



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 7, 2022

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Westover Property Management Company, L.P.
d/b/a Westover Companies
Docket Nos. C-2022-3030251; P-2021-3030002
**I&E Brief in Opposition to Petition for Review and Answer to Material
Questions and for Immediate Stay of Proceeding**

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Brief of the Bureau of Investigation and Enforcement in Opposition to the Petition for Review and Answer to Material Questions, and for Immediate Stay of Proceeding of Westover Property Management Company, L.P. d/b/a Westover Companies with regard to the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Stephanie M. Wimer', is written over a light blue horizontal line.

Stephanie M. Wimer
Senior Prosecutor
Bureau of Investigation and Enforcement
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Enclosures

cc: Per Certificate of Service
Hon. Christopher P. Pell, OALJ-Philadelphia (*via email*)
Athena Delvillar, OALJ Legal Assistant (*via email*)
Office of Special Assistants (ra-OSA@pa.gov)
Michael L. Swindler, I&E Deputy Chief Prosecutor (*via email*)
Kayla L. Rost, I&E Prosecutor (*via email*)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket Nos. C-2022-3030251;
	:	P-2021-3030002
Westover Property Management Company, L.P.	:	
d/b/a Westover Companies	:	
Respondent	:	

**BRIEF OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT
IN OPPOSITION TO
THE PETITION FOR REVIEW AND
ANSWER TO MATERIAL QUESTIONS
AND FOR IMMEDIATE STAY OF PROCEEDING OF
WESTOVER PROPERTY MANAGEMENT COMPANY, L.P.,
d/b/a WESTOVER COMPANIES**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW COMES the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its prosecuting attorneys, pursuant to 52 Pa. Code § 5.302(b), and files this Brief in Opposition to the Petition for Review and Answer to Material Questions and for Immediate Stay of Proceeding of Westover Property Management Company, L.P. d/b/a Westover Companies (“Westover” or “Petitioner”)¹ in the above-captioned matter. Westover’s Material Questions present an issue of a disputed material fact and a ruling on the merits of this issue prior to the scheduled evidentiary hearing would be premature. Instead, I&E respectfully requests that the Commission address the purely legal question concerning the applicability of the Federal pipeline safety laws and

¹ Westover’s Petition for Review and Answer to Material Questions and for Immediate Stay of Proceeding is hereinafter referred to as “Petition.”

regulations, as adopted by the Gas and Hazardous Liquids Pipelines Act, 58 P.S. §§ 801.101, *et seq.* (“Act 127”), to master meter systems at apartment complexes. Finally, I&E opposes Westover’s request to stay this proceeding pending disposition of its Petition, as a stay would interfere with I&E inspections of Westover pipeline facilities that are scheduled for November 15-18, 2022 and the timely receipt of Westover responses to I&E’s Set I Interrogatories, which are due on November 14, 2022. Moreover, it is not in the public interest to stay this matter and further delay the potential applicability of the Federal pipeline safety laws and regulations to Westover’s pipeline facilities, which are currently treated as unregulated.

In opposition to Westover’s Petition, I&E avers as follows:

I. STATEMENT OF THE CASE

A. Westover’s Petition for Declaratory Order

On December 13, 2021, Westover filed a Petition for Declaratory Order pursuant to 66 Pa.C.S. § 331(f) and 52 Pa. Code § 5.42 to resolve a case and controversy regarding whether Westover is subject to Act 127. The Petition for Declaratory Order was docketed at P-2021-3030002.

On January 3, 2022, I&E filed an Answer in Opposition to Westover’s Petition for Declaratory Order.

On May 16, 2022, Westover filed an Amended Petition for Declaratory Order that provided factual details concerning Westover’s natural gas pipeline facilities. At its various apartment complex locations, Westover described, *inter alia*, that it consumes gas in its central boiler,² provides heat and hot water to tenants,³ provides gas for tenants to use when cooking,⁴ has submeters that measure gas used by tenants,⁵ and has service lines that transport gas from meters to

² Amended Petition at 8, 10, 14.

³ Amended Petition at 8, 10, 14, 15.

⁴ Amended Petition at 10, 14, 15, 16.

⁵ Amended Petition at 13, 14.

apartment buildings.⁶ Each of these factual descriptions was used by Westover in its Amended Petition for Declaratory Order to support Westover’s claim that it is not a pipeline operator subject to the Commission’s jurisdiction.

On June 6, 2022, I&E filed an Answer in Opposition to Westover’s Amended Petition for Declaratory Order.

By Order entered on August 25, 2022, the Commission consolidated Westover’s Petition for Declaratory Order with the Formal Complaint (“Complaint”) proceeding docketed at C-2022-3030251, discussed *infra*, and assigned the matter to the Office of Administrative Law Judge for resolution of the aforementioned disputed material facts and legal issues, and the issuance of a recommended decision.

B. The Complaint Proceeding

On January 3, 2022, I&E filed a Complaint against Westover alleging that Westover is a “pipeline operator” as that term is defined in Act 127 through its operation of master meter systems at apartment complexes in Pennsylvania. The Complaint was docketed at C-2022-3030251.

In its Complaint, I&E alleges that the I&E Safety Division first became aware that Westover operates master meter systems when it responded to reports of a natural gas leak and service outage occurring on May 22-23, 2018 at one of Westover’s apartment complexes.⁷ After ensuring that the leak was properly repaired and service restored, the I&E Safety Division shifted the focus of its investigation to examine whether the pipeline facilities operated by Westover constitute “master meter systems” as defined in 49 CFR § 191.3 and are therefore subject to Commission regulation through Act 127.⁸

⁶ Amended Petition at 14, 15, 16.

⁷ I&E Complaint at ¶ 28.

⁸ I&E Complaint at ¶ 30.

I&E alleges in the Complaint that Westover operates master meter systems at approximately seventeen (17) of its apartment complexes in Pennsylvania where Westover purchases metered gas from a natural gas distribution company (“NGDC”) for resale to its tenants through a gas distribution pipeline system that is owned and maintained by Westover.⁹

Also in its Complaint, I&E detailed the extensive efforts it made to inspect Westover’s master meter systems and obtain Westover’s compliance with Act 127 prior to engaging in litigation.¹⁰ I&E alleges that its pre-complaint investigation was hampered by Westover’s refusal to acknowledge the Commission’s jurisdiction as it relates to its master meter systems. I&E was precluded from inspecting and examining the specific pipeline configurations present at Westover’s master meter systems.

I&E alleges in the Complaint that Westover violated Act 127 at 58 P.S. § 801.503(b), (d) by failing to submit annual registration forms with the Commission and paying an appropriate assessment based on regulated intrastate distribution pipeline miles. I&E further alleges that Westover violated Part 192 of the Federal pipeline safety regulations, 49 CFR §§ 192.1-192.1015, by failing to demonstrate compliance with the following Sections of Part 192 in its operation of master meter systems: 49 CFR § 192.603(a)-(b) (related to General provisions); 49 CFR § 192.605(a)-(e) (related to Procedural manual for operations, maintenance, and emergencies); 49 CFR § 192.615(a)-(c) (related to Emergency plans); 49 CFR § 192.625(f)(1)-(2) (related to Odorization of gas); 49 CFR § 192.805(a)-(i) (related to Qualification program); 49 CFR § 192.809(a)-(e) (related to General, pertaining to requirements for a qualification program); and 49 CFR § 192.807(a)-(b) (related to Recordkeeping, pertaining to operator qualification).¹¹

⁹ I&E Complaint at ¶¶ 24-25.

¹⁰ I&E Complaint at ¶¶ 27, 32-29.

¹¹ I&E Complaint at ¶ 45(c)-(h).

I&E also alleges that Westover prohibited the I&E Safety Division from completing inspections of Westover's records, procedures, and facilities and, therefore, the I&E Safety Division has been unable to verify that Westover complies with many other sections of Part 192 of the Federal pipeline safety regulations that pertain to natural gas master meter systems.¹²

On January 25, 2022, Westover filed an Answer and New Matter in response to I&E's Complaint where Westover **admits** purchasing gas from NGDCs, transporting the gas, and selling it to tenants residing in its apartment complexes.¹³ Westover claims, however, that its master meter systems are not subject to the Federal pipeline safety regulations because they do not affect interstate or foreign commerce.¹⁴ Westover has also averred that it is the ultimate consumer of the gas and therefore is not a jurisdictional pipeline operator, pursuant to 58 P.S. § 801.102.¹⁵

The parties have been engaged in discovery in the Complaint proceeding. On January 31, 2022, Westover served its Interrogatories and Requests for Production of Documents, Set I, on I&E. On February 10, 2022, I&E served its formal Objections to the Set I Interrogatories of Westover.

On February 14, 2022, I&E filed its Reply to Westover's New Matter.

On February 22, 2022, Westover filed with the Commission an unopposed request to extend the deadline for Westover to file a Motion to Compel until March 2, 2022.

On March 2, 2022, Westover filed its Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents ("Westover Motion to Compel #1").

¹² I&E Complaint at ¶ 45(i).

¹³ Westover Answer and New Matter at ¶ 7.

¹⁴ *Id.*

¹⁵ Amended Petition at 9.

On March 7, 2022, I&E filed its Answer to Westover's Motion to Compel.

On March 9, 2022, Westover filed an unopposed Petition for Protective Order.

On March 30, 2022, I&E served its Interrogatories and Requests for Production of Documents – Set I, on Westover.

On April 11, 2022, Westover filed its Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents (“Westover Motion to Compel #2”).

Also on April 11, 2022, Westover filed its Objections to the Interrogatories and Requests for the Production of Documents – Set 1, propounded by I&E.

On April 18, 2022, I&E filed its Answer to the Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents of Westover.

On April 21, 2022, I&E filed a Motion to Dismiss Objections and Compel Answers to Interrogatories and Requests for Production of Documents (“I&E Motion to Compel #1”).

On April 26, 2022, Westover filed its Answer to I&E's Motion to Dismiss Objections and Compel Answers to I&E's Set I Interrogatories and Requests for Production of Documents.

By Initial Call-In Telephonic Prehearing Conference Notice dated August 29, 2022, an Initial Call-In Telephonic Prehearing Conference was scheduled for October 5, 2022 and Deputy Chief Administrative Law Judge Christopher P. Pell (“DCALJ Pell”) was assigned to the consolidated proceeding.

On September 12, 2022, DCALJ Pell issued a Prehearing Conference Order.

On September 30, 2022, I&E and Westover filed their respective prehearing memoranda.

On October 3, 2022, I&E served Requests for Entry for Inspection upon Westover.

The Call-In Telephonic Prehearing Conference was held as scheduled on October 5, 2022.

On October 6, 2022, DCALJ Pell issued Prehearing Order #1, which established the service list, litigation schedule, discovery rules, and other related prehearing matters. A corrected Prehearing Order #1 dated October 6, 2022 was also issued.

On October 7, 2022, DCALJ issued Prehearing Order #2 approving Westover's Petition for Protective Order and entering the Protective Order for this consolidated proceeding.

On October 13, 2022, Westover served its Answers and Conditions to I&E's Requests for Entry for Inspection.

On October 19, 2022, Westover served its Interrogatories and Requests for Production of Documents, Set II, on I&E.

On October 24, 2022, I&E filed its Motion to Compel Entry for Inspection and requested an expedited ruling so that the parties may participate in the inspections scheduled for November 15 to 18, 2022.

On October 25, 2022, DCALJ issued an Interim Order addressing the Motions to Compel filed by Westover and I&E. The Interim Order granted, in part, and denied, in part, I&E's Motion to Compel #1, and directed Westover to provide responses to certain interrogatories set for in I&E's Interrogatories Set I within twenty days. The Interim Order denied Westover's Motion to Compel #1 and Motion to Compel #2.

On October 28, 2022, Westover filed its Petition for Review and Answer to Material Questions and for Immediate Stay of the Proceeding.

On October 31, 2022, Westover filed its Answer to I&E's Motion to Compel Entry for Inspection. Also on October 31, 2022, I&E served its formal Objections to the Set II Interrogatories of Westover.

II. COUNTER-STATEMENT OF MATERIAL QUESTION

DO THE FEDERAL PIPELINE SAFETY LAWS AND REGULATIONS, AS ADOPTED BY ACT 127, INCLUDE THE REGULATION OF INTRASTATE NATURAL GAS MASTER METER SYSTEMS OPERATED AT APARTMENT COMPLEXES?

Suggested Answer: Yes.

III. SUMMARY OF ARGUMENT

The Commission should decline to answer Westover's Material Questions, as stated, since they are predicated upon a disputed material fact concerning whether Westover "consumes" the natural gas in its pipeline distribution facilities, which it purchases from NGDCs and then resells to tenants. Whether Westover is the ultimate consumer of the gas is one of the issues that is currently subject to on-going discovery and the parties should be provided with the opportunity to present evidence during the evidentiary hearing concerning Westover's alleged consumption of natural gas at each of the seventeen (17) apartment complexes identified in I&E's Complaint.

Instead, the Commission should entertain I&E's purely legal Material Question as it would provide clarity as to whether the Federal pipeline safety laws and regulations, as adopted by Act 127, apply to master meter systems located at apartment complexes in Pennsylvania. An answer to this Material Question would resolve the major, threshold jurisdictional question.

Finally, I&E opposes Westover's request to stay this proceeding pending disposition of its Petition, as a stay would interfere with I&E inspections of Westover pipeline facilities that are scheduled for November 15-18, 2022 and the timely receipt of Westover responses to I&E's Set I Interrogatories, which are due on November 14, 2022.

IV. ARGUMENT

A. **The Commission should Decline to Answer Westover’s Material Questions as They Fail to Meet the Interlocutory Review Standards**

In its Petition for Review, Westover presents the following Material Questions:

1. Do Westover’s apartment complexes meet the definition of a “master meter system” in 49 CFR § 191.3 where: Westover takes delivery of the natural gas from a state-regulated NGDC on the grounds of the apartment complex in Pennsylvania, consumes some of the gas, and resells the remainder exclusively to tenants in the apartment complex in Pennsylvania?
2. Does Act 127 apply to Westover’s apartment complexes, considering the facts in question #1?

For the reasons explained below, both questions are predicated on issues of disputed material facts and, accordingly, seek relief that is premature and impermissible at this early stage of the proceeding.

The Commission will only grant requests for interlocutory review upon a showing by the petitioner of extraordinary circumstances or compelling reasons. 52 Pa. Code § 5.302; *In re: Application of Knight’s Limousine Service, Inc.*, 59 Pa. P.U.C. 538, Docket No. A-00105973 (July 22, 1985). Further, the Commission will only grant interlocutory review where it is necessary to prevent substantial prejudice *and* that the prejudice flowing from the error cannot be satisfactorily cured during the normal Commission review process. *Saucon Creek Associates, Inc. v. Borough of Hellertown*, 69 Pa. P.U.C. 467, Docket No. C-882119, Order entered April 28, 1989).

Westover has failed to demonstrate that it will suffer substantial prejudice or that the potential harm cannot be cured during the ordinary Commission review process. Westover asserts that interlocutory review is necessary to prevent it from answering I&E discovery that it was ordered to answer by DCALJ Pell and to narrow the issues that will be litigated in order to

avoid devoting substantial resources litigating this consolidated matter.¹⁶ However, the Commission has found that the expenditure of resources in producing extensive discovery and participating in hearings does not constitute substantial prejudice and is not a compelling reason to grant interlocutory review. *Saucon Creek*, 69 Pa. P.U.C. at 467.

Moreover, the question of whether a master meter system fits within the definition of the term at 49 CFR § 191.3 is a factually intensive inquiry that must be examined on a case-by-case basis. Indeed, Westover has alleged that it is the ultimate consumer of gas because it consumes gas in the boilers at several apartment complexes.¹⁷ This factual assertion, *inter alia*, is the subject of an on-going discovery dispute concerning I&E's October 3, 2022 Requests for Entry for Inspection in which I&E requests to inspect Westover's pipeline facilities to evaluate Westover's claim that such facilities are not jurisdictional master meter systems.¹⁸ Moreover, I&E intends to present evidence at hearing demonstrating that Westover charges tenants for natural gas consumption either through the issuance of a bill, which is based on the tenants' natural gas consumption as measured by submeters, or through rent. Any interlocutory ruling on the merits concerning the specific factual details of Westover's master meter systems, including the allegation that Westover consumes the gas, is premature. As the Commission found in *Saucon Creek*, a question that turns on the disputed facts of a case should not be answered because the facts can only be ascertained through the discovery and hearing process. *Saucon Creek*, 69 Pa. P.U.C. at 467. Accordingly, the Commission should decline to answer Westover's Material Questions and the parties should be afforded the opportunity at hearing to present evidence regarding the disputed material facts.

¹⁶ Westover Petition at 1-2.

¹⁷ Westover Amended Petition for Declaratory Order at 8, 10, and 14; Westover Answer to I&E Complaint at 12.

¹⁸ I&E filed a Motion to Compel Entry for Inspection on October 24, 2022, to which Westover responded on October 31, 2022. The matter is pending judicial resolution.

B. The Commission Should Answer the Purely Legal Material Question Presented by I&E to Clarify that the Federal Pipeline Safety Laws and Regulations, as adopted by Act 127, Apply to Master Meter Systems at Apartment Complexes

Westover argues that it is not a pipeline operator because it does not engage in the “transportation of gas.”¹⁹ Westover argues that its systems, which are located within its apartment complexes and serve only tenants in its apartment complexes, do not transport gas “in or affecting interstate commerce.”²⁰ For these reasons, Westover asserts that it is not subject to Federal pipeline safety regulation.

I&E requests that the Commission put aside all factual details concerning the specifics of Westover’s pipeline facilities and systems at its apartment complexes and instead, address the below Material Question presented by I&E, which is designed to elicit a ruling concerning the applicability of Federal pipeline safety laws and regulations on intrastate master meter systems at apartment complexes:

Do the Federal pipeline safety laws and regulations, as adopted by Act 127, include the regulation of intrastate natural gas master meter systems operated at apartment complexes?

Suggested answer: Yes.

An answer to I&E’s Material Question will expedite the proceeding by resolving the threshold question of jurisdiction.

Act 127 took effect on February 21, 2012 and provides that “[t]he safety standards and regulations for pipeline operators shall be those issued under the Federal pipeline safety laws as implemented in 49 CFR Subtitle B Ch. I Subch. D (relating to pipeline safety).” 58 P.S.

§ 801.302(a).²¹ In adopting the Federal pipeline safety laws and regulations as the applicable

¹⁹ Westover Petition at 3.

²⁰ *Id.*

²¹ The regulations at 49 CFR Subtitle B Ch. I Subch. D were promulgated under the authority of the Federal pipeline safety laws at 49 U.S.C. §§ 60101 *et seq.*

safety standards, Act 127 also provides that “[a]mendments to the Federal pipeline safety laws have the effect of amending or modifying the safety standards and regulations for the transportation of gas and hazardous liquids in the Commonwealth.” 58 P.S. § 801.302(b)(1).

Act 127 applies to pipeline operators, which are defined as “a person that owns or operates equipment or facilities in this Commonwealth for the transportation of gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws. The term does not include a public utility or an ultimate consumer who owns a service line on his real property.” 58 P.S. § 801.102.

“Transporting gas” is defined in the Federal pipeline safety laws, in pertinent part, as “the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in interstate or foreign commerce.” 49 U.S.C. § 60101(a)(21).²² Federal pipeline safety laws define “interstate or foreign commerce,” in pertinent part, as:

- (A) related to gas, means commerce - -
 - (i) between a place in a State and a place outside that State; or
 - (ii) that affects any commerce described in subclause (A)(i) of this clause.”

