

MINUTES OF THE House COMMITTEE ON Transportation

The meeting was called to order by Representative Rex Crowell at  
Chairperson

1:30 ~~xxx~~/p.m. on January 30, 1985 in room 519-S of the Capitol.

All members were present ~~except~~

Committee staff present:

Hank Avila, Legislative Research Department  
Fred Carman, Office of the Revisor of Statutes  
Donna Mulligan, Committee Secretary

Conferees appearing before the committee:

Mr. Brian Moline, Kansas Corporation Commission  
Mr. Jim Flaherty, Kansas Corporation Commission  
Mr. Leland R. Nicholson, The Kansas Power & Light/Gas Service Company  
Mr. James L. Grimes, Jr., Peoples Natural Gas Company  
Mr. Robert W. Storey, Union Natural Gas Company  
Mr. Richard C. Byrd, Greely Gas Company

Chairman Crowell called the meeting to order and the first order of business was a hearing on HB-2019.

Mr. Hank Avila of the Legislative Research Department briefed the Committee and said HB-2019 was a result of the interim study on Proposal No. 43 which was State Corporation Commission Jurisdiction--Municipal Utilities and Natural Gas Suppliers.

Mr. Brian Moline of the Kansas Corporation Commission testified on HB-2019. (See Attachment 1) Mr. Moline stated proper regulation by the Kansas Corporation Commission, if authorized by the Legislature, could allow traditional natural gas public utilities and new natural gas suppliers to compete on the same level and under the same rules. He added that unless some type of legislation is enacted requiring the new natural gas suppliers to play by the same rules as the traditional natural gas public utilities, unfair competition could result in increased rates to most customers.

Mr. Jim Flaherty of the Kansas Corporation Commission testified in favor of HB-2019. He outlined suggested amendments to HB-2019. (See Attachment 2)

Representative Patrick asked if it would be better to force the pipeline company that is already the certificated service company to dedicate a certain percentage of the pipeline to common carrier or to contract carriage status. Mr. Moline said the KCC can only assert that type of jurisdiction over intrastate pipelines.

Mr. Leland R. Nicholson, President of The Kansas Power and Light Company and The Gas Service Company testified favorably concerning HB-2019. (See Attachment 3)

Mr. Nicholson told the Committee he believed the bill to be an outgrowth of perceptions that the structure of the natural gas industry is changing significantly, and KPL/GSC views it as a positive effort to deal with some of the changes most affecting the ultimate consumer. He added, the vital interests of retail gas consumers require a clear pronouncement of state policy concerning the outer limits of competition for the "high margin" sales, commonly called "cream skimming".

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Transportation,  
room 519-S, Statehouse, at 1:30 ~~xx~~ p.m. on January 30, 19 85

Mr. James L. Grimes, Jr., Attorney for Peoples Natural Gas Company, was the next conferee, and presented favorable testimony in support of HB-2019. (See Attachment 4)

Mr. Grimes said Peoples Natural Gas believes that private entities whether they are producers, brokers, pipeline companies or transmission companies, should not be allowed, without the approval of the Kansas Corporation Commission, to come into the area of a certificated gas public utility which has been granted the right and obligation to serve all in its area with fair, just and nondiscriminatory rates, and provide unregulated and preferential rates and service only to the large customers.

Mr. Grimes urged passage of HB-2019, and suggested the definition in Section 1)a) be expanded, if necessary, so that producers, brokers and any others engaged in supplying natural gas to end users be subject to the provisions of this bill.

Mr. Robert W. Storey, representing Union Natural Gas Company testified as a proponent on HB-2019. Mr. Storey stated he supports the Kansas Corporation Commission's proposed amendments to HB-2019, and urged passage of the bill.

Representative Patrick asked if Union Gas Company would be opposed to making it mandatory that all utilities file transportation tariffs with the KCC. Mr. Storey said they couldn't suggest that all utilities be required to file transportation tariffs because everyone has their own unique problems.

Representative Shore asked if the gas Union Gas purchases from Northwest Central is Kansas gas. Mr. Storey said it is Hugoton gas and pointed out they buy local production also, in southeast and northeast Kansas.

Mr. Richard C. Byrd, representing the Greely Gas Company testified in opposition to HB-2019. Mr. Byrd stated we should not stand in the way of cheap gas produced in Kansas being available to Kansas customers.

Chairman Crowell asked if the legislature was to enact a requirement for existing utilities to transport gas for other gathering systems, should it come under the jurisdiction of the KCC or be a negotiated cost. Mr. Byrd said he believes it should be under the jurisdiction of the KCC.

Chairman Crowell announced another hearing would be scheduled on HB-2019 to allow further testimony to be presented.

The meeting was adjourned at 3:15 p.m.

  
Rex Crowell, Chairman

GUEST LIST

COMMITTEE: Transportation

DATE: 1-30-85

PLEASE PRINT

NAME	ADDRESS	COMPANY/ORGANIZATION
WALTER PRINN	Topeka	EKOGA
Judith Anderson	Wichita	City of Wichita
Phil Schaub	Topeka	SWBT
Don Schmale	Topeka	ICI OGA
Chip Wheelen	Topeka	Fairfax Gas Co.
Richard D. Kready	"	KPL/Gas Service Co.
Kerid Robertson	"	"
Dan McKee	Topeka	KCC
DENNIS E. LLOYD	ZOPEKA	KCC
BILL ABBOTT	WICHITA	BOEING
<del>George Brown</del>	Sturgeon	Mobil
Pete McMill	Topeka	Tanish Gas Co.
Robert C. Anderson	Topeka	<del>Parshall Enterprises</del>
BILL PERDUE	TOPEKA	KPL/G.S.
Joe Nicholson	Topeka - KCC Mo.	KPL/GSC
Jack Slavis	Wichita	BA M Group
Nick Howard	Lawrence City	Parshall Enterprises
Michael Wolf	Lawrence	Intern - Sen. Morris
Judy Bromick	Topeka	Sen Regina's Aide
Jim Flaherty	Topeka	KCC

ENTERED 7



STATE CORPORATION COMMISSION COMMENTS ON HOUSE BILL 2019

COMPETITION BETWEEN TRADITIONAL NATURAL GAS SUPPLIERS, I.E., PUBLIC UTILITIES AND NEW NATURAL GAS SUPPLIERS I.E. GAS BROKERS, HAS BEEN OCCURRING OVER THE PAST YEAR AND APPEARS TO BE STEADILY INCREASING.

