

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Charlie L. Angell at
Chairperson

8:00 a.m./~~p.m.~~ on Friday, February 24, 1984 in room 123-S of the Capitol.

All members were present except:

Senator Tom Rehorn
Senator Ed Roitz

Committee staff present:

Raney Gilliland, Research Department
Don Hayward, Revisor's Office
LaVonne Mumert, Secretary to the Committee

Conferees appearing before the committee:

Jack Glaves, Panhandle Eastern Pipe Line Company
David Black, Kansas Power and Light Company and Gas Service Company
Frank Rathbun, Peoples Natural Gas

Senator Vidricksen moved that the minutes of the February 23, 1984 meeting be approved.
Senator Werts seconded the motion, and the motion carried.

S.B. 483 - Economic waste of natural gas: Re Proposal No. 20

Copies of the following were distributed to the Committee: statement of Randal Loder on behalf of members of Kansas Farm Bureau and the Southwest Kansas Irrigation Association (Attachment 1); statement of Northern Liquid Fuels Company on S.C.R. 1643 (Attachment 2); and statement of Northern Liquid Fuels Company on S.B. 483 (Attachment 3).

Jack Glaves summarized his written statement (Attachment 4) in opposition to S.B. 483. He discussed court cases ruling that any setting of a minimum price on interstate gas interferes with interstate commerce and therefore is unconstitutional. Mr. Glaves said he did not disagree with Mr. Byrd's testimony on February 21 but he believes his remarks addressed intrastate gas rather than interstate. Responding to a question from Chairman Angell, Mr. Glaves said he thinks that economic waste is clearly spelled out in the statute and relates to wasteful utilization of gas. He agreed that any increase in the cost of Panhandle Eastern's gas would be mainly borne by out-of-state customers.

David Black reviewed his written statement (Attachment 5). He opposes the bill because he feels it is unconstitutional. He said the average Kansas Power and Light customer would see an increase of about \$55 a year under the bill, and the average Gas Service customer would see an increase of about \$40 a year. Mr. Black pointed out that the benchmark price set by S.B. 483 is influenced by expensive gas such as stripper well and deep sands gas. He said the Natural Gas Policy Act precludes states from taking any action affecting interstate commerce. Responding to questions from Senator Hess, Mr. Black said that his principal interest is keeping the price of gas low. Chairman Angell asked whether the companies Mr. Black represents would support legislation which would cancel all underages more than 12 months old. Mr. Black said they would certainly like to see more gas produced in the Hugoton field. Chairman Angell asked how much gas Kansas Power and Light Company sells in Kansas. Mr. Black answered that last year it was about 55 billion cubic feet. He agreed to advise the Committee the volume figure for the amount of gas sold in Kansas by Gas Service Company. Answering questions from Senator Werts, Mr. Black said that he would expect that the price of gas under deregulation would go to about the new gas price.

Frank Rathbun read his written statement (Attachment 6). They oppose S.B. 483 because they estimate it would increase the cost of gas to their customers. Senator Hess asked Mr. Rathbun if he favors deregulation. Mr. Rathbun answered that he does. Mr. Rathbun agreed to furnish the figure of the percentage of Northern Natural's gas purchases in Kansas.

The meeting was adjourned at 8:44 a.m. by the Chairman. The next meeting of the Committee will be at 8:00 a.m. on February 27, 1984.

Senate Energy & Natural Resources
Feb. 24, 1984

Name

Organization

Ed Remeort

Ks League Women Voters

Jack Graves

Panhandle Eastern Pipeline

David W. Nickel

KCC

Russ Bishop

Panhandle Eastern Pipeline

Chip Wheelon

KLPG

Jim McBride

United Way of Topeka

Steve Watson

Kansas Farmer magazine

A.E. Benignus

KPL

Richard D. Kready

KPL / Gas Service Co.

BILL FERDVE

" "

D.S. Black

" "

George A. Squires

Robert C. Anderson

mpb, 7

Mid East Oil Co.

Lon Stanton

NORTHERN NATURAL GAS

Dan Willoughby

Northern Liquid Fuels Co.

Glenn Cogswell

Northwest Central Pipeline Corp.

Dick Brewster

Standard Oil Co. (Ind.)

Paul E. Fleener

Kansas Farm Bureau

The statement of members of
KANSAS FARM BUREAU, and
The SOUTHWEST KANSAS IRRIGATION ASSOCIATION
with respect to Senate Bill 483
to Senate Energy and Natural Resources Committee
Charlie Angell, Chairman
February 24, 1984
Randal Loder Garden City, Kansas

Mr. Chairman and members of the committee, because of conflicts, I am unable to attend today's hearing and present this statement in person. However, we do wish for the committee to consider our opposition to Senate Bill 483. Our opposition centers around the fact that a traditional "free marketplace" does not exist in our relationship with natural gas suppliers. We have only one source of supply for this natural resource that is so vital to our farming operations. We are very concerned about our ability to have continued access to this energy source at reasonable prices.

I'm sure most, if not all, of the committee members are aware of the depressed state of the Kansas farm economy and the effect that rapid rises in energy prices have had on our operations. The financial data that I presented to the committee yesterday (and have included with this statement) shows irrigated agriculture has very serious problems. The present trend spells disaster in a few short years.

