

Testimony and Exhibits

A-140100
74

Consecutive No. _____

File No. A 17525

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

CONTRACT BETWEEN

Public Service Company

The Pure Oil Company et al
Municipal Corporation

Nature of Contract _____

No. of Record Folders

No. of Correspondence Folders

No. of Test. and Ex. Folders

BEFORE

A - 140100
F4

The Public Service Commission

Commonwealth of Pennsylvania

92676
A-17525

Application of Pure Oil Company, Producers and Refiners Pipe Line Company, and National Transit Company for a certificate of Public Convenience under Article 3, Section 3-C, Article 5, Sections 18-19, of the Public Service Company law for the approval of the sale of that portion of the pipe line owned by Producers and Refiners Pipe Line Company in the Commonwealth of Pennsylvania north of the southerly line of Butler County, to the National Transit Company, a Pennsylvania Corporation.

NOV 21 1927

OFFICE OF SECRETARY
THE PUBLIC SERVICE COMMISSION

Application
Docket,
File A-17525-27.

PETITIONER'S BRIEF

RECORD
FOLDER

DOCKETED
REGISTRATION DOCKET
NOV 22 1927
5
Entry No.

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EUGENE MACKAY,
JOHN W. DUNKLE,
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Attorneys.

BEFORE

The Public Service Commission

Commonwealth of Pennsylvania

Application of Pure Oil Company, Producers and Refiners Pipe Line Company, and National Transit Company for a certificate of Public Convenience under Article 3, Section 3-C, Article 5, Sections 18-19, of the Public Service Company law for the approval of the sale of that portion of the pipe line owned by Producers and Refiners Pipe Line Company in the Commonwealth of Pennsylvania north of the southerly line of Butler County, to the National Transit Company, a Pennsylvania Corporation.

Application
Docket,
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The pipe lines agreed to be sold under contracts of the Pure Oil Company extend from the southwesterly limits of the state of Pennsylvania to a point near Warren in said state, and in the contracts of purchase it was provided that that portion of the pipe line system extending from the southwest limits of the State of Pennsylvania to a point called Netzsky's Station at or near the southern limits of Butler County, should be sold to the Southwest Pennsylvania Pipe Lines, and that portion of said pipe line system extending northeast from Netzsky's Station to a point at or near Warren, Pennsylvania, should be sold to the National Transit Company.

Two petitions for certificates of approval were filed, one at File A-17524-27 which involved the contract for sale to the Southwest Pennsylvania Pipe Lines, and the other at File A-17525-27 which involved the sale to the National Transit Company.

In view of the fact that there was no protest to the approval of the contract for the sale of that portion of the pipe line system to the Southwest Pennsylvania Pipe Line Company, it was agreed as shown by the record on page 133 that the application at File A-17524-27 should be submitted on the record, and that as to application at File A-17525-27 oral arguments were waived but briefs were to be filed.

Therefore, this brief is filed on behalf of the applicants at the above number.

STATEMENT OF THE CASE.

Under date of the 10th day of August, 1927, the Pure Oil Company which controlled either directly or through subsidiaries, all of the capital stock of the Pure Oil Pipe Line Company, an Ohio Corporation, Pure Oil Pipe Line Company, a Pennsylvania Corporation, and Producers and Refiners Pipe Line Company, a Pennsylvania Corporation, entered into a contract with the National Transit Company, a Pennsylvania Corporation, wherein and whereby it was agreed, subject to the approval of this Commission, that the Pure Oil Pipe Line Company would sell and convey all that portion of its pipe line system and equipment lying and situate north of the southern boundary line of Butler County, Pennsylvania, for the price or sum of \$660,000.00. It was further provided that the contract to sell and purchase this portion of the pipe line system

was conditional upon the sale and purchase of the remaining portions of the Pure Oil Pipe Line systems located in the state of Pennsylvania.

Pursuant to this contract a petition for the approval of the contract by this honorable Commission was filed. Thereupon a hearing was fixed to be held on the 28th day of September, 1927, at the City County Building, Pittsburgh, Pennsylvania, of which hearing due notice was given by publication and otherwise as required by the order of the Commission.

At the time fixed for the hearing, certain refiners appeared and entered a formal protest to the petition. At the same time certain minority stockholders appeared by counsel and while not filing any formal protest, gave verbal notice that they intended to file a protest to the petition. Thereupon the hearing was continued until the 27th day of October, 1927, at the same place. On that date fixed for the adjourned hearing the protesting refineries appeared before the Commission by counsel stating that they desired to withdraw their protest for the reason that a satisfactory understanding had been arrived at between them and the pipe line companies which had been reduced to writing and which writing was filed as a stipulation on the record.

The minority stockholders who had appeared at the first hearing then filed a written protest and persisted in their protest throughout the hearing.

The petition for a certificate of public convenience sets forth and alleges that the portion of the system of the Pure Oil Company proposed to be sold had been operated at a loss for several years; that it is no longer necessary for the accommodation and convenience of the public that this pipe line system be maintained; that the National Transit Company has offered to buy

it, that the two systems can be operated as one more economically; and that it would be to the benefit and advantage of the public that the National Transit Company be permitted to buy that portion of the said pipe line company embodied in the contract.

A reading of the protest filed by the minority stockholders clearly shows that their sole and main objection is not that the public interest will not be advanced, but that, in their judgment as stockholders of the National Transit Company, it is not a wise investment for the National Transit Company to make.

The hearing was proceeded with before the Honorable Samuel Walker, Commissioner.

ABSTRACT OF THE EVIDENCE.

In support of the application the petitioners called a number of witnesses, an abstract of the testimony given by such witnesses is as follows:—

M. I. DEUEL:

I reside at Wilkesburg, Pennsylvania. Am general superintendent of the Southern Pipe Line system of the Pure Oil Company. Have held such position for nine years. Been in the pipe line business practically all my life. (Record page 11). Made an inventory of the portion of the line of the Pure Oil Company system proposed to be sold to the National Transit Company. Furnished the same to Mr. Hagenah for valuation purposes. (Record page 12). Pure Oil Pipe Line system through its gathering lines gathers oil along its lines from Oil City on southwesterly to the West Virginia line. Its system takes oil from 4,780 wells with a combined daily production of 1,055.98 barrels. This oil is known as Pennsylvania grade oil and comes from approximately 1,200 leases scattered over an area in length of about 120 miles. (Record pages 13-14). That the Pure Oil Pipe Line system involved

in the purchase has been operating at a loss for several years, which loss was occasioned by the fact that the amount of tonnage is so small compared with the expense in handling the system, and the rate received for such tonnage as fixed by the tariffs do not provide enough funds to make a profit. (Record page 14). That there is no reasonable probability of any increase in the production of oil in the Appalachian region reachable by the Pure Oil Pipe Line system and that as a matter of fact the production and amount of oil is gradually decreasing. (Record page 15). That on account of the inability to operate the system at a profit and on account of the decreasing amount of tonnage the Pure Oil Company has been seriously considering the abandonment of that portion of its pipe line system involved in the purchase by the National Transit Company and the Southwest Pennsylvania Pipe Line Companies. (Record page 15). That in the event of the purchase by the National Transit Company of the Pure Oil Pipe Line system, it could operate the two systems without any additional increase in its present working force, thereby eliminating practically all of the working force of the Pure Oil Company system. (Record page 21). That the purchase and consolidation of the Pure Oil Pipe Line system with the National Transit Company and the Southwest Pennsylvania Pipe Line Company would be beneficial to the public service for the reasons that it would give the producer of oil a broader market for his products; it would enable the small producers in various parts of the fields to retain pipe line connections for the transportation of their oil. (Record pages 23-24-25). That the pipe line system of the Pure Oil Company proposed to be sold to the National Transit Company and the Southwest Pennsylvania Pipe Line Company has been maintained in good condition of repair. That their main six inch line operates under a pressure from 425 pounds to 800 pounds. That in the opinion of the witness a depreciation against the present day replacement value of 40 per cent. would be reasonable. (Record pages 80-81).

Inventory and appraisal of property by Mr. Hagenah offered in evidence and received. (Record page 28).

