

Approved: Feb. 4, 1997
Date

MINUTES OF THE SENATE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Pat Ranson 1:30 p.m. on January 28, 1997 in Room 123-S of the Capitol.

All members were present except:
Sen. Sallee was excused

Committee staff present: Lynne Holt, Legislative Research Department
Fred Carman, Revisor of Statutes
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
Tim McKee, Chairman, Kansas Corporation Commission

Others attending: See attached list

Chairperson Ranson called the meeting to order and recognized Sen. Morris, who requested a bill be introduced which would disallow exit fees in natural gas operations. Sen. Morris made a motion the bill be introduced, and it was seconded by Sen. Clark; the motion passed.

Sen. Ranson announced the deadline for bill introductions is Monday, February 3 and that bill requests should be brought to the committee this week and that Sen. Sallee has two bills to be introduced, and he anticipates they will be ready on Thursday.

Sen. Ranson called the committee's attention to the Committee Minutes of January 21 and 23 (Attachment 1). Sen. Barone made a motion the Minutes for both meetings be approved, and it was seconded by Sen. Clark; the motion passed.

Sen. Ranson announced two articles have been distributed to the committee - one on high gas bills from the Kansas City Star, dated January 24, and one from the Wall Street Journal, dated January 27, on telecommunications.

Sen. Ranson also announced there will be a 2-day conference this week-end at Wichita State University which is sponsored by the Center of Urban Studies. Since members will not be able to attend, she has requested a video of the four sessions, and they will be made available to committee members and others who may be interested.

Sen. Ranson then introduced Tim McKee, Chairman of the Kansas Corporation Commission, who briefed the committee on gas gathering issues. He referred to the Gas Gathering Report (Attachment 2), which has a map of the gas gathering system attached. He also referred to another map of Natural Gas Pipelines and Certified Areas (which is available from the Kansas Corporation Commission). He also discussed court action in the District of DC which challenged the authority of FERC, wherein the Court found FERC did not have authority to regulate gas gathering. Mr. McKee suggested that the Legislature allow the KCC to regulate gas gathering and encouraged this committee to take action by amending Chapter 66. He further explained that under Chapter 55 and the Conservation provision, the KCC can regulate gas gathering now based on complaints, which would be filed with the KCC for investigation and action. He pointed out examples of other states and their handling of the gas gathering question and stated that Oklahoma adopted complaint-based legislation, and Texas has an internal policy practiced by the Railroad Commission (agency similar to KCC). He furnished the Informal Procedure for Responding to Complaints about Gas Transportation Service filed by the Railroad Commission of Texas (Attachment 3).

Mr. McKee continued by discussing Conclusions and Recommendations as outlined in the Gas Gathering Report and the proposed complaint-based statute and also referred to **HB 2041-contractor/subcontractor has six months to file a lien against nonresidential property** and discrimination and undue or unfair practices. He also stated the KCC can regulate gas gathering as a utility if it finds a company engaging in monopolistic practices. Another recommendation provides for the KCC to invoke mediation before a formal hearing is held. Mr. McKee stated the Legislature should decide if it will adopt the rate of return

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON UTILITIES, Room 123-S-Statehouse, at 1:30 p.m. on January 28, 1997.

concept or the complaint form of regulation.

Mr. McKee answered questions from the committee regarding KCC regulating as a common carrier and changing the definition in Chapter 55 and the publishing of rates. Charges for moving gas are contained in the contracts, which some believe are proprietary; therefore, some producers do not want to publish those charges. Other issues discussed was representation by an attorney, if the state is mandated by FERC to regulate gas gathering and if there is a pressing need to regulate. Mr. McKee stated there is no mandate for the state to act - that it can do nothing; that Oklahoma passed their complaint-based law in 1993, then tuned it up in 1995 and have had nine complaints, four of which have been settled. He believes the complaint-based concept is a tool and a deterrent to problems.

