Legislative Research Department July 15, 1976

M I N U T E S

SPECIAL COMMITTEE ON JUDICIARY

July 12 and 13, 1976
Room 514 - State House

Members Present

Senator J.C. Tillotson, Chairman
Representative Dave Heinemann, Vice-Chairman
Senator James Francisco
Senator Vincent Moore
Senator Bob Storey (first day only)
Representative Dick Brewster
Representative Eugene Gastl
Representative Fred Lorentz
Representative Phil Martin
Representative Neal Whittaker

Staff Present

Art Griggs, Revisor of Statutes Office
Sherman Parks, Jr., Revisor of Statutes Office
Walt Smiley, Legislative Research Department

Conferees Present

Representative Keith Farrar
Mr. Lamar Weaver, Kansas Energy Office
Judge Michael Barbara, Third Judicial District
Mr. Mike Friesin
Mr. Dale Stucky, SW Kansas Royalty Owners Association
Mr. Leland Nordling, SW Kansas Royalty Owners Association
Mr. Frank Trotman, Executive Secretary, SW Kansas Irrigation Association
Mr. Eugene Shore, President, SW Kansas Irrigation Association
Mr. Stuart Wheeler, Kansas/Nebraska Natural Gas Company
Mr. Jack Glaves, Panhandle Eastern Pipeline Company
Mr. Don Schnacke, Kansas Independent Oil and Gas Association
Mr. George Sims, Mobil Oil Corporation

July 12, 1976
Morning Session

Proposal No. 26 - Natural Gas

The Vice-Chairman called the meeting to order and noted that the Chairman would be delayed. He then introduced Representative Keith Farrar, who spoke from prepared statements. (See Attachments 1 and 2.)

Representative Farrar indicated that the price of natural gas at the wellhead varies from 14¢-25¢ per mcf; the price from a hookup on a gathering line varies from 35¢ to over $1.00 per mcf. He estimated that less than two percent of the total natural gas available is used for irrigation fuel. Representative Farrar cited figures from a KSU Extension Service publication by Roy Bogle, entitled "Impact of Natural Gas Curtailment on Segments of Kansas Agriculture."

In response to a question, Representative Farrar noted that Kansas-Nebraska Natural Gas Company estimates that 80 percent of the irrigation pumps in their area are fueled by natural gas. KSU estimates that 65 percent of all irrigators in Kansas use natural gas as fuel; however, this figure may not include irrigation activities on land with its own natural gas.

In response to a question, Representative Farrar indicated that, in his opinion, the price of natural gas purchased from Panhandle Eastern had increased due to the increased cost to the producer when buying gas in areas other than the Hugoton Field.

A Committee member inquired about the obligation of a pipeline company to supply gas to the property owner, where a gathering line passes across the property. In Representative Farrar's view, the pipeline company should supply gas, since the property owner incurs costs in maintaining cropland above the pipeline. Representative Farrar noted that he is referring to all pipelines, not just gathering lines.

A Committee member asked whether Kansas law can affect any gas under jurisdiction of the FPC. Representative Farrar indicated that the FPC is conducting hearings on priority of use for irrigation.

Representative Farrar pointed out that the multiplier effect of using natural gas as fuel for irrigation pumps is greater than for natural gas used as a manufacturing fuel.

A Committee member pointed out that under H.B. 3032, if an irrigator requests natural gas from a gathering line, and only enough gas was being produced to satisfy the irrigator, then that irrigator would get priority. Representative Farrar noted that the KCC should have some discretion in such cases.

The Vice-Chairman then introduced Mr. Lamar Weaver, Director of the Kansas Energy Office. Mr. Weaver spoke from a prepared statement, appended as Attachment 3. Mr. Weaver indicated that he supports a high priority for irrigation, and applauds the "El Paso" court decision, which upheld the priority of irrigation just under domestic use.

Representative Farrar then turned to a statment on sub-surface zones, appended as Attachment 2. He noted that H.B. 3038 reflects California law, although the details may not be transferable to Kansas. He pointed out the difference between a contract to purchase an automobile and a contract to develop land for minerals. In the latter case the royalty owner assumes that the land will in fact be developed; too often, only the cheapest horizons are tapped. H.B. 3038, in Representative Farrar's view, proposes a method to encourage such development.

Afternoon Session

Proposal No. 28 - Child Custody Issues

The Chairman introduced Judge Michael Barbara of the 3rd Judicial District. In response to a question the judge indicated that the courts could use more discretion in terms of placing a child with other than his natural parent. He noted that under present law, a natural parent must be declared unfit before custody may be removed from the natural parent. The judge noted that in a typical case, the grandparent may have actual physical custody of a child for several years and then the natural mother decides she wants the child back; unless the court finds the mother unfit, under present law the child must go to the mother. This creates a traumatic experience for the child in the terms of readjustment. The judge noted that the court must use the "parental preference" rule in these sorts of cases. In the judge's opinion, the court could be given some leeway to hear evidence (for example, concerning why the child was with the grandparents for several years) so "parental preference" would not always be the rule. Constitutional rights are rarely involved in such cases, the judge emphasized.

In response to a question about H.B. 2909 as passed by the Senate, the judge noted that a third party is usually not a respondent except in habeas corpus, which is rarely involved in divorce cases. He thought that page 3 of the bill, lines 12 to 16 would create problems. The judge noted that under the facts of Irwin v. Irwin (211k.1; 505 P2d 634), the criteria in lines 16-29 of page 3 would not be reached. In Irwin, the Kansas Supreme Court affirmed that a finding of unfitness is necessary to supplant the preference for a natural parent. The judge said that if the grandparent had custody of the children for several years and then the natural father took the children from the grandparents, the grandparents would have no legal standing other than as friends of the court. Such grandparents would not be a party of a divorce action.

In response to a question, Judge Barbara noted anyone who has actual physical custody of children would probably be heard by the court in some way under existing law. The Judge pointed out that unless lines 12 through 16 of page 3 of H.B. 2909 were restricted to persons with physical custody, court dockets might be cluttered.

In response to a question, the judge said the person who wants custody should have the burden of proof that such custody would be in the best interest of the child; the court would still examine the situation. He noted that "parental preference" forecloses the court from determining how persons with custody got custody.

In response to a question, the judge indicated that lines 16-29 would have indicated that the court should look into who has custody, how they got it, how long they have had it, etc. He noted that the first criteria (the length of time that such child has been under the actual care and control of any person other than a parent and circumstances relating thereto) could be interpreted as a factor involved in unfitness, which would then remain in case law. The judge said that if the legislature wants to depart from the "parental preference" standard, such intent should be spelled out in legislation.

The judge responded to another question by noting that if voluntary consent to custody is required, a parent who later asserts custody should be required to prove that such change in custody is in the best interest of the child. This, the judge thought, would get away from the fitness question.

The judge thought that a third party should have standing in part if such party had custody by other than illegal means for some period of time. The sixth criteria listed in the bill should be considered in such cases. The sixth criteria would not be relevant to the choice between parents for any period. In other words, if in any case involving custody a third party has physical custody, the six criteria listed in H.B. 2909 (as passed by the Senate) would automatically be brought into play, notwithstanding a finding of unfitness.

The judge noted that the District Court does not have the facilities that are available to Juvenile Court; District Courts must often rely on SRS staff for home studies in custody cases.

In closing, the judge noted that the fact that one day of actual physical custody should be sufficient to give standing to that third party in a custody case. A two year time limitation would seem to be too long.

The Chairman then introduced Mr. Mike Friesin, who referred to a Colorado statute which specifies that the court should consider the best interest of the child. Mr. Friesin indicated that this was a very simple statute, and that Kansas should examine Colorado's experience under this statute.

Mr. Friesin noted that if a nuclear family is altered to the extent that a third party is helping to support the children, and then a natural parent dies, the court should consider the child's interest in awarding custody. He cited an example where a mother has raised her children, absent the father, and then the mother dies. In one such case with which Mr. Friesin was familiar, the father asserted a claim on the children after many years of absence, and took only 1 of 2 children. In such case, Mr. Friesin noted that the court presently can do nothing.

Staff distributed copies of a memorandum concerning the development of case law on child custody. See Attachment 4.

After some discussion, Representative Brewster moved that a draft bill be prepared so that, in any third party custody action subsequent to divorce (with no minimum time after the divorce), a person who has had actual physical custody (for no specified period of time) by other than illegal means must initiate a custody action in court. When such action was filed, the criteria for awarding custody should include, but not be limited to, the six criteria listed in the Senate version of H.B. 2909. Representative Martin seconded the motion, which then carried.

July 13, 1976
Morning Session

Proposal No. 26 - Natural Gas

The Chairman introduced Mr. Dale Stucky of the SW Kansas Royalty Owners' Association. Mr. Stucky indicated that he had represented the Association since 1948.

Mr. Stucky noted that the jurisdiction of the FPC as specified in the Natural Gas Act extends to three areas - sale of natural gas for resale in interstate commerce; natural gas companies; and transportation of natural gas for interstate commerce. He indicated that this jurisdiction has been upheld by the U.S. Supreme Court on a number of occasions.

Mr. Stucky then reviewed a history of litigation brought by the Royalty Owners' Association, and cases through which the FPC inquired jurisdiction over the Hugoton Field. He cited Mobil Oil v. FPC (463 F2d 256), which upheld FPC jurisdiction over natural gas companies. In his view this case precluded the royalty owners from exercising their common law property rights. According to Mr. Stucky, the FPC has no jurisdiction over natural gas leases.

Mr. Stucky cited the example of Panhandle Eastern which created a wholly owned subsidiary (the Hugoton Production Company) to which Panhandle then assigned all of Panhandle's undeveloped natural gas leases. This had the effect of taking those leases out of interstate commerce, and the U.S. Supreme Court upheld this method of removing the leases from the FPC;s jurisdiction.

Mr. Stucky noted that he was relunctant to discuss constitutional issues until they are raised.

Mr. Stucky cited the case Rogers v. Westhoma Oil (291 F2d 726, (1961)). This case had the effect of releasing lower horizons from existing development leases, and would seem to be relevant to H.B. 3038.

Mr. Stucky pointed out that Hugoton is a shallow field; most of producing horizons are above sea level. The deeper horizons by and large have not been explored; in his view, the producers are using the income from existing production to support drilling elsewhere. Thus, Hugoton leases are being held for speculative purposes. However, the "implied covenent" doctrine holds that a lease cannot be held from purely speculative purposes, but must be developed for the mutual benefit of both lessor and lessee. Mr. Stucky said that one way of stopping such speculation is to file a suit claiming that the implied covenant has been violated. But to win such a case requires evidence that the "reasonable and prudent" operator would in fact drill deep.

Mr. Stucky then distributed a proposed amendment to H.B. 3038 (see attachment 5). He noted that if the proposed amendments were adopted, H.B. 3038 would be immune from attack on constitutional grounds. He cited Merrill, Implied Covenants, Section 212, concerning states with similar laws which have not been held unconsitutional. These states are: Kentucky, Michigan, Nebraska, Arkansas, Iowa, Virginia, Texas, Arizona and Indiana.

According to Mr. Stucky, this amendment would require the plaintiff to prove that the existing lease is more than 20 years old, and at the time the suit was brought there was no production from lower horizons. These conditions would create an evidentiary presumption of a breach of implied convenant; such presumption could be rebutted by lessee's evidence of "reasonable diligence for the common benefit" of both lessor and lessee.

Mr. Stucky cited the case of a Texas rancher with a 50-year lease which has currently expired. Such lease was with Gulf Oil which sold the gas to the community of El Paso, Texas. The FPC has stated that Gulf cannot abandon the sale of this gas once begun; the FPC has also ruled that the rancher's gas must stay in interstate commerce, although he (the landowner) could renegotiate the lease. Mr. Stucky pointed out that presently this case is in Fifth Circuit courts.

Mr. Stucky then distributed a handout concerning H.B. 3032 (appended as Attachment 6). He noted that this was copied from an Oklahoma statute, which has been attacked on constitutional grounds in Phillips Petroleum v. Jones (147 F. Supp. 122, (1955). In that case, a three judge federal court found no constitutional problem with the Oklahoma statute. However, the Oklahoma Supreme Court in Phillips Petroleum v. Corporation Commission of Oklahoma, (312 P2d 916) held the statute unconstitutional in 1956. In Mr. Stucky's view, Kansas has a situation different from that of Oklahoma - irrigators are already using gas and have been for years although the FPC rules appear to restrict such activity.

In response to a question Mr. Stucky, indicated the "implied covenant" is an established legal doctrine in all gas producing states, and has been used in federal courts.

In response to another question Mr. Stucky said that his evidentiary presumption proposal would not establish a precedent for other areas, because of the common law "implied covenant" doctrine concerning leases.

Mr. Stucky pointed out that the leasehold interest is dedicated to inter- or intrastate commerce, not the gas which has yet to be produced.

In response to a question, Mr. Stucky indicated that there may be a conflict between FPC priorities and those established by H.B. 3032. In his view such conflict is not insoluble and has existed for several years.

The Chairman then introduced Mr. Leland Nordling who spoke from two prepared statements (appended as Attachments 7 and 8).

The Chairman the introduced Mr. Frank Trotman, Executive Secretary of the SW Kansas Irrigators Association, who spoke from a prepared statement (appended as Attachment 9).

The Chairman then introduced Mr. Eugene Shore, President of the SW Irrigators' Association, who spoke from a prepared statement (appended as Attachment 10). Mr. Shore pointed to the state of New Mexico which took over certain existing pipelines as a state utility, and provided gas for irrigators in another part of the state.

Afternoon Session

The Chairman introduced Mr. Stuart Wheeler, of Kansas-Nebraska Natural Gas who spoke from a prepared statement (appended as Attachment 11).