49 U.S.C. § 60101(a)(8)(A)(i)-(ii).

The Commerce clause of the U.S. Constitution²³ is the authority underlying Federal pipeline safety laws. It permits, *inter alia*, Federal regulation of the transportation of natural gas by pipeline. Pursuant to that authority, Congress may mandate Federal regulation for the use of the channels of interstate commerce, the instrumentalities of and persons or things in interstate commerce, and any activity that has a substantial effect on interstate commerce.²⁴ With regard to the third category, Congress is empowered to regulate purely local activities that are part of an

²² Similarly, Act 127 defines the “transportation of gas” as “[t]he gathering, transmission or distribution of gas by pipeline or the storage of gas.” 58 P.S. § 801.102.

²³ U.S. Const. Art. I, § 8, cl. 3.

²⁴ *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005).

economic “class of activities” that have a substantial effect on interstate commerce.²⁵

When enacting the Natural Gas Pipeline Safety Act of 1968, the first statute regulating pipeline safety, Congress determined that the intrastate transportation of gas by pipeline *substantially affects* interstate commerce. Congress reported as follows when defining the transportation of gas covered under the Natural Gas Pipeline Safety Act:

The term “transportation of gas” is defined as the gathering, transmission or distribution of gas by pipeline or its storage in or affecting interstate or foreign commerce. With exception as to gathering in certain circumstances, this means all aspects of the transportation of gas from the well head to the consumer. As testified by Secretary Boyd:

‘There is no question but what every element of a gas gathering, transmission, and distribution line is moving gas which is either in or affects interstate commerce. * * * (p. 35).

I don’t think that it even requires any elasticity of the commerce clause of the Constitution to define 99 44/100 percent of this activity as being clearly within the commerce clause. (p. 36).’

H.R. Rep. No. 90-1390, at 18 (May 15, 1968).²⁶

The Pipeline and Hazardous Materials Safety Administration (“PHMSA”),²⁷ has likewise determined that even though the transportation of gas may entirely be within one State, every element of a gas gathering, transmission, and distribution line is moving gas that is either in or affects interstate commerce.²⁸

Master meter systems, which distribute gas entirely within one State, are subject to the Federal pipeline safety laws and regulations. Master meter systems are defined as:

²⁵ *Id.* at 17, citing *Perez v. U.S.*, 402 U.S. 146, 151 (1971); *Wickard v. Filburn*, 317 U.S. 111, 128-129 (1942).

²⁶ The House Report is appended hereto as I&E Exhibit 1.

²⁷ PHMSA is an agency within the United States Department of Transportation responsible for developing and enforcing regulations for the safe, reliable, and environmentally sound operation of the United States’ pipeline transportation system.

²⁸ PHMSA Letter of Interpretation to Florida Public Service Commission, PI-71-036 (March 16, 1971). The Letter of Interpretation is appended hereto as I&E Exhibit 2.

a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, *or apartment complex*, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents.

49 CFR § 191.3 (emphasis added).

Prior to the enactment of Act 127, PHMSA enforced the Federal pipeline safety laws and regulations on master meter systems at apartment complexes in Pennsylvania.²⁹ It is therefore clear that after Act 127 was enacted, the Commission, through the I&E Safety Division, which serves as an agent of PHMSA certified to regulate intrastate pipeline facilities for safety purposes pursuant to 49 U.S.C. § 60105, is authorized to enforce the Federal pipeline safety laws and regulations on master meter systems distributing gas to tenants at apartment complexes in Pennsylvania. Act 127's express adoption of the Federal pipeline safety laws and regulations at 58 P.S. § 801.302 clearly and unambiguously include the pipeline safety regulation of master meter systems, including those at apartment complexes. Indeed, the Commission has already enforced violations of Act 127 on master meter systems operated at mobile home parks.³⁰ For these reasons, the Commission should answer I&E's Material Question in the affirmative.

C. Stay of the Proceeding

A stay of this consolidated proceeding is not appropriate because discovery will be delayed and the safety of these currently unregulated pipeline facilities will remain at risk. Pursuant to DCALJ's October 25, 2022 Interim Order, Westover is directed to provide responses to I&E Interrogatories Set I, Nos. 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 by November 14, 2022. Furthermore,

²⁹ See Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety letter dated March 6, 1998 to Mr. Ernie Nepa of Governor Sproul Associates. The letter is appended hereto as I&E Exhibit 3.

³⁰ See *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Brookhaven MHP Management LLC, et al.*, Docket Nos. C-2017-2613983, *et al.* (Order entered August 23, 2018).

the parties have scheduled inspections of Westover's pipeline facilities at various apartment complexes between November 15 – 18, 2022. Staying this proceeding would interfere with discovery and potentially delay the remainder of the litigation schedule. Moreover, it is not in the public interest to stay this matter and further delay a ruling on the applicability of the Federal pipeline safety laws and regulations to Westover's pipeline facilities, which are currently treated as unregulated.

WHEREFORE, the Bureau of Investigation and Enforcement respectfully requests that the Pennsylvania Public Utility Commission: (1) answer the Material Question presented by the Bureau of Investigation and Enforcement in the affirmative; (2) decline to answer the Material Questions presented by Westover Property Management Company, L.P. d/b/a Westover Companies; and (3) deny the request to stay the proceeding pending disposition of the Petition for Review and Answer to Material Questions.

Respectfully submitted,



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Date: November 7, 2022

I&E
EXHIBIT 1

NATURAL GAS PIPELINE SAFETY ACT OF 1968

MAY 15, 1968.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STAGGERS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 1166]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1166) to authorize the Secretary of Transportation to prescribe safety standards for the transportation of natural and other gas by pipeline, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Natural Gas Pipeline Safety Act of 1968".

DEFINITIONS

SEC. 2. As used in this Act—

(1) "Person" means any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof;

(2) "Gas" means natural gas, flammable gas, or gas which is toxic or corrosive;

(3) "Transportation of gas" means the gathering, transmission or distribution of gas by pipeline or its storage in or affecting interstate or foreign commerce except that it shall not include the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or any similar populated area which the Secretary may define as a nonrural area;

(4) "Pipeline facilities" includes, without limitation, new and existing pipe, rights-of-way, and any equipment, facility, or building used in the transportation of gas or the treatment of gas during the course of transportation, but "rights-of-way" as used in this Act does not authorize the Secretary to prescribe the location or routing of any pipeline facility;

(5) "State" includes each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico;

(6) "Municipality" means a city, county, or any other political subdivision of a State;

(7) "National organization of State commissions" means the national organization of the State commissions referred to in part II of the Interstate Commerce Act;

(8) "Interstate transmission facilities" means pipeline facilities used in the transportation of gas which are subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act; and

(9) "Secretary" means the Secretary of Transportation.

STANDARDS ESTABLISHED

SEC. 3. (a) As soon as practicable but not later than three months after the enactment of this Act, the Secretary shall, by order, adopt as interim minimum Federal safety standards for pipeline facilities and the transportation of gas in each State the State standards regulating pipeline facilities and the transportation of gas within such State on the date of enactment of the Act. In any State in which no such standards are in effect, the Secretary shall, by order, establish interim Federal safety standards for pipeline facilities and the transportation of gas in such State which shall be such standards as are common to a majority of States having safety standards for the transportation of gas and pipeline facilities on such date. Interim standards shall remain in effect until amended or revoked pursuant to this section. Any State agency may adopt such additional or more stringent standards for pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commissioner under the Natural Gas Act as are not incompatible with the Federal minimum standards, but may not adopt or continue in force after the interim standards provided for above become effective any such standards applicable to interstate transmission facilities.

(b) Not later than twenty-four months after the enactment of this Act, and from time to time thereafter, the Secretary shall, by order, establish minimum Federal safety standards for the transportation of gas and pipeline facilities. Such standards may apply to the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Standards affecting the design, installation, construction, initial inspection, and initial testing shall not be applicable to pipeline facilities in existence on the date such standards are adopted. Whenever the Secretary shall find a particular facility to be hazardous to life or property, he shall be empowered by order to require the person operating such facility to take such steps necessary to remove such hazards. Such Federal safety standards shall be practicable and designed to meet the need for pipeline safety. In prescribing such standards, the Secretary shall consider—

(1) relevant available pipeline safety data;

(2) whether such standards are appropriate for the particular type of pipeline transportation;

(3) the reasonableness of any proposed standards; and

(4) the extent to which such standards will contribute to public safety.

Any State agency may adopt such additional or more stringent standards for pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act as are not incompatible with the Federal minimum standards, but may not adopt or continue in force after the minimum Federal safety standards referred to in this subsection become effective any such standards applicable to interstate transmission facilities.

(c) Any standards prescribed under this section, and amendments thereto, shall become effective thirty days after the date of issuance of such standards unless the Secretary, for good cause recited, determines an earlier or later effective date is required as a result of the period reasonably necessary for compliance.

(d) The provisions of subchapter II of chapter 5 of title 5 of the United States Code shall apply to all orders establishing, amending, revoking, or waiving compliance with, any standard established under this Act. The Secretary shall afford interested persons an opportunity to participate fully in the establishment of such safety standards through submission of written data, views, or arguments with opportunity to present oral testimony and argument.

(e) Upon application by any person engaged in the transportation of gas or the operation of pipeline facilities, the Secretary may, after notice and opportunity for hearing and under such terms and conditions and to such extent as he deems appropriate, waive in whole or in part compliance with any standard established under this Act, if he determines that a waiver of compliance with such standard is not inconsistent with gas pipeline safety. The Secretary shall state his reasons for any such waiver. A State agency, with respect to which there is in effect a certification pursuant to section 5(a) or an agreement pursuant to section 5(b), may waive compliance with a safety standard in the same manner as the

Secretary, provided such State agency gives the Secretary written notice at least sixty days prior to the effective date of the waiver. If, before the effective date of a waiver to be granted by a State agency, the Secretary objects in writing to the granting of the waiver, any State agency action granting the waiver will be stayed. After notifying such State agency of his objection, the Secretary shall afford such agency a prompt opportunity to present its request for waiver, with opportunity for hearing, and the Secretary shall determine finally whether the requested waiver may be granted.

TECHNICAL PIPELINE SAFETY STANDARDS COMMITTEE

SEC. 4. (a) The Secretary shall establish a Technical Pipeline Safety Standards Committee. The Committee shall be appointed by the Secretary, after consultation with public and private agencies concerned with the technical aspect of the transportation of gas or the operation of pipeline facilities, and shall be composed of fifteen members each of whom shall be experienced in the safety regulation of the transportation of gas and of pipeline facilities or technically qualified by training and experience in one or more fields of engineering applied in the transportation of gas or the operation of pipeline facilities to evaluate gas pipeline safety standards, as follows:

(1) Five members shall be selected from governmental agencies, including State and Federal Governments, two of whom, after consultation with representatives of the national organization of State commissions, shall be State commissioners;

(2) Four members shall be selected from the natural gas industry after consultation with industry representatives, not less than three of whom shall be currently engaged in the active operation of natural gas pipelines; and

(3) Six members shall be selected from the general public.

(b) The Secretary shall submit to the Committee all proposed standards and amendments to such standards and afford such Committee a reasonable opportunity, not to exceed ninety days, unless extended by the Secretary, to prepare a report on the technical feasibility, reasonableness, and practicability of each such proposal. Each report by the Committee, including any minority views, shall be published by the Secretary and form a part of the proceedings for the promulgation of standards. In the event that the Secretary rejects the conclusions of the majority of the Committee, he shall not be bound by such conclusions but shall publish his reasons for rejection thereof. The Committee may propose safety standards for pipeline facilities and the transportation of gas to the Secretary for his consideration. All proceedings of the Committee shall be recorded and the record of each such proceeding shall be available for public inspection.

(c) Members of the Committee other than Federal employees may be compensated at a rate to be fixed by the Secretary not to exceed \$100 per diem (including travel time) when engaged in the actual duties of the Committee. All members, while away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. Payments under this section shall not render members of the Committee employees or officials of the United States for any purpose.

STATE CERTIFICATIONS AND AGREEMENTS

SEC. 5. (a) Except as provided in subsection (d) of this section, the provisions of this Act shall not apply to pipeline facilities and the transportation of gas (not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act) within a State when the safety standards and practices applicable to same are regulated by a State agency (including a municipality) which submits to the Secretary an annual certification that such State agency (1) has regulatory jurisdiction over the safety standards and practices of such pipeline facilities and transportation of gas; (2) has adopted each Federal safety standard applicable to such pipeline facilities and transportation of gas established under this Act as of the date of the certification; (3) is enforcing each such standard; and (4) has the authority to require record maintenance, reporting, and inspection substantially the same as are provided under section 12 and the filing for approval of plans of inspection and maintenance described in section 11; and that the law of the State makes provision for the enforcement of the safety standards of such State agency by way of injunctive and monetary sanctions. Each annual certification shall include a report, in such form as the Secretary may by regula-

tion provide, showing (i) name and address of each person subject to the safety jurisdiction of the State agency; (ii) all accidents or incidents reported during the preceding twelve months by each such person involving personal injury requiring hospitalization, fatality, or property damage exceeding \$1,000, together with a summary of the State agency's investigation as to the cause and circumstances surrounding such accident or incident; (iii) the record maintenance, reporting, and inspection practiced by the State agency to enforce compliance with such Federal safety standards, including a detail of the number of inspections made of pipeline facilities by the State agency during the preceding twelve months; and (iv) such other information as the Secretary may require. The report included with the first annual certification need not show information unavailable at that time. If after receipt of annual certification, the Secretary determines that the State agency is not satisfactorily enforcing compliance with Federal safety standards, he may, on reasonable notice and after opportunity for hearing, reject the certification or take such other action as he deems appropriate to achieve adequate enforcement including the assertion of Federal jurisdiction.

(b) With respect to all pipeline facilities and transportation of gas (not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act) for which the Secretary does not receive an annual certification under subsection (a) of this section, the Secretary is authorized by agreement with a State agency (including a municipality) to authorize such agency to assume responsibility for, and carry out on behalf of the Secretary as it relates to pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act the necessary actions to—

(1) establish an adequate program for record maintenance, reporting, and inspection designed to assist compliance with Federal safety standards;

(2) establish procedures for approval of plans of inspection and maintenance substantially the same as are required under section 11;

(3) implement a compliance program acceptable to the Secretary including provision for inspection of pipeline facilities used in such transportation of gas; and

(4) cooperate fully in a system of Federal monitoring of such compliance program and reporting under regulations prescribed by the Secretary.

Any agreement executed pursuant to this subsection shall require the State agency promptly to notify the Secretary of any violation or probable violation of a Federal safety standard which it discovers as a result of its program.

(c)(1) Upon an application submitted not later than September 30 in any calendar year, the Secretary is authorized to pay out of funds appropriated pursuant to section 15 up to 50 per centum of the cost of the personnel, equipment, and activities of a State agency reasonably required to carry out a safety program under a certification under subsection (a) or an agreement under subsection (b) of this section during the following calendar year. No such payment may be made unless the State agency making application under this subsection gives assurances satisfactory to the Secretary that the State agency will provide the remaining cost of such a safety program and that the aggregate expenditures of funds of the State, exclusive of Federal grants, for gas safety programs will be maintained at a level which does not fall below the average level of such expenditures for the last two fiscal years preceding the date of enactment of this section.

(2) Payments under this section may be made in installments, in advance or by way of reimbursement, with necessary adjustments on account of overpayments and underpayments.

(3) The Secretary may, by regulation, provide for the form and manner of filing of applications under this section, and for such reporting and fiscal procedures as he deems necessary to assure the proper accounting for Federal funds.

(d) A certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety standard for pipeline facilities or the transportation of gas, not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act, established pursuant to this Act after the date of such certification. The provisions of this Act shall apply to any such new or amended Federal safety standard until the State agency has adopted such standard and has submitted an appropriate certification in accordance with the provisions of subsection (a) of this section.

(e) Any agreement under this section may be terminated by the Secretary if, after notice and opportunity for a hearing, he finds that the State agency has failed to comply with any provision of such agreement. Such finding and termination shall be published in the Federal Register, and shall become effective no sooner than fifteen days after the date of publication.

JUDICIAL REVIEW OF ORDERS

SEC. 6. (a) Any person who is or will be adversely affected or aggrieved by any order issued under this Act may at any time prior to the sixtieth day after such order is issued file a petition for a judicial review with the United States Court of Appeals for the District of Columbia or for the circuit wherein such petitioner is located or has his principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary or other officer designated by him for that purpose.

(b) Upon the filing of the petition referred to in subsection (a), the court shall have jurisdiction to review the order in accordance with chapter 7 of title 5 of the United States Code and to grant appropriate relief as provided in such chapter.

(c) The judgment of the court affirming or setting aside, in whole or in part, any such order of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(d) Any action instituted under this section shall survive, notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(e) The remedies provided for in this section shall be in addition to and not in substitution for any other remedies provided by law.

COOPERATION WITH FEDERAL POWER COMMISSION AND STATE COMMISSIONS

SEC. 7. Whenever the establishment of a standard or action upon application for waiver under the provisions of this Act, would affect continuity of any gas services, the Secretary shall consult with and advise the Federal Power Commission or State commission having jurisdiction over the affected pipeline facility before establishing the standard or acting on the waiver application and shall defer the effective date until the Federal Power Commission or any such commission has had reasonable opportunity to grant the authorizations it deems necessary. In any proceedings under section 7 of the Natural Gas Act (15 U.S.C. 717f) for authority to establish, construct, operate, or extend a gas pipeline which is or will be subject to Federal or other applicable safety standards, any applicant shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain the pipeline facilities in accordance with Federal and other applicable safety standards and plans for maintenance and inspection. Such certification shall be binding and conclusive upon the Commission unless the relevant enforcement agency has timely advised the Commission in writing that the applicant has violated safety standards established pursuant to this Act.

COMPLIANCE

SEC. 8. (a) Each person who engages in the transportation of gas or who owns or operates pipeline facilities shall—

(1) at all times after the date any applicable safety standard established under this Act takes effect comply with the requirements of such standard; and

(2) file and comply with a plan of inspection and maintenance required by section 11; and

(3) permit access to or copying of records, and make reports or provide information, and permit entry or inspection, as required under section 12.

(b) Nothing in this Act shall affect the common law or statutory tort liability of any person.

CIVIL PENALTY

SEC. 9. (a) Whenever the Secretary has reason to believe any person is violating any portion of section 8(a), or any regulation issued under this Act, he shall give notice to such person and permit such person reasonable opportunity to achieve compliance prior to imposing the penalties hereinafter provided. If compliance has not been achieved in a reasonable time, the Secretary may impose a civil penalty not to exceed \$500 for each day that such violation persists, except that the maximum civil penalty shall not exceed \$100,000 for any related series of violations. In addition, the Secretary may seek injunctive relief under the provisions set forth in section 10.

(b) Any such civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged

in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in the compromise, may be deducted from any sums owing by the United States to the person charged or may be recovered in a civil action in the United States district courts.

INJUNCTION AND JURISDICTION

SEC. 10. (a) The United States district courts shall have jurisdiction, subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this Act (including the restraint of transportation of gas or the operation of a pipeline facility) or to enforce standards established hereunder upon petition by the appropriate United States attorney or the Attorney General on behalf of the United States. Whenever practicable, the Secretary shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to present his views, and, except in the case of a knowing and willful violation, shall afford him reasonable opportunity to achieve compliance. However, the failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

(b) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this Act, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(c) Actions under subsection (a) of this section and section 9 may be brought in the district wherein any act or transaction constituting the violation occurred, or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found.

(d) In any action brought under subsection (a) of this section and section 9, subpoenas for witnesses who are required to attend a United States district court may run into any other district.