Sen. Ranson asked Mr. McKee if the KCC is planning on bringing proposals to the committee for consideration, and Mr. McKee answered it depended upon legislation being drafted from the Task Force Recommendations, which Sen. Sallee is bringing to the committee. Sen. Ranson reminded Mr. McKee of the deadline which is next week. She also asked Mr. McKee what, specifically, the KCC regulates at this time, and Mr. McKee answered the KCC regulates pipeline safety and rate charges for intrastate lines. Sen. Steffes discussed the amount of gas moving out of the state, and Sen. Ranson stated the committee may wish to look at the Texas recommended Code of Conduct format.

The Chairperson announced the agenda for the remainder of the week, and the committee adjourned at 2:30.

The next meeting is scheduled for January 29, 1997.

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: JAN. 28, 1997

NAME	REPRESENTING
<i>James Smith</i>	KCC
<i>James Higgins</i>	"
<i>Jim Guckel</i>	"
<i>TERRY HOLDREN</i>	STEVE KEARNEY LAW OFFICE
<i>Leslie Kaufman</i>	Ks Farm Bureau
<i>John White</i>	U.U. Law School
<i>Lisa VanMeter</i>	Intern for senator Steffes
<i>Mike Wallat</i>	_____
<i>Ired Carna</i>	Parsons
<i>Don Schunk</i>	KI OGS
<i>Montgomery Esene</i>	CCE
<i>Doug Smith</i>	SWKROA
<i>Bernard Nordling</i>	SWKROA
<i>Ken Peterson</i>	KS Petroleum Council
<i>Mari Ramsey</i>	The Williams Companies
<i>John Leallen</i>	
<i>Janie Clover Adams</i>	Governor's office
<i>Angela Debe Kamp</i>	Sen. Debe Kamp's office
<i>Paul Glavin</i>	PH-KM's Office

Approved: JAN. 28, 1997
Date

MINUTES OF THE SENATE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Pat Ranson 1:30 p.m. on January 21, 1997 in Room 531--N of the Capitol.

All members were present

Committee staff present: Lynne Holt, Legislative Research Department
Fred Carman, Revisor of Statutes
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
See attached

Others attending: See attached list

Chairman Ranson called the meeting to order and called the committees' attention to two articles distributed to the committee: article from the Wall Street Journal and from the Gas Daily. Sen. Ranson then introduced Louis Stroup, Jr., who requested a bill be introduced (Attachment 1). Sen. Clark made a motion the bill be introduced, and Sen. Steffes seconded the motion; the motion passed. Two proposals (Attachments 2 and 3) from the Interim Committee on Gas Gathering were distributed to the committee, and Sen. Sallee stated he hopes to have bills drafted to present to the committee Thursday or early next week.

Sen. Ranson introduced Tim McKee, Chairman of the Kansas Corporation Commission. Mr. McKee introduced John Wine and Susan Seltsam, KCC Commissioners and other staff members. Mr. McKee referred to an organizational chart (Attachment 4) and introduced Judith McConnell who explained the functions, responsibilities and scope of the Commission (Attachment 5).

Committee members asked questions of Ms. McConnell, and Mr. McKee and members discussed the mission of the Commission, which is to protect public interest, to provide good customer relations and to be impartial; the possibility of conflict of interest, particularly in the Legal Division, was also discussed. During the discussion, Mr. McKee referred to a post audit of the Commission, and Sen. Ranson suggested the committee be briefed and directed staff to schedule it sometime in the future

Sen. Ranson then recognized the three pages from Liberal assisting the committee today and asked each one to introduce himself.

Mr. McKee introduced Karen Matson, who explained the Telecommunications Division (Attachment 5) and distributed maps of telephone exchange areas to the committee. She also distributed the Executive Summary of the Phase II Competition Order (Attachment 6).

