand its system and services to meet future demands for coal movement, but there clearly is no evidence this cannot be done. The most obvious potential limitation to such expansion is the investment community's willingness to finance additional rolling stock, engines, tracks and related systems and equipment, as well as improvements to existing trackage and roadbeds. To date, when it has been demonstrated that the long-term business will exist, the financial community has shown itself to be willing to back such investments. Better information is needed about the total financial requirements of the rail industry to haul projected amounts of coal from the West.

Even if the rail industry could not do the job potentially demanded of it, this would not, in itself, lay a strong base for developing slurry pipeline systems. Time does not appear to be so short that more detailed information could not be prepared before a major decision on eminent domain for slurry pipeline systems must be made.

In the Upper Midwest Council's earlier report - Northern Great Plains Coal: Issues and Options for Suppliers and Users - the volumes of coal expected to be mined for export from the

Northern Great Plains would not appear to be more than the rail industry's capacity for hauling, if railroads could improve their lines through normal means - centralized traffic control and upgrading of track. Exports out of Montana were estimated at 47.5 million tons by 1983; exports from Wyoming were estimated at 84.8 million tons by 1983.

A single-track line equipped with centralized traffic control could handle 60 unit trains per day according to a study conducted by Bechtel Corporation for Mid-Continent Area Power Planners in May, 1975.[13] Sixty unit trains per day would carry about 220 million tons per year. If 60 trains included empty returns, then the total amount moved annually would be about 110 million tons. Because there is more than one rail line leading from the Northern Great Plains, there would appear to be no problem hauling the projected 132.3 million tons of coal per year from Wyoming and Montana by 1983. The only limiting factor for the railroads would be the uncertainty of future business stemming from the possibility of slurry line operation Such competition would reduce the investment community's interest in supporting rail system expansions.

The utility industry has asked whether railroad rates can remain reasonable without competition. Six railroads are capable of moving coal from the Northern Great Plains area, and utilities themselves help to keep the railroads competitive by seeking plant sites served by more than one railroad and by delaying as long as possible any decision restricting them to a particular coal field, transportation system or plant site.

In many ways, it would appear that the two sides - rail and slurry - are approaching the basic question of how to best move large volumes of coal from two entirely separate points of view. The rail industry wants assurances of continued business (through disallowing eminent domain to pipeline slurry companies) to attract financing for future expansion. Slurry proponents appear not to acknowledge the broader implications of their plans for the rail industry. Instead, their dominant interest seems to lie in developing a business that can provide

a strong rate of return to investors. Nowhere in the considerations of slurry line proponents does the broad question of national rail transportation policy surface.

The rail industry envisions major harm to its interests. This harm, however, needs to be more carefully documented and spelled out. For instance, to what extent would the effect of losing business between Wyoming and Arkansas impair the ability of Burlington Northern, the Upper Midwest's major rail system, to meet future demands for rail service? Would the projected financial losses caused by one slurry line produce irreparable harm? Would the uncertainties surrounding future business availability cause significantly higher freight rates for current and potential railroad customers in this region?

Certainly, if eminent domain is not provided pipeline slurry developers, the question of harm to the rail industry and potential negative effects on national transportation interests disappear, as will the controversy over using Northern Great Plains water for coal movement.

If this controversy is treated primarily as an exercise in free enterprise and competition and "may the best man win," then eminent domain for slurry pipelines seems logical. An unanswered question, however, is whether eminent domain for slurry systems, while in the interest of its proponents, is in the best interests of the consuming public and the nation.

History is replete with examples of government protection of private industry (railroads and other transportation systems and utilities, for example). Protective regulatory devices and monopoly can guarantee a future operating base upon which to secure the capital and other resources necessary to conduct current business and meet growing service demands. To remove or weaken these protective measures without first understanding the consequences is, at best, short-sighted and likely will require further regulation or other controls, if history is any indication.

Time appears not to be a problem because of long lead times required to build the new electric generating plants that

will consume Northern Great Plains coal. But, if it were - and if rail were not available or if no negative impacts on railroads were likely - then eminent domain for slurry pipelines could be justified. Burlington Northern Inc. projections of its capability to move 142 million tons of coal from the Northern Great Plains by 1980 exceed, by 30 million tons, the amount which likely will be moved to meet demands in place by that time.

Like nearly all other major energy-related decisions facing us today, responding hastily to a crisis which may or may not be real must be thoroughly weighed against the risks of making a wrong decision. Today, there is insufficient evidence to warrant providing the right of eminent domain to pipeline slurry interests unless we, first and foremost, thoroughly understand the implications of such a decision on the national transportation system and the national economy. Interestingly, the "Statement of National Transportation Policy" issued on November 17, 1975, by the Secretary of Transportation, makes no mention whatsoever of the impact of slurry pipeline coal movement for the rail industry or for transportation policy. In fact, the statement nowhere raises the slurry issue.

WATER POLICY

Slurries would require the removal of large volumes of water from the coal region. The Wyoming to Arkansas slurry line proposed by Energy Transportation Systems, Inc., would require 15 to 20 thousand acre-feet or 5 to 6.5 billion gallons of water[1] to be drawn annually from the Madison Aquifer, a large underground water-bearing rock formation in Wyoming, between the Black Hills in South Dakota and the Big Horn Mountains.

This aquifer, described as extremely large by most water experts, raises some uncertainties. Should a "water-poor" region that includes Wyoming, Nebraska, South Dakota and Montana allow its valuable water resource to be tapped and sent to a "water-rich" region? To what extent would the overall water

table in the region be affected? Would any towns or other significant users be affected by this removal of water? Would a precedent be created that would open the way for a growing number of large-volume transfers of water from one region to another? Is this, in fact, an efficient manner in which to use our water resources?

One proposal for using large volumes of water to move coal, in itself, would appear simple, uncomplicated and minimally disruptive. But, the cumulative effects of several proposals involving several pipelines and, ultimately, extremely large volumes of water represent quite another question. Currently, at least three slurry lines are proposed for moving coal from the Wyoming-Montana area; one to Arkansas, one to the Northwest and one to Houston, Texas. In addition, to make more water available for moving coal from Wyoming, consideration is being given to moving water from the Oahe Reservoir in South Dakota to Wyoming.

If history is any indication, any of these proposals could become reality without having their cumulative effects fully considered. The unanswered question is whether the use of potentially scarce water resources is a logical, beneficial, long-term use in view of other likely demands.

