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Second Session—Twenty-fourth Parliament
1959

THE SENATE OF CANADA



PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
NATURAL RESOURCES

To whom was referred the Bill (C-49), intituled: "An Act to provide for the Establishment of a National Energy Board."

The Honourable Cyrille Vaillancourt, *Chairman*

No. 1

TUESDAY, JUNE 23, 1959

WITNESSES:

Mr. Douglas M. Fraser, Director, Energy Studies Branch, Department of Trade and Commerce;
Mr. Robert Burgess, barrister-at-law, Ottawa, Ontario;
Mr. E. A. Driedger, Assistant Deputy Minister of Justice.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

THE STANDING COMMITTEE ON
NATURAL RESOURCES

The Honourable CYRILLE VAILLANCOURT, Chairman
The Honourable Senators

*Aseltine	Dupuis	McLean
Barbour	Emerson	Methot
Basha	Farquhar	Paterson
Beaubien	Fraser	Pearson
Bois	Gladstone	Petten
Bouffard	Haig	Power
Buchanan	Hayden	Raymond
Burchill	Higgins	Stambaugh
Cameron	Horner	Taylor (Norfolk)
Comeau	Kinley	Taylor (Westmorland)
Crerar	*Macdonald	Turgeon
Davies	McDonald	Vaillancourt
Dessureault	McKeen	Vien
		Wood—40

(Quorum 9)

**ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Wednesday, June 17th, 1959.

Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Aseltine, for second reading of the Bill C-49, intituled: "An Act to provide for the Establishment of a National Energy Board".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Natural Resources.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, June 23, 1959.

Pursuant to adjournment and notice the Standing Committee on Natural Resources met this day at 2.00 P.M.

Present: The Honourable Senators: Vaillancourt, *Chairman*; Aseltine, Buchanan, Burchill, Gladstone, Haig, Higgins, Horner, McDonald, Pearson and Taylor (*Westmorland*).—11.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel; the Official Reporters of the Senate.

Bill C-49, An Act to provide for the Establishment of a National Energy Board, was read and considered clause by clause, to wit; clauses 1 to 49 were passed with the exception of clauses 40, 41 and 42, which were postponed for further consideration.

Heard in explanation of the Bill were: Mr. Douglas M. Fraser, Director, Energy Studies Branch, Department of Trade and Commerce; Mr. Robert Burgess, barrister-at-law, Ottawa, Ontario; Mr. E. A. Driedger, Assistant Deputy Minister of Justice.

On motion of the Honourable Senator Aseltine, it was resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the proceedings on the said Bill.

At 4.00 P.M. the Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON NATURAL RESOURCES

OTTAWA, Tuesday, June 23, 1959.

EVIDENCE

The Standing Committee on Natural Resources, which was instructed to study Bill C-49, to provide for the establishment of a National Energy Board, met this day at 2 p.m.

Senator Vaillancourt in the Chair.

The CHAIRMAN: Honourable Senators, can we agree to commence immediately without waiting for one more member to constitute a quorum, until that member arrives?

Agreed.

The CHAIRMAN: The first order of business is a motion that has been proposed that authority be granted for the printing of 800 copies in English and 200 copies in French of this committee's proceedings on the said bill.

Senator ASELTINE: I so move.

Senator PEARSON: I second the motion.

Motion agreed to.

The CHAIRMAN: The first witness who is to explain the bill is Mr. Fraser, Director of the Energy Studies Branch of the Department of Trade and Commerce, Ottawa.

Senator McDONALD: Mr. Chairman, I would like to say before Mr. Fraser explains the bill that this is a bill that took a lot of time in the House of Commons, and it is the type of bill that should have been introduced in this house. Had the bill been introduced in this house we could have saved the time of the House of Commons by probably a week, or approaching that time, and the bill would have received as good if not better attention here in committee. I realize that there were about, I think, 17 amendments made in the House of Commons. Perhaps Mr. Fraser when he is speaking will point those out as he reviews the bill. May I suggest that in the future if the Senate is to be given adequate responsibility, the Government should keep in mind the fact that we can, especially toward the latter part of the session when time means so much, introduce measures like this here and have them given really first-class study and so save a lot of time.

Senator ASELTINE: I might say, Senator McDonald, that we have had more legislation initiated in the Senate this year than ever before.

Senator McDONALD: Well, that is encouraging.

Senator ASELTINE: I have impressed your opinions on the Government from time to time, and I hope as time goes on we will get more legislation of this nature.

Senator McDONALD: We hope so.

Senator ASELTINE: We have had quite a number of bills already, eight or ten, introduced first in the Senate this year.

Mr. Chairman, what do you suggest that we do, have a general explanation first?

The CHAIRMAN: Yes.

Douglas M. Fraser, (Director, Energy Studies Branch, Department of Trade and Commerce):

Thank you, Mr. Chairman and gentlemen. This being my first appearance before the Senate committee I am not sure in what detail you would like me to proceed. As you know, this is a lengthy bill, having 101 sections, and each of them has some history behind it. We could spend a very long time indeed if I were to give you a full explanation at this stage. Perhaps it would be simpler if I gave you a quite brief explanation, and then you could ask whatever questions you may wish to put to me. If that is agreeable, gentlemen, I would refer you first to the explanatory note as it appeared in the bill on first reading, which stated:

The purpose of this bill is to establish a National Energy Board which shall, in order to assure to the people of Canada the best use of energy resources in this country, regulate in the public interest the construction and operation of oil and gas pipe lines subject to the jurisdiction of the Parliament of Canada, the tolls charged for transmission by such pipe lines, the export and import of gas, the export of electric power and the construction of those lines over which such power is exported. The Board shall also study and keep under review all matters relating to energy within the jurisdiction of the Parliament of Canada, and shall recommend to the Minister of Trade and Commerce such measures as it considers necessary or advisable in the public interest with regard to such matters. The Bill also authorizes the extension of the export and import provisions to oil.

Senator BRUNT: It is intended to include atomic energy as well?

Mr. FRASER: Only in as far as the advisory functions of the Board are concerned, senator. There are no regulatory powers in this bill respecting atomic energy, unless in the event that atomic power is used to produce electrical energy which is then to be exported.

Senator BRUNT: Then the power will be dealt with as electric power?

Mr. FRASER: That is right, sir. Now for a more detailed explanation, I can proceed if you wish to recapitulate the minister's statements in the house on the resolution stage and on second reading, or if you prefer to proceed immediately to questioning I should be very happy to be at your disposal.

Senator McDONALD: Mr. Chairman, were the amendments made in the House of Commons all incorporated in this bill?

Mr. FRASER: Yes sir; the version of the bill as passed in the House of Commons includes all the amendments.

Senator McDONALD: Could you point them out in your review? There are quite a number.

Mr. FRASER: I do not have a convenient list in just that form.

Senator McDONALD: I think those of us who have been following the bill through the House of Commons have them in mind pretty well, but I was just wondering if we could make sure that they were all in the bill.

Mr. FRASER: I can assure you, sir, they are all there.

Senator BRUNT: You know the sections that were amended, Mr. Fraser. Could you not pick them out as we go along?

Mr. FRASER: I think so, if it is agreeable.

Senator BURCHILL: I move that we proceed section by section.

Senator PEARSON: It will take some time.

Senator BRUNT: Well, I think that is what we should do. It is a very important bill, and we could take three or four days, if we want to. Let us do it right.

The CHAIRMAN: I have read the interpretation section, section No. 2. What is your pleasure?

Senator BURCHILL: I move that the interpretation section carry.

Carried.

The CHAIRMAN: Now we come to Part 1, on page 2. The title of this section is "National Energy Board" and sections 3 and 4 relate to the establishment of the board.

Senator HIGGINS: Mr. Chairman, I notice section 2, subsection 7 requires that each member shall reside within 25 miles of the city of Ottawa. Is that the usual rule? Are they civil servants or quasi-civil servants and supposed to live that close to Ottawa?

Mr. FRASER: In the preceding legislation the limit was five miles and it was thought in view of modern transportation methods and highways it would be appropriate to increase that distance to 25 miles.

Senator HIGGINS: Is it the rule that a civil servant shall live within five miles of the city of Ottawa?

Mr. FRASER: A board member is not a civil servant, but that applied to members of the Board of Railway Commissioners under the old Railway Act.

Senator HIGGINS: Why them more than anybody else?

Mr. FRASER: I think it was originally intended that they should be close to their place of business so that the business of the board could be carried on without any delays on that score.

Senator BRUNT: That means that a person residing in Montreal could not serve on this board?

Mr. FRASER: That is right.

Senator BRUNT: Even though he can come from Montreal in an hour or so, that in spite of that he would be barred from membership on the board? Suppose, for instance, that a man was to live at the hotel here in Ottawa would he be barred from membership on the Board?

Mr. FRASER: There we come into a nice legal point, whether or not he has established residence in Ottawa. There is nothing to prevent a member from owning two homes.

The CHAIRMAN: May I point out that there is a saving clause there which says that, "...or within such other distance thereof as the Governor in Council determines."

Senator BRUNT: I did not notice that saving clause. So an exception can be made?

Mr. FRASER: That is right. The real intent is to avoid the hypothetical case of a man living in Victoria being appointed to the board and rarely being present at its meetings.

Senator HIGGINS: So generally he must reside within 25 miles of the city of Ottawa but if he goes to the cabinet and explains that he lives in Montreal and could be here in a short time the cabinet might make an exception.

Mr. FRASER: That is right.

Senator BRUNT: Is this a full-time job for each member?

Mr. FRASER: Yes.

Senator BRUNT: Are there any restrictions as to investments on the part of anyone serving on this board?

Mr. FRASER: Yes.

Senator BRUNT: What are they?

Mr. FRASER: Subsection 8 provides that members shall devote the whole of their time to the performance of their duty under this act. Subsection 5 of section 2 also provides that a person is not eligible to be appointed or to continue as a member of the board if he is not a Canadian citizen or if as owner, shareholder, director, officer, partner or otherwise, he is engaged in the business of producing, selling, buying, transmitting, exporting, importing or otherwise dealing in hydrocarbons or power or if he holds any bond, debenture of other security of a company. I may say, Mr. Chairman, this is one of the amendments made in the house, the following words having been added, "If he holds any bond, debenture or other security of a company."

Senator BRUNT: So that in the House of Commons they enlarged it even to include bonds and debentures.

Mr. FRASER: That is right.

Senator BRUNT: So anyone serving on this board cannot have any investments of any kind in any power company.

Mr. FRASER: That is right. He must be like Caesar's wife.

Senator BRUNT: Suppose there was a provincial company operating entirely within a province—a provincial pipe line—this board would have no jurisdiction over it at all.

Mr. FRASER: That is right sir.

Senator BRUNT: Take the Saskatoon Pipe Line, which runs from Minden to Saskatoon—a short stub of a line—that is a provincial company, and this board would have nothing whatever to do with that line. Such a person could not serve on this board?

Mr. FRASER: That is correct.

Senator BURCHILL: I want to ask the lawyers on this committee, is the language satisfactory with respect to the holding of any bond, debenture or security of a company?

Senator BRUNT: Surely not of a company... You would never get anybody to serve on the board, if that were so.

Senator BURCHILL: That is as I read it.

Mr. FRASER: In the interpretation section company is defined as follows:

'Company' means a person having authority under a Special Act to construct or operate pipe lines.

Senator BRUNT: But even that does not allow a person who is connected with a purely provincial company to serve on the board, and the board would have no jurisdiction over that provincial company at all.

Mr. FRASER: That is right, sir.

Senator BRUNT: Was this question raised in the other place?

Mr. FRASER: I don't recall it being raised in the other place. If you look at section 14 of the Railway Act you will find a fairly close parallel. May I read that section?

14(1) No commissioner or officer of the Board shall directly or indirectly,

(a) hold, purchase, take or become interested in any stock, share, bond, debenture or other security, of any company subject to this Act, or

(b) have any interest in any device, appliance, machine, patented process or article, or any part thereof, that may be required or used as a part of the equipment of railways or of any rolling stock to be used thereon, or of any other work or undertaking subject to this Act.

(2) If any such stock, share, bond or other security, device, appliance, machine, patented process or article, or any part thereof or any interest therein, comes to or vests in any commissioner or officer of the Board by will or succession for his own benefit, he shall, within three months thereafter, absolutely sell and dispose of the same, or his interest therein.

The parallel I wanted to point out was that a company that manufactured tie-plates or break-shoe linings or any part of railway equipment, the shares or bonds of such a company could not be held by an officer or member of the Board of Transport Commissioners.

Senator BRUNT: Take the Ontario Northland Railway, does it come under the jurisdiction of the Board of Transport Commissioners?

Mr. FRASER: No sir.

Senator BRUNT: That is perhaps not a good example, because there is no stock out in that company. Let us take the Algoma Central and Hudson Bay Railway. Is that under the jurisdiction of the transport board?

Mr. FRASER: I don't know that railway, but I believe not. I believe it is a provincial incorporation.

Senator BRUNT: Then I could own stock in that company, and serve on the Transport Board, is that not correct?

Mr. FRASER: You could; but if you had stock in, say, McKinnon Industries Ltd. making something for the railway industry, you could not. The point I am trying to make is that the restrictive clause of this proposed bill is less restrictive than the comparable section in the Railway Act.

Senator BRUNT: In one part it is, and in the other part it is much broader, because this subsection says that if you are connected with any power company at all, whether under this act or not, you can't serve with the board.

Senator ASELTINE: Does it go that far?

Mr. FRASER: That is correct, sir.

Senator BRUNT: The gentleman behind me says that is not correct. Let us agree on this.

Mr. FRASER: Subsection 5 of section 3 reads:

A person is not eligible to be appointed or to continue as a member of the Board if he is not a Canadian citizen or if as owner, shareholder, director, officer, partner or otherwise, he is engaged in the business of producing, selling, buying, transmitting, exporting, importing or otherwise dealing in hydrocarbons or power or if he holds any bond, debenture or other security of a company.

That does not say that the company dealing in hydrocarbons or power has to be a federal incorporation.

Senator BRUNT: It does not have to be interprovincial, extraprovincial or international.

Mr. FRASER: That is right.

Senator BRUNT: It could be a provincial company.

Mr. ROBERT BURGESS: Mr. Chairman, I think there is a simple answer to the question that has been raised, in that the definition of "company" means a company incorporated by Special Act, which means legally and technically, a Special Act of the Parliament of Canada, and none of those provincial companies you speak of need be incorporated, or can be incorporated by a Special Act of the Parliament of Canada. Therefore with respect to subsection 5 of section 3, where it refers to "company", you must refer back to the interpretation section: a company that is incorporated by a Special Act of the Parliament of Canada, which immediately rules out all those provincial companies.

