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Public Service Commission of West Virginia

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REGULATION OF THE NATURAL GAS INDUSTRY

JOHN J. D. PRESTON

1. THE PUBLIC SERVICE COMMISSION

The Public Service Commission Law of West Virginia is general in its terms, and grants wide jurisdiction to the commission over all public utilities in the state. Gas companies engaged in serving the public are amenable to all of these provisions. In addition, however, certain provisions of the statute apply specifically to gas utilities.¹

Pursuant to the authority vested in it by the statute, the commission has from time to time promulgated rules and regulations respecting the service and practices of particular classes of utilities. The rules and regulations for the government of gas utilities² now in effect were adopted June 30, 1927, and became effective on September 1st of that year. Several of these rules are particularly of interest to those concerned with the problems of the measurement of gas.³ The commission has now before it, pursuant to the provisions of its General Order No. 111,⁴ a proposed draft of new rules.

¹ Chairman of the Public Service Commission of West Virginia.
² See APPENDIX A.
³ Regulation of natural gas differs from the regulation of all other utilities which commissions are called upon to supervise and control in this, that it combines the furnishing of a commodity of tangible form and of a wasting and exhaustible nature, with the rendering of a service. The distributor must procure and part with something definitely the subject of private property rights. Gas is not abundantly free to all who wish to capture and vend it as are air, electricity and water. It is owned in feo with the land surface, or at least is accessible only through and from such land. And so it is held under absolute tenure, subject to the principles of private property law.
⁴ Enumeration of rules and regulations affecting customer metering effective September 1, 1937: Rule 6, relating to waste; Rule 8, measuring production and shipments; Rule 9, refunds for fast meters; Rules 11, 12, 13, relating to standard pressures, variations and pressure gauges; 14-C, instructions regarding reading of meters; 16, methods of measuring service; 17, meter readings on bills; 22, appointment of meter men; 23, meter testing facilities and equipment; 24, accuracy requirements for meters; 25, meter test records; 26, location of meters; 27, periodic test of meters; 28, complaint tests; 29, request tests. The general order of December 16, 1926, requires monthly, quarterly and annual reports to the commission in respect to meters.
⁵ General Order No. 111 was entered on June 9, 1938. An estimate of its importance may be drawn from the following excerpt: "It is further ordered that natural gas utilities subject to the jurisdiction of the Commission, on or before the date of said hearing, file with the Secretary of the Commission reports, in writing, under oath, showing their existing practices in extracting gasoline and other constituents from natural gas in such detail that the Commission may be advised of the number of cubic feet of natural gas from which gasoline was extracted over the most recent practicable twelve months' period; the amount of gasoline, in gallons, so extracted; by whom the extraction was done; the place of extraction; whether or not the extractor is owned by or
and regulations applicable to gas utilities. The need for modernization of the rules and regulations applicable to gas utilities is felt. Either the proposed regulations, or proper modifications thereof, will be adopted by the commission and promulgated for future use, at the conclusion of the hearing and proceedings in respect of these proposals now in progress.

Of utmost importance to anyone in attempting to apprise himself of the conditions and operations of any business is the establishment and accurate keeping of a correct and scientific accounting system and other records. For regulatory purposes, it is essential that all utilities of a particular class observe and keep the same system of accounts. Accordingly, the West Virginia commission, like other commissions, has prescribed for each particular class of utility a state-wide uniform system of accounts.

related to the reporting natural gas utility; the British Thermal Unit heat content of the natural gas before and after extraction; whether or not the natural gas from which gasoline is extracted is produced by the reporting utility or purchased and if both, the approximate number of feet produced and purchased; the amount, in dollars, received for said extraction; and in the event other constituents are extracted from natural gas, or natural gas is otherwise processed, the same information concerning such extraction or processing.

The development and evolution of the application of governmental regulation of the natural gas industry has proceeded in this order: first, to the field of distribution; second, to the field of production; and third, to the field of interstate transportation.

