

Approved: Carl Dean Holmes
Date 4-24-96

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 3:36 p.m. on March 13, 1996, in Room 526-S of the Capitol.

All members were present except: Representative Tom Sloan - Excused

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Mary Torrence, Revisor of Statutes
Marcia Ayres, Committee Secretary

Conferees appearing before the committee: Timothy E. McKee, Kansas Corporation Commission

Others attending: See attached list

Chairperson Holmes distributed Minutes from February 5th, 6th, 7th, 8th, and 12th for the committee to review.

Action on HB 3064: State agencies; energy and water conservation improvements

Representative Don Myers moved that HB 3064 be passed out favorably. Representative Joann Freeborn seconded the motion. Discussion followed. The motion carried.

Action on Substitute for SB 473: Creating the Kansas nongame and endangered species advisory task force

Representative Joann Freeborn moved to amend Substitute to SB 473 on page 1, line 32, by inserting "and a member of the State Association of Kansas Watersheds." Representative Steve Lloyd seconded the motion. Discussion followed. The motion carried.

Representative Laura McClure moved to amend the Substitute to SB 473 on page 1, line 32, by striking "(14) Mr. Duane Hund, a private landowner" and inserting "member of a private watershed." Discussion. The Chair suspended action on the bill while staff did some research. Representative McClure withdrew the motion.

Briefing on Gas Gathering Issues

Chairperson Holmes reviewed the background of HB 2041 which passed out of this committee last year but was not worked in the Senate. There were summer interim hearings on the bill and now the Senate is taking up HB 2041 this week. When it comes back, it will go to conference committee so Chairperson Holmes requested Commissioner McKee to brief the committee on what the Senate may do with the bill.

Commissioner Tim McKee. Commissioner McKee presented the findings required by SR 1613 regarding possible regulation of natural gas gathering systems within the State of Kansas, and he reported on the KCC's legal opinion that it may assert jurisdiction over natural gas gathering systems under either chapter 66 or chapter 55. The KCC report included overviews of testimony at public hearings and offered the Kansas Corporation Commission's recommendations on how best to view a regulatory structure for gas gathering in Kansas. (Attachment #1)

Questions followed after which the Chair thanked Commissioner McKee.

Continued Action on Substitute for SB 473: Creating the Kansas nongame and endangered species advisory task force

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m.. on March 13, 1996.

Representative Laura McClure moved to amend the **Substitute to SB 473** on page 1, line 32, by striking "(14) Mr. Duane Hund, a private landowner" and inserting "a private landowner appointed by the other members of the task force." Representative Vaughn Flora seconded the motion. Discussion followed. The motion carried. Representative Rich Becker requested to be recorded as voting nay.

Representative Steve Lloyd moved to amend the **Substitute to SB 473** on page 1, line 32, by adding "(15) two private landowners appointed by the state executive director of the Consolidated Farm Service Agency." Representative Bill Feuerborn seconded the motion. Discussion followed. The motion carried.

Representative Steve Lloyd moved to amend the **Substitute to SB 473** on page 2, in line 2, after the comma, by inserting "vice-chairperson and ranking minority member of the standing . . ." Representative Rich Becker seconded the motion. The motion carried.

Representative Clay Aurand moved that the **Substitute to SB 473** be passed out favorably as amended. Representative Richard Alldritt seconded the motion. The motion carried.

Representative Rich Becker moved that the Minutes for February 5th, 6th, 7th, 8th, and 12th be approved. Representative Joann Freeborn seconded the motion. The motion carried.

Chairperson Holmes announced there are six bills to be worked, and his intent is to work them tomorrow and Monday and not meet on Friday.

The meeting adjourned at 4:45 p.m.

The next meeting is scheduled for March 14, 1996.

