

Governor Clyde M. Reed correspondence, Public Service Commission

Section 3, Pages 61 - 90

This file includes subject correspondence relating to the Public Service Commission. Topics in the correspondence cover but is not limited to the Rate Department, gas rates in Kansas, and railroad transportation. This file is part of a bigger collection of Governor Clyde M. Reed correspondence.

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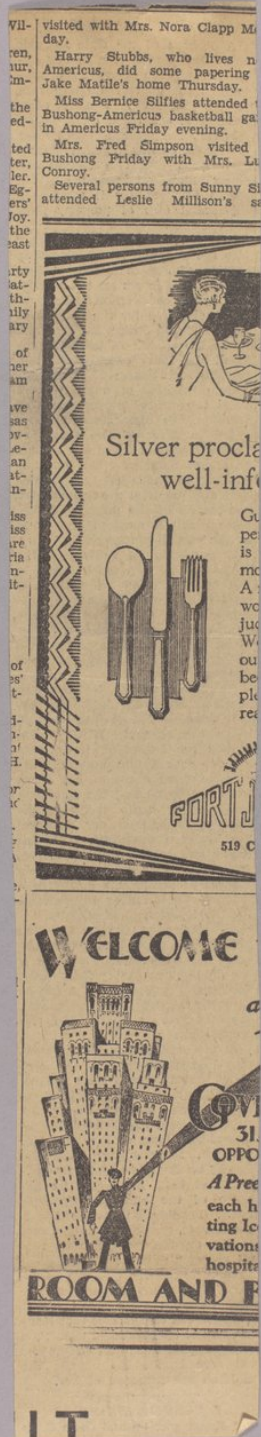
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Governor Clyde M. Reed correspondence, Public Service Commission



Governor Clyde M. Reed correspondence, Public Service Commission

THE EMPORIA GAZETTE

W. A. WHITE, EDITOR AND OWNER
W. E. HUGHES, MANAGER
EMPORIA, KANSAS

February 13, 1930

Governor Clyde M. Reed
State House
Topeka, Kansas

My dear Governor Reed:

Please find enclosed a copy of today's editorial
on the special session.

I wrote it before message came in over the wire
and am glad to find that ^{the} views so nearly coincide.

When I talked to you Kansas Day, I told you that
I thought the Public Service Commission's investigation of
our light situation was moving satisfactorily. I told you
at that time that the City Commission was skeptical of the
motives of the Commission and had passed a resolution saying
that they did not ask for the investigation. They told me
privately that the reason they did this was, that in view
of Commission's report on the gas situation, they feared
that the Commission might merely whitewash the Power Company
and do more harm than good in the fight.

As you know I do not agree with the commissioners
on this but was very much surprised today when I was shown
a letter from Clinton Montgomery saying,

" In view of the action of the City Commission,
do you desire us to proceed any further in securing the in-
formation requested by you?"

Governor Clyde M. Reed correspondence, Public Service Commission

Governor Reed
Pg. 2

The Chamber of Commerce and I, who originally asked for the investigation, have been going under the false impression that the investigation was under way and that Mr Black of Black and Veach was going over the Company's books in Lawrence, but apparently the whole matter has been dropped for the past month. Most emphatically we do want this investigation. We would like to have the Public Service Commission findings in this matter, as ^{fact-} a finding body, much as is suggested in the report of the Tax Code Commission.

I know you are busy, but anything you can do to stimulate action and keep the boys on the job in this matter will be deeply appreciated here in Emporia. The City Commissioners want to go ahead building a municipal plant. I want to go with them, if, as, and when, I am sure that it is economically sound and I had been counting on some help from the Public Service Commission in determining its soundness.