OVER THE LAST YEAR, NATURAL GAS PRICES HAVE STABILIZED, AND IN SOME INSTANCES HAVE DECLINED. THIS TREND HAS NO DOUBT RESULTED FROM A NUMBER OF THINGS INCLUDING A NATURAL GAS SURPLUS, DEREGULATION OF NATURAL GAS PRICING AND AN INCREASE IN COMPETITION AMONG SUPPLIERS. GIVEN THE CURRENT PRICE SITUATION, IT APPEARS AT THE PRESENT TIME THAT IT MAY NOT BE IN THE BEST INTEREST OF KANSAS CONSUMERS OR PRODUCERS TO FORECLOSE COMPETITION AMONG NATURAL GAS SUPPLIERS.

PROPER REGULATION BY THE KANSAS CORPORATION COMMISSION, IF AUTHORIZED BY THIS LEGISLATURE, COULD ALLOW TRADITIONAL NATURAL GAS PUBLIC UTILITIES AND NEW NATURAL GAS SUPPLIERS TO COMPETE ON THE SAME LEVEL AND UNDER THE SAME RULES.

HOWEVER, UNLESS SOME TYPE OF LEGISLATION IS ENACTED REQUIRING THE NEW NATURAL GAS SUPPLIERS TO PLAY BY THE SAME RULES AS THE TRADITIONAL NATURAL GAS PUBLIC UTILITIES, UNFAIR COMPETITION COULD RESULT IN INCREASED RATES TO MOST CUSTOMERS.

HOUSE BILL 2019 APPEARS TO ADDRESS THE ISSUE OF COMPETITION AMONG NATURAL GAS SUPPLIERS, AND IN PARTICULAR, THE ISSUE OF WHAT HAS BEEN COMMONLY REFERRED TO IN SUCH CASES AS IN THE MATTER OF FAIRFAX GAS AS "CREAM-SKIMMING". IF THE INTENT OF THE BILL IS TO INSURE EQUAL REGULATION OF GAS SUPPLIERS, I BELIEVE SOME CHANGES WOULD BE BENEFICIAL.

1/30/85  
Attach. 1

NEW SECTION 1 SUBSECTION (a) OF HOUSE BILL 2019 WHICH STATES  
IN PART THAT:

". . . WHEN ANY SUPPLIER OF NATURAL GAS, WHETHER IT IS A PUBLIC UTILITY, CORPORATION, COOPERATIVE, COMPANY, INDIVIDUAL, ASSOCIATION OF PERSONS, THEIR TRUSTEES, LESSEES OR RECEIVERS, WISHES TO SUPPLY NATURAL GAS TO ANY CUSTOMER WITHIN TERRITORY CERTIFIED FOR NATURAL GAS SUPPLY DISTRIBUTION BY ANY PUBLIC UTILITY REGULATED BY THE STATE CORPORATION COMMISSION, SUCH SUPPLIER SHALL FIRST OBTAIN AUTHORITY TO PROVIDE SUCH SUPPLY FROM THE STATE CORPORATION COMMISSION."

REQUIRES ALL SUPPLIERS, INCLUDING THOSE SUPPLIERS WHICH WOULD NOT BE CONSIDERED PUBLIC UTILITIES, I.E. GAS PRODUCERS, GAS BROKERS, TO ACQUIRE COMMISSION AUTHORITY BEFORE SUPPLYING NATURAL GAS TO ANY CUSTOMER LOCATED IN AN AREA ALREADY BEING SERVICED BY A PUBLIC UTILITY REGULATED BY THE STATE CORPORATION COMMISSION.

HOUSE BILL 2019 WOULD REQUIRE THE COMMISSION TO REGULATE COMPANIES WHICH ARE NOT CONSIDERED PUBLIC UTILITIES UNDER THE PUBLIC UTILITIES ACT. IT IS UNCERTAIN WHETHER THE COMMISSION COULD REGULATE AN ENTITY WHICH WAS NOT CONSIDERED TO BE A PUBLIC UTILITY AS DEFINED BY K.S.A. 66-104.

IT THEREFORE MAY BE MORE APPROPRIATE TO SIMPLY AMEND K.S.A. 66-104 SO THAT THE TERM "PUBLIC UTILITY" WOULD INCLUDE ALL SELLERS AND RESELLERS OF NATURAL GAS. CURRENTLY, UNLESS THE SELLER AND RESELLER OF NATURAL GAS OWNS OR OPERATES A PIPELINE FACILITY, IT IS NOT CONSIDERED A PUBLIC UTILITY, AND THUS, IS SUBJECT TO NO REGULATION.

HOUSE BILL 2019 WOULD ALSO REQUIRE THE COMMISSION TO REGULATE "SUPPLIERS" OF NATURAL GAS. IT IS UNCERTAIN WHAT ENTITIES WOULD BE INCLUDED UNDER THE TERM "SUPPLIERS" OF NATURAL GAS. IT IS POSSIBLE

FOR A GAS BROKER TO SELL GAS AND COMPETE WITH EXISTING GAS UTILITIES WITHOUT TECHNICALLY BEING THE SUPPLIER OF THAT GAS. THE TERMS "SELLER" (PRODUCER) AND "RESELLER" (BROKER) OF NATURAL GAS APPEAR TO BE MORE INCLUSIVE AND MORE APPROPRIATE THAN THE TERM "SUPPLIER".

