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REPORT OF THE
ATTORNEY GENERAL'S TASK FORCE
ON ENERGY

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Attorney General

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INTRODUCTION

The California Attorney General's Task Force on Energy was established by Attorney General Evelle J. Younger on January 22, 1974, with Senior Assistant Attorney General Robert O'Brien as head. Members of the Attorney General's anti-trust unit, land section, resources section, business law section, environmental unit and consumer protection unit have served as members of the Task Force.

The Task Force was given the following mandate:

1. An intensified anti-trust investigation of the petroleum industry, with particular attention to the questions:

    a. Should there be divestiture of any part of the oil company structure?

    b. Should any part of the oil industry be placed under Public Utilities Commission regulatory control?

2. Examination of state and Federal taxation policies as they affect the petroleum industry.

3. Evaluation of whether price controls on natural gas should be lifted in order to encourage more exploration.

4. Formal support for lawsuits challenging orders of the Federal Power Commission which cut back allocations of natural gas in California.

5. Assisting the Federal Trade Commission in its investigation of the petroleum industry in the western states.

6. An anti-trust investigation into transmission and development of geothermal power in California.

7. A statistical survey of the oil industry in California in order to make a public report of fuel production, storage, refining capacity, reserves, and other aspects of the petroleum industry. The report will cover a five-year period.

8. Assisting state law enforcement agencies to prepare for emergency shortages, with particular emphasis on dealing with crime during these shortages.

9. Take necessary steps to ensure that Federal fuel allocation programs are adequately operated for California's benefit.

10. Intensified support for legislation which will assist in implementing the Attorney General's positions on energy and the environment.

The purpose of this report is to outline the progress made by the Task Force to the present time, and to make recommendations for action in those areas where studies are completed.

I. QUESTIONS RELATING TO ANTI-TRUST MATTERS

A. *SHOULD THERE BE DIVESTITURE OF ANY PART OF THE OIL* COMPANY STRUCTURE

Recommendation: Retail service stations should be divested from petroleum producers, refiners, or product transporters.

Discussion:

The primary concern of the Attorney General's Task Force in regard to the anti-trust aspects of the petroleum industry is to assure that the industry is competitive. An examination of the industry on a nationwide basis indicates that it is dominated by eight major oil firms: Exxon, Texaco, Gulf, Mobil, Standard of California, Standard of Indiana, Shell, Arco). However, domination is not so great as to constitute a monopolistic situation on its face. The petroleum industry does not fit the generally accepted definition of a concentrated industry. For example, crude production in the United States in 1970 by the big four oil companies (Exxon, Texaco, Gulf, Mobil) constituted approximately 30% of the total -- by the big eight approximately 50%. The critical point in determining over-concentration for the big four is 50% control and the critical point for the big eight is 70% control.

Since 1955, however, the oil companies have increased their control of crude production. The big four in 1955 showed approximately 19% control and the big eight 31% control. However, this can be explained by two factors: (1) pro-rationing restraints were lifted between 1955 and 1970. Pro-rationing is the device employed by some states to limit production within state boundaries. Pro-rationing primarily affects the big companies and when pro-rationing restraints were lifted the big companies produced more; (2) the development of the outer continental shelf which by its very nature only attracts large companies. In refining throughout the United States, in 1972 the big four had approximately 33% control of petroleum refining - the big eight 59%. (The trend since 1955 was constant -- in 1955 the big four share was 33% and the big eight was 57%.)

Figures for California and the West Coast, which are not completely available at this time, may *show a greater concentration than the national figures.* Also, the widespread use of joint ventures throughout the industry adds another factor to questions of petroleum industry concentration and control over oil markets.

The question then remains: is there any aspect of the petroleum industry where the concentration is of such a nature that anti-trust action is warranted. The answer is that potential anti-competitive practices exist at the retail level, in the sale of gasoline, and there is reason to believe that the recent gasoline scarcity acerbated the anti-competitive situation. The April 1974 Consumers Reports notes:

> In the near but fast-fading past when gasoline was plentiful, the gas stations controlled by major oil companies were losing a large measure of their hegemony over the American driving public. Between 1960 and 1972, independent and nonmajor brand discount gas stations increased their share of the market from 10 per cent to 25 per cent . . .
>
> Their success formula was simple and unadorned—a straightforward pitch to cost-conscious consumers. By cutting automotive service to a minimum and by operating high-volume, around-the-clock type stations, the independents were able to sell gas for from 2¢ to 6¢ per gallon less than the going prices at stations controlled by major oil companies.
>
> ...The energy crunch closed with bear-trap suddenness. And the major oil companies were quick to capitalize on the chief weakness of the independents—their place at the bottom of the gasoline distribution chain...
>
> The squeeze on the independents coincides with another trend in the retail gasoline business: The major oil companies are

> canceling leases on many of their marginally profitable dealer-operated stations, replacing them with large-scale company-owned and operated stations...
>
> But it's unrealistic to expect the major oil companies not to use the present shortages to their own ends. They are not in business as a public service; they are in business to maximize the return on their shareholders' investment. Still, it's the public's prerogative to establish, through the instrument of government, a framework within which corporations are permitted to operate. In the case of the petroleum industry, it's clearly in the public interest to maintain competition in the retail gasoline business.

Our study of the industry has concluded that there are four different operations in the petroleum industry -- crude production, transportation, refining, and marketing and sales. The major petroleum companies are all vertically integrated as though they were a single company. Integrated control of the entire industry by a small group of companies plus the size of the largest of the majors raises the anti-competitive spectre. The FTC has a suit against several oil companies now regarding the East Coast and is investigating the West Coast, to determine if there is basis for federal anti-trust action.

Setting aside for the moment any comprehensive anti-trust actions that might lead to overall divestiture, it is the task force recommendation that divestiture be required at the retail level. This is the area where the situation is most critical; this is the area where immediate action is most needed. While a fully competitive structure at the retail level does not guarantee a lowering of gasoline prices, nor a greater supply of gasoline, it does guarantee that the free market will be allowed to work to the benefit of the consumer, and that free market pressures will be exerted to hold down gasoline prices.

Divestiture at the retail level can be accomplished in two ways: (1) by anti-trust action seeking to divest major corporations of their retail outlets. This would require proving violations of law, such as a conspiracy to drive out independent retailers; (2) through legislation requiring all companies which own or control refining, producing or transporting of petroleum to divest retail stations, or, if they choose, to divest all operations other than retail. At the present time, a legislative approach is clearly preferable. An anti-trust lawsuit on this matter could take eight years to complete, with no guarantee of success.

Evidence presented to us by economists we consulted, as well as empirical data on the oil industry, indicates that before the current energy crisis and resulting gasoline shortage, there was more competition at the retail level because independents were able to get enough gasoline to compete. Much of this gas was obtained from majors who had more gas than their own retailers and franchisees could sell. Now it appears that with the majors having to serve their own stations first they have been cutting out the independents. The independent affiliated stations (<u>i.e.</u>, major franchisees) are also affected by the majors' absolute control over supplies. We suspect that the majors may be supplying their own company-owned gas stations before they supply the affiliated independent stations (franchisees). Such a practice would be an apparent violation of Federal Energy Office guidelines relating to allocation.

