

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Don Myers at 9:00 a.m. on February 20, 1997 in Room 514-S of the Capitol.

All members were present.

Committee staff present: Lynne Holt, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes  
Mary Shaw, Committee Secretary

Conferees appearing before the committee: Steve Dillard, Member, Legis. Task Force Nat'l Gas Gathering  
Charles Wilson, Member, Legis. Task Force Nat'l Gas Gathering  
Dennis McLaughlin, President, Aurora Natural Gas  
Randal Loder, Southwest Kansas Irrigation Association  
Steve Rome, Southwest Kansas Irrigation Association  
Maria Seidler, Coalition for Competitive Energy  
Paul Clark, Clark Properties  
Dan Dalke, American Warrior, Inc.  
Erick Nordling, Southwest Kansas Royalty Owners Association

Others attending: See attached list

Chairperson Myers announced that the Committee would be hearing proponent testimony on **HB 2332** today and since there was a long list of conferees, testimony would be limited to three minutes each.

**Hearing on HB 2332 - regulation of natural gas gathering systems**

The Chair requested that Mary Ann Torrence, Staff, Revisor's Office, brief the Committee on **HB 2332**. She mentioned that **HB 2332** establishes state regulation of gas gathering systems. She continued to describe the bill by section as follows: Section 1 is the section in current statute that provides for licensing of operators of gas gathering systems. Section 2 provides that gas gathering systems would not be regulated either as a public utility or a common carrier by the Corporation Commission unless the Commission determines that competitive market conditions do not exist and that the services are not likely to be effectively and efficiently furnished unless they are regulated as public utilities or common carriers. Section 3 establishes regulation of natural gas gathering systems. Section 4 requires the gas gathering operators to file with the Commission their rates that they pay for gas purchased at the wellhead, the rates charged for transportation, cost of manufacturing and other services offered by the person offering the gas gathering services and any other data related to the quality and characteristics of the gas purchased or handled by the person offering the gas gathering services. There is a provision for the Corporation Commission to impose a fine if the person fails to file the required filings under Section 4. Section 5 establishes provisions that prohibit persons from offering gas gathering services at rates that are unjust, unreasonable, unjustly discriminatory or unduly preferential. Section 6 establishes the Commission's oversight. Section 8 relates to direct sales from the wellhead to a consumer. Section 9 provides that if there is a certificate of convenience and necessity to sell natural gas at retail from gas gathering systems that the Commission may issue other certificates of convenience and necessity at that location, and if a person wants to switch who they buy from at that location, not be charged an extra fee for switching to another seller.

The Chair recognized Steve Dillard, Member, Legislative Task Force on Natural Gas Gathering and Vice-President/Land Manager for Pickrell Drilling Company, Inc., who spoke in support of **HB 2332**. Mr. Wilson mentioned that he is Natural Gas Committee Chairman for KIOGA (Kansas Independent Oil and Gas Association) and they support a form of oversight as created by **HB 2332**. (Attachment #1)

The Chair recognized Charles Wilson, Member, Legislative Task Force on Natural Gas Gathering and Vice-President of BEREXCO, who spoke in support of **HB 2332** with certain modifications. (Attachment #2)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 514-S Statehouse, at 9:00 a.m. on February 20, 1997.

The Chair recognized Dennis McLaughlin, President and Founder, Aurora Natural Gas, spoke in support of **HB 2332**. He mentioned that he was impressed with the House Bill because it does two major things: 1. It creates price transparency (which is what is required of the interstate pipelines by FERC, Federal Energy Regulatory Commission) and 2. It creates a formalized procedure for handling complaints that will require resolution. (Attachment#3)

The Chair recognized Randal Loder, of the Southwest Kansas Irrigation Association and the Irrigation Representative on the Natural Gas Gathering Task Force, who spoke in support of **HB 2332** and in particular, new Section 9 of the bill, the provision for the issuance of multiple certificates of services. He felt this was necessary to restore the level playing field for all participants in the natural gas industry including those at the retail level. (Attachment#4)

The Chair recognized Steve Rome, of the Southwest Kansas Irrigation Association, spoke in support of **HB 2332**. (Attachment#5)

The Chair recognized Maria Seidler, Coalition for Competitive Energy, who spoke in support of **HB 2332**. (Attachment#6)

The Chair recognized Paul Clark, Clark Properties, who spoke in support of **HB 2332**. (Attachment#7)

The Chair recognized Dan Dalke, Controller for American Warrior, Inc., who spoke in support of **HB 2332**. (Attachment#8)

The Chair recognized Erick Nordling, Executive Secretary of the Southwest Kansas Royalty Owners Association (SWKROA) and Member of the Natural Gas Gathering Task Force, who spoke in support of **HB 2332**. (Attachment#9)

Questions and discussion from the Committee followed. The Chair thanked the conferees for appearing before the Committee. The Chair announced that tomorrow, February 21, 1997, the Committee will hear opponent testimony on **HB 2332**.

The meeting was adjourned at 9:50 a.m.

The next meeting is scheduled for February 21, 1997.

# HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 20, 1997

NAME	REPRESENTING
K.S. Wall	KPOC
Don Schwacke	KIOGA
STEVE DILLARD	KIOGA
Charlie Wilson	BEREXCO
Maria Seidler	Coalition for Competitive Energy Environment
Dennis McLaughlin	<del>DE # 27 20</del>
Jon Miles	KCC
Brady Cottrell	SWRB
Jack Graves	PTA - K M & Opey
Russ Bishop	PanEnergy Corp
ERICK NORDLING	SWKROA
KANDAL COOPER	SWKS Irr. Assoc
Steve Rome	SWK. Irrig Assoc.
Tom Bruno	Allen & Assoc.
Leslie Kaufman	Ks Farm Bureau
Jim Langford	DOB
DAN DALKS	American Warrior, Inc.
BERNIE NORDLING	SWKROA
WARREN SPIKES	Irrigator & Roy Ass'n

# HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: 2-20-97

NAME	REPRESENTING
Christopher Heger	SWK Irrigation Assoc.
Devin K. Heger	SWKIA
David Schuster	CO Comm Plan Co
Whitney Jamron	Anadarko Petroleum Corp
Sen Peterson	KS Petroleum Council
ED SCHAUB	WESTERN RESOURCES
MONTGOMERY ESCOE.	CEE.
J.C. LONG	UtiliCorp United, Inc.
Juli Hira	Mesa
Glenn Crawford	SWKIA
Marlin Heger	SWKIA
Keith Rome	SWKIA
Milton Gillespie	SWKIA
Keith Rome	SWKIA
Danny Campbell	R. Rice Law Offices
Joe Huber	SWKIA

**STEVE M. DILLARD**  
**Statement Before the House Committee on Utilities**  
**February 21, 1997**

My name is Steve M. Dillard. I am Vice-President/Land Manager for Pickrell Drilling Company, Inc., in Wichita, Kansas. I am responsible for gas contracts and gas marketing for Pickrell, which operates 127 different wells that produce natural gas in Central and Western Kansas. I also serve as Natural Gas Committee Chairman for KIOGA (Kansas Independent Oil and Gas Association). I served on the Task Force on Natural Gas Gathering as a representative for independent producers. The Task Force has submitted a report to this legislature.

I am here today to state KIOGA's support for a form of oversight as created by HB 2332. I have presented testimony several times on this issue before different legislative committees; however, I haven't presented testimony before this committee and not knowing your familiarity with this complex issue, I am going to present a fairly general overview of the issue.

It used to be so simple. As a producer we sold our gas to the nearest interstate pipeline which laid a gathering line to our well and offered us a long term gas contract, often for 20 years or longer. The interstate pipelines, in turn, entered into long term supply contracts with several local distribution companies. All of this activity was fully regulated by FERC (Federal Energy Regulatory Commission).

Now all of that has changed, thanks to sweeping changes from Washington. That interstate pipeline that provided integrated services from the wellhead to the city gate has broken its services into separate gathering, processing, transmission and marketing affiliates. And FERC has retained its regulation only on the transmission function.

Generally, competition works in the marketing and processing functions of the new

*House Utilities  
2-20-97  
Attachment 1*

regime, but because gathering often creates natural monopolies, competition does not exist for gathering services and some real protection from monopoly abuse is necessary.

Natural Monopolies: Natural gas, unlike oil, can only be transported through a pipeline. It is not economically efficient to construct multiple gathering lines over any one particular route. As a result, there is almost always only one pipeline connection for each well in Kansas. Once a well has begun to produce, it is even more difficult to justify the expense of laying a second gathering line. (The cost of laying a pipeline of 4" steel averages \$40,000 or more per mile, and a pipeline tap and meter might cost as much as \$30,000 to \$80,000 according to some gatherers.) The result is that there is generally only one option for a producer to deliver its gas to the market place. This results in a natural monopoly. Until approximately two years ago, the FERC regulated this monopoly as part of the integrated pipeline. But now the FERC has waived jurisdiction over gathering and turned over the regulation of gas gathering to the state with only a two year moratorium identified as a default contract period. Many of those default contracts are set to expire this year.

The state of Kansas testified before FERC approximately three years ago through former KCC Commissioner, Rachel Lippman, stating that Kansas was willing and capable of filling the void to be created by FERC's waiving jurisdiction of gas gathering. Here we are three years later with no state action taken and federal regulation about to expire. It is imperative to take action this legislative session to prevent the erosion of value of this state's vast natural resource. The state of Kansas produced more than 700 billion cubic feet of gas in 1995. A few pennies in increased gathering costs results in tens of millions of dollars annually being removed from the economy of Kansas and its producers, royalty owners, state severance taxes and county ad valorem taxes. Instead, this money will be headed to Houston, New York and other home offices

of the parent companies of these gathering affiliates. The gatherers have a duty to the parent companies' stockholders to maximize profit for their companies. If they have unchecked monopolistic power, the temptation will be too great, and abuse will occur. And with abuse, gathering costs are likely to increase more than a few pennies.

Producers and the state of Kansas need gas gatherers to get their natural gas to market. However, the state must not allow this segment of the industry, that has been fully regulated by FERC, to go unregulated.

KIOGA urges the passage of legislation to insure that monopolistic abuse is discouraged through state oversight.

**CHARLES B. WILSON**  
**STATEMENT BEFORE THE HOUSE UTILITIES**  
**COMMITTEE**  
**FEBRUARY 20, 1997**

My name is Charles B. Wilson. I am a vice president with BEREXCO INC. Our headquarters are in Wichita. BEREXCO, and its affiliated companies are owned by the Robert Beren family of Wichita. The companies began doing business in Kansas in the early 1950's. BEREXCO currently has over 260 employees and has oil and or gas operations in 44 Kansas counties. In each of these counties we are employing personnel, paying property taxes and purchasing goods and services. Additionally, we have operations in Nebraska, Colorado, Oklahoma, Arkansas and Texas.

I am also a member of the Task Force on Gas Gathering. This task force, appointed by Governor Graves, included 4 legislators, the Chairman of the KCC, and the remaining 9 members were a cross section of interests affected by the Federal de-regulation of gas gathering. As you will recall, on January 28 of this year, I gave this committee a briefing and a written statement of the Task Force findings.

I am not here to necessarily repeat my earlier statements, but to quickly highlight certain aspects of this issue.

- **FREE ENTERPRISE NEEDS COMPETITION TO WORK EFFECTIVELY**
  
- **GAS GATHERING COMPANIES HAVE A NATURAL MONOPOLY**
  
- **PRODUCERS NEED AN UNBIASED OVERSIGHT AUTHORITY**

I support HB 2332, with certain modifications.

*House Utilities*  
*2-20-97*  
*Attachment 2*



BEFORE THE KANSAS HOUSE OF  
REPRESENTATIVES  
ON HOUSE BILL 2332

FEBRUARY 20, 1997

Comments  
of

DENNIS G. MCLAUGHLIN, III

3102 MAPLE, SUITE 600  
DALLAS, TX 73201

House Utilities  
2-20-97  
Attachment 3

I am the founder and President of Aurora Natural Gas. Aurora was formed four years ago in January to aggregate natural gas from small operators and resell the aggregated quantities to large users of natural gas. Aurora is very active in the Hugoton area and throughout the Mid-continent and other producing regions in the country. Aurora represents over one hundred and ten independent producers and has been able to witness first hand the effect of the spindown process of interstate gathering facilities.

On Tuesday of this week, I testified before the Senate committee on Senate Bill 148. I have included my testimony from that hearing, as I think it is relevant for your consideration. As I stated in my testimony, I am of the firm opinion that the Senate bill does not go nearly far enough. However, I am impressed with the House bill because it does two major things: 1. it creates price transparency (which is what is required of the interstate pipelines by Ferc), and 2. it creates a formalized procedure for handling complaints that will require resolution.

I am a proponent of competition and free markets, to the extent they exist. That is why I support the house bill, I believe with few modifications, it solves the problem.

Since I don't have a great deal of time, I am going to focus on the central, critical issue: Are spundown gathering systems monopolies, and if they are what do you do?

In CIG's Senate testimony, they assert that there "are over 200 separate entities in Kansas engaged in the gathering business and more than 7,000 miles of gathering lines in the state...In 1994, before Coastal Field Services had been formed, CIG was connected to 700 wells in the Hugoton Field and 70 percent of those wells were located one mile or less from a competing gathering system. And that is typical of gathering systems throughout the region...the typical well (presumably typical means national) required just under 1 mile of pipe to connect it to gathering system. At a cost of approximately \$80,000-which the study reports is less than 10% of the total exploration and development costs for a well..."

These are the facts:

It may be true that there “are over 200 separate entities in Kansas engaged in the gathering business.” However, in the Hugoton area, where more than 68.6% of the natural gas production in the state of Kansas is produced (1995 % as reported by the KCC), approximately 75% of all the gas gathered is done so by four companies, all of them spun off from interstate pipelines. Further, the average well in the Hugoton field produced 166.4 MCF/day in December of 1996, as reported by the KCC. If it is assumed that it costs \$80,000 to connect to another gatherer, this is how the economics works:

	MCF/day	MCF/month	price/MCF	-gathering	new line	net price
gatherer #1	166.40	5058.56	\$ 2.00	\$ 0.25		\$ 1.75
gatherer #2	166.40	5058.56	\$ 2.00	\$ 0.25	\$ 0.44	\$ 1.31

The scenario above is a best case situation for laying a new line.

The assumption is that the producer was compelled to lay a new line to another gatherer. If he spends \$80,000 to build the new line, it will take 3 YEARS TO RECOVER THE COSTS OF THE NEW LINE. THIS ALL ASSUMES:

1. THE WELL VOLUME REMAINS CONSTANT-WHICH IS IMPOSSIBLE.
2. THAT THE WELL IS AN AVERAGE WELL, BASED ON TODAY'S PRODUCTION RATES.
3. THAT THE WELL IS 1 MILE AWAY. WHILE SOME MAY BE, I STRONGLY DISAGREE THAT 70% ARE.

The average well in the Hugoton field costs under \$150,000 to drill because of the relatively shallow depth. The gathering line cost is therefore more than half of the cost of a well for a new line. Further, with respect to the comment that the “typical well that required just under 1 mile of pipe to connect to a gathering system”, it implies a connection for a new well, and it certainly gives no indication that there are two gathering systems within a mile.

As many have mentioned, the Hugoton field is about depleted. As with any reservoir, its production will continue to decline, exacerbating the problem of sufficient competition.

As many of the irrigators have pointed out, Peoples Natural gas has circulated a letter advising them that it may not be able to continue natural gas deliveries because of line pressures dropping on gathering systems. This further points out the obvious: gas production is declining, making the argument that adequate competition exists less and less viable.

Interstate pipelines that have spun off their gathering assets are and will always be monopolies. As a result of their exclusive/certificated rights to serve certain areas, they have had the luxury of utility status to put in gathering systems, which explains their enormous market concentration: they are monopolies.

I realize there are many technical issues that have to be considered in any bill that you will have to vote for, and these certainly are not simple, I ask you to consider the following: What if tomorrow the people who lived in your districts were informed that the electric and gas utilities that serves them was free of any oversight. No more KCC to approve their rates and the deal was simply this: If you want service, you pay whatever they demanded. After all, you are free to procure service from whomever you want. The first response, after the screaming stopped would be:

1. Haven't we already paid for the facilities through our years and years of buying services from only them?, after all we gave them an exclusive certificate to serve us, guaranteed them a rate of return, and did not permit competition. Why in the world are we are at their mercy after all that?
2. Isn't it a little late to say "Complete Free market" when the very design of their structure was intended for a monopoly?

Now lets suppose the only assurance you could give them was that the utility promised it would not charge excessive rates, that it would not be a bad guy. Would that make you sleep better at night?

Hundreds of natural gas producers are in this spot right now. The only thing that protects them from these monopolies is the promise that "we aren't doing anything wrong." I wonder if that same promise would make your constituency feel any better about a similar situation.