Different and unrelated bodies usually have jurisdiction over these three phases, namely: (1) the state utility commissions in respect to the terms of distribution to the domestic consumer; (2) the state conservation bodies in respect to the manner in which natural gas is produced and the fields developed; (3) and finally, recently, that of the Federal Power Commission in respect to the movement of the commodity in interstate commerce.

The task of formulating the new gas utility regulations is obviously a very difficult and protracted one. Hence, it is not surprising that the revision has not as yet been completed.

It will be noted here that the accounting practice for utilities must necessarily vary with the respective governmental authority, and with the governmental purpose which the latter serves. A few instances will suffice to illustrate this proposition. The Securities and Exchange Commission, for example, requires certain forms of accounting for the benefit of investors. Similarly, the Stock List Committee of the New York Stock Exchange has endeavored to set forth standards of accounting in accordance with listing requirements. On the other hand, the Bureau of Internal Revenue is interested in ascertaining of taxable income, which is a statutory figure arrived at by following very definite rules laid down by the bureau. Again, the Federal Power Commission's proposed system of accounts has been one concerned with the regulation of public utilities. Moreover, the Social Security Board and the Bureau of the Census must have accounting data that meets the demands of the respective governmental function. Additional prescribing of accounting practices may result, if the pending O'Mahoney-Borah federal licensing bill becomes a law. Thus, regulation in this field by the West Virginia Public Service Commission must perform avoid imposing more burdensome duplications and overlapping complexities on the local utility industries.
The newer systems of utility accounts provide that utility plant be recorded on the books at original cost,—that is to say, at the cost of such property to the owner who first devoted it to public service. Thus, of utmost importance to the gas industry are the methods prescribed by the commission for the ascertainment and recordation of the fair value of leaseholds; whether they should be included in the rate base at their present market value or at cost; whether leaseholds on unoperated acreage should be excluded; the question whether or not delay rentals should be included in operating expenses; the differentiation between operated and reserve acreage; the question of how gas wells should be depreciated and other plant amortized.8

The former accounting system for gas companies was established by the commission in 1931. The commission has for some time had under consideration, however, the proposed uniform system of accounts for manufactured and natural gas utilities, classes A and B, which had also undergone examination by the National Association of Railroad and Utilities Commissioners, comprising representatives of all of the states and the appropriate federal regulatory agencies.9 The comments and recommendations of the twelve principal gas utilities in this state regarding the proposed new system were made to the commission on August 12, 1937; and conferences in this regard were held with such utility representatives on April 28, 1938. A fairly high degree of understanding and agreement was reached between the commission and the various utilities in respect of its nature and content. A final satisfactory form of the system was recommended by the national association to all state commissions, in November, 1938, so that uniformity in accounting requirements between the different states might be secured.10 The West Virginia Public Service Commission has now finally approved, as of January 1, 1939, the new Uniform System of Accounts, and these have come into operation in West Virginia.11

8 For illustrative litigation as to these issues, see Natural Gas Co. v. Public Service Com'n, 95 W. Va. 557, 121 S. E. 716 (1924); Dayton Power & Light Co. v. Public Utilities Com'n, 292 U. S. 290, 54 S. Ct. 647, 78 L. Ed. 1267 (1934).
9 General Order No. 107, July 14, 1937.
10 This action was taken at the fiftieth annual convention of National Association of Railroad and Utility Commissioners, held in New Orleans, during November, 1938.
11 See General Order No. 107-C, January 4, 1939. It was ordered that the Uniform System of Accounts therein prescribed be effective as of January 1, 1939. Thus, West Virginia has now adopted the most modern system of utility accounting proposed in the field of utility regulation.
The commission also has had under consideration a draft of a list of retirement units for gas utilities prepared by the committee on statistics and accounts of public utility companies of the National Association of Railroad and Utility Commissioners. This, likewise, has received the attention of the national association, in the form of the revision dated June 23, 1937, and has now been adopted in West Virginia, by its order of January 4, 1939, effective from the first of the year.

