Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, William R. Connole, Arthur Kline and John B. Hussey.

WISCONSIN MICHIGAN POWER COMPANY, PROJECT NO. 1759

ORDER APPROVING PROJECT EXHIBITS

(Issued December 22, 1959)

On September 28, 1959, Wisconsin Michigan Power Company, licensee for major Project No. 1759 filed for Commission approval the following described exhibits covering the addition of a new side channel spillway at the Twin Falls development of the project:

Exhibit L, Sheet 3 (FPC No. 1759–56) entitled "Menominee River—Twin Falls Development—Control Spillway Addition", and

Exhibit F, Sheet 1 (FPC No. 1759–55) entitled "Menominee River Twin Falls Development—Project Boundary"

Exhibit L, Sheet 3 shows the structures of the new spillway, while Exhibit F, Sheet 1 shows the project boundary as modified by the new spillway addition, for the Twin Falls development.

The Twin Falls development has been in operation for about 47 years, but in 1953 the development experienced a large flood which indicated the desirability of increasing its spillway capacity. The proposed new spillway addition, comprising a concrete structure with 3–15 feet high by 27 feet wide Tainter gates, will increase the flood handling capacity of the development by about 57 percent thereby greatly protecting the project against failure.

The Commission finds:

The above described project exhibits conform to the Commission's rules and regulations and should be approved as part of the license for the project.

The Commission orders:

The above-described project exhibits are approved as part of the license for Project No. 1759.

PACIFIC NORTHWEST PIPELINE CORPORATION, DOCKET NO. G–13018; EL PASO NATURAL GAS COMPANY, DOCKET NO. G–13019

ORDER ISSUING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING MERGER WITH CONDITIONS AND ADOPTING WITH MODIFICATIONS THE DECISION OF THE PRESIDING EXAMINER

(Issued December 23, 1959)*

Syllabus

1. Commission does not have authority to determine whether a given transaction is in violation of the Clayton Act, but it is required to consider the bearing of the policy of the antitrust laws on the public convenience and necessity. P. 1095.
2. Any lessening of competition, whether in the consumer markets or the producing fields, does not prevent approval of the merger, because there are other factors which outweigh the elimination of Pacific as a competitor. P. 1095.
3. Commission finds the merger is in the public interest from standpoint of (1) improved gas supply and utilization of gas reserves; (2) financially

*Initial decision appears on p. 1102. Rehearing and stay denied by order issued February 17, 1960, 23 FPC 350. Affirmed, *California* v. *F.P.C.*, 296 F. 2d 348 (CADC, 1961); reversed, 369 U.S. 482 (1962).

stronger company; or (3) flexibility in service; and (4) possibility of lower rates. P. 1096.

4. To insure that savings resulting from tax-loss carry-overs which can be taken by the merged company are used for the benefit of consumers, certificate is conditioned to require that the merged company establish a special reserve in the amount of all tax savings resulting from the merger, less the amount which could have been realized by Pacific if there were no merger. P. 1098.
5. Rate and allocation issues will be settled in a subsequent rate proceeding, since this is a merger proceeding. P. 1099.
6. Certificate conditioned to require El Paso to account for and allocate all costs as between the present El Paso and Pacific systems, and as between 3 portions of Pacific's system. P. 1099.
7. Pacific's application for abandonment under Section 7(b) of the Natural Gas Act *dismissed*, since no abandonment will actually take place. P. 1100.
8. Commission *issues* certificates of public convenience and necessity, under Section 7(c) of the Natural Gas Act to applicant, authorizing merger.

Commissioner Hussey *not participating.*

Charles V. Shannon, Stanley M. Morley, Arthur H. Dean, Robert MacCrate, Allen R. Grambling, and *George D. Horning, Jr.*, for El Paso Natural Gas Company.

Leon M. Payne, Richard Gray, G. Scott Cuming, Charles E. McGee and *Francis H. Caskin* for Pacific Northwest Pipeline Corporation.

Justin R. Wolf and *Eugene E. Threadgill* for Northwest Natural Gas Company.

William M. Bennett and *Melwood W. Van Scoyoc* for State of California.

Roger Arnebergh and *T. M. Chubb* for City of Los Angeles, California.

Rollin E. Woodbury, Harry W. Sturges, Jr., and *John R. Bury* for Southern California Edison Company.

Harry P. Letton, Jr., T. J. Reynolds and *H. P. Lippitt* for Southern California Gas Company.

Harry P. Letton, Jr., and *Milford Springer* for Southern Counties Gas Company of California.

Richard H. Peterson, F. T. Searls and *Malcolm W. Furbush* for Pacific Gas and Electric Company.

Richard J. Connor and *Thomas F. Ryan* for Intermountain Gas Company.

Joseph Jones and *John W. Scott* for Mountain Fuel Supply Company.

L. A. Stansfield and *Bryant O. Donald* for Public Service Company of Colorado and Colorado-Wyoming Gas Company.

James Lawrence White, Peter J. King, Spencer W. Reeder for Colorado Interstate Gas Company.

Fred M. Standley, Al P. Whittaker and *Frederick G. Von Huben* for State of New Mexico.

Harvey Dickerson for State of Nevada and Public Service Commission of Nevada.

A. S. Grenier and *Willis L. Lea, Jr.* for Southern Union Gas Company.

James H. Green, Jr. for State of Arizona.

Thomas O. Miller for State of Wyoming (including Wyoming Public Service Commission and Wyoming Natural Resources Board).

Alan P. O'Kelly for The Washington Water Power Company.

Charles M. Sturkey, A. Ray Smith, Christopher T. Boland, and *Thomas F. Brosnan,* for Washington Natural Gas Company.

Alexander E. Wiskup, Melwood W. Van Scoyoc, The Honorable Howard Morgan, and *Norman A. Stoll* for Public Utility Commissioner of Oregon.

Frank P. Hayes and *Martin T. Bennett* for Washington Public Service Commission.

Robert Morrison for State of Arizona.

Ralph M. Kirsch for State of Wyoming.

Robert L. Russell and *Alvin A. Kurtz* for the Staff of the Federal Power Commission.

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, William R. Connole and Arthur Kline.

As set forth fully by the presiding examiner, El Paso Natural Gas Company (El Paso) seeks by its application in Docket No. G–13019, a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act, authorizing it to acquire and operate all of the facilities and properties of Pacific Northwest Pipeline Corporation (Pacific), subject to the jurisdiction of the Commission, by the merger of the two corporations. Pacific has filed a companion application in Docket No. G–13018, by which it seeks permission under Section 7(b), to abandon the same facilities and the service rendered by them, in order to complete the merger.

In his decision issued November 20, 1959, the presiding examiner ordered, subject to review by the Commission, the issuance of certificates authorizing the merger conditioned to require that certain accounting records be kept separately for the present El Paso system and present Pacific system and for three separate parts of the present Pacific system. He denied Pacific's application to abandon facilities and services since he determined that the proposed merger did not represent an abandonment, but granted Pacific authority to bring about its merger into El Paso. In this order we are approving the merger and adopting the presiding examiner's decision with a condition requiring that tax savings resulting from tax loss carry-overs from the books of Pacific be credited to a special reserve for the benefit of consumers and with record keeping conditions somewhat modified from those recommended by the presiding examiner.

PROCEDURAL AND FACTUAL BACKGROUND

There is no need here to describe at length the background of this proceeding, for this has been done by the presiding examiner. However, it may be observed that El Paso is a Delaware Corporation with its principal place of business at El Paso, Texas. Its principal transportation facilities constitute a single integrated system. It operates pipelines extending from the Permian Basin area of western Texas and eastern New Mexico across the southern portions of Texas, New Mexico and Arizona to Blythe, California. It also operates pipelines extending from the Permian Basin area across the central portion of New Mexico to the San Juan Basin area and from there across the northerly portion of Arizona to the California border near Topock, Arizona. These pipelines are interconnected in the Permian Basin area at Plains, Texas and by two cross-over lines located in Central and Western Arizona. In the Permian Basin area its system is supplied with gas originating in the Panhandle area of Texas as well as Permian Basin sources of supply.

In addition to the supplies of gas obtained in the Permian Basin and the Panhandle areas of Texas, El Paso also obtains supplies in the San Juan Basin area. A comparatively small volume of Canadian gas is purchased from Pacific at the Canadian border. Under an exchange agreement, such volumes are immediately redelivered by El Paso to Pacific, which in turn, delivers equivalent volumes to El Paso in the San Juan Basin area. El Paso sells gas to various communities and distributing companies in Texas, New Mexico and Arizona wit approximately 80 percent of its gas sold for consumption in California. Gas for consump-

tion in California is delivered to Southern California Gas Company and Southern Counties Gas Company (Southern California Companies) at Blythe, and to both these companies and Pacific Gas and Electric Company (P.G. & E.) at Topock.

The Pacific Northwest Pipeline Corporation is also a Delaware Corporation and has its principal place of business in Salt Lake City, Utah. It owns and operates a pipeline system commencing at Ignacio, Colorado, in the San Juan Basin, where it is interconnected with El Paso's northern pipelines and extending through the states of Colorado, Utah, Wyoming, Idaho, Oregon and Washington to its northern terminus at Sumas, Washington. In addition to this main pipeline, it has several lateral lines of varying lengths projecting from it to certain markets and sources of gas supply. Pacific produces natural gas from its own leaseholds and purchases gas from other producers in the San Juan Basin and in various fields of the Rocky Mountain area. It also purchases natural gas from Westcoast Transmission Company, Ltd. at the Canadian border.

In addition to the exchange agreement relating to Canadian gas, Pacific and El Paso have also entered into an agreement by which they use jointly their gathering facilities in the San Juan Basin, and another, by which El Paso made available to Pacific, gas from the San Juan Basin to be returned by the delivery of equivalent quantities in the future.

At about the time that El Paso was contracting with Pacific concerning Canadian gas, it entered into negotiations with Pacific for the acquisition of Pacific's assets. Pacific, however, did not want a Section 7(c) merger proceeding before it had completed organization and financing, and refused to enter into such a transaction. After further negotiations, an agreement was executed by which El Paso would acquire the stock of Pacific by a tax-free exchange of shares. By May 1, 1957, when the offer of exchange was closed, El Paso had acquired 99.8 percent of the outstanding stock of Pacific. The record shows that the primary purpose of the acquisition was to gain access to the vast and relatively untouched Canadian gas reserves for El Paso's markets, and to gain access to the reserves of the Rocky Mountain area.

After the stock acquisition had been completed, El Paso's management decided, upon the basis of its experience, that the operation of the two systems as an integrated unit could be done more efficiently than by separate operation of the two corporations, and on July 16, 1957, the board of directors of both corporations, authorized the filing with the Commission of applications for certificate authority for a merger. It was made clear that these applications were stimulated by the fact that the Attorney General of the United States was prepared to file an antitrust suit with respect to the stock acquisitions. The antitrust action was filed on July 22, 1957, in the United States Disrict Court for the District of Utah, and the certificate applications were filed with the Commission on August 7, 1957.

In accordance with the applications, Pacific would be merged into El Paso under the provisions of Section 253 of the Delaware General Corporation law. The outstanding shares of Pacific's common stock, now in the hands of the public, would be acquired on the same basis as the stock previously acquired and all common stock of Pacific would be cancelled. All outstanding preferred stock of Pacific would be called and indebtedness of Pacific to El Paso would be cancelled. Upon the accomplishment of the merger the corporate entity of Pacific would be extinguished, and El Paso would own and operate its facilities with those of Pacific as a single integrated pipeline system under one central management. All contracts for sales to the present customers of both companies would be performed by El Paso and existing rates would be unaffected by the merger transaction.

After interventions by a number of parties, including customers of El Paso and Pacific and a number of states or state commissions[1] a hearing was set for September 17, 1958. The Attorney General of California moved that the proceedings be stayed until the antitrust issues before the District Court were resolved. Upon considering the interests of all parties, the Commission denied this motion by order issued September 15, 1958, 20 FPC 357. On the other hand, the District Court, by order of October 13, 1958, stayed its own proceedings until a final determination had been made by the Commission in the present dockets. The hearing commenced as scheduled on September 17, 1958 and covered 23 days with adjournments until January 6, 1959. After the filing of briefs, the presiding examiner issued his decision on November 20, 1959.

The presiding examiner, as already noted, approved the merger with conditions as to the segregation of accounts. Exceptions were filed by the State of California and our staff, opposing the merger, and by P.G.&E. not supporting the merger nor opposing it, providing that a condition be imposed that the costs of Pacific's system not fall on the California customers. Upon the basis of the briefs, the exceptions, and oral argument before us on December 10, 1959, we shall adopt the reasoning of the presiding examiner as set forth in his decision and discussed briefly below in the light of the exceptions.

THE ANTITRUST PROBLEM

Section 7 of the Clayton Act,[2] under which the antitrust suit was brought, prohibits the acquisition by one corporation of the stock or assets of another corporation where "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly". Exempt, however, are transactions consummated pursuant to Commission authority. This shows, reasons the presiding examiner, that Congress placed reliance on the Commission not to approve an acquisition of assets in violation of the injunction of the Clayton Act, unless in the carefully exercised judgement of the Commission, the acquisition would nevertheless be in the public interest. What we are attempting to arrive at is the public convenience and necessity. In reaching our determination, we do not have authority to determine whether a given transaction is in violation of the Clayton Act, but we are required to consider the bearing of the policy of the antitrust laws on the public convenience and necessity. *City of Pittsburgh* v. *F.P.C.*, 237 F. 2d 741, 754 (CADC). With the presiding examiner, we find that any lessening of competition whether in the consumer markets or the producing fields, does not prevent our approving the merger because there are other factors which outweigh the elimination of Pacific as a competitor. In any case, it appears that any lessening of competition is not substantial.

As discussed fully by the presiding examiner, Pacific sought to compete with El Paso only in the California market, but because of its initial financial difficulties did not threaten immediate or substantial competition in this market. But, irrespective of the merger, there is additional competition in prospect. The Commission, on August 10, 1959, issued a certificate to Transwestern Pipeline Company,[3] authorizing it to construct a pipeline from the Panhandle-Hugoton field and Permian Basin to a point on the California-Arizona border near Topock, Arizona, where gas will be delivered to Pacific Lighting Gas Supply Company, which, in turn will transport and sell the gas in California to the Southern California Companies. Furthermore, there is pending before the Commission

[1] Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Texas, Utah, Washington and Wyoming.

[2] 15 U.S.C. § 18.

[3] *Transwestern Pipeline Co.*, 22 FPC 391, Op. No. 328, August 10, 19[illegible].

in Docket No. G–17350, the application of Pacific Gas Transmission Company, which proposes to build a pipeline to transport Canadian produced gas from a point on the border near Kingsgate, British Columbia, to Klamath Falls, Oregon, near the border of California where connection will be made with the facilities of P.G. & E. While this latter project has not been approved by us it indicates, at least, a tendency for competition to develop for the California market.

With respect to the competition for natural gas supply, Pacific will, of course, be eliminated, but would probably not have been a competitor with El Paso in the Permian Basin or the Panhandle-Hugoton area. On the other hand, Southern Union Gas Company obtains gas in the San Juan and Permian Basins. Transwestern may well become a competitor in the San Juan Basin, and the Aneth field, in view of the proximity of its projected pipeline. In the Rocky Mountain area, competition will likely come from Colorado Interstate, Mountain Fuel Supply Company and others, in Canada from Pacific Gas Transmission Company and others.

In view of this competitive situation set forth by the presiding examiner and briefly described above, the exceptions of California and the staff of this Commission are not well taken on this point.

THE PUBLIC INTEREST

Coming to the advantages of the proposed merger, the presiding examiner finds that the merger is in the public interest from the standpoint of (1) improved gas supply and utilization of gas reserves, (2) a financially stronger gas supplier, (3) expanded and improved gas service and (4) lower rates.

A. *Improved Gas Supply and Utilization of Gas Reserves.*—The record shows, as recounted by the presiding examiner, that California has a continuing and increasing demand for gas, and is now importing in excess of 2,000,000 Mcf per day. The present sources of supply for this imported gas are the San Juan Basin, the Aneth Field, the Permian Basin and the Panhandle area of Texas. As set forth in our orders issuing certificates to El Paso in the Docket Nos. G–10499 (16 FPC 1354), G–11797 (19 FPC 393) and G–12580 matters, El Paso is in need of additional supplies of gas in order to continue rendition of service to California. The merger constitutes a step in the direction of increased supplies of gas. As we pointed out in our Opinion No. 271, issuing the original certificate to Pacific,[4] Pacific's pipeline traverses a region containing sedimentary basins that promise development of future gas reserves. Since the time of construction of Pacific's line exploration and development of the area have been stimulated. Through the merger and the addition of El Paso's markets further stimulus to development will be given. By comparatively minor construction, the flow of gas on portions of Pacific's system can be reversed so that gas may flow southerly from Rocky Mountain sources to El Paso's existing system. The present connection between El Paso and Pacific in the San Juan Basin, can also be strengthened by further comparatively minor additions. As a result, there would be a pipeline system extending from West Texas to Canada, fully unified and having many sources of supply available to serve the combined system markets, and to benefit all consumers.

There is a further problem that is mitigated by the proposed transaction. El Paso's principal sources of supply are in the Permian Basin area where large volumes of gas are produced in conjunction with oil. Because of varia-

[4] *Northwest Natural Gas Company*, et al., 13 FPC 221, Op. No. 271, Docket Nos. G–996 et al., issued June 18, 1954, mimeo p. 16.

tions in the production of oil, due to local regulation, it is necessary to supplement the residue gas sources with dry gas. On the other hand, Pacific's supply is primarily dry gas. Thus El Paso, which now has the greatest dependence upon residue supplies of any natural gas company, will reduce its dependence upon the vagaries of oil production. This in turn, through better scheduling of supplies, will aid conservation, lengthen life of reserves, and assist El Paso in marketing bonds having a longer maturity life.

In its exceptions, the staff contends that El Paso has shown in another proceeding[5] that it did have a sufficient gas supply. However, we are here concerned with El Paso's increasing its gas supplies for the indefinite future. The staff also argues that the same results with respect to gas supply, could be achieved through the parent-subsidiary relationship, and California argues that a like result could be achieved through contractual arrangements. However, the record shows that El Paso intends to dissolve the parent-subsidiary relationship if the merger is not achieved, and it seems obvious to us that El Paso will have greater opportunity of acquiring additional reserves in the Rocky Mountain area or Canada if Pacific's pipeline belongs to it, than if Pacific's pipeline is independent.

B. *A financially stronger gas supplier.*—The presiding examiner recounts how Pacific has shown financial weakness and was operating at a loss in 1957 and 1958 after payment of preferred dividends. While he thinks the corporation would survive and its financial picture would improve, he was clearly right in concluding that the merged company would have a vastly better financial standing than Pacific, which would have found it costly, if not impossible, to obtain debt and equity capital. Even El Paso would be in a stronger financial position than before because of its being able to acquire new gas reserves, particularly dry gas, and the merged company would be able to attract capital upon favorable terms. While some of the testimony indicates that Pacific's low earnings may be somewhat of a handicap for several years, this would appear to be temporary and would disappear when greater use is made of Pacific's pipeline We therefore, do not adopt the contentions made by California that the result of the merger will be the weakening of the financial integrity of El Paso.

The staff argues that Pacific's financial condition shows the effect of deleterious policies pursued at the behest of the parent company, El Paso. It points to advance payments for gas, failure to effect rate increases and reductions in contract demands to certain customers. It appears that the advance payments were necessary because of temporary lack of capacity to take contract volumes, that rate increases would have prevented development of Pacific's markets, particularly industrial loads and that the reductions in contract demands would in the long run result in greater sales. Management's judgment in these matters results from actual market conditions and not from a plot to weaken Pacific. These are the problems which can be more easily overcome when Pacific is merged with El Paso.

In connection with the financial effects of the merger, it is noted that El Paso is entitled under the Internal Revenue Code of 1954, to utilize for Federal income tax purposes, a tax loss carry-over of $23,734,923.00, representing net operating losses incurred by Pacific prior to January 1, 1957. Of this loss carry-over, applicants state in their Motion Regarding Time for Filing Exceptions and Hearing Oral Argument, that $9,019,000.00 is attributable to the year 1955, although only part of this amount would be available to Pacific if the

[5] *El Paso Natural Gas Company*, 22 FPC 900, Op. No. 333, Docket No. G-12580, issued November 27, 1959.

merger is not consummated by December 31, 1959. Since such losses can carry forward for only five years, Pacific has not and probably will not be able to obtain any advantage from a large part of the total carry-over, for it has not and apparently will not have sufficient taxable income within that time. There will thus result from the merger, tax savings amounting to 52 percent of the tax loss carry-over. Of course, in determining the effect of the merger, there should be deducted from the available tax loss carry-over that part of it which could have been utilized by Pacific if there had been no merger. We are of the opinion that the merger will be more truly in the public interest if tax savings inure to the benefit of the ultimate consumers of the gas of the merged corporation.

