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# Serving Producers in the Interstate Sale of Natural Gas

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# SERVING PRODUCERS IN THE INTERSTATE SALE OF NATURAL GAS

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An attempt is made to demonstrate in this paper the proposition that almost all of the problems and legal requirements of a small or medium sized oil and gas producer relating to the federal regulation of the sales of natural gas in interstate commerce can be effectively handled by the local attorney. The only reason for the qualification "small or medium sized" producer is that the larger producer will have its own legal staff. This service to the producer will require only a small additional overhead expense and the fee realized will be equal to, or greater than, that realized in handling the producer's other affairs. The private practitioner who examines title to the drill site, draws the drilling contract, draws or inspects the operating agreement and division orders can and should counsel his client and handle most of his client's affairs relating to the interstate sale of his gas and the resulting control by the Federal Power Commission.

If you have a producer client, you will discover sooner or later that consideration must be given to the control that the Federal Power Commission exercises over gas sales. In talking with attorneys who serve such clients, I have found that the local attorney will often conclude that this regulatory control is outside the area in which he can give effective service and advice, and the client, together with the fee, is referred away. Such action is a disservice to both the attorney and the client. The attorney loses the fee and the client loses the services of the person who best knows the details of his business.

The Federal Power Commission was established as an independent agency in 1930 and is vested with the regulatory functions of the federal government relating to electric power and natural gas. The jurisdiction of the Commission over natural gas is derived from the Natural Gas Act[1] which was enacted in 1938. As it pertains to interstate gas sales, the act purports to control the price of gas from birth to death. Therefore, the producer problems relating to the regulation by the Commission of sales of natural gas, together with the services required of the attorney, resolve themselves into four general areas: (1) obtaining the initial authorization to make the sale, (2) securing increases in the sale price of gas in accordance with the gas sale contract, (3) terminating deliveries, and (4) general investigations by the Commission into the over-all gas sale prices of the client.

## I. CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

Specifically, along with the transportation of gas in interstate commerce, section 1 (b) of the act[2] extends federal jurisdiction over the sale in interstate commerce of natural gas for resale for ultimate public consumption, and to natural gas companies engaged in such sales. Commission control thus extends over practically all sales

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1 15 U.S.C. § 717-717(w) (1938).

2 Natural Gas Act, 52 Stat. 822 (1938), 15 U.S.C. § 717(b) (1958).

of natural gas to pipeline companies, except where the gas does not go beyond a state boundary. For many years after the enactment of the act, it was generally thought, or at least hoped, that the words of section 1(b) " . . . but shall not apply . . . to the production or gathering of natural gas" excluded independent producers from Commission control. However, *Phillips Petrol. Corp. v. Wisconsin*,[3] decided June 7, 1954, set the matter to rest. The Commission thereafter prescribed "Regulations under the Natural Gas Act" applicable to independent producers, separate from those applying to the pipeline companies. These regulations appear as sections 154.91 to 154.103 and 157.23 to 157.31 of title 18 in the Code of Federal Regulations, and prescribe the manner of making certificate applications, changes in rate schedules, abandonments, etc. The "Rules of Practice and Procedure" before the Commission appear as sections 1.1 to 1.37 of said title 18 and govern such matters as pleadings, service, size of paper, and conduct of hearings.

Once a client has contracted to make a sale of his gas, subject to Commission jurisdiction, by command of section 7 of the act[4] he must make application to the Commission for a "Certificate of Public Convenience and Necessity" for such sale before commencing actual delivery. The contents of such application and the necessary exhibits thereto are spelled out in sections 157.24 and 157.25 of the regulations. For a typical wellhead sale, items (i) to (v) of Section 157.24 might be answered as follows:

(i) The gas so sold has been produced from applicant's wells on its leases in the Big Beaver field, in Washington County, Colorado, shown on the general map attached hereto as "Exhibit A." The point of delivery of such gas by applicant to the purchaser is at the wellhead.

(ii) Applicant's sale has not been, and is not proposed to be, accomplished by means of any pipeline or other facility subject to the jurisdiction of the Commission.

