Approved 4-24-85
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES.

The meeting was called to order by Sen. Bill Morris, Chairperson, at

9:00 a.m. on April 9, 1985 in room 254-E of the Capitol.

All members were present.

Committee staff present:
Hank Avila, Research Department
Fred Carman, Revisor
Louise Cunningham, Secretary

Conferees appearing before the committee:

Rep. Elaine Hassler
Gene Johnson, Kansas Community Alcohol Safety Action Project Coordinators Association
Harley Duncan, Secretary, Department of Revenue
Richard D. Kready, KP&L
Chris McKenzie, League of Municipalities
Bob Storey, Union Gas System, Inc.
Karen Langland, Peoples Natural Gas Company
Brian Moline, KCC
Don Schnacke, KIOGA
Jerry Bieker, Mgr., Natural Gas Sales Co.
Russell Freeman, Continental Energy, Garden City
Stu Entz, Iowa Beef Packers
Dick Brewster, Standard Oil of Indiana
Robert Anderson, Oklahoma-Kansas Oil and Gas Association

On a motion from Sen. Doyen, a second from Sen. Francisco and unanimous approval by the committee, the Minutes of April 2, 1985 were approved.

HEARING ON H.B. 2570 - Availability of diversion records to courts and prosecution attorneys.

Rep. Hassler spoke in favor of the bill and said the records would be disclosed only to attorneys, courts and law enforcement officials. This would be by direct computer access.

Gene Johnson said his organization consists of 30 members from all parts of the state and they do the evaluations of all DWI offenders in the state. He said they must now wait two weeks in order to get driving records and this bill would eliminate this two week waiting period. A copy of his statement is attached. (Attachment 1). He also submitted letters from John J. Eisenbart, Chief Probation Officer, ADSAP Board Member, City of Wichita, dated April 4, 1985 (Attachment 2); and from Robert A. Thiessen, Administrative Judge, Division 1, City of Wichita, dated April 5, 1985 (Attachment 3). Both of these letters were addressed to Sen. Bill Morris and were in support of H.B. 2570.

Secretary Duncan said the Department of Revenue did not object to H.B. 2570 but did express his concern about confidentiality and might want to make some recommendations in this regard. A copy of a memorandum from John W. Smith, Chief Administrator, Driver Licensing and Control dated March 25, 1985 pertaining to concerns about H.B. 2570 was submitted. (Attachment 4).

HEARING ON H.B. 2562 - Franchise fees; certain compensation payments declared void.

Richard D. Kready, KP&L, spoke in favor of this bill which would declare unenforceable provisions in utility franchises commonly known as "favored nations clauses". A problem was caused when KP&L acquired the Gas Service Company which pays higher franchise fees in Kansas amounting to as much as 5% of gross revenues and ranging up to 10% in Missouri. An increase to KP&L

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

customers could result because KP&L has acquired a subsidiary that had agreed to higher franchise fees in the past. This bill would prevent the increase. A copy of his statement is attached. (Attachment 5).

Chris McKenzie, League of Municipalities, said he was neither for nor against the bill but was more concerned with the scope of the bill. He would favor an amendment dealing only with the KP&L situation because of the merger.

HEARING ON SUB. FOR H.B. 2202 - Natural gas regulation by KCC, when.

Bob Storey, Union Gas Company, said this came about because of the overproduction of gas supplies. It was an opportunity for brokers to go out and attempt to obtain cheap gas from sellers and then resell that gas to industrial customers in an attempt to make a profit on such sales. These brokers should also be considered as public utilities and be under the jurisdiction of the KCC. If they are not, the additional burden of higher rates will be paid by residential consumers. A copy of his statement is attached. (Attachment 6).

Karen Langland, Peoples Natural Gas, said that "cream-skimming" of large customers by unregulated suppliers can increase costs to residential and small commercial customers. Peoples believes the KCC needs the authorization to regulate all sellers, resellers and brokers. They urged the same rules for all players. A copy of her statement is attached. (Attachment 7).

Rick Kready, KP&L, said the language on lines 78 to 94 were very important to them because it clarifies the ambiguities in existing law which last year was used as a loophole as a means to try to sell gas to a large industrial customer in Kansas City. If this attempt had been successful, KP&L would have had to spread millions of dollars in lost revenues to the bills of remaining customers. A copy of his statement is attached. (Attachment 8).

Brian Moline, KCC, said brokers are taking advantage of the deregulation and are bringing in low priced gas to industrial customers. This means recovering costs from the remaining consumers and bills have gone up. This bill makes certain that everybody plays by the same rules. He said the Iowa Beef Packers would not be regulated under this bill. That was a private sale. This bill is an attempt to get at the broker as an intervening partner.

OPPONENTS:

Don Schnacke, KIOGA, said the bill would protect pipelines and distribution companies. They do not support the regulation of brokers as though they were utility companies. Congress is now considering de-control of natural gas and letting the market forces work. This bill would move Kansas in the opposite direction and against what probably will be enacted by Congress. This is a pipeline bill and not a Kansas producer or consumer bill. A copy of his statement is attached. (Attachment 9).

Jerry Bieker, Manager, Natural Gas Sales Company, said they were opposed to additional regulation. Additional costs would have to be passed to consumers. This will reduce the market for Kansas natural gas. The reduction of markets will have a chilling effect on exploration of oil and gas. Serious consequences will result. This bill is overly broad. They especially objected to lines 37-45 and felt it should be deleted from the bill.

Robert Anderson, Oklahoma-Kansas Oil and Gas Association, said he agreed with Mr. Schnacke's statement and said Sec. 2 on Page 3 is especially bad.

Russ Freeman, Continental Energy, Garden City, said he spoke as owner of a small gas producing company. His gas is below pipeline quality but he was able to work out a contract with Iowa Beef Packers to sell his gas. This bill would have thwarted those efforts. A copy of his statement is attached. (Attachment 10).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,

room 254-E, Statehouse, at 9:00 a.m./pxmx on April 9, 1985

Stu Entz, Iowa Beef Packers, said he felt they should have the benefits of a free enterprise system and if a broker could get a better price for them they should be able to take advantage of it.

