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Energy Report/El Paso firm's worldwide gambles for gas put pressure on federal policy

by Richard Corrigan

"The answers, the solutions, the programs, the technologies to solve our energy problems are not going to be found here in Washington in government buildings, but in the oil fields, in the laboratories, at the wellhead, and in the refineries and board rooms of our private enterprise system."

— Rogers C. B. Morton,
Secretary of the Interior

"Gentlemen, this is not a game for small people."

— Howard T. Boyd, chairman,
El Paso Natural Gas Co.

Howard Boyd, the sparkplug chairman and chief executive officer of El Paso Gas, often describes the energy business as a poker game.

Boyd has the chips and the spirit to play for high stakes.

His company grosses more than $1 billion a year and transmits through its network of pipes nearly one-tenth of the gas consumed in the United States.

At a time when the nation's demand for gas is rising far above the available supply, Boyd is taking calculated gambles here and around the world to obtain more gas and make more money.

"It's a risky business," he said. "The rewards have to be commensurate with the risks. Otherwise you have no justification for spending your customers' dollars."

The success or failure of El Paso's ventures will be greatly influenced by—and will help to fashion—the energy policies of the federal government.

The views expressed by industry spokesmen like Boyd—a 63-year-old executive and onetime Washington lawyer with a salary of $140,000-plus—likewise will influence industry actions and government reactions.

And the kinds of energy that American consumers will be burning in years to come—and the prices they will be paying—will also be affected.

For as Secretary Morton's remarks quoted above suggest—as given in a Dec. 11 speech to the National Petroleum Council—the real go or no-go decisions on energy are made not by government officials but by corporate chiefs.

The federal government sets the conditions; companies like El Paso make their own judgments on where to place their bets.

During a four-hour interview at his Houston headquarters suite, Boyd voiced impatience over what he described as time-consuming rules and ill-founded regulations imposed by the federal government.

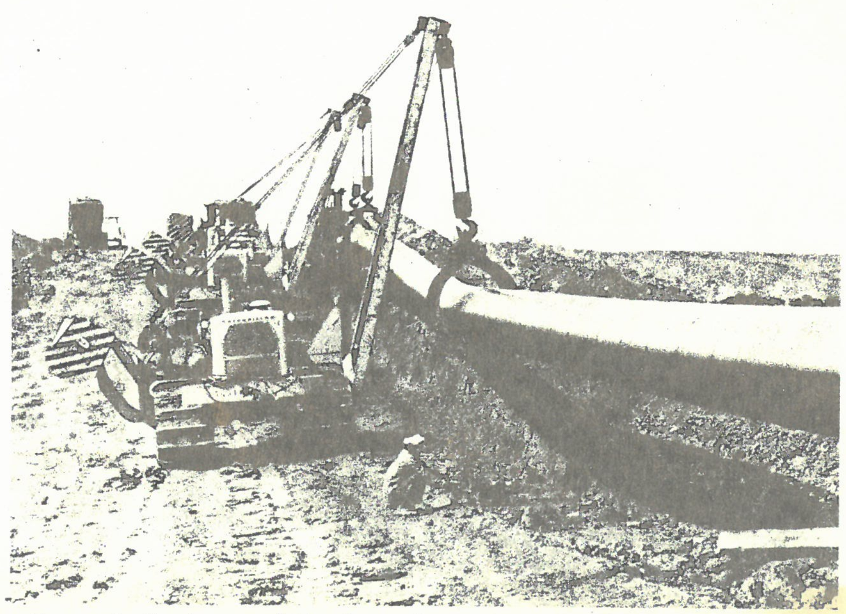
"Can you imagine," he asked in his 24th-floor corner office with a panoramic view, "trying to explain to any kind of a foreigner what the hell goes on in our government?"

El Paso's projects

As the Nixon Administration readies a new pronouncement on federal energy policy, Boyd's company is pressing for favorable conditions from Washington on a number of fronts. *(For background on the forthcoming energy message, see Vol. 4, No. 43, p. 1621.)*

El Paso is:

- still seeking to change—through court appeals or through legislation—a Supreme Court decision ordering the company to divest itself of its pipeline network in the Pacific Northwest *(see map)*. In an antitrust case dating back to 1957, the Court ruled unanimously in 1964 that El Paso's acquisition of the Pacific Northwest Pipeline Corp. violated the Clayton Act (38 Stat 730). El Paso has hung onto the Northwest line, which produces revenues of some $200 million a year, pending final action on a divestiture plan.
- awaiting final clearance from the Federal Power Commission for the importation from Algeria of one billion cubic feet of gas a day in the form of liquefied natural gas (LNG), a multi-billion-dollar project that would inaugurate U.S. purchases of LNG on a massive and long-range basis.
- asking the FPC's permission to import from Algeria an additional 750 million cubic feet a day, half of which would be piped from the East Coast to El Paso's markets in the West through a partnership arrangement with Transcontinental Gas Pipe Line Corp.
- continuing talks with Soviet officials over the possibility of importing LNG from Siberia to the U.S. West Coast. Along with several other companies, El Paso sees the untapped Siberian oil and gas reserves as a likely future source of U.S. energy. *(For reports on U.S.-Soviet trade prospects, see Vol. 4, No. 47, p. 1763, and No. 48, p. 1799.)*
- looking into the idea of bringing the gas beneath Alaska's North Slope to West Coast markets via a trans-Alaska pipeline and LNG tankers. Boyd described this project, which has a tentative price tag of $3 billion-plus, as the "all-American route," saying it would better serve U.S. interests than an Arctic pipeline from Alaska through Canada.
- proposing to build a plant at Corpus Christi, Tex., that would take in



Desert pipeline is part of Algerian project [illegible] by El Paso N[illegible]

300,000 barrels a day of imported crude oil or oil products and produce 600 million cubic feet a day of synthetic natural gas (SNG). The company has applied to the Office of Emergency Preparedness for a special exemption to the oil import control program to allow importation of the oil feedstock, according to E. G. Najaiko, El Paso's vice president-public affairs. This facility and a 450-mile connecting pipeline would cost about $750 million.