Mention should be made of the fact that this commission has made a survey of natural gas production in this state, and has taken samples from 600 wells and many compressor stations, processing plants and distribution systems, for the purpose of ascertaining the heating value of the natural gas, its specific gravity and its chemical content. This survey will be valuable to the commission and to the industry in West Virginia. It forms the basis of an investigation now under way by the commission for the purpose of determining whether or not it is economically practicable and feasible to adopt a method of measuring natural gas consumption on a therm basis.

The field work in this investigation was initiated in 1935. It has been completed by experts under the direction of Dr. Paul H. Price, state geologist, and the services of the state geological survey, with funds and facilities provided by the commission. The comprehensive scientific report of that investigation in the field and in the laboratory was filed with the commission in July, 1936, and constitutes a distinct achievement in the scientific field. It indicates the chemical content, specific gravity and thermal quality of natural gas being served to the people and produced from the various geological horizons in the various geographical sections of this state.

This report shows that gas is produced with B. T. Us. running from 980 to 1600 and over, and that it is served in towns for consumption running from 1015 to 1335 B. T. Us.,—with an average of

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12 General Order 107-Q, January 4, 1939, expressly provides: "It is further ordered that the List of Retirement Units . . . shall be followed and observed by gas utilities . . ." Retirement Units are units of property used respectively as guides or units of measurement in fixing the dividing line between maintenance and depreciation reserve charges. These must in many instances be the smaller units of property. The retirement list fixes maximum limits; thus, while the upper limit is established, each company may fix its own minimums. At that lower point, departure is taken from standardization, and the procedure then becomes an accounting practice requiring the exercise of considerable judgment. Presumably, a study should eventually be undertaken by the accounting profession as to the use of average costs in connection with the capitalization and retirement of small units of property.
about 1130 B. T. Us. It also denotes variations in B. T. Us. of gas supplied by some of the larger utilities in particular towns, running as high as 119 B. T. Us., (although all but four of the towns tested ran less than 100 B. T. Us.),—and variations between unweighted average maxima and minima between towns served by a single system as high as 142 B. T. Us.,—and variations, by towns, from the average, as high as 67 B. T. Us., but with all but four of the towns tested showing variations from the average, of less than 50 B. T. Us. Upon it and other studies can be based an ultimate determination of a proper and scientific method for the measurement and the manner of sale and purchase of natural gas. Consultations with nationally recognized authorities in this field have been held and further work may be conducted and proper standards ultimately set.

There is a matter of vital interest which requires the careful consideration and affirmative action of the various gas utilities,—namely, in relation to extension of gas service to thinly populated and, particularly, to rural districts. Study should be made as to desirability of the adoption of some plan possibly similar to that prescribed by the commission for electric utilities in this state, by its orders of December 12, 1936, or December 15, 1937. A more definite, more practical and utilitarian plan for such extensions than that which exists at present should be put into effect for the benefit of suburban and rural residents.

2. The Federal Natural Gas Act

Of peculiar and timely interest to all gas people is the recently enacted Federal Natural Gas Act, approved on June 21, 1938.\(^\text{13}\) This act gives the Federal Power Commission jurisdiction in respect of and regulatory authority over: (1) the transportation of gas in interstate commerce; (2) the sale in interstate commerce of natural gas for resale for ultimate public consumption; (3) the natural gas companies engaged in such transportation or sale. But specifically it does not apply to any other transportation or sale of natural gas, or to its local distribution, or to the facilities used for such distribution, and does not apply to the production or gathering of natural gas.

Recognition of and provisions for cooperation with the various state commissions is made in section 17 of the act, which provides for: (1) the reference of matters arising under its administration

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\(^{13}\) Known in its formative period as the "Lea Bill." Pub. No. 6588, 75th Cong. 1st Sess. 1937, H. R. 6586.
to joint boards to be composed of members from the particular states affected, on which they shall be entitled to equal representation; (2) conferences between the federal and state commissions; (3) the holding of joint hearings conducted by the federal and the state commissions together; (4) the making available to the state commissions of the reports and information at the Federal Power Commission's disposal, and for other assistance such as the use of expert witnesses.