Western states that control these water resources are just beginning to develop water policy and planning programs. Pressure from the private sector is growing <u>now</u> to force major water appropriation or allocation decisions before those long-range water-use programs are developed. This is a clear example of how short-term decisions continue to be made before long-range implications are understood.

Large-volume energy-related water demands in the Northern Great Plains are evidence of a traditional response to energy demand. This is happening mainly because state and national decision makers have never before faced so many difficult questions. Our decision-making systems are not designed to answer these questions except in terms of immediate concerns and short-term effects. Consequently, the natural course is to

move toward a decision under pressure from traditional forces of demand and guided by traditional planning or lack of it.

Availability and Allocation

In some instances, applications for water appropriation permits have exceeded average low flows or even median flows of some surface waterways. Because of this, the State of Montana placed a three-year moratorium on water allocation on the Yellowstone River.

About 28 million acre-feet of water is available annually in the Upper Missouri River Basin, and about 6.5 million acre-feet is being used. The remaining volume has been dedicated to future uses within the Basin and downstream on the Missouri and Mississippi Rivers.

While the extremely large volume of unused water could be allocated to any number of uses, the process of revising current allocation and dedication programs is, at best, a lengthy and complicated one. Any changes in current dedication programs must be measured in terms of their impact upon the national economy, the region's economy, the environment and the social and cultural well-being of residents in the areas affected.

It is important that any imminent decisions to alter current water dedication programs must be correlated with agricultural policy. Agricultural technology is NOT static and it reasonably can be expected that large areas of the Northern Great Plains and Upper Midwest could be irrigated.

Even in energy production, water will be needed for more than slurries. Water also is crucial for mining, for reclamation, for energy conversion (electric power and synthetic gas production), and for domestic and commercial needs of the larger populations resulting from normal growth and the influx of energy industry employees. Water demands for recreation and agriculture also must be included in planning.

The argument has been posed by some that if slurry systems are not developed, more and more coal would have to be converted to electricity or synthetic gas in the Northern Great

Plains area. This could hold true for electric power generation; but it is not likely for synthetic gas production given current economic limitations.

In reality, two factors will dictate how much energy conversion takes place on the Northern Great Plains. One is the ability of the rail industry to provide competitive, long-term service for coal transport. The second is the development of state policy to restrict the location of conversion plants which would produce energy for export only.

Certainly, there is an opportunity to learn from past mistakes. For the past several years, water from the Colorado River Basin has been allocated on a piecemeal basis with no effort to develop a comprehensive look at or plan for overall water management. Demands for water in the Missouri River Basin area are growing larger each year, further reinforcing the need for re-examination of current allocation and dedication priorities and development of a system of federal and state management to encompass the region.

ENERGY POLICY

Aside from the obvious question of whether it is less energy consumptive to move energy via rails, slurries or transmission lines, it is important to examine the effect of expanding or limiting the use of any of the three transportation methods on the development of Northern Great Plains coal as part of the nation's overall energy strategy.

Already, pressure is growing in the Northern Great Plains to export coal, not electric energy. Residents are becoming alarmed over the growing number of transmission lines already crossing the prairies, not to mention additional lines being proposed.

Again, the topic of eminent domain surfaces. A district judge in North Dakota ruled against allowing eminent domain for the Square Butte Electric Cooperative in its efforts to construct

a direct current line from North Dakota to northern Minnesota. Square Butte Cooperative sought to construct and operate a ± 250,000 volt direct current line to provide additional energy to the taconite industry, primarily in Minnesota. The court ruled that, while the cooperative indicated that some energy possibly could be made available for North Dakota residents in the future, the current plan was to move all energy produced at the North Dakota plant into Minnesota. The court ruled that landowners potentially affected by the transmission line would not have access to the electric energy the line would carry and that it was clearly not in their interest to have the line on their property. While this decision is now being contested, it is an indication of a growing mood against transmission lines.

Decisions that would rule out transmission of electric energy from the Northern Great Plains could contribute to making utilities turn to other sources of coal or other forms of energy, primarily nuclear power or midwestern coal in the long-term.

A decision to allow eminent domain for slurry pipelines also could have significant energy policy implications. If, in fact, the net effect of allowing slurries would be higher rail costs for other coal users and other shippers or, as the rail industry predicts, deterioration and ultimate ruin of overall rail service, then the ability of large areas of the United States to have access to coal reserves for electric energy production and rail transport for other commodities would decline markedly.

There is no evidence that denial of eminent domain to the slurry pipeline interests would cause loss of access to Northern Great Plains coal reserves. Middle South Utilities, which would use the coal moved in the Wyoming-Arkansas slurry, already has indicated it would obtain its coal via rail until the volumes are sufficient to warrant operation of a slurry system.

If slurry pipelines do become reality and do cause significant problems for the rail industry, utilities in the Midwest and western Great Lakes may have little choice but to seek

to construct additional transmission systems. They have two other alternatives. One would be a return to using coal from the Ohio River Valley, an uneconomical course now because air pollution control technologies are inadequate. The other would be to use nuclear power, an energy source that requires great amounts of capital, that may be restricted by insufficient quantities of nuclear fuel, and that still stirs controversy because of potential health and safety consequences and lack of sound waste disposal methods.

Several major inconsistencies mark both public and private energy transportation study and planning. One example bears discussion. The Interprovincial-Lakehead Pipeline System, operating for several years to provide Canadian crude oil to the United States and through Illinois, Indiana and Michigan to Canadian refineries in Sarnia, Ontario, is being considered as a potential coal slurry pipeline for moving Canadian coal east to major Canadian energy demand centers in Ontario.

At the same time, the Midwest is losing its traditional oil supplies from Canada, and talks have been underway for some time to consider using this same pipeline, plus one connecting with it from the Canadian west coast, to move surplus Alaskan crude oil through Canada into the Midwest. Canada has plans to use this same pipeline for moving crude oil supplies across western Canada, through the United States and into eastern Canada. Canada already has under construction a line from Sarnia, Ontario, to Montreal; it will move western Canadian crude oil into the heavily populated eastern Canadian provinces, reducing that nation's dependence upon foreign crude oil.

If, in fact, a Canadian slurry proposal is a serious one, it indicates that various branches of the U.S. federal government are not coordinating energy policy very well; and some private interests are taking a rather narrow view of energy supply and demand problems, a view based largely on single proposals and narrow self interests.