ENERGY AND NATURAL RESOURCES COMMITTEE
COMMITTEE GUEST LIST

DATE: March 13, 1996

NAME	REPRESENTING
MONTBOMERY ESCUE	FIRST NATIONAL OIL
EUGENE L. SMITH	
Karl Landis	Western Resources
MIKE HEIM	WESTERN RESOURCES
Jack Graves	Pan Energy Corp
Tim Aron	Northwest Natural Gas
Leslie Kaufman	Kansas Farm Bureau
Marla Divercamp	Kansas Pipeline
DAN STEVENS	TEXACO
Joe STASKAL	Williams Field Services
Chuck Dehart	The Williams Co.
Mari Ramsey	Williams Field Services
DAVID B SCHLOSSER	PEPE MCGILL & ASSOC.
Ken PETERSON	KPC
Ron Hein	MESA
Julie Hein	MESA
J. G. LONG	UtiliCorp United, Inc.
Rich McKee	KLA
TOM DMY	KCC

Briefing on Gas Gathering
Before the House Energy and Natural Resources Committee
Presented by Commissioner Tim McKee
Kansas Corporation Commission
March 13, 1996

Good Afternoon Mr. Chairman and Members of the Committee. I appear before you today to present the findings required by Senate Concurrent Resolution 1613. This report was officially filed on March 1, 1996 with the Secretary of the Senate, Chief Clerk of the House, Chairmen of the House and Senate Committees on Energy and Natural Resources, and the ranking minority members of the House and Senate Committees on Energy and Natural Resources.

During the summer and fall, 1995, the Special Committee on Energy and Natural Resources of the Kansas Legislature, which was chaired by Representative Holmes, directed the State Corporation Commission, to open one or more generic dockets to study the need for regulation of natural gas gathering lines and systems within the state of Kansas. Additionally, Senate Concurrent Resolution 1613, requested the Corporation Commission to provide its legal opinion and report to the Kansas legislature as to the Commission's authority to regulate natural gas gathering systems under chapter 66 of the Kansas Statutes Annotated. The Commission is of the legal opinion that it may assert jurisdiction over natural gas gathering systems under either chapter 66 or chapter 55; however, from a practical standpoint, it is the Commission's position that the preferred and more reasonable regulatory approach can best be provided by chapter 55 with the necessary amendments to clarify the Commission's authority to investigate and issue directive and/or economic remedies.

The revisor's office will be able to take the language and use favorable statutory construction to place the proposed amendments to KSA 55-702 and the new language in its proper place. This report gives some background and topical overviews of public testimony which derived from the public hearings held in Wichita, Chanute and Liberal. Following the summaries, the Commission has offered our conclusion and recommendations on how best to view a regulatory structure for gas gathering in Kansas.

Attached you will find the "Gas Gathering Report" with recommendations for amendments to the existing HB 2041 as amended.

House ENR
3-13-96
Attachment 1



Kansas Corporation Commission

*Bill Graves, Governor Susan M. Seltsam, Chair F.S. Jack Alexander, Commissioner Timothy E. McKee, Commissioner
Judith McConnell, Executive Director David J. Heinemann, General Counsel*

MEMORANDUM

TO: Pat Saville, Secretary of the Senate
Janet E. Jones, Chief Clerk of the House of Representatives
Chairperson Don Sallee/Senate Committee on Energy and Natural Resources
Chairperson Carl D. Holmes/House Committee on Energy and Natural Resources
Janis Lee, Ranking Minority Member/Senate Committee
Robert Krehbiel, Ranking Minority Member/House Committee

FROM: Chair Susan M. Seltsam
Commissioner F.S. Jack Alexander
Commissioner Timothy E. McKee

DATE: February 29, 1996

RE: Gas Gathering Report

Pursuant to Senate Concurrent Resolution No. 1613, this memorandum shall serve as the report regarding possible regulation of natural gas gathering systems within the State of Kansas.