Divestiture at the retail level would create competition. If all refineries were competing for the sale to retailers, presumably the price to retailers should be lowered. Further, without the price support previously provided by the majors to their own retailers, the lowest priced retailer should be able to capture his fair share of the market.

The Task Force legislation on oil company divestiture is included in Section 10.

B. SHOULD ANY PART OF THE OIL INDUSTRY BE PLACED UNDER PUBLIC UTILITIES COMMISSION REGULATORY CONTROL

<u>Recommendation</u>: The oil pipeline structure should be placed under Public Utilities Commission control.

Discussion:

Regulatory control of an industry involves assigning to a governmental agency (such as the Federal Power Commission or Interstate Commerce Commission, on the Federal level, or the Public Utilities Commission on the California state level) the function of regulating the industry or major aspects of it. This involves setting prices (rates) for the commodity provided, guaranteeing a fair rate of return to the industry, and a host of side activities such as regulating supplies, locations, and service. It is the antithesis of a free competitive market.

Such regulation, or the ultimate of such controls - nationalization or public ownership - is appropriate where a monopoly situation exists, such as in electrical, water, and telephone services; and is undoubtedly called for in the transportation field where predatory practices have prevailed historically.

With certain exceptions, the oil and gas industry does not show a monopolistic concentration. Although the oil industry is huge, and of vital importance in national and international economics, no effective case for blanket control or nationalization of the industry has yet been made. However, at the present time, certain aspects of the industry are under PUC-type control, some desirable and some not:

(a) Interstate gas pipelines and production are regulated by the Federal Power Commission.

(b) Interstate petroleum pipelines are under ICC regulation.

(c) Gas distribution is controlled virtually everywhere by state public utility commissions. Such systems are frequently municipally owned.

(d) Intrastate petroleum pipelines are, except in California, usually common carriers and subject to state control.

(e) Except in California, oil production has been subject to certain controls. Due to shortages, control is now effectively abandoned.

The Task Force concludes that, at the present time, the public interest can be adequately protected without placing the entire California oil and gas industry under such controls. We do not believe segments of the California industry, such as gasoline sales, refining, or crude production should be placed under PUC control. Any anti-competitive or predatory practices can be adequately dealt with by anti-trust and trade practice laws as they now exist.

Oil pipelines, however, are a special consideration. Unlike mid-continent oil fields, only five California petroleum pipelines are common carriers and thereby subject to Public Utility Commission control and available to all producers and refiners. The largest such common carrier is owned by Southern Pacific Railroad, which uses its right of way for pipelines for petroleum products. Although the California Constitution and the Public Utility Code declare <u>all</u> such pipeline to be public utilities, and subject to regulation, California courts have imposed an additional prerequisite; that the owner dedicate the pipeline to common carrier status.

In 1960, Justice Traynor, speaking for the California Supreme Court, strongly indicated that the old rationale for requiring dedication no longer existed. Current statutes were, however, enacted on an interpretation of the older court cases. Therefore, the Court concluded, PUC regulation of petroleum pipelines without dedication would require affirmative legislative action. <u>Richfield Oil Company</u> vs. <u>Public Utilities Commission</u>, 54 Cal.2d 419 (1960).

The usual method of moving crude oil from the fields to shipping ports and refineries is large pipelines. Pipelines are expensive to build. An independent producer can rarely build pipelines to market his production, and an independent refiner can rarely build pipelines to many or all of his sources of supplies. This leaves both producers and refiners at the mercy of those who own the existing pipelines, usually the major integrated oil companies. Exchange agreements are frequently entered into in California, but the owner of the pipeline can bargain from an unfair bargaining position.

The Task Force notes that complaints have been made relative to denial of pipeline access, indicating that abuses may be taking place. Such abuses could result in suppression of independent oil production, refining or sales. And we note that apparently, no state agency has a record of the location and ownership of all the pipelines in California.

Thus it would appear that pipeline operations in California have become a "natural monopoly." We recommend therefore that PUC control be imposed. This will allow a company denied access to pipelines to file a petition with the PUC, which would have the power to guarantee access to transportation of crude and finished products through all pipelines. This can be implemented by legislative action.

The Task Force legislation on oil company pipelines is included in Section 10.

II. AN EXAMINATION OF STATE AND FEDERAL TAXATION POLICIES WHICH AFFECT THE PETROLEUM INDUSTRY

Recommendations:

1. Limit the foreign tax credit, so that American oil companies cannot write off royalties on foreign petroleum operations against their United States taxes.

2. Remove expensing of intangible drilling costs.

3. Abolish the percentage depletion allowance for oil.

Discussion:

There are currently three areas of income tax policy whereby the oil and gas industry is given tax benefits not available either in part or whole to other industries or businesses:

(a) The Depletion Allowance - A producer of oil or gas is allowed to deduct from income from the producing property 22% of the gross income of the property (not to exceed 50% of net). There is no limit to the deduction - it continues as long as the property is producing gross income and irrespective of the capital investment on the cost of acquisition. All other mining and depletable resources industries have a depletion allowance benefit at lesser percentages.

(b) Expensing of Intangible Drilling Costs - Oil and gas producers may either (1) capitalize all dry-hole costs and the intangible (wages, fuel, repairs, etc.) costs of drilling production wells or (2) deduct them as current operating expenses. Since virtually all producers forego cost depletion (ordinary depreciation) and use percentage depletion on the oil, they obviously choose to expense intangible drilling costs. While a strong case can be made for allowing dry-hole costs to be expensed as any other business loss, expensing of intangible costs is another matter. These costs may be deducted in the year they are incurred or by capitalizing them and deducting them over each year of useful life (depreciation). They may be currently deducted (i.e., immediate expensing as opposed to depreciation) in addition to taking the percentage depletion allowance. We feel this amounts to, in effect, a double tax subsidy for the industry.

Our recommendation is to do away with this subsidy. In order to avoid short-run interruptions generating adverse long-run effects on investments, such recommended tax revision probably should be done gradually.

(c) Foreign Tax Credit - All businesses may offset income taxes paid to a foreign government against United States income tax due on their income. This is to preclude double taxation. Since the early 1950's however, by an Internal Revenue Service ruling, and allegedly as part of United States foreign policy, international oil companies have been allowed to offset as a tax credit, royalty payments to oil producing nations. These are Middle East countries primarily. These payments are couched in tax terms but are in fact royalty payments which would ordinarily be deductible from income, not as a tax, but as a business expense. Moreover, the companies are allowed to apply this credit against all foreign income, particularly the lucrative tanker shipping operations, irrespective of in what country the income was earned.