Dick Brewster, Standard Oil of Indiana, said some of these problems were brought on by the oversupply of gas. He said there really is no oversupply. It is deliverability. The price will be going up. The oversupply problems will be gone. This country is still running short of gas and this oversupply will not last long.

HEARING ON H.B. 2451 - Regulation of traffic, procedure for enforcement of municipal traffic laws.

Chris McKenzie, League of Municipalities, explained the need for this bill. He said it would deal with a number of problems that have arisen since enactment of 1984 S.B. 490. This bill created a new category of traffic offense called a "traffic infraction". A copy of his explanation is attached. (Attachment 11).

Meeting was adjourned at 10:00 a.m.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 4-9-85 Place 254-E Time 9:00

GUEST LIST

NAME	ADDRESS	ORGANIZATION
Kevin Robertson	Topeka	KPL Gas Service
Richard D. Kready	"	" " "
Bill Perdue	"	" " "
Don Schnacke	"	KIOGA
John Brooks	Topeka	Revenue
Bruce Beale	Lawrence	KS. ASAP
Steve Johnson	Topeka	Ks ASAP
Elaine Hassler	"	St. Legislature
Karen Langford	Minneapolis Mn	Peoples Natural Gas
John Jordison	Council Bluffs IA	"
[illegible]	IBP	Topeka
Bob Storey	Union Gas	Topeka
Charles Belt	Wichita	Chamber of Commerce
E.R. Brewster	Topeka	Standard Oil (Ind.)
Robert G. Cochran	Ottawa	Mid Cont Oil & Gas
Penny Burgess	Wamego	KEC

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

ate 4-9-85 Place 254-E Time 9:00

GUEST LIST

NAME	ADDRESS	ORGANIZATION
Mark Calcara	P.O. Drawer 1110 Great Bend, Ks	Sunflower Electric
Gerald Bieker	P.O. Box 1290 Hays, Ks	The Natural Gas Sales Co.
Bob Phillips	Topeka	KEC
Rick Fimewald	Topeka	AT&T

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Testimony on House Bill 2570

April 9, 1985

Mr. Chairman, Members of the Committee, my name is Gene Johnson and I represent the KS Community Alcohol Safety Action Project Coordinators Association. We are the people who do the evaluations of all DWI offenders in the state of Kansas. Our organization consists of 30 members from all parts of the state.

We endorse and enthusiastically support House Bill 2570 to be passed favorably by this Committee as a method of reducing the alcohol related crashes in the state of Kansas. The 1984 amendment to KSA - 74-2012 limited our ability to quickly and effectively obtain the driving records for those persons who had been arrested for a DWI offense. Our established practise prior to 1984 was to contact our local law enforcement direct computer service for those records. This was a matter of convenience both to the courts, the prosecutors' offices, and our offices. In a matter of minutes or hours, we could have the complete driving record of those offenders whom we were evaluating for charges of DWI.

Due to this 1984 amendment, it is now necessary for us, in order to get a complete driving history which might include a DWI diversion, to contact by mail the Division of Motor Vehicles, State Office Building,

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Topeka, Kansas. We must make this request in writing and we are told that the Division of Motor Vehicles will need at least two weeks to return this information to our offices. This means that once the offender has been referred to our offices we must wait at least two weeks in order to get a complete driving record. This will cause a delay or a postponement in the adjudication process of the DWI offender. Remember, this offender may have full driving privileges until his case is fully adjudicated by the sentencing court.

One of the principal factors in the founding of the Alcohol Safety Action Projects by the federal government, some fifteen years ago, was to eliminate unnecessary delays in the adjudication process. It was the feeling of the federal government and also the feeling of our Association that there should be no unnecessary delays such as what was imposed on us in the 1984 session by the amendment to KSA 74-2012. We understand why this amendment was passed in the last session and accept the fact that it was probably for good reason. However, in doing so, it does eliminate our efficient procedure in getting complete driving records for those people who have been arrested for a DWI.

Socialdrinkers who have been arrested for DWI's most generally request that the adjudication move as swiftly as possible in order for them to return to their normal life activities. The educational benefits to these people are much better received within a 90 day period of time after their arrest. Any other delays would cause diminishing effects on their educational process.

For those DWI offenders who may have a serious drinking problem and do not want to face that problem in a positive manner, any or all delays

in the adjudication procedure would be welcome. These people will continue to drive and it is highly conceivable that they will drink while doing their driving. House Bill 2570 would eliminate that two week period in the adjudication process to get these DWI offenders off of our roads and highways into an educational or treatment process in a much more efficient manner.

We ask you, as a Committee, to act on this proposed legislation favorably and move it on its way for acceptance by the Senate so this unnecessary delay in the processing of the DWI offenders can be rectified July 1, 1985.

I will answer any questions. Thank you for your consideration.

Respectfully submitted,

Gene Johnson, Chairman
KS Community ASAP Coordinators Assn.

CITY OF WICHITA

MUNICIPAL COURT

4 April 1985

The Honorable William Morris
Chairperson, The Senate Transportation and Utilities Committee
State House
Topeka, KS 66612

Re: HB 2570

Dear Senator Morris:

Printouts of the driving records are used to verify whether or not offenders have prior DUI's. The printouts are essential to recommend the correct penalties to the judges. Prior DUI's make substantial differences in the fines and jail sentences imposed.

The Wichita Municipal Court Probation Office conducts 150 DUI evaluations each month. By use of a computer link, the officers had access to offender's driving records in seconds. Now that the printouts are censored, speedy justice is delayed. Letters must be sent to obtain complete records. There is a minimum two week delay in getting the reply. This also means time and money wasted on paperwork red tape.

