Approved March 30, 1984
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES.

The meeting was called to order by SENATOR ROBERT V. TALKINGTON at
Chairperson

9:00 a.m. a.m./p.m. on Friday, March 30, 1984 in room 254-E of the Capitol.

All members were present except:

Senators Rehorn and Burke

Committee staff present:

Fred Carman, Hank Avila, Rosalie Black

Conferees appearing before the committee:

SB 818 - Senator Gus Bogina; Brian Moline, KCC; Joe Dennis, Director, Johnson County Airport Authority; Phil Harness, Johnson County Legal Dept.; Ron Cook, Johnson County Petroleum Engineer; Bob Storey, Union Gas Co. Inc.; Bill Perdue, KP&L; Lon Stanton, Northern Natural Gas

HB 3070 - Harley Duncan, Dept. of Revenue; Terry Ruse, KS Ethanol Association

The meeting was called to order by Senator Talkington, Chairman, to hear Senate Bill 818, House Bill 3070 and House Bill 2122. Due to the large number of conferees, time did not permit HB 2122 to be heard. It will be scheduled next week.

SENATE BILL 818 - HEARING

Senator Gus Bogina explained that SB 818 would allow Johnson County to operate as a municipal utility to serve natural gas to the Johnson County Industrial Airport.

Joe Dennis introduced Phil Harness and Ron Cook from Johnson County, who said the county was given twelve natural gas wells which should be allowed to furnish natural gas to the industrial airport instead of Union Gas the current supplier.

Brian Moline indicated the KCC takes no position on SB 818, however, the KCC is concerned that Johnson County's request that the KCC terminate Union Gas System Inc.'s certificate to serve the Johnson County Industrial Airport amounts to cream skimming. For additional lists of concerns by the KCC, see Page 2, Attachment 1.

Speaking in opposition to SB 818, Bob Storey, Bill Perdue and Lon Stanton said that Johnson County is not a municipality for purposes of operating a gas utility outside of the KCC's authority and the public convenience would not be served by terminating Union Gas System's certificate to serve the industrial airport.
Mr. Storey presented an application of Johnson County to terminate the service of

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:00 a.m./p.m. on March 30, 1984.

SENATE BILL 818 - HEARING

Union Gas System, Inc.; motion to dismiss and attached legal memorandum of Union Gas in opposition to application; and the order of the commission dated January 19, 1984, from the KCC file. (Attachment 2.) Mr. Perdue asked for a study involving utility cream skimming.

HOUSE BILL 3070 - HEARING

Harley Duncan, noting that the department has no position on HB 3070, explained the measure allows a tax incentive for ethanol plants making gasohol with a capacity under 17,000,000 gallons per year.

Terry Ruse representing the KS Ethanol Association in support of HB 3070 said that large quantities of imported ethanol from Brazil and giant producers outside of Kansas endanger Kansas investors and present laws provide benefits to agriculture outside the state. Atch. 3

There was not time to hear testimony from Glenn Cogswell or Becky Crenshaw for HB 3070.

The meeting adjourned at 10:02 a.m.

Robert N. Talkington

3-30-84

Please PRINT Name, Address, the organization you represent, and the Number of the Bill in which you are interested. Thank you.

NAME	ADDRESS	ORGANIZATION	BILL NO.
Brian McInnis	KCC		SB 818
Wm L. Beezley	Topeka Ks BOX 347	Union Gas System, Inc	" "
Clarence Bowser	720 W Eighteenth	Union Gas System	" "
Rick Kready	Topeka	KPL/Gas Service	" "
Larry Rine	Wichita	Ks Natural Gas	
Tom Regan	Topeka	" " "	
Mark Austin	Topeka	Ks Oil Marketers Assn	
B. Crenshaw	"	Comm of Farm Orgs	
ED DE SOIGNIE	TOPEKA	KANSAS DEPT. OF TRANSPORTATION	
Phil Harness	Olathe, Ks	Bd. of County Commissioners	SB 818
Frank Farnsworth	Industrial Airport Ks.	Johnson County Airport Commission	SB 818
Joe D. Dennis	" " "		SB 818
Ron Cook	Shawnee, Ks.	Petroleum Engineer	SB 818
John Blythe	Manhattan Ks	Ks Farm Bureau	
ED SCHAUB	Topeka	SWBT	SB 818
Lon Stanley	Topeka	Northern N.G.	SB 818
BILL PERDUE	TOPEKA	KPL/GAS SERVICE	SB 818

Attachment

KANSAS CORPORATION COMMISSION
STATEMENT ON
SENATE BILL 818

THE EFFECT OF THIS BILL IS TO EXPLICITY OVERTURN THE COMMISSION'S DECISION IN DOCKET NO. 138,498-U. IN THAT CASE, JOHNSON COUNTY HAD REQUESTED THAT THE COMMISSION TERMINATE UNION GAS SYSTEM INC.'S CERTIFICATE TO SERVE THE JOHNSON COUNTY INDUSTRIAL AIRPORT SO THAT THE COUNTY ITSELF COULD SERVE THE BUSINESSES LOCATED THERE. ATTACHED IS A COPY OF THE COMMISSION ORDER.

THE COMMISSION FOUND IN THAT ORDER THAT:

1. K.S.A. 66-104, WHICH PRECLUDES KCC REGULATION OF MUNICIPALLY OWNED OR OPERATED ELECTRIC OR GAS UTILITIES EXCEPT TO THE EXTENT OF OPERATIONS MORE THAN 3 MILES OUTSIDE THE CORPORATE LIMITS, DOES NOT APPEAR TO INCLUDE COUNTY OWNED OR OPERATED UTILITIES.

2. PUBLIC CONVENIENCE WOULD NOT BE FOSTERED BY TERMINATING UNION GAS' CERTIFICATE. ALTHOUGH THE INDUSTRIAL AIRPORT CUSTOMERS MIGHT BENEFIT INITIALLY FROM LOWER RATES, OTHER REMAINING UNION GAS CUSTOMER'S WOULD NOT. THIS WOULD OCCUR BECAUSE THE FIXED COSTS WHICH UNION IS ENTITLED TO RECOVER WOULD BE SPREAD AMONG FEWER CUSTOMERS. ASSUMING THAT THE FIXED COSTS DID NOT DECREASE, THE RATES OF REMAINING CUSTOMERS WOULD HAVE TO

Atch. 1

INCREASE. IN ADDITION, IT IS UNCLEAR HOW LONG THE INDUSTRIAL AIRPORT CUSTOMERS COULD BE SERVED FROM THE GAS RESERVES DEEDED TO THE COUNTY, AND IN ANY EVENT A SECONDARY SUPPLIER OF GAS WOULD BE NECESSARY.

THE COMMISSION DOES NOT TAKE A POSITION ON THIS BILL BUT DOES WISH TO NOTE SOME QUESTIONS WHICH ARE RAISED BY THE BILL.

1. IF JOHNSON COUNTY IS AUTHORIZED TO ESTABLISH A UTILITY, DOES IT HAVE THE OBLIGATION TO SERVE THE ENTIRE COUNTY RATHER THAN SELECTED PARTS OR CUSTOMERS AT A LOW COST?

2. CAN JOHNSON COUNTY SERVE IN SURROUNDING COUNTIES FOR UP TO THREE MILES BEYOND ITS BOUNDARIES WITHOUT SUPERVISION? THE BILL WOULD APPEAR TO HAVE THIS EFFECT.

3. DOES THE CHANGE IN THE STATUTE MEAN THAT A SUBUNIT OF JOHNSON COUNTY, THE INDUSTRIAL AIRPORT COMMISSION, HAS AUTHORITY TO OWN OR OPERATE A UTILITY?

4. IS THE LEGISLATURE INDICATING THAT IN THE FUTURE OTHER COUNTIES WILL BE ALLOWED TO ESTABLISH UTILITY OPERATIONS? IF SO, WHAT ARE THE IMPLICATIONS FOR EXISTING UTILITES WHICH MAY BE "OUSTED"?

5. IS THE LEGISLATURE INDICATING THAT IN THE FUTURE IT WILL ENCOURAGE ESTABLISHMENT OF PRIVATELY OWNED UTILITES WHICH ARE "SITUATED AND OPERATED WHOLLY OR PRINCIPALLY WITHIN A COUNTY" AND THEREFORE NOT SUBJECT TO KCC JURISDICTION BUT ONLY TO THAT COUNTY'S REGULATION.

FINALLY, THE COMMISSION IS NOT SURE THAT ALL ALTERNATIVES HAVE BEEN FULLY EXPLORED. POSSIBILITIES WHICH MIGHT ADDRESS

JOHNSON COUNTY'S CONCERNS INCLUDE: (1) HAVING UNION GAS SIMPLY TRANSPORT THE GAS FROM THE DEEDED WELLS, AND (2) STRUCTURING THE ARRANGEMENTS FOR PROVIDING THE GAS TO THE AIRPORT CUSTOMERS SO THAT IT IS CONSIDERED A "PRIVATE USE" EXEMPT FROM REGULATION.

THE STATE CORPORATION COMMISSION

OF THE STATE OF KANSAS

BEFORE COMMISSIONERS: MICHAEL LENNEN, CHAIRMAN
RICHARD C. (PETE) LOUX
PHILLIP R. DICK

IN THE MATTER OF THE APPLICATION OF JOHNSON COUNTY, KANSAS, TO TERMINATE THE CERTIFICATE OF CONVENIENCE AND AUTHORITY TO TRANSACT BUSINESS OF UNION GAS SYSTEM, INC. UPON THE JOHNSON COUNTY INDUSTRIAL AIRPORT PROPERTY.	DOCKET NO. 138,498-U
JOHNSON COUNTY, KANSAS, APPLICANT,	
UNION GAS SYSTEM, INC., RESPONDENT	

ORDER

THE ABOVE-CAPTIONED MATTER COMES BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS FOR CONSIDERATION. HAVING REVIEWED ITS FILES AND RECORDS AND BEING DULY ADVISED IN THE PREMISES, THE COMMISSION FINDS AND CONCLUDES AS FOLLOWS:

1. ON JULY 21, 1983, JOHNSON COUNTY, KANSAS FILED AN APPLICATION TO TERMINATE UNION GAS SYSTEM'S CERTIFICATE OF CONVENIENCE AND AUTHORITY TO TRANSACT BUSINESS AS A PUBLIC UTILITY AT THE JOHNSON COUNTY INDUSTRIAL AIRPORT. THE APPLICANT ALLEGED IT IS THE BENEFICIARY OF OIL AND GAS LEASES LOCATED IN THE IMMEDIATE VICINITY OF THE AIRPORT PROPERTY. THE APPLICANT DESIRES TO TRANSPORT THIS GAS TO CONSUMERS THROUGH A DISTRIBUTION SYSTEM IT OWNS WHICH IS CURRENTLY USED BY THE RESPONDENT.

2. THE RESPONDENT, UNION GAS, FILED A MOTION TO DISMISS THE APPLICATION ON SEPTEMBER 1, 1983. RESPONDENT ALLEGED THE COMMISSION WAS WITHOUT JURISDICTION OVER THE APPLICATION AS FILED BECAUSE OF CERTAIN PROCEDURAL DEFECTS. RESPONDENT ALSO ALLEGED THE APPLICANT WAS WITHOUT AUTHORITY TO FILE AN APPLICATION REQUESTING THE COMMISSION TO REVOKE A CERTIFICATE. RESPONDENT ALSO ALLEGED THAT NEITHER JOHNSON COUNTY NOR THE JOHNSON COUNTY AIRPORT COMMISSION WAS A MUNICIPALITY UNDER THE LAWS OF THE STATE OF KANSAS.

3. The Commission, in an order dated October 4, 1983, requested the Respondent to address two additional issues prior to oral argument. Those issues were the application of K.S.A. 66-131 to this matter and whether the Commission has discretion to refuse to allow a municipality to operate in an area already served by a certificated public utility. The Applicant was requested to file a brief addressing these questions and those raised by the Respondent in its Motion to Dismiss.

4. Oral arguments were heard by the Commission on November 21, 1983. The Commission found that notice was proper and that it had jurisdiction to hear this matter.

5. The Commission believes the consideration of two issues will resolve this proceeding. The first is whether the Applicant can be a municipality for purposes of K.S.A. 66-104 and K.S.A. 66-131 and thus largely exempt from Commission jurisdiction. The second is whether the Applicant has presented evidence which would indicate that Union Gas System's certificate to serve Johnson County Industrial Airport should be terminated.

6. The Commission is persuaded that Johnson County is not a municipality for purposes of the Public Utilities Act, K.S.A. 66-101, et seq. The exemption from Commission supervision provided in K.S.A. 66-104 is a narrow one and the plain language of that statute forecloses a construction which would allow a county to be a municipality. K.S.A. 66-104 provides in part:

> The term "public utility" shall also include that portion of every municipally owned or operated electric or gas utility located outside of and more than three (3) miles from the corporate limits of such municipality, but nothing in this act shall apply to a municipally owned or operated utility, or portion thereof, located within the corporate limits of such municipality or located outside of

SUCH CORPORATE LIMITS BUT WITHIN THREE (3) MILES THEREOF EXCEPT AS PROVIDED IN K.S.A. 66-131a.

