SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 45

FEDERAL POWER COMMISSION, PETITIONER,

vs.

COLORADO INTERSTATE GAS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUG. 30, 1954.

—7095

[fol. 1]

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 4541

Colorado Interstate Gas Company, Petitioner,

vs.

Federal Power Commission, Respondent

Petition to Review and Set Aside an Order of The Federal Power Commission—Filed October 7, 1952

To the Honorable, the Judges of said Court:

Colorado Interstate Gas Company (hereinafter sometimes referred to as "Petitioner"), being aggrieved by an order of the Federal Power Commission (hereinafter sometimes referred to as the "Commission") issued August 8, 1952, respectfully petitions this Honorable Court to review and set aside said order, and in support of its petition alleges the following:

A.

Jurisdiction and Venue

Petitioner is a corporation organized and existing under the laws of the State of Delaware. It owns and operates a transmission natural gas pipe line system extending from the Panhandle Gas Field in Texas to a point near the City of Denver in the State of Colorado, and from a point near Lakin, Kansas, to the City of Denver. Petitioner maintains its principal office and place of business at Colorado Springs, Colorado. Petitioner has been and is now a "natural-gas company" within the meaning of the Natural Gas Act.

This petition for review is filed under and pursuant to the provisions of Section 19(b) of the Natural Gas Act of June

21, 1938 (52 Stat. 831) U. S. C. Title 15, §717r, which provides in part as follows:

[fol. 2] "Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or his its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part."

Petitioner filed a Petition for Rehearing, Vacation and Modification of the Commission's order within the time required by law, to wit, on August 27, 1952. This application was denied by the Commission by order adopted and stated to be effective September 26, 1952 but issued September 29, 1952.

B.

The Nature of the Proceedings of Which Review Is Sought

The order of the Commission brought here for review is one reducing Petitioner's rates on the sale of natural gas in interstate commerce for resale. This order was issued by the Commission in its Docket G-1115 on August 8, 1952 accompanied by its Opinion No. 235 and resulted in a finding that the rates of Petitioner for the sale of natural gas in interstate commerce for resale were excessive and should be reduced by not less than $3,111,187 based upon the test year 1952.

The proceeding originally was instituted by the Commission on September 2, 1948 pursuant to Section 5 of the Natural Gas Act (15 U. S. C., §717d) to determine whether any rate, charge, service or classification observed, charged or collected by Canadian River Gas Company and Colorado Interstate Gas Company for or in connection with the transportation or sale of natural gas subject to the Commission's

jurisdiction was unjust, unreasonable, unduly discriminatory or preferential. The proceeding now is being carried on by Colorado Interstate Gas Company as the sole Petitioner since Canadian River Gas Company was merged into Colo-
[fol. 3] rado Interstate Gas Company on December 28, 1951 and the order of the Commission of which review is sought is solely against this Petitioner. Hearings were held at various sessions before a Presiding Trial Examiner of the Commission beginning October 1, 1951 and concluding on April 4, 1952. Subsequent to the filing of main briefs addressed to the Trial Examiner and on the same day that reply briefs were filed, the Commission issued an order on May 26, 1952 taking the case away from the Trial Examiner for his initial decision and requiring that the case be presented to the Commission en banc by oral argument on June 9, 1952. Although there were intervenors* in the Commission proceeding, the Commission Staff and Petitioner were the only ones who offered evidence, filed briefs or participated in the oral argument before the Commission.

Within the period of thirty days, after the issuance of the Commission's said opinion and order allowed by Section 19 of the Natural Gas Act (15 U. S. C. §717r), Petitioner on August 27, 1952 filed its Petition for Rehearing Vacation and Modification of the Commission's Order. On August 27, 1952 Petitioner also filed with the Commission a Motion for Stay of the Commission's Order issued August 8, 1952.

On September 8, 1952 Petitioner applied to this Honorable Court for a Stay Pending Review of the Rate Order of the Commission which is the subject of this review, and this Court by its order entered the same day granted a stay.

The Commission by order dated September 26, 1952 and issued September 29, 1952 denied Petitioner's Petition for Rehearing, Vacation and Modification of the Commission's

---

*The City of Denver, Colorado; the City of Colorado Springs, Colorado; Public Service Company of Colorado; Public Utilities Commission of the State of Colorado; and Natural Gas Pipeline Company of America.

Order. (A copy of this order is attached hereto as Exhibit "D")*

[fol. 4] C.

POINTS UPON WHICH PETITIONER INTENDS TO RELY

In prosecuting this review Petitioner will rely upon the following points, all of which are within the purview of the application made to the Respondent Commission for rehearing:

1. The Commission erred in the proceedings before it in denying to Petitioner due process of law to which Petitioner was entitled under the provision of the Constitution (Amendment V), the Administrative Procedure Act (5 U. S. C. §1001-1011), the Natural Gas Act (15 U. S. C. §717), and other applicable law:

a. In failing to give due and timely notice of the claims asserted against Petitioner and of the bases for the Commission's action, so as to permit Petitioner fully to meet and answer the claims, contentions and bases so put in issue. Specifically, the Commission Staff presented five cases-in-chief against Petitioner and at no time prior to the filing of the Staff's initial brief was Petitioner able to ascertain the claims which the Commission Staff were asserting against it, although, as the record will show, Petitioner diligently tried to ascertain such facts.

---

*Prior exhibits have been filed with this Court as attachments to Petitioner's Petition for Stay Pending Review of Rate Order as follows:

Exhibit A—Order of Federal Power Commission, Opinion No. 235, dated July 31, 1952, issued August 8, 1952, Docket No. G-1115.

Exhibit B—Petition of Colorado Interstate Gas Company for Rehearing, Vacation and Modification, filed with the Federal Power Commission, August 27, 1952.

Exhibit C—Motion of Colorado Interstate Gas Company for Stay, filed with the Federal Power Commission, August 27, 1952.

b. In interfering with the course of the hearings before the Commission's Trial Examiner in such manner as to deprive Petitioner of its right to a fair hearing. Specifically, the Commission interfered with the recesses granted by the Trial Examiner after said Examiner weighed all relevant facts as to the time required during recess to prepare for cross-examination of Staff witnesses by Petitioner. Further, the Commission made no findings that the time allowed by the Examiner was excessive or that he had abused his discretion in the premises but, nevertheless, in the recess period itself shortened the period of time within which Petitioner could prepare for the cross-examination of Staff witnesses and the presentation of countervailing evidence.

c. In ordering the omission of the intermediate decision procedure and taking the case from the Trial Examiner, so as to further deny to Petitioner its right to a fair hearing. The record in this case does not support such action and [fol. 5] clearly indicates that the issues of fact were sharply drawn and that the proceeding was accusatory in nature. The record also shows that important determinations of fact had to be made wherein the credibility of evidence and witnesses would be an important factor. It was, therefore, error for the Commission to take the case from the Presiding Officer who is in position to evaluate evidence in the light of demeanor of witnesses and other factors affecting credibility. The order of the Commission taking the case from the Trial Examiner was issued May 26, 1952 although dated May 23, 1952. May 26, 1952 was the date final briefs to the Examiner were due. The effect of the Commission's order of omission, therefore, was to deprive Petitioner of its right to brief and argue its cause. The effect of the Commission's action in omitting the intermediate decision procedure also deprived this Petitioner of an important portion of the record in this case.

d. In making an adjustment to the working capital allowance contrary to all of the evidence of record and without notice at any time of the fact that such adjustment was contemplated. The adjustment made by the Commission is in the amount of $139,199 because under the Commission's rationale advance collection of Federal income taxes would supply working capital in this amount. Working capital in the record was computed upon the basis used in the past by the Commission and there was no possible indication prior to the order of the Commission that any other method would be used in this case. The Commission by failing to give notice of this fact during hearing effectively deprived Petitioner of its right to introduce its own contentions in respect of such proposed adjustment either by way of showing the inadequacy of such working capital allowance or other factors which should be weighed in determining a proper working capital allowance.

2. The Commission erred in disallowing certain expenses and taxes from Petitioner's estimated 1952 cost of service upon which the Commission's rate order was based, as follows:

a. In adjusting Federal income taxes by the amount of $1,037,679 for the year 1952 by the use of a deduction for percentage depletion based upon a wellhead value of gas of [fol. 6] 5c per M.c.f.* for all of the gas produced from Petitioner's acreage in the West Panhandle Field in Texas. The Commission in so acting has improperly assumed a conclusion which must be made by another independent agency of the Federal Government. In fact, the last allowance of the Bureau of Internal Revenue in this regard was based upon a wellhead value of gas of 3.17¢ per M.c.f. Subsequent to the close of the record in this proceeding, Petitioner received a letter from the Bureau of Internal Revenue showing that the conclusion of the Commission is unwarranted at this time and noting the fact that no conclusion could be reached in respect of the wellhead value until subsequent to the end of 1952 and, further, noting that no reasonable basis for estimating such value could be made at this time. This letter was Exhibit B to Petitioner's Petition for Rehearing, Vacation and Modification of the Commission's Order in this case and is also Exhibit B to Petitioner's Petition for a Stay in this docket. Petitioner, pursuant to the rules of the Commission, proffered such evidence as a ground for modification of the order of which review is sought herein. It was error, therefore, for the Commission not to consider this

---

*1,000 cubic feet.

evidence and modify its findings so as to comport with the facts.

b. The Commission erred in reducing the cost of service for the year 1952 in the amount of $421,537 which it alleges to be a loss Petitioner will incur in the operation of gasoline extraction plants in the West Panhandle Field of Texas which loss, under the terms of a previous order entered by the Commission, Petitioner is to bear if such loss is "properly" allocable to such operations. The Commission in determining such loss acted contrary to the condition imposed upon Petitioner in said previous order. Further, in respect thereto, the Commission acted contrary to all the evidence of record and contrary to all the substantial evidence of record.

c. In disallowing $456,665 in 1952 Federal income tax allowance because of an alleged loss in hydrocarbon or gasoline extraction operations which pursuant to a condition in a previous order of the Commission was not to be considered [fol. 7] as a part of the cost of service applicable to sales by Petitioner in interstate commerce for resale. The action of the Commission in this respect constitutes a departure from all of its previous determinations as to Federal income tax allowance and has the effect of reducing the purported rate of return of 5.75%, which the Commission found to be properly the return to be allowed to Petitioner, to 5.01%.

3. The Commission erred in reducing by $431,061 the amount allowed for rate of return and in allowing Petitioner a rate of return of only 5.75% on the net investment in Petitioner's properties devoted to public service. This amount represents only the historical cost of capital of the investments made in years past, an amount unwarranted by the evidence presented. No adequate notice was given of this method of computation during the proceeding. The rate of return allowed also violates applicable judicial standards since no provision is made for the attraction of capital to the enterprise and amounts, therefore, to confiscation of Petitioner's property contrary to the Fifth Amendment to the Constitution.

4. In making its allocation of costs between sales subject to the Commission's jurisdiction and those not subject to its

jurisdiction, the Commission erred in using as a basis or factor for the spreading of the fixed or demand costs a ratio of volumes of sales which by the Commission's own action as set forth in the record in this case is impossible of accomplishment and in and of itself has the effect of attributing to the nonjurisdictional sales over $200,000 of demand costs which cannot be incurred by such class of sales because of the Commission's own action. Thus, the Commission has acted in an arbitrary, capricious and confiscatory manner and contrary to all of the evidence of record.

5. The Commission erred in prescribing the rates which Petitioner should observe by not making findings or conclusions upon which such rates could be based. Specifically, the means for determining the rates could not be ascertained without an allocation of the cost of service in detail by classes of customers conforming to the rate schedule designations indicated in the Commission's prescribed rates and the revenues determined by the application of the rates set forth in the order of which review is sought hereby by [fol. 8] classes of customers conforming to such rate schedule designations showing volumes, billing demand and the calculation of revenues. The Commission's order, therefore, lacks essential findings upon which the propriety of its rate order may be tested and without which it is impossible to determine whether or not the Commission is prescribing for the future discriminatory and unlawful rates as between classes of customers.

6. The Commission erred in using a cost formula basis for determining what Petitioner is entitled to for its activities in respect of the producton of natural gas in the West Panhandle Field of Texas in that the result of such cost formula basis is to give a net wellmouth cost allocable to gas of 1.53¢ per M.c.f. In allocating casts of the hydrocarbon or natural gasoline operations, the Commission used a 5¢ wellhead value of such gas and did likewise in determining the value of gas for percentage depletion purposes in calculating Federal income taxes. The action of the Commission in not using at least such value for determining the justness of Petitioner's rates is arbitrary, capricious, confiscatory and produces an unjust end result.

Wherefore, Colorado Interstate Gas Company, Petitioner, prays:

1. That a copy of this petition forthwith be served upon a member of the Federal Power Commission pursuant to Section 19(b) of the Natural Gas Act (15 U. S. C. §717(b)).

2. That Respondent, Federal Power Commission, be required, in conformity with said Act, to certify and file with the Court the record upon which the order now sought to be reviewed was purportedly entered along with Petitioner's Petition for Rehearing, Vacation and Modification and Motion for Stay of the Commission's Order.

3. That the Court review the order of the Federal Power Commission issued August 8, 1952, the findings and conclusions of the Commission included therein and upon such review reverse, vacate, set aside and hold said order for naught.

[fol. 9] 4. That this Court grant to Petitioner such other and further relief in the premises as the rights and equities of the cause may require.

Respectfully submitted, Colorado Interstate Gas Company, By James Lawrence White, Its Attorney.

[Exhibit D, opinion and order on application for rehearing, is printed at page 188.]

[fol. 10] Before the Federal Power Commission

In the Matters of Canadian River Gas Company and Colorado Interstate Gas Company. Docket No. G-1115.

Pages 1 to 4086 of the certified typewritten record consisting of testimony, oral argument, exhibits, and items by reference, are printed at pages 206 to 592.

Order Instituting Rate Investigation—Issued September

Before Commissioners: Nelson Lee Smith, Chairman; Thomas C. Buchanan, Claude L. Draper, Leland Olds and Harrington Wimberly. September 2, 1948.

It appearing to the Commission that:

(a) Canadian River Gas Company (Canadian River) owns and operates a natural-gas transmission pipeline system extending from the Panhandle gas field in Texas to a point near Clayton, New Mexico, and is engaged in the transportation and sale of natural gas for resale in interstate commerce and is a "natural-gas company" within the meaning of the Natural Gas Act, as amended as heretofore found by the Commission in its order of March 18, 1942, in Docket Nos. G-118, G-121 and G-124 (3 FPC 66-68);

(b) Colorado Interstate Gas Company (Colorado Interstate) owns and operates a natural-gas transmission pipeline system extending from a point near Clayton, New Mexico, to Denver, Colorado. Colorado Interstate purchases natural gas from Canadian River at said point of commencement of its main pipeline and also at a point near [fol. 11] Gray, Oklahoma, purchases additional natural gas from producers in the Kansas-Hugoton field, and transports and sells said natural gas for resale in interstate commerce, and is therefore a "natural-gas company" within the meaning of the Natural Gas Act, as amended, as heretofore found by the Commission in its order of March 18, 1942, in Docket Nos. G-118, G-121 and G-124 (3 FPC 69-71);

(c) On the basis of data available to the Commission, the rates, charges, services or classifications for *on* in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission by Canadian River and Colorado Interstate may be unjust, unreasonable, unduly discriminatory or preferential.

The Commission finds that:

It is necessary and proper in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act, that an investigation be instituted by the Commission into and concerning any rate, charge, service or classification, demanded, observed, charged or collected by Canadian River Gas Company and Colorado Interstate Gas Company, for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and any rule, regulation, practice, or contract affecting such rate, charge, service or classification.

The Commission, on its own motion, orders that:

An investigation be and it hereby is instituted for the purpose of enabling the Commission:

(A) To determine whether any rate, charge, service, or classification demanded, observed, charged or collected by Canadian River Gas Company and Colorado Interstate Gas Company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission or any rule, regulation, practice or contract affecting such rate, charge, service, or classification, is unjust, unreasonable, unduly discriminatory or preferential;
[fols. 12-19] (B) If, after hearing, it shall find that any such rates, charges, services, classifications, rules, regulations, practices or contracts are unjust, unreasonable, unduly discriminatory or preferential, to determine and fix by appropriate order or orders, just, reasonable, non-discriminatory or non-preferential rates, charges, services, classifications, rules, regulations, practices or contracts to be thereafter observed and in force.

By the Commission.

J. H. Gutride, Acting Secretary.

[fol. 20] Before the Federal Power Commission

Extract from a Meeting of the Federal Power Commission Held October 1, 1951

The Commission considered the appeal of staff counsel, at the hearing in the matter of Colorado Interstate Gas Company and Canadian River Gas Company, Docket No. G-1115, on October 1, 1951, from the ruling of the Presiding Examiner that the staff had the burden of proof and of going forward with the testimony, and sustained the ruling of the Presiding Examiner.

Leon M. Fuquay, Secretary.

Before the Federal Power Commission

Motion for Finding That Staff Has Failed to Meet the Burden of Proof and for Order Closing the Docket—Filed November

To the Honorable Emery J. Woodall, Presiding Examiner:

Comes now Colorado Interstate Gas Company and Cana-[fol. 21] dian River Gas Company, by their counsel, and hereby request the Presiding Examiner to certify forthwith to the Commission, pursuant to Section 1.12(d) of the Commission's Rules of Practice and Procedure, the following motion:

Motion is hereby made, in the nature of a demurrer to the evidence, for a finding that the Staff of the Commission has failed to produce evidence at the hearings in this docket held on October 1, 2 and 3, 1951, which would indicate or establish a prima facie case that the rates or charges collected by Colorado Interstate Gas Company (Colorado) and Canadian River Gas Company (Canadian) are unlawful, unreasonable, unjust, discriminatory or otherwise contravene the provisions of the Natural Gas Act (15 U.S.C. § 717 et seq.); and for an order closing the above docket.

Grounds Relied Upon

In view of the fact that the Staff has rested its case and no more evidence in support of a contention that said rates and charges are unlawful can now be made, it is proper for the Examiner and the Commission to consider the question of law as to whether or not, assuming all the facts asserted by the Staff to be true, a valid order of the Commission could issue holding the rates of Colorado and Canadian to be unlawful in any respect.