Historically, with minor exceptions not important here, the Federal Energy Regulatory Commission ("FERC") has dominated the field of regulatory jurisdiction over natural gas. Under this regulation, most interstate pipelines were considered wholesale merchants of natural gas. As merchants, the pipelines could sell "bundled services" that included both the commodity (gas) and the transportation of that commodity. In 1985 FERC initiated the move toward deregulation of the natural gas industry by the issuance of Order No. 436. In that Order FERC began to change the concept of operators of interstate natural gas pipelines as merchants and made them transporters of natural gas. The result was that large industrial customers and local distribution customers were permitted to acquire their own supplies of gas and to arrange for the transportation of those supplies on interstate pipelines.

1-2

FERC proceeded to further deregulate the natural gas industry by issuing Order No. 451 which had a significant impact on the natural gas fields in Kansas. The Hugoton Field is the largest known gas field in North America. Order No. 451 allowed producers that were tied to specific pipelines under long term contracts to obtain a release from the pipeline and sell directly to large users.

In 1992 FERC issued Order No. 636 which was designed to mandate total unbundling of the transportation of natural gas from the wellhead to the city gate or town border station. Under that Order, pipelines were required to divide their services into parts such as gathering, storage, and transportation. Once gas gathering became a separate service many pipeline companies began to spin off their gathering systems into separate subsidiaries or to sell them to third parties. Previously, gas gathering was considered to be an integral part of interstate pipelines and therefore was regulated at the federal level by the Federal Power Commission and later the FERC.

In May of 1994, FERC issued a series of decisions which held that if a pipeline spun off its gathering facilities to a subsidiary and if the subsidiary was truly operated as an arm's length affiliate of the interstate pipeline, then FERC would no longer exert jurisdiction over gathering rates. Similar treatment was given to systems which were sold to unrelated parties by the pipelines. FERC also indicated that states were free to exercise jurisdiction if they so desired. FERC provided for a two year time period which would enable states to make the necessary legislative changes to begin state regulation of gathering systems. Recent comments from the Commissioners of FERC indicate that they are somewhat dismayed that the states have not been more aggressive in drafting such legislation.¹ Specifically, Oklahoma is the only state to date which has adopted legislation to deal with the regulation of gathering systems.

During the 1995 Kansas legislative session H.B. 2041 was introduced and amended by the House of Energy and Natural Resources Committee. This Bill was introduced at the request of the Commission. The Bill was passed by the House of Representatives, subsequently referred to the Senate Committee on Transportation and Utilities and finally referred to the Senate Committee on Energy and Natural Resources. H.B. 2041 remains in that Committee.

¹ In the December 4, 1995 issue of Inside FERC it states: If and when producer-shippers believe that gathering companies are taking advantage of monopoly positions to deny access or to charge unreasonable rates, their sole source of regulatory relief will emanate from state capitols, commissioners asserted last week in making clear that FERC has washed its hands of the matter and fearful that states have not adequately prepared for their new role, Commissioners James Hoecker and Donald Santa, Jr. urged them to gear up. (See also February 26, 1996 Inside FERC, attached)

In its present form H.B. 2041 would amend several provisions of existing law with regard to the regulation of gas gathering systems, operators of those systems and operators of underground natural gas storage operations. H.B. 2041 defines a "gas gathering system" in K.S.A. §55-150 to mean a natural gas pipeline system used primarily for transporting natural gas from a wellhead or a metering point for natural gas production by one or more wells to a point of entry into a transmission line. The primary purpose of H.B. 2041 was to expand the definition of operator found in K.S.A. §55-150 to include operators of gathering systems. Also "gas gathering services" was defined to include the gathering, compression, or dehydration for natural gas transportation or distribution.