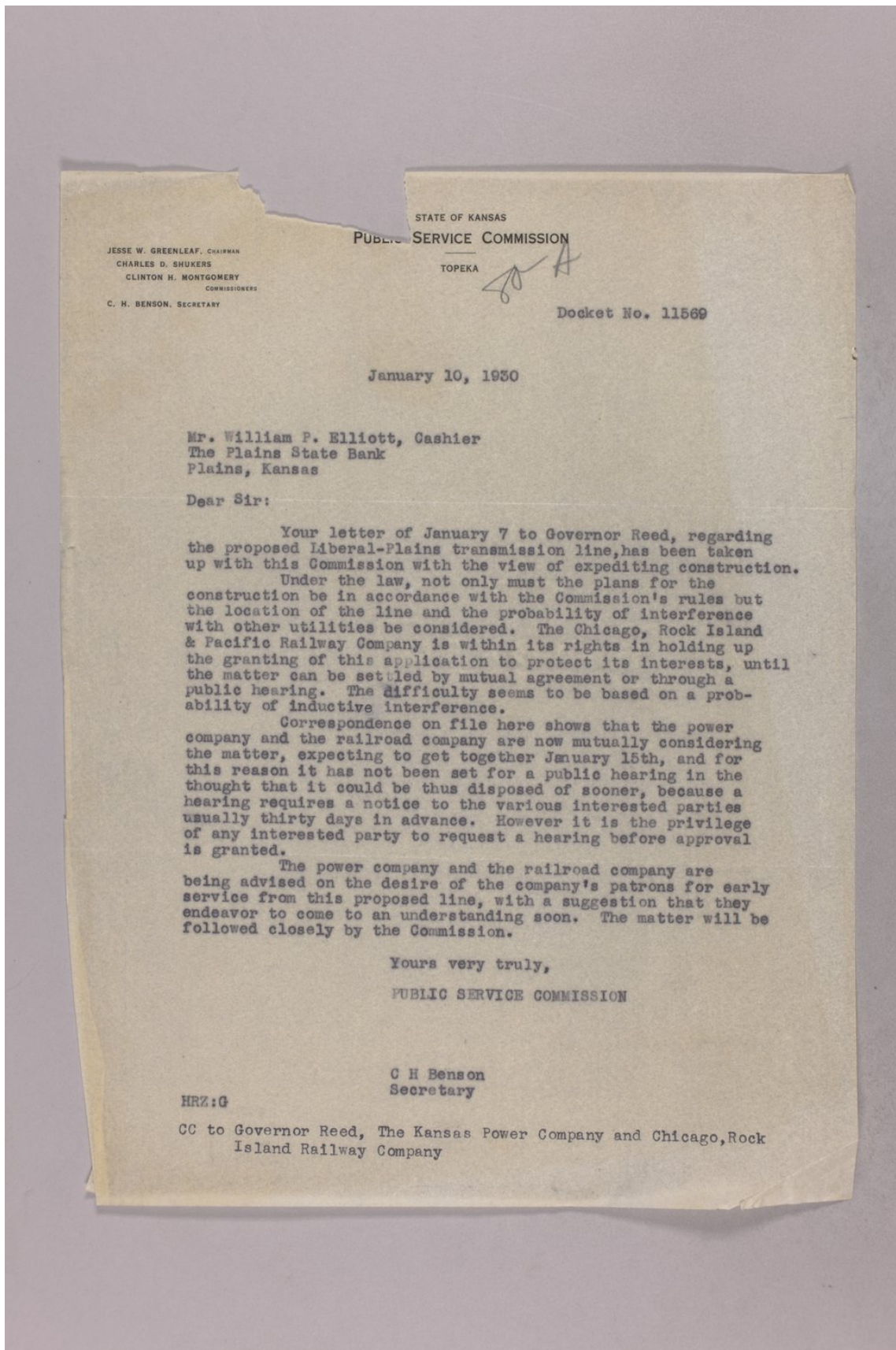
Yours very sincerely,

W. L. White

WLW:AR

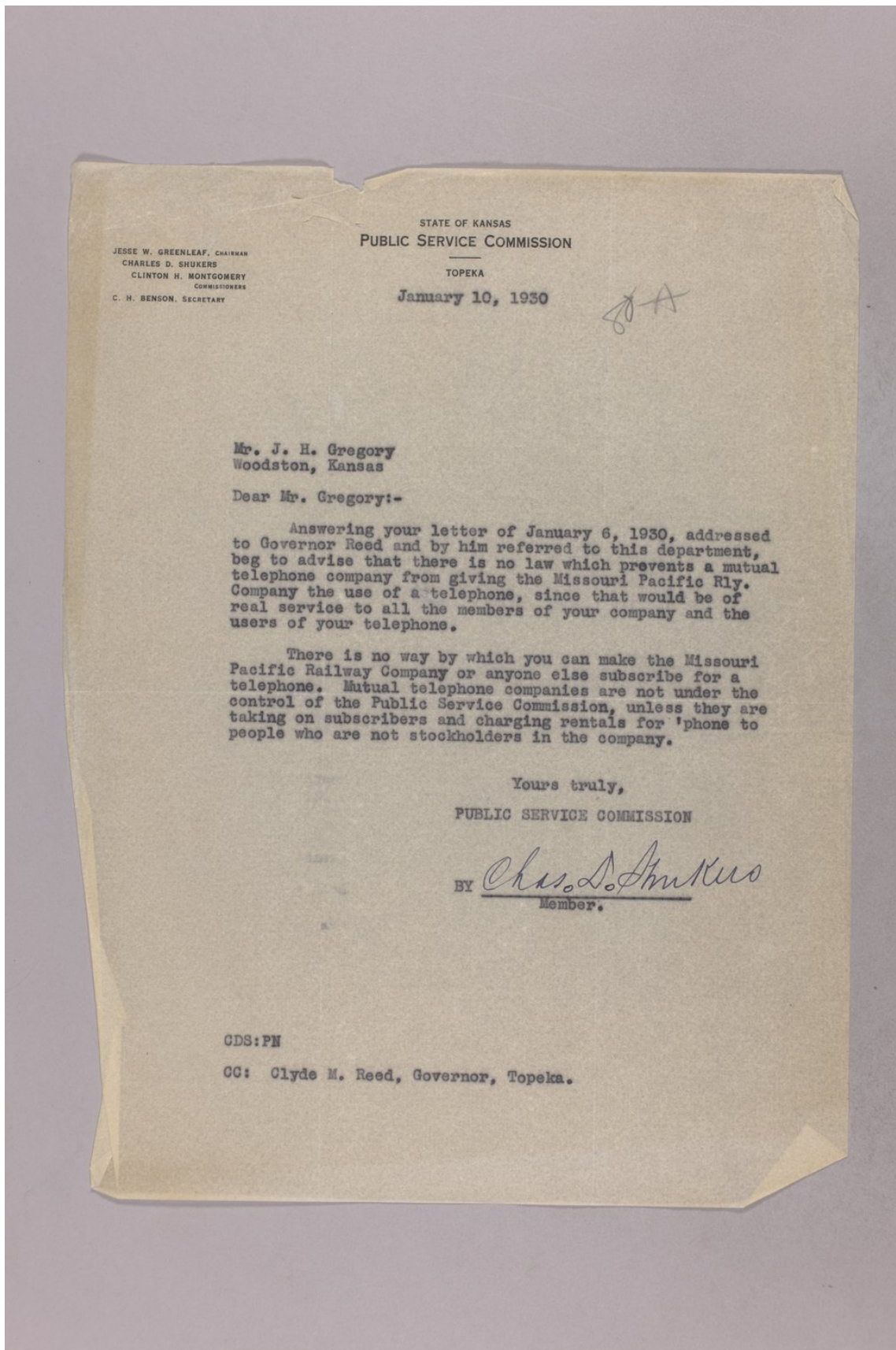


Governor Clyde M. Reed correspondence, Public Service Commission





Governor Clyde M. Reed correspondence, Public Service Commission



STATE OF KANSAS
PUBLIC SERVICE COMMISSION

TOPEKA

January 10, 1930

JESSE W. GREENLEAF, CHAIRMAN
CHARLES D. SHUKERS
CLINTON H. MONTGOMERY
COMMISSIONERS
C. H. BENSON, SECRETARY

Mr. J. H. Gregory
Woodston, Kansas

Dear Mr. Gregory:-

Answering your letter of January 6, 1930, addressed to Governor Reed and by him referred to this department, beg to advise that there is no law which prevents a mutual telephone company from giving the Missouri Pacific Rly. Company the use of a telephone, since that would be of real service to all the members of your company and the users of your telephone.

There is no way by which you can make the Missouri Pacific Railway Company or anyone else subscribe for a telephone. Mutual telephone companies are not under the control of the Public Service Commission, unless they are taking on subscribers and charging rentals for 'phone to people who are not stockholders in the company.

Yours truly,

PUBLIC SERVICE COMMISSION

BY Charles D. Shukers
Member.

CDS:PN

CC: Clyde M. Reed, Governor, Topeka.

Governor Clyde M. Reed correspondence, Public Service Commission

THE ASSOCIATION OF
CERTIFIED ELECTRICIANS
(Field Office)
N. OLMSTED, O.

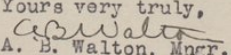
January
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3 0

Mr. W. G. West.
Secretary to the Governor.
Topeka, Kansas.

Dear Mr. West:-

Now comes the editor of a small, but interesting publication from your neighboring "show me" State who craves honourable debate with some public utility defender. He seems to lack information such as he could gleam from the Governor's Glacier Park address, and I am wondering if you will be kind enough to send him a copy.

I understand that he was at one time connected with the auditing department of a large public service corporation, and therefore "knows his onions"

Yours very truly,

A. B. Walton, Mgr.
The Association of
CERTIFIED ELECTRICIANS.

So The People May Know

*A Publication Favoring Lower Gas and Electric Rates
National in Scope*

VOL. 1.

KANSAS CITY, MO., DECEMBER, 1929.

NO. 3.

RESTRAINT OF TRADE

The 20 reasons cited in this issue is in our opinion sufficient grounds to conclude that the merchandising activities of the gas and electric Trust are restraining trade. In the United States there are thousands of merchants dealing in gas ranges, gas heaters, gas water heaters, gas furnaces, plumbers, sheet metal contractors, electric ranges, electric motors, sweepers, fixtures, lamp globe wiring, etc., that cannot meet this "trade restraining" competition due to the fact that these merchants must make their profit off of the appliance itself, while the gas and electric companies make their profit off of what the appliance uses.

The plumber who does installation work must make his profit off of the work itself. The same is true of the electrical contractor.

If all appliance merchants, plumbers, sheet metal and electric contractors each possessed a gas or electric plant to make their profit off of, as do gas and electric companies, then all would be on the same basis, but such is not the case. There is a wrong existing here that should be corrected. Merchants are being unjustly and unfairly injured by gas and electric companies.

FORCED TO MOVE OUT

So sure were the Insul Power people that they would get in a merchandise store at Wagoner, Okla., that they rented a vacant building and began to move their electric appliances in, but the hand of fate was against them.

When citizens went to the polls they saw matters much different, and voted the Power Trust out. Unfair merchandise methods were defeated. This merchandise store was closed and the goods moved away.

SHELBYVILLE, ILLINOIS

The editor spent the first few days in December at Shelbyville, Ill., assisting public spirited citizens in trying to save their lighting system from the Power Trust. When the votes were counted the Power Trust won and the city lost. Thus ended 14 years of trying to get the lighting system away from the city by this Power Company.