Because of the confusion, uncertainty and inconsistency of data surrounding energy transportation alternatives, it

becomes important to ask whether any of the entities involved in energy transportation are, in fact, making plans and decisions based upon the development of a sound national energy supply policy; or are they, instead, making their decisions based solely upon their own motives for continued economic operation and growth in their respective industries.

At a time when leadership and direction on these issues should emerge at the federal level, no system exists for comprehensive analysis. In addition, federal emphasis continues to support expanding the supply of energy rather than reducing demand or, at least, growth in demand. As we continue to press forward on our various energy problems separately, we reduce our ability to address the question of energy demand. Time that could be used to develop strategies for managing energy demand is disappearing. Under the pressures of real or potential energy crises, our energy policy efforts will continue to encourage expanding supply. Our alternatives and the time needed to carefully consider them slip away, and we again find ourselves having to "make do" with whatever actions we have available. The ultimate result could be a set of micro decisions likely only to result in a larger, more difficult problem. Indeed, history will support such a scenario.

No matter which direction(s) our energy transportation policies take, it is imperative that the interrelationship of these three alternative transportation methods - rail, slurry and transmission line - be carefully considered. Major national interests are involved; so are state and regional interests.

The uncertainty of which direction(s) national decision makers will take is causing states to take individual and sometimes separate and uncoordinated actions which can, in themselves, create even more problems.

LAND USE POLICY

The construction of transmission lines represents the most obvious impact on land use. Several considerations are

involved, including: removal of agricultural land from production, interference with irrigation of agricultural lands, impacts on forest lands and other natural habitats.

Rail lines, too, will affect land use. As demands for rail service grow, the need for new rail lines, or at least additional trackage for sidings and other system components, will grow. Rail movement of coal has some indirect land-use implications, too. Increased unit-train traffic through the many towns along the main lines between coal fields and energy demand centers will impede traffic movement through these communities. There will be a need for relocating rail lines outside population centers or building overpasses and underpasses or other alternative routes for truck and auto traffic. Heavier rail traffic could affect settlement patterns, changing the plans of some communities. Such land-use implications are rather speculative, however, and need much greater study.

Slurry pipelines also present land-use impacts. During construction, large amounts of land would be disturbed. Except for pumping station locations, the land can be restored, for the slurry lines would be buried, permitting plowing or other surface activity.

Slurry lines must be constructed with gradual slopes because coal has a natural tendency to settle or cause wear on the pipe as it passes through. Where natural contours slope sharply, considerable earth fill is necessary to reduce sharp changes of pipe elevations. Procuring fill will create additional land-use impacts. In addition, altering natural contours to reduce changing pipe elevations could create unnatural barriers to previous uses of the land surface, limiting some previous uses, such as agriculture. These contour changes also could affect the land's use by wildlife.

Any slurry construction could cause erosion through loss of ground cover, particularly where natural contours are rugged. Such conditions exist in many parts of the Northern Great Plains and at points between there and Arkansas and the Midwest.

No matter how well constructed, pipelines could break. Despite precautions such as shut-off valves and holding basins for the coal slurry, some damage to the land could occur. A 25-million-ton-per-year pipeline using 6.5 billion gallons of water per year could spill nearly 1,500 tons of coal and 375,000 gallons of water through a major break in only 30 minutes.

It does not appear that the land-use implications of rail or slurry movement of coal are unmanageable or unacceptable given proper planning and security measures. But, advance planning at the state and local levels must precede decisions to expand operation of either transportation alternative.

Because of historical action allowing eminent domain and arbitration of right-of-way and easement costs, the argument can be made that land values and prior land uses have been given less priority than has the use of land for movement of energy. This appears to be changing as landowners' views change.

Short of solving every land-use argument between farmer and utility on a farm-by-farm basis, state and local governments need practical guidelines for land use. An alternative to that for coal-producing states would be to ban the export of electric energy in favor of the export of coal only. This would seriously affect the development of North Dakota coal because of the costs of shipping low-BTU lignite long distances. It also would place even greater demands on rail movement and, potentially, development of slurry pipeline systems.

It is difficult to address in all of this the real extent to which construction of transmission lines will, in fact, affect agricultural production in the long-term. This question continually is raised; yet we've no national or state agricultural policies or guidelines which would provide a basis for making such statements. It is inaccurate to project that agricultural production would be impaired and that needed food would not be grown unless we first develop some goals and objectives and policies for agriculture and then make some comparisons of the costs and benefits of alternative land uses.

MAKING TRANSPORTATION DECISIONS

An examination of decision making and its relationship to making energy transportation choices for moving coal or energy from coal out of the Northern Great Plains into major demand centers shows two important interactions should be considered. First, there is the public-private process through which utilities, railroads, coal companies and other private interests interact with regulatory agencies. Second, there is the public-public process in which regulatory agencies at both the state and federal levels interact with each other in state-state, state-federal and federal-federal relationships.

The most important interaction is between the public and private sectors. This is particularly true in three specific areas. 1) Who should determine the costs and benefits of alternatives? 2) How should these costs and benefits be balanced? 3) How does the public sector insure that national and state interests are served and protected and, at the same time, allow private enterprise to operate economically with freedom to compete?

Clearly, numerous conflicts are present in ongoing debates over alternative energy transportation systems. Utilities seek to move energy via methods that will keep consumer energy costs to the lowest possible level within their limitations of operation, reliability and corporate economics. Landowners revolt against transmission lines even though utility studies indicate this method is most economical for a particular situation. Railroads want continued protection to insure future business and the development and continuation of a transportation network which will serve all shippers of commodities. Proponents of slurry lines, none of them in the electric power supply industry, want to build their systems for several separate reasons. One participant, the constructor of the system, would like the business. Another, the financial participant, also would like the business received from financing the system.

A third, a pipeline company, sees an opportunity to invest in a diversifying operation to better secure its financial position.

The electric energy consumer, the person who pays the monthly utility bill, appears to have little, if any, say in these matters. Consumers must pay the bill if they are to have energy. Those persons in between the coal fields and points of energy consumption, who experience the impact of any of the alternative transportation systems but gain no direct benefit from the energy produced, also must pay certain economic, social and environmental costs. Some are readily quantifiable; some are not because they are based upon individual and group values and judgments.

As designed, the evaluation and decision process weighs the evidence or contributions of the proponents of these transportation systems and the responses of those affected, in relation to applicable statutes and regulations.