We realize there is limited action the state legislature can take to change the current cost/price squeeze. However, Senate Bill 483 certainly could have a dramatic effect on one of our major cash operating expenses. Assuming that the price for natural gas would not exceed the floor price

Att. 1

this bill would establish, the farming operations represented in the Farm Management Association data would be faced with an additional cash operating expense of \$15,000 to \$20,000/ yr.

I think there is a great deal of evidence to suggest that wellhead prices would indeed exceed the floor price specified in the bill. Recent price levels for old gas that has been reclassified under provisions of the Natural Gas Policy Act have been in the \$3.70/Mcf range which is the ceiling price for this gas at wellhead. Strangely enough, pipelines are willing to pay this price even though billions of cubic feet of gas are going unsold within the same system in the Hugoton Field when the price for this gas is generally less than \$1.00/Mcf.

We are concerned that this occurs and feel it demonstrates the lack of negotiations between the pipeline and the seller. Our wellhead purchase contracts specify that we pay the average price the producer receives from other purchasers. However, we do not have the mechanism to pass on our "gas purchase costs" to the consumer.

Even though agricultural demand, especially irrigation gas demand, occurs in the off-peak season, we pay for the gas on a price basis the peak demand user is willing to pay. Our peak needs are in the July - August time period when pipeline sales are at their lowest levels.

A great deal of Kansas agriculture is based on the relatively small volume of natural gas used for agricultural purposes. The development of this use has resulted in a thriving livestock feeding and beef processing industry within our state. It has allowed Kansans to combine many raw resources and sell a finished product with a greater value than the sum of its parts. In the process it has generated jobs, markets, and tax revenues for our state. A decline in the viability of irrigated agriculture will

have serious and lasting effects on the very industries that have been a bright spot in recent years.

We must continue to realize the importance of agriculture to Kansas. The lure of increasing severance and other tax revenues must be resisted when they affect agriculture. We urge you to recognize the impact that this bill will have on agriculture, the primary industry in Kansas.

Thank you.

ANALYSIS OF IRRIGATED FARMS IN FARM MANAGEMENT ASSOCIATION NO. 3, 1979 - 1982

Year	1979	1980	1981	1982
Number of Farms	114	123	128	92
Gross Farm Income	224,643	231,288	191,218	232,575
Cash Operating Expense	133,524	148,320	169,107	186,279
Depreciation	25,504	26,923	29,604	28,099
Total Farm Expense	159,028	175,243	198,711	214,378
Net Farm Income	65,615	56,045	(-7,492)	18,197
Net Farm Income/Opr.	56,157	46,895	(-5,963)	15,558
% Return on Net Worth	8.73	4.98	-(9.29)	-(6.05)
Expense/\$100 Gross Income	71	76	103.91	92
Net Income/Gross Income (%)	29	24	(-3.92)	8
Total Loans/Net Worth (Dec. 31)	.45	.44	.50	.62
Capital Managed	1,051,643	1,440,573	1,475,637	1,445,853
Acres Operated	1657	1610	1740	1722
Total Crop Acres	1447	1440	1535	1527
% Crop Acres Irrig.	68.85	66.44	63.99	62.80
Number of Men	1.95	1.98	2.04	1.93
Man Work Days/Man	-	-	-	182
Mach. Invest/Crop Acre	51.56	56.14	57.59	54.60
Mach. Cost/Crop Acre	46.84	55.17	57.85	57.92
Gross Crop Value/Crop Acre	165.60	192.55	146.25	167.38
Fertilizer Cost/Crop Acre	13.41	14.52	12.09	13.11
Crop Prod. Cost/Crop Acre	89.85	102.10	108.71	114.27

Farm Management Association No. 3 is a cooperative effort between farmers and ranchers in Kansas, and the Cooperative Extension Service at Kansas State University.

STATEMENT ON SCR 1643

TO THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

February 22, 1984

A program to reduce the spacing between wells in order to increase production from the lease is gaining momentum in the states in which Northern Liquid Fuels operates. While the stated purpose of infill drilling is to adequately drain a given oil or natural gas field, the concept also has serious market implications for the natural gas and natural gas liquids businesses. Each new well drilled in an already producing field will produce natural gas at NGPA 103 or 109 prices. Since the current NGPA price, in the majority of the cases where infill drilling will occur, will be substantially higher than the existing contract price, the average price for natural gas from that field will be increased significantly.

In a typical gas processing plant, the cost of fuel and shrink, as represented by the cost of natural gas, represents 80% of the operating costs. Therefore, any program that will substantially increase the average cost of natural gas has serious negative impacts on the marketability of gas liquids and the profitability of the plant.

In a typical gas processing plant, the cost of fuel and shrink as represented by the cost of natural gas, represents 80% of the operating costs. Therefore, any program that will substantially increase the average cost of natural gas has serious negative impacts on the marketability of gas liquids and the profitability

Atch. 2

of the plant.

The natural gas liquids business, with limitations placed on product prices by the marketplace, cannot absorb significant increases in operating costs and survive.