The result of these policies is substantial tax savings for the oil and gas industry, and the statistics show that most major oil companies pay only from 2 to 15% of net income in United States income taxes, when the tax rate for ordinary corporations is 48%. The difference obviously constitutes a major tax subsidy by the American taxpayer to the oil and gas industry. The subsidy, of itself, is not the problem; but the subsidy has resulted in the American petroleum industry becoming excessively dependent upon foreign oil. Oil produced in foreign countries is eligible for depletion allowance and intangible expensing tax subsidies, as well as the foreign tax credit. The ability to fully offset foreign royalties against American taxes, in addition to the other tax breaks, makes it extremely attractive for American oil companies to invest and drill in foreign countries. As the Arab embargo has shown, this can be to the detriment of the American consumer, as well as to our own independent oil producers.

The oil industry puts forth several arguments in favor of maintaining these tax subsidies. The depletion allowance is defended on grounds that the oil and gas in the ground is depleting as produced and can not be replaced. Empirical data, however, suggests that depreciation allowance which permits recovery of the cost of acquisition, as any other business would have, would handle the problem. The vice of the depletion allowance is that it continues beyond recovery of cost as long as there is gross income from production. (See page 12 for a detailed discussion of the drawbacks of the oil depletion allowance.)

Various arguments have been put forth that tax benefits, and more importantly import quotas, are necessary to protect America's energy industry and to foster domestic exploration and production. However, the foreign tax credit has just the opposite effect. Assuming the foreign tax credit ruling of the 1950's was a proper foreign policy consideration then, that rationale no longer holds in the 1970's. And allowing depletion and expensing of intangibles on foreign oil fields, of course, hardly fosters domestic exploration and production. The Arab embargo has shown that the United States may lack an adequate crude oil and petroleum stocks reserve. The oil and gas industry insists that only through retention of the present tax benefits will adequate exploration take place. However, this incentive is not working as it should. There are, moreover, two more fundamental objections to these tax subsidies:

(1) If a subsidy for exploration is needed, then it should be in the form of appropriation by the Congress or the legislatures of the various states, thereby allowing control by the representatives of the people who are paying the subsidy. The amount of subsidy, recipients, location of drilling, etc. could then be blended with overall national priorities. The current tax subsidy method precludes any taxpayer control, and it is unknown whether the subsidies are actually being used for exploration, or as suspected by some for acquisition of competing energy sources, such as coal companies and geothermal energy.

(2) A market free of price restraints should supply adequate exploration funds. A price of $7 to $10 per barrel for crude oil should attract many investors without the need for government support.

Arguments for repeal of the oil depletion allowance.

Because the oil depletion allowance is of particular emotional concern both to the oil industry and the public, the Task Force feels it is beneficial to detail reasons for the recommendation that the allowance be eliminated. Fiscally, this tax subsidy has limited impact on the California treasury, only about $25 million a year. Its impact on the Federal treasury is much greater.

We based a number of our conclusions in the field of oil taxation on the report "An Analysis of the Federal Tax Treatment of Oil and Gas and Some Policy Alternatives," prepared by the Congressional Research Service of the Library of Congress for the U. S. Senate Committee on the Interior. This report quotes from several other studies of petroleum industry taxes, including Federal Trade Commission studies and Treasury Department studies.

With regard to the oil depletion allowance, and its effect on the structure of the oil industry, the report notes:

> "It has been charged that the tax provisions, primarily percentage depletion, have definite effects on the structure of the petroleum industry. On July 12, 1973, a preliminary Federal Trade Commission Report investigating the petroleum industry was published by the Senate Government Operations Committee. The report was directed generally toward concentration and competition in the petroleum industry, but charged that the percentage depletion allowance contributed to vertical integration, concentration and barriers to entry in the petroleum industry. The report suggested that because of the tax advantages in production, firms seek to integrate backward to take advantage of these provisions. Integrated firms (those engaged in production, refining, transportation, and marketing) then have an incentive to set high crude prices which result in a larger percentage-depletion allowance, which they are able to do because they sell crude oil to themselves. The result is concentration of profits in production and a very low rate of profit in refining operations. This low level of refining profits creates a barrier to entry for independent refiners who cannot supply themselves with crude. The general conclusion, is that the industry is characterized by concentration, lack of competition, cooperative behavior and administered prices."

Thus we feel it can be argued that repeal of the depletion allowance can have a beneficial effect on the overall industry, leading to more competition at production and refining levels, and generally more efficient operation. We realize there will be a need for a short term price increase, but, as the report notes, the long term effects on the consumer will not be harmful. The depletion allowance is economically inefficient, and leads to higher rents for oil producing lands, according to the report:

> "[An] aspect of percentage depletion which might lead to inefficiency is that to the extent that percentage depletion acts to bid up the price of oil lands, it acts merely to redistribute income from taxpayers to landowners. Reductions in the percentage depletion rate would tend to stretch out the recovery time rather than affect ultimate recovery. In addition lowering the rate itself would have a primary effect on low cost wells, since high cost wells often have percentage depletion limited through the net income limitation. The primary effect of percentage depletion is to encourage the drilling of development wells in known fields. These expenditures in known fields do not add substantially to the reserves.

The original intent of these tax subsidies was to establish a quid pro quo whereby the consumer got gasoline at a low price, and the oil companies received generous tax advantages in return for keeping the price low. The glut of low cost foreign oil which began flowing into this country in the late 1950's was largely due to the provisions of the foreign tax credit, which encouraged exploration in foreign lands where costs were lower than in the United States. Indeed, in real dollars the price of gasoline to the consumer remained virtually static between 1948 and 1972.

However, this is no longer the case. The consumer no longer buys gasoline at bargain prices. Inflation in fuel prices is running far ahead of cost of living inflation at the current time. Therefore, we take the stand that the tax subsidies no longer operate to keep down prices for the consumer, and the quid pro quo no longer exists. If a tax subsidy neither holds down prices nor increases exploration, it is not in the public's best interest to maintain it. We find with the oil depletion allowance that it operates only marginally to hold down prices, and does not lead to increased exploration, arguments of the oil industry notwithstanding. Again the Senate report notes:

> "The review of literature, and both qualitative and quantitative analysis previously presented in this paper, tends to suggest that percentage depletion and intangible drilling costs are inefficient in stimulating exploration and development. The reasoning for this argument may be summarized as follows:
>
> "(1) These tax provisions tend to lower the price of scarce commodities and to increase rents to the landowner and retard the development of substitute energy sources, since they depress the prices of oil and gas. Their repeal would increase oil and gas prices and reduce land rents.
>
> "(2) Rising prices for oil and gas, in turn, would permit oil companies to protect themselves from losses due to repeal of percentage depletion.
>
> "(3) The percentage depletion allowance is determined by the level of current production and is the outcome of past investments to achieve that production. It does not influence current output of minerals. Tax relief based upon investments already taken can only indirectly influence future investment through generating corporate liquidity via internal cash flows. But this is an inefficient means of attempting to encourage investment as it grants tax

relief based on existing capital stock and not future capital requirements. If percentage depletion were repealed, the owners might raise prices in the short run, but, if they were profit maximizing monopolists, they would have already obtained what the market would bear. So they will suffer a capital loss. For the same reason, percentage depletion reduction appropriately would strike rents and would not contribute to an increase in oil and gas prices.