INSPECTION AND MAINTENANCE PLANS

SEC. 11. Each person who engages in the transportation of gas or who owns or operates pipeline facilities not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act shall file with the Secretary or, where a certification or an agreement pursuant to section 5 is in effect, with the State agency, a plan for inspection and maintenance of each such pipeline facility owned or operated by such person, and any changes in such plan, in accordance with regulations prescribed by the Secretary or appropriate State agency. The Secretary may, by regulation, also require persons who engage in the transportation of gas or who own or operate pipeline facilities subject to the provisions of this Act to file such plans for approval. If at any time the agency with responsibility for enforcement of compliance with the standards established under this Act finds that such plan is inadequate to achieve safe operation, such agency shall, after notice and opportunity for a hearing, require such plan to be revised. The plan required by the agency shall be practicable and designed to meet the need for pipeline safety. In determining the adequacy of any such plan, such agency shall consider—

- (1) relevant available pipeline safety data;
- (2) whether the plan is appropriate for the particular type of pipeline transportation;
- (3) the reasonableness of the plan; and
- (4) the extent to which such plan will contribute to public safety.

RECORDS, REPORTS, AND INSPECTION FOR COMPLIANCE

SEC. 12. (a) Each person who engages in the transportation of gas or who owns or operates pipeline facilities shall establish and maintain such records, make such reports, and provide such information as the Secretary may reasonably require to enable him to determine whether such person has acted or is acting in compliance with this Act and the standards established under this Act. Each such person shall, upon request of an officer, employee, or agent authorized by the Secretary, permit such officer, employee, or agent to inspect books, papers, records,

and documents relevant to determining whether such person has acted or is acting in compliance with this Act and the standards established pursuant to this Act.

(b) The Secretary is authorized to conduct such monitoring of State enforcement practices and such other inspection and investigation as may be necessary to aid in the enforcement of the provisions of this Act and the standards established pursuant to this Act. He shall furnish the Attorney General any information obtained indicating noncompliance with such standards for appropriate action. For purposes of enforcement of this Act, officers, employees, or agents authorized by the Secretary, upon presenting appropriate credentials to the individual in charge, are authorized (1) to enter upon, at reasonable times, pipeline facilities, and (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such facilities. Each such inspection shall be commenced and completed with reasonable promptness.

(c) Accident reports made by any officer, employee, or agent of the Department of Transportation shall be available for use in any civil, criminal, or other judicial proceeding arising out of such accident. Any such officer, employee, or agent may be required to testify in such proceedings as to the facts developed in such investigations. Any such report shall be made available to the public in a manner which need not identify individuals. All reports on research projects, demonstration projects, and other related activities shall be public information.

(d) All information reported to or otherwise obtained by the Secretary or his representative pursuant to subsection (a), (b), or (c) which information contains or relates to a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the Secretary or any officer, employee, or agent under his control, from the duly authorized committees of the Congress.

ADMINISTRATION

SEC. 13. (a) The Secretary shall conduct research, testing, development, and training necessary to carry out the provisions of this Act. The Secretary is authorized to carry out the provisions of this section by contract, or by grants to individuals, States, and nonprofit institutions.

(b) Upon request, the Secretary shall furnish to the Federal Power Commission any information he has concerning the safety of any materials, operations, devices, or processes relating to the transportation of gas or the operation of pipeline facilities.

(c) The Secretary is authorized to advise, assist, and cooperate with other Federal departments and agencies and State and other interested public and private agencies and persons, in the planning and development of (1) Federal safety standards, and (2) methods for inspecting and testing to determine compliance with Federal safety standards.

ANNUAL REPORT

SEC. 14. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress on March 17 of each year a comprehensive report on the administration of this Act for the preceding calendar year. Such report shall include—

(1) a thorough compilation of the accidents and casualties occurring in such year with a statement of cause whenever investigated and determined by the National Transportation Safety Board;

(2) a list of Federal gas pipeline safety standards established or in effect in such year with identification of standards newly established during such year;

(3) a summary of the reasons for each waiver granted under section 3(c) during such year;

(4) an evaluation of the degree of observance of applicable safety standards for the transportation of gas and pipeline facilities including a list of enforcement actions, and compromises of alleged violations by location and company name;

(5) a summary of outstanding problems confronting the administration of this Act in order of priority;

- (6) an analysis and evaluation of research activities, including the policy implications thereof, completed as a result of Government and private sponsorship and technological progress for safety achieved during such year;
 - (7) a list, with a brief statement of the issues, of completed or pending judicial actions under the Act;
 - (8) the extent to which technical information was disseminated to the scientific community and consumer-oriented information was made available to the public;
 - (9) a compilation of—
 - (A) certifications filed by State agencies (including municipalities) under section 5(a) which were in effect during the preceding calendar year, and
 - (B) certifications filed under section 5(a) which were rejected by the Secretary during the preceding calendar year, together with a summary of the reasons for each such rejection; and
 - (10) a compilation of—
 - (A) agreements entered into with State agencies (including municipalities) under section 5(b) which were in effect during the preceding calendar year, and
 - (B) agreements entered into under section 5(b) which were terminated by the Secretary during the preceding calendar year, together with a summary of the reasons for each such termination.
- (b) The report required by subsection (a) shall contain such recommendations for additional legislation as the Secretary deems necessary to promote cooperation among the several States in the improvement of gas pipeline safety and to strengthen the national gas pipeline safety program.

APPROPRIATIONS AUTHORIZED

SEC. 15. For the purpose of carrying out the provisions of this Act over a period of three fiscal years, beginning with the fiscal year ending June 30, 1969, there is authorized to be appropriated not to exceed \$500,000 for the fiscal year ending June 30, 1969; not to exceed \$2,000,000 for the fiscal year ending June 30, 1970; and not to exceed \$3,000,000 for the fiscal year ending June 30, 1971.

BRIEF STATEMENT OF PURPOSE OF THE BILL

The purpose of the bill as reported is to provide for the prescription and enforcement of minimum Federal safety standards for the transportation of natural and other gas by pipeline and for pipeline facilities.

To achieve this purpose, the bill:

1. Directs (sec. 3) the Secretary of Transportation within 24 months to establish minimum safety standards for the gathering, transmission, and distribution of gas by pipeline or its storage, and for pipeline facilities used in the transportation or treatment of gas. (Provision is made for interim standards.) Certain standards apply retroactively and the Secretary otherwise is empowered to order removal of hazards to life or property.
2. Places a duty (sec. 8) upon each person engaging in the transportation of gas or who owns or operates pipeline facilities to:
 - (1) comply with these safety standards;
 - (2) file and comply with a plan of inspection and maintenance required by section 11; and
 - (3) permit access to records, make reports, and permit entry or inspection as required by section 12.
3. Provides (sec. 5) for the enforcement of these standards:
 - (1) as to pipeline facilities and the transportation of gas subject to the jurisdiction of the Federal Power Commission, by the Secretary; and
 - (2) as to all other pipeline facilities and transportation of gas either by the Secretary or by delegation to a State agency through

either: (a) an effective certification by the State agency to the Secretary; or (b) an effective written agreement between the State agency and the Secretary. (As here used a State agency may mean a municipality.)

4. In addition, the bill provides (sec. 4) for the establishment of a technical pipeline safety standards committee; (sec. 6) for the judicial review of orders; (sec. 7) for cooperation with the Federal Power Commission; (sec. 9) for civil penalties; (sec. 10) for injunctions and jurisdiction; (sec. 13) for research; (sec. 14) for reports to the Congress; and (sec. 15) for the authorization of the sums of \$500,000, \$2 million, and \$3 million for the next 3 fiscal years.

BACKGROUND AND NEED FOR LEGISLATION

Authority to improve the public safety as it is affected by transportation by private auto, bus, truck, railroad train, airplane, ship and pipelines which carry products other than gas and water, now exists in the Department of Transportation. The only significant mode of transportation which is presently beyond the reach of effective comprehensive safety regulation is the transportation of gases by pipeline. The anomaly of this exception is that the Department of Transportation now exercises safety regulation over flammable and other hazardous gases moving other than by pipeline, and safety regulation over pipeline movements of many other commodities including petroleum but not of natural gas.

Growth of Natural Gas Industry

There are now over 800,000 miles of gas pipeline in the United States including approximately 63,000 miles of gathering lines, 224,000 miles of transmission lines, and 536,000 miles of distribution lines. These lines range in diameter from less than 1 inch to 42 inches with 48-inch lines under consideration. They vary in condition from old, unprotected lines to new, well-protected lines. They differ in function from low-pressure distribution lines operated at one-fourth pound per square inch to, high-pressure transmission lines operated at 1,300 pounds per square inch, which is equivalent to a force of over 93 tons pushing against the pipeline wall over every square foot. Most of this pipeline system is of recent development.

Since World War II there has been —

1. A tremendous increase in the mileage of interstate transmission lines;
2. An increase in the number of these lines which now traverse populous areas;
3. Introduction of natural gas into city distribution mains originally constructed for manufactured gas; and
4. A tremendous increase in the number of city distribution mains to distribute natural gas.

In 1945 there existed some 27,000 miles of gathering lines. This has more than doubled.

In 1945 there existed some 77,000 miles of transmission lines. This has tripled.

In 1945 there were some 68,000 miles of distribution lines for manufactured gas. The total now is less than 1,000.

In 1945 there existed some 113,000 miles of natural gas distribution lines. This is now nearly five times greater.

In summary, while in 1945 natural gas supplied something like one-eighth of the Nation's total consumption of the energy fuels and energy, today it supplies one-third. The population of the Nation at the same time has grown, but even so, the per capita consumption of natural gas has increased from 30 to 88 million British thermal units.

This tremendous increase in the use of natural gas and the concurrent increase in the number of miles of gaslines makes consideration of the industry's safety record and standards most important. The tremendous growth in the population in the United States during the same period; that is, from 132 to over 200 million, immeasurably increases the need for that consideration.

Natural gas safety

The testimony of the Secretary of Transportation and the Chairman of the Federal Power Commission is that the safety record of the transmission industry has been a relatively good one. Studies made by the Federal Power Commission for the 18 years, 1950 up to November 15, 1967, show that only 67 people have been killed during this time of whom 31 were nonemployees and 36 were employees. Of these 31 of the general public, 17 were killed in one accident. Of the remainder, eight were killed as a result of their bulldozer or plow or road grader cutting the pipeline, and two were killed as a result of a runaway truck smashing into a pipeline metering station.

While the number of deaths has been low in relation to other industries, the recital of this fact alone, however, does not indicate adequately the seriousness of transmission systems failures. Over this period there has been an operational failure about every 5 days and a large number of failures during testing. In most cases the gas which escaped as a result of those failures did not ignite. In addition, the danger of injury and death has not been as great in the case of transmission lines which have been located away from areas of population density. When a transmission line failure occurs in a populated locale and ignition follows, the resulting explosion can be highly destructive. For example, the rupture and explosion at Natchitoches, La., in March 1965, gutted a 13-acre area, killed 17 people, burned five houses, and melted cars and rocks in the vicinity.

As to the safety record of distribution systems Secretary Boyd further testified:

Problems of the distribution lines are more complicated. Distribution systems have been in existence for many years and much of the original pipe is still in use even though it is now 30 or 40 years old. In some instances, it may be twice as old as that. There is no readily available information concerning past accidents in distribution systems as there is with transmission pipelines. However, in the first few months of this year, there were several major accidents in distribution systems. On January 13, there was a fire which engulfed an area equivalent to an entire block in Queens, Long Island, in which seven people were injured and 19 families left homeless. On February 19, there was an explosion in a rehearsal hall in South Milwaukee, Wis., where 250 people had been located just 20 minutes prior to the explosion, 14 people were injured. Simple chance and the heroic action of the police prevented loss of life in both these incidents.

On February 27, in Hastings, N.Y., one person was killed and 15 injured and 35 families left homeless. On March 14, a crack in a main located in Logansport, Ind., caused a blowup leaving eight injured. Another recent accident occurred in Fort Worth, Tex., where a gas main failed during a test, resulting in a blowup in which 12 were injured. The most recent incident of which we are aware occurred less than a month ago, on November 11, in St. Louis. Fortunately, the office building, which reportedly was leveled, was unoccupied since the blast occurred at night. However, records and documents were destroyed and two passersby were slightly injured.

How many major accidents have occurred in past years and how many minor ones this year is pure conjecture, but this emphasizes the need for safety jurisdiction over distribution lines to help prevent accidents of the type I have related (pp. 14-15).

As to the gathering lines, Mr. C. W. Miller, president, Natural Gas Processors Association, testified before the committee:

Since we testified before the Senate committee, we have supplemented the data there in evidence with another full year of safety information on gathering lines and can now inform the subcommittee that in 1966 forty-six members of this association who, in the aggregate handle more than 90 percent of all gas liquids produced in the Nation, gathered, through 61,956.23 miles of pipeline, 86.91 percent of the nearly 17.5 trillion cubic feet of gas produced in the United States.

Of these lines, 19.42 percent operated at pressures between 50 and 200 psig and 40 percent at pressures lower than psig. No lost-time accidents occurred on these two categories of pipelines during the six years ended December 31, 1967. Of these lines, 98.05 percent were rurally located. The remaining 40.58 percent of gathering lines carrying pressures exceeding 200 psig, were 98.42 percent rural and the three lost-time accidents which occurred on this category of lines during the six years ended December 31, 1967, resulted from man-failures which no code or regulation could have prevented. No lost-time accidents on any of this 61,956.23 miles of line occurred in 1966 or 1967 (p. 255).

Federal interest in natural gas safety

In 1950 a member of this committee, Mr. John Heselton, of Massachusetts, introduced in the 81st Congress H.R. 5933, which would authorize the Federal Power Commission to prescribe safety requirements for natural gas companies. He reintroduced the bill in the 82d and 83d Congresses. He indicated that his attention had been called to certain explosions on transmission lines that had led to his making inquiries as to the frequency of such accidents, and that in cooperation with many of the gas transmission lines and the Federal Power Commission he was able to develop a considerable amount of data which led to his originally filing the bill.

In a hearing in the 83d Congress on his bill, H.R. 134, Mr. Heselton on June 10, 1954, testified that after he had filed his original bill:

Certain representatives of the industry came to see me and told me very frankly and honestly, that they felt there was a need for an improved and revised code and asked whether I would be willing to defer any action on the legislation pending an effort on their part to develop such a code. I told them I would be very glad to do so.

Since that time there has been, as will appear from the testimony, a very considerable effort on the part of the industry, with certain representatives from Government to develop that code.

* * * * *

I have been told that probably that will take the balance of the year before that can be done.

Therefore, I am not interested in having the bill enacted until that action is completed.

Then, it seems to me, it will be useful from everybody's point of view to have some action on this bill, or some similar type of bill, so that it would have Federal sanction.

The activity on the part of the industry and of the regulatory agencies led to the adoption in 1955 of a substantially improved revision of the industry code B-31.8. Further revisions have been made in the code in 1958, 1961, 1963, and 1967.

During the course of these years the Federal Power Commission actively engaged in the work on an improved code. The Commission first in 1953 expressed a position favoring some Federal authority over the promulgation of standards although then expressing opposition to the Commission's enforcement of any standards. In ensuing years with changing circumstances the Commission has recommended that the Natural Gas Act be amended to give it authority in the field. Lately the Commission has used the authority which it has under section 7 of the Natural Gas Act in the granting of certificates of convenience and necessity for the construction of new interstate pipelines to impose certain requirements that the construction be in accordance with the specifications of the industry code.

In 1963 the Report on the Movement of Dangerous Cargoes, an interagency study coordinated by the Office of the Under Secretary of Commerce for Transportation, recommended:

The Federal Power Commission should be given specific statutory authority and responsibility for safety regulation of gas pipelines operating in interstate or foreign commerce.

In 1965 the Senate committee conducted hearings on a bill assigning additional safety responsibility to the Federal Power Commission, during the course of which the Commission was directed to make a study of the safety of transmission lines referred to above. This study was subsequently printed by that committee.

On February 16, 1967, President Lyndon B. Johnson, in his consumer message, stated:

With the creation of the Department of Transportation, one agency now has responsibility for Federal safety regulations of air, water, and land transportation, and oil pipe-

lines. It is time to complete this comprehensive system of safety by giving the Secretary of Transportation authority to prescribe minimum safety standards for the movement of natural gas by pipeline.

I recommend the Natural Gas Pipeline Safety Act of 1967.

State interest in natural gas safety

Over the years a number, but far from all, of the States, has prescribed pipeline safety standards by legislative or State commission action.

By the time of the report of the Federal Power Commission to the Senate committee of March 25, 1966, 26 States had adopted safety codes and of these, 25 used ASA B.31-8 as their basic code.

The creation of the Department of Transportation and the interest of that Department in natural gas pipeline safety resulted in many more States adopting safety standards, and in response to the questionnaire submitted by the National Association in April 1967, the 40 of the 51 States (including the District of Columbia) which replied indicated they had authority to establish safety standards. The association stated they understood that three more of the remaining 11 had regulations while the others did not have any codes.

At the time of testifying before our committee in February of 1968, the National Association stated that 47 States had adopted programs for the regulation of gas safety which was a gain of 20 States in 18 months, and that an additional two States were expected shortly to be added to this number.

While it is evident that the States recently have enlarged their jurisdiction in the field, their adoption of the codes is not uniform. Some have stricter standards than the codes and others have much less. This situation is described in the FPC report of 2 years ago to the Senate committee as follows:

Some of the States have prescribed pipeline safety standards by legislative or State commission action in most cases making the ASA Code mandatory for pipelines within their jurisdiction. Twenty-six States have safety codes, and of these 25 use the ASA Code either unchanged or with amendments. Although a few of the remaining States require odorization of gas, most have no transmission line safety regulations at all. Even in States where a State safety code is in force, limitations of State law restrict some of the code applications to intrastate facilities. Thus, a State may be unable to regulate much of the transmission line mileage within its borders if it is part of an interstate facility.

Despite adoption of the ASA Code in half the States, 58 percent of the Nation's transmission line mileage¹ is not subject to State safety regulation and even greater mileage was not subject to regulation when installed. In 1964, 85,310 miles of transmission pipeline were in the ground in States having safety codes, while lines in nonregulating States totaled 119,420 miles. Of the 5,100 miles of net increase in pipelines installed during 1963, 3,470 miles—more than two-thirds of the total—were in States without a safety code.

¹ Both interstate and intrastate pipelines.

Most of the States which have basically adopted the ASA Code deviate considerably from it in many particulars. Several have found the ASA Code insufficiently strict, and have made extensive additions and amendments. Thus Connecticut has, among other changes, prescribed minimum electric resistivity standards for pipe coatings to protect pipe from corrosion and required the use of cathodic protection; the importance of these matters is recognized, but left to the pipeline operator's discretion by the ASA Code. For a further example, the ASA Code does not require that any welds made in the field be examined by X-rays. New York, on the other hand, requires X-ray examination of at least a prescribed minimum sample of the welds in each project. Moreover, nine States have added the requirement, absent in the ASA Code, that accidents be reported immediately.

An example of the diversity existing among the States can be found in their provisions concerning automatic shutoff valves. Of the States which have added to the ASA Code in this respect, two, Connecticut and Rhode Island, require automatic valves under certain circumstances, while New Jersey, New York, and Washington forbid them unless it can be shown in each case that they will contribute to safer operation.

Despite the extensive additions found desirable in some States, eight jurisdictions have adopted the ASA Code virtually without change; and one has made a number of amendments relaxing the code requirements. In addition, at least six States have made no provision for incorporating revisions in the code as these are promulgated by the ASA. Thus, in some States the less stringent 1955 version of the ASA Code is still in force, although the association has revised it twice since that time. And while many, if not most, of the code's provisions are expressed as recommendations rather than requirements, only one State, California, has so drafted its regulations as explicitly to translate the code provisions into mandatory language.

Most long-distance natural gas transmission companies operate in several States and in hundreds of different local government subdivisions. Thus the applicable legal safety restraints are frequently not uniform in respect to various segments of a single pipeline company system.