Pursuant to Senate Concurrent Resolution No. 1613, the Commission's General Counsel, David J. Heinemann, provided a legal opinion to the legislature stating that authority for regulation of gas gathering systems could either be found under Chapter 55 (Conservation) or Chapter 66 (Public Utilities) of the Kansas Statutes Annotated. (copy attached)

Senate Concurrent Resolution No. 1613 also directed the Commission to hold public hearings investigating the necessity and extent of such regulation. Public hearings were held in Wichita on January 4, 1996, Chanute on January 9, 1996, and Liberal on January 10, 1996. Approximately 36 witnesses appeared and 107 people attended the hearings. The witnesses gave testimony ranging from recommending no or extremely light-handed regulation to the creation of a very comprehensive cost of service utility approach by the Commission.

The public hearings demonstrated that vast differences exist throughout the state in terms of the nature of gas production and gathering facilities. Obviously Western Kansas produces the majority of gas in the State of Kansas. As such, Western Kansas has large sophisticated gathering systems. Those gathering systems located in Southeastern Kansas quite often are under ten miles in length and do not possess the technical sophistication that is found in Western Kansas.

This report is also being supplied to the members of the Senate and House Committees on Energy and Natural Resources. The following is a summary of the different positions taken by the parties who offered testimony at the public hearings. Those who were designated to receive this report are also receiving a complete notebook which includes the transcripts of the three hearings. We have prepared a specific summary of each individual witness's testimony which is included.

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Summary of Public Testimony and Written Comments

Small Eastern Kansas Operators

Small Eastern Kansas producers presented a unified front in their opposition to extensive or stringent regulation. The wells, reserves, volumes and conditions in Eastern Kansas are so different from Western Kansas that a two tier structure of regulation was preferred.

Typically, the gas wells in Eastern Kansas produce from 3 mcf to 50 mcf per day, often with associated water. These wells are low volume and require more compression. This situation makes them marginally economic. The gathering systems themselves are six to fifteen miles long and most are owned by the operator of the gas wells. The reserves will not attract construction of large gathering systems. Most owners of these gathering systems have no more than two or three employees thus regulation that would require more employees would have an extremely negative impact upon the operators of these systems.

It was suggested that limited regulation consisting of licensing by the KCC, filing maps depicting pipeline size, location, proper identification and marking be adopted. It was also suggested that in the absence of contracts between the producer and gathering system operator, the KCC's Conservation Division should be the forum for handling complaints under Chapter 55.

Local Governmental Units

Stevens and Morton Counties testified as to potential erosion of the tax base and loss of income to Western Kansas communities.

If these hearings result in "light handed" regulation under Chapter 55 (Conservation) as opposed to regulation in Chapter 66 (Utility Division) there is a concern that the gathering systems would be re-classified as industrial and commercial as opposed to public utility thereby causing a drop from 33% to 25% of assessed value with a potential loss of \$1,000,000 per year in tax revenue to Seward county. If the transportation costs are transferred back to the operator or well head, these costs would be shared by the county through the loss of county ad valorem taxes and by the state through a loss in severance taxes.

Regulation of the gathering systems should allow the KCC to know prevailing rates, charges, terms, and conditions for gathering fees and services. The regulations should be an extension of Chapter 66 because some gathering systems have been paid for

through the utility rate base in the past, and the systems function as a monopoly and regulation is needed from the well head to the mainline, including all steps in between. Gathering systems and pipelines should charge just and reasonable rates. Any regulations or legislation should not adversely affect economic returns to the Southwest Kansas area.

Large Gas Gatherers and Producers

Testimony from this group came from representatives of two large gathering systems and two large producers who favored a "light-handed" approach under Chapter 55 of the Conservation Statutes. Where truly free market conditions do not exist, a case by case complaint forum should be established to determine individual gathering rates. This group supports H.B. 2041 which grants the Commission authority to regulate gas gathering systems. They also favor the complaint forum as enacted in Oklahoma.

One major producer/gatherer testified that in order for gathering systems to expand they must be receptive to the producers needs and would not survive if perceived, to be abusive and monopolistic.

Two of the producers testified that their gathering systems were private and should be exempt from compelled access.