IF A COUNTY WAS CONSIDERED A MUNICIPALITY THEN IT COULD EXTEND ITS UTILITY OPERATIONS THREE MILES BEYOND ITS CORPORATE LIMITS INTO ANOTHER COUNTY WITHOUT BECOMING A PUBLIC UTILITY SUBJECT TO COMMISSION JURISDICTION. SURELY THIS RESULT WAS NOT CONTEMPLATED BY THE LEGISLATURE.

7. K.S.A. 66-104 PROVIDES FURTHER:

EXCEPT AS HEREIN PROVIDED, THE POWER AND AUTHORITY TO CONTROL AND REGULATE ALL PUBLIC UTILITIES AND COMMON CARRIERS SITUATED AND OPERATED WHOLLY OR PRINCIPALLY WITHIN ANY CITY OR PRINCIPALLY OPERATED FOR THE BENEFIT OF SUCH CITY OR ITS PEOPLE, SHALL BE VESTED EXCLUSIVELY IN SUCH CITY, SUBJECT ONLY TO THE RIGHT TO APPLY FOR RELIEF TO THE CORPORATION COMMISSION AS HEREINAFTER PROVIDED IN K.S.A. 66-133 AND TO THE PROVISIONS OF K.S.A. 66-131a.

THIS SECTION OF THE STATUTE INDICATES A CLEAR LEGISLATIVE INTENT THAT THE HOME-RULE EXEMPTION TO COMMISSION SUPERVISION SHOULD APPLY ONLY TO CITIES. THE TERM MUNICIPALITY IS NOT DEFINED IN CHAPTER 66, BUT A READING OF THIS STATUTE AS A WHOLE LEADS TO THE CONCLUSION THAT A COUNTY IS NOT A MUNICIPALITY.

8. THE APPLICANT CONTENDS THAT THE DEFINITION OF A MUNICIPALITY SET FORTH IN K.S.A 12-825J SHOULD CONTROL. THAT STATUTE PROVIDES:

(A) ANY MUNICIPALITY WHICH OWNS OR OPERATES, OR WHICH HEREAFTER OWNS OR OPERATES, A UTILITY FURNISHING WATER, GAS OR ELECTRICITY IS HEREBY AUTHORIZED AND EMPOWERED TO ENTER INTO CONTRACTS FOR THE PURCHASE OF WATER, GAS OR ELECTRICITY FROM ANY PERSON, FIRM, CORPORATION OR OTHER MUNICIPALITY, UPON SUCH TERMS

AND CONDITIONS AS MAY BE DEEMED NECESSARY AND REASONABLE BY THE GOVERNING BODY OF SUCH MUNICIPALITY. ANY SUCH CONTRACT MAY INCLUDE AN AGREEMENT FOR THE PURCHASE OF WATER, GAS OR ELECTRICITY NOT ACTUALLY RECEIVED. NO SUCH CONTRACT SHALL BE MADE FOR A PERIOD IN EXCESS OF FORTY (40) YEARS, BUT RENEWAL OPTIONS IN FAVOR OF THE PURCHASING MUNICIPALITY MAY BE INCLUDED THEREIN. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AUTHORIZE THE LEVY OF A TAX BY ANY MUNICIPALITY ENTERING A CONTRACT AS HEREIN PROVIDED.

(B) AS USED IN THIS ACT, THE TERM "MUNICIPALITY" SHALL MEAN AND INCLUDE ANY CITY, COUNTY OR TOWNSHIP.

THE DEFINITION SET FORTH IN SUBSECTION (B) IS CLEARLY LIMITED TO APPLY ONLY TO THAT ACT. K.S.A. 12-825J IS NOT APPLICABLE TO CHAPTER 66, PARTICULARLY SINCE THIS DEFINITION WOULD CONTRADICT THE CLEAR INTENT OF K.S.A. 66-104. THE COMMISSION CONCLUDES THAT K.S.A. 12-825J IS INTENDED TO STATUTORILY EMPOWER MUNICIPALITIES TO ENTER INTO LONG-TERM CONTRACTS FOR THE PURCHASE OF WATER, GAS, OR ELECTRICITY. A CITY, TOWNSHIP OR COUNTY CAN PROVIDE AND CONTRACT FOR UTILITY SERVICES BUT K.S.A. 66-104 WILL EXEMPT ONLY CITIES FROM OUR JURISDICTION.

9. THE CASES CITED IN BOTH PARTIES' BRIEFS UNIFORMLY STAND FOR THE CONCEPT THAT MUNICIPAL UTILITIES ARE BEYOND THE SCOPE OF COMMISSION SUPERVISION. SEE THE STATE, EX REL. V. THE WYANDOTTE COUNTY GAS CO., 88 KAN. 165 (1912); HOLTON CREAMERY CO. V. BROWN, 137 KAN. 418 (1933); BOARD OF PUBLIC UTILITIES V. KANSAS CITY POWER AND LIGHT, 139 KAN. 842 (1934); AND KANSAS GAS AND ELECTRIC CO. V. CITY OF MCPHERSON, 146 KAN. 614 (1937). NONE OF THESE CASES, HOWEVER, INVOLVE A COUNTY-OPERATED UTILITY. JUDICIAL GUIDANCE AS TO WHETHER A COUNTY CAN OPERATE A MUNICIPAL UTILITY FREE OF STATE REGULATORY CONSTRAINTS SIMPLY DOES NOT EXIST IN THIS STATE. THE RELEVANT STATUTES INDICATE THE LEGISLATURE DID

NOT CONTEMPLATE THIS SITUATION AND WE ARE RELUCTANT TO BROADEN THE SCOPE OF THE EXEMPTION WITHOUT CLEAR AUTHORITY TO DO SO.

10. EVEN IF A COUNTY COULD QUALIFY AS A MUNICIPALITY FOR PURPOSES OF CHAPTER 66 IT IS UNCLEAR WHETHER A SUB-UNIT OF A COUNTY, SUCH AS AN AIRPORT COMMISSION, COULD QUALIFY. THE COMMISSION DETERMINES IT NEED NOT REACH THIS ISSUE BY CONCLUDING A COUNTY IS NOT A MUNICIPALITY FOR PURPOSES OF THE PUBLIC UTILITIES ACT.

11. THE SECOND ISSUE IS WHETHER THE APPLICANT HAS DEMONSTRATED THAT THE TERMINATION OF UNION GAS SYSTEM'S CERTIFICATE WILL PROMOTE THE PUBLIC CONVENIENCE.

12. THE COMMISSION BELIEVES THE SAME CRITERIA USED WHEN A PUBLIC UTILITY APPLIES FOR A CERTIFICATE PURSUANT TO K.S.A 66-131 SHOULD APPLY TO AN APPLICATION REQUESTING THE TERMINATION OF AN EXISTING CERTIFICATE. IT HAS BEEN STATED THE COMMISSION'S PRIMARY CONCERN SHOULD BE THE PUBLIC CONVENIENCE. THE INTEREST OF PUBLIC UTILITIES ALREADY SERVING THE AREA IS A SECONDARY CONCERN. THE DESIRES AND SOLICITATIONS OF THE APPLICANT ARE A RELATIVELY MINOR CONSIDERATION. KANSAS GAS AND ELECTRIC CO. V. PUBLIC SERVICE COMMISSION, 122 KAN. 462, 251 P. 1097 (1927).

13. THE RECORD DOES NOT INDICATE THAT THE PUBLIC CONVENIENCE WILL BE FOSTERED BY TERMINATING UNION GAS SYSTEM'S CERTIFICATE. THE APPLICANT ASSERTS THAT THEY HAVE SUBSTANTIAL GAS RESERVES WHICH WILL PERMIT THEM TO OFFER GAS TO THE INDUSTRIAL AIRPORT CUSTOMERS AT LOWER RATES. THE APPLICANT ADMITTED AT ORAL ARGUMENT IT WOULD NOT RELY ON THESE RESERVES, BUT WOULD REQUIRE A SECONDARY SUPPLIER (TRANSCRIPT OF ORAL ARGUMENT, PP. 37-38).

14. THE POTENTIAL SAVINGS TO THE AIRPORT LESSEES ARE OUTWEIGHED BY THE ADVERSE EFFECTS THAT WILL FOLLOW THE TERMINATION OF UNION GAS SYSTEM'S CERTIFICATE. THE REVENUES LOST WILL BE REFLECTED IN HIGHER RATES FOR THE CUSTOMERS REMAINING ON

THE RESPONDENT'S SYSTEM. JOHNSON COUNTY HAS INDICATED AN UNWILLINGNESS TO SERVE ANY CUSTOMERS OTHER THAN THOSE ON THE AIRPORT PROPERTY (TRANSCRIPT OF ORAL ARGUMENT, PP. 42-43) AND SUGGESTS THIS TYPE OF DISCRIMINATION WOULD NOT BE UNJUST (APPLICANT'S BRIEF, P. 18). THE COMMISSION CONCLUDES IT WOULD NOT BE IN THE PUBLIC INTEREST TO PERMIT JOHNSON COUNTY TO SERVE A SELECT GROUP OF INDUSTRIAL CUSTOMERS ALREADY SERVED BY A PUBLIC UTILITY WHEN IT HAS NO INTENTION OF SERVING ANY OTHER CUSTOMERS.

15. THERE HAVE BEEN NO ALLEGATIONS THAT UNION GAS HAS SERVED THE CERTIFICATED AREA IN QUESTION EITHER INADEQUATELY OR INEFFICIENTLY. A SHOWING OF THIS TYPE IS NECESSARY TO PERMIT EITHER THE REVOCATION OF A CERTIFICATE OR GRANTING A CERTIFICATE WHEN SERVICE IS ALREADY AVAILABLE. IN GENERAL COMMUNICATIONS SYSTEM, INC., V. STATE CORPORATION COMMISSION, 216 KAN. 410, 532 P.2D (1975) THE KANSAS SUPREME COURT CONSIDERED THE LATTER SITUATION. THE COURT STATED THAT A CERTIFICATE SHOULD NOT BE GRANTED TO ANOTHER SERVICE WHICH WILL DUPLICATE EXISTING SERVICE UNLESS THE REGULATORY AUTHORITY FIRST DETERMINES THAT EXISTING SERVICE IS INADEQUATE OR THE PERSON OFFERING THAT SERVICE IS UNWILLING OR UNABLE TO PROVIDE SUCH SERVICE. 216 KAN. AT 421. THE COMMISSION FINDS THIS REASONING TO BE APPLICABLE TO THIS MATTER AND FINDS NO EVIDENCE IN THE RECORD TO INDICATE THE EXISTING SERVICE IS INADEQUATE. THE COMMISSION CONCLUDES THE PUBLIC CONVENIENCE WOULD NOT BE FURTHERED BY TERMINATING SERVICE THAT HAS BEEN EFFICIENT AND SUFFICIENT.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

JOHNSON COUNTY IS NOT A MUNICIPALITY FOR PURPOSES OF OPERATING A GAS UTILITY OUTSIDE THE COMMISSION'S AUTHORITY AND JURISDICTION PURSUANT TO K.S.A. 66-104 AND K.S.A. 66-131.

THE PUBLIC CONVENIENCE WILL NOT BE SERVED BY TERMINATING UNION GAS SYSTEM'S CERTIFICATE TO SERVE THE JOHNSON COUNTY INDUSTRIAL AIRPORT.

THE RESPONDENT'S MOTION TO DISMISS THE APPLICATION IS HEREBY GRANTED.

THE COMMISSION RETAINS JURISDICTION OVER THE PARTIES AND THE SUBJECT MATTER TO ENTER SUCH ORDER OR ORDERS AS IT SHALL DEEM APPROPRIATE.

DATED: JANUARY 19, 1984

LENNEN, CHMN.; LOUX, COM. DICK, COM.

Judith McConnell

JUDITH MCCONNELL
EXECUTIVE SECRETARY

SEAL

BJM:RAM

ORDER MAILED JAN 19 1984

Attachment 2

TESTIMONY IN OPPOSITION TO SENATE BILL 818
BEFORE THE SENATE TRANSPORTATION AND UTILITIES COMMITTEE
PRESENTED BY BOB W. STOREY
REPRESENTING UNION GAS SYSTEM, INC.

MEMBERS OF THE COMMITTEE:

I wish to thank you for the opportunity to appear today on behalf of Union Gas System, Inc. in opposition to Senate Bill 818. As most of you know, Union Gas System, Inc. is a Kansas corporation, certificated by the Kansas Corporation Commission as a public utility, and operating in the southeast and northeast sections of the state of Kansas.

Senate Bill 818 attempts to make Johnson County, Kansas, a municipal utility, whereas it is not now recognized as such by the Kansas Statutes, by the case law within the state of Kansas, nor by the Kansas Corporation Commission.

I feel we should offer a brief background on how Senate Bill 818 was originated before this august body.

On or about May 18, 1983, Union received a communication from the Board of Commissioners of Johnson County, Kansas, demanding that Union remove its equipment and cease to serve the Johnson County Industrial Airport by September 1, 1983. Union had received a certificate from the KCC to serve this particular area in January, 1970. It has continuously been the sole supplier of natural gas to the Industrial Airport since that time.