To insure that the savings are retained for our purpose, we shall require that the merged corporation establish and maintain a special reserve upon its books of account in such amount as shall equal the amount of all tax savings resulting from the merger, less the amount which could have been realized by Pacific if there were no merger. After the consummation of the merger, El Paso will be required to file in this proceeding, a plan providing for the disposition of such reserve, including amounts that may be credited to it in the future, for the benefit of the ultimate consumers of the gas of the merged corporation. With such a plan before us, we shall be able to order an appropriate disposition of the amounts credited or to be credited to the special reserve.

C. *Expanded and Improved Gas Service.*—We agree with the presiding examiner that the merger will not only make available additional supplies of gas for service to California and other markets, but will make better use of the capacity of Pacific's system and will provide an increased flexibility of operation from the combined system; particularly, after the construction of further facilities. This flexibility is necessary because of demands of the various markets and the availability of sources of supply changing from day-to-day and will be effected by central control of the combined systems so that the demands may be met from the sources of supply available. Control of this flexibility could not readily be achieved if the two corporations were separate and independent. It could be achieved more easily, between affiliates, but not as economically as by one corporation, in view of the evidence of savings arising from the merger as discussed below.

P.G. & E. vigorously contends that the merger will not make the gas supplies of Pacific's system available to El Paso's present customers, including P.G. & E., without the construction of extensive pipeline facilities and contends further that the merger will not result in flexibility of operation including the ability to supplement residue gases with new sources of dry gas. As previously indicated, comparatively minor piping facilities at Pacific's existing compressor stations would enable gas to flow in either direction in the existing Pacific system. As also shown, comparatively minor increased interconnecting facilities in the San Juan Basin would permit gas to flow directly from Pacific into the existing El Paso facilities connecting San Juan with the California markets. Thus supplies available on the Pacific system could be used to supplement El Paso's present supply for its northern pipelines which now largely comes from either Permian or San Juan Basins. In a similar manner, gas could move north from El Paso's present system to supplement Rocky Mountain or Canadian supply in case of emergency. In any event, if the continuing increased demands for gas in California are to be made available, new construction must be undertaken by El Paso or some other company.

As above indicated, the failure of supply on any part of the combined system can be alleviated to some degree by gas available to other parts. While present

conditions would limit this effect, we cannot appraise the proposed merger from a narrow viewpoint but must look to the future when gas supplies north of El Paso's present system become more important as Permian and San Juan reserves decrease and when additional facilities are built to provide free movement of gas north and south.

D. *Rate questions.*—The strongest motive for attacking the presiding examiner's decision seems to be the fear that the cost of service will continue to be high for gas originating on the present Pacific system and the cost differential will be imposed on El Paso's customers in California. We agree with the presiding examiner that, in the first place, the merger will result in savings that will tend to lower rates or prevent them rising more than they would otherwise. The record indicates savings by the elimination of duplication in service functions and also savings in future financing of the merged company, with respect to both debt and equity capital. It was testified that the rate increase filed by Pacific on August 6, 1957, would have been higher if it had continued as an independent company.

As the presiding examiner shows, the merger will not of itself result in any rate change, and El Paso does not propose to make any change in its filed rates or Pacific's filed rates as a result of the merger. In fact, El Paso's president gave assurance that no new rate increases to Pacific's present customers would be filed with the Commission for at least one year from the date of the approval of the merger by the Commission. Thus any effect which the merger may have on rates is not before us at this time. It will necessarily have to be settled in another proceeding.

In their exceptions and oral argument, California, P.G. & E. and the staff have objected variously to the presiding examiner's not taking into account what they consider to be an inevitable shift of the costs from Pacific to El Paso's California customers. They argue that El Paso has treated the combined system as an integrated one that would be subject to the system-wide method of allocating costs with the result that Pacific's cost would be "rolled in" and would affect all of El Paso's present customers. This issue of allocation, of course, is one for a rate proceeding. It is a matter for our judgment based upon all the facts before us concerning the operation of the merged system.

The presiding examiner has recommended, in acordance with the contentions of the Southern Companies, that a condition be attached to approval of the merger which would require El Paso to maintain its accounts in such a way as to provide data in future rate cases to show the costs of Pacific's system as part of the merged company. We agree with this recommendation and will include such a condition in the present order. However, we shall amend the condition imposed by the presiding examiner so that El Paso will be required to account for and allocate not only direct costs, as required by the presiding examiner, but all costs as between the present El Paso and Pacific systems and as between three portions of Pacific's system. In this way the costs arising on the Pacific system will be readily identifiable by the parties and by us in a future rate proceeding, and the requirement will facilitate the allocation of system-wide costs and the designing of rates that will do justice to all customers. However, this requirement is without prejudice to the method of allocating costs or designing rates to be used in any future proceeding. We agree with the presiding examiner that it would be improperly prejudging the evidence in such a proceeding if we acceded to P.G. & E.'s request that a condition be imposed that none of the costs associated with the present Pacific system be allocated to El Paso's present customers.

OTHER MATTERS

We agree with the presiding examiner that Pacific's application, under Section 7(b) of the Natural Gas Act, to abandon its facilities and services was inappropriate, for no abandonment is actually going to take place. We shall therefore dismiss Pacific's application, but its certificates will be rescinded and reissued to El Paso. We agree also that El Paso and Pacific should be required to take the appropriate steps under Delaware law to consummate the merger. By stipulation filed as Exhibit No. 380 in this proceeding it was agreed by El Paso that $4,702,856.37 represents profits of affiliated construction companies and that a condition might be imposed requiring El Paso to establish a reserve of $10,000,000 to be available for adjustments to the accounts of Pacific upon the completion of the merger. Our staff is presently engaged in an examination of the accounts of Pacific. If as a result of this examination, adjustments to plant or depreciation reserve accounts are found to be appropriate and ordered by the Commission, we shall require as a condition of this order that adjustments in excess of the $10,000,000 shall be written off to earned surplus.

The Commission further finds:

(1) Pacific Northwest Pipeline Corporation, a Delaware Corporation with its principal place of business in Salt Lake City, Utah, is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) El Paso Natural Gas Company, a Delaware Corporation with its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act.

(3) The facilities hereinbefore described are proposed to be acquired and operated by El Paso for the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the acquisition and operation of these facilities are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) The sales of natural gas made from facilities to be acquired from Pacific, as more fully described in the applications and the evidence herein, will be made in interstate commerce, subject to the jurisdiction of the Commission and such sales are subject to the jurisdiction of the Commission and to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) Subject to the requirements of this opinion and order and the conditions of the certificates issued hereunder, El Paso is able and willing properly to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(6) The acquisition and continued operation of the facilities proposed to be acquired by El Paso from Pacific, and the sales of natural gas by it, subject to the jurisdiction of the Commission, are required by the public convenience and necessity, and certificates therefor should be issued as hereinafter ordered and conditioned.

(7) The public convenience and necessity requires that the certificates issued herein shall be conditioned as provided below.

(8) Such contentions, objections and exceptions as are not specifically disposed of in the foregoing are without basis in law or support in fact.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued, upon the terms and conditions of this order and subject to all pertinent provisions of the Natural Gas Act and the Commission's Regulations thereunder, authorizing El Paso to acquire and operate all of the facilities of Pacific, subject to the

jurisdiction of the Commission, which are described in the applications of these two natural-gas companies in Docket Nos. G–13018 and G–13019.

(B) All permits and certificates of public convenience and necessity heretofore issued to Pacific by the Commission are hereby rescinded as of the effective date of the merger herein authorized; and identical permits and certificates of public convenience and necessity to those so rescinded, with any amendments or modifications thereof made by the Commission, are hereby issued to El Paso, upon the terms and conditions of this order and subject to the pertinent provisions of the Natural Gas Act and the Commission's Regulations thereunder, to be just as effective as if El Paso had originally been issued said certificates; and El Paso is hereby vested with all rights, and charged with all obligations and responsibilities of Pacific under the said rescinded certificates.

(C) The certificates, issued in paragraphs (A) and (B) above, shall be accepted in writing and under oath by a responsible official of El Paso within 30 days from the issuance of this order, pursuant to paragraph (a) of section 157.20 of the Commission's Regulations under the Natural Gas Act.

(D) The acquisition of Pacific's facilities by El Paso, as authorized in paragraph (A) hereof, shall be accomplished by El Paso by merging Pacific into it pursuant to the provisions of Section 253 of the Delaware General Corporation Law, by taking the legal steps proposed in El Paso's application and testimony, within 30 days from the issuance of this order.

(E) The certificates described in paragraphs (A) and (B) hereof are issued subject to the provisions of the stipulation entered into on September 9, 1958, by Attorneys representing El Paso and the Commission Staff, which is Exhibit No. 380 in this record, including the statement that $4,702,856.37 represents profits of affiliated construction companies and the requirement that El Paso set up on its books and records and reflect in its financial statements, a reserve in the amount of $10,000,000 to be available for adjustments to the plant and depreciation reserve accounts of Pacific to be transferred to El Paso by Pacific upon acquisition of its facilities by merger.

(F) Any adjustments of El Paso's plant or depreciation reserve accounts applicable to the properties of Pacific in excess of the reserve of $10,000,000 referred to in (E) above shall be written off to earned surplus or such other disposition as the Commission may direct.

(G) Within 30 days from the issuance of this order, El Paso shall reissue, in its own name and without other change, all FPC Gas Tariffs of Pacific now on file with the Commission, but excluding agreements between Pacific and El Paso.

(H) The certificates described in paragraphs (A) and (B) hereof are issued upon the condition that El Paso shall maintain, in conformity with the Uniform System of Accounts, supplemental accounts in scope and form, satisfactory to the Commission designed to show separately:

(a) The gas plant, depreciation reserve, operating revenues, operating expenses, depreciation, taxes, and return on investments which would be involved in any determination of El Paso's cost of service for the system zones formerly served by (i) El Paso, and (ii) Pacific and

(b) The gas plant, depreciation reserve, operating revenues, operating expenses, depreciation, taxes, and return on investments applicable to the main transmission line of the Pacific system divided as follows:

(i) From Sumas, Washington (on the Canadian boundary) to and including Station No. 14, near Pendleton, Oregon.

(ii) From Station No. 14, near Pendleton, Oregon, to Station No. 6, near Rock Springs, Wyoming.

(iii) From and including Station No. 6, near Rock Springs, Wyoming to the San Juan Basin.

(I) The certificates described in paragraphs (A) and (B) hereof are issued upon the further conditions that:

(a) Upon the consummation of the merger, El Paso shall establish and maintain a special reserve upon its books of account in such amount or amounts as shall equal the amount or amounts of all tax savings from deduction by the merged corporation of Pacific's past losses, less the amount which could have been utilized by Pacific if there had been no merger;

(b) Credits to such reserve shall be made concurrently with the realization of the tax saving, and no charges shall be made to that reserve without the authorization and approval of the Commission first having been obtained.

(c) Within 60 days of the issuance of this order, El Paso shall file a plan for disposition for the benefit of consumers of the amounts credited, or to be credited to the special reserve required in subparagraph (b) of this paragraph (I). All parties to this proceeding may file comments and views or alternative proposals with respect to such plan within 30 days after filing thereof.

(J) The application of Pacific to abandon its facilities under Section 7(b) of the Act is hereby dismissed for the reasons hereinbefore given; but Pacific is hereby authorized to do all things necessary to accomplish the merger herein authorized.

(K) Exceptions to the presiding examiner's decision, unless specifically granted by this order, are hereby denied.

(L) The decision of the presiding examiner is hereby adopted as the decision of this Commission except as modified by this order.

DECISION

UPON APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND UPON APPLICATION TO ABANDON FACILITIES

(Issued November 20, 1959)

KELLY, *Presiding Examiner:* El Paso Natural Gas Company (El Paso) seeks, by its application in Docket No. G-13019, a certificate of public convenience and necessity from the Commission, pursuant to Section 7(c) of the Natural Gas Act (Act), authorizing it to acquire and operate all of the facilities and properties of Pacific Northwest Pipeline Company (Pacific), which are subject to the jurisdiction of the Commission. It proposes to acquire such facilities and properties by the merger of Pacific into El Paso, and to operate its own facilities and properties, together with those of Pacific, as a single integrated business and system for the production, acquisition by purchase, processing, transportation and sale of natural gas in a large area of the western United States. Pacific has filed a companion application, Docket No. G-13018, by which it seeks permission and approval from the Commission, pursuant to Section 7(b) of the Act, to abandon all of its facilities certificated by the Commission, and the service rendered thereby, so as to effect its merger with El Paso as proposed, if the certificate of public convenience and necessity applied for by El Paso is granted by the Commission.

Both El Paso and Pacific are engaged in the transportation and sale for resale of natural gas in interstate commerce for ultimate public consumption. The necessary facts to constitute each Applicant a natural gas company within the meaning of the Act are averred in their applications and established by the evidence. The jurisdiction of the Commission to grant or deny these applications is not here questioned.

The original applications were both filed on August 7, 1957, and supplements thereto have since been filed with the Commission. A joint notice of the filing of the two applications was given by the Secretary of the Commission on September 25, 1957, and it gave opportunity for the filing of "protests or petitions to intervene" in the consolidated proceedings on or before October 31, 1957. On July 25, 1958, the Secretary gave notice of the consolidation of the dockets shown in the caption hereof and of the fixing of September 17, 1958 as the date upon which the hearing of these consolidated proceedings would begin before the Commission. This hearing was convened pursuant to said notice on September 17, 1958 and, after several recesses, was concluded on January 6, 1959. All parties to these proceedings were given opportunity to participate in the hearing and to file briefs in support of their respective positions; and briefs have been received from the Applicants, the Staff of the Commission and certain interveners, the final briefs from the Applicants having been received on June 1, 1959.

Each State in which either El Paso or Pacific owns and operates facilities for the transportation and sale of natural gas, or in which are located purchasers from them of natural gas for resale, was represented by an intervener in these proceedings. Each such State is listed below with its intervener representative:

Arizona, by its Attorney General.
California, by its Attorney General.
Colorado, by The Public Utilities Commission thereof.
Idaho, by Idaho Public Utilities Commission.
Nevada, by Public Service Commission thereof and its Attorney General.
New Mexico, by New Mexico Public Service Commission and its Attorney General.
Oregon, by its Public Utility Commissioner.
Texas, by its Attorney General.
Utah, by Public Service Commission thereof.
Washington, by Washington Public Service Commission.
Wyoming, by its Attorney General.

Interveners which purchase natural gas transported and sold by El Paso are as follows:

Southern California Gas Company and Southern Counties Gas Company of California, jointly.
Southern California Edison Company.
Pacific Gas and Electric Company.
Southern Union Gas Company.

Interveners which purchase natural gas transported and sold by Pacific are as follows:

Colorado Interstate Gas Company.
Colorado-Wyoming Gas Company.
Mountain Fuel Supply Company.
Intermountain Gas Company.
Natural Gas Pipeline Company of America.
Northwest Natural Gas Company (formerly Portland Gas and Coke Company).
Public Service Company of Colorado.
Washington Natural Gas Company.
The Washington Water Power Company.

The City of Los Angeles, California intervened as a purchaser of natural gas from a customer of El Paso, and also as a representative of its residents and citizens who are consumers of such natural gas. J. W. Greenough intervened as the owner of capital stock of Pacific.

El Paso and Pacific filed on February 16, 1959, their joint initial brief in support of their applications. All interveners desiring to file briefs in support of the approval of the merger by the Commission, with or without conditions, were required to do so by March 16, 1959. The interveners who filed briefs in support of the merger without conditions were the representatives of the States of Arizona, Idaho, Nevada, New Mexico, Texas, Washington and Wyoming and the Northwest Natural Gas Company. Approval of the merger, with conditions imposed, was supported by the briefs of Pacific Gas and Electric Company, Southern Union Gas Company, Southern California Gas Company, and Southern Counties Gas Company of California, the last two filing a joint brief. Briefs were filed on April 20, 1959 by the Commission Staff and the Attorney General of California, both opposing the approval of the merger by the Commission. Reply briefs by all except the Applicants were required to be filed by May 22, 1959, and such were filed by Pacific Gas and Electric Company, Northwest Natural Gas Company, and the representative of the State of Oregon.[6] The joint reply brief of El Paso and Pacific was filed, as required, on June 1, 1959.

From the foregoing it may be seen that all of the interveners did not file briefs. There were nine interveners who merely showed by the averments of their petitions that they had such interest in these proceedings as entitled them to be granted intervention, and they took no definite position at any time for or against the merger.[7] While filing no briefs, Washington Natural Gas Company and Washington Water Power Company, through oral statements of counsel and the testimony of witnesses offered by them at the hearing, took a definite position in support of the merger. Counsel for Intermountain Gas Company stated orally at the hearing that his company appeared in support of the proposed merger. J. W. Greenough who intervened as a stockholder of Pacific, opposed the merger in his petition to intervene but he made no appearance at the hearing and offered no evidence of the facts averred therein as the basis of this opposition.

There were 23 days of hearing between September 17, 1958 and January 6, 1959, largely consumed by the direct and cross-examination of the witnesses for the Applicants. In addition to that of the Applicants, testimony was given in support of the applications by Northwest Natural Gas Company, Washington Natural Gas Company, and The Washington Water Power Company. Testimony was also given by witnesses for the Staff of the Commission, for Pacific Gas and Electric Company, and jointly for Southern California Gas Company and Southern Counties Gas Company of California. There were received in evidence 429 exhibits, and 71 items of evidence were incorporated into the record by reference to them in the files of the Commission. The evidence so received at the hearing is exclusively the basis of the decision upon the issues here made. Any statements made herein which show merely which parties favor or oppose the merger, whether by brief or otherwise, are for the sole purpose of showing which parties presented issues here for decision. Mere conclusionary statements, for or against the merger, made by parties or witnesses at any point in the record, which are not supported by substantial record evidence, were not permitted to have any bearing upon the decision here made.

The applications state clearly the grounds relied upon by the Applicants to support their respective prayers therein for a certificate authorizing El Paso to

[6] The Public Utility Commissioner of Oregon did not file an initial brief and the brief filed by him on May 22, 1959, in support of the merger, was not in the nature of a reply brief.

[7] The nine are: Public Utility Commission of Colorado, Public Service Commission of Utah; City of Los Angeles; Colorado Interstate Gas Company; Colorado Wyoming Gas Company; Public Service Company of Colorado; Mountain Fuel Supply Company; Natural Gas Pipe Line Company of America; and Southern California Edison Company.

acquire by merger and operate the properties of Pacific, and for permission to Pacific to abandon its properties so as to effect such merger. The grounds for the granting of the applications stated in the briefs of the Applicants are substantially the same as those averred in the applications. The positions taken by the Staff and the Attorney General of California (California) in opposition to the granting of such authority and permission are not set forth fully except in the briefs of these parties. Those seeking to have conditions imposed upon the issuance of the certificate to El Paso, have likewise stated their positions fully only in their briefs. Thus, the briefs have been looked to largely for definitions of the issues raised by those who oppose, or who would condition, the granting of the authority sought by the Applicants.

THE NATURAL GAS ACT

Section 7(c) of the Act provides definitely that no natural gas company shall acquire or operate any facilities for the transportation or sale of natural gas, subject to the jurisdiction of the Commission, without first having obtained from the Commission a certificate of public convenience and necessity authorizing such acquisition or operation.[9] As hereinbefore shown, El Paso, a natural gas company, has filed application to acquire and operate all of the facilities of Pacific, also a natural gas company, which are subject to the jurisdiction of the Commission. Section 7(e) of the Act provides that a certificate of public convenience and necessity authorizing the acquisition and operation of facilities, subject to the jurisdiction of the Commission, shall be issued by the Commission to any qualified applicant therefor, who is found to be able and willing properly to perform the acquisition and operation proposed by him and to conform to the provisions of the Act and lawful regulations thereunder; provided, that such acquisition or operation "is or will be required by the present or future public convenience and necessity." The record evidence shows clearly that El Paso is able and willing properly to perform the acquisition and operation of the facilities of Pacific and, in so doing, to conform to the provisions of the Act and lawful regulations thereunder. Therefore, the really basic issue here presented is whether the public convenience and necessity require the issuance of a certificate authorizing El Paso to acquire and operate the facilities of Pacific, together with its own facilities, as an integrated pipeline system, as proposed in its application. Pacific, of course, seeks to be merged into the El Paso corporation.