Independent production companies and irrigators are a very small group of people that won't be able to create a public outcry like the example above would. However, like the majority they have property rights as well. Our country was not only built on majority rule but also the protection of the minority. As I have stated in my previous testimony, The FERC'S primary intent with the deregulation of the interstate pipeline system was to create open access from the wellhead to the burnertip. It realized that the states must help this process along. Never did it state that gatherers should not be subject to oversight, it merely maintained that it did not have the authority to regulate these new intra-state companies. You may or may not like it, but the Federal government has been passing authority and responsibility back to the states. If you do not protect these people from monopolistic abuse, nobody else will and they indeed will suffer the consequences of being a class too small to get anyone's attention. Further, they can count on a transfer of their wealth to whom ever the monopoly happens to be. I firmly believe that it is your duty to protect their interests.

BEFORE THE KANSAS SENATE  
ON SENATE BILL 148

FEBRUARY 18, 1997

Comments  
of

DENNIS G. MCLAUGHLIN, III

3102 MAPLE, SUITE 600  
DALLAS, TX 73201

I am the founder and President of Aurora Natural Gas. Aurora was formed four years ago in January to aggregate natural gas from small operators and resell the aggregated quantities to large users of natural gas. Aurora is very active in the Hugeton area and throughout the Mid-continent and other producing regions in the country. Aurora represents over one hundred and ten independent producers and has been able to witness first hand the effect of the spindown process of interstate gathering facilities.

Although I am impressed with the work the task force has done to solve a very difficult problem, I want to say right up front, I oppose this bill for only one reason: it does not go nearly far enough.

As I understand it, specific examples of abuse were requested yesterday. I want to state there has been abuse, but I believe it pales in comparison as to what is about to come, as most of the pipelines are aware they are currently being watched closely. My company and those that we represent have been a victims of such abuse.

Examples:

1. Aurora purchased natural gas from Gryphon operating, whose headquarters in Tulsa, Oklahoma, for over two years when Anadarko acquired gathering facilities from Panhandle Eastern. Those gathering facilities connected Gryphon's large volume, operated properties to the Panhandle Eastern mainline. Gryphon also owned small, scattered interests in wells that were operated by Anarko's production company. At that time of the spindown, Anadarko informed Gryphon that if it did not agree to sell its gas to Anadarko at a specified price that it would not sell Gryphons small non operated working interests in the wells operated by Anadarko. Since the operator usually sells the gas, this would have created an administrative nightmare for Gryphon. The net result was that Gryphon was compelled to sell its natural gas to Anadarko, even though Aurora's price was better. Although Gryphon was never able to get Anadarko put that it writing, it happened. Gryphon gave in, they saw no alternative.

## 2. Increase in fuel and gathering rates since spindowns.

The rate charged on fuel by Panhandle field service, et al, has gone from .25% in December of 1995 to 5.45% in November of 1996.

The rate charged on fuel by Williams was changed from 1.7% to 5.2%

The rate charged on fuel by Anadarko, has gone from .25% when the system was owned by Panhandle prior to the spindown to 3.78%.

In no case were these changes explained or justified, they are just a fact of life. Further, these charges did not create a corresponding decrease in the mainline fuel. Ironically enough, it takes around 5.5% fuel, plus the transport rate to move gas from Kansas to Michigan on an interstate pipeline, about the same amount fuel required to move gas thirty miles through a spundown gathering system.

I will not belabor on existing abuse, although it is present and I deal with it every day. As I have stated I do not believe it is nearly as bad as it is going to get, absent adequate oversight. It is a fundamental truth that the only way an entity does not become abusive is through competition, or oversight. THERE IS NOT AN ADEQUATE BASIS FOR competition TO PROTECT OTHER PARTIES. An operator connected to a gatherer, nine times out of ten, does not have another choice. he is compelled to deal with that party, period. That is not competition. As I have previously testified. I believe companies previously owned by interstate pipelines are the major problem because they were devoid of competition when the infrastructure was developed long ago. If the concept of competition had existed when the producing fields were new, we would not have this problem. We would have gathering lines everywhere owned by many companies.

Although the word deregulation sounds good, its not as simple as the government getting out of the way. In the Northeast, where large utilities are being "deregulated", this does not mean they are being removed from oversight, it means that they are being compelled to offer open access, that is, a customer may choose who is purchases natural gas from, the local



commission sets the transport rate that it may charge. This creates competition and brings down the price of gas to the consumer.

The FERC'S primary intent with the deregulation of the interstate pipeline system was to create open access from the wellhead to the burnertip. It realized that the states must help this process along. The states in the Northeast and Midwest, where most of the gas is consumed are holding up their end of the bargain, they are moving as quickly as possible to create competition, (which requires their oversight). The FERC never suggested that gathering should be void of oversight, it merely maintains that it does not have the authority itself to do it.

The bottom line is this: without your oversight, monopolistic companies without any checks or balances will be created. I would ask you to consider a simple concept: What is every companies' prime directive? To maximize its profits, it has an obligation to its stockholders to do so. I believe that this suggests that over time, these companies that own spundown gathering systems, if left unchecked, will charge gathering rates that are going to be ever increasing. What will keep them from doing this? And what will happen if they do? higher gathering rates, lower production because the demand signal won't make it to the wellhead. Where will this lead us? check the history books. We don't pay attention to energy policy until we have a crisis. This is energy policy, its yours to make

In conclusion, I have included my previous testimony and have included suggestions for the improvement of this bill or another one. I believe we must have price transparency as I have outlined and should also have a more formalized complaint process. I believe a standard of just and reasonable should be used. I certainly do not propose a utility type cost of service rate methodology, as I believe that would do more harm than good.

Although this is not a populace issue, it is very important. I am testifying before you at the risk of impairing my business. Many companies like mine and small operators are afraid to testify for fear of the repercussions. However, I believe this to be a moral issue as much as a business problem. I know the people who have spent their lives building the companies that provide our country with energy. I do not want to see them pay for someone else's excessive return. I believe you have an obligation to see that they are protected. You will need them.

# Goals For Legislation For the State of Kansas Proposed by the Coalition For Competitive Energy

## I. GAS GATHERING:

It shall be the public policy of Kansas that gas gathering rates shall be just and reasonable, and practices and conditions of service shall not be unjust or unreasonable nor unduly preferential or discriminatory; and that the enforcement mechanism shall be a combination of (1) market forces disciplined by price transparency and (2) the KCC administrative process.

1. Each gathering company shall post on its own electronic bulletin board, and in addition furnish upon request a paper version by fax or mail, for each gathering contract:
  - (a) the contract number;
  - (b) the rate charged;
  - (c) system on which it is charged ;
  - (d) basis of charge, including
    - (1) length of term,
    - (2) volume per day, and
    - (3) an annotation of any extenuating circumstances, including
      - (a) processing,
      - (b) additional compression or pipelines,
      - (c) a provided meter run, or
      - (d) a provided meter;
      - (e) throughput commitments.
2. Each gathering company shall file its gathering service contracts with the KCC, and the KCC shall keep these contracts confidential until and unless a complaint and allegation of an unjust or unreasonable rate, or an unjust, or unreasonable or unduly preferential or discriminatory practice or condition of service is made.
3. The complaint procedure shall be that:
  - (a) Any person requesting gathering service shall be deemed to have standing and may file a complaint, based upon a reasonable belief, alleging an unjust or unreasonable rate, or an unjust, unreasonable,

or unduly preferential or discriminatory practice or condition of service;

- (b) The KCC shall then furnish to the complainant within 5 days the contracts specified in the complaint;
- (c) The complainant shall inform the KCC within 21 days of receipt of the requested contracts that the complainant wishes to renew the complaint or else the complaint shall be dismissed;
- (d) If the complaint is not dismissed, the KCC shall investigate and determine the merits of the complaint and issue a finding as to whether the complaint is true in whole or in part and shall set forth its reasoning as well as its conclusions.
- (e) Unjust and unreasonable practices shall include but not be limited to:
  - (1) tying arrangements or requirements;
  - (2) coercion;
  - (3) excessive gathering charges;
  - (4) excessive fuel charges, including fuel, rates, and processing charges;
  - (5) excessive facilities charges, including meter runs, taps, and compression; and
  - (6) Quality standards substantially augmented over average gas quality.

4. The KCC may upon its own motion, bring a complaint or investigation in pursuance of its duty to defend the public interest and the public policy of Kansas. Nothing in this bill shall retard, diminish, or reduce the authority, power, and duties placed upon the KCC by the common carrier statute.

## II. IRRIGATION AND RURAL FUEL USE:

- 1. The prohibition of the exclusive certificated areas where the certificated company owns no distribution or supply lines, at least in rural areas.
- 2. Current law should be modified to provide for bypass of utility company meters where the utility company owns only the meters and regulators, but does not own the supply or delivery pipelines.

ENERGY AND NATURAL RESOURCES COMMITTEE

Hearing on Proposal No. 26 -natural gas gathering systems, including removing them from regulation as a public utility.

MY NAME IS DENNIS MCLAUGHLIN, I AM THE PRESIDENT AND FOUNDER OF AURORA NATURAL GAS. MY COMPANY IS IN THE BUSINESS OF AGGREGATING AND PURCHASING NATURAL GAS PRODUCTION FROM SMALL INDEPENDENT PRODUCERS. WE THEN SELL THE VOLUMES IN SUFFICIENT QUANTITIES FOR INDUSTRY AND UTILITY COMPANIES. CURRENTLY WE REPRESENT IN EXCESS OF EIGHTY PRODUCERS AND SELL APPROXIMATELY 250,000 MMBTUS, OR MCF PER DAY. I APPRECIATE THE OPPORTUNITY TO ADDRESS THE COMMITTEE ON THE TOPIC OF NATURAL GAS GATHERING DEREGULATION. AS YOU KNOW, THE FERC HAS TAKEN THE POSITION THAT IT SHOULD NOT REGULATE NATURAL GAS GATHERING FACILITIES. IN 1993, THE FERC ISSUED AND BEGAN IMPLEMENTING ORDER 636, THIS ORDER WAS DESIGNED TO IMPLEMENT THE FINAL PHASE OF NATURAL GAS DEREGULATION. AMONG OTHER THINGS, THE ORDER CALLED FOR THE UNBUNDLING OF GATHERING, TRANSMISSION, AND STORAGE. IN PARTICULAR, BY SEPARATING GATHERING FROM LONG HAUL TRANSMISSION LINES, TWO ENTITIES AND TWO FEES WILL BE CREATED. AS A RESULT, THE PIPELINES BEGAN TO SEE TREMENDOUS OPPORTUNITY BY CREATING UNREGULATED GATHERING ENTITIES USING THE FACILITIES THAT WERE CONSTRUCTED IN THE JURISDICTIONAL, REGULATED ERA. TO MEET THE GATHERING CRITERIA, THE PIPELINE COMPANIES ARE EITHER SELLING THESE GATHERING SYSTEMS TO OTHER COMPANIES, OR ARE CREATING WHOLLY OWNED SUBSIDIARIES TO HOLD THESE FACILITIES. THIS IS KNOWN AS THE "SPINDOWN PROCESS."

THE FERC HAS IMPOSED A TWO YEAR TRANSITION PERIOD ON THE SPINDOWNS. AS A RESULT, THE NEW GATHERING ENTITIES HAVE TO OFFER THEIR EXISTING REGULATED RATE FOR THE NEXT TWO YEARS. FURTHER, THE FERC REQUIRED THE PIPELINES TO DEMONSTRATE THAT IT HAD NEGOTIATED AGREEMENTS WITH ALL EXISTING CUSTOMERS, OR HAD OFFERED A FERC APPROVED DEFAULT AGREEMENT.

THIS WAS ESTABLISHED PRIMARILY SO THAT THE STATES WOULD HAVE THE OPPORTUNITY TO RESPOND TO THIS NEW INDUSTRY STRUCTURE. KEEP IN MIND HOWEVER, ITS ONLY TWO YEARS, AND AFTER THAT, ANYTHING GOES.

ALTHOUGH MANY HAVE COMPLAINED TO THE FERC THAT THIS COURSE OF ACTION WILL BRING HARDSHIP TO PRODUCERS AND OTHER PARTIES THROUGH THE CREATION OF UNREGULATED MONOPOLIES, THEY HAVE MAINTAINED THEIR POSITION: IF ANYONE HAS AUTHORITY TO REGULATE GATHERING, ITS NOT THE FERC, ITS THE STATES.

THE FACT IS PRODUCERS HAVE FOUGHT THE SPINDOWNS TOOTH AND NAIL. THE FTC HAS BEEN INVOLVED AS A RESULT OF PRODUCER OUTCRIES. THE FERC CONTINUES TO RECEIVE COMPLAINTS OF ABUSE, OR IMPENDING ABUSE. ONE OF THE CONTRADICTIVE COMPONENTS OF THE WHOLE THING IS THAT INDEPENDENT PRODUCERS GENERALLY LIKE THE IDEA OF DEREGULATION, AS DO MOST BUSINESS PEOPLE. THE IDEA OF MARKETS DETERMINING PRICES IS SOMETHING THAT WE BELIEVE IN THIS COUNTY. IN FACT, THE FERC'S ENTIRE INTENT WAS AFTER ALL, TO CREATE COMPETITION FROM THE WELLHEAD TO THE BURNERTIP. BUT, HEREIN LIES THE ECONOMIC CONTRADICTION; THESE NEW ENTITIES ARE, OR WILL BECOME MONOPOLIES.

MONOPOLIES DO NOT PROMOTE COMPETITION, THAT'S WHY THEY ARE REGULATED. THESE COMPANIES WILL ARGUE THAT SUFFICIENT COMPETITION EXISTS. IF YOU LOOK AT A CONTINENTAL PIPELINE MAP YOU MIGHT COME TO THE SAME CONCLUSION. HOWEVER, LOOK AT THE MAP A LITTLE CLOSER YOU WILL SEE ITS NOT AS EASY AS DROPPING A NEW LINE TO CONNECT A WELL TO ANOTHER GATHERING LINE, AS I WILL DEMONSTRATE IN A MOMENT. THIS SIMPLE FACT CONTRADICTS ONE OF THE BASIC REASONS THESE ENTITIES ARE ASKING NOT TO BE REGULATED. THEY CONTEND THEY ARE NOT MONOPOLIES, BUT ASK ANY PRODUCER, OR ANY ONE WHO HAS BASIC KNOWLEDGE OF THE PRODUCING FIELDS IN KANSAS, OKLAHOMA AND TEXAS. THESE NEW COMPANIES ARE MONOPOLIES. THEY DO, OR WILL HAVE THE ABILITY TO

EXERCISE MONOPOLY POWER OVER PRODUCERS AND THIRD PARTY SHIPPERS.

IF YOU ARE STILL NOT CONVINCED THEY ARE MONOPOLIES, JUST ASK A PRODUCER WHO HAS A WELL CONNECTED TO ONE THEIR SYSTEMS AND HAS NO OTHER CHOICE BUT TO DEAL WITH THEM ON THEIR TERMS. AT THIS TIME, I WOULD LIKE TO DEMONSTRATE GATHERING AND HOW IT LOOKS AT THE NATIONAL, REGIONAL, AND LOCAL LEVEL. I WOULD FURTHER LIKE TO DEMONSTRATE EXAMPLES OF INTERSTATE GATHERERS WHO HAVE MONOPOLISTIC POWER.

#### PIPELINE AND PRODUCTION EXAMPLE

THESE NEW GATHERING ENTITIES WANT TO TAKE A MASSIVE NATURAL GAS GATHERING INFRASTRUCTURE THAT WAS CREATED UNDER REGULATION AND TREAT IT LIKE ITS A LEMONADE STAND. THEY WANT YOU TO BELIEVE THAT THEY ARE NOT MONOPOLIES AND IF THEY WERE, THEY WOULD NOT TAKE ADVANTAGE OF IT. IMAGINE IF THE CITY AND COUNTY DECIDED TO SELL THE ROADS THAT LEAD FROM YOUR HOME TO THE INTERSTATE HIGHWAYS. IMAGINE IF THIS NEW COMPANY WAS PERMITTED TO CHARGE YOU WHATEVER TOLL IT DESIRED. AND FURTHER IMAGINE THE COUNTY TOLD YOU THAT YOU DON'T HAVE TO USE THE ROADS, YOU COULD BUILD YOUR OWN, OR GET SOMEONE ELSE TO IF YOU DON'T LIKE IT. YOUR FIRST THOUGHT IS THAT YOU HAVE ALREADY PAID THE TAXES TO BUILD THE ROAD AND THE RULES HAVE BEEN CHANGED ON YOU. YOU ARE NOW DEALING WITH A COMPANY ON TERMS YOU COULD HAVE NEVER IMAGINED.

TO ACCENTUATE THIS FACT, THESE WERE INSTALLED BY INTERSTATE PIPELINES WHO HAD JURISDICTIONAL STATUS, THAT IS, THEY WERE PERMITTED TO PUT IN LINES WITHOUT THE WORRY OF COMPETITION. THE LINES WERE PAID FOR BY THE RATE BASE FROM THE TRANSMISSION LINES. THE CONCEPT OF A NATURAL MONOPOLY RESTS ON THE PREMISE THAT THE DUPLICATION OF EXPENSIVE FACILITIES IS NOT IN THE PUBLIC INTEREST. THEREFORE, ONE COMPANY IS GRANTED AN EXCLUSIVE RIGHT TO BUILD AND OPERATE FACILITIES, MUCH LIKE ANY MODERN UTILITY. THIS IS WHERE THE COST OF SERVICE RATE METHODOLOGY COMES FROM.