In conclusion, I feel the ADSAP Association is being penalized for the liberties taken by some of the insurance companies. I request your support for HB 2570. Thank You.

Respectfully,

John J. Eisenbart
Chief Probation Officer
ADSAP Board Member

JE/vh

ATT. (2)
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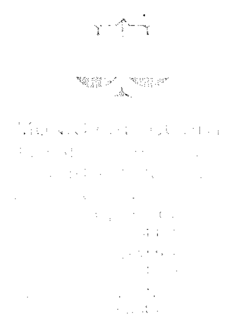
3

THE CITY OF WICHITA



5 April 1985

The Honorable William Morris, Chairperson
The Senate Transportation and Utilities Committee
State House
Topeka, Kansas 66612

Re: HB 2570

Dear Senator Morris:

Mr. Eisenbart, our Chief Probation Officer, has written you concerning the above bill. May I endorse the concern that he has shown in his letter.

In addition, may I say that quite a bit of money and time is used in preparation and handling of the letters that are required under our present law to obtain the driving records of those accused of DUI. Mr. Eisenbart refers to the delay caused by the paperwork that is necessary to obtain records, this translates into expenditure of tax dollars to pay the salaries of those engaged in such paperwork.

House Bill 2570 would permit the acquisition of driving records through our present computer set up and with a minimum of time and expense. May I urge your favorable consideration of House Bill 2570.

Very truly yours,

Robert A. Thiessen
Administrative Judge
Division I

RT/dla

4/9/85
ATT. 3

Kansas

DEPARTMENT OF REVENUE

State Office Building
TOPEKA, KANSAS 66626

TO: Harley T. Duncan
Secretary of Revenue

FROM: John W. Smith
Chief Administrator
Driver Licensing & Control

DATE: March 25, 1985

RE: HOUSE BILL NO. 2570

House Bill No. 2570 provides that the division's records pertaining to diversions shall be disclosed to city, county and district attorneys; municipal and district courts; and law enforcement by direct computer access.

The department does not object to this amendment but wishes to point out two areas of concern.

1. Once the division releases this information it has no control over its use. If a law enforcement agency obtains a record for the purpose of subparagraph (b)(2) and does not delete the confidential information (diversions, expungements and medical information) the requesting insurance company or agent will be aware of such information.

2. Does this amendment void the requirements of prosecutors and courts to obtain certified records from the division as required by K.S.A. 8-1567(h), K.S.A. 12-4415(a)(3) and K.S.A. 22-2908(c)?

JWS:bmh

4/9/85
ATT. 4

Testimony Before

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

House Bill 2562

By RICHARD D. KREADY
Manager of Governmental Affairs

THE KANSAS POWER AND LIGHT COMPANY
and
THE GAS SERVICE COMPANY

April 9, 1985

Mr. Chairman and Members of the Committee:

KPL Gas Service supports this bill, which would declare unenforceable provisions in utility franchises commonly known as "favored nations clauses." These provisions can cause the franchise fees paid to a city to automatically increase because the utility begins paying a higher fee to another city.

Within the public utility business, 20-year franchises often are agreed to between a city and a utility. These franchise agreements call for the utility to provide a particular level of service to all citizens and functions of the city throughout the 20-year period, in exchange for the city permitting the utility the right to serve that community during the same 20-year period.

KPL has negotiated franchises for many years that call for a franchise tax of 2% on our natural gas sales in exchange for the privilege of using the public rights-of-way. We have had some communities that wanted us to collect a larger fee from their citizens under the franchise tax, but KPL has been adamant about collecting no more than that 2% surcharge.

Some communities have required us to include favored nations clauses in the franchise agreement, providing them the opportunity to require us to increase the rate of the franchise tax we collect from residents

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in the event we agree to a larger franchise fee in and for any other community. In other words, should our philosophy change for any reason and we (KPL) agree to a franchise tax of greater than 2% on natural gas sales in any other community, (i.e. 3%), then all cities in which our contract includes a favored nations clause could require us to collect a similar (3%) fee. Recognizing that much can change within a 20-year period, we have permitted this language in a few of our franchises in case something unforeseeable would take place to change our corporate philosophy.

KPL's philosophy has not changed -- we still believe that a 2% franchise tax on customers' gas bills provides reasonable but adequate revenues to compensate the city for our use of public rights-of-way to serve the city's residents. However, a year ago last October, KPL acquired The Gas Service Company, which pays franchise fees in Kansas amounting to as much as 5% of gross revenues and ranging up to 10% in Missouri.

To take advantage of savings for customers made possible through economies of scale and to eliminate duplication of services and facilities, KPL now is proceeding toward merging our subsidiary, Gas Service, into KPL.

When KPL negotiated its existing franchises -- some were agreed to nearly 20 years ago -- we did not contemplate this situation we now face of merging Gas Service into KPL. In fact, for many years favored nations clauses have acted as a lever to prevent franchise fee increases. But, with the impending merger, KPL will in fact be paying higher fees to the cities previously served by the Gas Service Company, and the potential exists for substantial natural gas franchise fee increases in those KPL cities with the favored nations clauses. Those higher payments -- which are collected from our customers in those cities -- could total as much

as $2 million annually. Although we foresee nothing at this time that would affect our electric customers, a similar triggering of the clause in our electric franchises could result in additional increases of more than $8 million. These increases in franchise fees are nothing more than tax increases triggered by events having no relationship to the revenue needs of those cities, or the level of service we provide customers in those cities. Under our franchise contracts, we could be required to collect this higher tax even though it was brought about by events never contemplated by either KPL or the cities involved.

I say these increases may occur because there is room for doubt. First, we certainly would resist the triggering of favored nations clauses under this scenario through all available means. Also, most of the clauses will not occur automatically, but must specifically be triggered by the city involved. It would therefore require officials in those cities to decide if they want to impose this additional tax burden on their citizens. However, the potential for great harm is clearly present.