The burden is squarely upon El Paso to establish, by substantial evidence, the affirmative of the issue of whether the merger here under consideration is required by the public convenience and necessity. This would be true, under the Act, even though there had been no opposition to the merger. The reasons advanced in opposition to the merger must be weighed in relation to this issue; and it must be determined whether, in spite of such reasons, the public convenience and necessity still require the granting by the Commission of the certificate sought. The same is true with regard to the reasons advanced for attaching conditions to the certificate authorizing the merger; and it must be determined whether the public convenience and necessity require the issuance of the certificate with or without the proposed, or other, conditions. Of course, it must be shown by the evidence, that reasons advanced for opposing the certificate, or attaching conditions thereto, have their bases in fact. In making the decision as to the requirements of the public convenience and necessity in the premises here, all factors of consequence presented in this record, bearing affirmatively or negatively upon this issue, have been fully considered.

[9] 15 U.S.C. Sec. 717f(c).

THE TWO CORPORATIONS

El Paso Natural Gas Company

El Paso is a Delaware corporation with its principal place of business in El Paso, Texas. Organized in 1928, its first transmission facilities, about 200 miles in length and with a capacity of 36,000 Mcfd,[9] were completed and put in operation in 1929, with its principal market El Paso, Texas and environs. The first certificate of public convenience and necessity issued to El Paso by the Commission was by order of January 11, 1944, made pursuant to the "grandfather" clause of Section 7(c) of the Act as amended, which recited that El Paso was engaged in the purchase of natural gas in New Mexico, and in the transmission and sale thereof in Texas, New Mexico and Arizona.[10] Prior to its expansion to supply its additional markets, El Paso had in 1945 a capitalization of less than $40 million.

By authority of the Commission given in a certificate of public convenience and necessity of May 31, 1946, El Paso entered the California natural gas market.[11] It was authorized to construct and operate a natural gas pipeline with appurtenant facilities, extending approximately 1,000 miles from Dumas, Texas to the Arizona-California border, near Blythe, California, and to transport and sell natural gas to the Southern California Gas Company and the Southern Counties Gas Company of California (Southern California Companies), in accordance with a contract with these companies for the delivery at the end of 4 years of up to 305,000 Mcfd, for a period of 30 years. The Commission opinion granting this certificate stated that the sale of natural gas to these purchasers was "for resale to ultimate consumers in California through existing local distribution facilities", located in southern California. The greater portion of this gas supply was to be residue gas produced in the Permian Basin in west Texas and southeast New Mexico, and the remainder was to be dry gas produced in the Hugoton and Panhandle fields of Texas.

On February 28, 1949, the Commission issued to El Paso, a certificate of public convenience and necessity authorizing it to transport and sell to Pacific Gas and Electric Co. (PG&E) 250,000 Mcfd. The facilities then authorized to be constructed and operated were described in the Commission order; and they effected "a complete looping" of El Paso's then existing main transmission line from Texas to a point where a lateral pipeline would be constructed in a generally northerly direction to transport the natural gas for delivery to PG&E at the Arizona-California border near Topock, Arizona. According to the Commission order, this lateral was to be connected to the main transmission line at a point about 45 miles east of the delivery point to the Southern California Companies near Blythe, California. El Paso's contract with PG&E required it to deliver 150,000 Mcfd by January 1, 1951, for a period of 20 years, and to deliver an additional 100,000 Mcfd by January 1, 1952 for a period of 15 years. El Paso was required also to use its best efforts to make deliveries of these two quantities of gas for additional periods beyond the original contract terms. This gas was to be delivered to PG&E for its own use for sale to consumers, and for sales for resale. PG&E serves central and northern California. The deliveries required by the contract were to be from production in the Permian Basin, supplemented by dry gas from the Panhandle and Lea County fields.

These first sales by El Paso to the Southern California Companies and to PG&E, as authorized respectively in Dockets G–655 and G–1019, were the beginning of El Paso's expansion from a capitalization of less than $40 million, when

[9] Mcfd is used herein to mean "thousands of cubic feet daily."
[10] 4 FPC 486, Docket No. G–288.
[11] 5 FPC 115, Docket No. G–655.

it received its first certificate from the Commission, to a present capitalization, with its subsidiaries, of about $1 billion; and from a main pipeline of about 200 miles to existing main transmission lines in excess of 6,700 miles. As the California market for natural gas expanded, El Paso expanded its transportation facilities in an effort to meet the ever increasing demands of that market. While El Paso has important markets in west Texas, New Mexico, Arizona and Nevada, it may very surely be found from this record that the great growth of the El Paso system has been due very largely to the rapid expansion of the California market for natural gas from sources outside of the State. From the time that California's own supply of natural gas had diminished to the point where it no longer was adequate to meet the demands of the California consumers, thus requiring out-of-state supplemental supplies of natural gas, El Paso has been, and is now, the sole supplier of such supplemental gas to the State of California.

The certificates of public convenience and necessity issued successively by the Commission over the years authorizing the construction and operation of main transmission facilities for major sales of natural gas on the El Paso System, are listed by docket number and brief description in El Paso's original application in Docket No. G–13019. The evidence shows that the present certificated delivery capacity of the El Paso System is roughly 2,700,000 Mcfd, and that of this capacity approximately 1,030,000 Mcfd are for the Southern California Companies and approximately 1,025,000 Mcfd are for PG&E. This shows that more than three-fourths of El Paso's presently certificated capacity is for its three customers in California. The bulk of El Paso's transported gas is sold for resale and its direct sales are relatively unimportant.

The brief of the Applicants describes El Paso's main transmission facilities as consisting of the so-called "Permian" or "Southern System" and the so-called "San Juan" or "Northern System" which, together with numerous connecting pipelines and laterals, constitute El Paso's integrated pipeline system. The Southern System was the first to reach the California, border for the original delivery to the Southern California Companies, and later to PG&E, authorized respectively as shown above in Dockets Nos. G–655 and G–1019. As discussed hereinafter, the Commission authorized the construction and operation of El Paso's Northern System to enable it to have in the San Juan Basin a source of dry natural gas to balance its utilization of residue gas from the Permian Basin. The bulk of the gas transported and sold by El Paso is produced in these two basins, but it obtains gas from Canada and other fields in this country through purchase and exchange agreements with other pipeline companies.

El Paso, Southern System extends from the Permian Basin located in western Texas and southeastern New Mexico, to its western terminus near Blythe, California; and the main transmission facilities thereof are two parallel pipelines of large diameter from which project numerous lateral pipelines serving cities and communities in western Texas, southern New Mexico and southern Arizona. The Northern System extends from the San Juan Basin located in northwestern New Mexico and southwestern Colorado in a westerly direction to its terminus near Topock, Arizona. The main transmission facilities thereof consist of three parallel pipelines of large diameter from which project shorter pipelines and laterals to serve cities and communities in northern New Mexico and northern Arizona. The Southern System and the Northern System are interconnected by two single large-diameter pipelines in western Arizona. The two systems are likewise connected by a partially looped pipeline of large diameter, extending from its point of conection with the Southern System, in western Texas near the New Mexico border, in a northwesterly direction to a point in the Northern System near its eastern terminus at the San Juan Basin. El Paso also owns a pipeline of large diameter which is connected to its main

system in the Permian Basin and extends in a northerly direction to a point in the Panhandle field in western Texas; but this line is used to transport gas on an exchange basis for Northern Natural Gas Company. By means of these connecting pipelines, the two El Paso Systems, with their other transmission facilities, are operated as a single integrated pipeline transmission system.

There is pending before the Commission El Paso's application in Docket No. G–16235, for a certificate authorizing it to construct and operate a 34-inch pipeline, approximately 400 miles in length, from a point near Thistle and Provo, Utah, to the California-Nevada border, at a point southwest of Las Vegas, Nevada. This proposed pipeline has been referred to in the record as the Provo-Las Vegas project. At its northern terminus it will connect with a pipeline to be constructed and operated by Colorado Interstate Gas Company, which will be about 140 miles in length with its northern terminus at a point in the main pipeline of Pacific near Rock Springs, Wyoming. By an agreement of July 18, 1958, Pacific will deliver at this point a maximum of 235,000 Mcfd; and Colorado will deliver there a like quantity and transport the total of 470,000 Mcfd to the northern terminus of El Paso's Provo-Las Vegas pipeline. This gas will be sold and delivered at the California-Nevada border to the Southern California Companies, who will then transport it to their markets in Southern California. This pipeline will not be connected to El Paso's existing main pipeline system hereinbefore described.

By an Examiner's decision of February 26, 1959 upon its application in Docket No. G–13862, now pending before the Commission on exceptions, El Paso is authorized to construct and operate a pipeline from Aneth Field in the Four Corners area [12] to a point in its main transmission line, a short distance downstream from its San Juan Basin plant. Still another project of El Paso is before the Commission upon exceptions to the Examiner's decision of May 12, 1959, in Docket No. G–12580. In this proceeding, El Paso seeks authority to construct and operate certain facilities and to sell to Southern California Edison Company (Edison) 100,000 Mcfd for use as boiler fuel. In Docket No. G–15696, El Paso seeks authority to construct and operate facilities for delivery to PG&E at Topock, Arizona, 100,000 Mcfd of additional natural gas.

In order to meet the ever increasing natural gas requirements of its customers, El Paso has acquired leasehold rights, interests, and wells in the Permian and San Juan Basins and in the Texas Panhandle Fields; and from these it produces natural gas which materially adds to its gas reserves, which it controls under gas purchase contracts with other producers. For some years El Paso has been engaged in an extensive program of exploration and development in the above areas and elsewhere, which has increased substantially its overall gas reserves with which to meet its market requirements. El Paso likewise processes gas and sells at wholesale the extracted products.

Pacific Northwest Pipeline Corporation

Pacific is a Delaware Corporation with its principal place of business in Salt Lake City, Utah. It was first authorized by the Commission on June 18, 1954, to engage in the transportation and sale of natural gas in interstate commerce. Commission Opinion No. 271 of that date ordered that a certificate of public convenience and necessity issue to Pacific authorizing it to construct and operate the pipeline and the other facilities proposed in its application in Docket No. G–1429. This authorized natural gas transmission line had its southern terminus at Ignacio, Colorado in the northern part of the San Juan Basin of southwest Colorado and northwest New Mexico. From there its gen-

[12] This is the area around the meeting of the corners of the States of Utah, Colorado, Arizona and New Mexico.

erally northwesterly course was through the States of Colorado, Utah, Wyoming, Idaho, Oregon and Washington, to its northern terminus near Bellingham in northwest Washington near the Canadian border. Upon the applications of Pacific in Dockets Nos. G–8932, G–8933 and G–8934, the Commission authorized on November 25, 1955, in its Opinion No. 289, that the capacity of the northern section of this pipeline be enlarged and extended to the Canadian border near Sumas, Washington, for the importation of natural gas at this point. By the acceptance of the certificates issued by Commission Opinions Nos. 271 and 289, and the construction and operation of the authorized pipeline and facilities, Pacific became a natural gas company subject to the jurisdiction of the Commission.

In addition to this main pipeline from Ignacio, Colorado to Sumas, Washington, Pacific has lateral pipelines of varying lengths projecting therefrom to certain markets and to sources of gas supply. Filed as a part of Exhibit 6 in this record, is a map of the systems of both El Paso and Pacific, which shows in considerable detail their respective main pipelines, lateral lines, and other facilities. This map shows for both systems the completed facilities, the facilities certificated by the Commission but not yet installed, and certain facilities for which are pending applications before the Commission. Pacific has approximately 2125 miles of main and lateral pipelines. The capacity of the Pacific system is approximately 646,000 Mcfd, but its sales for 1958 were estimated to average only about 500,000 Mcfd. In addition to its sales to distributing companies and industrial customers, Pacific sells natural gas to Colorado Interstate Gas Company (Colorado), and Mountain Fuel Supply Company (Mountain Fuel), both pipelines subject to the jurisdiction of the Commission. The sales and exchanges of natural gas between Pacific and El Paso are discussed hereinafter.

The natural gas transported through this pipeline is authorized to be sold in all of the states traversed by it, to distributing companies for resale and to industrial customers along its route. Commission Opinion No. 271 had the following to say about the Pacific Northwest of the United States which would be served by Pacific:

> The Pacific Northwest is the one remaining large area of this country with a great need for natural gas but which is still without this highly desirable fuel and raw material. It is a section where great industrial expansion has occurred and is still in progress, and one which has played and continues to occupy a very important role in the National defense. The record amply demonstrates that it has a real desire and need for natural gas.

The completion of the initial financing of the Pacific project was accomplished early in May, 1955 and the actual construction of the certificated facilities was begun in June, 1955. While pipeline construction advanced to the point that deliveries of gas to some customers were made as early as August, 1956, the main transmission facilities were completed in December, 1956.

Pacific produces natural gas from its own leaseholds and purchases gas from other producers in the San Juan Basin and in various fields of the Rocky Mountain area; and it purchases natural gas from Westcoast Transmission Company, Ltd. (Westcoast, Ltd.) at the Canadian border which is produced in northern British Columbia and Alberta. It thus has sources of supply at both ends of its main transmission line and as well along the route thereof.

In Commission Opinion No. 271 it was stated that the estimated cost of the facilities authorized thereby to be constructed by Pacific, was $160 million; but in Opinion No. 289 it was found that Pacific's estimated capital structure would be $184,963,000. However, Pacific avers in its application here that its total

plant investment is in excess of $225 million, and this takes into consideration its plant at the time the application was filed on August 7, 1957.

Relations Between the Corporations

Westcoast Transmission Company, Inc. (Westcoast, Inc.), a Delaware corporation, was one of the companies competing for the unserved Pacific Northwest natural gas market, in the proceeding in which was issued Commission Opinion No. 271 which granted the application of Pacific to serve this area, and denied all other such applications. Westcoast, Inc. was the wholly-owned subsidiary of Westcoast Transmission Company, Ltd. (Westcoast, Ltd.), a Canadian corporation, which had extensive supplies of natural gas in the Peace River area of British Columbia and Alberta, Canada. Westcoast, Inc. instituted suit to review Opinion No. 271, but this litigation was voluntarily dismissed in December of 1954 after Westcoast, Ltd. entered into an agreement with Pacific for the sale to it of natural gas at the Canadian border. As a part of this transaction between Westcoast, Ltd. and Pacific, the latter acquired 25 percent of the former's common stock.

Pacific did not have a sufficiently large market in 1954 to justify the importation of Canadian gas. The management of El Paso decided then that it would be practical to utilize facilities of Pacific, together with its own, to bring Canadian gas to the California market. On December 11, 1954, Pacific entered into an agreement with Westcoast, Ltd. for the purchase of 300,000 Mcfd at the Canadian border near Sumas, Washington, and on the same date contracted with El Paso to sell to it 250,000 Mcfd of this Canadian gas at Mountain Home, Idaho. It was the plan of El Paso to construct a transmission line from this point to a point in the Nevada-California boundary near Reno, Nevada, and there to deliver the gas to PG&E. However, PG&E would not agree to accept gas from El Paso except at Topock, Arizona and this plan, for which authorization was sought in El Paso's original application in Docket No. G–8940, was abandoned.

The contract of December 11, 1954 between El Paso and Pacific was revised on August 23, 1955 to provide that El Paso would take 50,000 Mcfd of Canadian gas, to be delivered to it on an exchange agreement at Pacific's processing plant at Ignacio, Colorado; and further to provide that Pacific might require El Paso to take another 50,000 Mcfd in the same manner. On November 25, 1955, the Commission issued Opinion No. 289, 14 FPC 157, which authorized Pacific to increase the capacity of the northern section of its pipeline system to receive the 300,000 Mcfd from Westcoast, Ltd. It should here be commented, as was done in Opinion No. 289, that Pacific's "primary load obligations" are at the northern end of its system. Of course such obligations of El Paso are in the California market and this exchange of gas is advantageous to both parties. El Paso has a 24-inch pipeline by means of which it is now receiving 101,000 Mcfd of such exchange gas at Pacific's Ignacio plant which it transports to its own plant in Blanco, New Mexico, a distance of approximately 35 miles.

Pacific Gas Transmission Company (PGT) filed application with the Commission on December 29, 1958, in Docket No. G–17350, for authority to construct and operate a 36-inch pipeline for the transmission of natural gas from a point on the Canadian border near Kingsgate, British Columbia, to a point in the California-Oregon border near Klamath Falls, Oregon, a distance of about 600 miles. The greatest portion of the gas to be transported through this pipeline will be sold to PG&E at the California border. In addition to the transportation of gas for sale to PG&E, PGT will also transport approximately 150,000 Mcfd of natural gas for Pacific from the Canadian boundary to a point in the vicinity of Spokane, Washington, and to such other points within the States of Idaho,

Washington and Oregon as may be designated by Pacific. This gas, produced in Alberta, is to be obtained by Pacific from Westcoast, Ltd., a Canadian corporation. The former President of Pacific testified that the purchase of this additional quantity of Canadian gas was only feasible because the gas could be transported and sold to El Paso for delivery to Southern California Companies by means of the Provo-Las Vegas pipeline.

Pacific and El Paso entered into an agreement on June 15, 1956, whereby they agreed to use jointly their combined gathering facilities in the San Juan Basin. The agreement also provided for deliveries to each, on an exchange basis, of natural gas from wells of the other located, respectively, closer to the transmission facilities of each. This arrangement brought about the avoidance of unnecessary construction of gathering facilities in the Basin. It is estimated that Pacific made a capital saving of about $4,500,000 as a result of this agreement and that El Paso realized a saving in excess of $250,000. On June 15, 1956, another agreement between these parties was entered into whereby El Paso made available to Pacific gas from the San Juan Basin which was temporarily in excess of its requirements, which loaned gas was to be returned to El Paso by Pacific by the delivery of equivalent quantities in the future. Through these loans of gas, Pacific was enabled to obtain early deliveries of gas into its pipeline system and also to reduce substantially its program for immediate production of gas and to spread its drilling expenditures over a longer period of time. The Provo-Las Vegas project of El Paso has been discussed herein, and it was shown that the 470,000 Mcfd of natural gas supply therefor was to be obtained one-half from Pacific and one-half from Colorado. There are likewise other arrangements between the two companies in their activities in the San Juan Basin which are mutually beneficial. After the acquisition by El Paso of the Pacific common stock, an agreement of May 22, 1957, was made whereby El Paso took over the operation and maintenance of all Pacific properties, including its gathering system, in the San Juan Basin, and also the operation of Pacific's Ignacio plant. Other existing relationships between El Paso and Pacific are hereinafter discussed in relation to the issue of the public interest.

THE PROPOSED MERGER

El Paso's Acquisition of Pacific's Stock

Its President testified that El Paso first became interested in the acquisition of Pacific's common stock about the time El Paso contracted with Pacific to buy from it 250,000 Mcfd of Canadian gas in connection with the Mountain Home project hereinbefore discussed.[13] Discussions concerning this acquisition began at about that time between El Paso and Pacific and continued until March or April, 1955, during which time the personnel of El Paso was making studies of the Pacific system. In these first discussions, El Paso insisted upon making an application to the Commission under Section 7(c) of the Act for authority to effect the merger, but Pacific would not agree to this procedure because it did not want to be engaged in a proceeding under Section 7(c) at that time, which was prior even to the completion of the financing required for the construction of its pipeline.

There was a resumption of the discussions for this stock acquisition later in 1955 and a letter of December 14, 1955 from El Paso's President to the Board Chairman and the President of Pacific, offered to make a tax-free exchange of five shares of El Paso stock for each nine shares of Pacific stock. There were conditions specified in this letter among which was that however the acquisition

[13] Contract of December 11, 1954.

of Pacific's properties was effected, Commission approval of it under Section 7(c) of the Act would be required. El Paso's offer was again rejected by Pacific largely because it did not want to go through such a proceeding before the Commission during what it regarded as "a critical period in the Corporation's existence, *i.e.*, during the period it was organizing its personnel and preparing for the commencement of gas sales." These negotiations ended in February 1956.

The negotiations were resumed in August 1956 and continued through October 1956. El Paso still preferred, during these negotiations, to acquire Pacific's properties through a proceeding under Section 7(c) of the Act to obtain Commission approval of the acquisition. However, Pacific's officials would not yield, and insisted upon the tax-free stock exchange. Finally El Paso agreed to such an exchange of stock and entered into a contract dated November 8, 1956 with the principal stockholders of Pacific for the acquisition of Pacific stock on this basis. On January 8, 1957, the formal offer was made to Pacific's stockholders to exchange their stock for shares of the stock of El Paso; and by the end of that month more than 80 percent of the shares of Pacific's stock had been tendered for exchange. When this offer of exchange was closed on May 1, 1957, El Paso had acquired 99.8 percent of the outstanding stock of Pacific.