The Federal Power Commission has already prescribed provisional rules of practice and regulations, with approved forms,14 effective July 11, 1938. Several formal proceedings have already been instituted before the Federal Power Commission under this act, two involving state line rates for resale, emanating from Ohio, and another application for authority to export gas from the United States to foreign countries. 15

3. State and Federal Cooperation

The utility commissioner should be the last to discourage, discredit or discount the worthy essential purposes or the splendid achievement of the great regulatory agencies of the United States government such as the Interstate Commerce Commission, the Trade Commission, the Federal Power Commission, the Federal Communications Commission, the Securities and Exchange Commission and the Bituminous Coal Commission.

A survey of the scope and extent of the powers of the various federal regulatory agencies reveals the growing complexity of the structure of utility regulation in the United States. In some respects and to certain extents the federal commissions occupy a field from which the state commissions previously were largely excluded. In other respects, the federal and state commissions exercise parallel authority over the same subjects of regulation. In many instances, if all regulatory agencies insist upon the exercise of powers with which they are invested, the approval of three or more commissions may be required for a transaction by a utility company.

A large measure of cooperation is provided for in the federal regulatory statutes. It is believed that both the state and federal agencies will disregard their duty to the public if they do not undertake to proceed on a basis of full and active cooperation. Such pro-

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14 Order No. 52, entered July 5, 1938.
15 The first two are City of Cleveland v. Hope Natural Gas Co., and City of Akron v. Hope Natural Gas Co. The third is the application of the United Pipe Line Company to transport gas to the national boundary between the United States and Mexico.
procedure is necessary where joint jurisdiction clearly exists with respect to various subjects of regulation. It should also extend to a reasonable construction of the regulatory statute, of the marking out of a practical line of demarcation between the jurisdiction of the federal and state commissions.

Failure to cooperate may lead to complete duplication of effort and to conflict in regulation. Duplication of the regulatory processes will result in increased burdens for both consumers and taxpayers. A multiplicity of proceedings will increase the uncertainty and limit the incentives of management; thereby restricting the extension and perfection of service as well as of capital and credit. Effective regulation can not long tolerate such waste and uncertainty.

Fortunately, the newer federal regulatory agencies have indicated a policy of cooperation with the state commissions, particularly, for instance, as to accounting control. Without such cooperation and the ability to agree as to procedure and conclusions, conflicting decisions and orders are unavoidable. The federal authority is supreme where it is lawfully and regularly exercised; but it is a cardinal principle of our democratic system that the burden of proof as to its necessity is on those who would substitute centralized for local government and administration. The consumer of local utility service should continue to receive the benefit of regulation by the local state commission, and should not be compelled to resort to Washington for protection of his rights; and the local utility operating within the confines of a state should have to comply with the supervision and regulatory control exercised by the appropriate governmental agency of that state. The jurisdiction of the state commissions over intrastate utility service should be protected from any possible encroachment of federal authority. The people of West Virginia, as well as those of other states, should be fully aware of the extent of the trend toward centralized regulation of utility enterprises. They should also be concerned with the theory of the centralization,—with its principles and their sufficiency,—and with the reasons and the adequacy of those reasons for that trend.

The Public Service Commission of West Virginia, in the future as in the past, will offer the fullest and most cordial cooperation with all federal agencies in their proper activities; but it must be remembered as a fundamental principle to be preserved by eternal vigilance on the part of federal as well as state commissions, and
by Congress and courts as well as the people, that federal regulatory statutes and the regulatory agencies created thereunder, are to supplement rather than to supersede local state authority.

4. Conservation

It is a well-known fact that there are a great number of unnecessary wells drilled annually in proven fields. The amount of money spent in the country as a whole for drilling unnecessary wells has been and is enormous: this is equally true here. Most of such loss occurs in states, such as West Virginia, which have inadequate, or no conservation statutes. The sketchy code provision dealing with the subject seems an approach largely from the coal mining viewpoint. Possibly, for a member of the Public Service Commission of the state, it may seem somewhat presumptuous to refer to the matter of conservation. At least there is the peculiar fact that the commission may have no direct jurisdiction in the matter. That body is charged with the regulation of utilities, including gas, but has been given no specific authority over the production of gas, or over producers who are not utilities. However, it may not be entirely inappropriate at the present time to suggest to the public mind that the problem of true and proper conservation of so important a natural, but exhaustible, resource should receive immediate attention. The elapsed delay should not prevent belated action.