Mid-Sized Producers Favoring Chapter 66 Regulation

Four witnesses testified on behalf of this group. Their testimony stated that they represented small to medium producers and irrigators. Their position is that FERC Order No. 636 opened the door for a flood of monopolistic abuses. This group believes that the KCC should step into the void left by FERC and assert similar regulatory authority. Examples of alleged abuses cited were improper relationships between affiliate companies, no competitive alternative for gathering, and discrimination against low BTU gas and low volume wells. This group favors the filing of tariffs, full open access to any gathering system and public disclosure of rates being charged.

Independent Producers

This group believes that H.B. 2041 in its present form is inadequate to prevent the abuse that is inherent with a monopoly. As a whole this group favored regulation under Chapter 55. They do not believe sufficient competition exists in the gas gathering business to warrant a non-regulatory policy. This group would favor more expansive regulations such as those used in Oklahoma but stopping short of Chapter 66 regulation. They fear that a utility approach would be too expensive.

Irrigators and Agricultural Interests

Irrigators use approximately four to five percent of the total production from the Hugoton field for irrigation purposes. This group believes that: (1) any legislation should require equal access for the use of gathering and/or main pipelines; (2) the KCC should monitor good faith negotiations between carriers and irrigation users; (3) charges for pipeline transportation should be based on sound and fair economics; (4) rates should be made public by way of filings with the KCC; and, (5) that any regulation adopted should not adversely affect Southwest Kansas. This group favors open access to permit anyone to tap into the gathering lines and purchase irrigation gas. They believe that deregulation has already resulted in escalating costs of natural gas with respect to the operation of irrigation wells. They are greatly concerned about the dwindling pressures and the life expectancy of the Hugoton field and further believe that deregulation of transportation without government oversight would create monopolies and thereby deny equal and fair access to the pipelines.

Gas Storage

Only one large gas storage operator testified and took the position that gathering systems within a storage field should be exempt from any regulation.

Conclusion and Recommendations

The Commission believes that Kansas is possessed of one of the more valuable natural gas reserves in the Continental United States if not in the world. This asset is too valuable to the citizens of this state and the nation to allow the forces of the market place alone to dictate its future. The Legislature has already recognized these facts by virtue of its enjoinder to the Commission to protect correlative rights and to prevent waste of the natural gas resources of this state. (Kansas Statutes Annotated §§55-701 et seq.) The Commission is therefore of the view that a regulatory structure for the gathering of natural gas is appropriate.

It is the Commission's view that this regulatory authority would be in addition to the statutory amendments proposed in H.B. 2041. That legislation provides for licensing of gas gatherers and gas storage operators. The legislative changes suggested in Appendix "A" set forth the scope and nature of the complaint based regulatory oversight. Some changes to H.B. 2041 will have to be made to harmonize it with the proposed legislation in Appendix "A".

The Commission heard from many diverse interests in its public hearings over a period of two years and believes that it has sufficient factual basis upon which to fashion the regulatory structure to protect the interests of the citizens of this state with a "light handed" approach to the regulation of natural gas gathering.

The Commission requests that the Legislature grant sufficiently broad statutory authority to the Commission to complement and augment the authority already existing in K.S.A. §§55-701 through 713 by the addition of three statutory sections shown in Appendix "A" attached. Also H.B. 2041 will have to be modified to be certain it is consistent with Appendix "A".

Appendix "A" was drafted by the Commission after consideration of the evidence offered by mineral and royalty owners, lessees, producers (regardless of size), gathering interests, farmer/irrigators, and the public hearing participants.

By way of explanation the Commission is attempting to accomplish the following with its draft of proposed legislation in Appendix "A" which would give the Commission the authority to:

- 1) Hear complaints between persons who are unable to reach an arm's length agreement with respect to gas gathering services and the fees therefore. It is the intention of the Commission not to involve itself in contractual disputes or in cases where the parties have an existing contract governing gathering

services and fees. The resolution of disputes covered by existing contracts is clearly a matter for the judiciary and not the Commission.