The Chairman then introduced Mr. Jack Glaves, representing Panhandle Eastern Pipeline Company. Mr. Glaves pointed out that all sales of natural gas to interstate pipeline companies are under FPC jurisdiction, as authorized by the Federal Natural Gas Act. Sales of gas to an irrigator is not a sale for resale and is not under the jurisdiction of the FPC. But the construction of facilities for sale of interstate gas does come under FPC jurisdiction. Mr. Glaves cited 18 CFR 2.70 in this regard.

Mr. Glaves cited FPC v. Louisiana Power and Light Company (406 U.S. 621 (1972); 321 LEd2d 369), wherein the U.S. Supreme Court held the sale of natural gas for resale was subject to FPC jurisdiction for purposes of curtailments (covered by 18 CFR 2.78).

Mr. Glaves pointed out that Panhandle has not identified irrigators as separate from small business and residents for purposes of curtailment; that is, irrigators are in category No. 1 where there will be no curtailments. He also indicated that Panhandle cannot hook up new irrigators because Panhandle is in a severe curtailment situation. He noted that the KCC has ruled that 25 Kansas communities can have no new connections to natural gas, and that Panhandle supplies gas to the distributor serving some of those communities. However, H.B. 3032 mandates new hook-ups, but this cannot be done due to KCC regulations.

Mr. Glaves noted that certain definitional problems with H.B. 3032 would discriminate against farmers in the Hugoton area who have no gas on their land but who live near farmers with gas producing wells.

Mr. Glaves emphasized that the importance of irrigation is not the issue; rather new hook-ups and curtailment of existing uses are the issues. He cited Pennsylvania v. West Virginia (262 U.S. 553; 67 L ED 1117), concerning the commerce clause - the sale of gas to interstate pipelines and new customer hook-ups are under FPC jurisdiction.

Mr. Glaves emphasized that in his view H.B. 3032 is class legislation and gives preferential treatment to certain groups.

Concerning the Attorney General's Opinion to Representative Farrar dated March 3, 1976, Mr. Glaves pointed out that the FPC has assumed jurisdiction, and distributed copies of an FPC order dated January 12, 1976. A copy of this order is appended as Attachment 12.

In response to a question, Mr. Glaves noted that Panhandle is under FPC jurisdiction, while Gas Service Company is under KCC jurisdiction; thus, the KCC has restricted the Gas Service Company's sale of gas to certain communities.

In response to a question, Mr. Glaves noted several hundred wells are owned by subsidaries of Panhandle. He said that several wells have been drilled down to five thousand feet but the companies are uncertain as to how much gas is in the lower horizons. He noted that H.B. 3038 assumes there are additional productive levels, and that it is economically feasible to tap those levels.

In response to a question he noted that an adequate remedy exists under present law to cancel gas leases. He also pointed to possible damage to existing gas supplies by drilling through known gas supplies.

In closing, Mr. Glaves indicated that gas development will respond to price. If the FPC increases the price of gas, development will follow.

The Chairman introduced Mr. Don Schnacke, with the Kansas Independent Oil and Gas Association. Mr. Schnacke spoke from prepared statements appended as Attachments 13 and 14.

In response to a question, Mr. Schnacke pointed out that both price and the availability of pipelines to transport gas to the point of sale relate to the exploration of lower horizons. Mr. Schnacke also spoke of the contractual right to do with one's property with what one wants.

He indicated that KIOGA represents approximately one-half of the gas producing companies in Kansas, although few are in the Hugoton field area. He noted that H.B. 3032 would apply statewide.

Mr. Schnacke criticized the notion that the intrastate Kansas market can develop gas production. In his opinion, Kansas has only a small intrastate market compared to Oklahoma, Texas or Louisiana.

The Chairman then introduced Mr. George Sims, of Mobil Oil Corporation who spoke from statements appended as Attachments 15 and 16.

The Chairman thanked the conferees and Committee members for their attendance. He noted that the August 9-10 meeting of the Committee would be devoted to hearings on Proposal No. 31 - Product Liability, and staff agreed to examine the cases cited by the conferees. The Chairman suggested that the Natural Gas proposal may be taken up at the August 30-31 Committee meeting. The Chairman then adjourned the meeting.

Prepared by Walt Smiley

Approved by Committee on:

8/30/76
Date

ATTACHMENT 1

STATEMENT BY

REPRESENTATIVE KEITH FARRAR

BEFORE THE

SPECIAL COMMITTEE ON JUDICIARY

PROPOSAL 26

(Natural Gas for Irrigation)

I believe the concept of HB 3032, which I introduced in the 1976 legislative session forms the basis for one part of Proposal 26 which your committee is studying this summer.

In my opinion, the proposed legislation would help guarantee to the State of Kansas the continued benefit to the economy, provided by irrigation and the related business it has generated in recent history.

I will not take the time to point out the statistics of what irrigation has meant to the State of Kansas, and to the balance of payments of the United States as a whole. I would ask you to consider the priority that the Kansas Corporation Commission placed upon the use of natural gas for irrigation fuel approximately 20 years ago, which a few of the gas producing companies are not complying with since there is nothing in the present law that would force them to do so. The passage of a bill similar to HB 3032 would remedy this situation.

The Governor and the Attorney General have made appearances before the Federal Power Commission to attest to the value of irrigation, and natural gas for fuel for irrigation motors. I

call your attention to the attached statement by the Governor before Judge Curtis L. Wagner, Jr. in reference to a hearing held May 20, 1975, pertaining to priority of natural gas for irrigation use. Also attached is a copy of the News Release by the Federal Power Commission on July 24, 1975. I would also call your attention to the statements made October 15, 1975, before the Federal Power Commission by the Attorney General's Office plus a memorandum from the Attorney General's Office March 3, 1976, in response to my inquiry as to questions raised at the hearings on HB 3032 held in the House Energy and Natural Resources Committee.

There are two ways to deprive farmers of the fuels they must have in order to feed our citizens and other hungry people on this planet. One is price and the other is priority. It takes both. What good is a price we can afford, if no fuel is available? Or what good is a high agricultural priority if we are priced out of the fuel market? The approach used by HB 3032 would help solve this situation by establishing a state policy mandating a duty on the part of gas companies utilizing those lands for natural gas production and gathering lines, to provide sufficient gas for irrigation purposes, at a reasonable cost to the farmer. It provides for the first time that the Kansas Corporation Commission has jurisdiction over this gas.

I feel that the most important use of natural gas to the state today, in terms of the economy, is the very small percentage of this resource that is used for fuel for irrigation motors and the

resulting surplus of grain produced by the irrigators which has provided among other benefits the stimulus to the cattle feeding industry within the last decade.

I am sure that many of the members of the committee remember how dry this last winter and spring turned out to be over much of the state and High Plains area. I would like to point out that during that time of drouth, the irrigators were carrying the insurance against total crop failure and the probability of worse Dust storms than what the state could have experienced without irrigation. One last point I would like to make, through experience the irrigator has greatly increased the efficiency of his irrigation system, he has leveled the land, installed underground pipe, aboveground pipe, used wider rows etc. All of which result in more acres being irrigated with the same amount of water (or fuel). On my own farm we increased the acres covered by 25 percent by installing underground pipe. I call the above to the committees' attention as a reminder that most irrigators have tried to conserve both water and fuel in contributing to the growing economy of the state.

STATE OF KANSAS
FRED HALL, GOVERNOR

STATE CORPORATION COMMISSION
TOPEKA

May 9, 1956

ADMINISTRATIVE BULLETIN

TO ALL PARTIES OF INTEREST:

In re: Use of Gas for Irrigation Purposes.

It has long been the policy of this Commission that the use of gas for irrigation purposes on a landowners' premises is a lawful use under Kansas statutes and that it is highly desirable that natural gas produced from their land be made available to landowners for such purposes wherever possible.

Pursuant to a recent study conducted by the staff, the Commission has reconsidered the entire matter giving particular attention to the farmers' need for this most efficient and economical fuel, and has revised its former policy as set forth hereinafter. Subject to the following prescribed conditions and limitations governing use of natural gas for irrigation purposes, gas may be made available to any farmer desiring it for that use who will take delivery at the wellhead, make his own connection to the wellhead and transport his own gas to his irrigation pumps:

(1) Contracts entered into between the farmer-user and the producing company must be ratified by the contract purchaser of gas produced from the well.

(2) Each such contract shall be submitted to the Director of Conservation for approval and a copy as approved filed in his office before any gas is delivered thereunder.

(3) All gas so furnished shall be metered and proper records of same shall be kept in a manner approved by the Director of Conservation.

THE HONORABLE ROBERT F. BENNETT

Governor of Kansas

Statement before the Federal Power Commission

Re: Priority Use of Natural Gas for Irrigation

Hearing Room F
Federal Power Commission Building
Washington, D. C.
20 May 1975

Judge Curtiss L. Wagner, Jr. presiding

Judge Wagner, thank you for affording me the opportunity to present my views on the Federal Power Commission's Opinion Number 697-A, Docket Number RP72-6 of 19 December 1974, which downgraded the priority of natural gas used to pump water for irrigation, from Priority 2, to Priority 3. As the Governor of the State of Kansas, I wish to express my concern relative to that decision, and to respectfully request that you reverse that decision. I feel strongly that use of natural gas to pump irrigation water for agricultural production should be given high priority, the highest priority practicable in these trying times of dwindling natural gas supplies.

Mr. Chairman, I speak as Governor of an energy producing state, and a state in which agriculture is of great importance. In 1974, we in Kansas produced close to 900 billion cubic feet of natural gas, and consumed

(4) The amount of gas taken from a well and furnished to a farmer-user for irrigation purposes shall be charged against the monthly current allowable for such well.

(5) It is understood that producing companies will charge a nominal price for gas furnished for irrigation purposes, and the price shall be uniform to all such users.

The cooperation of all parties interested in this matter is invited.

STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

By Raymond B. Harvey
Raymond B. Harvey, Secretary

FEDERAL POWER COMMISSION

NEWS RELEASE WASHINGTON, D.C. 20426

IMMEDIATE RELEASE
JULY 24, 1975
Docket Nos. RP72-6, et. al.
El Paso Natural Gas Company

No. 21583

FPC JUDGE FINDS IRRIGATION FARMERS ON EL PASO NATURAL GAS' SYSTEM BELONG IN CURTAILMENT PRIORITY 2

Federal Power Commission Administrative Law Judge Curtis L. Wagner, Jr., today issued an initial decision finding that irrigation pumping customers of El Paso Natural Gas Company, of El Paso Texas, should be considered "process gas" customers, and therefore placed in priority 2 of the company's curtailment plan. The decision is subject to Commission review.

Judge Wagner concluded there is no answer for the irrigation farmers in Arizona, New Mexico, and Texas in the foreseeable future except natural gas. It is clear beyond any doubt, he said, that any curtailment will be disastrous to these farmers, not only causing severe crop damage, but making it impossible for them to get the necessary financing to put the crop in to start with.

The proceeding was initiated in March of 1975, when the FPC denied motions to reconsider an opinion (No. 697-A) in which it ruled that use of gas for irrigation pumping on El Paso's system should be classified as industrial rather than commercial service, and its priority lowered from priority 2 to priority 3 of El Paso's curtailment plan.

A large number of petitions to intervene were filed, and hearings were concluded last June 27, including local hearings in Arizona, New Mexico, and Texas. The importance of the issues involved was clearly demonstrated by the huge crowds that took time during the busiest season of the year to appear at the local hearings, Judge Wagner said; for example; in Lubbock, Texas, 1,456 persons registered attendance.

(over)

in size since the margin per acre is much less on dry land than on irrigated crops. Secondly, the number of farmers would need to be reduced since it requires more labor and keeps more people on the farms because of irrigation requirements. We would also find a drastic change in land values since irrigated land sells for 2 to 3 times that of dry land in western Kansas. In other words, we would see a reduced value to this land. This could cause cash flow problems to people who have borrowed money on high price land and are trying to pay it off with income generated by low income crops. We could easily see many farmers being forced out of the farming business at financial losses. As I indicated earlier, we could expect a reduction in the cattle feeding industry in Western Kansas if feed grain production were reduced. This then would have an effect on our community because of the income stream which is generated by the cattle feeding businesses of Southwestern Kansas. In addition, we would find that we no longer needed the irrigation equipment, the well drilling equipment nor as much fertilizer and other inputs which are required for irrigating crops but not required for dry land crops. This then would change the picture of the whole economy in loss of jobs, reduction of business income and eventually a change in the pattern and probably reduction of communities.

Q. Have you reached any conclusions regarding natural gas or irrigation and crop drying in Western Kansas?

A. Yes. First I would assume that farmers would look to alternative sources of energy. All of which would be more expensive on an annual energy cost basis and all except propane would require greater capital outlays in converting to the new equipment. We have already indicated that the farmers would need to invest in excess of $60,000,000 for electric motors along with the wiring, power suppliers would need to invest in excess of 60 million dollars to get three phase lines to the property plus there would need to be a huge capital investment for creating generating capacity. Other sources of energy such as gasoline or diesel may not be available because of the energy situation which the country currently faces. I would then expect some attempts to convert to alternative sources of energy, but I would fully expect that many farmers would switch crops and begin growing wheat rather than grain sorghum since a wheat crop under partial irrigation using interruptable natural gas would produce more management income than would grain sorghum under the same conditions. If and when this happens we

would then find reduced feed grain production which directly effects the livestock feeding industry.

In regard to crop drying, if farmers cannot find an alternative crop drying system, they would be forced to either stand higher field losses by allowing grain to become dryer in the field before harvesting or they would go to high moisture type storage which then limits their marketing ability. When marketing ability is reduced, income from the crops can also be reduced.

Q. With the information that you have provided, what classification do you feel is justifiable for natural gas used in irrigation and crop drying.