There were so many things that did not look right, that it was decided to get out petitions asking for signers with a view of having a legal investigation to find out if city officials had been bought off and if the Power Company had helped to wreck their light plant.

BRIBING CITY OFFICIALS

When the Gas and Electric Trust starts to get control of a city owned light plant, they usually corrupt city officials. Now and then there is one or two that won't sell out, but the majority love money more than honor, so they vote to sell.

In city after city are found city officials and former city officials that have stooped to bribe money and sold or attempted to sell the rights and liberties of the people. The Power Trust never has an election called until it has the city administration lined up for them. This occurs so frequently that it arouses suspicion. On every corner is heard "The city officials have sold out to the Power Co." In most cases it is true, but hard to prove.

CONSCIOUS OF THE FACT

Gas and electric companies know that they are not treating merchants right. It isn't a case of injuring them unknowingly, but it is a case of continuing this injury knowingly. They are conscious of the fact. Their intentions are to continue this injury until they are forced to quit it.

The reason the Sherman Anti-Trust law was passed was to deal with just such cases.

WAGONER, OKLAHOMA

The editor had the pleasure of assisting citizens of Wagoner, Okla., in saving their city owned light plant from the Power Trust.

You may be surprised to learn that all over the country the Power Trust is trying by both fair and foul means to get city owned light plants away from the people. Wagoner was just one of these cities that the Power Trust had been planning to grab, but the best citizens had their minds made up different.

For about 4 years the Power Trust had a very likable man coming there working into the good graces and confidence of the voters, so that he was personally acquainted with and knew many of the voters by their first names.

For some reason the city officials were for the Power Company, which looked very suspicious due to the fact that in a published statement the city administration agreed to step down and out if the Power Company got what it wanted.

The citizens defeated the Power Company by a vote of better than two to one, and then proceeded to clean up at the City Hall by a greater majority. The only discordant element not "cleaned" was one editor and he may be repentant now.

Governor Clyde M. Reed correspondence, Public Service Commission

SO THE PEOPLE MAY KNOW

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20 REASONS WHY GAS AND ELECTRIC COMPANIES SHOULD NOT SELL MERCHANDISE.

No. 1.

The reason why gas and electric companies sell gas ranges, electric sweepers, etc., is to get people to using more gas or electricity and not necessarily to make a profit off of the appliance. They make their money off of the gas or electricity the appliance uses. They "swap dollars" on merchandise to make money off gas and light bills. Since legitimate merchants have no gas plant or light plant to make money off of, they cannot compete with gas and light companies in "swapping dollars." And for this reason gas and electric companies should not sell merchandise.

No. 2.

Since gas and electric companies sell merchandise at no profit, which means a loss; some one has to make up this loss. There is only one way to make up this loss and that is on the people's gas and light bills, which is done.

Very few people who use gas and electricity know that each time they pay their bills, they are helping to make up losses on merchandise. For the reason that all users of gas and electricity are forced to make up merchandise losses, gas and electricity companies should not be allowed to sell merchandise.

No. 3.

Since gas and electric companies sell gas and electric appliances to get the people to using more gas, it stands to reason that they would recommend and sell appliances that use the most gas or electricity. The more the appliance used the more money they would make. Legitimate merchants cannot profit off of high gas or light bills. They would naturally handle appliances that use less gas or electricity. Legitimate merchants are the ones to sell appliances and not gas and electric companies.

No. 4.

As soon as gas or electric companies get to selling merchandise, they become schemers and plotters against their customers, to make their bills higher. Customer's bills are usually high enough without the gas and electric companies hiring professional schemers to make them higher. Legitimate appliance merchants are interested in selling merchandise that will lower your bills and since gas and electric companies scheme to make your bills higher, they should not be allowed to sell merchandise.

No. 5.

Gas and electric companies send monthly bills to every user of gas and electricity. The cost of sending these bills is paid for in the rates charged. Every one looks at his bill. On most of these bills is a merchandise advertisement at no extra cost, which amounts to free advertising and more effective than newspaper space, because it goes every month and is read. Legitimate merchants cannot get this best advertising free, which is unfair, and for this reason gas and electric companies should not be allowed to sell merchandise.

No. 6.

The state guarantees gas and electric companies 7 or 8% on its investment which is usually padded. The state virtually gives such companies a monopoly in cities and towns. Since the state has done so much for gas and electric companies, they should not be allowed to continue their "Dollar Swapping" merchandising policy which disrupts the appliance business for legitimate merchants and keeps them from making a fair return on their money.

No. 7.

In giving gas and electric companies a monopoly and guaranteeing them 7 or 8% on a padded valuation, the state has done too much for them. And for this reason they should not be allowed to play the part of a "Hog" and rob legitimate merchants of their just dues. If you want to get a fair and accurate idea of the unjust merchandising activities of the gas and electric trust, just watch a hog eat slop, and then you will understand what is meant "To hog it all."

No. 8.

The expenses of selling merchandise are many times added to the operating expenses of gas and electric companies in order to make their operating expenses higher. The higher gas and electric companies can get their operating expenses, the higher rates they can get for gas and electricity. This makes the householder pay higher rates than he should. In order to avoid such high rates, gas and electric companies should not be allowed to sell merchandise.

No. 9.

One of the Monopoly features of the gas and electric companies, is that all customers (except those paying by check) have to go to their offices each month to pay their bills. Gas and electric companies usually arrange their display of merchandise so the customers will have to pass near, through, or around many articles. This is done to make customers look at them while on their way to pay their bills.

Due to this fact that customers must go there, but do not have to go to the stores of legitimate merchants, they should not be allowed to sell merchandise.

Governor Clyde M. Reed correspondence, Public Service Commission

No. 10.

By virtue of their state protected monopolies employees of gas and electric companies are looked upon by the general public as experts in their line. Being thus put in a position of advantage by law, they are in a position to, and do, discredit fuel saving appliances of legitimate merchants, in order to sell fuel wasting appliances that will make customer's bills higher. For this reason gas and electric companies should not be allowed to sell merchandise.

No. 11.

According to Senate Document No. 92, Part 5, Page 84, the advertising of gas and electric appliances was used to bribe editors. "Grease the rails" as the Power men put it.

Since through merchandise advertising they have attempted and in some places succeeded in throttling the press, they should not be allowed to sell merchandise.

No. 12.

A gas and electric company in the west gave a young man \$6,000.00 and sent him to a small town to wreck a small city owned light plant. He bought out a merchandise store and began selling all kinds of appliances that used electricity. This was done to "overload" the generator and cripple the service, so they could prove that public ownership was a failure. Since Utilities have gone so far in a wrong use of merchandising they should not be allowed to sell merchandise.

No. 13.

In some cases gas and electric companies have adopted a foolish practice of giving away expensive pieces of merchandise to clubs, societies, churches, editors, newspapers and politicians. Such appliances are given as a round about way of buying good will and political support. They know the weakness of human nature and take advantage of it. By giving merchandise it has the same effect and answers the same purposes as a bribe, but does not show up in an audit of gas and electric accounts.

Due to this fact that merchandise is used for bribing people, gas and electric companies should not be allowed to sell merchandise.

No. 14.

Gas and electric companies are at little or no expense in collecting their merchandise accounts, as they usually bill their merchandise on gas and electric bills and the collector who collects gas and electric bills collects the merchandise at no extra expense. The point is these companies collect merchandise accounts and let the gas and electric revenues pay their collectors which amounts to free collection costs as far as the merchandise is concerned, while users of gas and electricity pay the bill. Since legitimate merchants cannot have free collection service, gas and electric companies should not be allowed to sell merchandise.

No. 15.