Northern Liquid Fuels shares the concern for extending the productive life of a producing field since the future of our processing plant is dependent upon the long-term ability to maintain natural gas supplies. However, within the current market conditions, any program that will significantly increase the cost of natural gas could jeopardize our ability to continue operating our processing facilities not only due to the increase in operating costs but also due to the potential reduced demand for natural gas and the resultant lower flows available for the processing plants.

For additional information on this subject, contact Don Willoughby, Northern Liquid Fuels Company, 402/633-4899.

STATEMENT ON SB 483
TO THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

NORTHERN LIQUID FUELS COMPANY

February 24, 1984

MINIMUM WELLHEAD PRICES FOR NATURAL GAS

With the current oversupply of natural gas in the marketplace today, states are examining ways to increase revenues from pre-NGPA wells through the establishment of minimum prices for the natural gas removed from those wells. This benefits not only the states, through increases in tax revenues, but also benefits producers and royalty owners.

Northern Liquid Fuels opposes any attempt to increase the wellhead price for natural gas. In a typical gas processing plant, the cost of fuel and shrink, as represented by the cost of natural gas, will represent 80% of the operating costs. Therefore, any program that will substantially increase the average cost of natural gas has serious negative impacts on the marketability of gas liquids and the profitability of the plant.

The natural gas liquids business with limitations placed on product prices by the marketplace cannot absorb significant increases in operating costs and survive.

The federal government has assumed control on the regulation of natural gas at the wellhead by its enactment of the NGA and NGPA. Legislation imposing a minimum price on flowing gas already under contract could create constitutional violations by preventing

Attch. 3

parties from retaining their contractual rights without governmental interference and by requiring gas purchasers to existing contracts to relinquish a valuable property right without compensation or the opportunity to be heard.

Northern Liquid Fuels cannot support any program that will significantly increase the cost of natural gas and, therefore, jeopardize our ability to continue operating our processing facilities not only due to the increase in operating costs but also due to the potential reduced demand for natural gas and the resultant lower flows available for the processing plants.

For additional information on this subject, contact Don Willoughby, Northern Liquid Fuels Company, 402/633-4899

TO: Senate Committee on Energy and Natural Resources
FROM: Panhandle Eastern Pipe Line Company
DATE: February 24, 1984
RE: Senate Bill 483

The Interim Study Report concedes that the definition of economic waste in the Kansas Statutes does not include low gas prices. The Study also suggests, however, that the statutory definition is not exclusive, and therefore, a definition of economic waste could include the price paid for natural gas produced, which is significantly below market value and pass legal and constitutional muster. (Page 409) I will confine my remarks to the contended lawfulness of the proposed minimum wellhead price, as proposed by this bill, insofar as it applies to interstate gas.

A minimum price concept for Hugoton gas is not new. The Kansas Commission issued an 11¢ minimum Order in 1953, in a proceeding commenced by the Southwest Kansas Royalty Owners Association, contending that a previous minimum price order was no longer adequate to conserve and prevent waste of natural gas, and protect correlative rights in the Hugoton field. The Kansas Supreme Court upheld the Commission order as being necessary to prevent waste and protect correlative rights, reciting its previous decision in Kansas Nebraska Natural Gas Co. vs. State Corporation Commission, 169 Kan. 722, as well as a decision of the Supreme Court of the United States in Cities Service Gas Co. vs. Peerless Oil & Gas Company, 340 US 179, 71 S.Ct. 215, 95 L.3d 190 [180 Kan. 454, 340 P.2d 528 (1956)]. The Supreme Court of the United States reversed the Kansas Supreme Court in a per curiam opinion (2 L.Ed2d 355). Similarly, Oklahoma's minimum price order was upheld by their Supreme Court in Natural Gas Pipe Line Co. vs. Panoma Corp., 272 P.2d 425, only to be reversed by the United States Supreme Court in 349 US 44, 75 S.Ct. 576, 99 L.Ed 866. The headnote in the case simply states,

Atch. #

"A state has no power to fix a minimum price to be paid for natural gas after its production and gathering has ended by a pipeline company which transports the gas for resale in interstate commerce, which is subject to the exclusive regulation by the Federal Power Commission."

In a subsequent case arising in Kansas, with respect to the power of the Corporation Commission to require interstate pipelines to purchase gas ratably from all Kansas gas wells to which the pipeline was connected, the Supreme Court of the United States held that the Commission's order invaded the exclusive jurisdiction of the FPC under the Natural Gas Act over the sale and transportation of natural gas in interstate commerce for resale. (1963) 372 US 84, 9 L.Ed2d 601, 83 S.Ct. 646. The United States Supreme Court, interestingly, observed at 9 L.Ed2d 607,

"The Kansas Supreme Court also sustained the orders on the ground that neither order threatened any actual invasion of the regulatory domain of the Federal Power Commission since it 'in no way involves the price of gas.' 188 Kan. at 624, 364 P.2d at 668. It is true that it was settled even before the passage of the Natural Gas Act that direct regulation of the prices of wholesales of natural gas in interstate commerce is beyond the constitutional power of the States--whether or not framed to achieve ends, such as conservation, ordinarily within the ambit of state power. . . . the Congress enacted a comprehensive scheme of federal regulation of "all wholesales of natural gas in interstate commerce, whether by a pipeline company or not, and whether occurring before, during, or after transmission by an interstate pipeline company. . . . the federal regulatory scheme leaves no room either for direct state regulation of the prices of interstate wholesales of natural gas . . . or for state regulations which indirectly achieve the same result"

In a footnote, the Commission noted that its decision in Cities Service Gas Co. vs. Peerless, above noted, and its subsequent decision in Phillips Petroleum Co. vs. Oklahoma, 340 US 190, 95 L.Ed 204, 71 S.Ct. 221, which was the landmark case establishing the regulation of price at the wellhead by the Federal Power Commission were not contrary. The Court stated, "In those cases, we were dealing with constitutional questions and not the construction of the Natural Gas Act." Natural Gas Pipe Line Co. vs. Panoma Corp., 349 US at 45.