Atch. 2

The Kansas Statutes state that a utility cannot abandon service to any area within the state of Kansas for which it has a certificate, without the permission of the KCC. Therefore, Union immediately notified the KCC of the letter it has received from Johnson County, Kansas, and asked the KCC's advice as to how to proceed.

In July, 1983, Union received a communication from the KCC which stated that Union could not abandon its service in Johnson County, and to continue to file tariffs and to serve that area until further order of the Commission.

Late in July an application to terminate the Certificate of Convenience and Necessity held by Union Gas was filed with the KCC by the Board of County Commissioners of Johnson County, Kansas.

On the 1st of September, 1983, Union filed a motion to dismiss the application filed by Johnson County, for certain legal reasons which are set out in the attachments hereto.

In order not to make this testimony too burdensome, I have enclosed the following documents from the KCC file for your consideration:

1. Application of Johnson County to terminate the service of Union Gas System, Inc.
2. Motion to dismiss and attached Legal Memorandum of Union Gas System, Inc. in opposition to said application.
3. The Order of the Commission dated January 19, 1984.

As you can see by the Order of the KCC, it found that:

1. Johnson County is not a municipality for purposes of operating a gas utility outside of the Commission's authority.
2. The public convenience would not be served by terminating Union Gas System's certificate to serve the Johnson County Industrial Airport.

I would urge that each committee member read the attachments hereto so that you can get a truer picture of why Senate Bill 818 is being discussed in this committee. However, it is far too burdensome to relate to you today.

I would like to point out on behalf of Union, though, some of the problems which would arise if Senate Bill 818 ever became law.

As you can see when you read the attached documents, all of the language throughout the statute books of the State of Kansas, and all of the language contained in the court cases which have been appealed to the Court of Appeals and the Kansas Supreme Court, refers to municipal utilities as cities. Johnson County attempted, through the legal briefs filed with the KCC in response to Union's motion to dismiss, to show the Commission that counties could operate as municipal utilities the same as cities. That theory was rejected by the KCC in light of the statutes and the case law within our state. I will not go into all of the law as to why Johnson County is not a municipality, since obviously the county does not believe it is or it would not have introduced Senate Bill 818.

I do, however, want to point out some of the serious problems which would arise if in fact Johnson County did become a municipal utility under Senate Bill 818.

First, the county is relying on the fact that it has been given certain gas leases, which contain eleven producing gas wells, by a citizen of Johnson County. That gift obviously was meant as a tax benefit to that contributing citizen. There is absolutely no question that there are certain pools of natural gas located within Johnson County, Kansas, as there are within almost all of the 105 counties in the state of Kansas. However, one of the major problems is that Johnson County does not have the expertise nor the know-how to operate as a municipal utility. Nor does it have any knowledge of the pitfalls involved in making sure that natural gas is available to its customers at all times.

You will note that Johnson County intends to operate as a municipal utility, yet limit its service to the Johnson County Industrial Airport. The case law which is cited in the attachments before you shows that a municipal utility <u>has</u> to offer service to <u>all</u> residents of the location in which it operates, or it is discriminatory in nature. Therefore, even if Senate Bill 818 passed, Johnson County would be discriminating under the law by offering service only to the Industrial Airport. There are not sufficient cubic feet of gas from the leases which have been given Johnson County to adequately serve the Industrial Airport, much less the entire Johnson County.

As we stated above, there are gas pools located within almost all of the counties of the state of Kansas. However, the

reserves of those gas fields are not adequate to meet an ongoing need of the patrons of the utility. In the case of Johnson County, all of the statistics show, and the testimony of Mr. Bill Grant of Grant Oil Company, Denver, Colorado, (which is being introduced here today on behalf of Union) shows that his company has been taking gas from this particular field for some time. It further shows that the reserves are slowly depleting, and within a few years the natural gas will be exhausted. Then what are the customers of Johnson County going to do at that time? I submit that there are <u>not</u> enough gas reserves in this field to adequately serve the Johnson County Industrial Airport, much less the entire county of Johnson.

Secondly, by the laws of the State of Kansas a municipal utility is authorized to operate within three miles of its corporate <u>city</u> (as defined by the statutes) limits. If this bill were adopted, then that would mean Johnson County could extend its utility operations three miles outside of the county line into other counties, such as Miami, Douglas, or Wyandotte. This, of course, is not what the intent of the law was in the state of Kansas, but it would become that if Senate Bill 818 were adopted in its present form. I think that you would have some objections from the other counties if Johnson County tried to impose its utility powers upon the other counties.

Thirdly, one of the biggest problems that always occurs when someone outside of a certificated utility is attempting to serve customers for a profit is that during the peak season (which this year could be classified as December, January,

February, and March) there is not sufficient gas, and not sufficient know-how, to serve the customers in question. This means that there has to be a standby service to supply natural gas for the users of the Industrial Airport during the peak season. There is no guarantee or assurance that Johnson County will have access to that much gas. The main supplier to Union of natural gas for this area is Northwest Central Pipeline, which is regulated by the Federal Energy Regulatory Commission. It is not subject to the jurisdiction of the KCC; and if that agency did not desire to sell gas to Johnson County, then it does not have to do so. Without a long-term contract, I would very seriously doubt if Northwest would agree to sell this gas. The reason Union has to purchase gas from Northwest to serve Johnson County is that there is not an adequate supply of natural gas in the county from which to draw and make sure that the customers are served year round. Union is able to purchase gas from Northwest because of its contract to purchase a certain number of cubic feet per year. Johnson County would have to enter into a contract like this with Northwest. Without purchasing large volumes, I am sure that Northwest would not consider Johnson County a preferred customer. Also, it would not be fair and equitable to demand that Union offer a standby service to serve the customers of Johnson County as a municipal utility, when it could not reap the rewards of being able to serve the customers during the other parts of the year.

Lastly, one of the most important factors for you to consider: What happens when business is taken away from a

certificated public utility, such as Union, in a given area? I would like to point out here that if Senate Bill 818 becomes law, then more than likely there will be other entities (such as school districts, benefit districts, portions of cities, and portions of counties) which will attempt to amend the law and become their own small municipal utility, with a less than adequate supply of gas to serve their customers. This would mean, of course, that the public utilities, which were serving that area at the time the small municipal utility had started to operate, would lose business. If the business were lost to the public utility, then the cost to the utility of that portion lost would have to be allocated among the other customers of the area which the utility served. That would result in higher utility costs for those customers.

In the case of Union, I would like to elaborate and point out that if the revenue from the Industrial Airport is lost to Union (which is approximately $62,828.00 a year), then Union will immediately file an application with the KCC to pass that loss of profit on to the other customers of Union. That, of course, would result in higher utility rates for those customers.

We do not believe that this legislative body desires to get itself in the position of allowing utility rates to increase in a area in which they are already burdensome, which is a result of the orders of the Federal Energy Regulatory Commission, and not the desires of the KCC nor Union Gas System, Inc. Union does not desire to raise its rates in Johnson County unless it is

absolutely necessary to make a fair return on its investment. However, there is no way that Union could not attempt to pass these costs on, since they would be direct lost profits. The profit and loss figures are based on the quantity of gas consumed and the quantity of gas purchased by the utility.

We would ask this committee not to look favorably upon Senate Bill 818. It is only a vehicle to circumvent the existing Kansas law and the desires of the Kansas Corporation Commission, and it could only result in a higher cost of natural gas to Union customers. This is not in the best interest of those customers.

We have been advised that Johnson County does not intend to reduce its rates to the customers of the Industrial Airport if it obtains the authority to operate as a municipal utility. Therefore, even those customers would not receive any beneficial treatment.

We respectfully request that this committee report Senate Bill 818 unfavorably to the full Senate, and let Union Gas System, Inc. operate as a certificated utility as governed by the Kansas Corporation Commission.

Respectfully submitted,

BOB W. STOREY

EXHIBIT "D"

BEFORE THE STATE CORPORATION COMMISSION
OF STATE OF KANSAS

In the Matter of the Application of JOHNSON COUNTY, KANSAS, to terminate the Certificate of Convenience and Authority to transact business of Union Gas Systems, Inc. upon the Johnson County Industrial Airport Property.

RECEIVED
JUL 28 1983

JOHNSON COUNTY, KANSAS
Johnson County Courthouse
Olathe, Kansas,

APPLICANT

UNION GAS SYSTEMS, INC.,
122 West Mrytle
P.O. Box 347
Independence, KS 67301

RESPONDENT

Docket No. _____

APPLICATION TO TERMINATE CERTIFICATE OF CONVENIENCE

COMES NOW Johnson County, Kansas, and in support of its Application to terminate the certificate of convenience as above-captioned, states and alleges as follows:

1. Johnson County, Kansas, is the fee title owner of certain property generally described as the Johnson County Industrial Airport, said property previously being known as the Olathe United States Naval Air Station. The United States Naval Air Station was deactivated and was deeded from the United States of America to Johnson County, Kansas, pursuant to the terms of a Quit Claim Deed dated November 13, 1973, as instrument number 970705, and recorded of record in the Register of Deeds of Johnson County, Kansas, on the 20th day of November, 1973, in Book 492, Page 346-367; that a copy of said Deed is attached to the Application marked as Exhibit "A" and incorporated by reference as if fully set out herein.

2. Johnson County, Kansas, received additional property from the United States of America pursuant to a Quit Claim Deed

State Corporation Commission
Rec'd JUL 21 1983 A.P.M.
Secretary

dated November 3, 1976, recorded August 12, 1977, at Book 1246, Page 520 et. seq., said Deed being incorporated by reference as Exhibit "B". Additional property was received from the United States of America pursuant to the terms of a Quit Claim Deed dated September 29, 1980, and recorded in the Register of Deeds on October 1, 1980, in Book 1609, Page 92, said property also being previously deeded from the United States of America, said Deed is incorporated by reference as Exhibit "C" as if fully set out herein.

3. That the Johnson County Industrial Airport is operated under the direction and control of the Johnson County Airport Commission as provided for in K.S.A. 3-301 et. seq. and amendments thereto. A portion of the Johnson County Industrial Airport is dedicated and devoted exclusively to aviation oriented activities and the balance of the property is reserved and presently being developed as an office and industrial park.

4. That pursuant to the terms of the Deeds from the United States of America to Johnson County, Kansas, the County owns fee title to the real estate and all improvements located thereon. The County owns and operates the water and sewer system. The Government had previously owned and operated a utility distribution systems including gas, water, electrical, telephone and sewer. All of these facilities were deeded to the County.

5. On January 21, 1970, the Respondent, Union Gas Systems, Inc., received a Certificate of Convenience from the Kansas Corporation Commission shown as Docket No. 88,472-U which allowed said Respondent to serve the United States Naval Air Station with a natural gas supply and that pursuant to said Order of the Corporation Commission, the Commission retained jurisdiction of the subject matter and the parties for the purpose of entering such further orders as it may deem necessary.

6. That as the owner of the natural gas distribution system,

the Applicant has been responsible for the costs and liability of maintaining said distribution system and further has paid for the enlargement to said system by and through contracting with Union Gas Systems. Johnson County, Kansas, is the owner of all of the natural gas distribution system located within the boundaries of the Johnson County Industrial Airport with the exception of the meters located at the distribution point of each user and the gas odorizer located on the north side of said industrial property.

7. That Johnson County, Kansas, is the beneficiary of certain oil and gas leases which have been dedicated from James L. Osborn, Jr. to the County; said leases consisting of partially drilled and undeveloped leases in the immediate vicinity; that the County is desirous of completing a gathering system to provide for the transportation of the "local gas" to the Johnson County Industrial Airport for the sale and consumption within the limits of the Johnson County Industrial Airport. In addition to the sale of "local gas" to the consumers at the Johnson County Industrial Airport, the Applicant intends to contract with Cities Service (Northwest Pipeline) for a secondary supplemental supply of gas to be sold to the users at the Johnson County Industrial Airport.

8. That the County is a "municipality" under the laws of the State of Kansas and as such is exempt from jurisdiction of the Kansas Corporation Commission except as for those provisions contained in K.S.A. 66-131(a) which provides for the filing of tariffs and rules and regulations restricting connections or attachments to their system for residential, commercial or industrial structures in respect to heat loss standards and energy efficient ratios.

9. That the County has attempted to prepare such tariffs, but is unable to do so until the Certificate of Convenience by Union Gas has been terminated by the Corporation Commission. It is necessary for the County to determine

what contracts rates will be set by Cities Service and that said rates can then be incorporated into the rates of the County to be charged the consumer at the Airport.

10. That the County has put Union Gas Systems, Inc. on notice of their intent to operate the facilities within the limits of the Johnson County Industrial Airport.

11. That it would be in the public interest of the local landowners upon which the existing oil and gas leases are held, general County interests due to the creation of revenues, and the tenants at the Johnson County Industrial Airport because of lower rates to terminate the Certificate of Convenience held by Union Gas Systems, Inc. and to allow Johnson County, Kansas, to operate its municipal gas utility for all tenants located within the limits of the Johnson County Industrial Airport.