(Committee print, pp 9-10, Senate Commerce Committee, "Safety of Interstate Natural Gas Pipelines," 89th Cong., second sess., Apr. 19, 1966.)

The analysis of the natural gas safety questionnaire conducted at the request of the Department of Transportation by the National Association of Regulatory Utility Commissioners a year ago shows that while the authority to establish standards exists, this authority has been exercised in a variety of forms. For example, of the 40 commissions replying, only 10 had authority to establish standards for publicly owned gas utilities; only 31 of the 40 had adopted the USASI code, of whom 14 had modified sections of the code and 18 had adopted additional or other safety standards. Only 21 of the 40 had a staff to provide for inspection. The analysis of the varying degree of exercise of

authority is set forth herein in appendix A. The authority of State commissions to have their orders enforced by court injunction and the amount of fine which may be imposed for willful violation of commission orders is set out in appendix B.

One of the matters on which the committee had most difficulty in ascertaining the facts was that of the extent to which the State regulatory bodies exercised their jurisdiction to prescribe safety standards for gathering lines. Since gathering lines as such are not present in a number of States, the statistics as to the total are not meaningful. It does appear, however, that in some of the primary producing States, there is no State regulation. A summary of the situation is included as appendix C.

The industry code

The Industry Code B-31.8 was created by the American Society of Mechanical Engineers and the U.S.A. Standards Institute. It was first published in 1935 and since 1952 there have been 4 complete new editions and numerous supplements and amendments.

Primary responsibility for its development has centered in the code committee, made up of representatives of professional engineering societies, associations, and governmental agencies such as the National Safety Council, the Bureau of Ships, U.S. Coast Guard, the American Society of Safety Engineers, the American Society for Testing & Materials, the American Insurance Association, and the American Institute of Mining, Metallurgical & Petroleum Engineers, as well as industry groups such as the American Gas Association, American Iron & Steel Institute, and the American Petroleum Institute.

The code committee includes approximately 70 to 75 members; representatives of the Federal Power Commission, the Bureau of Mines, State public service commissions, university engineering departments, research institutes, consulting engineers, contractors, inspection services, manufacturers, pipeline companies, the National Energy Board of Canada, the American Gas Association, and others.

In addition, the B-31.8 code incorporates many standards and specifications by reference from other organizations, such as the American Society for Testing & Materials, American Standards Association, American Petroleum Institute, ASME Boiler and Pressure Vessel Code, and the National Board of Fire Underwriters.

Chairman White has referred to the code committee as "made up of technical experts, people who are the best this country has produced." Secretary Boyd referred to the members of the B-31.8 code committee with these words:

I believe that they have performed a meritorious and public-spirited task over these past years. A counterpart in other industries is difficult to find. Few industries have devoted the time and attention to safety procedures as has this one.

Secretary Boyd went on to say, however, that he felt there were shortcomings in the code.

Yet pipeline transportation of the commodity in which this industry deals is inherently dangerous. The examples of pipeline accidents which I described to you a few moments ago gives us some idea of the magnitude of the destruction which results from such accidents. The steadily and rapidly

increasing population densities where gas is used presents, in my judgment, a compelling and convincing case for assuring that additional measures to protect the public are taken. Clear authority to establish comprehensive safety standards must be enacted; we believe that the exercise of such authority by the Federal Government will assure the best framework within which the standards can be developed and implemented.

I do not believe that we can provide such protection through the enactment of the present code. I have attached to my statement a list of some of the major areas where the code would not provide the kind of protection which we believe is essential (p. 15).

APPENDIX TO STATEMENT OF HON. ALAN S. BOYD, SECRETARY,
DEPARTMENT OF TRANSPORTATION

Some of the major areas where the USASI B31.8 Code does not provide the safety standards essential for gas pipeline systems:

1. The Code does not provide for a systematic testing or evaluation of pipe already in the ground.

2. The code does not require a pressure test for all up-grading of pipeline systems.

3. The code mentions use of varying types of construction materials to be used in cold climates, but offers no positive specifications to insure materials with special properties are used.

4. The code does not require uniform marking of the exact location of lines.

5. The code does not define welding inspection procedures; specifically, the frequency of inspection of welds by radiographic methods.

6. The code does not specify uniform construction specifications for new pipeline.

7. The code requires that companies have a plan for pipeline maintenance, but it does not specify the extent, thoroughness, or any specific points of such a plan.

8. The code establishes design factor requirements for pipeline according to location. In rural areas, the code limits the operating pressure to 72 percent of the design stress. In urban areas, the code limits the operating pressure to 40 percent of the design stress, i.e., giving a greater safety factor.

It does not provide a method for changing these requirements as population density changes. Consequently, we now have suburban homes, office buildings, and shopping centers in close proximity to pipelines originally designed to operate at a higher percent of design stress.

9. The code does not give inspection procedures during construction for each type of pipeline.

10. The procedures for revision of the code are extremely time consuming. The time required for a revision can be 2 years or more. This timelag is too great when the public safety is concerned (pp. 19-20).

Need for Federal regulation

In summary, the accident record of the industry has been a spotty one. In certain areas it has been good; in other areas, statistics are lacking but many illustrations can be given of unfortunate and disastrous failures.

Present regulation by State commissions is varied and indeed there is difficulty in determining the effectiveness of State enforcement inasmuch as many of the States only recently have prescribed safety standards.

The primary problem results from the fact that whatever standards have been applied, have been applied primarily to new pipe and to new construction. Secretary Boyd testified that he considered the major shortcoming of the code which has been adopted by most of the States and by the industry is that it does not provide for systematic testing or evaluation of pipe already in the ground.

The tremendous increase in the number and location of pipelines has great bearing on the potential danger associated with pipeline failures. Such of these failures as have occurred in the past on our transmission lines up to now have not been accompanied by too many disasters. Most of these lines were laid to code specifications, but the code deviated between populated and unpopulated areas and today we now have pipe in the ground that does not necessarily meet today's standards under today's conditions of growing population. Grave as may be this hazard, it is small compared with that resulting from the introduction of natural gas into the distribution mains of our cities, many of which were laid years ago for the handling of manufactured gas, and the tremendous growth of the natural gas distribution industry itself. The industry growth plus population growth enhances the need for adequate safety standards and enforcement.

HEARINGS

Hearings on S. 1166, the bill here being reported, and on H.R. 6551, a bill which was the reintroduction of the recommendation made by the Federal Power Commission in previous years for authority being placed with it for the regulation of interstate transmission lines safety, were held by the Subcommittee on Communications and Power starting December 6, 1967, and continuing during the latter part of February until March 1 of this year.

S. 1166 was supported as to principle, with several amendments suggested, by the Department of Transportation, the Federal Power Commission, and the Bureau of the Budget. Other persons testified that they would have no objection to the bill if amended in the fashion they indicated; namely American Petroleum Institute, Independent Natural Gas Association of America, American Gas Association, Natural Gas Producers Association, American Public Gas Association, certain gas companies, National Association of Regulatory Utility Commissioners, and State Commissions. Representatives of unions also appeared for or filed statements urging the adoption of a bill. No one appeared in opposition.

SCOPE OF THE BILL

The reported bill provides for the establishment and enforcement of minimum Federal safety standards for pipeline facilities and the transportation of natural and other gases.

Section 2 contains definitions which describe the persons, gas, transportation, and facilities covered.

Persons covered

Each person who engages in the transportation of gas or who owns or operates pipeline facilities comes within the jurisdiction of the bill. "Person" means any individual, State or municipality, including personal representatives therefor. The jurisdiction extends to operations of public bodies, for example, municipally owned distribution companies, but the Secretary has indicated it was not the intent that its provisions apply to federally operated facilities, including the military (p. 335).

Gas covered

Gas is defined as meaning natural gas, flammable gas, or gas which is toxic or corrosive. Thus gases other than natural gas are covered by the bill, including what might be liquids when they are transported in gaseous form. (The Department of Transportation has certain other authority over transportation in liquid form.) The jurisdiction extends even to manufactured gas (testimony of Secretary Boyd, p. 36).

The bill as referred used the phrase "or nonflammable hazardous gas." The committee has amended this to "or gas which is toxic or corrosive." The original language could have implied jurisdiction over any gas when under a pressure creating a hazard such as steam or even compressed air. The Secretary testified that it was not the intent to provide for such coverage but for toxic and corrosive gases, chlorine, for example (p. 16).

Transportation covered

The term "transportation of gas" is defined as the gathering, transmission or distribution of gas by pipeline or its storage in or affecting interstate or foreign commerce. With exception as to gathering in certain circumstances, this means all aspects of the transportation of gas from the well head to the consumer. As testified by Secretary Boyd:

There is no question but what every element of a gas gathering, transmission, and distribution line is moving gas, which is either in or affects interstate commerce. * * * (p. 35).

I don't think that it even requires any elasticity of the commerce clause of the Constitution to define 99 $\frac{4}{100}$ percent of this activity as being clearly within the commerce clause (p. 36).

It should be noted that storage of gas "in or affecting interstate commerce" is included in the coverage.

Gathering

During the course of the hearings much testimony was presented as to the need for the establishment of Federal standards over gathering pipelines. This jurisdiction had not been in the bill as reported by the Senate committee, but had been added on the floor of the Senate. There is no question that there exist certain gathering lines which are located in populous areas but the tremendous bulk of such lines is located in rural areas. Testimony was offered as to the safety record

of these lines and that no man-days had been lost as the result of accidents on gathering lines during the past 6 years. The safety record is impressive.

On the other hand, as the Secretary of Transportation testified, many of these lines originally were located in rural areas which since have become populated and it can be expected that gathering lines in the future also may become surrounded by people. The committee, accordingly, in the reported bill has provided an exception for the Federal jurisdiction over the prescription of safety standards for gathering lines where gathering occurs in rural locations which lie outside the limits of an incorporated or unincorporated city, town, village, or other designated residential or commercial area such as a subdivision, a business or shopping center, a community development, or similar populated area.

Since the population within an area can change in the future and since the illustrations of populated areas set forth in the language may not cover all situations and are subject to interpretation as well, the Secretary is given the authority to define from time to time what is a nonrural area. The committee wishes it to be clear that its thought as to a populated area does not mean that it must be one with a total of a large number of people. It is evident that to a few the safety standards pertaining to a pipeline passing near their houses, their school, or their place of employment is of as much concern as though they were part of a large group.

Pipeline facilities covered—treatment plans

The term "pipeline facilities" is defined to include any new or existing pipe, rights-of-way, and equipment, facilities, or buildings used in the transportation of gas or the treatment of gas during the course or transportation. There is a qualification contained in this definition which provides that the term "rights-of-way" as used in the legislation does not authorize the Secretary of Transportation to prescribe the location or routing of any pipeline facility, which is discussed later in this report.

The bill as referred included all pipeline facilities used in the treatment of gas just as it included all gathering lines. Consistent with the amendment which the committee has made for an exemption of gathering lines where gathering occurs in rural locations lying outside populated areas, the committee has modified the coverage over facilities used in the treatment of gas so that facilities located on the exempted gathering lines are excluded from coverage of the bill. This is accomplished by providing that the jurisdiction applies to the facilities used in the treatment of gas during the course of transportation, and transportation has been defined to exclude certain gathering lines.

Other definitions

Other definitions are included in this section covering what is meant by State (includes District of Columbia and the Commonwealth of Puerto Rico); municipality (includes county or other political subdivision of a State as well); and a few other terms as used in the bill.

DUTY OF SECRETARY OF TRANSPORTATION TO ESTABLISH FEDERAL SAFETY STANDARDS

The basic tool created by this bill to improve the safety of gas pipelines and facilities is the direction given to the Secretary of Transportation in section 3 to set minimum safety standards to be

observed by all persons engaged in the transportation of gas or owning or operating pipeline facilities.

Not more than 2 years after enactment of this legislation, the Secretary is required to establish permanent minimum Federal safety standards for the transportation of gas and pipeline facilities. New or amended standards may be established from time to time thereafter. Such standards may apply to the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Such standards necessarily will take into account geology and above-surface conditions and structures, although the Secretary may not prescribe the location or routing of any pipeline facility.

To assure that Federal safety standards will be practicable and designed to meet the need for pipeline safety, the Secretary of Transportation, in prescribing such standards, is required to take into consideration (1) relevant available pipeline safety data, (2) whether such standards are appropriate for the particular type of pipeline transportation, (3) the reasonableness of proposed standards, and (4) the extent to which such standards will contribute to public safety.

With respect to both interim and permanent Federal safety standards, a State agency may adopt additional or more stringent standards not incompatible with the Federal standards. Additional or more stringent State standards are prohibited as to interstate transmission facilities, that is, pipeline facilities used in the transportation of gas which are subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act. With respect to these facilities, the Federal standards will apply, providing for uniformity of regulation where the lines of a single company may traverse a number of States.

INTERIM STANDARDS

The committee believes that the need for meaningful pipeline safety regulation is serious enough that no vacuum should be permitted to exist during the period in which the Secretary is developing standards. Therefore, he is required by section 3(a) to establish interim Federal safety standards within 3 months after enactment. As noted elsewhere in this report, not all States have safety codes or regulations applying to all phases of pipeline operation. To fill these gaps quickly, the Secretary shall establish as the Federal mandatory interim standards existing State standards. Where all or part of the distribution and transmission operations in any State are not covered by State standards, the Secretary must develop and establish interim standards which will consist of the standards common to a majority of existing State standards. To further guard against gaps in the standards, any interim standard will remain in effect until specifically amended, or revoked, even if this is not done until more than 24 months after enactment of this bill.

APPLICATION OF STANDARDS TO, AND REMOVAL OF, HAZARDS IN EXISTING PIPELINE FACILITIES

The standards to be developed by the Secretary under section 3(b) may apply to the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of

pipeline facilities except that those standards affecting the design, installation, construction, initial inspection, and initial testing shall not be applicable to pipeline in existence on the date such standards are adopted. In other words, any Federal standard leading to inspection and testing (other than initial inspecting and testing), extension, operation, replacement, and maintenance may be applied to existing pipe as well as new pipe. In addition, although certain standards established for the laying of new pipe may not apply to existing pipe, the Secretary of Transportation nevertheless is given the authority to require the removal of hazards whenever he finds a particular facility to be hazardous to life or property.

A designation of the type of standards which would and would not apply to existing pipe was contained in the bill as it was referred to this committee. The reasons prompting such designation as set out in the Senate report on the bill is as follows:

The committee appreciates the fear of the industry that it might be required to bear the expense of removing large quantities of pipeline laid before a standard becomes effective for no other reason than that it does not comply with the Federal standard, irrespective of whether the pipe is sound and safe. For this reason, the committee has provided that standards affecting the design, installation, construction, initial inspection, and initial testing shall not be applicable to pipeline facilities in existence on the date such standard is adopted, unless the Secretary finds that a potentially hazardous situation exists, in which case, he may by order require compliance with any such standard. This provision requires the Secretary to make a finding of potential hazard before applying certain standards to existing pipe. When such finding and order has been issued, the standards can be made immediately applicable to remedy the potentially hazardous situation (subject to judicial review of the order) since all of the requirements of the rulemaking will have previously been satisfied.

In the course of the hearings before this committee, the Secretary urged an amendment to this section which would strike this provision differentiating the standards to be applied to existing pipe. He said that he felt that the fears of the industry were unjustified, that the bill contained adequate restraints on the authority of the Secretary in establishing standards; that it imposed obligations to consider criteria, and that the action of the Secretary was subject to procedural requirements of the Administrative Procedure Act and eventually to judicial review.

During the course of the hearings, representatives of the Independent Natural Gas Association asserted a need for the exemption of the application of standards to those activities which had been completed prior to the effective date of any new standard on the ground that it might be contended that all existing facilities technically would become nonconforming immediately upon adoption of any new standard and that under such interpretation this would occur not only on adoption of initial standards but would recur whenever any new or amended standards were adopted in the future. These representatives argued that the language in the bill as referred might

be interpreted to permit the Secretary to wipe out the exemption in its entirety as to existing facilities by a finding that all facilities not constructed in accordance with the newly adopted standards created a potentially hazardous situation. They urged that this language be amended.

Although the committee is of belief that the fears of the Secretary as to the possible restrictive effect of the language of the bill as referred, and the fears of the industry as to the possibly unrestrained authority contained in such language are unfounded, the committee in the reported bill has adopted language which it thinks makes completely clear that it is the committee's intent that hazards in the pipe in the ground are to be removed, regardless of applicability or nonapplicability of any given standards.

The representatives of the gas industry in speaking to the question of existing pipe made the following observations as to safety.

In other governmental codes covering ships, planes, buildings, and other structures, the incorporation of new requirements for construction, design, etc., has never been felt to render all ships, planes, buildings, etc., previously constructed, obsolete and unsafe. This is particularly true of airplanes where the rapidly developing science of design has created new and better planes but this has not required the scrapping of all older planes which have been proven safe for operation within their prescribed limitations (p.166).

The committee believes that the gas industry reference to the aviation industry is especially apt. The committee feels that it is not necessary that the adoption of new standards automatically must be made applicable to existing pipelines or to existing aircraft; but the committee does feel that when it develops that existing pipelines, just like existing aircraft, develop hazards, these must be corrected and corrected promptly.

Depending upon the severity or degree of the hazard ascertained to exist in one of a given type of aircraft, to any part of or equipment used in the aircraft or to the entire plane itself, the Federal Aviation Administrator can direct that all such parts or all such aircraft must be inspected for a similar hazard within a certain number of hours, can order the parts modified, strengthened, or replaced within a given time, or can even order all such planes grounded until such inspection, modification, strengthening, or replacement has been made.

An examination of some representative actions taken by the Administrator shows that he has required the replacement of a defective drive system coupling, new design parts for torsion strap assemblies and main rotor hub clevis bearing, and modification of longitudinal control difficulties, in each case before further flight. He has required a flap system modification within 10 flight hours, an elevator train tab flutter modification within 5 hours, modification of cyclic input swash plate ring within 25 hours, and inspection of tail rotor blades prior to first flight each day and later modification. He has required inspection of drive system component within 15 hours, tail rotor shaft drive failure within 10 hours, selective valve control cables within 10 hours, aileron control idler within 15 hours. He has required deactivation of a yaw damper within 10 hours, deactivation

of a passenger cabin blanket heater switch, and prohibited use of propeller reverse, until modifications were made. Many other illustrations could be given.

Just so, when the Secretary finds that a particular type of pipeline valve is hazardous, the Secretary should have and the bill does give to him, the authority to require the removal of this hazard by removing or replacing this type of valve wherever it exists. If the Secretary finds that a particular kind of pipe has a metallurgical specification when located in a particular type of soil which leads to accelerated corrosion, the Secretary should have the authority to require, and the reported bill gives him this authority to require, the replacement of this type of pipe wherever the same soil conditions exist.

The Secretary's action shall be taken by order which is subject to procedures contained elsewhere in the act, as well as to judicial review in the event it should be necessary, but the committee wishes it to be quite clear that this order can be issued to any person operating the particular type of facility which the Secretary has found to be hazardous.

The committee believes that in giving the Secretary this authority to move directly to remove a hazard, the Secretary has the power permitting him to achieve protection to the public much more quickly and effectively than he might have were he to invoke the cumbersome and more restrictive route of attempting to apply standards of general universality to a given situation.

COMPANY DUTY TO COMPLY WITH SAFETY STANDARDS

Section 8 places the duty to comply with the safety standards established by the Secretary of Transportation under section 3 upon each person who engages in the transportation of gas or who owns or operates pipeline facilities. These sections plus section 5 are the basic framework for the achievement of greater safety.