NORTON H. WEBER:

Am vice president and member of the Board of Directors of the Pure Oil Company and reside in Chicago. Have been with the present Pure Oil Company since 1917, and with the old Pure Oil Company, a corporation of New Jersey which was taken over by the present company, in various capacities since 1899. Am familiar with the pipe line system involved in the purchase. (Record page 31). The Pure Oil Company has been operating the pipe line system involved in the purchase at a loss for several years due to the gradual decrease in the volume of oil transported over the lines and the increased cost of salaries and fuel and other items of operation and that the question of disposition of that portion of the pipe line system of the company had been under discussion by the Board of Directors for several years. (Record page 32). That no method has been devised whereby the system could be operated at a profit and that it is no longer possible for them to operate the system, and if they can not sell it they will be forced to abandon it. (Record pages 32-33). That the public service would be benefited by the sale of the Pure Oil Pipe Line Company system to the Southwest Pennsylvania Pipe Line and the National Transit Companies for the reasons that if the Pure Oil was unable to sell its system and obliged to abandon it, a great many of the outlying producing districts which are now furnished an outlet to the market by the present gathering line system of the Pure Oil Company, in the event of the lines being taken up, the production is so small that the National Transit Company or any other company would not be justified in laying new lines to the tanks, and in that event a great many producers would be left with no market for their oil and the oil would be lost to the trade; that all of the oil produced, gathered and transported by the two pipe line systems could be handled by one pipe line company with very little, if any, additional expense except possibly for fuel and a small expense for connection of the two systems, and this would enable the purchasing pipe line company to operate at a reasonable profit without having to increase its pipeage rates, which rates if increased would impose an additional cost on the crude oil

to the refineries, thereby increasing cost of the products to the public. (Record pages 34-35-36). That the purchase and consolidation of the two pipe line systems under one management and control would also afford better facilities to the various refiners in that it would afford them better transportation facilities and a wider area for their crude supply, and better facilities for keeping the different grades of oil separated. (Record pages 37-38). That the pipe line system proposed to be sold by the Pure Oil Company includes that portion of its system in West Virginia, southeastern Ohio and all of its system in Pennsylvania. That the purchase of that portion of its system in Ohio by the Buckeye Pipe Line Company has been approved by the Public Service Commission of Ohio, and that the Public Service Commission of West Virginia has made no objection to the purchase by the Eureka Pipe Line system of that portion of the Pure Oil Company system to be sold in West Virginia. (Record page 39).

FREDRICK WRIGHT:

Am general superintendent of the National Transit Company. Have been acting in that capacity for about a year. Have been connected with the National Transit Company for 23 years, having charge and supervision of the pipe line system for the transportation of oil. (Record page 41). Am familiar with the location of the Pure Oil pipe line system proposed to be purchased by the National Transit Company, the extent thereof and its general condition having made an investigation of it for the purpose of figuring its value. (Record page 42). That the cost or replacement value of that portion of the Pure Oil Pipe Line system proposed to be purchased by the National Transit Company is \$2,500,000.00. (Record page 44). The National Transit Company has agreed to pay \$660,000.00 for the same (Record page 44). That the Pure Oil system transports about 2,700 barrels of oil per day through this system. This includes oil gathered in the system and inter-state oil shipment. That the National Transit Company transports about 10,000 barrels of oil per day through its system, composed of about 5,000 barrels gathered production and 5,000 barrels inter-state shipments. (Record page 45). That

by the purchase and acquisition of the Pure Oil system, the National Transit Company would be enabled to eliminate all of the present pumping stations of the Pure Oil Company with the exception of three or four which would mean the elimination of the expense and maintenance of about 15 pumping stations. That in a great many places where there is a present duplication of the lines, they could be taken up and the oil transported through one set of lines. That with very small additional expense in the event of the National Transit Company buying the Pure Oil system, the National Transit Company could take care of the producers' oil by its present force of gaugers, thereby doing away with the force now maintained by the Pure Oil Company. (Record page 46). That the repair or construction force of the National Transit Company would be sufficient to take care of the repairs and construction incident to both systems. (Record page 47). That the National Transit Company by the purchase of this system and the acquisition of the additional amount of oil for transportation and the operation of the same without any particular increase in expense aside from fuel and extra labor could pay the purchase price in five or six years based upon the present rates as fixed by the tariffs filed with this Commission. (Record page 47). That the public service would be benefited by the purchase and consolidation of the two systems in that it would increase the line facilities for delivering the oil to the refineries and would benefit the producers. (Record page 47). That it would thereby enable the refineries to obtain different grades of oil with very little contamination. (Record page 48). That the National Transit Company is at present connected with and taking oil in its territory from 31,733 wells and the average production of such wells is about one-sixth of a barrel. That their system is connected to 5,600 stock tanks of the producers and that they have 5,863 producers' accounts on their books. (Record page 49). That if the Pure Oil Pipe Line system were abandoned or taken up it would mean that a great many producers would be deprived of a means of getting their oil to the market for the reasons that the wells are so small and are located at such a distance from the lines of the National Transit Company that it would not be profitable to

extend the lines that distance for a small amount of production. The result would be that producers would lose their wells and the oil itself, valuable to the trade of Pennsylvania and elsewhere, would be lost to the market. (Record page 50). That Pennsylvania crude oil is produced from thousands of small wells and if the National Transit Company should take over the Pure Oil system, by the combining of the two systems and doing away with the extra pumping stations and curtailing of the working force and the doing away with the duplications in the operation of the system and the oil which is now being transported through the two systems being combined in one, that the National Transit Company could operate the system at a profit and thereby postpone the time for any increase in the transportation rates which increase in the transportation rates would have to be paid by the refiner and reflect back on the price of crude oil and the price of the refined products to the public. (Record page 51). That in the event of the purchase by the National Transit Company of that portion of the Pure Oil system, it could operate the combined system at the same expense that it now operates its own system, with an additional expense of about \$10,000.00 for fuel and \$10,000.00 for labor; that the estimated cost for making ty-in connections between the two systems would be \$25,000.00. That the National Transit Company would be able to pay for the system purchased in about five years. (Record page 53). That a fair allowance for depreciation against the present day replacement value of the Pure Oil Pipe Line system proposed to be purchased by the National Transit Company would be 40 per cent. (Record page 66).

VICTOR A. DORSEY:

Reside in Chicago and am associated with William J. Hagenah. Am an engineer by profession and have been engaged constantly in my profession since 1908. Have inventoried and appraised natural gas and oil transmission lines in West Virginia, Kentucky, Oklahoma, Wyoming, Texas and Pennsylvania. Have been associated with Mr. Hagenah for 17 years. (Record page 70). Made a personal inspection and examina-

tion of all of the physical assets and equipment of that portion of the Pure Oil Company system proposed to be sold, including that portion proposed to be sold to the National Transit Company. (Record page 71). That the fair present day reproduction cost of that portion of the system to be acquired by the National Transit Company is \$2,753,417.00. That the system was well maintained and that the current repairs and renewals were carefully made. Record page 72). That a fair allowance for depreciation against the present day value of the system to be taken over by the National Transit Company would be 25 per cent. (Record page 73). That he assisted Mr. Hagenah in making the record report filed in the case as Exhibit Two, and that the report is correct. (Record pages 73-74).

S. N. MOYAR:

Resides at Rouseville—(Noted incorrectly in transcript as Riceville). Has been in the oil business 50 years. Is a producer of Pennsylvania grade oil. Also interested as a stockholder in a refinery at Rouseville. (Record page 83). This refinery is served by the pipe line system of the National Transit Company and the Pure Oil pipe line system, and the pipe line systems of the Pure Oil Company and the National Transit Company also are connected to many of his producing wells to run the oil therefrom. (Record page 84). In my opinion the public service would be benefited by the consolidation of the two lines and thereby enable one of them to operate at a profit which would tend to keep down the rates for the transportation of oil. (Record page 85). By a consolidation of the two lines it would enable the small producers of Pennsylvania grade oil to always have pipe line connections to transport their oil to the market. (Record page 85).

LUTHER FULTON:

I am general superintendent of the Pennzoil Company which operates a refinery with a present capacity of 125,000 barrels per month of Pennsylvania grade oil and the improvements now going on will increase

the capacity to around 6,000 barrels per day, at Rouseville and Oil City, Pennsylvania. (Record page 89-90). This refinery is served by the lines of the Pure Oil Company and the National Transit Company. (Record page 90). In my opinion the public service would be benefited by the consolidation or acquisition by the National Transit Company of the Pure Oil Pipe Line Company system. (Record page 90). Such consolidation would tend to reduce the cost of the operation of the pipe line system. It would reduce the cost of looking after the delivery of oils to the refineries; it would tend to keep down any increase in the rates charged by the pipe line systems for the transportation of oil which increase in rate is detrimental not only to the producer of Pennsylvania grade oil but to the refiner thereof and to the consuming public in that it adds to the cost. (Record pages 91-92).