This proposed legislation (H.B. 2562) would protect KPL customers in communities having franchise agreements with KPL from suddenly having their natural gas bills increase simply because our company has acquired a subsidiary that had agreed to higher franchise fees in the past.

The KCC has also expressed concern about operation of these favored nations clauses because they impose increases totally unrelated to the operating costs of the city which triggers the clauses. However, since there is no specific standard in Kansas statutes for setting a fee, there is no solid basis for determining that the fees paid are unreasonable.

This bill would not decrease the tax collected on behalf of any city -- it merely would prevent the unnecessary escalation of this tax, and thereby prevent the unnecessary escalation of consumers' natural gas utility rates.

By making franchise fee favored nations clauses unenforceable because they are deemed not in the interest of public policy, this bill would resolve this potentially harmful problem facing KPL's customers. Again, let me state that KPL believes House Bill 2562 is in the interest of the people of Kansas, would serve to help avoid unnecessary increases in the cost of natural gas service, and should be made part of the law of the State of Kansas.

TESTIMONY IN SUPPORT OF SUBSTITUTE FOR HOUSE BILL 2202
BEFORE SENATE TRANSPORTATION AND UTILITIES COMMITTEE
PRESENTED BY BOB W. STOREY
REPRESENTING UNION GAS SYSTEM, INC.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Thank you for giving me the opportunity to testify on behalf of Union Gas System, Inc. in support of Substitute for House Bill 2202.

First, let me state that Union Gas System, Inc. is a jurisdictional public utility operating a gas distribution system in certain portions of southeast and northeast Kansas. As such, Union is certificated and regulated by the Kansas Corporation Commission.

The new language contained in Section 1 of the bill defines those who are to be considered public utilities under K.S.A. 66-104. This new language would include gas brokers who are seeking markets for natural gas to displace gas sold to certain customers by certificated public utilities. Since the so-called gas bubble has occurred within the state of Kansas, it has become increasingly popular for individuals, partners, or companies to go out and attempt to obtain cheap gas from certain sellers, then resell that gas to lucrative industrial customers of public utilities in an attempt to make a profit on such sales. The Kansas Corporation Commission, recognizing the problems herein, is requesting that these brokers also be considered public utilities and under the jurisdiction of the Commission. At the present time, in order to receive a certificate as a

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public utility, one has to appear before the Kansas Corporation Commission and prove to the satisfaction of the Commission that there is a public need for the service and that public convenience would be served by the granting of the application. These brokers are circumventing that law, since they are not now regulated by the Commission; and I might point out to you that when public utilities, industrial, or commercial customers are taken away from them, then the utility has to file a request with the Commission for a rate increase on the residential customers who are served by the public utility in that area. The reason is very simple. For years the industrial and commercial customers have carried the load for residential customers in the gas business. If it were not for those large industrial and commercial customers, then the rates for residential users throughout the state of Kansas would be much higher than they presently are today. Quite frankly, as we all know, persons within the state of Kansas are now in a bind to pay utility bills, and the additional burden of higher rates would be very detrimental to the consumers.

The other language in Section 1 exempts producers of gas for on-farm use. It has never been the intention of Union to attempt to bring the producers under the regulation of the Commission. We as a public utility do buy gas from producers now, and are perfectly willing to buy gas from producers, or to ship that gas for a producer if the producer finds an unused customer for the gas at a cheaper rate. Union, of course, if this arrangement is made, will try to make up the lost margin of

profit by agreeing with the producer or purchaser on a transportation charge per M.C.F. Union was one of the first public utilities to file a transportation tariff with the Commission, in order to insure that certain customers would get cheaper gas. Union would transport the gas through its system, using a transportation tariff, so that it would not have to raise the rates of the residential users within that particular area.

The additional language in Section 1(a) defines a "municipally-owned" gas utility as a city-owned utility. The reason for this, as I am sure some of you committee members remember, is that last year a Senate bill was introduced to allow Johnson County to operate as a municipal utility. That was not passed by this committee, but referred to an interim committee, and the language in Substitute for House Bill 2202 is a result of that interim study. Back in 1981, Johnson County attempted to disenfranchise Union from the Industrial Airport in Johnson County, so that the county itself could serve that area with natural gas from leases given to it by a benefactor located in Johnson County. At that time the Commission determined that Union could not abandon the authority at the Industrial Airport, and also ruled that Johnson County could not operate as a municipal utility, since Chapter 66 of Kansas Statutes Annotated clearly makes reference to a municipally-owned or operated utility as one owned or operated by a city and not by a county. The language included on page 2 of the bill merely sets out in law what has been determined by the Commission and by the case law in the state of Kansas.

Under Section 1(b) is what we refer to as defining a single city utility, which merely states that any utility which is operating within the confines of a city, or three miles thereof, at the effective date of this act shall be under the jurisdiction of that particular city. Further, that any natural gas utilities which begin operations after the effective date of this act, which are wholly or principally operated within the confines of the city, and that city is not being served by a public utility, will be under the jurisdiction of the city.

Section 1(c) states that any natural gas utilities that begin operation after the effective date of this act, which are principally within the confines of a city, which is presently being served by a public utility, will have to go to the Commission to seek a certificate of convenience and necessity. We point out to the committee that this makes sense, since we are only protecting a public utility that operates within the confines of a city. In case another utility wants to serve that area, then it has to bear the same burden as a public utility does now with the Commission, i.e., proving that convenience and necessity would be furthered by the granting of the certificate. It would be very expensive to the consumers, and it would not make sense, to have duplicitous utilities within the confines of one city, unless there were a public need for the same.

New Section 2 relates to the problem of what happens when a city annexes a customer of a public utility. This section states that the service by the existing public utility will cease within 180 days from the date the city annexes that customer,

unless a contractual agreement is reached between the city and the public utility to serve the area. It also extends the 180-day period of 280 days in case a franchise would be awarded to that public utility, and that would be because of the time required for publication and the granting of said franchise.