An unnecessary well may be defined as any well not needed to drain adequately a determined area, because a well has already been drilled which will adequately drain such area,—or as the development by further drilling of a proven area where there is no available market for the output physically and economically available,—or where the available markets have already been fully supplied,—or the price in such markets is inadequate to compensate the producer for his cost of production and the carrier for the transportation of the gas. Mr. Northcutt Ely, in a paper read before the Mineral Section of the American Bar Association at Kansas City, September 29, 1937, entitled "Legal Restraints on Drilling and Production," gives the definition: "... any well which will fail to increase ultimate recovery (from the field) by an amount sufficient to return the cost of investment plus the cost of operation and royalties and a reasonable profit ..."

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36 W. VA. REV. CODE (1931) c. 22, art. 4.
37 See Oliver, Oil and Gas Law Responsible for Overproduction and Waste (1930) 55 A. B. A. REP. 712. See also Stanley, The Drama of the Oil Industry—Calling for Federal Regulation (1931) 56 id. 699; Oliver, Cooperation
In discussing the subject, one operator remarked that everyone knows an unnecessary well when he sees it, unless it is his own and he gets an advantage over his neighbor by drilling it.\footnote{One may find an average distance of five hundred feet between oil wells in the ordinary West Virginia quincunx arrangements: the Oklahoma quadrangular arrangement may go farther and set the average distance between oil wells at six hundred and sixty feet. Similarly, the West Virginia quincunx arrangement of gas wells may average something more than two thousand feet between wells and about eighteen hundred feet between rows, allowing each well a drainage territory of eighty-five acres.}

Unnecessary drilling means not only unnecessary capital expenditure, therefore a financial loss, but also a diminishing return on all wells and the capital invested therein, both necessary and unnecessary.

The term "waste" is a broad and inclusive one and signifies any situation in which the full amount or the full value of a product is not utilized, or the cost of producing it is unduly great. There may be both physical waste and economic waste, some of which may not be preventable; waste here refers to that which is avoidable. There are,—first, physical underground waste where water encroachment may entrap gas in sands if withdrawal is too rapid, or where preventable drowning of producing sands may occur due to improper casing or plugging of wells; second, physical surface waste such as blowing into the air,—allowing pipe lines to leak,—and permitting production in excess of marketing facilities or available markets; third, economic waste by misuse of gas whereby its full potentialities are not utilized, such as allowing it to burn unnecessarily or through improper appliances, not using it efficiently, manufacturing carbon black, unnecessary loss or destruction by use for fuel purposes of valuable chemical constituents, such as the higher hydro-carbons, propane and other higher concentrates. Can it be either sound economy or ethical social conduct to fail to extract the most valuable elements of gas, worth possibly more than their weight in gold in the hands of modern technical wizards, (by burning these rare higher constituents as common ordinary fuel), when their depletion from the great mass of the gas leaves the residue imperceptibly affected for fuel purposes, and for some uses may improve it? The sound basic philosophy may be summarized and crystallized in the short phrase,—conservation is effective use. It is not mere blind hoarding for an indefinite and undefined future.

\footnote{Between Lawyers and Engineers (1931) 56 id. 691; Rummel, Constitutional Powers of Congress Over the Production of Natural Resources and Their Shipment in Interstate Commerce (1932) 57 id. 711; German, Oil Conservation and the Champlin Decision (1932) 57 id. 724.}
Proper processing of gas to make the best use and most valuable disposition of its constituent elements and characteristics may be highly desirable from the standpoint of true conservation and of actual economy.

It is superficially easy to point out the occurrence of the losses and the evils attending the waste of portions of this valuable resource, but it is difficult to arrive at a universally equitable solution of the many problems which arise in this connection.