Committee members asked questions regarding the Summary, urban vs. rural lines and quality of service. Also discussed were requirements for eligibility for KUSF and the FCC Decision. Sen. Ranson questioned Ms. Matson regarding the Telecommunications Order and the remedy for those in disagreement with that Order. Ms. Matson answered that the Issues for Reconsideration is due February 3 or 4, then if there are Appeals, it will be taken to the Courts. Parties to the proceedings will be represented, and she referred to HB 2728, passed last session, which set up the framework for the Telecommunications Act and the subsequent Order. Sen. Ranson suggested it would be beneficial for the committee to be briefed on the Order after it is received.

Mr. McKee introduced Glenda Cafer, who gave a brief Overview on the Utilities Division. (Attachment 7).

Meeting adjourned at 2:35.

Next meeting is -
Thursday, January 23.

Approved: JAN. 28, 1997
Date

MINUTES OF THE SENATE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Pat Ranson 1:30 p.m. on January 23, 1997 in Room 531--N of the Capitol.

All members were present except:
Sen Jones was excused

Committee staff present: Lynne Holt, Legislative Research Department
Fred Carman, Revisor of Statutes
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
See attached list

Others attending: See attached list

Chairperson Ranson called the meeting to order and made several announcements - Sen. Downey will no longer serve on this committee, and will be replaced by Sen. Jones, who is out of state today. She also asked the committee to read the Minutes, which have been distributed, along with a listing of internet energy sources, and an article from the Wichita Eagle regarding customers switching long distance carriers. The Chair also announced the agenda for next week will be on gas gathering and pricing of natural gas and the committee will meet on Tuesday, Wednesday and Thursday in Room 123-S.

Sen. Ranson then referred to the Minutes of January 16 (Attachment 1) and asked for action on the Minutes. Sen. Barone made a motion the Minutes be approved, and Sen. Steffes seconded the motion; the motion passed.

The Chair recognized Sen. Lee, who proposed a conceptual bill to the committee (Attachment 2), which would bring municipal utilities and REA's under the same cold weather rule as other utilities have been. This bill would allow civil penalties and attorney's fees; she then asked for suggestions as to how to make it enforceable. Sen. Lee made a motion it be introduced as a committee bill, and it was seconded by Sen. Steffes; the motion passed.

Sen. Ranson then introduced Dave Heinemann, who is general counsel for the Kansas Corporation Commission, who briefed the committee (Attachment 3) on legal activities of the Commission. He spoke of involvement with the Federal Energy Regulatory Commission, the FCC and other federal agencies. He announced a change which involves the appointment of two attorneys to work with the Commission, as the other attorneys work with staff. He also mentioned an Advisory Staff appointed by the Commission and that the response to this change has been positive. He issued an open invitation to committee members to come to the Commission office to meet staff and to observe the Commission at work.

Sen. Ranson introduced Larry Holloway, Chief of Electric Operations, who briefed the committee (Attachment 4) and referred to a grid (Attachment 5) which depicts current industry, wholesale competition and retail wheeling. He also referred to a map outlining electric power areas, transmission lines and power plants in Kansas. He also furnished copies of sales and revenue of 1995 for electrical services (Attachment 6), which will be discussed in committee later. Sen. Ranson asked about pilot projects of other states and requested that Ms. Holt furnish those to the committee. Committee members expressed interest in other states' activities and those will also be discussed later.

Sen. Morris asked questions regarding the 240-day time limit, and Mr. Heinemann explained the procedures.

Meeting adjourned at 2:30.

Next meeting will be January 28, 1997.