Absent, however, are mechanisms for relating immediate or short-term impacts, economic considerations, and energy supply and demand problems to long-term and, often, cumulative effects of various proposals. Also absent is any mechanism for public institutions to judge whether private utility interests, for instance, or those of the consuming public are best served by providing "lowest-cost energy," by protecting land for present and future uses or by insuring economic protection for railroads through disallowance of eminent domain for slurry pipelines. Clearly, under present-day standards, if the slurry line is an economical proposition and can keep the lid on consumer energy costs better than railroads can, then there is merit in allowing eminent domain, construction and operation of the slurry line. Lost in all of this is the risk that the rail industry will suffer broad and long-term economic problems that will manifest themselves in higher consumer costs and even broader economic consequences ranging far beyond the energy consumers in the Middle South Utilities service area. In fact, if the railroads are right in their projections, the effects

of their projected economic problems could be felt nationwide and, in particular, in the Upper Midwest where Burlington Northern Inc. is the dominant rail system.

In terms of water policy, the Upper Midwest Council's earlier report on Northern Great Plains coal noted there is ample water available in the Northern Great Plains to support all activities projected. The problem is that the water ofttimes is not in the right place at the right time, and considerable diking, damming, piping and other techniques would be needed to support the broad range of water-related operations proposed.

Even though surplus water is available now in the Northern Great Plains, all of it has been dedicated or allocated for future uses based upon priorities developed several years ago by the various river basin commissions. These priorities can change, together with the data and growth projections upon which they were based. The long-range implications of sending large volumes of water out of the region through pipeline slurries or of transferring water from the Missouri River system to Wyoming are unclear in their effects on water demands in those areas. In addition, insufficient data is available to determine whether an appropriation of 15,000 acre-feet of water per year from the Madison Aquifer would significantly harm water users in that area.

The decision-making process proceeds without sufficient information leading perhaps to the need later on to counter negative impacts that may occur. The major problem with this kind of decison making is that some decisions and impacts become irreversible. Once, for instance, large investments are made to move large volumes of water from one area to another, it is extremely difficult, if at all possible, to halt the activity.

Whose interest should be served in these situations? Should the current national policy for solving our energy problems - expanding supply, not managing demand - take precedence, along with strong pressure to develop the lowest-cost alternatives for energy supply? Or, should, in the case of water policy, the needs of present users take precedence to assure that adequate water supplies will continue to be available?

Clearly, with alternatives such as rail movement and with many unknowns surrounding transfers of large quantities of water out of a "water poor" area, one could argue strongly for taking proven courses of action - rail or transmission line energy transportation, not pipeline slurry movement.

In terms of energy policy and national and local efforts to meet energy demands, any economic problems that might be experienced by rail systems serving the Northern Great Plains and Upper Midwest as a result of slurry competition must be considered in the decision-making process. The economic viability of the region's rail systems is critical to the movement of coal into the Midwest and western Great Lakes region if energy consumers in these areas are to have fuels to meet growing demands at a time when supplies of oil and natural gas are declining and their prices rising. Continued overall economic operation of this region's rail systems is vital to the region's economic future.

How Urgent Is the Problem?

Interested parties suggest that unless we lease coal lands, build mines and operate slurry pipelines, we are going to create yet another, even more serious, energy shortage. Mines that already exist and those that are approved, but not yet operating, plus real expansion potential in them, appear sufficient to meet demands for Northern Great Plains coal during the next eight years. Beyond 1984, utility projections of coal demand are extremely uncertain.

It is not unrealistic to think that generating plants built in the next eight years could be located close to the demand centers they will serve outside the Northern Great Plains. This time period would allow opportunities for states and groups of states to develop comprehensive policies to deal with land-use impacts associated with transmission lines. Likewise, this time could be used to study further the costs and benefits of pipeline slurries. If it were clear that the railroads would be asked to provide the service for these coal demands, then

the financial community could act quickly to insure capital is available for the railroads to expand. Also, during this period, the long-range implications and possible counter measures to protect economic viability of rail systems could be examined if pipeline slurries were built.

Even more importantly, the decision-making process would not be locked into highly inflexible energy transportation methods - pipeline slurries and transmission lines. If demands for Northern Great Plains coal or other energy sources changed from one area to another, adjusting supplies could be handled more easily by increasing use of relatively flexible rail systems.

Private-Private Relationships

Does a private organization that seeks to use Northern Great Plains water to provide energy elsewhere have a responsibility to those affected at the water source? Does the responsibility involve simply paying for the water appropriated? Or does the responsibility go beyond that to make sure that actions taken today, while appearing to be the best choices, do not cause long-term difficulties? In short, does the utility's responsibility go beyond delivering low-cost energy to its consumers and include weighing the costs imposed on others against alternatives?

A direct current transmission between Underwood, North Dakota, and central Minnesota may be the most economical system that United Power Association/Cooperative Power Association can construct, but the line may not be in the best environmental, economic, social or cultural interests of the persons along the right-of-way or others throughout the region who are affected by it.

The major problem in addressing conflicting views and differing definitions of costs and benefits is the fact that the utility already has made decisions based on its own economic considerations well in advance of any interaction between developers and those affected by development. Pressures from

regulatory agencies to hold down consumer energy costs may preclude the utility's consideration of other alternatives. Because utilities can automatically pass along higher fuel costs, the resulting rise in consumer costs causes difficulties for utilities seeking further rate increases to provide capital for plant expansions.

If it is impossible for utilities and other energy-related operations to include in their decision-making process consideration of alternative values for water, land and other environmental conditions, the region likely will continue to be faced with an unending list of individual fragmented proposals for energy development. Without long-range land-use and water policies, public decision makers will be left with the almost impossible task of arbitrating differing points of view. These kinds of disputes will continually end up in the courts, where questions of equity cannot be answered adequately. The courts, like other public decision makers, cannot adequately arbitrate disputes over land or water use unless long-range policies are developed to clearly indicate how the states and their residents want to use land and water.

Insuring National and Local Interests

Only by creating comprehensive long-term programs and policies for energy, land use, water and other resources can national or local public agencies insure the interests of the people they serve.

The states of the Northern Great Plains, confronted by a large number of energy development proposals for mining, power production, water appropriation, land use and other activities, are cast primarily in the role of the responder or reactor. Only as recently as November, 1975, did an official of state government in North Dakota suggest that, before the state authorizes the many energy-related proposals before it, comprehensive, long-range economic policies must be developed for the state.

Unless both private and public interests can combine efforts to define the long-term interests at all levels, it is quite likely that two current trends will continue unabated:

1. Individual states will continue to address such proposals in terms of finding systems for dealing with the costs and benefits of energy development without ever first addressing the appropriate role of energy development in that state's long-range economic future.