(iii) No community is proposed to be served directly by such sale.

(iv) No industrial customer is proposed to be served directly by such sale.

(v) Except for the usual and ordinary oil and gas lease equipment, applicant has no major appurtenant properties or facilities which have been, or are proposed to be, utilized in making this sale.

The above is not offered as a model of draftsmanship but only to demonstrate a common approach. The "Exhibit A map" prescribed by section 157.25, as a minimum requirement, need only be a printed form of township map which may be obtained from any legal stationery store. The lease area that is described in the contract may be indicated by shading, together with an accurate legal description of the lease area. "Exhibit B" would be a conformed copy of the contract. The application should be verified. It should be noted that if the producer's total annual jurisdictional gas sales are in the aggregate less than 1,000,000 Mcf, section 157.23(b) of

3 347 U.S. 672 (1954).
4 Natural Gas Act, 52 Stat. 824 (1938), 15 U.S.C. § 717 (f) (1958).

the regulations provides that only the information called for in "Exhibit A" need be filed.

In the case of the usual casinghead gas contract, that is, where the sale of gas is made to the operator of a processing plant for a percentage of the proceeds from the resale of the residue gas, the sale is a jurisdictional sale,[5] but the plant operator must make the required certificate applications and other required filings.[6] Also, where the operator of a producing unit is a party signatory to the sale contract, the operator must make the required filings.[7] As a co-owner signatory party to the contract, one may make his own filings in addition to that required of the operator, and it is the author's strong feeling that it should be done. The decision not to make one's own filings where allowed could prove to be a most costly mistake in dealings with the Commission. This will not become evident until the time has come to make application for price increases. This matter is more fully discussed in part II of this paper. Generally, where the operator is required to make the necessary filings, the co-owner who is non-signatory to the gas sale contract cannot make his own filing.[8] In the event the non-signatory co-owner does enter into a separate sale contract with the same purchaser and after the signatory co-owner has obtained a certificate and made deliveries, the filing of the contract with the Commission is a "rate change" subject to section 4 and not an "initial filing" under section 7.[9]

If there is a lease expiration date approaching or for any other reason one must initiate immediate deliveries pending formal action by the Commission on his application, he can, by letter accompanying the filing of the application or afterwards, give notice of intention to invoke the temporary authorization of section 157.28 and commence immediate deliveries after having received a notice from the Secretary of the Commission of acceptance of the filing. This procedure should be reserved for real emergencies, because once deliveries have commenced in interstate commerce, Commission approval is necessary to discontinue. Frequently the temporary certificate issued under this section will be "conditioned" to provide that the contract price be lowered, or to provide that the difference between the contract price and the permanently certificated price be refunded, or other variations. Since *Sunray Oil Co. v. F.P.C.*,[10] these conditions have been fairly specific.

Once the application has been filed, it will be assigned a docket number and eventually an order will issue setting the matter for hearing.

If the sale is not one of a number of similar sales to a common purchaser involving an expansion of its facilities; if the sale is at or lower than the area price established by the Commission[11] in

5 Deep South Oil Co. v. F.P.C., 247 F.2d 882 (5th Cir. 1957); Shell Oil Co. v. F.P.C., 247 F.2d 900 (5th Cir. 1957); Humble Oil & Refining Co. v. F.P.C., 247 F.2d 903 (5th Cir. 1957); Continental Oil Co. v. F.P.C., 247 F.2d 904 (5th Cir. 1957).

6 18 C.F.R. § 154.91(e) (1949).

7 18 C.F.R. § 154.91(b) (1949).

8 18 C.F.R. § 154.91(d) (1949). See also Sun Oil Co. v. F.P.C., 256 F.2d 233 (5th Cir. 1958).

9 Sun Oil Co. v. F.P.C., 281 F.2d 275 (1960).

10 270 F.2d 404 (1959).