ATTACH 2



Kansas Corporation Commission

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

MEMORANDUM

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

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

DATE: February 29, 1996

RE: Gas Gathering Report

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

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

SENATE UTILITIES
1-28-97
ATT 2

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

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

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

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

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

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

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

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

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

This report is also being supplied to the members of the Senate and House Committees on Energy and Natural Resources. The following is a summary of the different positions taken by the parties in the public hearings. Those who were designated to receive this report are receiving a complete notebook which includes the transcripts of the three hearings. Also included are written statements which were submitted by both witnesses who appeared and testified and those who only submitted writings. We have also prepared a specific summary of each individual witness's testimony which is included.

kdd

Summary of Public Testimony and Written Comments

Small Eastern Kansas Operators

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

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

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

Local Governmental Units

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

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

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

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

Large Gas Gatherers and Producers

Testimony from this group came from representatives of two large gathering systems and two large producers who favored a "light-handed" approach under Chapter 55 of the Conservation Statutes. Where truly free market conditions do not exist, a case by case complaint forum should be established to determine individual gathering rates. This group supports H.B. No. 2041 which grants the Commission authority to regulate gas gathering systems. They also favor the complaint forum as enacted in Oklahoma.

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

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

Mid-Sized Producers Favoring Chapter 66 Regulation

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

Independent Producers

This group believes that H.B. No. 2041 in its present form is inadequate to prevent the abuse that is inherent with a monopoly. As a whole this group favored regulation under Chapter 55. They do not believe sufficient competition exists in the gas gathering business to warrant a non-regulatory policy. This group would favor more expansive regulations such as those used in Oklahoma but stopping short of Chapter 66 regulation. They fear that a utility approach would be overly expensive.

Irrigators and Agricultural Interests

Six witnesses fell into this category, all from Western Kansas. Irrigators use approximately four to five percent of the total production from the Hugoton field for irrigation purposes. This group believes that any legislation should require equal access for the use of gathering and/or main pipelines, that the KCC should monitor good faith negotiations between carriers and irrigation users, that charges for pipeline transportation should be based on sound and fair economics, that rates should be made public by way of filings with the KCC and that any regulation adopted should not adversely effect the economic returns to the Southwest Kansas area. This group favors open access to permit anyone to tap into the gathering lines and purchase irrigation gas. They believe that deregulation has already resulted in escalating costs of natural gas with respect to the operation of irrigation wells. These parties are greatly concerned with the dwindling pressures and the life expectancy of the Hugoton field. They believe that deregulation of transportation without government oversight will create monopolies and thereby deny equal and fair access to the pipelines.

Gas Storage

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

Conclusion and Recommendations

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

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

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

The Commission requests that the Legislature grant sufficiently broad statutory authority to the Commission to complement and augment the authority already existing in K.S. A. 55-701 through 713 by the addition of three statutory sections as are shown on Appendix "A" attached hereto and so that the two are in harmony a modified version of H.B. 2041.

Appendix "A" was drafted by the Commission after consideration of the evidence offered by mineral and royalty owners, the lessee, producer (regardless of size), the gathering interests, the farmer/irrigator, and the public generally in the public hearings.

By way of explanation the Commission is attempting to accomplish the following with its draft of proposed legislation in Appendix "A" by allowing the Commission to:

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

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

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

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

Respectfully Submitted,

The Kansas Corporation Commission

APPENDIX "A"

PROPOSED LEGISLATION

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

55-712. (a) No person offering services for the gathering of natural gas for a fee or other consideration shall engage in any unduly discriminatory services or offer gathering services for a fee which is, or otherwise anti-competitive.

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

55-713. Any aggrieved party as referred to in this act shall be required to allege and prove to the satisfaction of the corporation commission that the operator of the natural gas gathering systems which is offering services for a fee or other consideration has sufficient facilities to accommodate the producer's natural gas, that there is no other natural gas gathering system conveniently located to gather the complainant's gas and willing to do so; that the quality of complainants's natural gas will not have an adverse affect of the gatherer's facilities or the safety thereof and is of a quality and content consistent with gas being gathered by the gathering entity.

55-714. (a) Upon proof satisfactory to the commission, the commission shall have authority to require any gas gathering entity to provide open access and non-discriminatory gas gathering and to establish a fee for such gathering services.

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

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

55-715. (a) This act shall not apply to: (1) the gathering of natural gas produced from wells owned and operated by the gatherer and where the gathering system is used exclusively for its own private purposes (2) to lead lines from the wellhead to the connection with the gathering system which are owned by the producing entity and (3) to gathering systems used exclusively for injection and withdrawal from natural gas storage fields.