THE SYSTEMS THAT ARE TO BE SPUN DOWN WERE CREATED UNDER THAT STRUCTURE, HOW COULD THEY NOT BE MONOPOLIES. AS YOU MAY KNOW, THERE ARE A NUMBER OF INDEPENDENT GATHERING COMPANIES. GATHERING, IN AND OF ITS SELF DOES NOT CREATE A MEANINGFUL MONOPOLY. THE DIFFERENCE OF COURSE LIES IN HOW THE COMPANIES ARE CREATED.

AN INDEPENDENT GATHERER, A COMPANY NOT AFFILIATED WITH AN INTRA, OR INTERSTATE PIPELINE, GENERALLY MAKES A DEAL WITH A PRODUCER TO GATHER, AND/OR PURCHASE THEIR GAS WHEN A FIELD IS DISCOVERED, OR ENOUGH NEW PRODUCTION IS BROUGHT ON TO JUSTIFY A NEW FACILITY. LIKE ANY OTHER SERVICE, HIS RATES MUST BE COMPETITIVE, BECAUSE THERE ARE ANY NUMBER OF COMPANIES WILLING TO MAKE A SIMILAR DEAL. THE GATHERER HAS NO WAY TO ASSURE HIMSELF OF A PROFIT, OTHER THAN HIS ABILITY TO OPERATE EFFICIENTLY AND AGREE TO TERMS THAT ARE REASONABLE FOR BOTH PARTIES.

NATURAL GAS WELLS ARE NATURALLY PRODUCING RESERVOIRS. THEY DECLINE AS THEY AGE. A GAS RESERVOIR IS LIKE A BALLOON. WHEN YOU FIRST PUNCTURE IT, THE CONTENTS RUSH OUT. HOWEVER, AS THE CONTENTS DEPART, THEY CONTINUOUSLY DEPART SLOWER AND IN LESS QUANTITIES.

USING MY ANALOGY, THE AVERAGE FIELD IN THE THREE STATE AREA THAT IS GATHERED BY THE INTERSTATE GATHERING SYSTEMS IS ABOUT THREE FOURTHS DEPLETED. WHEN THE FIELDS WERE NEW, IF COMPETITION HAD BEEN THE STANDARD, THERE WOULD BE GATHERING LINES EVERY WHERE AND A PRODUCER WOULD HAVE A MULTITUDE OF CHOICES.

HOWEVER, THE REALITY IS THOSE CHOICES ARE LIMITED BY THE AGE OF THE PRODUCTIVE RESERVOIR HE IS DEALING WITH. FURTHER, AS THE FIELDS ARE PRODUCED, THESE FACTORS WILL BE MORE PRONOUNCED. IT JUST DOES NOT MAKE SENSE TO BUILD A LINE THAT COSTS \$100,000 TO RECONNECT A WELL THAT HAS \$150,000 WORTH OF RESERVES LEFT. THEREFORE, WITHOUT OVERSIGHT, THERE IS NO DOUBT IN MY MIND THAT GIVEN THE GREEN LIGHT, THESE NEW GATHERING COMPANIES

WILL CHARGE THE HIGHEST GATHERING RATE POSSIBLE. FURTHER, THEY WILL MAKE IT IMPOSSIBLE FOR COMPANIES SUCH AS MINE WHO COMPETE TO PURCHASE SUPPLIES FROM PRODUCERS AT THE WELLHEAD TO SHIP ON THEIR SYSTEMS. I BELIEVE THESE GATHERING ENTITIES WILL BASE THEIR GATHERING CHARGE, NOT ON WHAT WILL MAKE DECENT PROFIT, BUT RATHER, WHATEVER RATE THEY CAN EXACT THAT WILL FORCE THE PRICE RECEIVED BY THE PRODUCER RIGHT DOWN TO THE MARGINAL COST OF PRODUCTION, THAT IS, WHATEVER THE PRODUCER CAN BARE TO RECEIVE, SHORT OF GOING OUT OF BUSINESS.

MOST OF THE PIPELINES WHO HAVE RESPONDED TO THE IDEA OF REGULATION ON A STATE LEVEL WANT TO REMOVE THE COST OF SERVICE RATE METHODOLOGY AND THE KANSAS CORPORATION COMMISSION AS A MEANS OF REGULATION AND REPLACE IT WITH AN ARBITRATION BOARD. THEY ARE ASKING YOU TO COMPLETELY DISCARD ANY FACTUAL BASIS FOR THEIR RATES. RATHER THAN USING A DEFINABLE STANDARD, THEY WANT TO DEFER COMPLAINTS TO A 'BOARD' THAT WILL ARBITRATE BASED ON DISCRIMINATION, UNJUST, UNLAWFUL, AND UNREASONABLE. IF THERE IS NO FACTUAL BASIS, HOW DO YOU DETERMINE WHAT IS UNLAWFUL? WITHOUT AN OBJECTIVE STANDARD, HOW DO YOU DETERMINE WHAT IS UNREASONABLE? AND IF ALL PRODUCERS GET A BAD DEAL, THEN CAN'T ONE PRODUCERS BE INJURED BY A GATHERER WITHOUT DISCRIMINATING AGAINST?

IN MANY CASES THESE COMPANIES HAVE MADE MISLEADING STATEMENTS ABOUT WHAT A PRODUCER CAN AND CANNOT DO WITH RESPECT TO SELLING AND TRANSPORTING THEIR GAS. THEY HAVE MADE MISLEADING STATEMENTS ABOUT WHO ACTUALLY OWNS THE GATHERING LINES. THE STANDARD IMPLICATION HAS BEEN, SELL US YOUR GAS NOW ON OUR TERMS, BECAUSE THE TERMS THAT WILL BE OFFERED IN THE FUTURE ARE NOT GOING TO BE AS GOOD. IN MY OPINION, THIS PRACTICE HAS BEEN USED PRIMARILY TO COMPEL PRODUCERS TO AGREE TO LONG TERM CONTRACTS SO THAT THE NEW GATHERING ENTITY COULD MISLEAD THE FERC INTO



BELIEVING THAT THE TERMS OF THE SPINDOWNS WERE ACCEPTABLE TO THE PRODUCERS AND OTHER PARTIES INVOLVED.

IN CENTANA'S RESPONSE TO HOUSE BILL 2041, THEY SUGGEST THAT THE KCC SHOULD NOT BE USED AS "VEHICLE TO ENHANCE A PARTIES' NEGOTIATING POSITION", OR, BE USED AS A DEVICE TO "RESOLVE PRICING DISPUTES BETWEEN PRODUCERS AND GATHERERS". I POSE THE QUESTION, HOW ELSE WOULD A PRODUCER NEGOTIATE?

OUR POSITION IS THIS: THE CREATION OF NON REGULATED MONOPOLIES SHOULD NOT BE PERMITTED. IF THE FEDERAL GOVERNMENT IS NOT GOING TO OVERSEE THESE ENTITIES, THE STATES SHOULD. THESE NEW ENTITIES HAVE ASSUMED THAT THEY WILL NOT BE REGULATED WHICH HAS BEEN DEMONSTRATED BY THE CAVALIER MANOR THEY HAVE TAKEN WHEN APPROACHING PRODUCERS ABOUT ENTERING INTO AGREEMENTS.

I WOULD BE REMISS IF I ACCUSED ALL PIPELINES WHO HAVE GATHERING SYSTEMS OF ABUSIVE BEHAVIOR. SEVERAL OF THEM HAVE GONE OUT OF THEIR WAY TO BE EQUITABLE, CIG, ANR, AND WILLIAMS ARE GOOD EXAMPLES OF THIS. FURTHER, NONE OF THEM HAVE MONOPOLY POWER IN EVERY INSTANCE. I BELIEVE THERE IS A BETTER WAY TO REGULATE GATHERING THAN USING A COST OF SERVICE BASIS. HOWEVER, THE COMPLETE REMOVAL OF OBJECTIVE OVERSIGHT IS NOT THE ANSWER. THE PRIMARY INTENT MUST BE TO RETAIN COMPETITION AT THE WELLHEAD, INSURE THAT PRODUCERS ARE NOT SUBJECTED TO UNHARNESSED MONOPOLY POWER AND THAT OTHER RESTRAINTS OF TRADE ARE NOT PERPETRATED. IN ORDER TO ACHIEVE THESE GOALS, THE FOLLOWING MUST OCCUR:

1. A BOARD SHOULD BE ESTABLISHED THAT HAS WEIGHTED REPRESENTATION. THIS BOARD SHOULD HAVE THE AUTHORITY TO DETERMINE WHEN A GATHERER HAS MONOPOLY POWER OVER PRODUCERS AND THIRD PARTY SHIPPERS.
2. OPEN ACCESS TO ANY SHIPPER AND/OR PURCHASER MUST BE A STANDARD.

3. AN OBJECTIVE RATE DESIGN MUST BE ESTABLISHED, THAT CREATES A MAXIMUM RATE A MONOPOLISTIC GATHERER CAN CHARGE.

4. PRODUCERS AND OTHER PARTIES MUST HAVE THE RIGHT TO FILE THEIR COMPLAINTS WITH THE KCC.

5. RATES AND OTHER PERTINENT INFORMATION SHOULD BE OF PUBLIC RECORD.

KAJ WELLS

WELL NAME	PATTERSON #1	ATWELL #1	BARTH #1
OPERATOR	WILSON COS.	AMERICAN WARRIOR	AMERICAN WARRIOR
LOCATION	SW 25-28S-37W	NW SE 9-33S-31W	C NW/4 10-35S-22W
CURRENT RATE	825 MCF/D	112 MCF/D	109 MCF/D
REMAINING RESERVES	.5BCF	49 MMCF	144 MMCF
DECLINE	5%	5%	5%
LINE PRESSURE	21-28	60 #	90#
LOE PER MONTH	\$1,000	\$826	\$1,384
CURRENT CONNECTION	PEPL	PEPL	NNG
CURRENT GATHERING RATE	0.1659	0.1659	0.0731
FUEL	0.25%	0.25%	
WELLHEAD PRICE			
NEW GATHERING COMPANY	ANADARKO	ANADARKO	GPM
NEW GATHERING RATE	0.2218	0.2218	0.2218
FUEL	0.25%	0.25%	0.25%
DISTANCE TO NEAREST	6730'	13980'	5000'
ALTERNATE LINE	CIG 6" LINE	CENTANA	TWPL
ALTERNATE RATE	0.159	0.22	0.1
FUEL	0	1%	1%
COST TO LAY NEW	\$60,380	\$75,920	\$40,000
LINE AND INSTALL TAP			
(TAP = \$20,000)			
(LINE IS \$4/FT FOR 500 MCF/DAY OR LESS)			
(LINE IS \$6/FT FOR MORE THAN 500 MCF/DAY)			

AVERAGE PRICES 10/94-9/95	INDEX
PEPL	1.383
NNG	1.323
CIG	1.138
TW	1.32

ASSUMPTIONS:  
 1/8TH ROYALTY  
 5% KS PROD TAX  
 MAINLINE PRICE  
 NO ESCALATION  
 NO DISCOUNT

Daily production	825	112	109
Decline	0.95	0.95	0.95
year 1	297,000	40,320	39,240
year 2	282,150	38,304	37,278
year 3	268,043	36,369	34,296
	848,018	115,126	110,814

Gathering Cost per MCF for 3 years                      \$0.0712                      \$0.6595                      \$0.3610

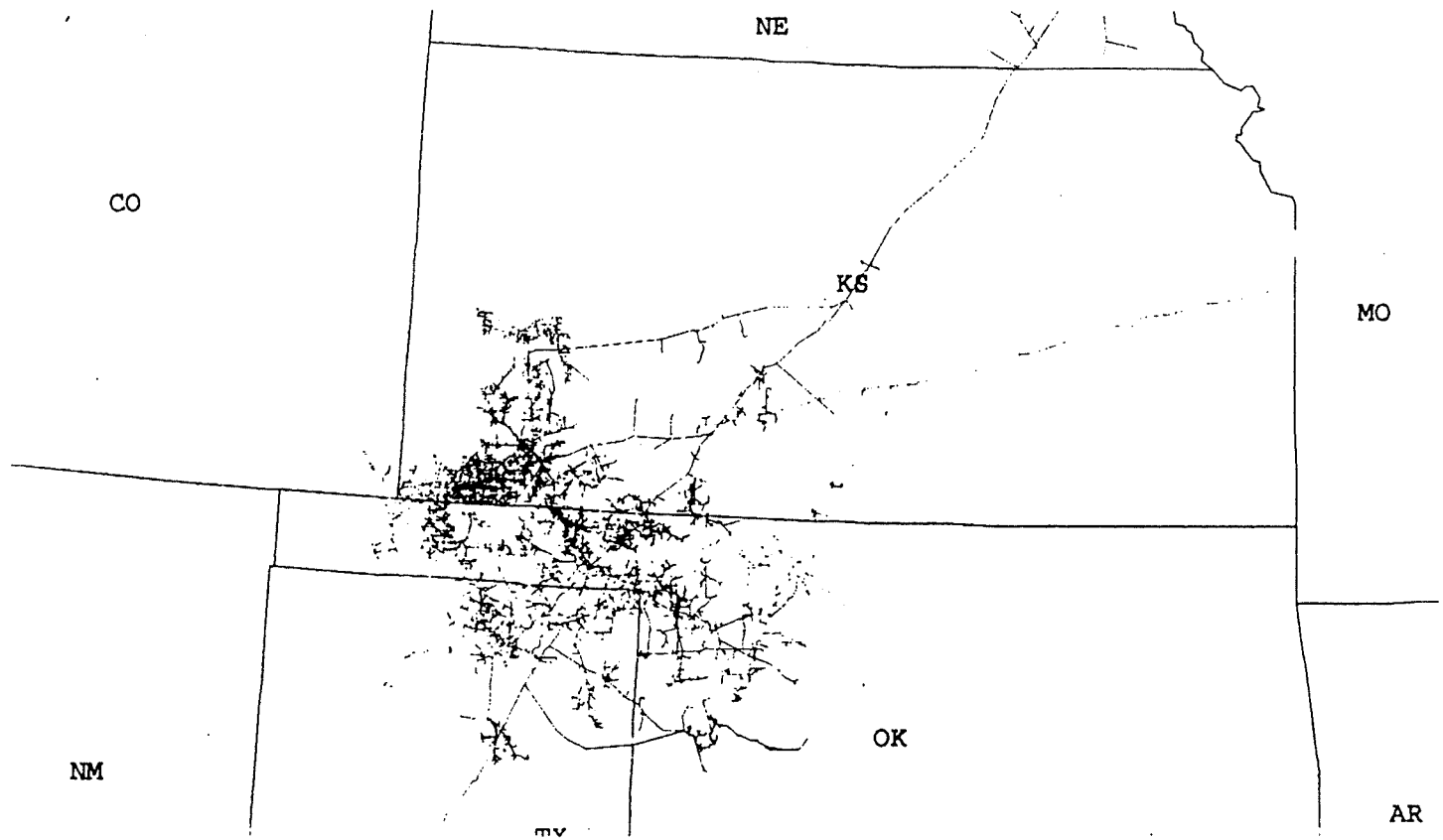
<b>CURRENT RATE</b>	<b>\$0.1659</b>	<b>\$0.1659</b>	<b>\$0.0731</b>
<b>RATE TO NEW FACILITY</b>	<b>\$0.2302</b>	<b>\$0.8795</b>	<b>\$0.4610</b>
<b>CURRENT PRICE</b>	<b>\$1.2141</b>	<b>\$1.1583</b>	<b>\$1.2499</b>
<b>PRICE TO ALTERNATIVE</b>	<b>\$0.9078</b>	<b>\$0.5035</b>	<b>\$0.8590</b>

Operating cost	\$0.0425	\$0.2583	\$0.4496
Royalty	\$0.1598	\$0.0863	\$0.1236
Profit before prod taxes	\$1.0765	\$0.3459	\$0.4158
Tax	\$0.0559	\$0.0302	\$0.0433
Net before overhead, taxes et al	\$1.0205	\$0.3157	\$0.3725