12. That the County has reason to believe that there are natural gas reserves on the north portion of the Johnson County Industrial property and is desirous of developing those reserves in conjunction with the local reserves as deeded from Osborn to the County.

WHEREFORE, the Applicant prays the Kansas Corporation Commission for an Order terminating the Certificate of Convenience and Authority to Transact Business of Union Gas Systems, Inc. on the property generally described as the Johnson County Industrial Airport and further for an Order determining that Johnson County, Kansas, is a "municipality" under the laws of the State of Kansas and may operate such gas utility within the limits of the Johnson County Industrial Airport without the authority and control of the Kansas Corporation Commission except as provided for in K.S.A. 66-131(a).

JOHNSON COUNTY, KANSAS

By: William E. Franklin

WILLIAM E. FRANKLIN, Chairman of the Board of County Commissioners of Johnson County, Kansas

ATTEST:

Donald J. Carry, County Clerk
by Louise Hunter, Deputy
(S E A L)

STATE OF KANSAS, COUNTY OF JOHNSON) ss.

William E. Franklin, Chairman of the Board of County Commissioners of Johnson County, Kansas, of lawful age, being first duly sworn, on oath deposes and says:

That Johnson County, Kansas, is the Applicant above-named; that on behalf of said County he has read the foregoing Application, knows the contents thereof, and that the statements therein contained are true.

WILLIAM E. FRANKLIN, Chairman of the Board of County Commissioners of Johnson County, Kansas

SUBSCRIBED AND SWORN to before me this 21st day of July, 1983.

NANCIE RICHARDSON
NOTARY PUBLIC
STATE OF KANSAS
My Appointment Expires:
11-22-1984

Notary Public

PREPARED BY:

GERALD E. WILLIAMS
GAGE & TUCKER
9401 Indian Creek Parkway
P.O. Box 25830
O.P., KS 66225 642-8022

PHILIP S. HARNESS
Assistant County Counsellor
Johnson County Courthouse
Olathe, KS 66061 782-5000

ATTORNEYS FOR APPLICANT, JOHNSON COUNTY, KANSAS

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Application to Union Gas Systems, Inc., Attn: William Reeder, President, 122 West Mrytle, P.O. Box 347, Independence, KS 67301 and to Bob W. Storey, Suite 310, Columbian Title Building, 820 Quincy, Topeka, KS 66612, this 21st day of July, 1983, by depositing same in the United States Mail, postage prepaid.

GERALD E. WILLIAMS

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application
of JOHNSON COUNTY, KANSAS, to
terminate the Certificate of
Convenience and Authority to
transact business of Union Gas
System, Inc. upon the Johnson
County Industrial Airport
Property.

JOHNSON COUNTY, KANSAS
Johnson County Courthouse
Olathe, Kansas,

APPLICANT

UNION GAS SYSTEM, INC.
122 West Myrtle
P. O. Box 347
Independence, KS 67301

RESPONDENT

Docket No. 138,498-U

MOTION TO DISMISS

Comes now Union Gas System, Inc., the respondent in the above-entitled matter, and moves the Commission to strike the application filed herein by Johnson County, Kansas, from its agenda, and to remove the same as a proper application filed before said Commission for the following reasons, to-wit:

1. The Kansas Corporation Commission does not have jurisdiction over the application as filed.
2. The applicant herein is without authority to file an application requesting the Commission to abandon the authority of a duly-certificated utility under an order issued by the Kansas Corporation Commission.
3. Applicant herein does not meet the criteria of an "applicant" according to the definition set out in K.A.R. 82-1-212(e).
4. Applicant does not meet the criteria set out in the definition under K.A.R. 82-1-212(f).
5. Applicant herein is not clothed with the authority to request the abandonment or cancellation of the authority of a duly-certificated public utility; only the Commission has the authority to cancel or abandon said authority.
6. The rules and regulations of the Commission do not authorize the type of application herein filed by the applicant, nor

does it meet the criteria of a formal or informal complaint under the rules and regulations of the Commission.

7. Applicant herein is completely without standing to address any of the matters set out in this application.

8. The Commission has not acted upon the provision of K.A.R. 82-1-237(d), and there is not a proper matter before the Commission to be determined.

WHEREFORE, respondent herein respectfully requests the Commission to strike the alleged application filed herein for not meeting the requirements after 66 of the Kansas Statutes Annotated and the rules under Agency 82 of the Kansas Administrative Regulations. If this motion is denied, then respondent requests a reasonable length of time in which to file its answer to the application.

Respectfully submitted,

BOB W. STOREY
Shadow Wood Office Park
5863 S. W. 29th Street
Topeka, Kansas 66614
Attorney for Union Gas System, Inc.

VERIFICATION

STATE OF KANSAS, COUNTY OF SHAWNEE, SS:

Bob W. Storey, of lawful age, being first duly sworn, on oath deposes and says:

That he is attorney for Union Gas System, Inc.; that he has read the above and foregoing Motion to Dismiss and knows the contents thereof; and that the statements therein contained are true and correct to the best of his knowledge and belief.

BOB W. STOREY

Subscribed and sworn to before me this 1st day of September, 1983.

Edna Ferguson
Notary Public

My appointment expires:

Edna Ferguson
STATE NOTARY PUBLIC
Shawnee County, Kansas
My Appointment Expires:
March 19, 1984

CERTIFICATE OF SERVICE

I, Bob W. Storey, do hereby certify that a copy of the foregoing Motion to Dismiss was served on the following by first class United States mail, postage prepaid and properly addressed, this 1st day of September, 1983:

Gerald E. Williams
Gage & Tucker
9401 Indian Creek Parkway
P. O. Box 25830
Overland Park, Kansas 66225

Philip S. Harness
Assistant County Counselor
Johnson County Courthouse
Olathe, Kansas 66061

William E. Franklin, Chairman
Board of County Commissioners
Johnson County Courthouse
Olathe, Kansas 66061

Brian J. Moline, General Counsel
Kansas Corporation Commission
State Office Building, 4th Floor
Topeka, Kansas 66612

BOB W. STOREY

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of JOHNSON COUNTY, KANSAS, to terminate the Certificate of Convenience and Authority to transact business of Union Gas System, Inc. upon the Johnson County Industrial Airport Property.

JOHNSON COUNTY, KANSAS
Johnson County Courthouse
Olathe, Kansas,

APPLICANT

UNION GAS SYSTEM, INC.
122 West Myrtle
P. O. Box 347
Independence, KS 67301

RESPONDENT

Docket No. 138,498-U

LEGAL MEMORANDUM

FACTS

On or about January 21, 1970, Union Gas System, Inc. (hereinafter referred to as Respondent) received a Certificate of Convenience and Necessity from the Kansas Corporation Commission (hereinafter referred to as Commission), referenced as Docket No. 88,472-U, which authorized Respondent to serve areas of Johnson County, Kansas, including the United States Naval Air Station near Olathe, Kansas, as a natural gas supplier.

Sometime in 1973 the United States Naval Air Station abandoned the premises and deeded the property through the United States government to Applicant, which is presently the owner in fee of the property which is designated as the Johnson County Industrial Airport (hereinafter referred to as Airport). A portion of the Airport is designated for aviation purposes, and a portion thereof is designated as an office and industrial park.

Since the takeover of the naval base by Applicant, Respondent has been the supplier of natural gas for the patrons in the industrial park, and continues to serve that area today along with other areas in Johnson County. As a result of having obtained authority to serve the area, Respondent installed

necessary pipelines for the transportation and service of natural gas into the area, and installed meters to perfect a reading on the natural gas used by each consumer. Since that time Respondent has maintained the gas pipeline system and the meters, and is presently doing so today.

As of this date Respondent is still a duly certificated public utility subject to the jurisdiction of the Commission as defined by K.S.A. 66-104.

On or about May 18, 1983, Respondent received a communication dated May 16, 1983, signed by William E. Franklin, Chairman of the Board of County Commissioners of Johnson County, Kansas. This letter demanded that Respondent remove its equipment by September 1, 1983, and discontinue service on that same date to those patrons located within the Johnson County Industrial Airport. (See attached Exhibit "A.")

On or about May 24, 1983, Respondent's counsel, Bob W. Storey, met with Mr. Joe Dennis, Executive Director of the Airport, and Gerald E. Williams, Esq., who is counsel for that entity, in Olathe, Kansas, to discuss this matter. At that time Respondent advised the Applicant's representatives that Respondent could not abandon the service of natural gas to the patrons of the Airport without the permission of the Commission, which has regulatory control over Respondent as a public utility. At the same time Respondent also advised Applicant that Respondent had no intention to terminate its service to the Airport customers; that Respondent had the authority to perform said service; and that it had spent much time and gone to considerable expense to maintain service in that area. Respondent stated further that it would be happy to discuss any problems which had arisen and possible solutions to the same. Respondent was notified that the Airport had its own supply of gas through an alleged gift by a citizen of Johnson County of certain natural gas wells; that it intended to drill other wells on land owned or leased by Applicant; and that it would be its

own supplier and distributor of natural gas to the patrons of the Airport.

As a result of that meeting, Respondent, through its counsel, Bob W. Storey, wrote a letter on May 27, 1983, to Mr. Brian Moline, General Counsel of the Commission, Topeka, Kansas. That letter set out that Respondent had been notified to terminate all service to Johnson County, but that Respondent did not intend to do so until so ordered by the Commission. Copy of this letter is attached as Exhibit "B."

On or about July 1, 1983, Respondent received through its counsel, Bob W. Storey, a letter from Mr. Brian Moline (copy attached as Exhibit "C") which stated in effect that Respondent was required to continue to serve the area and follow all orders and tariffs of the Commission until further order of the Commission. It stated further that the Certificate of Convenience and Necessity could not be terminated, canceled, abandoned, or altered without specific approval of the Commission or the filing of a proper application.

On or about July 21, 1983, an application to terminate the Certificate of Convenience was filed with the Commission by Applicant, through William E. Franklin, Chairman of the Board of County Commissioners of Johnson County. In this application the Applicant asked the Commission to cancel the Certificate of Convenience and Necessity held by Respondent to serve the area in question. (Attached as Exhibit "D.")

On or about July 29, 1983, a Motion for Enlargement of Time was duly filed by Respondent, requesting that an additional thirty-day period (or until September 1, 1983) be allowed for Respondent to answer or otherwise plead to the application filed by the Airport. (See Exhibit "E.")

By order of the Commission dated August 16, 1983, copy of which is attached as Exhibit "F," Respondent was given until September 1, 1983, to answer or otherwise plead to the allegations contained in the application herein.

This Legal Memorandum was duly and properly filed with the Commission September 1, 1983, in support of Respondent's Motion to Dismiss.

QUESTIONS OF LAW

1. Does the Commission have jurisdiction over the application herein filed?
2. Is Applicant clothed with the authority to file an application requesting the Commission to abandon or to cancel the authority of a duly certificated utility, such as Respondent?
3. Does the application filed herein meet the criteria of a formal or informal complaint under the rules and regulations of the Commission or the statutes of the State of Kansas?
4. Is Applicant or the Johnson County Industrial Airport or the Johnson County Airport Commission a municipality under the laws of the State of Kansas?
5. Can a municipally-owned utility offer partial service to a territory in which it serves, without offering that same service to the other patrons of the territory.
6. Can the Commission issue dual certificates of authority to serve the same area?
7. Can the Commission cancel the authority of a duly certificated public utility, except upon the request of the utility or upon the action of the Commission itself by the issuance of a show-cause and later order canceling said certificate?

ARGUMENT

1. Jurisdiction

In order for the Commission to have jurisdiction over the application filed herein, the applicant must show that it is clothed with the authority to file said application; that the allegations contained in the application meet the criteria

contained in the Kansas Statutes Annotated and the Kansas Administrative Rules; and that the parties are the proper parties to appear on the application.

There is no question that Respondent is subject to the jurisdiction of the Commission as a public utility defined under K.S.A. 66-101 and 66-104. It is a well-established rule that a public utility which holds a Certificate of Convenience from the Commission may not abandon that certificate without the express permission of the Commission.

In The State, ex rel., v. Telephone Company, 102 K. 318, it was said by the Court:

> To avoid a possible misunderstanding, it may be added that it does not follow from anything here decided that where by mutual arrangement a connection has been established between two or more local exchanges, by which their subscribers are brought into communication with each other without charge other than such as is included in the payment of rent, such service may be discontinued (or that an additional charge may be exacted for its continuance) without the consent of the utilities commission.

Further, in the case of The State, ex rel. v. Postal Telegraph Company, 96 K. 298, it was said by the Court:

> How is the public utilities commission to discharge its important duties if the puiblic service companies may quit business here, there, or anywhere in the state without an opportunity for the commission to determine the propriety of such a course? (Page 305).

And, lastly, in The State of Kansas, ex rel., v. The Trego County Cooperative Telephone Company, 112 K. 701, the Court reiterated that a public utility may not abandon its authority without permission of the public utilities commission. The Court said:

> The fact that the defendants' lines were originally designed for mutual service only and that they never applied for and never received a certificate of convenience from the public utilities commission, as prescribed by section 31 of the Public Utilities Act, General Statutes of 1915, section 8359, is no defense to an action in mandamus requiring the restoration of a public service in which the defendants were engaged and to which their property was devoted for several years, when such service was discontinued without the consent of the public utilities commission.