I WOULD RECOMMEND THAT NEW SECTION 2 SUBSECTION (a) BE DELETED AND THAT THE FOLLOWING LANGUAGE BE INCLUDED IN K.S.A. 66-104 WHICH IS SECTION 2 OF HOUSE BILL 2019:

". . . ALSO ALL SELLERS AND RESELLERS OF NATURAL GAS DOING BUSINESS WITHIN THE STATE WHO DO NOT OWN, CONTROL, OPERATE OR MANAGE PIPELINE AND DISTRIBUTION FACILITIES, EXCEPT FOR NATURAL GAS PRODUCERS WHO SELL TO CUSTOMERS NOT SERVED BY PUBLIC UTILITIES AS HEREIN DEFINED. . ."

THE LAST SENTENCE IN SUBSECTION (a):

"THE COMMISSION SHALL GRANT SUCH AUTHORITY IF IT FINDS, AFTER HEARING OF INTERESTED PARTIES, THAT GRANTING SUCH AUTHORITY IS IN THE PUBLIC INTEREST OF THE PEOPLE OF THE STATE OF KANSAS."

AND ALL OF SUBSECITON (b):

"WHEN ANY SUPPLY OF NATURAL GAS IS AUTHORIZED TO BE PROVIDED UNDER SUBSECTION (a) THE COMMISSION SHALL HAVE JURISDICTION (1) TO APPROVE THE RATES CHARGED FOR SUCH SUPPLY, (2) TO DETERMINE THE CUSTOMERS AND TERRITORY REQUIRED TO BE SUPPLIED NATURAL GAS BY SUCH SUPPLIER AND (3) TO DETERMINE THE PERIOD OF DURATION THAT PROVIDING SUCH SUPPLY BY SUCH SUPPLIER IS REQUIRED TO CONTINUE. THE TIME REQUIRED FOR SUCH SUPPLY TO BE CONTINUED MAY BE A DEFINITE TERM OR UNTIL THE STATE CORPORATION COMMISSION AUTHORIZES DISCONTINUATION OF SUCH SUPPLY."

APPEAR TO BE UNNECESSARY IF ALL SELLERS AND RESELLERS OF NATURAL GAS ARE DEFINED IN K.S.A. 66-104 AS PUBLIC UTILITIES. AS PUBLIC UTILITIES, ALL SELLERS AND RESELLERS OF NATURAL GAS WOULD BE REQUIRED BEFORE BEGINNING OPERATION, TO OBTAIN A CERTIFICATE FROM THE CORPORATION

COMMISSION UNDER K.S.A. 66-131, THAT PUBLIC CONVENIENCE WILL BE PROMOTED BY THE TRANSACTION OF THEIR BUSINESS. I WOULD THEREFORE, RECOMMEND THAT THE LAST SENTENCE IN SUBSECTION (a) AND ALL OF SUBSECTION (b) BE DELETED.

SUBSECTION (c) OF HOUSE BILL 2019 APPEARS TO CLARIFY THE CITIES' FRANCHISE PROCEDURE IN REGARDS TO AREAS THAT HAVE BEEN ANNEXED BY THE CITY. THE FIRST PART OF SUBSECTION (c):

"ALL RIGHTS OF A SUPPLIER OF NATURAL GAS TO PROVIDE DISTRIBUTION SERVICE IN AN AREA ANNEXED BY A CITY SHALL TERMINATE 180 DAYS FROM THE DATE OF ANNEXATION, UNLESS SUCH NATURAL GAS SUPPLIER IS THEN HOLDING A VALID FRANCHISE FOR SERVICES IN SUCH AREA GRANTED BY THE ANNEXING CITY. THE 180 DAY PERIOD SHALL BE EXTENDED TO 210 DAYS FROM THE DATE OF ANNEXATION IF A FRANCHISE IS GRANTED TO SUCH NATURAL GAS SUPPLIER PURSUANT TO REFERENDUM CONDUCTED ACCORDING TO APPLICABLE FRANCHISE LAWS OF THE STATE WITHIN THE 210-DAY PERIOD."

SIMPLY PROVIDES THAT THE NATURAL GAS SUPPLIER CURRENTLY OPERATING IN THE ANNEXED AREA SHALL CONTINUE TO PROVIDE SERVICE FOR A 180-DAY PERIOD. AT THE END OF THE 180-DAY PERIOD THAT NATURAL GAS SUPPLIER MUST HAVE OBTAINED A FRANCHISE FROM THE CITY IN ORDER TO CONTINUE TO OPERATE IN THAT AREA WHICH HAS BEEN ANNEXED. SUBSECTION (c) APPEARS TO CODIFY WHAT HAS BEEN DECIDED BY THE COURTS TO BE THE LAW IN KANSAS. I THEREFORE RECOMMEND THAT SUBSECTION (c), EXCEPT FOR THE LAST SENTENCE BE LEFT IN HOUSE BILL 2019.

THE LAST SENTENCE IN SUBSECTION (c):

"WHEN SERVICES ARE TERMINATED UNDER THIS SUBSECTION, THE STATE CORPORATION COMMISSION SHALL CERTIFY SUCH ANNEXED AREA AS A SINGLE CERTIFIED TERRITORY TO THE SUPPLIER HOLDING A FRANCHISE FOR OR THEN PROVIDING NATURAL GAS DISTRIBUTION SERVICE IN THE CITY IMMEDIATELY PRIOR TO THE ANNEXATION."