3-19

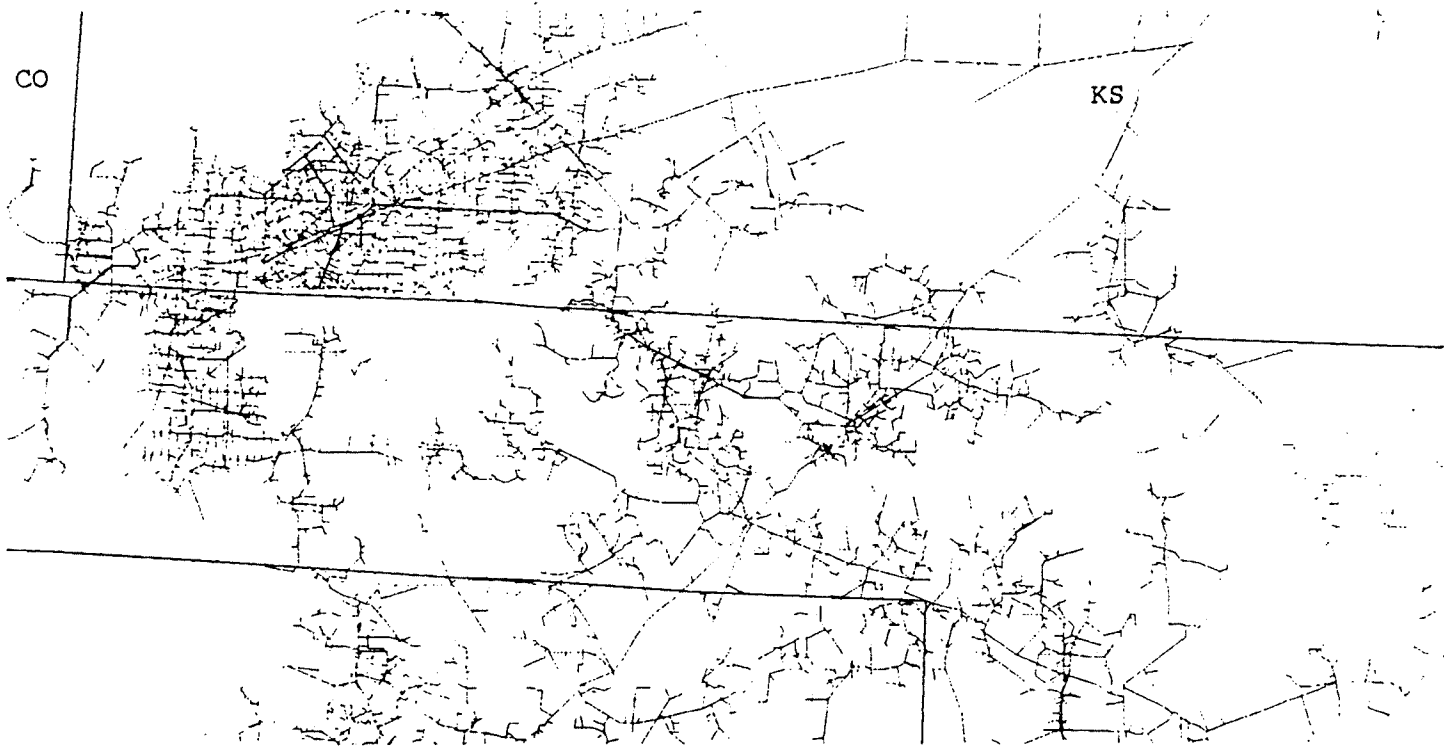
Northern Natural Gas Company

Panhandle Eastern Pipe Line to  
Panhandle Field Services Compa



Northern Natural Gas Company

Panhandle Eastern Pipe Line Co  
Panhandle Field Services Compa



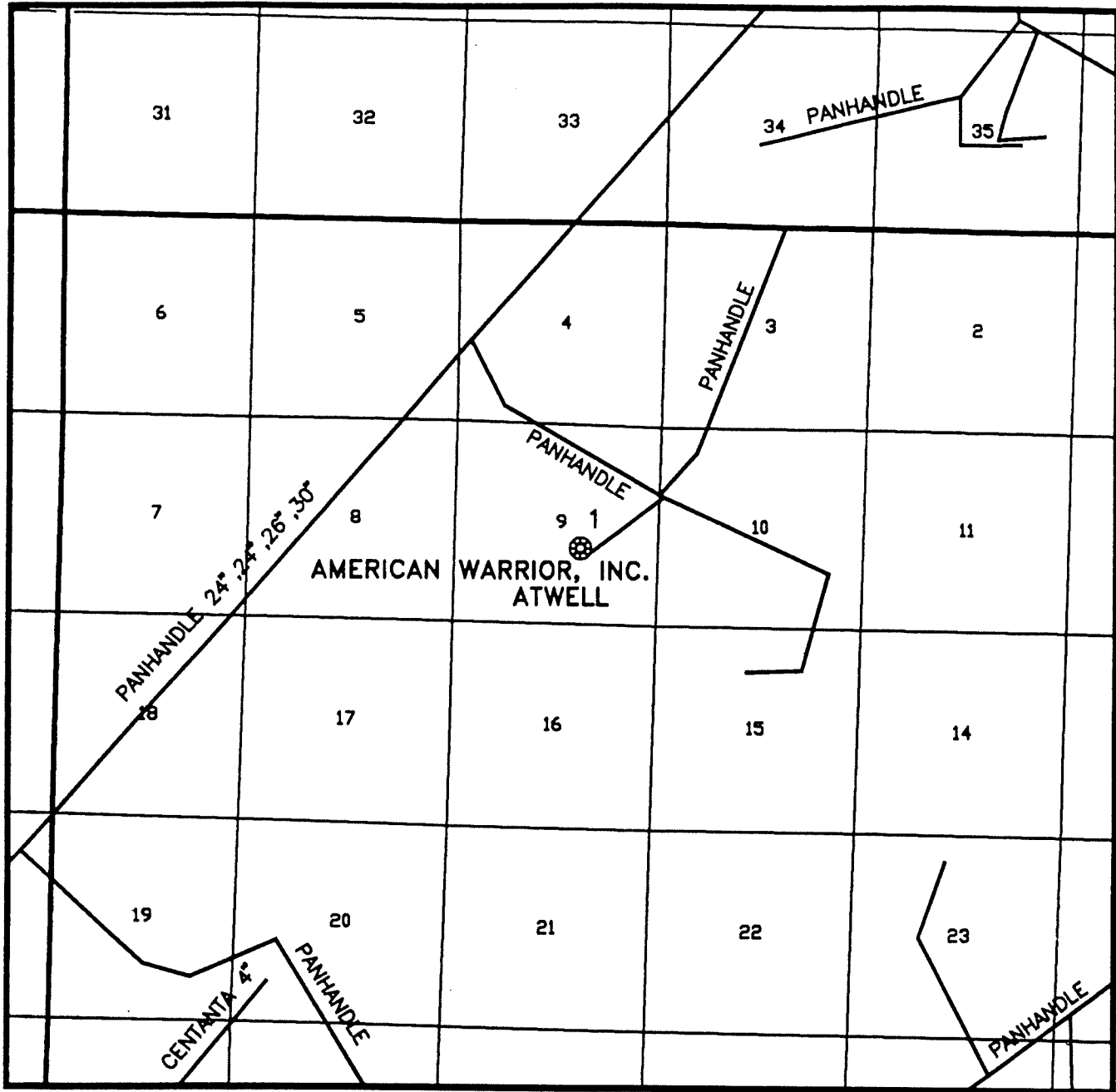
R-31-W

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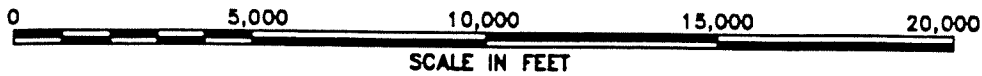
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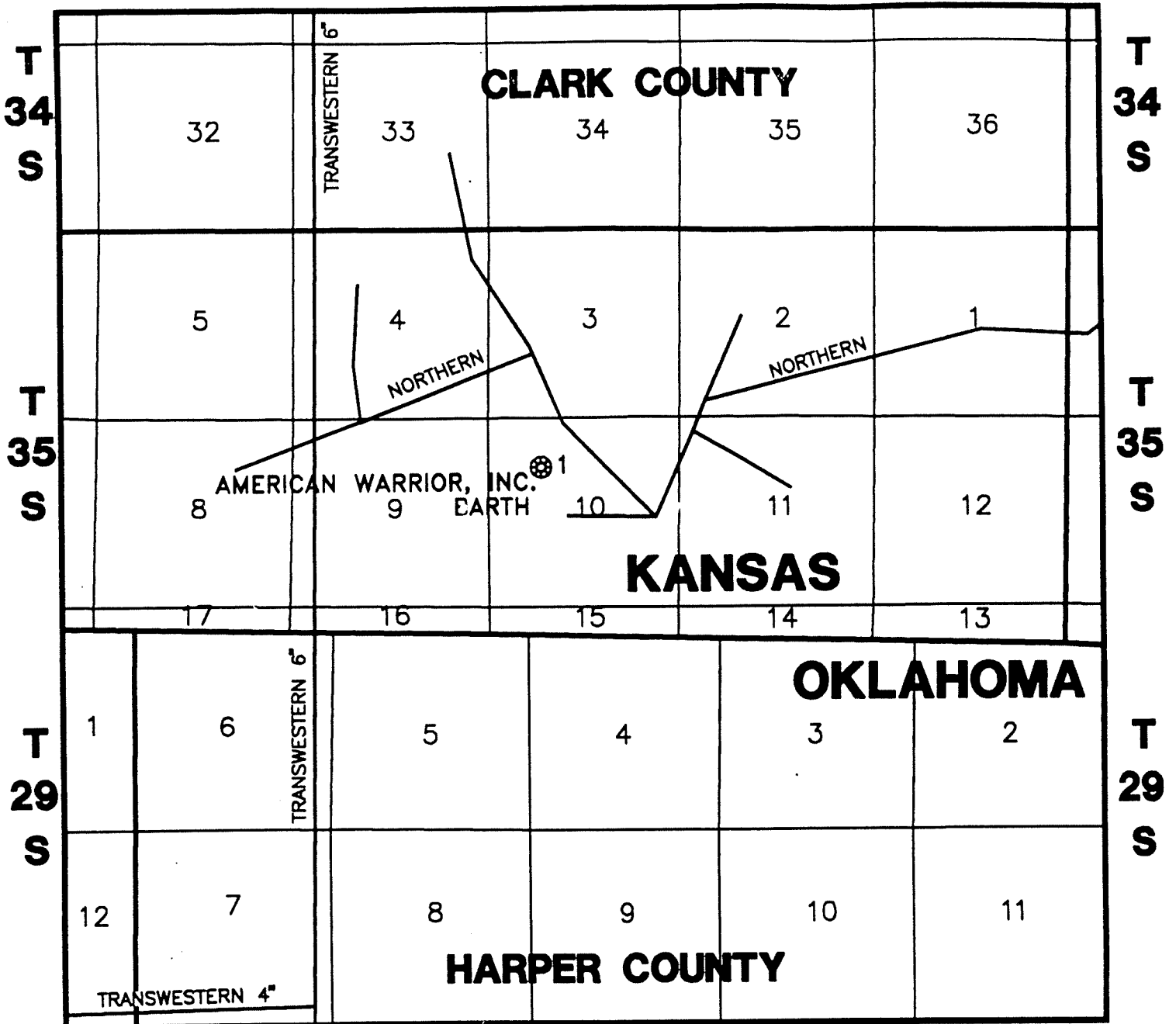


R-31-W

**LOCATION PLAT  
FOR THE  
AMERICAN WARRIOR, INC.- ATWELL # 1 WELL  
SEWARD COUNTY, KANSAS**



R-22-W



R-23-W

**LOCATION PLAT  
FOR THE  
AMERICAN WARRIOR, INC - BARTH #1 WELL  
CLARK COUNTY, KANSAS  
HARPER COUNTY, OKLAHOMA**

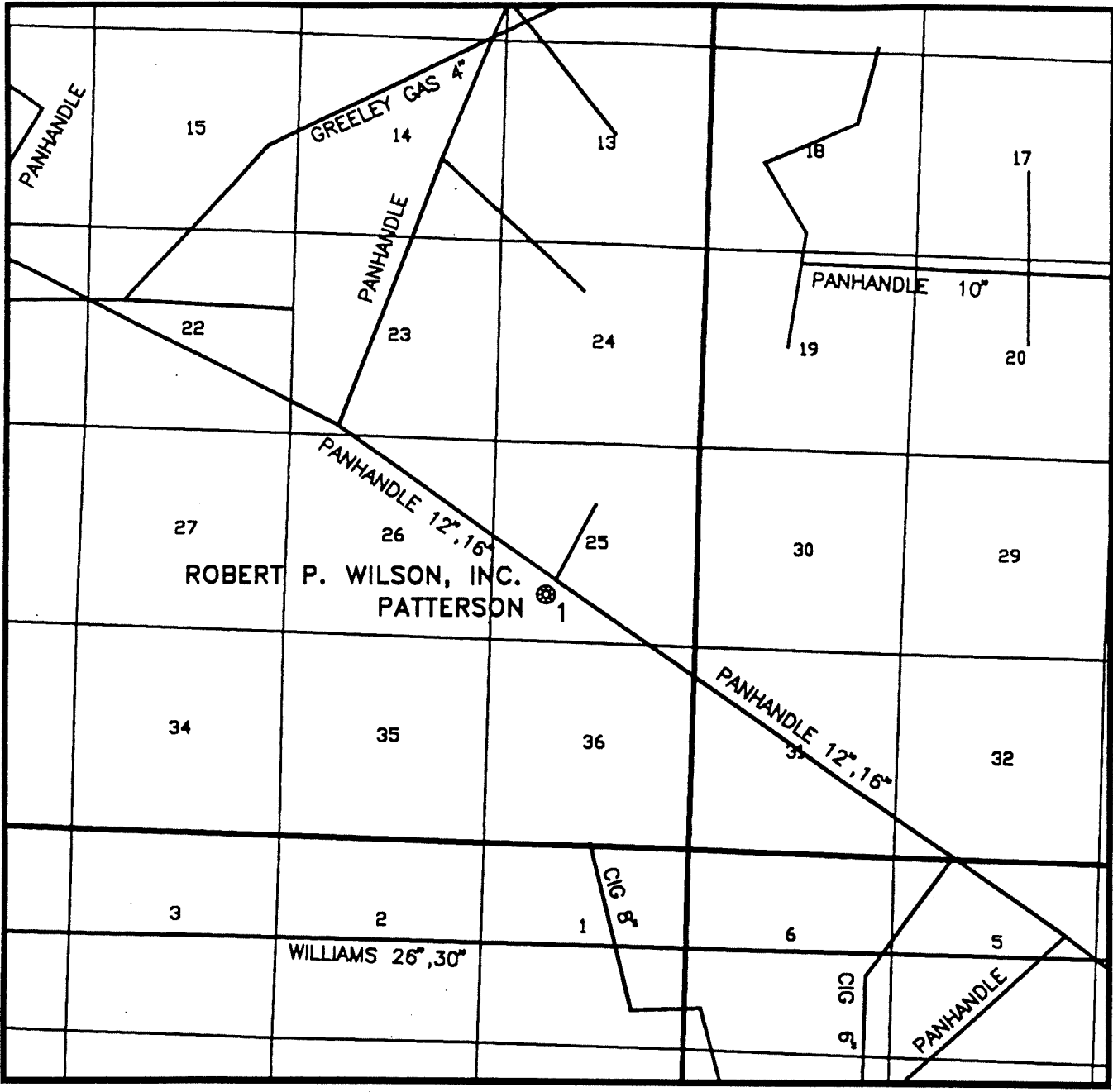


R-37-W

R-36-W

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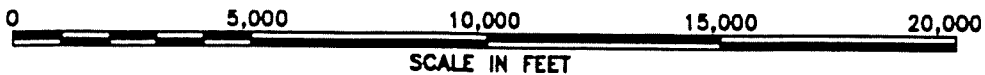
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R-37-W

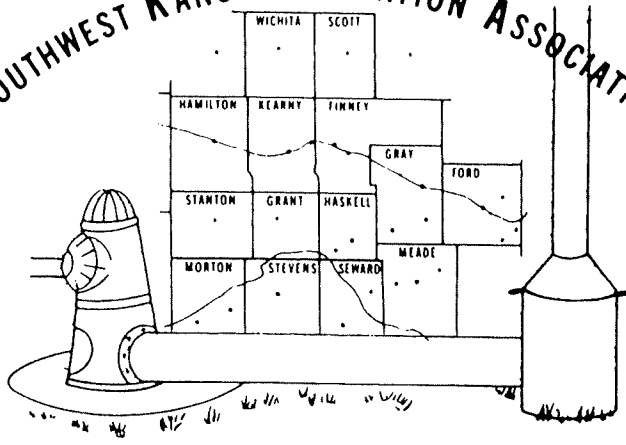
R-36-W

**LOCATION PLAT  
FOR THE  
ROBERT P. WILSON, INC. - PATTERSON #1 WELL  
GRANT COUNTY, KANSAS**





SOUTHWEST KANSAS IRRIGATION ASSOCIATION



Box 254  
Ulysses, Kansas  
67880

Testimony of Randal Loder on behalf of  
The Southwest Kansas Irrigation Association  
In support of H.B. 2332  
Before the House Utilities Committee  
Don Myers, Chairman  
February 20, 1997

House Utilities  
2-20-97  
Attachment 4

Chairman Myers, and members of the Utilities Committee, my name is Randal Loder. My wife and I have an irrigated farming operation near Garden City, Kansas, where in addition to some wheat, we grow corn and alfalfa which is marketed through area cattle feed yards.

In addition to my involvement with the Board of Directors of the Southwest Kansas Irrigation Association, I served as the irrigation representative on the Task Force on Gas Gathering.

I am here today in support of H.B. 2332, and in particular the new Sec. 9 of the bill. The provision for the issuance of multiple certificates of service, and prohibitions of exit fees for purchasers of gas or gathering services who choose to seek those services from another provider are necessary to restore a level playing field for all participants in the natural gas industry, even those of us at the retail level.