Gas and electric companies have little or no credit expense in extending credit to buyers of merchandise.

What little credit expense they have is paid for in gas and electric rates. As long as people pay their gas and light bills their credit is good. They are spoiling the credit business, by allowing loose credit. All legitimate merchants are at some considerable credit expense and cannot compete with a business that has little or no credit expense, and for this reason gas and electric companies should not be allowed to sell merchandise.

No. 16.

Gas and electric companies can sell merchandise on a very small down payment and give a long time in which to pay for it. The reason they can afford to do this is because they begin to make money as soon as the appliance begins to use gas or electricity. Since legitimate merchants do not have gas and electric plants to make their profits off of, they cannot compete with such terms, and for this reason gas and electric companies should not be allowed to sell merchandise.

No. 17.

Gas and electric companies can afford to take in old appliances on a trade, and make very liberal allowances for them, because they begin to make money off of them as soon as they are attached to their lines, and will continue to make money off them for a number of years.

But with legitimate merchants this is not the case. The only profit they make is the selling profit, and for this reason gas and electric companies should not be allowed to sell merchandise.

No. 18.

Gas and electric companies can afford to give free installation, or half price installation of gas and electric appliances as they begin to make money as soon as the appliance is installed and continue to make money as long as the appliance is in use. No legitimate merchant, plumber or wiring contractor can compete with them since they have no way to make a profit off of the gas and electricity used by such appliances and for this reason gas and electric companies should not be allowed to sell merchandise.

No. 19.

When customers sign a contract for gas and electric service the contract specifically states that representatives of such companies shall have access to their premises at any reasonable hour. This agreement is taken advantage of many times by salesmen posing as inspectors who gain easy access to homes supposedly to inspect gas and electric appliances but in reality to try and sell appliances which will increase gas and electric bills, and for this reason gas and electric companies should not be allowed to sell merchandise.

No. 20.

In many cases gas and electric companies have been known to give away lamp globes free of charge for the purpose of making the cost of them back on the customers light bills. Legitimate merchants cannot do this, and for this reason electric companies should not be allowed to deal in merchandise.

Governor Clyde M. Reed correspondence, Public Service Commission

THE CHIEF OF MEDDLERS

For meddlers, busy bodies and political disturbers the Power Trust cannot be beat. When once the Power Trust determines to get control of a city owned Light Plant trouble for that city begins. They have been known to keep cities in an uproar for 15 years before they were either driven off or secured the city owned plant. Now there are scores of cities all over the U. S. where the Power Trust is working principally by foul means to rob them of their most valued money maker; their Electric Light plant.

They should be branded as "undesirable citizens" and not allowed a foothold in a town.

SCHEME TO ESTABLISH MORE MERCHANTISE STORES.

There are about 2200 cities in the United States that own their own light plants. These cities with very few exceptions do not sell merchandise.

There is a campaign on by the Power Companies to get control of these city owned light plants. As soon as the Power Companies get them they usually establish a merchandise store there. Appliance merchants should band together to keep the light plant in the hands of the city. This will keep the Power Companies out of the merchandising business there.

RUNNING WIRES UP TO THE CITY LIMITS

Power Companies are always very anxious to run their wires up to the city limits where a city owns a light plant. There is a reason for this. It is one step in the scheme to grab the city's light plant.

The method of procedure is for the Power Trust to work in with the city officials or the man who looks after the light plant and get them to either wreck the plant or cripple the service. When the service according to the pre-arranged plan is made poor, the Power Company is ready to sell electricity to the city at wholesale price, on a short contract.

The length of the contract is made to expire at about the time they want to grab the plant. Then as the proposed election draws near, the city's power plant out of commission, as per pre-arranged plans, the Power Company informs the voters that it will no longer sell current to the city at wholesale. This is done to scare the voters into thinking they will be without lights, so they will vote to sell. This is what is called scaring voters into line. Don't let them bluff you. They will have to supply you until other arrangements can be made.

HONORABLE OPPOSITION

A debate is the most honorable form of opposition. Most every great reformatory movement has been aided by debating. In debates you are not talking behind your opponent's back, where he has no chance to defend his side. You are talking to his face where he has an equal chance with you. The man who is in the right has nothing to fear.

A COMPLAINT HAS BEEN FILED WITH THE GOVERNMENT.

So great has been the oppression of appliance merchants that a complaint has been filed with the Federal Trade Commission seeking to bar Utilities from dealing in merchandise for being a violation of the Sherman Anti-Trust law.

The State of Pennsylvania has filed QUO WARRANTO proceedings against the Philadelphia Electric Company. We are hopeful that the two legal proceedings will be decided in our favor.

In four other cases very similar the government has already acted favorably and we fail to see how the government can decide against us in this case.

NO DEBATE SO FAR

For about 90 days we have had a standing challenge to the Gas and Electric Trust for a fair debate. So far they have not accepted. How many will get up petitions and get all the signers you can, requesting them to meet the issue? Write us on this matter.

No. 1.

RESOLVED: That the merchandising activities of the Gas and Electric Trust are wrong in principle and are in "restraint of trade."

No. 2.

RESOLVED: That public ownership of gas and electric plants is best for the people.

No. 3.

RESOLVED: That "Customer Ownership" stock selling campaign of the Gas and Electric Trust are against public welfare.

No. 4.

RESOLVED: That the entire structure of the Gas and Electric Trust is so saturated with deception, trickery, false and misleading propaganda and evil designs as to constitute a menace to Public welfare.

The editor is ready to meet the best man the Trust can get. Time and places for debate to be arranged later. All or any one of these propositions will be debated.

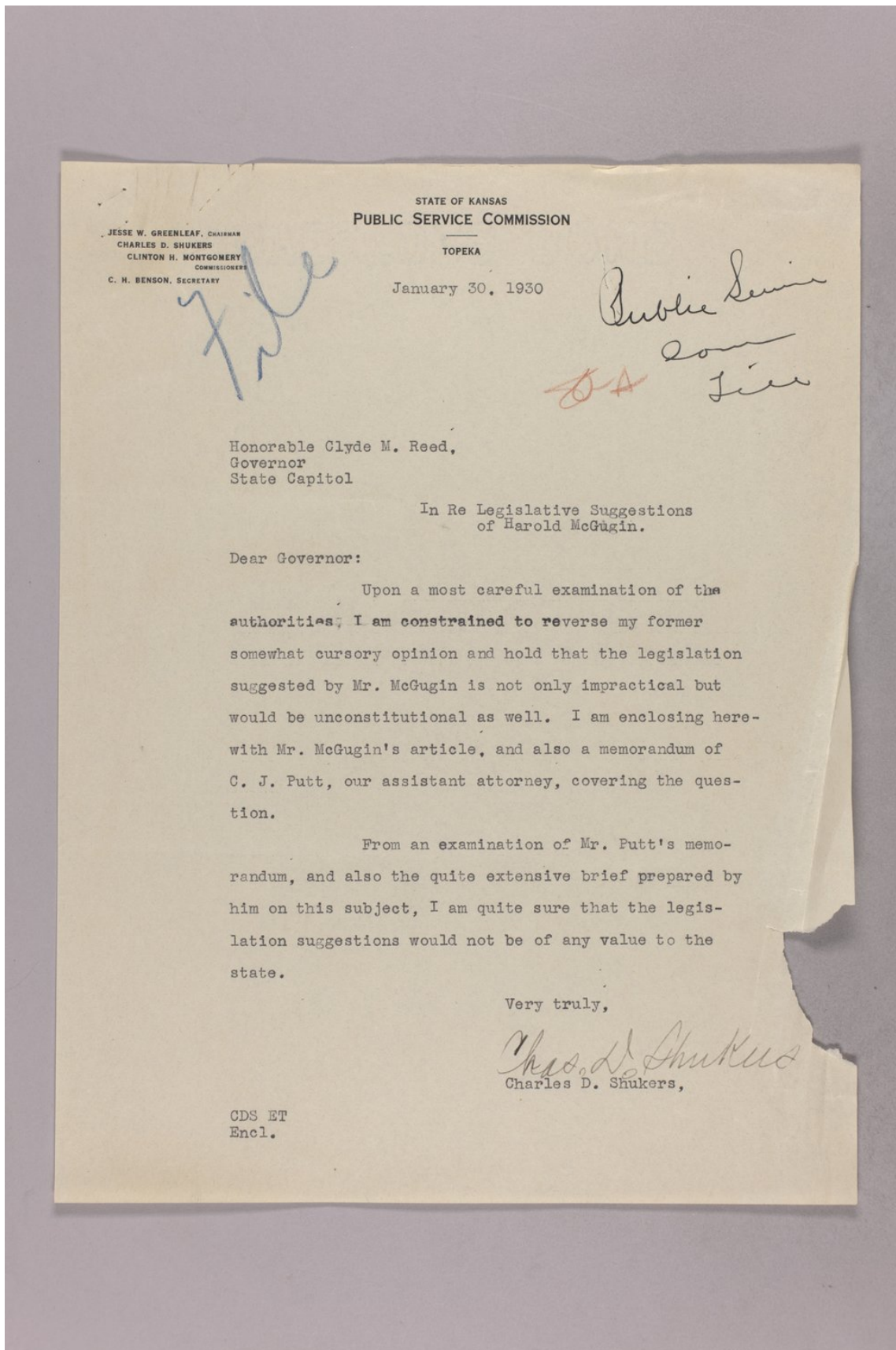
As an oppressive and corrupting force the Power Trust has no parallel in the annals of American Commerce. These propositions are so framed to get at both the cause and remedy of this gigantic economic cancer.