Under section 8, each person who engages in the transportation of gas or who owns or operates pipeline facilities shall—

- (1) at all times after the date any applicable safety standard established under this act takes effect, comply with the requirements of such standard; and
- (2) file and comply with a plan of inspection and maintenance required by section 11; and
- (3) permit access to or copying of records, and make reports or provide information, and permit entry or inspection, as required under section 12.

The bill as reported here differs from the bill as referred in that it is made clear that owners and operators of facilities as well as those engaged in transportation have the duty to comply.

Tort liability

Section 8(b) of the bill provides that nothing in this legislation will affect the common law or the statutory tort liability of any person. This language is designed to assure that the tort liability of any person existing under common law or any statute will not be relieved by reason of the enactment of this legislation or compliance with its provisions.

COMPANY PLANS FOR INSPECTION AND MAINTENANCE

An important part of the program proposed by this legislation to achieve pipeline safety is the plan of inspection and maintenance according to which the company maintains surveillance of its lines and facilities.

Section 11 of the reported bill requires each person who engages in the transportation of gas or owns or operates pipeline facilities to file a plan for inspection and maintenance with the Secretary of Transportation, or with the State agency where a certification under section 5(a) or an agreement under section 5(b) is in effect. The filing of such plans is mandatory under the bill as to all gathering, transmission, and distribution pipelines and pipeline facilities which are not under the jurisdiction of the Federal Power Commission under the Natural Gas Act. The filing by interstate transmission lines subject to Commission jurisdiction is optional with the Secretary.

If the agency with responsibility for enforcement of compliance with the standards established under this legislation finds that such plan is inadequate to achieve safe operation, such agency must (after notice and hearing) require that such plan be revised. In determining the adequacy of any such plan, and to assure that it will be practicable and designed to meet the need for pipeline safety, such agency is required to take into consideration (1) relevant available pipeline safety data, (2) whether the plan is appropriate for the particular type of pipeline transportation, (3) the reasonableness of the plan, and (4) the extent to which the plan will contribute to public safety.

The bill as reported here differs from the bill as referred in that it is made clear that owners and operators of facilities as well as those engaged in transportation have the duty to comply.

RECORDS, REPORTS, AND INSPECTIONS

Section 12 provides that the Secretary of Transportation may require the maintenance of such records, reports, and information as he deems reasonably necessary to enable him to determine whether persons subject to this legislation are acting in compliance with this legislation and the standards established thereunder. Each such person must permit authorized agents of the Secretary to inspect records and documents for the purpose of determining whether such person is acting in compliance with this legislation and the standards established thereunder.

The section authorizes the Secretary of Transportation to monitor State enforcement practices and authorized agents of the Secretary may, at reasonable times, enter upon pipeline facilities for the purpose of conducting an inspection of such facilities. The Secretary is required to furnish the Attorney General any information obtained indicating noncompliance with standards established under this legislation.

In requiring that accident reports and facts developed in accident investigations be available for use in both civil and criminal judicial proceedings, the committee does not intend to predetermine its admissibility as evidence. That determination is, of course, a prerogative of the courts and a decision each court must make for itself under

applicable rules of evidence. The section does preclude the Secretary from withholding any such report.

The section further provides that any information obtained by the Secretary of Transportation or his representative which contains or relates to a trade secret will be considered confidential for the purpose of section 1905 of title 18, United States Code, which provides criminal penalties for the disclosure by an officer or employee of the United States of information relating to trade secrets in any manner or to any extent not authorized by law. The section authorizes disclosure to other officers or employees of the Department of Transportation concerned with carrying out this legislation and also when relevant in any proceeding under this legislation. Nothing in this provision of the bill is to be construed as authorizing the withholding of information from duly authorized committees of the Congress.

ENFORCEMENT OF THE SAFETY STANDARDS

The relationship of Federal-State regulatory authority created by this bill differs as between local pipelines and interstate transmission lines. In the latter area, the lines of a single transmission company may traverse a number of States and uniformity of regulation is a desirable objective. For this reason, section 3 provides for a Federal preemption in the case of interstate transmission lines.

On the other hand, in the case of local lines exempted from the economic regulatory authority of the Federal Power Commission under the Natural Gas Act, States may establish additional or more stringent standards, provided they are not inconsistent with the Federal minimum standards. The committee has provided for this different treatment because each State authority is uniquely equipped to know best the special aspects of local pipeline safety which are particularly applicable to that community.

This bill also gives the States an important role in enforcement, as well. Because of preemption, the safety standards for interstate transmission lines will always be Federal standards, and enforcement will be a Federal responsibility. Consistent, however, with the role this bill gives the States in amplifying distribution standards, the committee has sought to give the States a primary role in enforcement of local pipeline safety standards.

Section 5 envisions that the States may substitute State for Federal enforcement of the safety standards as they apply to gathering, distribution and local transmission lines in one of two ways, either (1) by the submission to the Secretary of an annual certification by a State agency regarding its authority and enforcement activities, or (2) in situations when the State agency does not or cannot submit such certification, through a written agreement with the Secretary for the State agency to carry out on behalf of the Secretary the administration of the Federal standards.

State agency certification

Under section 5(a) of the reported bill an arrangement is provided whereby the provisions of this legislation will not apply to pipeline facilities and the transportation of gas (other than interstate transmission facilities) within a State when the safety standards and

practices applicable to such facilities and transportation are regulated by a State agency (including a municipality) which submits annually to the Secretary of Transportation a certification that such State agency—

- (1) has regulatory jurisdiction over safety standards and practices of such facilities and transportation;
- (2) has adopted each Federal safety standard applicable to such facilities and transportation as of the date of the certification;
- (3) is enforcing each such standard; and
- (4) has authority to require record maintenance, reporting, and inspection substantially the same as provided under section 12 and filing for approval of plans of inspection and maintenance described in section 11.

The State agency must also certify that the law of the State provides for the enforcement of the safety standards of such State agency by way of injunctive and monetary sanctions.

Each annual certification must include a report showing—

- (1) the name and address of each person subject to the jurisdiction of the State agency;
- (2) all accidents or incidents reported during the preceding 12 months by each such person involving personal injury requiring hospitalization, fatality, or property damage exceeding \$1,000, together with a summary of the State agency's investigation as to the cause and circumstances surrounding each such accident or incident;
- (3) the record maintenance, reporting, and inspection practiced by the State agency to enforce compliance with Federal safety standards, including a detail of the number of inspections made of pipeline facilities by the State agency during the preceding 12 months; and
- (4) such other information as the Secretary may require.

State agency agreement

Section 5(b) provides that in the case of pipeline facilities and transportation of gas (not subject to the jurisdiction of the Federal Power Commission) for which the Secretary does not receive an annual certification, he is authorized to enter into an agreement with a State agency (including a municipality) under which such agency will carry out on behalf of the Secretary such actions as may be necessary to—

- (1) Establish an adequate program for record maintenance, reporting, and inspection designed to assist compliance with Federal safety standards;
- (2) Establish procedures for approval of plans of inspection and maintenance substantially the same as required under section 11;
- (3) Implement a compliance program acceptable to the Secretary, including provision for inspection of pipeline facilities used in the transportation of gas; and
- (4) Cooperate fully in a system of Federal monitoring of such compliance program and reporting under regulations prescribed by the Secretary.

Any such agreement will require the State agency to promptly notify the Secretary of any violation or probable violation of a Federal safety standard which it discovers as a result of its program.

Grants to aid State enforcement

Under section 5(c) of the reported bill, the Secretary is authorized to make grants from appropriated funds. In the case of a State agency which submits an application not later than September 30 in any calendar year, the Secretary may pay up to 50 percent of the cost of a State safety program, whether carried out pursuant to a certification under section 5(a) or an agreement under section 5(b). The State agency must assure the Secretary that it will provide for the payment of that portion of the cost of such safety program which exceeds the amount of the Federal grant. At the request of the Secretary the committee amended the bill to require that such State agency must also provide assurances that State expenditures for gas safety programs (excluding Federal grants) will not fall below the average level of such expenditures for the last 2 fiscal years preceding the date of enactment of this legislation.

Recertification

Section 5(d) provides that a certification which is in effect under section 5(a) will not apply to any new or amended Federal safety standard established after the date of such certification. The provisions of this legislation will apply to any new or amended Federal safety standard until the State agency has adopted such standard and submitted an appropriate certification under section 5(a).

Rejection of certification or termination of agreement

Section 5(a) provides that if the Secretary determines, after receipt of an annual certification, that the State agency is not satisfactorily enforcing compliance with Federal safety standards, he may reject the certification or take such other action as he deems appropriate to achieve adequate enforcement, including the assertion of Federal jurisdiction.

Section 5(e) provides that the Secretary may terminate any agreement in effect under section 5(b) if he finds that the State agency has failed to comply with any provision of such agreement. Such termination is required to be published in the Federal Register and will become effective no sooner than 15 days after the date of such publication.

In either case, whether rejection or termination, the Secretary's action must be after notice and hearing.

Committee changes

The bill as referred provided for two types of agreements between the Secretary and a State agency. The committee has retained the second type, but substituted a certification procedure for the other.

In the bill as referred, section 5(a) authorized the Secretary—

by written agreement with a State agency to exempt from the Federal safety standards pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act, under which agreement such State agency—

(1) adopts each Federal safety standard applicable to such transportation of gas and pipeline facilities and any amendment to each such standard, established under this act;

(2) undertakes a program satisfactory to the Secretary, designed to achieve adequate compliance with such standards and with the plans of inspection and maintenance required by section 11; and

(3) agrees to cooperate fully in a system of Federal monitoring of such compliance program and reporting under regulations prescribed by the Secretary.

No such agreement may be concluded with any State agency which does not have the authority (i) to impose the sanctions provided under sections 9 and 10, (ii) to require record maintenance, reporting, and inspection responsibilities substantially the same as are provided under section 12, and (iii) to require the filing for approval of plans of inspection and maintenance described in section 11.

The Senate report describes the intent of this provision as follows:

Section 5(a) envisions a series of agreements between the Secretary and the States, substituting State for Federal enforcement for gas distribution and local transmission lines.

To obtain such substitution, the State must adopt the Federal standards as its own; impose the same sanctions as would the Federal Government (including requiring records, reports, inspections, and the filing of plans of inspection); implement an effective compliance program; and agree to cooperate in Federal monitoring of its compliance program. Under these agreements, in effect, State law and State enforcement responsibility replace the Federal law for local facilities because the State has undertaken to do the job conscientiously and effectively. Thus, this subsection creates a mechanism whereby the States may participate to the utmost in establishing and enforcing gas pipeline safety standards for distribution lines and local transmission lines.

In the course of the hearings before the committee it was pointed out that whereas a condition precedent to a written agreement was that the State agency had authority to impose the penalties provided under section 9 and seek the injunction relief provided by section 10, most State agencies did not have such authority as to penalties, although most of them could seek enforcement through injunctions (see app. B). It thus appeared that some amendment to section 5(a) must be made if any such State enforcement program were to be initiated.

During the hearings also the National Association of Regulatory Utility Commissioners appeared, and numerous State agencies filed statements, in support of H.R. 6551, a bill amending the Natural Gas Act which would have placed safety regulation over interstate transmission lines in a Federal agency (the Federal Power Commission) but clearly, by reason of section 1(c) of that act preserved a traditional line of demarcation between Federal and State regulatory respon-

sibilities in the natural gas industry.¹ The association urged as an alternative approach an amendment to S. 1166 along the lines of section 1 (c) which would provide for State regulation upon an annual certification covering its authority and activities in the field.² It urged its amendment as creating "a Federal safety floor below which no State could fall, yet the enforcement burden would remain with the State commissioners. Direct Federal regulation would only apply to those systems not subject to effective State regulation."

In the bill as reported, the committee incorporates the results of its consideration of the need to amend the agreement conditions and the alternative proposal.

The language adopted by the committee indicates a reaffirmation of the intent that State law and State enforcement replace the Federal law for local facilities where the State agency has undertaken conscientiously and effectively to adopt and enforce the Federal standards.

It should be clear that the committee language while adopting the certification (instead of agreement) suggestion, otherwise departs radically from the NARUC proposal. The committee in nowise accepts the declaration that gas safety matters are primarily of local concern and subject to regulation by the States. On the contrary, it is the Federal safety standards which are in effect and the ultimate responsibility for establishment and enforcement of the Federal safety standards is the responsibility of the Secretary. The bill reported gives to the States in certain circumstances, a role in the enforcement of these standards. This role not only initially but annually is up for review. If the Secretary is not satisfied with the State's performance of the role, he is not bound by the State's certification, but may reject it.³

¹ (C) The provisions of this act shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce, or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this act by this subsection are hereby declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction. [68 Stat. 36 (1954); 15 U.S.C. sec. 717(c). Natural Gas Act.]

² "Basically, this proposal may be accomplished by striking subsec. (a) of section 5 of S. 1166 and inserting in lieu thereof the following provision modeled after the 'Hinshaw' amendment (sec. 1c of the Natural Gas Act):

"Sec. 5. (a) The provisions of this Act shall not apply to pipeline facilities and the transportation of gas within a State when the safety standards and practices applicable to same are subject to regulation by a State agency which submits to the Secretary an annual certification that such State agency: (i) has regulatory jurisdiction over the safety standards and practices applicable to such pipeline facilities and transportation of gas; (ii) has adopted each Federal safety standard applicable to such pipeline facilities and transportation of gas established under this Act as of the date of certification; and (iii) is enforcing each such standard. The certificate shall constitute conclusive evidence of such regulatory jurisdiction for one year following the date of each such certification. The matters exempted by this subsection from the provisions of this Act are hereby declared to be matters primarily of local concern and subject to regulation by the several States. Any State may adopt such additional or more stringent standards for such pipeline facilities and the transportation of gas as are not incompatible with the Federal minimum standards."

³ State regulation and enforcement in a Federal field is not new. This committee reported and the Congress enacted the Securities Acts Amendments of 1964, which provided in sec. 12(g)(2) of the Securities Exchange Act of 1934 for the enforcement of certain Federal programs by the commissioners of insurance of the several States—

"(2) The provisions of this subsection shall not apply in respect of—

"(G) any security issued by an insurance company if all the following conditions are met:

"(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

"(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

"(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 16 of this title."

See also sec. 204(a)(4) (a) of the Interstate Commerce Act regarding State regulation of interstate motor carriers.

The committee language also takes from the States and gives to the Secretary the regulation of safety of the interstate transmission lines.

The committee believes the certification route to be more feasible and fully as effective in achieving the ends here sought as the agreement route. The committee feels observance of the Federal standards will be obtained more quickly.

In addition the American Public Gas Association proposed that municipalities be treated the same as State regulatory agencies where State law provides that they are exempt from the jurisdiction of such agencies. The committee has accepted the association's suggestion as to an amendment, namely, the indication that as to this section the term State agency includes a municipality. The committee points out however that under the conditions set forth in the section only municipalities which have franchise or similar authority to regulate private gas companies would stand in such stead where the State law makes provision for enforcement by monetary sanctions and injunctive relief.

It would seem impractical as well as inappropriate for municipalities owning their own systems to fine or enjoin themselves. Therefore this would seem to come under the direct jurisdiction of the Secretary until such time as State law might provide for their safety regulation by a State agency.

OTHER PROVISIONS OF THE BILL

PROCEDURES APPLYING TO SAFETY STANDARDS

Effectiveness of standards

Under section 3(c) of the reported bill standards prescribed by the Secretary of Transportation, including amendments thereto, become effective 30 days after date of their issuance. The Secretary may however, prescribe an earlier or later effective date if he determines a different date is required because of the period of time reasonably necessary for compliance.

Obviously in instances such as the promulgation of any set of standards far-reaching enough to involve considerable leadtime for the design of the equipment or the production of materials to the specification involved, a much longer period may be necessary. On the other hand where it may be a simple change in operation or in equipment, a shorter time may be feasible. Inasmuch as the committee change to section 3(b) relative to the authority of the Secretary to meet hazardous situations has been to give him the power to move directly to remove the hazards, rather than to do so by applying safety standards to the situation, the need for the shorter effective date would appear less pressing.

Administrative procedures

In establishing standards, the Secretary is required to comply with the provisions of subchapter II of title 5, United States Code relating to administrative procedure (formerly part of the Administrative Procedure Act). Under these provisions the Secretary would normally have the discretion to proceed with rulemaking with or without oral argument but the bill requires the Secretary to provide opportunity to present oral testimony and argument.

Technical Pipeline Safety Standards Committee

Under section 4 of the reported bill, the Secretary of Transportation is required to establish a Technical Pipeline Safety Standards Committee composed of 15 members. Five members must be selected from governmental agencies (including State and Federal Governments) two of whom must be State commissioners, selected after consultation with the national organization of State commissions. Four members must be selected from the natural gas industry, after consultation with industry representatives, not less than three of whom must be currently engaged in the actual operation of natural gas pipelines. Six members must be selected from the general public. Each of the 15 members must be experienced in the safety regulation of the transportation of gas and of pipeline facilities or technically qualified by training and experience in one or more fields of engineering applied in the transportation of gas or the operation of pipeline facilities.

There was substantial testimony as to the highly complicated and technical nature of developing and applying safety standards to gas pipelines. Therefore, the bill creates the committee described above and requires the Secretary to obtain their counsel before formally proposing any safety standard. The committee did revise the structure of the committee to provide that persons experienced in safety regulation of the transportation of gas and pipeline facilities would be eligible to serve as well as persons technically qualified by formal training. Also, recognizing that State commissions have amassed the most expertise in this field, the committee provided that two of the five members selected from governmental agencies must be State commissioners. To assure that the general public would be adequately represented, the committee increased the members selected from the general public from five to six and reduced the number selected from the natural gas industry from five to four.

Waivers

Under section 3(e), whenever the Secretary of Transportation determines that a waiver of compliance with any standard is not inconsistent with pipeline safety, he may waive compliance (in whole or in part) under such terms and conditions as he deems appropriate, and after notice and opportunity for hearing. He is also required to state his reasons for granting any such waiver. Elsewhere in this report, there is described procedures under which States may be exempt from Federal standards or agree to enforce Federal standards (sec. 5). Where such an exemption exists, or such an agreement is in effect, a State agency will have the same waiver authority as the Secretary. The waiver authority of the State agency is limited in that it must give the Secretary at least 60 days advance notice, and the Secretary may stay the proposed grant of a waiver by a State agency and afford such agency a hearing on the matter. After opportunity for such hearing, the Secretary will make the final determination as to whether the requested waiver may be granted.

Judicial review

Section 6 of the reported bill provides that any person adversely affected or aggrieved by any order issued by the Secretary of Transportation may, within 60 days after such order is issued, file a petition for judicial review with the U.S. Court of Appeals for the District of

Columbia or the court of appeals for the circuit in which the petitioner is located or has his principal place of business. The court in which the petition is filed will have jurisdiction to review the order in accordance with chapter 7 of title 5 of the United States Code which provides, among other things, for the scope of the review and the granting of appropriate relief, including relief pending review. The judgment of the court will be final, subject to review by the Supreme Court of the United States as provided in section 1254 of title 28 of the United States Code. Any change or vacancy in the office of the Secretary of Transportation will not affect any action initiated under this section. The provisions of this section will not affect any other remedies which an aggrieved party may have under any other provision of law.

The bill as referred to the committee defined the term "adversely affected" to include exposure to personal injury or property damage. The reported bill omits this definition. The judicial review provision of the bill, as noted above, provides that any person "adversely affected or aggrieved" by an order of the Secretary may obtain judicial review of such order. This is a description of the persons who have legal standing to seek such review. This term is frequently used in statutes to describe persons who may obtain judicial review of administrative action. The meaning of the term has been judicially defined by the gradual process of inclusion and exclusion based in part on the judgment of the courts with respect to the legislative intent of a particular statutory scheme. The committee feels that definition of the term should continue to rest with the courts.