Undaunted, the Oklahoma Corporation Commission entered an order in 1972 determining that production of natural gas which was thereafter to be sold at a price so low as to cause waste was contrary to law and should be prohibited, and further determined that a "wasteful price" was any price below 20¢ for gas being produce and sold on October 1, 1972. The Commission order was attacked in the Oklahoma Federal Court in a proceeding by the Federal Power Commission, et al., contending that the Order burdened interstate commerce and conflicted with the jurisdiction of the FPC under the Natural Gas Act. A three-man Federal Court, including Circuit Judge Delmas Hill held that the Order in question would burden interstate commerce by indirectly fixing the prices to interstate consumers, and further held that the order conflicted with the jurisdiction of the Federal Power Commission under the Natural Gas Act, concluding at 362 F.Supp. at 538,

"We find from the evidence that the objective of the orders is not to prevent physical waste or protect correlative property rights, . . . but rather to increase the price which Oklahoma producers may receive from interstate pipelines before natural gas may move in interstate commerce. The State has no authority, either directly or indirectly, to fix the price at which natural gas is sold in interstate commerce."

The Court relied on Northern Natural vs. State Corporation Commission of Kansas on the pre-emption issue, and the landmark case of Pennsylvania vs. West Virginia, 262 US 553, 43 S.Ct. 658, 67 L.Ed 1117, on the Interstate Commerce Clause question. In that case, West Virginia sought, through regulation of pipeline companies, to compel the retention within West Virginia of all natural gas produced there that might be required for local needs. The rationale rejecting the West Virginia law is well stated at pp. 538-539, 69 S.Ct. 665,

"Our system, fostered by the Commerce Clause, is that every farmer and every craftsman shall be encouraged to produce by the certainty that he will have free access to every market in the Nation, that no home embargoes will withhold his exports, and no foreign state will by customs duties or regulations exclude them. Likewise, every consumer may look to the free

competition from every producing area in the Nation to protect him from exploitation by any. Such was the vision of the Founders', such has been the doctrine of this court which has given it reality."


The Oklahoma Federal Court decision was affirmed in a Memorandum Decision in 415 US 961, 39 L.Ed2d 838, 94 S.Ct. 1548 (1974). Although there was a dissent by Justices Rindquist, Stewart and Powell, the disagreement was not with the substantive holding of the lower court, but with the holding that the FPC had authority to institute the action.

The remaining question, assuming arguendo that the Commerce Clause is not in issue, is whether the Natural Gas Policy Act modifies the Natural Gas Act, so as to render the pre-emption issue moot. Section 602 of the Natural Gas Policy Act of 1978 provides that the Act shall not affect the authority of the State to establish maximum lawful prices for the sale of natural gas, which prices do not exceed the NGPA maximum prices. The NGPA is silent as to minimum prices. It does not amend the Natural Gas Act with respect to the exclusive jurisdiction of the FERC over the transportation and sale of natural gas in interstate commerce for resale. I don't have any disagreement with Mr. Byrd's presentation to you this week. It should, however, be understood that his remarks pertained to intrastate gas. I respectfully suggest that at least as to interstate gas the bill will not withstand constitutional or federal pre-emption testing.

Respectfully submitted,

PANHANDLE EASTERN PIPE LINE COMPANY

By:



Jack Glaves
GLAVES, WEIL, EVANS & HOKE
600 One Twenty Building
Wichita, Kansas 67202

FEDERAL POWER COMMISSION, an independent regulatory agency of the United States, Plaintiff,

v.

The CORPORATION COMMISSION OF the STATE OF OKLAHOMA et al., Defendants.

Colorado Interstate Gas Company, et al., Intervening Plaintiffs;

The GHK Company, a general partnership et al., Intervening Defendants.

No. Civ. 72-832.

United States District Court,
W. D. Oklahoma.

June 26, 1973.

Proceeding by Federal Power Commission and intervening plaintiffs to enjoin enforcement of orders of Oklahoma Corporation Commission relating to wellhead price for natural gas. The District Court, Eubanks, J., held that evidence established that the orders established minimum price at which gas might be sold in interstate commerce; that orders burdened interstate commerce; that orders conflicted with jurisdiction of Federal Power Commission under Natural Gas Act; that the complaint presented justiciable controversy; that the Federal Power Commission had standing to sue; that defendant Commission was not immune to suit as an agency of the state and that abstention pending determination by state Supreme Court of Appeals of case involving the orders was not appropriate.