Attention should be drawn specifically, however, to the situation of waste in production. Here one becomes involved in legal problems and precedents with questions of "vested rights," "confiscation," "property rights," and the rights of conflicting interests inter sese of landowners, producers and other classes of the public. The present system of real estate tenure and property rights, inherited from England and from colonial tradition, is based upon the right of the owner to do as he pleases to and with his land and its products, so long as he does not commit an actionable nuisance to his neighbor. The same concepts of law permit a man to engage in a business and produce and sell what, when, and as, he can. Real property law is a judicial development: it may well be that there is social and technical necessity for change in its concepts as applied to gas. Who can say of what one man's land it is a part or product? Enactment of statutory changes in property laws may be indicated as the primary step.

Two conflicting policies are involved: first, that of production; second, that of conservation. These are not consistent with one another, but represent opposing interests. The courts have long wrestled with this conflict in construing leases. In deciding a particular question, judges have frequently to determine whether a lease, on the whole, intended that the property should be developed immediately,—which is to say, whether the lease was intended to promote development and prevent delay. 19

The courts seem to have adopted the theory that the landowner is entitled to take and use his gas, subject only to the duty not to commit surface nuisance and waste. This may have been in ignorant disregard of the effect of such a policy upon the underground reservoir. In other words, the law has looked at the problem more from the point of view of production. Gas operators have

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been inclined, at the most, to give only lip service to physical conservation, and formerly even under-emphasized economic conservation. They have quite naturally been dominated by the profit motive, although they have doubtless always wanted to produce at the very lowest price.

It is apparent that in determining relative rights among several landowners, producers, and sellers of gas, the solution of the problems of conservation hinge and turn about correlative rights under the old principles of real estate law and private property rights which today remain unmodified, unelastic and set. They were developed long years before the existence of gas or oil was known and under conditions which do not prevail in fact in the gas fields. The existence of correlative rights and of many conflicting interests have led to the suggestion and trial of many and divergent devices for the solution of the problem.

Some consider, as the big problem for the industry, the proper spacing and location of wells,—the regulation of unrestricted drilling,—of line drilling,—the reduction of the number of wells to one to a lot,—the requirement for permits to drill,—protection to other lessors by allowing them to participate in the royalties from the single well drilled,—the provision for compulsory pooling, statutory well drilling and pooling of adjacent tracts,—voluntary pooling,—prorations, etc.

An ever-present problem presented by vested rights and confiscation is in respect of small or irregularly shaped tracts which cannot be drilled in conformity with a uniform spacing pattern fixed for each field. Instead of granting exceptions to the spacing rule to prevent confiscation or to protect so-called vested rights, some believe it to be advisable to obtain pooling of small or illegally shaped tracts. Others believe in proration, and that the unit of proration should be no smaller than the area which one well will sufficiently drain and at a profit. Under this requirement the operator would probably drill only one unit, and, thus, many unnecessary wells would be saved.

Advocates of quite radical statutory regulation would doubtless advocate its constitutionality under the so-called "Paramount Industry" theory. This may be applicable in states wherein the

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20 For the theory of "correlative rights" as applied to underground waters, see Meeker v. City of East Orange, 77 N. J. Law 623, 74 Atl. 379 (1909); and Pence v. Carney, 58 W. Va. 296, 52 S. E. 702 (1905).

21 For a West Virginia example of several tracts being prudently developed as one leasehold, see Lynch v. Davis, 79 W. Va. 437, 92 S. E. 427 (1917).
predominant significance of the oil and gas industry is indisputable. In West Virginia and in many other states that situation does not obtain. Its advocates cite the primacy of the apple industry in the neighboring Shenandoah Valley, in recognition of which the courts upheld the drastic Cedar Rust statutes,22 and judicial notice of the dominance of the oyster beds in Chesapeake Bay.23 In spite of its importance, many would deny that the gas industry predominates in certain sections of the state, and it might be difficult to sustain a conservation statute grounded on the “Paramount Industry” theory.