Cooperation with other agencies

The Federal Power Commission and some States issue certificates of public convenience and necessity authorizing gas transportation. Establishment of a standard by the Secretary of Transportation, or action on a waiver, could affect the continuity of service under one of these certificates. If that appears to be the case, the Secretary is required by section 7 to consult with the Federal Power Commission or the State commission, as the case may be, before establishing the standard or acting on a waiver and will be required to defer his action until the appropriate commission has had reasonable opportunity to grant the authorizations it deems necessary to preserve continuity of service.

CIVIL PENALTY

Under section 9(a) of the reported bill the Secretary is required to give notice to any person he has reason to believe is violating any provision of section 8(a), or any regulation issued under this legislation, before imposing any penalty. If compliance has not been achieved within a reasonable time, the Secretary may then impose a civil penalty of not more than \$500 for each day a violation persists. The maximum penalty may not exceed \$100,000 for any related series of violations. Also, the Secretary may seek injunctive relief under the provisions of section 10. The bill as referred to the committee provided for a civil penalty of \$1,000 per day for each day a violation continued, with a maximum of \$400,000 for a related series of violations, and did not provide for notice of a violation or for any opportunity to come into compliance before the penalty could be imposed. The committee feels that continuity of service is an extremely important consideration and service to the consuming public should not be

unnecessarily disrupted. The imposition of severe penalties without notice because of an unknowing violation which may be of a minor technical nature could very well result in an unnecessary disruption of service to the consuming public. The committee believes the reported bill provides adequate penalties for enforcement and at the same time provides procedures to assure continuity of service wherever possible.

Under section 9(b), any civil penalty imposed by the Secretary may be compromised by him. In determining the amount of any compromise penalty, the Secretary is required to consider the appropriateness of the penalty in relation to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance. The amount of any penalty imposed may be deducted from any sums owed by the United States to the person charged or recovered in a civil action in the U.S. district courts.

INJUNCTION AND JURISDICTION

Section 10(a) of the reported bill gives the U.S. district courts jurisdiction (subject to rule 65(a) and (b) of the Federal Rules of Civil Procedure) to restrain violations of this legislation or to enforce standards established thereunder. The Secretary of Transportation is required to give notice, whenever practicable, to any person against whom injunctive relief is contemplated and afford him reasonable opportunity to achieve compliance. Failure to give such notice will not preclude the granting of appropriate relief.

As noted earlier in this report, the committee revised the penalty provisions of the bill to assure that continuity of service could be preserved wherever possible. In view of this change, the committee feels that the injunction authority described above becomes a most necessary tool to provide for effective enforcement whenever prompt action becomes necessary to prevent personal injury or property damage. The committee realizes that while continuity of service is important it is necessary to recognize that safety is ultimately a primary consideration and that the Secretary must be given adequate authority to assure safety.

Section 10(b) of the reported bill assures any person charged with criminal contempt for violation of an injunction or restraining order issued under section 10 the right to demand a trial by jury. Under the provisions of rule 42(b) of the Federal Rules and Criminal Procedure relating to criminal contempt, a defendant is entitled to a jury trial only if an act of Congress so provides.

ADMINISTRATION BY THE SECRETARY

Under section 13(a) of the reported bill, the Secretary of Transportation is required to conduct research, testing, development, and training necessary to carry out the provisions of this act. He is authorized to carry out this provision by contract, or by grants to individuals, States, and nonprofit institutions.

Section 13(b) provides that the Secretary must, upon request, furnish to the Federal Power Commission information concerning the safety of materials, operations, devices, or processes relating to the transportation of gas or the operation of pipeline facilities.

Section 13(c) gives the Secretary authority to cooperate with Federal, State, and other interested public and private agencies and persons in the planning and development of Federal safety standards and methods for inspecting and testing to determine compliance therewith.

ANNUAL REPORT OF THE SECRETARY

Under section 14 of the reported bill, the Secretary is required to submit to the President for transmittal to the Congress an annual report covering the preceding calendar year. Such report is required to include—

(1) a compilation of accidents and casualties and causes thereof, when the National Transportation Safety Board has made a finding of cause;

(2) a list of Federal safety standards in effect during such year with identification of standards newly established during such year;

(3) a summary of the reasons for each waiver granted under section 3(e) during such year;

(4) a list of enforcement actions and compromises of alleged violations by location and company name, together with an evaluation of the degree of observance of applicable safety standards;

(5) a summary of outstanding problems in the administration of this legislation in order of priorities;

(6) an analysis of research activities and the policy implications thereof, together with an evaluation of technological progress for safety achieved;

(7) a list of completed and pending judicial actions, together with a brief statement of the issues;

(8) the extent to which technological information was disseminated to the scientific community and consumer-oriented information was made available to the public;

(9) a compilation of certifications filed by State agencies under section 5(a) which were in effect during the preceding calendar year, and a compilation of certifications which were rejected, together with a summary of the reasons for such rejections; and

(10) a compilation of agreements entered into with State agencies under section 5(b) which were in effect during the preceding calendar year, and a compilation of such agreements which were terminated by the Secretary, together with a summary of the reasons for such terminations.

The Secretary is required to include in his report such recommendations for legislation as he deems necessary to promote cooperation among the States in the improvement of pipeline safety and to strengthen the pipeline safety program.

The committee added items (9) and (10) to the reporting requirements in conformity with the changes made in section 5 concerning State certifications and agreements.

ROLE OF THE FEDERAL POWER COMMISSION

The general scheme of the act is to provide broad safety powers to the Secretary in gas pipeline transportation. The Federal Power Commission presently has exercised certain safety regulatory authority over interstate transmission lines under the Natural Gas Act.

The Commission considers and takes action on some elements of the safety of transmission proposals in acting on applications for new or extended authority and it is not intended that the passage of this act will diminish that authority and responsibility of the Commission. In order, however, that the Commission not be placed in the position of having to determine whether the construction and operation details of a proposed service conform to the Secretary's standards, an applicant may certify to this effect and the certification will be conclusive on the Commission. But if the relevant State or Federal enforcement agency has information that the applicant has violated safety standards in the past (thus possibly calling in question the applicant's compliance disposition) and notifies the Commission in writing, the certification will not be binding. The Commission then in connection with its awarding a certificate of public convenience and necessity may give such weight to the absence of a certificate as it may feel appropriate. It is not intended by the committee that this process of certification of compliance with the Secretary's standards will bar the Commission from continuing to consider safety in the same fashion it presently does in connection with awarding certificates of public convenience and necessity.

In addition to the above authority, the Federal Power Commission has authority over the routing of interstate transmission lines, and through the exercise of its conditioning authority in the granting of a certificate of convenience and necessity can delimit the route with particularity. The reported bill does not impinge upon this jurisdiction of the Commission. Indeed section 2(4) states that the Secretary is not authorized to prescribe the location or routing of any pipeline facility.

The Commission's authority in routing matters is of especial importance owing to the fact that by being certificated, the transmission line may then exercise the right of eminent domain in a district court of the United States to acquire land needed for certificate operations. This was provided by the enactment in 1947 of the Schwabe Act adding subsection (h) to section 7 of the Natural Gas Act.

Since the interrelation between safety and routing was brought up during the hearings, the committee believes it important to include herewith the response of Chairman Lee White of the Commission making clear that it is that Commission which has the jurisdiction and "provides a forum" for consideration in the routing of transmission pipelines, "where relevant, safety implications, community dislocation and the impact of the proposed construction on sites of historic importance or scenic beauty."

FEDERAL POWER COMMISSION,
Washington, D.C., February 27, 1968.

HON. TORBERT H. MACDONALD,
Chairman, Subcommittee on Communications and Power, House Committee on Interstate and Foreign Commerce, Washington, D.C.

DEAR MR. CHAIRMAN: This replies to your letter of January 23, asking that the Commission make clear for the record its jurisdiction and responsibility over the routing of natural gas pipelines.

The selection of the route which an interstate pipeline will take is in the first instance left to the natural gas company. However, before construction or operation of the pipeline may commence, a certificate of public convenience and necessity must be obtained from this Commission. Among other things the certificate application filed by the natural gas company must include "a concise description of the proposed * * * construction" (FPC regulations under the Natural Gas Act, sec. 157.6(b)(4)) and have annexed to it a map showing generally the location of the proposed facilities. Section 157.14(a)(6). The proposal may be implemented only if the Commission finds that it is required by the present or future public convenience and necessity. If the Commission certifies a proposal, the certificate holder has the right of eminent domain to acquire land needed for the certificated operations. Natural Gas Act, section 7(h).

In determining the public convenience and necessity of a proposal, the Commission must determine its economic feasibility and the proposed route can be relevant to this determination. However, the Commission does not limit its consideration to economic matters. Rather it must consider "all factors bearing on the public interest." *Atlantic Refining Co. v. P.S.C. of N.Y.*, 360 U.S. 378, 391 (1959). This may include, where relevant, safety implications, community dislocation and the impact of the proposed construction on sites of historic importance or scenic beauty.

The Commission's existing procedures provide a forum for persons who wish to take issue with the routing of a proposed pipeline, although that forum has only rarely been used. Such persons may intervene and enjoy full party status with the right to present evidence, cross-examine witnesses and file briefs. Alternatively, those persons wishing to make their views known without becoming parties to the proceeding may do so by the filing of protests. In two recent pipeline certificate cases the Commission has admitted as intervenors local governmental authorities, landowner associations, and individual landowners from the area the pipeline will traverse. *Manufacturers Light and Heat Co.*, Docket No. CP66-347 (southeastern Pennsylvania), now pending Commission decision, and *Tennessee Gas Pipeline Co.*, Docket No. CP67-211 (Phase II, eastern Massachusetts), order issued November 8, 1967 (attached). The intervenors have raised such issues as the need for any construction, the safety of the proposed line and the width of the right-of-way to be acquired and have suggested alternative routes. In the *Tennessee* case the pipeline company agreed to routing changes to accommodate the position of the intervenors. There is also now pending before the Commission a proceeding initiated by the complaint of a landowner objecting to the route selected by a pipeline. *Stitt v. Manufacturers Light & Heat Co.*, Docket No. IN-1003. Where a certificate is granted the natural gas company may select any appropriate route within the general criteria established by the certificate. However, the Commission through the exercise of its conditioning authority, may delimit the route with particularity.

In sum, the Commission now has jurisdiction to review the proposed routing of interstate pipeline facilities and does offer a forum for public participation and the advancement of interests which may differ from those of the applicant. This area of Commission concern

and responsibility would in no way be foreclosed or diminished by enactment of S. 1166.

I do not mean to convey the impression that the Commission's procedures cannot be improved upon. They can and will be as the Commission gains experience in dealing with these problem areas. One area of present concern relates to the problem of assuring that interested persons are timely apprised of the pendency of applications in order to be able to avail themselves of the Commission's procedures. Another is the problem posed by pipelines proceeding with condemnation after receiving a temporary certificate which may, under the act, be granted ex parte "in cases of emergency, to assure maintenance of adequate service or to service particular customers," but before being issued a permanent certificate of public convenience and necessity. Where a temporary certificate has been issued and condemnation already taken place, the permanent certificate proceeding obviously provides an inadequate forum for the landowner whose basic contention is that certain portions of his property should not be defaced. However, in our view the resolution of these problems relates to the Commission's rules of practice and procedure rather than the existence of any legislative gap. One step which the Commission has recently taken to facilitate the expression of views of interested persons involves the simplification of our rules dealing with the filing of complaints and protests (Order No. 359, issued Feb. 5, 1968). Under the revised rules persons who wish to object to a pending application or who contend that a natural gas company is violating a Commission order, rule, or regulation would be able to do so informally and with the assurance that a complaint or timely filed protest will be referred to the Commission for appropriate action.

Even if, with greater exposure to the land-use problem, the Commission should conclude that further legislation is warranted, I do not believe that it would be desirable to look for a solution by way of an amendment to pipeline safety legislation. Certainly there is no need to amend that legislation either to reserve to the Commission its existing jurisdiction over pipeline routing or to preserve the public's right to present to the Commission its objections to a proposed route.

Sincerely,

LEE C. WHITE, *Chairman.*

AUTHORIZATION OF APPROPRIATIONS AND COST OF THE LEGISLATION

In the course of the hearings before the Senate committee the Department of Transportation placed the cost of this legislation at approximately \$25 million a year. The Senate bill as it passed the Senate and came to this committee contemplated that about one-half of this amount would be raised through the imposition of annual fees upon those who were engaged in the transportation of gas and the remainder of the amount come from appropriated funds. The bill accordingly authorized appropriations for the next 3 fiscal years of \$10 million, \$13 million, and \$15 million, respectively.

The subcommittee in its interrogation of witnesses from the Department of Transportation had extreme difficulty in developing the basis for the \$25 million figure. The matter was pursued with the

Department following the hearings and under date of March 18, Secretary of Transportation Boyd submitted the following table:

DEPARTMENT OF TRANSPORTATION—ESTIMATED STAFFING AND FUNDING REQUIREMENTS FOR IMPLEMENTATION OF THE NATIONAL GAS PIPELINE SAFETY ACT OF 1967 (S. 1166), FISCAL YEARS 1969-73

	1969	1970	1971	1972	1973
Direct operations:					
Man-years.....	20	65	112	143	161
Personal compensation and benefits.....	\$328,000	\$898,000	\$1,433,500	\$1,798,000	\$2,009,500
Other objects.....	172,000	922,000	1,506,500	1,525,000	1,510,500
Total.....	500,000	1,820,000	2,940,000	3,323,000	3,520,000
Grants-in-aid program to States.....		5,000,000	9,000,000	9,600,000	9,600,000
Grand total.....	500,000	6,820,000	11,940,000	12,923,000	13,120,000

The funds which the committee, in section 15 of the reported bill, has authorized to be appropriated; namely, \$500,000, \$2 million, and \$3 million for the next 3 fiscal years roughly are those which the Secretary of Transportation contemplates are adequate for the creation of standards and the part of the program of direct cost to him.

In effect, the authorization does not provide for any substantial portion of the grant-in-aid program for State administration of a Federal safety program as contemplated by the bill. It should be noted, however, that under the terms of the legislation here proposed interim standards will be in effect until such time, not over 2 years hence, as the Secretary of Transportation promulgates Federal standards. These "interim" standards are merely the prescription of the standards which the State already has in effect and, accordingly, there seems very little in the way of need for additional grants to carry out what the States already are doing. For that matter, a committee change to section 5(c) of the bill, made at the request of the Secretary of Transportation, requires that the Federal funds cannot be a substitute for State funds which must be maintained at a level which is not below the level of their expenditures for the last 2 previous fiscal years.

Further, while Federal safety standards will be prescribed before the end of 24 months after the enactment of this legislation, such standards, of course, cannot become immediately effective, nor will the adoption and enforcement of such standards all at once give rise to tremendously increased expenditures by the States.

The committee is aware of the fact that sometime during the third year there will appear a need for the consideration of the extent to which the grant-in-aid program will require the authorization of additional Federal funds and the committee accordingly intends to keep abreast of this situation so that in its consideration of the extension of the legislation appropriate attention to whatever is this need may be given.

The bill as referred authorized a \$20,000 grant to the National Association of Regulatory Commissions to aid the States in their enforcement programs by coordinating State activities and rendering technical assistance. In view of the reduction of funds and the obvious timelag discussed above before State programs will be in operation, the committee feels this provision is unnecessary at the present time, and the reported bill deletes it.

The bill as referred included a revision in subsection (b) of section 15 authorizing the Secretary to require the payment of a reasonable annual fee to him by all persons engaged in the transportation of gas for the purpose of helping to defray the expenses of Federal inspection and enforcement under this act. It is the sense of the committee that when any collection of fees is authorized, they should be covered into the Treasury and the expenses of the Secretary should be met through the usual route of authorized and appropriated funds. Since this provision apparently was inserted originally to reduce the amount of appropriated funds and permit the expenses to be met otherwise, the committee has deleted the provision.

APPENDIX A

DEPARTMENT OF TRANSPORTATION STATEMENT ON CURRENT STATE PIPELINE SAFETY ACTIVITIES

A study of State activities conducted by the National Association of Regulatory Utility Commissioners and the Department of Transportation was completed in April 1967. This study indicated a strong need for comprehensive uniform safety standards covering the natural gas industry. A copy of the analysis of the survey is attached.

A report, dated September 11, 1967, prepared by the Subcommittee on Intergovernmental Relations of the Committee on Government Operations, U.S. Senate, contains the results of a survey of the State commissions responsible for the regulation of utilities. This report reveals that 31 of the 49 States responding indicate their current budget is sufficient and they do not plan any increase. These 31 States have within their boundaries approximately 70 percent of the total pipelines (gathering, transmission, and distribution) of the United States. It appears that, even though there has been a rapid passage of legislation by the States during the past 18 months concerning pipeline safety, very few States plan to do very much more than they are doing now. Based on the NARUC survey of April 4, 1967, and the above-mentioned survey, there remains a void in the comprehensiveness and uniformity of regulations for gas pipeline safety.

ANALYSIS OF THE NATURAL GAS SAFETY QUESTIONNAIRE, DATED JULY 18, 1967, SUBMITTED BY NARUC TO THE STATES AND DISTRICT OF COLUMBIA ON APRIL 4, 1967

A natural gas safety questionnaire was sent to all States and the District of Columbia. A total of 44 completed questionnaires were returned with no response from seven States. Of the 44 responding, four do not have authority to establish safety standards for the gas industry. Therefore, all comments and statistical comparisons made in this analysis are based on 40 States including the District of Columbia. These represent 80 percent of the total States. Those States not included are Alaska, Georgia, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New York, Pennsylvania, South Dakota, and Wyoming. Of these 11, it is understood that three have regulations while the remaining eight do not have any codes for natural gas facilities.

This analysis indicates the strong need for comprehensive uniform safety regulations.

The following are the individual questions, replies, and a brief analysis.

1. (a) Does the commission have the authority to establish safety standards for privately owned natural gas utilities?

Yes 40. No. 0. N/A* 0.

*No answer or not applicable.

(b) If the commission has such authority, does it apply throughout the State?

Yes 40. No 0. N/A 0.

(c) Does the commission have safety jurisdiction over:

(1) Interstate transmission systems? Yes 26. No 10. N/A 4.

(2) Intrastate transmission systems? Yes 39. No. 1. N/A 0.

(3) Distribution systems? Yes 40. No. 0. N/A 0.

(4) Gathering systems? Yes 16. No 11. N/A 13.

All 40 States report that they have statewide authority to establish safety standards for privately owned natural gas utilities or distribution systems. In addition—

65 percent have authority over interstate transmission systems.

97.5 percent over intrastate transmission systems.

Only 50 percent have jurisdiction over gathering systems due to the fact that a large number of States have no gas production.

2. (a) Does the commission have the authority to establish safety standards for publicly owned natural gas utilities, such as municipal systems?

Yes 10. No 27. N/A 3.

(b) If the commission has no such jurisdiction, is there authority at the municipal or county level?

Yes 22. No 3. N/A 15.

(c) Is such authority exercised?

Yes 14. No. 4. N/A 22.

Only 25 percent of the States have authority to regulate publicly owned natural gas utilities, while 55 percent report that authority for establishing safety standards does exist at the municipal or county level. At this level only 35 percent have any type enforcement.

These figures indicate that the States have very little control over the publicly owned natural gas utilities.

3. Aside from the commission, are there any other public bodies within the State—local, county, or regional—which establish safety standards for privately owned gas utilities?

Yes 16. No 24.

The survey shows that 100 percent of the States reporting, Question 3, have safety jurisdiction over privately owned gas utilities with 40 percent showing further regulatory authority at lower levels of government.

