

M I N U T E S

SPECIAL COMMITTEE ON ENERGY AND NATURAL RESOURCES

November 4 and 5, 1976

Members Present

Senator Leslie Droge, Chairman
Senator Paul Burke
Representative Gus Bogina
Representative Ralph Bussman
Representative Arden Dierdorff
Representative Paul Feleciano
Representative Edgar Moore
Representative Anita Niles

Members Absent

Representative Bill Southern, Vice-Chairman

Staff Present

Ramon Powers, Kansas Legislative Research Department
Emalene Correll, Kansas Legislative Research Department
Bob Taylor, Kansas Legislative Research Department
Don Hayward, Revisor of Statutes Office

Conferees

Bob Alderson, Chief Counsel, Kansas Corporation Commission
Jack Byrd, Attorney, Interstate Oil Compact Commission
Robert Eide, Peoples Natural Gas Division of Northern Natural Gas Company
Ernie Mosher, League of Kansas Municipalities
John Williamson, Executive Vice-President, Kansas Power and Light Company
Bob Anderson, Mid-Continent Oil and Gas Association
Don Schnacke, Executive Vice-President, KIOGA
R. Joe Durkin, Greeley Gas Company
Bob Olsen, Kansas Department of Revenue
Lewis Krueger, Division of Architectural Services
Myron Reed, Division of Architectural Services
John Flickor, The Nature Conservancy

November 4, 1976

Chairman Droge called the Committee to order at 10:00 a.m. The Committee approved the minutes of the September 29 and 30 meeting. The Chairman then announced that the Committee would receive testimony relating to Proposal No. 63 - Intrastate Oil and Gas Production and Distribution.

The first conferee to appear before the Committee was Bob Alderson, Chief Counsel for the Kansas Corporation Commission. Mr. Alderson indicated that the Corporation Commission has not taken a position on the issue of whether intrastate pipelines should be made limited common carriers. Before taking a position on this issue they would like the opportunity to go over a concrete legislative proposal. He also expressed a concern on behalf of the Commission that the integrity of public utilities to serve the public is not interfered with if legislation is passed to make intrastate pipelines limited common carriers. Mr. Alderson then read two memoranda from Noel

Salisbury, Chief Engineer, Kansas Corporation Commission. Those memoranda are attached to the minutes (see Attachments 1 and 2.) One memorandum provides a list of the number of intrastate transmission lines which most likely would be affected should any type of intrastate common carrier legislation pass. The other memorandum lists the factors that would have to be considered before it could be determined that additional capacity of a pipeline was available.

Mr. Alderson also expressed his personal views on this type of legislation. He was concerned that there might be a constitutional question involving the "due process" clause in denying a public utility the use of its property. A public utility is in the business of supplying natural gas to its customers, he stated, and legislation of this sort could be construed as being unconstitutional by refusing pipelines the full use of their property. Mr. Alderson pointed out that there were potential problems in conjunction with the limited common carrier proposal. For example, who would be allowed to use vacant capacity and on what basis, first come first serve, or should all those who request it be allowed to use the spare capacity. Mr. Alderson closed by stating that he had merely attempted to address possible problems that could arise from legislation in this area. Consequently he did not wish to suggest that something not be done in this area for he is well aware of the dwindling supply of natural gas and the need to do something.

A Committee member asked if anyone had knowledge of similar legislation in other states. The staff and conferees replied that if there was such legislation, none of them were aware of it. Staff asked whether the diminishing supply of natural gas would make this type of proposition more feasible in the future? Mr. Alderson replied that undoubtedly it would be more feasible when and if there is increased spare capacity in transmission lines, and the Corporation Commission would be glad to work with the staff to develop workable legislation.

The staff informed the Committee that Lamar "Bud" Weaver, Director, Kansas Energy Office was unable to attend this meeting due to hearings being held in western Kansas. A written statement by Mr. Weaver was distributed to Committee members and is attached to these minutes. (Attachment No. 3.)

The second conferee to appear before the Committee was Jack Byrd, attorney, Interstate Oil Compact Commission. His first reaction was that legislation in this area might be beneficial, and he noted that oil pipelines already designated common carriers. After reviewing the proposal, several problems appeared, he said. Mr. Byrd posed the question of how the 25 percent of space available would be allocated, whether it would be based on yearly average capacity, peak day capacity, or otherwise? Also, how would this be allocated between producers? Mr. Byrd suggested that it might be better to allocate to cities rather than to producers. He also pointed out that there is a limited number of pipeline companies that would be included in this proposal.