El Paso's President testified that the primary purpose for the acquisition of the common stock of Pacific was to gain access to the vast and relatively untouched Canadian gas reserves for El Paso's markets, and that the next purpose in importance was gaining access to the reserves of the Rocky Mountain area. It is found hereinafter that the attachment to El Paso's expanding markets of these two great sources of natural gas is definitely in the public interest.

Merger Under Delaware Law

In Section 7 of El Paso's application, appears its "Plan of Acquisition: The Proposed Merger of Pacific Into El Paso." Under this caption it is shown that the merging of the corporate entity of Pacific into that of El Paso will be accomplished by the procedures prescribed by Section 253 of the Delaware General Corporation Law. In support of the averments made in this section of the application, El Paso presented the testimony of its Financial Vice-President, in which were given in considerable detail the procedures which would be followed to accomplish the merger under Delaware law.

Beginning at page 10 of the original joint brief of the Applicants, filed February 16, 1959, there appears a discussion of the testimony of this witness concerning the legal procedures which will be taken by El Paso to accomplish the merger in compliance with Delaware Law. There is hereinafter issued to El Paso a certificate of public convenience and necessity authorizing the acquisition of Pacific's facilities, subject to the jurisdiction of the Commission, under Section 7(c) of the Act; and there is attached to the issuance of this certificate a condition that the acquisition of facilities authorized in the certificate be accomplished pursuant to Section 253 of the Delaware General Corporation Law. This condition is attached to the issuance of the certificate under the authority of Section 7(e) of the Act, and the acceptance of this condition by El Paso will assure that all obligations of Pacific of whatever kind or character will be assumed by El Paso as required by this Delaware law.

El Paso now owns, according to the evidence, 99.85 percent of the total outstanding shares of Pacific's common stock. Fourteen shares of El Paso's Common B Stock have been exchanged for each 8 shares of Pacific's common stock. The outstanding shares of Pacific's common stock now in the hands of the public will be acquired on the same basis, or as otherwise provided by Delaware law and all common stock of Pacific will then be cancelled.

All outstanding preferred stock of Pacific will be called, prior to the consummation of the merger, at the redemption prices provided; and the necessary funds for this acquisition will be obtained by El Paso through a bank loan and from working funds of Pacific. Pacific is now indebted to El Paso in the sum of $15,000,000, evidenced by an unsecured 5 percent promisory note, which it will pay prior to the effectuation of the merger by the issuance to El Paso of one share of its common stock for each $30 of the principal amount of the note. This loan was made by El Paso to Pacific pursuant to the stock exchange agreement of November 8, 1956 and the stock issued by Pacific in payment of the note will be cancelled along with all other common stock of Pacific at the time of the effectuation of the merger. All indebtedness between El Paso and Pacific will be cancelled and all obligations of Pacific will be assumed by El Paso as provided by Delaware corporation law. Discussions have been had with the principal holders of the mortgage bonds of Pacific, who have expressed their willingness to exchange their Pacific bonds for El Paso bonds bearing the same interest rates, maturities and sinking fund provisions.

It is shown definitely that, under El Paso's proposed plan of merger, El Paso will assume every obligation of Pacific just as though it had been originally incurred by it; and the acceptance of the certificates hereinafter granted to it will impose upon it all obligations of Pacific to perform all services for which Pacific now holds certificates from the Commission.

Operation of Integrated System

Upon the accomplishment of the merger, the corporate entity of Pacific will be extinguished and El Paso will own and operate its facilities with those of Pacific as a single integrated pipeline system. The operation of the unified system will be under one central management. The natural gas reserves of both companies will be available to all existing customers of both companies, either directly or by displacement, under central supervision and direction. All contracts for sales to the present customers of both companies will be performed by El Paso with prices for natural gas remaining the same under the respective tariffs of the two companies now in effect, subject to change in the future only under the provisions of the Act and regulations by the Commission. The proposed plans of El Paso for the operation and management of the integrated system are hereinafter discussed in greater detail in relation to the issues pertaining to the public interest.

THE CLAYTON ACT

On July 22, 1957, there was brought in the name of the United States of America, by its Attorney General, a civil action in the United States District Court for the District of Utah to prevent and restrain the violation of Section 7 of the Clayton Act by El Paso and Pacific, the defendants named in the complaint. The acquisition by El Paso of more than 99 percent of the outstanding shares of Pacific's common stock was charged to be a violation of the Clayton Act, in that the effect thereof would be substantially to lessen competition or tend to create a monopoly. An adjudication of such a violation was sought from the Court and the complaint contained a prayer that El Paso be required to divest itself of the common stock of Pacific under such terms and conditions as the Court might prescribe.

On September 8, 1958, the Attorney General of California (California) filed a motion for a stay of the proceedings in these two consolidated dockets, the hearing of which was to begin on September 17, 1958. The motion asserted that the "primary jurisdiction" of the issues here was vested in the United States

District Court for the District of Utah, in which was pending the civil action described above. The motion asserted that "any action of this Commission pertaining to said subject matter is premature and if taken will be repetitious and will not possess that degree of finality as will exist after determination of this cause," by said Court; and that "as a matter of comity the Federal Power Commission should recognize and defer to the Court action presently pending in Utah to avoid duplication." Following these assertions is an extensive argument urging that the hearing here "be adjourned to a date when the antitrust issues shall have been resolved." By order issued September 15, 1958, the Commission denied California's motion. This Order contained the following:

> The grounds on which this motion rest is the pending suit entitled *United States of America*, Plaintiff v. *El Paso Natural Gas Company and Pacific Northwest Pipeline Corporation*, Defendants, civil case No. 143–57 in the United States District Court for the District of Utah, involving alleged violations of Section 7 of the Clayton Act. Heretofore by letter dated July 30, 1958, the Attorney General of California had requested that the commencement of the hearing be postponed until after October 11, 1958, for the purpose of study and preparation for his participation in the hearing. The Commission after considering the interests of all parties denied this request on August 18, 1958.

At the time of the commencement of the hearing here on September 17, 1958, a pre-trial conference was scheduled for November 3, 1958, in the civil action aforesaid. The Applicants here, the defendants to said civil action, filed on October 2, 1958, a motion in the said District Court for a continuance of the trial of said civil action, and the motion was heard on October 10, 1958. On October 13, 1958, the following Order was entered by said Court postponing without date the trial of the civil action before it:

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Civil No. 143–57

UNITED STATES OF AMERICA, PLAINTIFF,

v.

EL PASO NATURAL GAS COMPANY AND PACIFIC NORTHWEST PIPELINE CORPORATION, DEFENDANTS

ORDER

Defendants' application for a continuance of the trial of this action filed October 2, 1958, came on for hearing before the Court on October 10, 1958.

Now, therefore, after oral argument and full consideration of said application and of the letter to the Chairman of the Federal Power Commission from the Chief of the Antitrust Division of the Department of Justice dated October 6, 1958, and of the letter to this Court from the Chairman of the Federal Power Commission dated October 7, 1958, the application of the defendants is granted, and the trial of this action is hereby continued until the final determination by the Federal Power Commission of the applications now pending before it in Docket Nos. G–13018 and G–13019. It is further provided and ordered that the pretrial conference heretofore fixed for November 3, 1958, and the time for defendants to answer the interrogatories heretofore propounded to them by plaintiff are hereby continued until such dates as this Court may hereafter designate.

Dated: October 13, 1958. WM. W. RITTER, *Judge.*

The trial of the civil action awaits the final determination by the Commission of the issues presented by the applications in these two dockets. The specific authority of the Commission to approve or disapprove the proposed merger, depending upon its effect upon the public interest, is derived from the Natural Gas Act. As hereinbefore pointed out, there being no question about the ability and willingness of El Paso to acquire and operate properly and lawfully the facilities of Pacific, the one remaining question for determination here is whether, under all the evidence, the proposed merger "is or will be required by the present or future public convenience and necessity." In making this determination there are many factors to be taken into consideration.

Among these factors is whether the evils sought to be prevented or restrained by Section 7 of the Clayton Act, are found by record evidence to be present here, and to be such as to render inimical and repugnant to the public interest the merger here sought to be approved. This is not to say that the Commission must here determine whether there is technically a violation of the Clayton Act under the facts here established; it has no jurisdiction so to determine. It is, however, the unmistakable duty of the Commission to consider such evils to whatever extent they may be shown by substantial evidence to result from the merger of Pacific into El Paso, and to weigh them carefully in relation to the public interest, so as to make a truly fair determination of whether, in spite of their presence, there are orther factors shown to exist, which preponderate in establishing that the merger "is or will be required by the present or future public convenience and necessity." This would be true even in the absence of any pending action taken under the Clayton Act.

Section 7 of the Clayton Act[14] prohibits the acquisition by one corporation of the stock or other share capital or assets of another corporation engaged in commerce where "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." This language makes clear what evils are sought to be prevented by this prohibition. The last paragraph of Section 7 reads as follows:

> Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Civil Aeronautics Board, Federal Communications Commission, Federal Power Commission, Interstate Commerce Commission, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79 of this title, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Secretary, or Board.

The Natural Gas Act very definitely vests the Commission with the power to issue a certificate of public convenience and necessity authorizing a natural gas company to acquire and operate facilities for the transportation and sale of natural gas in interstate commerce. El Paso seeks to acquire and operate the facilities of Pacific now used for this purpose and the authority of the Commission to grant or deny the authority so to do is unquestioned in this record. El Paso needed no authority from the Commission to acquire the common stock of Pacific, as it has, even to the extent of controlling Pacific as its majority stockholder; but it very definitely needs authority to acquire and operate the facilities of Pacific by the merger it here proposes under Delaware law. It would appear, therefore, that the certificate of public convenience and necessity hereinafter issued to El Paso, authorizing this acquisition by merger, constitutes the necessary "authority" to El Paso for the consummation of the proposed merger, within the meaning of the language quoted above from the Clayton Act.

[14] 15 U.S.C. Sec. 18.

It was the amendment of 1950 to Section 7 of the Clayton Act which made its prohibitions inapplicable to transactions approved by the Federal Power Commission. This amendment, of course, contemplates that the "authority" to be given by the Commission is to be based upon the public interest. It is to be interpreted in the light of the provision of the Natural Gas Act that such given authority "is or will be required by the present or future public convenience and necessity." The amendment, in effect, places Congressional reliance upon the Commission, acting under the Natural Gas Act, not to approve an acquisition of assets the effect of which would be "substantially to lessen competition, or to tend to create a monopoly," unless in the carefully exercised judgment of the Commission the acquisition would nevertheless be in the public interest. Therefore, the transaction here must be carefully examined to determine whether any lessening of competition or creation of monopoly shown by the evidence to result therefrom, is such that Commission authority for the consummation of the transaction should be denied, regardless of all other factors and considerations however favorable to the approval of the transaction.

The courts have most definitely held that the antitrust laws, including the Clayton Act, express a national policy which opposes interference with free competition. But this is not a blind policy to be followed regardless of its detriment to public interest in certain circumstances. It is not so ironclad a policy that it cannot be varied when it becomes obstructive of benefits to the public interest.[15] In the amendment of 1950 to Section 7 of the Clayton Act, making inapplicable its provisions in the presence of Commission authority for the consummation of the transaction, the Congress has recognized that the national policy against interference with free competition must not be a blind policy. The Congress has given to the Commission, in the Natural Gas Act, the authority to approve the acquisition of the assets of another such company by a natural gas company subject to the Commission's continuing power to regulate and supervise, and this continuing power indeed constitutes a protective shield against the evils of monopoly. This is particularly true in view of the legal presumption that this agency of Government will properly and lawfully exercise this power in the public interest.

The discussion of the "Antitrust Issue" in the Staff brief opens with the following statement:

> It is apparent that El Paso considers the acquisition of the stock of Pacific as violating the national antitrust policy and seeks to avoid its consequences by having the Commission issue to it a certificate of public convenience and necessity to acquire certain facilities of Pacific.

El Paso's position with regard to the Clayton Act, and its effect upon its acquisition and ownership of the Pacific stock, is entirely clear in this record. From the time of El Paso's first negotiations with the principal stockholders of Pacific, it sought to acquire not just the Pacific common stock but the facilities of Pacific, through a procedure under Section 7(c) of the Natural Gas Act to obtain Commission approval of such acquisition. The Pacific stockholders insisted from the beginning upon a tax-free exchange of their stock for the stock of El Paso. After nearly two years of negotiations, El Paso finally agreed to such exchange of stock. The agreement of November 8, 1956, which contained the terms of exchange, provided that there would be no merger of the two corporations, and this provision was made, according to the evidence, in order to make the transaction tax-free within the law and regulations, as interpreted by the Internal Revenue Bureau.

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[15] *McLean Trucking Co.* v. *U.S.*, 321 U.S. 67; *Chicago Board of Trade* v. *U.S.*, 246 U.S. 231; and *City of Pittsburgh* v. *F.P.C.*, 237 F. 2d 741.

By the end of January 1957 El Paso had acquired more than 80 percent of Pacific's common stock, and by the closing date of the offer of exchange, May 1, 1957, it had acquired 99.8 percent of such stock. Within two months after the stock acquisition, El Paso management decided, upon the basis of its experience, that the operation of the two systems as an integrated unit could be done more efficiently than by the separate operation of the two corporations. On July 16, 1957 the Boards of Directors of both El Paso and Pacific formally authorized the filing with the Commission of the applications here for certificate authority for El Paso to acquire Pacific's facilities by means of the proposed merger. El Paso's President admitted, on cross-examination, that the decision to file these applications was "considerably stimulated by the fact that the Attorney General of the United States was prepared to file an antitrust suit against us." The antitrust action filed against El Paso and Pacific, hereinbefore discussed, was filed on July 22, 1957. The applications of El Paso and Pacific were filed here on August 7, 1957.

The amendment of 1950 to Section 7 of the Clayton Act made inapplicable its provisions to "transactions duly consummated pursuant to authority given" by the Commission, acting within its powers. This shows a positive legislative intent to permit mergers of natural gas companies, when found by the Commission to be in the public interest, even in the presence of the things sought to be prevented by the Clayton Act. Otherwise there would be no purpose for the above provision. Therefore, even in the presence of the frank admission by El Paso's President of the "high probability" of an adverse decision in the civil action, if its application here is denied, El Paso still has the right, as a regulated natural gas company, to come before this Commission and request a determination of the issue of whether, under all facts and circumstances, its acquisition of the facilities of Pacific is in the public interest. El Paso has the burden of proving the affirmative of this issue, and if it sustains this burden, its application should be granted.

The Staff cites authorities in support of its position that "size is an earmark of monopoly power." The physical integration of the two systems will make the unified system one of the largest in this country. There is doubt in this record as to which would be the largest in the country after the merger, El Paso or Tennessee Gas Transmission Company. It will have markets in all the States of the Pacific Coast, and all along its pipelines from Mexico to Canada. This great size should not be permitted to bring awe into the picture here so as to distort the views of one giving consideration to the issues. Certainly a large evil-doer is capable of more evil than a small one. Nevertheless, an immense pipeline system may be in the public interest just as well as a smaller one. There are a good many giants among American industries, both regulated and unregulated.

The position is taken by California and the Staff that the benefits to the public claimed to result from the merger, may be obtained just as well by contractual dealings between El Paso and Pacific as separate corporations, with the Commission exercising its regulatory powers over such dealings. The evidence does not sustain this position and there are distinct benefits to the public from the merger not attainable by the two corporations dealing separately with each other. El Paso has taken a definite position on the record that it does not want the Pacific stock as an investment and that it will divest itself thereof if its application here is denied. In fact, El Paso concedes that there is "high probability" that it will be ordered to do just this in the pending civil action, if the Commission denies its application. Either El Paso becomes the owner by merger, and the controlling operator, of all of Pacific's facilities, or El Paso and Pacific will exist henceforth as two entirely separate and inde-

pendent corporations; and what they, dealing with each other as such, might accomplish in the public interest is highly problematical.

The United States District Court of Utah has postponed the trial before it of the civil action in which El Paso and Pacific are charged with a violation of the Clayton Act, until the final determination by the Commission of the question of whether the proposed merger is in the public interest. This action indicates a decision by the Court that the Commission should have the first opportunity to examine carefully the transaction here, particularly in relation to any lessening of competition or creation of monopoly which may result therefrom, and weigh such factors in relation to the public interest before determining whether Commission authority should be given, pursuant to the Natural Gas Act, to consumate the transaction. Such factors are given primary consideration in relation to the issue here of whether this merger is in the public interest.

COMPETITION

The important competition for consideration here in relation to the public interest is in two fields. The first is in the market areas supplied with natural gas by El Paso and Pacific. The second is in the producing areas which are economically accessible by pipeline to these companies, for the acquisition of natural gas supplies for transportation and sale in their markets.

Competition for Markets

El Paso's markets for the sale of natural gas are in Texas, New Mexico, Arizona, Nevada and California. Uncontroverted evidence shows that Pacific never, at any time, sought to compete for any El Paso market except in California. There is no evidence that El Paso ever had any plan to invade the markets of Pacific certificated by the Commission. So far as markets are concerned there existed prior to the acquisition of the Pacific stock by El Paso no actual or potential competition between these two natural gas companies, except for the California market.

Since the time of its first certificated sale of natural gas in the California market, El Paso has been the sole supplier of out-of-state gas to that market. It may be said that it has had a certificated monopoly of the California market. It is undeniable that Pacific was a potential competitor for a share in this market. It is just as undeniable that actual Pacific competition in the California market posed no real threat to El Paso's monopoly there. The former Chairman of the Board of Pacific testified that he began negotiations in May, 1956 with Southern California Edison Company (Edison) for the sale of natural gas to it. He knew that such a project would not be feasible if a pipeline were constructed merely to serve this company, and that Pacific would likewise have to have contracts with the Southern California Companies and PG&E to bring the quantity of gas to be sold high enough to make feasible the contemplated pipeline. While there was a letter agreement for the sale of gas between Pacific and Edison dated July 30, 1956, it was terminated by Edison on October 2, 1956. Pacific's Board Chairman likewise entered into negotiations for gas sales with PG&E, but he stated that these negotiations did not materialize probably because of the plans of PG&E to build its own pipeline to Canada.[18] These negotiations with Edison and PG&E were the only real efforts made by Pacific to sell natural gas in the California market. The President of Pacific, prior to the stock exchange, testified that he never gave much thought to the sale of gas in California because such sales never came "close enough to reality." It cannot be found, from any evidence in this

[18] This refers to the project of PGT in Docket No. G–17350.

record, that Pacific was at any time a real competitor for a share in the California market.

Hereinafter are discussed the financial difficulties encountered by Pacific in the construction and commencement of operation of its pipeline; and it may be found definitely that Pacific, standing alone as a separate corporation, did not have the financial capacity to compete seriously for any share in the California market. While Pacific's former Board Chairman testified that he might have financed a pipeline to the California market from Pacific's planned transmission facilities, he frankly stated that it would have first been necessary that Pacific take "steps to correct its financial condition." While it may be said that Pacific, which needed greatly more markets for its gas at the time of the stock exchange, was ambitious to sell gas in the California market at some future date, it was in no position in the fall of 1956 to compete seriously for business in the California market. Attention is called to the fact that negotiations for the exchange of stock began in early 1955 at which time no effort whatever had been made by Pacific management to attempt to enter the California market.

In the opening statement made on behalf of California, at the outset of the hearing, it was said that "California has no wish to be made solely dependent for a commodity so vital as this upon a single supplier." Upon the map which is Exhibit 1 in this record, there appear the planned pipelines of Transwestern Pipeline Company (Transwestern) and of Pacific Gas Transmission Company (PGT) to be built to bring additional gas to California. The President of El Paso has testified that he had no objection to the construction and operation of these two pipelines. He thought there should be more than one supplier of gas to California. The Commission, on August 10, 1959, issued a certificate of public convenience and necessity to Transwestern, authorizing it to construct and operate a pipeline for the transportation of natural gas from the Panhandle-Hugoton area of Texas and Oklahoma and the Permian Basin area of Texas and New Mexico, to a point in the California-Arizona border near Topock, Arizona; and to sell and deliver the gas at this point to Pacific Lighting Gas Supply Company which, in turn, will transport and sell the gas in California to the Southern California Companies, which have been supplied with out-of-state natural gas solely by El Paso since 1947.[17] There is now pending before the Commission (Docket No. G-17350) the application of PGT, of which the principal stockholder is PG&E, for a certificate of public convenience and necessity authorizing it to construct and operate a 36-inch pipeline for the transportation of Canadian produced natural gas, from a point on the Canadian border near Kingsgate in British Columbia, to a point in the California-Oregon border near Klamath Falls, Oregon, where it will be delivered to PG&E for sale in its marketing area in central and northern California. Of course, this application of PGT has not yet been acted upon by the Commission, but it is certain that a strong competitor is now seeking to enter the California market with Canadian gas, and that it will become a supplier of such gas to California if the Commission finds its project to be in the public interest. Thus, it is quite possible that instead of one, California will now have three suppliers of out-of-state gas, even after Pacific becomes extinct.