F. D. WILLIAMS.

Am now and have been president of the National Transit Company since January 3, 1920. Have been engaged in the pipe line business for 51 years. (Record page 94). Am familiar with the cost of installation of pipe lines and the cost of maintenance and of the up-keep and operation of the same. Am familiar with the location of the pipe line system proposed to be purchased by the National Transit Company. Have been investigating this system and considering the purchase of the same on behalf of the National Transit Company for upwards of two years. (Record page 95). That the Pure Oil Pipe Line system is in good condition of repair and maintenance. (Record page 96). That the National Transit Company can pay the purchase price of \$660,000.00 for the Pure Oil Company system without in any way impairing its ability to carry on its pipe line business. (Record pages 97-98). That the purchase of the Pure Oil system by the National Transit Company is a good purchase from the standpoint of the National Transit Company and that thereby the National Transit Company will be able to operate the system in conjunction with its own with practically the same gauging force and field force that it now has to operate its own system. That it will be enabled to do away with a great

many of the pumping stations, thereby eliminating considerable expense. That by tying-in connections it will be enabled to do away with the present duplication of lines. (Record pages 98-99). That the increased cost of fuel and labor to operate the new system in conjunction with the present system of the National Transit Company would only amount to about \$20,000.00 per year. (Record page 99). That the Board of Directors of the National Transit Company felt that it was for the best interest of the company that the Pure Oil Pipe Line system should be purchased by the National Transit Company and have taken official action to that effect. (Record page 100). That the purchase of the Pure Oil system by the National Transit Company and consolidation of that system with the National Transit Company system would be of benefit to the public service. It would give the producer who now runs his oil through the pipe line system of the Pure Oil Company a broader market for his oil in that there are more buyers of oil located and connected with the lines of the National Transit Company. (Record page 100). That if the Pure Oil system should be discontinued a great many producers would be cut off from the market because there are a great many wells, the production of which is so small and scattered over such a large area of territory, that it would not pay the pipe line company, in the event of the present system being taken up, to lay new lines in to the tanks. (Record page 101). That the capital stock of the National Transit Company is \$6,363,350.00 divided in 509,000 shares of stock, the par value of which is \$12.50 per share. That the National Transit Company on account of the decreased amount of oil being transported over its lines has operated at a loss during the last year. That if it can acquire the Pure Oil system and combine the amount of oil carried in one system with the elimination of the expense now necessary to maintain two system, that the National Transit Company can make a profit at the present rates for the transportation of oil and that the said combination would tend to keep down any increase of rates for the transportation of oil, thereby benefiting the public because the increase in cost of the transportation of oil would be added to the cost of the products to the public. (Record page 102). That a fair al-

lowance for depreciation against the present day replacement value of the Pure Oil Pipe Line Company is 40 per cent.

CHARLES E. KINDER:

I am manager of the Crew Levick Refining Company at Titusville, Pennsylvania, which refines Pennsylvania grade crude oil exclusively. Our refinery is served by the Pure Oil Pipe Line Company system and the National Transit Company system. (Record page 114). In my opinion the public service would be benefited by the consolidation of these systems resulting in the purchasing of the Pure Oil Company system by the National Transit Company and the Southwest Pennsylvania Pipe Line Company for the reason that a reduction of the cost of operation both in the production and piping of crude as well as in refining it has been made necessary by the reduction in the volume of crude that there is to be handled in this territory. (Record pages 114-115). A consolidation of this kind would tend to keep down the rates of the transportation of oil which effects the cost of the products to the public. (Record page 115). That the one pipe line system could serve the refineries just as well, if not better, than they are now being served by the two pipe line systems. (Record page 115).

THEODORE TOWL:

Have been superintendent of the Southwest Pennsylvania Pipe Line Company for about 6 years. (Record page 117. I have made an investigation of the pipe line system of the Pure Oil Company proposed to be taken over by the Southwest Pennsylvania Pipe Line Company and have submitted the same to my father, Forest M. Towl. (Record pages 117-118). In my opinion the public service would be benefited by the consolidation of the Pure Oil system with the Southwest Pennsylvania Pipe Lines and the National Transit Company pipe line system because it would give better service to the refineries in the handling and transportation of the oil and by the economies that would enure by virtue of the consolidation of the two system it would tend to greatly reduce the expense

of operating the two systems. (Record page 118). Under the contract of the Pure Oil Company, the Southwest Pennsylvania Pipe Line Company is to pay \$165,000.00 for that portion of the system which extends from the south line of Butler county to the West Virginia line. (Record page 120). The public service would be benefited by the purchase and consolidation in that it will enable the pipe line company to handle the oil to a better advantage for the refineries making more oil available to the refiners and give a wider market to the producers who are now connected on the Pure Oil Company system for their products. (Record page 121).

FOREST M. TOWL:

I reside in Brooklyn, New York. I am president of the Southwest Pennsylvania Pipe Line Company and the Eureka Pipe Line Company. I have been engaged in the pipe line business since 1886. I am familiar in a general way with the extent and character of the Pure Oil Company pipe line system involved in the purchase by the Southwest Pennsylvania Pipe Line Company and the National Transit Company. I am familiar with the cost of installing the pipe line systems. (Record page 122), I think a fair allowance for depreciation against the present day replacement value of that portion of the Pure Oil Pipe Line system proposed to be sold to the Southwest Pennsylvania Pipe Line Company and the National Transit Company will be from 25 per cent. to 40 per cent. (Record page 125). I am of the opinion that the public service would be benefited by the purchase of the Pure Oil Pipe Line system as contemplated. That by the consolidation and operation of the two pipe line systems as one instead of two as now operated, the cost and expense to the refineries would be less. The trouble in selling and purchasing credit balances of oil in the pipe lines by the producers and purchasers would be considerably simplified. That the producers of the Pure Oil Pipe Line system would be given a broader market for their oils. That by a consolidation of the two systems, they could be operated as one system much more economically than two, and thereby one company would be enabled to operate,

with the combined tonnage of the two systems and the elimination of a considerable part of the expense in operating the two systems, at a profit and thereby the rate for the transportation of oil would be kept down, which rate enters into the cost of the oil to the refiners and the cost of the products to the public. (Record pages 126-127).

D. F. YOUNG:

I am shipping agent and assistant secretary of the National Transit Company. I have charge of the records which show the amount of oil that is run by the producers into the pipe line system of the National Transit Company, and who the producers of said oil are. That as shown by the records for the first eight months of the year 1927, there have been 23 separate purchasers of Pennsylvania grade oil in our pipe line system. That during said time, there was oil in our pipe line system belonging to various producers to the amount of 935,211.24 barrels purchased by 22 independent purchasers purchasing for the various refineries. (Record page 131). When a producer has a tank of oil ready to run from his lease, he notifies our gauger and the gauger then runs the oil from the producer's tank into our pipe line system. That oil, when it comes into the pipe line system loses its identity and becomes mixed with the oils of other producers. The producer is given credit on our books for the amount of oil that we run from his tank from time to time. At any time he is at liberty to sell that oil to whomever he pleases, and if he desires to sell it we give him an order showing the amount of oil we have to his credit in the pipe line, and then he endorses that over to his purchaser—somewhat similar to a checking transaction through a bank, and then we deliver the oil out of the pipe line system to the purchaser. This is what is known as a credit balance system. (Record pages 132-133).

ARGUMENT.

The application filed in this case requests the approval by this Honorable Commission of the purchase

by the National Transit Company of that portion of the pipe line system of the Pure Oil Company located in this state and lying north of the southerly line of Butler County for the principal reason that owing to the decreased production of oil in the territory through which the pipe line system passes that the continued operation of this system is not economical. To this petition, protest was filed by various refiners, based largely on the fear that there might in the future be some discrimination practiced by the National Transit Company if it became the purchaser of the Pure Oil system. This protest was filed at the time set for the first hearing of the application. The petitioners felt at the time that the fears of these refiners were not well based and if a conference could be had, they could satisfy the refiners that no such unlawful things were even in contemplation. The National Transit Company and the Southwest Pennsylvania Pipe Line Company were perfectly willing to reduce to writing an agreement not to discriminate in any way in the handling or distribution of the oil, either as to quantity or quality. Because of the fact that there are a great many other interested refineries and producers of oil in the district served by these pipe line companies who had not filed any protest it was deemed advisable to file this stipulation of record. It was not filed with the understanding that it was to be any part of the certificate of approval and our position in this respect was outlined at the time of the filing of the paper before Commissioner Walker, and appears in the record, and therefore we need not here repeat it.