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

55-716. Enforcement of act; agents. The commission is hereby authorized to employ or designate such agents as may in its judgment be necessary to enforce and administer the provisions of this act, and the rules and regulations and orders promulgated thereunder. Such agents, with the exception of clerical help, to be experienced in and conversant with the business of the production of natural gas.

55-717. Invalidity of part. If any clause, sentence, section, provision, or part of this act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not invalidate, impair, or affect the remainder of this act, which shall remain in full force and effect.

HOECKER, OTHERS PONDER NEW REGULATORY ENVIRONMENT FOR GATHERING

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

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

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

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

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

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

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

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

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

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

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

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

INFORMAL PROCEDURE FOR RESPONDING TO COMPLAINTS
ABOUT GAS TRANSPORTATION SERVICE

The Railroad Commission has established a Helpline at (512) 463-7077 that may be used to register complaints about natural gas transportation services (both gathering and transmission services). Calls to the Helpline will be taken by a receptionist from 8:00 a.m. to 5:00 p.m. on all regular Commission workdays. A voice-mail system will be in place to receive any calls during non-business hours.

The following procedure will be used to process complaints registered on the Helpline. The procedure does not require that legal counsel be hired to pursue resolution of a complaint.

1. The receptionist receiving the Helpline call will record preliminary information concerning the complaint and forward the call to a Special Projects Director in the Regulatory Analysis and Policy (RAP) section.
2. The Special Projects Director taking the call will document the complaint by recording information based on a standardized set of questions. *{{attached}}*
3. The Special Projects Director will direct the complaining party ("complainant") to submit its complaint in writing, along with supporting documents, if the complainant wishes to pursue the matter. The complainant will be directed to send a copy of these materials to the party which is the subject of the complaint ("respondent").
4. The Special Projects Director will contact the respondent by telephone within one business day to inform it that a Helpline complaint has been received. The respondent will be told that upon receipt of the written complaint, the Staff will send a copy of the complaint to the respondent with a cover letter *{{attached}}* asking it to reply to the complaint within 14 days (with a copy of the reply to the complainant).
5. After receiving the written complaint, the Special Projects Director will send the respondent a copy of the complaint and cover letter asking for a reply within 14 days.
6. The Special Projects Director will begin preliminary research of the complaint, and will seek technical and legal assistance from the Economic and Statistical Analysis section,

the Oil & Gas Division, and the Office of General Counsel as needed.

7. If resolution of the complaint is not reached within 30 days from the date the written complaint was received by the Commission, the Special Projects Director will:
 - Set an informal meeting with the parties, with the Special Projects Director acting as a facilitator between the parties, if the parties agree to such a meeting, or
 - Refer the matter to the Office of General Counsel to be set for hearing if requested by either party, or if the respondent has not filed a timely response to the complaint.
8. An internal report of all complaints received will be maintained by RAP personnel and will be circulated on a regular basis to the Commissioners, the Director of the Gas Services Division, and the General Counsel.
9. Anonymous complaints will not be processed.
10. The Staff may ask for additional written information of either party at any point in the process.

Approved this 26th day of November, 1996.

**PRELIMINARY INFORMATION
INFORMAL GAS TRANSPORTATION COMPLAINT**

Name of Person Registering Complaint _____

Company Name _____

Company Address _____

Company Phone Number _____

Date and Time of Complaint _____

Person Receiving Complaint _____

Description of Complaint _____

How long has the problem described in the complaint been going on?

Has complainant made contact with the party which is the subject of the complaint? _____

If answer is "No," why not? _____

If answer is "Yes," then what response did the complainant receive? _____

What is the current status of negotiations between the complainant and the party about which the complaint has been made? _____

Describe any other actions the complainant has taken to resolve the problem. _____

What is the relief sought by the complainant? _____

END

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