The rates and charges of both companies which are under investigation in this docket were those previously set by this Commission and incorporated in the FPC Gas Tariff Original Volume No. 1 of Canadian (Item D) and the FPC Gas Tariff Original Volumes 1 and 2 of Colorado (Item E). In view of this fact the previous action of the Commission was legislative in nature and now to attack the rates and charges it is necessary to bear in mind that any action of the Commission setting rates other than those presently charged would have to be legislative in nature. There can be no dispute that under the provisions of the Natural Gas Act this Commission has authority anly to fix rates for the future (Federal Power Commission v. Hope Natural Gas Company, 320 U. S. 591, 618), and its findings must be supported by substantial evidence (Natural Gas Act, § 19(b), 15 U.S.C. § 717r(b)). It is submitted that there is no sub- [fol. 22] stantial evidence in this record which would indicate that for the future the rates and charges of Canadian and Colorado are unlawful. This is so because the Staff's case is bottomed completely upon investment and other book figures of both companies as of June 30, 1951, and utterly fails to take into consideration any adjustments to the chosen period because of added investment already authorized and made. As a matter of fact, the Staff utterly ignored all the facts of the merger of Colorado and Canadian as dealt with the Docket No. G-1326 except for the use of a depletion allowance inapplicable to their period and for a purported loss on gasoline operations (Exhibit 1). Both of these items which were considered by the Commission Staff were ones which serve to reduce the cost of service and thus to inflate alleged excess revenues based upon a test period otherwise using book figures for the year ending June 30, 1951. As Staff Counsel put it:

We have not included the new facilities, and we are perfectly willing to let the Commission determine rates which we say as a matter of law the Commission can determine for the future without including these new facilities. I think that is simple enough." (Tr. p. 278.)

We submit to the Examiner and to the Commission that at this posture of the case there is nothing in the record to indicate the cost of rendering the service to the customers of Canadian and Colorado in the future. It becomes obvious that the failure of the Staff to reflect back into its test year period the elements of the cost of service which are pertinent in the immediate future or to select a test period which would include such elements of cost amounts to an utter failure of its case. This Commission, it is submitted, cannot lawfully legislate new rates by adopting an order for a future period without finding and grounding those rates upon the cost of all the useful property and other cost elements that the Company will then have in service or will incur. The Commission certainly must have had this very fact in mind when it adopted its opinion in Docket No. G-1326, for there is stated:

[fol. 23] "Now that the acquisition by Colorado of the Canadian properties has been authorized and the future pattern of operation settled, it is appropriate that our rate investigation should be brought to a speedy conclusion. In our order issued March 1, 1951, we required Colorado, within four months of that date, to report to us the completion of the acquisition, the commencement of operation by it of facilities acquired, and proof of dissolution of Canadian. Therefore, we have, by order entered today, fixed the date of hearing in the rate case for August 1, 1951, which is one month after the required date for such report."

It is submitted that Colorado and Canadian can make this motion without prejudice to their rights to offer evidence in the event this motion is not granted. Analogy is hereby drawn to Rule 41(b) of the Rules of Civil Procedure for the District Courts of the United States. It is appropriate on this basis for the Commission forthwith to determine the issue posed by this motion and to grant the same immediately so that further expense will not be incurred.

Counsel for Colorado and Canadian are filing this motion only after a deliberate study of the record in this case. It is not filed for any purpose of delay but only for the expeditious determination of a needless controversy. To summarize the whole issue presented hereby, it need only be stated that the Commission Staff has closed its eyes to that used and useful property and to other elements of the cost of service which must be pertinent to this rate inquiry.

Wherefore it is requested that the motion herein made be granted.

Respectfully submitted, Colorado Interstate Gas Company, by James Lawrence White, Counsel. Canadian River Gas Company, by Charles E. McGee, Counsel.

[fol. 24] BEFORE THE FEDERAL POWER COMMISSION

MOTION FOR FINDING THAT STAFF HAS FAILED TO SHOW A CASE, FOR ORDER CLOSING DOCKET AND FOR ORAL ARGUMENT BEFORE COMMISSION EN BANC—Filed November 15, 1951

To The Honorable Emery J. Woodall, Presiding Examiner:

Comes now, Colorado Interstate Gas Company and Canadian River Gas Company, by their counsel, and hereby request the Presiding Examiner to certify forthwith to the Commission, pursuant to Section 1.12(d) of the Commission's Rules of Practice and Procedure, the following motion. Colorado Interstate Gas Company and Canadian River Gas Company hereby move for the following final determinations upon this record:

1. For a finding that the Staff of the Commission has failed to show any purported facts supported by reliable, probative and substantial evidence indicating that the *movents'* rates to be charged for the future are in anywise in violation of the Natural Gas Act;

2. For a finding that the Staff, contrary to law, specifically the Administrative Procedure Act, has failed to notify movants of either the terms or substance of its proposed rate or to describe the actual subjects and issues involved; and

3. For an order closing this docket for either or both of the grounds set forth in "1" and "2" above.

Grounds Relied Upon.

I.

The Staff's Failure to Make a Case.

[fol. 25] The Commission under the Natural Gas Act Section 19(b) (15 U.S.C. 717r(b)) must act upon substantial evidence which by virtue of Section 7 (c) of the Administrative Procedure Act must also be reliable and of probative value. If all the alleged facts supported by evidence of this character submitted on behalf of the staff are taken to be true, as it should be for the purposes of this motion, the Commission still does not have available to it such material as would enable it to make valid findings and premise a valid rate order.

A. Requirements for a Valid Rate Order.

The Commission has heretofore fixed the presently effective rates of both companies and any rate order now to be entered can only be prospective in effect (federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591, 618). Since only the future rates can be the issue here, the prime question immediately is whether the Staff has shown that the rate structure violates the terms of the Natural Gas Act. We submit that the implements for a decision on this question are missing. Assume for the purposes of this part of the motion that there is a proper rate base determination, proper adjusted revenues and expenses, and proper rate of return, it is obvious that these mean nothing unless they are reduced to an appropriate cost of service and the component costs are spread or allocated to the jurisdictional and the non-jurisdictional business. At the further hearings in this proceeding held on November 6 and 8, 1951, this was not done although the Staff was permitted to reopen and present in effect another direct case (Tr. 289) apparently to overcome some of the objections raised by the movants in their prior motion.

B. There is no Allocation of Costs.

The Commission from the previous rate case involving these companies to the present has determined that the proper allocation basis for rate making purposes is an allocation of costs. This approach has been sustained by the highest authority. We do not understand that the Commission intends to change this approach in this case. The [fol. 26] Staff, however, has not introduced any allocation of costs except for the original test period for the year July 1, 1950, through June 30, 1951 (Exhibit 10), a period which, from the record as a whole, it now appears the Staff has abandoned (Tr. 328-332).* We now have what is designated as an "allocation of excess earnings" (Exhibit 18). What Mr. French has done is to take from Exhibit 13 certain purported excess revenues (Tr. 320-321) for 1951, 1952 and 1953. These so-called excess revenues were then spread among classes of customers on the same basis he used in Exhibit 10 for spreading costs (Tr. 320). He freely admitted that he made no allocation of costs (Tr. 320). Therefore, Mr. French has assumed or would have this Commission assume that every item in the cost of service will be precisely proportional to every comparable item in his Exhibit 10 which related to the year ending June 30, 1951. Neither the witness French nor any witness has shown that this would be the case. It defies all common sense that such would be the case. No finding of this Commission could be based upon such a non-existent foundation.

It is interesting to note that the so-called excess revenues shown in Exhibit 13, which were the basic figures (the Staff, however, calculated its own income tax, working capital and assumed loss of gasoline operations (Tr. 295-299)), used by Mr. French in his novel Exhibit 18, were in turn based upon estimated figures provided by the companies in a certificate application filed April 24, 1951 in Docket No. G-1677. However, such estimated figures are criticized by the Staff as not being comparable to either the Staff's estimated figures, the figures prepared in an earlier certificate proceeding (Docket No. G-1326), or certain actual figures of the companies for a period ending five months subsequent to the filing in April, 1951 of the G-1677 application (Exhs. 14, 15, 16, Tr. 301-315). Nevertheless, the witness French used the so-called excess revenues of Exhibit 13 as the basis for Exhibit 18.

[fol. 27] To analyze this approach further and really to sum it up, there is here no method for determining whether

* Although we have referred only to certain pages of the transcript in connection with this motion, an examination of the 59 pages of the transcript of hearing of November 8, 1951, as well as Exhibits 13 through 18, will provide positive proof of our assertion that the record provides no basis for a rate order.

these excess revenues will be allocable in the future to the regulable business. The entire excess can as well be applicable to the direct rates—and the resale gas may even show a deficiency.

The study contained in Exhibit 18 is subject to the very same condemnation which this Commission once leveled at movants: "Nowhere in the entire evidence submitted . . . is there a complete presentation of the entire operations of the company broken down between jurisdictional and non-jurisdictional operations" (3 F.P.C. 32 at 62). Oddly, Exhibit 10 required 13 tables to data comprising 32 pages (exclusive of descriptive narration) to make up an allocation of cost of service study. Aside from the straight commodity allocation all other data was required to support the so-called "commodity-demand" method recommended by Mr. French (Tr. 182). There is no background data or working papers for the single page Exhibit 18 (Tr. 320).

C. No Rate Can Be Constructed from Staff Evidence.

If the revised cost of service exhibit (Exhibit 13) and the so-called allocation exhibit (Exhibit 18) are to be treated seriously, no two-part rate (i. e., with a demand component and a commodity component) can possibly be constructed. The movant Colorado Interstate Gas Company has such a rate (Item E). The Staff in its first direct case constructed such a rate for the merged company (Exhibit 12) based upon the allocated cost of service shown in French Exhibit 10 (Tr. 215-216). Significantly, no rate designed by the Staff has been submitted in this second shot at a direct case. The reason, of course, is apparent—no such rate can be devised under the method used by Mr. French in Exhibit 18.

D. The Staff's Position Is Now the Same as When It Closed Its First Direct Case.

Looking at this record as a whole and realizing that no [fol. 28] allocation of the cost of service has been made in this second chance to meet its burden of proof, it is evident that if the case is to be sustained it must be on the basis of its previous status, namely, the full performance of the function of showing all rate determinants in per book as of the year ending June 30, 1951. That case, however, is fatally deficient as a matter of law. This is so because the Staff's case is bottomed completely upon investment and other book figures of both companies as of June 30, 1951, and utterly fails to take into consideration any adjustments to the chosen period because of added investment already authorized and made. As a matter of fact, the Staff utterly ignored all the facts of the merger of Colorado and Canadian as dealt with in Docket No. G-1326 except for the use of a depletion allowance inapplicable to their period and for a purported loss on gasoline operations (Exhibit 1). Both of these items which were considered by the Commission Staff were ones which serve to reduce the cost of service and thus to inflate alleged excess revenues based upon a test period otherwise using book figures for the year ending June 30, 1951. As Staff Counsel put it:

"We have not included the new facilities, and we are perfectly willing to let the Commission determine rates which we say as a matter of law the Commission can determine for the future without including these new facilities. I think that is simple enough." (Tr. 278.)

In an attempt to perform the impossible task of rationalizing the evidence presented by the Staff, the Examiner and company counsel inquired if the Staff's test year as shown in the first direct case was abandoned (Tr. 327-328; 331). In answer to this inquiry, Staff counsel stated: "Well, our answer is we are not standing on anything, except all the evidence that has gone in" (Tr. 331). The Examiner pursued the subject and asked what relationship there was between Exhibits 13 through 18 and those presented at the first direct case (Tr. 329). Staff counsel stated that the question could be answered two ways and that, therefore, "* * * we are not going to recommend anything" (Tr. 330). Where all this leaves us we do not know.

[fol. 29]

II.

Lack of Due Process of Law.

The Administrative Procedure Act, which was remedial legislation of the most organic nature, requires "either the terms or substance of the proposed rule (which by definition 2(c) relates to rates for the future) or a description of the subjects and issues involved'' (Administrative Procedure Act 4(a)(3)). Certainly in the present posture of the case no rate is proposed nor, in view of this statement by Staff counsel that:

''Our position as to the use of this material is as follows, Mr. Examiner. You can do it either way Your Honor suggested, use this new material to adjust the figures for the actual, (the first direct case) or you can do the reverse, you can use this new material and adjust that by the actual, and frankly we have not made up our minds which is the approach. Obviously, it is either one of the two, and we are not in a position to say which is the method that should be followed.'' (Tr. 330.)

is there any notice of anything. There certainly has not been disclosed to anyone what the test period is. Is it the year ending June 30, 1951 (Exhibits 1-12), or any, or all, or an average of 1951, 1952, 1953 (Exhibits 13 and 18)?

In effect the Staff has tried to mend their obviously defective case but analysis will disclose that it is now more procedurally and substantively defective than it was before. To the lack of basis for fixing future rates there now has been added the additional defect of lack of reasonable notice.

III.

The movants, in filing this motion, do so only after a careful and deliberate study of the ''evidence'' submitted in the Staff's two cases and is presented in order to expedite a determination of an apparently needless controversy and to save all parties further unnecessary expense.

We are of the view that it would be in the public interest [fol. 30] to grant the within motion. It is obvious that by reason of the fact that there has been no experience factor with respect to the companies as merged and because of changing economic conditions, it is difficult to fairly and reasonably present a Section 5(a) rate case at this time. We have heretofore on various occasions represented to the Commission that when Colorado Interstate Gas Company and Canadian River Gas Company are actually merged and needed property installed and operated that there might be some slight excess revenues on the basis of established precedent. We again repeat that statement.

Frankly, the Staff is faced with a rather difficult situation and we believe that the only proper thing to do is to close this docket and review the merged company's operations a year or so hence.

Wherefore, movants pray that this Commission forthwith grant the motion hereinabove made or fix a hearing before the Commission sitting en banc for the purpose of hearing oral arguments on the issues presented, and for such other and further relief as may be just and proper.

Respectfully submitted, Colorado Interstate Gas Company, By James Lawrence White, Its Counsel. Canadian River Gas Company, By Charles E. McGee, Its Counsel.

BEFORE THE FEDERAL POWER COMMISSION

NOTICE OF CONTINUANCE OF HEARING—November 21, 1951

[fol. 31] Because of the pendency before the Commission of a motion filed by the above-named companies, and the unlikelihood that determination on that matter can be had before November 27, 1951, the date fixed for hearing, notice is hereby given that this hearing is continued from November 27, 1951, to a date to be fixed by further order of the Commission.

Emery J. Woodall, Presiding Examiner.

BEFORE THE FEDERAL POWER COMMISSION

ORDER RECONVENING HEARING—November 30, 1951

On November 15, 1951, Colorado Interstate Gas Company and Canadian River Gas Company (hereinafter referred to as the companies) filed a motion for a finding that Staff has failed to show a case and requested oral argument before the Commission on said motion.

On November 26, 1951, Staff Counsel filed an answer to said motion of the companies.

The companies have reserved the right to cross-examine Staff's witnesses and to offer their own testimony.

The Commission finds:

(1) A majority of the Commission not voting in favor of the request for oral argument on the motion, it is not granted.

(2) It would be in the public interest to conclude the hearings in this matter with all reasonable dispatch.

The Commission orders:

(A) Decision on the motion filed by the companies on November 15, 1951, be and the same is hereby reserved.

(B) The public hearing in this proceeding reconvene to commence on December 10, 1951, at 10:00 A.M. (EST), in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue, N. W., Washington, D. C.

(C) At said hearing, the companies shall be prepared to proceed with the cross-examination of Staff's witnesses and the presentation of their direct evidence.

[fol. 32] (D) Interested State Commissions may participate as provided by Sections 1.8 and 1.37(f) [18 CFR 1.8 and 1.37(f)] of the Commission's Rules of Practice and Procedure.

By the Commission.

Leon M. Fuquay, Secretary.

Before the Federal Power Commission

Motion to Continue Hearing.—Filed February 1, 1952

Staff Counsel moves that the hearing in the above-docketed proceeding be continued from February 6, 1952, the date heretofore fixed by the Presiding Examiner to February 18, 1952.

As reason for said continuance, Staff Counsel states that Mr. Frank S. French, a Staff witness who has testified in this proceeding and who is to offer rebuttal testimony on behalf of the Staff, suffered a fractured arm and other personal injuries as the result of an accident in December 1951; that said Mr. Frank S. French has not been able to return to his duties since the accident; that up until the filing of this motion it was reasonably believed that Mr. Frank S. French would be sufficiently well to return to his duties and testify in this proceeding on February 6, 1952; that it now appears that Mr. Frank S. French will not be able to return to his duties on February 6, 1952; but that it is now expected he will be able to return by February 18, 1952.

Staff Counsel has informed James L. White, Esquire, Counsel for Colorado Interstate Gas Company of the request for said continuance, and counsel offers no objection to Staff Counsel's request.

Jacob Goldberg, Staff Counsel.

[fol. 33] BEFORE THE FEDERAL POWER COMMISSION

NOTICE OF CONTINUANCE OF HEARING.—February 1, 1952

Upon consideration of the Motion of Staff Counsel filed February 1, 1952, notice is hereby given that the hearing in the above-designated matter, now scheduled for February 6, 1952, be and it is hereby continued to February 18, 1952, at 10:00 a.m., in the Commission's Hearing Room, at 1800 Pennsylvania Avenue, N. W., Washington, D. C.

Leon M. Fuquay, Secretary.

BEFORE THE FEDERAL POWER COMMISSION

APPEAL FROM RULING OF PRESIDING EXAMINER—Received February 26, 1952

Staff Counsel appeals from the ruling of the Presiding Examiner granting to Colorado Interstate Gas Company (Colorado Interstate) a recess of the hearings herein for a period of six weeks, from February 20, 1952 to April 8, 1952 (T. 1229). Colorado Interstate requested a continuance of at least eight weeks to prepare for the cross-examination of Staff's rebuttal testimony and such sur-rebuttal as it deems requisite (T. 1218). Staff Counsel objected to such a continuance (T. 1220), and recommended one week as sufficient for Colorado Interstate's purposes.

This proceeding was instituted by Commission order on September 2, 1948. Hearings commenced on October 1, 1951 (postponed from August 1, 1951 at the request of Colorado Interstate), at which time Staff went forward first and presented its cost-of-service study and allied studies based on the actual experience of the Company for the test year ending June 30, 1951. Thereafter, Colorado Interstate was granted a month's recess to prepare for cross-examination [fol. 34] of Staff's witnesses. Four days prior to the reconvening of the hearing, Colorado Interstate filed a motion for a finding that Staff had failed to sustain the burden, on the ground that the test year did not include facilities to be placed in operation in 1952 and at the same time, Colorado Interstate asked for a continuance pending the disposition of the motion. Thereafter, on November 8, 1951, Staff introduced evidence of future operations of the company, based on estimates submitted by Colorado Interstate in an application for a certificate of public convenience and necessity filed by Colorado Interstate at Docket No. G-1677.

After the conclusion of this testimony on November 8, 1951, the hearing examiner continued the hearing to November 27, 1951.* In the meantime, Colorado Interstate filed its second motion for a finding that Staff had failed to sustain the burden, and because of the pendency of this filing the Presiding Examiner continued the matter generally.