APPEARS TO BE INCLUDED TO PARALLEL THE PROCEDURE FOLLOWED FOR ELECTRIC UTILITIES WHEN A CITY ANNEXES AN AREA. FOR ELECTRIC UTILITIES, IT IS ESSENTIAL THAT THE COMMISSION CERTIFY SUCH ANNEXED AREA AS A SINGLE CERTIFIED AREA BECAUSE OF THE "RETAIL ELECTRIC SUPPLIERS ACT", WHICH DIVIDES THE STATE INTO SEPARATE CERTIFIED TERRITORIES FOR ELECTRIC UTILITIES. BECAUSE A SIMILAR ACT HAS NOT BEEN ENACTED FOR NATURAL GAS SUPPLIERS, IT IS NOT ESSENTIAL FOR THE COMMISSION TO CERTIFY THE ANNEXED AREA TO A PARTICULAR NATURAL GAS SUPPLIER. ALTHOUGH THERE IS NO PROBLEM WITH THE LAST SENTENCE IN SUBSECTION (c) BEING INCLUDED IN THE BILL, THE SENTENCE COULD CAUSE SOME CONFUSION, PARTICULARLY IN LIGHT OF THE COMPETITIVE MOVEMENT IN THE NATURAL GAS INDUSTRY, AND THEREFORE I WOULD RECOMMEND THAT THE LAST SENTENCE IN SUBSECTION (c) BE DELETED.

SUBSECTION (d) OF HOUSE BILL 2019 APPEARS TO BE ADDRESSED TO THE KANSAS INDUSTRIAL ENERGY SUPPLY COMPANY (KIES) IN WICHITA, KANSAS. KIES CURRENTLY PURCHASES NATURAL GAS ON BEHALF OF SEVEN INDUSTRIAL CUSTOMERS. GAS PURCHASED BY KIES IS TRANSPORTED TO THE INDUSTRIAL CUSTOMERS BY THE LOCAL DISTRIBUTION COMPANY. EVIDENTLY, KIES WAS ORIGINATED BY THE CITY OF WICHITA TO SUPPLY INDUSTRIAL CUSTOMERS. KIES IS CURRENTLY TREATED AS A CUSTOMER OF A LOCAL DISTRIBUTION COMPANY, AND A RESELLER WHO DOES NOT OWN OR CONTROL A PIPELINE AND DISTRIBUTION FACILITY. KIES IS NOT CURRENTLY REGULATED BY THE COMMISSION.

UNDER SUBSECTION (d) KIES WOULD BE ALLOWED TO ADD OTHER CUSTOMERS TO ITS GROUP. THE ADDITIONAL CUSTOMERS WOULD NO DOUBT BE OTHER LARGE INDUSTRIAL AND COMMERCIAL CUSTOMERS IN THE WICHITA AREA THAT ARE NOW BEING SERVED BY THE LOCAL DISTRIBUTION SYSTEMS, ARKLA AND THE



GAS SERVICE COMPANY. IF KIES DECIDES TO BUILD ITS OWN PIPELINE SYSTEM (WHICH MAY BECOME ECONOMICALLY FEASIBLE WITH THE ADDITION OF NEW CUSTOMERS) AND BYPASS THE LOCAL DISTRIBUTION SYSTEM, THEN THE SAME TYPE OF SCENERIO WHICH DEVELOPED IN THE FAIRFAX DISTRICT IN KANSAS CITY, KANSAS WILL CONFRONT THE CITY COMMISSION OF WICHITA, KANSAS. IT IS APPARENT FROM THE FAIRFAX GAS CASE THAT THE CITY SHOULD NOT BE PLACED IN THE POSITION OF HAVING TO DECIDE BETWEEN LOWER RATES FOR INDUSTRIAL CUSTOMERS AND INCREASED RATES FOR RESIDENTIAL CUSTOMERS, AND TURNING DOWN LOWER RATES FOR INDUSTRY IN ORDER TO PRESERVE THE RATE PAID BY THE RESIDENTIAL CUSTOMER.

IF SUBSECTION (d) IS DELETED, AND KIES IS DETERMINED TO BE A RESELLER WHO DOES NOT OWN OR CONTROL A PIPELINE AND DISTRIBUTION FACILITY AND THUS A PUBLIC UTILITY SUBJECT TO THE COMMISSION'S JURISDICTION UNDER THE PROPOSED AMENDMENTS TO K.S.A. 66-104, THEN THE COMMISSION WOULD HAVE JURISDICTION TO DECIDE ANY ISSUES CONCERNING KIES, OR ANY OTHER RESELLER WHO INTENDS TO COMPETE WITH CURRENT NATURAL GAS PUBLIC UTILITIES.

THE RECOMMENDED AMENDMENTS TO HOUSE BILL 2019 (WHICH ARE ATTACHED TO THIS MEMO) RECOGNIZE THAT COMPETITION AMONG TRADITIONAL NATURAL GAS PUBLIC UTILITIES AND NEW NATURAL GAS SUPPLIERS EXIST; THAT SUCH COMPETITION IF PROPERLY REGULATED COULD RESULT IN LOWER GAS PRICES FOR KANSAS CUSTOMERS; AND THAT PROPER REGULATION MUST BE BASED ON ALLOWING TRADITIONAL NATURAL GAS PUBLIC UTILITIES AND NEW NATURAL GAS SUPPLIERS TO COMPETE ON THE SAME LEVEL AND UNDER THE SAME RULES.

TO ASSURE THAT TRADITIONAL NATURAL GAS PUBLIC UTILITIES AND

NEW NATURAL GAS SUPPLIERS ARE COMPETING UNDER THE SAME RULES, AND TO AVOID THE SITUATION POSED BY FAIRFAX GAS, AMENDMENTS TO THAT PART OF K.S.A. 66-104 DEALING WITH SINGLE CITY UTILITY COMPANIES ARE ALSO RECOMMENDED.