"(4) The present value of percentage depletion with development drilling is higher than with exploratory drilling as the output comes on stream almost immediately. The expensing of intangible drilling costs when viewed in concert with the expensing of dry holes only provides an incentive for producing wells. However, the removal of the option to expense these costs would make development drilling less attractive.

"(5) Investment in oil and gas exploration is more likely to be stimulated by the immediate write-off of dry holes. By contrast, the elimination of percentage depletion would add only nominal profitability to investment in exploration and development activities because it accounts for such a small fraction of the future income stream. Further, any wells already in production, if their operating costs are less than the value of their output will continue to produce, so long as taxable income exceeds net cash flow before income tax.

"It would appear that tax policy would be more efficient if it served to redirect tax incentives toward exploration and development and away from rewarding drilling in known fields."

III. AN EVALUATION OF WHETHER PRICE CONTROLS ON OIL AND NATURAL GAS SHOULD BE LIFTED IN ORDER TO ENCOURAGE MORE EXPLORATION

Recommendation: All government-imposed price restrictions on natural gas and petroleum products which constitute an artificial restraint on the free market, should be removed.

Discussion:

1. Deregulation of Natural Gas. In 1938 Congress enacted the Natural Gas Act designed to regulate, under the jurisdiction of the Federal Power Commission, the interstate shipment of natural gas by pipeline companies. These companies were accused of taking unfair advantage of producers. In 1954 in Phillips Petroleum Company vs. State of Wisconsin, 347 U.S. 672, the Supreme Court extended the jurisdiction of the FPC to prices paid to producers of gas produced for interstate shipment. That amounted to control over wellhead gas prices. The FPC has wrestled with this problem for years and now has a series of area rates for gas destined for interstate shipment. The rates are subject to upward, downward and even retroactive adjustment by the FPC. The prices currently allowed at the wellhead are generally in the area of 25-30 cents per thousand cubic feet (mcf), with less allowed for older contracts. Prices charged for intrastate gas, not under FPC regulations, have been reported to be as high as 95¢ per mcf.

The basic pricing policy of FPC has been a traditional public utility approach; that is, cost of service. Little regard has been paid to the inherent or market value of the product. More recently, the FPC has been integrating into the cost of service some consideration for market value. There is a fear, however, that the Courts will not allow this.

Most experts agree that there is a long range gas supply shortage, and many, including the FPC, believe it is short range as well. Thus the FPC has issued curtailment orders on interstate shipment of natural gas, to the severe detriment of California where, as a result, fuel oil must be burned for the generation of electricity instead of gas. (The curtailment orders are the subject of a separate memorandum by the Task Force.)

Interstate shippers know there is currently a shortage, and the stark difference between FPC regulated prices (25-30¢ per mcf) and unregulated prices (up to 95¢ per mcf) clearly shows why no newly discovered gas is being placed in the interstate market. We feel that *artificial price restrictions are suppressing exploration* for and development of new reserves, although new oil discoveries, particularly offshore, will undoubtedly bring with them additional gas supplies.

The Task Force concludes that the FPC wellhead price regulations, should be removed. Whether this should be immediately done for all new gas placed in interstate shipment, or whether phased in under FPC supervision, would appear to make no great difference. The important objective is to restore a free market for natural gas. This conclusion, however, does not suggest removal of FPC regulation over interstate gas pipelines, an area of inherent monopolistic control.

2. Lifting Price Controls on Petroleum Products. As anyone who has waited in line for gasoline knows, something is wrong. Some facts appear indisputable: The United States, although still the largest single producing country of crude oil at nine million plus barrels per day, nevertheless must import prodigious quantities of crude and refined products to meet an increasing demand for oil products. Current imports total from five to seven million barrels per day. The statistics, most of which come from the oil industry, show a constant excess of demand over supply for at least the last two years. These same statistics, however, also show a relatively steady stock, particularly of motor gasoline, which is hardly comforting for those forced to wait in line.

The Task Force concurs with the judgment of many economists that the current shortage in the United States is in large part caused by artificial suppressants and dislocations forced on the market by federal allocation and pricing regulations. We believe these should be removed immediately to allow the free market to prevail. If a future Arab oil embargo in fact severely restricted the total supply available to the United States, then immediate heating oil and motor gasoline rationing would be justified. Otherwise, the normal supply-demand functions should be allowed to work.

3. Impact of Deregulation. Most economists agree there would be an immediate effect, if pricing restrictions on petroleum products and natural gas were lifted. Generally it is to be believed that crude oil prices would rise to \$10 per barrel (\$9 for California crude) immediately; but over a two to three year period prices would settle back to the \$6 to \$8 range. Gasoline might go as high as 80 cents

per gallon, and later retreat to the 60-70 cents range. Interstate gas wellhead prices would be expected to rise to 60-65 cents per mcf, resulting in roughly a one-third increase in home heating bills.

In addition, other prices would rise, for instance food costs, because of increased fertilizer, fuel and transportation costs. And there would be increased costs in transportation; plastics and other materials made from petroleum feedstocks; electricity would rise, due to fuel costs. All these price rises reflect, however, a basic fact of economic life: the days of cheap energy in the United States and elsewhere in the world have come to an end.

We believe that it is extremely important to stress that although prices would rise, the overall cost to the consumer would be much less than the price increases. We consider our proposals a total package, and would not favor a free market economy in oil and gas as long as the unjustified and inefficient oil tax subsidies are still in effect. Repeal of the oil depletion allowance and ending expensing of intangible drilling costs, and revising the foreign tax credit will save taxpayers millions of dollars. So, while the consumer as purchaser may pay more for the product at the retail level; the consumer as taxpayer will save due to ending the tax subsidies. And, a free market approach will tend to curb the excessively high profit margins, without the necessity of imposing excess profits taxes.

There are also some non-fiscal but nevertheless very important corollary benefits to de-regulation of prices. An increase in natural gas supplies will help alleviate California's smog problems. Higher petroleum product prices should spur efforts to develop alternate and additional sources of energy, such as geothermal, nuclear and solar. It is estimated that oil shale, of which the United States has an enormous supply, can be profitably produced and the petroleum extracted at $6 plus per barrel, witness recent successful bid-lease sales by the Federal Government. Higher natural gas and petroleum prices should spur coal gasification, coal desulphurization, and coal liquification projects, and gas liquification efforts.

The one obvious beneficial effect of the current petroleum shortage is that the United States now must and will search for new and more efficient energy sources. A free market will help in those efforts.

4. <u>An Excess Profits Tax.</u> The high profit margins enjoyed by international oil companies since the commencement of the gasoline shortage has led to increased calls for an excess profits tax. We note that increased crude oil and gasoline prices, increased demand with no real decrease in supply, and the end to gas wars, have resulted in an enormous increase in industry profits. However, we do not feel that these profits can be adjusted by an excess profits tax, but rather that they warrant an end to the tax benefits particular to the oil industry. We object to an excess profits tax and an inefficient and improper response to the profit margins on three grounds.

(a) As Congress is finding out, the definition of "excess" is almost impossible to spell out.

(b) Such a tax encourages inefficiency and cost increases to avoid the tax, resulting in economic waste.