Senator BRUNT: Do you mean to say that you cannot incorporate by special act a company which wants to do business entirely within a province?

Mr. BURGESS: That is not within the jurisdiction of the Parliament of Canada.

The LAW CLERK: Yes, but that does not apply to the first part of the section; that only applies to bonds, debentures or other securities.

Mr. FRASER: This is where the confusion has arisen, I think.

Senator ASELTINE: The sub-clause was added in the House of Commons, was it not?

Senator BRUNT: What does the Railway Act say?

Mr. FRASER: Section 14?

Senator BRUNT: Yes; they have a similar clause in there.

Mr. FRASER: Section 14 of the Railway Act, subsection (1) (a), says that no commissioner or officer of the Board shall directly or indirectly, "hold, purchase, take or become interested in any stock, share, bond, debenture or other security, of any company subject to this act".

Senator BRUNT: "Subject to this act". Would you mind reading a definition of "company" out of that Railway Act?

Mr. FRASER: (Reading)

(4) "company" includes a person, and where not otherwise stated or implied means "railway company," unless immediately preceded by "any", "every" or "all", in which case it means every kind of company which the context will permit of; and "railway company" or "company" when it means or in includes "railway company,"

(a) includes every such company and any person having authority to construct or operate a railway; and

(b) in the sections of this Act that require companies to furnish statistics and returns to the Board, or provide penalties for default in so doing, includes further any company constructing or operating a line of railway in Canada, even though such company is not otherwise within the legislative authority of the Parliament of Canada, and includes also any individual not incorporated who is the owner or lessee of a railway in Canada, or party to an agreement for the working of such a railway,"

Senator BRUNT: Does that finish it?

Mr. FRASER: That is it.

Senator BRUNT: Which is the broader definition, in your opinion?

Mr. FRASER: Sir, that is a legal matter.

Senator BRUNT: It is all inclusive, and yet with that definition they put in a proviso in section 14, do they not? When you read section 14 to us that this was copied from, did they not say a company "subject to this act"?

Mr. FRASER: Yes, sir, they do.

Senator BRUNT: Well, I am not proposing this as an amendment, but I would like this section to stand, that is, subsection (5). I am not proposing that it be amended, and I would not want to, unless the minister is entirely agreeable, but I think we should bring it to his attention. Would you mind submitting that to the minister, to see what his views are on it?

Mr. FRASER: I will be glad to do this senator. May I simply point out that the mood of the other place seemed to be to make the words more restrictive rather than less so.

Senator BRUNT: It may be that nobody thought of this. It might be interpreted as being restrictive.

Mr. FRASER: That is precisely the intent, I would gather.

Senator BRUNT: I think it should be brought to the attention of the minister to get his views on it.

Senator HIGGINS: What do you mean by special act, provincial act?

Senator BRUNT: No, a special act is the kind we put through.

Senator HIGGINS: Was it not a provincial act, though?

Senator BRUNT: No, as far as I know there are no companies incorporated by provincial act, they are all done by letterspatent.

The CHAIRMAN: Do you think it will be better to proceed paragraph by paragraph?

Senator ASELTINE: We are only postponing the consideration of subsection (5) of section 3. Could we not pass the other subsections of section 3 now?

Agreed.

The CHAIRMAN: Section 6 relates to the head office of the Board, and meetings.

Section agreed to.

The CHAIRMAN: Section 7 deals with the Board making rules.

Section agreed to.

The CHAIRMAN: Section 8. Staff.

Senator BRUNT: How do you remove the secretary?

Mr. FRASER: In the same manner, sir—the Governor in Council.

Senator BRUNT: That must be under the Civil Service Act?

The LAW CLERK: No, during pleasure.

The CHAIRMAN: Section 8(2) says:

The secretary shall be paid such salary as the Governor in Council may fix, and he shall reside in the city of Ottawa or within twenty-five miles thereof or within such other distance thereof as the Governor in Council determines.

Senator BRUNT: That is dealing with the secretary's salary.

Senator McDONALD: How does that compare with the right section under the Railway Act, regarding the distance?

Mr. FRASER: In the same case it was five miles previously.

The CHAIRMAN: Section 8(3) says:

For the purposes of the Public Service Superannuation Act, the members and secretary of the Board and the officers and employees appointed as provided in subsection (1) shall be deemed to be persons employed in the public service.

Section 8 agreed to.

The CHAIRMAN: Section 9 says:

The Governor in Council may appoint and fix the remuneration of experts or persons having technical or special knowledge to assist the Board in any matter in an advisory capacity.

Section agreed to.

The CHAIRMAN: Section 10 says:

- (1) The Board is a court of record.
- (2) The Board shall have an official seal, which shall be judicially noticed.

(3) The Board has, as regards the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry upon and inspection of property and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

Senator McDONALD: Where are these taken from; is there any other source?

Mr. FRASER: Yes. Subsection (10)(1) and (2) of the bill are modelled on section 9(2) of the Railway Act; and section 10(3) is identical with section 33(3) of the Railway Act.

Senator BRUNT: I suppose "superior" is meant to be an adjective there. There is no Superior Court in Ontario, and in Saskatchewan it is the Court of King's Bench. Does this refer to the high court in each province?

Mr. FRASER: I believe that is the intent.

The CHAIRMAN: Shall clause 10 carry?

Carried.

Clause 11, on the question of jurisdiction.

Mr. FRASER: This section is substantially identical with section 33(1) of the Railway Act but there is one difference, in that while the Railway Act bases action by the Board of Transport Commissioners on receipt of a complaint or request from an interested party, this Bill leaves such action to the discretion of the energy board.

The CHAIRMAN: Shall section 11 carry?

Carried.

Clause 12, mandatory orders.

Mr. FRASER: This section is identical with 33(2) of the Railway Act.

Senator BURCHILL: Is there an appeal from this to the Supreme Court or to the Governor in Council?

Mr. FRASER: Yes, as you will see later on, there is provision for appeal on matters of law or jurisdiction to the Supreme Court. The board's findings as to fact, however, are final.

The CHAIRMAN: Shall section 12 carry?

Carried.

Section 13. This has to do with delegation of powers.

Senator BRUNT: How can you differentiate between the powers?

Mr. FRASER: It is a matter of judgment which has been exercised by the ministers and through them, acting on their instructions, the legal officers.

Senator BRUNT: They will determine what is a minor matter?

Mr. FRASER: This distinction is made in the terms of what are listed in section 13 as the sections in respect of which the board may not delegate its functions. These are deemed to be the important functions which the board itself must not delegate.

Senator McDONALD (*Kings*): Was there any change made in this section by way of an amendment in the House of Commons?

Mr. FRASER: Yes. In the list of exceptions one clause was struck out, having been left there by mechanical error. I think I am right in saying that this is the only change in that section.

The CHAIRMAN: Shall the section carry?

Carried.

Section 14. This has to do with the powers of a single member.

Mr. FRASER: Section 14, subsection 1 is identical with section 12(1) (d) of the Railway Act.

Section 14, subsection 2 is modelled on section 36 of the Railway Act. In the latter this section was designed to complement section 33(1) in which the Board of Transport Commissioners was given authority to act in certain matters on the complaint or request of any interested party. The present bill's section 11 no longer requires a complaint or a request before the board will act. Sections 11 and 14(2) do not duplicate each other, entirely, however.

Shall the section carry?

Carried.

Section 15, enforcement of board orders.

Mr. FRASER: These provisions are identical with those in section 50(1) and 50(2) of the Railway Act.

Senator HIGGINS: Once an order has been filed with the Exchequer Court, does it become a matter for the jurisdiction of the Exchequer Court or is it still under the jurisdiction of the board? The reason I am asking you this question is that in section 17 it says the board may review, rescind, change, alter or vary any order or decision made by it. If it is an order of the Exchequer Court how can the board deal with it? If it is under the jurisdiction of the Exchequer Court how can the board rescind it?

Senator PEARSON: I thought we were on clause 15.

Mr. FRASER: There is a link-up between clause 15 and 17.

Senator BRUNT: Is this not where the board applies to the Exchequer Court for an order to enforce its order, that is, they are enforcing the board's order with a court order.

Senator HIGGINS: I am reading sections 15 and 17 together. Perhaps that is the ordinary procedure but I cannot understand it.

Mr. FRASER: Here I am afraid we are in the realm of legal procedure and far be it from me to attempt to define law in the presence of so many learned senators.

Senator McDONALD (*Kings*): Is there anyone from the Justice Department here?

Mr. FRASER: Not today.

Senator BRUNT: Suppose then that we stand section 15 and 17 until we get somebody here from that department.

The CHAIRMAN: Sections 15 and 17 stand.

Senator McDONALD (*Kings*): Should section 16 stand too?

Senator BRUNT: We might as well stand the three sections and we will clean them all up at one time.

The CHAIRMAN: Sections 15, 16 and 17 stand.

The CHAIRMAN: Section 18, appeals to Supreme Court.

Mr. FRASER: The provisions of section 18 (1) and (2) are identical with sections 53 (2) and (3) of the Railway Act.

Mr. Chairman, I have not previously referred to the Borden Report—the first report of the Royal Commission on Energy. Honourable senators may wish from time to time to inquire as to the relationship between the provisions of this bill and the proposals of that report. There will be occasions when in making these explanatory notes which had been prepared during the course of the preparation of the bill, I shall refer to the Borden Report.

In this case we would like to point out that no reference is made in the Borden Report to the subject of appeals, but Mr. Borden later wrote to suggest that the right of appeal should be provided for to the Exchequer Court or the

Supreme Court of Canada from any regulatory decision of the board, and that it would be a great mistake to apply section 53 (1) of the Railway Act, and to allow such appeals to go to cabinet.

Findings of fact by the Energy Board, in the view of the Government, should not be subject to appeals to the courts any more than to cabinet. The board should be established as the authority to determine matters of fact in this complicated and highly technical area, and its findings should be conclusive. Appropriate provision should be made for reconciliation or co-ordination of the board's views and those of the Government as to proper public policy, through the requirement of approval by the Governor in Council in certification and licensing cases. Finally, the protection of the Supreme Court should be available to any interested party who may feel that a decision or act of the board, even though it may have been approved by the Governor in Council, is in error as to law or jurisdiction. This last is particularly important to protect the interests of the provinces, some of which apparently feel that the Borden Commission has suggested courses of action which might come close to infringing upon provincial jurisdiction, in an area in which respective jurisdictions have not been too clearly defined.

Senator BURCHILL: Then I take it there is no appeal to the Governor in Council; they have no power to stay an order of the board?

Mr. FRASER: That is right. I should qualify that, if I may. The approval of the Governor in Council is required for recommendations of the board for certification for public convenience and necessity in respect of construction of pipe lines or international power lines, or the issuance of export licences; for actions that require special licences, there shall be review by the Governor in Council. This in effect means that the Governor in Council does receive an appeal in respect of an order, but must first approve of the decision of the board, or disapprove, as the case may be.

Senator BRUNT: And that will be done before an appeal is taken to the Supreme Court of Canada? What I am wondering about is what is your first move?

Mr. FRASER: Well, sir, in the case of an application, shall we say for certification of public convenience and necessity—

Senator BRUNT: Let us take an application for the export of 300 million feet of gas a day, and the applicant is dissatisfied.

Mr. FRASER: He will not know of the outcome of his application until the Governor in Council has approved or disapproved of the recommendation of the board.

Senator BRUNT: It is not made public.

Mr. FRASER: Well, this is not established in the act. There is a public hearing; the board then makes its recommendation . . .

Senator BRUNT: The applicant knows of the recommendation.

Mr. FRASER: He presumably would.

Senator BRUNT: Let us say he has made application for export of 500 million feet, and the board grants him 300 million feet. Now what does he do? Does he sit by and wait for the Governor in Council to approve or disapprove of the board's recommendation and then launch his appeal, or does he launch his appeal as soon as he knows of the order of the board?

Mr. FRASER: Well, senator, I suppose there are two courses he can follow. If he is an active sort of fellow he will talk to his cabinet minister.

Senator BRUNT: That is a practical approach.

Mr. FRASER: Yes. What the legal procedure will be as to when he will file his appeal, if he is appealing as to law or jurisdiction I presume as soon as the order of the board is issued he would have a right to launch an appeal.

Senator BRUNT: Has the Governor in Council the right to review an order made by the board, or does it just have the right to approve or reject?

Mr. FRASER: To approve or reject.

Senator BRUNT: It can't vary an order in any way?

Mr. FRASER: That is the intent—to approve, reject, or refer back for reconsideration.

Senator BRUNT: Can the Supreme Court of Canada increase it?

Mr. FRASER: They would have to base this on a question of law or jurisdiction. I find it hard to understand how they would vary it.

Senator BRUNT: Then what is the purpose of an appeal to the Supreme Court of Canada, if an applicant got an order for 300 million feet a day?

Mr. FRASER: I am not quite sure how to answer that, senator. It seems to me that there are two separate categories of problem here: one is with respect to quantity, an arithmetical question, and the other is a question of law, whether the subject has received due consideration under the law, and has been lawfully treated by a board having some judicial attributes. An appeal to the Supreme Court is contemplated as a guarantee of the right of the subject in that latter case, in the event that he has been wrongfully treated, either as to law or jurisdiction, as to the facts, it was the view of the Government, as we understand it, that it is only reasonable if you are going to establish a board of experts to assess the facts, to take the findings of the board to be final.

Senator BRUNT: Would you give me an example of circumstances under which you would take an appeal to the Supreme Court of Canada? May I ask you, was this point raised at all in the other place?

Mr. FRASER: Not in this context, no.

Senator ASELTINE: An appeal is only taken on the question of law or jurisdiction.

Mr. FRASER: Yes.

Senator BRUNT: The jurisdiction of this board under section 11 is almost all-inclusive.

Mr. FRASER: Well, sir, I recall some analogies in the railway jurisprudence. There may possibly be analogies here: I am thinking of the coal mining case, where the question arose as to whether a railway incorporated within a province, being connected with an interprovincial railway, was subject to the jurisdiction of the Board of Transport Commissioners.

Now, there could be an analogy here. In fact, there has been a somewhat similar case in some respects before the Board of Transport Commissioners in respect of the Westspur Pipe Line. This is a question of jurisdiction of the board, to decide what should be done with respect to the disposition of a work located in a province being part of an interprovincial work or undertaking.

Senator BRUNT: You would have no objection if we let this particular section stand?

The CHAIRMAN: Section 18 stands.

Mr. FRASER: Have you a question you wish me to put forward on this section?