Order accordingly.

See also, D.C., 354 F.Supp. 137.

1. Commerce ⇐57

Orders of Oklahoma Corporation Commission requiring operator of well producing gas under contract below \$.20 per MCF to demonstrate that continued production at contract price would not result in waste laid down rule by which gas produced in Oklahoma might move from there to other states, thus constituting a regulation violative of federal

interstate commerce clause. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w; U.S.C.A.Const. art. 1, § 8, cl. 3; 52 O.S.1971, § 318.1.

2. Commerce ⇐57

Where 95% of proven natural gas reserve inventory of lower 48 states was already committed to gas sales contracts, Oklahoma was third largest gas-producing state and supplied 9% of total domestic gas sold in interstate commerce, orders of Oklahoma Corporation Commission relating to wellhead price for gas and resulting in increase in price placed burden on interstate commerce in that they jeopardized interstate supply of natural gas. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w; U.S.C.A. Const. art. 1, § 8, cl. 3; 52 O.S.1971, § 318.1.

3. Commerce ⇐57

Orders of Oklahoma Corporation Commission relating to wellhead price of natural gas burdened interstate commerce in violation of Commerce Clause by indirectly fixing prices to interstate consumers, where it appeared that when passed through pipeline and distributor rates, orders would have impact in excess of \$30,000,000 per year upon interstate consuming public. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w; U.S.C.A.Const. art. 1, § 8, cl. 3; 52 O.S. 1971, § 318.1.

4. Commerce ⇐57

Record established that orders of Oklahoma Corporation Commission relating to wellhead price for natural gas conflicted with rates fixed by Federal Power Commission under Natural Gas Act and thus burdened interstate commerce. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w; U.S.C.A.Const. art. 1, § 8, cl. 3; 52 O.S.1971, § 318.1.

5. Commerce ⇐57

Orders of Oklahoma Corporation Commission relating to wellhead price for gas, to extent they threatened to withdraw a large volume of gas from established interstate current, constituted an undue burden on interstate commerce

in natural gas and violated Commerce Clause. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w; U.S.C.A.Const. art. 1, § 8, cl. 3; 52 O.S.1971, § 318.1.

6. States ⇐4.13

Courts will attach no validity to state law which frustrates effectiveness or is contrary to a federal statute. U. S.C.A.Const. art. 6, cl. 2.

7. Gas ⇐2

Provision of Natural Gas Act that it does not apply to production or gathering of natural gas relates to physical activities, processes and facilities of production or gathering and does not apply to sales affirmatively subjected to jurisdiction of Federal Power Commission and the terms "production" and "gathering" are narrowly confined to physical acts of drawing gas from earth and preparing it for the first step of distribution. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w.

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

8. Gas ⇐2

Primary duties of Federal Power Commission under Natural Gas Act are to underwrite reasonable rates and adequate service to consumers of interstate natural gas. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w.

9. Gas ⇐14.5(8)

In proceeding by Federal Power Commission to enjoin enforcement of orders of Oklahoma Corporation commission relating to wellhead price of natural gas, evidence established that the purpose of orders was to establish a minimum price at which gas might be sold in interstate commerce, that orders were not conservation or waste prevention measures but were intended to increase price which Oklahoma producers would receive from interstate pipelines before natural gas would be permitted to move in interstate commerce. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w; U.S.C.A.Const. art. 1, § 8, cl. 3; 52 O.S. 1971, § 318.1.

10. Commerce ⇐8(19)

State has no authority, either directly or indirectly, to fix prices at which natural gas is sold in interstate commerce. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w; U.S.C.A. Const. art. 1, § 8, cl. 3; 52 O.S.1971, § 318.1.

11. Gas ⇐1

Regulation of "economic waste" by general monitoring of natural gas supply through manipulations of rate structure and determination of gas use priorities is within jurisdiction of Federal Power Commission. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w; U.S.C.A.Const. art. 1, § 8, cl. 3; 52 O.S.1971, § 318.1.

12. Mines and Minerals ⇐92.3

State has authority to regulate physically wasteful practices with respect to natural gas, such as improper well spacing and flaring of unused gas, so long as regulation does not interfere with federal jurisdiction. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w; U.S.C.A.Const. art. 1, § 8, cl. 3; 52 O.S. 1971, § 318.1.

13. States ⇐4.14

Where if producers of natural gas were to sell gas at wellhead at minimum price fixed under orders of Oklahoma Corporation Commission, a price which exceeded applicable area rate of Federal Power Commission, they might be in violation of orders issued under the Natural Gas Act and thereby be liable for fines and penalties, so that they could not comply with both federal and state regulatory schemes, the state regulation was preempted. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w; U.S.C.A.Const. art. 1, § 8, cl. 3, 52 O.S.1971, § 318.1.

14. States ⇐4.12

Orders of Oklahoma Corporation Commission with respect to prices of gas at wellhead invalidly infringed upon Federal Power Commission's abandonment jurisdiction, to extent that such orders contemplated a shutting in of gas

wells that did not meet minimum rate levels established by the state Commission's orders. Natural Gas Act, §§ 7(b), 21, 15 U.S.C.A. §§ 717f(b), 717t.