(c) Such a tax would be a form of punishment for the oil and gas industry. If the questioned profits of the industry are the result of monopolistic or predatory practices, or unfair trade operations, then laws prohibiting such practices should be strengthened and enforced. To impose a tax on an industry because it has made money would be to impose another artificial restraint on free market.

While we oppose such a tax, we emphasize that the fact profits are so large, is testimony in itself that the oil industry no longer needs the special depletion allowance, the current foreign tax credit, and special tax benefits for intangible drilling costs. If these tax subsidies were repealed, and a truly free market situation allowed to develop, the pressures of the marketplace would of themselves reduce the profit margins. This is to be preferred to a questionably effective excess profits tax.

IV. FORMAL SUPPORT FOR LAWSUITS WHICH CHALLENGE ORDERS OF THE FEDERAL POWER COMMISSION WHICH HAVE CUT BACK ALLOCATIONS OF NATURAL GAS TO CALIFORNIA.

The Federal Power Commission's curtailment of the natural gas supply to California has resulted in three principal lawsuits.

We received from the U.S. Court of Appeals for the District of Columbia permission to file an amicus curiae brief in the case involving the Federal Power Commission's statement of policy of January 1973. This order established an 8-tier system of priorities in the distribution of natural gas (since amended to a 9-tier priority system). The basic problem of the policy is that curtailments were made with regard to end use, rather than contractual relationships between the utilities and their customers. Pacific Gas and Electric and the Mississippi Power and Light companies have both appealed the Federal Power Commission's order. Our petition is on the side of Pacific Gas and Electric.

Our brief was sent to the Court on April 5. If the order is allowed to stand, there will be a serious curtailment in the supply of natural gas to California, which will require switching to more expensive and less clean fuels by California industries and consumers. If our intervention is successful, it will have the long term effect of lowering fuel prices in California.

V. ASSISTANCE TO THE FEDERAL TRADE COMMISSION IN ITS INVESTIGATION OF THE PETROLEUM INDUSTRY IN THE WESTERN STATES.

In 1973, the Federal Trade Commission filed a detailed anti-trust lawsuit against several major oil companies, charging that the vertical integration of the oil industry amounted to a violation of the Federal anti-trust laws. The suit involved petroleum operations in the East and Midwest. At the time this suit was filed, the California Attorney General's Office began a study to determine what role California should play in this and similar lawsuits. The FTC has concluded that the vertical integration and concentration evident in the industry amounts to a shared monopoly although there was no evidence of conspiracy to control prices. Our study has stressed the anti competitive structure of the industry.

The Federal Trade Commission has now undertaken an examination of the oil industry in the Western States, and we have committed one man-year of support from the Attorney General's Office to this effort. We also requested the FTC to make public the transcripts of these present actions against the major oil companies in the East and Midwest. The FTC has granted our request.

This undertaking is, of course, a supplement to our own independent anti-trust investigations. Whether or not the FTC files an action in California, will not necessarily determine what will be recommended upon conclusion of our independent anti-trust investigation.

VI. ANTI TRUST INVESTIGATION OF GEOTHERMAL RESOURCES IN CALIFORNIA

The Attorney General's Office has commenced a long term investigation of allegations of anti-trust violations in the development and transmission of geothermal power in California. The allegations of violations involve the Pacific Gas and Electric Company, and possibly the Union Oil Company. It will require a considerable amount of time to gather the information necessary to make a decision on the advisability of anti-trust actions by our office. At present, the U.S. Department of Justice is conducting an investigation of its own, and we have requested access to the information they have acquired thus far. We have been in contact with the Division of Oil and Gas, and the Northern California Power Agency in our effort to obtain information.

VII. SURVEY OF THE OIL INDUSTRY IN CALIFORNIA

The following letter has been sent to 760 oil and gas companies in California:

EVELLE J. YOUNGER
ATTORNEY GENERAL

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

Department of Justice

STATE BUILDING, LOS ANGELES 90012

March 4, 1974

TO: THE OIL OR GAS PRODUCER
ADDRESSED

RE: REQUEST FOR INFORMATION

Dear Sir:

The Office of the Attorney General is vested with numerous responsibilities in the environmental field. Not only must he enforce California's new environmental laws, but he must act, in effect, as legal guardian for California's air, land, and water. He is not unmindful of the need to maintain a sound economy, and recognizes that these concerns are often in conflict.

Among California's major environmental concerns at the present time is the orderly development of sources of energy. It appears that California faces an energy crisis of substantial proportions. In order that the Office of the Attorney General, and the citizens of California may be better informed as to the extent and seriousness of that crisis, and to permit the formulation of sound policies in response to it, the Attorney General is hereby requesting you, as a California oil or gas producer, to provide certain information. The Division of Oil and Gas estimates that well in excess of 90% of California's energy consumption is currently met by oil and gas supplies. Consequently, the requested information involves the production, storage, importation, estimated proven reserves, and distribution of those supplies within California. Attached is a questionnaire that you are hereby requested to complete and return.

Your cooperation in this effort is sincerely solicited, with the hope that a voluntary effort to inform the public will prove the most effective method of achieving our goals. Please address any correspondence, and your replies to Senior Assistant Attorney General Robert H. O'Brien, 217 West First Street, Los Angeles, California 90012, Telephone (213) 620-2494. Thank you.

Very truly yours,

EVELLE J. YOUNGER, Attorney General

Robert H O'Brien

ROBERT H. O'BRIEN
Senior Assistant Attorney General

Encl.

OFFICE OF THE ATTORNEY GENERAL
STATE OF CALIFORNIA

REQUEST FOR INFORMATION CONCERNING
OIL & GAS SUPPLIES IN CALIFORNIA

DEFINITIONS

As used in this request for information, the following terms have the meanings indicated:

1. "California" includes the land areas of the State of California, the California State tidelands, and the United States Outer Continental Shelf off the shores of the State of California.

2. "Company" includes the company to which this correspondence is directed and all of its domestic and foreign parents, subsidiaries, divisions, and affiliates.

3. "Crude oil" means all liquid hydrocarbons produced from oil wells.

4. "Production" means gross production of crude oil or natural gas, including royalty interests.

5. "Gas" means all hydrocarbons which at atmospheric conditions of temperature and pressure are in a gaseous state.

6. "Proved Reserves" means the estimated quantities of all liquids statistically defined as crude oil, and of all natural gases, which geological and engineering data demonstrate with reasonable certainty to be recoverable in the future from known reservoirs under existing economic and operating conditions.

7. "Units" mean areas operating under unit agreements, or plans of development and operation for the recovery of oil and gas made subject thereto as a single consolidated unit without regard to separate ownerships and for the allocation of costs and benefits on a basis as defined in the agreement or plan.

8. "Joint Operations" means areas operating under a joint operating agreement between or among concurrent owners for the operation of a concurrently owned tract or leasehold for oil, gas and other minerals.

9. "Stock" means the inventory of a company in the company's storage facilities, or in storage facilities of others which are owned, leased, rented or otherwise under the control of your company.