Section 7(g) of the Natural Gas Act reads as follows:

> (g) Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural gas company.

Under the foregoing provisions, the Commission may find at any time that it

[17] Opinion No. 328, Docket No. G-14871, et al., 22 FPC 391.

is required by the public convenience and necessity that some additional qualified applicant be granted a certificate giving authority to transport and sell additional natural gas to the California market. Thus, the elimination of Pacific as a possible competitor for the California market appears to do no violence to the public interest. Furthermore Section 7(g) prevents a monopoly of any market by a natural gas company except when approved by the Commission as being in the public interest: and the rates for sales of natural gas in the monopolized territory may be reduced by the Commission if they be unjust or unreasonable in violation of the Act.

While El Paso has substantial markets elsewhere, its main market is, and has been for years in California. It will find competition there to be keener for a long time than in any other of its present markets, or in any present market of Pacific. The California market is quite apparently the prize for which competing natural gas companies now strive in the western United States. This is true because of the great growth of California in recent years and its anticipated growth in the future, in population, commerce and industry.

The California Market

The Staff brief states that "the demands for gas in California have been phenomenal." The California brief speaks of that State as being "one of the major natural gas markets of the United States," and as "now experiencing phenomenal population and industrial growth." It is irrefragable that California's needs for imported gas are now mounting constantly and will continue so to do through the foreseeable future; and at the same time the available supplies of natural gas from within the State are diminishing.

The production of natural gas in California has for a long time been inadequate for its needs, making this ever-expanding market greatly dependent upon imported gas. In its order of May 31, 1946 in Docket No. G–655, in which El Paso received its first certificate to sell natural gas to the Southern California Companies, the Commission spoke of the project being "designed to meet a developing shortage in the local natural gas supply for consumers in Southern California", and concluded from the evidence "that within a short period of time the available local gas supply will not be sufficient to meet the firm demands for gas" upon the Southern California Companies.[18] The Commission said in its order of February 28, 1949, granting to El Paso its first certificate to sell gas to PG&E, that this California Company "like other utilities in the state of California has experienced a constantly mounting demand for natural gas and is confronted with increasing difficulty in obtaining adequate supplies of gas to meet its requirements from available sources within the State." It will be seen that the dependence of California upon imported gas has been great for well more than a decade.[19]

El Paso holds certificates from the Commission authorizing it to sell to its California customers 2,055,000 Mcfd of natural gas. Approximately one-half of this amount is for the Southern California Companies and the other one-half is for PG&E. The certificate issued to Transwestern on August 10, 1959[20] authorized it to sell and deliver to the Southern California Companies a contract demand of 300,000 Mcfd which would be transmitted through a pipeline with an initial capacity of 350,000 Mcfd, but which could be increased to 640,000 Mcfd by the mere addition of facilities to effect greater compression within the pipeline. El Paso was an intervener in the Transwestern certificate case to protect its interests in relation to its proposed Provo-Las Vegas project to sell and deliver 470,000 Mcfd for consumption by the customers of the Southern

[18] 5 FPC 115.
[19] 8 FPC 726.
[20] See footnote 12.

California Companies. The Examiner's decision in the Transwestern case stated that "this record is replete with evidence that both the Transwestern and El Paso quantities of natural gas are urgently required to meet the heavy actual and anticipated growth in the peak-day firm demand experienced in this market." The Commission Opinion in this case, rendered after exceptions were made to the Examiner's decision, adopted "so much of the Examiner's decision as treats of the need for this gas in the Southern California markets."

PGT's proposed pipeline from the Canadian border to the California-Oregon border will consist of more than 600 miles of 36-inch pipe which, with other facilities, are estimated to cost about $130 million. None could be more familiar with the needs of its markets in central and northern California than the management of PG&E, which will purchase this Canadian gas from PGT. By means of this proposed pipeline PG&E will acquire for its market in excess of 400,000 Mcfd of Canadian natural gas.

Thus, with the completion of the pipelines of Transwestern, PGT, and El Paso (Provo-Las Vegas project), there will be more than 1,000,000 Mcfd of gas entering the California market, which will be in addition to the present importations into that state. Transwestern will be a direct competitor with El Paso for the Southern California markets and for sales to PG&E near Topock, Arizona for the central and northern California markets; and the 290,000 Mcfd which may be added to Transwestern's pipeline capacity, through a mere increase in compression, will make it a strong competitor. In the central and northern California markets PGT will be a direct competitor with El Paso for the sale there of Canadian gas or gas from the Rocky Mountain area. It may be safely concluded that both Transwestern and PGT will offer considerably greater and stronger competition to El Paso than Pacific could possibly have offered as a separate corporation, and the competition from these two companies will be immediate rather than several years into the future. The public interest will not be hurt by the elimination of Pacific as a competitor for natural gas sales in California or elsewhere.

Concerning El Paso's activities in relation to the California market, the Staff brief states:

> Instead of permitting other companies to participate in supplying the increased demands, El Paso has sought to dominate that market by control of the supply. This effort to control the supply and secure it away from others has resulted in increased costs to all of El Paso's customers.
>
> The opposition to other applications by moving against the supply of gas is classified by El Paso as prosecuting its own business (Kayser, T. 354).

Since 1947 El Paso has been the only natural gas company selling out-of-state natural gas in the California market. However, there is no evidence here that El Paso ever prevented any competitor from entering this market. In 1954 El Paso opposed the issuance of the original certificate to Pacific because it wanted to hold the natural gas reserves in the San Juan Basin for the California market. It was not then opposing the entry of Pacific into the California market, as Pacific was then seeking no such entry. By supplying greater and greater quantities of gas to this market since it first entered it in 1947, always with authority from the Commission, El Paso may have discouraged others until recently from attempting to sell imported gas in California, and in so doing may have made greater profits for its stockholders. It should not be condemned for this, particularly when it was performing a service to California customers under regulated rates. There is no doubt that El Paso has successfully competed with other natural gas companies to obtain additional reserves of natural gas accessible to its pipelines. It is a matter of common knowledge that there is, and has been, extensive competition between natural gas pipeline companies

for the purchase of gas for their customers in fields to which they have economic access; and such competition has indeed increased the price of natural gas over the years. In any competition for business, one does not find any altruistic beneficence between competitors.

Competition for Natural Gas Supply

During the first years in which natural gas was finding its way into interstate commerce, the markets for it were meager. Natural gas produced with oil was largely flared to the skies. The markets were created by the construction of pipelines which have now extended to all parts of this country from the gas producing areas. With adequate markets, flaring could cease, and the producers in many areas then found that there was competition between pipelines for the purchase of their gas. Before this occurred, natural gas sold relatively cheaply to the first pipelines, but field prices for gas inevitably rose with the additional markets bringing competition to the producing fields.

For a good many years after the enactment of the Natural Gas Act, this Commission did not assert the jurisdiction it had thereunder, to regulate the prices received by the producer of natural gas sold for resale in interstate commerce. There was exempted by the provisions of the Act, the regulation by the Commission of the production and gathering of natural gas; and this specific exemption was interpreted by the Commission to include the sale of the produced and gathered gas. However, on June 7, 1954, the Supreme Court issued an opinion[21] which interpreted the Act to give the Commission the power to regulate the rates for all wholesales of natural gas in interstate commerce. Therefore, while there is still competition between pipelines for the purchase of natural gas and reserves thereof in the producing fields, it is not such important competition when the prices of gas sold in interstate commerce are regulated by the Commission, and the competition itself is not permitted to control such prices.

So far as El Paso and Pacific, as separate companies, are concerned, Pacific will be eliminated by the merger as a competitor for available gas reserves in producing fields economically accessible to both it and El Paso. Pacific would definitely be a competitor in the San Juan Basin, in the nearby Aneth Field and in the several fields in the Rocky Mountain area, which are at present quite economically accessible to its existing pipeline. Of course, having its pipelines at present very close to the Canadian border, Pacific would be a true competitor for the purchase of Canadian gas. Pacific would not, with its existing pipeline system, be in a position to compete strongly with El Paso for natural gas reserves in the Permian Basin or in the Panhandle-Hugoton Field.

When Pacific first acquired natural gas rights in the San Juan Basin, El Paso's only competitor there was the Southern Union Gas Company (Southern Union) which sells natural gas in the State of New Mexico which it obtains in the San Juan and Permian Basins and transports to its customers. It purchases substantial quantities of gas transported by El Paso. Upon the completion of the already certificated pipeline of Transwestern, this company may well become a competitor for the acquisition of natural gas reserves in the San Juan Basin for the California and other markets in view of the proximity of its proposed pipeline to this source of gas. Transwestern might also become a competitor for gas produced in the Aneth Field or other fields developed in the southern part of the so-called Paradox Basin located near the Four Corners area. So far as the Rocky Mountain area is concerned, potential competition for gas reserves there may surely come from Colorado Interstate, Mountain Fuel Supply Company, and perhaps others whose pipelines are not too distant. In the Canadian producing fields, El Paso will have competition from PGT and perhaps quite a number of

[21] *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672.

Canadian companies which will sell gas both to Canadian purchasers and to other natural gas companies of this country at other points on the Canadian border.

The elimination of Pacific as a competitor for the purchase of gas in the producing fields is not of great consequence when there remain other strong competitors for gas in all producing fields to which the unified company will have access. Such elimination of Pacific will do no real harm to the public interest.

Conclusions Concerning Competition

Considering all of the evidence, it must be found that any lessening of competition, either in the consumer markets or the producing fields, by reason of the elimination of Pacific as a competitor, does not create any obstacle to approving the merger of Pacific into El Paso. There are other factors of greater importance showing this merger to be required by the public convenience and necessity which indeed far outweigh this single factor of the elimination of Pacific as a competitor of El Paso or any other natural gas company.

THE PUBLIC INTEREST

The Applicants aver in their applications their reasons for asserting that the merger of El Paso and Pacific is in the public interest. They have adduced extensive evidence to support these averments. The burden of showing the merger to be required by the public convenience and necessity being upon the Applicants, they are entitled to have their positions and supporting evidence considered as presented. "The Substantial Benefits to the Public in the Proposed Merger" are presented in the Applicants' joint brief under the following four divisions:

1. Improved gas supply and utilization of gas reserves.
2. A financially stronger gas supplier.
3. Expanded and improved gas service.
4. Lower rates.

The factual evidence and the contentions of the Applicants based upon them are discussed herein under the above four divisions. Where the Applicants' contentions are controverted, the opposing positions are likewise there so discussed.

Improved Gas Supply and Utilization of Gas Reserves

Of paramount importance to the decision here in relation to the public interest is the matter of a adequate natural gas supplies for the markets here involved. The quest for such supplies brought about this proceeding. While there are other markets in other progressive states to be considered, nothing could be more clearly established by the record evidence than that the constantly increasing demands of the California market for imported natural gas are, and for some years have been, the stimulus and incentive behind this quest. California's own production of natural gas has been greatly inadequate for years and continues to diminish. It is now importing in excess of 2,000,000 Mcfd, and three natural gas companies are now proposing to increase this by another million.[23] It may be most certainly concluded that the demands of California for imported gas will not be permanently satisfied by this increase, and that its steadily expanding population and industry will bring still further demands in future years. It is definitely in the public interest that California, and all other States served by El Paso and Pacific, have supplies of natural gae adequate to their present and foreseeable future needs.

[23] *Transwestern*, Docket No. G-14871; *PGT*, Docket No. G-17350; and *El Paso's Provo-Las Vegas* project.

Economic Use of Gas Resources

Pipelines are constructed of capacities to meet daily peak demands of the markets served When the demands of a market exceed the top capacity of the pipeline serving it, greater capacity is obtained only by the construction of additional transmission pipelines. All of such pipelines, subject to the jurisdiction of and certificated by the Commission, are eventually paid for by the consumer through the depreciation allowance in his suppliers' cost-of-service, reflected in the consumer rates. It is of advantage to the consumer that the pipelines serving him remain in service as long as possible; and the long life of the pipeline is dependent upon the life of the natural gas reserves economically accessible to it. If there be an exhaustion of natural gas reserves at the receiving end of the pipeline, its usefulness is ended. Therefore, it is unquestionable that the greater the natural gas reserves economically available to an existing certificated pipeline, the longer will be its useful life to the consumers who pay for it.

The out-of-state natural gas reserves which are the closest to California are in the San Juan Basin and the Aneth Field, which, with the Permian Basin, constitute California's chief source of its present gas supply. This is likewise true of New Mexico and Arizona. The El Paso system is also connected by a pipeline to the Hugoton and Panhandle Fields located in Kansas, Oklahoma, and Texas. The Hugoton and Panhandle Fields are among the oldest producing fields in this country, and they have for years supplied, and are now supplying, some of the largest consumer areas in the United States, in addition to El Paso's market area. The Permian Basin, which is predominantly an oil field, has been produced for about 30 years and most substantial depletions of its gas supply will occur daily from the takes thereform by El Paso and three other major pipeline companies, including Transwestern. The San Juan Basin, in which both El Paso and Pacific have gas reserves, now has fairly well defined limitations, and its potential production lies in the now undeveloped deeper horizons. The enormous daily withdrawals of irreplaceable natural gas from these older fields in constantly lessening their productive lives. This is not to say that the exhaustion of natural gas reserves in these fields is imminent, but a supplier of natural gas to extensive and expanding markets will, indeed, do well to attach his transmission lines to newer and less depleted sources of gas supply, if this be at all economically feasible. The connection of the El Paso system to the newer and undeveloped fields accessible to Pacific's pipelines will be of great advantage to the consumers in its markets.

Furthermore, and quite importantly, El Paso presently needs additional natural gas supplies to meet the existing and foreseeable demands of its markets. It would serve no purpose here to set forth the many available figures to show that El Paso's supply of gas should be greater in view of its market requirements. In relatively recent cases before the Commission, seeking authority to transport and sell additional gas to its markets, El Paso has found it difficult to make a snowing of adequate gas supply to justify the issuance of the certificates applied for. In the proceeding relating to El Paso's application in Docket No. G-12580, for authority to sell to Southern California Edison Company (Edison) 100,000 Mcfd for use as a boiler fuel for the purpose, among others, of relieving a serious smog condition in and around Los Angeles, there was a serious issue present of whether, on an overall basis, El Paso's total gas supply was adequate to meet its total system requirements, considering its expanding markets, for a satisfactory number of years in the future. In his decision of May 12, 1959, now before the Commission on exceptions, the Presiding Examiner found, in that case, that it appeared from the evidence that El Paso's gas reserves would "constitute a gas supply for about 8 years," and that such short

period of time in which it is expected to meet its total system requirements from its present total gas supply would create an objectionable situation from the standpoint of the public interest. It is not found from the record in the instant proceeding that El Paso has only an 8-year supply of gas to meet its requirements; but it is found positively that El Paso needs the additional supplies of gas to be made available by its acquisition of Pacific, in the light of its market requirements, if it would have that healthy relationship between gas supply and gas requirements required by the public interest.

It is unquestionably in the public interest that the greatly expanding California market have access to the additional reserves economically accessible to Pacific's existing transmission facilities. There are immediately available to Pacific substantial supplies of natural gas from Canada and the Rocky Mountain area, which are presently in excess of the needs of its markets and which could be made available to the California markets practically immediately for any emergency, or for additional regular supplies. This is certainly not to say that Canadian gas, as such, will be imported and directly transported through the Pacific system to its connection with El Paso's Northern System for transportation to the California market; but only that the Canadian gas which enters the Pacific system, will become a part of all gas in the entire transmission system, the closest part of which may be dispatched to supply El Paso's customers in accordance with their needs. With an abundance of gas available to Pacific from Canada and the Rocky Mountain area, and with Pacific's major markets at the northern end of its pipeline system, it may be quite possible that, in the future, much of the gas in the Pacific system will flow in a southerly direction for consumption in the California markets. There are no major markets whatever presently served by Pacific south of its Station No. 6 in southern Wyoming; and the only sizeable markets near its Rocky Mountain reserves are Salt Lake City, Utah, and Denver, Colorado. There is a 26-inch pipeline between Pacific's aforesaid Station No. 6 and its southern pipeline terminus near Ignacio, Colorado, where there is a connection with El Paso's system. Such gas could move through El Paso's existing transmission facilities to any of its present markets.

The integrated system to result from the merger is not to be regarded as a pipeline system to supply one market from one source of supply, such as supplying the California market from Canada. The unified system will have numerous markets, all of which are to be supplied from the total available system supplies of gas which may be moved in accordance with system demands. Supplies from any source may supplement those from any other source as the overall system operation may require. There will be the major sources of natural gas of both El Paso and Pacific hereinbefore enumerated, which together will constitute most substantial gas reserves with a life of considerable length. These additional reserves of gas on the Pacific system may also be drawn upon so as to conserve the sources of supply closer to California and El Paso's other existing customers. There will be an integrated pipeline system from West Texas to Canada which will be well supplied from its various sources of gas; and such system gas may be taken to any system market from the point closest thereto. A quite economical operation of the system will inevitably result.

In Opinion No. 271, the Commission asserted its duty "to give the fullest possible protection to all the prospective customers," when granting an application for the importation of natural gas under Section 3 of the Act. Following this assertion, the Commission said:

> Such protection would not be afforded to any segment of the American people if its sole source of essential natural gas were through importation from a foreign country without some intergovernmental agreement as-

suring the continued adequacy of its supply. Otherwise, all control over the production, allocation, and transportation to our border of such natural gas would be in the hands of agencies of foreign governments, whose primary interest would of necessity always be in the needs and advantages of their own people, and whose judgments and actions would be essentially dependent upon public opinion within that country, rather than upon the interests of American consumers. Regardless of any long and cherished friendly relations with any neighbor nation able to supply such area with natural gas, it would not be in the public interest to permit the importation of its gas as the sole source for the consumers in need of an uninterruptible supply at a reasonable price, which should always be assured by this Commission to the full extent of its powers.

The Canadian natural gas fields are, in no sense, the "sole source" of supply for Pacific, which still has its basic supply of gas in the San Juan Basin. Considering the various sources of supply of the merged pipeline system, the importation of natural gas should constitute no large percentage of the total gas received into the system. There will not be, at any time, any great reliance upon Canada as a source of gas supply to which the Commission has indicated its opposition. The integrated company will be in a position, therefore, to receive and sell Canadian gas to its various markets, by displacement or directly, while at the same time having readily available very substantial American sources of supply. The application of PGT [23] for Commission authority to transport natural gas for more than 600 miles from Canada to the California border emphasizes the importance of the attachment of the vast Canadian reserves to the California market.

There is little need to give here any of the detail of the geological testimony concerning the vast supplies of natural gas in the Canadian Province of Alberta and in the Rocky Mountain area of this country, to which the Pacific pipeline system has or will have access. Unlike the older oil and gas fields from which large withdrawals of gas have been made over the years, these supplies of gas are relatively untouched. Pacific is now purchasing gas from Westcoast, Ltd., which is produced in the Peace River area of northern Alberta and British Columbia. This contract of purchase calls ultimately for 300,000 Mcfd, of which two-thirds is now being delivered. The capacity of the pipeline of Westcoast, Ltd. is such that very substantial additional supplies may be transported through it for delivery to Pacific. Pacific's contract with PGT calls for 150,000 Mcfd of Canadian gas delivered near Spokane, Washington. The evidence shows that the supplies of gas in southern Alberta are such that they will be capable of providing for the needs of the Canadian markets, and of supplying some demands for export to this country as well. The supplies of gas from the several fields in the Rocky Mountain area,[24] according to the geological evidence, have greatly surpassed all of the original estimates of them.

There is no doubt from the evidence here that the connection of the Pacific system to that of El Paso will strengthen greatly El Paso's ability to render satisfactory natural gas service to its present markets. At the same time the total system gas supply, now available and to be expected from exploration, will be of advantage to the consumers in all the markets on the combined system. It is, indeed, in the public interest that a pipeline should have a truly adequate gas supply to meet all of its system requirements for a good number of years in the future.

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[23] Docket No. G–17350, discussed *supra*.