- 2) Hold hearings and to take such evidence as it deems appropriate to fashion an order governing the gathering of natural gas in any particular case through and including the setting of fees for gathering services to the end that a fair and nondiscriminatory system of gas gathering is established.
- 3) The Commission believes that except for safety, registration, licensing and informational purposes, the following should be exempt from the complaint based regulation of the Commission:
 - a) Gathering systems utilized exclusively for the gathering of natural gas produced by the owner of the gathering system.
 - b) Lead lines owned by the producer which connect the well to the gathering system.
 - c) Gathering injection lines used exclusively for gas storage purposes.

The Commission believes that a complaint based system, not unlike that system adopted in Oklahoma, is the least intrusive mechanism available while still providing a knowledgeable governmental entity with authority to protect the interests of all parties with respect to the production and gathering the natural gas resources of Kansas.

Respectfully submitted,

The Kansas Corporation Commission

APPENDIX "A"

PROPOSED LEGISLATION

55-702. Definitions. The term "waste", in addition to its ordinary meaning, shall include economic waste, underground waste and surface waste. Economic waste shall mean the use of natural gas in any manner or process except for efficient light, fuel, carbon black manufacturing and repressuring, or for chemical or other process by which such gas is efficiently converted into a solid or a liquid substance. The term waste shall not include the use or flaring of natural gas if permitted pursuant to an order issued or rule and regulation adopted under the provisions of subsection (b) of K.S.A. 55-102, and amendments thereto. The term "common source of supply" shall mean any underground accumulation of natural gas which constitutes a single natural pressure system whereby production of natural gas from one portion thereof will affect the pressure in other portions thereof. Common source of supply shall include those natural gas reservoirs which contain one or more wells for production of the accumulated natural gas. Further the term "common source of supply" shall include that portion lying within this state of any gas reservoir lying partly within and partly without this state. The term "commission" shall mean the state corporation commission of the state of Kansas, its successors, or such other commission or board as may hereafter be vested with jurisdiction over the subject matter of this act.

55-7 (a) No person offering services for the gathering of natural gas for a fee or other consideration shall engage in any unduly discriminatory services or offer gathering services for a fee which is or otherwise anti-competitive.

(b) Upon the filing of a complaint by any aggrieved person, the corporation commission shall, after due notice and hearing, be authorized to issue an order directing the remediation of any unduly discriminatory fee or unduly discriminatory service for the gathering of natural gas.

55-7 Any aggrieved party as referred to in this act shall be required to allege and prove to the satisfaction of the corporation commission that the operator of the natural gas gathering systems which is offering services for a fee or other consideration has sufficient facilities to accommodate the producer's natural gas, that there is no other natural gas gathering system conveniently located to gather the complainant's gas and willing to do so; that the quality of complainants's natural gas will not have an adverse affect of the gatherer's facilities or the safety thereof and is of a quality and content consistent with gas being gathered by the gathering entity.

55-7 (a) Upon proof satisfactory to the commission, the commission shall have authority to require any gas gathering entity to provide open access and non-discriminatory gas gathering and to establish a fee for such gathering services.

(b) In determining the fee to be charged for gathering services, the commission shall consider among such other evidence as it shall determine is proper, the following:

- 1) The historic fee or consideration for gathering services for gas of like kind and quality in relevant geographic area as the gas which is the subject of the proceeding, given all the facts and circumstances.
- 2) The fee that would fairly compensate the gatherer for the gathering services, the fees the gatherer charges and receives from other producers, the capital, operating and maintenance costs of the operation of the gathering system and such other factors as the commission deems relevant.

55-7 (a) This act shall not apply to: (1) the gathering of natural gas produced from wells owned and operated by the gatherer and where the gathering system is used exclusively for its own private purposes (2) to lead lines from the wellhead to the connection with the gathering system which are owned by the producing entity and (3) to gathering systems used exclusively for injection and withdrawal from natural gas storage fields.