Please answer the following questions and produce any documents under your control or custody which were used to arrive at your answers:

<u>PRODUCTION</u>

1. The average number of producing wells, on a monthly basis, wholly or partially owned or operated by your company or your company and others in California between January 1, 1969 and the present. Set forth the number of wells wholly owned separately from the number jointly owned.

2. The amounts, in barrels, of your company's production of crude oil in California, on a monthly basis, between January 1, 1969 and the present.

3. The amount, in barrels, of your company's share of production of crude oil from units in California, on a monthly basis, between January 1, 1969 and the present.

4. The amounts, in barrels of your company's share of production of crude oil from jointly owned wells in California, on a monthly basis, between January 1, 1969 and the present.

5. The amount, in thousand cubic feet (M.C.F.), of your company's production of natural gas in California, on a monthly basis, between January 1, 1969 and the present

6. The amount, in M.C.F., of your company's production of natural gas from units in California, on a monthly basis, between January 1, 1969 and the present.

7. The amount in M.C.F., of your company's share of natural gas production from joint operations in California, on a monthly basis, between January 1, 1969 and the present.

STOCKS

8. The amount of your company's stock, in California, in barrels (average number of), of the following, on a monthly basis, between January 1, 1969 and the present:

a. Crude oil

b. Gasoline

c. Diesel fuel

d. Jet fuel

e. Residual fuel oils

f. All other petroleum products.

9. The amount of your company's stock, in average number of M.C.F., of natural gas, on a monthly basis, between January 1, 1969 and the present.

10. The total storage capacity (in M.C.F. and barrels, respectively), of natural gas and oil (crude and products) of your company's bulk storage facilities in California on a monthly basis, between January 1, 1969 and the present. Include in total capacity for each month all bulk storage facilities (including tankers) which the company either owned, operated, rented, leased, or had any other right to use during that month.

IMPORTS

11. The amount, in barrels, of your company's total crude oil imports (from any sources outside of California) on a monthly basis, between January 1, 1969 and the present. As to any imports from outside the United States please indicate the source nation and the amount obtained from each such source nation.

12. The amount, in M.C.F. of natural gas imported by your company (from any sources outside of California) on a monthly basis between January 1, 1969 and the present. As to any imports from outside the United States please indicate the source nation and the amounts obtained from each such source nation.

13. The amount, in barrels, of your company's total imports of oil products, other than crude oil (from any source outside of California) on a monthly basis, between January 1, 1969 and the present, for each of the following:

a. Crude oil

b. Gasoline

c. Diesel fuel

d. Jet fuel

e. Residual fuel oils

f. All other petroleum products

As to any imports from outside the United States please indicate the source nation and the amounts of each oil product obtained from each such source nation.

EXPORTS

14. With respect to your company's exports of natural gas, crude oil, and oil products, outside of California, please provide the same figures as requested in numbers 11 - 13 above and indicate the state or country to which exports were delivered and the amount sent to each such state or country.

RESERVES

15. The amount of your company's estimate of total proven reserves, in M.C.F. of natural gas and barrels of crude oil respectively, as of December 31st of each calendar year from 1969 to 1973, and at the present time on both a California and a worldwide basis.

16. Describe the method by which the figures provided in response to No. 15 above were estimated.

REFINERIES

17. The capacity, in barrels per day, of refineries owned or operated by your company in California, on a monthly basis, between January 1, 1969 and the present.

18. The actual monthly production, in barrels, on a monthly basis from the refineries owned or operated by your company between January 1, 1969 and the present of the following products:

a. Gasoline

b. Diesel fuel

c. Jet fuel

d. Residual fuel oils

e. All other products

19. The percentage of refinery capacity utilized by your company, on a monthly basis, between January 1, 1969 and the present.

20. The percentage of refinery capacity of refineries owned or operated by your company utilized by persons other than your company, on a monthly basis, between January 1, 1969 and the present.

SALES

21. The amount, in barrels, of each refined product sold in California, in the United States, and throughout the world by your company, on a monthly basis, between January 1, 1969 and the present.

MISCELLANEOUS

22. Please set forth the names and titles of each person involved in the preparation of responses to the above questions. As to each such person please indicate the number of each question on which the person participated.

VIII. ASSISTANCE TO STATE LAW ENFORCEMENT AGENCIES TO PREPARE FOR EMERGENCY ENERGY SHORTAGES

We have conducted a preliminary review of law enforcement contingency plans for dealing with crime in the event of major blackouts or other energy shortages. On January 28, we sent to all agencies a copy of the results of our preliminary review, with a guide to help them prepare for the energy shortage and suggestions of how to cope with blackout and brownouts.

The Office of Emergency Services has responsibility for long range planning in this area, and our office is in contact with them. The OES is conducting an evaluation of law enforcement problems with regard to the energy crisis.

IX. OPERATION OF THE FEDERAL FUEL ALLOCATION PROGRAMS IN CALIFORNIA

We feel there are problems with the methods and amounts of fuel allotted to California under the Federal fuel allocation system. To assure that California receives its proper allocation of gas and oil, we have offered our services to the State Energy Planning Council, and we requested that the Attorney General be made a member of the Council. This has been done.

We are prepared to file suit in any month in which the Energy Council and our office feel California is receiving insufficient fuel for our particular needs. In determining state allocations, we feel the Federal Energy Office should take into consideration the unique features of each state. Geographically, California is a long state with several diverse population centers. As a result, we must rely on the automobile more than other states. We also have significant agricultural and tourism industries. We belive all these factors must be taken into account in allocating fuel to the state.

An attorney has been assigned by this office to work with the State Energy Planning Council, and to monitor Federal fuel allocation policies as they relate to California.

X. LEGISLATION IN SUPPORT OF ATTORNEY GENERAL'S ENERGY POSITION PAPER AND RECOMMENDATIONS OF THE ENERGY TASK FORCE

1. Letter to members of California Congressional delegation in support of Federal energy bills.

2. Legislation on divestiture of retail outlets by the oil companies.

3. Legislation placing pipelines under Public Utilities Commission regulation.

The Attached letter was sent to the following members of Congress:

CALIFORNIA SENATORS

Alan Cranston
John V. Tunney

CALIFORNIA CONGRESSMEN

Don H. Clausen
Harold T. Johnson
John E. Moss
Robert L. Leggett
Phillip Burton
William S. Maillard
Ronald V. Dellums
Fortney H. Stark
Don Edwards
Charles S. Gubser
Leo J. Ryan
Burt L. Talcott
Jerome R. Waldie
John J. McFall
B.F. Sisk
Paul N. McCloskey, Jr.
Robert B. Mathias
Chet Holifield
Carlos J. Moorhead
Augustus F. Hawkins
James C. Corman
Del Clawson
John H. Rousselot
Charles E. Wiggins
Thomas M. Rees
Barry Goldwater, Jr.
Alphonzo Bell
George E. Danielson
Edward R. Roybal
Charles H. Wilson
Craig Hosmer
Jerry L. Pettis
Richard T. Hanna
Glenn M. Anderson
William Ketchum
Yvonne Brathwaite Burke
George E. Brown, Jr.
Andrew J. Hinshaw
Bob Wilson
Lionel Van Deerlin
Clair W. Burgener
Victor V. Veysey

EVELLE J. YOUNGER
ATTORNEY GENERAL

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL
Department of Justice
STATE BUILDING, LOS ANGELES 90012

Honorable
United States House of Representatives
Capitol Building
Washington, D.C. 20515

Dear Congressman:

The current shortages in oil supplies have served to highlight the substantial proportions of the energy crisis we face. While emergency measures are in order, the Congress of the United States has also been called upon to give careful consideration to long-term solutions as well. The result has been a dramatic increase in the volume of proposed energy legislation. Our staff has studied the following bills, and we particularly recommend them for your support.