15. Commerce ⇨8(19)

The Natural Gas Act leaves no room for direct state regulation of prices of interstate wholesales of natural gas or for indirect state regulation which accomplishes the same result, even though regulation be framed to achieve ends which ordinarily fall within ambit of state power. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w; U.S.C.A. Const. art. 1, § 8, cl. 3; 52 O.S.1971, § 318.1.

16. Gas ⇨2

Sales of leasehold interest in a proven and substantially developed natural gas field are "sales" of gas within Natural Gas Act. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w; U.S.C.A. Const. art. 1, § 8, cl. 3; 52 O.S.1971, § 318.1.

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

17. States ⇨4.12

Evidence established that orders of Oklahoma Corporation Commission relating to wellhead price for natural gas stood as obstacle to accomplishment and execution of full purposes and objectives of Natural Gas Act; thus orders were invalid under the supremacy clause. U. S.C.A. Const. art. 6, cl. 2.

18. Gas ⇨14.5(2)

Mere separateness and exclusiveness of Oklahoma Corporation Commission and Federal Power Commission was not determinative of whether justiciable controversy existed with respect to Federal Power Commission's action to enjoin enforcement of state Commission's orders relating to wellhead price for natural gas. Natural Gas Act, § 1 et seq., 15 U.S.C.A. § 717 et seq.

19. States ⇨4.11

State action which allegedly impairs federal superintendence of a field and

thereby violates Federal Constitution raises a justiciable issue.

20. Gas ⇨14.5(2)

Instances in which Natural Gas Act authorizes Federal Power Commission to seek aid of federal courts are not exclusive and they do not by implication constitute a denial to Commission of right to seek aid of courts in other instances where United States has interest to protect and defend; injunctive relief is appropriate to that end. Natural Gas Act, § 1 et seq., 15 U.S.C.A. § 717 et seq.

21. Gas ⇨14.5(4)

Federal Power Commission had standing to initiate and pursue action against Oklahoma Corporation Commission to enjoin enforcement of orders of state Commission relating to wellhead price for natural gas. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w.

22. Gas ⇨14.5(2)

Three-judge federal district court had power to issue injunction sought by Federal Power Commission restraining enforcement of orders of Oklahoma Corporation Commission relating to wellhead price for natural gas. Natural Gas Act, § 1 et seq., 15 U.S.C.A. § 717 et seq.

23. Gas ⇨14.5(2)

Under Natural Gas Act, Oklahoma Corporation Commission was not immune to suit by Federal Power Commission to enjoin enforcement of orders of state Commission relating to wellhead price for natural gas. Natural Gas Act, §§ 2, 2(1-9), 20, 15 U.S.C.A. §§ 717a, 717a(1-9), 717s.

24. Health and Environment ⇨25.10

Where Federal Power Commission sought injunctive relief against orders issued by Oklahoma Corporation Commission relating to wellhead price for gas, the action did not constitute a "major federal action" within National Environmental Policy Act and Federal Power Commission was not required to provide a detailed environmental impact statement as a requisite to institution of

the action. Sherman Anti-Trust Act, § 8, 15 U.S.C.A. § 7; National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C.A. § 4321 et seq.

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

25. Courts ⇨260.4

Doctrine of abstention is an extraordinary and narrow exception to duty of federal court to adjudicate controversy before it.

26. Courts ⇨260.4

Doctrine of abstention is inapplicable where state ruling on local law cannot settle federal constitutional questions involved in case.

27. Courts ⇨260.4

Federal court's abstention pending a determination by Oklahoma Supreme Court of pending appeals involving Oklahoma Corporation Commission's orders challenged by Federal Power Commission in the federal case was not appropriate, where there was no challenge in federal case to the orders on ground that they were invalid under local law and there was an asserted conflict between what the state regulatory agency sought to do and federal authority asserted by the federal regulatory agency. Natural Gas Act, §§ 1-24, 15 U.S.C.A. §§ 717-717w.

William R. Burkett, U. S. Atty., W. D. Okl.; Leo E. Forquer and John H. Burnes, Federal Power Commission, Washington, D. C., George W. McHenry, Jr., Acting Solicitor, Federal Power Comm, for plaintiff.

Elmer J. Jackson, Hastings, Neb., Lee B. Thompson, Oklahoma City, Okl., Peter Kauffman, Chicago, Ill., John D. Townsend, Houston, Tex., Edwyn R. Sherwood, Colorado Springs, Colo., Joseph M. Wells and Paul E. Goldstein, Chicago, Ill., Hal D. Leaming, Oklahoma City, Okl., Raymond N. Shibley, Washington, D. C., Barth P. Walker, Oklahoma City, Okl., for intervening plaintiffs.

Harvey H. Cody, Jr., Conservation Atty., Oklahoma Corp. Commn, Oklahoma City, Okl., for defendants.

Eugene O. Kuntz, Richard W. Fowler, Judson S. Woodruff, John M. Mee and Stanley L. Cunningham, Oklahoma City, Okl., for intervening defendants.

MEMORANDUM OPINION

HILL, Circuit Judge, DAUGHERTY, Chief Judge, and EUBANKS, District Judge.

EUBANKS, District Judge.