A. As I understand it, the Federal Power Commission has not determined an agricultural category in which natural gas would fall for irrigation and crop drying. It appears to me that if natural gas were put on an interruptable basis that we could see dramatic results if gas were shut off during certain times when the crop is in most need of water or when farmers have grain in holding bins waiting to be dried. The crops would suffer tremendous losses and the grain in holding bins waiting to be dried would spoil in a matter of several days.

Farmers do not operate in a marketing system where they can pass their increased costs along to the buyers of their product. The tremendous capital outlay required to switch to alternative and acceptable sources of energy are far greater than farmers or power companies could stand over a short period of time.

It also appears to me that should capital financing be available to switch to electricity as a source of alternative energy that it would take years to build the number of irrigation motors necessary, to manufacture the electrical supply equipment as well as the generating capacity. Therefore, we would expect that many farmers would switch to grain sorghum or wheat which would reduce their income as well as reduce the feed grain supply and effect the livestock industry in Western Kansas.

Q. Does this conclude your testimony?

A. Yes.

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

March 3, 1976

M E M O R A N D U M

TO: Representative Farrar

FROM: Donald R. Hoffman
Assistant Attorney General DRH

DATE: March 3, 1976

RE: House Bill 3032

House Bill 3032 is legislation in the best interest of the Kansas irrigation farmer and particularly those in the Hugoton field.

It enunciates a state policy mandating a duty on the part of gas companies utilizing these lands for natural gas production and gathering lines to provide sufficient gas for irrigation purposes; a vital contribution to the State's economy.

The Bill does not interfere with contracted-for gas shipments, intrastate or interstate. Problems in this area can be dealt with under the provisions of the Bill by providing for Kansas Corporation Commission jurisdiction over this gas for the first time. The Corporation Commission can act only after hearings are held in conformity with administrative rule making procedures; which, of course, are subject to legislative review. Technical considerations inherent in regulation of sales of this gas are left, to the Corporation Commission; the State's most competent body to deal with this problem. Certainly, the requirements established by this Bill and the implementing rules and regulations of the Corporation Commission will be reasonable and will consider technical difficulties encountered by the companies.

This legislation is remedial in nature and need not be viewed as confiscatory since the companies view the amounts of gas to be so utilized as de minimus.

We, as a legislative body, would be remiss if we engage in hand-ringing over the academic question of whether some federal agency might at some time in the future attempt to assume jurisdiction in this area. We know the problem exists, and we know that it is our obligation to deal with our own problems. Efforts are presently being made to co-ordinate State and Federal jurisdiction. While these efforts must continue we should not shirk our responsibilities.

The Washington Post

AN INDEPENDENT NEWSPAPER
THURSDAY, APRIL 3, 1975

Gas Prices and Jellybeans

AS THE SHORTAGE of natural gas grows more serious in the Washington area, some customers are being forced to convert to oil. Nobody converts voluntarily. The price of gas to a large customer is $1.60 per thousand cubic feet. The equivalent energy in the form of fuel oil is now up around $2.60. That difference is, in fact, the explanation of the gas shortage. There are three basic fuels. Congress insists on holding the price of gas far below the prices of oil and coal. That is the heart of the controversy over the deregulation of natural gas.

The local distributor, Washington Gas Light, has accepted no new customers for three years. The pipeline companies supplying the Washington area have cut back deliveries and, in turn, Washington Gas Light is dropping service to its interruptible customers—those that got a lower rate for signing a conditional contract. Most of them are big apartment houses and office buildings, but the list includes some schools and colleges. Next in jeopardy are the industrial customers. Some of them would have been cut off months ago if the weather had been normal. But for the second year in a row this region was lucky. It was a warm winter. What about next winter?

Gas is the cleanest of all the major fuels, and ought to be sold at a premium on environmental grounds alone. Instead, as the cheapest of the three competing fuels, it is used to fire boilers by any industry or utility that can get it. With the enormous increases in oil prices over the past two years, the disparity has become increasingly severe. By last summer, to use a standard comparison, the gas delivered to utility generators throughout the country cost only 26 per cent as much as their fuel oil. Coal cost 38 per cent as much but was rising fast, as contracts expired or were renegotiated. Soft coal went for about $5 a ton throughout the 1960s, but prices now range from $15 to $25 and are climbing. The wider the price gap between gas and the other fuels, the more severe the gas shortage will be.

It is as though Congress were keeping down the price of red jellybeans, to protect the consumers—but not the prices of black or white jellybeans which, in the current inflation, are rising. In time you would find it increasingly difficult to get red jellybeans, although there would be plenty of the others in the stores. In Congress, the defenders of the consumer would explain that the rapacious and monopolistic jellybean industry was willfully withholding red jellybeans from the public. That, of course, would be an outrage. Several senators would promptly introduce bills establishing intricate rules for allocating the dwindling national supply of red jellybeans—and maybe extending price controls to the black ones as well, since they are getting increasingly popular.

In the Senate Commerce Committee, Sens. Warren G. Magnuson (D.-Wash.) and Adlai E. Stevenson (D.-Ill.) are currently drafting a bill to resolve the natural gas issue pretty much along the lines of the jellybean case. Their bill would greatly expand and refine the system of allocation and price control that is already in effect. It would extend price ceilings for the first time to gas burned within the state where it is produced. The uncontrolled intrastate prices are currently running almost four times as high as the present federal maximum for gas crossing state lines.

The Commerce Committee's draft bill is pursuing a principle that deserves attention. It would raise the present ceiling price, but deliberately keep it far below the comparable price for oil. The price of oil has been jacked up artificially high, the argument goes, by a cartel of foreign governments. If the U.S. government has lost control of oil and coal prices, why should it voluntarily permit gas prices to accompany them to such unreasonable heights? This view is not a frivolous one. It reflects a well-considered conviction that, as a matter of social justice, it is better to have shortages—managed by various allocation and rationing systems—than high prices.

But keep in mind that any price ceiling turns out to be a subsidy paid by somebody. As people in the Southwest point out, a low ceiling on natural gas means that relatively low-income states like Oklahoma and Louisiana are subsidizing the standards of living in much wealthier states of the northeast—not to mention metropolitan Washington. To help the poor and the elderly in times of rapidly rising prices, the most effective remedies are those that directly increase the amounts of money in their pockets. Straightforward income redistribution is infinitely better than trying to fiddle and distort the mechanisms for pricing each of the hundreds of commodities that are, to one degree or another, necessities of life.

The way to deal with the gas shortage is to deregulate the price. In present circumstances, it ought to be done in stages, over several years, to cushion the impact. No one can exactly say where fuel prices will be several years from now. But they certainly will not return to the level of two years ago. The basic reason for the great upswing in fuel costs is not the producers' cartel but a worldwide surge of demand for cheap fuel. Higher prices are a signal that supplies are not unlimited and we have to begin conserving. Price controls merely suppress that warning signal. Natural gas currently provides one-third of this country's energy supply. We can afford to make mistakes in our national policy on jellybeans, but not on basic fuels.

ATTACHMENT 2

STATEMENT BY

REPRESENTATIVE KEITH FARRAR

BEFORE THE

SPECIAL COMMITTEE ON JUDICIARY

PROPOSAL 26

(Termination of leases on Natural Gas in Sub-surface Zones)

The concept of HB 3038 provides a method to make available more Natural Gas to the people of Kansas and at the same time increase the monetary value of the gas or oil remaining in the ground that is not presently contracted for.

For example, most of the acreage in the large Hugoton Natural Gas Field is held by oil and gas leases executed many years ago.

There are indications that deeper zones of gas and oil may be located within the presently leased area. However, most of the companies holding these old leases are hesitant to drill to the deeper zones when they feel they can spend exploratory funds in areas where they can sell the production to an INTRA STATE market without price regulation.

I feel the committee would benefit from researching the results of increased drilling activity caused by the "Westhoma Oil Co." case, in which approximately 32,000 acres were severed from the horizons above sealevel. I would think the increase would be approximately the same in percentages if applied to the approximate 2,500,000 acres in the Kansas portion of the Hugoton Field, this should result in more gas and oil being produced in Kansas.

I introduced HB 3038 last session because of my concern over dwindling natural gas supplies and the apparent disinterest that some Natural Gas Companies have in developing the deeper horizons in the Hugoton Field. Apparently the gas producer assumes the lease he holds gives him the right to produce only the shallowest and therefore usually the cheapest zone. Surely 25 years is enough time to allow development of a lease.

I am not a lawyer, however, I feel the understanding most people have of the purpose for a gas lease between a royalty owner and a gas producing company, is that the gas company wants to develop the gas resource and pay the royalty owner a set percentage of the production of that gas resource.

I can understand a gas producer not wanting to develop the more expensive lower horizons, but I cannot understand the same companies reluctance to release those zones to the royalty owner unless there is more potential value there than previously thought, or the deeper horizons are being used as collateral for loans to explore in other more potentially rewarding areas of the world.

I repeat my projection of increased drilling activity which should result in more natural gas and oil being discovered in Kansas if the Committee acts favorably on Proposal 26.

July 12, 1976

ATTACHMENT 3

STATEMENT BEFORE THE 1976
INTERIM JUDICIARY COMMITTEE

RE: PROPOSAL 26

I am Lamar Weaver, Jr., Director of the Kansas Energy Office, and I appear before this committee in response to the request of the Legislative Research Staff.

I wish to preface my remarks by noting the purpose of this committee in undertaking the Proposal No. 26 (according to my understanding) is to study the legal implications involved in assigning priority use of natural gas for irrigation purposes on land where gas wells and gathering lines are located; and the legal implications of proposed legislation which would allow the termination of natural gas leases as they apply to certain subsurface zones which have been undeveloped for at least 25 years.

First off, I must admit to no legal expertise nor does my office have immediate access to legal counsel. Thus I claim no competency in the jurisdictional aspects before the committee.

I therefore conclude that any value or substance taken from my remarks must be in what light I can shed on the natural gas situation--the posture we are in--in the state of Kansas. Such facts may assist in establishing the needs that might become part of the foundation underlying the legal rulings to be arrived at.

I will address first the HB 3038 from my point of view.

The supply-demand picture for natural gas in this country is serious and, in my opinion, rapidly approaching a critical stage. Curtailments (which is a simple way of expressing shortfall in supply VS. demand) amounted to 2.8 Tcf last year. This shortfall was not greater only because of mild winter weather and a lagging economy rebound. Federal Power Commission projections for this year (April '76 March '77) indicate curtailments will amount to 3.6 Tcf -- or about 25% of requirements. These projections are based on normal conditions -- weather, economic activity, etc.

The basis for these curtailments lie in the draw down of reserves. Interstate pipeline reserves declined 10% from 1974 to the end of 1975. In other words, production isn't keeping up with demand.

For Kansas, projected curtailments by the major interstate pipeline companies for the current year vary dependent upon their reserve supply status. However I would point out that Cities Service Gas Company, which supplies over 50% of Kansas' gas, is projecting a curtailment of 31% for Kansas.

These few facts do point up the growing shortage of natural gas in the face of increasing demand. To the extent these shortages indicate the threat to all users, regardless of priority, the facts support the need for any lawful measure that will stimulate increased recovery and production of natural gas now, and that will preclude the withholding of production in the face of this need.

As regards assigning priority use of natural gas for irrigation on land where gas wells or gathering lines are located, the legality of the proposed legislation is beyond me. The extent of my knowledge prompts me to comment as follows:

Certainly irrigation plays an extremely vital role in Kansas' agricultural productivity -- in corn, sorghum, and wheat. Almost 3,000,000 acres of Kansas farm land are under irrigation and the breakout of energy forms used to pump irrigation water is:

Natural gas	62%
Diesel	15%
Electricity	13%
LP Gas	10%

(from KCC hearings)

Some 22.5 Bcf of natural gas are now used annually for irrigation. This approximates 2.5% of Kansas annual production and less than 4% of the natural gas consumed in Kansas.

I recently had an opportunity to see firsthand the importance of irrigation to the southwestern part of our state. I was struck by the part that irrigation has played in the economic growth and prosperity of the area. But I was also impressed by the delicate balance that has been established, based upon water and natural gas as an energy source for using the water in agricultural production. All this is said in support of natural gas being given high priority as it is used for irrigation purposes.

However the issue which you examine is not just a matter of priority. It seems to me one of the key elements in the proposed legislation is the granting of "preferred use" because of location. From a detached point of view, I can subscribe to the suggested provisions on the basis of efficiency in the use of energy. Certainly using gas directly at its source as the means of powering irrigation pumps is more efficient than importing diesel or LPG or using gas or oil generated electricity. But I am not sure that furthering usage of natural gas for irrigation by mandating that it be made available to irrigators is altogether wise or desirable -- regardless of the legal questions. It has been pointed out that it would be impossible to replace the estimated 16,800 natural gas fueled irrigation pumps with heavy duty industrial diesel engines short of 8-10 years with our present production base for this equipment. Present electric generating capacity would be hard pressed now to take on the entire load. Yet we must realize that at some point in the near term future we may be forced to reserve the use of natural gas to the highest priority users. If we legislate so as to proliferate the use of natural gas for irrigation -- and I have read of a doubling of the irrigated acreage in Kansas between now and the year 2000 -- aren't we just digging ourselves into a deeper hole? Perhaps the wiser course would be to encourage the use of other fuels for irrigation purposes on an incremental basis as irrigation grows -- albeit at some greater cost for that fuel -- and at the same time attempt to guarantee the sustained supply of natural gas now being used for irrigation by according it high priority near equivalent to domestic use.

I would be happy to amplify any of my remarks or answer any questions.

ATTACHMENT 4

MEMORANDUM

TO: 1976 Special Committee on Judiciary

FROM: Revisor's Office

RE: Proposal No. 28: Child Custody Issues

Proposal No. 28 is a study of laws relating to custody of minor children subsequent to divorce. This proposal is also to include permitting award of custody to third parties.