- planning to build a $350-million coal-gasification plant in New Mexico, which would be the first of a number of such plants that may dot the West. The El Paso facility would process strip-mined coal on a 40,000-acre lease acquired from the Navajo Tribe and would require 10,000 acre feet of water a year for 25 years. It would produce 250,000 cubic feet daily of SNG.
- looking for rights to other coal fields in the West. "We have developed a relationship that we're not yet free to announce," said Boyd. The "relationship" involves sizable western leases now held by an oil company.
- joining with the Atomic Energy Commission in studying the use of underground nuclear explosives to allow recovery of natural gas deposits in western states. The AEC and El Paso already have conducted one experimental test, Project Gasbuggy, detonated on Dec. 10, 1967. Boyd said El Paso is looking toward another test, known as Project Wagon Wheel, that would tap an estimated four trillion cubic feet of gas reserves near Pinedale, Wyo. No date has been set for this test pending further studies of the explosion's expected impact.

This list of projects illustrates El Paso's campaign to become one of the nation's prime suppliers of energy.

It is quite a drive for a company that started out modestly 44 years ago.

At that time, when natural gas was an unwanted and often wasted by-product of oil production, the newly chartered company began piping gas through a 16-inch line from New Mexico's San Juan Basin to the West Texas town of El Paso, along the Mexican border.

Current operations: In its annual report to shareholders for 1971, El Paso said:

Howard T. Boyd

"Sales and earnings in 1971 improved substantially over the previous year.

"Earnings were $64,147,000 or $2.12 per common share before an extraordinary charge to income of 26 cents per share. . . .

"Operating revenues in 1971 exceeded one billion dollars for the first time. Such revenues were $1,020,237,000 as compared with $925,260,000 in the preceding year."

(This revenue figure ranked El Paso as the fifth largest utility in the nation, in terms of income, according to the *Fortune Double 500 Directory.*)

"Our total deliveries of natural gas also reached a record level, exceeding 1.8 trillion cubic feet for the year. . . . Record sales volumes were reached in 1971 in each of the 11 western states served by the company's pipeline systems. . . .

"That volume of gas represents 9 per cent of all natural gas delivered in the United States during the year.

"The increasing demands in our market areas for natural gas have presented opportunities for further expansion. . . .

"Regional and national needs for additional low-pollutant energy sources have made it possible for El Paso to move into new types of projects which should provide a base for future earnings growth."

More gains in '72: For the first nine months of 1972, according to reports filed with the Securities and Exchange Commission, El Paso revenues (at $814,295,000) and net income (at $53,979,000) were running well above the 1971 levels.

The company also raised $95 million through the issuance last June of 20-year, 8 ¼-per cent debentures that were bought by blue-chip investors such as Metropolitan Life Insurance Co., Equitable Life Assurance Society of the United States and John Hancock Mutual Life Insurance Co., according to reports at the SEC.

Also, the company raised another $23 million through the sale last June of preferred stock to existing securities holders.

Reputation: Because of its sheer size and its often controversial actions, El Paso does not have the reputation in Washington of a corporate wallflower.

"There isn't anybody in the energy business who isn't familiar with the El Paso Natural Gas Co. and who hasn't formed some opinions about them," said one Washington lawyer specializing in FPC matters. "Most of us, way down deep, probably admire the audacity and the daring they show."

"They'll push you as far as you let them go," said an Interior Department official on a not-for-attribution basis.

Another view was offered by Beverly C. Moore Jr., an associate of the Corporate Accountability Research Group, a Ralph Nader organization.

Moore, testifying before the House Interstate and Foreign Commerce Subcommittee on Communications and Power last Sept. 22 against legislation (HR 10331) to exempt El Paso from the divestiture of Pacific Northwest, said:

"Far from being a leader and innovator, the only industry milestone to which El Paso can legitimately lay claim is its being the first natural gas pipeline company to perpetuate an illegal merger. . . .

"El Paso has used its economic muscle to create a groundswell of political support for special interest legislation.

"Large corporations have done this in the past — Lockheed and Penn Central being two recent examples — and large corporations will do this in the future so long as Congress remains addicted to the false notion that it is somehow in the public interest to dispense special favors to special interest groups."

To back up his point, Moore said El Paso documents filed with the FPC showed that for 1971 the company's expenditures involving the legislation to preserve the merger totaled $893,-862.

Gas supply

El Paso is not the only energy company—or, more particularly, the only natural gas transmission company—that is scouting the world for more gas.

Virtually all major pipelines say they cannot get hold of enough gas to meet projected or even current demand.

El Paso's system could move another 500 million cubic feet of gas daily right now to distribution companies and other customers—if it had the gas to move, Boyd said.

Like the other pipelines, El Paso has filed with the FPC a curtailment plan designed to allocate available supplies to customers on a priority basis.

Even in Texas, Boyd said, the current scarcity of gas has caused cutoffs and reductions in the flow of the fuel.

"There's more gas produced in Texas than in any other state," Boyd said.

The intrastate price is not regulated by the FPC.

The situation in Texas shows that the gas shortage is real and that gas producers are not simply cutting off interstate sales so as to sell more gas to higher-paying intrastate customers, Boyd said.

Reasons: If there is a shortage of gas today, what brought it on?

Like his colleagues throughout the oil and gas industry, Boyd singled out the regulatory policies of the FPC.

The commission during the 1960s set prices too low to attract the money needed to find and develop adequate new reserves of domestic gas, according to this view.