If you would refer to the information attached to my statement, I would like to explain a few things about retail operations in gathering system areas. You'll first see a map of the Hugoton Field gas gathering lines, which gives you a little sense of the vastness of that system. The top photo is a good representation of an irrigation "tap", or service delivery point that might appear anywhere on the system.

There is a meter in the center of the picture, and to the left of it, a pipe from the gathering system line below rises from the ground. The gathering system pipeline is owned by someone other than the utility providing retail gas sales via their certificate of service. The utility providing service may own the meter and pressure regulating devices just to the left of the meter. This varies with the requirements of the owners of the underlying gathering lines. To the right of the meter, the line is owned by the agricultural user, and it transports the gas to his point of use. That could be a few yards away, or more than a mile.

The natural gas wellsite in the lower photo shows perhaps the most common and preferred method of purchasing natural gas for irrigation use, that being the purchase of gas at wellhead from the producer of the well. In this instance, there are four irrigation wells on the section of land which coincides with the boundaries of the gas lease each having a separate meter at the wellhead point of purchase. The meters and pressure regulators are owned by the wellhead producer, and the price of gas and terms of sale are the result of agreements reached between buyer and seller.

It is typical for the larger producers in the field to offer the same terms field wide through agreements that our Association negotiated with the producers following wellhead price decontrol in the early 90's.

All this brings us to our present situation, with declining pressures at the wellhead. The very same gathering activities that help get adequate amounts of gas from the Hugoton Field, are severely hampering our abilities to get agricultural gas through traditional methods. The utilities that we have always thought would fill the void, and thought *would be required* to fill that void by virtue of their holding a certificate of service to the area, are proving unequal to the task. An example of the problem of which I speak appeared in our mailboxes less than two weeks ago, and is the 3<sup>rd</sup> item in my supporting materials (Feb. 4, 1997 , Peoples Natural Gas letter ).

I draw your attention to the area that I have underlined in the 3<sup>rd</sup> paragraph. As I indicated earlier, the lines either don't belong to the utility, or were installed for the purpose of gathering gas. Though the certificate of service has forced the buyers to go exclusively to the utility for gas, there doesn't seem to be much of an obligation on the part of the certificate holder to furnish gas. No one is saying that there isn't any gas available, just that conditions make it more difficult to get the gas to the buyer. I'm going to take it a step further and charge that our business has been **"cherry-picked"** from others who might have served us according to our needs were in not for the exclusive certificates of service. Now I know well that this is a term you've only heard used by utilities in the past to justify their need for exclusive rights to an area. If that right isn't followed *by an obligation to serve and invest in infrastructure for the future*, then the utilities that hold these certificates of service are the "cherry-pickers", and they are doing just that.

Your can help correct this with the favorable passage of H.B. 2332 from your committee with the new Sec. 9 intact, and I urge you to do so. Competition and the marketplace will take care of the rest.

The current certificate holders are going to scream about their "stranded investments", but we already know they are minimal, and only become stranded through their own choice. Had reasonable investments in the infrastructure of the certificated areas been made in the past when the picking was easy, we wouldn't be left with systems that are unable to deal with today's conditions.

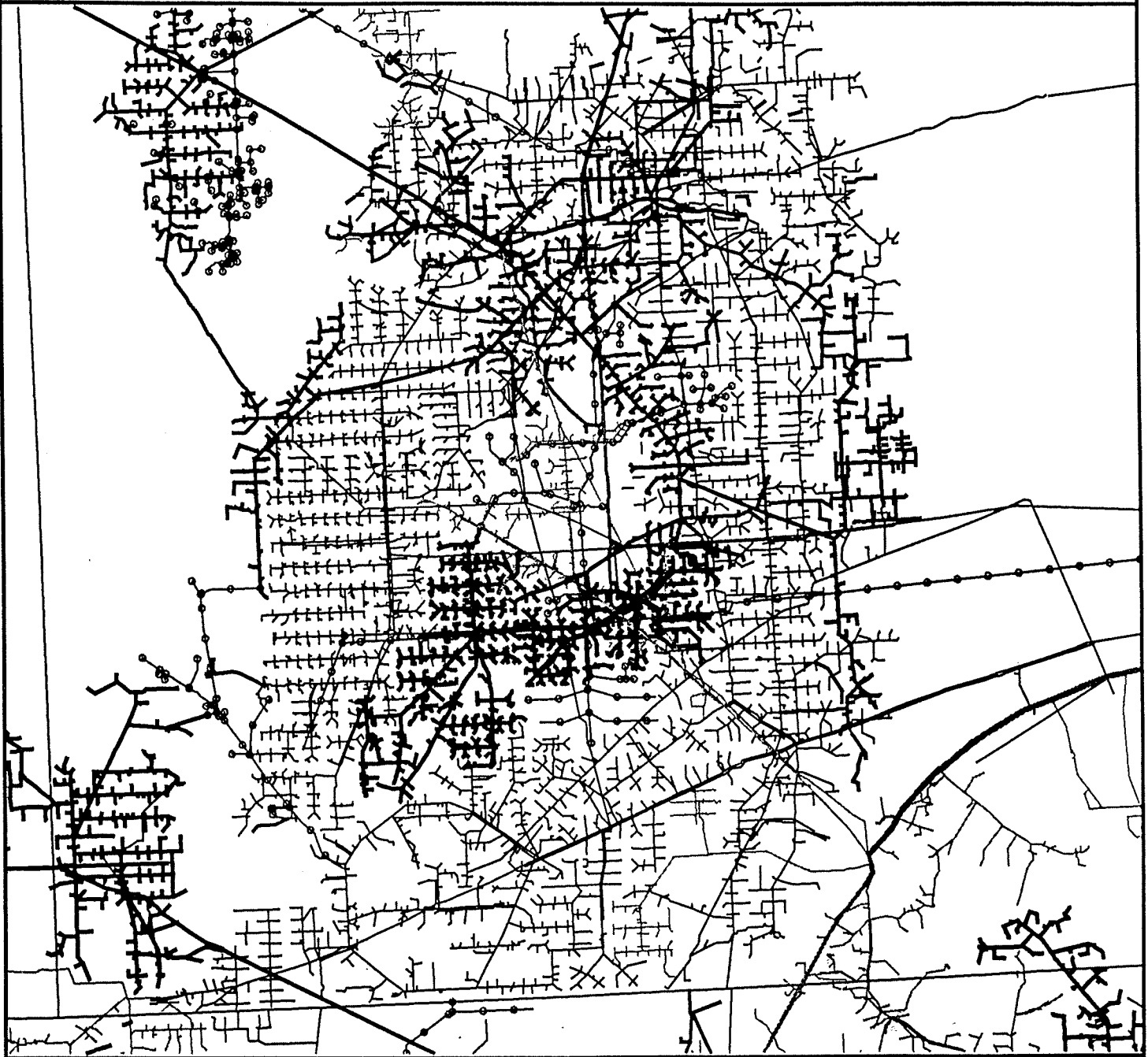
A final item is a listing of the holders of certified areas of natural gas public utilities in the State of Kansas. Not all of them provide service in the areas of the Hugoton Field, but many of them do. More than a few of them have gathering affiliates that are asking to be completely deregulated, yet they want their retail customers to remain exclusively committed to buying gas only from them. It's a ludicrous, but factual example of the arrogance of a monopoly. But, it's not the level playing field they want, and it's not fair.

Again, I encourage your passage of H.B. 2332 from committee and your continued support before the full House. Please accept my thanks for your consideration.














Randal Loder  
535 E. Hwy. 50  
Garden City, KS 67846-8024

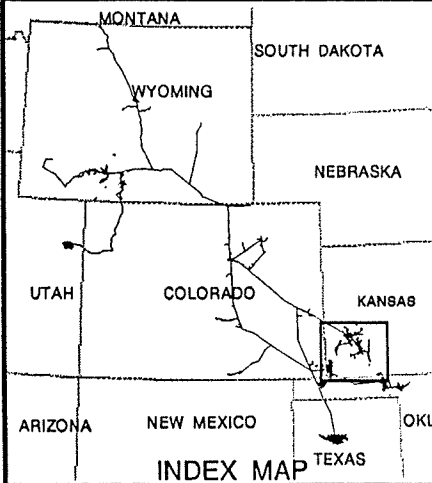
316-275-1303 Phone/FAX/messages

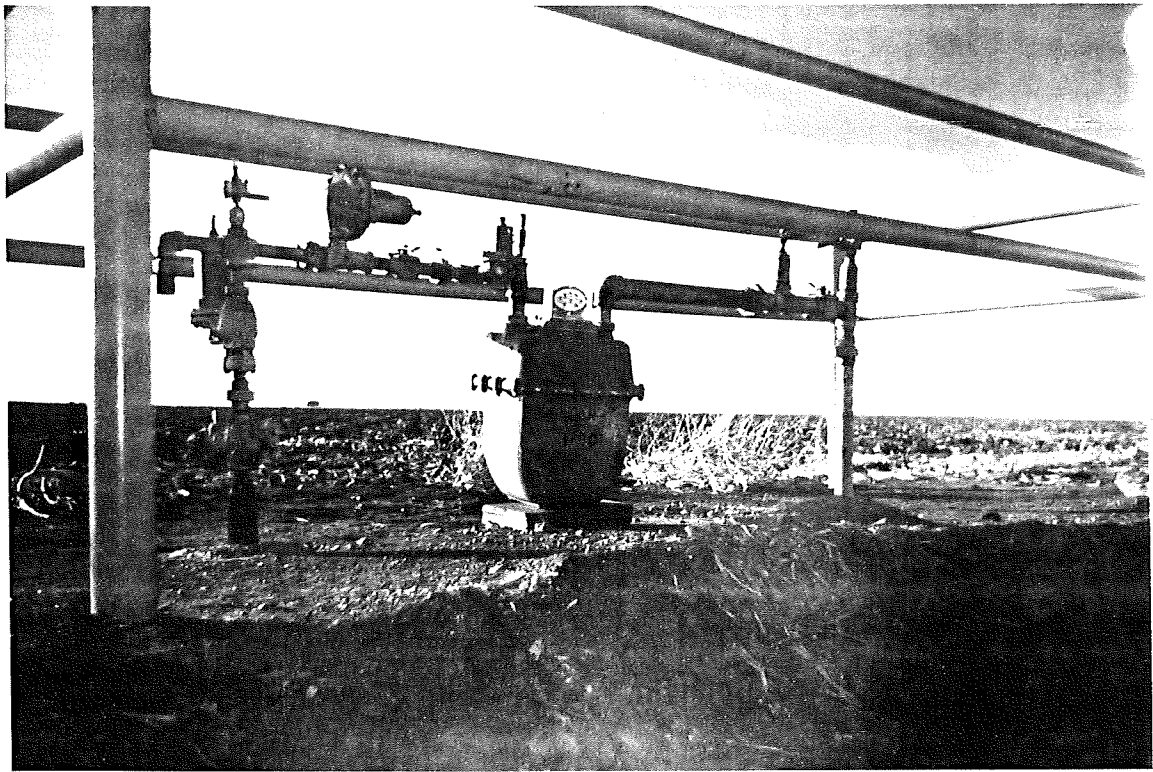
# HUGOTON



## GATHERERS

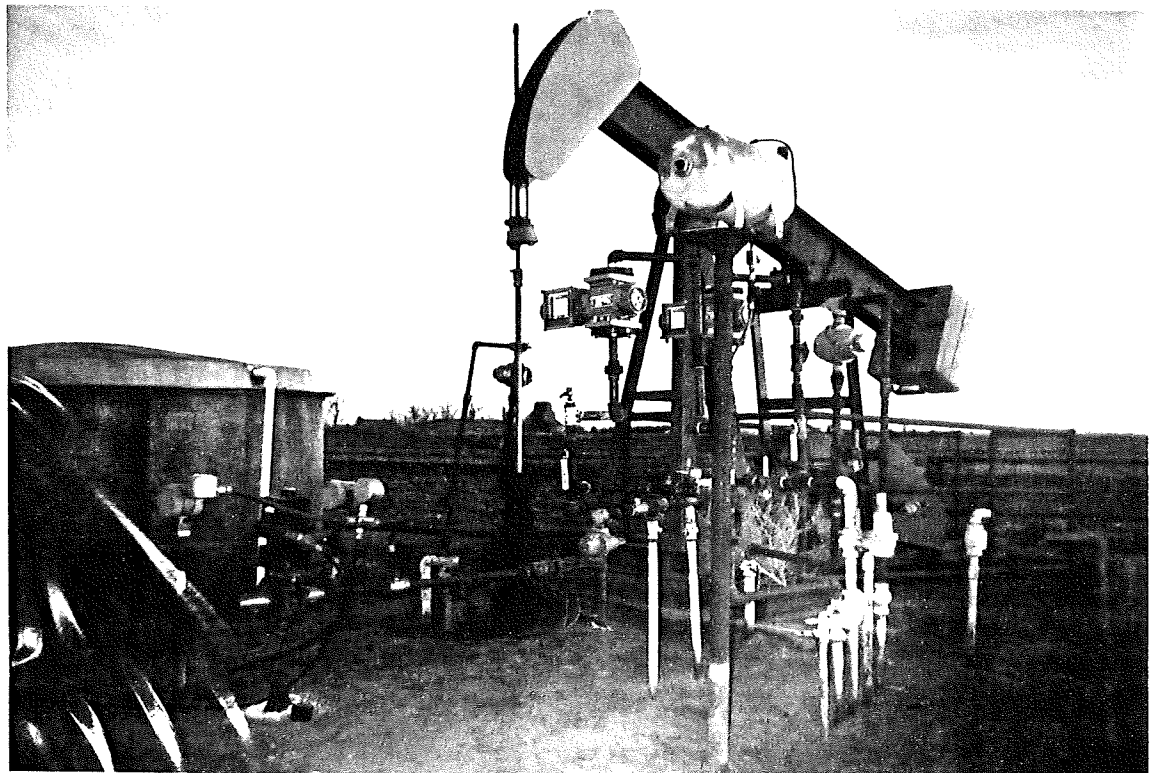
- |   |                    |   |           |
|---|--------------------|---|-----------|
|  | CIG Field Services |  | Mobil     |
|  | ANGI               |  | NNG       |
|  | Vastar             |  | PEPL      |
|  | KN                 |  | Richfield |
|  | KP&L               |  | Tekas     |
|  | Mesa               |  | Trident   |
|   |                    |  | Williams  |





Example of equipment found at a typical irrigation "tap" on either the gathering system in the Hugoton Field, or a high pressure interstate pipeline transporting natural gas from the Field.

Irrigator takes ownership of gas at meter outlet at current rate utility is allowed to charge as determined by KCC. Irrigator provides and owns underground lines from meter to irrigation well.



Hugoton Field natural gas wellsite with pump and tank for produced water. 4 irrigation "taps" and meters. Gas enters the gathering system thru line entering ground at lower left.

Irrigator takes ownership of gas at meter outlet at a price negotiated with gas well producer. 10,500 feet of irrigator owned gas lines move the gas to the 4 irrigation wells on this section (640 ac.)

February 4, 1997

PEOPLES NATURAL GAS  
**ENERGYONE**

**RE: IMPORTANT NOTICE - Declining Gas Pressures on Pipeline Gathering Systems**

Dear Peoples Natural Gas Customer:

Our records indicate that you receive gas service from Peoples Natural Gas through a pipeline gathering system owned by one of the following companies: Panhandle Eastern Pipeline, Anadarko, GPM or Northern Natural Gas.

Due to declining gas wellhead production, all of the above pipeline companies are systematically reducing the operating pressures of their gas gathering systems in an effort to maximize the production of the gas wells connected to their respective systems.

In the past these companies operated their gathering systems at pressures of approximately 50 lbs. or greater. The gathering system Peoples utilizes to serve you is scheduled to be lowered soon to 10 or 15 lbs. with the very likely chance that it will be lowered to even less pressure in the future.

The Peoples Natural Gas measurement station or meter that serves you is designed to operate at a pressure higher than 10-15 lbs. It will not measure accurately or provide sufficient gas flow under the lowered operating pressures. In some cases, Peoples may not be able to continue to provide gas service to customers attached to gathering systems because the lowered pressures will not provide sufficient volumes of gas on an hourly basis to meet the customer's needs.

Peoples Natural Gas is willing to assist you in determining if natural gas is still a viable energy option or if you will need to arrange for conversion to another source of energy. For your use, I have enclosed a Customer System Information worksheet. Please complete the worksheet and return it to the address shown for analysis of your natural gas needs.

I am making myself available to discuss your situation with you. Feel free to contact me at the Garden City office at (316)275-1183. Fred Taylor, Director of Operations in Liberal, Kansas is also prepared to answer your questions or concerns and can be reached at (316)624-1807.

Sincerely,

Don Bowlby  
Consumer Market Representative

Enc.