At the time of the preliminary hearing certain minority stockholders appeared by counsel and indicated that they desired to file a protest against the approval of the application. No formal protest was filed by them until a short time before the date set for

the adjourned hearing when stockholders residing in or near New York City and claiming to own between 17,000 and 18,000 shares of the capital stock of the National Transit Company, filed a written protest. From an examination of the protest filed, it is apparent that the position of these stockholders is based not on the question of public service but rather on internal policy in the management of the corporation. The protestants in paragraph three of their protest denied that the granting or approval of the application is necessary or proper for the service, accommodation, convenience or safety of the public. All the other portions of their protest are confined to allegations which concern alone the internal management and control of the affairs of the National Transit Company, and do not directly or indirectly affect the main issue before this Commission. In addition to their position set forth in their protest, we think that the attitude of these protestants is more clearly set forth on page 110 of the record wherein Mr. White, counsel appearing for the protestants, stated as follows in the course of the examination of Mr. Williams, President of the National Transit Company:—"Our clients feel that if this company is to be engaged in manufacturing business and also in this transporting business, it is not favorable to their interests and that the two should be segregated; *and while that has not anything to do with the decision that you may reach I mention it as one of the reasons why we are here.*"

We may say at this point to this Honorable Commission that with due respect to the able counsel who appeared for these protesting stockholders, not one word of testimony was produced by them that might enable this Honorable Commission to determine the question whether or not from the standpoint of the public interest, this proposed sale or consolidation

should be approved. They were not concerned with the public rights or interests. These stockholders were before the Commission for their own personal interests, as they conceived them. They represented between three and four per cent. of the stockholders of the National Transit Company. It is Hornbook law and needs the citation of no authority to this Commission, that when the stockholders of a corporation have committed the management of its affairs to its directors, that in the administration of its business policy, in the absence of fraud or negligence, minority stockholders cannot interfere with the judgment or decision of the Board. Likewise it is true that the Public Service Commission was not established for the purpose of supervising and controlling the internal management of corporations. If there is anything wrong with the internal management of the National Transit Company, a court of equity is the forum for these stockholders.

The Pure Oil Company on one hand as the seller and the National Transit Company on the other hand as the purchaser, have the right under the laws of the State of Pennsylvania to purchase and sell the pipe line system in question. The exercising of this right was made subject to the approval of the Public Service Commission.

“The legislation existing prior to the enactment of the Public Service Company Law renders lawful such sales of property and franchises as that which the Mountain Gas Company petitioned the Public Service Commission to approve. The Public Service Company Law did not take away from such corporations the right to make such a sale. It merely made that right subject to the regulation that the contract must be approved by the Public Service Commission. The powers and duty of the Commission with regard to such approval are defined by Section 18, Article 5, of the

statute: 'Such approval, in each and every such case, or kind of application, shall be given only if and when the said Commission shall find or determine that the granting or approval of such application is necessary or proper for the service, accommodation, convenience, or safety of the public.' This is the only barrier which the statute raises to the approval of such contracts. It does not provide that the corporations shall be called upon to establish any specific facts. The Commission is by the statute made the guardian of the interests of the public, and the burden upon the corporation is to present a case which warrants the Public Service Commission in exercising the discretion with which it is by law invested." V. & S. Bottle Company, Appellant, vs. Public Service Commission. 70 Pa. Sup. Ct., p. 308.

In view of the law, we could not see at the hearing and we do not now see the relevancy of the position of these protesting stockholders.

From the uncontradicted evidence produced in this case, it appears that 30 or 40 years ago when the production of Pennsylvania oil was much larger and conditions in the district much different than at present, there was a justification and a necessity for two pipe line systems such as the Pure Oil Pipe Line system and the National Transit Company system. As the years went by and the production gradually declined, new laws going into effect, labor costs of maintenance increasing, the necessity for the maintenance and operation of two separate and independent pipe line systems no longer existed. For the last several years, the Pure Oil pipe line system has been operated at a loss. The situation that confronts the Pure Oil Company and its subsidiary companies owning these lines is either to go before the Public Service Commission and obtain a sufficient increase in rates that will enable them to operate at a profit, or sell or

abandon their system. The National Transit Company during the last year on account of the amount of oil transported and the expenses which were not unusual, and the cost of maintenance, has not been able to make any profit on the present rate of carriage. The National Transit Company is transporting over its system about 10,000 barrels of oil per day. The Pure Oil Company is transporting over its system about 2,700 barrels per day. The Pure Oil Company in order to transport this oil over that portion of the system proposed to be sold under the agreement to the National Transit Company maintains about 18 pumping stations, which is one of the large items of cost entering into the operating of the pipe line system. It is shown conclusively by the evidence in the case, by experienced witnesses who know, that the consolidation of these two pipe line systems will produce such an economy in the operation thereof, which taken in connection with one company having the benefit of a combined shipment would enable the purchasing or consolidating company to operate and maintain the systems at a reasonable profit, thereby postponing the date when an increase in the rates for the transportation of oil will be requested from this Honorable Commission. Certainly any combination that is permitted by statute, that is not detrimental to the public interest, but brings about economy in operation is to be sanctioned rather than condemned.

Some of the members of this Honorable Commission are familiar from personal experience and observation with the conditions that now prevail in the oil industry in this section compared with what they were 30 years ago.

There is no law that we know of that would prevent the Producers and Refiners Pipe Line Company, which owns the pipe line system involved in this pur-

chase extending from a point at or near Corapolis, Pennsylvania, to Warren, Pennsylvania, from surrendering its charter, abandoning its franchises and taking up and disposing of its pipe line system. If this were done, it would spell disaster to a great many small producers who are now connected to the gathering lines of the Pure Oil system. While the production in the aggregate is considerable, yet it is made up of so many small, widely scattered units that in event of renewal it would not justify any other pipe line company in laying or extending its lines thereto. The preservation of this oil to the consuming trade as well as the preservation of the wells from abandonment is of vital interest, not only to the owners thereof but to the public generally. The various refiners of Pennsylvania grade oil located along the lines of these two systems and at present being furnished by them with their supply of crude, could better be accommodated by the system if combined under one management and operation. This is the opinion of the refiners and men not interested financially in any of the pipe line companies involved in this application, but alone concerned with proper service and economy in the delivery and receipt of the crude oil. These men voiced the opinion that if this sale is allowed to go through, that the National Transit Company and the Southwest Pennsylvania Pipe Line Company by reason of the economies which they can inaugurate will benefit the service in the delivery and transportation of the oil from the wells to the refineries. It will also give a broader market to the producer for the sale and distribution of this oil and will tend to keep down any increase in the rates for the transportation of oil, which necessarily involves an additional cost to the public of petroleum products.

It is a significant and a very interesting fact, under the so called credit balance system which has

existed in this state for upwards of 40 years and in our opinion will exist as long as pipe lines are common carriers of crude, that the producer of oil can sell his oil in the pipe line to whomever he pleases. When the oil is run into the pipe line by the producer, it loses its identity and becomes mixed with the common mass of oil therein. The producer is given credit on the books of the pipe line company for the amount of oil that is run from his tank from time to time. At any time he is at liberty to sell that oil to whomever he pleases and if he desires to sell it, the pipe line company gives him a written order showing the amount of oil to his credit in the pipe line, and then he endorses it over to his purchaser—somewhat similar to a checking transaction through a bank, and then the pipe line company delivers the oil to the purchaser. This, in short, is the way the credit balance system operates.

The evidence showed that during the last year that of the nine hundred thousand and odd barrels of oil run into the system of the National Transit Company by the producers there were 23 independent purchasers for the same.

In conclusion and at the expense of repetition, the evidence produced in this case conclusively demonstrates that in the interest of economy, service and benefit to the producers, refiners and the consuming public, the consummation of this contract of sale and purchase should be approved by this Honorable Commission.

Respectfully Submitted,

CHARLES A. KREPS,
EUGENE MACKAY,
JOHN W. DUNKLE,
HUGH C. DORWORTH,
E. C. BREENE, of Breene & Jobson,
Attorneys for Petitioners.