(This view has just been expressed once again in the new "U.S. Energy Outlook" report of the National Petroleum Council, industry advisory panel to the Interior Department. Boyd served as vice chairman of the council panel that produced the report.)

Boyd also zeroed in on a particular FPC decision that, he said, nearly drove El Paso out of domestic gas exploration.

Rate of return: In the mid-1950s, Boyd said, El Paso began building up its own exploration division to help assure a future supply of gas.

lion on this effort and hired about 300 geologists, engineers and other specialists, he said.

In 1963, he said, in a nine-year-old case involving El Paso's allowed rate of return, the commission fixed the company's annual rate at 6⅛ per cent rather than the 9½ per cent the company had sought. This rate applied to exploration expenses as well as other operations, he said.

"You just can't justify spending your stockholders' money, when all you're going to earn is 6⅛," Boyd said. "God, you could put your money in a savings and loan association and there's no risk at all."

Boyd said that "from that day forward," El Paso withdrew "to a large extent from the gas exploration business."

That FPC decision, he said, cost the company rate refunds to its customers totaling $155 million. More than half the refunds stemmed from exploration investments, he said.

Government policies of that kind discouraged the search for domestic gas and as a result, he said, there is today a shortage of gas.

Worsening shortage: Boyd said that because the FPC under the Nixon Administration is more favorable to higher incentives to gas producers, El Paso is beginning to build up its exploration operation again.

But, he said, because of the long lead times involved in bringing new reserves to market, "as I see the gas situation, there is no way to avoid a worsening of the situation before it can get better. . . .

"We're too little, too late on every one of the remedies. . . . The Federal Power Commission still has not come forward with an incentive . . . that would produce additional gas in the United States."

The search abroad

On Bastille Day, 1969, in Paris, Boyd and officials of the Algerian government oil and gas agency, Sonatrach, signed an agreement for the exportation of one billion cubic feet of gas a day—by far the biggest LNG venture yet.

El Paso had obtained concessions from France for exploration rights in the Sahara, Boyd said, following the FPC decision that discouraged domestic exploration.

The company made a "significant discovery" in the Sahara, Boyd said, where in one field alone the recoverable gas reserves have been estimated at 60 trillion cubic feet—nearly triple the amount consumed yearly in the United States.

"We stayed down there all through the revolution, and we're very proud of the relationship we have with the Algerians," Boyd said.

But ever since the agreement was signed, he said, "We've been working against a series of deadlines, each one threatening to blow the project sky-high."

Every U.S. agency with a say in the matter, including the State and Defense Departments and the FPC, has approved the project, he said—"and yet, nothing happens."

It has been difficult, he said, to explain to the Algerians such U.S. novelties as the National Environmental Policy Act (83 Stat 852), which is now necessitating a new environmental-impact statement by the FPC.

"Every month that the FPC failed to come forward with a certificate that we could live with," Boyd said, "the cost of that plant (a $300-million liquefaction facility in Algeria) goes up another $1.8 million. And that continues to this day. . . .

"This is going to have to be reflected in the price of the gas to the (U.S.) consumer. . . . Somebody's got to pick up this tab."

Import arrangement: The Algerian LNG project is an intricate arrangement in which El Paso serves as promoter and middle-man.

Sonatrach, the Algerian agency, will produce the gas, pipe it to the Mediterranean coast and liquefy it. Sonatrach's investments will total some $628 million, which it will raise through the help of the U.S. Export-Import Bank and a consortium of U.S. banks.

El Paso Algeria Corp., an El Paso subsidiary, will take delivery of the gas and transport it in a fleet of nine LNG tankers owned by another El Paso subsidiary, El Paso Marine Co.

Six of these tankers, each costing nearly $100 million, are to be built in U.S. shipyards. The U.S. government will pay part of the bill through construction subsidies from the Commerce Department's Maritime Administration.

Three of the tanker contracts have been awarded to Newport News (Va.) Shipbuilding and Dry Dock Co., a subsidiary of Tenneco Inc. The Commerce Department last Sept. 30 announced the approval of subsidies to

Newport News totaling $76.3 million for the three tankers.

El Paso Algeria will sell the liquefied gas to Columbia LNG Corp., Consolidated System LNG Co. and Southern Energy Co. Title to the gas will pass from El Paso to these buyers on the high seas.

Columbia and Consolidated will regasify the LNG at a Cove Point, Md., terminal. Southern will regasify the fuel at a Savannah, Ga., port.

The gas then will be transmitted to East Coast distributors for resale to gas consumers.

FPC opinions: In its initial approval of the project last June 28, the FPC tacked on some stiff conditions.

The FPC said it would allow El Paso to sell the gas to the importing firms at no more than 77 and 83 cents per thousand cubic feet. "We cannot permit El Paso Algeria to track (pass on) costs to consumers under indefinite escalations," the FPC said.

The commission's opinion suggested that El Paso stood to gain an annual rate of return approaching 16 per cent on its commitments to the Algeria project.

The FPC said, in a declaration of potentially strong impact, that the high cost of the LNG should be borne only by those gas consumers who actually buy it.

This meant that the LNG would not be mixed in on the rate schedules with cheaper domestic gas, so that all customers would have to pay more.

El Paso, along with the importing firms and several other parties, objected to the commission's opinion.

The commission granted a new round of oral arguments and briefs and then changed its mind on these key points.

In Opinion No. 622-A, issued Oct. 5, the FPC dropped the requirement for separate LNG rates for gas consumers—though the pipelines themselves would still have to purchase the LNG under separate rates.

Thus, there was no prohibition against passing on the costs of the LNG to all of the importers' gas consumers—whether or not they used LNG.

The FPC also said it would accept an automatic price-escalation clause in the El Paso contracts.

Moreover, the FPC said that since El Paso would be surrendering title to the gas on the high seas, it would assert no direct jurisdiction over El Paso in this venture.