4. In those areas in which the commission has the statutory or constitutional authority to establish safety standards for privately or publicly owned gas utilities, has it adopted rules or regulations to implement that authority?

Yes 36. No 3. N/A 1.

Ninety percent of the States have adopted rules or regulations.

5. (a) Has the commission adopted the USASI code for gas safety standards for new pipelines?

Yes 31. No 8. N/A 1.

(b) If the USASI code is the basis for your regulation, have you eliminated or modified any sections of the code?

Yes 14. No 21. N/A 5.

(c) Has the commission adopted safety standards for existing gas pipelines?

Yes 29. No 11.

(d) If so, do these standards conform to the USASI standards for new pipes?

Yes 26. No 6. N/A 8.

Seventy-eight percent have adopted the USASI code with 40 percent of these making changes, either eliminating or modifying various sections covering new lines. From these figures it is not possible to determine exactly what type protection the existing regulations are providing.

Seventy-three percent have adopted safety standards for existing gas pipelines with 90 percent of these conforming to the USASI standards for new pipes.

6. Has the commission adopted any additional or other gas safety standards or codes, including the proposed NARUC amendments?

Yes 18. No 22.

These figures show that 45 percent of the States have adopted codes or standards other than or in addition to the USASI code.

7. (a) Do the companies in your State periodically test and inspect existing gas pipelines?

Yes 31. No 5. N/A 4.

(b) Does the commission periodically test and inspect existing gas pipelines?

Yes 9. No 30. N/A 1.

(c) Does the commission inspect materials and methods of construction for gas pipelines?

Yes 18. No 21. N/A 1.

(d) If the commission has established gas safety standards, does it enforce these standards through civil or criminal sanctions?

Yes 29. No 5. N/A 6.

Seventy-eight percent of these States reporting indicate that gas companies inspect and test existing gas lines, while 13 percent report not testing or inspecting.

Only 23 percent of these States inspect existing gas pipelines.

Forty-five percent of these States inspect construction of gas pipelines, while 53 percent do not.

Seventy-three percent indicate they enforce their safety regulations through civil or criminal sanctions. Thirteen percent do not while 15 percent made no reply.

8. (a) If your commission has a program of inspection, does it have a staff of its own to do this work?

Yes 21. No 14. N/A 5.

(b) If so, how many inspectors do you employ?

20 have inspectors (average range 1-4).

7 do not have inspectors.

13 no reply.

(c) How is this enforcement program financed?

(1) by legislative appropriation? Yes 16. No 3. N/A 21.

(2) by fees charged the companies? Yes 6. No 6. N/A 28.

(d) Does your commission employ outside contractors to perform such inspections?

Yes 3. No 32. If so, please explain briefly:

Of the States reporting, 53 percent have an inspection program and 35 percent do not. Fifty percent report they have inspectors, ranging from an average of 1 to 4 inspectors each. The other 50 percent either do not have inspectors or did not reply.

These figures indicate very clearly that with this number of inspectors a thorough program cannot be carried out. Some of these States indicated that their inspectors were part of their engineering staff and were not full-time inspectors. Only 8 percent employ outside contractors to perform such inspections.

9. (a) Does the commission collect statistics on gas accidents throughout the State?

Yes 26. No 13. N/A 1.

(b) Does your commission require gas companies to report gas line failure or accidents to you?

Yes 34. No 6.

(c) How often are they required to report such accidents?

32 as soon as possible.

2 monthly.

Sixty-five percent indicate they collect statistics on gas accidents.

Only 5 percent (two States) furnish a summary report of accidents. The others indicated the statistics were not in such form that could be separated or the information could not be reduced.

Most States required the reporting of accidents or failures as soon as possible after the accident occurred.

10. (a) Have there been any fatal or injury accidents in your State in the past 10 years resulting from gas pipeline failures?

Yes 17. No 18.

(b) Does the commission establish cause in gas accidents?

Yes 22. No 17. N/A 1.

(c) What have been the principal causes of such accidents?

Forty-three percent of these States have had accidents resulting in injury or death.

Only 55 percent attempt to determine the cause of gas accidents.

The principal causes of accidents was reported by 50 percent of the States, with a total of 18 accidents. The causes were as follows:

Construction/outside sources.....	11
Ground settling or movement.....	4
Corrosion.....	2
Human error.....	1

APPENDIX B

STATES IN WHICH STATE AGENCY ORDERS MAY BE ENFORCED BY INJUNCTION AND BY CRIMINAL FINES FOR WILLFUL VIOLATIONS, SUBMITTED BY THE AMERICAN GAS ASSOCIATION

Name of State	Authority to have Commission orders enforced by court injunction	Amount of fine which may be imposed for willful violation of Commission orders
Alaska		
Alabama	Yes.	\$1,000 per day.
Arizona	Yes	\$5,000 per offense.
Arkansas		
California	Yes	\$500 to \$2,000 per day.
Colorado	Yes	At discretion of court
Connecticut	Yes.	\$5,000 for each offense.
Delaware	Yes.	\$50 per day.
Florida	Yes; Commission has authority to enforce orders and seek injunctions.	\$5,000 per day.
Georgia	Yes; civil and criminal.	Do.
Hawaii	Yes.	\$1,000 per offense.
Idaho	Yes	\$2,000 per day for each offense.
Illinois	Yes.	\$500 to \$2,000 per day per offense. \$1,000 and/or 1 year imprisonment (individuals).
Indiana	Yes.	\$100 to \$1,000 per offense.
Iowa		
Kansas		
Kentucky	Yes.	\$1,000 per offense.
Louisiana	Yes; Commission has authority to enforce orders.	\$100 to \$500 for each violation.
Maine	Yes; through Attorney General.	\$1,000 per day for each violation or part.
Maryland	Yes.	\$100 per day for failure to file reports. \$2,500 per day for violations of Commission orders. \$1,000 for the first offense. \$5,000 for additional offense (individuals).
Massachusetts	Yes.	At discretion of court.
Michigan	Yes.	\$100 to \$20,000 per offense. \$100 to \$1,000 and/or 30 days to 1 year (individuals).
Minnesota	Yes; fire marshal.	\$100 and/or imprisonment of up to 90 days per offense (individuals).
Mississippi	Yes.	\$200 per day per offense.
Missouri	Yes.	\$1,000 to \$2,000 per day. \$1,000 and/or 1 year imprisonment (individuals).
Montana	Yes.	\$100 to \$500 per day per offense.
Nebraska		
Nevada	Yes.	\$300 to \$500 per day.
New Hampshire	Yes.	\$5,000 for each violation for corporation. \$1,000 fine and/or 6 months in house of Correction (individuals).
New Jersey	Yes.	\$250 per day (with no limitation on days).
New Mexico	Yes.	\$100 to \$1,000 per offense.
New York	Yes.	\$1,000 per day.
North Carolina	Yes.	\$1,000 per day per offense.
North Dakota		
Ohio	Yes.	\$100 to \$1,000 per day. Statute also provides for imprisonment up to 2 years for willful violation and treble damages (individuals).
Oklahoma	Yes; Commission has authority.	\$500 per day per offense.
Oregon	Yes.	\$100 to \$10,000 for each offense.
Pennsylvania	Yes.	\$50 per day for corporation. \$500 and/or 1 month to 1 year imprisonment for first offense. \$1,000 for subsequent offenses, imprisonment 3 months to 2 years (individuals).
Rhode Island	Yes; Administrator of Division of Public Utilities.	\$200 to \$500 per day.
South Carolina		
South Dakota	No; municipalities have jurisdiction.	
Tennessee	Yes.	\$50 per day.
Texas	Yes.	\$1,000 per day.
Utah	Yes.	\$500 per day per offense. \$1,000 and/or 1 year imprisonment per offense (individuals).
Vermont	Yes.	\$5,000 for each violation.
Virginia	Yes; Commission has authority to enforce orders and seek injunctions.	\$500 per day.
Washington	Yes.	\$1,000 per day.
West Virginia	Yes.	\$5,000 per day and/or imprisonment of 3 months to 1 year (individuals).
Wisconsin	Yes.	\$25 to \$1,000 per day.
Wyoming	Yes.	\$5,000 per offense.

APPENDIX C

STATISTICS PERTAINING TO STATES PRODUCING NATURAL GAS IN 1966, COMPILED BY HAROLD E. SHUTT, CHAIRMAN OF THE SUBCOMMITTEE OF STAFF EXPERTS OF THE NARUC COMMITTEE ON GAS

State	Gathering and field lines ¹		Percent of domestic production ² for interstate sales	Questions for State survey		
	Miles	Percent		No. 1 ³	No. 2 ⁴	No. 3 ⁵
Alabama			(⁶)	No.	None	Yes.
Arizona		(⁶)	0.01	No.	do.	Yes.
Arkansas	580	0.92	.75	Yes ⁷	Arkansas Public Service Commission	Yes.
California	710	1.12		No.	None	Yes.
Colorado	1,160	1.83	.51	No.	do.	Yes.
Illinois	80	.13		Yes ⁷	Illinois Commerce Commission	Yes.
Indiana	320	.50	(⁶)	Yes	Public Service Commission of Indiana	Yes.
Iowa	70	.11		Yes ⁸	Iowa State Commerce Commission	Yes.
Kansas	6,490	10.25	5.93	No.	None	Yes.
Kentucky	3,450	5.45	.33	Yes	Kentucky Public Service Commission	Yes.
Louisiana	2,440	3.85	37.30	No.	None	No.
Maryland	60	.10		Yes ⁹	Maryland Public Service Commission	Yes.
Michigan	620	.98	(⁶)	Yes	Michigan Public Service Commission	Yes.
Mississippi	140	.22	1.42	No.	None	Yes.
Montana	1,140	1.80	(⁶)	Yes	Montana Board of Railroad Commissioners	Yes.
Nebraska	40	.06	.06	No.	None	Yes.
New Mexico	7,030	11.10	5.94	No.	do.	No.
New York	820	1.29	.01	Yes	New York Public Service Commission	Yes.
North Dakota	20	.03	.19	No.	None	Yes.
Ohio	4,330	6.84	.17	Yes ⁷	Ohio Public Utilities Commission	Yes.
Oklahoma	6,450	10.19	8.58	No.	None	No.
Pennsylvania	6,830	10.78	.22	No.	do.	Yes.
Texas	10,280	16.23	35.48	No.	do.	Yes.
Utah	470	.74	.38	No.	do.	Yes.
Virginia	10	.02	.02	Yes ⁸	Virginia State Corporation Commission	Yes.
West Virginia	9,020	14.24	.96	No.	None	Yes.
Wyoming	770	1.22	1.71	Yes	Wyoming Public Service Commission	Yes.
Total	63,330	100.00	100.00			

¹ Data obtained from "Gas Facts" prepared by the American Gas Association, 1967.

² Data obtained from "Sales by Producers of Natural Gas to Interstate Pipeline Companies, 1966," prepared by the Federal Power Commission.

³ Is there any State agency within your State that has regulatory jurisdiction of safety of gas-gathering lines?

⁴ If yes, what is the agency's name?

⁵ If a public utility owned and operated gas-gathering lines in your State, would your commission have regulatory jurisdiction of safety of these lines?

⁶ Less than 0.01 percent.

⁷ If the lines are operated by a public utility.

⁸ Yes, if State had any gathering lines.

⁹ Not exercised.

AGENCY REPORTS

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., February 28, 1968.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Bureau of the Budget on H.R. 6551, H.R. 13936, and S. 1166, bills relating to the safety regulations of natural gas pipelines, and to your letter of February 21, 1968.

In his message of February 16, 1967, on protection of the American consumer, President Johnson called for legislation to provide Federal safety regulation of gas pipelines. To this end, S. 1166 was introduced in the Senate on March 3, 1967. In testimony before your committee on December 6, 1967, the Secretary of Transportation endorsed S. 1166 as passed by the Senate, but recommended amendments to (1) delete the requirement for the Secretary to publish his reasons for rejecting recommendations of the Technical Advisory Committee; (2) add a maintenance-of-effort requirement to the provision for grants to the States; (3) add criminal penalties for wilful and knowing violations; and (4) delete the partial exemption from retroactive application of standards.

We concur in the views expressed by Secretary Boyd and strongly recommend that S. 1166 be amended as he suggested. Enactment of this legislation would be in accord with the program of the President.

You also inquired about the costs of this legislation and whether provision has been made for them in the 1969 budget. The timing of enactment and the final form of the bill will, of course, affect the costs which can be anticipated for fiscal year 1969. This legislation was taken into account in developing the allowance for contingencies in the 1969 budget, which provides for the possible costs of new programs for which definite estimates cannot be made at the time.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., December 6, 1967.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR MR. STAGGERS: Your committee has requested a report on S. 1166, a bill to authorize the Secretary of Transportation to prescribe safety standards for the transportation of natural and other gas by pipeline, and for other purposes.

S. 1166 would authorize the Secretary of Transportation to establish minimum Federal safety standards applicable to the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities used in the transportation of gas.

Under the terms of the bill, "gas" is defined as "natural gas, flammable gas, or nonflammable hazardous gas," and "transportation of gas" is declared to mean "the gathering, transmission, or distribution of gas by pipeline or its storage in or affecting interstate or foreign commerce." The term "pipeline facilities" is also comprehensively defined within the bill to include new and existing pipe, rights-of-way, buildings, and general equipment and facilities.

The bill provides that within 3 months following its enactment the Secretary of Transportation shall, by order, adopt interim minimum Federal safety standards for pipeline facilities and the transportation of gas in each State. In those States currently enforcing regulatory standards governing such activities, the State standards are to be adopted as the interim Federal safety requirements. Where no State standards are currently in effect, the Secretary is directed to establish such interim Federal safety standards as are common to a majority of the States presently enforcing specific safety standards within their borders. The Secretary is directed to establish permanent minimum Federal safety standards not later than 24 months after the enactment of the act, which standards "shall be practicable and designed to meet the need for pipeline safety." Any permanent minimum Federal safety standards are to become effective 30 days after their date of issuance unless the Secretary, for good cause shown, determines that an earlier or later effective date is reasonably necessary to insure compliance.

Minimum Federal safety standards prescribed by the Secretary of Transportation relating to design, installation, construction, initial inspection, and initial testing would not be applicable to pipeline facilities in existence on the date such standards were adopted unless a potentially hazardous situation existed. The Secretary would be authorized by written agreement with an appropriate State agency to exempt from Federal safety standards those pipeline facilities and the transportation of gas not otherwise subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act. Under such agreements, the State agencies would be required to adopt the Federal standards, undertake programs designed to achieve adequate compliance with such standards, and cooperate in a system of Federal monitoring of the compliance program and reporting requirements. The bill authorizes the Secretary to pay up to 50 percent of the annual costs for carrying out such agreements by a State agency.

Prior to promulgation of permanent Federal safety standards, the Secretary of Transportation is directed to establish a Technical Pipeline Safety Standards Committee composed of 15 members, five to be selected from governmental agencies, five from the natural gas industry, and five from the general public. All of the proposed Federal safety standards and amendments would be submitted to the technical committee, which in turn would report on the technical feasibility, reasonableness and practicability of each proposal. The committee would also be authorized to propose safety standards to the Secretary for his consideration. The Secretary, however, would not be bound by the technical committee's reports or conclusions.

The bill provides for judicial review before the various U.S. courts of appeals of any order or other administrative determination of the Secretary of Transportation arrived at under the Natural Gas Pipeline Safety Act of 1967. Enforcement features of the bill include provision for civil penalties not exceeding \$1,000 per day for each violation, except that the maximum civil penalty may not exceed \$400,000 for any related series of violations. The Secretary is authorized to compromise monetary penalties in accordance with the equities of the particular case, or to recover penalties, wherever necessary, through civil actions in the U.S. district courts. Injunctive relief to restrain violations of the act is also provided for through the offices of the appropriate U.S. attorneys or the Attorney General. The Secretary of Transportation is authorized to advise, assist, and cooperate with other Federal and State departments and agencies, as well as other interested public and private agencies and persons, in the planning and development of Federal safety standards and general enforcement procedures.

We recommend enactment of S. 1166. Although this Department is assigned no functional role in the administration and enforcement of the Natural Gas Pipeline Safety Act of 1967, we are in full accord with the determination that need exists for early enactment of safety legislation in this vital consumer area. President Johnson, in his consumer message to the Congress on February 16, 1967, stated the following:

"Nearly 800,000 miles of pipeline reach out across a continent, linking the Nation's natural gas producing fields to the consumer. This gas brings heat and convenience to millions of American homes. It is used increasingly in industrial processes.

"The safe transmission and distribution of natural gas is essential to all of us.

"The natural gas industry is among the most safety conscious in the nation. But natural gas is inherently dangerous when it is being transmitted. It travels through pipelines at enormous pressures. It is highly inflammable. When it burns, it can reach temperatures as high as 2500° Fahrenheit. In March 1965, a tragic pipeline failure near Natchitoches, Louisiana, killed 17 persons. The recent blaze in Jamaica, New York, dramatically underscored how serious a gas pipeline failure can be.

"As pipelines age and as more and more of the system lies under areas of high population density, the hazards of pipeline failures—and explosions—increase. Yet:

—22 States have no safety regulations.

—Many of the remaining 28 States have weak or outmoded provisions.

—Although the gas industry has developed safety standards, they are not binding and in some instances not adequate.

—There is no Federal jurisdiction whatsoever over 80 percent of the Nation's gas pipeline mileage and no clear authority to set minimum safety standards for the remaining 20 percent.

"With the creation of the Department of Transportation, one agency now has responsibility for Federal safety regulation of air, water and land transportation, and oil pipelines. It is time to complete this comprehensive system of safety by giving the Secretary of Transportation authority to prescribe minimum safety standards for the movement of natural gas by pipeline.

"I recommend the Natural Gas Pipeline Safety Act of 1967."

Inasmuch as the Secretary of Transportation is authorized to advise and cooperate with other Federal departments and agencies in the planning and development of Federal safety standards and methods relating to inspection and testing for purposes of assuring compliance with the act, this Department anticipates future opportunity to participate actively in the formulative process.

There is a typographical error in section 8(a) (2) and (3) of the bill. Section 8(a)(2) should refer to "section 11" instead of "section 12" and section 8(a)(3) should read "section 12" instead of "section 13".

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

J. CORDELL MOORE,
Assistant Secretary of the Interior.

FEDERAL POWER COMMISSION REPORT ON H.R. 6551, S. 1166, H.R. 13936, H.R. 13950 AND H.R. 13953, 90TH CONGRESS, GAS PIPELINE SAFETY BILLS

S. 1166, H.R. 13936 (identical to H.R. 13950), and H.R. 13953 would assign to the Secretary of Transportation the responsibility for prescribing safety regulations for the transportation of natural and other gases by pipeline. Such regulations would cover the gathering, transmission, and distribution of gas by pipeline and its storage in or affecting interstate commerce.

The bills, except for H.R. 6551, are all similar in scope, language, and structure with one major substantive difference: S. 1166 and H.R. 13953 do not provide for criminal penalties; H.R. 13936 does. The attachment contains a brief analysis of S. 1166 with a table showing the differences between the various bills.

H.R. 6551 would assign such a responsibility for interstate lines to the Federal Power Commission. While the Commission has supported such legislation in the past, it now supports the broader concept embodied in S. 1166.

NEED FOR LEGISLATION

The principal need for a Federal effort in the field of gas pipeline safety is the inadequacy of the code now used as a safety guide by companies and State agencies, and the improbability that an adequate code can or will be established under existing law or under existing private procedures.

The current basis for safety standards for transmission and distribution pipelines is the USAS B31.8 Code for Pressure Piping. This code has in turn been adopted by a preponderance of State utility commissions, on occasion with some strengthening amendments, as the basis for their legal requirements.