In Kansas, the District Court in divorce, annulment, or separate maintenance actions shall make provisions regarding custody of children. The basis for the courts action is K. S. A. 1975 Supp. 60-1610(a). Section 60-1610(a) also grants a trial court power to modify or change any custody order it has made. The trial court is bested with this continuing jurisdiction to modify a custody order when justified by a change in circumstances. Before a custody order will be modified, the movant has the burden of showing the child can be better cared for if the requested change is granted. This question is subject to the sound judicial discretion of the trial court since it is in the most advantageous position to judge how the interest of a child may be best served, its decision will not be disturbed by the Kansas Supreme Court, unless there is a clear showing of an abuse of discretion.

In a long line of cases in Kansas, the Kansas Supreme Court has held where the issue of custody of minor children lies between the parents' the paramount question for determination is what best serves the interests and welfare of the children, and all other issues are subservient thereto. Whereas, in parent-third party custody suits, the Kansas Supreme Court, as late as 1976, has stated:

> "A parent who is able to care for his children and desires to do so, and who has not been found to be an unfit person to have their custody in an action or proceeding where the question is in issue, is entitled to custody, as against grandparents or others, who have no permanent or legal right to custody."

This preference for natural parents' rights in parent-third

party custody suits long has been followed in Kansas and is known as the "Parental Preference" Rule. Kansas courts feel the rule advances the child's welfare by giving custody to a fit parent, rather than a third party. This rule is based on the belief parents will best care for their children because of their natural aggection, devotion and love. Unless a court finds both parents unfit, one or both parents will receive custody under the statute. Accordingly, the Kansas Supreme Court has made the "Parental Preference" doctrine an integral part of the state's child custody law.

Custody law traces its beginning to concern for property rights which led courts to recognize the children's father as their natural guardian. Unless he were found grossly unfit, the father's custody rights preempted the mother's. Kansas, however, does not follow the common law practice of allowing the father priority in custody matters. B th the Kansas Constitution and Kansas Case law grant both parents equal custody rights.

In the case, Moudy v. Moudy, 211 Kan. 213, 505 P. 2d 764, the Kansas Supreme Court stated:

> "This court has always recognized the value of maternal love and care where children are of tender age, and, absence of finding of fitness, a mother is ordinarily entitled to the custody of a child of tender years".

There is no fixed rule, however, requiring the custody of a minor child be awarded to the mother, rather than to its father. As stated in Moudy, the real issue is which parent will do a better job of raising the children and provide a better home environment. Where all other things are equal, children of tender age will normally be placed with their mother. However, the 1976 Legislature in passing House Bill No. 2909, has basically done away with this "tender years doctrine". In House Bill No. 2909, the Kansas Legislature modified K. S. A. 1975 Supp. 60-1610, by making a new subsection (b) which states:

> "In all cases involving the custody of any minor children, the court shall consider the best interests of such children to be paramount. Where parental rights have not been terminated, neither parent shall be considered to have a vested interest in the custody of any child as against the other parent, regardless of the age of the child".

It appears the intent behind this amendment is based on the fact that to blindly award custody to a mother on the strength of the "tender years doctrine" would be to lose sight of the fact that "tender years" is merely one, albeit an important one, of the several vehicles by means of which a decision respecting the children's custodial well being may be reached. The "tender years doctrine" is not an independent absolute doctrine that runs parallel to our basic "best interests rule". It is nothing more than an important factor to be considered in determining how a child's interest and welfare are best served. Thus, if the custody action is between natural parents, there appears to be a universal agreement, the child's best interests determines who receives custody, however, this unanimity disappears when custody proceedings are between a parent and a third party. Views on parent-third party custody disputes follow two main doctrines: The traditional "parental preference rule" and the more modern "best interests of the child" doctrine.

The "best interest" rule, followed in a majority of states, primarily emphasizes the child's future welfare. More important than a parent's fitness or unfitness is the child's mental, moral and physical well-being. Courts applying this rule, however, exercise discretion in determining which factors will be considered most relevant in awarding custody. In some states following the "best interest" rule a presumption exists that custody by natural parents will be in the child's "best interest."

The more traditional view of parent-third party custody cases, however, is parents have a natural right to custody. States, such as Kansas, adhering to this minority view infer the child's best interests are advanced by granting custody to a natural parent. The parent is "prima facie entitled to custody" unless such parent is found unfit. Thus, the "parental preference" doctrine's cornerstone is the determination whether natural parents are fit or unfit. Unfitness generally is found if a parent has an unsatisfactory moral character or an unsuitable environment would be provided by the natural parent.

Kansas courts apply the "parental preference" doctrine to parent-third party suits and hold parental rights superior to the child's physical, mental and moral well being. To award custody to a third party, courts must find the parents unfit. Courts, however, can use their discretion in determining unfitness because the word is not defined statutorily. Accordingly, the trial court can apply the fitness requirement strictly and eliminate some of the "parental right" rule's harshness by finding parents unfit and awarding custody to a third party.

The "parental preference" rules is strengthened by the Kansas Supreme Court's interpretation of section 60-1610(a), in the case of Bandel v. Bandel. (211 Kan. 672, 676, 508 P. 2d 487, 490 (1973)).

> This was an appeal from an order of the trial court denying the natural mother's motion for custody of her two children and granting third parties consent to adopt the children. Jo Ellen Bandel and Delmar Bandel, husband and wife, were legally divorced in February of 1968. At a subsequent hearing, in April, each parent were found to be unfit to have the custody of their two minor children, and "permanent" custody of the children was awarded to Staley and Martha Pettibone, brother-in-law and sister of Delmar Bandel. Two years later, Mrs. Bandel petitioned the court to grant her custody of the children. Holding appellant's parental rights had been severed, the trial court rules for purposes of changing custody evidence should be presented concerning the Pettibones' fitness rather than the fitness or unfitness of the natural parent, appellant. Because the Pettibones were not alleged to be unfit, appellant's motion for custody was denied and the Pettibones' subsequent motion for permission to adopt the children was granted.

The Kansas Supreme Court reversed holding court consent to adoption had to be found upon prior termination of parental rights. The trial court's permanent custody award did not automatically sever parental rights. Therefore the trial court lacked authority to permit the Pettibones' adoption of the children before redetermining appellant's fitness. Thus, a finding of unfitness does not preclude a showing of changed circumstances sufficient to restore fitness. Such a change permits a return of custody to the natural parent. Although no legal definition of changed

circumstances "necessary to warrant a change of custody" exists, one changed circumstance especially important is the remarriage of the party seeking to change custody. Ten years after a custody award to a third party a natural parent conceivably could regain custody by showing changed circumstances. In Bandel appellant remarried and waited nearly two years before making her motion for a custody change. The supreme court's construction of the statute requires a trial court to hear evidence pertaining to a parent's rehabilitation whenever an application for a custody change is made. Therefore, a custody decree is not res judicata in the sense of an ordinary judgment.

Bandel reflects the degree to which the "parental preference" rule is ingrained in Kansas. Although the parent previously has been found unfit, the Bandel decision permits the trial court no discretion concerning the necessity of a custody change hearing. If the parent is no longer unfit, the trial court, applying the "parental preference" doctrine, may not consider whether a change in custody would benefit the child. If a natural parent is fit, he may claim changed circumstances in an attempt to regain custody. Even though the trial court was correct in its initial finding of unfitness, the court in Bandel upholds the "parental preference" doctrine and allows subsequent redetermination of the custody issue.

ATTACHMENT 5

EVIDENTIARY PRESUMPTION

HOUSE BILL NO. 3038

AN ACT to encourage exploration and production of oil and gas in the State of Kansas, to provide the citizens of the State with an increased supply of oil and gas which would redound to the economic and general benefit and welfare of the citizens and industries of the State, to assure that certain natural resources in the State of Kansas will not be unreasonably held unproductive against the public interest for speculative purposes, and to establish a clear and concise judicial standard for the enforcement of the implied covenants of reasonable development and exploration of certain leasehold estates for the mutual benefit of both lessor and lessee.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Whenever a lease permits the production of oil, gas or other hydrocarbons from subsurface horizons or zones, any person who owns a fee interest in the lands or minerals thereunder, so leased, may bring an action in district court for cancellation of such lease insofar as it covers the minerals contained in such subsurface horizons or zones which are not, at the time of the institution of such action, productive, through operations under the lease, of oil, gas or other minerals.

(b) The court may enter a judgment or decree terminating the lessee's leasehold interest insofar as it covers the minerals contained in any such non-productive subsurface zones or horizons;

(c) In such an action, the following evidentiary presumption is established;

If any person who owns such an interest in said lands produces evidence that:

(1) The document which created the leasehold interest was originally executed more than twnety-five (25) years prior to the filing of such an action; and

(2) At the time the action is brought, there was no leasehold production from the horizon or zone as to which such cancellation is sought; an evidentiary presumption arises that the lessee has breached his implied covenants of reasonable development and exploration as to any such horizon or zone.

(d) If any amendment was entered into prior to the date of the enactment hereof expressly for the purpose of waiving, limited or rearranging rights of the lessee as to production from such zone or horizon, the twenty-five (25) year period shall be computed as if the document was originally executed on the date of execution of such amendment.

(e) In such an action for cancellation, the lessee may rebut this presumption only by presenting clear and convincing evidence as to each non-productive horizon or zone as to which cancellation is sought:

(1) That lessee proceeded with reasonable diligence for the common benefit of both the lessor and the lessee in the development and exploration of the leasehold estate as to such horizon or zone; and

(2) That the lessee does not hold the same insofar as it covers such horizon or zone, for speculative purposes.

(f) If the lessee fails so to rebut the presumption, the court shall enter a judgment or decree for cancellation of the lease insofar and only insofar as it covers such non-productive horizon or zone.

Section 2. It shall be against public policy for any oil, gas or hydrocarbon lease, at its inception or by amendment, to provide for a waiver of the evidentiary presumption created by this Act.

Section 3. Except for the creation of the evidentiary presumption herein contained, this Act does not alter the rights of lessors under the common law of Kansas and the relief and remedy herein granted is not exclusive, but shall be cumulative and in addition to all other rights or remedies in existence at the time of the effective date of this Act.

Section 4. This Act shall take effect and be in force from and after its publication in the statute book.

ATTACHMENT 6

3i

Session of 1975

HOUSE BILL No. 3032

By Representative Farrar

1-26

AN ACT relating to natural gas; concerning natural gas gathering pipe lines and the use of natural gas therefrom for the purpose of providing power for agricultural irrigation purposes; prescribing certain rights and liabilities and providing for the enforcement thereof; and conferring certain powers and duties on the state corporation commission.

Be it enacted by the Legislature of the State of Kansas:

Section 1. It is hereby declared that the use of natural gas, on the premises in which it is produced or in gathering pipe lines located on lands in a proven gas field, to pump water to the surface for irrigation on such premises, is a preferred use, ~~prior in order to all other uses to which such gas may be devoted.~~

Sec. 2. Every person, firm or corporation owing or operating any well from which natural gas is produced, sold or used off the premises on which such well is located shall make available, upon request, to any person engaged in agricultural activities upon such premises, sufficient gas from the production of such well for the operation of pumps necessary for the pumping of such amount of water, produced from wells on such premises, as may be necessary and proper for the irrigation of such portion of said premises as may be devoted to the growth of agricultural products or to pasture or orchard uses. The person at whose request the gas is furnished shall receive the gas at the wellhead and pay therefor the price not to exceed that at which the gas is sold at the wellhead, but all

in order to insure the continued availability of power for irrigation in certain areas of Kansas where irrigation is vital to agricultural production.

and with the approval of the Kansas Corporation Commission

cost of installation, including the gas meter, shall be borne by the person at whose request the gas is furnished.

Sec. 3. Every person, firm or corporation owning or operating a natural gas gathering pipe line located on lands in a proven natural gas field, shall furnish to owners or operators of natural gas engines used for pumping irrigation water on such lands and shall furnish to owners or operators of such irrigation wells, if requested to do so, natural gas for the operation of engines used for pumping irrigation water. The price charged to the owner or operator of such irrigation wells shall not be more than twenty-five percent (25%) above the prevailing wellhead price. The owners or operators of such gathering line shall make connection and furnish the gas meter, but all costs of installation, including this cost of the gas meter, shall be borne by the owner or operator of such irrigation well.

Sec. 4. It shall be permissible when agreeable to all parties mentioned in sections 2 and 3 of this act, to substitute an hour meter on such engine in lieu of a natural gas meter as a method of measuring the amount of the gas so used.

Sec. 5. The state corporation commission is hereby vested with jurisdiction over the sales of natural gas pursuant to this section, and may adopt such rules and regulations as may be necessary with respect thereto, but nothing in this act shall create in any manner an obligation or duty on the part of the operator of any well or gathering pipe line, who furnishes gas under the provisions of this act, to assume in any way public utility duties to the public at large, except as such duties may arise from such operator's acts separate and apart from any performance of obligations imposed under this act.

Sec. 6. Any owner or operator of a well who fails to comply with any duty imposed by this act shall be liable to the person or

persons aggrieved for all damages suffered as a result thereof, including any diminution in yield from said land which may arise from inability to irrigate the same because of or arising out of the failure to perform such duty. Any person entitled to rights under the provisions of this act may bring an action or proceeding in the district court of the county wherein the natural gas well or natural gas gathering pipe line is situated to protect and enforce any or all such rights.