WRITE FOR SPEAKERS

If you know of a city or town where the Gas or Electric Trust is trying to get a franchise, buy out a public owned gas or light plant, or get increased rates, let us know. Don't wait until the damage is done. Much can be avoided. Also let us know when the franchise in your town expires.



Governor Clyde M. Reed correspondence, Public Service Commission



STATE OF KANSAS
PUBLIC SERVICE COMMISSION
TOPEKA

JESSE W. GREENLEAF, CHAIRMAN
CHARLES D. SHUKERS
CLINTON H. MONTGOMERY
COMMISSIONERS
C. H. BENSON, SECRETARY

January 30, 1930

File
Public Service
Commission
DA

Honorable Clyde M. Reed,
Governor
State Capitol

In Re Legislative Suggestions
of Harold McGugin.

Dear Governor:

Upon a most careful examination of the authorities, I am constrained to reverse my former somewhat cursory opinion and hold that the legislation suggested by Mr. McGugin is not only impractical but would be unconstitutional as well. I am enclosing herewith Mr. McGugin's article, and also a memorandum of C. J. Putt, our assistant attorney, covering the question.

From an examination of Mr. Putt's memorandum, and also the quite extensive brief prepared by him on this subject, I am quite sure that the legislation suggestions would not be of any value to the state.

Very truly,

Charles D. Shukers
Charles D. Shukers,

CDS ET
Encl.

Governor Clyde M. Reed correspondence, Public Service Commission

MEMORANDUM TO MR. SHUKERS:

Several days ago you handed to me a copy of a speech of Harold McGugin in which said speech certain legislation was proposed for the control of the transmission and distribution of natural gas, and requested me to advise you as to the advisability of such proposed legislation.

As you well know, the gas question in Kansas is the question of the control of The Cities Service Gas Company, which said Company is an interstate carrier of gas which sells to its own subsidiaries and to others in Kansas.

This corporation is a foreign corporation duly admitted to do business in Kansas. The State Charter Board has power to revoke this permissive right for cause the same as it would have the right to forfeit the charter of a Kansas corporation, plus of course any suit that was necessary for such purpose. Regardless of the domicile of the corporation its right to engage in interstate commerce remains constant, and regardless of whether or not it has the right to engage in business within the state it can nevertheless engage therein in an interstate business.

Article 1, Section 8, Clause 3, of the Constitution of the United States provides that Congress shall have power "to regulate commerce with foreign nations, and among the several states and with the Indian tribes", and a state, therefore, is powerless to regulate interstate commerce. This power of Congress is so broad and exclusive that in the Shreveport case (Houston etc. R. Co. v. U. S. 234 U.S. 324) it was held that Congress, through the Interstate Commerce Commission, could prevent intra-state commerce to the injury of interstate commerce. The state not being able to regulate interstate commerce the domicile of the corporation engaging in such commerce would be of no consequence. Minn. v. Creamery Package Company, 115 Minn. 207; Terral v. Burke Construction Co., 66 L. ed. 352; Western Union Telegraph Co. v. Kansas, 216 U.S. 165; International Text Book Company v. Pigg, 217 U. S. 91; Pullman Company v. Kansas, 54 L. ed. 378; Buck Stove & Range Company v. Vickers, 57 L. ed. 189; West v. Kansas Natural Gas Company, 221 U. S. 229.

Domestication of a corporation was held not to be a burden or an interference with interstate commerce, but compelling domestication would not, in my opinion, cure the existing evil. Plummer v. C. & O. Railway Company, 143 Ky. 102; Commonwealth v. M. & O. R. R. Co., 54 L.R.A. 916.

Another feature of this proposed legislation that I desire to call your attention to is the feature providing that such a corporation must contract and agree with the State of Kansas that if granted a charter it will always submit to the jurisdiction of the Kansas Public Service Commission subject to the appellate jurisdiction of the Kansas court to regulate the rate which a corporation should charge for gas.

Article 3, Section 2, Clause 1, of the Constitution of the United States provides "The Judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and the treaties made, or which shall be made, under their authority."

Governor Clyde M. Reed correspondence, Public Service Commission

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Amendment 14, Section 1, Clause 2, provides:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Under the above provisions a state law cannot effect Federal jurisdiction, as the jurisdiction conferred upon the National courts cannot be abridged or impaired by state statute. Home Insurance Company v. Morse, 22 L. ed. 365.

"The doctrine is so elementary as to require no citation of authority to sustain it. Indeed, it stands out so plainly as one of the essential and fundamental conceptions upon which our constitutional system rests and the lines which define it are so broad and so obvious, that, unlike some of the other powers delegated by the Constitution, where the lines of distinction are less clearly defined, the attempts to transgress or forget them have been so infrequent as to call for few occasions for their statement and application. (Harrison v. St. L. & S. F. R. R. Co., 58 L. ed. 621.)

See also: Terral v. Burke Construction Co., 257 U.S. 529; Barron v. Burnside, 121 U. S. 186; Southern Pacific Co. v. Denton, 36 L. ed. 943; West v. Kansas Natural Gas Company, 221 U. S. 229.

It has been said:

"Every citizen is entitled to resort to all the courts of the country and to invoke the protection which all the laws of all those courts may afford him. A man may not barter away his life or his freedom, or his substantial rights In a civil case he may submit to his particular suit by his own consent to an arbitration, or to the decision of a single judge. So he may omit to exercise his right to remove his suit to a Federal tribunal, as often as he thinks fit, in each recurring case. In these aspects any citizen may no doubt waive the rights to which he may be entitled. He cannot, however, bind himself in advance by an agreement, which may be specifically enforced, thus to forfeit his rights at all times and on all occasions, whenever the case may be presented." (New York Home Insurance Company v. Morse, 22 L. ed. 365.)

