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BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
Commissioner - Chairman
JIM IRVIN
Commissioner
TONY WEST
Commissioner

IN THE MATTER OF THE
NOTICE OF PROPOSED RULE MAKING
REGARDING THE TRANSPORTATION OF
NATURAL GAS, OTHER GASES AND
HAZARDOUS LIQUIDS BY PIPELINES.

DOCKET No. RG-00000A-00-0548

WRITTEN COMMENTS
SUBMITTED BY ASARCO INCORPORATED

October 19, 2000

Submitted by:
FENNEMORE CRAIG
Attorneys for ASARCO
Incorporated

1 Pursuant to the August 30, 2000 Procedural Order in this
2 docket, ASARCO Incorporated hereby submits its Written Comments on
3 the Proposed Transportation of Natural Gas, Other Gases and
4 Hazardous Liquids By Pipelines Rules (R-14-5-201, et. seq.) (the
5 "Rules").

6 R14-5-201

7 The Rules attempt to increase the jurisdiction of the
8 Arizona Corporation Commission ("Commission") by granting the
9 Commission jurisdiction over private property used in connection
10 with unregulated commercial activities. The expansion of the
11 Commission's jurisdiction is accomplished by deleting references
12 to public service corporations and incorporating the language in
13 A.R.S. § 40-441 which includes both privately owned and public
14 pipeline facilities.

15 The constitutional powers, duties and limitations of
16 the Commission are set forth in Article 15 of the Arizona
17 Constitution which limits the Commission's regulatory
18 jurisdiction to public service corporations. Specifically,
19 Article 15, Section 3 of the Arizona Constitution grants the
20 Commission the power to make reasonable rules, regulations, and
21 orders by which **public service corporations** shall be governed in
22 the transaction of business within the state.

23 It is well established the legislature may not expand
24 the jurisdiction of the Commission. Menderson v. City of
25 Phoenix, 51 Ariz. 280, 76 P.2d 321 (1938); American Bus lines,
26 Inc. v. Arizona Corporation Commission, 129 Ariz. 595, 633 P.2d

1 404 (1981). Therefore, the Commission's jurisdiction is limited
2 to the regulation of public service corporations. Art. 15, § 2
3 Ariz. Const.; Menderson, 51 Ariz. at 283. Further, the
4 legislature cannot give public service corporation designation to
5 corporations not identified in Article 15, § 2. Rural/Metro
6 Corporation v. Arizona Corporation Commission, 129 Ariz. 116, 629
7 P.2d 83 (1981).

8 Sections 40-441 through 40-443 of the Arizona Revised
9 Statutes specifically address the regulation of pipeline safety
10 by the Commission. These statutes provide for state control over
11 safety standards to the extent permissible under the Federal
12 National Gas Pipeline Safety Act of 1968, 49 U.S.C.A. § 1671 et
13 seq, recodified as the Federal Pipeline Safety Act, 49 U.S.C.A. §
14 60101 et seq ("Pipeline Safety Act"). Under the Pipeline Safety
15 Act a certified state may regulate safety standards and practices
16 only for an intrastate pipeline facility and intrastate pipeline
17 transportation as those terms are defined by the Act.

18 The Commission may not adopt rules which are
19 incompatible with the federal regulation, nor may it extend its
20 jurisdiction through rule. Therefore, the Commission may not
21 assert jurisdiction over any gas line on private property other
22 than an intrastate pipeline facility and intrastate pipeline
23 transportation as those terms are defined by the Pipeline Safety
24 Act.

25 The Rules, as proposed, would expand the Commission's
26 jurisdiction over all pipeline facilities without limitation.

1 Such amendments would be contrary to the Constitution and the
2 Pipeline Safety Act. Therefore, the Commission should not adopt
3 the amendments deleting the references to public service
4 corporations and incorporating privately owned pipeline
5 facilities through A.R.S. § 40-441.

6 DATED this 19th day of October, 2000.

7 FENNEMORE CRAIG

8
9 BY 

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14 Original and ten copies filed
15 this 19th day of October, 2000:

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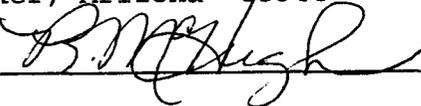
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