By order of November 30, 1951, the Commission reserved ruling on this second motion and found that it was in the public interest that the hearing in this rate proceeding should be concluded with all reasonable dispatch, and ordered Colorado Interstate to be prepared to cross-examine

---

* This action was taken at the request of Colorado Interstate (T. 335).

Staff's witnesses and to present its own direct testimony on December 10, 1951. A motion filed by Colorado Interstate on December 6, 1951 to continue the hearing beyond December 10, 1951 was denied.

Colorado Interstate cross-examined all of the Staff's witnesses (except for one small phase of Staff Witness Frank French), and introduced its direct case-in-chief. At the request of Staff Counsel, a continuance of seven weeks was granted (the Christmas holidays intervening). Thereafter, Staff requested an additional 12 days because Staff Witness French had become incapacitated due to an accident.

On February 18, 1952, Staff concluded cross-examination of Colorado Interstate's witnesses and offered its rebuttal [fol. 35] testimony based entirely on the direct testimony introduced by Colorado Interstate. It is on the action of the Presiding Examiner granting Colorado Interstate a six weeks continuance following this stage of the proceeding from which this appeal is taken.

The history of these proceedings shows that any further delay in the rendering of a final decision is contrary to the public interest. The Commission noted this fact in its opinion at Docket No. G-1326 approving the merger of Colorado Interstate and Canadian River when it said,

> "Now that the acquisition by Colorado of the Canadian properties has been authorized and the future pattern of operation settled, it is appropriate that our rate investigation should be brought to a speedy conclusion."

Similarly, the Commission found in its order of November 30, 1951 in this proceeding,

> "It would be in the public interest to conclude the hearings in this matter with all reasonable dispatch."

Turning to the background against which the action of the presiding Examiner must be measured, we find that Colorado Interstate has already cross-examined Staff's witnesses on all the evidence presented by Staff save for the rebuttal testimony. In this connection, it may be well to examine the nature and content of Staff's rebuttal testimony. Staff accepted Colorado Interstate's Cost of Service study for 1952 (Exhibit 21). It made six adjustments thereto:

(1) Adjusted the rate of return from 6½% to 6%, using the same average net plant balances which the Company used.

(2) Adjusted the depletion allowance for tax purposes using a well head value of 5 cents, rather than the Company's 3.17 cents value, but based on the same volume of gas.

(3) Adjusted the annual depreciation allowance to conform to the service lives recommended by the Staff in its earlier exhibit in this proceeding.

[fol. 36] (4) Adjusted the cost-of-service to reflect the loss on the gasoline operations resulting from the giving up by Colorado Interstate of the gasoline revenues as provided in the merger agreement. The allocation of well mouth and gathering costs to the gasoline was done exactly in the same manner as in Staff's previous exhibit.

(5) Adjusted rate case expense by eliminating two items.

(6) Adjusted the Federal and State Income Tax liability resulting from the five above adjustments.*

Staff cannot conceive that any extended time is necessary to prepare for cross-examination of adjustment (1). It is not a question of rate of return testimony, but merely the mechanics of using one rate of return as against another. The same Staff witness who sponsored Exhibit 26 sponsored the corresponding exhibit (Exhibit 1) for the test year ending June 30, 1951 and was cross-examined on the use of the 6% figure in Exhibit 1.

Concerning adjustment (2) the 5 cents wellhead value was used by the Staff witness in assessing the depletion allowance in Exhibit 1 and he was cross-examined on this point. He has already fully and completely given his reasons for using the 5 cent figure. It was the 5 cent figure sponsored by the company on which the Commission measured the

---

* All of Staff's proposed rebuttal exhibits were supplied to the Company at the opening of the session on February 18, 1952, prior to cross-examination of the Company's witnesses (T. 939).

benefit of the merger to Colorado Interstate at Docket No. G-1326, and which Colorado Interstate now seeks to repudiate.

As to adjustment (3) (the depreciation allowance), an adjustment to the company's allowance for depreciation was necessary in order to conform to the service lives recommended by the Staff engineer and used in Exhibit 1. The Staff engineer has been cross-examined on his recommended service lives. The Staff engineer did make one addition to his recommendation—the use of a 4 per cent allowance rather than the company's 4.65 per cent on certain of the [fol. 37] new facilities. But no extended time is necessary to prepare for cross-examination of this one point.

As to adjustment (4) (the loss on gasoline operations), the mechanics and method of allocating the well mouth and gathering costs to the gasoline was exactly the same as in Exhibit 1, on which the Staff's witness has been cross-examined. Staff used all the figures and work sheets of Company Exhibit 21, the cost-of-service study introduced by the company. Staff witness has already been cross-examined on the method and reasons for making this allocation. Surely, the task of checking the figures used by Staff witness should not take more than a few days.

In adjustment (5), Staff adjusted the Company's claim for rate case expense by rejecting the fee of $10,000 paid to Mr. D. Houlihan for testifying in Docket No. G-1326, because it is non-recurring item. Further, the Company claimed rate case expense of $210,000 for this proceeding to be amortized over a three-year period. It was admitted by the Company that the figure of $210,000 included possible court review of this proceeding (T. 864). The Staff accountant found from the Company's work sheets that $95,000 was estimated as court review expense. He rejected this amount and recommended that the balance be amortized over 5 years rather than 3 years. This adjustment does not involve any complicated features requiring an extended preparation for cross-examination.

Staff adjustment (6) is the mechanical adjustment to Federal and State Income Taxes necessitated by the previous adjustments. The mathematical method of making adjustments to income tax liability was explained in previous Staff exhibits. As a matter of fact, the mechanics of the tax adjustments involved here were discussed with the company representatives a month prior to the present hearing (T. 1113). The recomputation of the income tax liability due to the previous adjustments is simply a mechanical detail requiring very little time to check and no new principles are involved here.

Staff Exhibit 27 offered in rebuttal is merely a mathematical breakdown of the average peak-day volume and [fol. 38] revenues, broken down between classes of service, taken from Company's Exhibit 23, and supporting working papers. The figures shown in Staff Exhibit 27 together with Staff's working papers were supplied to the company representatives about a month prior to the hearing (T. 1179).

Staff Exhibit 28 offered in rebuttal by Staff witness French is an allocation study based on Staff's Exhibit 26. Except for different dollar amounts necessarily resulting from a different test year, it is identical in every respect as to method, theory and mechanics with a comparable exhibit (Exhibit 10) for the test year ending June 30, 1951, as to which this witness has been completely cross-examined. This witness stated that Exhibit 28 could be worked out by anyone using the basic figures of Exhibit 26 and the method employed in Exhibit 10 (T. 1206). Surely no extended time is necessary for the purely mechanical task of checking his figures. *

One further fact should be noted. This is a proceeding instituted under Section 5 of the Natural Gas Act. No bond is filed pending its determination. If a rate reduction is in order, and Staff's evidence indicates that the excess of jurisdictional revenues is between 2 and 3 million dollars, every day's delay means that the consumer pays excess revenues without possible redress. The consumer is also

---

* Witness Goubleman for the Staff offered two statistical charts to rebut two statements of Company witness Merill. These charts are one page each, representing figures taken from recognized financial publications. As a matter of fact, the company waived cross-examination of Goubleman's prior direct testimony.

entitled to his measure of due process, including a prompt disposition of this proceeding.

It appears that the Presiding Examiner was guided by the length of time required by the Staff to prepare for cross-examination and to prepare its rebuttal testimony (T. 1224). Aside from the fact that the Christmas holidays intervened and the time necessary for the Staff to travel to and from Colorado Springs, Colorado, the Staff first had to analyze and review the company's exhibits and work papers before reaching the determination to accept them, subject to the ad-[fol. 39] justments, and then work out the adjustments. But no such problem is before the company now because it has only to check the six Staff adjustments. The time required by the Staff is no measure of the time required by the company because the issues are much narrower now.

In conclusion then, it is submitted that considering the length of time this proceeding has been pending, and the nature of Staff's rebuttal evidence which was of very limited and narrow scope, the ruling of the Presiding Examiner should be reversed and the hearing reconvened not later than March 4, 1952 for the conclusion of the hearings herein.

Respectfully submitted, Jacob Goldberg, Staff Counsel.

Before the Federal Power Commission

Answer to Staff Appeal From Ruling of Presiding Examiner.—Received February 29, 1952

Colorado Interstate Gas Company ("Colorado") makes answer to the appeal filed in the above matter as follows:

1. The statements and grounds for such appeal are misleading half-truths as appears from the following:

(a) Staff Counsel neglects to show that on his own motion the proceedings were delayed on November 6, 1951 to put in additional evidence which the Staff could have produced on October 1, 1951, the day hearings commenced.

(b) Staff Counsel speaks of evidence produced by the Staff on February 19 and 20, 1952 as "rebuttal," whereas in fact, the record clearly indicates that under the guise of "rebuttal" the Staff is seeking to put in still another substantive case-in-chief. This is quite obvious from the fact that Staff Counsel and Staff witnesses contend that the latest exhibits could be used by the Commission, along with all [fol. 40] other evidence in the case, to set rates. Therefore, the evidence is not in answer of or rebuttal to Colorado's cost of service evidence as Staff Counsel would have the Commission believe (Tr. pp. 1085, 1086, 1093, 1143-1145, 1180-1187, 1205-1206).

(c) It is indicated in the appeal that Colorado would have to prepare cross-examination only upon certain simple adjustments. What the appeal does not indicate is that in Exhibit 26, an accounting witness for the Staff has reclassified in six schedules a total of $17,916,022 of costs differently from Colorado. This breakdown of costs on a functional basis must be examined in great detail since it is a Staff endeavor and Colorado cannot risk its propriety or accuracy. Examination of the Staff exhibits will show further detail requiring thorough examination of these exhibits and work papers.

(d) Staff Counsel neglects to state that there is an allocation of costs (Exh. 28) introduced ostensibly as "rebuttal" evidence even though no such allocation study made up a part of Colorado's case-in-chief. What is more important is the fact that the Staff for the first time is seeking to spread demand costs in its fifth recommended allocation study (there is one in Exh. 10, three in Exh. 18 and one in Exh. 28) on a so-called "normal peak day" which is not a day of actual experience. Grave questions arise here and must be thoroughly tested by the process of adequately prepared cross-examination and proper countervailing evidence.

(e) The Staff would have this Commission believe that Mr. French's disability was the only reason for the two full months the Staff had for preparation. If such was the case, why did the Staff wait until the day hearings resumed on February 18, 1952 to serve its so-called rebuttal exhibits on Colorado? If the Staff, in good faith, desires expedition, these exhibits should have been served on Colorado well in advance of February 18, 1952.

(f) The Staff (both Counsel and witnesses) have refused to tell which of the five bases of fixing rates in this record they are advocating. Instead they indicate that the hodge- [fol. 41] podge of five periods can be used separately or together. Since any one of five methods plus the hodge-podge thereof can be used according to the Staff, Colorado now has, in effect, six cases against it which it must answer.

(g) Staff Counsel indicates that Staff witnesses already have been cross-examined on the principles involved. Even if Staff Counsel believed this to be so, Colorado cannot be denied, on his say-so alone, of the opportunity to see whether this is so or not. Even if this were so, and Colorado denies that it is, the Staff is dealing with many millions of dollars which have been reclassified, adjusted and allocated. Drastic things had to be done in great detail to raise an indicated excess over-all revenue from $46,510 (Colorado's Exh. 21) to $3,296,026 (Staff Exh. 26).

(h) Staff Counsel neglects to point out that Colorado was willing to conduct cross-examination beginning on March 17, 1952 but after objection of Staff Counsel to this earlier date and because of the necessity of Staff and Company men traveling it was felt that it would be more economical to have cross-examination and further evidence from Colorado at one group of hearing days, and in furtherance of this plan Colorado proposed to start one day earlier than that set so as to save possibly holding witnesses over a weekend (Tr. pp. 1224-1225, 1228-1229). Staff Counsel was apparently willing to have April 2, 1952 set as a reconvening date (Tr. p. 1227) but this conflicted with an engagement of Counsel in the United States Court of Appeals and, therefore, April 8, 1952 was set (Tr. p. 1227).

2. Staff Counsel would have this Commission believe that Colorado is seeking to delay this rate case. Examination of the record will show that the Stuff, rather than Colorado, is responsible. The Staff has set the pace and, after three years in which to prepare, but in its case in October, 1951. Whatever the reason, the Staff found it necessary to put in a new or cumulative case involving three possible test periods in November, 1951. On February 19 and 20, 1952 it put in still another case. If the Staff would originally or [fol. 42] even after the second attempt have had a case

upon which it was willing to rely, these hearings would be over.

3. The time granted is the shortest reasonable time, consistent with due process of law, that the Examiner could set under the circumstances (Tr. pp. 1227-1229). He was the judge of the facts involved on that question. To analyze the matter for the Commission, the Examiner held: "It is my definite conclusion that any time short of April 2 would not be reasonably adequate." (Tr. p. 1227.) It was then pointed out that Counsel had a conflicting engagement in the United States Court of Appeals in New Orleans arising because of a motion of the Commission's Associate General Counsel. April 8, 1952 was then determined by the Examiner.

Examination of the record will show that Colorado requested eight weeks to prepare for cross-examination and the introduction of further evidence. It did not get this amount of time. The record will further disclose that the Examiner fairly inquired into the question and reached what he felt was a fair result. Counsel for Colorado will not quarrel with the result even though, to it, the time does seem too short—considerably shorter than that allowed to the Staff to have men devoted solely to this case examine briefer, less involved documents.

4. The appeal of Staff Counsel was received by Counsel for Colorado one week after the last hearings were recessed and only six days before the date of resumption suggested by Staff Counsel in its said appeal. No prior notice was given of such appeal and its timing is an obvious attempt to embarrass and further harass Colorado. The appeal entirely ignores §1.13 and §1.27(b) (7) of the Commission's Practice Rules and The Administrative Procedure Act, §7 wherein it is clear that the Examiner may control the question raised by this appeal. It would appear that Staff Counsel by his so-called appeal is endeavoring to circumvent the purpose of §1.28 of the Rules of Practice which requires referral by the Examiner. If the device of Staff Counsel is successful, any party can then feel free to appeal [fol. 43] to the Commission on any interlocutory question so long as hearings are in recess. The procedure of Staff Counsel is patently wrong.

5. Not in response to the appeal, but for the Commission's information, Colorado's Counsel are of the opinion that only by long and very hard work can they be ready to proceed with cross-examination and further evidence by April 8, 1952. It would be impossible to proceed before that date.

Wherefore, the appeal filed by Staff Counsel should be dismissed.

Respectfully submitted, James Lawrence White, Charles E. McGee, Counsel for Colorado Interstate Gas Company.

Before the Federal Power Commission

Order on Appeal From Ruling of Presiding Examiner—March 7, 1952

Before Commissioners: Thomas C. Buchanan, Chairman; Claude L. Draper, Nelson Lee Smith and Harrington Wimberly. March 6, 1952.

On February 26, 1952, Staff Counsel filed an appeal from the ruling of the Presiding Examiner granting to Colorado Interstate Gas Company (Colorado Interstate) a recess of the hearings herein from February 20, 1952 to April 8, 1952.

On February 29, 1952, Colorado Interstate filed its Answer to said Appeal of Staff Counsel.

The Commission finds:

On the record in this proceeding, including the matters set forth in the pleadings above mentioned, it would not be in the public interest to recess this hearing for the length of time fixed by the Presiding Examiner.

[fols. 44-56] The Commission orders:

(A) The public hearing in this proceeding shall reconvene, commencing on March 25, 1952, at 10:00 a.m. (EST) in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue, N. W., Washington, D. C.

(B) Colorado Interstate Gas Company shall be prepared on said date to proceed with cross-examination of Staff rebuttal evidence and the presentation of evidence in response to Staff's rebuttal evidence.

(C) Interested State commissions may participate as provided by Sections 1.8 and 1.37(f) [18 CFR 1.8 and 1.37(f)] of the Commission's Rules of Practice and Procedure.

By the Commission.

Leon M. Fuquay, Secretary.

Date of Issuance: March 7, 1952.

[fol. 57] BEFORE THE FEDERAL POWER COMMISSION

MOTION TO OMIT INTERMEDIATE DECISION PROCEDURE, OR IN THE ALTERNATIVE, FOR ISSUANCE OF TENTATIVE DECISION.—Filed April 9, 1952

Pursuant to Section 1.30(c) of the Commission's Rules of Practice and Procedure, Staff Counsel moves and requests that the intermediate decision procedure be omitted in this proceeding. In the alternative, Staff Counsel requests, pursuant to Section 1.30(b) of said Rules of Practice and Procedure, that the Commission issue a tentative decision herein.

[fol. 58] As reasons for the motion, Staff Counsel states the following: This is a rate proceeding initiated pursuant to Section 5 of the Natural Gas Act by the Commission on its own motion by order of September 2, 1948. The order instituting this rate investigation recited that it appeared "[O]n the basis of data available to the Commission the rates * * * [of] Colorado Interstate may be unjust, unreasonable, unduly discriminatory or preferential."

Hearings in this proceeding did not commence until October 1, 1951, more than three years after the institution of the investigation of Colorado Interstate's rates. There have been six separate hearing sessions in this matter since October 1, 1951, concluding on April 4, 1952.

Staff Counsel respectfully further states that Exhibit 10 introduced by the Staff on October 2, 1951, showed that the company's operations for the year ending June 30, 1951 resulted in excess revenues on the jurisdictional business of more than $3,000,000. Staff Exhibit 28, based on Colorado Interstate's own estimates of operating expenses and revenues for the calendar year 1952, as adjusted by the Staff, showed excess revenues over a fair return on the jurisdictional business of more than $3,000,000.

Colorado Interstate has been collecting excess revenues for more than three years since the Commission instituted this proceeding. The customers of Colorado Interstate, however, have no redress under a Section 5 proceeding for such past excessive exactions. Their relief can only come when the Commission enters an order reducing rates, and such relief is long overdue. In the circumstances here present, the Commission can with justice make the prerequisite findings required by the Administrative Procedure Act and omit the intermediate decision procedure.

In the alternative, if the Commission does not grant the above request, Staff Counsel requests that the Commission itself issue a tentative decision herein in lieu of the Presiding Examiner's report. Such action may be taken by the Commission, pursuant to Section 1.30(b) of the Rules and [fol. 59] Section 8(a) of the Administrative Procedure Act, without the necessity of making the statutory finding required for the omission of the intermediate decision procedure. The Administrative Procedure Act does not require the Commission to make any findings to support the Commission action in issuing a tentative decision in rate matters. However, it is submitted the foregoing reasons to support the omission of the intermediate decision procedure are sufficient of themselves to warrant the tentative decision procedure here. It should be recalled that unlike a proceeding under Section 4 of the Natural Gas Act, there is no provision in a Section 5 proceeding for the filing of a bond to insure the repayment of excessive revenues collected.