Mr. Byrd explained that under Rule 533 of the Federal Power Commission (FPC) a high priority industrial customer can purchase natural gas from a producer and transport it in interstate pipelines without that gas coming under FPC jurisdictions as regards to price. The FPC must, however, approve of such transactions. This rule is only applicable for high priority users and only for transportation and the gas cannot be for resale. Rule 533 is a temporary order and only in effect for two years, but will probably be extended. Mr. Byrd suggested that the Kansas Corporation Commission encourage the private contracting of intrastate lines under the present laws.

Mr. Robert Eide of Peoples Natural Gas Division of Northern Natural Gas Company appeared to offer comments on Proposal No. 63. In his statement, which is attached to the minutes (Attachment No. 4), he reviewed possible difficulties his company sees in the proposal: (a) How could intrastate pipelines be made limited common carriers without jurisdiction by the K.C.C. or some other agency? (b) How could the proposal be constitutionally limited to Kansas producers? (c) Would the proposal make it more difficult to direct gas to high priority users? (d) Under this proposal it would appear that competition for gas would increase which could possibly raise prices of natural gas in Kansas; and (e) if additional construction were required under such a proposal it should be paid for by the gas producer.

The last conferee of the morning was Mr. Ernie Mosher, representing the League of Kansas Municipalities. He explained that he had attended a policy meeting of the League on October 25, 1976, when they recommended that the K.C.C.: (a) urge the conservation of energy; (b) research alternate energy sources; (c) protect the gas producers of Kansas; and finally (d) encourage exploration and production of natural gas. Mr.

Mosher stated that Pratt, Iola and Kingman are now exploring for natural gas for electric generation. Wells they are now using are of marginal quantity, he noted. When cities purchase gas there is a full reimbursement to the pipeline company for delivery services, Mr. Mosher stated, and this is accomplished through negotiations. Pratt purchased a pool which will last for two to three years and a utility company usually will not be interested in investing in a small quantity of gas, he noted.

Mr. Jack Byrd informed the Committee that the Gas Service Company, a company he also represents, has no transmission lines, but has negotiated with the City of Wichita to use its distribution lines. He again encouraged producers to negotiate with pipeline companies which is allowed under the present laws.

The Committee then recessed for lunch.

Afternoon Session

Chairman Droge called the meeting to order and then called on John Williamson, Executive Vice-President, Kansas Power and Light (KPL) to present his testimony. A copy of Mr. Williamson's statement is attached to these minutes (Attachment No. 5.) He raised many questions as to the feasibility and constitutionality of the proposal. He argued that such a proposal, if it became law, would raise the price of intrastate natural gas. In response to questions by the Committee, Mr. Williamson said that KPL is not using underground storage at the present, but a study is underway to ascertain its feasibility. Mr. Williamson said that due to the situation that existed in Wichita, the price of intrastate gas in the last few years has risen from .19¢ to \$2.03 per thousand cubic centimeters (MCF) and that there is a great deal of bidding competition already between gas companies in the fields.

Mr. Williamson said that KPL receives complaints daily of high bills and it is difficult to explain the rapid rise of natural gas prices to the public. The rates charged by KPL are approved by the KCC based on many factors, he stated, and the rate paid by different classes of customers is likewise set by the KCC. Industries pay less for gas because they can be curtailed on peak days and they must have a stand-by system if they want to keep operating. Mr. Williamson was asked if KPL used gas to generate electricity, and he said that their plants in Lawrence, Hutchinson and Abilene used small amounts of natural gas, however, these plants are being changed to coal at the present time. We have 18 generating plants and we provide gas wholesale to seven small towns which handle the distribution, he added.

The next conferee of the afternoon was Mr. Bob Anderson representing Mid-Continent Oil and Gas Association and the Kansas-Nebraska Natural Gas Company. Mr. Anderson believes the companies which are in the transmission business are regulated by the KCC, and further regulations of this sort will prove to be too complicated. The KCC can handle this situation now under present laws, he argued. He contended that if this proposal were to become law, litigation over it would drag on for years. Mr. Anderson finished by stating that this hearing might have enough affect to aid the situation and encourage private contracting.