Mr. Chairman and members of the committee, we ask that in order to serve the consumers of public utilities of the state of Kansas in a consistent manner, the committee recommend Substitute for House Bill 2202 for passage as amended.

Respectfully submitted,

BOB W. STOREY

TESTIMONY OF PEOPLES NATURAL GAS COMPANY

ON H.B. 2202

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

APRIL 9, 1985

The natural gas industry has changed significantly in the last few years. With abundant supplies, natural gas prices are declining. Competition for customers is increasing, and Peoples welcomes the challenges that fair competition brings.

However, Peoples remains concerned about protection for residential customers. In the case of the telephone and airline industries, ungoverned entry into the market place has favored large users, not the small users and rural areas. In the natural gas industry, "by pass" is also a threat. "Cream-skimming" of large customers by unregulated suppliers can dramatically increase costs to residential and small commercial customers. If Peoples loses sales of 10,000 Mcf/day to creamskimmers, residential rates could increase as much as 15 cents per Mcf.

At the same time creamskimming does not increase markets for natural gas, but merely shifts sales from one producer to another. Even worse, unregulated suppliers have approached our customers offering supplies of natural gas from Oklahoma.

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Peoples believes that it is in the best interest of Kansas natural gas consumers that all entities choosing to compete for existing natural gas customers be regulated by the KCC. The Commission is empowered to decide if sales by regulated natural gas utilities are fair to all classes of customers, on a case-by-case basis. In order to protect the residential customers of regulated natural gas public utilities, Peoples believes the KCC needs the authorization to regulate all sellers, resellers and brokers of natural gas choosing to compete for large customers. This bill does not prohibit competition. It will not regulate those sellers, resellers and brokers of natural gas who sell to public utilities or to new customers, nor will it regulate producers who sell by private contract to end-use customers. It will not prevent anyone from attempting to serve existing large customers.

It does assure that the rules are the same for all players.

I urge that you favorably report HB 2202 as written.

Testimony Before

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

House Bill 2202

By RICHARD D. KREADY
Manager of Governmental Affairs

THE KANSAS POWER AND LIGHT COMPANY
and
THE GAS SERVICE COMPANY

April 9, 1985

Mr. Chairman and Members of the Committee:

My testimony will address H.B. 2202 concerning proposed amendments to the law governing certification of natural gas suppliers in the state by the Corporation Commission. We view this bill as a response to certain changes taking place in the competitive nature of the natural gas industry, and we consider it a positive effort to deal with some of these changes most affecting the ultimate consumer.

Competition at the gas distribution end of the business for high volume customers, popularly known as cream skimming, threatens the quality and cost of gas service to the vast majority of consumers who the local distributor has a statutory obligation to serve, and for whose business there is little or no competition.

K.S.A. 66-131 provides a framework in which the KCC can order the distribution of gas to end users, preventing inefficient competition and unnecessary duplication of facilities. H.B. 2202 addresses what we consider the most important problem in the present law - a loophole which allows "single-city" utilities to escape KCC regulation and compete as they wish for the high volume customers of utilities obligated to serve everyone in their service areas.

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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 saw 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. H.B. 2202 would not affect these existing distributors. The problem is the speculative venture trading on a temporary market condition, in which temporary gas supplies are available at distress prices because of a lack of demand, to unfairly compete for the most profitable sales. We read H.B. 2202 to address this problem, and we think it would attain that objective.

The addition of the language on lines 78-94 is important to KPL Gas Service, because I believe it clarifies the ambiguities in the existing law. This language closes the most important gaps in regulation of the natural gas industry in the state, allowing the KCC to exercise the control necessary to protect consumers from uneconomic competitive practice. I urge your support of H.B. 2202.

KANSAS INDEPENDENT OIL & GAS ASSOCIATION
500 BROADWAY PLAZA • WICHITA, KANSAS 67202 • (316) 263-7297

April 9, 1985

TO: Senate Committee on Transportation

RE: Subs. HB 2202

KIOGA appeared in opposition to this overall scheme of protecting pipelines and distribution companies during the hearings under Proposal 43, Interim Study in 1984. We stated there that we find no prohibition in the statutes that keeps the KCC from establishing exclusive territories within which natural gas suppliers would have the exclusive right to furnish natural gas to all customers within that territory, if the KCC felt it was in the public interest to do so.

The history of Subs. HB 2202 has been to provide for the exemption of natural gas producers, which we support, only if this bill is destined to be passed. That exemption was put in by the House Committee on Transportation; removed by the House Committee on Federal and State Affairs on the suggestion of KPL; and restored on the House floor. We do not support regulation of brokers as though they were utilities, as contained in the bill.

Kansas producers are concerned about future markets for Kansas natural gas. We continue to sell our gas at the lowest price in the nation. (Average interstate sales in Kansas are $1.15/mcf - the next is Texas at $2.47/mcf. DOE-EIA late 1982 & early 1983 sales.) We have Kansas gas shut-in and available for sale at this time.

The pipelines are apparently convinced that by exempting producers, as they have proposed, that we are free to make contracts and continue as we have. We're not so convinced. This bill would appear to protect an exclusive franchise, but the producers and consumers appear to not benefit from this scheme. For instance, if a Kansas producer has gas to sell and finds an industry that wants to buy, the producer first would have to deal with the pipelines and distribution companies that are protected. We do that now. The gas may or may not get to those willing to buy, depending upon the availability of the pipelines and the price of the use of the line.

In this atmosphere, I can report that the natural gas industry is continually changing. The market before 1978 was tight. The NGPA of 1978 loosened the market and produced an abundance of gas. There is now a temporary surplus, and the Congress is considering de-control of natural gas and letting the market forces work.

The Congress in its deliberation in both the House Commerce and Energy Committee and the Senate Energy Committee and on the Senate floor, late in November 1983, and during 1984, proposed schemes broadening, not limiting, the natural gas market potentiality, rather than continuing the present near-monopoly that a few pipelines enjoy in delivering natural gas. Both the Senate and House versions proposed a new scheme labeled as "contract carriage" which would make available the access to the pipelines by producers and end-users in the open market place. In 1984, 40% of the U.S. House bill and 25% of the U.S. Senate-Administration bill was dedicated to implementing contract carriage provisions.