CURRENTLY, ALL SINGLE CITY UTILITIES ARE NOT SUBJECT TO KCC JURISDICTION. UNDER THE CURRENT STATUTE, IT IS POSSIBLE TO HAVE A KCC JURISDICTIONAL UTILITY HAVING TO COMPETE WITH A CITY JURISDICTIONAL UTILITY. THE RESULT IS THAT THE TWO COMPANIES COMPETE UNDER DIFFERENT SETS OF RULES. UNDER THE PROPOSED AMENDMENTS:

- 1) ALL SINGLE CITY UTILITIES OPERATING AS OF THE EFFECTIVE DATE OF THE ACT WOULD NOT BE SUBJECT TO KCC JURISDICTION;
- 2) ALL SINGLE CITY UTILITIES BEGINNING OPERATION AFTER THE EFFECTIVE DATE OF THE ACT IN A CITY NOT BEING PROVIDED THAT PARTICULAR SERVICE BY A PUBLIC UTILITY SUBJECT TO THE JURISDICTION OF THE COMMISSION WOULD NOT BE SUBJECT TO KCC JURISDICTION;
- 3) ALL SINGLE CITY UTILITIES BEGINNING OPERATION AFTER THE EFFECTIVE DATE OF THE ACT IN A CITY ALREADY BEING PROVIDED SIMILAR SERVICE BY A KCC REGULATED UTILITY, WOULD BE SUBJECT TO KCC JURISDICTION.

UNDER THE AMENDMENTS, NO TWO GAS COMPANIES WOULD COMPETE AGAINST EACH OTHER UNDER DIFFERENT RULES. ALL UTILITIES THAT COMPETE WITH EACH OTHER WOULD BE SUBJECT TO THE SAME SET OF REGULATIONS.

HOUSE BILL NO. 2019  
BY SPECIAL COMMITTEE ON TRANSPORTATION AND UTILITIES  
RE PROPOSAL No. 43  
RECOMMENDED AMENDMENTS

AN ACT CONCERNING NATURAL GAS; REGULATION BY STATE CORPORATION COMMISSION OF CERTAIN NATURAL GAS SUPPLIERS; AMENDING K.S.A. 66-104 AND REPEALING THE EXISTING SECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

NEW SECTION 1. ~~(A) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (D), WHEN ANY SUPPLIER OF NATURAL GAS, WHETHER IT IS A PUBLIC UTILITY, CORPORATION, COOPERATIVE, COMPANY, INDIVIDUAL, ASSOCIATION OF PERSONS, THEIR TRUSTEES, LESSEES OR RECEIVERS, WISHES TO SUPPLY NATURAL GAS TO ANY CUSTOMER WITHIN TERRITORY CERTIFICATED FOR NATURAL GAS SUPPLY DISTRIBUTION BY ANY PUBLIC UTILITY REGULATED BY THE STATE CORPORATION COMMISSION, SUCH SUPPLIER SHALL FIRST OBTAIN AUTHORITY TO PROVIDE SUCH SUPPLY FROM THE STATE CORPORATION COMMISSION. THE COMMISSION SHALL GRANT SUCH AUTHORITY IF IT FINDS, AFTER HEARING OF INTERESTED PARTIES, THAT GRANTING SUCH AUTHORITY IS IN THE PUBLIC INTEREST OF THE PEOPLE OF THE STATE OF KANSAS.~~

~~(B) WHEN ANY SUPPLY OF NATURAL GAS IS AUTHORIZED TO BE PROVIDED UNDER SUBSECTION (A) THE COMMISSION SHALL HAVE JURISDICTION (1) TO APPROVE THE RATES CHARGED FOR SUCH SUPPLY, (2)~~

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Attach. 2

TO DETERMINE THE CUSTOMERS-AND TERRITORY REQUIRED TO BE SUPPLIED-NATURAL GAS BY SUCH SUPPLIER, AND (3) TO DETERMINE THE PERIOD OR DURATION THAT PROVIDING SUCH SUPPLY BY SUCH SUPPLIER IS REQUIRED TO CONTINUE. THE TIME REQUIRED FOR SUCH SUPPLY TO BE CONTINUED MAY BE A DEFINITE TERM OR UNTIL THE STATE CORPORATION COMMISSION AUTHORIZES DISCONTINUATION OF SUCH SUPPLY.

(c) ALL RIGHTS OF A SUPPLIER OF NATURAL GAS TO PROVIDE DISTRIBUTION SERVICE IN AN AREA ANNEXED BY A CITY SHALL TERMINATE 180 DAYS FROM THE DATE OF ANNEXATION, UNLESS SUCH NATURAL GAS SUPPLIER IS THEN HOLDING A VALID FRANCHISE FOR SERVICES IN SUCH AREA GRANTED BY THE ANNEXING CITY. THE 180-DAY PERIOD SHALL BE EXTENDED TO 210 DAYS FROM THE DATE OF ANNEXATION IF A FRANCHISE IS GRANTED TO SUCH NATURAL GAS SUPPLIER PURSUANT TO REFERENDUM CONDUCTED ACCORDING TO APPLICABLE FRANCHISE LAWS OF THE STATE WITHIN THE 210-DAY PERIOD. WHEN SERVICES ARE TERMINATED UNDER THIS SUBSECTION, THE STATE CORPORATION COMMISSION SHALL CERTIFY SUCH ANNEXED AREA AS A SINGLE CERTIFIED TERRITORY TO THE SUPPLIER HOLDING A FRANCHISE FOR OR THEN PROVIDING NATURAL GAS DISTRIBUTION SERVICE IN THE CITY IMMEDIATELY PRIOR TO THE ANNEXATION.