Sec. 7. The provisions of this act are severable and, if any clause, sentence, paragraph or section hereof shall be held void, the decision of the court shall not affect or impair any of the remaining portions or provisions of the act.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

ATTACHMENT 7

STATEMENT OF
LELAND E. NORDLING, ASSISTANT SECRETARY
SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION
HUGOTON, KANSAS 67951

July 13, 1976

To the Honorable Members of the
Interim Special Committee on Judiciary:

PROPOSAL NO. 26

(Natural Gas for Irrigation)

I am appearing before your committee as Assistant Secretary of the Southwest Kansas Royalty Owners Association in support of HB 3032. Our association is a non-profit Kansas corporation, organized in 1948. We have a paid-up membership of over 2,000 members. Our membership is limited to landowners owning mineral interests in the Kansas portion of the Hugoton Field - lessors under oil and gas lease as distinguished from oil and gas lessees, producers, operators, or working interest owners. While membership in our organization is voluntary, our members own mineral interests in approximately 1,200,000 acres, or almost half of the producing acreage in the Hugoton Field.

GAS FIELDS IN SOUTHWEST KANSAS

There are five major gas fields located in the nine Southwest Kansas Counties of Seward, Stevens, Morton, Stanton, Grant, Haskell, Finney, Kearny, and Hamilton counties. They are the Hugoton, Panoma Council Grove, Greenwood, Arkalon and Bradshaw Fields.

According to information furnished by the Conservation Division of the Kansas Corporation Commission, as of January 1, 1976, there were 5,389 producing gas wells located in these five fields. In 1975, these wells in the five fields produced 711,439,975 Mcf of natural gas, or 83.6% of the total 1975 natural gas production in Kansas of 850,786,000. There are additional gas wells producing from smaller gas fields. Thus, in the nine southwestern counties are located over 60% of gas wells in Kansas which produce about 85% of the natural gas produced in Kansas. While the natural gas production decreased 4.9% in Kansas in 1975 compared with 1974, the production in these counties decreased a little less than the rest of the state.

1975 Gas Production

Major Gas Fields in SW Kansas	No. of Wells	Gas Production in Mcf	Per Cent of Total Kansas Gas Production
Kansas	3,965	594,355,000	69.9%
Panoma	1,003	79,194,000	9.4%
Greenwood	262	27,956,563	3.2%
Arkalon	25	3,861,779	0.4%
Bradshaw	134	6,072,633	0.7%
	5,389	711,439,975	83.6%
Kansas 1975 Total Gas Wells in Production			8,865
Kansas 1975 Total Gas Production			850,786,000 Mcf

In the Kansas portion of the Hugoton Field, there are slightly over 2,500,000 producing acres. The field covers parts of nine Southwest Kansas Counties of Seward, Stevens, Morton, Stanton, Grant, Haskell, Finney, Kearny and Hamilton counties, and extends through the Oklahoma Panhandle into Texas. The Guymon-Hugoton Field has 1357 gas wells and encompasses 1,110,720 acres. The Texas portion of the Hugoton Field has 972 wells and covers 622,080 acres; making the total acres in the Hugoton Field of 4,232,800 acres and 6268 gas wells. The field extends about 150 miles north and south and forty to fifty miles east and west. Production of Hugoton pay gas is from a depth of between 2700 and 2900 feet. Within the confines of the Hugoton Field lies the Panoma Council Grove Field of approximately 1,000,000 acres producing gas from formations lying immediately below the Hugoton pay

As we view it, the problems of irrigation farmers in the Hugoton Field can be stated as follows:

1. There is no law requiring the producers to furnish natural gas at the wellhead for irrigation use.

2. There is no regulation of irrigation gas sales from the producers.

3. There is a lack of statutory control through the Kansas Corporation Commission over the irrigation gas sales contracts of producers.

4. It is becoming most difficult for the irrigation farmer to obtain natural gas for irrigation pumping.

As you undoubtedly are aware, the idea behind Rep. Farrar's bill for gas for irrigation farmers is not new. The Kansas Corporation Commission, while having no present statutory authority to order irrigation gas connections, has, since 1956, encouraged producers and gas purchasers in the Hugoton Gas Field to cooperate with farmers in providing natural gas being produced from their lands as a fuel source. Most companies in our area have been cooperating 100%, but circumstances are changing and priorities desperately need to be established in order to ensure that natural gas being produced from Kansas lands will be available for Kansas farmers, thus protecting the vast agricultural wealth of our state.

Because of the natural gas shortage, some companies in the Field are now reluctant to permit hookups without full ownership of the minerals, while in other instances, companies are refusing to allow irrigation connections under any circumstances. Other companies are charging considerably above the wellhead price being paid to the landowners as royalty for gas produced from their property. Land potentially suitable for irrigation is going undeveloped because natural gas is not available as a fuel source, and alternate fuels are too costly to use. If you are

interested, I can name specific companies and specific circumstances to support this statement.

Alternate fuels are simply not available. An analogy to the problem of our Western Kansas farmers would be for Central and Eastern Kansas farmers, desiring to use electricity for irrigation purposes, to be refused a connection because Kansas Power and Light or Kansas Gas and Electric had already dedicated the electricity to Topeka or Wichita.

Opponents of the irrigation bill will undoubtedly argue that such legislation is unconstitutional and that it will be in direct conflict with long-term gas purchase contracts executed years ago dedicating our Kansas gas to consumers in the Detroit and Chicago areas in the Midwest and to Eastern consumers. As for these "life of the field" contracts, these are the same contracts under which natural gas is presently being supplied for irrigation purposes!

As for constitutionality of the irrigation bill, I wonder who will raise the constitution question when it obviously is for the best interests of the citizens of Kansas to have Kansas gas available for Kansas farmers.

All of the powers in Washington, including the President of the United States, members of Congress, the Federal Power Commission, the Secretary of Agriculture, and the Federal Energy

Administrator have gone on record as recognizing the need to establish a high priority for natural gas for agricultural use. The irrigation gas bill simply carries this recognition through on a state level.

Natural Gas for Irrigation Pumping

Many of our members are irrigation farmers or own land under irrigation. A substantial portion of the 2,500,000 acres in the Kansas portion of the Hugoton Field is under irrigation. One of the primary reasons for the development of this former "dustbowl" area has been the availability of natural gas to supply fuel for the irrigation engines.

Information furnished by the U. S. Geological Survey shows there are an estimated 15,000 irrigation wells in Kansas irrigating approximately 2,800,000 acres. Seven thousand of these irrigation wells are irrigating 1,400,000 acres in Southwest Kansas. Ninety percent of the irrigation wells are pumped by motors using natural gas. I understand that between one-fourth and one-third of the land over good sources of irrigation water is being irrigated. The potential of irrigated land in Kansas is between 8,000,000 and 10,000,000 acres.

It is estimated that irrigation has increased the economy in Kansas in the neighborhood of one billion dollars per

year. Much of the increased production in Southwest Kansas would be lost if the land under irrigation would have to revert to dry land farming.

Irrigation has changed the semi-arid regions of Western Kansas to some of the most productive agricultural land in Kansas. This increased food production is necessary for the feeding of the rapidly increasing world population.

It is estimated the world population is increasing at the rate of eighty million people per year. This means in two and a half years, this increase is the equivalent of adding another country to the world population as large as the population of the United States. Kansas is doing more than its share in feeding the world but food production in Kansas will be drastically decreased if natural gas is not available as a fuel source to operate the irrigation engines.

As you are aware, the Federal Power Commission caused a great deal of concern and alarm throughout our area when it issued an order last December, in Docket No. RP 72-6 (El Paso Natural Gas Company), classifying natural gas for irrigation pumping as industrial use and subjecting irrigation farmers to interruptible gas service. Immediately after learning about the FPC ruling in February, 1975, the Board of Directors of our Association adopted a resolution protesting such classification. A copy of our resolution was mailed to the President of the United States,

members of Congress, Federal Power Commission members, the Secretary of Agriculture, the Federal Energy Administrator, and the governors of the states located within the High Plains area. A copy of the resolution is attached for your reference.

While the FPC order applies only to El Paso's customers, nevertheless, it is our concern and the concern of irrigation farmers in the area that the order can directly affect all irrigation farmers in the United States who use natural gas as a fuel source.

Under its curtailment guidelines, the FPC places residential users and small commercial users in the top priority, or Priority 1. In the second priority are large commercial users. In the Priority 3 are all industrial users not included in Priority 2. The FPC El Paso order placed irrigation users in Priority 3.

In February and March of 1975, El Paso irrigation gas users in Texas, New Mexico, and Arizona filed motions to intervene, but the FPC ruled that it was too late to intervene except on a limited basis. The primary purpose of the new hearings was to ascertain whether El Paso had correctly determined that none of the volumes it delivers for irrigation purposes is classifiable as "process gas" includable within Priority 2. Representing the El Paso irrigation users were Southwest Natural Gas Consumers,

Public Service Commission of the State of New Mexico, Tucson Gas and Electric Company, the Plains Irrigation Users Association, the State of Oklahoma, and the Arizona Fuel Users Association.

Hearings on the motions to intervene began April 8, 1975, and concluded on June 27, 1975, and were held in Phoenix, Arizona, Albuquerque, New Mexico, and Lubbock, Texas, in addition to Washington, D. C. The hearings were held before the Honorable Curtis L. Wagner, Jr., Presiding Administrative Law Judge. During the 39 days of hearings, 137 witnesses gave extensive and detailed testimony.

On July 22, 1975, Judge Wagner handed down his decision, ruling that all natural gas delivered by El Paso on its system for irrigation pumping is "process gas" and qualifies for inclusion in Priority 2 of El Paso's curtailment plan.

Among the findings of Judge Wagner are the following:

> "The Presiding Judge finds that all natural gas used for agricultural irrigation pumping purposes on the El Paso Natural Gas Company system meets the criterion for "process gas" because of the extremely high cost of conversion to alternate fuels coupled with the physical nonavailability of alternate fuels in the foreseeable future..."
>
> "The cost to convert the engine or purchase a new engine, together with the cost of fuel supply tanks is prohibitive to most farmers and would force them out of business in most instances. Farmers are unique in the business world in that they cannot pass on increased cost of doing business, including costs of conversion and resulting increased cost of operation..."

"Aside from the extremely high actual dollar economic cost of conversion, an adequate supply of gasoline and/or diesel oil in the involved areas of the Southwest to meet the needs of irrigation farmers should conversion become necessary is just not available..."

"There is no answer for the irrigation farmers in Arizona, New Mexico, and Texas in the foreseeable future except natural gas. It is clear beyond any doubt that any curtailment will be disastrous to the irrigation farmers not only causing severe crop damage, but rendering it impossible for him to get the necessary financing to put the crop in to start with. Consequently, he is faced with three alternative courses of action. One, he can fold up his tent, sell his land if he can find a buyer, and call it quits. Two, he can go to dry-land farming, except in Arizona where there is no dry-land farming whatsoever, with tremendous drops in per acre yields making the profitability of the operation decidedly questionable. Three, he can change to another fuel for his irrigation pumping which will raise the cost of pumping to a point that the return realized on the farming operation will be noncompensatory by either converting his existing engine or by purchasing a new engine with financing for either being doubtful, and the availability of the other fuels being nonexistent at the present time."

To my knowledge, no Kansas irrigation users are involved in the El Paso proceeding. However, there are Kansas irrigation farmers who will be affected by the Cities Service Company curtailment proceedings being had in FPC Docket No. 75-62. The Southwest Kansas Irrigation Association, and the Texas County Irrigation and Water Resources Association headquartered in Guymon, Oklahoma, have intervened and introduced testimony on behalf of irrigation farmers.

As I understand the Cities Service curtailment plan, Cities has placed most of its irrigation users in Priority 1 and Priority 2, with only a handful of users in Priority 3. The company's plan is based on usage.

While curtailment of natural gas for irrigation pumping by the Federal Power Commission would adversely affect irrigation farmers in the Southwest Kansas area, most of the irrigation gas hookups in the Hugoton Field are at the wellhead. For many years, nearly all of the lessee-producers in the field have voluntarily permitted farmers to purchase natural gas at the wellhead for irrigation. This has been with the cooperation and encouragement of the Kansas Corporation Commission. On May 9, 1956, the Commission issued an Administrative Bulletin setting forth its prescribed rules governing the use of natural gas for irrigation. A copy of this bulletin is attached.

In 1970, at the request of Dale E. Saffels, Chairman of the State Corporation Commission, a study was made by the Committee on Labor and Industries through the Kansas Legislative Council to determine if legislation could be enacted to ensure the availability of natural gas for irrigation.

Hearings were conducted in Garden City and Topeka in the Fall of 1970. Officials from our association and the Southwest Kansas Irrigation Association presented testimony at the

Garden City hearing but did not participate in the Topeka hearing. It is my understanding there was a determination by the study group that no legislation was needed at that time, principally because the lessee-producers were cooperating with the irrigation farmers on a voluntary basis.

In his request to the Kansas Legislature in 1970, Mr. Saffels pointed out that natural gas was the best known fuel for supplying power to the irrigation plants when it is available. However, there is no regulation of the sales in areas not certified to a public utility, and it is sometimes very difficult to obtain natural gas for the irrigation farmer. Mr. Saffels expressed concern over anticipated problems in the future as the field is depleted. He also called attention to the need to provide for availability of natural gas as a fuel for irrigation purposes, to insure equity, and to prevent prejudicial rates between users of the natural gas.

A further concern of the irrigation farmer is that at the present rate of removal, there will be no gas for them to use at any price in a matter of a few years. Many of the irrigation farmers own the minerals under their irrigated land. They have made large capital investments, based upon the use of natural gas, which will take years to pay. It is quite possible that before the equipment is paid for, the gas wells on their land will be depleted.

The recognized discovery well in the Hugoton Field was drilled near Hugoton in 1927, with most of the development of the field taking place during the 1930's, 1940's and early 1950's. Since that time, most of the gas from the Hugoton Field has been transported out-of-state by interstate pipeline companies for the use and benefit of consumers residing in the north central and eastern parts of our country, principally around the Detroit and Minneapolis areas. Consumers in the Denver area are also benefiting from our gas.