Senator BRUNT: No. The Department of Justice will be able to send somebody up and provide us with the necessary answers.

The CHAIRMAN: Section 19. Orders and decisions final.

Mr. FRASER: If you wish section 18 to stand, I expect you will want section 19 to stand also.

Senator BRUNT: Yes, until somebody comes up.

The CHAIRMAN: Section 20. Public Hearings.

Mr. FRASER: Section 20 is modelled substantially on section 19(2) of the Railway Act. The latter provided that public hearings would be left to the discretion of the Board, but that any complaint made to it should, on the application of any party to the complaint, be heard and determined in open court. Recommendation 25 of the Borden Report suggested that all hearings be public. It is clearly desirable that the facts in relation to important proceedings before the Energy Board be established in public hearing, with full opportunity for examination by the Board and by interested parties. There may be occasions, however, when no public interest is affected and speed of treatment is important. This bill consequently requires that hearings shall be public in cases of major importance, i.e. those dealing with the issue, cancellation or suspension of certificates or licences, but leaves to the Board itself discretion to decide whether a public hearing is advisable in other cases.

Section agreed to.

Mr. FRASER: Section 21 is identical with section 69 of the Railway Act.

The CHAIRMAN: Part II. Section 22.

Mr. FRASER: Subsection 22(1) has no counterpart in existing energy legislation, but is based almost entirely on the following recommendations of the Borden Report:

20. That the National Energy Board shall have authority:
- (a) To study, review and from time to time recommend to the Minister of Trade and Commerce such policies and measures as it considers necessary or advisable in the public interest for the control, supervision, conservation, use and development of energy and sources of energy and for the production, recovery, manufacture, processing, distribution, transmission, sale, purchase, exchange, disposal, import or export of energy and sources of energy within, to or from Canada
 - (c) To compile, study and review the statistics and estimates of the quantity, quality, location and availability of the various forms of energy and sources of energy in Canada so that the Board may maintain an up-to-date inventory of Canada's energy resources
 - (e) To make a continuing study and appraisal of all matters relating to the exploration for, production, processing, transportation and marketing of natural gas and oil and by-products thereof in Canada and elsewhere.

Senator HIGGINS: What are you reading from now?

Mr. FRASER: These are excerpts from recommendation number 20 of the Borden Report.

Senator TAYLOR (*Westmorland*): Is there any provision when a company wants to explore for gas or oil or the production of electricity that authority must come from this Board?

Mr. FRASER: No, sir, by no means. All that is meant by section 22 is that the Board shall study, keep informed, on what is going on in respect to energy. This is wholly an advisory section, and there is nothing regulatory in it. Almost the first words in the second line say, "matters over which the Parliament of Canada has jurisdiction", which have been carefully inserted to avoid any impression or any danger that the jurisdiction of the provinces in these matters might be interfered with in any way.

Section agreed to.

The CHAIRMAN: Section 23. Publication of Studies and Reports.

Senator McDONALD: Why is the word "may" put in that section, rather than the word "shall"? I suppose it is anticipated that there may be some voluminous reports that might not be necessary to publish?

Mr. FRASER: That is right, sir. Many of the studies done by boards, agencies, branches of departments, while they may be helpful for some special purpose or may shed some light on an area of interest, may not be worth the money involved in publishing and may not have enough public interest to warrant publishing.

Section agreed to.

The CHAIRMAN: Section 24. Powers of Board.

Section agreed to.

The CHAIRMAN: Part III. Section 25—Who may construct or operate pipe lines.

Mr. FRASER: Subsection 25(1) is modelled on the first part of Section 10A of the Pipe Lines Act as amended. "Company" in this context is defined in the Bill as "a person having authority under a Special Act to construct or operate pipe lines". Such a Special Act is an Act of the Parliament of Canada that (1) authorizes a person named in the Act to construct or operate a pipe line, or (2) is enacted with special reference to a pipe line that a person is by such an Act authorized to construct or operate.

The LAW CLERK: And "pipe line" is also defined.

Mr. FRASER: Thank you, yes. Honourable senators might be interested to know one matter of background explanation. There have been suggestions in the past that there is a substantial case for allowing any company incorporated under the laws of Canada (not only by Special Act but under the Companies Act) for purposes which included the construction, ownership and operation of pipe lines, to apply to the Board of Transport Commissioners for leave so to construct, own or operate. This suggestion was turned down during the drafting of the Pipe Lines Act on the ground that the right to expropriate land should be conferred only by Parliament.

It has since been suggested in connection with this Bill that the public interest might be better served by having the right of expropriation dependent on a certificate of public convenience and necessity, rather than on a Special Act. While a Special Act is in some cases merely hunting licence, from which an actual pipe line project may or may not result, the Energy Board procedure would be particularly appropriate to ensure that only practical and immediate projects, which in the view of the Board and the Governor in Council merit a certificate, are granted the right of expropriation. It has been decided, however, that the control of Parliament over such grants of the right of expropriation should be retained, and this Section has consequently been drafted as in the Pipe Lines Act.

Subsection 25(2) is modelled on the latter part of Section 10A of the Pipe Lines Act as amended. In 1949 Parliament asserted its jurisdiction over inter-provincial and international pipe lines by enacting the Pipe Lines Act as a piece of general legislation, which could apply to companies having authority under a Special Act of Parliament to construct or operate oil or gas pipe lines. The 1949 Act gave general powers to pipe line companies, including that of expropriation, which would supplement those already granted by the Special Act. It was envisaged that, in order to gain the power of expropriating and holding land conferred by the Pipe Lines Act, companies intending to construct pipe lines beyond provincial or international boundaries would seek incorporation by a Special Act of Parliament, and thus come under the control of the Board of Transport Commissioners. In short, the Pipe Lines Act was intended as enabling legislation which, read together with the Special Act, would give the company concerned the power to construct its line. Consequently, Parliament did not

specifically provide in the Act that pipe line companies under federal jurisdiction were required to apply to the Board of Transport Commissioners for leave to construct.

It subsequently appeared that a company might lay a pipe line across a provincial or international boundary without obtaining either a Special Act of Parliament, or leave from the Board of Transport Commissioners, so long as it was able to get along without expropriation powers by obtaining the necessary rights from private land owners, and so long as it was able, in the case of navigable water crossings, to obtain approval under the Navigable Waters Protection Act. Consequently, in 1953 the Pipe Lines Act was amended to close this gap by including, within the definition of Special Act companies, all persons operating extra-provincial pipe lines and by providing that only Special Act companies should be able to construct or operate such lines.

This provision was not to be retroactive, however, and any person could continue to operate or improve such a line which was fully completed at the date of the amendment to the act. This included the important Montreal to Portland pipe line which carries crude oil to Montreal from Portland and whose construction ante-dated even the Pipe Lines Act.

The present section 25(2) and 25(2)(c) has carried this amendment into the bill. It carries the additional provision, however, that all previously existing pipe lines must be operated in accordance with the provisions of the Energy Board Act in the same way as a line operated by a Special Act company. Improvements in such lines may still be carried out without having to apply to the energy board for a certificate of convenience and necessity, such improvements, according to the December 4, 1953 debate on the Pipe Lines Act amendment, to include even a complete looping of the line concerned.

The first two parts of section 25(3) are identical with section 2(4) of the Pipe Lines Act as amended June 26, 1954 and are designed to ensure that those who are entitled to operate a company are entitled to operate the line although they may not be the persons incorporated under the Special Act.

The CHAIRMAN: Shall section 24 carry?

Carried.

Section 25. This deals with the question of who may construct or operate pipe lines.

Senator ASELTINE: Was this section copied from the Pipe Lines Act?

Mr. FRASER: No, but it complements section 25(1).

Senator BRUNT: This is a new section?

Mr. FRASER: That is right.

The CHAIRMAN: Shall the section carry?

Carried.

Shall section 26 carry?

Carried.

Section 27. This has to do with the approval of the board for the location of pipe lines.

Mr. FRASER: This is identical with section 11 of the Pipe Lines Act.

The CHAIRMAN: Shall the section carry?

Carried.

Section 28: application for certificate; material to be filed.

Mr. FRASER: Sections 28(1) and 28(2) are identical with sections 12(1) and 12(2) of the Pipe Lines Act.

The CHAIRMAN: Shall the section carry?

Carried.

Section 29 provides for plan, profile, book of reference and so forth.

Mr. FRASER: Mr. Chairman, if I may, sections 29 through 35 are all identical respectively with sections 13 to 19 inclusive of the Pipe Lines Act.

Senator BRUNT: Were any changes made in the House of Commons with respect to these sections?

Mr. FRASER: I do not believe so.

The CHAIRMAN: Shall sections 29 to 35 carry?

Carried.

Section 36, approval of deviations.

Mr. FRASER: Subsections 1 and 2 are the same as sections 20(1) and 20(2) of the Pipe Lines Act. Subsection 3 differs from section 20(3) of the Pipe Lines Act in that the extent to which a pipe line may deviate from its plotted course and still be exempted from the provisions of this section is now discretionary with the board rather than having a fixed figure of 300 yards. Such definite limitations in the past have proved embarrassing when a pipe line would have to be laid to skirt some obstacle and the deviation would amount to something like 301 yards, and it was felt burdensome to require a company to make application for such deviation. It was thought that everything possible should be done to avoid unnecessary procedural delays in the construction of pipe lines in view of the short construction season in Canada.

Senator BRUNT: Is there any limit here at all?

Mr. FRASER: No, sir. The board is expected to exercise its discretion.

The CHAIRMAN: Shall section 36 carry?

Carried.

Section 37, board may order deviations.

Mr. FRASER: Section 37 is identical with 33 of the Pipe Lines Act.

Shall the section carry?

Carried.

Section 38, leave to open line.

Mr. FRASER: Section 38, subsection 1 is identical with section 34 of the Pipe Lines Act. Subsection 38(2), which has no counterpart in the Pipe Lines Act, merely gives authority to the board to grant leave to operate. This section is designed to ensure that all lines are inspected in regard to public safety before they are opened.

It is contemplated that for purposes of satisfying the board that section of pipe line may safely be opened for transmission, inspection may be carried out by the board's own personnel or by private engineers who may submit affidavits of inspection to the board, or the board may accept evidence from the company itself, that satisfactory tests and inspections have been made; this, however, will be left to the board to decide.

Senator BRUNT: This does not restrict in any way the right of a company to test this line.

Mr. FRASER: No sir.

Senator BRUNT: If it did, it would not be a very workable section.

Mr. FRASER: Absolutely not.

Senator BRUNT: Once the board is convinced that the line is in a safe condition, then they are allowed to transport gas.

Mr. FRASER: That is correct. Whether the board takes the company's affidavits as to insurance underwriters' inspections or as to the company's own inspections, or whether the board sends its own engineers out to watch the actual tests being made, is up to the board.

The CHAIRMAN: Section 39—public safety.

Senator ASELTINE: Is that section taken from the Pipe Lines Act?

Mr. FRASER: Yes, subsections 1 and 2 are identical to section 35 of the Pipe Lines Act, except that the regulations referred to must now be approved by the Governor in Council.

Section 39 has no counterpart in the Pipe Lines Act. It merely provides penalties for violations of such regulations.

Senator BRUNT: The penalties are set out in the Criminal Code.

Mr. FRASER: That is right.

The CHAIRMAN: Section 39, carried.

Section 40.

Senator BRUNT: I think section 40 should stand, because Senator Bouffard raised a point about it in the Senate. We will be having further meetings of this committee, and I think we should let it stand until Senator Bouffard is here.

Mr. FRASER: I may say that some information has already been placed in Senator Bouffard's hands.

Senator BRUNT: Is he satisfied?

Mr. FRASER: That I don't know.

Senator BRUNT: If it is agreeable, I think the section should stand.

Senator TAYLOR (*Westmorland*): The board's order applies as well to provincial power commissions?

Mr. FRASER: In so far as international connections are concerned, yes.

Senator BRUNT: But not interprovincial in any way?

Mr. FRASER: No.

The CHAIRMAN: Section 40 stands.

Section 41.

Senator BRUNT: Did Senator Bouffard raise a question with respect to section 41 too?

Senator BURCHILL: Just with respect to 40.

Mr. FRASER: The question he raised as to section 40 would, I should think, also relate to section 41.

The CHAIRMAN: Section 41 stands.

Section 42. May we hear from Mr. Fraser on that?

Mr. FRASER: This provision, which has no counterpart in existing energy legislation, continues the parallel begun in section 40. The corresponding provisions regarding pipe lines are sections 32 to 37. This section allows the board to make regulations concerning the above matters, subject to the approval of the Governor in Council.

What we have done here, honourable senators, is to put in broad terms in one section what was intended to be parallel of several sections which are set forth more precisely in respect of pipe lines.

Senator BRUNT: Is it related in any way to section 40 and 41?

Mr. FRASER: Yes, I think in a sense it is.

Senator BRUNT: Could we allow that to wait until Senator Bouffard comes back?

Mr. FRASER: We have no objection.

The CHAIRMAN: Sections 40, 41, 42 and 43 stand.

Senator BRUNT: There is no principle involved in section 43. If there is no objection, perhaps it should stand.

The CHAIRMAN: Section 43 stands. Section 44.

Mr. FRASER: This provision, which has no counterpart in existing energy legislation, gives the board the power to grant certificates for pipe lines and power line projects, subject to the approval of the Governor in Council. It also requires that the board must be satisfied that any such line is and will be required by the present and future public convenience and necessity.

The factors which are to be taken into account in such applications come from various sources: section 12(3) of the Pipe Lines Act and Recommendation 21 of the Borden Report, and a memorandum drawn up by the Board of Transport Commissioners for their own guidance and for the guidance of applicants appearing before it. If the senators wish, I will be glad to read those texts to which I have referred.

Senator BRUNT: Yes.

Mr. FRASER: Section 12(3) of the Pipe Lines Act reads:

Upon the application, the board shall have regard to all considerations that appear to it to be relevant and in particular to the objection of any party interested, to a public interest that in the board's opinion may be affected by the granting or the refusing of the application, and to the financial responsibility of the applicant.

Recommendation 21 of the Borden Report reads:

That in exercising its responsibility with respect to the issuance of . . . certificates of public convenience, the board shall take into account all matters which in its opinion are required to be considered by it in the public interest and in particular the following matters: (i) the economic feasibility of the pipe line project and whether or not such project is in the national interest; (ii) the financial structure, ownership, financing, engineering and construction plans of any applicant and the opportunity for the people of Canada to participate in the financing, engineering and construction of the project.