11 The latest pronouncement by the Commission establishing area prices, as of the date of this article, is General Policy Statement No. 61-1, September 28, 1960.

the producing area involved; and if there are no protests or petitions to intervene filed in the docket, the matter will be set for hearing along with a number of unrelated cases and a certificate will be perfunctorily issued. The order in such a case will set a date and time for hearing, and state that it will not be necessary for the attorney or client to be present. The ultimate order will recite that at such hearing staff counsel orally moved that the intermediate decision procedure be omitted and that the Commission directly give a final decision[12] issuing the certificate.

If the sale is protested or parties are allowed to intervene in the docket, the certificate application will be set down for formal hearing. If the sale is a part of a program of expansion by the pipeline purchaser, all the applications for sales along with the pipeline company's application to construct additional facilities will be consolidated into one proceeding for hearing.[13] It is not within the scope of this paper to detail the problems involved in a contested certificate hearing. Suffice to comment in passing that the hearing is in some respects similar to a court trial proceeding in that it falls upon the applicant to maintain the burden of proving that " . . . the applicant is able and willing to do the acts and perform the service proposed . . . and that the proposed . . . sale . . . is or will be required by the present or future convenience and necessity. . . ."[14] Customarily, the pipeline purchaser will assume the initiative in such a consolidated proceeding and call a meeting before the hearing at which the forms of proof, necessary witnesses, and procedure will be discussed. Quite often, prepared or "canned" testimony is used and is formally adopted by the witnesses at the hearing.

Two uncertainties regarding the authority of the Commission concerning certificates were resolved recently in *Sun Oil Co. v. F.P.C.*[15] and *Sunray Oil Co. v. F.P.C.*[16] The *Sunray* case held that the Commission need not give a certificate for the term of the contract but can (and usually does as a matter of policy) give certificates for an unlimited duration. Similarly, the *Sun* case concluded that not only does the Commission certify a "sale," but also a "service," and that when an old contract expires and the parties enter into a new contract, the new contract is a "rate change" within the meaning of section 4 of the act, and not a contract necessitating a new certificate under section 7.

There are several common problems that arise after the issuance of a certificate. Frequently, as a result of successful developmental drilling and extensions of fields, additional sales are made to the same purchaser from acreage adjoining that described in the original sale contract. Although no such procedure is contained in the Commission's rules or regulations, a time honored method of getting Commission approval for such sale is by means of a petition filed with the Commission to amend the original certificate. No prescribed form exists, but it is suggested that the petition should advise the Commission of the details of the prior

12 18 C.F.R. 1.30c(1) (1960).
13 18 C.F.R. 1.20(b) (1960).
14 15 U.S.C. § 717 f(e) (1958).
15 364 U.S. 170 (1960).
16 364 U.S. 137 (1960).

certificate proceedings and generally contain the information required of an original application for a certificate. In such circumstances the Commission will usually issue an order amending the original certificate and authorizing the additional sales.

Immediately after the *Phillips* decision[17] on June 7, 1954, pursuant to the resulting Commission order, the independent producers were required to file all existing gas sale contracts involving jurisdictional sales with the Commission as rate schedules. This was done in great haste and in some instances contracts were filed which later were discovered to have involved no jurisdictional sales. A simple method to clear the record in such a situation is to file with the Commission a petition to cancel the certificate, accompanied by a statement from the purchaser confirming the non-jurisdictional aspects of the sale. If there is no disagreement as to the lack of jurisdiction, an order will issue cancelling the certificate.

If the client sells his interests in producing properties from which sales have been previously certificated, petition can be made to the Commission to amend the certificate to exclude the transferred properties, or, in the event the client has disposed of all his interest, petition to cancel the certificate can be made. It is recommended that in any such sale, the parties stipulate that the purchaser will make immediate application for a "Certificate of Public Convenience and Necessity" to continue the deliveries and sale of the gas from the transferred properties.

## II. CHANGES IN SALE PRICE

Traditionally, most long term gas sale contracts provide for future increases in the price of the gas. These increases take the form of definite periodic escalations, or some form of indefinite price redetermination clauses. Although these clauses are a part of the original contract when the certificate is issued, obviously an increase in price based on such clauses is a "change" in rates as defined in section 4(d) of the act.[18] Therefore, a change in rates should be filed with the Commission if a price increase is desired.