In this proceeding the Federal Power Commission and Intervening Plaintiffs seek to enjoin the enforcement of Order No. 93,381 and Order No. 93,382 of the Defendant Oklahoma Corporation Commission, entered on October 5, 1972, effective October 1, 1972, but stayed by said Defendant until July 1, 1973.

The Findings in Order No. 93,381 recite that "present Oklahoma gas reserves total approximately 17 trillion cubic feet"; that the current annual production approximates ten percent of those reserves; that the rate of production of gas is increasing while additions to reserves are diminishing; that "the wellhead price for approximately 98 percent of all Oklahoma gas varies from .03 cents per MCF to .32 cents per MCF"; and that the "wellhead price does not respond readily to market supply and demand factors due to a combination of long term gas contracts and Federal price regulations." The Order further recites that "*the Federal Power Commission has refused to recognize that a field price may be too low;*" (italics ours) that low wellhead prices "cause gas wells to be shut down before all reasonable gas has been produced, a clear example of physical waste" which is certain to increase as operating costs continue to rise where wellhead prices remain constant under long term purchase contracts; that "an unreasonably low sale price for gas encourages, and perhaps requires, the lease operator to produce gas at progressively higher rates [increased volume] to offset rising oper-

TESTIMONY OF DAVID S. BLACK
ON BEHALF OF THE KANSAS POWER AND LIGHT COMPANY
AND THE GAS SERVICE COMPANY
HEARINGS ON SENATE BILL 483 BEFORE
SENATE, ENERGY AND NATURAL RESOURCES COMMITTEE

FEBRUARY 24, 1984

Mr. Chairman, Members of the Committee:

The Kansas Power and Light Company has appeared before this committee on many occasions over the past years to express the views of our management on pending legislation which would affect the cost or quality of utility services in Kansas. It has been the consistent position of KPL to favor legislative proposals which would improve electric or gas service and make it more available at reasonable prices, and strongly to oppose those measures which, in our judgment would have the opposite effect.

On prior occasions, in which legislation dealing with the price of natural gas was before this Committee, we have appeared on behalf of the 135,000 gas customers of KPL. Today we also represent the views of The Gas Service Company which KPL has recently acquired, and its 850,000 gas customers, about half of whom live and work in the State of Kansas. That Company's customers here and in Missouri, Oklahoma and Nebraska, would all be affected by Senate Bill 483, if it were to become the law as written.

As presently cast, this proposal clearly would not, in my judgment, succeed on constitutional and other legal grounds for reasons I will detail in a moment.

Atch. 5

But on the assumption that the legislation could somehow withstand court test, I would like briefly to address the impact it would have on the customers of KPL and Gas Service in Kansas. We strongly oppose the bill because it would immediately cost the 1.5 million Kansans dependent upon the two companies more than \$48 million a year in bigger gas bills. The average Gas Service customer in Kansas would see his bill rise by \$40.00. The KPL residential customer in this state would pay about \$55 more the first year, and as gas prices continue to escalate so would his utility bill. The increased cost for Gas Service rate payers across the four state system would equal more than \$54 million the first year.

It is difficult to understand how this legislature can seriously entertain a proposal which would largely reverse the efforts it has made over the past several years to provide the natural gas consumer with some small element of protection against runaway price increases. It removed the sales tax on residential utility bills; it enacted the Natural Gas Price Protection Act which provides that indefinite contract price escalator provisions can not operate to permit producers to charge gas purchasers more than the appropriate federal ceiling prices. Last session this legislature froze gas prices until the end of 1984. But now, on the heels of a record shattering cold winter across Kansas, which has produced breathtakingly higher natural gas bills for many thousands of Kansas citizens, the legislature is debating a measure which would remove those modest restraints and tell the homeowner that he still isn't paying enough to heat his home; that the price paid to the producers of natural gas is so low that its production constitutes "economic waste."

It is interesting to note that the benchmark price which S.B. 483 sets as the reference point for "economic waste" is a national average wellhead price including, of course, the NGPA new gas incentive price, the price for stripper well gas, and deep sands gas, all the most expensive gas in production in the United States. How can the treatment of all of this very costly gas be justified as forming any part of a reference price below which no gas may be sold--because to do so would constitute "economic waste?"

Fortunately, the rate payer can take comfort from the fact that, if enacted, the courts will not permit the law to stand. In the first place the bills' proponents project increased producer revenues and increased severance tax revenues based on the assumption that the state can set a minimum price for Kansas natural gas sold in interstate commerce. Clearly it cannot. In 1956 the Kansas Corporation Commission sought to do by Order essentially what this bill would try to accomplish: to regulate price under the guise of conservation. That controversy reached the United States Supreme Court where the Commission ruling was summarily thrown out. Oklahoma later tried the same thing with the same thing with the same result. The law is well settled that sales of natural gas for resale in interstate commerce cannot be regulated by the state. These transactions are exclusively within the federal jurisdiction--even if they purport to control the price solely for conservation purposes. Under the Natural Gas Policy Act of 1978, moreover, the maximum price of intrastate gas is also regulated. Sec. 602 only permits the states to set prices which are lower than the otherwise applicable NGPA ceilings.