The flaw in this picture of almost unanimous adoption of a safety code by almost all the States is not in the will of States in adopting available safety standards, but in the inadequacy of the available safety standards themselves. The B31.8 Code, while it establishes some

safety standards in some areas, sets standards so low that it is seriously deficient to ensure safe practices. In fact, the standards the code sets are so low that most companies exceed code requirements or use practices more stringent than those required by the code. To illustrate, companies, as a matter of practice, bury their pipe, which is not required by the code, except at crossings. To protect against corrosion, most companies put a protective coating on pipe, also not required by the code; further, companies cathodically protect their pipelines, also not required by the code. In addition, most companies require a coating of a specific electric resistance, also not required by the code. Most companies have a comprehensive program for maintenance and corrosion prevention, while the code merely provides a checklist of danger areas. Most companies radiographically inspect welds on their pipe, while the code makes no such requirement.

Comparison with previous gas pipeline safety bills

S. 1166 establishes a complete scheme of standard setting, inspection, enforcement, sanctions, agreements with States, reporting and monitoring, whereas previous bills assigning such responsibility to the FPC would have utilized the existing enforcement, reporting, and compliance sections of the Natural Gas Act. S. 1166, as introduced, amended title 18 of the United States Code which would have added gas pipelines to the Transportation of Explosives Act.

S. 1166 would cover gas gathering, transmission, and distribution pipelines and storage facilities, whereas previous bills assigning such responsibility to the FPC would have covered only interstate transmission lines under FPC jurisdiction. In addition, S. 1166 would apply to all pipelines regardless of ownership, whereas previous bills would have applied only to privately owned companies.

Effect on FPC

The bill contains provisions to reduce any possible administrative problems which may arise because of the dual responsibilities over the transportation of natural gas between the Department of Transportation and the FPC. For example, section 7 of the Safety Act provides that whenever the establishment of a standard or action upon an application for a waiver would affect continuity of FPC certificated gas service, the Secretary must first consult with the FPC and defer the effective date until the FPC has had reasonable opportunity to grant the authorizations it deems necessary. Such language gives the final say on safety to the Secretary of Transportation but coordinates the actions of the FPC and the DOT so that compliance with a DOT standard would not entail violation of a FPC certificate of public convenience and necessity.

In addition, section 7 of the Safety Act provides that applicants under the Natural Gas Act for a certificate to construct a pipeline must certify that the proposed pipeline will meet Federal standards. This certification is binding on the FPC unless the DOT has timely advised the FPC that the applicant has violated DOT safety standards. The Senate Commerce Committee report on S. 1166 (Rept. 718, 90th Cong.) interprets this:

The FPC is required to consider and take action on some elements of the safety of transmission proposals in acting on applications for new or extended authority and it is not intended that this act will diminish that authority and re-

sponsibility of the FPC. * * * It is not intended by the committee that this process of certification of compliance with the Secretary's standards will bar FPC from continuing to consider safety in the same fashion it presently does in connection with awarding certificates of public convenience and necessity.

The FPC agrees with this interpretation.

Section 13(b) provides that, upon request, the Secretary shall furnish the FPC any information he has regarding the safety of materials, operations, devices or processes relating to the transportation of gas or the operation of pipeline facilities. This will allow the FPC to obtain the most up-to-date safety data to help in its consideration of the safety of proposed facilities for those aspects of the transportation of gas not covered by DOT standards.

Section 13(c) also authorizes the Secretary to cooperate with, among others, the FPC in planning and developing Federal standards and methods to insure compliance with those standards.

SUGGESTED AMENDMENTS

While the Commission strongly supports the basic concept of the bill, the Commission feels that the bill could be improved to give the States and the Secretary more discretion in promulgating standards. These amendments would restore S. 1166 more closely to its form as introduced and endorsed by the President and heretofore supported by the Commission.

MORE DISCRETION IN PROMULGATING STANDARDS

S. 1166 now prevents States from establishing additional non-conflicting standards for interstate transmission lines and also prevents the Secretary from adopting any standards but the State standards then existing in each State as Federal interim standards. In any State where no such standards are in effect, the Secretary must promulgate those standards common to a majority of States.¹

Under these provisions the anomalous situation is created whereby States may raise their own standards for those transmission lines under State jurisdiction (50,000 miles) but may not apply similar standards for such lines in that State under FPC jurisdiction (160,000 miles). Functionally and operationally, these lines under State or FPC jurisdiction are identical and may even be part of the same network or even owned by subsidiaries of the same holding company. Some States have made valuable and worthwhile additions to the B31.8 Code and others may wish to do so. The FPC has supported the concept of minimum standards in its testimony on S. 1553 in the 89th Congress and S. 1166 in the 90th Congress before the Senate Committee on Commerce because it believes the creative efforts of States have proved to be and should continue to be fruitful sources of safety concern. We believe the States should be free to improve their own standards for interstate lines and continue their current jurisdiction. Similarly, the Secretary should be free to supplement

¹ This section would authorize the Secretary to prescribe standards for those pipelines in States where the State has adopted some safety regulations but which did not apply to particular classes of pipe, such as distribution lines or interstate lines.

the interim standards with such additional requirements as accident reporting or other rules as would be necessary to administer an interim safety program rather than be required to adopt the various existing State standards as then in effect. In sum, we suggest the Secretary be allowed to so supplement existing State standards for interim standards and that the Federal standards not preempt additional consistent State regulation of the interstate transmission lines.

The FPC believes that there is a vital public need for a national agency responsible to the public to set adequate safety standards for gas pipelines. S. 1166, with the amendments we suggest, effectively provides for a national responsibility and the FPC therefore favors enactment of such a bill.

MINORITY VIEWS ON S. 1166, NATURAL GAS PIPELINE SAFETY BILL

SECTION 5

AMENDMENT TO RESTORE FEDERAL SAFETY REGULATION

The original bill provided that the Secretary of Transportation would have jurisdiction over all pipeline facilities and the transportation of all natural gas.

Under section 5 of S. 1166 when it was referred to the House, the Secretary of Transportation was authorized by written agreement with appropriate state agencies to exempt from Federal safety standards pipeline facilities and the transportation of gas not subject to the jurisdiction of the Federal Power Commission. No such agreement could have been concluded unless the State agency in effect had authority to impose the same kind of sanctions, recordkeeping, and inspection responsibilities that were given to the Secretary. In the event a State agency could not enter into such an agreement, the Secretary was authorized to negotiate with such agencies to carry out certain administration of the act on behalf of the Secretary.

Section 5 was changed by the House Committee to provide that any State which could meet certain requirements would have the right to certify its ability to carry out the regulation required by the act and thereafter the State would control regulation (sec. 5), have the right to waive compliance with safety standards (sec. 2(e)), receive the plans for inspection and maintenance (sec. 11), and generally carry out the entire examination and inspection of gas pipelines not regulated by the Federal Power Commission (sec. 5).

Once the State had certified its program, then under this bill the Federal Government would be required to pay up to 50 percent of the cost of the activities of the State agencies above the present amounts they are spending (sec. 5(c)); a subsidy which would absorb nearly all of the funds granted to the Secretary under the act (sec. 15).

The net effect of the House committee amendment thrusts a burden on the Secretary which he cannot possibly carry. In order to insure protection for the public, under this unique Federal-State relationship, the Secretary would have to have a massive staff to monitor State enforcement activities, since the burden would be on him to prove that a State was, despite its certification, not in compliance.

This is in contrast to the original bill which would provide that, by written agreement, a State must spell out in detail the standards it has adopted and prove that it has the capacity to enforce those standards. Under such a system only a modest force would be necessary to monitor compliance. Also, of vital importance, the burden of proof would be on the States to show compliance and enforcement instead of on the Secretary to show noncompliance and inadequate enforcement.

There is also a substantial question whether, the State having certified itself out from Federal supervision, the Secretary could make any serious effort to look behind that certification.

This proposed amendment will be presented by Congressman Macdonald.

SAMUEL N. FRIEDEL.
JOHN E. MOSS.
JOHN D. DINGELL.
DANIEL J. RONAN.
BROCK ADAMS.
RICHARD L. OTTINGER.
PETER N. KYROS.

MINORITY VIEWS ON AMENDMENTS TO RESTORE SECTIONS 2, 3, 4, 9, AND 15

GENERAL

In addition to the basic change in the bill created by section 5, there were a series of weakening amendments adopted by the committee which will prevent the bill from being effective even if section 5 were to be corrected. With section 5 in its present form, these amendments make the bill a nullity.

SECTION 2

AMENDMENT TO RESTORE REGULATION OF GATHERING LINES

The original will provided that "transportation of gas" included all means of distribution of gas by pipeline or its storage.

The committee amended that section to exclude pipelines used for the gathering of gas in rural locations unless the Secretary defined that an area had become "nonrural."

It will be impossible for the Secretary to examine each of some 65,000 miles of gathering lines to determine where there is a populated as opposed to nonpopulated area, and therefore the risk caused by gathering lines will continue in its present status since the Secretary can only issue general regulations and cannot examine each line to determine whether it is rural or nonrural.

SECTION 3

AMENDMENT TO RESTORE REGULATION OF EXISTING PIPELINES

Existing pipe under our major metropolitan centers is the chief hazard against which legislative action is needed, yet this pipe is effectively "grandfathered" out from effective coverage by section 3 of the bill.

The Senate language in section 3 should be restored. This would permit the Secretary to eliminate potentially hazardous situations by requiring compliance with safety standards already established. It would allow the Secretary to promulgate a series of orders in general form that would correct some of the more dangerous situations in the existing lines throughout the Nation. For example, he could find that certain types of pipe which had been in existence for a certain number

of years were hazardous and should be replaced. Pipe of deficient material, or which was improperly welded, would be subject to replacement. The burden would then be on the companies to bring their facilities up to such standards.

The committee changed this section to provide that the Secretary could not issue general orders but instead was required to find that a "particular" facility was actually (not potentially) hazardous to life or property and then he had to order the person operating such facility to take the steps necessary to remove the potential hazard. This would mean that every mile of the country's pipeline would have to be inspected and tested and the faults revealed before he could order compliance. This is an impossible burden for the Secretary and is contrary to the general regulatory system which requires the industry itself to bring its facilities up to a standard, with the risk of meaningful penalties for noncompliance.

There are today some 800,000 miles of gas pipeline already in the ground. Some of that pipe has been in use for over a century, and most for at least a decade. Some pieces of pipe taken recently from under city streets and buildings and shown at the hearings were so corroded that they could crumble at the slightest touch. Explosions that have leveled hundreds of houses and office buildings, that have killed hundreds and have maimed thousands have taken place in cities all around the country. Some recent examples are a rupture and explosion in Natchitoches, La., in March 1965, gutting an 18-acre area, killing 17, burning down five houses and melting cars and rocks in the vicinity; a January 1967 explosion engulfing an entire block in Queens, N.Y., in which seven people were injured and 19 families left homeless; the injury of 14 people in a recreation hall explosion in South Milwaukee, Wis., in February 1967, where 20 minutes earlier 250 people had been gathered; a February 1967 explosion in Hastings-on-Hudson, N.Y., which killed one, injured 15 and left 35 families homeless; a March 1967 explosion in Logansport, Ind., injured eight; destruction of an office building in downtown St. Louis, Mo., in November 1967—no one was hurt because luckily the explosion took place at night; explosion injuring nine in Riverdale, N.Y., last December; and so on.

SECTION 4

AMENDMENT TO BROADEN THE MEMBERSHIP OF THE TECHNICAL PIPELINE SAFETY STANDARDS COMMITTEE

This committee is to assist the Secretary in establishing safety standards, but the bill goes far beyond that and requires that the Secretary shall use this committee's recommendations unless he specifically rejects them and publishes his reason for rejection thereof.

The present standard provides that each of the 15 members must be experienced in the safety regulation of the transportation of gas and of pipeline facilities or technically qualified by training and experience in one or more fields of engineering applied in the transportation of gas or the operation of pipeline facilities. This in effect limits the membership of this committee to individuals who are in, or have in the past been members of, the gas pipeline industry. This would exclude members of regulatory agencies who had not worked for the industry or academic personnel who had not worked specifically in engineering applied in the transportation of gas or the operation of pipeline facilities.

SECTION 5

See the first minority views.

SECTION 9

AMENDMENT TO RESTORE THE CIVIL PENALTIES SECTION

The House committee reduced the civil penalties in the Senate bill from \$1,000 to \$500 per day with a maximum of \$100,000 instead of \$400,000. For big utilities, these maximums are inadequate.

Even more importantly, the committee amendment reduced the penalty sanctions to absurdity by insisting that they could be assessed only upon prior notice of noncompliance by the Secretary, followed by inaction by the pipeline company. This situation is precisely analogous to the old "mad dog" statutes, which permitted any dog one bite before he could be muzzled. We are not prepared to permit a pipeline company one explosion before minimum safety standards can be imposed.

Nowhere in any Federal regulation (or State so far as the undersigned know) is such a system of civil penalties used.

SECTION 15

AMENDMENT TO RESTORE APPROPRIATIONS

The amounts authorized to the Secretary to carry out his responsibilities under the act are wholly inadequate to permit him to do the job. Next year's authorization is cut from \$13 million to \$2 million, and the 1971 authorization from \$15 million to \$3 million.

We are conscious of the need to keep Federal spending down to the essential minimum level consistent with the national welfare. In our view, however, the amounts authorized in this legislation are inadequate to permit even a show of compliance with the duties which the legislation imposes or attempts to impose upon the Secretary. The amounts provided won't provide for any meaningful Federal inspection, to say nothing of the 50 percent grants to the States required under section 5(c).

The Natural Gas Pipeline Safety Act should be restored to the form in which it passed in the Senate, and the Secretary of Transportation should be given the funds necessary to do the job required.

As one witness testified before the committee about the leaking pipelines under our cities: "There is dynamite under our streets." It is left to us to remove it.

JOHN E. MOSS.
JOHN D. DINGELL.
DANIEL J. RONAN.
BROCK ADAMS.
RICHARD L. OTTINGER.

SEPARATE VIEWS

Having heard a major portion of the testimony in public hearings and participated in subcommittee deliberations, I do not share all the misgivings of my colleagues in their minority views. However, I agree substantially that section 5(a), as amended, seriously impairs the Secretary's opportunity to attack present dangers.

The language as reported appears to admit Federal jurisdiction, but at the same time places an undue burden on the Secretary to prove that it ought to be asserted. I therefore urge a return to the language of section 5 as it was passed by the Senate, which preserves the traditional concept of Federal-State cooperation.

I would nonetheless caution against a familiar pitfall of consumer legislation, the desire of well-intentioned administrators to achieve a wider jurisdiction than is proved necessary. An example in the present debate is their effort to regulate all gathering lines.

Our subcommittee worked conscientiously to protect inhabited areas against faulty gathering lines. But from nearly 98 percent of gathering lines, testimony indicated, there is no need for protection. These lie across open terrain, most of it prairie, and the usual gas pressures are only 3 or 4 pounds per inch. No accidents involving gathering lines have occurred over the past decade.

Similarly, I find little logic in arguments of the minority that the prospect of penalties up to \$500 a day per violation and a total of \$100,000 would fail to stir action by officials of a company who have been warned their property is unsafe. And I am baffled by colleagues who find it "amazing" that a violator should be warned before he is penalized. Let us hope the day of the friendly cop has not ended altogether.

LIONEL VAN DEERLIN.

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I&E
EXHIBIT 2

March 16, 1971

Mr. J. H. Lambdin
Professional Engineer
349 Glenway
Jackson, Mississippi 39216

Dear Mr. Lambdin:

This is in reply to your letter of February 16, 1971, concerning the applicability of the Natural Gas Pipeline Safety Act of 1968 to a line approximately 10 miles long operating at a pressure of 125 to 150 pounds, crossing various public and private rights-of-way and supplying only one customer, a public utility owned generating station.

The Natural Gas Pipeline Safety Act of 1968 (hereinafter called the Act), and the regulations contained in 49 CFR, Parts 191 and 192 would appear to be applicable to this facility. Section 2(3) of the Act defines "Transportation as gas" as "the gathering, transmission or distribution of gas by pipeline or its storage in or affecting interstate or foreign commerce...." (underscoring added). "Pipeline facility" as defined in Section 2(4) of the Act includes "any equipment, facility, or building used in the transportation of gas or the treatment of gas during the course of transportation."

It is our view, based on the legislative history of the Act, that even though the operation may be entirely within one State there is no question but that every element of a gas gathering, transmission and distribution line is moving gas, which is either in or affects interstate commerce.

We hope this answers your question, and if we can be of any further assistance, please let us know.

Sincerely,

Joseph C. Caldwell
Director, Acting
Office of Pipeline Safety

I&E
EXHIBIT 3

1998 WL 35166473 (D.O.T.)

Department of Transportation (D.O.T.)

Pipeline and Hazardous Materials Safety Administration

Office of Pipeline Safety

Mr. Ernie Nepa
Governor Sproul Associates
1 Makefield Road
Morrisville, PA 19067

CPF No. 18003C

March 6, 1998

*** Start Section

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Letter

*1 Dear Mr. Nepa:

On February 14, 1998, there was an explosion and fire at the Governor Sproul Apartment Complex (Lewis Building) in Broomall, Pennsylvania, due to a ruptured 2-inch PVC pipe transporting natural gas. The natural gas pipe was struck by mechanical equipment during construction of a ramp. The gas pipeline was reported to be not "marked" prior to the construction project. Governor Sproul Associates (GSA) purchases metered gas from an outside source, PECO Energy Company (PECO), for resale through a master meter system. The Federal Department of Transportation's Office of Pipeline Safety (OPS) has pipeline safety jurisdiction over this master meter system.

A representative from the OPS, Eastern Region Office, responded to the incident on February 14, 1998, and conducted a follow-up site visit on February 17, 1998. As a result, the OPS discovered deficiencies that need immediate attention. GSA operates a master meter system. Therefore, GSA must operate their master meter system in accordance with the Federal pipeline safety regulations, Title 49, CFR, Parts 191 & 192. The requirements of Title 49, CFR, Part 192 include, but are not limited to, the proper design, operation, maintenance and emergency procedures for natural gas pipeline systems. The OPS provided a copy of the Federal pipeline safety regulations and a copy of the, "Guidance Manual for Small Natural Gas Operators", to help you understand your pipeline safety obligations as a master meter operator. Based on the information gathered during our above visits, it appears that you were not aware of the Federal pipeline safety requirements and your system was not being operated or maintained under these regulations.

Following the incident, you indicated several times that GSA intends to replace the existing main with newer plastic pipe. You also stated that, if cost effective, GSA prefers the system to be modified such that GSA is no longer a master meter operator and each individual apartment is metered and billed separately. We acknowledge that you and your tenants were and will be faced with many challenges because of this incident. We also appreciate your responsiveness to our previous concerns. However, if you decide to continue to operate your master meter system, this office will need to take steps to ensure that you comply with the Federal pipeline safety regulations. This could include taking enforcement action as specified in Title 49, CFR, Part 190.

Please provide to this office within 20 days a letter which includes a time schedule with your plans to convert the existing master meter system to a pipeline system that would be operated by PECO or inform us of your plans to continue to operate your underground master meter pipeline system. Modifications to your system, where PECO becomes the operator, is encouraged because PECO has the resources and experience to design, operate, and maintain a gas distribution system.

*2 We greatly appreciate your immediate attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact Michael J. Khayata of my staff, on the following number (609) 989-2181 or you can contact my office directly at (202) 366-4580.

Sincerely,

William H. Gute
Eastern Region Director
Office of Pipeline Safety

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

1998 WL 35166473 (D.O.T.)

End of Document

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**


Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket Nos. C-2022-3030251;
	:	P-2021-3030002
Westover Property Management Company, L.P.	:	
d/b/a Westover Companies	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by Electronic Mail:

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Dated: November 7, 2022