An infinite variety of formulae containing many factors could be written and obtain practically the same result of giving each operator or each lessor his fair share. Any formula would appear to be proper which, over a period of time, causes a distribution of allowable production so that there is no noncompensated drainage which could reasonably be avoided and no requirement to drill unnecessary wells.

Legislation on conservation, while sustained by some courts on the “Paramount Industry” theory, has been most often sustained as a valid exercise of the police power of the state in order to prevent waste. The problem for the careful draftsman of legislation is to close the gap between desirable social public policy and narrow technical legal rights. Types followed have been proration, well spacing, unit development, use and protection of gas, interstate compacts, and transportation in interstate commerce. The statute on whatever theory, should be short, simple and comprehensive, and should give the conservation agency broad and elastic powers for the desired purposes. The selection and constitution of the conservation agency is, of course, a local problem for the particular state, but, in all events, it should be provided with adequate means for enforcement. It is hoped that, under a workable statute, the regulatory agency, however constituted, will be so provided, and that it may achieve its purpose and exercise its functions in finding the balance between the way in which one owner wants to drill and space, and the way in which another does.

It is thought that under the police power the conservation

statute and regulatory agency could control contract law as between lessor and lessee.

In any event, no dispute or case could be settled without hearing and the taking of necessary evidence as to spacing in each field, to determine what drilling pattern should be adopted in view of the testimony presented, unless a more or less arbitrary although reasonable state-wide spacing rule were established.

No list of suggestions would be complete without recognition of a solution, but one which is practical and possible only where all operators and landowners desire it and take cooperative action. That is to say, there is the possible method of voluntary agreements, relating to the manner of developing production and distribution of markets, profits and royalties as among producers and among the landowners. Even here it is well to have the state act as umpire, for the difficulty is the ability of one stubborn recalcitrant to upset the arrangement by refusing to agree. If it were not for such individuals who elevate self-interest above public interest, fewer statutes, courts and commissions would be necessary. But like the poor, they are always with us to plague our footsteps,—like the unescapable death and taxes.25

APPENDIX A. STATUTORY PROVISIONS SPECIFICALLY APPLICABLE TO GAS UTILITIES

"The Commission . . . (inter alia) . . . shall have general supervision of oil and gas pipe lines.

"The Commission may ascertain . . . (inter alia) . . . the quality and quantity of gas . . . supplied by such utilities and examine the methods employed, and shall have power to order such improvements as will best promote the public interests.

". . . The Commission shall, when and as necessary, appoint inspectors of gas, electric and water meters. And, when such inspectors are required to act, it shall be their duty to inspect, examine, prove and ascertain the accuracy of any gas, electric, or water meters used or intended to be used for measuring or ascertaining the quantity of gas, electricity or water furnished to, by or for the use of any person, firm or corporation, and, when found to be correct, or made correct, the inspector shall stamp or mark each of such meters with some suitable device, which device shall


25 Statistics regarding the gas industry in West Virginia are set forth, (together with pertinent data in connection therewith), in APPENDIX B.
be recorded in the office of the commission. No public utility shall furnish or put in use any gas, electric or water meter which shall not have been inspected, proved and stamped or marked by an inspector of the commission: Provided, That in cases of emergency, gas, electric or water meters may be installed and used before being inspected, but notice thereof shall be immediately given to the public service commission by the public utility installing the same, and such meters shall be inspected, proved and stamped or marked, as soon thereafter as practicable. Every gas, electric and water utility shall provide and keep in and upon its premises suitable and proper apparatus, to be approved and stamped or marked by the commission, for testing and proving the accuracy of gas, electric and water meters furnished for use by it and by which apparatus every meter may and shall be tested on the written request of the consumer to whom the same shall be furnished, and in his presence if he so desires.

"... Provided, That nothing in this chapter shall prevent the commission from changing and modifying the method of inspecting meters and adopting such rules and regulations therefor as to the commission may seem just and proper." [W. Va. Rev. Code (1931) c. 24, art. 2, § 5.]