The Board of Transport Commissioners had previously drawn up for its own guidance a set of rules showing the following factors to be taken into consideration in any application for leave to construct:

1. Proof that the directions of the order fixing the date for hearing, etc., have been complied with.
2. Financial responsibility of the applicant—method of financing construction—financial ability to construct and operate the line.
3. Route map.
4. Availability of gas or oil—evidence by competent experts as to reserves and availability of the gas or oil to the pipe line.
5. Purchase contracts between the gas pipe line company and suppliers of the gas.
6. Market data—where and what is the market—data re market for initial years and later years.
7. Evidence to show a throughput sufficient to establish economic feasibility of the line.
8. Gas sales contracts between the pipe line company and distributing companies or consumers—oil sales contracts.
9. Information as to gathering lines where they are necessary to bring the gas or oil to the pipe line—are they to be constructed by the applicant or by other companies.
10. If the line is international, what arrangements have been made and what authorization and permits have been obtained for the construction of the facilities in the United States and for importation of gas or oil into the U.S.—(or for import into Canada, if that is the case).

11. Provincial licence or permit for export of the gas or oil from the province, where required by provincial law.

12. Licence under the Exportation of Power and Fluids and Importation of Gas Act, in respect of international pipe lines.

13. Particulars of the pipe line and its facilities, size, capacity, route, engineering features of the system and route, etc.

14. Estimates of cost of construction.

15. Estimates of cost of operation.

16. Refineries and storage facilities.

17. Statements of estimated revenues and expenses for initial and subsequent years during life of the pipe line.

18. Price of the gas to be paid by the company to the suppliers, and selling price the company will receive from purchasers (this may be included in purchase contracts and sales contracts referred to above) with a view to showing the cost to consumers and economic feasibility of the line.

19. Does the project conform with national policy in so far as declared by the Federal Government or Parliament.

20. Dates when construction will commence and be completed.

21. Availability of pipe, machinery, equipment, etc.

22. Public interest—what public interest will be served by the pipe line.

23. Competition, if any, between proposed pipe line and existing pipe lines—will the competition be in the public interest—what effect will it have on existing lines.

24. Generally, proof that oil or gas is available to the pipe line, that there is an adequate market for it at the other end, that the project is economically feasible over the life of the line, and financially sound, and that the applicant is financially able to construct and operate the line.

That is the end of my quotation.

Senator HIGGINS: You use the word "person" sometimes. How do you define a person?

Mr. FRASER: It can be an individual or corporate person, sir, either one.

Senator HIGGINS: You have no interpretation of "person", but you have of "company". In other words, either an ordinary person or a company can apply for a certificate provided that the company must be incorporated under a special act; is that right?

Mr. FRASER: Yes, sir.

The specific criteria listed in this Section are to all intents and purposes a summary of these rules I have quoted. Some overlapping of these with the Pipe Lines Act and the Borden Report was, of course, inevitable. The requirement that the line is and will be required by the present and future public convenience and necessity is modelled on Section 15 (3) of the Aeronautics Act, which states the criteria regarding commercial air service licence applications to the Air Transport Board.

It has been suggested that a detailed list of criteria brings up the danger of restrictive interpretation by the Courts on the power of the Board to apply criteria other than those specified. On the other hand, a too general description might afford insufficient guidance to the Board. In its present form, this Section leaves the Board free to consider all such matters as appear to it to be relevant.

Now, honourable senators, and Mr. Chairman, I note that Mr. Driedger, of the Department of Justice, has come in. I am delighted to see him here,

and I hope that any questions involving legal matters you will take up with him. Perhaps until he gets the feel of the meeting we can carry on section by section, and he can catch up with those sections that we have stood over.

Senator BRUNT: I do not think we shall get through with the bill today.

Mr. FRASER: I did not suggest we would, senator.

Senator BRUNT: I wonder if he would define "public interest"?

Mr. DRIEDGER: Perhaps that is a matter that should be left to the politicians rather than to the Department of Justice.

Senator BRUNT: Somebody from the other place, because there are no politicians here.

The CHAIRMAN: Do you prefer to come back to Mr. Driedger and continue with the sections?

Senator BRUNT: I thought we should hear him on some of these sections that we have stood, while he is here.

Senator ASELTINE: Have we carried section 44?

Section agreed to.

Senator ASELTINE: Let us take sections 45 and 46.

Mr. FRASER: Section 45 is modelled on sections 12(3) and 12(4) of the Pipe Lines Act.

Section 46 is modelled on sections 12(5) of the Pipe Lines Act. Among such terms and conditions should be definite limits to the extension or addition of facilities which may be carried out under the authority of a single certificate. The Board of Transport Commissioners Customarily has had no objection to an entire line being looped on the basis of its original "leave to construct" order, so long as the same right of way is used. Since the Board does not carry out any regulation of rates, its main concern has been the further expropriation of land. Similarly, the Borden Commission did not recommend that a further certificate should be required for extension, looping, or addition to compression or pumping capacity of pipe lines. Presumably the Commission felt that its proposal to require existing pipe lines to obtain a licence from the National Energy Board, and to seek a further licence in the event of a change in the direction of flow or a major change in capacity, would achieve the same purpose. As explained earlier, this Bill does not provide for such licences.

On the one hand it is not desirable to burden the National Energy Board with the necessity of holding a hearing and issuing a certificate of convenience for every addition to equipment, to burden the Government with approving such certifications, or to burden industry with formal applications in respect of every little capital addition. On the other hand, if the Board is to set rates for pipe lines, it must first have some control of investment in them, or else it will be faced with completed investments, perhaps of a very substantial nature, on which the pipe line company desires to be allowed a fair rate of return, regardless of how the National Energy Board might view the "public convenience" of the investment.

The distinction between a "major" investment which will affect the rate base, and one which will not, may be a difficult one. However, extensions or additions to pipe lines or power lines themselves may be taken care of by Section 49 of this Bill, which gives the Board authority to exempt lines or parts of lines from the certificate provisions. Procedure for approval of additions in the form of compressor stations or other facilities will presumably be provided for by the regulations, if not by the terms and conditions of the certificate.

Senator BRUNT: Are there any rates set now?

Mr. FRASER: There is no federal supervision over rates, tolls and tariffs of pipe lines, sir. There is provision in the Pipe Lines Act for such control in respect of oil pipe lines under the jurisdiction of Parliament, provided that such pipe lines have been declared to be common carriers, have been so declared by the Board. The major oil pipe line companies have in fact conducted themselves as if they were common carriers, but the Board has never declared them to be common carriers. Therefore, that power to exercise jurisdiction over the rates, tolls and tariffs of oil pipe line companies has not been exercised.

Senator BRUNT: In other words, there has been no abuse up to the present time?

Mr. FRASER: That is right.

Senator BRUNT: Does the same apply to the gas lines?

Mr. FRASER: There has been no provision for control of rates for gas and pipe line transmission companies.

Senator BRUNT: So there has been no abuse there or there would have been some interference.

Mr. FRASER: There has been a suggestion that this is one reason for bringing this legislation along but I would not know about that.

Mr. McDONALD (*Kings*): Perhaps now, Mr. Chairman, we could go back to the sections that were stood over.

The CHAIRMAN: Shall sections 45 and 46 carry?

Carried.

The CHAIRMAN: We will now revert to section 3 of the bill, relating to the establishment of the board.

Senator BRUNT: The point that we raised is that I thought that we should add the same words that are in the act setting up the Board of Transport Commissioners. In other words, in clause 3 of the bill, subclause 5, after the words "... of a company" add these words, "... subject to this act."

The CHAIRMAN: Mr. Driedger, would you be prepared to answer that question put by Senator Brunt?

Mr. E. A. Driedger, Assistant Deputy Minister, Department of Justice:

Mr. DRIEDGER: Yes, Mr. Chairman, I will endeavour to.

I really do not think it would be necessary to say so because the word "company" as used throughout the whole bill always means the same thing.

Senator BRUNT: Would it not help to clarify the meaning?

Mr. DRIEDGER: Possibly, but at the same time there are always pros and cons, and it might then raise the question elsewhere that where it did not say that you did not mean a company as defined in the bill. I think frankly it would be better if it were left as it is in the bill because if we deviate from that in any way the question might be raised that some other section might be affected.

Senator BRUNT: Well, would this apply to a completely provincial pipe line, like the Saskatoon pipe line, for instance. Could anyone connected with that company serve with this board?

Mr. DRIEDGER: If he holds any bond or debenture of a company . . . not necessarily, because it also says if he is engaged in the business of producing, selling, buying, transmitting and so forth, so he would be caught there.

The CHAIRMAN: Shall section 3 carry?

Carried.

Now, we will take up sections 15, 16 and 17, which were stood. Are there any questions on these sections?

Senator BRUNT: It is just a question on how these sections operate. I gave as an example, an application is made for the export of gas and the board makes an order allowing the applicant to export 300 million feet a day. The applicant is dissatisfied and wants to export 500 million feet a day. What remedy, under this section, has he, if any?

Mr. DRIEDGER: Perhaps I could explain the sections from our point of view and the way they hang together. I do not know just what the answer to your question would be but it may turn up. I may say first of all that sections 15, 16 and 17 are not really new. In the present Pipe Lines Act the jurisdiction is exercised by the Board of Transport Commissioners and that board in relation to the Pipe Lines Act is given all of the powers and functions and so on that it has under the Railway Act, and in the Railway Act you find sections comparable to 15, 16 and 17. I want to say something about sections 18 and 19 especially.

Section 15 provides in effect that the board can file its order in a court and it then becomes an order of the court. Now, my information is that a provision of that kind is rarely if ever used. You find it in the Railway Act and it also is in the Aeronautics Act and it is in the Pipe Lines Act. I do not know whether it is used to any extent but the effect of its being there, I think, is enough to ensure enforcement of its orders. If somebody did violate an order of the board the board itself has no enforcement machinery, it has no sheriff, it cannot commit people for contempt and so on, and if you want to enforce the order you file it with the court and then you have remedies that are inherent in a superior court of record.

Senator BRUNT: In other words, the filing of it makes it an order of the superior Court?

Mr. DRIEDGER: That is right.

Of course under section 17 the board itself can review, change or alter an order and if it did file an order, and if it did alter it, then presumably the board would also file it in the court to make the record complete.

Senator BRUNT: Are these orders you speak of reviewed by the Governor in Council?

Mr. DRIEDGER: I do not think so. I do not think in the normal course of events they would even be filed in court. On the question of review I may begin by saying that innumerable legislative attempts have been made to exclude the court from any jurisdiction over orders that are made by, shall we say, administrative tribunals. You will find provisions in provincial statutes, in statutes of the Parliament of Canada, where the legislature has attempted to bar the court. You have an example of that type of thing in the Railway Act itself where in subsection 9 of section 53 it is provided that no order, decision or proceeding of the board shall be questioned or reviewed, restrained or removed by prohibition, injunction, certiorari or any other process or proceeding in our courts. Now, that is a fairly common provision.

Senator HIGGINS: There is no appeal from the Workmen's Compensation Board?

Mr. DRIEDGER: That is what it says. But if anyone thinks that the legislatures have thereby ousted the jurisdiction of the courts, they underestimate the ingenuity of our judiciary, because the courts do find a way of attacking and challenging these orders. For example, you may say the board had no jurisdiction, and there is not an order, so the court can review it.

Senator BRUNT: If there is not an order, there is nothing to review.

Mr. DRIEDGER: The court will review the instrument that has been issued by the board. But, in any event, in preparing this legislation we did not try to oust the jurisdiction of the courts. Our reasoning was somewhat along this line.

First, a decision of the board on facts alone should be the end of the matter. After all, this board hears the evidence; it is a specialized board, operating in a technical field, and if it decides a question of fact, that should stand. If the board makes a decision that is wrong in law, that should be open to appeal to the Supreme Court of Canada. If the board acted without jurisdiction in the issuance of an order, it should be subject to appeal to the Supreme Court of Canada, as provided for in section 18.

Now so far as the prerogative writs are concerned—that is writs of *certiorari*, prohibition or *mandamus*—we first tried to give exclusive jurisdiction to the Exchequer Court of Canada. Otherwise, a litigant, or a dissatisfied customer if you like, could make an application in the Supreme Court of British Columbia for a writ of *certiorari*, and if refused there, he could go to Alberta, Saskatchewan, Manitoba and so on across the country; in other words, the board exists and carries on its purposes in every province of Canada, and wherever it has officials, its proceedings could be challenged in the Superior Court of that province.

We did not think that was a proper way of proceeding. We felt that if one wanted to challenge an order of a board that had jurisdiction throughout Canada, he should be able to do it in a court which has jurisdiction through Canada. Section 19(2) therefore confers upon the Exchequer Court of Canada exclusive jurisdiction in relation to these prerogative writs. You can still go to the court for such a writ; that has not been changed.

By subsection 3 we have restricted the right of the Exchequer Court to review a decision of the order of the board.

First, if an appeal is taken on a question of law, it cannot be reviewed on that ground because it has to be taken under section 18. Secondly, if it is a question of jurisdiction, it cannot be reviewed under subparagraph (b), because there again the appeal must be taken under section 18.

An appeal cannot be taken on a question of fact, because you cannot challenge a decision of the board on fact; a decision of the board on fact is intended to be final. You may ask, what is left? A good deal is left.

There are the grounds upon which these decisions are usually challenged and set aside, for instance, by *certiorari*, namely, that the board has failed to observe the fundamental principles of justice; that the board has not given you a fair hearing, that it has not done what the statute requires it to do, that it has not acted judicially. If the board should fail in any such respect, then you have your remedy by way of the appropriate writ, *certiorari*, prohibition or *mandamus* to the Exchequer Court.

We have not, as was done in the Railway Act, attempted to oust the courts. The only restrictions we have placed are that the judicial remedy is confined to one court, and that the decision of the board as to facts is final. Apart from that, we have not in this bill taken away from any person any of the ordinary judicial remedies which he would have with respect to a tribunal of this kind.

Senator BRUNT: With respect to an appeal in my case of the 300 million feet of gas a day, all you would have to do is allege that the board had not acted judicially.

Mr. DRIEDGER: You might not have a right to attack an order of the board and take your appeal to the Supreme Court of Canada, but if you felt that the board had not observed the fundamental principles of justice, it would be open to you to attack a decision of the board by an appropriate writ to the Exchequer Court.

Senator BRUNT: That could only be done after the cabinet reviewed it.

Mr. DRIEDGER: It would depend on what kind of order it is. There are many kinds of orders.

Senator BRUNT: In certain circumstances you would have to wait until the Governor in Council reviewed it.

Mr. DRIEDGER: That might be so in those cases where an order of the board is subject to approval by the Governor in Council.