BEFORE

The Public Service Commission

Commonwealth of Pennsylvania

FILE NO. A 94954
FILE NO. A 17525

REC'D NOV 25 1927

OFFICE OF SECRETARY
THE PUBLIC SERVICE COMMISSION

Application of Pure Oil Company, Producers and Refiners Pipe Line Company, and National Transit Company for a certificate of Public Convenience under Article 3, Section 3-C, Article 5, Sections 18-19, of the Public Service Company law for the approval of the sale of that portion of the pipe line owned by Producers and Refiners Pipe Line Company in the Commonwealth of Pennsylvania north of the southerly line of Butler County, to the National Transit Company, a Pennsylvania Corporation.

Application
Docket,
File A-17525-27.

PETITIONER'S BRIEF

CHARLES A. KREPS,
EUGENE MACKEY,
JOHN W. DUNKLE,
HUGH C. DORWORTH,
E. C. BREENE, of Breene & Jobson,
Attorneys.

DOCKETED
APPLICATION DOCKETED
NOV 26 1927
Entry No. 6

**RECORD
FOLDER**

BEFORE
The Public Service Commission
Commonwealth of Pennsylvania

Application of Pure Oil Company, Producers and Refiners Pipe Line Company, and National Transit Company for a certificate of Public Convenience under Article 3, Section 3-C, Article 5, Sections 18-19, of the Public Service Company law for the approval of the sale of that portion of the pipe line owned by Producers and Refiners Pipe Line Company in the Commonwealth of Pennsylvania north of the southerly line of Butler County, to the National Transit Company, a Pennsylvania Corporation.

Application
Docket,
File A-17525-27.

The pipe lines agreed to be sold under contracts of the Pure Oil Company extend from the southwesterly limits of the state of Pennsylvania to a point near Warren in said state, and in the contracts of purchase it was provided that that portion of the pipe line system extending from the southwest limits of the State of Pennsylvania to a point called Netzsky's Station at or near the southern limits of Butler County, should be sold to the Southwest Pennsylvania Pipe Lines, and that portion of said pipe line system extending northeast from Netzsky's Station to a point at or near Warren, Pennsylvania, should be sold to the National Transit Company.

Two petitions for certificates of approval were filed, one at File A-17524-27 which involved the contract for sale to the Southwest Pennsylvania Pipe Lines, and the other at File A-17525-27 which involved the sale to the National Transit Company.

In view of the fact that there was no protest to the approval of the contract for the sale of that portion of the pipe line system to the Southwest Pennsylvania Pipe Line Company, it was agreed as shown by the record on page 133 that the application at File A-17524-27 should be submitted on the record, and that as to application at File A-17525-27 oral arguments were waived but briefs were to be filed.

Therefore, this brief is filed on behalf of the applicants at the above number.

STATEMENT OF THE CASE.

Under date of the 10th day of August, 1927, the Pure Oil Company which controlled either directly or through subsidiaries, all of the capital stock of the Pure Oil Pipe Line Company, an Ohio Corporation, Pure Oil Pipe Line Company, a Pennsylvania Corporation, and Producers and Refiners Pipe Line Company, a Pennsylvania Corporation, entered into a contract with the National Transit Company, a Pennsylvania Corporation, wherein and whereby it was agreed, subject to the approval of this Commission, that the Pure Oil Pipe Line Company would sell and convey all that portion of its pipe line system and equipment lying and situate north of the southern boundary line of Butler County, Pennsylvania, for the price or sum of \$660,000.00. It was further provided that the contract to sell and purchase this portion of the pipe line system

was conditional upon the sale and purchase of the remaining portions of the Pure Oil Pipe Line systems located in the state of Pennsylvania.

Pursuant to this contract a petition for the approval of the contract by this honorable Commission was filed. Thereupon a hearing was fixed to be held on the 28th day of September, 1927, at the City County Building, Pittsburgh, Pennsylvania, of which hearing due notice was given by publication and otherwise as required by the order of the Commission.

At the time fixed for the hearing, certain refiners appeared and entered a formal protest to the petition. At the same time certain minority stockholders appeared by counsel and while not filing any formal protest, gave verbal notice that they intended to file a protest to the petition. Thereupon the hearing was continued until the 27th day of October, 1927, at the same place. On that date fixed for the adjourned hearing the protesting refineries appeared before the Commission by counsel stating that they desired to withdraw their protest for the reason that a satisfactory understanding had been arrived at between them and the pipe line companies which had been reduced to writing and which writing was filed as a stipulation on the record.

The minority stockholders who had appeared at the first hearing then filed a written protest and persisted in their protest throughout the hearing.

The petition for a certificate of public convenience sets forth and alleges that the portion of the system of the Pure Oil Company proposed to be sold had been operated at a loss for several years; that it is no longer necessary for the accommodation and convenience of the public that this pipe line system be maintained; that the National Transit Company has offered to buy

it, that the two systems can be operated as one more economically; and that it would be to the benefit and advantage of the public that the National Transit Company be permitted to buy that portion of the said pipe line company embodied in the contract.

A reading of the protest filed by the minority stockholders clearly shows that their sole and main objection is not that the public interest will not be advanced, but that, in their judgment as stockholders of the National Transit Company, it is not a wise investment for the National Transit Company to make.

The hearing was proceeded with before the Honorable Samuel Walker, Commissioner.

ABSTRACT OF THE EVIDENCE.

In support of the application the petitioners called a number of witnesses, an abstract of the testimony given by such witnesses is as follows:—

M. I. DEUEL:

I reside at Wilksburg, Pennsylvania. Am general superintendent of the Southern Pipe Line system of the Pure Oil Company. Have held such position for nine years. Been in the pipe line business practically all my life. (Record page 11). Made an inventory of the portion of the line of the Pure Oil Company system proposed to be sold to the National Transit Company. Furnished the same to Mr. Hagenah for valuation purposes. (Record page 12). Pure Oil Pipe Line system through its gathering lines gathers oil along its lines from Oil City on southwesterly to the West Virginia line. Its system takes oil from 4,780 wells with a combined daily production of 1,055.98 barrels. This oil is known as Pennsylvania grade oil and comes from approximately 1,200 leases scattered over an area in length of about 120 miles. (Record pages 13-14). That the Pure Oil Pipe Line system involved

in the purchase has been operating at a loss for several years, which loss was occasioned by the fact that the amount of tonnage is so small compared with the expense in handling the system, and the rate received for such tonnage as fixed by the tariffs do not provide enough funds to make a profit. (Record page 14). That there is no reasonable probability of any increase in the production of oil in the Appalachian region reachable by the Pure Oil Pipe Line system and that as a matter of fact the production and amount of oil is gradually decreasing. (Record page 15). That on account of the inability to operate the system at a profit and on account of the decreasing amount of tonnage the Pure Oil Company has been seriously considering the abandonment of that portion of its pipe line system involved in the purchase by the National Transit Company and the Southwest Pennsylvania Pipe Line Companies. (Record page 15). That in the event of the purchase by the National Transit Company of the Pure Oil Pipe Line system, it could operate the two systems without any additional increase in its present working force, thereby eliminating practically all of the working force of the Pure Oil Company system. (Record page 21). That the purchase and consolidation of the Pure Oil Pipe Line system with the National Transit Company and the Southwest Pennsylvania Pipe Line Company would be beneficial to the public service for the reasons that it would give the producer of oil a broader market for his products; it would enable the small producers in various parts of the fields to retain pipe line connections for the transportation of their oil. (Record pages 23-24-25). That the pipe line system of the Pure Oil Company proposed to be sold to the National Transit Company and the Southwest Pennsylvania Pipe Line Company has been maintained in good condition of repair. That their main six inch line operates under a pressure from 425 pounds to 800 pounds. That in the opinion of the witness a depreciation against the present day replacement value of 40 per cent. would be reasonable. (Record pages 80-81).

Inventory and appraisal of property by Mr. Hagenah offered in evidence and received. (Record page 28).