It is in the public interest to put an end to the exaction of excessive revenues by Colorado Interstate. There is every reasonable expectation that the adoption of the tentative decision procedure will conclude this proceeding more promptly than otherwise. The omission of the intermediate decision procedure is warranted by the record in this proceeding and will provide even more expeditious determination of this matter.

Respectfully submitted, Jacob Goldberg, Staff Counsel.

Before the Federal Power Commission

Answer to Staff Counsel's Motion to Omit Intermediate Decision Procedure or, Alternatively, for the Issuance of Tentative Decision by the Commission.—Filed April 17, 1952

Colorado Interstate Gas Company (Colorado) by its counsel hereby answers the motion of Staff Counsel filed April 9, 1952 for omission of the intermediate decision procedure or, in the alternative, for issuance of a tentative decision by the Commission. In answer to said motion, Colorado states the following:

[fol. 60] 1. This motion cannot be made pursuant to Section 1.30(c) of the Commission's Rules of Practice and Procedure because:

(i) the concurrence of Colorado has not been alleged, nor can it be alleged since Colorado refuses to occur therein;

(ii) there is not specified whether there should be opportunity for presenting oral argument or filing briefs before the Examiner or the Commission; and

(iii) there is not specified whether there is desired an opportunity for presenting proposed findings and conclusions with supporting reasons therefor.

2. The Commission may not omit the intermediate decision procedure either upon motion of Staff Counsel or upon its own motion under the Administrative Procedure Act, Section 8(a) (for the convenience of the Commission, all of Section 8 is attached as an Appendix). Section 8(a) of the Administrative Procedure Act, by virtue of judicial holdings (mainly, Universal Camera Corporation v. N.L.R.B., 340 U.S. 474), and the legislative history of the Administrative Procedure Act clearly does not allow the omission of the intermediate decision procedure where issues are sharply controverted or where the case tends to become accusatory in nature (see portion of the legislative

history quoted under "2" sub). The situation in the instant case clearly is one in which the decision of the presiding officer is not only desirable but absolutely necessary as the following will show:

(i) As the Supreme Court held in Universal Camera Corporation vs. N.L.R.B. (supra), an examiner's decision has an important bearing upon the substantiality of the evidence upon which Commission action must rest. The Supreme Court stated:

"We intend only to recognize that evidence supporting a conclusion may be less substantial when an impartial, experienced examiner who has observed the witnesses and lived with the case has drawn conclusions different from the Board's than when he has reached the same conclusion. The findings of the examiner are to be considered along with the [fol. 61] consistency and inherent probability of testimony. The significance of his report, of course, depends largely on the importance of credibility in the particular case. To give it this significance does not seem to us materially more difficult than to heed the other factors which in sum determine whether evidence is 'substantial'." (340 U. S. at 496-497.)

The Supreme Court in the Universal Camera case also noted the provisions of Section 8(b) of the Administrative Procedure Act and held the Examiner's report to be as much a part of the record as the testimony. Similarly, the House Committee is reporting on the Administrative Procedure Act stated in respect of examiner's decisions:

"They become a part of the record and are of consequence, for example, to the extent that *material facts in any case depend on the determination of credibility of witnesses as shown by their demeanor or conduct at the hearing.*" Administrative Procedure Act, Legislative History, 79th Cong. 2d. Sess., Senate Document No. 248, p. 272, emphasis added.)

Examination of the record in this case will show that credibility has got to be one of the paramount factors. Colorado contends that the Staff case is defective and has not been supported by reliable or credible evidence. As the record in this case shows, Staff Counsel and Staff witnesses alike have refused to notify or testify as to what base or test period they are depending upon or would recommend. The Staff and its Counsel say that any of five test periods (see Exhs. 1, 13 and 26) might be used, or a combination thereof might be appropriate (Tr. pp. 330, 1085, 1086). In the course of the cross-examination of all of Staff witnesses there appeared to be a reluctance to answer and evasiveness to answers given both with respect to the proper test period or periods (Tr. pp. 1143-1145, 1180-1187, 1205-1206) and also with respect to the manner in which the Staff made its own calculations or adjusted estimates presented on behalf of Colorado (Tr. pp. 424-427, 437-442, 447). This was particularly true in the later phases of the case (Tr. pp. 1252, 1254, 1255, 1256-1262). The record disclosed only those evidences of a witness' demeanor which can be re-[fol. 62] corded in the written progress of the hearing. Counsel for Colorado allege that there were many other instances of where the demeanor of witnesses in this case has an important bearing upon evaluating the worth of their evidence and only the presiding officer is competent to make this necessary determination.

(ii) The record in this case will show that from the beginning the issues have been sharply controverted and the proceeding has been accusatory in nature. The best late evidence of this fact is contained in the motion of Staff Counsel to which this is in answer wherein he states on Page 1 of his motion:

"Colorado Interstate has been collecting excess revenues for more than three years since the Commission instituted this proceeding."

And in the last paragraph of the motion Staff Counsel states:

"It is in the public interest to put an end to the exaction of excessive revenues by Colorado Interstate."

A similar set of accusations appear in the transcript (Tr. pp. 334, 420). It is obvious that Staff Counsel is grounding his motion upon what he hopes will be the end result of a valid Commission determination, i. e. that Colorado's revenues are excessive. The important factor at this juncture of the case, however, is that Staff Counsel makes such accusations not as his contention but as a final fact and, therefore, expects this Commission to shut its eyes to the evidence introduced on behalf of Colorado which shows instead of an excess of allowable revenue the Company in fact has a deficiency. There can be no doubt that the contention being made on behalf of Colorado is that there is no excess revenues. This in itself requires the most careful consideration of over 40 involved exhibits and the examination of 1,798 pages of testimony. This all brings into focus what was said during the legislative progress of the Administrative Procedure Act:

"The alternative intermediate procedure which an agency [fol. 63] may adopt in rule-making or determining applications for initial licenses is broadly drawn. But even in those cases, if issues of fact are sharply controverted or the case or class of cases tends to become accusatory in nature, sound practice would require the agency to adopt the intermediate recommended decision procedure." (Report of House Judiciary Committee, Administrative Procedure Act, Legislative History, 79th Cong. 2d. Sess., Senate Document No. 248, p. 273.)

3. In view of the foregoing, if the Commission were to omit the intermediate decision procedure in this case on the motion of Staff Counsel, it would be acting contrary to its own rules and requirements; and if the Commission were to decide to omit the intermediate decision procedure upon its own motion the effect would be to deprive Colorado of a part of a record and that scrutiny of the whole record which Colorado is entitled to by the one most competent to judge the overwhelmingly important item of the credibility of the witnesses and the evidence. In effect, under the opinion of the Supreme Court in the Universal Camera case (supra), the Commission would be denying an important factor in the determination of that substantiality of evidence upon which its findings under the Natural Gas Act (§19(b)) must depend.

4. Alternatively, Staff Counsel asks that this Commission issue a tentative decision. Examination of the legislative history of the Administrative Procedure Act (see part quoted under "2" supra) will show conclusively that a

tentative decision by the Commission is no more appropriate in this case than would be the omission of the intermediate decision procedure (see Legislative History of the Administrative Procedure Act, House Report, 79th Cong. 2d. Sess., Senate Document No. 248, pp. 272-273). As a practical matter under the Commission's rules (§1.30(b)) it would appear that such tentative decision would only serve further to delay this proceeding since a tentative decision is subject to all the exceptions and subsequent procedures as is the case with an intermediate decision (Commission's Rules of Practice, §1.31). It would be necessary, [fols. 64-65] therefore, for the Commission itself to study this record in order to render an intelligent tentative decision and acquaint itself with material and involved data and to resolve conflicts and spend the necessary time in doing so, whereas the Presiding Examiner has heard the whole case and is in a position to render a decision within the shortest possible time after the briefs provided for have been submitted by the Staff, by Colorado and by intervenors. Even if the Commission were to do all of these things, it would still be denying to Colorado in a sharply controverted and accusatory case its right to the Examiner's appraisal.

5. The fair construction of Section 8 of the Administrative Procedure Act as portrayed in its legislative history and as expounded in the Universal Camera case is that the intermediate procedure through the Examiner is required and denial of the Examiner's decision would be tantamount to disallowing a proper part of the record upon which Commission action must be grounded. To grant in any particular the motion of Staff Counsel would deprive Colorado of the hearing to which it is entitled under Section 5(a) of the Natural Gas Act and by the Constitutional requirement of due process of law.

Wherefore, it is clear that consistent with the rights of Colorado and consistent with the requirement that an intelligent and fair result obtain it would be inappropriate to grant the motion of Staff Counsel to which this response is made and said motion must, therefore, be denied.

Respectfully submitted, James Lawrence White, Charles E. McGee, Counsel for Colorado, Interstate Gas Company.

[fol. 66] BEFORE THE FEDERAL POWER COMMISSION

ORDER OMITTING INTERMEDIATE DECISION PROCEDURE AND FIXING DATE FOR ORAL ARGUMENT.—Issued May 26, 1952

Before Commissioners: Thomas C. Buchanan, Chairman; Dale E. Doty, Claude L. Draper, Nelson Lee Smith and Harrington Wimberly. May 23, 1952.

On April 9, 1952, Staff Counsel filed a motion, pursuant to Section 1.30 of the Commission's Rules of Practice and Procedure, that the intermediate decision procedure be omitted in this proceeding, or, in the alternative, the Commission issue a tentative decision.

On April 17, 1952, counsel for Colorado Interstate Gas Company (Colorado Interstate) filed its answer opposing said motion of Staff Counsel.

The record shows that this proceeding was initiated pursuant to the authority of the Natural Gas Act on the Commission's own motion, by order of September 2, 1948, instituting an investigation of the rates of Colorado Interstate [1] for the reason that it appeared to the Commission on "the basis of data available to the Commission, the rates, charges, services or classification or sale of natural gas subject to the jurisdiction of the Commission by Canadian River and Colorado Interstate may be unjust, unreasonable, unduly discriminatory or preferential." Staff studies based on Colorado Interstate's and Canadian River's Annual Reports to the Commission (FPC Form No. 2) showed excess revenues above a fair rate of return of $2,000,000 for the two companies.

Subsequent to the institution of the rate proceeding and after the Staff had completed its studies of the records and operations of Colorado Interstate and Canadian River in [fol. 67] preparation for a hearing, Colorado Interstate and Canadian River filed on February 13, 1950, at Docket No. G-1326, a joint application, as amended, on April 4, 1950, for a certificate of public convenience and necessity

---

[1] The order of September 2, 1948 included the investigation of the rates of Canadian River Gas Company, which since January 1, 1952, has been merged with Colorado Interstate.

authorizing (1) Colorado Interstate to acquire by merger the properties of Canadian River and to merge Canadian River into Colorado Interstate and (2) to construct and operate certain natural-gas pipe-line facilities. By order of July 20, 1950, the Commission authorized the construction and operation of the natural-gas pipe-line facilities referred to above, but reopened the hearing for purpose of determining certain aspect of the proposed merger. By opinion and order of February 28, 1951, a certificate was issued authorizing the merger.

In the meantime hearing on the instant rate proceeding was deferred pending the disposition of the merger proceedings at Docket No. C-1326. The Commission, therefore, in its opinion of March 16, 1951, authorizing the merger stated (Opinion No. 209, (mimeographed), page 23):

"Now that the acquisition by Colorado of the Canadian properties has been authorized and the future pattern of operation settled, it is appropriate that our rate investigation be brought to a speedy conclusion."

Accordingly, by order of March 16, 1951, the Commission fixed August 1, 1951, as the date of hearing in this proceeding.

On July 1, 1951, Colorado Interstate and Canadian River filed a motion to continue the hearing from August 1, 1951, to February 1, 1952. By order of July 25, 1951, the Commission granted Colorado Interstate and Canadian River a continuance of the hearing in this proceeding from August 1, 1951, to October 1, 1951.

Hearing in this matter commenced on October 1, 1951, with Staff's presentation of its evidence. At the conclusion of the Staff's evidence on October 3, 1951, counsel for Colorado Interstate and Canadian River requested and received a continuance until November 6, 1951, to prepare for cross-examination. On November 2, 1951, Colorado Interstate and Canadian River filed (1) a motion for a finding that Staff has failed to meet the burden of proof and (2) a mo-
[fol. 68] tion for continuance of the hearings to November 14, 1951. After the Staff had introduced further testimony on November 8, 1951, the Presiding Examiner fixed November 27, 1951, for the reconvening of the hearing to enable

Colorado Interstate and Canadian River to cross-examine the Staff's witnesses and to introduce its own case-in-chief, Colorado Interstate and Canadian River, however, on November 15, 1951, filed a second motion for a finding that the Staff had failed to sustain the burden of proof. By notice dated November 21, 1951, the Presiding Examiner continued the hearing to a date to be fixed by further order of the Commission because of the pendency of the second motion filed by the companies. On November 30, 1951, the Commission reserved decision on the second motion pending conclusion of the hearing and finding that "it would be in the public interest to conclude the hearing in this matter with all reasonable dispatch," ordered the hearing to reconvene on December 10, 1951. On December 6, 1951, Counsel for the companies filed a motion to continue the hearing scheduled for December 10, 1951, to a date to be fixed by further order of the Commission. By notice dated December 6, 1951, this motion for continuance was denied.

Beginning on December 10, 1951, and concluding on December 17, 1951, the companies cross-examined Staff's witnesses and introduced their own case-in-chief. The hearing was then continued to February 1, 1952, extended to February 6, 1952, to enable Staff to cross-examine the companies' witnesses and to introduce its rebuttal. Thereafter, to enable Colorado Interstate to prepare for cross-examination of Staff rebuttal, the hearing was recessed to March 25, 1952, on order on Staff appeal taken from the ruling of the Presiding Examiner. After cross-examination of Staff introduction of further testimony by Colorado Interstate and cross-examination thereof by Staff, the hearing concluded on April 4, 1952.

This proceeding has been in progress for a regrettably long period of time, responsibility for which fact is not attributable to any one particular party. In view of the fact that this Commission has no power of reparation with respect to past rates, which may or may not prove to be excessive, it appears that the record in this proceeding [fols. 69-74] presents the kind of situation requiring the omission of the intermediate decision procedure as provided in the Administrative Procedure Act.

The Commission finds:

Based on the foregoing facts taken together, due and timely execution of its functions imperatively and unavoidably requires the Commission to omit the intermediate decision procedure in this proceeding.

The Commission orders:

(A) The intermediate decision procedure be and the same is hereby omitted in this proceeding, and the Presiding Examiner is hereby directed to certify the record to the Commission.

(B) Main briefs and reply briefs shall be filed on the dates heretofore fixed by the Presiding Examiner.

(C) Oral argument be had before the Commission on June 9, 1952, at 10:00 A. M. (EDST) in the Hearing Room, Federal Power Commission, 1800 Pennsylvania Avenue, N. W., Washington, D. C., concerning the matters and issues involved in this proceeding.

(D) Parties in this proceeding who intend to participate in the oral argument shall so notify the Secretary of the Commission on or before June 2, 1952, and of the time requested for presentation of their argument.

By the Commissioner. Commissioner Doty not participating.

Leon M. Fuquay, Secretary.

* * * * * * *

[fol. 75] BEFORE THE FEDERAL POWER COMMISSION

APPLICATION FOR REHEARING OF ORDER ISSUED MAY 26, 1952 OMITTING INTERMEDIATE DECISION PROCEDURE—Received June 4, 1952

Colorado Interstate Gas Company (Colorado) by its counsel hereby applies for rehearing of the order issued May 26, 1952 by this Commission wherein it was determined to omit the intermediate decision procedure. As grounds for granting said rehearing, Colorado states the following:

1. The effect of said order of the Commission denies to Colorado its right to submit briefs upon the merits and pro-

cedural aspects of this rate controversy since the order was issued on the day that final briefs were due and was received the day after said final briefs were filed. A participant to an adversary proceeding, such as this one has proved to be, prepares briefs and argument to one who has presided at the reception of all evidence and who has been able to study the demeanor and manner of witnesses. As the order of the Commission notes, the application for [fol. 76] omission of the intermediate decision procedure of Staff Counsel was filed April 9, 1952 and was answered on behalf of Colorado on April 17, 1952. There was more than adequate time after the answer was received for the Commission to pass upon the motion, and the action of the Commission in failing to issue its order omitting the intermediate decision procedure until the day final briefs were due effectively thwarted any endeavor to brief the whole question to the Commission rather than to the Presiding Officer.

2. The Commission recites as one of the facts upon which it was determined to omit the intermediate decision that it lacks reparation authority. The denial by Congress of reparation authority to this Commission does not in any way enlarge the jurisdiction of this Commission or in any way confer upon it a right to prejudice parties who are subject to proceedings before it.

3. The Commission by its said order finds that all of the recited facts in said order require the omission of the intermediate decision. Among the facts set forth in the petition was the motion of Staff Counsel to omit the intermediate decision. Under the Rules of this Commission (Section 1.30(c)), the intermediate decision could not be omitted upon the basis of this motion.

4. The Commission may not upon its own motion omit the intermediate decision under Section 7(a) of the Administrative Procedure Act as the same has been construed by Universal Camera Corporation vs. N. L. R. B. (340 U. S. 474) and the legislative history of the Administrative Procedure Act, all as fully set forth in the answer to Staff Counsel's motion to omit the intermediate decision procedure filed by Colorado in this docket.

5. This proceeding has become one obviously accusatory in nature and one in which issues of fact have been sharply controverted, all of which have been fully set forth in Colorado's answer to the motion of Staff Counsel in this matter. Reference to the record in this case will show upon its face [fol. 77] that this is a proceeding peculiar in that it requires the attention and decision of one who has been able to observe the manner and demeanor of witnesses and, therefore, properly arrive at conclusions bearing upon the credibility of testimony and other evidence. Matters of record in respect thereof have been fully set forth in the answer of Colorado to the motion of Staff Counsel above referred to.

7. The net effect of the Commission's action in omitting the intermediate decision procedure in this case is to deny Colorado its right to a fair hearing under applicable Constitutional and statutory safeguards. It is recited by the Commission that there has been delay in the decision of this case but that no party is responsible therefor. It is submitted that no reason appears, nor is there any finding made, to determine the necessity of denying to Colorado a full and fair determination of the issues involved under every Constitutional and statutory safeguard. No matter what the necessities of time are within the Commission's concept thereof, there is never an excuse for failing to adhere to the concept of fair play.

Wherefore, it is submitted to the Commission that it has erred in ordering the omission of the intermediate decision procedure in this case and that a rehearing of its order issued May 26, 1952 should be had and said order vacated forthwith.

Respectfully submitted, By James Lawrence White, By Charles E. McGee, Counsel for Colorado Interstate Gas Company.