Senator BRUNT: And then where do you go?

Mr. DRIEDGER: As you gentlemen will appreciate, I do not want to express an opinion on what you could or could not do in specific circumstances, but I do say that this section is an innovation, and it does not attempt to take away any ordinary legal rights and remedies. It restricts them to some extent, but it leaves them there and you can pursue them just as you have always done.

Senator McDONALD (*Kings*): To a layman, that sounds very reasonable.

Mr. DRIEDGER: We have tried to be reasonable.

Senator McDONALD (*Kings*): It seems to be an improvement.

Mr. DRIEDGER: As I have said, section 19 is an innovation—one we conceived ourselves. We believe it to be fair, and at the same time it protects the board and the public.

Senator BRUNT: You don't know how it will work?

Mr. DRIEDGER: We don't know how it will work, but we hope it will work as we expect it to.

Senator BURCHILL: There is a difference between this legislation and the Railway Act in respect of an appeal to the Governor in Council on a question of fact?

Mr. DRIEDGER: Yes. Under the Railway Act orders or decisions are appealable to the Governor in Council. Such a right of appeal does not exist under this bill.

Senator BURCHILL: And a decision of the board on fact is final?

Mr. DRIEDGER: A decision of the board on fact is final.

Senator HIGGINS: If you claimed that the board had no jurisdiction, your right of appeal would be to the Supreme Court of Canada?

Mr. DRIEDGER: If you allege the board had no jurisdiction you would have to proceed by way of appeal to the Supreme Court of Canada under section 18.

Senator BRUNT: And if you allege the board was not judicial, you would have to take the other method.

Mr. DRIEDGER: You would proceed by way of a prerogative writ in the Exchequer Court. Then, if you did not like the decision of the Exchequer Court, you could appeal to the Supreme Court of Canada.

The CHAIRMAN: Sections 15, 16, 17, 18 and 19—carried.

We stopped at the consideration of section 47. Perhaps we could complete this Part of the bill before we adjourn.

Mr. FRASER: Section 47 has no counterpart in the Pipe Lines Act, but is modelled almost exactly on section 3 (3) of the Exports of Power and Fluids Act, which deals with the revocation of export and import licences. Suspension is not mentioned in the latter act, although provision is made in section 7 for fines to be imposed on all those who violate any provisions of the act or the regulations thereunder.

Section agreed to.

The CHAIRMAN: Section 48—Compliance with conditions and act.

Mr. FRASER: Section 48 has no counterpart in existing energy legislation. Subject, of course, to any terms and conditions which may state otherwise, all certificates shall continue in force indefinitely, so long as the holder complies with the act, the regulations thereunder, and any lawful order of the Board.

Section agreed to.

The CHAIRMAN: Section 49—Exemptions.

Section agreed to.

Senator BRUNT: Section 49 is put in so that these short pipe lines that might happen to cross a provincial boundary could be exempt?

Mr. FRASER: I am not sure that particular case was in mind. This is modelled on section 37 of the Pipe Lines Act. I don't recall exactly the intent that went into the provision of that section, except this, that it may not involve the public interest if a pipe line company proposes to extend its line a short distance, and it seemed too bad to require that the company should have to go through all the procedure in order to get a very small addition to its pipe line facilities, to which no one was objecting.

Senator McDONALD: This is up to 25 miles?

Mr. FRASER: That is right, sir. As the bill went through the other place there was provision for exempting such greater distances as the Governor in Council might approve, or something to that effect, but those words on amendment were struck out.

Senator HIGGINS: Does that mean that a person with a line less than 25 miles can construct without any permission under section 25(1)?

Mr. FRASER: No. The Board may make an order to exempt such a case if in the view of the Board circumstances justify such an order.

Senator HIGGINS: They may dispense with advertising, and all that?

Mr. FRASER: That is right. This would be in cases where the Board concludes on examining the elements of the case that there is no public interest involved, no purpose in holding a hearing and going through all the formalities.

Section carried.

Senator ASELTINE: I move that we adjourn sine die.

Senator BURCHILL: Before we adjourn, I would like to ask Mr. Fraser a question on section 85 on the matter of regulations. Paragraph (b) speaks of "the duration of licences, not exceeding twenty-five years". Does that mean twenty-five operating years? From the time you make application there might be a period of one, two or three years getting ready.

Senator BRUNT: I have an amendment to propose when we come to that section, which would add these words—and you can think about it: "from a date to be fixed in the licence".

Mr. FRASER: If I may answer your question first, sir, without derogating in any way from what Senator Brunt has suggested, the intent clearly is yes. As the minister said in introducing the bill in the other place, it is deemed desirable to allow such length of licence for gas pipe lines, gas export pipe lines, as may be necessary to enable those lines to be financed. Now, it often happens, as you apparently very well know, sir, that it takes two or three years to get a project to the operating stage after applying for a certificate or for an export licence, and it is clearly inconsistent with the purposes of the act and its licencing provisions to so reduce the operation of the licence; therefore my answer is a very definite yes, it is the intent to give a twenty-five years clear run.

The committee adjourned sine die.

THE SENATE OF CANADA



PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
NATURAL RESOURCES

To whom was referred the Bill (C-49), intituled: "An Act to provide for the Establishment of a National Energy Board."

The Honourable Cyrille Vaillancourt, *Chairman*

No. 2



THURSDAY, JULY 9, 1959

WITNESSES:

Mr. Douglas M. Fraser, Director, Energy Studies Branch, Department of Trade and Commerce;

Mr. E. A. Driedger, Assistant Deputy Minister of Justice.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

THE STANDING COMMITTEE ON
NATURAL RESOURCES

The Honourable CYRILLE VAILLANCOURT, Chairman
The Honourable Senators

*Aseltine	Dupuis	McLean
Barbour	Emerson	Methot
Basha	Farquhar	Paterson
Beaubien	Fraser	Pearson
Bois	Gladstone	Petten
Bouffard	Haig	Power
Buchanan	Hayden	Raymond
Burchill	Higgins	Stambaugh
Cameron	Horner	Taylor (<i>Norfolk</i>)
Comeau	Kinley	Taylor (<i>Westmorland</i>)
Crerar	*Macdonald	Turgeon
Davies	McDonald	Vaillancourt
Dessureault	McKeen	Vien
		Wood—40

(Quorum 9)

**ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Wednesday, June 17th, 1959.

Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Aseltine, for second reading of the Bill C-49, intituled: "An Act to provide for the Establishment of a National Energy Board".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Natural Resources.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MACNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, July 9th, 1959.

Pursuant to adjournment and notice the Standing Committee on Natural Resources met this day at 10.30 A.M.

Present: The Honourable Senators:—Vaillancourt, *Chairman*; Aseltine, Bouffard, Buchanan, Gladstone, Haig, Higgins, Horner, Kinley, McDonald, Methot, Stambaugh, Taylor (*Norfolk*), Taylor (*Westmorland*), Turgeon—15.

In attendance: Mr. E. Russel Hopkins, Law Clerk and Parliamentary Counsel and the official reporters of the Senate.

Bill C-49, An Act to provide for the Establishment of a National Energy Board, was further read and considered clause by clause.

Clauses 50 to 101 were passed with the exception of the following: 2(h), 2(m) 19, 40, 41, 42, 43, 58, 76, 77, 88 and 96.

On Motion of the Honourable Senator Bouffard it was RESOLVED to amend the Bill as follows:—

1. *Page 25, line 19:*—Immediately after “years,” insert the following: “from a date to be fixed in the licence,” Heard in explanation of the Bill were: Mr. Douglas M. Fraser, Director, Energy Studies Branch, Department of Trade and Commerce; Mr. E. A. Driedger, Assistant Deputy Minister of Justice.

In attendance but not heard: Mr. G. W. Green, Energy Studies Branch, Trade and Commerce.

At 11.30 A.M. The Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON NATURAL RESOURCES

OTTAWA, Thursday, July 9, 1959.

EVIDENCE

The Standing Committee on Natural Resources, which was instructed to study Bill C-49, to provide for the establishment of a National Energy Board, met this day at 10.30 a.m.

Senator Vaillancourt in the Chair.

The CHAIRMAN: Honourable senators, we have a quorum now. Do you wish to deal with the clauses that stand, or to continue as we did before, and return to the clauses that stand afterwards?

Senator BOUFFARD: Mr. Chairman, may I point out that this morning we had a meeting with Mr. Churchill, the Minister of Trade and Commerce, with regard to a few objections that some may have with regard to this bill, and I would like to ask that clause 2(h) and 2(m) stand. 2(h) has to do with the definition of "international power line"; and 2(m) has to do with the definition of "pipe line". Mr. Churchill is agreeable that those two items should stand; they are very important, and we explained the whole situation to him as to the overlapping with provincial rights. The same applies to clause 19. I think the minister has no objection that this clause stand; he wants to study this section. We have proposed some amendments to clause 2(h) and 2(m) which would be more practical as definitions, because it is felt that certain international power lines and pipe lines as described would not fall under the control of the Energy Board. The danger is that a whole line might fall under the control of the Energy Board and that a provincial line would lose control over the power from where it comes. Therefore this morning the minister agreed that these clauses be studied and reviewed, and then that the problem could be settled more easily. No doubt the minister would like to have a little time to think about it and to consult with his officials, and then we could probably come back with some ways and means of settling the whole situation.

The CHAIRMAN: If that is agreeable, then we will turn to sections 40, 41 and 42.

Senator BOUFFARD: Well, they all depend on 2(h) and 2(m).

The CHAIRMAN: Very well. Let us turn to page 15, Part IV. We have Mr. Fraser here, Director of the Energy Studies Branch, of the Department of Trade and Commerce, and Mr. G. W. Green, of the Energy Studies Branch, and also Mr. E. A. Driedger, Assistant Deputy Minister of Justice. Mr. Fraser, would you like to continue your statement from the previous meeting?

Mr. FRASER: Very well, Mr. Chairman, and honourable senators. The provisions of Part IV differ from those of Parts II and III of the Pipe Lines Act, in that the regulation of tolls now applies to both oil and gas pipe lines

rather than to oil lines alone, without any requirement that the latter be first declared by the board to be common carriers. Such regulation, too, is to be carried out by the new National Energy Board rather than as previously by the Board of Transport Commissioners.

The applicable recommendations of the Borden Commission were 11(a), (b) and (c), and 12. Those recommendations reserve the power of rate regulation to the Board of Transport Commissioners. This recommendation has not been implemented in the approved legislation. It was based upon the argument that the Board of Transport Commissioners already had personnel experienced in rate work, and that the transfer of this function would involve an unjustifiable duplication of administrative machinery. This duplication, however, would be more apparent than real, since pipe line rate work has been carried out by those already engaged in railroad and telephone rate work. It would disrupt the transport board if any of this staff were taken over by the Energy Board, but, if they were not, the latter would have to rely on inexperienced staff. Since pipe line rates have never before been controlled, staff would have to be added heavily in any event, as the Borden Commission suggested.

Mr. FRASER: It would seem to make little difference to which board such staff was added.

Secondly, economic feasibility, which is to be a first consideration in the Energy Board's certification procedure, could hardly be determined in the absence of knowledge of whether the Transport Board would approve the basic rate structure proposed. At the same time, the Transport Board was to be prohibited from hearing a rate case until the applicant had been granted a certificate by the Energy Board. The only solution to this dilemma seemed to be a close liaison between the two boards. Even assuming such liaison, however, it appeared probable that this separation of functions would only produce the duplication of personnel which it was intended to avoid, and would place the pipe line companies under the necessity of substantially duplicating their applications to two federal regulatory authorities.

Finally, it should be noted that there is still to be no regulation of rates on interprovincial movements of electric power. Although there may be some difficulty in logic in defending treatment of power transmission facilities different from that accorded to oil and gas pipe lines, there is an important practical distinction in that the lines and power plants supplying them are normally owned by a provincial authority or are provincial incorporations under close provincial regulation. This appears to be a case where the federal authority might well remain passive unless some problem presently unforeseen should arise.

This, Mr. Chairman, was a point we were attempting to foresee and deal with. It is the sort of point that Senator Bouffard has drawn attention to.

With respect to Section 50 itself, this provision is identical to Section 40 of the Pipe Lines Act, save that it now refers to both oil and gas.

Section 51 is identical to Section 42 of the Pipe Lines Act, save that it now refers to both oil and gas transmission companies.

Do you want to proceed clause by clause now, sir?

The CHAIRMAN: Yes. I think Clause 50 is correct.

Carried.

The CHAIRMAN: Clause 51?

Carried.

Senator METHOT: Where does it refer to only gas and oil?

Senator KINLEY: In the interpretation.

Senator BOUFFARD: Section 40 only affects gas and oil.

Mr. FRASER: Yes. Perhaps I have caused some confusion here, Mr. Chairman, in saying that Section 50 is identical to Section 40 of the Pipe Lines Act save that both oil and gas are now covered by this. In the Pipe Lines Act that was not the case. Only oil was affected there. Does that answer your question, sir?

Senator BOUFFARD: Does this not also apply to electric power?

Mr. FRASER: Yes, in those sections specified, sir.

Senator KINLEY: In this act are the rates set by the board final, or can they be appealed to the Governor in Council?

Mr. FRASER: There is no appeal to the Governor in Council.

Senator KINLEY: They have absolute authority over the rates?

Mr. FRASER: Yes, except that there is provision for appeal on matters of law or jurisdiction to the Supreme Court of Canada.

Senator KINLEY: I am thinking of the rates.

Mr. FRASER: That is right, sir. The point I am making is that unless there is a question of law or jurisdiction involved, the decision of the board is final.

Senator KINLEY: They set the price, and that is it?

Mr. FRASER: That is right, sir.

The CHAIRMAN: Clause 52?

Mr. FRASER: Clause 52 is identical to Section 43 of the Pipe Lines Act. Perhaps I should expand my remarks on this point; it is a fairly important clause.

Senator HIGGINS: Clauses 52 and 53 should be read together, should they not?

Mr. FRASER: Well, Clause 53 authorizes the board to disallow any tariff for a portion —

Senator HIGGINS: Clause 52 says that all tolls shall be just and reasonable, and the board decides what is just and reasonable?

Mr. FRASER: Yes.

Senator HIGGINS: So Clauses 52 and 53 should be read together?

Mr. FRASER: Yes: 52, 53 and 54, as a matter of fact.

THE CHAIRMAN: Will you explain Clause 52?