[24] These fields are: Bar–X, Grand County, Utah, and Mesa County, Colorado; Big Piney, Sublette County, Wyoming: Piceance Creek, Rio Blanco County, Colorado; Tip-Top-Hogsback, Lincoln and Sublette Counties, Wyoming; and Rangely, Rio Blanco County, Colorado.

Exploration and Development

When the Commission granted the original certificate to Pacific in Opinion No. 271, it commented therein upon the fact that the Pacific pipeline "traverses three large sedimentary basins in the States of Colorado, Utah, and Wyoming, in which there has been only minor development due to the lack of a market," and stated further that, according to common knowledge, the "development of this potentially productive area will be retarded unless stimulated by a market outlet." As discussed elsewhere herein, the growth of Pacific's markets has been disappointing; Pacific now has more gas than it needs to supply its present markets. With the attachment of El Paso's markets, particularly the California market, to the merged system, exploration and development should indeed be stimulated in the Rocky Mountain area. All of the area containing these sedimentary basins is within economic reach of Pacific's existing facilities. Evidence in the record shows that the announcement by El Paso of its Provo-Las Vegas project has already caused some stimulation of such activity in this area. To give this stimulation to the exploration and development of these potentially productive areas is greatly in the public interest.

It is definitely established by the evidence that the Rocky Mountain area has considerable potentiality for natural gas production in addition to its proven fields. This area lies north of the San Juan Basin and largely in the States of Colorado, Wyoming, and Utah. The owners of oil and gas rights in this area may reasonably anticipate that their production of gas will be available to any market on the integrated system. Surely, in these circumstances, there will be a great inducement to expend funds for the exploration and development of natural gas in the area, which will be of benefit to all consumers in the markets to be served by the merged system.

It has been shown before that El Paso has an extensive program of exploration and development in various fields and basins, both in this country and Canada. With a direct connection of the Rocky Mountain sources of supply to its existing markets, El Paso itself has a real incentive to explore in this area. El Paso already has an office in Salt Lake City, Utah, from which is directed its program of exploration in the area. There is no doubt from the evidence that a very considerable exploration and development of this area for the production of natural gas may be anticipated when all the markets on the unified system become accessible. It may even be anticipated that exploration and development will be stimulated in southern Alberta as a result of the quest by both PGT and El Paso for Canadian gas for the California market.

Residue Gas

The first certificate authorizing El Paso to transport and sell natural gas from the San Juan Basin to the California market was issued by the Commission in connection with its opinion rendered on July 14, 1950, in relation to El Paso's four applications in Docket Nos. G–655, G–1019, G–1051, and G–1177.[35] This opinion commented on the task confronting El Paso to provide adequate reserves of dry gas to replace losses of residue gas resulting from the reduction of allowable production of oil in the Permian Basin. The opinion further stated that El Paso's purpose in going to the San Juan Basin was to develop additional sources of dry gas. Concerning the marketing of residue gas by El Paso, the Commission said:

> While it is unquestionably a real service in the public interest to market such a considerable volume of flare gas, it imposes on the company a task of some magnitude to provide an ever-ready and adequate reserve of dry

[35] 9 FPC 170.

gas, since flare gas is available wholly as a result of the production of oil, and the height of oil production is in the summer and not during the winter when El Paso experiences its system-wide peak demands for gas.

Another and equally important reason for a pipe-line company to maintain an ever-ready supply of dry gas, when relying upon a large volume of flare gas for the supply to meet its own pipeline demands, is because the Railroad Commission of Texas and the Oil Conservation Commission of New Mexico may in any given month reduce the allowable production of oil, thereby reducing the availability of residue gas. Such oil allowables are fixed by those state agencies each month for each well in each field, and generally it is done by fixing the number of barrels per well per day for a stated and varying number of days per month. A variation in such oil allowable of as low as one day per month is calculated to result in a loss of approximately 20 million cubic feet per day of available flare gas to El Paso. It is not uncommon for a reduction of the number of days of producing oil to be as many as three or four, hence it is obvious that the pipe line may have to provide additional dry gas in volumes ranging from 20 to 60 or even 80 million cubic feet per day. This can and often does occur, month by month.

The above opinion points out that El Paso's then expected takes of residue gas "from the Permian Basin aggregate about 750 million cubic feet per day, and the company's present maximum supply of about 250 million cubic feet per day of dry gas in the Permian Basin, even considering its potential of dry gas from the Panhandle-Hugoton fields, is insufficient in solving the problem created by marketing such a large volume of residue gas." The Commission thus recognized in 1950 that it was "unquestionably a real service in the public interest to market such a considerable volume of flare gas." Flare, or residue gas, produced with oil, must be made available to the consuming public as a conservation measure; but the Commission saw from the evidence in the case discussed above the necessity of having available a supply of dry gas to replace periodic losses resulting from the lessening of oil production.

El Paso is today still confronted with this residue gas problem. In 1957, El Paso marketed 1,300,000 Mcfd of residue gas. After endeavoring for years to increase the percentage of dry gas in relation to total sales, this percentage in 1957 amounted only to 50.46 percent. For each day in any month by which the Texas Railroad Commission reduces the allowable production of oil, El Paso's takes of residue gas from the Permian Basin are reduced from 40,000 to 50,000 Mcfd. These losses usually occur at the end of the month and sometimes in extreme weather when peak demands for gas are being made.

The Canadian gas and the gas from the Rocky Mountain area received into the Pacific system are largely dry gas. In 1957, Pacific marketed only 6.82 percent of residue gas. As the use of gas by the merged system from the sources now available to Pacific increases in percentage over the years the total percentage of dry gas will increase and thus relieve, to a considerable extent, El Paso's existing problem. Such additional supplies of dry gas on the Pacific system will likewise enable the entire system to absorb an even greater quantity of residue gas from the Permian Basin and other sources. The dry gas can be turned on and off any time according to the occurrence of residue gas deficiencies, while the residue gas is only available with the production of oil and must be taken into the El Paso system as produced. It is greatly desirable, apparently, that the percentage of dry gas in a pipeline system be considerably higher than the present average of about 50 percent.

One of the disadvantages of using a high percentage of residue gas is that excess capacity must be provided for pipelines in order that the residue gas

may be taken as the oil is produced. This disadvantage would be removed by the attachment to the merged system of abundant sources of dry gas which are to become available. A second disadvantage of marketing a high percentage of residue gas is that the life of the average oil well may be only 12 to 14 years, whereas the average dry gas well may be expected to have a longer life. By reason of its marketing such a high percentage of residue gas, the estimated life of El Paso's reserves is relatively low. This is a disadvantage to El Paso, in that it is not able to point to as long a life for its dedicated reserves as are other pipelines using higher percentages of dry gas; and as a result El Paso's management claims that it has perhaps "the highest amortization rate on its bonds of nearly any other pipeline in the country of the size of El Paso." By the attachment of dry gas to the merged system, El Paso will be able to show in the future a considerably longer life for its natural gas reserves and it will be able to market bonds of longer maturity, thus reducing its financing expense.

Use of New Gas Supplies at Lower Capital Costs

It has been shown that all new natural gas reserves accessible to the Pacific system will be accessible as system gas for any market of the combined system. It has also been pointed out herein that Pacific has gas reserves in relative abundance with an inadequacy of markets for the sale of them. The Pacific pipeline is at present not operating nearly at full capacity, and its surplus capacity may indeed be used to make gas available to the markets with the greater needs. For example, if the California market is to have access to additional sources of gas supply, it must have some pipeline connection to them; and there is no doubt that, looking to the future, California will need such additional sources. A pipeline may be built to such sources, just as PGT proposes to do in connecting the California market to Canadian gas; but the California consumers must pay for the long haul through this pipeline. The combined El Paso-Pacific system will not be a mere supply line from one area of gas production to a single state market, with only the consumers of that market to pay the costs of construction, operation, and maintenance of such supply line. The contemplated integrated system of El Paso will, in time, have markets along a large portion of its pipelines, with several sources of gas supply well spaced along the system, so as to make no particular market pay for any long hauls of gas. This cannot fail to make natural gas available to the customers of the unified system at lower capital cost.

A Financially Stronger Gas Supplier

(*a*) *Pacific's Financial Problems*

In the discussion of Pacific's financial problems that existed at the time of the stock acquisition by El Paso, let it be said at the outset that while Pacific was then in an unhealthy financial condition, it did not face the death of bankruptcy. El Paso did not acquire this common stock for the purpose of "bailing out" Pacific; El Paso's true purpose has been stated herein. And let it be understood that, in telling of the greater benefits to come to Pacific's customers as a result of the merger, there is no thought here that Pacific was about to become a complete failure as a natural gas company performing a service in the public interest. Those opposing the merger argue that Pacific, as of the time its stock was acquired by El Paso, was in a position to work out its financial difficulties and would have done so if left alone.

It may be conjectured that Pacific might have done just this; but this future possibility constitutes no basis for the rejection of the merger. This is true whether the possibility is considered separately or together with the other rea-

sons offered in opposition to the merger. The true situation with regard to its finances is, that Pacific simply was not in a position, when its stock was acquired by El Paso, to conduct a vigorous plan or program to bring about truly effective natural gas service for the area adjacent to its pipeline system. El Paso will be able to conduct such a program for the Pacific area upon the accomplishment of the merger, and financial vigor will be needed in the prosecution of such a program.

When Pacific was originally authorized to construct and operate its system by Commission Opinion No. 271, the estimates of its prospective markets then presented have been proven by experience to be quite high. One result of this mistake is that Pacific's actual market demands have been such as not to make possible full utilization of the capacity of its pipeline. Then, too, the inadequate markets failed to produce sufficient revenues to make funds available for truly effective operation of Pacific's extensive system. This made necessary minimal expenditures for operation and maintenance; and Pacific has been operating with over-worked personnel, insufficient in number.

Even with its management practicing necessary economies, Pacific had a net operating loss of $2,067,000 in 1957, its first full year of operation. In order not to default in the payment of the required dividends for 1957 on its preferred stock, Pacific obtained the funds for such dividends by selling to El Paso one-fifth of its holdings of the stock of Westcoast, Ltd., reserving the right to repurchase it. Pacific's revenues from the sale of gas in 1957 were about $3,000,000 less than the estimated revenues filed with its initial tariff, filed in 1956 with the Commission. Its sales of gas were about 50,000 Mcfd less than the estimated 390,000 Mcfd for 1957, and this reduction occurred in the sales to distributing companies which yield the higher rates. The sales of products from its extraction plant were about $3,400,000 less than anticipated.

In testimony given at the hearing in the Fall of 1958, officers of Pacific estimated that its operating losses for 1958 would be about $1,500,000, which estimate was based upon the actual experience of the company through the month of August 1958. It was anticipated that the revenues for 1959 might be somewhat better even to the point of earning some relatively small amount of income; but it was not anticipated that any such income would be sufficient to meet the required dividend payments for 1959 on Pacific's preferred stock. It must be kept in mind also that these revenue shortages have occurred even in the face of the economies practiced by the management in relation to operation and maintenance expenditures.

Without counting the exact dollars related to Pacific's distressed financial condition, it is well established by the record evidence that Pacific's sales and resulting revenues were well below the estimates of them and were indeed insufficient for the operation of the company business of rendering a public service. It was found necessary to curtail expenditures for the development of Pacific's natural gas acreage as required by some of its leases, and to provide for gas needs into the future. Capital expenditures could not be made for the expansion of Pacific's markets, and segments of the public are thus deprived of natural gas service.

Further detailed discussion of Pacific's financial shortcomings is deemed to be unnecessary; and it is enough to say that Pacific did not have the financial capacity to render the type of service to its markets that should be expected of an interstate pipeline company. It is safe to conclude also that while Pacific might have ultimately survived to become a financially healthy concern, the progress to that end would have been indeed quite slow if Pacific had continued to make its struggle alone.

It is argued, in effect, by the opponents of the merger, that the acquisition by El Paso of Pacific will not constitute a panacea for all of the financial and other ills of the latter. The evidence shows clearly that the acquisition by El Paso merely of the stock of Pacific has relieved, at least temporarily, some of the financial pains that Pacific has been suffering while struggling through its long organizational period. This merger of the two companies into a financially strong natural gas company cannot fail to bring very much earlier to the Pacific Northwest that type of natural gas service to which it is entitled as a part of the gas consuming American public.

(*b*) *Tax Loss Carryover*

As the surviving corporation of the merger with Pacific, El Paso is entitled, under Internal Revenue Code of 1954, to utilize for Federal income tax purposes, a tax loss carryover of $23,734,923, which represents net operating losses incurred by Pacific prior to January 1, 1957. Such tax loss carryover would not be available to El Paso as the parent company owning the Pacific stock. The net operating losses may be carried forward only five years for tax purposes; and Pacific, therefore, as a separate corporation, very probably could not have nearly the full benefit of the aforesaid sum, as it could only utilize the carryover to the extent that its future income would offset such losses. It is not anticipated that Pacific would have, within such period of five years, sufficient income against which to offset any great part of the carryover.

The tax savings which El Paso will gain by the merger will not, of course, inure to the benefit of the customers of El Paso or Pacific, other than by improving generally the financial position of their gas supplier. Nevertheless, this tax benefit to the surviving El Paso corporation may be regarded as a factor in concluding that the merger is in the public interest. It is anticipated that there will probably be some reduction in the net earnings of El Paso for a period after the merger as a result of the temporary income deficiencies from the operation of the Pacific facilities, as herein elsewhere discussed. The tax loss carryover, when utilized by El Paso, will compensate to a very considerable extent for such reduction in earnings.

(*c*) *More Favorable Acquisition of Debt and Equity Capital*

The financial difficulties of Pacific have been discussed herein and it was shown that its revenues were quite low in relation to its investment. Expert testimony by witnesses from the financial field established that because of these financial difficulties Pacific would have found it very costly, if not impossible, to obtain debt and equity capital to finance the necessary expansion of its system in the near future. It is provided in the indenture covering Pacific's first mortgage bonds that additional bonds may not be issued in 1959 and subsequent years unless Pacific is able to meet certain tests with regard to its earnings; and the evidence shows that Pacific, as an independent corporation, could not meet such tests. An investment banker, familiar with the financing problems of natural gas pipelines in general, and with those of Pacific in particular, testified that Pacific, as an independent corporation, would find its ability to sell bonds to be so impaired as to make it practically non-existent, and that any sale of bonds it might make would be on a costly basis. In 1957, Pacific sold $35 million of bonds, and opinion testimony shows that being a subsidiary of El Paso enabled Pacific to make this sale on favorable terms that it could not have obtained as an independent corporation.

In discussing hereinbefore the problem of El Paso in relation to its extensive sales of residue gas, attention was called to testimony which showed that El Paso, because of this situation, paid "perhaps the highest amortization rate on its bonds" of any natural gas pipeline company comparable to it. This is due

to the fact that wells from which gas is produced with oil do not have as long a period of productivity as do those producing dry gas; and the length of life of the reserves of the pipeline company controls the length of the maturities of its bonds. The evidence establishes that, by having an increased percentage of dry gas available to the merged company, El Paso's borrowing position will be considerably improved.

El Paso has an excellent credit rating. The benefit of this rating is brought to the unified company, and it would appear not to be lessened by the attachment to El Paso of the Pacific facilities, which are temporarily not producing so great an amount of revenue as may be anticipated with their proper extension and development, for which El Paso has the financial capability. It would appear that El Paso itself will be in a stronger financial position after the merger than before; and the merged company should be stronger than either El Paso or Pacific as independent corporations. The evidence shows that the merged company should be able to attract debt and equity capital readily and upon quite favorable terms. This inures to the benefit of the consuming public.

(d) Disadvantage of Parent-subsidiary Relationship

The Applicants' original brief discusses the complexities and difficulties of the relationship of parent and subsidiary corporations, particularly in regard to corporate financing. In reaching the decision here rendered, it is not found necessary to consider for any purpose the future operation of Pacific as a subsidiary of El Paso. If the merger here approved is finally sustained, Pacific the corporation, will become extinct. Otherwise, as hereinbefore shown, El Paso will not operate Pacific as a subsidiary, and will divest itself of the Pacific stock. Pacific will then be operated entirely as an independent corporation.

Expanded and Improved Gas Service

(a) Additional Service to California

The phenomenal natural gas market of the State of California has been discussed hereinbefore. It has been pointed out that this market has been constantly expanding for years, and, under all the evidence here, it will continue to expand for all of the foreseeable future. Officials of the Southern California Companies and PG&E appeared as witnesses to give testimony concerning the anticipated future natural gas requirements for their respective markets. The conclusion to be reached from their testimony is that great quantities of imported natural gas will be needed in California in addition to all sales thereof now certificated by the Commission or for which certification by the Commission is now sought. There is no need whatever to discuss these future gas needs of California in terms of cubic feet; there are undisputed estimates of these needs in the record, given in considerable detail.

These needs for gas for a market cannot be learned of one day and supplied the next day. Facilities for the transmission and delivery of additional quantities of natural gas beyond the capacities of existing facilities must be carefully planned well in advance, and approval of their construction and operation must be obtained from the Commission after proceedings that are sometimes quite time consuming. Following this the certificated facilities must be constructed; and several years may pass from the time the need for gas in the future is realized until the time that the need is met. So it is that El Paso, in cooperation with its customers, must look to the future needs of all of its markets, and this is particularly true in regard to the future additional requirements for California.

The existing service by El Paso to California has been herein discussed. The project of PGT to bring Canadian gas to California for its affiliate, PG&E, the

project of Transwestern recently certificated by the Commission, and El Paso's Provo-Las Vegas project, have all been described herein. The evidence here shows that after all of these pipeline facilities are completed and gas is flowing through them, and the now existing facilities of El Paso, the requirements of the California markets within the next 5 or 6 years will only be met by great quantities of additional imported natural gas. Therefore, El Paso, as one of the suppliers of gas to the California market, must be continually planning to meet the future needs of this great market and all of its other markets.

The importance of adequate supplies of gas to meet the present and future requirements of the California market can hardly be over-emphasized. As the demands of this market increase with the passing years, El Paso and other natural gas companies will compete for the business. It has been pointed out hereinbefore that the evidence shows that El Paso cannot presently offer to increase its daily deliveries of gas to this market by any great quantities without accessibility to additional sources of supply. The accessibility of the additional sources of supply on the Pacific system will become a reality with the merger.

El Paso will then be in a position to present to the Commission new projects for supplying additional gas to California, and each such presentation may be examined by the Commission for economic feasibility. Furthermore, it may be assumed that El Paso would have a contract with a California customer, obtained after competition with others, before seeking to obtain from the Commission a certificate authorizing additional sales in the California market. Additional deliveries of gas by El Paso to this market may be made either through existing facilities, or expanded facilities along existing rights-of-way; and they may be made also through the presently proposed Provo-Las Vegas pipeline.

It may be concluded with certainty that Pacific, as an independent corporation, would not soon be in a position to propose new projects to supply California, for the reasons given herein. Upon the consummation of the merger, El Paso should be able immediately to start planning and negotiating for such projects in the future. California will be benefited by these proposed new supplies of gas and California customers will have, under the Act, the right to participate in any proceeding for certificate approval from the Commission of any such sale of additional gas in their State. These things being true, it is definitely in the public interest that California have available to it the additional sources of gas supply of the merged company.

While discussing the advantages of having available these additional substantial sources of gas supply for the California market, it might be well to comment that all of El Paso's present customers may receive the same benefits. It is true that California has the phenomenally expanded market to which will be made the greater deliveries, but other markets may benefit in proportion to their needs. It may be concluded also that the ratio of benefits to the general economy of one State as compared to another might well be in proportion to its consumption of natural gas.

(b) Benefits to Pacific's Present Customers

While the California market has been discussed herein more extensively than the other markets involved, because of its great expansion, there is no reason why all of the markets on the merged system may not benefit from the increased sources of gas supply and the attachment of them to the vast aggregate market of the unified system. It may be taken for granted that the citizens of the States in the Pacific Northwest will be constantly striving to improve and expand their respective state economies. The same will be true of the

Rocky Mountain area traversed by Pacific. It may be surely anticipated that these areas will have growth in population, industry and commerce. Their natural gas requirements may be expected to become increasingly greater with the passage of time; and the easy accessibility of substantial sources of supply will be of great advantage.

Pacific's present customers will have the advantage, hereinbefore discussed, of not having to bear alone the costs of long hauls of natural gas. The merged system will be very large, with its pipelines extending for many miles in numerous States between the Mexican and Canadian borders. However, there will be on this vast system natural gas service to many markets, and there will be scattered along the system sources of gas supply from each of which gas will be flowing into the system. El Paso's President testified that he anticipated that most of the gas imported from Canada would be consumed in the Pacific Northwest states, although this would vary with the rise and fall of peak demands on the system. It may be assumed also that each of the other sources of supply will furnish gas to the markets closest to it. This should necessarily result in a lower unit transportation cost for gas to all markets on the system.