CERTIFIED AREAS of Natural Gas Public  
Utilities in Kansas, 1-18-96

Anadarko Gathering Company  
Getty Gas Gathering, Inc.  
Greeley Gas Company  
K N Energy, Inc.  
Kansas Gas Supply Corporation  
Kansas Pipeline Partnership  
Mac County Gas, Inc.  
Miami Pipeline Company, Inc  
MidWest Energy, Inc.  
Twin County Gas Company, Inc.  
United Cities Gas Company  
Utilicorp United, Inc.  
Western Resources, Inc.



February 10, 1997

Joe Williams  
State Corporation, Utilities Division  
1500 SW Arrowhead Road  
Topeka, KS  
913-271-3220

By Facsimile ( 913-271-3357 )

RE: Docket No. 193,371-U , Western Resources v. Peoples Natural Gas

Mr. Williams:

Last November I stopped by the Utilities Division to gather some information and we briefly discussed paragraph 27 of the Order in the above referenced matter. As you may recall, that paragraph states:

27. Further, in light of these price disparities and the continued interest of the Commission in developing and promoting gas-on-gas competition throughout the state, the Commission finds it appropriate to direct Staff to investigate how the benefits of competition could be applied to circumstances such as those existing in this case. Thus, the Commission concludes that Staff shall gather and summarize information including, but not limited to current transportation tariffs, sales volumes, and load factors for these and similar seasonal and agricultural gas customers, as well as the potential impact of competition in this forum on overall rates.

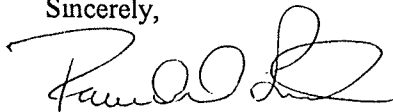
At the time of our discussion, there had been no action on this paragraph of the order, and as I recall nothing had been scheduled.

As part of a presentation that I'm making at the Annual Meeting of the SW Kansas Irrigation Association on Wed., February 12, 1997, I need an update on what is taking place with regard to this part of the Commission Order. Specifically, I would like to know;

1. What has transpired to this date to address this section of the order,
2. If any action has been taken, a copy of the staff summaries, conclusions, reports, or anything of a nature that would help my understanding of what has taken place,
3. A summary of the time frame that you estimate will govern future actions.

I would appreciate it if you could send a reply via Fax by tomorrow evening, Tues., Feb. 11, 1997. Thank you.

Sincerely,



Randal K. Loder

316-275-1303 Fax/message recorder

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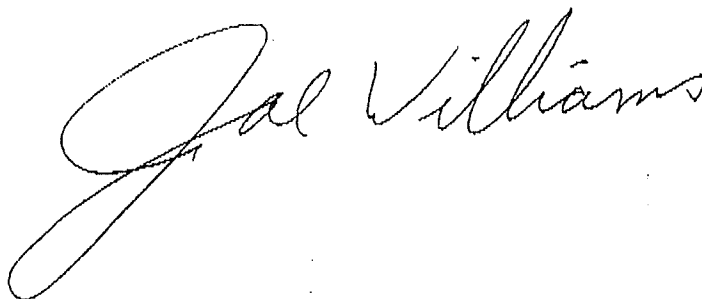
02/11/97 15:21 913 271 3357

KCC UTILITIES

002/002

Dear Mr. Loder,

The Commission is currently involved in an extensive review of many gas policy matters. There is no set timetable for completion of that review. If you have any further questions, please call me at 913-271-3135.



House Utilities Committee  
Chairman: Don Meyer  
Capitol Building - Topeka, Kansas

**TESTIMONY ON HB2332**

*Presented by: Steven D. Rome - Hugoton, Ks.  
February 20, 1997*

Mister Chairman and members of the House Utilities Committee, thank you for the opportunity to address this committee regarding our concerns as irrigators have pertaining to the future of natural gas as an energy source in southwest Kansas.

My name is Steve Rome and I am involved in an irrigated farming operation in Southwest Kansas. The availability of natural gas is one of the main reasons irrigated crop production has been able to remain profitable in this area. Other sources of energy such as electricity and diesel fuel are available that would support the irrigation needs, however, there are economical and logistical problems involved with these alternative energy sources. Utilizing electricity would double or triple our pumping costs. In addition, it would place irrigators in a competitive situation with city customers during a time when energy needs for air conditioning are at a peak. This situation could potentially create higher utility rates and expenses for additional generating capacities. Diesel and LP gas are also possibilities; however, they would be more expensive and difficult to handle and store because of the volume needed.

Unfortunately, given our current situation, all alternative sources of energy that could be utilized are ultimately more expensive. Switching to any of these alternative energy sources to supply our irrigation presents an additional repercussion: as with any business budget, unless additional revenue could be generated, the increased cost of energy would have to be covered by saving or reductions in other areas of our operating budget. This would affect many agricultural businesses in our area due to reduced sales in machinery, equipment, vehicles, and crop production.

**Clearly, natural gas has been and remains the most effective and cost efficient energy source in irrigated crop production.**

House Utilities  
2-20-97  
Attachment 5

As you put forth your efforts to create an effective gas gathering bill, I foresee three important ideas that need to be included within this piece of legislation.

**1.) Certificated Areas:**

My understanding of the present system is that utilities have been granted the right to be the only supplier of gas in that area. This may have served a purpose at one time and still may be a viable option in urban areas, however, in rural America it appears this unitary supplier theory has created a monopoly since the deregulation of the gathering lines a few years ago. In early February, we received a letter from Peoples Natural Gas stating that because of existing pipeline pressures, they may not be able to supply irrigators with gas to irrigate our crops this summer. (A copy of this letter is attached to this testimony.) We were told to contact them and they would help us find another source of energy if the pressure in our area didn't allow them to supply us with gas. I made this call and so far we don't know if we have a problem or a solution to that problem. Yet, our farming schedule timeline dictates that in approximately two months we will plant a crop that will require irrigation. At that point, we have implemented a business liability that dictates a commitment on our part for crop production.

In addition to the letter from Peoples Natural Gas, we also received a letter about the same time from Utilicorp Energy Solution. This company which with the deregulated side of the natural gas business. This letter stated that before we sign a contract, we should contact them concerning our irrigation gas needs for this crop season. They went on to say how they saved their customers twenty-two percent on the price of natural gas last year. Utilicorp also said that because they purchased large amounts of gas when prices were lower, they could pass along these savings to their customers. (A copy of this letter is attached to this testimony.) It appears these two letters are ironic in their contradictions especially since they are both subsidiaries of the same company (Utilicorp).

As I'm sure you're aware, cities and communities have received huge increases in the gas bills for heating their homes. I have included a copy of an article that recently appeared in our local paper. It states that Peoples doesn't contract ahead for gas but instead buys on the spot market. Subsequently,.... this year they got caught. The article goes on to state that it might even happen again. Pertaining to my own business, I can think of many articles and workshops for farmers indicating the need for us to learn how to market our agricultural products in order to remain profitable. This is usually the norm in how businesses are operated in a competitive environment, but it is evidently not required of gas utility companies (or monopolies).

**2.) Price Transparency:**

The fact that we need price transparency or posting of prices appears to be a necessity and is a common practice in the competitive business environment. An analog would be to pull up to a service station and being asked to fill your car with gas without knowing what the cost is until you walk in to pay. Most service stations have signs that a consumer can see from several blocks. This price posting allows the consumer to know that the prices are competitive. This system also allows the businesses the opportunity to increase sales.

**3.) Fair and Reasonable Transportation Rates:**

The need for fair and reasonable rates in most business arenas is taken care of by competition within the job market. However, in a certificated area where no price competition exists, it seems imperative that the rates for the transporting of this gas should be addressed. When my farming business hires a trucking firm at harvest time to haul our grain from the field to the marketplace, they know their rates must be competitive or they will not get the business. In relating this to natural gas sales it seems like these transportation charges can be used to eliminate the competition.

In closing, I will say I am thankful to live in a state and country where we as consumers are able to address a legislative group like yourselves regarding our concerns. Thank you for your time and consideration in listening to our concerns. We appreciate your willingness to gather facts and information from all facets of the business industry which this piece of legislation will impact.

February 4, 1997

**PEOPLES NATURAL GAS**  
**ENERGYONE**

**RE: IMPORTANT NOTICE - Declining Gas Pressures on Pipeline Gathering Systems**

Dear Peoples Natural Gas Customer:

Our records indicate that you receive gas service from Peoples Natural Gas through a pipeline gathering system owned by one of the following companies: Panhandle Eastern Pipeline, Anadarko, GPM or Northern Natural Gas.

Due to declining gas wellhead production, all of the above pipeline companies are systematically reducing the operating pressures of their gas gathering systems in an effort to maximize the production of the gas wells connected to their respective systems.

In the past these companies operated their gathering systems at pressures of approximately 50 lbs. or greater. The gathering system Peoples utilizes to serve you is scheduled to be lowered soon to 10 or 15 lbs. with the very likely chance that it will be lowered to even less pressure in the future.

The Peoples Natural Gas measurement station or meter that serves you is designed to operate at a pressure higher than 10-15 lbs. It will not measure accurately or provide sufficient gas flow under the lowered operating pressures. In some cases, Peoples may not be able to continue to provide gas service to customers attached to gathering systems because the lowered pressures will not provide sufficient volumes of gas on an hourly basis to meet the customer's needs.

Peoples Natural Gas is willing to assist you in determining if natural gas is still a viable energy option or if you will need to arrange for conversion to another source of energy. For your use, I have enclosed a Customer System Information worksheet. Please complete the worksheet and return it to the address shown for analysis of your natural gas needs.

I am making myself available to discuss your situation with you. Feel free to contact me at the Garden City office at (316)275-1183. Fred Taylor, Director of Operations in Liberal, Kansas is also prepared to answer your questions or concerns and can be reached at (316)624-1807.

Sincerely,

Don Bowlby  
Consumer Market Representative

Enc.

UTILICORP ENERGY SOLUTIONS

**ENERGYONE**

January 16, 1997

Rome Farms  
HCR 1, Box 18  
Hugoton, KS 67951-9014

Dear Energy User:

### **Could You Negotiate A Better Deal On Natural Gas?**

We hope you had a successful 1996 farming season. If you irrigate, a better deal on natural gas may help you enjoy even more success this year.

By our calculations, **you paid an average of 22% more than necessary for natural gas used during the 1996 irrigation season** by buying it through your local utility.

That's 22% more than you might have paid had you purchased your natural gas from UtiliCorp Energy Solutions (UES).

More than 1,200 Great Plains irrigators chose UES in 1996, and most of them saved an average of 22% on their gas bills for the irrigation season. While there's no guarantee we'll achieve comparable results in 1997, we're looking forward to another good year. Will you be among our customers and get the opportunity to save?

Of course, savings are great, but they're just one reason to choose UES. Many irrigators contract with us at a fixed rate for an entire season to avoid surprises brought on by fluctuating gas prices from their local utility. So, if stable prices are the main appeal to you, any savings we can pass your way will be a bonus.

### **When's The Best Time To Lock In Your Deal For 1997?**

One reason we can offer very competitive prices is that we purchase large volumes of gas when prices are most favorable. We're constantly monitoring those prices, and we'll notify you soon regarding the great price we've secured for you for the coming irrigation season.

**So don't buy or sign anything yet.** Watch your mail in the next few weeks for a large

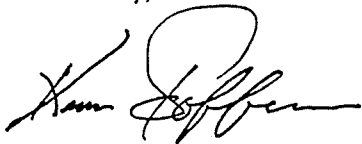
envelope from UES containing all the details.

### Looking For Competitive Gas Prices Year 'Round?

If you'd like information on your natural gas service for the coming irrigation season —or to learn about competitive rates year 'round — please don't wait for our next letter. Call our toll-free number: 800-860-2746, and we will put you in contact with a sales representative. Ask for information on recent tariff changes that make "transporting" gas year 'round as competitive as buying sales tariff gas.

We hope you'll choose UES and take advantage of the benefits of our irrigation program.

Yours truly,



Kevin Stoffer  
Vice President

P.S. The enclosed brochure offers information on our company, how other farmers have benefited by choosing UES, and **convenient features** such as multiple-year contracts. If you have questions, simply call our toll-free number: **800-860-2746**.



# Council Cheers Bigger Project, Scolds Peoples For Big Increase

Approval of the proposed widening and extension of Highway 51 leading east from Washington Street was given by the Hugoton City Council Monday evening. The action came on the heels of news an extension of the project had been approved by the Department of Transportation for inclusion in their 2000 program.

Originally the council hoped to get the highway treated from Washington Street to the drainage ditch but it also applied for the second phase, extending it to the cemetery road.

A letter from KDOT announced the approval of the larger project.

City Clerk Tom Hicks re-

*"There's no way we can pass it up!"*

*City Clerk Tom Hicks*

joiced, "There's no way we can pass it up!"

Mayor Neal Gillespie remarked, "We're getting out to cemetery road a lot faster than we thought."

In a letter from KDOT Hicks was told the total project cost would be \$755,000. KDOT pays 95% of the costs of projects up to a maximum of \$630,000. So the city's share would be \$125,000.

Hicks noted that amount would soak up about half of the street bud-

get for 1997, but the two years to prepare for the costs would give them some time to get it done.

"Jerry (Utilities Superintendent Jerry Leonard) and I met with the group and they were very favorable. We may have to back off on some other things, but we've got to do it."

Most of the evening was devoted to a thorough discussion of the huge utilities cost increases Peoples Natural Gas has imposed on its customers. Over 100 percent increases have been delivered to everyone, including the elderly with limited fixed

Continued on Page 10

incomes.

A recurring theme was expressed by Councilman Johnnie Denton, "I think we need to pursue this to the max! ....It seems unfair - here we are on top of all this natural resource."

Fred Taylor and Ann Burkhart, representatives of Peoples from Liberal, attended to explain the situation to the group. Burkhart revealed they receive 150 phone calls a day on this problem.

Ruthanna Strickland, a Home Health employee of Stevens County Hospital, related that she helps many elderly people over 70 in their homes and they are devastated. She said 90% of them are on fixed incomes that are low but not low enough for heating assistance.

One of her clients had her house temperature set at 50 degrees. She could see her breath as she talked inside the home. The client asked her to help decide whether to discontinue her Life Line service to the hospital or medicine or food. Her cable service was the first to go.

The person had no living relatives and needed \$380 to pay her gas bill. Her medicine costs were \$300 per month. Her Social Security check was \$622 a month.

Strickland said, "I work with elderly people in four counties and Hugoton has been hurt the worst."

She informed the group her job was to help keep these people at home.

Taylor restated the reason for the gas increases were the deregulation of gas, an unusually cold winter in the east, and a need to restock reserves on the west coast.

Taylor noted the price has gone down \$1.45 from January

*"I work with elderly people in four counties and Hugoton has been hurt the worst."*

*Ruthanna Strickland  
Home Health Worker*

prices. "Supply has caught up with demand."

Councilman Greg Gaskill asked Taylor why Peoples didn't buy gas in the summertime when the price is cheaper.

He was told Peoples usually purchases on the spot market instead of the retail contracts. This time it worked against them.

"So there's a good chance this will happen again," surmised Denton.

"Yes," Taylor replied.

About shutting off those who can't pay, it was mentioned a law prevents Peoples from this path until after April 1.

The representatives said they don't actually disconnect that many customers. "As long as they're working with us". They also warned against kerosene heaters being employed as "an accident waiting to happen".

More exchanges brought out the fact Hugoton customers pay the same price for gas as customers in eastern Kansas. Transportation charges for gas that hasn't been transported very far are being paid by customers here.

Councilman Everett Rowden also told Taylor, "We miss our local gas office here. We don't get near the service." He complained it took hours to get through on the telephone.

A work order from the fax machine in Liberal is needed before work can proceed, the group learned. By 1998 the ser-

vice men will be able to receive faxes in their vehicles to speed up service.

Rowden also encouraged the firm to install a drop at the building here they still own.

In a related matter the council was shown a Peoples Natural Gas bill for \$2,398 for a building where some city crew members work. A brief discussion on enclosing the office or insulating the structure took place.

A new police car was purchased from low bidder Don Trentham Motors for \$14,300.

Trentham, who was present, and serves on the Hugoton Golf Course Board, was asked about costs for tournaments the school board had previously resented.

Trentham replied the price is the same it has been for ten years. He believes they are not getting their labor costs restored with that fee. "I don't feel we should lower it", he concluded.

Building Inspector Jay Holcomb presented a comprehensive report on his activities in a clean up project and appliance of city codes. He also compiled a list of permit types granted by the city and to whom as well as a list of qualifying contractors.

Holcomb confirmed that the owners of two new trailer parks in the city are complying with city codes.

The problem of finding unmarked homes was presented. Emergency medical staff people have to search for

many times, wasting valuable minutes, only because the addresses are not posted anywhere.

Strickland related one occasion where she was with the ambulance crew and they drove around, looking for the emergency unmarked address until finally someone waved them down the street.

Leonard reminded everyone the city has numbers which can be posted at no cost to the residence. Residents can just pick them up. However, they must be warned not to paint over them - a common occurrence. Now the possibility the new mail boxes may obscure them is evident.

Rowden urged the council to secure updated city maps. The men agreed, less absent councilman Gary Gold. They are needed as much growth has taken place in recent months and the existing maps were not up to date before the growth occur.