Federal Power Commission regulation of wellhead and field deliveries of gas have made it possible for out-of-state users to obtain what appeared to be unlimited quantities of gas from the Hugoton Field at artificially low regulated rates. This has hastened the depletion of our reserves and postponed the development of additional reserves or continued use of alternative fuel sources.

Bearing in mind that 79.3% of the total Kansas 1975 gas production came from the Hugoton and Panoma Fields in Southwestern Kansas. The amount paid the producer for most of the shallow Hugoton pay gas is 13.5¢ per Mcf, or less, possibly the lowest in the nation! The 13.5¢ figure represents the present area regulated rate for shallow gas in the Hugoton Field. The amount received by producers for Panoma Council Grove gas ranges from 18.5¢ per Mcf to in the neighborhood of 75¢ per Mcf, depending upon the size of the producing company and the date wells were commenced, even

though the gas goes into the same pipeline from the same land at the same time. This demonstrates the utter artificiality of bureaucratic regulation.

By way of comparison, in January 1975, the national average regulated rate paid for gas purchased by major interstate pipeline companies from domestic producers was 29.5¢ per Mcf!

By way of further comparison, one barrel of fuel oil (42 gallons) is equivalent in heat energy to 5.8 Mcf of natural gas. Natural gas, paid for at 13.5¢ per Mcf at the wellhead, is equivalent to crude oil selling at the wellhead at 78¢ per barrel. Natural gas, at 13.5¢ per Mcf, compares with fuel oil selling at 2¢ per gallon and electricity selling at 1/20 of 1¢ per kilowatt hour.

In 1954, when the Federal Power Commission asserted jurisdiction over producers selling gas to interstate pipeline companies, the average wellhead rate in the Hugoton Field was 11¢ per Mcf, compared to crude oil selling at the wellhead for $2.90 per barrel. The present wellhead rate being paid for Hugoton pay gas is slightly under 13.5¢ per Mcf compared to the present posted field price for oil in Kansas of $12.75 per barrel, the price of oil being four times as much as paid in 1954.

State of Kansas

ROBERT B. DOCKING Governor
DALE E. SAFFELS Chairman
JULES V. DOTY Commissioner
JOHN W. CUNNINGHAM Commissioner
RAYMOND B. HARVEY Secretary
JACK GLAVES Gen. Counsel

State Corporation Commission
TOPEKA, KANSAS 66612

March 5, 1970

The Honorable Glee Smith
President Pro Tem
Kansas State Senate
State House
Topeka, Kansas

Re: Irrigation Fuel Gas - State of Kansas

Dear Glee:

For many years we have had continuing problems with requests for natural gas fuel to be used for irrigation systems in certain areas of Kansas.

For several sessions in the past there have been attempts to give legislative guidelines for regulation of this subject in Kansas.

Natural gas is the best known fuel for supplying power to irrigation plants when it is available, but because there is no regulation of these sales in areas not certified to a public utility, it sometimes is very difficult to obtain this natural gas for the irrigation farmer and because of this there are literally dozens of different types of contracts and prices for this fuel which, in the opinion of this Commission, makes it discriminatory in certain cases to use natural gas for fuel for irrigation.

We asked Mr. Lester Wilkonson to make a study of this last fall and I hand you a copy of a letter received from him together with a list showing the number of wells in the Hugoton Gas Field area, along with a chart showing examples of different contracts entered into between the farmer and the supplier.

In addition to this you will find that the several public utilities who serve areas using natural gas for irrigation have even different costs to the farmers in these cases.

This has not been presented to the Legislature during this session as I believe that the study that is required on this subject would require more time than could be spent by a committee during a regular session.

We do feel that the Legislature, either through the service of an Interim Committee or the Legislative Council, should make a study of this subject to see if the Legislature desires to enact legislation in future sessions on this subject.

In anticipating problems in the future, I believe that we will run into even more difficulty as the Hugoton Field and other fields in Kansas are depleted, as there will not be natural gas available for the farmer, and provision for this particular problem should be provided to insure equity and to prevent prejudicial rates between users of the natural gas.

Although the problem might be greater in the Hugoton Gas Field because this is the largest gas source in America, this same problem exists in other areas of irrigation that are blessed with a supply of natural gas.

You are requested to submit this matter to a proper Interim Committee of the Legislature or to the Legislative Council if you so desire for the purpose of making an interim study to provide guidelines in this area.

Please be assured that this Commission is available to assist you in any way in this connection.

You are further advised that this request is being made by this Commission in cooperation with the Southwest Kansas Royalty Owners Association and the Southwest Kansas Irrigation Association.

You are further advised that identical letter to this is being submitted to the Honorable Calvin Strowig, Speaker of the House of Representatives, evidencing a similar request to that body.

Very truly yours,

Dale E. Saffels, Chairman

DES/tk

cc: Southwest Kansas R oyalty Owners Association
Southwest Kansas Irrigation Association

Enclosures

STATE OF KANSAS
FRED HALL, GOVERNOR

STATE CORPORATION COMMISSION
TOPEKA

May 9, 1956

ADMINISTRATIVE BULLETIN

TO ALL PARTIES OF INTEREST:

In re: Use of Gas for Irrigation Purposes.

It has long been the policy of this Commission that the use of gas for irrigation purposes on a landowners' premises is a lawful use under Kansas statutes and that it is highly desirable that natural gas produced from their land be made available to landowners for such purposes wherever possible.

Pursuant to a recent study conducted by the staff, the Commission has reconsidered the entire matter giving particular attention to the farmers' need for this most efficient and economical fuel, and has revised its former policy as set forth hereinafter. Subject to the following prescribed conditions and limitations governing use of natural gas for irrigation purposes, gas may be made available to any farmer desiring it for that use who will take delivery at the wellhead, make his own connection to the wellhead and transport his own gas to his irrigation pumps:

(1) Contracts entered into between the farmer-user and the producing company must be ratified by the contract purchaser of gas produced from the well.

(2) Each such contract shall be submitted to the Director of Conservation for approval and a copy as approved filed in his office before any gas is delivered thereunder.

(3) All gas so furnished shall be metered and proper records of same shall be kept in a manner approved by the Director of Conservation.

(4) The amount of gas taken from a well and furnished to a farmer-user for irrigation purposes shall be charged against the monthly current allowable for such well.

(5) It is understood that producing companies will charge a nominal price for gas furnished for irrigation purposes, and the price shall be uniform to all such users.

The cooperation of all parties interested in this matter is invited.

STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

By Raymond B. Harvey
Raymond B. Harvey, Secretary

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION
HUGOTON, KANSAS 67951

RESOLUTION

WHEREAS, the Southwest Kansas Royalty Owners Association is a non-profit Kansas corporation organized in 1948. Its membership consists of over 2,000 landowners with mineral interests in the Kansas portion of the Hugoton Gas Field. The Hugoton Gas Field comprises a substantial portion of nine Southwest Kansas counties, extends through the Panhandle of Oklahoma into Texas, and adjoins the large East and West Panhandle fields of Texas. The Hugoton field and East and West Panhandle fields in Kansas, Oklahoma and Texas cover approximately 33,000 square miles and over 21 million acres. Much of the land in this area is under irrigation, and the chief source of fuel to operate the irrigation engines comes from the natural gas produced from the land; and

WHEREAS, on December 19, 1974, the Federal Power Commission, in Opinion No. 697-A entered in Docket No. RP72-6, (El Paso Natural Gas Company), classified natural gas for irrigation pumping as an industrial use, thus placing its use on an interruptible basis. The FPC order further prohibits considering the use of butane and propane as an alternate fuel; and

WHEREAS, FPC Opinion No. 697-A applies only to El Paso Natural Gas customers, nevertheless, it is the concern of the members of this Association and irrigation farmers in the area that the order can directly affect all irrigation farmers in the United States using natural gas as a fuel source; and

WHEREAS, if this policy is made applicable to other gas companies and the use of natural gas for irrigation purposes is curtailed, the following results can be expected:

(1) Irrigation farming requires water to be available at critical times during the growing season of all crops. If the fuel source is not available at a critical stage of growth of the plant, there can be crop failure. Fertilizer is necessary to increase crop production and requires water to utilize the chemicals. If there is not the proper balance of water and fertilizer, there will be a drastic decrease in production.

(2) The FPC order eliminates considering the use of propane and butane as alternate sources of fuel supply, leaving only diesel, gasoline or electricity as alternate sources. Not only would the cost of fuel be greatly increased, conversion to alternate energy would require a different type of irrigation engine, as well as supply tanks and other equipment to operate the engines. There is already a critical shortage of diesel fuel and gasoline, as well as fuel tanks.

(3) Most industrial plants are designed for alternate fuels and the costs of the equipment and fuel are being passed on to the consumer. The irrigation farmer does not have standby equipment to convert to other fuels because of prohibitive costs, which cannot be passed on to the consumer.

(4) FPC Opinion No. 697-A is in direct conflict with the position taken by President Ford, by the Federal Energy Administration, by the Department of Agriculture, and by Congressmen introducing legislation declaring top priority for the use of natural gas and other fossil fuels in food production.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION, on behalf of its members and on behalf of thousands of irrigation farmers throughout the United States, that it hereby opposes the action of the Federal Power Commission in classifying natural gas for irrigation pumping as an industrial use on an interruptible basis, and urges the Commission to reconsider such action and classify natural gas for irrigation pumping to the highest priority of use.

BE IT FURTHER RESOLVED, that the Secretary of this Association is hereby directed forthwith to transmit a copy of this Resolution to the President of the United States, members of Congress, the Federal Power Commission members, the Secretary of Agriculture, the Federal Energy Administrator, and the Governors of the states located within the affected area.

ADOPTED this 19th day of February, 1975, by the Board of Directors of the Southwest Kansas Royalty Owners Association.

Attest:

B. E. Nordling, Secretary

Robert Larrabee, President

ATTACHMENT

STATEMENT OF
LELAND E. NORDLING, ASSISTANT SECRETARY
SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION
HUGOTON, KANSAS 67951

July 13, 1976

To the Honorable Members of the
Interim Special Committee on Judiciary:

PROPOSAL NO. 26

(Termination of leases on Natural Gas in Sub-surface Zones)

Much of the acreage in the Hugoton Field is held by oil and gas leases executed years ago with the primary terms of the leases long since expired. It is fortunate that the lease structure is such that royalty payments are not subject to regulated rates. If it were otherwise, landowners would be better off financially if the gas wells on their land were shut-in and they were compensated by shut-in royalty, as provided under lease terms, at the rate of 50¢ to $1.00 per acre per year, in lieu of royalty payments.

Competent engineers and geologists have from time to time indicated that the deeper horizons underlining the Hugoton Field contain large untapped oil and gas reserves, as evidenced by scattered deep test wells and geological and engineering data. To date, some 103 oil fields and 63 small gas fields have already been discovered in the Hugoton Field area at depths below the Hugoton and Panoma gas zones. Yet much of the deeper horizons underlying the 2,500,000 acres in the Hugoton Field are unexplored or undeveloped.

Members of our association have for many years urged their lessees to explore the deeper horizons below the shallow Hugoton pay. However, the lessees generally refuse to do so giving as a reason that they dedicated to interstate pipeline companies not only the gas to be produced from the shallow horizons but any natural gas that might later be discovered or produced from deeper horizons, and that FPC regulation has now made it impossible to shake any of the gas free of bureaucratcially low rates. These dedications usually extend for the life of any present or future production. Because of FPC rate regulations, the lessees prefer to and do expend their exploratory funds in searching for oil and gas in foreign countries or for gas in areas where they can sell gas to the intrastate market without rate regulation.

Nationwide Rates for New Gas

In June, 1974, the Federal Power Commission established a single nationwide rate for new interstate natural gas at the producer's level. A single uniform national ceiling of 42¢ per Mcf was established for all new gas produced from wells commenced on or after January 1, 1973, or for gas delivered under contracts executed on or after that date. By subsequent orders, the FPC has permitted the rate to be increased to 50¢ per Mcf effective as of June 1, 1974, and 51¢ per Mcf effective on January 1, 1975.

Small independent producers are permitted to receive 150% of the nationwide rate subject to FPC approval.

As for old gas, the Federal Power Commission, in Docket No. R-478, issued a notice initiating a "Nationwide Rulemaking To Establish Just and Reasonable Rates For Natural Gas Produced From Wells Commenced Before January 1, 1973." The Commission has issued an order of 23¢ per Mcf for a nationwide rate for old gas effective January 1, 1976, and to be increased to 29.5¢ per Mcf effective July 1, 1976, however as yet no actual increase in rates for old gas has been paid to the royalty owners.

There is no justification for such an arbitrary position as to flowing gas. Obviously, old gas has the same worth to the consumer as new gas.

Extension of the Life of the Hugoton Field

At the present time the projection of the life of the Hugoton Field has been estimated to be another ten to fifteen years. At the time of first production, the Hugoton Field had a wellhead pressure of between 390-430 psia.

The present field pressure is down to between 175 to 200 psia. Abandonment pressure of the field is estimated to be 50 psia, which will leave a substantial amount of gas in place.

It is my understanding that, depending upon the degree of technology and the rate paid by the pipeline company to the producer for the gas, it could be economically feasible to produce gas from the Hugoton Field at pressures much lower than 50 psia. In fact, I understand that vacuum pumps can be installed on wells and gas removed even below zero pressure. Thus, there is a good possibility the life of the Hugoton Field can be extended by several years if there is a substantial increase in the well-head rate for Hugoton pay gas and if there is the economic incentive for the producers to incur the additional expense of removing the gas by mechancial means.

In the meantime, we have millions of acres in Southwestern Kansas that have lower formations below 3400 feet that have never been tested by the major oil and gas producing companies.

You and I do not last forever but a corporation does especially a major oil and gas company.