S. 2176, the National Fuels and Energy Conservation Act, was introduced by Senator Jackson and passed the Senate on December 10, 1973. It is now before the House Interstate and Foreign Commerce Committee. This bill incorporates a wide variety of energy conservation measures that can materially aid in solving the energy crisis. It establishes new structures for identifying and responding to energy problems, and appropriates needed funds for research and development in the area. We regard the following measures as among the outstanding features of the Act:

1. The Automobile Fuel Economy Act is enacted by the addition of Title V to the Motor Vehicle Information and Cost Savings Act (15 U.S.C. § 1901 et seq.). This provides that the Department of Transportation establish minimum fuel economy standards for 1978 model cars, and requires dealers to prominently place a sticker indicating expected miles per gallon and estimated annual costs on each automobile. We have endorsed similar legislation for California, but effective controls must come at the national level.

2. The Automotive Transport Research and Development Act would be added as Title VI of the Motor Vehicle and Cost Savings Act. This provision appropriates $200 million in the form of grants and loan guarantees to insure the development of production prototypes for advanced automobiles. These vehicles are to be energy-efficient, safe, damage-resistant and environmentally sound. The prototypes are to be ready for production within four years.

3. The bill also requires that a complete life-cycle cost analysis be prepared for each major federal facility to be constructed, a measure that we are also supporting in the form of H.R. 1565.

4. Finally, S. 2176 contains a directive to the Federal Trade Commission to establish methods for determining the cost of major energy-consuming products over an average use cycle. The FTC is then to require that such information be displayed in selling and advertising such products. This "Truth-in-Energy" requirement provides the consumer with information needed to conserve energy in the home, and therefore creates an indirect incentive to manufacturers to improve the efficiency of their products.

H.R. 11565 is an act for the development of design criteria for new construction and for the exploration of the possibility of improvement of existing buildings. It also requires federal agencies to prepare a complete life-cycle cost analysis for new major federal facilities. Because the important provisions of this act are included in S. 2176, it should be superseded should this act be passed. However, it is an important measure in its own right and fully merits independent support. Careful attention to long-range efficiencies can result in savings both in energy consumed and dollars spent.

H.R. 10965 was introduced by Representative Anderson of California. We believe it would set an important example for the nation by increasing the proportion of fuel-economy cars purchased by the federal government. Encouraging the use of small cars is one way to alleviate the pressures of the current energy crisis. We would like to see the bill amended, however, to add the words "and thereafter" at the end of line 1 on page 2 in order to correct what was probably a technical oversight in drafting. This would insure that the legislation remains effective after 1976.

H.R. 8628, introduced by Representative Brown of California, is a bill to encourage development of geothermal resources for the production of electrical energy. The bill creates the Geothermal Energy Development Corporation whose initial responsibilities include the construction of two demonstration facilities. It is governed by a board of nine directors nominated by the President. We have suggested an amendment to the author to provide that all directors be confirmed by the Senate. We believe that geothermal resources hold special promise for the State of California and we urge your support in this matter.

H.R. 10392, the NASA car bill also introduced by Representative Brown, with its objectives of energy conservation, economy, clean emission characteristics, performance and safety, and its utilization of the unique engineering systems competence to be found in NASA, offers a real prospect of significant development in ground propulsion systems.

As a member of the California congressional delegation, we urge your support of these bills.

Very truly yours,

EVELLE J. YOUNGER
Attorney General

SENATE BILL No. 2121

Introduced by Senators Mills, Behr, and Robbins

ASSEMBLY BILL No. 3928

Introduced by Assemblymen Nimmo, Berman, Carter, Craven, Ingalls, and Papan

April 18, 1974

An act to add Article 2.5 (commencing with Section 16730) to Chapter 2 of Part 2 of Division 7 of the Business and Professions Code, relating to restraint of trade.

LEGISLATIVE COUNSEL'S DIGEST

SB 2121, as introduced, Mills. Restraint of trade.

Makes it unlawful, after one year from the date of enactment of this act, for any person to own or control any gasoline marketing outlet who is also engaged in the business of producing or transporting petroleum.

Provides that neither appropriation is made nor obligation created for the reimbursement of any local agency or school district for any costs incurred by it pursuant to the act.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no state funding.

The people of the State of California do enact as follows:

SECTION 1. Article 2.5 (commencing with Section 16730) is added to Chapter 2 of Part 2 of Division 7 of the Business and Professions Code, to read:

Article 2.5. Petroleum Industry Divestiture

16730. This article may be cited as the "Petroleum Industry Divestiture Act of 1974."

16731. (a) The Legislature finds and declares that in order to promote the public health, safety and welfare of the people of the State of California that:

(1) It is necessary to insure adequate supplies of petroleum products at competitive prices;

(2) It is necessary to remove currently existing competitive restraints in the structure of the petroleum industry; and

(3) Ownership or control of gasoline retail marketing outlets by any person engaged in the business of production, refining, or transportation of petroleum precludes competition, increases the cost of gasoline and diesel fuels and is often detrimental to the interest of individual gasoline marketing retailers and consumers.

(b) The Legislature declares that the purpose of this act is to insure adequate supplies of petroleum products at competitive prices by requiring the divestiture of gasoline marketing outlets by any person engaged in the business of production, refining or transportation of petroleum.

16732. As used in this act the term:

(1) "Affiliate" means a person controlled by or controlling, or under or subject to common control with any other person.

(2) "Interest" means any financial interest whatsoever and includes, but is not limited to, loans of money or equipment and extensions of credit provided however that "interest" does not mean extensions of credit for the purpose of supplying inventory of gasoline marketing outlets for a period of no longer than 30 days.

(3) "Gasoline marketing outlet" means a place of business used for the sale and distribution of gasoline and diesel fuels to the consuming public.

(4) "Own or control" means actual or legal power or influence over another person, directly or indirectly, arising through direct, indirect, or interlocking ownership of capital stock, interlocking directorates or officers, contractual relations, including but not limited to, agency agreements, leasing arrangements, instruments of indebtedness, or security agreements where the exercise or potential exercise of such power or influence may be used to affect or influence persons engaged in the marketing of petroleum products.

(5) "Person" means an individual, corporation, partnership, joint-stock company, business trust, trustee

in bankruptcy, receiver in reorganization, association whether or not incorporated, or any affiliate of any of these.

(6) "Petroleum" means crude oil, oil shale, or products refined therefrom.