Mr. FRASER: Yes. Part of the Borden Commission's recommendation No. 12 dealing with fair rate of return has not been implemented in this legislation. This, in fact, was suggested by the Borden Commission itself in its report on a point where the Borden Commission said:

We have carefully considered whether the proposed legislation should fix the rate of return to be allowed on the shareholders' equity and whether this rate might be different in the case of oil or gas pipe lines or, alternatively, whether these matters should be left to the discretion of the Board of Transport Commissioners for Canada. We have concluded that it is preferable to allow the board to exercise its discretion in this regard, recognizing that in so doing it will strive to exercise its powers

in a fair manner and authorize rates, and thus a level of earnings having regard to the circumstances of each case, sufficient to attract the necessary capital. The flexibility which will obtain under such a plan is, in our view, particularly desirable.

That is the end of the quotation from the Borden Commission's report. To ensure that rates are both—

Senator KINLEY: Under the Public Utilities Act public utilities are guaranteed a profit, and they have a franchise that eliminates competition.

Mr. FRASER: I am sorry, sir, but I could not quite catch that.

Senator KINLEY: A public utility is set up on the principle that it has a franchise, and that it can make a profit.

Mr. FRASER: A reasonable profit.

Senator KINLEY: Yes. That is not in here. Although you might read it in this, it does not say so.

Mr. FRASER: Not in terms such as are found in the provincial public utilities acts, that is correct, sir. To ensure that rates are both fair and reasonable is a fundamental reason for the exercise of control by public authority over pipe line transmission systems. It appears to be desirable, however, to leave the exact method to the discretion of the board, rather than to attempt legislative definition. The board will no doubt establish some general criteria, but there is a good case for leaving it free to give weight to any particular circumstances in each case.

One particular merit of this flexible approach is that it will give scope for recognizing the distinction between gas pipe lines and oil pipe lines. As the commission noted, "A crude oil pipe line company provides a transportation link between the producer and the refiner and does not own the crude oil transmitted through the line. On the other hand, a gas pipe line company usually is the owner of the gas which it transports." That is a quotation from the Borden Commission's report.

Senator BRUNT: Would you repeat that.

Mr. FRASER: Yes: "A crude oil pipe line company provides a transportation link between the producer and the refiner and does not own the crude oil transmitted through the line. On the other hand, a gas pipe line company usually is the owner of the gas which it transports."

Senator BRUNT: If you take a gas line that was built in Alberta for the purpose of gathering the gas there—

Mr. FRASER: The Alberta Trunk?

Senator BRUNT: Yes. It does not own any gas.

Mr. FRASER: That, senator, is the outstanding exception, is it not?

Senator BRUNT: That is one I can recall. The pipe line from Minden to Saskatoon owns no gas—none at all. Those are two that I can think of and that I know of from my own personal knowledge.

Mr. FRASER: I suggest, with deference, sir, that you have hit on the two that exist in Canada. In any event, it is not my province to defend the Borden Commission's report.

Senator KINLEY: When you get an inter-provincial pipe line that does not apply, does it? The company owns the gas that it sends along?

Mr. FRASER: In the case of the two large gas transmission companies, Westcoast and Trans-Canada—they own the gas.

Senator KINLEY: They own the gas in the pipe line?

Mr. FRASER: Yes, sir. That was probably the fact at the time the Borden Commission's report was written.

Senator BRUNT: Both of those lines have been in existence for years.

Senator BUCHANAN: Not the trunk line.

Senator KINLEY: It is only something the commission says. What effect it has on this bill, I do not know.

Mr. FRASER: That is the end of the commission report.

The commission did not note the even more relevant distinction that a gas pipe line normally buys its gas on long-term contracts, and sells it on equally long-term contracts to distributing utilities which henceforward have no other source of supply, and whose customers in turn are, in some respects and to some degree, tied to the source of supply and cannot be cut off without hardship. A gas pipe line therefore has some of the characteristics of a public utility, and, as a monopoly, must expect regulation and a limited though fairly secure rate of return. An oil pipe line, by contrast, offers a transportation service to customer refineries which to some extent are free to obtain their oil supplies elsewhere, and are themselves subject to competition not only from highly mobile petroleum products refined elsewhere but, in some cases, from other fuels. The elements of risk and competition are therefore greater in the case of oil pipe lines than in that of gas pipe lines, and the returns required to attract capital may therefore be higher. Some elements of the oil industry on first reading of the Commission's Report feared that oil and gas pipe lines were to be judged alike on matters of "fair rate of return". The above quotation from the Report indicates that the Commission desired that the difference between the two kinds of pipe line be taken into account in the regulation of rates.

One aspect of the distinction between oil and gas pipe lines may result in a substantial problem of administration. This concerns the difference in pattern of volume of throughput. The throughput of a gas transmission line appears, on the basis of U.S. experience, to increase at a more or less steady rate from year to year. Field prices are normally on an escalated basis, and the profit incentive for the transmission company is to increase throughput more than sufficiently to cover additions to gas purchase prices and operating costs. There is a reasonably firm expectation that such rate of throughput increase is feasible. By contrast, since demand for oil is more flexible, and since there is competition between alternative sources of crude oil and alternative sources of products, the throughput of an oil pipe line is more variable; the history of the Trans Mountain Oil Pipe Line Company is a striking example. The Commission's proposal of a "fair return on shareholders' equity" might seem to require that pipe line tariffs or prices be decreased when throughputs are high, and be increased when throughputs are low. This would be apt to require more frequent variation in rates for oil than for gas pipe lines. However, the time when oil demand, and consequently pipe line throughput, is low, is the time when the need to cut costs is greatest: public pressure will be for oil pipe line earnings to be kept low in times of high throughput, but economic considerations will require that rates be kept low in times of low throughput. There may be some danger that the oil pipe lines may not, because of these two kinds of downward pressure on rates, be able to earn enough to attract capital.

Senator BRUNT: Mr Chairman, do you not think we could pass these?

Senator KINLEY: That is all that section 52 says:

All tolls shall be just and reasonable, and shall always, under substantially similar circumstances and conditions with respect to all traffic of the same description carried over the same route, be charged equally to all persons at the same rate.

It is all in the discretion of the Board.

Mr. FRASER: I am in your hands, Mr. Chairman.

Senator BOUFFARD: We can come back to it.

The CHAIRMAN: Shall section 52 carry?

Carried.

The CHAIRMAN: Shall sections 53 and 54 carry?

Carried.

The CHAIRMAN: Section 55?

Senator BOUFFARD: In this connection, I want to say that no one can sell at a tariff which is higher than that fixed by the board, in the case of most boards. There is no provision who would prevent a man from selling lower than the tariff; and of course if an oil company sells gas higher than the tariff it is bound to come back.

The CHAIRMAN: Shall section 55 carry?

Carried.

The CHAIRMAN: Shall sections 56 and 57 carry?

Carried.

The CHAIRMAN: Section 58?

Senator BOUFFARD: I would like that to stand. It seems to me that in contracts limiting liability of a company it should be done as it is under the Railway Act. In the ordinary way the Railway Act does not limit any contract by the railway. Here we have a difference, and the company only needs to file. I feel that a contract should not only be filed, but should be approved first, because if you file a contract it may be a long time before that contract is approved. Therefore I ask that this section stand.

The CHAIRMAN: Section 58 stands. Shall section 59 carry?

Carried.

The CHAIRMAN: Shall section 60 carry?

Carried.

The CHAIRMAN: Shall section 61 carry?

Carried.

The CHAIRMAN: Part V deals with the powers of a company.

Senator BRUNT: I think it gives just the general powers that are required.

Mr. FRASER: It is substantially identical with section 7 of the Pipe Lines Act.

The CHAIRMAN: Clause 62?

Carried.

The CHAIRMAN: Clause 63?

Senator KINLEY: The powers of expropriation are already there.

Senator BRUNT: Yes, they are the same as in the Railway Act.

The CHAIRMAN: Clause 63?

Carried.

The CHAIRMAN: Clause 64?

Carried.

The CHAIRMAN: Clause 65?

Carried.

The CHAIRMAN: Clause 66, taking and using lands. Do you wish some explanation of that?

Senator BOUFFARD: They can take Crown land that belongs to a province without any permission on the authorization of the Governor in Council. As a matter of fact, some of these lands belong to the province, and it is with the consent of the Governor in Council without any reference to the provincial authority. It seems to me that that goes very far.

Senator HIGGINS: What do you mean by "lands vested in Her Majesty"?

Senator BOUFFARD: Some are vested in Her Majesty in the right of the dominion, and some are vested in Her Majesty in the right of the provinces.

Senator BRUNT: Did the railways have this same power?

The CHAIRMAN: Yes.

Senator HIGGINS: Then there is no objection.

The CHAIRMAN: Clause 66?

Carried.

The CHAIRMAN: Clause 67?

Carried.

The CHAIRMAN: Clause 68, protection of mines.

Mr. FRASER: This is the same as in the pipe lines act.

The CHAIRMAN: Clause 68?

Carried.

The CHAIRMAN: Clause 69?

Carried.

The CHAIRMAN: Clause 70?

Carried.

The CHAIRMAN: Clause 71?

Carried.

The CHAIRMAN: Clause 72?

Carried.

Senator BRUNT: Just as a matter of interest, why the sixty feet?

Senator KINLEY: That is all they need.

Mr. FRASER: It goes back to the Pipe Lines Act. I would suspect, and this is only speculation, that the reason for this particular width in the earlier act was that it is the practical limit within which pipe laying equipment can operate.

Senator McDONALD (*Kings*): They require that much width in which to operate their machines?

Mr. FRASER: That is right, sir.

The CHAIRMAN: Clause 73?

Carried.

The CHAIRMAN: Clause 74?

Carried.

Senator McDONALD (*Kings*): Are these sections copied from the Pipe Lines Act?

Mr. FRASER: These are almost identical. Clauses 71 to 74 are identical with sections 26 to 29 of the Pipe Lines Act. Clause 75(1) is identical with section 30 of the Pipe Lines Act, save that the reference to section 251 of the Railway Act has been dropped.

Senator BRUNT: Subparagraph (2) is added for the protection of the sulphur people?

Mr. FRASER: Yes.

The CHAIRMAN: Clause 75?

Carried.

The CHAIRMAN: Clause 76?

Senator BRUNT: Stand.

The CHAIRMAN: Does Clause 77 stand along with Clause 76?

Senator BRUNT: Yes.

The CHAIRMAN: Clause 78?

Carried.

The CHAIRMAN: Clause 79?

Senator McDONALD (*Kings*): Is this the same as in the Pipe Lines Act?

Senator BRUNT: Perhaps we could have a short explanation.

Mr. DRIEDGER: This results from a decision of the Supreme Court of Canada in the *Comstock* case in which it was held—not very clearly, perhaps—that provincial Mechanics Liens Acts did not apply to undertakings of this kind, and this section makes it clear that they do apply.

Senator BRUNT: It confers an additional right?

The CHAIRMAN: Very well, Clause 79?

Carried.

The CHAIRMAN: Clause 80?

Carried.

The CHAIRMAN: Clause 81, gas and power licence requirements?

Senator McDONALD (*Kings*): Are Clauses 81 and 82 similar?

Mr. FRASER: Clause 81 is modelled on Section 6(1) of the Exportation of Power and Fluids and Importation of Gas Act. Clause 82 subparagraph (1) is modelled on Section 3(1) of that act.

The CHAIRMAN: Clause 81?

Carried.

The CHAIRMAN: Clause 82?

Carried.

The CHAIRMAN: Clause 83?

Carried.

The CHAIRMAN: Clause 84?

Carried.

The CHAIRMAN: Clause 85, regulations?

Senator BOUFFARD: I would move an amendment to Clause 85. It is an amendment to subparagraph (b) which would make it require that a licence shall not exceed twenty-five years' duration from the date fixed for the licence. The subparagraph says "the duration of licences, not exceeding twenty-five years", but there is no date set as to the beginning of the running of the twenty-five years, and it might be a good thing that it be fixed in the licence itself. I would move that after the word "years" the following words be added "a date to be fixed in the licence". That motion is seconded by Senator Brunt.

Senator BRUNT: All the witnesses will be before the Board, and the Board will be in the best possible position to fix the date.

The CHAIRMAN: Is Clause 85 carried as amended?

Carried.

The CHAIRMAN: Clause 86?

Carried.

The CHAIRMAN: Clause 87?

Carried.

Senator BRUNT: May I ask if this is new?

Mr. DRIEDGER: Not entirely. I think it is based on a section in the Pipe Lines Act. I think Mr. Fraser has the reference.

Mr. FRASER: It is Section 52 of the Pipe Lines Act.

Senator BOUFFARD: Subject to the amendments that will be discussed later on, because a provincial corporation such as the Hydro will have to change its method of accounting.

Senator McDONALD (*Kings*): Mr. Chairman, could I ask Mr. Fraser what is new here in the regulations?

Mr. FRASER: I wonder if I may do it by reading section 52 of the Pipe Lines Act, which is, in part, comparable with this section.

Section 52 of the Pipe Lines Act reads:

The Board may prescribe or make regulations with respect to

- (a) the manner in which the accounts of a company shall be kept;
- (b) the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of

depreciation that shall be charged with respect to each of such classes of property; and

(c) a uniform system of accounts applicable to any class of company.

Senator McDONALD (*Kings*): You have no paragraph (d) in section 52?

Mr. FRASER: That is right.

Mr. DRIEDGER: That follows section 53 of the Pipe Lines Act which says:

“(1) Every person constructing or operating a pipe line for the transportation of oil or gas shall prepare and furnish to the Board returns of its capital, traffic, revenues, expenses and all other information required by the Board.

(2) The returns required by subsection (1) shall be signed and attested by such person or persons and shall be made for such periods as the Board may direct.

That is substantially the same as (d).

Senator KINLEY: This only means they have got to keep the books according to what the National Energy Board decides.

The CHAIRMAN: Shall section 88 stand?

Stand.

The CHAIRMAN: Shall section 89 carry?

Carried.

The CHAIRMAN: Shall section 90 carry?

Carried.

The CHAIRMAN: Shall section 91 carry?

Senator BOUFFARD: I want to have assurance from the Deputy Minister of Justice that section 90 applies not only to the Crown in the right of the Dominion but also the Crown in the right of the provinces.

Mr. DRIEDGER: I should think so, yes.

Senator BRUNT: Is this report to Parliament new?

Mr. DRIEDGER: I do not think there was any such provision in the Pipe Lines Act before, but it is a standard provision.

Mr. FRASER: It is similar to a provision which appears in the Aeronautics Act.

The CHAIRMAN: Shall section 91 carry?

Carried.

The CHAIRMAN: Shall section 92 carry?

Carried.

The CHAIRMAN: Shall section 93 carry?

Carried.