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To give you an insight on this subject, I'm attaching a side-by-side comparison of contract carriage proposals currently before the Congress by the following sponsors:

> Repr. Bill Richardson (D) New Mexico - Amending the NGPA of 1978 to facilitate the transition of the natural gas industry to a more competitive market.
>
> Sen. Bill Bradley (D) New Jersey - "Natural Gas Competition Act of 1985" - by requiring natural gas pipelines to transport natural gas for others when they have available capacity in their pipelines, resulting in a savings to natural gas consumers and the economy of over $10 billion.

This comparison of these two bills was furnished to me by the Natural Gas Supply Association of Washington, D.C.

What we are fearful of is that Subs. HB 2202 would move Kansas in the opposite direction and against the tide of what probably will be enacted by the Congress. Subs. HB 2202 merely protects the pipelines and distribution companies, but it does not address the subject of moving more cheap Kansas natural gas to Kansas markets. It is a pipeline bill - not a Kansas producer or Kansas consumer bill.

Donald P. Schnacke

DPS:pp
Encl

SIDE-BY-SIDE COMPARISON OF
CONTRACT CARRIAGE PROPOSALS

House of Representatives PROPOSED RICHARDSON BILL (3/1/85 Discussion Draft)	Senate BRADLEY BILL S. 834 (Introduced 4/2/85)
Transportation By	**Transportation By**
Pipelines for transportation or storage of natural gas on behalf of a contract carriage customer to the extent that it has available capacity.	Pipelines, ldc's or field gathering systems for transportation of natural gas on behalf of any person to the extent that firm or interruptible capacity is available.
Exemption	**Exemption**
Intrastates or field gathering systems will be exempt from this requirement if their State regulatory commissions have or will have authority to order them to transport for others.	Ldc, intrastates or field gathering systems...
Bypass	**Bypass**
No interconnection or transportation permitted by interstate pipeline if pipeline is requested to transport gas for a facility which was served by an ldc in the immediately preceeding 4-year period.	Same
Further, exemption is lifted 1 year from enactment if State commission does not have procedures to require ldc's to provide transportation or if ldc capacity is not available.	No provision
Rebuttable Presumption	**Rebuttable Presumption**
Places the burden of proving adequacy or lack of capacity on the pipeline.	Places the burden of proving adequacy or lack of capacity on the pipeline or ldc.

Av .able Capacity--Protection for Existing Customers

Available capacity is the capacity of a pipeline to transport or store natural gas without impairing its ability to render adequate service to existing customers; available capacity includes capacity obligated to a firm customer of an ldc to the extent the State authorizes it.

Protection for High-Priority Users

Whenever sufficient capacity is not available, priority of service goes to firm sales and transportation customers first and interruptible sales and contract carriage requirements last; no discrimination between firm sales and firm contract carriage customers.

Further, in the event of an emergency, a contract carriage service priority may be established so that pipelines would be required to carry that service priority volume in preference to the requirements of customers who are not high-priority users.

Rates

Transportation rates shall be just and reasonable, shall include any costs associated with prepayments for gas that was not taken prior to the date of enactment (if the Commission so permits) and shall not discriminate between carriage transportation and transportation for sale or resale.

Further, shall include an equitable percentage of the fixed costs of transporting.

Available Capacity

Same, but without the storage

Protection for High-Priority Users

Same

No provision

Rates

Same, and rates shall be fully recoverable.

No provision

Incentive Allowance

For the first 3 years after date of enactment, any pipeline providing transportation service shall be allowed to charge an incentive allowance of up to $.03/MMBtu or $.05/MMBtu if more than one pipeline is involved.

Construction of New Facilities

Upon request of a carriage customer, the Commission may order the construction of minor facilities after notice and opportunity for hearing.

Service Obligation

Service obligation of pipeline to existing customer is not reduced as a result of a customer requesting and becoming a contract carriage customer. If customer elects to reduce its purchase obligation from the pipeline then the obligation to sell by the pipeline is reduced to that extent.

Minimum Bills

Upon petition by a pipeline or ldc, the Commission shall reduce such pipeline or ldc's obligation to purchase under minimum bills, contracts, service agreements or demand tariffs necessary to offset reduced demand because of contract carriage.

Take-or-Pay Liabilities

For any contract for which gas remains price regulated, a pipeline may elect to not take or pay for gas from its suppliers in an amount equal to the reduced purchases from its system supply due to carriage transportation. Volumes will be reduced ratably among all purchase contracts. Not available to a pipeline's production affiliate.

Incentive Allowance

Pipeline or ldc allowed an incentive allowance for voluntary carriage as prescribed by the Commission.

Construction of New Facilities

No provision

Service Obligation

Same

Minimum Bills

Minimum bill obligation shall be reduced to the same extent that customer's purchases are reduced because of carriage transportation.

Take-or-Pay Liabilities

Same, without any description of the contracts for which this provision is effective.

Procedures

Commission to establish procedures for self-implementing transportation and protest. Priority will be given to protests with a Commission determination within 90 days. Otherwise, transportation will be implemented.

Use Restrictions

No transportation will be permitted without a certification by the contract carriage customer that there is an eligible buyer(s) for the gas willing to accept delivery.

Termination

Commission may terminate or reduce contract carriage services without prejudice for failure to initiate service or use all available capacity.

Non-Discrimination

No pipeline may discriminate between sales and contract carriage customers in providing storage; Commission shall require publication of separate rates for purchase, transportation, sale and storage of natural gas.

Buyer Cooperatives

Rules issued by the Commission for contract carriage shall facilitate and encourage the formation of buyer cooperatives for the purchase and transportation of natural gas.

