

LAW AND CONTEMPORARY PROBLEMS

VOLUME 19

SUMMER, 1954

NUMBER 3

FOREWORD

This symposium discusses certain aspects of the many problems being encountered in the regulation by the state and federal governments of the natural gas industry. In particular, it considers questions growing out of the transmission of gas across state lines.

States such as Texas, Louisiana, and Oklahoma, where the bulk of natural gas is at present found and produced, undoubtedly have a vital interest in this rapidly growing industry. For one thing, the production of natural gas may be a source of considerable revenue to the states through taxes levied upon the industry, but many of such taxes, such as those imposed on gas which is "gathered" within the state but thereafter transported to consumers outside the state, may run into strong constitutional objections because of possible interferences by the state with interstate commerce. In the second place, the producing states may attempt to fix either minimum or maximum wellhead prices for gas produced within their boundaries. Such action may also raise difficult problems if the gas is later transported in interstate commerce. Finally, the producing states may adopt various measures in order to conserve this vital natural resource so as to discourage wasteful methods of obtaining, using, and disposing of the gas. In all these areas, the producing states clearly have a responsibility to fulfill and must be given legal powers commensurate with that responsibility.

As a result of an almost nationwide network of gas pipelines which has expanded rapidly and widely within the last decade, natural gas, although produced at present in only a handful of states, is transported from them to almost all the other states for home and industrial uses. The consuming states, of course, assert traditional powers over the local distribution of gas as a public utility function, and as such, subject it to local governmental control over rates, facilities, and services. Although both consuming and producing states may well emphasize state regulation of natural gas, their regulatory viewpoint and interests may and frequently do sharply clash. Consuming states ordinarily favor the lowest possible rates for industrial and home customers. Producing states, not unnaturally, are inclined to view with more sympathy higher prices for gas producers.

The fact that so much of today's production of natural gas is, between the initial local production and the final local consumption, transported usually in pipelines

across state boundaries, brings the federal government, principally through the Federal Power Commission, into the field of regulation of the natural gas industry and has given rise to what are perhaps the most bitterly contested issues. When gas is produced and gathered locally in one state and then transmitted in interstate commerce, where does federal regulation begin? And when such gas is consumed in homes and factories in one state, after interstate transmission, where does federal regulation end? In the Natural Gas Act, Congress, by an express exemption for production and gathering, has at least indicated that the full scope of its constitutional regulatory powers over natural gas under the concepts of interstate commerce, is not to be exercised by the Federal Power Commission. Unfortunately, the language of the statute still does not indicate clearly and definitely where the jurisdiction of the Federal Power Commission over the natural gas industry begins and ends, and thus far, at least, neither the courts nor Congress have been able to clarify this matter satisfactorily.

In addition to the fiercely waged battle over the exact extent of the jurisdiction of the Federal Power Commission over the natural gas industry, there are other controversies in connection with federal regulation, one of the most important of which, perhaps, centers about the rate-making methods applied by the Commission to that part of the natural gas industry admittedly subject to its control. Certain aspects of the Commission's rate-making policies are comparatively unrelated to its jurisdictional problems—for example, the long delays and time lags in granting rate increases, accounting methods for income tax accruals, or the handling of depreciation allowances in rate-making. Other aspects of its rate policies, however, are inextricably interwoven with its jurisdictional troubles—for example, how to value gas producing properties owned by interstate pipelines—whether at original cost, at current market value, or by some other method—allocation of costs between regulable and non-regulable sales, and the effect of state minimum wellhead price laws.

Whatever may be the final outcome of these highly controversial matters, the fact that we are dealing here with what has become one of our great natural resources should not be forgotten. Our aim should be to hammer out, so far as possible, a policy which will insure for the future as well as the present the wisest and most efficient use under a system of free private enterprise of natural gas, as well as of our other fuel resources. This should be the aim of all government regulation here, whether it be state or federal.

ROBERT KRAMER.