*　*　*　*　*　*　*

Before the Federal Power Commission

Opinion, Finding and Order Reducing Rates—
Issued August 8, 1952

[fol. 78] Before Commissioners: Thomas C. Buchanan, Chairman; Dale E. Doty and Harrington Wimberly. July 31, 1952.

Opinion No. 235

On September 2, 1948, the Commission instituted an investigation pursuant to Section 5 of the Natural Gas Act, to determine whether any rate, charge, service or classification observed, charged or collected by Canadian River Gas Company (Canadian River) and Colorado Interstate Gas Company (Colorado) for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission is unjust, unreasonable, unduly discriminatory or preferential. Said Section 5 of the Natural Gas Act empowers the Commission to determine the just and reasonable rates to be thereafter observed and in force and to fix the same by order on a finding after hearing that any such rate is unjust, unreasonable, unduly discriminatory or preferential.

Petitions to intervene in the proceeding were filed by Public Service Company of Colorado, Natural Gas Pipeline Company of America, Public Utilities Commission of the State of Colorado, The City of Denver and The City of Colorado Springs, all of which petitions were granted.

Pursuant to our Order of Investigation, an extensive field examination of the books, records, facilities and operations of Respondent[1] was made by our staff. Hearings

---

[1] Subsequent to the initiation of this proceeding but prior to the commencement of hearings, the Commission authorized Colorado to acquire by merger the properties of Canadian River. Said merger was consummated on December 31, 1951. Hereafter, therefore, when we refer to Respondent, the reference will include both companies unless the text of the Opinion otherwise indicates.

in this proceeding commenced on October, 1951, and concluded on April 4, 1952. Exhibits numbering 44 were received in evidence and 1,798 pages of testimony were recorded. By order of May 23, 1952, we omitted the intermediate decision procedure in this matter and fixed June 9, 1952, as the date for oral argument before the Commission. The staff of the Commission and the Respondent companies introduced evidence in this proceeding. None of the inter-[fol. 79] venors offered any evidence, filed briefs or took part in the oral argument.

Following the oral argument before the Commission, by letter of June 11, 1952, Counsel for Colorado transmitted:

(1) a copy of the minutes of the meeting of the Board of Directors of Colorado held on March 10, 1952.

(2) a copy of the minutes of the meeting of the Board of Directors of Colorado held on May 16, 1952.

(3) a copy of the Post-Effective Amendment to the Registration Statement filed by Colorado with the Securities and Exchange Commission on April 30, 1952.

In his letter of transmittal, counsel for Colorado requested that these three documents be considered a part of the record in this proceeding. Accordingly, they may be deemed to be incorporated into the record in this proceeding by reference to the official files of the Commission, and they are hereby identified as Item- R, S and T, respectively.

Colorado owns and operates extensive natural gas production, gathering and processing facilities in the West Panhandle field of Texas and also purchases and processes large volumes of natural gas in the Hugoton field of Kansas. Colorado also owns and operates a transmission pipe line system extending from such fields to its terminal market area at Denver, Colorado. Sales are made from such pipe lines to distributing utilities for resale and to industrial customers. Colorado admits that it is a "natural-gas company" under the Act. Respondent's rates have been the subject of another Commission rate proceeding In the Matter of Colorado Interstate Gas Company, 3 F. P. C. 32, Affirmed 324. U. S. 581.

The staff of the Commission presented evidence from which the staff concluded that the rates of Colorado subject to our jurisdiction should be reduced by the sum of $3,227,287. Colorado contends, however, that it is not earning sufficient revenues to yield a fair return on its jurisdictional sales.

We have carefully considered the entire record including the briefs, oral arguments and requested findings. Our find-[fol. 80] ings and conclusions, hereinafter set forth, are dispositive of each and every one of the requested findings. It is our opinion that the presently effective rates and charges of Colorado are unjust, unreasonable and excessive and should be reduced as hereinafter ordered.

The following table summarizes the difference between the staff and Colorado with reference to the rate base, and the various elements which make up the cost of service. We will discuss these differences and thereafter take up the various issues relating to cost allocation and the form of rates.

Rate Base	Staff	Colorado	Difference
Average Balance			
Plant in Service	$73,162,834	$73,162,834	....
Plant Held for Future Use	269,213	269,213	....
	$73,432,047	$73,432,047	....
Less: Average Reserve for Depreciation and Depletion	18,182,793	18,253,259	$ 70,466
Contributions in Aid of Construction	139,302	139,302	....
Net Investment in Plant	$55,109,952	$55,039,486	$ (70,466)
Working Capital			
Cash Allowance	673,363	779,623	106,260
Material & Supplies	1,381,331	1,381,331	....
Total Rate Base	$57,164,646	$57,200,440	$ 35,794
Revenues			
Gas Service Revenues	$17,962,532	$17,962,532	....
Other Gas Revenues	1,141,520	1,141,520	....
Total Revenues	$19,104,052	$19,104,052	....
Cost of Service			
Operating Expenses	$ 8,417,707	$ 9,282,680	$ 864,973
[fol. 81]			
Depreciation and Depletion	2,595,427	2,736,361	140,934
Taxes Other than Federal Income	1,835,229	1,898,994	63,765
Federal Income Taxes	....	2,306,808	2,306,808
Return	3,286,967	3,718,028	431,061
Loss on Gasoline Operations	(585,528)	....	585,528
Total Cost of Service	$15,549,802	$19,942,871	$4,393,069

Test Period.

There is no dispute as to the test period, both the staff and Colorado using the calendar year 1952. The basic figures presented which was based on the most recent actual past operating experience adjusted to reflect known changes combined on a pro forma basis for the merged corporation including the facilities authorized at Docket G-1326 and G-1677 which went into operation in part in 1951 and the balance in 1952. We are of the opinion and find that the appropriate test period is the calendar year 1952.

Rate Base.

As shown by the above table, the net difference of $35,794 between the staff and Colorado as to the rate base for 1952 relates to the amount deducted for accrued depreciation and depletion and to the cash allowance for working capital. The difference of $70,466 in the average balance for depreciation and depletion flows from the divergent methods used by Colorado and the staff in determining the annual depreciation provision for the year 1952. As will be noted from the Cost of Service section of the foregoing table, such difference in the annual expense for depreciation and depletion amounts to $140,934. The effect upon the average depreciation reserve balance is about one-half of that sum.

The staff made a comprehensive study of the company's facilities, its gas reserves and retirement experience and from such study developed service lives for each particular segment of the company's property. The testimony shows [fol. 82] that major consideration was given to the functional or economic life of the enterprise. Colorado's claimed annual allowance for depreciation was based upon the method which it has followed since January 1, 1948, in accounting for depreciation on its books.[2] Under this

[2] The "remaining service life" method accounts for approximately 85% of the annual provision for depreciation and depletion the remainder being calculated on the unit of production and other bases.

method which it terms the "remaining service life method" the annual provision is determined by taking the average net investment for the year and dividing it by the estimated number of years life remaining of the company's properties. The company estimated the remaining life of its properties to be 25 years from January 1, 1948.

Prior to the adoption of such method on January 1, 1948, and since the conclusion of the earlier rate proceeding In the Matter of Colorado Interstate Gas Co. (3 F. P. C. 32) the Company had also followed the straight line—service life basis of depreciation as determined by the Commission in that case. It presented no evidence which would justify a departure from the straight line-service life basis of depreciation which we determined in the prior rate proceeding and which the staff has used herein. The company's contention appears to be that the service life method is inappropriate as there is no present basis for the projection of its present gas reserves beyond 1972 and refers to a statement in our decision (Re: Colorado Interstate Gas Company, et al., Opinion No. 209, March 20, 1951, Docket No. G-1326) as authority therefor. Colorado has misinterpreted such statement for what we there said related solely to Canadian's acreage in the West Panhandle field and was not an appraisal of the company's overall reserve picture or economic life.

The resulting difference between the staff and the company in the annual depreciation provision for 1952 exclusive of that portion relating to the additional facilities authorized in Docket Nos. G-1326 and G-1677 amounts to [fol. 83] $44,258. As to such additional facilities the difference amounts to $96,676. The staff witness recommended a 25-year service life for these new facilities based upon his appraisal of the reserves of Colorado in the West Panhandle field, the Hugoton field and the additional reserves proposed to be and in fact subsequently acquired by Colorado in the Keyes fields and South Keyes fields in Oklahoma. Under the company's remaining life method, Colorado computed the annual provision for 1952 on a remaining life of 20½ years for the facilities proposed to be placed in service during such year.

From our review of the record we are convinced that the service lives recommended by the staff witness are reasonable and proper under the circumstances and we therefore find that such service lives should be used in computing the annual depreciation provision for 1952.

Colorado argues that a major defect exists with respect to the staff's depreciation studies contending that as no correlation was made between annual and accrued depreciation, which if made, would result in a lesser amount for accrued depreciation thus effecting an increase in the rate base. It seems hardly necessary to point out that the reserve for depreciation could not properly be adjusted for past accrued depreciation relating to the property certificated in Docket Nos. G-1326 and G-1677, since most of such properties did not go into service until 1952. Therefore the alleged lack of correlation could only arise from the small annual difference of $44,258 applicable to Plant other than that authorized in the above dockets.

It has not been the practice to adjust depreciation reserves either upward or downward whenever changing circumstances makes necessary minor revisions of current depreciation rates. We have in some instances, used the reserve requirement when we found that book reserves were accumulated through haphazard, unsound or improper accounting methods.[3] On this record we could not make such a finding.

[fol. 84] Accordingly, we find that the accrued depreciation and depletion to be deducted in determining the rate base for 1952 is $18,182,793.

Working Capital.

Both the Company and staff computed the allowance for Working Capital in the same manner, the difference of $106,260 being due to the fact that the sum used for operating expenses by Colorado in computing cash Working Capital (as 1/8 of operating expenses less purchased gas and certain other deductions) exceeded that used by the staff

---

[3] Interstate Power Company, 2 F. P. C. 71, 82. Hope Natural Gas Company, 3 F. P. C. 150, 168.

by the amount of $850,080. Based upon our determination as hereinafter set forth of the appropriate sum to be allowed for operating expenses we find that the amount of Working Capital before applying any adjustment for advance collection from customers by Colorado of sums to cover Federal income tax obligations to be $2,078,235. The staff did not make any adjustment for such advance tax collections. Under the staff's recommended reduction in rates no Federal income tax liability would be incurred by Colorado. Since, however, the determinations which we have made herein will result in Colorado's having a Federal income tax liability, it is appropriate that the principles which we have enunciated in the recent cases[4] be applied in the instant proceeding. We find that Working Capital as computed above of $2,078,235 should be reduced by $139,199 which is 75% of the Federal income tax of $185,599 which tax we find would be appropriate for the year 1952. Thus the appropriate Working Capital allowance becomes $1,939,036 instead of $2,054,694 shown on page 4.

We, therefore, find that the rate base of Colorado for the year 1952 upon which it is entitled to earn a fair return is $57,048,988 instead of $57,164,646 as shown on the same table.

[fol. 85] Operating Expenses

Colorado's claim for operating expenses during the test year exceeds the recommended allowance by the staff for such item in the amount of $864,973. Of this amount, $810,517 represents alleged increases in operating costs which were not presented by Colorado as part of its case in chief but which were submitted after the staff concluded its rebuttal evidence. Various elements comprising the difference of $864,973 are discussed below.

---

[4] In the Matter of Alabama-Tennessee Natural Gas Company, Opinion No. 226, April 30, 1952.

In the Matter of Transcontinental Pipe Line Company, Opinion No. 227, May 29, 1952.

Wages and Salaries—$342,529.

To the original claim for salaries and wages of $2,717,705 for 1952, which claim was accepted by the staff, Colorado has added estimated increased wages and salaries of $342,529. Such amount is of two categories, each computed in a different manner. Colorado first took the January, 1952, payroll for general officers and general office employees added 4% thereto and multiplied the result by 12 to arrive at an annual cost of $670,092. This amount is $165,481 in excess of the annual amount originally claimed by the company and accepted by the staff. The above-mentioned 4% was added to take care of projected future increases in wages and salaries during the year 1952. Admittedly, the added 4% is not a cost being currently incurred or that can reasonably be projected for the future. Indeed it is purely speculative and conjectural.

The record also shows that the payroll for the month of January includes some overtime pay arising from the merger with Canadian River Gas Company which became effective January 1, 1952. The record does not support the assumption that this one month's experience by itself is a sufficient guide to measure the cost of general officers and general office employees salaries for the year 1952.

But the record shows that effective January 1, 1952 a cost of living increase of 4.16% was given to employees in these classifications. This increase in salaries should be recognized and we, therefore, increase the original claim by the amount of $20,992 based upon the 4.16% of the amount originally estimated.

[fol. 86] Colorado increased the salaries and wages paid to other classifications of employees over the original estimate by an amount of $177,048. This amount is 8% of the salaries and wages originally claimed for 1952. The record shows that effective January 1, 1952, Colorado did grant its employees in these classifications a 4% average increase in wages and salaries. This amount is computed at $88,524, which sum we add to the original claim.

The projected second 4% increase is, like the similar item mentioned above, a speculative and conjectural increase. We are here allowing all increases in wages and salaries which are supported in this record. We do not, however, deem it our responsibility or duty to speculate as to what future wage increases, if any, may be granted by Colorado. For the foregoing reasons we find that Colorado's claim for an allowance for wage increase of $342,529 must be rejected except for the sum of $109,516 which we allow.

Employees' Welfare Expenses and Pensions—$306,727.

Colorado has included in its cost of service estimated increases for Employee Benefits consisting of $14,816 for Group Hospitalization $13,887 for Group Life Insurance, and $278,024 for Pensions. While the employees of Colorado are not presently enjoying any of these proposed benefits nor is Colorado incurring any of the proposed costs we are asked to allow them on the assertion that unless we do these benefits could not be undertaken or if undertaken would reduce Colorado's return below the amount allowed. It has been our consistent policy to make full allowance in rate proceedings for all costs of Employees Benefits actually incurred and we do so here. We would unhesitatingly allow these particular items if there were any reasonable degree of certainty as to their effectiveness but no such assurance was given upon this record. Moreover, it was admitted unequivocally by the company's witness that these Employee Benefits proposals are purely in the planning stage.

In reference to the Employees' Welfare and Pension Plans, Colorado made the following statement in a regis- [fol. 87] tration statement and prospectus filed with the Securities and Exchange Commission on April 2, 1952 and which is in this record:

"During 1951 employees paid approximately $87,600 under these several plans, while the company's payment approximated $115,400. *Under the present plans it is not anticipated that there will be an appreciable increase in cost in 1952.* Consideration is being given to revisions in the Group Life Insurance Plan, Group Hospitalization and Surgical Benefits Plan and Retirement Plan, so as to provide increased benefits under these plans. The possible revisions being considered might increase the cost of such plans to the company by as much as $307,000 during 1952, *but the Board of Directors has not yet come to any conclusion as to the adoption of any such revisions.*" (Emphasis supplied.)

In the face of such statement, it is not reasonable to burden the rate payers with a substantial item of cost when such costs are not in fact being incurred and when there is no evidence in the record to indicate when such costs would be incurred.

If, in the future, this question of employee benefits be resolved by management and its employees the way is open under the Natural Gas Act for the recovery through rates of such additional costs as may be actually experienced. Assuming no great lapse of time occurs before the question is resolved, all of the facts in the instant proceeding will be before the Commission and it can act promptly upon the request of Colorado when made.

We, therefore, reject Colorado's claim for estimated increases in Employees' Welfare Expenses and Pensions in the amount of $306,727.

Director and Executive Committee Payments—$75,000.

In its revised cost of service computation for 1952, Colo-
[fol. 88] rado has included the amount of $75,000, representing $5,000 fees for each of its Directors who are not full time employes of the company; $30,000 for the Chairman of the Executive Committee and $15,000 for other members of the Executive Committee who are not full time employees of the company, such payments to become effective April 1, 1952.

The fees in question were authorized at a special meeting of the Directors of Colorado held on March 10, 1952 at 30 Rockefeller Plaza, New York City. Four of the seven [5] Directors were present: Messrs. Joseph H. King, Robert W. Hendee, F. T. Parks and W. A. Dougherty.[6]

---

[5] Two directors were absent and there was one vacancy.

[6] Mr. King is a Director and President of the Union Securities Corporation, 65 Broadway, New York City; Mr. Hendee is President of Colorado Interstate, Colorado Springs, Colorado; Mr. Parks is a Director and Vice Presi-

At the aforesaid meeting the Board approved the filing, with the Securities and Exchange Commission, of a Registration Statement covering the sale of 971,480 shares[7] of Colorado's common stock par value $5.00 per share owned by the Union Securities Corporation group[8] and Sinclair Oil Corporation. Prior to such sale the Union Securities group owned 42½% of Colorado's common stock acquired in 1947 from Standard Oil Company (N. J.) Southwestern Development Company owned 42½% and Public Service Company of Colorado owned 15% of Colorado's common stock.

Sinclair Oil Corporation acquired 21.69% of Colorado's stock by reason of its ownership in Southwestern Develop- [fol. 89] ment Company[9] and the Mission Oil Company

---

dent of the Public Service Company of Colorado, Denver, Colorado, the largest resale customer of Colorado Interstate; Mr. W. A. Dougherty, 30 Rockefeller Plaza, New York City, is the Vice President and General Counsel of Colorado.

[7] The stock was initially registered on the basis of the sale of 966,000 shares; however, it appears that the Underwriters actually sold an aggregate of 988,905 shares at the public offering price of $26.75 per share—22,905 shares having been oversold on allotments. The several Underwriters covered their short position by purchasing 13,688 shares from Sinclair Oil Corporation and the remaining shares upon the open market.

[8] This group consists of Union Securities Corporation, A. C. Allyn & Co., Inc., Equitable Securities Corporation and Stifel Nicolaus & Co. Inc.

[9] By order of December 21, 1951 the Securities and Exchange Commission approved a plan of corporation simplification relating to Sinclair, Southwestern Development Company and The Mission Oil Company under Sec. 11 of the Public Utility Holding Company Act of 1935. Among other things the plan provided for the sale to the public of the common stock of Colorado Interstate to be acquired by Sinclair as the result of its holdings of 51% of the common stock of Southwestern and 3.98% of the common stock of The Mission Oil Company which in turn owned 47.28% of the stock of Southwestern.

acquired 20.11% of Colorado's stock also by reason of its ownership in Southwestern. As a result of the public sale on April 2, 1952 of Colorado's stock, Sinclair Oil Corporation no longer holds any of such shares and the Union Securities group apparently now owns only 126,449 shares out of the 726,757.05 shares originally held.[10]

Prior to the foregoing action of March 10, all Directors of Colorado received an attendance fee of $50.00 per meeting plus expenses. This fee was increased to $100.00 per meeting by the Board at the March 10 meeting and in addition the Board, with one of the four members present dissenting,[11] voted to give each Director, not a full time employee of the company, $5,000 per year for his services.