In a concurring opinion on the FPC's first decision, Commissioner Rush Moody Jr., D, noted that, to help beef up the nation's gas supply, the FPC was allowing pipelines to pay about $1 per thousand cubic feet for gas—"while prohibiting the same companies from paying independent (U.S.) producers an area rate of more than 26 cents."

Moody said, "This inequity results from commission attempts to follow the requirements of cost-based pricing," which permits companies to recover their investments and then earn a specified rate of return.

Cost-based regulation, Moody said, "will always favor that source which is most difficult to bring to market; the more the importers spend on transport and processing facilities, the greater the dollar return."

Boyd's pet: During the interview, Boyd described the Algerian venture as his pet project.

One of its attractions, he said, is that "El Paso's not going to spend a penny in Algeria" on capital investments. That will be done by the Algerians themselves.

Furthermore, he said, the Algerian facilities "would not be subject to nationalization." (He agreed that this was another way of saying the facilities would already be nationalized.)

Algerian President Houari Boumedienne has told him, Boyd said, that the project will be his country's biggest single source of hard currency, bringing in some $120 million a year.

The U.S.-Algerian deal will help bolster America's position in that region of the world, Boyd said, "at a time when we become more and more dependent on Middle Eastern oil" and when "there is increasing Russian influence in the Mediterranean."

Siberian gas: Boyd also talked of El Paso's negotiations with Soviet officials for the importation of LNG from Siberia.

El Paso's partner in this possible venture is Occidental Petroleum Corp., whose chairman, Armand Hammer, was one of the first capitalists to operate in Communist Russia.

Hammer, now 74, went to Russia in the 1920s as a young man with a medical degree and interests in supplying pharmaceuticals.

He struck up an acquaintance with Vladimir I. Lenin, as Boyd tells the story, and arranged for rights to distribute pencils, then a scarce commodity, as a way of giving the Russian people the means to an education.

Hammer headed the A. Hammer Pencil Co. in Moscow for five years. He also is a noted art fancier, author of "Quest of the Romanoff Treasure" and owner of a rare art collection of such value that it recently was displayed at the famed Hermitage museum in Leningrad.

Boyd recalled talking in January 1972 in Moscow with a Soviet trade official.

"I told him that we were exploring the prospects in all of the Pacific Basin," Boyd said.

The Russian said his country had sufficient reserves of oil and gas to meet its needs, but that "there was going to come a time when the nuclear fast breeder and perhaps other sources" would be used instead.

The Russian said, according to Boyd, that "it was entirely possible that if they did not exploit their resources now, they might not be exploitable."

El Paso and Occidental concluded a preliminary study on exploitation of the Siberian reserves; the study was delivered in Moscow in September, Boyd said.

Further messages have been exchanged and Boyd said he hoped a meeting on technical matters could be held by the end of this month.

Boyd conceded that "if we get into a holocaust with Russia, the Russian LNG will be cut off."

But, he argued, it would be to the advantage of the United States to arrange diverse sources of energy, if energy must be imported—and that the Siberian deal thus would be a plus to our national security.

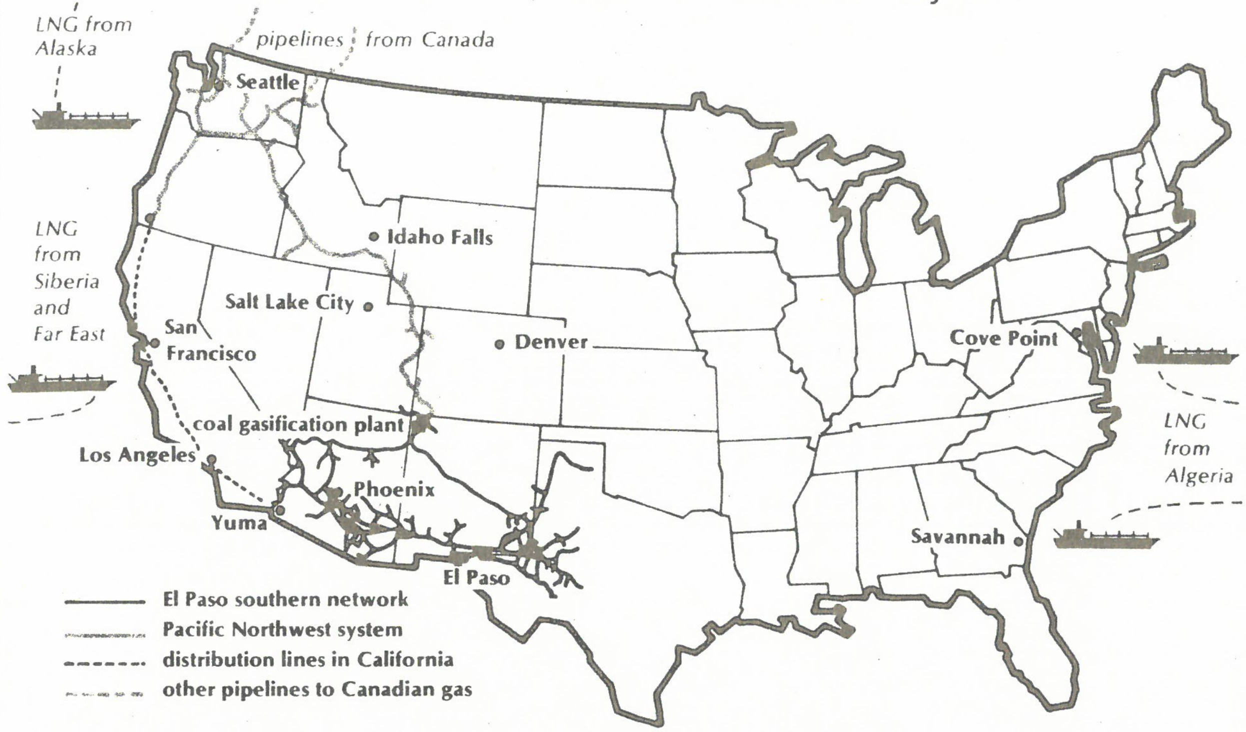
Looking north

Until last month, it had been generally assumed in industry and government circles that the gas reserves beneath Alaska's North Slope would come into the lower United States via a trans-Canadian pipeline.