"Whenever, under the provisions of this chapter, the commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or shall find that any service is inadequate, or that any service which is demanded cannot be reasonably obtained, the commission shall determine and declare, and by order fix, reasonable measurements, regulations, acts, practices or service, to be furnished, imposed, observed and followed in the State in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory, inadequate or otherwise in violation of this chapter, and shall make such other order respecting the same as shall be just and reasonable." [W. Va. Rev. Code (1931) c. 24, art 2, § 5.]

"No public utility subject to the provision of this chapter shall, directly or indirectly, by any special rate, rebate, drawback or other device or method, charge, demand, collect, or receive from any person, firm or corporation, a greater or less compensation, for any service rendered or to be rendered, than it charges, demands, collects, or receives from any other person, firm or corporation for doing a like and contemporaneous service under the same or substantially similar circumstances and conditions.

"It shall be unlawful for any public utility subject to the provisions of this chapter to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular character of traffic or service, in any respect whatsoever, or to subject any particular person, firm, corporation, company or locality, or any particular character of traffic or service, to any undue or unreasonable preju-
dice or disadvantage in any respect whatsoever.” [W. Va. Rev. Code (1931) c. 24, art. 3, § 2.]

Article 4 of the statute provides penalties for infractions of the law.

Discrimination has been defined by someone as “... differences of price not attributable to difference in cost.”

APPENDIX B. WEST VIRGINIA GAS STATISTICS FOR 1937

(Compiled from the reports to the commission of utilities and other producers.)

Utilities and Non-Utility Producers.

<table>
<thead>
<tr>
<th>Description</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
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<td>Production</td>
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</tr>
<tr>
<td>Consumption</td>
<td>62,256,518 MCF</td>
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<tr>
<td>Consumption by Utility Customers</td>
<td>32,072,195 MCF</td>
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<tr>
<td>Exports from West Virginia</td>
<td>135,033,002 MCF</td>
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<tr>
<td>Imports into West Virginia</td>
<td>40,346,738 MCF</td>
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<tr>
<td>Net Exports from West Virginia</td>
<td>94,186,264 MCF</td>
</tr>
<tr>
<td>Stored</td>
<td>2,334,949 MCF</td>
</tr>
<tr>
<td>Removed from Storage</td>
<td>789,769 MCF</td>
</tr>
</tbody>
</table>

(Note.) The Minerals Yearbook 1938-Natural Gas shows that for the year 1937, West Virginia was the fifth state in the Union in marketed production of natural gas with 153,000 MMMCF, California, Louisiana, Oklahoma, and Texas leading, in the order named. While it was the ninth state in consumption with 57,978 MMCF, the preceding year, in 1937 this rose to 62,256,518 MCF.

The vitality of the natural gas business is in striking contrast to the decadence of anthracite coal or the street railways. But, for example, it is remarkable even in comparison with the rapidly growing automobile and steel industries. Its expansion is exemplified by the rise in volume in 1937 of twenty-four per cent above the volume of the 1929 level, overcoming and surmounting even the effect of the intervening depression.

Some of the important issues the state commission has been called upon to consider are the appraisal and character of inspection to be given to underground pipe lines, the rates of depreciation and amortization to be charged thereon, the depletion of the gas reservoir in the various producing areas, the method of allocating transmission property and operating expenses as between particular markets, the valuation of gas lands and leaseholds, the amount of acreage a given company should carry as a charge to operating expenses, that is the amount of permissible delay rentals on unoperated leaseholds, the quality and heating value of gas in various fields, and the variations therein, and the effect thereof upon price, the extraction of gasoline and other hydrocarbons or constituent elements from natural gas, the use and value to be made of carbon black and manufacture of various products from various hydrocarbons, the propriety of existing differences in the wholesale or
city gate rates between municipalities, and varying prices charged
different classes of consumers. In the conservation studies the com-
mmission has had to look into the drilling programs, the various uses
now made of natural gas, its competition with other fuels, repres-
suring and underground storage, and literally hundreds of other
related and intricate matters.