These major oil companies are holding these deeper formations for their whims. They have shallow production on the acreage and will not develop the lower formations until they see fit or until the State governments make a decision for the welfare of their state that such formations should be developed or released so an independent company can come in and find new sources of energy for our state and nation.

Our nation and our state is in an energy crisis. It is my sincere belief that our state can relieve some of this energy crisis by the passage of HB 3038.

ATTACHMENT 9

Southwest Kansas Irrigation Association
P. O. Box 781
Liberal, Kansas

Statement of Frank Trotman, Executive Secretary for Southwest Kansas Irrigation Association Before the Special Committee on Judiciary, July 13, 1976.

I am Frank Trotman, executive secretary for Southwest Kansas Irrigation Association headquartered in Ulysses, Kansas. Our association represents approximately 1000 irrigation farmers in fourteen Southwest Kansas counties.

I would like to speak in support of Rep. Keith Farrar's bill entitled HB3038 "An Act related to natural gas, providing for the termination of certain rights and prescribing certain conditions, restrictions and procedures therefor."

I understand the purpose of this committee to be a consideration of the legal implications of HB3038. My comments today will be directed to some court rulings as applied to gas leses.

Section 1 (b) of HB3038 sets out certain conditions to be met before a court decree to terminate the lease can be ordered. These conditions are not unreasonable nor are they contrary to legal precedent.

In many court rulings, shorter time periods than 25 years have been established for lessee's to develope and produce minerals or terminate the lease. The implied covenant fairly to exhaust the capability of the land to produce minerals subsists. If the land will not produce minerals in paying quantities, and the lessee would not be justified in drilling more wells, he may not continue to hold the lease by extending the term. If the land is burdened with a lease, the landowner is entitled to have that land prospected

within a reasonable time.(1)

The ordinary and legal meaning of the word "royalty" as applied to a gas lease is the pompensation provided in the lease for the privilege of drilling and producing gas, and consists of a share in the gas produced. It does not include a perpetual interest in the gas in the ground. The ordinary meaning of the word "royalty" in an existing gas lease cannot be enlarged by proof of usage and custom so as to include a nonveyance of gas in place in the land and the perpetual right to go upon the land and explore and produce gas. (2).

The publication American Jurisprudence, Section 121 Volume 38 Second Edition pages 586 and 587 states, "The lessee is not entitled to sink a well upon the leased premises, discover a trace of oil or gas, and then be idle and insist that this discovery vested in him a right to produce at any time he might choose to operate in the future." Warfield Natural Gas Co. vs Allen 248Ky646 is referred to as an example of this rule.

American Jurisprudence Section 99 Volume 38 Second Edition page 566 states, "The doctrine under which forfeiture provisions in gas and oil leases are favored has sometimes been based on the theory that delay on the part of the lessee in carrying out the objects of the lease may, as a result of the elusive and fugacious nature of gas and oil, completely prevent the attainment of those objects, and that, therefore, time must be regarded as of the essence of the agreement."

In discussing implied provisions of a lease, the same publication on page 559 states that a lessee must market the production within a reasonable time and further comments that the lessee will do nothing to impair the value of the lease to the lessor.

And there is judicial support for the rule declaring that by virtue of the doctrine of implied convenants, a rigid duty is imposed on the lessee to protect the leased premises from substantial drainage by wells on lands adjoining the leasehold premises by the drilling of sufficient numbers of wells. There is support for the view that a right in the lessee to defer development by the payment of delay rentals will not necessarily prevent the courts from requiring the lessee to drill protection wells on pain of forfeiture. (3)

The purview of Rep. Farrar's HB3038 embodies these judicial considerations. The bill is more than reasonable in its stipulation of time, is quite clear in its intent only to provide for court decree for termination if no effort to produce natural gas is made, and excludes leasehold premises that are presently occupied by a producing well or well bofe or well or well bore presently being used as an injection aid in oil or gas production. The proposed legislation neither limits nor provides unfair ad vantage to the lessee or lessor bound together in an agreement to develop the lands' mineral producing capability for the benefit of both. Its thrust, as in the thrust of judicial decision, is to eliminate perpetual holding of leases for speculative purposes of the lessee without regard for the lessor.

It would seem that in a time when full development of our natural gas resources is essential for our energy needs, such a bill would aid exploration for and development of production.

I hope that these judicial references have not been burdensome, but rather adequate to show prevailing legal consideration pertaining to aspects of HB3038. I thank you for the opportunity to speak in favor of this bill.

ATTACHMENT 10

Southwest Kansas Irrigation Association
P. O. Box 781
Liberal, Kansas

Statement of Eugene Shore, President of
Southwest Kansas Irrigation Association
Before the Special Committee on Judiciary.

July 13, 1976

I am Eugene Shore. I live and farm in Stanton County and am president of the Southwest Kansas Irrigation Association, which represents about half of Kansas' three million acres of irrigated cropland.

I would like to speak in favor of house bill 3032. During the past year, energy for irrigation has been the subject of many hearings before the Federal Power Commission, State Corporation Commission, and both state and national congressional committees on energy. The hearings have pretty well been consistent in showing that prior to two years ago irrigation use was so small it was ignored by everyone. Today, while irrigation uses less than 2 per cent of the available natural gas, everyone wants that two per cent. The findings have consistently shown irrigation to be a high priority for which there is no substitute, therefore an uninterruptible supply should be maintained. In forty years we have developed an agricultural economy in Southwest Kansas, totally dependent upon irrigation and the business it generates. Developing Western Kansas agriculture has placed Kansas among the top states in grain-fed beef, and in 1975 third in the nation in dollars worth of agricultural exports. These are dollars to Kansas to be spent in Kansas. The development over 40 years is due to land, water, and natural gas. All three are necessary to a vigorous irrigated agricultural economy in Southwest Kansas.

Water and natural gas are natural resources that are available in particular locations and are similar in production for man's use. The irrigation farmer in Southwest Kansas whose land sits on top of an underground water supply and an underground natural gas supply views his access to those supplies in much the same way a landowner in Eastern Kansas views his access to a stream or river flowing across his property. Should the Eastern Kansan be denied the right to use water from that stream or river to water his cattle because some interest downstream has need of it? Should a Western Kansas irrigator be denied use of natural gas when it is produced from his land or flows across his land in pipes? House Bill 3032 does not seek free use of that natural gas, but states the irrigator will pay cost plus 25 per cent for pipeline gas and wellhead price for gas at the well. The bill further requires the irrigator to stand the costs of installing facilities for delivery of that gas to his irrigation engines.

I would also add that HB3032 does not create a new situation. It simply makes universal what is already being practices by many gas companies. It corrects the landowners disadvantage in having the wrong gas company to deal with.

Kansas has been generous in sharing her natural gas, but remiss in protecting its own interests by failure to insure adequate supplies of gas for its own citizens. It is ridiculous for the people who own natural gas to be refused the opportunity to use a small per cent of it for their preservation, and the benefit of the state where the gas is produced.

Irrigation gas can be lost by refusal of a company to hook up the irrigator, or by pricing it out of the market. HB3032 would assure irrigators adequate irrigation gas at a reasonable and fair price. Producers, and pipeline companies would also be protected as to a fair rate of return on their investment. The state of Kansas would be protected by insuring the continuance of agricultural dollars flowing through the economy. It is important to realize that irrigation gas used in Kansas produces dollars which multiply almost six times as they pass through the economy. Gas placed in the pipeline pass that multiplier effect on to another state.

We want to share our resource, but let's guarantee Kansans a piece of the pie by passing HB3032.

ATTACHMENT II

Presentation to Kansas
Special Committee on Judiciary
July 13, 1976

My name is Stuart Wheeler.

I am the Manager of Governmental Affairs for Kansas-Nebraska Natural Gas Company, Inc.

Kansas-Nebraska is a natural gas company engaged in the business of producing, purchasing, transporting and selling natural gas along its pipeline system located in a number of communities and in rural areas in the states of Colorado, Kansas, Nebraska, Wyoming, and Texas and wholesale to other gas distribution pipeline systems for resale in the states of Colorado, Kansas and Nebraska.

Kansas-Nebraska currently obtains its supply of natural gas from the Anadarko Basin in Kansas, Oklahoma and Texas, the Denver-Julesburg Basin in Colorado and Nebraska, and the Wind River and Powder River Basins in Wyoming and by pipeline purchases from Northern Natural Gas Company in Nebraska and Colorado Interstate Gas Company in Colorado.

Because Kansas-Nebraska transports gas for resale in interstate commerce the company is subject to the jurisdiction of the Federal Power Commission as provided by the Natural Gas Act. In addition the company's retail sales in Kansas are subject to the jurisdiction of the State Corporation Commission of Kansas.

Kansas-Nebraska has served customers in the State of Kansas for over 40 years. During this period, Kansas-Nebraska has connected and is presently serving 59 communities in Kansas and approximately 28,212 customers, including 3,386 irrigation (per meter basis) customers. With respect to new irrigation well connections in Kansas since 1974 Kansas-Nebraska has provided new service as follows:

	1974	1975	March 15, 1976	July 1, 1976
Gathering lines	153	105	51	90
State total	315	234	84	165

Insofar as Kansas-Nebraska is concerned legislation such as HB 3032 introduced last session is unnecessary.

In the State of Kansas, Kansas-Nebraska had gas sales of about 14,400,000 MCF to domestic, commercial and irrigation customers and of that total 8,100,000 MCF were for irrigation customers.

Kansas-Nebraska was also disturbed by the pricing provisions contained in last year's legislation. Kansas-Nebraska could not provide service at the price set forth in the legislation. For example, Kansas-Nebraska's employees drive 4,600 miles each month to reach rural meters in the Lakin and Rush Center areas where most of our gathering facilities are located.

As a result of the national gas shortage pipeline companies have been unable, in recent years, to acquire enough gas to serve their customers' total requirements. Consequently, reserves dedicated to pipelines are being rapidly depleted, and production not sufficiently increased to meet the growing needs of the pipeline customers. To meet this problem the Federal Power Commission has been forced to authorize, in certain areas, a curtailment of service by the pipeline.

It is the present natural gas shortage which has lead to significant Federal Power Commission activity to result not only in the need for curtailment but also the manner of curtailment.

The Commission's efforts to arrive at a uniform solution to the curtailment problem lead to the adoption of Order No. 467-B, in March, 1973. This order prescribed a nine-tier priority schedule for curtailments, which favored residential and small commercial customers. Order No. 467-B specified that the lowest priority level would be completely curtailed before the next higher priority was curtailed. This type of end-use curtailment has been upheld by the Supreme Court in the case of FPC vs. Louisiana Power and Light Company, 406 U. S. 621 (1972). Subsequent to the adoption of Order No. 467-B the Commission adopted a standard set of terms and definitions which it stated would apply to curtailment plans.

With respect to irrigation use the Commission in Opinion No. 745 declared that all natural gas used for agricultural irrigation pumping on a pipeline system which meets the criteria for processed gas is entitled to priority 2 status under Order No. 467-B. This decision amounted to reclassification of natural gas used for irrigation pumping use from industrial use to process gas or from priority number 3 to priority number 2 as set forth in Order No. 467-B. Reclassification of natural gas used for irrigation pumping in this case was considered a major victory for the irrigators.

Presently, proceedings are being conducted by the State Corporation Commission of Kansas regarding establishment of priorities.

Kansas-Nebraska has taken a number of steps to conserve existing reserves and reduce sales to lower priority users so that curtailment of service to high priority users can be avoided.

These measures are brought to this Committee's attention for a better understanding of how Kansas-Nebraska is attempting to cope with the gas shortage without impairing service to the high priority customers which includes the irrigation customers. However, legislation such as is being proposed in Kansas to require service be provided to irrigation customers is likely to focus attention on a problem which in relation to a ban on all new sales is not of legal significance. In a recent proceeding involving Northern Natural Gas Company an FPC administrative law judge ruled that Northern could not provide service to some 50 customers who were entitled to right of way taps for the reason that Northern was curtailing service to other customers. In other words if Northern could not provide complete service to its existing customers it could not take on new customers, regardless of the end-use.

If the legislature wants to be helpful in solving the natural gas shortage, it should do so by attacking the cause of the supply shortage. This includes support of deregulation of the price of gas at the wellhead, measures to provide for timely and appropriate relief from the regulating Commission so that the utility can recover increased costs, and explanations to the constituents that utility bills can be expected to increase in the future.

ATTACHMENT 12

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Northern Natural Gas Company) Docket No. CP75-333

INITIAL DECISION DENYING IN PART AND GRANTING IN PART AN APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO SECTION 7(c) OF THE NATURAL GAS ACT

(January 12, 1976)

APPEARANCES

David B. Ward, Charles A. Case, Jr., F. Vinson Roach, Daniel B. O'Brien, Jr., and Patrick J. McCarthy for Northern Natural Gas Company

Donnell R. Fullerton for the Federal Power Commission

MCGOVAN, PRESIDING ADMINISTRATIVE LAW JUDGE

Background

On May 9, 1975, Northern Natural Gas Company (Northern) filed, in Docket No. CP75-333, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities for the sale and delivery of natural gas in the States of Kansas, Oklahoma and Texas. Northern seeks authorization to construct 36 delivery stations and to transport gas and make direct sales to consumers in Kansas and Texas through its Peoples Division. Northern also requested authorization to construct 17 measuring stations for use in rural areas of Oklahoma and Texas. Northern estimates the total cost of the proposed facilities to be $54,977, and that the total annual sales volume of gas involved is 177,134 MCF.

Northern's application was noticed in the Federal Register on May 20, 1975.

On June 12, 1975, Terra Chemicals International, Inc. (Terra) filed a petition to intervene in opposition to the application and requested a formal hearing.