State Regulatory Authority

Ensure that State regulatory commissions have the authority to encourage contract carriage.

Procedures

Upon request, a pipeline or ldc shall provide transportation within 45 days of request; if lacking capacity, shall petition the Commission within 10 days of the request. Commission shall make final determination within 45 days.

Use Restrictions

No provision

Termination

Commission may reduce or terminate contract carriage services.

Non-Discrimination

No pipeline or ldc may discriminate in favor of or against any person or condition contract carriage service upon provision of any other service.

Buyer Cooperatives

Same

State Regulatory Authority

Same

Rate Competition

No charges less than the maximum just and reasonable unless pipeline provides the same lower rate to all classes of customers or is prohibited from recouping from any of its customers the monetary difference between the maximum and lesser rates.

Reporting Requirements

Report from each pipeline due each 6 months describing capacity--location, expected duration, current and anticipated transportation.

No provision

Rate Design

No provision

Rate Competition

Same, with provision for ldc's as well

Reporting Requirements

Same

Report to Congress by the Commission 24 months after date of enactment.

Rate Design

Within 45 days of enactment, the Commission shall initiate rulemaking proceedings to establish a new interstate pipeline rate design that will encourage voluntary transportation by:

1. establishing incentives that encourage pipelines to provide adequate transmission services at minimum cost;

2. making pipelines indifferent between selling their own system supply and providing transportation for others;

3. ensuring clear and prompt transmission of price signals in both directions between the wellhead and burnertip markets;

4. allocating risk to those who have chosen to bear it in exchange for the opportunity to earn profits.

Good morning, Ladies and Gentlemen.

I'm greatly appreciative of the opportunity to appear in opposition to Sub. for House Bill 2202.

I own a small oil and gas producing Co. and opperate out of Garden City.

For a period of almost three years, I and a large group of investors owned 3 gas wells with a total investment, including accumlated interest, of over $700,000. We contacted every pipeline and/or utility in a futile effort to get any kind of contract to sell this gas.

The gas itself is below pipeline quality but has great value to certain potential users as will be evidenced by my testimony.

To make this phase of my story short, we were able finally to negotiate a willing buyer, willing seller, contract with Iowa Beef Packers and then I.P.B. proceeded to lay a pipeline to serve their needs. I'm sure that the language the House added by their floor amendment would have thwarted our selling our product to I.P.B., with a consequential continuing loss to our investors as well as causing I.P.B. continued higher cost for gas.

Another factor that I;d like for the committee to consider would be that with the passage of the "deep horizons" bill of two or three years ago we are in pretty good shape to open up vast new areas of potential production but with the restrictions placed on the oil and gas industry by the previously mentioned House Floor amendment there would quite likely be far less drilling and related activity, causing the State of Kansas to lose valuable revenue from these activities.

Once again I sincerely appreciate the opportunity to do what I can to at least remove the House Floor Amendment from the bill.

I would appreciate further the chance to answer any questions you may have.

Russ Freeman
Russell Freeman
Contintntal Energy

South Star Route
Garden City, Kansas

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League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: Senate Committee on Transportation and Utilities
FROM: Chris McKenzie, Attorney/Director of Research
DATE: April 8, 1985
SUBJECT: Explanation of HB 2451

HB 2451 was introduced by the House Committee on Transportation at the request of the League of Kansas Municipalities to deal with a number of questions and problems that have arisen since the enactment of 1984 SB 490. SB 490, which was effective January 1, 1985, created a new category of traffic offense called a "traffic infraction." The 130 traffic offenses classified as traffic infractions by SB 490 are required to be classified as "ordinance traffic infractions" by cities which adopt ordinances prohibiting the same traffic offenses. Under SB 490 state and municipal courts are required to give an accused person an opportunity to pay a fixed fine and court costs by mail when they have committed what the new law classifies as a "traffic infraction" or "ordinance traffic infraction." Further information on SB 490 is attached to this memorandum.

Section 1. This section of the bill is designed to give guidance to municipal officials concerning the contents of municipal notices to appear in order to carry out the intent of SB 490. The provisions of New Section 1 are virtually identical to those contained in subsection (e) of K.S.A. 1984 Supp. 8-2106, part of 1984 SB 490, which deals with the required contents of a notice to appear given to a person who is charged with a violation of a state "traffic infraction." The main difference between New Section 1 and subsection (e) of K.S.A. 1984 Supp. 8-2106 is that New Section 1 authorizes a municipal law enforcement officer, in lieu of entering the appropriate fine for an ordinance traffic infraction on the notice to appear, to either direct the person charged with the ordinance traffic infraction to contact the clerk of the municipal court to determine the applicable fine or provide the person charged with a copy of the fine schedule established by the municipal judge. Before the enactment of SB 490 many cities were already treating many traffic offenses similar to traffic infractions in that a person was authorized to pay their fine by mail if they contacted the municipal court clerk to determine the amount of the fine. This section simply preserves what is an existing local procedure which has proven to work well.

Section 2. This section of the bill amends K.S.A. 1984 Supp. 8-2110, which concerns suspensions for failure to appear for a traffic offense, to deal with the problem which has arisen since the issuance of an Attorney General's Opinion in May of 1984. That Opinion, No. 84-43, concluded that a municipal court could not request the Division of Motor Vehicles to suspend the

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license of a violator who fails to appear in municipal court because K.S.A. 1984 8-2110 does not specifically refer to municipal courts. The amendment contained in Section 2 would specifically make reference to municipal courts, thereby allowing the municipal courts to take advantage of the same opportunity available in district courts for individuals who fail to appear. Since the vast majority of traffic offenses are prosecuted in municipal court, the League of Kansas Municipalities recommended this change in order to effectively deal with individuals who fail to appear. There was testimony by a municipal prosecutor before the Committee indicating that failure to appear is a serious problem in municipal courts.