(7) "Production" means the development of oil lands or oil shale lands wherever situated, the extraction of crude oil or oil shale therefrom, and the storage of crude oil thereon.

(8) "Refining" means the refining, processing, or converting of crude oil, or oil shale, into finished or semifinished products. "Refining" includes the initial sale or transfer of such finished or semifinished products to customers from the refiner.

(9) "Transportation" means the movement of petroleum products by means of pipelines or ships.

16733. It shall be unlawful, after one year from the date of enactment of this act, for any person to own or control, or have any interest in, any gasoline marketing outlet within the State of California who is also engaged in the business of producing, refining, or transporting petroleum.

16734. Each day in which a person owns or controls petroleum product marketing outlets in violation of Section 16733 shall constitute a separate violation of this act. A violation by a corporation shall be deemed to be also a violation by the individual directors, officers, receivers, trustees, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting the violation in whole or in part.

SEC. 2. No appropriation is made by this act, nor is any obligation created thereby under Section 2231 of the Revenue and Taxation Code, for the reimbursement of any local agency or school district for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on or performed by it by this act.

O

SENATE BILL No. 2179

Introduced by Senators Behr and Mills

April 23, 1974

An act to add Chapter 10 (commencing with Section 5601) to Division 2 of the Public Utilities Code, relating to oil and gas, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 2179, as introduced, Behr. Pipeline regulation.

States legislative intent. Enacts the Pipeline Regulation Act of 1974. Specifies the conditions and circumstances under which transporters of petroleum or natural gas may use the pipeline facilities of operators for reasonable charges. Directs the Public Utilities Commission to permit such use, upon petition therefor, and to fix the charges. Prohibits discrimination in the terms and conditions of such use of pipelines. Defines terms used.

Requires certain information regarding quantities of petroleum and natural gas to be filed with the commission monthly.

Specifically authorizes the commission to seek enforcement of these provisions or its rules, regulations, or orders in the superior court. Permits interested persons affected by these provisions or any rule, regulation, or order of the commission to bring an action in the Supreme Court to test the validity thereof.

Provides penalties for any violation.

Appropriates an unspecified amount to the State Controller for allocation and disbursement to local agencies for costs incurred by them pursuant to this act.

To take effect immediately, urgency statute.

Vote: ⅔. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 10 (commencing with Section 5601) is added to Division 2 of the Public Utilities Code, to read:

CHAPTER 10. PIPELINE REGULATION

Article 1. General Provisions

5601. This chapter shall be known and may be cited as the Pipeline Regulation Act of 1974.

5602. The Legislature hereby finds and declares that the people of the State of California have a direct and primary interest in the continued operation and development of petroleum and natural gas, and that the state should insure the continued development of petroleum and natural gas resources in such a manner as to safeguard life, health, property, natural resources, and the public welfare.

5603. The Legislature further finds and declares that pipelines afford a fast, economical, and necessary means of transporting natural gas and petroleum to the public for ultimate use.

5604. The Legislature further finds and declares that to speed the development of new or existing natural gas or petroleum resources it is necessary that existing pipelines be available for use in such development.

5605. It is, therefore, the purpose and policy of the Legislature in enacting this chapter to confer on the Public Utilities Commission the power and authority to insure that access to existing pipelines where appropriate under the circumstances, is provided for the transportation of natural gas or petroleum, so as to protect the safety and general and economic welfare of the public.

5606. The provisions of this chapter shall apply to transportation of petroleum and natural gas in intrastate commerce for ultimate public consumption for commercial, industrial, or any other use.

Article 2. Definitions

5611. Unless the context otherwise requires, the definitions in this article shall govern the construction of this chapter.

5612. "Person" includes a natural person or a corporation.

5613. "Corporation" includes any corporation, joint stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver of trustee of any of the foregoing.

5614. "Local governmental entity" means a city, county, city and county, or other political subdivision of the state.

5615. "Natural gas" means natural gas, either unmixed or any mixture of natural and artificial gas.

5616. "Petroleum" means crude oil or any liquid or gaseous product thereof.

5617. "Intrastate commerce" means commerce between any points within this state, but not through this state.

5618. "Commission" means the Public Utilities Commission.

5619. "Pipeline" includes any pipe or pipeline used for the transportation or transmission of any liquid or gaseous substance, except water, within or through any part of this state, including tide or submerged lands.

5620. "Transporter" includes every person producing or purchasing and transporting, conveying, distributing, or delivering natural gas or petroleum under any of the following conditions:

(a) For public use or service for compensation.

(b) For compensation to a local governmental entity for further sale and distribution to the public or any portion thereof.

(c) For compensation to any person for further sale and distribution to or for the public or any portion thereof pursuant to franchise or contract issued by a local governmental entity to such person.

(d) To or for the public or any portion thereof for compensation.

5621. "Operator" includes every person owning, operating or managing a pipeline for the transportation or carriage of natural gas or petroleum, whether for public hire or not, if any part of the right-of-way for such pipeline has been acquired by eminent domain; or if such pipeline or any part thereof is constructed upon, over, or under any public street, highway, right-of-way, beach, or easement of the state, any local governmental entity, or the right-of-way of any railroad or other public utility, or any other such location in which the public has a property right.

Article 3. Regulation of Pipeline Operators and Transporters

5631. Every operator and every transporter shall, on or before the 20th day of each month, file with the commission a verified statement containing the following information concerning its activity during the preceding month:

(a) The quantity of petroleum or natural gas used in connection with pipelines within this state which are in the actual and immediate control of such person at the beginning and close of such month, where such petroleum or natural gas is located or held, the location and designation of each tank or place of deposit, and the name of its owner.

(b) The quantity of petroleum or natural gas received by such person through such pipelines during such month.

(c) The quantity of petroleum or natural gas delivered by such person during such month.

(d) The available empty storage owned or controlled by such person, and its location.

5632. (a) Any transporter may request any operator to permit the use of a pipeline under the control of the operator for a reasonable charge.

(b) In the event the operator denies such request, or in the event the parties cannot agree on a reasonable against the commission to test the validity of such law, rule, regulation, or order. Such action shall be advanced for trial and be determined as expeditiously as possible and no postponement thereof or continuance shall be granted except for reasons deemed imperative by the Supreme Court. In all such trials, the burden of proof shall be upon the party complaining of such law, rule, regulation, or order, and such law, rule, regulation, or order so complained of shall be deemed prima facie valid.

5637. Any person who willfully or knowingly violates any provision of this chapter, or any rule, regulation, or order of the commission pursuant to this chapter, shall be punished by a fine of not more than five hundred dollars ($500) or by imprisonment for not more than six months, or both such fine and imprisonment.

SEC. 2. The sum of ________ dollars ($________) is hereby appropriated from the General Fund to the State Controller for allocation and disbursement to local agencies pursuant to Section 2231 of the Revenue and Taxation Code to reimburse such agencies for costs incurred by them pursuant to this act.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The immediate regulation of pipeline construction, operation, maintenance, and abandonment is necessary in order to safeguard life, health, property, natural resources, and the public welfare. It is, thus, essential that this act take immediate effect.

O