The Nixon Administration has approved a different route for the oil under the North Slope; it is to be piped south across Alaska to the Gulf of Alaska, and then transported by tanker to the West Coast and other markets. This is the controversial, $3-billion-plus project advanced by the Alyeska Pipeline Service Co., representing a consortium of major oil companies.

But because of the expense of liquefying gas, moving it in LNG tankers and then converting it on shore to gas again, the widespread belief was that

El Paso's Network: Coast to Coast and Beyond



The pipeline network of El Paso Natural Gas Co. spreads from the gas fields of West Texas and New Mexico throughout the West. The system's current capacity is about six billion cubic feet of gas a day. California is the company's prime market area, with Southern California Gas Co. accounting for about one-third of El Paso's gas sales revenue. The Pacific Northwest system runs from New Mexico to the Canadian border. This system was acquired by El Paso in a merger that the Supreme Court has ruled illegal; El Paso is appealing the latest court ruling in the long-running antitrust case, and also is seeking legislation to preserve the merger. The Pacific Northwest system gives El Paso access to the gas reserves of Canada; El Paso imports one billion cubic feet of gas daily through Westcoast Transmission Co. Ltd. El Paso also is seeking final federal approval to import from Algeria massive amounts of liquefied natural gas (LNG), which would be delivered to East Coast ports by tanker. The company is studying the prospects for bringing LNG tankers to the West Coast from Alaska, Siberia and other areas of the Eastern Hemisphere. In New Mexico, El Paso plans a gasification plant that would produce gas from strip-mined coal. Other El Paso ventures include plans for the use of nuclear explosives to help recover western gas deposits, importation of oil to the Texas coast for conversion to gas and explorations for new gas reserves in the United States and Canada.

the gas would travel an overland route rather than a land-and-sea route.

In fact, environmental organizations that objected to a trans-Alaska oil pipeline argued that since the gas would move across Canada anyway, the oil should be piped along the same corridor. *(For background, see Vol. 4, No. 14, p. 571.)*

Boyd's plan: Then on Dec. 4, in a speech to the Anchorage Chamber of Commerce, Boyd announced that El Paso is studying the prospects for a trans-Alaska gas pipeline.

The project would involve laying a 42-inch-diameter pipeline from the North Slope to a liquefaction plant and tanker port on the state's south coast. The line's capacity would be 1.6 billion cubic feet of gas a day.

The pipeline and other facilities in Alaska would cost more than $2 billion, El Paso estimated, and the tanker fleet and West Coast port facility would cost another $1 billion.

Asked about this latest venture, Boyd said, "We said to ourselves, 'If you can move Prudhoe Bay gas to U.S. markets with no impact on the balance of payments and at no greater expense . . . then why in the world shouldn't that route be examined?' "

He said a preliminary study was commissioned about a year ago, and that a more comprehensive, $750,000 investigation has been ordered.

A consortium of some two-dozen U.S. and Canadian firms called Canadian Gas Arctic Systems Ltd. has been conducting exhaustive studies for a projected trans-Canadian line, which would carry Alaskan and Canadian Arctic gas.

Boyd said that the proved gas reserves at Prudhoe Bay on Alaska's North Slope, which have been estimated at 26 trillion cubic feet, can justify the construction of only one gas pipeline.

"The gas is going to have to go one way or the other," he said—so why not via "an all-American route" when "it's perfectly obvious that, economically, the Canadians will be greatly favored by building the facilities in Canada."

Advantages: The Alaskan route would provide total U.S. ownership and control of the line, he said, besides assuring that U.S. rather than Canadian construction companies would get the contracts to build the pipeline.

He also said that this route would lead to construction of a petrochemical complex on Alaska's south coast and provide access to gas service through the center of the state.

The companies producing the gas on the North Slope would not object to the Alaskan route so long as they were paid the same price, Boyd said.

Furthermore, he suggested, the decision on which way the line should go will be up to the Federal Power Commission, which must seek to protect the national interest and ought to be concerned over the balance-of-payments implications of a Canadian line.

The Alaskan route would also provide a supply of gas for the West Coast—El Paso's market area—whereas a trans-Canadian line would pipe most of the gas to the U.S. Midwest and to Canadian markets.

Boyd was asked whether a trans-Alaska line could be built if El Paso should lose its pipeline network in the Pacific Northwest in the long-running antitrust case.

"The people in the Pacific Northwest are going to want gas," he said—and even if El Paso should lose that system, he said, the company could still sell LNG there.

"The alleged purpose of the antitrust suit," Boyd said, "was to promote competition."

Antitrust case

Howard Boyd's career began not in the gas fields of the Southwest but in the government and private law offices of Washington.

A 1932 law graduate of Georgetown University, he served in the Justice Department from 1934 to 1939 and was an assistant U.S. attorney for the District of Columbia.

From 1939 to 1952, he was a member of the prestigious firm of Hogan and Hartson, leaving his partnership there to join one of his corporate clients—the El Paso Natural Gas Co.

There is one case he has been struggling with for a long time—the antitrust case involving Pacific Northwest. It is clearly a case he cannot reconcile himself to losing.

The polished lawyer-executive sums it up this way: "In a divided opinion, the Supreme Court said that the Clayton Act does not mean what it says."

Background: In 1954, a new natural gas transmission company called Pacific Northwest Pipeline Corp. got permission from the FPC to build and operate a pipeline from the gas fields of New Mexico to the Washington state market.