The CHAIRMAN: Shall section 94 carry?

Carried.

The CHAIRMAN: Shall section 95 carry?

Senator BRUNT: Is there anything new in section 95?

Mr. FRASER: These transitional powers are all new, in effect, for they deal with new situations.

Carried.

Senator McDONALD (Kings): Perhaps Mr. Fraser might give us in his own words an explanation of section 95.

Mr. FRASER: What is intended here is to arrange to transfer to the new board the functions which have previously been carried out either by the Board of Transport Commissioners or by the Standards Branch of the Department of Trade and Commerce, as the case may be, with the least possible disruption of existing relationships and rights and interests in these industries, consistent with public interest. We have attempted to direct our efforts towards making this changeover as painless as possible. This is the underlying spirit of the thing, sir, and I hope we have been successful.

The CHAIRMAN: Shall section 95 carry?

Carried.

The CHAIRMAN: I think we have agreed to stand section 96. Shall section 96 stand?

Stand.

The CHAIRMAN: Shall section 97 carry?

Carried.

The CHAIRMAN: Shall section 98 carry?

Carried.

The CHAIRMAN: Shall section 99 carry?

Carried.

The CHAIRMAN: Shall section 100 carry?

Carried.

The CHAIRMAN: Shall section 101 carry?

Carried.

Senator BOUFFARD: There are a few sections standing and we cannot finish with them until we hear the minister with respect to the amendments we have proposed. We have proposed a change in the definition of international power line and of a pipe line. The purpose of the amendment is as follows. At the present time most provinces have hydro commissions. They have built up power developments and power lines. Some provinces have developed pipe lines through their own efforts or through the efforts of companies. If we follow the definition as it exists at the present time, most of these power developments and power lines will fall under the jurisdiction of the new board and will be completely outside any jurisdiction of the provinces, even though the provinces have been responsible in building up these lines. This will result on account of the fact that a small amount of power may be exported through such facilities.

We think it would be quite unjust on the part of the federal Government to take control of all these lines, electric or pipe lines, that have been built up in the past, due to the fact that some of the power that goes through these lines is going to be exported.

Senator McDONALD (*Kings*): Your amendments would protect provincial rights?

Senator BRUNT: It would protect existing lines.

Senator BOUFFARD: We say a power line will not be an international power line if it is completely within the jurisdiction of one province and if the delivery of the power to be exported is done within the province. On the other hand, the line that will come and join the Canadian line will be an international power line. In other words, if you have a power line that starts from Niagara Falls and goes to within half a mile of the border and there it is joined by a power line from a United States company which gets that power for delivery or export into the United States, we say it would not be just that the hydro commission power line going to within half a mile of the border should be deemed to be an international power line and fall under the jurisdiction of the new board, but that the line of the company that comes and gets the power in Ontario should be considered an international power line. It is not necessary to have the whole of Niagara Falls system built up by the hydro commission—and the same thing applies to Quebec—fall under the new Energy Board and under the jurisdiction of the federal Government. That is the whole purpose of the amendments.

Senator HORNER: As it now stands the Ontario Hydro Commission would come completely under the federal board?

Senator BOUFFARD: Yes, and the same thing would happen in Quebec, British Columbia and New Brunswick. We want to be sure that these lines which have been built up and which have been under the control of the provincial Governments will not fall into the control of the federal board.

Senator McDONALD (*Kings*): Why were these definitions not made right when the act was prepared? Were these not thought of at the time?

Senator BRUNT: This is something entirely new, and the more you get into it the more you find out about it. That is why the minister was so very pleased to see us this morning.

Senator McDONALD (*Kings*): But were no discussions held with a view to protecting the rights of the provinces in all this?

Senator BOUFFARD: Possibly not. If a pipe line is engaged in the business of delivering oil, or gas, or sulphur to a point within its own boundaries it should not be necessary for it to come under the authority of this board, to have the whole system all under the control of the federal authority, when up to now it has been under the control of a provincial company or a provincial Government. That is the only thing we are putting before the committee this morning.

Senator McDONALD (*Kings*): Then we will have to meet again.

The CHAIRMAN: Yes, undoubtedly.

Senator HIGGINS: Mr. Chairman, I want to ask a question about the taking of land.

I suppose the rights of private individuals in regard to their land are being looked after still, I see this in the bill, in section 62, subsection 1, paragraph (b), which reads:

62. (1) A company may, for the purposes of its undertaking, subject to the provisions of this Act and its Special Act,

(b) purchase, take and hold of and from any person any land or other property necessary for the construction, maintenance and operation

of its pipe line and alienate, sell or dispose of any of its land or property that for any reason has become unnecessary for the purpose of the line;

Now, how is this done? Suppose that the parties do not agree, then what happens? Is the land then expropriated?

Mr. DRIEDGER: Clause 75 of this bill incorporates the expropriation sections of the Railway Act.

SENATOR HIGGINS: I see according to section 68 of the bill that mining companies are well protected, the provision affecting them reads as follows:

68. No company shall, without the authority of the Board, locate the line of its proposed pipe line, or construct the pipe line or portion thereof, so as to obstruct or interfere with or injuriously affect the working of or the access or adit to a mine then open, or for the opening of which preparations are, at the time of such location, being lawfully and openly made.

According to that section you cannot interfere with mining operations.

Now, according to section 64 of the bill the owner of land is entitled to have a certain procedure followed where additional lands are taken from him. Now, I do not know anything about pipe lines, I have never seen one and I have never seen any of them building. But suppose that I have a house, and a backyard. Is that company empowered to come into my backyard and take it over?

Senator KINLEY: That's what they did in the Strait of Canso.

Mr. DRIEDGER: They can do it only by complying with the provisions of the Railway Act.

Senator HIGGINS: Well, I do not know about the provisions of the Railway Act.

Mr. DRIEDGER: That provides a method of negotiations. The Railway Act fully protects the owners of land against the exercise of these powers.

Senator HIGGINS: Well then, why has this provision to be put in the bill? Under section 73 lands may be taken. I will read that section:

73. Subject to section 74, the lands that may, without the consent of the owner, be taken for the right of way of a pipe line shall not exceed sixty feet in breadth.

Section 73 apparently requires that no notice be given. Now, section 74 requires that a notice be given and certain procedures followed before the board. Now, why are sections 68 and 74 necessary? Would not the Railway Act apply to these cases?

Mr. DRIEDGER: Yes, but if you want additional land this is the procedure you have to follow. A pipe line company may take land according to section 73, limited to 60 feet, but if it wants additional land on top of that it must get the consent of the board.

Senator BRUNT: This takes place in Ontario all the time in connection with highway construction. First they start out by taking a strip 100 feet wide, and then they come back and take a little more, and in all they may come back four or five times and finally end up with a highway 200 feet in width. If they cannot agree, the matter can be taken to arbitration.

The CHAIRMAN: We will adjourn now at the call of the Chair.

Second Session—Twenty-fourth Parliament
1959

THE SENATE OF CANADA



PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
NATURAL RESOURCES

To whom was referred the Bill (C-49), intituled: "An Act to provide for the Establishment of a National Energy Board."

The Honourable Cyrille Vaillancourt, *Chairman*

No. 3

TUESDAY, JULY 14, 1959

WITNESSES:

Mr. Douglas M. Fraser, Director, Energy Studies Branch, Department of Trade and Commerce;

Mr. E. A. Driedger, Assistant Deputy Minister of Justice.

REPORT OF THE COMMITTEE.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

THE STANDING COMMITTEE ON
NATURAL RESOURCES

The Honourable CYRILLE VAILLANCOURT, Chairman

The Honourable Senators

* Aseltine	Emerson	Paterson
Barbour	Farquhar	Pearson
Basha	Fraser	Petten
Beaubien	Gladstone	Power
Bois	Haig	Raymond
Bouffard	Hayden	Stambaugh
Buchanan	Higgins	Taylor (<i>Norfolk</i>)
Burchill	Horner	Taylor (<i>Westmorland</i>)
Cameron	Kinley	Turgeon
Comeau	*Macdonald	Vaillancourt
Crerar	McDonald	Vien
Davies	McKeen	Wood—40
Dessureault	McLean	
Dupuis	Méthot	

(Quorum 9)

**ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Wednesday, June 17th, 1959.

Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Aseltine, for second reading of the Bill C-49, intituled: "An Act to provide for the Establishment of a National Energy Board".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Natural Resources.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, July 14, 1959.

Pursuant to adjournment and notice the Standing Committee on Natural Resources met this day at 10.30 a.m.

Present: The Honourable Senators: Vaillancourt, *Chairman*; Aseltine, Buchanan, Davies, Higgins, Horner, Kinley, Macdonald, McDonald, Methot, Stambaugh and Turgeon—(12).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the official reporters of the Senate.

Bill C-49, An Act to provide for the Establishment of a National Energy Board, was further read and considered clause by clause.

On Motion of the Honourable Senator McDonald it was RESOLVED to further amend the Bill as follows:—

2. *Page 2:* Strike out paragraph (h) of clause 2 and substitute therefor: “(h) “international power line” means facilities constructed or operated for the purpose of transmitting power from any place in Canada to any place outside Canada;”

Further heard in explanation of the Bill were: Mr. D. M. Fraser, Director, Energy Studies Branch, Department of Trade and Commerce and Mr. E. A. Driedger, Assistant Deputy Minister of Justice.

In attendance but not heard: Mr. G. W. Green, Energy Studies Branch, Trade and Commerce.

It was RESOLVED to report the said Bill with two amendments.

At 11.15 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Gérard Lemire,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, July 14, 1959.

The Standing Committee on Natural Resources to whom was referred the Bill (C-49), intituled: "An Act to provide for the Establishment of a National Energy Board", have in obedience to the order of reference of June 17, 1959, examined the said Bill and now report the same with the following amendments:

1. *Page 2*: Strike out paragraph (h) of clause 2 and substitute therefor: "(h) "international power line" means facilities constructed or operated for the purpose of transmitting power from any place in Canada to any place outside Canada;"

2. *Page 25, line 19*: Immediately after "years," insert "from a date to be fixed in the licence,"

All which is respectfully submitted.

CYRILLE VAILLANCOURT,
Chairman.

THE SENATE
STANDING COMMITTEE ON NATURAL RESOURCES
EVIDENCE

OTTAWA, Tuesday, July 14, 1959.

The Standing Committee on Natural Resources, which was instructed to study Bill C-49, to provide for the establishment of a National Energy Board, met this day at 10.30 a.m.

Senator Vaillancourt in the Chair.

The CHAIRMAN: Honourable senators, we now have a quorum. Clauses 2(h) and 2(m) were allowed to stand at our previous hearing. Mr. Fraser, have you some explanation to make?

Mr. FRASER: Yes.

Mr. Chairman and honourable senators, when last this committee sat, you will recall that several clauses were stood over. Immediately after the rising of that committee meeting, Mr. Driedger, Mr. Green and I called upon the minister and discussed with him the points which had been raised. Later we had the benefit of the assistance of Senator Brunt in explaining some of the points that had been discussed amongst the senators, and subsequently obtained the instructions of the minister. Mr. Driedger has drawn a note setting forth very carefully the understandings which were reached with the minister, and with your permission I shall call on Mr. Driedger and ask him to present that note to you.

Senator BRUNT: Could we start with 2(h).

Mr. DRIEDGER: Yes. The Minister approves of an amendment as follows:

‘international power line’ means facilities constructed or operated for the purpose of transmitting power from any place in Canada to any place outside Canada.

Senator ASELTINE: What does that mean?

Senator HIGGINS: How does it improve the situation? How does it change it?

Mr. DRIEDGER: Under that it is, I think, clear that the facilities must be constructed, or must be operated, for the purpose of transmitting power from Canada to a place outside. We have added the purpose. Under the present definition it says merely “facilities for the transmission of power”; now, it is “facilities constructed or operated for the purpose”. That would not include facilities that are constructed or that are operated for some other purpose. It would include only facilities that are constructed or operated for this very purpose of transmitting power from a place inside Canada to a place outside Canada.

Senator McDONALD (*Kings*): Under this amendment the provincial rights will be protected?

Senator MÉTHOT: You have put in a word—it is for that very purpose. I had something in my mind which would be the same thing, but an international power line wholly situated in Canada does not become an international power line if it delivers power inside Canada. You have put in the word “facilities”,

which can mean many things, and you have put in the purpose. But, suppose it is for the two purposes. Suppose it is for the purpose of delivering electricity in the province and of delivering electricity outside of the province at the same time?

Senator BRUNT: Could we not remove all doubt in regard to provincial rights? We do not want any doubt. Could not all doubt be removed by adding the word "sole"? Could it not be "for the sole purpose of transmitting power from any place in Canada to any place outside Canada"?

Mr. DRIEDGER: We did consider something along those lines, but, you see, sir, the difficulty there. Just to carry this to an extreme case, it could be that a power company might take one line and connect it to one light bulb to illuminate its power station. In that case it would not be solely for the purpose of exporting power. You could very easily escape the definition by adding some other purpose.

Senator BRUNT: But, there are no Canadian power companies that have plants, offices, yards or equipment in the United States. How would the lighting of a bulb—would it not have to be in the United States?

Mr. DRIEDGER: No, I am suggesting that if they lit a bulb on the Canadian side then they could say it is not exclusively for export purposes.

Senator BRUNT: You mean on this subline.

Mr. DRIEDGER: Yes.

Senator MÉTHOT: Would you mind taking what I had in mind, leaving everything as it is now? According to the interpretation section the definition of an international power line means facilities for the transmission of power from any place in Canada to any place outside Canada. Then, however, a power line wholly situated in Canada does not become an international power line if it delivers power inside Canada for export purposes.

Does this mean that a power plant, let us say, in Niagara Falls, Ontario, will produce electricity and will deliver the power inside of Ontario, and then another company will be formed to take the power and deliver it in the United States? It will mean the Government of Canada will have absolute jurisdiction over the second company but will not touch the first company, the Ontario Hydro Company? We accept the fact that you control in every sense the export but in the amendment you use the word "purpose". Let us say they use the main power in the province in question but they send a little bit of it to the United States. Is your amendment going to take effect there?

Mr. DRIEDGER: I might say we did consider that aspect and did discuss it with the Minister, and I am afraid that all I am authorized to put before you on behalf of the Minister is the amendment I have here. I might add, however, my own comment to the example you gave to illustrate the difficulties we have had in approaching it from that point of view. Supposing you had a power development in Canada for the sole and avowed purpose of delivering power only to the United States and not to Canada. They construct a power plant. They lead their power to within six inches of the border. No power is taken off anywhere in Canada, yet under your proposed amendment that would not be an international power line.