2. Confrontations will continually wind their way into the courts, where delays will occur, clear decisions will not be made and cumulative effects of energy development will not be addressed. In the face of delays, national energy policies that emphasize rapidly expanded energy supplies likely will take precedence, and state and local governments again will be left with managing the impacts of decisions made beyond their boundaries by people insensitive to local interests.

NOTES

1. Energy Transportation Systems, Inc. (Bechtel Incorporated), Progress With Coal Slurry Pipelines (Comparison With Unit Trains), paper presented at the Frontiers of Power Technology Conference, Stillwater, Oklahoma, October 1, 1975.

2. T. C. Aude, T. L. Thompson, E. J. Wasp, (Bechtel Incorporated) "Slurry-pipeline Systems for Coal, Other Solids Come of Age," Oil & Gas Journal, July 21, 1975.

3. Memorandum to M. Murphy, Upper Midwest Council, from Allan R. Boyce, Director, Cost Control, Burlington Northern Inc., St. Paul, Minnesota, January 23, 1976.

4. As reported in Progress With Coal Slurry Pipelines (Comparison With Unit Trains) [footnote #1], Capital cost for the 1,040 mile pipeline planned from Wyoming to Arkansas is expected to be $750 million. Capital costs for a 700-mile Montana to Minnesota pipeline are estimated at $505 million using a direct ratio, assuming that variables such as terrain to be crossed, land values, number of river crossings, etc., are similar enough that the above cost approximation can be used.

5. As reported in the Report on the Feasibility Study for a North Dakota Power Supply Project [footnote #10], The cost of one 410-mile, dc transmission line is expected to be $170 million. Three such transmission lines on three separate rights-of-way would then cost $510 million.

6. Personal Communication with Allan R. Boyce, Director, Cost Control, Burlington Northern Inc., January 9, 1976.

7. As reported in Progress With Coal Slurry Pipelines (Comparison With Unit Trains) [footnote #1], The proposed 1,040-mile slurry pipeline from Wyoming to Arkansas would require 450,000 tons of steel over a 30-year period. The hypothetical 700-mile Montana-to-Minnesota pipeline, assuming similar construction practices and terrain, would require 304,000 tons of steel.

8. Personal Communication with David Kopecky, Assistant to the General Manager, United Power Association, Elk River, Minnesota, March 29, 1976.

9. Personal Communication with Allan R. Boyce, Director, Cost Control, Burlington Northern Inc., February 6, 1976.

10. Burns & McDonnell, Report on the Feasibility Study for a North Dakota Power Supply Project, for United Power Association (Elk River, Minnesota) and Cooperative Power Association (Minneapolis, Minnesota); Kansas City, Missouri, July 15, 1973.

11. Telephone conversation with T. C. Aude, Engineering Manager, Slurry Systems, Bechtel Incorporated, San Francisco, California, December 10, 1975.

12. Burlington Northern and U.S. Coal Transportation, Exhibit J, (Statement of Louis W. Menk, Chairman and Chief Executive Officer, Burlington Northern Inc., before the House Committee on Interior and Insular Affairs), November, 1975.

13. Bechtel Corporation, Western Coal Utilization in the Mid-Continent Area Power Pool, San Francisco, California, May, 1975.

STATEMENT BY IVAN W. WYATT, VICE-PRESIDENT

(10)

KANSAS FARMERS UNION

STATEMENT

ON

HOUSE BILL NO. 2193

SLURRY PIPELINE

Before the

House Committee on Judiciary

Mr. Chairman, Members of the Committee--

I am Ivan Wyatt, Vice President of the Kansas Farmers Union.

Members of the Kansas Farmers Union at their convention in Wichita, in January this year reiterated their opposition to the "Slurry Pipeline".

There are several reasons for their position, ranging from environmental and economical reasons to the legal and political aspects of eminent domain.

The issue of the slurry pipeline is not new to the members of Farmers Union. In 1976, Dale Lyon, President of the Kansas Farmers Union was appointed to the Coal Energy Transportation Study Group that met in Wahington D. C. in April of that year.

Farmers Union members had several reasons for opposing the slurry pipeline.

Since Kansas is an agricultural state producing millions of bushels of grains, it is necessary that we have a viable railroad sysstem to reach our markets.

Because of the increased volume of coal shipments we have already seen an upgrading of the railroads. The further increased volume of coal shipments will help to further upgrade the rail system in this part of the nation. This increased volume of business will also help offset the need to continually increase freight rates for other commodities such as grain and farm supplies shipped by rail.

Numerous members of the House apparently share the Farmers Union

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concern also for the need of a viable railroad system by placing their name in sponsoring HCR No. 5021 that speaks of a joint utilization of the rail system.

Should the Kansas Legislature, on the other hand allow the slurry pipeline to skim off the cream of the coal transportation business, the shippers of manufactured goods and grains will be forced to pay a larger part of the cost to maintain the railroad system in the state. This would in the end mean either higher cost to the consumer for food or lower prices to the farmer for his grains. Railroads ar the most efficient way to ship grains both dollar wise and energy wise.

The loss of a potential increase in employment of railroad personnel, would be in direct conflict with the intent of the Legislation passed recently to increase employment opportunities in the state known as the "Job Expansion and Investment Credit Act". The loss of these employment opportunities and their effect on the Kansas economy should be considered.

It is also realistic to assume, that in the event of a breakdown or rupture of the slurry system, there would be a need to dump close to a half - million tons of fine - ground coal each time. What would be the environmental effects with Western Kansas wind blowing this stuff around?

The very nature of the pipeline dictates that mammoth generating facilities to be built. This means the smaller generating facilities will be placed at a fuel pricing disadvantage, since they can't all be served by the pipeline. They would have to depend on the railroads who would be getting only the less lucrative leftover business.

I have left until last the most far reaching and important point to be considered. That is the granting of the power of eminent domain to a private corporation.

House Concurrent Resolution No. 5021

By Representatives Augustine, Anderson, Arbuthnot, Aylward, Campbell, Crowell, Crumbaker, Cubit, Dempsey, Ehrlich, Erne, L. Fry, Glover, Green, Guffey, Harper, D. Heinemann, K. Hineman, Jarchow, Johnson, King, Leach, M. Littlejohn, Maloney, Martin, Matlack, McCrum, I. Niles, Novak, Rodrock, Sand, Schmidt, Shelor, Shriver, Sughrue, Thiessen, M. Thomson, Vogel, Darrel Webb and Works

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A CONCURRENT RESOLUTION memoralizing Congress and the United States Department of Transportation to improve the transporting of agricultural grain products.