Pacific Northwest soon after also got from the FPC approval to import Canadian gas into the U.S. West Coast through a Canadian line, Westcoast Transmission Co. Ltd.

Pacific Northwest began negotiating for sales contracts with California gas utilities. At that time, El Paso was the only interstate gas line serving California.

But in November 1956, before any sales agreements had been reached, Pacific Northwest accepted a merger bid from El Paso. By May 1957, El Paso had acquired nearly 100 per cent of Pacific Northwest's stock.

In August 1957, El Paso filed for approval of the merger from the FPC.

The previous month, however, the Justice Department under the Eisenhower Administration initiated an antitrust action in U.S. District Court for Utah to block the merger. El Paso sought to stay the antitrust proceeding until the FPC had ruled on the merger.

On Dec. 23, 1959, the FPC gave its blessing to the merger, which was consummated formally on Dec. 31.

The state of California appealed the FPC's authority to approve a merger while an antitrust case was pending.

On April 30, 1962, the Supreme Court in the case of *California v. FPC* (369 US 482) ruled in a 5-2 decision that the FPC should have waited for the antitrust question to be settled. The court struck down the commission ruling upholding the merger.

On Nov. 19, 1962, the U.S. District Court for Utah cleared El Paso of the antitrust challenge. The judge dismissed the Justice Department's complaint and told counsel for El Paso, "Prepare the findings and conclusions and judgment. . . . I shan't write an opinion in this case."

The case was taken to the Supreme Court on direct appeal by the Justice Department. In *United States v. El Paso* (376 US 651), decided on April 6, 1964, the Court in an 8-0 vote reversed the district court's ruling.

Divestiture order—In an opinion written by Associate Justice William O. Douglas, the Court directed the district court "to order divestiture without delay" of El Paso's acquisition of Pacific Northwest.

The opinion said that Pacific Northwest, while a young company, was not "feeble and failing" but "prospering," and clearly posed a competitive threat to El Paso in California.

Pacific Northwest had raised $250 million to construct its main pipeline and had adequate reserves of gas and managerial skill, the Court said.

"It was so strong and militant that it was viewed with concern, and coveted, by El Paso. If El Paso can absorb Pacific Northwest without violating (section) 7 of the Clayton Act, that section has no meaning in the natural gas field."

(The Clayton Act prohibits mergers in which "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.")

A divestiture plan proposed by El Paso was accepted by the U.S. District Court for Utah, but several parties to the case objected to the terms.

The case returned to the Supreme Court. In an opinion handed down Feb. 27, 1967, the Supreme Court in the case of *Cascade Natural Gas Corp. v. El Paso* (386 US 129) said in a 5-2 decision that the plan violated the Court's mandate.

Justice Douglas, writing for the majority, accused the Justice Department of having "knuckled under" to El Paso by giving its consent to the terms of the "evil" divestiture plan. Douglas said the conditions of the decree were such that it "promises to perpetuate rather than terminate this unlawful merger."

The Court remanded the case to the district court—specifying that a new judge take the case—for a new round of hearings on a proper divestiture plan. It said the plan "must establish a new company in the same or comparable competitive position that Pacific Northwest was in when the illegal merger obliterated it."

Again, a divestiture plan was worked out in district court. The Supreme Court struck down this plan too.

In the case of *Utah Public Service Commission v. El Paso* (395 US 464), the Court in a 4-2 opinion on June 16, 1969, said a proposed divestiture decree "does not satisfy our mandate" and remanded the case for further proceedings.

Under the proposed decree, the Court had selected Colorado Interstate Corp. as the new operator of the Pacific Northwest system.

The Supreme Court, in an opinion written by Chief Justice Earl Warren, objected to terms that would give El Paso five million preferred convertible shares in the new system and make the Colorado firm assume $170 million of El Paso's debt.

"Only a cash sale" of the Pacific Northwest system "will satisfy the rudiments of complete divestiture," the Court said.

In this case, Utah had filed the appeal but then sought to drop out of the case.

Dissent—This unusual circumstance was noted in a dissenting opinion written by Associate Justice John O. Harlan and signed by Associate Justice Potter Stewart.

"All semblance of judicial procedure has been discarded in the headstrong effort to reach a result that four members of this court believe desirable," said the minority view.

It is "unlikely," said the dissent, that California's natural gas consumers "will ever obtain the benefit of competition that this lawsuit was intended to achieve. . . .

"It is difficult to perceive why the Court should feel constrained to enforce its mandate when the parties have subsequently agreed, in a completely bona fide and voluntary way, that a different solution will better accommodate their interests. . . .

"There is no need to 'do justice' when no litigant is complaining that a wrong has been committed."

Chilson plan—The long-running case was then assigned to the U.S. District Court in Denver before Judge Hatfield Chilson.

On June 20, 1972, in the case of *United States v. El Paso*, Chilson ordered El Paso to sell the Pacific Northwest system to Colorado Interstate Gas Co.

Shortly afterward, Colorado Interstate itself became the subject of a takeover by Coastal States Gas Producing Co.

Judge Chilson, saying this action changed the status of Colorado Interstate, and seeking to avoid further delays in the case, then chose another applicant.

In a final order dated Aug. 30, 1972, Chilson selected a combine of four companies as the purchaser of the Pacific Northwest system.

Welders in rainy Washington put final touches on El Paso's Canada pipeline

The winners, known as the Apco group, were: Apco Oil Corp.; Alaska Interstate Co.; Gulf Interstate Co., and Tipperary Land and Exploration Corp.

Current status—El Paso appealed the latest court order to the Supreme Court last fall.

The company said that "a drastic change has occurred in the gas supplies and gas reserves of natural gas pipelines" in the past few years.