Section 154.94 of the regulations details the manner of making the filings for such increases. One must file his change in rates at least 30 days in advance of the date it is to become effective in order to comply both with section 4(d) of the act and section 154.94(b) of the regulations.

In filing for proposed increases, sub-sections (e) and (f) of section 154.94 require special attention. The "basis for the proposed change" as set out in sub-section (d) is, of course, a contract provision, and it is recommended that reference be made to the applicable contract clause and that it be set out verbatim. In addition to the required information asked for in items (i) through (v) of sub-section (e), all other "reasons," as stated in said sub-section (e), that justify the increase, and "a full statement in support of such increase," such changes-in-rate filings contain statements relating to the needs of the applicant for increased revenue and further recite that the original contract was arrived at by arm's

17 Phillips Petrol. Corp. v. Wisconsin, 347 U.S. 672 (1954).
18 Episcopal Theo. Sem. v. F.P.C., 269 F.2d 228 (D.C. Cir. 1959).

length bargaining; that the increased price constitutes an integral part of the consideration upon which said contract is based; and that the proposed increased price does not constitute a new "price plateau" nor is it "out-of-line" with current prices being paid in the area.[19] Frequently other price increases at comparable levels are detailed, if the information is available, setting forth the names of the purchasers and sellers, rate schedules and supplement numbers, dates of price increases, areas, etc. If cost information relating to the properties described in the sales contract is available showing exploration, acquisition and operating costs, and showing that the expected profit from the sale is not large, it is recommended that this also be included.

The necessity for such cost information is a controversy that has not been completely resolved. In the past, Eastern Seaboard distributing companies have intervened in producer proceedings where the proposed increase has been suspended pursuant to section 4(e) of the act, and have made the claim that if cost evidence is not submitted by the producer in his proposed changes in prices, he has not made a "full statement in support of such increase" as required by sub-section (f) of section 154.94 of the regulations and therefore the Commission should reject such proposed changes. The basis of their reasoning apparently comes from the 1955 pipeline case of *Detroit v. F.P.C.*[20] In view of the very recent decision of the Commission in the *Phillips Petrol.* case,[21] it would appear that cost evidence is not necessary for a "full statement." However, the progress of this decision should be followed through the courts as an aid to conduct in this regard.

The Commission can (and frequently will) suspend price increases for a period of five months from the effective date thereof, that is, the date proposed to make the increase effective. As the end of the suspension period approaches, in order to put the increased price into effect, one must file a motion as stated in section 4(e) of the act, and section 154.102 of the regulations. Upon receipt of the motion, the Commission will issue an order stating that the increased rate will go into effect as of a certain date, subject to the producer's refunding to the purchaser such portion of the increase found not to be justified by the Commission. The order

19 Atlantic Ref. Co. v. Public Serv. Comm'n, 360 U.S. 378 (1959).
20 230 F.2d 810 (D.C. Cir. 1955), *cert. denied*, 352 U.S. 829 (1956).
21 Phillips Petrol. Co., G-1148, Opinion and Order No. 338, September 28, 1960.

will also require, before collection of the increased rate can begin, that the producer file an agreement and undertaking (or bond) to refund such portions of the increased prices, with interest, found by the Commission not to be justified. The practice has grown in the last few years of filing the agreement and undertaking at the same time the motion is filed. The Commission has formally recognized the practice.[22] The Commission will now, in one order, accept the agreement and undertaking if satisfactory, and allow the increase to become effective, subject to refund. If the client is a corporation, a certificate of the secretary of the corporation should be filed which sets forth the resolution by the board of directors giving the officer signing the agreement and undertaking the necessary authority to do so, together with the secretary's statement that such resolution has not been rescinded, annulled or revoked.

At this uncertain stage of development in proceedings before the Commission, unless the client has very large increases in net dollars, section 4(e) suspensions should be avoided, if at all possible. Once suspended, the increased price that can be collected will probably be refunded at some future time, with interest at 7% per annum. Aside from the additional bookkeeping burden involved in accounting for these funds for your client's own purposes, the Commission requires frequent reports concerning the amounts collected.