WHEREAS, The economic well-being of the state of Kansas and a large portion of the United States is tied to the ability of the American farmer to move his or her product to the markets of this nation and of the world; and

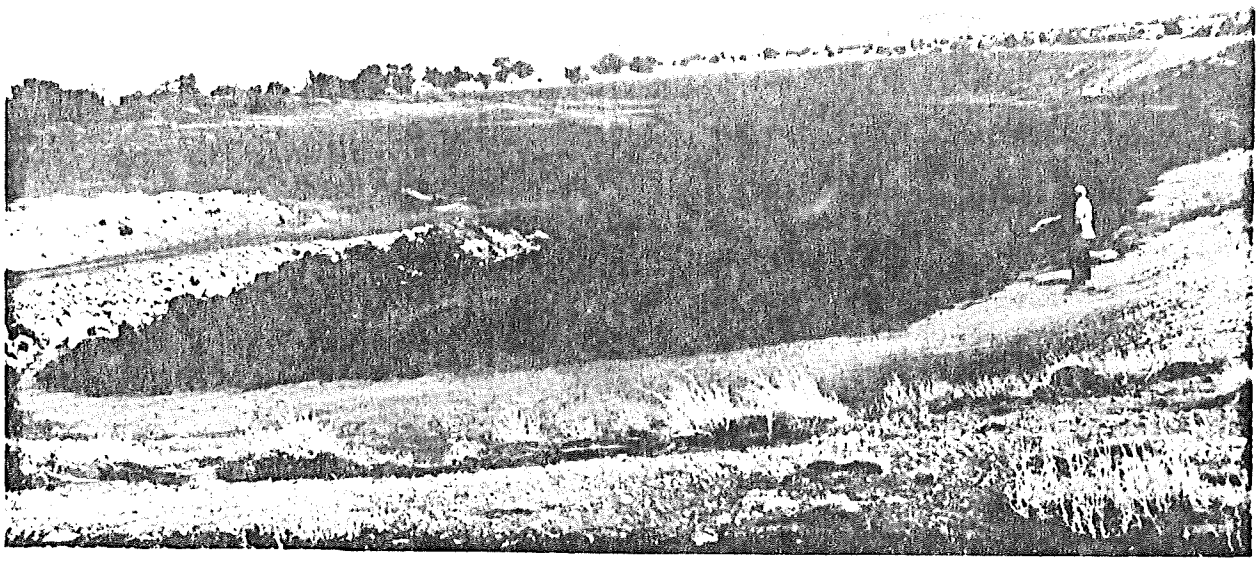
WHEREAS, The lack of box cars and hopper cars during harvest has created problems not only for the American farmer, but for the elevator operators and the consuming public; and

WHEREAS, The massive transportation systems of the United States must be utilized in a joint effort to insure that the American farmer can be assured that his or her product will be transported at a reasonable cost and within a reasonable time; and

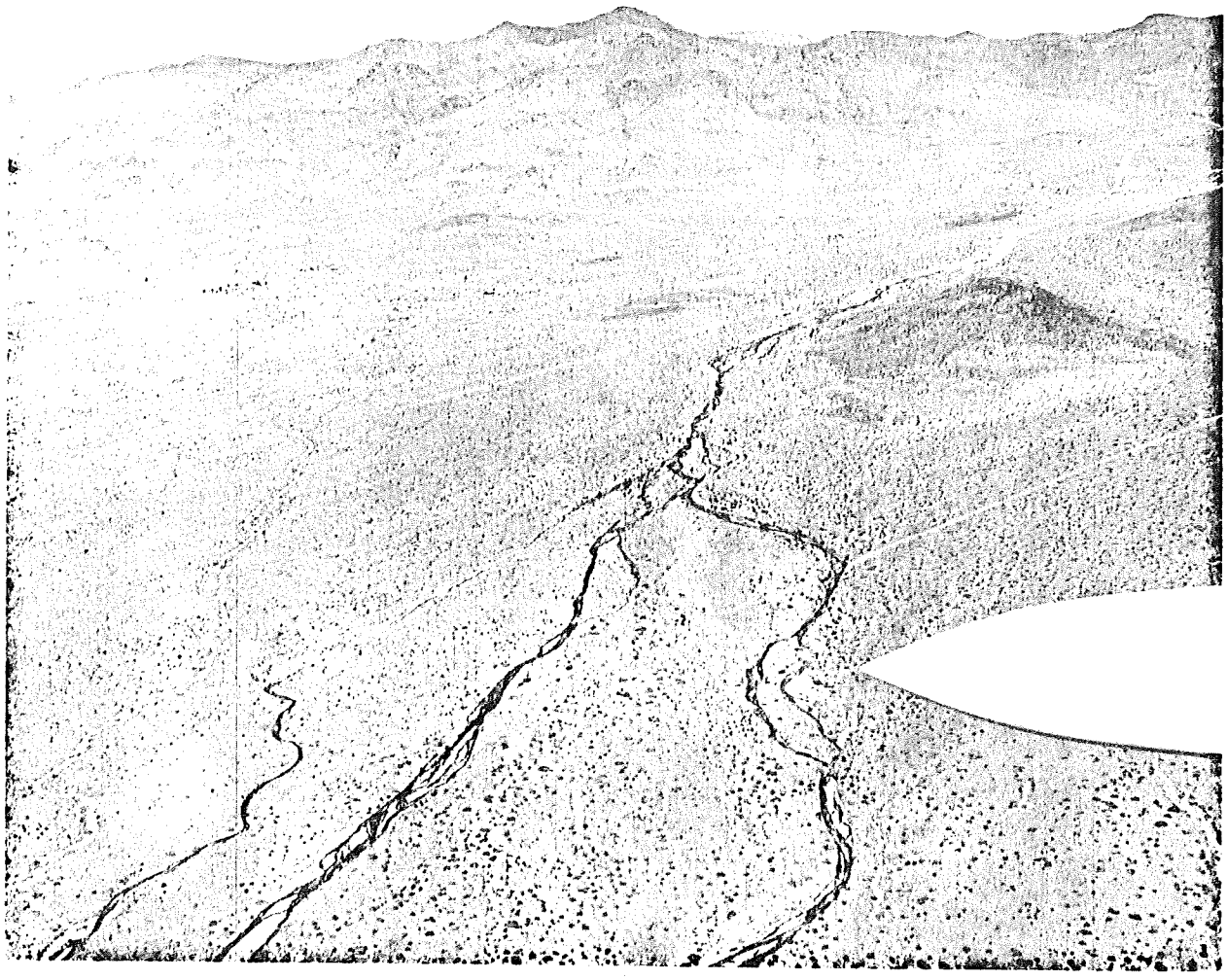
WHEREAS, The problem of moving grain from the producing areas to the consuming areas and the ports cannot be cured with band-aid-like treatment, nor can it be cured overnight, but it is time that the government and the transportation industries take a candid and hard look at this problem and the possible solutions: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the Congress of the United States and the United States Department of Transportation are urged to seek a solution to the problem of transporting agricultural grain products; and

Be it further resolved: That the Secretary of State be directed to transmit enrolled copies of this resolution to the Secretary of Transportation and to each member of the Kansas congressional delegation.