On August 5, 1975, Terra withdrew its request for a formal hearing and stated that a hearing was now unnecessary on the basis of assurances made to it by Northern that the supply-demand projections set forth in Northern's recent curtailment case in Docket No. RP74-104 will not be affected by the instant application.

No other protests or petitions to intervene have been filed.

On September 3, 1975, the Commission entered an order setting the matter for hearing and directed that the proceeding should develop, inter alia, a record regarding:

1. The specific end use involved in each of the primary end use categories (Crop Drying, Irrigation, Feed Lot, Commercial and Domestic Heat) proposed to be served as a result of this application including their relationship as to priority of use as set forth in § 2.78 of the Commission's General Policy and Interpretations;

2. The availability of alternate fuels to serve these requirements.

3. A detailed description of how Northern proposes to supply natural gas for the proposed new and additional sales and the source of such gas supply.

4. The impact of serving new and additional sales on Northern's existing customers; and

5. How the public convenience is advanced by adding additional service while existing customers are being curtailed.

On October 3, 1975, a formal hearing was held before Presiding Administrative Law Judge Graham W. McGowan and briefs were later submitted by Northern in support of its application and by Staff in opposition thereto.

Discussion

This case presents one central issue, "Should the Commission allow a pipeline in curtailment to add on new customers?" This may seem like an oversimplication of the issue and applicant has carefully pointed out that the new customers would be high priority customers, as if rationally they should be allowed to displace old low priority customers. Had natural gas service long ago been allocated on a priority basis this could be completely justified. However, we are cognizant of the fact that every present user represents an investment in facilities that become wasted in many instances if natural gas is no longer available. Industrial users pose other more significant economic problems such as loss of productivity and unemployment.

Applicant would hasten to assure us that the natural gas to be used by the proposed new customers is really de minimis and that the diversion of the quantities sought herein would not seriously injure any present customer. Applicant failed to demonstrate the proof of this theorem and it is noted that there is not in evidence a list of present customers willing to relinquish any of their entitlements under present priorities.

I cannot agree with applicant's argument that natural gas service should be certificated for new customers1/ to replace other fuels now used, because of its economic advantage for the customer. This hypothesis would support a finding that alternate fuels do not exist simply because all alternate fuels are vastly more expensive. To encourage this concept would be an abandonment of all efforts to conserve natural gas supplies.

Applicant has touched upon only one situation which would impel a restructuring of priorities to allow the add-on of new customers. If applicant has, in good faith, agreed to provide small volume gas service to a landowner as partial consideration for the granting of a pipeline easement and such landowner relying on said agreement acts to his detriment, then I believe that such an agreement creates an enforceable obligation in favor of the landowner grantor for small volume, high priority usage compelling recognition by this Commission. In granting such an easement the grantor not only acted to his own advantage but facilitated gas service for other customers of the pipeline as well, a public benefit.

1/ Applicant's Initial Brief, p.4.

Unfortunately, despite Northern's assertion that 42 of the proposed new customers are right-of-way grantors,[1] only one of the 53 proposed new customers has been identified as a right-of-way easement granting customer with a private grant of service who, relying on such agreement, acted in good faith to his detriment and is presently without an alternate fuel capability, and this is Lloyd E. Tucker, a proposed residential customer of South Union Gas Company. The record discloses that Mr. Tucker built a new home to be heated by natural gas, with the expectation that natural gas would be available to him by virtue of his contract with Northern. Although the record does not contain a recital of the land record reference to the alleged right-of-way easement, the addition of service for Mr. Tucker is not opposed by intervenors nor Staff.

Should the applicant at a later date desire to submit additional evidence to be limited to the identification of additional right-of-way easement grantors with a contractual right of serivce, who relied in good faith on such agreement to their detriment and are presently without an alternate fuel capability, this docket will be reopened for the specific purpose of receiving and examining such evidence and the making of a determination of the obligation of the applicant to extend service to them as required by the public convenience and necessity under Section 7(e) of the Natural Gas Act.

Finding

1. That Northern is a natural gas company within the meaning of the Natural Gas Act.

2. That applicant has failed to prove that the certificate requested in this application under Section 7(c) of the Natural Gas Act is required by the public convenience and necessity except as it pertains to the sale and delivery of natural gas to South Union Gas Company for resale and delivery to Lloyd E. Tucker.

3. That Lloyd E. Tucker is a landowner who granted a right-of-way easement to Northern, securing thereby a private grant of service in partial exchange for said easement, and that he relied in good faith on said agreement to his detriment, and is presently without an alternate fuel capability.

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[1] Tr. 1, p.15.

4. That sale and delivery of natural gas to Lloyd E. Tucker for residential purposes is required by the public convenience and necessity.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission, that:

The applicant's request for a certificate of public convenience and necessity authorizing the construction and operation of certain sales measuring and delivery station facilities and the sale and delivery of natural gas in the States of Kansas, Oklahoma, and Texas is hereby denied without prejudice, except as it pertains to the sale and delivery of natural gas to South Union Gas Company for resale to Lloyd E. Tucker for whom such certificate is hereby granted.

Graham W. McGowan
Presiding Administrative Law Judge

KIOGA

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ATTACHMENT 13

BEFORE THE 1976 INTERIM JUDICIARY COMMITTEE
HB 3032 - Hearing July 13, 1976

KIOGA has reviewed this bill and appeared in opposition to it February 11, 1976 and March 17, 1976. The minutes of the hearing March 17, 1976 were complete and should be referred to as a part of this study.

We are sympathetic with the future plight of the irrigation farmers of Southwest Kansas, but we believe this bill is not the answer to their problem and should not be recommended for passage.

The Assistant Attorney General appearing in favor of the bill during the House hearings did not appear at the Senate Committee hearings when we called to his attention Phillips Petroleum Company v. Corporation Commission of Oklahoma 312 Pac 916 declaring a similar law in Oklahoma unconstitutional for the reason it constituted a taking of property without due process of law. This opinion has a direct relationship to this bill or anything else proposed like it.

We think HB 3032 violates existing contractural rights for natural gas already sold. Line 9, Page 1 indicates the producer shall divert interstate gas to an intrastate use. Line 5 and Line 7 in Section 3 says the pipeline shall divert interstate gas to intrastate use. We don't believe the Federal Power Commission would permit this and such a move by a State legislature would bring on federal regulation of intrastate gas in the several states. Dr. Robert Robel testified to this at an earlier date.

Section 2 required a guarantee of delivery for all natural gas asked for and this can't be done under existing contracts, nor can the volume be guaranteed.

There is no protection to current purchasers who have a contract for a certain volume to be able to abandon its connection when this bill would reduce his volume during the irrigation season.

Last year's interim study (1975) Proposal No. 43, dealt at length with the problem of production, transportation and usage of natural gas. Although the focus on HB 3032 seems to be on Southwest Kansas, it is state wide in concept and could effect some 650 gas producers active in 39 counties operating out of 326 gas fields. There are 22 companies listed with the KCC that purchase or sell natural gas.

We wish to call to your attention that the Kansas Energy Office has set emergency energy regulations in the event of a declared emergency by the Governor indicating essential agricultural operations 4th in priority out of the 7 categories. The KCC is continuing its public hearings on establishing curtailment priorities of use of natural gas.

We suggest that this problem of availability and price of natural gas is not unique to agricultural irrigators. We think it is a national problem effecting all facets of America and Kansas business, brought on by extensive federal price controls and regulations for the past 22 years. The solution is being seriously studied today by the Congress and the FPC and we forsee relief and increased activity and supply developing ahead.

Thank you for your consideration.

Donald P. Schnacke

KIOGA

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ATTACHMENT 14

BEFORE THE 1976 INTERIM JUDICIARY COMMITTEE
HB 3038 - Hearing July 13, 1976

KIOGA has reviewed this bill and appeared February 11, 1976. We have labeled this as bad legislation and we asked that it not be recommended for passage.

First of all, this is state wide legislation effecting oil and gas leases throughout Kansas. The bill addresses the subject of natural gas leases and forgets that over the years gas production was a by-product of the search for oil. It was not intended, but the bill as written would permit the termination of oil rights, when the intent is to get at natural gas rights. This is hard to separate.

The bill begins in Section 1 by addressing "fee interests in the surface" which is contrary to legal definitions of fee ownership. It apparently would permit surface owners to interfere with leasehold rights of mineral owners and lessees. We wonder about the term "Superior Court" and where that term arose.

HB 3038 seems to be designed to bring pressure on lessee oil companies to give up rights and renegotiate the leases by a threat of court action.

It provides for the termination of economic rights - the taking of property rights without just compensation, raising a serious legal constitutional question.

HB 3038 is very unclear in many of its terms and intent. For instance, Section 4 is so confusing that frankly we can't understand what is intended.

Section 4 (c) indicates the court may order the relacation of equipment which might work contary to good production practices.

Here again, we suggest the problem of the availability and price of natural gas is not unique to agricultural irrigators. Price of natural gas related to the increased cost of drilling and production in an atmosphere of federal price controls and regulations for the past 22 years is the real problem. The Congress and FPC are attempting now to solve this problem, and hopefully will relieve the consuming public of its concern for a long term supply of natural gas.

Much has been said about the fact that releasing leased acreage under this bill would increase drilling. We doubt these statements. Increased leasing might result, but the economics of deeper drilling and the success record of past drilling does not indicate there would be much increased drilling activity.

Thank you for your consideration.

Donald P. Schnacke

George A. Sims
Mobil Oil Corporation

ATTACHMENT 15

SPECIAL COMMITTEE ON JUDICIARY

Mr. Chairman and Members of the Committee, it is ironic to me that it is necessary to defend the free enterprise system in this our Bicentennial year. The purpose, as I understand our forefathers action, was to resist governmental interference in the private affairs of man. They did not trust England or their own representatives in these matters and put in their constitution the provision that States may not interfere with the right to contract. It has been basic to our system of government to allow individuals to enter in to contracts freely as long as the actions under those contracts were within the law. These agreements were entered into freely without coercion and a consideration paid. Consideration in accordance with the terms of the lease continues to be paid or the lease expires.

The landowners have a remedy in the courts for the cancellation of the rights which are not being produced by bringing an action and showing the courts they have an operator who is ready, willing and able to drill a well on a lease. This is called the reasonable and prudent operator rule. I personally know that acreage has been released in N.E. Stevens County where a demand for an offset was made and Mobil released the acreage without the necessity of a lawsuit. This acreage to my knowledge is still open and undrilled.

The precedent of this type law is dangerous and onerous to me for another reason. We have a growing number of people who do not believe minerals within the State of Kansas should belong to private individuals and should be appropriated for the state as water was appropriated by an act of the legislature in the late 1940's.

This resource, water, in future years will be a far more valuable resource than oil or gas. It is now in terms of human life as man can live only about a week without it. I hear no clamor for the return of the water rights which were taken from the private landowners.

There are other interested parties also who entered into contracts 25 years ago for the deeds to the surface rights above these minerals. Are we now going to pass legislation to void part of the contract and say that all those minerals not producing after 25 years will go to the surface owners as the present mineral owners have owned them long enough and it is only fair to transfer the rights thereunder to the surface owners.

I can see an endless chain of conditions emanating from this type of legislation, sales by contracts will never be fully consumated and forever be open to review the same as it is now when an individual deals with a governmental agency. Our whole system of trade would always be in a state of flux.

Would the proponents of this legislation want to be confronted by these people from whom they bought this land after 25 years for additional payments due to inflation or by reason of the fact that they did not live thereon to return the portion on which they were not residing.

I ask that you consider these points carefully and also look at the provision in the U.S. Constitution wherein states may not interfere with the right to contract. I hope and believe you will arrive at the conclusion this legislation is unconstitutional and not in the best interests of the State of Kansas.

George A. Sims
Mobil Oil Corporation

ATTACHMENT 16

SPECIAL COMMITTEE ON JUDICIARY

Mr. Chairman and Members of the Committee, on the natural gas for irrigation question we are sympathetic to the problem of the irrigator. We have worked with our purchasers and feel we have been reasonably successful in meeting the needs of our royalty owners. We have no real objection to giving irrigators such a priority but contractual obligations entered into long before irrigation was wide spread in Southwest Kansas prevent us; and we believe also prevents the Kansas Legislature; from such a priority due to the fact that the Federal Power Commission has jurisdiction. We have challenged this jurisdiction in the courts and have lost as the U.S. Supreme Court has held that the F.P.C. does have jurisdiction and control of the producer.

Producers also have problems in the normal operation of natural gas wells that also must be considered in this type of legislation. The setting of allowables by the Kansas Corporation Commission may prevent us from being able to deliver the volumes needed for the wells which may vary as I understand it from about 500 mcf to as much as 4,000 mcf per month, the average being about 1,800 to 2,500 mcf per month during the irrigation season.

Salt water and its disposal are also a major factor along with greater mechanical problems as the wells age. We need protection from lawsuits for damages for loss of crops because no gas is or might not be available at a critical stage of irrigation. We have the problems now and have been able to work them out in a reasonable manner but we want the committee to be aware of the problems before legislation is passed as this bill suggests.

The irrigators are well aware of the F.P.C. problem and have intervened in the El Paso case for a higher priority service.

We are of the opinion that if Kansas passes this legislation and the prior consumers on the interstate pipelines are cut back on their consumption as a result of this legislation we will see a greater effort in Congress to give the F.P.C. control over intrastate gas and also reset F.P.C. priority goals for existing interstate customers thus reducing the irrigators presently available supply.

We urge you to look carefully at this action and after careful study we believe you will decide not to pass this legislation because of the F.P.C. threat or exposure for intrastate gas and the problems of setting priorities among Kansas consumers for Kansas gas who were prior customers before irrigators.

The supply for customers along intrastate lines will be reduced with the passage of this legislation. You have seen the problems created in the Wichita utility action. I would suggest you will see similar action on this bill when the various parties become aware of the potential results of this bill.