NORTON H. WEBER:

Am vice president and member of the Board of Directors of the Pure Oil Company and reside in Chicago. Have been with the present Pure Oil Company since 1917, and with the old Pure Oil Company, a corporation of New Jersey which was taken over by the present company, in various capacities since 1899. Am familiar with the pipe line system involved in the purchase. (Record page 31). The Pure Oil Company has been operating the pipe line system involved in the purchase at a loss for several years due to the gradual decrease in the volume of oil transported over the lines and the increased cost of salaries and fuel and other items of operation and that the question of disposition of that portion of the pipe line system of the company had been under discussion by the Board of Directors for several years. (Record page 32). That no method has been devised whereby the system could be operated at a profit and that it is no longer possible for them to operate the system, and if they can not sell it they will be forced to abandon it. (Record pages 32-33). That the public service would be benefited by the sale of the Pure Oil Pipe Line Company system to the Southwest Pennsylvania Pipe Line and the National Transit Companies for the reasons that if the Pure Oil was unable to sell its system and obliged to abandon it, a great many of the outlying producing districts which are now furnished an outlet to the market by the present gathering line system of the Pure Oil Company, in the event of the lines being taken up, the production is so small that the National Transit Company or any other company would not be justified in laying new lines to the tanks, and in that event a great many producers would be left with no market for their oil and the oil would be lost to the trade; that all of the oil produced, gathered and transported by the two pipe line systems could be handled by one pipe line company with very little, if any, additional expense except possibly for fuel and a small expense for connection of the two systems, and this would enable the purchasing pipe line company to operate at a reasonable profit without having to increase its pipeage rates, which rates if increased would impose an additional cost on the crude oil

to the refineries, thereby increasing cost of the products to the public. (Record pages 34-35-36). That the purchase and consolidation of the two pipe line systems under one management and control would also afford better facilities to the various refiners in that it would afford them better transportation facilities and a wider area for their crude supply, and better facilities for keeping the different grades of oil separated. (Record pages 37-38). That the pipe line system proposed to be sold by the Pure Oil Company includes that portion of its system in West Virginia, southeastern Ohio and all of its system in Pennsylvania. That the purchase of that portion of its system in Ohio by the Buckeye Pipe Line Company has been approved by the Public Service Commission of Ohio, and that the Public Service Commission of West Virginia has made no objection to the purchase by the Eureka Pipe Line system of that portion of the Pure Oil Company system to be sold in West Virginia. (Record page 39).

FREDRICK WRIGHT:

Am general superintendent of the National Transit Company. Have been acting in that capacity for about a year. Have been connected with the National Transit Company for 23 years, having charge and supervision of the pipe line system for the transportation of oil. (Record page 41). Am familiar with the location of the Pure Oil pipe line system proposed to be purchased by the National Transit Company, the extent thereof and its general condition having made an investigation of it for the purpose of figuring its value. (Record page 42). That the cost or replacement value of that portion of the Pure Oil Pipe Line system proposed to be purchased by the National Transit Company is \$2,500,000.00. (Record page 44). The National Transit Company has agreed to pay \$660,000.00 for the same (Record page 44). That the Pure Oil system transports about 2,700 barrels of oil per day through this system. This includes oil gathered in the system and inter-state oil shipment. That the National Transit Company transports about 10,000 barrels of oil per day through its system, composed of about 5,000 barrels gathered production and 5,000 barrels inter-state shipments. (Record page 45). That

by the purchase and acquisition of the Pure Oil system, the National Transit Company would be enabled to eliminate all of the present pumping stations of the Pure Oil Company with the exception of three or four which would mean the elimination of the expense and maintenance of about 15 pumping stations. That in a great many places where there is a present duplication of the lines, they could be taken up and the oil transported through one set of lines. That with very small additional expense in the event of the National Transit Company buying the Pure Oil system, the National Transit Company could take care of the producers' oil by its present force of gaugers, thereby doing away with the force now maintained by the Pure Oil Company. (Record page 46). That the repair or construction force of the National Transit Company would be sufficient to take care of the repairs and construction incident to both systems. (Record page 47). That the National Transit Company by the purchase of this system and the acquisition of the additional amount of oil for transportation and the operation of the same without any particular increase in expense aside from fuel and extra labor could pay the purchase price in five or six years based upon the present rates as fixed by the tariffs filed with this Commission. (Record page 47). That the public service would be benefited by the purchase and consolidation of the two systems in that it would increase the line facilities for delivering the oil to the refineries and would benefit the producers. (Record page 47). That it would thereby enable the refineries to obtain different grades of oil with very little contamination. (Record page 48). That the National Transit Company is at present connected with and taking oil in its territory from 31,733 wells and the average production of such wells is about one-sixth of a barrel. That their system is connected to 5,600 stock tanks of the producers and that they have 5,863 producers' accounts on their books. (Record page 49). That if the Pure Oil Pipe Line system were abandoned or taken up it would mean that a great many producers would be deprived of a means of getting their oil to the market for the reasons that the wells are so small and are located at such a distance from the lines of the National Transit Company that it would not be profitable to

extend the lines that distance for a small amount of production. The result would be that producers would lose their wells and the oil itself, valuable to the trade of Pennsylvania and elsewhere, would be lost to the market. (Record page 50). That Pennsylvania crude oil is produced from thousands of small wells and if the National Transit Company should take over the Pure Oil system, by the combining of the two systems and doing away with the extra pumping stations and curtailing of the working force and the doing away with the duplications in the operation of the system and the oil which is now being transported through the two systems being combined in one, that the National Transit Company could operate the system at a profit and thereby postpone the time for any increase in the transportation rates which increase in the transportation rates would have to be paid by the refiner and reffect back on the price of crude oil and the price of the refined products to the public. (Record page 51). That in the event of the purchase by the National Transit Company of that portion of the Pure Oil system, it could operate the combined system at the same expense that it now operates its own system, with an additional expense of about \$10,000.00 for fuel and \$10,000.00 for labor; that the estimated cost for making ty-in connections between the two systems would be \$25,000.00. That the National Transit Company would be able to pay for the system purchased in about five years. (Record page 53). That a fair allowance for depreciation against the present day replacement value of the Pure Oil Pipe Line system proposed to be purchased by the National Transit Company would be 40 per cent. (Record page 66).

VICTOR A. DORSEY:

Reside in Chicago and am associated with William J. Hagenah. Am an engineer by profession and have been engaged constantly in my profession since 1908. Have inventoried and appraised natural gas and oil transmission lines in West Virginia, Kentucky, Oklahoma, Wyoming, Texas and Pennsylvania. Have been associated with Mr. Hagenah for 17 years. (Record page 70). Made a personal inspection and examina-

tion of all of the physical assets and equipment of that portion of the Pure Oil Company system proposed to be sold, including that portion proposed to be sold to the National Transit Company. (Record page 71). That the fair present day reproduction cost of that portion of the system to be acquired by the National Transit Company is \$2,753,417.00. That the system was well maintained and that the current repairs and renewals were carefully made. Record page 72). That a fair allowance for depreciation against the present day value of the system to be taken over by the National Transit Company would be 25 per cent. (Record page 73). That he assisted Mr. Hagenah in making the record report filed in the case as Exhibit Two, and that the report is correct. (Record pages 73-74).

S. N. MOYAR:

Resides at Rouseville—(Noted incorrectly in transcript as Riceville). Has been in the oil business 50 years. Is a producer of Pennsylvania grade oil. Also interested as a stockholder in a refinery at Rouseville. (Record page 83). This refinery is served by the pipe line system of the National Transit Company and the Pure Oil pipe line system, and the pipe line systems of the Pure Oil Company and the National Transit Company also are connected to many of his producing wells to run the oil therefrom. (Record page 84). In my opinion the public service would be benefited by the consolidation of the two lines and thereby enable one of them to operate at a profit which would tend to keep down the rates for the transportation of oil. (Record page 85). By a consolidation of the two lines it would enable the small producers of Pennsylvania grade oil to always have pipe line connections to transport their oil to the market. (Record page 85).