Huge dump ponds will become common sights if coal slurry pipelines are granted eminent domain. During a pipeline rupture or power failure, the slurry must be flushed from the pipe into ponds or on the ground. When the water evaporates, there is the danger of thousands of tons of coal dust blowing across the countryside.



A recent break in the Black Mesa Pipeline near Kingman, Arizona resulted in slurried coal pouring into natural watercourses. The contamination was spread over miles of desert terrain.

Serious political and legal consideration should be given to the implication and ramifications of the granting to private corporations, the power of eminent domain, and the effect it will have on private property rights in the future. Former Attorney General Schneider's ruling on political contributions gives every indication that the ETSI Corporation is a private corporation when he ruled that a 1911 state law that generally prohibits political contributions by corporations falling under state regulations such as banks, railroads or public utilities does not relate to the ETSI Corporation.

Let's look at the Kansas Bill of Rights, it reads in part:
"All political power is inherent in the people and free governments are founded on their authority and instituted for their equal protection and benefit. No special privileges or immunities should ever be granted by the Legislature".

How soon will other corporations wanting "equal protection and benefit" want the "special privilege" of eminent domain power?

Former Congressman Joe Skubitz is quoted in a news story, in part as saying "a bill that would provide eminent domain rights to coal slurry pipelines is another attempt to ride on the coattail of the energy crisis by giving private industry the right to take anyone's property".

Mr. Skubitz is reported as saying "courts ruled in a case involving a natural gas pipeline that eminent domain is constitutional only because there is not other way to transport natural gas. This is not the case of coal."

Last year the ETSI Corporation attempted to gain broad eminent domain powers to use against private citizens, ranchers and farmers as well as the railroads.

They failed in this attempt.

Now ETSI says they want eminent domain "privileges" on land owned by other than individual landowners.

What about family farm corporations and grassing associations?

ETSI says they want eminent domain "privileges" only to assure pipeline underground crossings of the railroads. Ms. Partridge of the ETSI Tulsa office is reported as saying in a speech in Kansas City (K. C. Times 6-14-78) without eminent domain authority existing railroad right-of way pose serious barriers for the pipeline.

Yet it is reported that in 29 suits against the railroads ETSI has won so far 27 court cases.

Why then do they still want eminent domain "privileges", to use against the railroads, and other corporations? If they are successful in this effort how do we know they won't be back wanting eminent domain "privileges" to be used against Kansas farmers and ranchers.

According to Webster - "eminent domain is the sovereign power over property... to necessary public use." A pipeline running from Wyoming to Arkansas is not a necessity of the public use of the citizens of Kansas.

At this time we are considering only one pipeline. Once they have this "privilege of power", how many other such pipelines may crisscross the state?

If ETSI is successful in gaining this "privilege of power" over the rail roads, then the Kansas farmer and rancher would stand along in opposing legislation granting further eminent domain privileges.

What is the scope of ETSI's size and financial power as compared to some of our state corporations and even more so the average size family farm operation?

Among the owners of ETSI is Lehman Brothers, United Energy Resources Inc., including the Bechtel Corporation who, according to an article prepared by Mark Dowie with the reasearch assistance of the Center of Investigative Reporting, is a secretive family owned business who's name is familiar to prime ministers and presidents around the world.

Bechtal's largest current project is to build a major industrual city in Saudi Arabia equal to the size of Toledo, Ohio.

If privately held firms were listed in Fortune 500 Bechtal alone would rank about 24th with multi - million dollar investments in land and other corporations.

Bechtel and it's 30 odd subsidiaries are involved in Indonesia, a Trade Center in Moscow, and a copper complex in South Africa, just to name a few major projects.

Dowie reports Bechtel will work for anyone who can borrow large sums of money: socialists, tribal sheiks, fascist dictators, even alleged enemies of the United States.

Repeating the Kansas Bill of Rights in part "All political power is inherent in the people, and free governments are founded on their authority, and instituted for their equal protection and benefit. No special privileges or immunities should ever be granted by the Legislature."

Bechtal and ETSI's financial and political scope is uncomprehensive. In closing, I can only ask should ETSI and Bechtel ever be granted this "special privilege" to use against the private investors of Kansas, whether they be investors of the railroads or the family investors of Kansas farms and ranches?

There is no corporation or family farmer in Kansas who could muster the funds to challenge the ETSI group in any lengthy court contest involving appeals to the numerous courts.

In many cases the court cost's could conceivably in a short time cost more than the value of the land involved.

Up to this point I've spoken only of this legislation on a state level, but the question of granting eminent domain powers to be used for "pipeline pormotion" by an international "slurry pipeline" consortium has been a national issue.

Proponents argue that coal slurry pipeline will promote competition in coal transportation, when in fact they may be laying the ground work for yet another form of oligopoly involving joint ventures of coal mining, coal slurries, and the generating of electricity, with the long term construction costs and purchase contracts being eventually passed on to the consuming public.

In 1978 the U. S. House of Representatives denied the power of eminent domain for the slurry pipeline by a vote of 246 to 161. Farm organization opposing the slurry pipeline at the national level was the National Farmers Union, National Association of Wheat Growers, National Farm Organization and the National Farm Bureau.

In Summary:

Why does ETSI really need eminent domain powers?

1. They are winning their suits against the railroads.
2. What will the slurry pipeline do for Kansas?
3. How much employment and taxes will the slurry pipeline generate as compared to the potential expanded railroad business?
4. What will the passage of House Bill No. 2193 do to private property rights in the future?
6. Will not the passage of House Bill 2193 open an Eminent Domain Pandora's Box?