Mr. Don Schnacke, Executive Vice-President of the Kansas Independent Oil and Gas Association (KIOGA), was next to appear before the Committee. Mr. Schnacke explained that Mr. Robert L. William's, Chairman of the KIOGA committee on natural gas, was called out of the state and was unable to attend the meeting but had Mr. William's prepared written statement for the Committee. The statement is attached to the minutes (Attachment No. 6.) Mr. Schnacke said that his association has been concerned over the Kansas natural gas situation for some time and in the last three years they have not seen any action to save this valuable resource. He said that the U.S. Congress was trying to de-regulate prices and this should help matters to some extent. Shortages are occurring which result in curtailments. Mr. Schnacke expressed his dismay at previous conferees who pointed out problems and dismissed the whole concept of the limited common carriers proposal as too complicated and full of problems. Mr. Schnacke felt that everyone -- lawyers, engineers, and others should get together to work out a solution. Mr. Schnacke also supported Mr. Byrd's statement that it was probably more important to relate to the needs of communities and industries rather than to the needs of producers. The municipalities already have the authority to seek out natural gas supplies and this proposal would make it possible for them to transport that gas to their community.

In response to questions from the Committee, Mr. Schnacke said if the proposal would affect only pipelines with 25 percent spare capacity, then Kansas Power and Light would probably be excluded from it, but there are companies that are not using 75 percent of their peak design capacity. If more natural gas is discovered and produced as a result of such proposals, it should bring the price down, Mr. Schnacke contended. There have been very few isolated sales of \$2.00 per MCF in Kansas, according to Mr. Schnacke. He said we have not developed an intrastate market in Kansas, therefore, new industrial use is not being encouraged.

The last conferee of the day was Joe Durkin. He explained that his company, Greeley Gas Company, is located in central Kansas and purchases gas from four different pipeline companies. Our longest length of pipeline is 26 miles and we prefer not to purchase directly from the producer, he stated. We have transported gas at .05¢ per MCF for the City of Anthony and the bookwork is quite extensive, and we have been approached by a producer in the Marion area to transport gas to another point, he explained. They have come to us and take care of hookups to our lines and we transport gas for a simple charge, Mr. Durkin said.

His company has no opposition to the proposal nor are they in favor of it. The cost of gas has risen considerably in the past three years he noted. We sell gas to the Herrington power plant at \$1.04 per MCF and 89¢ per MCF to the City of Anthony, he explained. In the Herrington area, Greeley Gas buys from KPL and in August, 1973, gas was .71¢ per MCF and in August, 1976, it had risen to \$1.43 per MCF. For the City of Anthony, Greeley Gas purchases from City Service and in August, 1973, it was 69¢ per MCF and by October, 1976, gas was purchased for \$1.23 per MCF. Mr. Durkin believes that the Wichita gas situation has influenced the increase in prices.

The Chairman opened to discussion the issue of whether intrastate pipelines should be made limited common carriers. Committee members felt that more time was needed to fully understand the issues at hand. Representative Anita Niles reported that she had talked to Representative Keith Farrar and he felt that there is a depleting supply of gas and legislation such as this would reduce prices. In his area of the state, lines are not full and therefore, gas costs more to transport. The staff reported that William Hambleton of the State Geological Survey and Dr. Robert Robel of the Energy Advisory Committee had been contacted to appear before the Committee, but both preferred not to appear unless specifically directed to do so. Mr. George Sims made a short statement to the Committee saying that if legislation is drawn it should stress the "limited" aspect of the common carrier status and this might protect private property rights and avoid the constitutional issues.

Representative Dierdorff moved and it was seconded by Representative Feleciano that the information studied by this special Committee pertaining to Proposal No. 63 be sent to the House and Senate standing committees and that further study be initiated by these committees during the regular session of the Legislature. The motion passed unanimously.

The Chairman asked the staff if they would contact the Division of Environment and the Department of Health and Environment to request an updated review of Proposal No. 15, Water Pollution Control - Non-point Source. The Committee recessed until the following morning at 9:00 a.m.