LUTHER FULTON:

I am general superintendent of the Pennzoil Company which operates a refinery with a present capacity of 125,000 barrels per month of Pennsylvania grade oil and the improvements now going on will increase

the capacity to around 6,000 barrels per day, at Rouseville and Oil City, Pennsylvania. (Record page 89-90). This refinery is served by the lines of the Pure Oil Company and the National Transit Company. (Record page 90). In my opinion the public service would be benefited by the consolidation or acquisition by the National Transit Company of the Pure Oil Pipe Line Company system. (Record page 90). Such consolidation would tend to reduce the cost of the operation of the pipe line system. It would reduce the cost of looking after the delivery of oils to the refineries; it would tend to keep down any increase in the rates charged by the pipe line systems for the transportation of oil which increase in rate is detrimental not only to the producer of Pennsylvania grade oil but to the refiner thereof and to the consuming public in that it adds to the cost. (Record pages 91-92).*

F. D. WILLIAMS.

Am now and have been president of the National Transit Company since January 3, 1920. Have been engaged in the pipe line business for 51 years. (Record page 94). Am familiar with the cost of installation of pipe lines and the cost of maintenance and of the up-keep and operation of the same. Am familiar with the location of the pipe line system proposed to be purchased by the National Transit Company. Have been investigating this system and considering the purchase of the same on behalf of the National Transit Company for upwards of two years. (Record page 95). That the Pure Oil Pipe Line system is in good condition of repair and maintenance. (Record page 96). That the National Transit Company can pay the purchase price of \$660,000.00 for the Pure Oil Company system without in any way impairing its ability to carry on its pipe line business. (Record pages 97-98). That the purchase of the Pure Oil system by the National Transit Company is a good purchase from the standpoint of the National Transit Company and that thereby the National Transit Company will be able to operate the system in conjunction with its own with practically the same gauging force and field force that it now has to operate its own system. That it will be enabled to do away with a great

many of the pumping stations, thereby eliminating considerable expense. That by tying-in connections it will be enabled to do away with the present duplication of lines. (Record pages 98-99). That the increased cost of fuel and labor to operate the new system in conjunction with the present system of the National Transit Company would only amount to about \$20,000.00 per year. (Record page 99). That the Board of Directors of the National Transit Company felt that it was for the best interest of the company that the Pure Oil Pipe Line system should be purchased by the National Transit Company and have taken official action to that effect. (Record page 100). That the purchase of the Pure Oil system by the National Transit Company and consolidation of that system with the National Transit Company system would be of benefit to the public service. It would give the producer who now runs his oil through the pipe line system of the Pure Oil Company a broader market for his oil in that there are more buyers of oil located and connected with the lines of the National Transit Company. (Record page 100). That if the Pure Oil system should be discontinued a great many producers would be cut off from the market because there are a great many wells, the production of which is so small and scattered over such a large area of territory, that it would not pay the pipe line company, in the event of the present system being taken up, to lay new lines in to the tanks. (Record page 101). That the capital stock of the National Transit Company is \$6,363,350.00 divided in 509,000 shares of stock, the par value of which is \$12.50 per share. That the National Transit Company on account of the decreased amount of oil being transported over its lines has operated at a loss during the last year. That if it can acquire the Pure Oil system and combine the amount of oil carried in one system with the elimination of the expense now necessary to maintain two system, that the National Transit Company can make a profit at the present rates for the transportation of oil and that the said combination would tend to keep down any increase of rates for the transportation of oil, thereby benefiting the public because the increase in cost of the transportation of oil would be added to the cost of the products to the public. (Record page 102). That a fair al-

lowance for depreciation against the present day replacement value of the Pure Oil Pipe Line Company is 40 per cent.

CHARLES E. KINDER:

I am manager of the Crew Levick Refining Company at Titusville, Pennsylvania, which refines Pennsylvania grade crude oil exclusively. Our refinery is served by the Pure Oil Pipe Line Company system and the National Transit Company system. (Record page 114). In my opinion the public service would be benefited by the consolidation of these systems resulting in the purchasing of the Pure Oil Company system by the National Transit Company and the Southwest Pennsylvania Pipe Line Company for the reason that a reduction of the cost of operation both in the production and piping of crude as well as in refining it has been made necessary by the reduction in the volume of crude that there is to be handled in this territory. (Record pages 114-115). A consolidation of this kind would tend to keep down the rates of the transportation of oil which effects the cost of the products to the public. (Record page 115). That the one pipe line system could serve the refineries just as well, if not better, than they are now being served by the two pipe line systems. (Record page 115).

THEODORE TOWL:

Have been superintendent of the Southwest Pennsylvania Pipe Line Company for about 6 years. (Record page 117. I have made an investigation of the pipe line system of the Pure Oil Company proposed to be taken over by the Southwest Pennsylvania Pipe Line Company and have submitted the same to my father, Forest M. Towl. (Record pages 117-118). In my opinion the public service would be benefited by the consolidation of the Pure Oil system with the Southwest Pennsylvania Pipe Lines and the National Transit Company pipe line system because it would give better service to the refineries in the handling and transportation of the oil and by the economies that would enure by virtue of the consolidation of the two system it would tend to greatly reduce the expense

of operating the two systems. (Record page 118). Under the contract of the Pure Oil Company, the Southwest Pennsylvania Pipe Line Company is to pay \$165,000.00 for that portion of the system which extends from the south line of Butler county to the West Virginia line. (Record page 120). The public service would be benefited by the purchase and consolidation in that it will enable the pipe line company to handle the oil to a better advantage for the refineries making more oil available to the refiners and give a wider market to the producers who are now connected on the Pure Oil Company system for their products. (Record page 121).

FOREST M. TOWL:

I reside in Brooklyn, New York. I am president of the Southwest Pennsylvania Pipe Line Company and the Eureka Pipe Line Company. I have been engaged in the pipe line business since 1886. I am familiar in a general way with the extent and character of the Pure Oil Company pipe line system involved in the purchase by the Southwest Pennsylvania Pipe Line Company and the National Transit Company. I am familiar with the cost of installing the pipe line systems. (Record page 122), I think a fair allowance for depreciation against the present day replacement value of that portion of the Pure Oil Pipe Line system proposed to be sold to the Southwest Pennsylvania Pipe Line Company and the National Transit Company will be from 25 per cent. to 40 per cent. (Record page 125). I am of the opinion that the public service would be benefited by the purchase of the Pure Oil Pipe Line system as contemplated. That by the consolidation and operation of the two pipe line systems as one instead of two as now operated, the cost and expense to the refineries would be less. The trouble in selling and purchasing credit balances of oil in the pipe lines by the producers and purchasers would be considerably simplified. That the producers of the Pure Oil Pipe Line system would be given a broader market for their oils. That by a consolidation of the two systems, they could be operated as one system much more economically than two, and thereby one company would be enabled to operate,

with the combined tonnage of the two systems and the elimination of a considerable part of the expense in operating the two systems, at a profit and thereby the rate for the transportation of oil would be kept down, which rate enters into the cost of the oil to the refiners and the cost of the products to the public. (Record pages 126-127).

D. F. YOUNG:

I am shipping agent and assistant secretary of the National Transit Company. I have charge of the records which show the amount of oil that is run by the producers into the pipe line system of the National Transit Company, and who the producers of said oil are. That as shown by the records for the first eight months of the year 1927, there have been 23 separate purchasers of Pennsylvania grade oil in our pipe line system. That during said time, there was oil in our pipe line system belonging to various producers to the amount of 935,211.24 barrels purchased by 22 independent purchasers purchasing for the various refineries. (Record page 131). When a producer has a tank of oil ready to run from his lease, he notifies our gauger and the gauger then runs the oil from the producer's tank into our pipe line system. That oil, when it comes into the pipe line system loses its identity and becomes mixed with the oils of other producers. The producer is given credit on our books for the amount of oil that we run from his tank from time to time. At any time he is at liberty to sell that oil to whomever he pleases, and if he desires to sell it we give him an order showing the amount of oil we have to his credit in the pipe line, and then he endorses that over to his purchaser—somewhat similar to a checking transaction through a bank, and then we deliver the oil out of the pipe line system to the purchaser. This is what is known as a credit balance system. (Record pages 132-133).

ARGUMENT.

The application filed in this case requests the approval by this Honorable Commission of the purchase

by the National Transit Company of that portion of the pipe line system of the Pure Oil Company located in this state and lying north of the southerly line of Butler County for the principal reason that owing to the decreased production of oil in the territory through which the pipe line system passes that the continued operation of this system is not economical. To this petition, protest was filed by various refiners, based largely on the fear that there might in the future be some discrimination practiced by the National Transit Company if it became the purchaser of the Pure Oil system. This protest was filed at the time set for the first hearing of the application. The petitioners felt at the time that the fears of these refiners were not well based and if a conference could be had, they could satisfy the refiners that no such unlawful things were even in contemplation. The National Transit Company and the Southwest Pennsylvania Pipe Line Company were perfectly willing to reduce to writing an agreement not to discriminate in any way in the handling or distribution of the oil, either as to quantity or quality. Because of the fact that there are a great many other interested refineries and producers of oil in the district served by these pipe line companies who had not filed any protest it was deemed advisable to file this stipulation of record. It was not filed with the understanding that it was to be any part of the certificate of approval and our position in this respect was outlined at the time of the filing of the paper before Commissioner Walker, and appears in the record, and therefore we need not here repeat it.