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REMARKS OF JOSEPH S. GOODMAN
BEFORE THE KANSAS HOUSE JUDICIARY COMMITTEE FEBRUARY 13, 1979
REP. JOE HOAGLAND CHAIRMAN

ADDRESSING THE ISSUE OF THE COAL SLURRY PIPELINE BILL
NOW BEFORE THE COMMITTEE

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, AND FELLOW KANSANS;

MY NAME IS JOSEPH GOODMAN, I LIVE IN LAWRENCE, AND I WORK FOR THE STUDENT UNION OF THE UNIVERSITY OF KANSAS. I SPEAK TO YOU TODAY AS A PRIVATE CITIZEN, FOR I HAVE NO TIES TO ANY PIPELINE INTERESTS, THE RAILROADS, LABOR UNIONS, OR THE STATE GOVERNMENT. IN FACT, I AM PROBABLY THE ONLY PERSON IN THIS ROOM WHO ISN'T BEING PAID TO BE HERE.

I HAVE TAKEN THE TIME TO COME HERE TO SPEAK TO YOU TODAY BECAUSE I FEEL A GENUINE CONCERN ABOUT WHAT IS GOING ON WITH THIS CONTROVERSY CONCERNING THE COAL SLURRY PIPELINE. I HAVE LIVED IN KANSAS FOR NEARLY HALF MY LIFE, AND MY WIFE'S FAMILY HAS FARMED IN CHEYENNE COUNTY FOR NINETY YEARS. I WANT OUR ECONOMY TO GROW AND I WANT TO SEE NEW CLEAN INDUSTRY ATTRACTED TO KANSAS. I THINK THE ISSUE HERE TODAY IS NOT WHETHER ONE UTILITY SHOULD BE GIVEN RIGHTS OVER ANOTHER, BUT RATHER, ARE WE CONSIDERING ALL THE FACTORS THAT WILL BE CHANGED BY SUCH AN ACTION.

I'M TOLD THAT THE PIPELINE WILL CREATE 16 NON LOBBYIST JOBS IN KANSAS. IF THE COAL WERE TO MOVE BY RAIL, HUNDREDS OF TRAIN CREW, MAINTAINER, ELECTRICIAN, AGENT AND MANAGEMENT STAFF POSITIONS WOULD BE CREATED - MANY OF THESE JOBS BEING BASED IN SMALL COMMUNITIES THAT BADLY NEED DIVERSIFIED EMPLOYMENT.

THE ROCK ISLAND RAILROAD OPERATES 1225 MILES OF LINE IN KANSAS - ALL OF IT BANKRUPT SINCE 1975. FEDERAL JUDGE FRANK MCGARR HAS GRANTED THE TRUSTEES SEVEN - SIX MONTH EXTENSIONS TO FILE A REORGANIZATION PLAN. THE CREDITORS ARE

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GETTING NERVOUS. AN ADDITIONAL 191 MILLION DOLLARS HAS BEEN LOST SINCE 1975. IF TRUSTEE WILLIAM GIBBONS CAN SHOW THE COURT SOME SOURCES OF NEW REVENUE - T JUST BRANCH LINES FEEDING COUNTRY ELEVATORS - LINES WHICH NEVER REALLY MAKE MONEY - THEN PERHAPS THE ROCK WON'T BE LIQUIDATED FOR SCRAP. HUNDREDS OF KANSANS WORK FOR THE ROCK ISLAND, AND THEY DON'T WANT TO LOSE THEIR JOBS. DOZENS OF ELEVATORS ARE DEPENDANT ON THE ROCK'S SERVICE TO MOVE THE HARVEST - A SERVICE WHICH MUST BE SUPPORTED BY OTHER. STRONGER REVENUE BASES OF THE COMPANY. IF YOU VOTE TO DENY THIS REVENUE TO A COMMON CARRIER. DON'T TELL THE FARMERS THEY CAN SHIP THEIR GRAIN IN THE COAL PIPELINE.

UNCLE RUEBEN FARMS SEVERAL HUNDRED ACRES OF WHEAT OUT NEAR ST. FRANCIS. IF THE RAILROAD DID'T SERVICE HIS ELEVATOR, HIS GRAIN WOULD HAVE TO MOVE BY TRUCK - AT A HIGHER COST - OVER NARROW, OBSELETE HIGHWAYS LIKE U.S. 36. IF THAT HAPPENED THE TAXPAYERS OF KANSAS - US - WE - WOULD END UP PAYING MORE SO THE STATE COULD UPGRADE THOSE ROADS TO HANDLE THE BIG SURGE IN TRUCK TRAFFIC - ALL BECAUSE YOU GAVE RIGHT OF WAY TO A HUGE INTERNATIONAL COMPANY THAT BUILDS NUCLEAR REACTORS, OILFIELDS, AND PIPELINES - NONE OF WHICH BENEFIT KANSAS.

UNLIKE THE BELEAUGERED ROCK ISLAND. THE SANTA FE. UNION PACIFIC AND MISSOURI PACIFIC ALL OPERATE PROFITABLY HERE IN KANSAS. THEY SEEM QUITE HAPPY TO PROVIDE US WITH SUPERIOR FARM COMMODITY SHIPPING SERVICE, IF THEY CAN MAKE FAIR RETURNS ON OTHER COMMODITIES AND THRU SERVICE. SERVICE LIKE THE COAL UNIT TRAIN THAT PASSES VERY NEAR TOPEKA ON A REGULAR 2,073 MILE JOURNEY FROM ACCO UTAH TO DANIEL MISSISSIPPI WITH COAL FOR A POWER PLANT. A POWER PLANT THAT IS GETTING ITS FUEL AT A VERY GOOD PRICE - EVEN AFTER THAT COAL TRAVELS FARTHER THAN ANY ER UNIT TRAIN HAS BEFORE - AND WITHOUT CREATING A WHOLE NEW UTILITY JUST TO SERVE IT - AND, OH YES, THAT COAL GOING TO MISSISSIPPI CREATES JOBS FOR KANSAS... CONTINUING JOBS.. NOT JUST SHORT TERM, ONE TIME CONSTRUCTION JOBS.

KANSAS BASES ITS ECONOMIC STRENGTH ON AGRICULTURE - AND RAIL SERVICE IS THE BACKBONE OF THE FARM MARKETING SYSTEM. LETS NOT GIVE AWAY THE STRENGTH THAT 120 YEARS OF RAIL PROGRESS HAS GIVEN OUR STATE.

THANK YOU