At the same meeting, the Directors elected three of their number to a newly created Executive Committee, two of whom were representatives of Union Securities Corporation and Sinclair Oil Corporation respectively. Whereas previously, members drew no separate compensation for their services on the old Committee, the Board over the opposition of the same member voted to fix the compensation of those members not full time employees of the company at $30,000 annually for the Chairman and $15,000 for other members. The representative of Union Securities Corporation was made Chairman.

At a further meeting of the Board of Directors of Colorado held on May 16, 1952, at the offices of the Company in [fol. 90] Colorado Springs, Colorado, at which six of the seven Directors were present,[12] it was noted on the minutes that the representative of Sinclair was no longer a member of the Board of Directors of Colorado due to a requirement of the Securities and Exchange Commission that such

---

[10] Union Securities Corporation sold 345,176.43 shares out of a total owned of 362,865.52.

[11] Mr. F. T. Parks, Director and Vice President of Public Service Company of Colorado.

[12] Mr. Parks was absent. Mr. William G. Marbury, President of Mississippi River Fuel Corporation of St. Louis, Missouri, was elected, to fill the vacancy existing at the time of the March 10 meeting prior to the May 16 meeting.

representative resign upon the sale by Sinclair of the Colorado common stock received from Southwestern Development Company.

At the meeting of May 16, Mr. W. A. Dougherty replaced the Sinclair Oil representative on the Executive Committee. The Board also increased the annual salary of Mr. Hendee at this meeting from $36,000 to $45,000.

In the calendar year 1951, Colorado expended for salaries of its general officers and executives the sum of $73,714 while Canadian River Gas Company expended $33,929.30, or a total for the two corporations combined of $107,643.30. The amount originally estimated by Colorado for the year 1952 as compensation for its general officers was $103,889, thus the increases voted by the Board of Directors represent better than an 80% increase in the cost of executive direction of this utility.

The action by a minority of the authorized Board in voting themselves and absent Directors additional compensation to be effective one day prior to the public sale by their principals of most of their holdings of Colorado's common stock detracts greatly from Colorado's claim that "it is reasonable to contract for the services of men competent to forward the welfare of the company."

The action of Union Securities Corporation in placing its President, Joseph H. King, in an advantageous position to direct the affairs of Colorado just before it disposed of sub-
[fol. 91] stantially all of its holdings of Colorado's stock is reminiscent of the Holding Company era involving investment banker control of public utilities through interlocking director.

In the face of these circumstances justification for such a large increase in cost, claimed on rebuttal when the hearing was on the verge of completion, was plainly required of Colorado. It was not enough for Colorado to simply assert that such fees were legally authorized; that it is reasonable to presume that those who will receive the fees will earn them, and that the future will fully vindicate the compensation of the Directors and Executive Committee members.

On this record, we cannot find that the reasonableness of these fee payments (of $75,000) has been established. We, therefore, find that such payments may not be included as a part of Colorado's cost of service to be recovered through rates subject to our jurisdiction.

Royalties—$86,261.

Colorado claimed payments of gas royalties for the test year of $1,422,730 which is $86,261 in excess of the amount originally estimated by Colorado and accepted by the staff. The revised estimate was premissed upon settlement of a royalty controversy involving approximately 8% of the gas produced by Colorado in the West Panhandle field. A royalty rate of ⅛ of 8¢ per Mcf at 14.65 psi. was then applied by the company witness to all gas produced,[13] on the assumption that the company would have to pay this higher rate in the future to all royalty owners.

It is indisputable that the additional amount claimed for gas royalty payments at the time of hearings did not represent actual experience or contractural obligations. Certain events have transpired, however, since that time which lead us to the conclusion that such additional royalty payments have been removed from the realm of specula-
[fol. 92] tion. It appears that two additional law suits involving gas royalties have now been settled and that the Board of Directors, on May 16, 1952 authorized the management to negotiate with the other royalty owners on the same basis. For this reason, we allow the additional claim of $86,261 for gas royalties.

V. Regulatory, Commission Expense—$54,456.

The amount of regulatory Commission expense claimed by Colorado is $93,593 detailed as follows:

Regulatory expense per books, year ended September 30, 1951		$23,593
Estimated expense Docket No. G-1115 before F.P.C.	$127,720	
Estimated Cost of Court review	95,000	
Total estimated cost of rate base	$222,720	
Amortization over approximate 3-year Period		$70,000
Total Company claim		$93,593

[13] The record shows that approximately 50% of the royalties were being paid on the basis of 1¢ per Mcf which were included in the original estimate of Colorado Interstate and accepted by the staff.

The staff recommended three adjustments to the company's claim as follows:

(1) Included in the Regulatory Commission Expenses, which were recorded in Colorado's books for the year ended September 3, 1951 is a $10,000 fee paid to Price Waterhouse & Company for the services of D. F. Houlihan who testified in behalf of Colorado in the merger proceeding, Docket No. G-1326. The staff eliminated such item as nonrecurring. Colorado takes exception to the adjustment on the basis that while this particular item might not be experienced again, other items of cost would occur in its place. Colorado's theory would involve an allowance based on speculation, a basis which has been repeatedly rejected by this Commission (Cities Service Gas Co. 3 F. P. C. 459, 485). Moreover, no evidence was presented to show that the remaining amount of Regulatory expense, i.e., $13,593 was inadequate on the basis of past experience or for future [fol. 93] requirements. Accordingly the Houlihan fee is eliminated.

(2) The claim of $95,000 by Colorado as the estimated cost of seeking Court review of our Order in this proceeding is entirely speculative and conjectural and we think not properly includible as part of the cost of service. (Driscoll v. Edison Light & Power Co., 307 U. S. 104, 121). It is, therefore, rejected.

(3) Colorado amortized its Regulatory Commission expense applicable to this case over an approximate 3-year period, whereas the staff used a 5-year period. As we stated in the previous Colorado rate case, "It is customary to amortize such expenses over a period of 5-years or more." 3 F. P. C. 32, 55. No new significant facts appear here which would warrant a departure from the customary rule. Alabama-Tennessee Natural Gas Company, Docket No. G-585, Opinion No. 226, Page 13, April 30, 1952. We, therefore, use a 5-year period of amortization.

Depreciation and Depletion—$140,934.

We have heretofore discussed the above item under Rate Base, page 5. Suffice it to say here we find the annual provision for depreciation and depletion for the test year to be $2,595,427.

Taxes Other Then Federal Income Taxes—$63,765.

The above amount relates to the State income taxes. The computation of such tax is geared to the amount of Federal income taxes allowed. Therefore, upon the basis of the computed Federal income tax liability as described in the Section next following, we find the appropriate amount to be allowed for State income taxes to be $5,568.

Federal Income Taxes—$2,306,808.

Federal income taxes are computed on the basis of return allowed and the various tax deductions to which Colorado is entitled. For this reason the amount allowable for Fed-[fol. 94] eral income taxes is the end result of other determinations of costs includible in the cost of service and of the appropriate tax deductions.

Colorado claims deductions for Federal income tax purposes of $1,578,089 whereas the deductions computed by the staff total $2,700,602. The differences are:

Depreciation per books	$ 140,934
Depletion—Tax return basis	981,579
Total	$1,122,513

We have dealt previously with the difference of $140,934 in the annual provision for depreciation and no further attention thereto at this point is required.

As for the $981,579, in computing the depletion allowance for Federal income tax purposes, Colorado used 3.17¢ per Mcf as the wellhead value of the gas produced by it in the West Panhandle field. The staff used a wellhead value of 5¢ per Mcf, the depletion allowance thereunder for tax purposes being $1,379,972 as compared with the allowance claimed by Colorado at the 3.17¢ value of $398,393. Under the tax code a producer of natural gas is permitted an annual deduction for depletion amounting to 27½% of the wellhead value but not to exceed 50% of the net income. Without going into the mechanics of the so-called percentage depletion allowance it is sufficient for our purposes here to state that generally speaking the higher the wellhead value the greater the depeletion allowance; the greater the depletion allowance the lesser the Federal income taxes; and the lesser the Federal income taxes the lower the cost of service.

The 5¢ per Mcf wellhead value was used by the staff in the instant proceeding because that was the value claimed by Colorado to support its application for a certificate of public convenience and necessity authorizing the merger into it of Canadian River at Docket No. G-1326. In that proceeding Colorado presented evidence to show that if a merger were authorized Colorado would be able to receive an increase in the wellhead value above the 3.17¢ which [fol. 95] was the basis of the last settlement by the Bureau of Internal Revenue for the 1945 tax year. It was stated that such higher wellhead value would be at least 5¢.

To show that the merger would be in the public interest, Colorado relied upon the substantial savings in Federal income taxes which would be brought about by an increased depletion allowance to offset the loss in revenues derived from the sale of liquid hydrocarbons which, under the merger, would be diverted in large part to Southwestern Development Company or its nominee. In the merger proceeding the company placed in evidence Exhibits which showed that, based upon a 5¢ wellhead value for depletion purposes and a 45% Federal income tax rate, the total tax benefit to Colorado Interstate for the period 1950-1972 would be $14,324,415. This same evidence is before us in this proceeding. Colorado has alleged no new facts nor are there any facts showing any change from the facts and testimony introduced by it in the merger proceeding. We conclude that the same evidence which supported and warranted our finding that 5¢ was a reasonable figure for tax depletion purposes supports and warrants a similar finding here. As a matter of fact, on April 24, 1951 Colorado filed an application for a certificate of public convenience and necessity at Docket No. G-1677 authorizing the construction and operation of additional facilities and in that application it included an income statement in which the depletion allowance for tax purposes was taken at the 5¢ wellhead value.

In our Opinion No. 209 (Decided March 20, 1951) authorizing the merger we had the following to say concerning the evidence which was there presented:

"As against this cost [the loss of the hydrocarbons] Colorado stands to gain an estimated $14,324,415 in tax benefits becoming available to the merged company by reason of the transfer to it of the percentage depletion allowance based on the production of both natural gasoline and natural gas from Canadian's acreage. We think that the [fol. 96] weight of the evidence supports this forecast in tax savings. Such savings clearly will inure to the benefit of Colorado's customers and the consumers of the Rocky Mountain area.

* * * We cannot and do not here attempt to influence the depletion allowance ruling which will be made by the Bureau of Internal Revenue, but, from this record, we think that the basis upon which the tax savings of Colorado of $14,324,415 was estimated is a reasonable one." (Brackets supplied.)

While Colorado has insisted throughout the present proceeding that it is going to prosecute vigorously before the Bureau of Internal Revenue its claim for a depletion allowance of at least 5¢ per Mcf, it takes the position that until such decision is finally realized the value of 3.17¢ should be used in this proceeding.

We think Colorado's proposal is without merit after its representations made to us in the merger proceeding. Further, Colorado in equity and good conscience is estopped to deny the 5¢ value here. The tax credits which would redound to Colorado and its customers as a result of a merger were a necessary ingredient to our authorization thereof. Not only is Colorado retaining the benefits of the certificate which we issued at Docket No. G-1326 but Southwestern's nominee is receiving the liquid hydrocarbons given up by Colorado pursuant to the merger agreement estimated to amount to $1,428,780 for the year 1952. Such revenues would have effected a reduction in the cost of service of such amount had the merger not taken place.

That Colorado, in the merger proceeding, fully understood and intended that the tax credits should offset the loss in gasoline revenues and that the merger would not result in any additional costs to be borne by the rate payers cannot be disputed. Its effort in this proceeding to negate its prior representations and positions, thereby substantially increasing the cost of service cannot be justified. We would [fol. 97] be derelict in our duty were we to follow Colorado's pleadings and allow the cost of service to be thus increased. Accordingly, we shall compute the depletion allowance for Federal income tax purposes at 5¢ per Mcf in lieu of 3.17¢ proposed by Colorado. On such basis we find the proper allowance for Federal Income taxes to be $185,599, as shown by the following table:

Colorado Interstate Gas Company.

G-1115

Computation of Federal and State Income Taxes Year 1952.

Gas Service Revenues, as Estimated	$17,962,532	
Less: Excess Revenues	3,009,965	$14,952,567
Revenue from Gasoline Operations		1,104,020
Other Gas Revenues—Rent		37,500
Total Income		16,094,087
Deductions:		
Operating Expenses	8,613,484	
Statutory Depreciation	2,327,417	
Statutory Depletion (Adjusted for Increased Royalties)	1,356,251	
State Income Taxes	5,568	
Taxes—Other	1,835,229	
Intangible Drilling Costs	585,920	
Cost of Removal	26,395	
Interest on Long-term Debt	964,300	
Amortization and Sundry	12,025	15,726,589
Normal Tax Net Income		367,498
Less: Surtax Exemption		25,000
Surtax Net Income		$ 342,498

[fol. 98]

Federal Income Tax:	
Normal Tax at 30%	$ 110,249
Surtax at 22%	75,350
Total	$ 185,599
State Income Taxes:	
Computed as 3% of Federal Income Tax	$ 5,568

Rate of Return

The rate of return claimed by Colorado is 6½%. The staff contends that a return of 5¾% is fair, reasonable and proper based upon the record in this proceeding. Since the difference between the staff and company as to rate base is only $35,794, the difference in return of $431,061, shown by the tabulation on page 4, is due almost entirely to the difference in the rate of return. We have in this record an abundance of evidence on the subject of rate of return including average yields for bonds of public utilities, railroads and industrials as well as U. S. Treasury bonds; data on public offerings of natural gas bonds, preferred and common stocks; earnings-price ratios of various natural gas companies' common stocks; natural gas companies' capitalization ratios and data as to Colorado's outstanding securities, its earnings and financial requirements.

The capitalization of Colorado as of December 31, 1951, which is similar to the industry as a whole and which we find to be reasonable, is as follows:

		Amount	Percent
Long-term Debt		$29,600,000	53.9%
Preferred Stock		2,000,000	3.6%
Common Equity			
Common Stock (1,711,016.6 shares)	$ 8,555,000		
[fol. 99]			
Surplus	$14,759,000		
		$23,314,000	42.5%
		$54,914,000	100.0%

The outstanding long-term debt of Colorado consists of four issues of long-term serial notes as follows:

2% Notes, due $400,000 semi-annually May 1, 1952 through May 1, 1954	$ 1,200,000[14]
2¾% Notes, due $400,000 semi-annually November 1, 1954 through November 1, 1964	$ 8,400,000
3⅛% Notes, due $250,000 semi-annually October 1, 1952 through April 1, 1969	$ 8,000,000
3¾% Notes, due $400,000 semi-annually February 1, 1955 through August 1, 1969	$12,000,000

[14] Excludes $800,000 of such notes due within one year included in current liabilities.

The weighted average cost of such debt is 3.21%. The outstanding preferred stock of the company bears a dividend rate of 6%.[15] Colorado agrees that the actual cost of its long-term debt and preferred stock capital is an shown above but maintains that such costs do not take into consideration future needs in attracting new capital.

It is, of course, true that the most recent issue of notes sold by Colorado bears an interest rate of 3¾% which rate exceeds the average rate of 3.21% for all of its outstanding long-term debt. It may well be that Colorado, in the indefinite future, may find it necessary to incur a higher interest cost than the average rate it is now paying in order to raise additional debt capital. But Colorado's contention presupposes that rate making is not a continuing process and that appropriate adjustments of rates cannot be made when experience demonstrates that adjustment is required. We find that the actual cost of the company's outstanding long-term debt and preferred stock is a proper [fol. 100] measure of the cost of borrowed money and of preferred stock funds in determining a fair rate of return for Colorado in this case.

Colorado strongly urges that it is entitled to a return on its equity capital of 11%, and bases such claim upon the testimony of its witness Merrill that such rate of return is necessary if the company is to be able to maintain its credit and attract capital. Mr. Merrill's 11% return for common equity was derived from selected earnings-price (net price to company) ratios of eight natural gas utility common stocks which were issued and sold between February 1948 and October 1951.[16] The record shows that these

---

[15] The company has stated to the Securities and Exchange Commission that it will retire such presently outstanding stock on or before December 31, 1952.

[16] Three publicly offered issues of Tennessee Gas Transmission Company and one of American Natural Gas Co. with low earnings-price ratios were eliminated because according to the witness these companies had not developed their full earning power. He also eliminated one 1948 issue of Pacific Lighting Corporation which he considered on the high side.

earnings-price ratios used by the witness were, with one exception, based on offerings to stockholders rather than to the public and thus were made at a considerable discount under prevailing market prices. It is generally recognized that such type of offerings do not represent the best prices that these companies could have received and, therefore, the results obtained therefrom cannot be wholly relied upon in determining the investor's appraisal of the cost of equity capital.

An objective study of the investors' appraisal of the common stock of nine natural gas companies [17] held by the public indicates that during the five years ending August 1951 investors have been requiring a return on the average on the issues sold publicly of around 8.3%. The average earnings-price ratios of the outstanding common stocks of seven natural gas companies traded on recognized exchanges for the same period was 8.2% with the average for the last 12 months of such period being 7.5% and decreasing to 6.4% at October 1951. At the latest date shown by the record, July 1951, the yields varied from 3.5% to 6.4%. [fol. 101] Persuasive evidence as to the cost of equity capital is provided by the experience of Colorado itself. On April 2, 1952, just two days prior to the conclusion of the hearings in this Docket, two of the principal stockholders' groups of Colorado offered for sale to the public 966,000 shares of Colorado's common stock held by them. This was the first public offer ever made of Colorado's stock and the amount offered represented 56% of the total common stock outstanding. As previously noted in this Opinion, the record shows that the public offering was oversold. The stock was offered at $26.75 per share to net the selling stockholders at $25.25 per share. The book value of the stock as of the most recent date available preceding the sale (December 31, 1951) was $13.63 per share. Based on earnings for 1951 of $1.88 per share the earnings-offering price ratio is 7.03% and the earnings-net price to the selling stockholders ratio is 7.44%.

---

[17] Natural gas companies reporting to the Federal Power Commission.

Colorado attempts to discount the earning-price ratio resulting from the public sale of its stock, maintaining that the investors might have been willing to take a smaller return because of potential development of future earning power as a result of the merger. While the price which the investors were willing to pay for the common stock of Colorado may have been based in some degree upon the investors' appraisal of the growth possibilities of the merged corporation, it can be argued that the investors also took into consideration the instant rate proceedings and the substantial reduction in income available for common stock which might result therefrom, mention thereof having been made in the company's Prospectus. It can only be concluded from the results of the sale that the selling stockholders were competing for the investors' dollar and likewise the investors were competing for Colorado's stock at the price at which it was offered. Under such circumstances the verdict of the market place is compelling evidence.