No longer is there competition for the California market, El Paso said—the competition today is for supplies of gas to meet the market's demand.

And only a company as big as El Paso can put up the risk capital necessary to find that gas, the company said.

It asked the Court to allow the district court to recommend "more appropriate relief" than divestiture.

And El Paso asked that the District Court be permitted to name the FPC—which back in 1959 had approved the merger—to serve as a "master in chancery" to help develop a suitable course of action.

El Paso's appeal was signed by the company's leading counsel—Arthur H. Dean, the 74-year-old New York lawyer, former U.S. ambassador to Korea (1953-54) and chairman of the U.S. delegation to a 1961-62 international disarmament conference, and a director of El Paso.

Legislation: Meantime, while the case has been subject to continuing court proceedings, El Paso also has sought to drum up support for legislation to exempt the company from the divestiture order.

Endorsements—Support for such legislation has been forthcoming. Governors, state legislators, public utility commissions, chambers of commerce, gas distributors and newspapers throughout the Northwest have endorsed such legislation.

Their pleadings had a common theme: El Paso has served their region well and has the wherewithal to develop new gas supplies, whereas a new company would likely charge higher rates and be able to provide less gas.

Support also came from other sources: for example, from the AFL-CIO Maritime Trades Department and, later, the full AFL-CIO Executive Council.

The maritime unions suggested that, if El Paso had to give up Pacific Northwest, its financial strength might be sapped to the point where it could not proceed with the Algerian LNG venture. Since the maritime unions plan on building and manning those tankers, they had a direct interest in El Paso's health.

Sen. Warren G. Magnuson, D-Wash., chairman of the Senate Commerce Committee, introduced on Aug. 3, 1971, a bill (S 2404) to exempt the El Paso merger from any violation of antitrust law. Eleven other western Senators were co-sponsors.

Explaining his interest in the matter, Magnuson said at one hearing: "The consumer wants a reliable source of supply. When your wife and my wife turns that knob, they want to see that flame. I don't want to be around when it doesn't work: do you?"

Hearings—In the House, Rep. Brock Adams, D-Wash., was chief sponsor of a companion bill (HR 10331).

Magnuson's committee held hearings in Seattle on the case in April, 1971, and another round of hearings in Washington, D.C., that October.

The House Interstate and Foreign Commerce Subcommittee on Communications and Power held hearings in the summer and fall of 1972.

Neither committee reported out a bill. The Justice Department, speaking for the Nixon Administration, strongly opposed the legislation.

Both sets of hearings provided some fireworks.

The Senate committee was told of an alleged bribe offer concerning bank deposits that would be forthcoming in exchange for the bank's support of the bill. El Paso vehemently denied this charge.

In the House, attention focused on the high expenditures reported by El Paso in support of the legislation.

Boyd, asked about this at a Sept. 21, 1972, hearing before the House panel, said:

"Legislative effort is a strange world to El Paso, and thus, when in response to the importunings of our customers and the utility commissioners of the Northwest and the whole West, we decided to move into this, we employed people who could give us wise counsel as to how it should be handled, and one of the firms we engaged was Sharon's firm."

John H. Sharon of the Washington firm of Sharon, Pierson, Semmes, Crolius and Finley said in a Sept. 19 letter to the House subcommittee chairman, Rep. Torbert H. Macdonald, D-Mass., that his firm as a registered lobbyist for El Paso had spent some 75 hours in 1971 in direct communication with Members of Congress on the merger legislation.

Expenses and fees for this lobbying totaled some $10,000 in 1971 and $16,000 in 1972, Sharon said, while the bulk of his firm's work for El Paso consisted of legal services, which in 1971 totaled $450,000.

Boyd testified that El Paso had contributed no funds to Members of Congress—"none whatsoever"—and that the company's lobbying was being paid for by the company's stockholders, not its customers.

Impact: What would the loss of Pacific Northwest mean to El Paso?

Asked this question at the House hearings, Boyd responded: "Obviously, it will weaken El Paso. We will not be in a position to carry on the exploration we otherwise would accomplish. We will not be able to conduct the research to which we have contributed. Whether we will be able to finance these highly capitalized projects I have mentioned, I hope we will, but I can't guarantee it, obviously our ability to make money will be impaired."

In his appearances before the Senate and House committees, Boyd argued that the legislation would benefit not just El Paso but the gas consumers of the nation.

He told the House subcommittee that the people of the Northwest were being relegated to the role of "second-class citizens," because the contested pipeline was being awarded to the district court's second choice, the Apco group.

"I will confess that five members of the Supreme Court disagreed with me and two agreed with me," he said during one exchange. "I would rather have the five on my side. . . . (But) when following the decision of the Court works a hardship, I think that is the purpose for which Congress exists."

In mid-1970, an El Paso prospectus filed with the SEC indicated that the company would have ample gas supplies even if it lost the Pacific Northwest system and that system's gas reserves.

The prospectus, drawn up in connection with a securities offering, in-

Meeting Energy Needs in the 1980s

Howard T. Boyd, chairman of El Paso Natural Gas Co., served as the gas industry's top representative on a high-level review of U.S. energy policy for the Nixon Administration. The review was conducted by the National Petroleum Council, a blue-ribbon group of energy executives that advises the Department of the Interior.

The council's summary report ("U.S. Energy Outlook"), released in December, says there are three approaches the government can take to cope with projected energy needs through the mid-1980s:

- step up the exploitation of domestic resources;
- allow imports of fuel at a far higher rate;
- place restraints on the growth in energy consumption.

The report strongly endorses the first approach, calling for higher financial incentives and fewer restrictions on such activities as offshore drilling, strip-mining for coal and construction of refineries.

The report also says the second approach must be followed to some degree, simply to keep pace with U.S. energy demands. But the report cautions against excessive reliance on foreign sources because of national-security and balance-of-payments factors.