El Paso has given assurance that if the merger is consummated it will be its policy to give natural gas service to every community within economic reach of the unified system. This will be of considerable benefit to the area traversed by Pacific pipelines, in which are a considerable number of unserved communities large enough to make feasible such service to them. It may be taken for granted that El Paso, being prudently managed, will extend its service to every community in which profitable sales of gas may be made. El Paso has the financial ability to accomplish these extensions promptly upon completion of the merger.

(c) *Fuller Utilization of the Pacific System*

It has been shown clearly by the evidence that the market estimates for the Pacific system have been indeed too high. Its pipelines were constructed of capacities to meet these unrealized estimated market demands, with the natural result that the Pacific system has considerable idle capacity. This idle capacity may be lessened by the extension of Pacific's facilities to presently unserved markets, and also by the connection of the Pacific system to the El Paso markets.

Well managed gas distributing companies do not blindly buy their supplies from the pipeline. They are interested in the unit cost of transportation to the supplier, so that they may know that a rate proposed to them will not have soon to be increased because based on an uneconomic use of pipeline capacity. Any prospective purchaser will more readily seek service from the unified company when there begins the more economic use of the capacity of the Pacific system. The attachment of the Pacific system to El Paso's markets will eventually bring about an elimination of the idle capacity now existing in the Pacific system, to the benefit of the system consumers by the reduction of unit transportation costs through this system.

If El Paso and Pacific were dealing as separate corporations, this idle pipeline capacity would not nearly so quickly disappear. The merged company may lessen this idle capacity to a considerable extent by the promotional activities for greater sales of which it will be capable. It may also be said that the unit transportation costs could not be so low as on the unified system, to which larger markets would be connected. It is quite obvious that it is in the public interest that Pacific's idle pipeline capacity be quickly eliminated.

(*d*) *Flexibility of Operation*

The brief of the Applicants urges that:

> An important benefit of the merger of El Paso and Pacific Northwest with its attendant complete integration of the two pipeline systems is that it will create a flexibility in a day-to-day operations which will give the greatest possible assurance of uninterrupted service to the customers of the combined systems.

To have a proper understanding of this "flexibility" of operations, the definition thereof by El Paso's President, in his testimony, should here be given. The essence of this testimony is that by central control of the operation of the entire unified system, the flow of system gas may be directed at all times to points of need on the system. He pointed out that this flexibility of operation is of great importance in meeting any shortage of gas occurring at any point on the system, due to whatever cause.

Nothing is more important in the use of natural gas than that there be maintained at all times a continuous flow of gas from the wellhead to the point of consumption. Serious situations have resulted from the continuity of such flow being broken. If there be an interruption of the flow of gas from any source of supply, it would be of greatest advantage, in the operation of a pipeline, to have an alternate source from which to meet the shortage resulting from such interruption. If there be severe weather of unusual duration, which causes greater consumption of gas for such period, it would be quite important to have supplemental sources of supply of gas from which to make up any shortage from the interrupted source. The unified company will have various sources of supply well spaced along its system.

The takes of natural gas by customers of El Paso are not constant. The differences in takes by a customer from day to day may be very great. For example, the takes on weekends are much less than during the rest of the week. With natural gas entering the system at so many points, the flow of gas to any particular market or customer may be increased or decreased with greater facility; and larger temporary demands on one source of supply may be readily relieved by a supplemental supply from another source.

The "flexibility" of operation, as here explained, could not be accomplished to any appreciable extent by cooperation between two separate corporations. It is true that separate natural gas companies have given assistance to each other in situations of emergency, where their pipelines were connected; but there are other periodically occurring situations than the true emergency, which could be quickly and easily handled by having such flexibility of operation, attainable only through central control of operations. This flexibility of operation is clearly an advantage in rendering proper service to the gas consuming public.

Lower Rates in Prospect

(*a*) *Deferral and Reduction of Increases in Pacific's Rates*

The importance of increasing the number of Pacific's customers as soon as practicable, in order to better its presently unsatisfactory financial condition, has been shown herein. Any fuel user must be convinced that it is to his interest to shift from the use of another fuel to the use of natural gas, or to install facilities originally for the use of gas. One obstacle to so convincing the fuel user would surely be a present or prospective higher price for natural gas. Therefore, Pacific has had a serious problem in trying to better its

financial position by obtaining more revenue from additional customers without deterring its prospective customers with higher rates.

On August 6, 1957, after the acquisition of its stock by El Paso, Pacific made a rate filing with the Commission increasing its rates generally. On September 4, 1957, the Commission entered an order suspending the increased rates, and it was found therein that it was in the public interest that the Commission enter upon a hearing concerning the lawfulness of the increased rates. Subsequently, after the granting of a motion by Pacific, the Commission permitted the increased rates to become effective under bond to make refunds of any part of such rates found to be excessive. This pending rate proceeding is in Docket No. G–13202, and no date for the commencement of the hearing has yet been fixed by the Commission. These rates, being collected under bond, are the effective rates for Pacific's customers, subject to later refund.

It was the unanimous opinion of past and present officers of Pacific, who appeared as witnesses, that it would have been necessary for Pacific to file for even higher rates than it is now collecting if it had continued as an independent company. Pacific was likewise prepared to file for still greater rate increases in order that it might become a sound and substantial company. Such additional increases would have been necessary to meet the earnings requirements for any further financing by Pacific as an independent company. This would unquestionably have retarded the expansion of Pacific's markets.

El Paso's President gave assurance in his testimony that no new rate increases to Pacific's present customers would be filed with the Commission for at least one year from the date of the approval of the merger by the Commission. This would be quite important to the expansion of the markets of Pacific, and any deferral of rate increases is in the interests of the consuming public. Pacific, as a separate corporation, could really not afford such a deferral of rate increases. Furthermore, during this period El Paso will be carrying on promotional activities and extending facilities to increase the customers and revenues in the Pacific markets.

(b) Savings in Operating Expenses

An official of El Paso gave, in his testimony, a rough estimate of the savings which might be accomplished by the operation of the El Paso and Pacific systems as a single integrated pipeline system under one central management. These savings would result largely by the elimination of duplication of service functions, now carried on by the separate companies. The witness gave a breakdown of the possible savings in each department of the company, and the total of his estimate of savings was $1,115,000 a year. There is also in the record evidence that savings may result in any future financing of the merged company, both as to debt and to equity capital. All estimates of savings were based upon the operation of the merged company as a single unit, as contrasted to the separate operation of the two companies.

Attacks have been made upon the accuracy of these estimates of savings. No attempt is made here to determine the accuracy of these estimates. The evidence shows clearly that substantial savings in the costs of operation may be effected by the joint operation of the two systems. No finding is here made of any exact dollar amounts expected to be so saved; and no such finding is important to the decision here upon the basic issue of whether the merger is in the public interest. Any savings in cost of operation are in the public interest.

Reasonable Anticipation of Lower Rates

It is urged in the Applicants' joint brief that "the many economies which will result from the merger of the two systems will necessarily redound to the benefit of *all* customers of both companies in the form of lower rates than

would otherwise obtain." This is something that is conceivable under the facts here established. The unit cost of transportation to all markets should be less. Deliveries of gas may be effected at lower capital cost. Debt and equity capital may be more readily acquired and upon better terms. These are some of the factors which may bring about lower rates for the consumers in all markets on the merged system. This is not an adjudication that El Paso, the survivor corporation, must lower its rates in the future; it is merely a finding that, on the basis of the evidence, there is a likelihood that the economies to be effected by the merger will result in a reduction in the cost of service, which will be of benefit to the consuming public served by the unified system.

FUTURE RATES

El Paso avers in an exhibit to its application in Docket No. G–13019 that it does not now propose to make any changes in its own "FPC Gas Tariff Relating to Rates, Charges or Classification of Service," nor in Pacific's "filed tariff rates," as a result of the merger, except those which apply exclusively to sales or exchanges between El Paso and Pacific, for which there will be no need after the merger. El Paso will continue all service to its present customers and it does not "propose to discontinue or curtail in any manner the services now being rendered" by Pacific to its customers. Pacific's existing FPC Gas Tariff will merely be reissued in the name of El Paso which will continue to perform all service thereunder.

Under Section 157.14(c), "Additional Information", of the Commission's "Regulations under the Natural Gas Act," the Secretary is authorized to request from any applicant in a proceeding upon his application before the Commission. "such additional data, information, exhibits, or other data as may be specified," which the applicant is then required to submit. Pursuant to this authority, the Secretary by letter of June 20, 1958, requested from El Paso, among other things. the following:

(a) System cost of service for the first two calendar years of operation of the merged company

(b) An allocation of such costs to each particular service classification, with the basis for each allocation clearly stated.

(c) The combined rate base and rate of return.

(d) Gas Operating expenses, segregated functionally by accounts.

(e) Depletion and depreciation.

(f) Taxes, with the basis upon which computed.

This additional detailed information was submitted to the Staff by El Paso prior to the hearing; and all of it has been received in evidence with extensive supporting testimony. There arises the question of what place this evidence has in this proceeding. It is at most merely certain thoughts or ideas advanced by El Paso, on request therefor by the Staff, upon what it might propose at some time in the future with regard to the rates to be charged in the various markets on the merged system. This expression of El Paso's views upon this subject is certainly not relevant to any issue rightfully and logically related to the basic issue of whether the proposed merger is in the public interest.

This is true because the merger herein authorized is to have no effect whatever upon any rate being paid by any customer of either El Paso or Pacific. El Paso was asked for its views on future rates for the unified system and it gave them; but it has made no filing of them under Section 4 of the Act which would require the Commission to make a determination of whether they are just and reasonable. The rates that will be charged on the merged system are the existing rates which can only be changed by a proceeding under Sections 4 and 5 of the Act.

They cannot be changed in this proceeding because the lawfulness of them is not here in issue. It must not be predicted here what the future rates will be, even on the basis of El Paso's views expressed on request, because no determination can be made except in a true rate proceeding of whether such views would result in lawful rates. It must be kept in mind that any rates for the future, different from the existing rates, would constitute rate changes, the lawfulness of which must be determined under procedures prescribed under Sections 4 and 5 of the Act. Therefore, all evidence relating to future rates to be charged on the unified system is irrelevant to the basic issue of whether the merger is in the public interest.

This is not a rate proceeding and will not be permitted to become such. Nothing in this decision is to be construed as in any way affecting any present or future rate to be charged by the survivor corporation for any sale of gas or service whatever. The issuance of the certificates herein leaves every customer of both corporations subject to the rates he is now paying. El Paso will have, as the survivor corporation, every right pertaining to its future rates that either separate corporation would have as a natural gas company under the Act.

There are contentions in the record that the merger per se will inevitably result in higher rates for El Paso's present customers. The Staff asserts this as one of the grounds advocated by it for the denial of the merger, as does California. While PG&E does not specifically oppose the merger, it seeks the imposition of conditions upon the issuance of the certificate authorizing the merger, which would effectively prevent permanently the allocation of any "costs of service" to any present customers of either El Paso or Pacific, "which would not have been allocable to such customers if the acquisition and merger authorized herein had not been consummated." To attach any such conditions would be to render a decision that under no possible circumstances should any present El Paso customer be required at any time in the future to pay any part of any cost of service relating to the ownership and operation of Pacific's existing system, regardless of whether such customers were receiving benefits from this operation. The request of PG&E for the attachment to the certificates herein issued of its proposed conditions is denied.

The Southern California Companies and Southern Union are present customers of El Paso. Each, as an intervener, has filed a brief in which it does not oppose the merger, but seeks only to have a condition attached to its approval which would require El Paso to maintain its accounts in such a manner as to make available in future rate cases adequate data for cost allocation studies on Pacific's system, as it would exist as a part of the unified company. The public interest requires that a condition be attached to the issuance of the certificate which would enable the customers of both corporations to have, from the accounts of the unified company, such adequate data. With the attachment of such a condition to the certificate, no decision whatever is made concerning cost allocation between the various customers of the unified company. Such cost allocation remains a wide-open issue for some future rate case resulting from action taken under Sections 4 and 5 of the Act.

Hereinafter appears a further discussion of the conditions to be attached to the certificate. This separate discussion of future rates at this point is for the purpose of making clear that they are not to be considered in relation to the basic issue of whether the public convenience and necessity require the merger.

PACIFIC'S APPLICATION

Pacific prayed specifically in its application that the Commission "permit and authorize Pacific to abandon, pursuant to Section 7(b) of the Natural Gas Act," all of its system facilities, "and to abandon all services rendered by means of

such facilities, in favor of the acquisition and operation thereof by El Paso", conditioned, of course, upon the granting of El Paso's application and the consummation of the merger. There will be no such abandonment of Pacific's facilities and the service rendered by means of them, as is contemplated by Section 7(b) of the Act. Under the proposed plans of El Paso, there will be no cessation whatever of the services now rendered by Pacific in the use of its facilities. Section 7(b) contemplates an actual abandonment of service and facilities and none such is here proposed. Under similar circumstances, the Commission denied the application to abandon.

In the matters of Kenneth McCullough, Docket No. G–11701, and Canon Oil Production, Docket No. G–11702, which were consolidated for hearing, McCullough sought a certificate authorizing him to continue a sale of natural gas to an interstate pipeline company, which was being made by Canon under certificate authority from the Commission. Canon had assigned to McCullough his leasehold interests from which was being produced the gas being sold as aforesaid, and asked in his application for permission to abandon the sale. Under these circumstances, the Commission made the following two specific findings:

> Inasmuch as effective from the date of the issuance of a certificate herein McCullough proposes to continue under the same contractual provisions and at the same rate the identic operations and service which Canon has been rendering to Hope Natural Gas Company, no abandonment of service is involved and the application filed by Canon, Docket No. G–11702, should be dismissed as being not required by the provisi ns of the Natural Gas Act.
>
> In view of the foregoing, it is necessary and appropriate in the public interest to rescind as of the date of issuance of this order the certificate of public convenience and necessity granted to Canon by the order of the Commission issued August 19, 1955, Docket No. G–8777.

In the Commissioner's Regulations under the Natural Gas Act it is provided in Section 157.20(e) as follows:

> (e) The certificate issued to applicant is not transferable in any manner and shall be effective only so long as applicant continues the operations authorized by the order issuing such certificate and in accordance with the provisions of the National Gas Act, as well as applicable rules, regulations, and orders of the Commission.

It would appear from the above that the proper procedure to be followed here pursuant to the Act and Commission Regulations, would be to rescind all certificates heretofore issued to Pacific by the Commission, and then by the order herein, issue new certificates to El Paso identical with the rescinded certificates issued to Pacific. By this procedure El Paso would then be specifically authorized by issued certificates to own and operate all of Pacific's facilities, and to perform every service that Pacific now has certificate authority to perform. In the Applicants' joint brief a finding is proposed to the effect that El Paso will, by the proposed merger, "succeed to and assume all the property, tangible and intangible, real and personal, and all the rights, obligations, franchises, and privileges of Pacific Northwest, and El Paso will render any and all services now rendered, or contemplated by Pacific Northwest including the importation of natural gas from Canada and including the maintenance of the requisite importing facilities at Sumas, Washington on the International Boundary." This finding is hereby made with the exception that the merger will not effect a transfer of any franchise granted to Pacific by a certificate of public convenience and necessity issued by the Commission. It is true that the merger, under the Delaware Law, will accomplish a transfer of all property rights of Pacific to El Paso, and will impose upon El Paso all obligations of Pacific; but the merger, standing alone, could not transfer certificate

authority which is not transferable under the Commission's Regulations. The sovereign State of Delaware has no such authority to transfer.

Therefore, the prayer of Pacific in its application for permission to abandon its facilities and the services rendered by means of them, pursuant to Section 7(b) of the Act, should be denied. However, the authority sought by Pacific to bring about its merger into El Paso, and to do all things necessary to this end, should be, and is, hereinafter granted. The merger of Pacific into El Paso will definitely serve the public interest.

The facilities to be acquired under the certificates of public convenience and necessity herein ordered are to include the entire pipeline system of Pacific as constituted at the time of the merger. By issuing to El Paso identical certificates to all those heretofore issued to Pacific and rescinded hereinafter, El Paso will be given the right and authority to construct and operate any facilities heretofore certificated by the Commission but not yet completed and put in operation by Pacific. In any pending proceedings before the Commission to which Pacific is a party, El Paso may file a motion to be substituted for Pacific in each such proceeding.

CONDITIONS

The public interest requires that certain conditions be attached to the issuance of the certificates of public convenience and necessity herein ordered. The conditions imposed in the order hereinafter made are to be construed in the light of the discussion of them in this section of the decision.

Merger under Delaware Law

The certificate of public convenience and necessity authorizing the acquisition and operation by El Paso of Pacific's facilities should not be issued without specifying the manner of acquisition, so that the Commission, acting to protect the public interest, may be entirely sure that El Paso will stand squarely in the shoes of Pacific insofar as its obligations of whatever kind are concerned. El Paso has set forth in its application the legal procedures it will follow, pursuant to Section 253 of the Delaware General Corporation Law to consummate the merger. These procedures were likewise described in the testimony of El Paso's Financial Vice-President, and a summary of them was given in the Applicant's joint brief. If these procedures are followed, El Paso unquestionably assumes every obligation of Pacific under Deleware law; and the certificates are issued upon the condition that they be followed.

Paragraph (a) of said Section 253, specifies the conditions under which the merger may be effected, and prescribes the procedures for the consummation of the merger. The evidence shows that El Paso will be able to meet these conditions. Paragraph (b) covers the rights and obligations of the survivor corporation, reading as follows:

> (b) Upon the recording of the certificate pursuant to subsection (a) of this section, all of the estate, property, rights, privileges and franchises of such other corporation or corporations shall vest in and be held and enjoyed by such parent corporation as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation or corporations, and be managed and controlled by such parent corporation, and except as hereinafter in this section provided, in its name, but subject to all liabilities and obligations of such other corporation or corporations and the rights of all creditors thereof. The parent corporation shall not thereby acquire power to engage in any business, or to exercise any right, privilege or franchise, of a kind which it could not lawfully engage in or exercise under the provisions of the law by or pursuant to which such parent corporation is

organized. The parent corporation shall be deemed to have assumed all the liabilities and obligations of the merged corporation or corporations, and shall be liable in the same manner as if it had itself incurred such liabilities and obligations.

Stipulation of Counsel

This stipulation by counsel for El Paso and an Assistant General Counsel of the Commission is self-explanatory. It is Exhibit No. 380 in the record. The certificates of public convenience and necessity hereinafter issued to El Paso are ordered subject to the provisions of the stipulation, which reads as follows:

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

IN THE MATTERS OF PACIFIC NORTHWEST PIPELINE CORPORATION, DOCKET NO. G–13018; EL PASO NATURAL GAS COMPANY, DOCKET NO. G–13019

STIPULATION

It is hereby stipulated and agreed by and between counsel for El Paso Natural Gas Company and an Assistant General Counsel for the Federal Power Commission as follows:

(1) That the reported gross profit in the amount of $4,702,856.37 as reflected in Schedule No. 1 attached to a letter dated July 1, 1958, to the Federal Power Commission from El Paso Natural Gas Company entitled "Summary of Charges From Various Fish Companies to Pacific Northwest Pipeline Corporation For Fees and Services" represents profits between companies under common control which arose out of various agreements and contracts between companies under common control.

(2) That El Paso Natural Gas Company consents to imposition of a condition by the Federal Power Commission in any order or orders that may be issued authorizing the acquisition by El Paso of the facilities of Pacific Northwest Pipeline Corporation that are subject to the jurisdiction of the Federal Power Commission, requiring El Paso Natural Gas Company to set up on its books and records and to reflect in its financial statements, a reserve in the amount of ten million dollars ($10,000,000) to be available for adjustments to the plant and depreciation reserve accounts of Pacific Northwest Pipeline Corporation to be transferred to El Paso by Pacific Northwest upon acquisition of its facilities by merger.

(3) With respect to the disposition of the reserve for accounting adjustments, El Paso Natural Gas Company shall have the right in this or any other proceeding to make such contentions as may be appropriate, but which are not inconsistent with paragraph (1) above.

(S) Stanley M. Morley,
STANLEY M. MORLEY,
Attorney for El Paso Natural Gas Company.

(S) Robert L. Russell,
ROBERT L. RUSSELL,
Assistant General Counsel, Federal Power Commission.

September 9, 1958.