Senator MÉTHOT: I admit that at once.

Mr. DRIEDGER: And yet the only purpose and the only thing that power plant would do would be to export power.

Senator MÉTHOT: Yes, but the Government of Canada will not lose control any more because the moment they export, then Ottawa takes the control of that part which is used to export, and I think all the rights of Canada are preserved. Otherwise, supposing that company decided to exploit such a river and the provinces of Ontario and Quebec say it is good, and Ottawa says

it is not powerful enough, for example, not important enough, although you have the rights within the law, then you will have prevented a province from building a power line on the river where it chooses to build it, and will have prevented them from expropriating. In those two cases if the line is built, even if the power is built for export you will control 100 per cent; you may not control the construction, but you will control the exportation in both cases.

Senator BRUNT: Mr. Fraser and Mr. Driedger, is there anything in this bill that controls in any way the development of electric power? Because if not, then I do not think Senator Méthot need worry.

Mr. DRIEDGER: Well, the bill does not as such control the development of electric power, but only the construction of international power lines, not the development of a power plant. That is dealt with in sections 40 to 43, and there is also Part VI, which deals with the export of power.

Senator BRUNT: I may be wrong, but as I recall there is no section here that I have come across that deals with the development of power in Canada.

Senator MÉTHOT: Section 22(1) says:

The Board shall study and keep under review matters over which the Parliament of Canada has jurisdiction relating to the exploration for, production, recovery, manufacture, processing, transmission, transportation, distribution, sale, purchase, exchange and disposal of energy and sources of energy within and outside of Canada, shall report thereon from time to time to the Minister and shall recommend to the Minister such measures within the jurisdiction of the Parliament of Canada as it considers necessary or advisable in the public interest for the control, supervision, conservation, use, marketing and development of energy and sources of energy.

There is also provision in some cases supposing the Government of Canada decide that such power should not be developed and the province decides it should be developed.

Senator BRUNT: I think Senator Methot is overlooking these words—"matters over which the Parliament of Canada has jurisdiction". Well, you have not got jurisdiction now. This section surely does not give it to you.

Mr. FRASER: In addition to that, these are advisory functions. These are "matters over which the Parliament of Canada has jurisdiction" which the board shall study. There is no power here to control.

Senator BRUNT: The second section goes on to deal with studies and reports.

Mr. FRASER: But nowhere is there in Part II the power to regulate.

Senator BRUNT: Well, I cannot recall having seen this in the bill, but if this bill has no jurisdiction over the development of hydro power in Canada then I think our amendment to 2(h) is all right.

Senator MÉTHOT: Yes—but if we link section 22 with section 44. In section 44 it says:

The Board may, subject to the approval of the Governor in Council, issue a certificate in respect of a pipe line or an international power line if the Board is satisfied that the line is and will be required by the present and future public convenience and necessity, and, in considering an application for a certificate, the Board shall take into account all such matters as to it appear to be relevant, and without limiting the generality of the foregoing, the Board may have regard to the following:

- (a) the availability of oil or gas to the pipe line, or power to the international power line, as the case may be;

So, section 44 and section 22 gives me the impression that you have control.

Mr. FRASER: Mr. Chairman, let us first dispose of section 22. There is no control function in section 22, absolutely no regulatory power there at all. In section 44, I submit with respect, the only regulatory power which is assigned to the board is, in so far as power is concerned, over the construction of an international power line as defined, and we are here proposing this morning an amendment to the definition of international power line designed to set at rest any fears that honourable senators may have that there was any thought of imposing or encroaching in any fashion whatsoever upon provincial rights. We have attempted to do in this bill nothing more than what has been done since 1907 under the Exportation of Power and Fluids and the Importation of Gas Act, in which, if you look at section 3 (1), it reads as follows:

“3 (1) Subject to the regulations and to such terms and conditions as the Governor in Council may approve with respect to each licence, licences may be granted for

- (a) the exportation of power and fluids;
- (b) the importation of gas; and
- (c) the construction or placing of any line of wire or other conductor for the exportation of power.”

Now, what is here proposed, Mr. Chairman, is somewhat different wording for precisely the same intent, not to tell the provinces what they may or may not do about the construction of power plants, but only to exercise control over the construction of international power lines which are essentially for the export of power, which is clearly within the jurisdiction of the federal Parliament.

Senator HIGGINS: Is every portion of a line transmitting power abroad to be known as an international line, that is, every portion of it? Suppose that there is an electric producing plant in one location say A, and another different company generating electricity right near the border, at B, and A sends power through a line down to B for the purpose of giving them electricity to transmit to the United States. That is a possible situation, is it not?

Mr. FRASER: Yes, it is.

Senator HIGGINS: Is the portion of the power line between A and B to be classified as an international power line, or is it only the portion which sends it finally to the United States, that is between B and the border? In other words, is every intermediate part of that power line to be known as an international power line?

Mr. FRASER: No. Our proposed definition will cover only such part of it as is “constructed or operated for the purpose of transmitting power from any place in Canada to any place outside Canada.”

Senator HIGGINS: Well, in the illustration I gave company A is doing that.

Mr. FRASER: Well, that is a conceivable situation.

Senator HIGGINS: Will the line between A and B be known as an international power line?

Mr. FRASER: If it is operated or constructed for the purpose of transmitting power, to a place outside Canada, yes.

Senator HIGGINS: Then, if company A does not send a bit of power outside of Canada it still operates as an international power line?

Senator BRUNT: What is that?

Senator HIGGINS: Suppose there is an electric power company at A which sends power to another company B for transmission to the United States. That

is possible. What I want to know is, is this portion of the line between A and B to be known as an international power line?

Senator BRUNT: If it is built for the purpose of exporting power, yes.

Senator HIGGINS: It is built for the purpose of supplying company B with power to send to the United States. I can see some lawyer arguing this point at some future time, and we might as well get it settled now.

Senator BRUNT: You say that company A sends power to company B for the sole purpose of exporting it?

Senator HIGGINS: Yes.

Senator BRUNT: Then it has got to come under federal control.

Senator KINLEY: Do they not have to obtain a permit from the board before they can export any power?

Mr. FRASER: Yes.

Senator KINLEY: Why then would an international power line or a power company be defined as one that exports power? The permit governs the whole thing, does it not? If you export power you are an exporter and you become an international power line.

Mr. FRASER: You mean, would we then bring all the operations of that company under the control of the act? That is not what we want to do.

Senator KINLEY: But to export power, it all has to be done in accordance with the act, has it not?

Mr. FRASER: Just in respect to the export, not in respect to the power supply to the domestic market.

Senator HIGGINS: But in my example company A is not exporting the power, it is selling it to company B, another company altogether.

Senator BRUNT: I thought you said company A was transmitting power to company B for export.

Senator MÉTHOT: Let us set aside the imaginary case and take up a real situation. In the Niagara peninsula the Hydro Electric Power Commission of Ontario and an American company located in New York state are actually connected by power lines.

Mr. FRASER: That is correct.

Senator MÉTHOT: So, electricity is being produced in Ontario which is used in Ontario for the most part but at certain times, depending upon the load, power may be transmitted to the United States, and under the law as it is, Ontario Hydro comes under federal jurisdiction. Now, with the amendment, if you do not include the words "very purpose" I am afraid that that will occur again. If we adopt the amendment that I propose there would be no doubt.

Mr. FRASER: With deference, Mr. Chairman, I suggest that the wording we have proposed would bring under the jurisdiction of this act only those facilities of Ontario Hydro which were constructed or operated for the purpose of exporting power, and in practice that may be only a few feet of line across the river, and only to that extent does the federal authority impinge upon Hydro's operation, and this in fact is the situation which now exists.

Senator MÉTHOT: And we are ready to admit that the Government of Canada should have the control? But, words are words. We know what we want. I thought that the wording of the amendment that I proposed would clear the matter: My amendment reads: "However, a power line wholly situated in Canada does not become an international power line if it delivers power inside Canada for export purposes." Then, even if the company does produce part of the electricity for export purposes, they come under

the control of the federal jurisdiction the moment they export to the United States.

Senator BRUNT: Let us follow that one step further. Ontario Hydro has a development at Niagara Falls. They decide that they want to export power to the United States so they build a line to Fort Erie down the river, 12 miles away. Then the American company comes over and connects up at Fort Erie. Now, under your argument that line that the Ontario Hydro built from Niagara Falls to Fort Erie is wholly located within Canada, it is used to transmit export power and you say there should be no control over it?

Senator MÉTHOT: It will, if the delivery of the power in Canada is for export, and the moment the power is taken in Canada it has to be by another company, so it must come under the control of the board. Would you read your amendment again, Mr. Driedger?

Mr. DRIEDGER: The proposed amendment reads as follows:

“‘international power line’ means facilities constructed or operated for the purpose of transmitting power from any place in Canada to any place outside Canada”.

Perhaps I might be permitted an observation. Part VI, on page 24, deals with exports and imports—that part deals with the export of power. Part III deals with the construction of international power lines. Part III commencing at page 9. So that as far as power is concerned you have the two aspects in this bill, the construction of international power lines and secondly the export of power.

Under the amendment that Senator Méthot has suggested the effect would be to remove power, I should think, completely from Part III so that there would no longer be any provision in the bill applicable to the construction of international power lines and there would be left in relation to power only Part VI which deals with the export of power. That would be my understanding of the proposal you make.

Senator MÉTHOT: Is it necessary for the Government of Canada to cover also the construction of power plants?

Mr. DRIEDGER: Well, with regard to that, all I can say is that that is a matter of Government policy and in that respect there is no change in this bill from what is the law today, because the jurisdiction over international power lines is now regulated under another statute that has been in force for a long time, in perhaps different terms and in a slightly different way, but in that respect this bill makes no change.

Senator McDONALD (*Kings*): Mr. Chairman, I think that the amendment submitted by the department is about the best we can get which will protect provincial rights, and I suggest that we adopt the proposed amendment which reads:

“‘international power line’ means facilities constructed or operated for the purpose of transmitting power from any place in Canada to any place outside Canada”.

I move that that amendment be adopted.

The CHAIRMAN: Is it agreeable to the committee?

Senator MÉTHOT: You could not put the word “very” in there, could you? We die hard.

Hon. SENATORS: Agreed.

Carried.

The CHAIRMAN: Now we will take up clause 2, paragraph (m).

Mr. DRIEDGER: Mr. Chairman, clause 2, paragraph (m)—the wording in this paragraph follows verbatim the language of Head 10 of section 92 of the British North America Act, and that says:

“10. Local Works and Undertakings other than such as are of the following Classes:—

(a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:”

Therefore, it follows, that the matters specified in paragraph (m) of clause 2 are within the exclusive legislative jurisdiction of Parliament, and hence outside the jurisdiction of the provincial legislatures. Conceivably, there could be difficulty in determining whether a particular line falls within the definition, but there can be no doubt that if it does it is under the exclusive jurisdiction of Parliament.

Senator BRUNT: That is under the British North America Act?

Mr. DRIEDGER: Yes.

Senator BRUNT: Well, if we amended the B.N.A. Act this morning, we would be doing something.

The CHAIRMAN: Is the section satisfactory?

Carried.

The CHAIRMAN: Clause 19?

Senator BRUNT: I was the one who asked that it stand. I am now content with it in its present form, because it is only used in exceptional circumstances. It is an additional right that is being given, is that not so?

Mr. DRIEDGER: Yes.

Senator BRUNT: I am not a member of the committee.

Carried.

The CHAIRMAN: Clauses 40 to 43 inclusive?

Mr. DRIEDGER: They are consequential on the passage of paragraph (h) of clause 2.

Senator BRUNT: When that paragraph is straightened out, the others fall into line.

Senator McDONALD (*Kings*): Does that apply to all the sections that were stood over, namely, 19, 40, 41, 42, 43, 58, 76, 77, 88 and 96? Are all those consequential?

Mr. DRIEDGER: Most of them are, sir, with the exception of clauses 58 and 76; they were not contingent on the definition in paragraph (h) of clause 2. I believe the others were all consequential.

Senator McDONALD (*Kings*): Clauses 58 and 76 will still have to be dealt with.

Mr. DRIEDGER: I have some comments on those.

The CHAIRMAN: Will clauses 40, 41, 42 and 43 carry?

Carried.

The CHAIRMAN: Clause 58?

Mr. DRIEDGER: I believe there was some discussion as to the effect of this clause. It limits the liability only as between the carrier, the shipper and the consignee, and cannot affect the rights or liabilities of other persons. The exemption applies only if it is approved by the board or if it is included as a

term or condition of the tariffs of the company as filed with the board. Such a term or condition can of course apply only to the parties to the contract. The previous amendment was made on the recommendation of the parties affected.

Senator MÉTHOT: You mean the amendement that was made to the bill between first reading and the passage of the measure by the other house?

Mr. DRIEDGER: Yes.

Senator MÉTHOT: No objection on my part.

The CHAIRMAN: Shall clause 58 carry?

Carried.

The CHAIRMAN: Clause 76?

Mr. DRIEDGER: Under this clause the approval of the board is required before a company could cross a provincial utility. This requires an application to the board, and it is expected that the board will give the province or utility concerned an opportunity of stating its cases. Failure to do so would probably subject the order of approval to attack by prerogative writ in the Exchequer Court under clause 19.

In any case, if any unforeseen difficulties are encountered in the operation of this clause the minister will be willing to consider an appropriate amendment at a future session.

Senator MÉTHOT: May I ask whether there is a big difference between clause 76 and Articles 256, 258, 273, 375 and 378 of the Railway Act.

Mr. DRIEDGER: There is a difference in principle. This is more closely related to the expropriation provisions, rather than some of the provisions in the Railway Act dealing with the operation of power lines by railway companies and so on. This is more comparable to the provisions in the Railway Act, and in this act, dealing with the taking over of land, or the rights of or interests in land. In all of those cases one goes to the board, and the board takes into account representations of all persons concerned.

Senator BRUNT: In other words, if any provincial body is going to be hurt under this clause as it is now drawn, the minister is quite willing to give consideration to an appropriate amendment.

Mr. DRIEDGER: Yes.

Senator BRUNT: And I suppose he would make it retroactive to cover any injustice that might have taken place under this clause?

Mr. DRIEDGER: No doubt he would take it into consideration.

The CHAIRMAN: Shall section 76 carry?

Carried.

The CHAIRMAN: Section 88.

Mr. DRIEDGER: I understand the remaining clauses are consequential on the power provisions?

Carried.

The CHAIRMAN: Section 96?

Carried.

The CHAIRMAN: Shall I report the bill as amended?

Carried.

—Whereupon the committee adjourned.