See also: Railroad & Warehouse Company v. Duluth Street Railway Company. 71 L. ed. 807.

In view of the inability of the state to regulate interstate commerce and its inability to oust Federal courts of jurisdiction, when federal questions are involved, I do not believe that the proposed legislation would be of much benefit to Kansas.



Governor Clyde M. Reed correspondence, Public Service Commission

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The Commission now exercises jurisdiction over the Doherty companies engaged in the distribution of gas to the various cities, even though it does not have jurisdiction over the pipe line company, and regardless of whether said companies are foreign or domestic corporations, (Winfield case, 111 Kans. 580.) and corporations engaging in the distribution of gas, except interstate carriers, are securing certificates from the Commission. Some of the companies who have secured many certificates recently are The Union Public Service Company, Kansas Pipe Line & Gas Company, Argus Gas Company and Western Gas Company, and these companies, when rates have been determined by the Commission, regardless of whether they are foreign or domestic corporations, may resort to the Federal court and have the matter of confiscation adjudicated.

Respectfully submitted,

Attorney.

CJP/cb

Governor Clyde M. Reed correspondence, Public Service Commission

If we of America are going to maintain government worthy of the name, we must provide some way to handle rate regulation of public utilities in an effective way. By franchises the power of government has created a monopoly for the various public utilities companies. When government has provided this monopoly, the citizens of the country are helpless in the hands of the monopoly. Government must honestly and effectively prescribe the rates which the utilities may charge the public. This has been a self evident and a recognized fact by everybody. Government has no right to permit the creation of monopoly unless at the same time it secures the people from the grasping hand of monopoly. It is human nature for everyone to charge for his wares all that the traffic will bear. In general commerce, competition will stay the natural grasping hand of greed. In monopoly, government alone can stay that hand and protect the people.

Everyone recognizes, that in the case of public utilities, competition is impracticable. In the case of utilities exclusive right to perform the given business is the only practical plan. Recognizing this situation, government has permitted exclusive rights in the various fields of public utilities. Government has undertaken to curb the greed and the selfishness incident to this exclusive right, by the establishing of public service commissions in each of the forty-eight different states and the federal government by establishing the Interstate Commerce Commission.

The theory of these public commissions prescribing public rates was perfectly sound. It was a noble experiment. It should have worked well. However, to a too great an extent, the public utilities companies have practiced every ingenuity to circumscribe and to evade

Governor Clyde M. Reed correspondence, Public Service Commission

-2-

the jurisdiction and power of these public commissions. It has been common practice for these utilities to practice virtually nothing less than perjury in their endeavor to evade the power of the rate making bodies. They have employed engineers and auditors and have presented technical and fictitious valuation to the public service commissions. They have asked and they have demanded that the rate making bodies base the rates upon these figures.

The utilities have pyramided their stock valuations far in excess of the actual valuations of their properties. They have had two sets of valuations; one a ridiculously low valuation for taxation purposes and another a ridiculously high valuation for rate making purposes.

The public has been sold the stock in these utilities corporations. The stock has been in excess of any fair or reasonable valuation of the property. Eventually, the public that bought the stocks and the bonds, must either lose a goodly part of their investment or else, the public that buys the products, must pay an excessively high rate in order to furnish enough revenue to pay a return and to repay the pyramided stocks and bonds which have been sold to the stock and bond buying public.

The utilities have built up an ownership structure whereby they expect to receive from the public service commissions legal authority to charge high rates and at the same time deny to the public service commissions a fair opportunity to inquire into what is a fair rate. I refer to the plural ownership of a given utility. The gas company combine ownership in Kansas is a perfect example of this plural ownership evil. This plural ownership scheme has become an iniquity which is preying upon the American people throughout the length and breadth of this nation. It is being particularly practiced by the power and

Governor Clyde M. Reed correspondence, Public Service Commission

-3-

the gas companies. Governor Roosevelt of New York recently said:

"THE PUBLIC SERVICE CORPORATIONS HAVE GOT LITTLE BY LITTLE THAT WHICH, IN THE FIRST INSTANCE, THEY NEVER EXPECTED TO GET. WITH DOZENS OF HOLDING CORPORATIONS HOPELESSLY MIXED UP TO A CONDITION WHERE IT IS NECESSARY TO GO THROUGH A MAZE TO REACH THE REAL OWNERS, THE AVERAGE MAN HAS BECOME GREATLY CONFUSED. THE PUBLIC WILL GET THE FACTS AFTER A WHILE BUT IT WILL TAKE A LONG TIME."

The gas situation in Kansas provides a perfect model of this plural ownership scheme. It is briefly as follows: One corporation is created which is the parent or holding corporation. We may refer to this parent corporation as corporation A. Another corporation is created which is the local distributing company. We may refer to it as corporation B. Another corporation is created which is the interstate pipe line company, we may refer to it as corporation C. Corporations B and C both are ultimately owned by corporation A. For all practical purposes there is only one corporation engaged in the entire business. That corporation is corporation A. It ultimately owns the gas which is piped from other states into Kansas and then sells the gas to the domestic consumers. Corporation A has the complete management of corporations B and C.

It is never intended that corporation B can possibly make any money. It is the apparent purpose to keep corporation B broke in order that it may be constantly calling upon the Public Service Commission for increased rates. The favored way of keeping corporation B broke is to compel it to pay continually to corporation C a high price for the gas which is distributed to the consumers.

The Gas Research Committee of the Kansas League of Municipalities, after an exhaustive engineering survey, has found that from eighteen to twenty cents is a fair price to be paid by the distributing company to corporation C for the gas which it brings into the State.

Governor Clyde M. Reed correspondence, Public Service Commission

-4-

Yet, we find that the distributing company is paying from thirty-eight to forty cents for this gas. Corporation B after paying corporation C from thirty-eight cents to forty cents for this gas or a hundred per cent more than the Kansas League of Municipalities has found to be a fair price, is constantly calling upon the Public Service Commission for increased rates. The plea is that the distributing company is not making money. What is the difference whether the distributing company is making money or not when the pipe line company is making twice what it should make and the parent company is receiving these profits from the pipe line company? Since the parent company owns both the distributing company and the pipe line company it ought to be made to balance the profits of the pipe line company with the losses of the distributing company. Yet, when the Public Service Commissions of the states undertake to follow this horse sense course, the gas companies arrogantly answer that the State Public Service Commissions are not interested in the huge profits of the interstate pipe line company because that company is engaged in interstate commerce.

This is a set-up which must be crushed. If Government cannot crush this kind of a set-up then government in America has become a weak and vacillating thing. However, the present glory of America is that government is going to crush this situation. The Supreme Court of the United States went a long way to break the back of this despicable thing. The Supreme Court made this splendid and forward step in United Fuel Company versus Railroad Commission decided January 15, 1929. The American public and the American press are alive to the situation.

Our own Governor, in a recent speech at Glacier Park, spoke

Governor Clyde M. Reed correspondence, Public Service Commission

-5-

upon the activities of the utilities companies in circumscribing the Public Service Commissions of the states. I fully agree with him in those remarks. However, I cannot agree with him when in the same speech he censured the Federal Judiciary by attributing a goodly part of the destruction of the jurisdiction of the State Public Service Commissions to the decisions of the federal judiciary. The federal courts have respected the interstate commerce clause of the federal constitution. They have rightfully done so. However, for every bit of the sovereignty of the states that the federal courts have absorbed under the interstate commerce clause of the constitution, the people, the state legislatures, and the governors, have foolishly surrendered a hundred times more of the sovereignty of the respective states. We must not forget that the United States Supreme Court in the before mentioned decision vested more power in the state commissions than the utilities companies ever dreamed would be possible.