When one is so unfortunate as to have several rate increases under suspension, they will usually be consolidated for hearing. It is quite difficult to get to trial on one or a few price suspensions.[24] At any such trial, as provided in section 4(e) of the act, " . . . the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the natural-gas company." It is not within the scope of this paper to cover the problems of a trial involving section 4(e) price increase suspensions. As an aid to judgment in trying to avoid them at the present time, the observation should be made that no definite standards as to what constitutes a prima facie case to sustain the burden of proof have been formulated.[25] Before the Commission's decision in the *Phillips* case issued September 28, 1960, a minimum case was usually a traditional public utility "cost-of-service" study of the total client's jurisdictional sales[26] plus any other evidence deemed worthy of consideration. "Field price" and "commodity" evidence was frequently introduced along with the above mentioned cost evidence. It is still too early to formulate any definite plan in view of *Phillips*. It would appear that cost evidence pertaining to the industry as a whole is relevant, particularly as such costs relate to the areas in which a particular suspension is located.[27] A conservative approach would also indicate that a cost-of-service study, calculated on the same basis as that used by the Commission for Phillips

22 Natural Gas Act, 52 Stat. 323 (1938), 15 U.S.C. § 717 c(e) (1958).
23 18 C.F.R. § 154.102(e) (1949).
24 At the end of 1959 there were 3065 producer rate increase suspensions pending before the Commission, which is an increase of 1031 suspensions over 1958.
25 See May, *Preparation For Gas Rate Hearing before the Federal Power Commission*, Eleventh Annual Institute on Oil and Gas Law and Taxation, 123.
26 See Episcopal Theo. Sem. v. F.P.C., 269 F.2d 228 (D.C. Cir. 1959); Bel Oil Corp. v. F P C., 255 F. 2d 548 (5th Cir. 1958); Detroit v. F.P.C., 240 F.2d 810 (D.C. Cir. 1955); Mississippi Riv. Fuel Corp. v. F.P.C., 121 F.2d 159 (8th Cir. 1941).
27 Phillips Petrol. Co., *Supra* note 21 at 11.

Petroleum Company in *Phillips*, would be of value where suspended prices exceed the Commission's established area prices. The preparation of any such case would invariably involve the use of expert testimony, would take a long time to prepare, and would entail tremendous expense.

To successfully avoid a section 4(e) suspension of a price increase allowed by a client's gas sale contract involves some hardship but is usually worthwhile. One way to avoid the hardships of section 4(e) of the act is not to file for the price increase provided in the contract. This course is founded upon the simple premise that it is not good business to spend a large sum of money to try to obtain a lesser amount in the form of a price increase. Particularly, this is true when the chances of succeeding are so small. Surprisingly enough, several large producers follow this course. I suspect that the possible avoidance of a section 5 general investigation is involved in this practice also. This is discussed further in part IV herein. A more obvious approach is to determine what the Commission-approved price is for the particular area involved and then file for so much of the contract price increase as will be allowed without question.

If one should incur one or more section 4(e) price increase suspensions, he still has several alternatives other than a formal trial. First he can petition the Commission to terminate the suspension proceedings showing, if it happens, that the Commission has allowed similar price increases in his area without refund obligations.[28] Also, if his price increase is above that which he believes will be allowed by the Commission, he can file an "Offer of Settlement" pursuant to section 1.18(e) of the Commission's Rules of Practice and Procedure, in which an offer can be made to reduce the proposed price to the level that he believes the Commission will accept.

From the above discussion, one can see the advantages of making his own filings, as pointed out in part I, instead of entrusting this duty to an operator, as judgment and interest in these matters may very well differ.