The third approach, to the council's way of thinking, is the least acceptable option.

"Restrictions on energy-demand growth could prove expensive and undesirable," said the report. "Among other things, they would alter life-styles and adversely affect employment, economic growth and consumer choice. . . ."

The report estimates that by 1985 U.S. energy consumption is likely to be nearly twice the 1970 level.

Boyd, in an interview, endorsed the council's findings. "There's a direct relationship between energy consumption and your standard of living," he said.

"One hundred per cent of our electricity here in Houston is generated from gas," he said. Gas could be conserved for other needs, but then how could electricity be generated, Boyd asked.

The only way to cut down on gas consumption in Houston would be to shut off the electricity, he said.

"That's not an acceptable alternative. You might as well cut off the gas."

cluded a report by the Houston engineering and geological firm of Brokaw, Dixon and McKee, which since 1928 has been estimating El Paso's gas reserves.

The June 22, 1970, report said: "We estimate the proved gas reserves owned or controlled by El Paso to be 34,333 billion cubic feet, which includes 9,195 billion cubic feet to be divested. . . .

"The certificated supplies to be retained upon divestiture are equal to approximately 17 times the 1969 requirements of the pipeline system properties to be retained.

"The gas available to El Paso should be considered as not only the presently proved gas reserves of fixed amounts gradually being exhausted through the years, but as a supply which can be expected to be increased in the future. El Paso should be able to obtain, in competition with others, sufficient gas to supply the markets served by each of its pipeline systems for a period beyond 25 years."

The Apco group testified against passage of the legislation. Spokesman for the group was Charles Honig, president of Alaska Interstate Co., who told the House subcommittee that the group could well serve the Northwest gas market.

"It is true that when this litigation was begun there was an abundant gas supply and the principal competitive thrust was for incremental market growth," Honig said. "Today, competition in the producing fields is an essential element to stimulate the search for new gas supplies.

"More than ever before, we need competition for new technology and efficiencies as well as new sources of supply. It is clearly in the public interest to re-establish an independent new pipeline company in the West to provide an alternative to El Paso's dominance."

Honig also said, in response to the argument that a single integrated transmission company is the most efficient, economical way to serve the public:

"Carried to its logical conclusion, this would require but one transmission company to handle all of our nation's gas supplies, which would likely result in the nationalization of such an endeavor."

Boyd said, during the interview, "Utilities are natural monopolies. In the city where you live, there's only one gas company—one electric company—one telephone company. They're not violating any antitrust laws. . . . We're in that situation. We're fully regulated."

Outlook

In talking of future energy trends, Boyd stressed the importance of the U.S. balance of payments.

"The industrialized nations of the world are in the same short supply of hydrocarbons (oil and gas) that we are," he said.

Competition for this energy will tend to drive up prices and, on the part of the purchasers, accelerate their efforts to export manufactured goods.

But, he asked, "Where are you going to sell these things? What are you going to do with the Saudi Arabians? Is General Motors going to sell them five million cars a year?"

Federal policy: The Administration, Boyd said, "is going to have to let energy come in to the extent that it's required. . . . We cannot do without energy. You just have to accept that as gospel."

But the United States must try to minimize the outflow of dollars, Boyd said. Otherwise, the balance-of-payments deficit will become "intolerable."

Asked about the Nixon Administration's forthcoming energy policy, Boyd said he hoped to see a more coordinated approach to energy matters.

"There ought to be somebody who can cut across the authority" now scattered throughout the executive branch, he said.

But Boyd said he was puzzled by reports that Secretary of Agriculture Earl L. Butz had been appointed a White House counselor with oversight over natural resource matters.

"That's surprising to me," Boyd said, expressing doubts that the Secretary of Agriculture now controls policies on energy as well as soybeans.

Not until he sees a direct quote from President Nixon, said Boyd, "will I believe that he has made Mr. Butz the hydrocarbons czar."

Asked whether he favors legislation to decontrol the price of natural gas, Boyd said he did not care for the word "decontrol" but that the nation needs an "arrangement" whereby newly found gas can "assume the level of unregulated fuels."

Rising prices: An official of another pipeline company, speaking on a not-for-attribution basis, talked of the wide-ranging commitments that El Paso has been making.

"Suppose all these things came to fruition at once?" he speculated. "El Paso would need one hell of a lot of money."

On the other hand, he said, "What happens if there is a big splurge of drilling in the Gulf and they suddenly come up with 10 trillion cubic feet of reserves in the next three years? . . . What happens to the company that's tied into a 20-year contract for LNG?"

Or conversely, he said, a number of companies have just plunked down $1.6 billion for leases in the Gulf of Mexico. "What if they drill and it isn't there?"

The energy situation is full of uncertainties, he said. But, speaking of El Paso, he said, "I sometimes wonder whether all this stuff about coal gasification, LNG, pipelines across Alaska, is sometimes tossed in and projected to illustrate, very dramatically, the difference between conventional supplies . . . to illustrate the need for at least nominal increases in domestic prices."

An investment banker who has been close to El Paso's operations said, also on a not-for-attribution basis, that the company certainly is "looking at very very substantial capital needs."

He said the gas pipelines have been through such times before, such as in the years after World War II. "Somehow or other they seemed to raise the money," he said. "The money is around—the question is whether they can earn sufficient returns on their investments."

That question, in turn, will hinge on future FPC policies, he said.

Gambles: Boyd, during the interview, repeatedly used the poker player's vernacular in talking of future energy projects.

"We're going to take that risk. . . . We're going to gamble. . . . That's just the admission to the poker game."

Placing bets around the world, Boyd still wants to keep El Paso's prize catch—the Pacific Northwest network that gives his company access to Canadian gas.

"If we can get this story understood," he said of the merger legislation, "then I would expect Congress to do the right thing." ■