The solving of the question of handling the power of state public service commissions to prescribe rates effectively, in common with the solving of many other public questions of this day, is to be found only in the restoration of the sovereignty of the states.

In the case of the gas companies, there can be no effective governmental rate regulation until this interstate pipe line company is controlled by some governmental body. As the matter now stands this corporation escapes all governmental regulation. As it escapes governmental regulation the whole gas industry escapes governmental regulation. With the interstate pipe line corporation running rampant and charging such a price as it may desire to charge for the gas which it sells to the distributing company, supposed governmental control of gas rates is a mockery. The public would be just as

Governor Clyde M. Reed correspondence, Public Service Commission

-6-

well off if it had no rate regulation whatever of the gas industry. This interstate gas company has been dodging state regulation on the theory of interstate commerce. It has evaded federal regulation because the federal interstate commerce commission has never been given jurisdiction over interstate gas pipe lines.

To regulate this interstate company and thereby restore effective governmental regulation of gas rates, some advocate that congressional legislation is necessary. It is their purpose to give the interstate commerce commission jurisdiction to regulate and prescribe the rates of the interstate gas pipe lines. This would be one form of governmental control. It would be a thousand times better than the present situation of no governmental control.

Yet, in the last analysis the most and best effective control would be state control. It would, indeed, be expensive and embarrassing for local communities to look to the interstate commerce commission in distant Washington for the regulating and prescribing of the rates which they should pay for gas. Such a situation would mean unbearable delay. The gas companies would be at a great advantage. In short, distant government is always conducive of special privilege and advantage for the great and the strong and of injustice for the weak.

I believe that there is state legislation, which if enacted, can and will effectively provide for state regulation of rates of even this interstate gas pipe line corporation.

Texas by state legislation years ago provided that no railroad corporation could operate in Texas except one holding a Texas charter. The interstate railroad companies running into Texas all have a separate charter for the operation of their railroads in Texas. It is only a separate Texas corporation which may operate a railroad without in the boundaries of Texas. The Texas Statute is as follows:

Governor Clyde M. Reed correspondence, Public Service Commission

-7-

Article 6260 reads:

"No corporation, except one chartered under the laws of Texas shall be authorized or permitted to construct, build, operate, acquire, own or maintain any railroad within the state."

If Texas can compel these interstate railroads to be separate corporations, when operating in Texas, surely Kansas can by legislation compel interstate gas pipe line companies to have a Kansas charter when they operate in Kansas.

To control interstate gas pipe line corporations by Kansas legislation, I would suggest that the next legislature of Kansas enact legislation in substance as follows:

(a) That no corporation EXCEPT ONE CHARTERED UNDER THE LAWS OF KANSAS shall be permitted to construct, maintain or operate any pipe line for the transmission of natural gas within the state of Kansas.

(b) That any such corporation in its application for a charter must contract and agree with the state of Kansas, that if granted a charter, it will always submit to the jurisdiction of the Kansas Public Service Commission, subject to the appellate jurisdiction of the Kansas courts, to regulate and prescribe the rate which such corporation shall charge for natural gas which it may sell for public consumption to any person, firm or corporation in the state of Kansas.

(c) That if any such corporation shall ever refuse to abide by the rates prescribed by the state of Kansas that it shall thereby be deemed to have violated its contract and its charter, which violation shall work a forfeiture of its charter and of its right to do business in Kansas.

(d) That any such corporation shall, in its application for a charter, contract, and agree with the state of Kansas that it shall never discriminate in either price or service between privately owned and municipally owned distributing gas companies.

Governor Clyde M. Reed correspondence, Public Service Commission

-8-

Such legislation would compel such a corporation by contract in its application for a charter to submit to the jurisdiction of the state rate regulating body. I believe that time and judicial construction will determine that such a contract is something more than a scrap of paper.

Section D of such proposed legislation would be particularly beneficial for the cities which own their own distributing gas plants. It would insure to them a supply of gas equal to the supply of any of the privately owned companies. This interstate pipe line corporation cannot complain about such legislation. The so-called Doherty companies insist that their interstate pipe line corporation is an entirely separate and distinct corporation from the local, distributing corporation. If there is no connection whatever between the interstate pipe line corporation and the distributing company then it can make no difference to this interstate pipe line corporation whether it sells its gas to the privately owned distributing company or to some municipally owned distributing company. However, I venture the prophecy that such legislation will find the parent holding company bitterly complaining and strenuously insisting that it wants its pipe line corporation to sell gas only to its local distributng corporation.

Then as a companion bill, which will vest further power in the Kansas Public Service Commission to regulate gas rates, I should suggest that the next legislature enact a bill in substance as follows:

(a) That any person, firm or corporation using any of the public highways of Kansas in the piping or transporting of natural gas shall first obtain a permit to do so from the Kansas Public Service Commission.

(b) In the application for a permit, the applicant must contract and agree with the state of Kansas that the Public Service Commission,

Governor Clyde M. Reed correspondence, Public Service Commission

-9-

subject to the appellate jurisdiction of the Kansas courts, shall have jurisdiction to regulate and prescribe the price which shall be paid for any gas transported under such permit for public consumption.

(a) That any refusal or failure to abide by such rate regulation shall be deemed a violation of the contract and of the permit and shall work a forfeiture of the permit. That the Public Service Commission be given jurisdiction to declare such forfeiture ~~and~~ cancel such permit.

(d) That any person, firm or corporation transporting gas along or across any public highway without such a permit shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than \$500.00 nor more than \$1,000.00. Each day of transporting gas without such a permit shall constitute a separate offense.

It will be noted that these provisions do not effect the gas producers of Kansas who produce gas and sell it for industrial purposes. Industries using gas for industrial fuel do not need legal protection. Coal and electricity as competitive fuel for industrial power will regulate the price for industrial gas. When competition will regulate a price, government has no business to interfere.

I believe that such legislation will permit Kansas to be the mistress of her own household so far as natural gas for public consumption is concerned.

While I firmly believe that Topeka is the most effective place to carry on this primary fight with the gas companies, it is perfectly proper to carry on the secondary fight at Washington.

In the matter of congressional legislation for years the Kansas City Star has been advocating that jurisdiction be given to the interstate commerce commission to regulate and prescribe the rates to be charged by interstate pipe line companies. No one can question the

Governor Clyde M. Reed correspondence, Public Service Commission

-10-

constitutionality of such legislation. No one can claim that such legislation would not be effective and a great improvement upon the present condition. In the consideration of congressional legislation there is other national legislation which I beg leave to suggest as being appropriate. It is as follows:

(a) By congressional legislation make the members of the State Public Service Commissions federal officers or agencies for the purpose of regulating the gas rates of interstate pipe lines.

(b) If Congress is loath to delegate so much power to state agencies then it could at least enact legislation making the members of the State Utilities Commissions, commissioners or special masters to take evidence and report to the interstate commerce commission.

These last two suggestions are for the purpose of expediting and speeding up the work of the Federal Government in passing upon these rates. The interstate commerce commission is so burdened with railroad rates that it is far behind with its docket. Place the control of the interstate pipe line directly and exclusively with the interstate commerce commission and it would often mean three or four years before a decision could be reached in prescribing rates for these pipe lines.

In any campaign of attack, I believe that the state legislature is by far the better place to make that attack. Let not the people of Kansas depend on distant Washington alone to do for them what they can do for themselves here at home.