These cases clearly show that no public utility may abandon its authority without first an application having been filed before the Commission, and the Commission then issuing an order authorizing the utility to abandon such territory.

In this particular case, the respondent has not filed such application. At a matter of fact, it does not intend to abandon the authority; and it is ready, willing, and able to serve the territory which is authorized by its certificate from the Commission, which is the subject matter of this alleged application.

Applicant has no authority to file the alleged "application" under the laws of the State of Kansas and the rules of the Commission. More specifically, we would point out that under K.A.R. 82-1-204, sub. (e), the definition of applicant is as follows:

> 'Applicant' means any party on whose behalf an application for authority or permission, which the commission is authorized by law to grant or deny, is made.

The applicant herein has already stated that it needs no authority to operate as a municipal utility from the Commission, and the application which it has filed in this matter does not seek authority or permission for it to operate as a utility. Rather, it seeks an order of the Commission to cancel or abandon the certificate of the respondent, which does not fall under the auspices of subsection (e) of 82-1-204.

If the Commission elects to treat this as a complaint, we would submit the following arguments. Complaints are defined by K.A.R. 82-1-220 as follows:

> Complaints. (a) Any mercantile, agricultural, manufacturing organization or society, any body politic, municipal organization, or any taxpayer, firm, corporation or association may initiate, by the filing of a formal complaint, proceedings, in which the rates, joint rates, fares, tolls, charges, rules, regulations, classifications, or schedules of any public utility or common carrier are alleged to be unreasonable, unfair, unjust, unjustly discriminatory, unduly preferential, or that any service performed or to be performed is unreasonably inadequate, inefficient, unduly insufficient or cannot be obtained. Parties other than those hereinabove enumerated may file complaints if they have an interest in the subject of

the action involved and if this interest can be shown by their complaint.

The regulation goes on to cite formal and informal complaints. Without lengthening this matter, we can determine that this application, if defined as a complaint, would be a formal complaint, since it has been written and filed before the Commission. However, it is interesting to note that the application does not cite that the public utility (in this case, Respondent) has been discriminatory, unreasonable, unjust, etc., in any of the service or rates offered by it. Merely, the applicant wants the authority abandoned so that it can serve the territory itself.

Further, we would bring the Commission's attention to K.A.R. 82-1-204 (f) wherein it states:

> 'Complainant' means any person who complains to the commission of anything done or failed to be done in contravention or violation of the provisions of any statute or other delegated authority administered by the commission, or of any orders, rules, or regulations issued or promulgated thereunder, or any other alleged wrong over which the commission may have jurisdiction.

It is plain to see by these rules and regulations that a complaint is filed by a complainant that alleges a wrongdoing, or unreasonable act, or unjust or discriminatory action, which the Commission has authority to rectify. In this particular case, it is not alleged that Respondent has done anything wrong; therefore, this proceeding cannot be called a complaint, and the Commission would have no jurisdiction over the same.

The last area of the law and rules and regulations which would give the Commission jurisdiction over this matter would be if the Commission decided on its own initiative to conduct an investigation. Under K.A.R. 82-1-237 (c) it states, and we quote:

> Upon the initiation of an investigation. The commission may at any time, on its own motion, make investigations and order hearings into any act or thing done or omitted to be done by any public utility, common carrier or any other party under its jurisdiction, which the commission may believe is in violation of law or of any order of the commission. The commission may

> institute such other investigations as are required or authorized by law whenever the same are deemed to be necessary. It may, also, through its own legal staff or otherwise, secure and present such evidence as it may consider necessary or desirable in any formal proceeding in addition to the evidence presented by the parties.

We would point out that in this particular case the Commission has not initiated its own investigation, or has seen fit to conduct an investigation into the practices of a duly-certificated public utility, the Respondent. Therefore, since it has not conducted its own investigation, and the application before it is not a proper one, it does not have jurisdiction over this matter.

2. Is Applicant clothed with authority to file an application requesting the Commission to abandon or to cancel the authority of a duly-certificated utility such as Respondent?

As previously stated, the only parties who have the authority to file an application to abandon the certificate of a public utility which holds such a Certificate of Convenience and Necessity from the Commission would be the certificated utility itself. That would have to be done by the proper filing of an application, and the presenting of sufficient evidence before the Commission to validate such abandonment of authority; or by the Commission, upon its own initiative, which would be in the form of an investigation into whether the utility was performing under the terms of its certificate. The matters contained in the purported application do not involve either of the two situations herein discussed. Therefore, the third party does not have the authority to file pleadings to terminate the certificate of a public utility merely because it wants to go into competition with said utility.

3. Does the application filed herein meet the criteria of formal or informal complaint of the rules and regulations of the Commission under the statutes of the State of Kansas?

As herein discussed, there are two types of complaints which may be filed before the Commission. These would be an informal complaint or a formal complaint. An informal complaint is one which is received either orally, by letter, or by other

writing. A formal complaint is one which must be in writing and shall comply with the requirements of the Commission rules and regulations (see K.A.R. 82-1-237). For the elimination of argument, it would be determined here that the alleged application filed herein, if in fact it has any standing at all, would be classified as a formal complaint. If this matter is to be treated as a complaint, then it has to meet the criteria of K.A.R. 82-1-237 (b). We do not believe the purported application has met the criteria of said K.A.R., for the reason that the allegations contained therein would have to establish a prima facie case for action by the Commission. As well defined by the rules and prior cases, a complaint could be to the services, rates, etc., of a certificated carrier and not to the fact that the complaint should be initiated because another utility desires to compete with the certificated carrier. In addition thereto, by the filing of a formal complaint, the provisions of K.A.R. 82-1-204 (f) would have to be met, which states in essence that:

> 'Complainant' means any person who complains to the commission of anything done or failed to be done in contravention or violation of the provisions of any statute or other delegated authority administered by the commission, or of any orders, rules, or regulations issued or promulgated thereunder, or any other alleged wrong over which the commission may have jurisdiction.

In order for the Applicant herein to become a complainant, it must be recognized as a public utility. The Court in the case of City of Piqua v. Public Utilities Commission, 320 N. E. 2d 661, said:

> Term 'public utility,' in statute permitting a public utility to file a complaint with the Public Utilities Commission protesting an alleged duplication of service by another public utility, does not include a public utility which is owned or operated by a municipal corporation.

In that particular case, the City of Piqua, the appellant, owned and operated a municipal power system which generated and distributed electric energy. Appellant had been supplying electricity to the Upper Valley Joint Vocational School until the school's Board of Trustees terminated the service

arrangement and entered into a contract to receive electricity from Dayton Power and Light Company, the appellee. Considering appellee's proposed action to be a duplication of its preexisting, the appellant filed a complaint with the Public Utilities Commission requesting an order preventing appellee from furnishing electric energy to the school. The Court further said in that case:

> "... the provisions of Section 4905.261 Revised Code do not apply to a municipally owned utility and that this statute conferred no jurisdiction upon the commission to act in disputes of this nature.

The law R. C. 4905.261, in pertinent part, reads as follows:

> Whenever a public utility proposes to furnish or furnishes electric energy to a consumer and which consumer is being furnished or was being furnished electric energy by another public utility, the latter public utility may file a complaint with the public utilities commission protesting the furnishing of service by the other public utility. ... The commission upon finding that the complaining public utility has been furnishing or will furnish an adequate service to such consumer and that the public utility complained against will duplicate facilities of the complainant, shall order the public utility complained against not to furnish electric energy to such consumer.

The Court accordingly held that the term "public utility" as used in R. C. 4905.261 does not include a public utility which is owned or operated by a municipal corporation. Such municipal utility may not file a complaint with the Public Utilities Commission pursuant to R. C. 4905.261 protesting an alleged duplication of service by another public utility. The complainant herein, Applicant, does not complain of any of the necessary elements contained in subparagraph (f). Therefore, Applicant does not meet the criteria of a complainant, which means in effect that there is no formal complaint before the Commission.

4. Is Applicant or the Johnson County Industrial Airport or the Johnson County Airport Commission a municipality under the laws of the State of Kansas?

It is well documented that a truly owned and operated municipal utility is not subject to the jurisdiction of the Commission, except as hereinafter provided in K.S.A. 66-133 and K.S.A. 66-131a. K.S.A. 66-104 states, and we quote:

> Except as herein provided, the power and authority to control and regulate all public utilities and common carriers situated and operated wholly or principally within any city or principally operated for the benefit of such city or its people, shall be vested exclusively in such city, subject only to the right to apply for relief to the corporation commission as hereinafter provided in K.S.A. 66-133. (and the provisions of K.S.A. 66-131a).

It is interesting to note that this section speaks of cities and not counties, nor airport authorities, nor airport commissions, nor industrial airport parks.

The Court said in the case of Holton Creamery Company v. G. H. Brown, 137 K. 418, as follows:

> The regulation and control of utility rates and services supplied by an electrical power and water plant owned and operated by a municipality is vested in the city government, subject to judicial review of the reasonableness of the same city ordinances pertaining thereto.

(See Public Utilities v. Knsas City Power & Light Company, 139 K. 842, and Kansas Gas & Electric Company v. City of McPherson, 146 K. 614.)

It is interesting to note that in all of these cases, also, the law refers to municipally-owned utilities within the corporate city limits, or three miles thereof. There is no mention of a county being defined as a municipality and authorized to operate a municipal utility. The query would be that if a county is a municipality and is authorized to operate a municipal utility, how can the term within three miles of the corporate city limits be defined, since it is to be found nowhere in the statute books.

It is true that in Chapter 10 of Kansas Statutes Annotated, entitled Bonds and Warrants, and more specifically, K.S.A. 10-101, a municipality is defined as:

> 'Municipality,' as used in this chapter and all acts amendatory thereto, unless otherwise expressed in such amendment, shall mean and include every corporation and

quasi corporation empowered to issue bonds in payment of which taxes may be levied.

The applicant herein seems to be hanging its hat on the fact that a municipality has been defined in this statute. However, we would point out to the Commission that Chapter 10 of K.S.A., is entitled Bonds and Warrants, and as municipalities are defined in that particular section of the statute book, it is as it relates to the power to issue bonds, either by a city or by a county. For the purposes of a public utility or a municipally-owned utility as defined by Chapter 66 of the Kansas Statutes Annotated, there is no such definition; and to the knowledge of this writer there has not been an occasion where a county itself has been able to operate as a municipally-owned utility.

The Court has said in many instances that a county under the laws of the State of Kansas is not treated as a municipality. This is well set out in the case of Silver v. Clay County, 76 K. 228, 91 Pac. 55, where the Court held:

> Counties are involuntary quasi-corporations and are mere auxiliaries to the state government and partake of the state's immunity from liability. They are in no sense business corporations.

This law was reiterated in the case of Clapham v. The Board of County Commissioners of the County of Miami, 158 K. 685, 149 P. 2d 344, where the Court held that the county was not liable for damages for the death of the plaintiff's husband, which was alleged to have resulted from the negligence of the defendant. The Court reiterated the law which was applied in Silver v. Clay County and further cited Shawnee County v. Jacobs, 79 K. 76, 99 Pac. 817, and other related cases, which find that a county is not liable for the damage and is not treated as a private corporation, but as an arm or auxiliary of the State. I would like to quote from McQuillin on Municipal Corporations, 1971 Revised Volume, Volume 1, Sect. 2.23, General considerations. McQuillin states:

So-called 'quasi-municipal' corporations have been

> defined and cnsidered in general in a preceding subdivision of this chapter.' Whether a particular corporation is (1) a municipal corporation in the strict sense of the term, or is (2) a quasi-municipal corporation, is sometimes answered differently in the several states, and even in the same state the decisions sometimes are in conflict as to whether a particular corporation is a municiapl corporation in the strict sense of the term or is a quasi-municipal corporation. Municipal corporations, using the term in its strict sense, include, unless otherwise provided by the constitution or a statute, as a general rule, only incorporated cities, villages and towns. Counties, it is generally held, are not included, nor are townships, unincorporated towns, unincorporated villages, or districts created by or pursuant to statute, such as drainage districts, irrigation districts, and the like.

It is recognized in McQuillin that a county is not in the strictest sense of the word a municipality. Therefore, it may not operate as a municipal utility.

5. May a municipally-owned utility offer partial service to a territory without offering the same service to the other patrons of the territory?

In the application which has been filed herein by Applicant, it states that Applicant is the owner of the land which encompasses the Johnson County Industrial Airport, and that entity is operated by the Johnson County Airport Commission under the auspices of the Applicant itself. By the terms of the application filed, Applicant desires to have the Certificate of Convenience and Necessity of Respondent terminated, so that Applicant may serve the patrons of the Industrial Airport of Johnson County. Nowhere in the application does it state, nor do we believe it will be indicated by any of the evidence offered by the applicant, that it intends to offer service as a municipally-owned utility to all of the citizens of Johnson County, which is required by law of other municipally-owned utilities. Therefore, it could not meet the criteria of being a municipally-owned utility, unless it would offer service to the entire area of Johnson County. The Applicant itself is without the expertise, equipment, and natural gas to provide service to the entire county of Johnson; and the Commission would have jurisdiction over this matter by the requirements of K.S.A.