(b) The corporation commission shall have authority to promulgate rules and regulations for the administration of its authority over natural gas gathering as authorized herein.

HOECKER, OTHERS PONDER NEW REGULATORY ENVIRONMENT FOR GATHERING

It is difficult to know whether gathering service is being offered competitively in Texas, or in other states for that matter, Commissioner James Hoecker said at the Texas Railroad Commission's Gas Forum in Houston last Thursday. As the nature of gathering regulation and organization has changed in recent years, Hoecker has been among those asserting that states must move faster to fill the gap created by Ferc's withdrawal from the field (*IF*, 19 Feb, 1).

"If you look at gathering across the state [of Texas], you see that there are lots of different gathering companies and what seems to be good competition. If you look on a [TRC] district-by-district basis, you see less competition. And if you look at it on a county-by-county basis, there is even less competition," Hoecker said. "But I really don't know if anticompetitive behavior is a problem in this state, or in others."

According to TRC statistics filed at Ferc in 1994, about 20% of the producers in Texas are in areas where gatherers exhibit market power and have little competition. But even if gathering is not being offered competitively, there is little Ferc can do, Hoecker said. Since May 1994, when Ferc loosened its policy on regulating gathering facilities, the commission's role has been limited. Now, it regulates only about 22% of gathering facilities nationwide, he said.

Gathering "may be anticompetitive in some regions, and the TRC [information filed with Ferc] tends to show this," Hoecker said. "But the burden is on the states, not on Ferc," to deal with the matter.

Katherine Edwards, a Washington attorney who represents producers in gathering cases, said Ferc "really blew it on gathering. Ferc had an obligation and [it] stepped away from that obligation." She said she is convinced that gathering in many areas of the country is provided in an anticompetitive environment.

"There may be some pockets of competition, but that is the exception, not the rule," Edwards maintained, adding that statistics on gathering can be deceiving. "You have to look at things on a case-by-case, a wellhead-to-wellhead basis," to determine whether gathering service is competitive.

Edwards' firm, Travis & Gooch, represents major producers in gathering cases, "and you would think that being major producers, they would have clout." But that is not the case, she said. Even majors are having difficulty finding reasonably priced and competitive gathering services.

Since the proliferation of spindowns/spinoffs of gathering facilities, gathering rates have skyrocketed, said Taylor Yoakam, a gas consultant representing independent producers. "With higher gathering fees and lower prices, there is no incentive for the independent producer to drill," Yoakam said. "We would like to see the TRC get involved in this."

But M.J. Panatier, president of GPM Gas Corp., said the criticism of gathering companies is unwarranted. During the spinoff/spindown process, the gathering industry has gone from a subsidized to an unsubsidized industry, he said.

He explained that when interstate pipelines commonly owned and operated gathering systems, they could subsidize gathering services, or offer them for free, because they were making money by attaching gas to their interstate system. But as gathering companies were spun down or spun off, it became obvious that gathering services could not be offered for free if a gathering company was to stay in business, he said.

"Gathering costs money," Panatier said. "I sympathize with producers who had subsidized rates before and now they don't. But I didn't create the situation, and just like the producers, I have to deal with it." Responding to criticism that GPM and other gathering companies use their market power to charge exorbitant prices for gathering services, Panatier replied, "If I can't compete, I go out of business. If I provide a service, and I can't compete doing it, I have to sell out. Someone else will come in and provide the same service, but rates will go up because there are fewer competitors." He added that GPM does not take advantage of any market clout (see related story on page 7). "We have a reputation to protect because our success as a gatherer is based on repeat business," Panatier said.

Since the spindown/spinoff process, about 40% of GPM's gathering customers aren't under contracts "because they didn't want the default contract," he related. About 20% still are negotiating new gathering contracts and 40% are operating under existing contracts, he said. — *Cathy Landry, Houston*

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