Reissuance of Pacific's Tariffs

It is ordered hereinafter that El Paso shall issue in its own name all FPC Tariffs of Pacific now on file with the Commission. Inasmuch as Pacific goes out of existence with the merger, there should be legally filed tariffs by El Paso, as

the survivor, for the performance of all services now being performed by Pacific, without any change whatever therein except the insertion of El Paso's name for that of Pacific wherever it appears.

Supplemental Accounts for Cost Allocation

The pendency of the civil action against El Paso and Pacific in the United States District Court for Utah, for the alleged violation of Section 7 of the Clayton Act, has been discussed herein. In this case, the Attorney General prayed for a preliminary injunction enjoining the defendants "from disposing of any of the stock of Pacific Northwest, from disposing of or commingling or in any way impairing the independent utility of the assets of Pacific Northwest, and from making any basic changes in the organization or operations of Pacific Northwest pending a final adjudication of this proceeding." While this preliminary injunction was not issued by the Court, El Paso has, according to the evidence, respected and complied with the terms of the requested injunction to the same extent as if it had actually issued. It is assumed that Pacific will continue so to do until a final disposition of that proceeding.

At the present time, therefore, Pacific is being operated as an independent corporation. It is, of course, maintaining its separate corporate accounts in conformity with the Uniform System of Accounts of the Commission. If El Paso and Pacific, after obtaining from the Commission the certificates of public convenience and necessity here ordered, should successfully defend against the civil action aforesaid, there would no longer be any requirement for the maintenance of a separate accounting system for Pacific. Therefore, for the protection of certain rights of the customers of both El Paso and Pacific, conditions should attach to the issuance of the certificates here ordered, which would require certain supplemental accounts to be maintained so as to make available for any future rate case certain cost allocation data.

Such cost allocation data will be of importance in any rate proceeding wherein El Paso should seek to change the existing rates for sales or service to the present customers of either company. As pointed out, no rate question is here decided; but it appears quite necessary that such cost allocation data be made available for the future, so as to make possible a fair trial of any future proceeding involving increased rates for any customers of the unified company. In such future proceedings there will arise problems of cost allocation between customers of the merged company, and El Paso should be required by order herein to maintain the accounts of the merged company in such manner as to make available adequate data for cost allocation studies to be presented in relation to any such change of rates.

The Southern California Companies have requested in their brief the attachment of a condition to the certificates here granted which would require El Paso so to maintain the accounts of the unified company. The requested condition, as proposed by them, is set forth in their brief, and it appears to be reasonable in its provisions and to accomplish the intended purpose. This request of the Southern California Companies is granted and the proposed condition appears in paragraph (G) of the ordering section of this decision. Southern Union likewise proposed a condition to be attached to the certificates, which seeks the same result as that proposed by the Southern California Companies.

CONCLUSION

El Paso has sustained the burden of proof and established by substantial evidence that its acquisition and operation of the facilities of Pacific are required by the public convenience and necessity. El Paso is able and willing to

acquire and operate Pacific's facilities, to perform every service Pacific is now authorized to perform by certificate or permit issued by the Commission, and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder.

The paramount objection to the approval of the merger appears to be that it may bring additional costs for gas to some of the customers of the unified company. The law presumes, at this point, that any rates to be charged in the future for gas delivered to any of the customers of the merged company will be lawful. It is presumed that the Commission will perform its duty and order that only just and reasonable rates be charged on the merged system. The possibility of a change in rates should not stand in the way of a merger found to be in the public interest.

All findings of fact or conclusions of law requested by any party to these proceedings, which have not been made hereinbefore either specifically or in substance, are hereby denied.

ORDER

Wherefore, it is ordered, subject to review by the Commission pursuant to its Rules of Practice and Procedure, that:

(A) A certificate of public convenience and necessity is hereby issued, upon the terms and conditions of this order and subject to all pertinent provisions of the Natural Gas Act and the Commission's Regulations thereunder, authorizing El Paso to acquire and operate all of the facilities of Pacific, subject to the jurisdiction of the Commission, which are described in the applications of these two natural gas companies in Docket Nos. G–13018 and G–13019.

(B) All permits and certificates of public convenience and necessity heretofore issued to Pacific by the Commission are hereby rescinded as of the effective date of the merger herein authorized; and identical permits and certificates of public convenience and necessity to those so rescinded, with any amendments or modifications thereof made by the Commission, are hereby issued to El Paso, upon the terms and conditions of this order and subject to the pertinent provisions of the Natural Gas Act and the Commission's Regulations thereunder, to be just as effective as if El Paso had originally been issued said certificates; and El Paso is hereby vested with all rights, and charged with all obligations and responsibilities of Pacific under the said rescinded certificates.

(C) The certificates, issued in paragraphs (A) and (B) above, shall be accepted in writing and under oath by a responsible official of El Paso within 30 days from the issuance of this order, pursuant to paragraph (A) of Section 157.20 of the Commission's Regulations Under the Natural Gas Act.

(D) The acquisition of Pacific's facilities by El Paso, as authorized in paragraph (A) hereof, shall be accomplished by El Paso by merging Pacific into it pursuant to the provisions of Section 253 of the Delaware General Corporation Law, by taking the legal steps proposed in El Paso's application and testimony, within 30 days from the issuance of this order.

(E) The certificates described in paragraphs (A) and (B) hereof are issued subject to the provisions of the stipulation entered into on September 9, 1958, by Attorneys representing El Paso and the Commission Staff, which is Exhibit No. 380 in this record.

(F) Within 30 days from the issuance of this order, El Paso shall reissue, in its own name and without other change, all FPC Gas Tariffs of Pacific now on file with the Commission.

(G) The certificates described in paragraphs (A) and (B) hereof are issued upon the condition that El Paso shall maintain, in conformity with the Uniform System of Accounts, supplemental accounts in scope and form satisfactory to the Commission designed to show separately:

(a) The actual direct gas plant, depreciation reserve, operating revenues, operating expenses and other operating revenue deductions which would be involved in any determination of El Paso's cost of service for the system zones formerly served by (i) El Paso, and (ii) Pacific Northwest, and

(b) The actual direct gas plant, depreciation reserve, operating revenues, operating expenses and other operating revenue deductions applicable to the main transmission line segments (excluding laterals) of the Pacific Northwest system, divided between:

(i) Northwest System—from Sumas, Washington (on the Canadian boundary) to and including Station No. 14, near Pendleton, Oregon.

(ii) Rocky Mountain System—from Station No. 14, near Pendleton, Oregon, to Station No. 6, near Rock Springs, Wyoming.

(iii) San Juan System—from San Juan Basin to and including Station No. 6, near Rock Springs, Wyoming.

(c) The applicable indirect gas plant, depreciation reserve, operating revenues, operating expenses and other operating revenue deductions which would be involved in determination of allocations between the divisions outlined above.

(H) The application of Pacific to abandon its facilities under Section 7(b) of the Act is hereby denied for the reasons hereinbefore given; but Pacific is hereby authorized to do all things necessary for it to do to accomplish the merger herein authorized.

DANIEL J. KELLY,
Presiding Examiner.

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, William R. Connole, Arthur Kline and John B. Hussey.

PACIFIC NORTHWEST PIPELINE CORPORATION, DOCKET NO. G–18257

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 23, 1959)

Pacific Northwest Pipeline Corporation (Applicant), a Delaware corporation with its principal office in Salt Lake City, Utah, filed a budget-type application for a certificate of public convenience and necessity on April 8, 1959, and a supplement and an amendment thereto filed June 10, and July 13, 1959, respectively, pursuant to Section 7 of the Natural Gas Act authorizing the construction and operation during the calendar year 1959 of field facilities to enable Applicant to attach new gas supplies, of natural gas, as more fully described in the application on file with the Commission.

Applicant proposes to construct approximately 15 miles of field lines, together with related line taps, and metering facilities.

Applicant states the proposed facilities will enable it to take into its certificated main pipeline system, natural gas which will be purchased from producers in the general area of its existing transmission system from time to time during the calendar year 1959 at a total cost not in excess of $374,000, exclusive of any facilities to be constructed by Applicant pursuant to certificate author-

izations heretofore issued by the Commission and as may be issued hereafter in any pending certificate applications.

Pursuant to due notice, a public hearing was held in Washington, D.C., on December 16, 1959, respecting the matters involved in and the issues presented by the application. No appearances other than staff counsel were entered upon the record and no evidence offered in opposition to the granting of the application. Staff counsel moved orally at the hearing that the intermediate decision procedure be omitted and the Commission render a decision herein pursuant to Section 1.30(c)(1) of the Commission's Rules of Practice and Procedure.

The Commission finds:

(1) The applicant herein is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(2) The facilities hereinbefore described are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, as an integral part of Applicant's pipeline system, and the construction and operation thereof by Applicant are subject to the requirements of Subsection (c) and (e) of Section 7 of the Natural Gas Act.

(3) The construction and operation of the facilities hereinbefore described will enable Applicant to connect its system with new sources of supply required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(4) Applicant is able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) Public convenience and necessity require that the general terms and conditions set forth in paragraph (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act should attach to the certificate issued to Applicant herein, and to the exercise of the rights granted thereunder.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant should submit, prior to March 1, 1960, a statement, under oath, showing by projects: (a) names of fields connected, (b) estimates of gas supply attached, (c) a description of the project or projects that have been constructed pursuant to the authorization granted hereunder, during the calendar year 1959, (d) the location of said project or projects, (e) the costs of the facilities constructed, and (f) the names of the independent producer together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate application.

(7) The authorization granted in the certificate referred to in paragraph (3) above should be limited to construction during the calendar year 1959 and the total expenditures for facilities authorized to be constructed in Docket No. G–18257 should not exceed a cost of $374,000 and no single project should exceed a cost of $100,000.

(8) A request during the public hearing by staff counsel for omission of the intermediate decision procedure under Section 1.30(c) of the Commission's Rules of Practice and Procedure was unopposed by any party of record, and, not having been denied by the Commission, is granted pursuant to Section 1.30(c)(1) of said Rules.

The Commission orders:

(A) The certificate of public convenience and necessity be and the same is hereby issued authorizing the applicant to construct and operate natural gas

facilities for the purposes stated upon the terms and conditions of this order, as hereinbefore described, all as more fully described in the application filed in this proceeding.

(B) A certificate issued herein is not transferable and shall be effective only so long as the applicant continues the operations authorized in this order and in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations and orders of the Commission thereunder.

(C) The certificate issued in paragraph (A) above, is hereby conditioned and limited to include expenditures for construction during the calendar year 1959 and total extent of facilities authorized to be constructed by Applicant shall not exceed a cost of $374,000 and no single project shall exceed a cost of $100,000.

(D) The general terms and conditions set forth in subparagraph (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to and become a part of the certificate granted by paragraph (A) hereof, and the exercise of the respective rights granted thereunder.

(E) The applicant shall submit on or before March 1, 1960, a statement under oath, showing by projects: (a) names of fields; (b) estimates of gas supply attached; (c) the costs; (d) a description of the project or projects which have been constructed; (e) locations of facilities constructed pursuant to the authorizations granted thereunder during the calendar year 1959, and (f) the names of the independent producers involved together with the respective dates of the gas sales contracts and the docket numbers of the related producer certificate applications.

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, William R. Connole, Arthur Kline and John B. Hussey.

IDAHO POWER COMPANY, DOCKET NO. E-6907

ORDER AUTHORIZING THE ISSUANCE OF PROMISSORY NOTES

(Issued December 24, 1959)

Idaho Power Company (Applicant), a corporation organized under the laws of the State of Maine and qualified to do business as a foreign corporation in the States of Idaho, Oregon, and Nevada, with its principal place of business at Boise, Idaho, filed an application on November 3, 1959, as supplemented November 23, 1959, for an order, pursuant to Section 204 of the Federal Power Act, authorizing the issuance of not to exceed $40,000,000, aggregate principal amount of Promissory Notes, outstanding at any one time.

Applicant proposes to issue the Notes as original Notes and renewal Notes to evidence bank loans and renewals of loans to be obtained on or before December 31, 1960. Each Note will mature not later than one year after its date of issue and will bear interest at the rate applicable in New York City at the time of each borrowing to commercial bank loans of such form and character. As of the date of the application, that interest rate was 5% (corresponding to the New York City prime rate).

By order issued April 24, 1957, *Idaho Power Company*, Docket No. E-6734 (17 FPC 581), as supplemented by orders issued February 27, 1958 (19 FPC 279) and December 18, 1958 (20 FPC 848), the Commission authorized Applicant to issue up to $40,000,000, principal amount of Promissory Notes, outstanding at any one time, subject to the condition that the issuance of any Notes authorized therein be completed on or before December 31, 1959. Since the

Commission's initial authorization on April 24, 1957, to issue Promissory Notes in the maximum principal amount of $40,000,000, Applicant on various occasions has had Notes outstanding in the aggregate principal amount of approximately $30,000,000. However, Applicant then reduced the total amounts of such Notes outstanding out of the proceeds from the issuance and sale of permanent securities (including First Mortgage Bonds, Debentures, and equity securities) before proceeding to issue new Notes.* Pursuant to that authorization, Applicant had outstanding $18,400,000, aggregate principal amount of Promissory Notes, as of November 27, 1959, and expects to have outstanding Notes in the total principal amount of approximately $22,300,000 as of December 31, 1959.

The request herein for authorization to issue Notes in the maximum principal amount of $40,000,000 will cover the issuance of new Notes and the issuance of any renewal Notes, including renewal Notes for the payment of any Notes presently outstanding or to be issued on or before December 31, 1959, under the above-described authorization in Docket No. E–6734.

Applicant anticipates that the maximum principal amount of Notes to be outstanding during the authorized period to December 31, 1960, will not exceed $32,500,000, unless market or other conditions preclude the consummation of permanent financing arrangements by October, 1960. During 1960 Applicant expects to undertake permanent financing arrangements, including the issuance of equity securities, probably during the fall of that year; however, the exact form, amount and times of issuance of such long-term corporate securities necessarily will depend upon future market and other conditions. The proceeds from such financing will be utilized to repay in part any of the contemplated Notes then outstanding.

None of the proposed Notes will be resold to the general public, and no finder's fee or other negotiation fee, commission or remuneration will be paid in connection therewith to any third person.

The proposed issuance of Notes will enable Applicant to (1) issue renewal or replacement Notes for those presently outstanding or to be outstanding on or before December 31, 1960; and (2) carry forward Applicant's current construction program, which is currently estimated to require approximately $27,800,000 for the remainder of 1959 and 1960. Of that amount approximately $13,790,000 will be required to carry forward Applicant's construction of the Snake River development, licensed by order of the Commission issued August 4, 1955, Project No. 1971, which is presently in progress. Other major items included within that amount are $4,270,000 for the 187-mile Boise Bench-Brady 230 kv transmission line; $1,170,000 for the 65-mile Oxbow-Imnaha 230 kv transmission line; $1,600,000 for substation facilities; and $4,000,000 for distribution facilities.

Written notice of the application has been given to the Idaho Public Utilities Commission, the Oregon Public Utilities Commissioner, and the Public Service Commission of Nevada, and to the Governor of each of those States. Notice of the application was also given by publication in the Federal Register on November 18, 1959 (24 F.R. 9319), stating that any person desiring to be heard or to make any protest with reference to the application should file a

*See the Commission orders approving these issuances and sales of permanent securities by Applicant in Docket Nos. E–6781, issued November 7, 14, and 21, 1957 (18 FPC 603, 630, 688); E–6802, issued March 21 and April 1, 1958 (19 FPC 354, 444); E–6830, issued July 18 and July 23, 1958 (20 FPC 54, 94); E–6840, issued September 29 and October 14, 1958 (20 FPC 437, 516); and E–6871, issued April 29, May 5, and May 13, 1959 (21 FPC 598, 636, 681).

petition or protest with the Federal Power Commission, Washington 25, D.C., on or before December 2, 1959. No protest or petition or request to be heard in opposition to the granting of the application has been received.

The Idaho Public Utilities Commission, by order dated November 18, 1959, authorized Applicant to issue $30,187,500, principal amount of Promissory Notes, "over and above the limitations applicable to Applicant under Section 61-903, Idaho Code".

The Commission finds:

(1) Applicant, a corporation, is a public utility within the meaning of Section 204 of the Federal Power Act, subject to the jurisdiction of the Commission as heretofore described and set forth in the Commission's order issued November 7, 1957, *Idaho Power Company*, Docket No. E-6781 (18 FPC 603).

(2) The proposed issuance of Promissory Notes in the aggregate principal amount of $40,000,000, all as described above, would constitute an issuance of securities within the purview of Section 204 of the Act.

(3) The proposed issuance of Promissory Notes in the aggregate principal amount of $40,000,000, all as described above, will be in excess of 5% of the par value of the other securities of Applicant, and therefore, will not be exempt by virtue of Section 204(e) from the requirements of Section 204(a) of the Act.

(4) Applicant is not organized and operating in a State, under the laws of which the security issue here involved is regulated by a State commission within the meaning of Section 204(f) of the Act; and the proposed issuance is, therefore, not exempt by virtue of that Section from the requirements of Section 204 of the Act.

(5) The proposed issuance of Promissory Notes will be exempt from the competitive bidding requirements of Section 34.1a of the Commission's Regulations under the Federal Power Act, by reason of Paragraph 34.1a(a)(2) thereof.

(6) The proposed issuance of securities, as hereinafter authorized, will be for a lawful object, within the corporate purposes of the Applicant and compatible with the public interest, which is appropriate for and consistent with the proper performance by Applicant of service as a public utility and which will not impair its ability to perform that service and is reasonably appropriate for such purposes.

(7) The period of public notice given in this matter is reasonable.

The Commission orders:

(A) The proposed issuance of Promissory Notes in the aggregate principal amount of $40,000,000 outstanding at any one time, upon the terms and conditions and for the purposes set forth in the application, all as described above, is hereby authorized, subject to the provisions of this order.

(B) This authorization is expressly conditioned upon the maturity of all Notes to be issued pursuant thereto being within one year of their respective dates of issue and the final maturity of all such Notes being not later than December 31, 1961.

(C) The foregoing authorization is without prejudice to the authority of this Commission or any other regulatory body with respect to rates, service, accounts valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States in respect of any securities to which this order relates.

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, William R. Connole, Arthur Kline and John B. Hussey.

COLUMBIA GULF TRANSMISSION COMPANY, DOCKET NO. G-19376

FINDINGS AND ORDER ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

(Issued December 28, 1959)

Columbia Gulf Transmission Company (Applicant), a Delaware corporation with its principal office in Houston, Texas, filed an application in Docket No. G-19376 on September 1, 1959, pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities subject to the jurisdiction of the Commission, all as more fully described in the application on file with the Commission.

Applicant seeks certificate authority to construct and operate an additional 10,500 horsepower compressor unit at its existing Compressor Station No. 2 near Clementsville, Kentucky, for experimental purposes. The proposed unit will consist of one 10,500 horsepower gas turbine as the prime mover of a centrifugal compressor, which will be the only remote controlled unit in the Clementsville Station. A component of the gas turbine is a modified aircraft type jet engine.

Applicant states the major advantage of this type of unit over conventional units is a substantial reduction in capital costs.

The results of the experiment may influence future installations for capacity increases and may provide valuable information to the gas industry which may enable lower costs to the consuming public.

Applicant estimates the total cost of the proposed experimental installation at $1,554,000 and has entered into an agreement, dated July 15, 1959, with the Cooper-Bessemer Corporation wherein the latter agrees to furnish, without charge, the proposed facilities and its related spare parts for use in the proposed compressor station addition during the test period of 8,000 hours or 18 months, whichever occurs first. Cooper-Bessemer has also agreed to pay Applicant the sum of $250,000 to be applied against the cost of construction. The combined contributions of Cooper-Bessemer is estimated at $1,025,000 of the total cost of the proposed installation. The cost to the Applicant is estimated at $529,000 which will cover the remaining cost of materials and labor. In addition, Applicant will furnish the normal operating and maintenance expenses of the facilities during the test period, which is estimated at $223,650 per year. If the experiment is unsuccessful, the salvage value of Applicant's materials is estimated at $379,000.

Applicant states Cooper-Bessemer will own the facilities it furnishes and Applicant will have the option (but not the obligation) to purchase these facilities during the test period at a price of $1,025,000. In the event that Applicant does not exercise its option to purchase the facilities, Cooper-Bessemer will remove the units furnished by it.

The experimental unit is not to be used to increase the capacity of Applicant's system or the daily or yearly volumes transported. If successful, it will be used as standby only and later included in any future request for facilities to increase system capacity.

Pursuant to due notice, a public hearing was held in Washington, D.C., on December 15, 1959, respecting the matters involved in and the issues presented by the application. No petition to intervene or protest to the granting of the