66-131a, which requires a municipally-owned utility to file its tariffs. Such tariffs would have to reflect service to the entire population of Johnson County, and not just to that restricted area known as the Industrial Airport.

Even though we are speaking of a municipal utility, it is well founded in law that a public utility may not offer partial service to its customers and that jurisdiction is in the public utility commission to mandate that a full, reasonable service is offered to all rate payers. The Commission has jurisdiction over a municipal utility, as it relates to the filing of tariffs and under the statutes which already have been cited herein. Therefore, it would follow that the Commisson may demand that a municipal utility offer full service to its customers.

In the case of New York & Queens Gas Co. v. McCall, 171 App. Div. 580; 219 N. Y. 84, 681, the Court said:

> Corporations which devote their property to a public use may not pick and choose, serving only the portions of the territory covered by their franchises which it is presently profitable for them to serve and restricting the development of the remaining portions by leaving their inhabitants in discomfort without the service which they alone can render. To correct this disposition to serve where it is profitable and to neglect where it is not, is one of the important purposes for which these administrative commissions, with large powers, were called into existence, with an organization and with cuties which peculiarly fit them for dealing with problems such as this case presents, and we agree with the Court of Appeals of New York in concluding that the action of the Commission complained of was not arbitrary or capriciou;s, but was based on very substantial evidence, and therefore that, even if the courts differed with the Commission as to the expediency or wisdom of the order, they are without authority to substitute for its judgment their views of what may be reasonable or wise.

Even though this case speaks of public utilities, it is clear that the Commission has the jurisdiction, and even the mandate, to require reasonable service by a utility, be it municipal or public, to all of the customers who desire service from that utility.

This is not the first time this matter has been addressed. It was ruled specifically on in the case of Town of Wickenburg v. Sabin, 200 Pacific Reporter, 2d Series, page 342, 68 Ariz. 75. In that particular case, Sabin, a customer, had applied for service from the town of Wickenburg, which is a municipal utility; and the utility denied the service upon the grounds that it did not have to offer service to all of its customers.

The Court in that case said, and we quote:

> Public service corporations must treat all their consumers fairly and without unjust discrimination and give all of them the same service on equal terms at uniform rates without discriminating between customers similarly situated as to character of service rendered or charges made and as regards discrimination in rates or service in the public utility field, a municipal corporation stands in the same position as a private corporation.

The Court further went on to say:

> ... And a municipality undertaking to supply water to its inhabitants stands in no different relation as to the right to discriminate from that of private corporations.

In this case the Court cited the law on discrimination in McQuillin Municipal Corporations, 2d Ed., Vol. 4, Sec. 1829, which states:

> The rule forbidding unjust discrimination has been variously expressed: The charges must be equal to all for the same service under like circumstances. A public service corporation is impressed with the obligation of furnishing its service to each patron at the same price it makes to every other patron for the same or substantially the same or similar service. It 'must be equal in its dealings with all.' It 'must treat the members of the general public alike.' All patrons of the same class are entitled to the same service on equal terms. 'The law will not and cannot tolerate discrimination in the charges of these quasi-public corporations. There must be equality of rights to all and special privileges to none.' 'A person having a public duty to discharge is undoubtedly bound to exercise such office for the equal benefit of all.' All should be treated alike; equality of rights requires equality of service.' The duty owed to all alike involves obligations to treat all alike.' 'The common law upon the subject is founded on public policy which requires one engaged in a public calling to charge a reasonable and uniform price to all persons for the same

service rendered under the same circumstances.'

Again, the Court said here:

> As regards discrimination in the public utility field, the appellant, a municipal corporation, stands in the same position as a private corporation.

6. May the Commission issue dual certificates of authority to serve the same area?

It is well documented in both the statutes and case law that the powers given to the Commission are to promote the welfare and interests of the citizens of the state of Kansas, who rely on the furnishing of utilities either by public utilities or municipally-owned utilities, through the granting of a certificate by the Commission to serve an area. The canceling of a part of the territory granted by a certificate so that another purported municipally-owned utility can operate would not be in the best interests of the citizens of the state of Kansas, and would be confiscatory and discriminatory in eliminating part of the territory held by the certificated utility. If the certificate is not canceled, the end result could be that there would be a regulated public utility and an alleged municipal utility serving the same area. That would be contrary to the laws of the State of Kansas and the rules and regulations of the Commission.

It has been well recognized in Kansas law that the operation of dual certificates in the utility field could be disastrous to one utility, thereby down-grading the service offered to the patrons, which is the primary concern in granting a utility the right to serve a particular area. In the case of General Communications, Inc. v. State Corporation Commission, 216 K. 410, Syllabus No. 3, the Court said:

> The granting by the State Corporation Commission of a certificate of convenience to a radio common carrier, under the provisions of K.S.A. 66-1,144, does not constitute an invasion of the territorial integrity of an existing operator where the proposed services are not in duplication of the existing services.

The Court was saying in this language that the Commission by granting a Certificate of Convenience and Necessity

where another carrier was not operating did not force the issue of competition, and therefore did not endanger the public welfare. The Court was merely reiterating the fact that it could be disastrous to have dual certificates for utilities operating in the same area. The Court went on further to say in the General Communications case, as follows:

> Insofar as the cases discussed above stand for the proposition that a certificate should not be granted to another service, which will duplicate the existing service unless the regulatory authority first determines that existing service is inadequate and that the person operating the same is unable or refuses to provide such service, we agree.

This law is reiterated in the case of Kansas Gas & Electric Company v. Public Service Commission, 122 K. 462, 251 Pac., 1097. As the dual communications system points out, this theory was restated in the recent case of Central Kansas Power Company v. State Corporation Commission, 206 K. 670, at page 677, in which the Court said:

> The statutes authorizing the Commission to supervise and control corporate action in the utility field have been generally understood as an expression of the legislature's administrative policy, designed to protect against ruinous competition, to promote adequate and efficient service and to limit the waste attendant on unnecessary duplication of facilities designed for the same purpose in the same area.

In the Kansas Gas & Electric case above cited, the Court stated as follows:

> In determining whether such Certificate of Convenience should be granted (1) the public convenience ought to be the Commission's primary concern, (2) the interest of public utility companies already serving the territory secondary, and (3) the desires and solicitations of the applicant a relatively minor consideration. (Page 466.)

This language needs to be taken in context with paragraph 7, which sets out that the Commission's primary concern should be public convenience. If in fact the Respondent herein is properly serving the area in question, and is providing adequate service to all of the patrons of that area; and if it would be against the public interest to have two utilities serving the same area, then the Commission certainly does not

have the authority to cancel the certificate of the Respondent. If dual service existed, then the Commission does have the authority to rule that it would not be in the best interests of the public, and that Applicant, since it is not a municipality, does have the authority, or should not be issued a certificate to serve said area and the tariff filing should not be accepted by the Commission.

7. Does the Commission have the authority to investigate to determine if a public utility or a municipally-owned utility is capable of providing service to the patrons it should serve under all cnditions?

There is no question here that there is not enough gas in the wells given to Applicant by the donor, which have been described in the application, to sufficiently provide for the patrons it desires to serve during the peak winter months. If Applicant is allowed to prevail under its application and terminate the services of Respondent, then there will be no provider of natural gas which is capable of handling the needs of the patrons of the Industrial Airport Park. Further, there is no supply of natural gas immediately available to Applicant except by Northwest Pipeline Company, successor to Cities Service, which is controlled by the Federal Energy Regulatory Commission (FERC) of the United States government. It is not subject to jurisdiction by the Commission, and does not have to provide natural gas to Applicant unless it so desires or is so ordered by FERC. Therefore, Applicant is not guaranteed a regular supply of natural gas during the peak periods of use. The welfare of the patrons which it purports to serve is in grave danger if a regulated public utility, such as Respondent, is not available for providing said service.

CONCLUSION

Respondent has shown by the above arguments and legal citations that the application filed herein by Applicant should be dismissed, because the Commission has no jurisdiction over the

same, and because there is no provision in the Kansas statutes or Kansas Administrative Rules and Regulations authorizing Applicant to do any filing before the Commission. The only authority for the abandonment of a Certificate of Convenience and Necessity would be by the person holding the certificate, or by the Commission on its own initiative. In addition, the best interests of the citizens of Johnson County will not be furthered by the canceling of the certificate of the respondent, since it has the only capable, efficient service to provide to the rate-paying customers of Johnson County. Applicant does not meet the criteria of a municipality under the terms of operating a municipally-owned utility, since it does not offer services to all the citizens of Johnson County which would be within its municipal bounds by the terms of the language used in the application.

Respectfully submitted,

BOB W. STOREY
Shadow Wood Office Park
5863 S. W. 29th Street
Topeka, Kansas 66614
Attorney for Union Gas System, Inc.

VERIFICATION

STATE OF KANSAS, COUNTY OF SHAWNEE, SS:

Bob W. Storey, of lawful age, being first duly sworn, on oath deposes and says:

That he is attorney for Union Gas System, Inc.; that he has read the above and foregoing Legal Memorandum and knows the contents thereof; and that the statements therein contained are true and correct to the best of his knowledge and belief.

BOB W. STOREY

Subscribed and sworn to before me this 1st day of September, 1983.

Notary Public

My appointment expires:

Edna Ferguson
STATE NOTARY PUBLIC
Shawnee County, Kansas
My Appointment Expires:
March 19, 1984

CERTIFICATE OF SERVICE

I, Bob W. Storey, do hereby certify that a copy of the foregoing Legal Memorandum was served on the following by first class United States mail, postage prepaid and properly addressed, this 1st day of September, 1983:

Gerald E. Williams
Gage & Tucker
9401 Indian Creek Parkway
P. O. Box 25830
Overland Park, Kansas 66225

Philip S. Harness
Assistant County Counselor
Johnson County Courthouse
Olathe, Kansas 66061

William E. Franklin, Chairman
Board of County Commissioners
Johnson County Courthouse
Olathe, Kansas 66061

Brian J. Moline, General Counsel
Kansas Corporation Commission
State Office Building, 4th Floor
Topeka, Kansas 66612

BOB W. STOREY

THE STATE CORPORATION COMMISSION

OF THE STATE OF KANSAS

BEFORE COMMISSIONERS: MICHAEL LENNEN, CHAIRMAN
RICHARD C. (PETE) LOUX
PHILLIP R. DICK

IN THE MATTER OF THE APPLICATION OF JOHNSON COUNTY, KANSAS, TO TERMINATE THE CERTIFICATE OF CONVENIENCE AND AUTHORITY TO TRANSACT BUSINESS OF UNION GAS SYSTEM, INC. UPON THE JOHNSON COUNTY INDUSTRIAL AIRPORT PROPERTY.	DOCKET NO. 138,498-U
JOHNSON COUNTY, KANSAS, APPLICANT,	
UNION GAS SYSTEM, INC., RESPONDENT	

ORDER

THE ABOVE-CAPTIONED MATTER COMES BEFORE THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS FOR CONSIDERATION. HAVING REVIEWED ITS FILES AND RECORDS AND BEING DULY ADVISED IN THE PREMISES, THE COMMISSION FINDS AND CONCLUDES AS FOLLOWS:

1. ON JULY 21, 1983, JOHNSON COUNTY, KANSAS FILED AN APPLICATION TO TERMINATE UNION GAS SYSTEM'S CERTIFICATE OF CONVENIENCE AND AUTHORITY TO TRANSACT BUSINESS AS A PUBLIC UTILITY AT THE JOHNSON COUNTY INDUSTRIAL AIRPORT. THE APPLICANT ALLEGED IT IS THE BENFFICIARY OF OIL AND GAS LEASES LOCATED IN THE IMMEDIATE VICINITY OF THE AIRPORT PROPERTY. THE APPLICANT DESIRES TO TRANSPORT THIS GAS TO CONSUMERS THROUGH A DISTRIBUTION SYSTEM IT OWNS WHICH IS CURRENTLY USED BY THE RESPONDENT.

2. THE RESPONDENT, UNION GAS, FILED A MOTION TO DISMISS THE APPLICATION ON SEPTEMBER 1, 1983. RESPONDENT ALLEGED THE COMMISSION WAS WITHOUT JURISDICTION OVER THE APPLICATION AS FILED BECAUSE OF CERTAIN PROCEDURAL DEFECTS. RESPONDENT ALSO ALLEGED THE APPLICANT WAS WITHOUT AUTHORITY TO FILE AN APPLICATION REQUESTING THE COMMISSION TO REVOKE A CERTIFICATE. RESPONDENT ALSO ALLEGED THAT NEITHER JOHNSON COUNTY NOR THE JOHNSON COUNTY AIRPORT COMMISSION WAS A MUNICIPALITY UNDER THE LAWS OF THE STATE OF KANSAS.