November 5, 1976

The Committee was called to order for the second day and Chairman Droge called on Bob Olsen of the State Department of Revenue to explain to the Committee the issue concerning the implementing of H.B. 2969 which had been enacted by the 1976 Legislature. He said that a problem had developed over the legislative intent as to provisions for accelerated amortization and the tax credit for solar systems on trade or business property. According to the Department of Revenue's interpretation, the law calls for an election between the two tax incentives. Subsequently, the Department of Revenue has heard that legislative intent was that both tax incentives were to be available to the person installing a solar system on business property. A copy of Mr. Olsens recommendations are attached to the minutes (Attachment No. 7.) Sections 2 and 3 add provisions if both credit and accelerated amortization are intended. A new provision is also added to allow a transferee to claim the remainder of accelerated amortization credit if a transfer of the title to the property with the solar system takes place.

The suggestion was made that there should be more publicity regarding H.B. 2969. Mr. Bob Olsen expressed the view that most builders are not involved in the use of solar energy, therefore, they do not encourage its use.

Mr. Lewis Krueger of the State Architect's Office appeared before the Committee. He informed the members that the only building project the state was involved with at the present is a new student recreation center at Kansas State University, part of which is funded by student fees. He explained that in order to incorporate solar energy in a state building you need to make two sets of plans, one set providing for solar heating and cooling and one set for use of conventional energy sources. The plan that incorporates solar heating and cooling would also have to include the full compliance of conventional heating and cooling as a backup. Mr. Krueger said the State Architect's Office had no authority to request federal funds for a demonstration project. A state agency could seek federal funds in its request for capital improvement appropriations but he does not know if they are aware of this. Mr. Krueger suggested that funds be available to the Department of Administration specifically for research and experimentation for possible use of solar energy in state buildings. The initial cost of installation of solar units in state buildings would pay for itself in approximately ten years. Mr. Krueger gave strong emphasis to proper insulation in new buildings and better insulation of existing buildings in order to save energy. He explained plans for next year to try implementing some type of seminars for user agencies on proper energy conservation.

Mr. Myron Reed, Division of Architectural Services, said that the technology is available, but is still in the experimental stage. In order for widespread use of solar energy, we just need to put it together and that will just take time, he stated.

Mr. Bob Taylor, Kansas Legislative Research Department, explained that three property tax incentive bills were introduced to the 1976 Legislature. The Kansas Legislative Research Department has worked out the approximate cost of a property tax incentive proposal. Staff selected a \$35,000 home in Sabetha, Kansas to compare the tax liability on such a home with a \$10,000 solar heating system installed in it and the property tax liability if the value of the solar unit was exempt from property taxation.

Application of S.B. 739

	<u>Conventional</u>	<u>Solar</u>
Value of Home	\$35,000.00	\$45,000.00
Assessment Valuation Ratio	7,350.00	9,450.00
Levy	720.00	926.00

Increase in tax with solar system - \$206.00

Mr. Reed pointed out that property is assessed in different ways, some assessors use building permits to assess the value of a home and others use different methods.

The Committee members expressed their views on property tax incentives such as the one explained to them by Mr. Taylor. Some members were opposed to the property tax incentive approach. Others favored some kind of property tax incentive for solar energy installations. Mr. Charles Carey of the Mechanical Contractors Association stated that when he mentions H.B. 2969 during lectures, he receives very favorable responses. He believed that the additional property tax incentive might be enough to tip the scales in favor of solar energy for many people.

A motion was made by Senator Burke to recommend a bill allowing for both the tax credit and the accelerated amortization on solar systems installed on trade or business property. The bill draft should also include no provision that when a property is sold or transferred, the amortization is continued. The motion was seconded by Representative Bogina. The motion passed.

Representative Anita Niles moved that the substance of 1976 S.B. 739 be considered by the House Assessment and Taxation Committee. The property tax exemption should be for the difference between the assessed valuation of the property with the solar system less the assessed valuation of the property without the solar system, or \$2,000 whichever is less. The bill should be for only five years. Representative Moore seconded the motion. The motion passed. The vote was recorded as follows:

Yes - Representative Niles, Representative Bussman, Representative Feleciano, and Representative Moore

No - Representative Bogina, Senator Burke and Representative Dierdorff

Abstention - Senator Droge

Don Hayward informed the Committee that a solar easement can be negotiated under present laws in Kansas. The bill that was proposed by Senator Sowers last session was to bring issue of easements to the attention of the public so that those who might rely on a gentleman's agreement would be aware that a written easement would better assure their future right to sunlight. Staff explained that Oregon recently passed a more extensive statute on the rights to sunlight.