Section 3. This section amends the arrest provisions contained in the Municipal Court Procedure Act at K.S.A. 1984 Supp. 12-4212. The amendment is contained in lines 101-102 and is designed to deal with the problem which has developed with individuals who commit an ordinance traffic infraction but who refuse to give a written promise to appear. Under current law, a police officer may not arrest a person who is only charged with committing an ordinance traffic infraction unless the person charged has received service of a notice to appear and has failed to appear. A police officer simply has no recourse in situations in which a person who is charged refuses to give their written promise to appear. That person, under current law, is free to go down the road. This could develop to be an even bigger problem in our border cities in dealing with out-of-state drivers who refuse to give a written promise to appear. There is serious question whether the license suspension procedures of the nonresident motor vehicles compact would allow the State of Kansas to request the home state of such a violator to suspend that person's license.

Section 4. This section amends K.S.A. 1984 Supp. 12-4305 to make its provisions concerning mandatory appearances in municipal court compatible with those set out and applicable to district court in subsection (d) of K.S.A. 1984 Supp. 8-2104.

Section 5. This section amends K.S.A. 12-4516, concerning expungement of convictions in municipal courts, to make its provisions compatible with the provisions of K.S.A. 1984 Supp. 21-4619, which concerns expungement of convictions by district courts and was amended by 1984 SB 490.

Ordinance Traffic Infractions: A Review for Municipal Officials

On January 1, 1985, the new state traffic infraction law (SB 490, L. 1984, ch. 39) took effect, requiring a special treatment of 130 traffic offenses considered by the legislature to be minor enough to be handled without a court appearance. Under that law state and municipal courts are required to give an accused person an opportunity to pay a fixed fine and court costs by mail when they have committed what the new law classifies as a "traffic infraction." Traffic offenses classified as traffic infractions by the new state law are required to be classified as ordinance traffic infractions by cities which adopt ordinances prohibiting the same traffic offenses. (A list of ordinance traffic infractions with their corresponding state statutory citation appears in the appendix of the 1985 edition of the Standard Traffic Ordinance for Kansas Cities, published by the League of Kansas Municipalities.)

SB 490 amends K.S.A. 12-4305 to provide that the municipal judge *shall* establish a schedule of fines which shall be imposed for violation of traffic offenses classified as ordinance traffic infractions. Cities may establish fines for ordinance traffic infractions which differ from those established by state law. The judge also *may* establish a schedule of fines for the violation of other traffic offenses. The fine established by the judge in the fine schedule must be within the minimum and maximum allowable fines established by ordinance. The penalty for violation of traffic offenses not classified as traffic infractions or for which a scheduled fine has not been established, is contained in the general penalty section (Sec. 201(c)) of the Standard Traffic Ordinance for Kansas Cities.

Under the procedures set out in SB 490, a person accused of an ordinance traffic infraction is to be notified of the amount of fine established for that offense and any court costs (cities may impose court costs pursuant to a charter ordinance). The accused cannot be arrested nor can a warrant be issued against the accused if charged only with an ordinance traffic infraction, unless he or she has received service of notice to appear for the ordinance traffic infraction and has failed to appear. If the accused chooses to plead guilty or no contest and waive the right to trial, he or she may pay the scheduled fine and court costs in person or by mail. If payment is made without executing the plea of guilty or no contest and waiver of trial, which is to be included in the notice to appear, the payment is considered to be a plea of no contest and waiver of the right to trial. If the check is not honored for any reason, or if the fine and court costs are not paid in full, the traffic citation remains outstanding.

The fine established in the fine schedule does not apply if the accused makes a court appearance and pleads not guilty. If the accused goes to trial and is convicted, the judge may impose a fine which under state law may not exceed $500. In municipal court the maximum amount of the fine for conviction is left to the discretion of the governing body and may be less than $500. No term of imprisonment may be imposed upon conviction of an ordinance traffic infraction, and the accused may appeal the conviction to district court where he or she may request a jury trial.

Under SB 490 certain offenses may *not* be included in a schedule of fines: (a) reckless driving; (b) driving while under the influence of alcohol or drugs; (c) driving without a valid license issued or on a suspended or revoked license; and (d) offenses arising from a motor vehicle collision or accident. In addition, a number of other state traffic offenses were not classified by SB 490 as traffic infractions, and are not included in the state fine schedule. Cities are not prohibited, however, from including such offenses in a schedule of fines, but they should not be classified as ordinance traffic infractions. These offenses include: (a) failure to obey a police officer; (b) defacing traffic control devices; (c) driving a prohibited vehicle on a controlled access highway; (d) walking on a highway while under the influence of alcohol; (e) drag racing; (f) failure to stop or give accurate information when involved in an accident; (g) selling bald tires; (h) failure to equip a motor vehicle with safety glazing material; and (i) unsafe transportation of hazardous material.

In order to respond to the requirements of SB 490, cities must revise the notice to appear (or combined complaint and notice to appear) form to provide the following information:

✓ A place where the police officer shall enter the fine established by the fine schedule for the ordinance traffic infraction and any applicable court costs;

✓ A place where the person may make a written entry of appearance, waive the right to trial, and plead guilty or no contest; and

✓ An explanation of the person's right to appear, their right to trial, their right to appear to pay the scheduled fine and court costs prior to the appearance date, and that failure to pay the fine and court costs or appear at the specified time may result in the issuance of a warrant for the accused person's arrest. This information also may be provided in a *separate form* if it is not provided in the notice to appear. The police officer also must provide the person with the address of the court to which the written entry of appearance, waiver of trial, plea of guilty or no contest, and payment of fine and court costs shall be mailed.

The League has revised the 1985 edition of the Standard Traffic Ordinance for Kansas Cities to comply with the requirements of SB 490. For more information on the new law and the steps that cities must take in order to comply with its provisions, see the "Manual of Procedure for Incorporating by Reference the Standard Traffic Ordinance for Kansas Cities," available from the League, and the article entitled "Traffic Infractions Come to Kansas" appearing on page 222 of the July 1984 issue of the *Journal.*