[fol. 102] A rate of return of 5¾% on the rate base which we have here used would provide a return for the common stock equity of Colorado of 8.45% [18] after the servicing of its debt and preferred stock requirements and after allowance for all income taxes. Such return for equity capital is, we believe, wholly adequate in the light of the record in this case.

We therefore conclude and find that based on the record in this proceeding a rate of return of 5¾% is fair, reasonable and adequate to assure confidence in the financial soundness of the utility; to maintain its credit and to enable it to attract capital necessary for the proper discharge of its public duties.[19]

---

[18] After allowance for cost of financing of ½%.

[19] F. P. C. v. Hope Natural Gas Company, 320 U. S. 591, 601, 603; Bluefield Waterworks & Improvement Company v. Public Service Commission, 262 U. S. 679, 692-693; United Railways v. West, 280 U. S. 234, 261-262.

Loss on Gasoline Operations

In issuing a certificate of public convenience and necessity at Docket No. G-1326 authorizing Colorado to acquire the properties of Canadian River, we attached the following condition:

"The authorization herein granted for effectuating the acquisition and operation of Canadian's properties and facilities is upon the express understanding and condition that if, as a result of carrying out the terms and conditions in the transaction proposed as a part of the acquisition and merger of Canadian into Colorado whereby rights to liquid hydrocarbons in place are granted to Southwestern Development Company and whereby Colorado is to receive 50% of the gross proceeds from the sale of certain liquid hydrocarbons and 15% of the net revenue to be received by Colorado from the hydrocarbons resulting from the operation of Fritch Natural Gasoline Plant of Texoma Natural Gas Company, the costs properly allocable to such hydrocarbons exceed the amounts payable to Colorado pursuant to such transaction, then and in that case in any proceed- [fol. 103] ing in which the effective or proposed rates of Colorado are under inquiry such excess shall not be considered as a cost of service to Colorado's natural gas customers and consumers."

There is no dispute that this condition was a reasonable one in the light of the record at Docket No. G-1326 and required by the public convenience and necessity. Colorado pursuant to the order issuing the certificate at Docket No. G-1326 has duly accepted the certificate and the conditions thereto attached. Nor is there any dispute as to the meaning and intent of the above-quoted condition. The question arising here is the determination of "the costs properly allocable to such hydrocarbons."

Under the merger agreement, as referred to in the above mentioned condition, Colorado has agreed to produce, gather and process liquid hydrocarbons, contained in the wet gas stream, and turn over the finished natural gasoline to Southwestern Development Company or its nominee at the loading rack of the Bivins and Fourway gasoline plants operated by Colorado in the West Panhandle field. Upon the consummation of the merger, Southwestern denominated Westpan Hydrocarbon Company (Westpan) as the owner of the hydrocarbons and to whom delivery is to be made. Westpan in turn, sells the finished gasoline, and after deducting 1/4th cent per gallon as cost of marketing, remits 50% of the gross revenues to Colorado. Additionally some of Westpan's liquid hydrocarbons are processed at the Fritch Gasoline Plant, owned and operated by Natural Gas Pipeline Company of America (successor to Texoma Natural Gas Company). The wet gas is produced and gathered by Colorado, brought by it to the Fritch Plant; processed there, the dry gas being sold by Colorado to Natural Gas Pipeline Company, that company sells the finished gasoline, deducts its actual costs of operation and marketing, and remits the balance to Colorado pursuant to agreement with Colorado. Under the merger agreement, Colorado agreed to remit to Southwestern or its nominee 85% of such net proceeds from the Fritch plant operations. [fol. 104] It remains, therefore, to determine whether the 50% of the gross revenues received by Colorado from the gasoline operations at the Bivins and Fourway plants, and the 15% received by it from Natural Gas Pipeline Company cover the costs properly allocable to the producing, gathering, and processing of the liquid hydrocarbons. Indeed, our opinion at Docket No. G-1326 recognizes that the "costs of producing, gathering and extracting the natural gasoline" are to be considered. (Opinion No. 209, page 8.)

Colorado claims that the gasoline revenues which it receives under the merger agreement exceed the costs properly allocable to its gasoline operations in the Panhandle field by $624,985. The staff, however, contends that such revenues fall short of meeting the cost of producing and processing the gasoline by an amount of $585,528. We have not heretofore been concerned with a similar problem since it has not been necessary under our policy in rate cases to separate the costs associated with the production and processing of gasoline from total production cost as we have always included in the cost of service all costs and revenues applicable to the gasoline operations of a natural gas company. Thus, for the purpose of the instant proceeding we find it necessary to test opposing theories and to resolve wide differences of opinion and results.

It is recognized by both Colorado and the staff that inasmuch as the liquid hydrocarbons are contained in the wet gas stream the cost of producing and gathering such wet stream to the inlet of the gasoline plants is a joint cost. The method of allocating such joint cost is one of the most important questions to be resolved. The staff allocated the joint wellmouth and gathering costs on the basis of the relative market value theory of joint production, a method generally employed in the petroleum industry. Under this method the joint costs are apportioned to the finished product on the basis of the relative market values of such products. The direct costs incurred to make each product fully marketable are deducted from the respective market [fol. 105] values of the finished products so as to determine relative market values at the point of processing where joint operations cease.

For the respective market values the staff recommended and used 5 cents per Mcf as the value of the dry gas, and as the value of the gasoline the total gasoline revenues for 1952 as estimated by Colorado, less the direct cost to make the gasoline marketable and other direct gasoline costs. The five cent value for the dry gas was based on the then latest reports of the Texas Railroad Commission as to the weighted average market price at the wellhead paid for gas being used and sold in the Panhandle field. The report of September 12, 1951, based on evidence submitted at a hearing before that commission states that the Texas Railroad Commission finds that the weighted average wellhead price being paid in the Panhandle field is 4.8526 cents per Mcf measured on a 16.4 pressure base. Further, Colorado or its predecessor, Canadian River, paid the Texas production tax based on the market value of its gas at 4.33 cents per Mcf. The staff assigned all the costs of the gasoline plants to the gasoline operation, except such costs as applied to the steam and cooling facilities to dehydrate the gas entering Colorado's transmission line.

Colorado, on the other hand, allocated the wellmouth and *and* gathering costs on what it termed a volumetric method based on the shrinkage of the wet gas volume while being

processed. The result of such method is that one per cent of the total wellmouth and gathering costs of the wet gas processed at the Bivins and Fourway plants is assigned to gasoline and 99 per cent to the dry gas. Because the contract with Natural Gas Pipeline Company for the processing of the wet gas at the Fritch plant provides for a 2 per cent shrinkage allowance, Colorado allocated 2 per cent of the total wellmouth and gathering costs of the Fritch gas to gasoline and 98 per cent to dry gas. The weighted average percentage of all the wellmouth and gathering costs for all the wet gas processed at the three plants results in 1.27 per cent assigned to gasoline and 98.73 per cent to dry gas. Thus, of $4,323,547 claimed by Colo-
[fol. 106] rado as total wellmouth and gathering costs for all the wet gas processed at these three plants, Colorado assigns $55,008 as the cost attributable to the gasoline operations, and the balance to the dry gas.

Colorado, additionally, treats the processing [20] of the wet gas within the gasoline plants up to and including the distillation unit as a joint operation. The balance of the processing is treated as a direct gasoline operation, except for an amount allocated to the dry gas for dehydration. In spreading the gasoline plant costs which it considers joint, Colorado used the same 1 per cent and 2 per cent basis which it used for the wellmouth and gathering costs. The result is that out of total claimed costs of $1,012,603 for operation of the three gasoline plants, Colorado claims $570,617 as joint costs, $366,374 as direct gasoline costs, and $75,612 as direct dry gas costs. Then Colorado assigns

---

[20] In brief, the processing involves bringing the wet gas in contact with mineral oil in vessels termed "absorbers." The heavier hydrocarbons in the wet gas are picked up by the mineral oil—such oil being circulated in a continuous process through the absorbers and in a distillation unit, the liquid hydrocarbins being separated from the oil in the latter. The liquid hydrocarbons are further processed through a stabilizer and gasoline treater to bring them to a commercial marketable grade of natural gasoline. The dry or residue gas stream flows from the absorbers to a dehydration unit and thence into the pipe-line system.

$7,453, or 1.27 per cent, of the $570,617 joint costs to the gasoline and the balance of $563,164, or 98.73 per cent, to the dry gas. Thus a total of $638,776 ($563,164 of joint costs plus $75,612 of direct costs) is assigned to the dry gas and $373,827 to the gasoline operations out of total gasoline plant costs of $1,012,603.

Colorado contends that the relative value method is subject to such serious deficiencies upon application to the facts in this case that it breaks down. On the other hand the staff urges that the volumetric basis fails to recognize the economics of the natural gasoline business and produces an unreasonable result. We believe the Supreme Court of the United States cogently stated the criteria to be applied in allocation matters when it said, "considera- [fol. 107] tions of fairness not mere mathematics govern the allocations of costs." Colorado Interstate v. F. P. C., 324 U. S. 581. Moreover, the reasonableness of the result is essential to the validity of any method of allocating joint costs. Accounting for Joint Costs, Harold G. Avery, Accounting Review, April 1951.

We think neither the relative value method, nor the volumetric method are entirely satisfactory, but from our study of the evidence we are of the opinion and find that the relative value method as applied by the staff produces a more reasonable and fairer result in our judgment than does Colorado's method. The record shows that during the year 1952 it is estimated that 45,143,140 gallons of natural gasoline will be processed at the three plants, the total market value of such gasoline being estimated at $2,482,600. This amount must be compared with the total costs assigned to natural gasoline operations by Colorado of $428,835. Thus, it is evident that the annual revenues from the sale of natural gasoline exceed by more than five times the costs allocated by Colorado to such operations after allowance for a return of 6½% and the income taxes associated therewith. On a rate of return basis, the method followed by the staff would result in the gasoline operations earning a 15.8% rate of return on the rate base assigned to such operations as compared to a rate return resulting from Colorado's method of 163%.

We next turn to the allocation methods and cost assignments within the gasoline plants themselves. As previously noted, the staff assigned all of the costs associated with the gasoline plant operation directly to natural gasoline other than those applicable to the dehydration of the pipe-line gas. Colorado, on the other hand, divided the gasoline plant facilities between (1) joint dry gas and gasoline; (2) direct dry gas and (3) direct gasoline, and assigned or allocated to these three classification operating expenses, depreciation, taxes and return.

It is the position of Colorado that it is necessary for the efficient operation of its transmission line system to extract the liquid hydrocarbons from the gas since unless [fol. 108] such liquids are extracted transmission line operations would be hampered and the lines would freeze up during low temperature conditions. The staff does not dispute that the removal of some liquids is necessary for operating purposes but maintains that the extraction of liquid hydrocarbons through Colorado's plants is carried on to a much greater degree than necessary for transmission line operations.

There is no doubt that under the merger agreement Colorado is obligated by contract to install the facilities necessary to extract gasoline as would be installed by a prudent operator. Furthermore, it may be required to extract the liquid hydrocarbons to a point where the remaining heat content of the dry gas would not be less than 963 Btu's per Mcf. Under such agreement, Colorado is not a free agent to discontinue or curtail its gasoline operations [21] to meet its transmission requirements and in fact may be called upon, under the merger agreement, to expand them substantially. It is admitted by Colorado's witness that if the gasoline operations were stepped up at the request of West Pan to produce more gasoline, the additional facilities would be chargeable wholly to the gasoline operations.

It also appears from the evidence that the dehydration unit serves to remove some liquids which are introduced

---

[21] Colorado has authority under the agreement to by-pass the gasoline plants in cases of emergency.

into the gas stream during the course of its processing in the plants but all costs relating to dehydration were assigned entirely to dry gas. As we view the evidence some of the facilities which were assigned by Colorado to the joint gas and gasoline operations appear to be more properly assignable to the gasoline operations.[22]

From our examination of the record it is our conclusion that part of the operations of the gasoline plants should be [fol. 109] treated as a joint operation. We, therefore, adopt for the purposes of this case, Colorado's point of split-off within the gasoline plant and the percentages used by it to determine the joint gas and gasoline costs, the direct dry gas costs and the direct gasoline costs within the plants. We shall use, however, the gasoline plant costs heretofore found and determined by us to be the costs to be allocated. We also recognize that our adoption of Colorado's method may result in the assignment of more costs to the dry gas than may be proper but the record here does not include data for further refinement or adjustment.

Inasmuch as we find that the gasoline plant costs are in part joint costs, it becomes necessary to compute the market value of the raw gasoline at the point of split-off in the plants (at the conclusion of distillation process). Table I below shows the derivation of the representative market values of dry gas and natural gasoline and the resulting percentages to be used in allocating the joint costs to dry gas and natural gasoline.

---

[22] For example, the "distillation unit" condenser and tank at the Bivins and Fourway Plants appear to be only necessary for the recovery of gasoline.

[fol. 110]

TABLE I

Colorado Interstate Gas Company

Computation of Percentages Used to Allocate Joint Gas
and Gasoline Costs to Dry Gas and Natural Gasoline
Year 1952.

	Total	Bivins	Gasoline Plants Fourway	Fritch
Value of Dry Gas				
Gas Output of Plants—				
Mcf at 16.4 p.s.i.a.	113,682,214	49,893,969	20,864,638	42,923,607
Value of Dry Gas at 5¢ per Mcf	$5,684,110	$2,494,698	$1,043,232	$2,146,180
Value of Gasoline				
Gross Revenue	$2,482,600	$ 893,000	$ 457,000	$1,132,600
Less: Cost to Make Marketable (Direct Gasoline Plant Costs)	208,863	65,639	88,663	54,561
Value of Gasoline	$2,273,737	$ 827,361	$ 368,337	$1,078,039
Total Value	$7,957,847	$3,322,059	$1,411,569	$3,224,219
Dry Gas Percent		75.095%	73.906%	66.564%
Gasoline Percent		24.905%	26.094%	33.436%

[fols. 111-112] The allocation percentages as determined above are then applied to the joint wellmouth and gathering costs and to the joint gasoline plant costs as summarized in the Table below for each of the three plants:

(Here follows Table, folios 113-114)

Fols. 113-114]

TABLE

Colorado Interstate Gas Company
Allocation of Costs to Gasoline Operations and
Computation of Net Loss Thereon
Year 1952

		All Plants		Bivins		Fourway		Fritch	
	Total	Gas	Gasoline	Gas	Gasoline	Gas	Gasoline	Gas	Gasoline
Allocation Percentages				75.095%	24.905%	73.096%	26.094%	66.564%	33.436%
Joint Well Mouth and Gathering Costs	$3,921,979	$2,805,920	$1,116,059	$1,262,952	$ 418,854	$ 521,623	$ 184,170	$1,021,345	$ 513,035
Joint Gasoline Plant Costs (Note 1)	537,199	386,764	150,435	162,084	53,754	108,407	38,275	116,273	58,406
Total	$4,459,178	$3,192,684	1,266,494	$1,425,036	472,608	$630,030	222,445	$1,137,618	571,441
Direct Gasoline Costs (Note 1)			208,863		65,639		88,663		54,561
Total Costs Assigned to Gasoline			1,475,357		538,247		311,108		626,002
Applicable Gasoline Revenues			1,053,820		446,500		228,500		378,820
Net Loss on Gasoline Operations			$421,537		$ 91,747		$ 82,608		$ 247,182

Note 1

Segregation of Costs Within the Gasoline Plants Computed as follows:

	Total	Bivins	Fourway	Fritch
Total Costs Applicable to Gasoline Plants	$814,251	$301,431	$267,020	$245,800
Allocated as follows:				
To Joint Gas and Gasoline	$537,199	$215,838	$146,682	$174,679
Percent used for Operation and Maintenance Expenses		65.94%	48.80%	65.94%
Percent used for all other costs		78.51%	58.3 %	78.51%
To Direct Gasoline Costs	$208,863	$ 65,639	$ 88,663	$ 54,561
Percent used for Operation and Maintenance Expenses		26.21%	35.58%	26.21%
Percent used for all other costs		16.37%	31.9 %	16.37%
To Direct Dry Gas	$ 68,189	$ 19,954	$ 31,675	$ 16,560
Percent used for Operation and Maintenance Expenses		7.85%	15.62%	7.85%
Percent used for all other costs		5.12%	9.8 %	5.12%

[fol. 115] Thus, of the total wellmouth and gathering cost, $2,805,920 is allocated to dry gas and $1,116,059 to natural gasoline. The joint gasoline plant costs are allocated $386,764 to dry gas and $150,435 to natural gasoline. The gasoline plant costs directly assigned to natural gasoline amount to $208,863. The total cost therefore applicable to the production, gathering and processing of the liquid hydrocarbons owned by Westpan into finished gasoline is $1,475,357. The total revenue accruing to Colorado under the merger agreement for gasoline operations is estimated by it for 1952 to be $1,053,820. Therefore, from such operations there is a net loss or excess of cost over revenues of $421,537. Under the terms of the certificate which we issued to Colorado in Docket No. G-1328, supra, page 48, which terms and conditions were accepted by Colorado, this loss is not to be considered as a cost of service to Colorado Interstate's natural gas customers and consumers. Accordingly, we find and conclude that the loss of $421,537 shall not be considered as a part of the cost of service which we have heretofore determined.

In connection with our determination of the loss on gasoline operations it should be recognized that we are here adjusting the cost of service so as to remove the burden of such loss from the consumers as Colorado agreed should be done. We are not suggesting that Colorado set up cost accounting procedures for the purpose of currently segregating its cost on the basis of our decision as such appears to be entirely unnecessary.

Summary of Cost of Service.

Based upon the foregoing and the record before us we find that total overall cost of service is $14,952,567 as follows:

[fol. 116] Operating Expenses	$ 7,471,964
Depreciation and Depletion	2,595,427
Taxes Other than Fed. Income	1,840,797 [23]
Federal Income Taxes	185,599
Return at 5¾%	3,280,317
Loss on Gasoline Operations	(421,537)
Total Cost of Service	$14,952,567

Classification and Allocation of Cost of Service

One of the more important issues of this proceeding is the apportionment of the total cost of service between jurisdictional and non-jurisdictional sales. Both the staff and the company used the method of first classifying costs into demand and commodity classifications [24] and then al-

[23] We note from the press that a District Court of the State of Texas has held *unconstitutional,* the Texas Gathering Tax but that an appeal may be taken. The above amount of $1,840,797 includes the estimated Texas gathering tax for the Year 1952 in the amount of $573,332. Colorado is currently paying such tax under protest. It does not appear to us that we can make an adjustment therefor at this time, on the basis of these reports, but if Colorado is relieved from paying such tax we shall require a further rate reduction.