Clearly, S.B. 483 would have the effect of raising such prices above the applicable maximums. Sec. 105(b)(1) of the NGPA sets the maximum price under existing intrastate contracts at the lower of the price under the terms of the contract or the ceiling price for new gas. The only intrastate gas KPL buys in significant quantities which would be affected by the proposed legislation is the very inexpensive gas we buy from Mesa Petroleum Co. in the Hugoton field. Under the terms of that gas purchase contract the present price of gas is 26¢ per Mcf. The NGPA makes that price the lawful maximum. Senate Bill 483, however, in setting a minimum price formula related to average wellhead value as reported in D.O.E.'s Monthly Energy Review, would immediately raise the minimum price for the gas under that contract to \$1.92, some seven and a half times the lawful maximum under federal law. We do not know the quantities of gas purchased by other intrastate buyers in Kansas, nor the terms of the contracts under which it is taken. It is difficult to conceive of a situation, however, in which this proposed law could effect an increase in the price of gas being sold intrastate without raising the state-set minimum price above the lawful NGPA maximum.

Thus, with respect to sales to the interstate pipelines the proposed law would create an unconstitutional invasion of the exclusive regulatory jurisdiction of the federal government. With respect to intrastate sales, it would violate the express terms of the Natural Gas Policy Act.

For all of the foregoing, KPL and Gas Service oppose enactment of Senate Bill 483. We do not believe the setting of a minimum price for natural gas can be justified as a means of preventing "economic waste," particularly where the reference price for such a determination includes the highest price gas under production in the United States. Moreover, the proposal seeks to accomplish its purpose by means that are incompatible with federal statutory law and the U. S. Constitution.

Finally, and most importantly, if the law should become effective, it would unfairly and unnecessarily raise the price paid by millions of citizens, to heat their homes and operate their businesses. We hope this committee will reject the bill.

Testimony of Frank Rathbun before
the Senate Energy and Natural Resources Committee
State of Kansas
on February 24, 1984

Mr. Chairman, Members of the Committee:

Good Morning,

My name is Frank Rathbun. I am Manager of Rates and Tariffs for Peoples Natural Gas Company.

Peoples owns, operates, and maintains distribution and transmission facilities for supplying natural gas service, at retail, to domestic, irrigation, commercial, and industrial users in 38 counties and 24 cities and towns in Kansas. Peoples also provides natural gas service at wholesale for resale within 14 communities within the State of Kansas. We currently provide natural gas service to approximately 35,000 customers on a firm or interruptible basis here in Kansas.

Our gas is obtained by purchase both from interstate pipelines and wellhead and field purchases. Pipeline suppliers include: Northwest Central Pipeline Company, Northern Natural Gas Company, KN Energy, Inc., Colorado Interstate Gas Company. Wellhead and field purchases come from various gas fields in south central and southwest Kansas.

I am before you today to express my company's concern about the adverse impact of Senate Bill 483 on the gas consumers of Kansas.

One of the areas which Peoples serves with natural gas is called the Southwest Kansas area. It covers parts of Hamilton, Kearney, Grant, and Stanton County. We sell and distribute natural gas in the communities of Hickok, Johnson, Kendall, Manter, Syracuse, and Ulysses.

Peoples serves approximately 4,000 customers in that rate area. About 78% of these customers are residential households.

Peoples gets the gas it sells in this area by purchases from about 100 wells in the Bradshaw, Hugoton-Kendall, Hugoton-South, and the Panama Council Grove fields. There is no other source of supply for these customers.

During our current fiscal year Peoples will purchase over two billion cubic feet of gas to meet the requirements of our customers in this area. Peoples will spend \$3,080,231 for this gas at the current effective contract rates. These contracts range from a low of about 28¢ per thousand cubic feet to about \$4 per thousand cubic feet.

In order to determine the impact of this bill on Peoples customers in Kansas--and we are a relatively small distributor--we examined each of our purchase contracts, and for each contract where the price was less than \$1.90, we computed the cost to buy that gas as if the volume scheduled for this year was going to cost us \$1.90 per Mcf. The result

of this exercise indicated that our cost of gas under the current contract--for the current year--would go from the \$3 million I just mentioned to over \$5.6 million--an increase of 85%. Our average cost of purchase gas would increase from \$1.45 to about \$2.66 per thousand cubic feet. An increase of this size would have to be reflected in our retail rates. The higher gas cost generated by Senate Bill 483 would require an increase of \$1.09 per Mcf in our retail rates to customers in the aforementioned area.

We calculate that the average residential customer in Kansas uses 125 Mcf per year in a normal year. An increase of the magnitude required if Senate Bill 483 is passed into law would cause the annual bill for our typical residential customer in southwest Kansas to go from \$322.45 a year to \$458.66 a year--an increase of over 42%.

We also serve approximately 2,400 residential customers in and around Goodland, Kansas. We serve these customers with gas we purchase from KN Energy. We know that KN gets a substantial portion of its supply from gas wells located in Kansas, but as yet, KN has not been able to quantify the impact of Senate Bill 483 on the cost of the gas they sell to us. KN does acknowledge that Peoples can expect an increase in gas costs if Bill 483 passes.

I urge this committee to oppose Senate Bill 483 to protect Kansas natural gas customers from the sharp cost increases which it would bring about.

Thank you!