Senator Burke moved and it was seconded by Representative Dierdorff that a concurrent resolution be drawn requesting the state to consider solar energy in conjunction with normal heating and cooling on all new buildings. The motion passed. The Committee also emphasized that their recommendation at the last meeting provide for a demonstration project on a projected large state building and a project on a residence-size structure owned by the state. The Committee then turned to a consideration of conservation easements.

Mr. John Flickor from the Nature Conservancy's Regional Office in Minneapolis was next to appear before the Committee. He explained that the Nature Conservancy was a non-profit organization that makes land acquisitions for conservation purposes. They purchase land with the aid of an internal revolving fund that is funded by membership drives and donations. The organization is 25 years old and has acquired over 1,000,000 acres nationally. The Conservancy manages a tallgrass area in Clark County of 2,000 acres.

The conservation easement is a much less expensive tool for preserving nature or other landmarks according to Mr. Flickor. The Nature Conservancy does not accept any easements unless they are in perpetuity. Mr. Flickor reviewed the basic concept of conservation easements for the Committee. He said that a restrictive covenant often requires title of the land and is not very permanent and not as transferable as an easement. He pointed out that a statute is needed in order to allow for those who grant easements to receive tax deductions in compliance with the federal law 73-339. There is also a tax deduction for donations between June, 1976, and July, 1977, for easements less than perpetuity which are for at least 30 years. The advantage of a conservation easement is that the seller or donor may only give away what he or she wants to give away and also keep what he or she wants to keep. There are 14 to 15 states that have specific conservation easements statutes and a majority of states provide for some type of scenic easements or allow for specific state agencies to accept easements.

Mr. Flickor informed the Committee of easement uses in Wisconsin and Minnesota pertaining to conservation and scenic rivers. He stated that the Wisconsin Fish and Wildlife Department has been using conservation easements for years. Easements are not a substitute for land use planning, according to Mr. Flickor. It is a limited tool, but often is the only way you can accomplish what you want in a particular situation. Mr. Flickor recommended that if a law were enacted, it should provide that only non-profit or governmental agencies could receive conservation easements. The holder of an easement would pay property taxes on the value of the easement under Kansas law and a non-profit agency would not be exempt which concerned Mr. Flickor. Mr. Flickor distributed copies of easement documents to the Committee; he pointed out that people do not sign such documents without careful deliberation.

The Committee recessed for lunch.

Afternoon Session

Chairman Droge called the meeting to order and polled the Committee for their views regarding Proposal No. 16 - Conservation Easements. The majority of members felt that provision in Kansas law for conservation easements would be a good thing. There would be advantages to the Fish and Game Department, historical societies, and federal tax benefits would also be available. Questions were posed regarding special assessment

taxes on property with easements which prohibited development, the enforcement of easements where violations occur, and the implication of easements in relation to the proposed Tallgrass Prairie Park. The staff pointed out that special assessment taxes would not be likely, due to the fact that this land could not be developed. Staff said court action could be brought in order to enforce conditions of an easement. Staff also explained that easements on property within the area proposed for the Tallgrass Prairie Park would not preclude the National Park Service purchasing the land for the Tallgrass Prairie Park.

Senator Burke made a motion and it was seconded by Representative Feleciano that the staff research legislation in other states and incorporate the suggestions of Mr. Flicker and Mr. Timothy Fox, presented at the last meeting, into a bill draft to be presented at the next meeting. The motion passed.

The Committee reviewed the report of Proposal No. 14 - Monitor Solar Energy Activity in Kansas, which is attached to the minutes. The Committee directed that recommendations made during the morning session be included in the report.

Senator Burke moved that a state-owned house be retro-fitted with a solar heating system and this be included in the concurrent resolution to be drawn by the staff and presented at the next meeting. The motion was seconded by Representative Feleciano. The motion passed.

The Committee reviewed the preliminary drafts of the Committee reports on Proposals No. 15 and 16 and decided to give final consideration to them at the next meeting which was set for November 29-30. The meeting was adjourned.

Prepared by Ramon Powers

Approved by Committee on:

Nov. 30, 1976
(Date)