In the meantime, there is no need for the cities of Kansas or the Kansas Public Service Commission to lie down and idly wait for legislative relief. The cities of Kansas and the Kansas Public Service Commission can well afford to set themselves under the

Governor Clyde M. Reed correspondence, Public Service Commission

-11-

authority of the United Fuel Gas Company versus Railroad Commission decided by the Supreme Court of the United States, January 15, 1929. Here is a quotation from that decision:

"A public service corporation cannot make a rate confiscatory by reducing its net earnings through the device of a contract unduly favoring a subsidiary or a corporation owned by its own stockholders."

This decision means that corporation B owning the local distributing plant cannot make its public rate confiscatory by unduly favoring corporation C by paying to corporation C a 100% excess price for gas. This is true because corporation C is owned ultimately by corporation A, the stockholder which ultimately owns corporation B the distributing company.

This case goes further, it holds that the burden of proof is upon such a gas company to prove that its rate to the distributing company is fair and that the rate charged to the public has not been made confiscatory by paying too much to its companion company for gas.

This case had its origin in Kentucky. The local distributing company was demanding an increased rate. The local distributing company was insisting that it was losing money. It was insisting that the railroad commission of Kentucky had no right to inquire into the reasonableness of the price which the distributing company was paying for the gas which it purchased at the gate. The local distributing company was insisting that it was helpless, that it was purchasing its gas from an interstate corporation which was bringing gas from West Virginia to Kentucky.

Since this interstate corporation and the local distributing company had similar ownership the United States Supreme Court recognized the absurdity of the position of the gas companies. This Kentucky set-up of plural ownership of the gas business is a perfect

Governor Clyde M. Reed correspondence, Public Service Commission

-12-

duplication of the plural ownership of the gas industry in Kansas. If the Kansas Public Service Commission and the cities of Kansas will operate under the shelter of this decision, I believe that the so-called Doherty companies operating in Kansas will thereby be brought to time and will learn that there is a government in Kansas. It is with joy that we observe that the Kansas Public Service Commission, fortified with their decision, has met the Doherty companies head-on in the rate cases presented by the Western distributing company.

The so-called Doherty companies have carried on another practice which is to say the least subject to censure. They have in wholesale fashion taken into their employment men high in the public service of Kansas, members of the Public Service Commission, former Attorneys General and Assistant Attorneys General, Judge of the District Court of Shawnee County, which Court has played no small part in establishing the gas rates in Kansas, auditors and engineers of the Kansas Public Service Commission and men high in the legislative branch of our State. Doubtless, all of these men are capable and have made valuable employees for the gas companies. However, the employment has been on such a broad scale that it has all the appearance of the employment of prestige rather than service.

To say the least, it is singular that these companies with headquarters in Oklahoma and New York City should find it necessary to look to Kansas public officials for so many of its employees. In speaking about this question, I cannot pass without mentioning the fact that engineers of the Kansas Public Service Commission, who represented the Commission and helped to establish the valuation of many of the Doherty distributing gas plants for rate purposes, was shortly after the establishing of these rates employed by the Doherty companies.

Governor Clyde M. Reed correspondence, Public Service Commission

-13-

Others may view this situation in any light they may desire, but as for myself, my common sense will always compel me to believe that the gas consumers of Kansas would be better off if the Doherty companies had never taken into their employment a single public official of Kansas. I believe that it would be a wise public policy for Kansas immediately to give Doherty to understand that this State will look with disfavor upon his companies further employing Kansas public officials. That the State will look upon a continuation of this program with such disfavor, that a further practice of it will obtain for his companies disrepute rather than prestige. If this employment had consisted of only one or two Kansas officials, no right thinking person could take any exceptions of it. However, this employment has included so many that it takes on the appearance of a program and a practice which is not in any sense merely an incident in commercial life.

During the past few years the public utilities companies all too prevalent have carried on a program of controlling government. For their own good and for the good of the country they must abandon this program. They must not carry on even in the least degree the domination of government. In a former day the debatable question was private ownership of public utilities or governmental ownership of public utilities. IF THE UTILITIES CARRY ON THE PROGRAM OF ENDEAVORING TO CONTROL GOVERNMENT THEN THE QUESTION WILL BECOME WHETHER OR NOT WE SHALL HAVE GOVERNMENT OWNERSHIP OF UTILITIES OR UTILITY OWNERSHIP OF GOVERNMENT. If the American people have the spirit and patriotism of their forefathers, it will never take them long to answer that question.

The gas companies in Kansas in furnishing employment for former public officials have carried on a program which is bad. However,

Governor Clyde M. Reed correspondence, Public Service Commission

-14-

they deserve full credit for the fact that there is no evidence that they have done the reprehensible things which the power companies have done in other sections of the United States. There is no evidence that the utilities in Kansas have ever furnished fabulous slush funds to elect a former member of the Public Service Commission as United States Senator. Such was publicly reported to have been done in Illinois. The public reports of a Senatorial investigation were to the effect that Mr. Insul, a power magnate of Illinois, furnished a huge sum of money to elect Mr. Smith, a former chairman of the Public Service Commission of Illinois, to the United States Senate. This so shocked the patriotic and moral conscience of the country that the United States Senate barred its doors to Mr. Smith. I understand that Mr. Insul is now interested in the power business in Kansas. It is not unfriendly advise for anyone to inform Mr. Insul that if he ever undertakes to finance the campaign of a Kansas public service commissioner for a high office, that the people of Kansas will view such a transaction as the payment of a debt of gratitude for rates prescribed by such commissioner favorable to the power company.

There is no public evidence that any privately owned utilities companies have ever undertaken to buy up any of the press of Kansas. It was recently disclosed before the Federal Trade Commission that some power companies in the East had financed the "chaining" of a number of the Eastern newspapers. The public is bound to accept such conduct as an effort to prostitute the public press, deceive the public mind and to prepare the way for such utilities to rob the public by unfavorable rates prescribed by public rate making bodies. Such destruction of the freedom and integrity of the public

Governor Clyde M. Reed correspondence, Public Service Commission

-15-

press is little less than disloyalty to country. It will never be accepted by the American people as anything less than disloyalty. It is unbelievable that such a thing could ever happen in Kansas. If any Kansas editor ever made his paper subservient to any public utility, and that fact became disclosed, then may a merciful God have grace for that editor, for the remainder of the Kansas press will never have any forgiveness for him.

The subject assigned to me was public utility regulation. The greater part of my remarks have been confined to the regulation of the gas companies. This is because I believe that in Kansas there is a greater need at this time for the regulation of the gas companies than of any other utility. As to Kansas regulation of the electric power companies, I do not have any particular suggestions to offer. Any city which is not satisfied with its power rate is not in any great need of governmental regulation to give it relief. Any instance where the power company is charging too much, the people in that city have relief within their own grasp. They can establish their own power plant. It is my observation that publicly owned power plants like privately owned power plants are very valuable property and are making money.

As to telephone rates or regulation of them, if the people are not satisfied at this time, I have no confident judgment as to how to make public rate regulation more effective. However, I have observed that telephone rates in Kansas are on a war time basis. I have also observed that the telephone company still has in effect every war time device to gouge the public for a little here and a little there. Also that telephone systems are being merged and then stocks and bonds are sold for many times the purchase price of the system. This means again, that the purchasers of these stocks

Governor Clyde M. Reed correspondence, Public Service Commission

-16-

and bonds are going to lose their investment or else the public will be gouged for further advancement in telephone rates.

As to our railroad passenger and freight rates, I do not know of any needed additional legislation. The states have control of intra-state rates. The interstate commerce commission has control of inter-state rates. In any instance, where these rates are not satisfactory at this time, the evil lies not in any lack of legislation or jurisdiction vested in the rate making bodies. The evil of necessity must be in the improper administration of the jurisdiction already vested in the state and federal rate making bodies.

I thank you.