[24] The staff classified distribution costs between commodity and customer costs, rather than between demand and commodity. Colorado Interstate classified distribution costs between demand and commodity.

locating such classified costs among the various classes of customers. Both the staff and Colorado functionalized the cost of service into production,[25] transmission and distribution, functions. The only significant difference in method between Colorado and the staff in this respect relates to the assignment of Federal income taxes to functions. The staff assigned the total Federal income tax between functions on the ratio that the return calculated for each function bears to the total return. Colorado's method resulted in the assignment to the Panhandle field segment of the production function of a negative income tax which was utilized by Colorado as reducing the actual cost of the production functions. This is an unrealistic result. For the purpose of this case, therefore, we use the method recommended by the staff.

[fol. 117] The staff classified all production costs as a commodity cost. Colorado has assigned certain production costs or parts thereof, to demand on the theory that such costs do not vary with the volumes of gas produced. We find no justification in the record for treating these particular costs differently from the other production costs which Colorado admits should be classified to commodity. In re Northern Natural Gas Company, Opinion No. 228, June 11, 1952, Mimeo. ed. p. 24, where contentions similar to those made by Colorado were advanced, we held that production costs are so intimately associated with the volumes of gas produced that they are properly classified as commodity costs.

The staff classified transmission costs between demand and commodity based on behavior of cost studies and judgment. Supervision and engineering, and administrative and general expenses were classified between demand and commodity on the ratios developed from all other supervised expenditures, exclusive of compressor station fuel. Colorado assigned 100% of supervision and engineering to demand on the ground that such costs were dependent solely upon the size and location of the plant and had no relation to the volume of gas sold. Of administrative and

[25] Includes products extraction.

general expense, it assigned about 91.5% to demand and 8.5% to commodity, on the ground that most of such expenses do not vary with the volumes of gas transported and sold. Even if the salaries of officers of the company and supervisors are fixed, and even though all the time of such officials is not spent in direct contact with the employees of the company, we find that the only reasonable and equitable basis of spreading these costs is in proportion to the supervised expenditures. In this way, these costs are correlated in proportion to the dollar amounts of the supervised expenditures exclusive of compressor station fuel, which are made to carry on the business of the company and to earn revenues. And as we shall discuss in a moment, we do not adhere to the view that all fixed costs are ipso facto translated into the demand classification.

Compressor station labor, compressor station supplies and expenses (which includes compressor station fuel), and [fol. 118] maintenance of compressor station equipment were classified by the staff entirely to commodity. Colorado assigned compressor station labor 50% to demand and 50% to commodity; compressor station supplies and expenses, including compressor station fuel, 100% to commodity; and maintenance of compressor station equipment, 100% to commodity.

We have recently had occasion to review the problem of classifying costs for purpose of making a fair and equitable allocation of total costs between jurisdictional and non-jurisdictional business. Atlantic Seaboard Corporation, Op. No. 225, decided April 23, 1952; and Northern Natural Gas Company, Op. No. 228, decided June 11, 1952- We there held that all constant costs are not thereby translated into demand costs; that the determination of now much of the constant costs shall be apportioned between demand and commodity cannot be measured by the slide rule or mathematical formula; that such determination rests necessarily solely and entirely on judgment.

We found that in classifying compressor station labor, such costs partake of certain fixed characteristics, but both the capacity of a pipeline and its annual use are important cost incidences. We reach the same conclusion here. It is our judgment that compressor station labor should be classified equally between demand and commodity. As to the other two items, compressor station supplies and expenses, including fuel, and maintenance of compressor station equipment, as to which there is no dispute between staff and Colorado in classifying such costs as 100% to commodity, we find that this is the proper classification for these two items.

"Other operating expenses" and "other maintenance expenses" were classified by the staff on the basis of 50% to demand and 50% to commodity. Colorado treats some of the items in these groups as 100% demand on the ground that after analysis of some of these items, Colorado's witness concluded such costs were fixed and therefore should be classified as demand costs. Even if we were to agree with the subsidiary facts, we are not necessarily bound to [fol. 119] reach the same conclusion that such items are fixed costs. For instance, Colorado's witnesses stated that the item "Other Operation Labor" represents the labor cost of operating dehydration plants. From this he reached the conclusion that such an expense was not related to the volume of gas transported. (T. 1674.) We reach a different and contrary conclusion. In our judgment we find such costs related to the volume of gas purchased and produced. Similarly Colorado's witness classified the cost labelled "transmission maps and records" as a demand cost—as not varying with the volumes of gas transported and sold.

But, whether we would or would not agree in every instance as to the few items analyzed by Colorado is not controlling with respect to the allocation of such constant costs. Colorado has treated all constant costs as demand costs, but this treatment assumes that classification of an item as a constant cost means that it is assignable 100% to demand. With this we cannot agree. As we stated in Atlantic Seaboard case, and repeated in the Northern Natural opinion,

"* * * A pipe line would not normally be built to supply peak service, that is to say, service on the peak days only. We know from our administration of Section 7 of the Natural Gas Act, which involves the issuance of certificates of public convenience and necessity, that pipe lines are built to supply service not only on the few peak days but on all days throughout the year. In proving the economic feasibility of the project in certificate proceedings, reliance is placed upon the annual as well as the peak deliveries. Stated another way, the capital outlay for the pipe-line facility is made—and justified—not only for service on the peak days but for service throughout the year. Both capacity and annual use are important considerations in the conception of the project and the issuance of certificates of public convenience and necessity. Both capacity and volume, therefore, are what are known as cost factors or incidences in respect to the capital outlay for a pipeline project. It follows that reasonably accurate results can be achieved only by allocating the fixed expenses flowing from [fol. 120] the capital outlay to both operating functions, viz., capital and volume.''

Thus, even if all such costs included in ''Other Operating Expenses'' and ''Other Maintenance Expenses'' are considered fixed, we find for these reasons and upon the record in this proceeding, that such cost should be classified 50% to demand and 50% to commodity. The staff has so treated these expenses and we adopt such classification.

The staff witness classified depreciation, taxes, and return equally between demand and commodity. Colorado classified all depreciation as a demand cost; other taxes except for state and federal income taxes and payroll taxes were classified as 100% demand. State and federal income taxes were classified 50-50, and return 50-50. We have referred in the Atlantic Seaboard and Northern Natural opinions to the fact that depreciation and return are related items. No useful purpose would be served in repeating here all that was said in those opinions. We find that there are no facts here warranting any departure from the principles announced by us on this matter. Demand and volume are important cost incidents in depreciation. We believe they should be given equal weighing in its classifications and we accordingly classify it 50-50. As to taxes, other than income taxes, we find that the property tax which is the largest item may be considered as a fixed cost and treated like depreciation and return.

Colorado classified income taxes and return 50-50. The reason given was that the cost of Colorado's funded debt was approximately 50% of Colorado's claimed 6½% rate of return and therefore 50% of the return was a fixed cost and the remainder was a variable cost. We find that return, like depreciation, is a fixed cost and because demand and commodity functions are important considerations, we shall classify return and income taxes (associated with the return) equally between demand and commodity.

[fol. 121] In transmission costs, there is included the costs for dehydrating the gas. The staff classified all dehydration costs, including taxes, depreciation and return, as 100% commodity on the ground that dehydration followed production and was directly proportional to the volume of gas processed. Colorado treated dehydration as it did its "other operating expenses." We find and conclude that dehydration costs are directly related to the volume of gas processed and should be classified 100% to commodity.

Distribution costs are less than two percent of the total cost of service. We find that the staff's method of classifying distribution costs 50% to commodity and 50% to customers on the basis of metering units is more reasonable and accurate than Colorado's demand-commodity classification.

In allocating the costs classified between demand and commodity, the staff allocated demand costs to classes of customers on the basis of the estimated normal peak day in 1952. Colorado estimated its 1952 revenues on the basis of a normal peak day. The staff has accepted such revenue estimates, and accordingly used the peak day on which Colorado estimated its revenue. Colorado allocated its demand costs on the basis of the actual system peak day sustained in the 1951-52 seasons; to-wit, February 24, 1952.

It was admitted by Colorado that all of the facilities, the costs of which are included in the cost of service studies of both staff and the company were not in service on February 24, 1952. Further, the revenue estimates were based on all these additional facilities being in operation. We conclude under the facts here, that the normal peak day for 1952 is the more reliable measure for allocating the demand costs.

As a practical matter the percentage of jurisdictional sales on the peak day used by the staff is 90% and non-jurisdictional is 10%. On Colorado's peak day the jurisdictional [fol. 122] is 90.39% and the non-jurisdictional is 9.61%, so that in effect the difference is de minimus.[26]

In allocating demand costs, the staff allocated such costs among the transmission pipeline customers. Colorado allocated its demand costs among all its customers, including sales made at the well mouth and in the field, on the ground that it classified production costs into demand and commodity. Since we have classified all production costs as commodity costs, it is only reasonable and proper that transmission line costs should be allocated to transmission line sales.

Colorado did not assign any of the Hugoton and Loveland field costs against its customer the Amarillo Oil Company. The staff pooled all production costs and spread such costs among all customers, including Amarillo Oil Company. Colorado excludes Amarillo Oil Company from all pooled production costs on the ground that Colorado, and its predecessor Canadian River, have a cost contract based on production in the Panhandle field. In spreading costs, all customers must share pro rata in the total costs. All customers, including Amarillo Oil Company, receive benefits from all the operations of the company. Amarillo Oil Company receives a benefit from Colorado's gas purchases in the Hugoton and Loveland fields to the extent that such purchases reduce the volumes which otherwise would be required to be produced by Colorado in the Panhandle field. We do not find that the cost contract between Colorado and Amarillo Oil Company is of such nature as to derogate from the general practice of pooling all costs and assigning them pro rata against all customers.[27]

In spreading its costs, Colorado has listed the sales to Colorado Springs, City of Trinidad and Public Service Company of Colorado for power plant use as a "direct

---

[26] Excludes sales to Dalhart Gas Company.

[27] Re Northern Natural Gas Company, Opinion No. 228, page 40.

sale." At the time of the hearing, no sales were being made to the City of Trinidad for power plant use. Colorado admitted that the volumes it listed as sold to Colorado Springs as a direct sale were being sold under Rate Schedule I-1 on file with the Commission as a rate schedule covering sales for resale for industrial use. Additionally, [fols. 123-124] sales under the I-1 Rate Schedule are available only to those who purchase gas under the G-1 Rate Schedule, which is the sale for resale for general use. Colorado also admitted that the volumes it listed as a direct sale to Public Service Company for power plant uses were sold under Rate Schedule G-1, a rate schedule on file with the Commission covering sales for resale for domestic, commercial and industrial consumption. It estimated the amount to be used by Public Service in its power plant based on advice furnished to Colorado by Public Service in 1948. The staff considered all sales under the I-1 and G-1 Rate Schedules as sales for resale and therefore jurisdictional. Revenue estimates of sales to Public Service and Colorado Springs for boiler fuel use were based on rates in existing rate schedules. Colorado did not include such sales as jurisdictional. We conclude that on this record such sales should be included with the jurisdictional business.

There is nothing inconsistent here with Colorado Interstate Gas Company v. F. P. C., (C. A. 3), 185, F. 2d 357. That case simply decided that a rate schedule could be filed if stated in the terms of the statute that it was applicable only to sales for resale. Admittedly, all the sales to Colorado Springs and to Public Service Company are made pursuant to rate schedules on file with the Commission applicable to sales for resale.

The following tables show our findings and conclusions as to the classification of the cost of service and the allocation thereof among the various classes of customers.

(Here follows Table, folios 125-126)

[fols. 125–126]

TABLE NO. 1

Colorado Interstate Gas Company
Excess Revenues and Cost of Service—By Functions
Year 1952

Line No.			Production					Production Extraction Plants				Transmission		Distrbution
			Hugoton and Loveland Fields		Panhandle Field		Hugoton Field		Panhandle Field		Extraction Costs Allocated to Dry Gas	Dehydra-tion Panhandle Field	Other Transm.	
		Total	Well Mouth	Gathering	Well Mouth	Gathering	Lakin	Bivins	Fourway	Fritch				
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
1	Gas Service Revenues	$17,962,532	$ ..	$ ..	$ ..	$ ..	$ ..	$ ..	$ ..	$ ..	$ ..	$ ..	$ ..	$ ..
	Cost of Service													
2	Operating Expenses	8,613,484	2,018,800	299,671	1,438,855	229,454	118,205	262,127	146,620	93,100	..	44,236	3,721,478	240,938
3	Depreciation	2,537,739	..	239,734	377,807	188,949	30,632	36,556	50,290	..	..	17,485	1,573,054	23,232
4	Depletion	57,688	..	..	57,688	..	..	..	..	..	..	..	..	..
	Taxes:													
5	Federal Income	185,599	848	16,899	25,455	10,590	2,231	2,017	3,961	..	..	1,383	120,361	1,854
6	State Income	5,568	25	507	764	318	67	61	119	..	..	41	3,611	55
7	Other	1,835,229	..	80,953	403,518	628,272	11,512	14,313	17,785	..	..	6,277	659,608	12,991
8	Return at 5¾%	3,280,317	14,989	298,689	449,888	187,175	39,442	35,647	70,008	..	..	24,431	2,127,270	32,778
9	Other Gas Revenues—Rent	(37,500)	..	..	..	..	..	(2,200)	(1,250)	..	..	..	(34,050)	..
10	Expense charged by Natural Gas Pipeline Co. of America to Fritch Operations	245,800	..	..	..	..	..	..	..	245,800	..	..	..	..
11	Sub-total	16,723,924	2,034,662	936,453	2,753,975	1,244,758	202,089	348,521	287,533	338,900	..	93,853	8,171,332	311,848
12	Allocation of Gasoline Plant Costs to Dehydration and Compression	..	..	..	..	..	..	(19,954)	(31,675)	(16,560)	..	50,208	17,981	..
13	Sub-total	16,723,924	2,034,662	936,453	2,735,975	1,244,758	202,089	328,567	255,858	322,340	..	144,061	8,189,313	311,848
	Allocation of Costs to Gasoline:													
14	Bivins	..	..	..	(242,260)	(129,504)	..	209,680	..	..	162,084	..	..	..
15	Fourway	..	..	..	(106,916)	(56,741)	..	..	55,250	..	108,407	..	..	..
16	Fritch	..	..	..	(268,543)	(151,392)	..	..	..	303,662	116,273	..	..	..
17	Sub-total	16,723,924	2,034,662	936,453	2,136,256	907,121	202,089	538,247	311,108	626,002	386,764	144,061	8,189,313	311,848
18	Gasoline Revenues	(1,349,820)	..	..	..	..	(296,000)	(446,500)	(228,500)	(378,820)	..	..	..	..
19	Sub-total	15,374,104	2,034,662	936,453	2,136,256	907,121	(93,911)	91,747	82,608	247,182	386,764	144,061	8,189,313	311,848
20	Loss on Gasoline Operations	(421,537)	..	..	..	..	..	(91,747)	(82,608)	(247,182)	..	..	..	..
21	Cost of Service	$14,952,567	$2,034,662	$ 936,453	$2,136,256	$ 907,121	($ 93,911)	$ ..	$ ..	$ ..	$ 386,764	$ 144,061	$8,189,313	$ 311,848
22	Excess Revenues	$ 3,009,965												

[fol. 127–128]

TABLE No. II

Colorado Interstate Gas Company
Summary—Allocation of Cost of Service
Total System
Year 1952

Line No.	(a)	Annual Volume Mcf[1] (b)	Revenue (c)	Cost of Service: Production (d)	Transmission (e)	Distribution[2] (f)	Total (g)	Excess Revenue Over Cost of Service (h)
	Transmission System Sales to Other Utilities							
1	Juridictional	86,119,000	$13,384,661	$3,278,988	$6,823,920	$ 170,566	$10,273,474	$3,111,187
2	Non-Jurisdictional	535,000	72,225	20,374	54,023	6,111	80,508	(8,283)
3	Total	86,654,000	13,456,886	3,299,362	6,877,943	176,667	10,353,982	3,102,904
4	Direct Sales	15,958,000	2,135,721	607,593	1,012,431	36,010	1,656,034	479,687
5	Total Transmission System	102,612,000	15,592,607	3,906,955	7,890,374	212,687	12,010,016	3,582,599
6	Leased Transmission System[3]	48,051,000	1,945,400	1,829,549	443,000	53,512	2,326,061	(380,661)
7	Field System	15,472,000	424,525	570,841	..	45,649	616,490	(191,965)
8	Total System	166,135,000	$17,962,532	$6,307,345	$8,333,374	$ 311,848	$14,952,567	$3,009,965

[1] Pressure base 14.65 p.s.i.a.
[2] Distribution Cost Classified 50% to Commodity & 50% to Customer.
[3] Sale to Natural Gas Pipeline Company of America.
() Indicates Red Figures.

(Here follows Table, folios 129-130)

[fol. 129–130]

TABLE No. III
Colorado Interstate Gas Company
Allocation of Cost of Service
Production System
Year 1952

Line No.		Well Mouth			Gathering			Products Extraction			Total Production System
		Volume Mcf[1]	Percent	Cost	Volume Mcf[1]	Percent	Cost	Volume Mcf[1]	Percent	Cost	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)
	Transmission System Sales to Other Utilities										
1	Jurisdictional	86,119,999	51.837	$2,482,286	86,119,000	53.887	$1,175,389	86,119,000	57.160	$(378,687)	$3,278,988
2	Non-Jurisdictional	535,000	0.322	15,419	535,000	0.335	7,307	535,000	0.355	(2,352)	20,374
3	Total	86,654,000	52.159	2,497,705	86,654,000	54.222	1,182,696	86,654,000	57.515	(381,039)	3,299,362
4	Direct Sales	15,958,000	9.605	459,949	15,958,000	9.986	217,816	15,958.000	10.592	(70,172)	607,593
5	Total Transmission System	102,612,000	61.764	2,957,654	102,612,000	64.208	1,400,512	102,612,000	68.107	(451,211)	3,906,955
6	Leased Transmission Facilities[2]	48,051,000	28.923	1,385,017	48,051,000	30.067	655,824	48,051,000	31.893	(211,292)	1,829,549
	Field System										
7	Well Mouth	6,323,000	3.806	182,256	..	..	..	..	..	..	182,256
8	Other	9,149,000	5.507	263,710	9,149,000	5.725	124,875	..	..	..	388,585
9	Total Field	15,472,000	9.313	445,966	9,149,000	5.725	124,875	..	..	..	570,841
10	Total System	166,135,000	100.000	$4,788,637	159,812,000	100.000	$2,181,211	150,663,000	100.000	$(662,503)[3]	$6,307,345

[1] Pressure Base 14.65 p.s.i.a.
[2] Sale to Natural Gas Pipeline Co. of America.
[3] Total of lines 14, 15, and 16, cols. (e) & (f) plus line 21, cols. (g) & (k).