3. THE COMMISSION, IN AN ORDER DATED OCTOBER 4, 1983, REQUESTED THE RESPONDENT TO ADDRESS TWO ADDITIONAL ISSUES PRIOR TO ORAL ARGUMENT. THOSE ISSUES WERE THE APPLICATION OF K.S.A. 66-131 TO THIS MATTER AND WHETHER THE COMMISSION HAS DISCRETION TO REFUSE TO ALLOW A MUNICIPALITY TO OPERATE IN AN AREA ALREADY SERVED BY A CERTIFICATED PUBLIC UTILITY. THE APPLICANT WAS REQUESTED TO FILE A BRIEF ADDRESSING THESE QUESTIONS AND THOSE RAISED BY THE RESPONDENT IN ITS MOTION TO DISMISS.

4. ORAL ARGUMENTS WERE HEARD BY THE COMMISSION ON NOVEMBER 21, 1983. THE COMMISSION FOUND THAT NOTICE WAS PROPER AND THAT IT HAD JURISDICTION TO HEAR THIS MATTER.

5. THE COMMISSION BELIEVES THE CONSIDERATION OF TWO ISSUES WILL RESOLVE THIS PROCEEDING. THE FIRST IS WHETHER THE APPLICANT CAN BE A MUNICIPALITY FOR PURPOSES OF K.S.A. 66-104 AND K.S.A. 66-131 AND THUS LARGELY EXEMPT FROM COMMISSION JURISDICTION. THE SECOND IS WHETHER THE APPLICANT HAS PRESENTED EVIDENCE WHICH WOULD INDICATE THAT UNION GAS SYSTEM'S CERTIFICATE TO SERVE JOHNSON COUNTY INDUSTRIAL AIRPORT SHOULD BE TERMINATED.

6. THE COMMISSION IS PERSUADED THAT JOHNSON COUNTY IS NOT A MUNICIPALITY FOR PURPOSES OF THE PUBLIC UTILITIES ACT, K.S.A. 66-101, ET SEQ. THE EXEMPTION FROM COMMISSION SUPERVISION PROVIDED IN K.S.A. 66-104 IS A NARROW ONE AND THE PLAIN LANGUAGE OF THAT STATUTE FORECLOSES A CONSTRUCTION WHICH WOULD ALLOW A COUNTY TO BE A MUNICIPALITY. K.S.A. 66-104 PROVIDES IN PART:

> THE TERM "PUBLIC UTILITY" SHALL ALSO INCLUDE THAT PORTION OF EVERY MUNICIPALLY OWNED OR OPERATED ELECTRIC OR GAS UTILITY LOCATED OUTSIDE OF AND MORE THAN THREE (3) MILES FROM THE CORPORATE LIMITS OF SUCH MUNICIPALITY, BUT NOTHING IN THIS ACT SHALL APPLY TO A MUNICIPALLY OWNED OR OPERATED UTILITY, OR PORTION THEREOF, LOCATED WITHIN THE CORPORATE LIMITS OF SUCH MUNICIPALITY OR LOCATED OUTSIDE OF

SUCH CORPORATE LIMITS BUT WITHIN THREE (3) MILES THEREOF EXCEPT AS PROVIDED IN K.S.A. 66-131A.

IF A COUNTY WAS CONSIDERED A MUNICIPALITY THEN IT COULD EXTEND ITS UTILITY OPERATIONS THREE MILES BEYOND ITS CORPORATE LIMITS INTO ANOTHER COUNTY WITHOUT BECOMING A PUBLIC UTILITY SUBJECT TO COMMISSION JURISDICTION. SURELY THIS RESULT WAS NOT CONTEMPLATED BY THE LEGISLATURE.

7. K.S.A. 66-104 PROVIDES FURTHER:

EXCEPT AS HEREIN PROVIDED, THE POWER AND AUTHORITY TO CONTROL AND REGULATE ALL PUBLIC UTILITIES AND COMMON CARRIERS SITUATED AND OPERATED WHOLLY OR PRINCIPALLY WITHIN ANY CITY OR PRINCIPALLY OPERATED FOR THE BENEFIT OF SUCH CITY OR ITS PEOPLE, SHALL BE VESTED EXCLUSIVELY IN SUCH CITY, SUBJECT ONLY TO THE RIGHT TO APPLY FOR RELIEF TO THE CORPORATION COMMISSION AS HEREINAFTER PROVIDED IN K.S.A. 66-133 AND TO THE PROVISIONS OF K.S.A. 66-131A.

THIS SECTION OF THE STATUTE INDICATES A CLEAR LEGISLATIVE INTENT THAT THE HOME-RULE EXEMPTION TO COMMISSION SUPERVISION SHOULD APPLY ONLY TO CITIES. THE TERM MUNICIPALITY IS NOT DEFINED IN CHAPTER 66, BUT A READING OF THIS STATUTE AS A WHOLE LEADS TO THE CONCLUSION THAT A COUNTY IS NOT A MUNICIPALITY.

8. THE APPLICANT CONTENDS THAT THE DEFINITION OF A MUNICIPALITY SET FORTH IN K.S.A 12-825J SHOULD CONTROL. THAT STATUTE PROVIDES:

(A) ANY MUNICIPALITY WHICH OWNS OR OPERATES, OR WHICH HEREAFTER OWNS OR OPERATES, A UTILITY FURNISHING WATER, GAS OR ELECTRICITY IS HEREBY AUTHORIZED AND EMPOWERED TO ENTER INTO CONTRACTS FOR THE PURCHASE OF WATER, GAS OR ELECTRICITY FROM ANY PERSON, FIRM, CORPORATION OR OTHER MUNICIPALITY, UPON SUCH TERMS

AND CONDITIONS AS MAY BE DEEMED NECESSARY AND REASONABLE BY THE GOVERNING BODY OF SUCH MUNICIPALITY. ANY SUCH CONTRACT MAY INCLUDE AN AGREEMENT FOR THE PURCHASE OF WATER, GAS OR ELECTRICITY NOT ACTUALLY RECEIVED. NO SUCH CONTRACT SHALL BE MADE FOR A PERIOD IN EXCESS OF FORTY (40) YEARS, BUT RENEWAL OPTIONS IN FAVOR OF THE PURCHASING MUNICIPALITY MAY BE INCLUDED THEREIN. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AUTHORIZE THE LEVY OF A TAX BY ANY MUNICIPALITY ENTERING A CONTRACT AS HEREIN PROVIDED.

(B) AS USED IN THIS ACT, THE TERM "MUNICIPALITY" SHALL MEAN AND INCLUDE ANY CITY, COUNTY OR TOWNSHIP.

THE DEFINITION SET FORTH IN SUBSECTION (B) IS CLEARLY LIMITED TO APPLY ONLY TO THAT ACT. K.S.A. 12-825J IS NOT APPLICABLE TO CHAPTER 66, PARTICULARLY SINCE THIS DEFINITION WOULD CONTRADICT THE CLEAR INTENT OF K.S.A. 66-104. THE COMMISSION CONCLUDES THAT K.S.A. 12-825J IS INTENDED TO STATUTORILY EMPOWER MUNICIPALITIES TO ENTER INTO LONG-TERM CONTRACTS FOR THE PURCHASE OF WATER, GAS, OR ELECTRICITY. A CITY, TOWNSHIP OR COUNTY CAN PROVIDE AND CONTRACT FOR UTILITY SERVICES BUT K.S.A. 66-104 WILL EXEMPT ONLY CITIES FROM OUR JURISDICTION.

9. THE CASES CITED IN BOTH PARTIES' BRIEFS UNIFORMLY STAND FOR THE CONCEPT THAT MUNICIPAL UTILITIES ARE BEYOND THE SCOPE OF COMMISSION SUPERVISION. SEE THE STATE, EX REL. V. THE WYANDOTTE COUNTY GAS CO., 88 KAN. 165 (1912); HOLTON CREAMERY CO. V. BROWN, 137 KAN. 418 (1933); BOARD OF PUBLIC UTILITIES V. KANSAS CITY POWER AND LIGHT, 139 KAN. 842 (1934); AND KANSAS GAS AND ELECTRIC CO. V. CITY OF MCPHERSON, 146 KAN. 614 (1937). NONE OF THESE CASES, HOWEVER, INVOLVE A COUNTY-OPERATED UTILITY. JUDICIAL GUIDANCE AS TO WHETHER A COUNTY CAN OPERATE A MUNICIPAL UTILITY FREE OF STATE REGULATORY CONSTRAINTS SIMPLY DOES NOT EXIST IN THIS STATE. THE RELEVANT STATUTES INDICATE THE LEGISLATURE DID

NOT CONTEMPLATE THIS SITUATION AND WE ARE RELUCTANT TO BROADEN THE SCOPE OF THE EXEMPTION WITHOUT CLEAR AUTHORITY TO DO SO.

10. EVEN IF A COUNTY COULD QUALIFY AS A MUNICIPALITY FOR PURPOSES OF CHAPTER 66 IT IS UNCLEAR WHETHER A SUB-UNIT OF A COUNTY, SUCH AS AN AIRPORT COMMISSION, COULD QUALIFY. THE COMMISSION DETERMINES IT NEED NOT REACH THIS ISSUE BY CONCLUDING A COUNTY IS NOT A MUNICIPALITY FOR PURPOSES OF THE PUBLIC UTILITIES ACT.

11. THE SECOND ISSUE IS WHETHER THE APPLICANT HAS DEMONSTRATED THAT THE TERMINATION OF UNION GAS SYSTEM'S CERTIFICATE WILL PROMOTE THE PUBLIC CONVENIENCE.

12. THE COMMISSION BELIEVES THE SAME CRITERIA USED WHEN A PUBLIC UTILITY APPLIES FOR A CERTIFICATE PURSUANT TO K.S.A 66-131 SHOULD APPLY TO AN APPLICATION REQUESTING THE TERMINATION OF AN EXISTING CERTIFICATE. IT HAS BEEN STATED THE COMMISSION'S PRIMARY CONCERN SHOULD BE THE PUBLIC CONVENIENCE. THE INTEREST OF PUBLIC UTILITIES ALREADY SERVING THE AREA IS A SECONDARY CONCERN. THE DESIRES AND SOLICITATIONS OF THE APPLICANT ARE A RELATIVELY MINOR CONSIDERATION. KANSAS GAS AND ELECTRIC CO. V. PUBLIC SERVICE COMMISSION, 122 KAN. 462, 251 P. 1097 (1927).

13. THE RECORD DOES NOT INDICATE THAT THE PUBLIC CONVENIENCE WILL BE FOSTERED BY TERMINATING UNION GAS SYSTEM'S CERTIFICATE. THE APPLICANT ASSERTS THAT THEY HAVE SUBSTANTIAL GAS RESERVES WHICH WILL PERMIT THEM TO OFFER GAS TO THE INDUSTRIAL AIRPORT CUSTOMERS AT LOWER RATES. THE APPLICANT ADMITTED AT ORAL ARGUMENT IT WOULD NOT RELY ON THESE RESERVES, BUT WOULD REQUIRE A SECONDARY SUPPLIER (TRANSCRIPT OF ORAL ARGUMENT, PP. 37-38).

14. THE POTENTIAL SAVINGS TO THE AIRPORT LESSEES ARE OUTWEIGHED BY THE ADVERSE EFFECTS THAT WILL FOLLOW THE TERMINATION OF UNION GAS SYSTEM'S CERTIFICATE. THE REVENUES LOST WILL BE REFLECTED IN HIGHER RATES FOR THE CUSTOMERS REMAINING ON

THE RESPONDENT'S SYSTEM. JOHNSON COUNTY HAS INDICATED AN UNWILLINGNESS TO SERVE ANY CUSTOMERS OTHER THAN THOSE ON THE AIRPORT PROPERTY (TRANSCRIPT OF ORAL ARGUMENT, PP. 42-43) AND SUGGESTS THIS TYPE OF DISCRIMINATION WOULD NOT BE UNJUST (APPLICANT'S BRIEF, P. 18). THE COMMISSION CONCLUDES IT WOULD NOT BE IN THE PUBLIC INTEREST TO PERMIT JOHNSON COUNTY TO SERVE A SELECT GROUP OF INDUSTRIAL CUSTOMERS ALREADY SERVED BY A PUBLIC UTILITY WHEN IT HAS NO INTENTION OF SERVING ANY OTHER CUSTOMERS.