A detailed gas well production report revealed the city's three gas wells were not meeting the power plant needs. Someone intoned, "We need another gas well". The yearly totals show the Hugoton zone well produced 91,060 MCF, the Council Grove zone well 46,900 MCF and the deeper infill well 115,585 MCF. The group agreed any new well would have to go deep.

Hicks added the downtown plant, which had been earmarked for closing, was taking up the slack after the south power plant generator explosion. The unit has been described a total loss.

The meeting closed with the acceptance of a bid from McBrid Construction for curb and gutter and storm sewer for Tenth Street totalling \$75,807.80 and an announcement of the split of the quarter purchased with the county at First and Washington Street giving the city the north half and the county the south half. 5-8

*Maria Mercedes Seidler*

ATTORNEY-AT-LAW / CONSULTING  
NATURAL GAS FEDERAL REGULATION & POLICY

3945 S. Trenton Ave.,  
Tulsa, Oklahoma 74105  
918-748-9741

**COMMENTS BEFORE THE KANSAS LEGISLATURE  
PROPOSED LEGISLATION FOR REGULATION OF GAS GATHERING**

February 18, 1997

On January 4, 1995, I presented testimony before the KCC and then again on September 18, 1996, before the Legislative Task Force on the need for regulation of gathering. In both presentations, I noted that the FERC, in federally deregulating gas gathering, had relied heavily on representations by the Kansas Corporation Commission that the KCC would regulate:

The KCC has asserted that it "has developed in depth knowledge of the gas industry, including gas gathering facilities in the State of Kansas" and, in comparison with this Commission, "is uniquely situated and better able to make the necessary factual determinations concerning alleged discriminatory practices by gas gatherers in Kansas," and, therefore, "is better able to assure that gathering services performed on exempt gathering facilities are not abusive." Given the KCC's explicitly expressed interest in assuring that Kansas production will be moved through gathering systems to the market place, we anticipate that the KCC will provide an adequate forum for producers' complaints regarding gathering practices. <sup>1</sup>

The KCC representations and promise referred to by FERC were made in the FERC's generic proceeding on gathering back in January 1994, three years ago, and still the need for regulation is being debated within the State. Meanwhile, Kansas producers and customers have lost the only means of protection from the monopsony power of gathering facilities over gas supplies when

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<sup>1</sup> Panhandle Eastern Pipe Line Co., CP90-1050-003; CP94-151-002; Panhandle Field Services Co., CP94-152-001, "Order On Requests for Rehearing and Clarification and Modifying Prior Order," mimeo 14-15, (DATE), citing KCC Comments filed in FERC Docket No. RM94-4-000, "Natural Gas Gathering Services Performed by Interstate Pipelines and Interstate Pipeline Affiliates -- Issues Related to Rates and Terms and Conditions of Service" at pp.3 and 8 (January 14, 1994).

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Maria M. Seidler  
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the D.C. Circuit struck down the default contract. It is now more imperative than ever that the KCC stand behind its promise to provide some forum for regulation and that the Kansas Legislature act quickly to provide the KCC whatever authority necessary to allow the KCC to act.

Because of the increased focused on gathering companies as a result of these legislative debates, it should not be surprising that these companies have not acted upon the advantage gained with the elimination of the default contract after the D.C. Circuit's opinion. However, in Arkansas, where there is no state regulation and no future consideration of state regulation of gathering, my Arkansas clients have informed me that NorAm Fields Services have already doubled its fuel use rate and gathering rates have steadily increased. It is the corporate nature -- in fact, it is the corporation's responsibility -- to maximize profits for shareholders. Arguably any corporation that does not take advantage of its market power, albeit within the limits of the law, in order to maximize its return would be failing its corporate responsibility. Corresponding, it is the legislature's responsibility to define those legal limits and provide a form of checks and balance between capitalistic enterprise and regulation.

The legislature can determine that there is no need to establish regulatory checks in a particular industry -- that competition sufficiently exists to restrain a corporation's capitalistic zealously. However, testimony presented at previous hearings before the Natural Resource Committee of the Kansas Legislature, then again before the KCC,, and even before the FERC, demonstrates that most wellhead supplies do not have competitive alternatives for gathering. The historical development of the gas market under regulation did not support the construction of alternative facilities. And present day economics for most existing production in the Hugoton does not support future development of competitive systems.

Once it is determined that there is not sufficient gathering competition, then the threat to the wellhead market must be defined. The existence of a competitive wellhead market has been recognized by Congress in enacting the Wellhead Decontrol Act and by FERC in its sweeping regulatory change under Order No. 636. But what will happen to Kansas' wellhead market if physical access to that market is controlled by an unregulated company

attempting to fulfill its corporate responsibility to maximize profits.<sup>2</sup>

For example, an independent aggregator enters into a contract providing for a fixed gathering fee. It then resells the gas at the interstate pipeline interconnect. At the resale point, the market will determine the price of the delivered gas. The higher the gathering cost embedded in that price, the lower the wellhead value of the gas commodity. The small independent is between the proverbial rock and a hard place if he wants to get his gas to market, and has the responsibility to do so to his royalty owners. Lower wellhead value affects taxes, and other forms of state and local revenue. It has a trickled down affect from the producers to the State and its citizens.

An alternative to a straight gathering contract is a percent of proceeds sales contract with a gathering company or a gatherer's marketing affiliate. Western Gas Resources presented an affidavit in a Panhandle spin-down case stating that percent of proceeds contracts are the most prevalent forms of contract for gas gathering and processing companies. In my own experience, a percent of proceeds contract is generally the first contract tendered to producers by either the gatherer itself or the marketing affiliate before the gatherer offers a straight gathering agreement.

I have grave concerns about these contracts which allow gathering companies or their affiliates to provide a bundled product for resale into the interstate pipeline. Gathering companies can use their control of essential facilities to augment their market power over wellhead supplies. They can then bundle that supply service with gathering services to acquire a market advantage when they resell the bundled services at the interstate pipeline interconnect. This is the same form

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<sup>2</sup> To demonstrate the extensive impact of federal deregulation, consider that Panhandle Eastern is transferring over 3,000 miles of pipeline facilities and over 2,600 receipt point to its affiliate Panhandle Field Services, which will be added to the already substantial gathering facilities Panhandle acquired in its merger with Associated Natural Gas. Anadarko is adding to its existing systems by purchasing from Panhandle over 1,100 miles of pipeline, with control of over 1,000 receipt points in region where it is the primary producer. Consider similar numbers of receipt points and miles of pipe being abandoned by Northern, KN Energy and Williams Natural Gas.

of bundling that pipelines did pre-636, when these systems were part of the integrated transmission system and which FERC found to be unlawfully discriminatory. Bundled gas services can hide preferential gathering rates, as well as operational preferences in how gatherers apply operational requirements and restrictions.

For example, a gathering affiliate offers producers 95% of resale price to purchase their gas at the wellhead. Assume that the resale price is equal to a market price of \$1.75, then the gatherer pays the producer \$1.66 and recovers only ten cents for the gathering services embedded in the market price. Third party purchasers cannot compete for supplies against such a preferential gathering rate, where they are paying a straight gathering fee. Competition at the thousands of spun-down receipt points will be severely frustrated, if not eliminated.

In addition, the proceeds from which the producer is to be paid may not equate to a market price for gas. Many items may be deducted from the proceeds before the producer receives its percentage. Further, the calculation of what proceeds make up a particular pool under a contract is often not specifically defined. Consequently, the proceeds pool can be manipulated. In an actual example, an affiliate of a gathering company is the wellhead purchaser under a percent of proceeds contract. It arranges for the gathering of its aggregated supplies, then processes those supplies and resells the residue gas to still yet another marketing affiliate for it to resell in the interstate market on its pipeline affiliate. What price the marketing affiliate pays that goes into the proceed pool and what gathering fees should come out of the pool can easily be manipulated, particularly where so many corporate affiliates are involved, to the economic advantage of the corporation and to the detriment of the wellhead value of the gas.

Because of preferential gathering rates embedded in the gatherer's or its affiliate's bundled price of gas, independent aggregators and marketers may not be able to compete with gatherers and their marketing affiliates in the resale market. Independent aggregators are thus shut out from the wellhead supply market and from the interstate resale market. Competitors for wellhead supplies will compete elsewhere. No matter what price increase may occur in the interstate market, the effective use of these facilities control over access to wellhead supplies, as described above, will impede the ability of producers, their royalty owners, and the State to share in the benefits of a rising market. In addition, production may be forever lost to the State. Marginal production, which is prevalent in the Hugoton, may be rendered uneconomical to produce. Small volume producers are forced either to sell to the

gatherer or the gatherer's affiliate or to shut in their production.

Admittedly, I am not an economist, but based on what I understand from the economic experts that I have heard and read in various regulatory proceedings, competition works at the wellhead market because a benchmark value for gas supplies can be established through published prices, such as the postings in the Gas Daily or Inside FERC, and through trading in the futures market. This creates what has been termed price transparency. FERC is also attempting to establish a commodity market for interstate transmission capacity through the bidding process under pipeline's capacity release program. Bids for secondary capacity are posted on the pipeline's electronic bulletin board, providing price transparency in establishing a market value for interstate capacity.

Gathering capacity should also be considered a commodity with a need for price transparency if the wellhead market is to continue to be mature. Nevertheless, most gathering contracts today include a confidentiality provision. These provisions should be considered unlawful. Actual market value cannot be determined in an environment of secrecy and confidentiality. I cannot surmise any reason that gathering should be the only component in the delivered cost of gas that is secretly contrived.

Having sat through many FERC pipeline rate hearings, I know the financial burden on all parties, on the industry itself, that results from full-blown utility regulation. However, light-handed regulation will be ineffective alone, without public access to established gathering rates. In fact, public access to rates, and terms and conditions could help in minimizing complaints filed at the KCC. On one hand, public filing would serve as a deterrent to discrimination. On the other, a gatherer may provide in its filing a justification for a rate that deviates from the rates charged other shippers who appear to be similarly situated, and that justification may be sufficient to the shipper or producer to keep it from filing a complaint case.

Consistent with the above views, I would recommend the following:

1. that a moratorium be immediately adopted which would continue in effect the last effective gathering rate, terms and conditions approved by the FERC for affected gathering facilities, for a period of two years, or until such time as the KCC has established rules and regulations implementing whatever gathering authority future legislation mandates;

2. that all such terms, conditions, and rates be required to be on file with the KCC;
3. that any deviation from those filed rates, terms or conditions which a gathering company may have already negotiated with its customers prior to the moratorium also be required to be on file with the KCC, together with the location of the subject facilities and the reason for the deviation;
4. that all gathering companies operating facilities [excepting possibly de minimus facilities] not previously subject to FERC jurisdiction be required to file the terms, conditions, and rates under which gathering services are currently provided and the location of the related facilities;
5. that any change in the rate, terms or conditions initially filed with the KCC, together with an explanation for such change, or any new services being offered or rendered by a gathering company be filed with the KCC, and that such filings also be made available either through an Internet website or a pipeline's EBB;
6. that the KCC be required to implement a code of conduct for all gathering companies and any affiliate that may purchase, process or resell gas on the gathering system, possibly modeled after FERC Order No. 497 for interstate pipelines and their marketing affiliates; and
7. that the KCC be required to implement a complaint procedure under which producers or shippers (i) may complain to the KCC of a violation of statutory-mandated open access; (ii) may file a request for the KCC to determine a fair gathering rate, and/or other terms and conditions; or (iii) may complain of discriminatory conduct by the gathering company in charging a gathering rate or applying operational terms and conditions.
8. that the KCC not only have the authority to hear and adjudicate gathering complaints, but also the duty to investigate complaints of discrimination, and that it be granted subpoena and other discovery powers; [legislation should be designed so as to minimize the chilling effect that would occur if the producer or shipper had the financial burden generally involved in the legal process of discovery]; and
9. that the KCC be granted sanctioning powers with the authority to impose civil penalties in the case of willful



Maria M. Seidler  
Comments Before Kansas Legislature  
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abuse of market power, particularly in cases of discrimination that involve the gathering company's affiliate.

There has been concern that the KCC does not have the authority to resolve private contractual disputes and therefore existing contracts should be exempted from the KCC's jurisdiction. However, such exemption would create a regulatory gap that in itself would be discriminatory. The abandonment of most pipeline gathering has occurred. Producers, who are being coerced to enter into contracts now in order to move their gas through these deregulated facilities, would have no hope of relief under this future legislation. Further, it would deny producers any forum to address complaints, besides expensive and protracted antitrust litigation, where the producer becomes aware that he is being discriminated against, after he has entered into a contract or where the gathering affiliate abuses the terms of the contract to frustrate open access. However, if the law requires that all services, including services being rendered under existing contracts, be fair and non-discriminatory, then the KCC could determine whether the services under the contract meets the statutory requirement. If it does not, the contract is void as unlawful.

*Maria Mercedes Seidler*

ATTORNEY-AT-LAW / CONSULTING  
NATURAL GAS FEDERAL REGULATION & POLICY

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3945 S. Trenton Ave.  
Tulsa, OK 74105  
918-748-9741

February 3, 1997

TO: The Honorable Dennis McKinney  
House Utility Committee  
The Kansas Legislature

RE: Proposed Legislation For the Regulation of Gathering  
Facilities, Rates and Services -- Legal Precedent Defining  
the Just and Reasonable Standard for Rates

It has been represented that the standard of "just and reasonable" as used relative to the regulation of rates charged by natural gas companies and gas utilities requires that a cost-of-service methodology be used in the setting of such rates. FPC V. Hope Natural Gas Co., 64 S.Ct. 281 (1944), has been cited to support this interpretation. Not only is this a gross misstatement of Hope, but the Hope decision provides for the direct converse. The Supreme Court in Hope and other appellate courts in subsequent decisions citing Hope, have consistently held that the standard of "just and reasonable" under sections 4 and 5 of the Natural Gas Act does not mandate any one rate methodology, but only requires that the "end result" is just and reasonable.

The rate challenged in Hope was based on cost of service. Various parties disagreed with the Commission's<sup>1</sup> use of the present fair value of certain property included in the gas company's rate base, rather than the property's actual legitimate cost. The Supreme Court refused to determine whether the use of one or the other valuation of the property was proper. It held that the "Commission was not bound to the use of any single formula or combination of formulae in determining rates. . . . Under the statutory standard of 'just and reasonable' it is the result reached not the method employed which is controlling." Id., 287.

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<sup>1</sup> As used in this memorandum, the "Commission" shall refer to both the federal Power Commission (FPC) and to the Federal Energy Regulatory Commission (FERC), the successor agency to the FPC.

To: The Honorable Dennis McKinney  
House Utility Committee  
Re: Just and Reasonable Standard for Rates  
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In determining just and reasonable rates, the Commission is merely required to consider the ultimate impact of the rate on the consumer and the utility. The "fixing of 'just and reasonable' rates involves a balancing of investor and consumer interest." Id., 288; see also, Jersey Central Power & Light Co. v. FERC, 810 F.2d 1169, 1172 (D.C. Cir. 1987) ("It is axiomatic that the end result of Commission rate orders must be "just and reasonable" to both consumers and investors, and that, in achieving this balance, the Commission must consider the impact of its rate orders on the financial integrity of the utility"). To require that the Commission consider the rate impact on the financial stability of a natural gas company is to require, not that the company's profitability must be somehow assured, but that the rate be higher than a confiscatory level. See FPC v. Texaco Inc., 94 S.Ct. 2315, 2323 (1974). Merely because the rates at issue in Hope (and also in Jersey Central) were based on the traditional cost-of-service methodology cannot lead to the conclusion that either of the cases mandates cost-of-service. Further, the Commission has never interpreted those cases to stand for such a proposition.

In determining just and reasonable rates for producers' well-head sales under sections 4 and 5 of the NGA, the Commission abandoned cost-of service based rates and established, first, area rates, affirmed by the Supreme Court in Permian Base Area Rate Cases, 390 U.S. 9 (), and, later a national rate, affirmed by the Court of Appeals, see, cf, Shell Oil Co. v. FPC, 520 F.2d 1061 (1975). In Shell, the D.C. Circuit limited its ability to review the FPC's approval of a national rate to determining whether, under the "end result" test,

the order protects the consumer against excessive rates and charges; and

the order is consistent with the maintenance of adequate service in the public interest.

Id., 1073. On determining whether the Commission should consider certain cost of service factors in setting a national rate or the commodity valuation of gas production, the Court did not state, nor in any way imply, that the just and reasonable standard require cost-of-service ratemaking. To the contrary, the Court notes only that the "Commission's long and often judicially approved practice of basing rates on cost carries a substantial presumption of validity." Id., 1084. Cost-of-service based rates are only presumed to be just and reasonable; they are not required for just and reasonable. Indeed, the Court's decision indicates that should a party demonstrate that the "net effect"

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of such a cost-based rate is "improper," and does not satisfy the end-result test, the rate could be determined unlawful under the just and reasonable standard. Id.