(d) A SUPPLIER OF NATURAL GAS IN EXISTENCE ON THE EFFECTIVE DATE OF THIS ACT, WHICH SUPPLIER WAS ORIGINATED BY A CITY, MAY CONTINUE AS SUCH SUPPLIER OF NATURAL GAS TO ITS CUSTOMERS ON THE EFFECTIVE DATE OF THIS ACT AND SUCH ADDITIONAL CUSTOMERS AS ARE AUTHORIZED BY THE GOVERNING BODY OF SUCH CITY. THIS SUBSECTION (d) SHALL NOT APPLY TO MUNICIPALLY OWNED UTILITIES--

SEC. 2. K.S.A. 66-104 IS HEREBY AMENDED TO READ AS FOLLOWS:  
66-104. THE TERM "PUBLIC UTILITY," AS USED IN THIS ACT, SHALL BE

CONSTRUED TO MEAN EVERY COOPERATIVE, CORPORATION, COMPANY, INDIVIDUAL, ASSOCIATION OF PERSONS, THEIR TRUSTEES, LESSEES OR RECEIVERS, THAT NOW OR HEREAFTER MAY OWN, CONTROL, OPERATE OR MANAGE, EXCEPT FOR PRIVATE USE OTHER THAN CASES TO WHICH SUBSECTIONS (A) AND (B) OF SECTION 1 APPLY; ANY EQUIPMENT, PLANT OR GENERATING MACHINERY, OR ANY PART THEREOF, FOR THE TRANSMISSION OF TELEPHONE MESSAGES OR FOR THE TRANSMISSION OF TELEGRAPH MESSAGES IN OR THROUGH ANY PART OF THE STATE, OR THE CONVEYANCE OF OIL AND GAS THROUGH PIPELINES IN OR THROUGH ANY PART OF THE STATE, EXCEPT PIPELINES LESS THAN FIFTEEN (15) 15 MILES IN LENGTH AND NOT OPERATED IN CONNECTION WITH OR FOR THE GENERAL COMMERCIAL SUPPLY OF GAS OR OIL OTHER THAN CASES TO WHICH SUBSECTIONS (A) AND (B) OF SECTION 1 APPLY; OR FOR THE OPERATION OF ANY TROLLEY LINES, STREET, ELECTRICAL OR MOTOR RAILWAY DOING BUSINESS IN ANY COUNTY IN THE STATE; ALSO ALL DINING CAR COMPANIES DOING BUSINESS WITHIN THE STATE; ALSO ALL SELLERS AND RESELLERS OF NATURAL GAS DOING BUSINESS WITHIN THE STATE WHO DO NOT OWN, CONTROL, OPERATE OR MANAGE PIPELINE AND DISTRIBUTION FACILITIES, EXCEPT FOR NATURAL GAS PRODUCERS WHO SELL TO PUBLIC UTILITIES AS HEREIN DEFINED OR WHO SELL TO CUSTOMERS NOT SERVED BY PUBLIC UTILITIES AS HEREIN DEFINED, AND ALL COMPANIES FOR THE PRODUCTION, TRANSMISSION, DELIVERY OR FURNISHING OF HEAT, LIGHT, WATER OR POWER. NO COOPERATIVE, COOPERATIVE SOCIETY, NONPROFIT OR MUTUAL CORPORATION OR ASSOCIATION WHICH IS ENGAGED SOLELY IN FURNISHING TELEPHONE SERVICE TO SUBSCRIBERS FROM ONE TELEPHONE LINE WITHOUT OWNING OR OPERATING ITS OWN SEPARATE CENTRAL OFFICE FACILITIES, SHALL BE SUBJECT TO THE JURISDICTION AND CONTROL OF THE COMMISSION AS PROVIDED HEREIN, EXCEPT THAT IT SHALL NOT CONSTRUCT OR EXTEND ITS



FACILITIES ACROSS OR BEYOND THE TERRITORIAL BOUNDARIES OF ANY TELEPHONE COMPANY OR COOPERATIVE WITHOUT FIRST OBTAINING APPROVAL OF THE COMMISSION. AS USED HEREIN, THE TERM "TRANSMISSION OF TELEPHONE MESSAGES" SHALL INCLUDE THE TRANSMISSION BY WIRE OR OTHER MEANS OF ANY VOICE, DATA, SIGNALS OR FACSIMILE COMMUNICATIONS, INCLUDING ALL SUCH COMMUNICATIONS NOW IN EXISTENCE OR AS MAY BE DEVELOPED IN THE FUTURE.

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 AND AMENDMENTS THERETO/ OR SECTION 1.

EXCEPT AS HEREIN PROVIDED, THE POWER AND AUTHORITY TO CONTROL AND REGULATE ALL PUBLIC UTILITIES AND COMMON CARRIERS CURRENTLY SITUATED AND OPERATED WHOLLY OR PRINCIPALLY WITHIN ANY CITY OR PRINCIPALLY OPERATED FOR THE BENEFIT OF SUCH CITY OR ITS PEOPLE ON THE EFFECTIVE DATE OF THIS ACT, AND ALL PUBLIC UTILITIES AND COMMON CARRIERS THAT BEGIN OPERATION AFTER THE EFFECTIVE DATE OF THIS ACT WHOLLY OR PRINCIPALLY WITHIN ANY CITY NOT BEING PROVIDED THAT UTILITY OR COMMON CARRIER SERVICE BY A PUBLIC UTILITY SUBJECT TO THE JURISDICTION OF THE COMMISSION, 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. 66-131a OR