At the time of the preliminary hearing certain minority stockholders appeared by counsel and indicated that they desired to file a protest against the approval of the application. No formal protest was filed by them until a short time before the date set for

the adjourned hearing when stockholders residing in or near New York City and claiming to own between 17,000 and 18,000 shares of the capital stock of the National Transit Company, filed a written protest. From an examination of the protest filed, it is apparent that the position of these stockholders is based not on the question of public service but rather on internal policy in the management of the corporation. The protestants in paragraph three of their protest denied that the granting or approval of the application is necessary or proper for the service, accommodation, convenience or safety of the public. All the other portions of their protest are confined to allegations which concern alone the internal management and control of the affairs of the National Transit Company, and do not directly or indirectly affect the main issue before this Commission. In addition to their position set forth in their protest, we think that the attitude of these protestants is more clearly set forth on page 110 of the record wherein Mr. White, counsel appearing for the protestants, stated as follows in the course of the examination of Mr. Williams, President of the National Transit Company:—"Our clients feel that if this company is to be engaged in manufacturing business and also in this transporting business, it is not favorable to their interests and that the two should be segregated; *and while that has not anything to do with the decision that you may reach I mention it as one of the reasons why we are here.*"

We may say at this point to this Honorable Commission that with due respect to the able counsel who appeared for these protesting stockholders, not one word of testimony was produced by them that might enable this Honorable Commission to determine the question whether or not from the standpoint of the public interest, this proposed sale or consolidation

should be approved. They were not concerned with the public rights or interests. These stockholders were before the Commission for their own personal interests, as they conceived them. They represented between three and four per cent. of the stockholders of the National Transit Company. It is Hornbook law and needs the citation of no authority to this Commission, that when the stockholders of a corporation have committed the management of its affairs to its directors, that in the administration of its business policy, in the absence of fraud or negligence, minority stockholders cannot interfere with the judgment or decision of the Board. Likewise it is true that the Public Service Commission was not established for the purpose of supervising and controlling the internal management of corporations. If there is anything wrong with the internal management of the National Transit Company, a court of equity is the forum for these stockholders.

The Pure Oil Company on one hand as the seller and the National Transit Company on the other hand as the purchaser, have the right under the laws of the State of Pennsylvania to purchase and sell the pipe line system in question. The exercising of this right was made subject to the approval of the Public Service Commission.

“The legislation existing prior to the enactment of the Public Service Company Law renders lawful such sales of property and franchises as that which the Mountain Gas Company petitioned the Public Service Commission to approve. The Public Service Company Law did not take away from such corporations the right to make such a sale. It merely made that right subject to the regulation that the contract must be approved by the Public Service Commission. The powers and duty of the Commission with regard to such approval are defined by Section 18, Article 5, of the

statute: 'Such approval, in each and every such case, or kind of application, shall be given only if and when the said Commission shall find or determine that the granting or approval of such application is necessary or proper for the service, accommodation, convenience, or safety of the public.' This is the only barrier which the statute raises to the approval of such contracts. It does not provide that the corporations shall be called upon to establish any specific facts. The Commission is by the statute made the guardian of the interests of the public, and the burden upon the corporation is to present a case which warrants the Public Service Commission in exercising the discretion with which it is by law invested." V. & S. Bottle Company, Appellant, vs. Public Service Commission. 70 Pa. Sup. Ct., p. 308.

In view of the law, we could not see at the hearing and we do not now see the relevancy of the position of these protesting stockholders.

From the uncontradicted evidence produced in this case, it appears that 30 or 40 years ago when the production of Pennsylvania oil was much larger and conditions in the district much different than at present, there was a justification and a necessity for two pipe line systems such as the Pure Oil Pipe Line system and the National Transit Company system. As the years went by and the production gradually declined, new laws going into effect, labor costs of maintenance increasing, the necessity for the maintenance and operation of two separate and independent pipe line systems no longer existed. For the last several years, the Pure Oil pipe line system has been operated at a loss. The situation that confronts the Pure Oil Company and its subsidiary companies owning these lines is either to go before the Public Service Commission and obtain a sufficient increase in rates that will enable them to operate at a profit, or sell or

abandon their system. The National Transit Company during the last year on account of the amount of oil transported and the expenses which were not unusual, and the cost of maintenance, has not been able to make any profit on the present rate of carriage. The National Transit Company is transporting over its system about 10,000 barrels of oil per day. The Pure Oil Company is transporting over its system about 2,700 barrels per day. The Pure Oil Company in order to transport this oil over that portion of the system proposed to be sold under the agreement to the National Transit Company maintains about 18 pumping stations, which is one of the large items of cost entering into the operating of the pipe line system. It is shown conclusively by the evidence in the case, by experienced witnesses who know, that the consolidation of these two pipe line systems will produce such an economy in the operation thereof, which taken in connection with one company having the benefit of a combined shipment would enable the purchasing or consolidating company to operate and maintain the systems at a reasonable profit, thereby postponing the date when an increase in the rates for the transportation of oil will be requested from this Honorable Commission. Certainly any combination that is permitted by statute, that is not detrimental to the public interest, but brings about economy in operation is to be sanctioned rather than condemned.

Some of the members of this Honorable Commission are familiar from personal experience and observation with the conditions that now prevail in the oil industry in this section compared with what they were 30 years ago.

There is no law that we know of that would prevent the Producers and Refiners Pipe Line Company, which owns the pipe line system involved in this pur-

chase extending from a point at or near Corapolis, Pennsylvania, to Warren, Pennsylvania, from surrendering its charter, abandoning its franchises and taking up and disposing of its pipe line system. If this were done, it would spell disaster to a great many small producers who are now connected to the gathering lines of the Pure Oil system. While the production in the aggregate is considerable, yet it is made up of so many small, widely scattered units that in event of renewal it would not justify any other pipe line company in laying or extending its lines thereto. The preservation of this oil to the consuming trade as well as the preservation of the wells from abandonment is of vital interest, not only to the owners thereof but to the public generally. The various refiners of Pennsylvania grade oil located along the lines of these two systems and at present being furnished by them with their supply of crude, could better be accommodated by the system if combined under one management and operation. This is the opinion of the refiners and men not interested financially in any of the pipe line companies involved in this application, but alone concerned with proper service and economy in the delivery and receipt of the crude oil. These men voiced the opinion that if this sale is allowed to go through, that the National Transit Company and the Southwest Pennsylvania Pipe Line Company by reason of the economies which they can inaugurate will benefit the service in the delivery and transportation of the oil from the wells to the refineries. It will also give a broader market to the producer for the sale and distribution of this oil and will tend to keep down any increase in the rates for the transportation of oil, which necessarily involves an additional cost to the public of petroleum products.

It is a significant and a very interesting fact, under the so called credit balance system which has

existed in this state for upwards of 40 years and in our opinion will exist as long as pipe lines are common carriers of crude, that the producer of oil can sell his oil in the pipe line to whomever he pleases. When the oil is run into the pipe line by the producer, it loses its identity and becomes mixed with the common mass of oil therein. The producer is given credit on the books of the pipe line company for the amount of oil that is run from his tank from time to time. At any time he is at liberty to sell that oil to whomever he pleases and if he desires to sell it, the pipe line company gives him a written order showing the amount of oil to his credit in the pipe line, and then he endorses it over to his purchaser—somewhat similar to a checking transaction through a bank, and then the pipe line company delivers the oil to the purchaser. This, in short, is the way the credit balance system operates.

The evidence showed that during the last year that of the nine hundred thousand and odd barrels of oil run into the system of the National Transit Company by the producers there were 23 independent purchasers for the same.

In conclusion and at the expense of repetition, the evidence produced in this case conclusively demonstrates that in the interest of economy, service and benefit to the producers, refiners and the consuming public, the consummation of this contract of sale and purchase should be approved by this Honorable Commission.

Respectfully Submitted,

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21st
NOV, NOVEMBER ~~1926~~, 1927, we acknowledge to have received six (6) copies
of the within brief and accept notice of the filing of the brief with the
Commission.

Wm. M. Smith
Walter Perry Schuchman Harris