As part of its industry restructuring under Order No. 636, the Commission has approved market-based rates under its sections 4 and 5 authority. In Elizabethtown Gas Co. v. FERC, 10 F.3d 866 (1993), parties challenged the Commission's approval of market-based pricing for gas sales made by Transcontinental Gas Pipeline Corporation. They argue that market-based pricing "constitutes 'virtual deregulation' and is utterly at odds with [the Commission's] NGA obligation to insure that rates are cost-based so that consumers will be protected from abuse at the hands of natural gas companies," maintaining that the Commission "was required to adhere to its historical policy of basing rates upon the cost of providing service plus a fair return on invested capital." Id., 870. The court expressly denies any such requirement. It cites the Supreme Court's statement in Mobil Oil Exploration v. United Distribution Co., 498 U.S. 211, that it 'has repeatedly held that the just and reasonable standard does not compel the Commission use any single pricing formula.' It refers to its own previous decision that "when there is a competitive market the FERC may rely upon market-based prices in lieu of cost-of-service regulation to assure a 'just and reasonable' result, citing particularly, Tejas Power Corp. v. FERC, 908 F.2d 998, 1004 (D.C. Cir. 1990) ("In a competitive market, where neither buyer nor seller has significant market power, it is rational to assume that the terms of their voluntary exchange are reasonable and specifically to infer that the price is close to marginal cost, such that the seller makes only a normal return on its investment").

The Commission has also approved market-based pricing for jurisdictional storage services where the natural gas company has demonstrated a lack of market power over potential customers. See, e.g., Koch Gateway Pipeline Co., 66 FERC Para. 61, 385 (1994). These cases were considered pursuant to the Commission's recent "Alternatives to Traditional Cost-of-Service Ratemaking Policy Statement," 74 FERC Para. 61, 076 (1996). Generally, the Policy Statement provides for an examination of the relevant product, such as the gas commodity, storage services, etc., and the geographic markets, firm size and market concentration, and ease of entry into the market to determine whether market-based rates if charged by the applicant company are just and reasonable.

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Clearly, just and reasonable under sections 4 and 5 of the NGA and as defined in NGA case law does not require the use a cost-of-service methodology, nor does it mandate the use of any other methodology. The rate's end result must protect the consumer from excessive rates and charges by a natural gas company, while providing the company a rate that is not confiscatory. Under this end-result test, a rate is just and reasonable.

I have also enclosed with this memorandum excerpts from Energy Policy: The REEL World; Cases and Materials On Resources, Energy and Environmental Law by Professor Marla Mansfield (1996). These excerpts support this memorandum's conclusion that the just and reasonable standard does not mandate a cost-of-service methodology. Many of the cases she cites and includes in the text involve state utility regulation, in addition to federal regulation under the NGA.

BEFORE THE KANSAS HOUSE OF REPRESENTATIVES  
ON HOUSE BILL 2332

FEBRUARY 20, 1997

Comments  
of

PAUL A. CLARK

506 W. 8th Street  
Amarillo, Texas 79101

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My name is Paul Clark. I am an independent Landman and producer in the Mid-Continent area, being Western Kansas and Oklahoma and the Texas Panhandle. I never thought I would speak in public ---- let alone in front of the Kansas House of Representatives ---- but this issue affects my future livelihood and, as awkward as I am at this, I must.

The natural gas gathering deregulation issue already has had drastic ramifications on the future of Kansas' drilling and the development of its gas reserves. I know because I have seen it and been hurt by it. As a landman, I work with geologists and independent operators putting together drilling prospects, many of these in Kansas. In developing these prospects, naturally the primary factor has always been the geologic merit of the wells to be drilled. These days there is another question that is of equal importance, the gas market. You may have an idea with good potential, but if you are not in close proximity to a main line, no one will touch it. That means no potential for me to make money, none for the landowners and none for the taxing entities either! These pipelines have the producers in a hostage situation. I deal with this everyday and have seen many good ideas go undrilled. For example, we had a chance to drill quite a few wells on the edge of the Hugoton field in Kearney and Finney Counties, but we did not drill them because the only line in the area was Panhandle Eastern. To pay them the exorbitant fees demanded, and pay to lay lines to connect to them, made the economics not worth the risk of drilling the wells. We were ready to spend the money but did not, and primarily for the reason I am here today.

There are instances where competition is present and gathering charges are fair. On the Adams Ranch in Southern Kansas, we sell gas on a C.I.G. line in a competitive situation and we pay .10 cents per MCF. Just a few miles away, on the same ranch, in a non-competitive situation, to get the gas sold on a Panhandle Eastern line, we pay .25 cents per MCF. This is the same region, the same gas quality, so why is it not the same fair deal?

To me, it all boils down to that question --- why?

- \* Why are these companies spending all this money lobbying you?
- \* Who benefits from what these companies want?
- \* Why are all these companies spinning off their pipelines into wholly owned subsidiaries?
- \* Why are these pipelines more valuable now than ever before?
- \* Why are there larger administrative staffs, and more landmen in these spin-off companies than in their parent companies?
- \* Why is it that GPM, the spin-off company of Phillips Petroleum (who also purchased a large share of Northern Natural Gas' lines in Western Kansas) made so much money last year --- as a gas gatherer --- that they had to find ways to funnel this money into their parent company?
- \* Why do these companies want to get one price for transporting our gas now, and, if in the future we can get a better price, they want to get an increase in their cut to transport the gas?
- \* Why is all this necessary?
- \* Who does it benefit?
- \* Does it benefit the producers, who are the people that are actually generating this income that the pipelines are taking as big a cut of as they can?
- \* Does it benefit your constituents?

Don't they always say that to get to the truth just follow the money?



In this current environment, we should be drilling as many good wells as we can. And we can only get them drilled in a fair, equitable and competitive environment. There is a fair price for gathering services and for transportation. Unfortunately, we do need State regulation to see that these companies are only going to charge fairly. And we need the State regulation to keep our gas, the landowner's royalties and the State's taxes from being held hostage by unfair tactics.

Thank you.

Appearance Before  
KANSAS HOUSE OF REPRESENTATIVES  
Supporting HB #2332

By  
Dan Dalke

I. Introduction

A. Background

1. I am Controller for American Warrior, Inc., an oil and gas producer in western Kansas, and I also handle the responsibility of all of our gas marketing.
2. We own and operate a number of wells, mostly which produce oil, but including 43 gas wells in 12 counties on 13 different pipelines and currently 13 different purchasers and/or marketers. A brief schedule of these is included. In addition, over the past couple weeks and currently, we are hooking up six new wells on four different pipeline systems.
3. As a result of the variety of arrangements we have had and currently have, we do have some familiarity with gas gathering and marketing in our state.

B. Our major concerns

1. Gathering pipelines are a monopoly; there is no practical alternative or option.
2. A reasonable and understandable charge is all that the gas producers can bear.
3. Common access to the interstate pipelines through gathering lines on a reasonable basis is an economic necessity for the producer, the consumer and our communities.
4. We are not requesting burdensome regulation, but practical administrative monitoring.

II. Monopoly - absence of competition or options

A. There is no option to another gathering line, most often, and where options do exist they are impractical.

1. Locations for drilling wells (oil or gas) are determined by geology and seismic data for the most likelihood of good production, not proximity to existing pipelines.
2. Once a well is drilled and tested, the closest possible pipeline is usually the only practical alternative.

B. Where an alternative does exist, the option is often cost prohibitive.

1. Cost to acquire and install pipeline to connect to a gathering line is around \$7.50 per foot, and can even be higher if expensive easements are required.
2. An alternate gathering line, if any, may be from one to five miles, costing an additional \$40,000 to \$200,000.
3. If such an alternative saved \$.15 per MMBTU in gathering rates, it would require 89 months to recover

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the cost of one mile for an average well of 100 MCF per day, and 222 months for stripper wells of 40 MCFD.

4. We have several examples of just that situation, three of which are:

Well	County	Curr P/L	Distance to New P/L	Est'd Cost	Months to Recover
Johns	Stanton	WNG & KN	6 Mi	\$240,000	1,428
Moore	Edwards	KN	3 Mi	\$120,000	248
Prater	Seward	CIG/NNG	4 Mi.	\$160,000	444

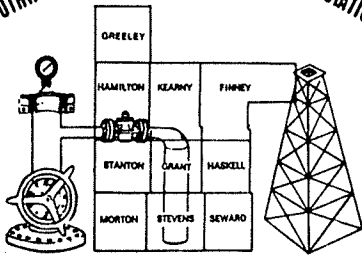
- C. Spin-downs, mergers and sales currently occurring between pipelines increase our concern for the extent of these monopoly situations.
1. They are allowing the anticipated increases to happen more promptly, already:
    - a. The sale of certain lines from NNG/Enron to GPM did result in an increase of over \$.06 per MMBTU.
    - b. The proposed sale of lines from NNG/Enron to KN will result in an increase of \$.22 per MMBTU in the next year.
  2. They are setting up the ability for significant, unchecked increases in the near future with no recourse.

III. A reasonable charge allowing a reasonable profit is expected, but already current charges are confusing and often excessive.

- A. Our current arrangements range from no charge for gathering, where the liquids are being taken and we receive some portion of credit, to over \$.50 per MMBTU, including both the gathering rate on the units of volume and a fuel surcharge as a percentage of the dollar volume moved.
- B. These charges can and do become quite excessive, such as our Moore lease in Edwards County:
- |  |                |
|--|----------------|
| Gathering charge per MMBTU is                | <u>\$.51</u>   |
| Gathering charge per month at 70 MCFD is     | <u>\$1,071</u> |
| As a percent of revenue at current price is  | <u>17.9%</u>   |
| As a percent of revenue at a price of \$1.25 | <u>40.8%</u>   |
- C. These charges seem excessive to us when the pipeline companies are already recovering their additional investments through additional pricing arrangements, such as our Nielsen 1-33 well in Comanche County which we are just now hooking up:
- |  |                 |
|--|-----------------|
| Gathering charge per MMBTU is  | <u>\$.4325</u>  |
| Gathering charge per month at 500 MCFD is                                | <u>\$6,488</u>  |
| Cost of installation by KGS (est'd)                                      | <u>\$18,000</u> |
| Additional recovery per agreement (estimated per MMBTU at current price) | <u>\$.0855</u>  |
| Period to recover installation by additional charge (est'd)              | <u>14 mo.'s</u> |
- D. A reasonable profit is expected and not resented, but some process is needed by which excessive charges can be reviewed and contested.

- IV. Continuity of a common access to the interstate pipeline system is not only an economic necessity for our industry, but a public responsibility.
  - A. Domestic production of gas is not only a social and economic preference, but, unlike oil, it is also a necessity for our national consumption.
  - B. The price-gouging in pipeline gathering, which is already beginning and will potentially worsen, will result in the loss of numerous gas wells, particularly "stripper (or low production) wells", with a significant economic impact on:
    - 1. Independent producers, such as us,
    - 2. Kansas communities from the loss of land-owner royalty income and well-servicing revenues, and
    - 3. Consumers, locally and across the country, from ultimately higher gas prices.
  - C. To the extent that some wells may have some valid alternative to lay line to another gatherer, this process will still be:
    - 1. An unjustified economic burden to that producer,
    - 2. An unjustified windfall benefit to the gatherer, and
    - 3. A chaos of pipeline construction with public nuisance and even dangerous risk.
- V. Nobody, including us, want burdensome over-regulation.
  - A. The proposed bill is not simply an attempt to replace federal regulation with equally burdensome state regulation.
  - B. We are simply trying to provide for administrative monitoring that may discourage abuse and will provide some means of recourse if such abuse does occur.
- VI. Conclusion - We respectfully request your sincere consideration of House Bill 2332 and a vote in favor of it.

SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION



PHONE (316) 544-4333  
FAX (316) 544-2230

209 EAST SIXTH STREET

P.O. BOX 250  
HUGOTON, KS 67951

STATEMENT OF  
ERICK E. NORDLING, EXECUTIVE SECRETARY  
SOUTHWEST KANSAS ROYALTY OWNERS ASSOCIATION  
HUGOTON, KANSAS 67951

RE: HOUSE BILL NO. 2332

February 20, 1997

To the Honorable Members of the House Committee on  
Utilities.

INTRODUCTION

Mr. Chairman and Members of the Committee:

My name is Erick E. Nordling of Hugoton. I am Executive Secretary of the Southwest Kansas Royalty Owners Association (SWKROA). I am appearing on behalf of members of our Association and on behalf of Kansas royalty owners to support House Bill No. 2332. I served as a member of the Gas Gathering Task Force which the 1996 Legislature and Governor Graves charged to study this issue.

BACKGROUND ON SWKROA

SWKROA is a non-profit Kansas corporation, organized in 1948, for the primary purpose of protecting the rights of landowners in the Hugoton Gas Field. We have a membership of over 2,500 members. Our membership primarily consists of landowners owning mineral interests in the Kansas portion of the Hugoton Field who are lessors under oil and gas leases, as distinguished from oil and gas lessees, producers, operators, or working interest owners.

GAS GATHERING LEGISLATION

As you are aware, the 1996 Legislature passed legislation directing the Governor to create a Gas Gathering Task Force to study the issue of whether and how to regulate gas gathering in the State of Kansas. The Bill, (Senate Substitute for House Bill No. 2041) also directed the Task Force to study the implications of gas gathering for royalty owners.

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PRESIDENT,  
JACK HAYWARD

EXECUTIVE SECRETARY,  
ERICK E. NORDLING

ASS'T SECRETARY,  
B. E. NORDLING

ASS'T SECRETARY,  
WAYNE R. TATE

The Task Force, following a great deal of testimony and discussion, approved (11-1) that Kansas should have legislation to regulate gas gathering. We support House Bill No. 2332 which would require the regulation of gas gathering, as well as address other concerns of royalty owners and irrigators, but we believe the bill does not go far enough in its regulations.

IMPLICATIONS FOR ROYALTY OWNERS

Royalty owners believe that their royalty interests are not subject to deductions of gathering charges under Kansas law.

Historically, lessees have not assessed their royalty owners with any exploration, production or operating costs, including gathering charges, for the simple reason the lessees are prohibited from deducting any portion of such expenses from royalty payments to make the gas marketable unless the lease clearly and unambiguously authorizes such deductions. In recent months, however, lessee-producers have arbitrarily begun making deductions from royalty checks which the oil and gas industry is calling "post production" expenses. Some of these deductions are made, often without disclosure. Among these deductions, we are beginning to see the term "gathering charges," which is not a post production expense.

The Supreme Courts of Kansas, Oklahoma and Colorado, under the implied covenant to market, have all held that lessees cannot deduct any expenses incurred to prepare the gas for market, regardless of where such activities occur. Under these holdings, "production costs" clearly are not deductible.

Task Force member Timothy E. McKee, and Chairman of the Kansas Corporation Commission, acknowledges that gas gathering is a part of the production process. In his prepared statement made to the Special Committee on Energy and Natural Resources on August 23, 1995, with regard to gas gathering issues, he closed his remarks with the following statement:

"Because gas gathering is an integral part of the entire conservation business of the Commission and an essential link in providing reliable and reasonably cost energy services to the citizens of this state and the nation, the Legislature should not leave the Commission handcuffed with respect to its regulatory power. There is no question that gas gathering has an essential role in the production process and therefore an impact on correlative rights and possible waste of natural and economic resources." (Emphasis ours).

As such, if a royalty owner is being charged for a share of the gathering expenses, (Although, as stated above, we believe it is an improper deduction from royalty.) then such charges should be reasonable. We support the informal procedure before the KCC and regulation under the utility statutes if competitive market conditions do not exist.

We also support the provisions in House Bill No. 2332 requiring rate information to be provided.

#### IMPLICATIONS TO IRRIGATORS

Many members of SWKROA are also irrigators. Irrigators could be more directly impacted by gathering charges than royalty owners. Several issues should be addressed which will impact irrigators. First, since most irrigation gas sales are made at the wellhead, it is questionable whether they should be subject to any gathering costs.

If gathering prices were posted, it would help the irrigator to enter into a agreement to purchase gas with at least some knowledge of what other irrigators are paying for gas and gathering charges. This would help them to negotiate a reasonable rate. The irrigator is similar to a small independent producer in that they would not have the clout (volumes of gas purchased/sold) or knowledge to deal with the gas gather as would a large volume customer for the gas gatherer.

Access is also another important issue. "Open Access" should be viewed as both access onto a gathering system (sale of gas - ie. producers) and access off of the system (purchase of gas - ie. irrigators). Your legislation should address both of these areas.

There should be no exit fees charged if an irrigator changes to another gas supplier.

Many farmers would be willing to purchase gas from the wellhead, gathering system, or even a transmission pipeline near their property for other uses, such as: household, shops, compressed natural gas vehicles, and other agricultural uses. Often the gas producers, gas gatherers, or gas transport companies claim they cannot sell gas for such uses because they do not want to be treated as a public utility, or the "service area" has already been certificated to another company. It seems a shame that, although we are fortunate to have one of the largest gas fields in the world, the gas is often unavailable or not affordable to those users closest to the supply.

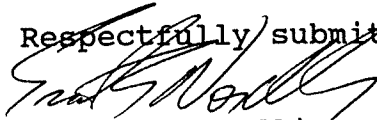
House Bill No. 2332 appears to address these issues.

SUMMARY

In summary, we urge your favorable consideration of House Bill No. 2332.

Thank you for this opportunity to present these concerns to your honorable committee.

Respectfully submitted,



Erick E. Nordling,  
Executive Secretary, SWKROA

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