66-133 AND TO THE PROVISIONS OF K.S.A. 6-131a AND AMENDMENTS  
THERETO. OR SECTION 1. ALL PUBLIC UTILITIES AND COMMON CARRIERS  
THAT BEGIN OPERATION AFTER THE EFFECTIVE DATE OF THIS ACT  
WHOLLY OR PRINCIPALLY WITHIN ANY CITY ALREADY BEING PROVIDED  
SIMILAR SERVICE BY A PUBLIC UTILITY SUBJECT TO THE JURISDICTION OF  
THE COMMISSION, SHALL BE DEEMED TO BE A PUBLIC UTILITY AS THAT  
TERM IS USED IN THIS ACT AND, AS SUCH, SHALL BE SUBJECT TO THE  
JURISDICTION OF THE COMMISSION. A TRANSIT SYSTEM PRINCIPALLY  
ENGAGED IN RENDERING LOCAL TRANSPORTATION SERVICE IN AND BETWEEN  
CONTIGUOUS CITIES IN THIS AND ANOTHER STATE BY MEANS OF STREET  
RAILWAY, TROLLEY BUS AND MOTOR BUS LINES, OR ANY COMBINATION  
THEREOF, SHALL BE DEEMED TO BE A PUBLIC UTILITY AS THAT TERM IS  
USED IN THIS ACT AND, AS SUCH, SHALL BE SUBJECT TO THE  
JURISDICTION OF THE COMMISSION.

SEC. 3. K.S.A. 66-104 IS HERE REPEALED.

SEC. 4. THIS ACT SHALL TAKE EFFECT AND BE IN FORCE FROM AND  
AFTER ITS PUBLICATION IN THE KANSAS REGISTER.

TESTIMONY OF L. R. NICHOLSON  
President  
The Kansas Power and Light Company  
and  
The Gas Service Company

H. B. 2019

Special Committee on Transportation  
and Utilities

My testimony will address H. B. No. 2019 concerning proposed amendments to the law governing certification of natural gas suppliers in the state by the Corporation Commission. I understand this bill to be an outgrowth of perceptions that the structure of the natural gas industry is changing significantly, and KPL/GSC views it as a positive effort to deal with some of the changes most affecting the ultimate consumer. In particular, the vital interests of retail gas consumers require a clear pronouncement of state policy concerning the outer limits of competition for the "high margin" sales, commonly called "cream skimming."

Local gas distribution companies provide an essential service to consumers. Because we need to build hundreds or even thousands of miles of underground pipe to serve a single city, it is far more efficient for one distributor to serve an area than to allow two or more to lay pipes in the same streets and compete for customers. Granting distributors local monopolies minimizes the investment needed to supply a given level of demand and prevent cutthroat competitive practices that end up detracting from quality and safety of service. Regulation by the KCC effectively prevents distributors from abusing their

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limited monopoly power by limiting rates, requiring adequate service to all, and prohibiting discrimination among customers.

This industry structure has served the state well through many changes in the past. The Commission has granted certificates of convenience to distribution companies which, on occasion, overlap, but which generally allow for efficient service to all those who want it with a minimum of duplication. That is the object of the certification statute, which requires each utility to obtain a certificate before operating anywhere in the state.

Once certificated, a distributor has the duty to serve in its territory. It is required to make necessary investments and commit to purchase gas supplies so as to provide and maintain adequate and safe service. To obtain the capital necessary to make these investments on reasonable terms whenever required, its market position must be protected from opportunistic competition that threatens the integrity of its financial condition.

Furthermore, if the market were open to entrants interested only in the largest, most "profitable" customers such as large industries, the gas utility would still be required to serve the remaining customers. Because of the loss of large loads, the cost of service on a per unit basis would rise precipitously, imposing an economic burden on the utility and its customers alike. The reason why competitors target the largest customers is simply that these customers require the

least investment per unit to serve. Thus, entry is easy, pay back periods on investment are short, and there is little need to develop a large service organization.

Under present rate making practices, customers are grouped into rate classifications, and the rates to each class are designed to produce adequate revenues from the class as a whole. Because of differences in customer characteristics, it is simply inescapable that service is more profitable to some members of a class than others. If competition were the rule, no one could afford to serve the less profitable customers. Therefore, customers in that category could very well be unable to obtain service at all, or would have to pay very high prices for gas. This is likely to apply most to the small or isolated customer, most typically residential.

So the scheme of regulation we have in Kansas and most of the rest of the country insures service to those who want it at reasonable cost. But today this system is being tested because of present conditions in the natural gas market. As a result of the move at the Federal level toward deregulation of well head prices and competition among wholesale suppliers to the local distribution companies, opportunities exist to obtain limited, short term supplies of relatively low cost gas. These supplies have become available largely because of the run-up in gas prices immediately following passage of the Natural Gas Policy Act of 1978, simultaneously spawning a sharp increase in gas supply development and a severe decline in end user demand.



Most analysts see the present oversupply of deliverable reserves as temporary. However, many entrepreneurs never before involved in the distribution of gas see an opportunity to purchase excess gas, market it to large purchasers on an "as-available" basis with minimal investment, and turn a quick profit without undertaking the utility obligations, overheads or risks of the distributors with which they seek to compete.

Were such speculation to be tolerated, existing utilities would face unfair competition that would strip valuable load. The result would be weakened financial strength leading to potential declines in system adequacy, higher rates to remaining customers, and a serious threat to the reliability of long term supplies. None of these results serves the public interest. They all should be avoided.

Because of K.S.A. 66-131, the KCC has the power to prevent such cream skimming, and it has done so. Unfortunately, this statute does not cover all circumstances where cream skimming is likely to occur. The prominent exception is the case of the "single-city utility" - a utility "situated and operated wholly or principally within any city or principally operated for the benefit of such city or its people." These utilities escape state regulation almost entirely, and may be formed simply by obtaining a franchise from the city they wish to serve. If a single-city utility seeks to sell gas exclusively to large industrial customers of a certificated utility, the city, not the Corporation Commission, controls. This loophole in the certificate law thereby creates a vehicle to circumvent the

otherwise comprehensive fabric of state regulatory policy.