It has been the Commission's policy to reject price increase filings made during the suspension period of a prior filing.[29] This policy is currently being litigated.[30]

## III. TERMINATION AND ABANDONMENT

Once natural gas enters into interstate commerce, deliveries cannot be terminated "without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extend that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment."[31] The problem of termination arises quite frequently: wells are depleted; the seller wishes to

28 Reef Fields Gasoline Corp., 19 F.P.C. 351 (1958).
29 See Panhandle Eastern Pipeline Co., 8 F.P.C. 1224 (1949); Federal Power Commission, Statement of Federal Policy and Interpretations Under the Natural Gas Act § 2.52 (1958).
30 Amerada Petrol. Corp. v. F.P.C., Cause No. 6483 (July 25, 1960).
31 Natural Gas Act, 52 Stat. 324 (1938), 15 U.S.C. § 717(f)(b) (1958).

use some or all of the gas for secondary recovery operations; or a contract terminates.

The philosophy once existed among many producers that the Commission only certificated a "sale" and that upon the completion of the term of a contract or upon the depletion of a well, the Commission's jurisdiction ended. The *Sun* and *Sunray* cases[32] adversely settled this issue, but the philosophy persists with many in the case of depleted wells. Desirable as it may be from a producer's viewpoint, it seems well settled as a matter of law that Commission approval is a prerequisite to termination or abandonment of deliveries of gas flowing in interstate commerce.[33] Commission regulations 154.97 and 157.30 detail the procedure to be followed to obtain approval to terminate deliveries.

In the case of a property that has become depleted, seeking Commission approval to terminate deliveries may seem to be a rather useless thing. However, it is recommended that it be done. Not only will there be technical compliance with the law, and avoidance of the possibility of penalties, but in the event of new discoveries on the property involved at a later date, there would seem to be no question but that the new sales from new discoveries are "initial" sales to be certificated pursuant to section 7 of the act, and not changes in existing rates subject to suspension pursuant to section 4(e) of the act. This is important, of course, because the Commission will, at the present time, certify a price higher than that which they will allow as a rate increase. If there is no protest, the Commission will usually accept a verified application to terminate as sufficient proof of the depletion, and in due time grant approval to terminate.

To obtain Commission approval to terminate deliveries to make a new sale or to use the gas in secondary recovery operations, requires an extremely strong case. Termination has been allowed where the seller has shown that the buyer does not need the gas involved,[34] and where termination would end flaring and promote good conservation practices,[35] but it has been refused in cases where a higher price appeared to be the primary object,[36] and where the Commission believed that the public need for gas production outweighed conservation benefits.[37]

## IV. GENERAL INVESTIGATIONS

Under the authority of section 5 of the Natural Gas Act,[38] the Commission can institute a general investigation into the rates, charges and practices of a natural gas company, which includes, of course, an independent producer. The initial investigation of a producer was that of Phillips Petroleum Company. Later, in January

32 *Supra* notes 14 and 15.
33 In addition to the *Sun* case cited in note 14, see J. M. Huber Corp. v. F.P.C., 236 F.2d 550 (3rd Cir. 1956), *cert. denied*, 352 U.S. 971 (1957).
34 Rutherford, 23 F.P.C. 357 (1960).
35 Atlantic Refining Co., 16 F.P.C. 1010 (1956).
36 Dixie Pipe Line Co., 14 F.P.C. 106 (1955).
37 Harper Oil Co., 22 F.P.C. 756 (1959).
38 52 Stat. 823 (1938), 15 U.S.C. § 717d (1958).

of 1956, the Commission issued the "Tennessee" orders.[39] These orders instituted section 5 general investigations into the activities of the Chicago Corporation, Gulf Plains Corporation, Alfred C. Glassell, Jr., Stanolind Oil and Gas Co., Continental Oil Co., The Altex Corporation, The Atlantic Refining Co., Tidewater Oil Co., Ralph E. Fair, Ralph E. Fair, Inc., Gillring Oil Co., Humble Oil and Refining Co., C. V. Lyman, The Nueces Co., and Sinclair Oil & Gas Co. At last count, only six of these investigations had been terminated; this gives some indication of the manner in which these proceedings race along. Many investigations of this nature have since been instituted. Other than in the "Tennessee" cases, the reason usually given by the Commission in the order instituting such investigation is that there is outstanding, with respect to the sales of the company or individual involved, a large number of suspension orders concerning rate increases. This raises the question of the legality of all the rates of the company or individual. To the extent that this is the motivating factor, it certainly lends substance to the suggestion made in Part III that the section 4(e) suspensions should be avoided if at all possible.