15. THERE HAVE BEEN NO ALLEGATIONS THAT UNION GAS HAS SERVED THE CERTIFICATED AREA IN QUESTION EITHER INADEQUATELY OR INEFFICIENTLY. A SHOWING OF THIS TYPE IS NECESSARY TO PERMIT EITHER THE REVOCATION OF A CERTIFICATE OR GRANTING A CERTIFICATE WHEN SERVICE IS ALREADY AVAILABLE. IN GENERAL COMMUNICATIONS SYSTEM, INC., V. STATE CORPORATION COMMISSION, 216 KAN. 410, 532 P.2D (1975) THE KANSAS SUPREME COURT CONSIDERED THE LATTER SITUATION. THE COURT STATED THAT A CERTIFICATE SHOULD NOT BE GRANTED TO ANOTHER SERVICE WHICH WILL DUPLICATE EXISTING SERVICE UNLESS THE REGULATORY AUTHORITY FIRST DETERMINES THAT EXISTING SERVICE IS INADEQUATE OR THE PERSON OFFERING THAT SERVICE IS UNWILLING OR UNABLE TO PROVIDE SUCH SERVICE. 216 KAN. AT 421. THE COMMISSION FINDS THIS REASONING TO BE APPLICABLE TO THIS MATTER AND FINDS NO EVIDENCE IN THE RECORD TO INDICATE THE EXISTING SERVICE IS INADEQUATE. THE COMMISSION CONCLUDES THE PUBLIC CONVENIENCE WOULD NOT BE FURTHERED BY TERMINATING SERVICE THAT HAS BEEN EFFICIENT AND SUFFICIENT.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

JOHNSON COUNTY IS NOT A MUNICIPALITY FOR PURPOSES OF OPERATING A GAS UTILITY OUTSIDE THE COMMISSION'S AUTHORITY AND JURISDICTION PURSUANT TO K.S.A. 66-104 AND K.S.A. 66-131.

THE PUBLIC CONVENIENCE WILL NOT BE SERVED BY TERMINATING UNION GAS SYSTEM'S CERTIFICATE TO SERVE THE JOHNSON COUNTY INDUSTRIAL AIRPORT.

THE RESPONDENT'S MOTION TO DISMISS THE APPLICATION IS HEREBY GRANTED.

THE COMMISSION RETAINS JURISDICTION OVER THE PARTIES AND THE SUBJECT MATTER TO ENTER SUCH ORDER OR ORDERS AS IT SHALL DEEM APPROPRIATE.

DATED: JANUARY 19, 1984

LENNEN, CHMN.; LOUX, COM. DICK, COM.

Judith McConnell

JUDITH MCCONNELL
EXECUTIVE SECRETARY

SEAL

BJM:RAM

ORDER MAILED JAN 19 1984

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

BOARD OF COUNTY COMMISSIONERS
OF JOHNSON COUNTY, KANSAS,

Plaintiff,

v.

Case No. 128913
Court No. 7
K.S.A. Chapters 60 and 66

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS AND
UNION GAS SYSTEMS, INC.,

Defendants,

PETITION

COMES NOW plaintiff, and for its cause of action against defendants states and alleges as follow:

COUNT I

1. Plaintiff is the duly elected governing body of Johnson County, Kansas, and brings this action pursuant to K.S.A. 19-105.

2. This court has jurisdiction pursuant to K.S.A. 60-1701 et seq., 66-182, other statutes and the common law of the State of Kansas.

3. Defendant State Corporation Commission of the State of Kansas may be served with process on the Secretary of the Commission, Judith McConnell, 4th Floor, State Office Building, Topeka, Kansas, 66612 and on Attorney General Robert T. Stephan or any assistant attorney general, at the Office of the Attorney General, Kansas Judicial Center, 10th and Harrison, Topeka, Kansas 66612.

4. Defendant Union Gas Systems, Inc., may be served with process by serving the registered agent, Glenn O. McGuire, 122 West Myrtle, Union Gas Building, Independence, Kansas, 67301.

5. Plaintiff has duly created a municipal gas utility pursuant to Resolution 072-83 for the purpose of furnishing natural gas to tenants at the Johnson County Industrial Airport, which it owns in fee simple.

6. Plaintiff is the assignee of certain oil and gas leases, duly recorded in the Register of Deeds office.

7. Defendant Union Gas is allegedly the holder of a certificate of convenience and necessity for the purpose of furnishing natural gas on the land hereinbefore described as the Johnson County Industrial Airport.

8. Plaintiff owns the natural gas transmission lines at the Johnson County Industrial Airport.

9. Defendant State Corporation Commission of the State of Kansas has allegedly concluded that plaintiff is not a municipal utility and seeks to assert jurisdiction over its attempt to be recognized as a municipal utility at the Johnson County Industrial Airport, all as set out in Docket No. 138,498-U, Order, before the State Corporation Commission of the State of Kansas, dated January 19, 1984, attached as Exhibit A and incorporated by reference herein as if fully set forth.

10. An actual controversy exists between plaintiff and defendants.

11. Plaintiff will suffer irreparable harm since it may be in violation of the covenants in the oil and gas leases to use the prudent operator standard to produce commercial quantities of natural gas, the primary term, shut-in royalties, and other clauses.

WHEREFORE, plaintiff prays for declaratory relief against defendant the State Corporation Commission of the State of Kansas, finding that plaintiff created a municipally-owned and operated utility; that the State Corporation Commission of the State of Kansas had no jurisdiction to find otherwise, in Docket No. 138,498-U or any other proceedings; that it has no authority and is without jurisdiction over the Johnson County Industrial Airport Gas Utility, pursuant to K.S.A. 66-104, except as provided in K.S.A. 66-131a, and such other and further relief as the Court deems fair, just and equitable.

COUNT II

12. Paragraphs 1 thru 11, inclusive, of Count I are incorporated by reference herein as if fully set forth.

WHEREFORE, plaintiff prays for an injunction enjoining both defendants from interfering with plaintiff's Johnson County Industrial Airport Gas Utility and ordering the orderly transfer of natural gas utilities from defendant Union Gas Systems, Inc. to Johnson County Industrial Airport Gas Utility at a date certain so as not to interfere with the rights of third-party tenants at the Johnson County Industrial Airport.

COUNT III

13. Paragraphs 1 thru 11, inclusive of Count I and paragraph 12 of Count II are incorporated by reference herein as if fully set forth.

14. Plaintiff has duly demanded that defendant Union Gas Systems, Inc., vacate those natural gas transmission lines which plaintiff owns at the Johnson County Industrial Airport and defendant has refused to do so.

WHEREFORE, plaintiff prays that defendant Union Gas Systems, Inc., be ordered to vacate those transmission lines and that defendant Union Gas Service, Inc., if it so desires, be ordered to supply its own natural gas transmission lines after it lawfully secures the easements for the same.

Philip S. Harness
Assistant County Counselor
Johnson County Courthouse
Room 706
Olathe, Kansas 66061
(913) 782-5000 Ext. 538
Attorney for Plaintiff
Board of County Commissioners
of Johnson County, Kansas.

GRANT OIL, INC.

March 27, 1984

Mr. Harrison F. Johnson
Union Gas Systems, Inc.
122 W. Myrtle St.
Independence, Kansas 67301

Re: Lake Gardner Project Reserves
Johnson County, Kansas

Dear Mr. Johnson:

The area of interest is a one mile radius surrounding the intersection of Townships 22 & 23 East, and Ranges 13 & 14 South. The largest amounts of gas have been located in the Bartlesville zone at 750' - 830'. Your office has previously received my subsurface contouring of the apparent location of two Bartlesville sand structures. I'll refer to these as the Section 31 area and the Section 7 area.

Wells Section 31 area

G. Moll 1-36	J. Moll 1-36	J. Moll 2-36	Pretz 1-31	Pretz 2-31
Arndt 1	Arndt 2	Arndt 3	Arndt 4	Jamison 1
Ernst 1	Ernst 2	Sandow 3		

Wells Section 7 area

Williams 1	Amodt 1	Amodt 2	Sandow 5	Bono 1	Seetaert 1

The Section 31 area contains at least 440 productive acres currently proven, with another 160 probable. The Section 31 area reserves are estimated at 600 - 1000 MMCF. To date, 150 MMCF have been produced, all in 1983.

The Section 7 area just commenced production in January 1984. It is too early to make accurate predictions, but it would appear this area has potential for 500 - 800 MMCF from the Bartlesville. The potential from the shallower zones is unknown.

As the market currently stands, we will be able to sell 200 - 220 MMCF to Northwest Central Pipeline, and from 100 - 180 MMCF to G-M Delco in 1984. If these figures are compared with my previous reserves estimates, it quickly becomes obvious that my pipeline had better be almost paid for, or it will never be. For example, we have possible production rates of

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300 - 400 MMCF /Year, and reserves of 950 - 1650 MMCF. These reserves must be deducted from the Ernst No. 1 & No. 2, the Sandow No.3 & No.5, both which belong to the airport, and the Seetaert No.1 which is dedicated to Union Gas.

The Ernst No.1 & No.2 are on the edge of the gas-water contact. If produced from 1st production, they may have been able to produce 20 - 40 MMCF each. However, they have been left shut-in, and could be depleted.

The Jamison No.1, dedicated to Nothwest Central Pipeline,is structurally similiar to the Pretz 1-31. The Pretz has produced 20 MMCF and is rapidly going to water. A'spaghetti' string may allow production of another 10MMCF before produced water makes this well uneconomical.

The Sandow No.3 is structurally high enough to remain potentially productive for some time. However, its shut-in pressure has declined to about 75% of original, and it's never been produced. It is likely the Section 31 production has drained this portion of Section 7.

The Sandow No. 5 is reported to be a 'good' well, capable of over 3000MMCF AOF. I don't know how much drainage you can give it, as there are now 4 wells drilled in the S/2 NW¼ Sec.7 T23 E, R 14 S. Also, there are 2 wells in the N½ SW¼ Sec. 7, T23 E, R 14S. Of the 6 wells just described, I'm buying from 4, Union is buying from one, and the Airport is shut in waiting on a pipeline.

I'm unable to calculate these wells due to insufficient data,but will make the following guesses:

Purchaser		MMCF	Operator
Grinsted	Sandow 3	25/20 ac.	Jo. Co.
Grinsted	Sandow 5	45/40 ac.	Jo. Co.
GOI	Williams 1	30/20 ac.	BOF
GOI	Amodt 1	30/20 ac.	BOF
GOI	Amodt 2	30/20 ac.	BOF
NWCPL	Jamison 1	10/20 ac.	Jo. Co.
GOI	Bono 1	40/40 ac	Crator
UGS	Seetaert 1	40/40 ac.	Wilkes

From the above it would appear that the airport has 70MMCF to sell to Grinsted, plus a small amount for the Ernst leases. This should fill at least 240 days.

I hope this information is of some use. Let me know if we can be of any further help.

Sincerely,
GRANT OIL, INC.

William P. Grant
President

Attachment 2

KEA **KANSAS ETHANOL ASSOCIATION**

TESTIMONY ON HB #3070 - 3/30/84

Senate Transportation and Utilities Committee
State Capitol Building
Room 254 - East
Topeka, Kansas

Mr. Chairman, members of the Senate Transportation and Utilities Committee. My name is Terry Ruse and I'm here today representing the Kansas Ethanol Association in support of H.B. 3070.

The ethanol industry in Kansas is a fledgling industry with tremendous growth potential, if given the opportunity to mature. But like many of our country's great industries, incentives have been necessary until the newly produced product achieves natural parity in the marketplace, with the products it competes against.

The Federal Government fostered the creation of the alternative fuels industry, and specifically the ethanol industry, as a result of the oil embargo of 1973. It reasonsed, that if the United States ever hoped to achieve energy independence, a renewable, alternate energy source must be developed.

Towards this end, the Federal motor fuels excise tax incentive and approximately 35 state motor fuel tax incentives were legislated to generate private investment in production facilities that would provide a product to displace foreign crude oil imports and create a stable, domestic market for surplus agricultural products.

Because of this Federal and State commitment to the ethanol industry, private investors accepted the challenge to build production facilities in Kansas, entirely with private funds, to bring to market a premium quality, renewable energy source.

P.O. Box 47508 Wichita, Ks. 67201-7508 (316) 262-4035

Atch. 3

The Kansas Ethanol Association believes that large quantities of imported ethanol from Brazil and giant producers outside of Kansas, endanger these Kansas investors through a non-return, exist of Kansas tax dollars, providing benefits to economies and agriculture outside the State.

Brazil exported approximately 60,000,000 gallons of ethanol to the U.S. in 1983 at a price 50¢ per gallon below their own domestically subsidized selling price. This allowed their product to land in the U.S. at about $1.40 per gallon, clearly allowing them a competitive advantage that no Kansas or U.S. producer could duplicate profitably.

The net result is pressure on the state treasury, due to tax incentives paid on ethanol, without the resulting return benefits to Kansas farmers, communities and the State of Kansas.

Investment in Kansas ethanol production has created approximately 477 directly related jobs and 576 indirectly related positions. Additional planned production will generate another 447 direct and 672 indirect jobs. Grain consumed by existing production amounts to approximately 7,200,000 bushels annually with another 8,400,000 bushels projected annual consumption to be utilized by additional plants that are presently on the drawing board.

The USDA estimates that the price of grain increases 7¢ to 12¢ per bushel for every 100,000,000 bushels of grain diverted from normal market channels to ethanol production. This could mean additional income to a very vital segment of the Kansas economic system thus creating a stronger state, financially.

In closing, the Kansas Ethanol Association supports passage of HB #3070 because it encourages privately financed ethanol production in the State of Kansas, which benefits the Agricultural community and the local communities where plants are located,

in addition to the added plus of reducing dependency on imported oil. Additionally, it severely reduces the net outflow of Kansas tax dollars to other non-Kansas economies, creating a long term, growth atmosphere for the Kansas Ethanol Industry.

Terry A. Ruse
President