We have seen in the last year a serious attempt to use this loophole as a means to sell gas, when available, to large industrial customers in Kansas City. Had this attempt been successful, we would have had to spread millions of dollars in lost revenues to the bills of our remaining, smaller customers. Fortunately, it did not succeed in that case, but a major effort was required to protect our customers.

There are, in fact, isolated instances in Kansas of single-city gas utilities providing reliable, long term service to all types of customers, and these are not the problem. The problem is the speculative venture trading on a temporary market condition to unfairly compete for the most profitable sales. We read H. B. 2019 to address this problem, and we think it would attain that objective for the most part.

However, we see this bill as raising a number of new questions and problems that can easily be avoided. I will address the most pronounced of these and suggest alternatives.

Section 1(a) and (b) of the bill appear to bring within limited KCC jurisdiction any kind of gas supplier, whether or not it is public utility as defined in K.S.A. 66-104. This group could include such entities as producers, agents, brokers and the like. While such an expansion of jurisdiction would certainly increase protection of existing markets, it could also lead to a considerable increase in the KCC's administrative burden and could result in a great deal of litigation before the KCC and the courts.

Furthermore, subjecting producers, brokers and other non-utilities to ratemaking and territorial regulation would not necessarily lead to competition on an equal footing with local distributors because the cost structures in these sectors are completely different.

The real problem to be addressed is the non-utility supplier's use of a temporary price advantage to undercut and by-pass the local distributor on a customer by customer basis. This problem was adequately and properly addressed in the case of Kansas Pipeline Company when the KCC required, as a condition of certification, that any sale by Kansas Pipeline to an end user within the territory of an existing utility be through the facilities of that utility. In this way, the utility can protect its remaining customers by charging a transportation fee equal to the margin on its sales to the end user.

Such a solution could be codified in Chapter 66, but we believe the standards now in place for granting certificates adequately protect utilities from territorial invasion by outside entities. After all, in order to deliver gas to the end user, pipeline facilities must be constructed, and in most cases this act would automatically classify the supplier as a utility. I would therefore recommend that Sections (a) and (b) of new Section 1 not be enacted.

Section 1(d) is somewhat troublesome to us, in that its effect is unclear. If this section is intended to grandfather any single city utility now in existence, we have no problem with

it. However, the words "which supplier was originated by a city" suggests the possibility of exempting from state regulation utilities that have their origin in a municipal system but which are later transferred to private ownership. Since a municipality may operate outside its city limits, the result could very well be exemption of new utilities that would not be exempt under current law. For example, transfer of ownership of a system serving customers immediately outside a city from municipal to private control would, today, subject the system to certification requirements and KCC regulation. Section 1(d) appears to expand the single city utility loophole, creating another method for circumventing statewide regulatory policy. I would recommend that this section too, be deleted.

In order to eliminate the single city utility loophole without disrupting the few existing single city utilities now serving their communities, I would suggest an amendment to the last paragraph of K.S.A. 66-104 as follows:

Except for gas utilities and common carriers not in existence on the effective date of this act, and 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 of the Corporation Commission as hereinafter provided in K.S.A. 66-131 or 66-133 and amendments thereto. A transit system principally engaged in rendering local transportation service in and between contiguous cities in this and another state by means of street railway, trolleybus or motor bus lines, or any combination thereof, shall be deemed to be a public utility as that term is used in this act and, as such, shall be subject to the jurisdiction of the Commission.

With these changes, I think the bill accomplishes the single, important purpose of closing a gap in the framework of state regulatory policy to protect the interests of all gas consumers.



Testimony of James L. Grimes, Jr., Attorney  
for Peoples Natural Gas Company on  
H.B. 2019 Before the Kansas House  
of Representatives Committee on  
Transportation and Utilities  
January 30, 1985

As Kansas attorney for Peoples Natural Gas Company of Council Bluffs, Iowa, I wish to record my client's support for House Bill 2019.

While not headquartered in Kansas, Peoples has a vital interest in the state. It serves 29,000 residential customers, and 6,000 industrial, commercial and irrigation customers in Kansas.

Peoples Natural Gas, consistent with the obligations of its Certificate from the State Corporation Commission, has always tried to keep its customers' well-being uppermost. The issue of cream-skimming which HB 2019 addresses has the potential of pitting residential and small commercial customers against the large industrial users.

Peoples has a long-term obligation to assure adequate supplies of natural gas for all customers. Having invested to insure long term supplies and deliverability capability, loss of

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customers and particularly large industrial customers will have a detrimental impact on Peoples remaining customers. Loss of any contribution to fixed costs by one customer must be recovered from the remaining customers through higher rates. And we feel that private entities whether they are producers, brokers, pipe line companies or transmission companies, should not be allowed, without approval by the Kansas Corporation Commission, to come into the area of a certificated gas public utility which has been granted the right and obligation to serve all in its area with fair, just and nondiscriminatory rates and provide unregulated and preferential rates and service only to the large customers.

Private entities attempting to serve only large customers with short-term supplies will deprive public utilities of revenue from large users, forcing utilities to increase rates to residential and other customers. Utilities would be left with an uneconomic business, and still be left with the legal obligation to continue that business.

Public utilities have long-term obligations to assure adequate supplies of natural gas to all customers. Private entities need not meet this obligation, and have no obligation to ensure that other, smaller customers do not receive higher bills.

KCC jurisdiction must be preserved and extended to ensure that, as in the past, all consumers receive adequate service at the most reasonable price. The Commission's process of certification, in order to prevent unnecessary duplication of services,

and resulting confusion and price shock, is in the best interest of all Kansans. Peoples supports the extension of the Commission's jurisdiction to all private entities who furnish gas to end users in Kansas.

For these reasons, we ask you to pass H.B. 2019. We suggest that the definition in section 1(a) be expanded, if necessary, so that producers, brokers and any others engaged in supplying natural gas to end users be subject to the provisions of this bill.