It is difficult to detect a common denominator in the events causing these investigations. The companies and individuals being investigated cover the range from large to small in total volumes of gas sold and from high to low in average prices being received for such sales.

The Commission has lately adopted the tactic of consolidating a section 5 general investigation with a group of section 4(e) rate suspensions for trial. Although the burden of proof is upon the Commission in a section 5 general investigation, the burden is upon the producer in a section 4(e) proceeding. By thus consolidating the proceedings, the producer must prepare and go forward first with his evidence to sustain his increased prices suspended pursuant to section 4(e) of the act, thus accumulating the bulk of the data required by the Commission"s staff in preparing its direct section 5(a) case. As is the case in section 4(e) suspension proceedings, the requirements of a prima facie case in a section 5 general investigation are not settled and the defense of such an investigation is costly and time consuming. There is, of course, some advantage for

39 Instituted upon the complaints of the Tennessee Public Service Commission and others.

the producer in postponing the ultimate decision in a section 5 general investigation, because an order from such a proceeding, lowering the contract prices, is prospective. It is in the area of general investigations that seeking the assistance of an attorney experienced in such matters is recommended when one has had little contact with such cases.

Some encouragement in the area of section 5 investigations has been handed the independent producer in the recent *Phillips* decision.[40] There the Commission dismissed the section 5 general investigation pending against Phillips, debunked an individual company cost approach, and indicated that "fair prices for gas" would require development on an area basis "based on reasonable financial requirements of the industry." It is probable that definite standards will soon be established as to the requirements of a prima facie case; but until the *Phillips* decision has run the gauntlet of the appellate courts, the conservative approach would again seem to suggest a traditional cost-of-service study following that used by the Commission for Phillips Petroleum Company.[41]

40 Phillips Petrol. Co., G-1148, Opinion and Order No. 338, September 28, 1960.

41 The quantity of research aids and reference works one may wish to acquire will, of course, depend upon the volume of work that will be done in this area. Copies of the Natural Gas Act, the Commission's Rules of Practice and Procedure and the Commission's regulations under the Natural Gas Act with approved forms can be purchased from the United States Government Printing Office in pamphlet form for about 40¢ each. The Natural Gas Act is contained in annotated form in title 15 of the United States Code Annotated and the commission's Rules and Regulations are printed in title 18 of the Code of Federal Regulations. The Natural Gas Act and the Rules and Regulations, along with related Commission and court decisions, are contained in a Commerce Clearing House loose leaf service entitled "Utilities Law Reporter, Federal." The Government Printing Office publishes and sells most, but not all, of the Commission's decisions and orders in bound volumes entitled "Federal Power Commission Reports."

In addition, the Federal Power Commission distributes without charge its press releases, and copies of all its opinions, decisions and major orders. The Commission also sells a 25¢ map showing and identifying the major natural gas pipelines—a very worthwhile source of information. Many important commission and court decisions and related matters are collected in the Oil and Gas Reporter published by the Southwestern Legal Foundation. The Annual Institute on Oil and Gas Law and Taxation, held by the Southwestern Legal Foundation, usually publishes papers relating to Federal Power Commission activities, as does the Rocky Mountain Mineral Law Institute. A fairly recent "Administrative Law Treatise" by Kenneth Culp Davis in four volumes deals with the Federal Power Commission along with other agencies and has a section containing practice forms. The Public Utilities Reports, Inc., publications include: "Conduct of the Utility Rate Case," by Frances X. Welch, "Ruling Principles of Utility Regulations" by Ellsworth Nichols, and "Preparing for the Utility Rate Case" by Frances X. Welch. Foster Associates, Inc., of Washington, D.C., published a weekly bulletin concerning current activities before the Commission, including summaries of evidence presented in the proceedings and summaries of the important briefs filed with the Commission. And, of course, law reviews are a prolific source of current information in the field.