

Approved: MARCH 6, 1997
Date

MINUTES OF THE SENATE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Pat Ranson at 1:30 p.m. on February 17, 1997 in Room 313-S 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:

Rep. Joann Freeborn, Member, Task Force on Gas Gathering
Steve Dillard, member, Task Force on Gas Gathering
Charlie Wilson, Member, Task Force on Gas Gathering

Others attending: See attached list

Chairperson Ranson announced the committee will hear testimony on **SB 148-relating to natural gas gathering systems, providing for regulation of certain entities; certain natural gas public utilities and common carriers**. Sen. Ranson first briefed the committee on the Report of the Task Force on Gas Gathering and referred to the fiscal note. The following proponents testified:

Rep. Joann Freeborn, (Attachment 1);
Steve Dillard, (Attachment 2);
Charles Wilson, (Attachment 3)

The committee asked questions of the proponents, beginning with Rep. Freeborn, who explained the makeup of the Task Force and the opposition encountered resulting in the Minority Reports. Mr. Dillard, who stated he represented the independent producers on the Task Force, also stated support from Kansas Independent Oil and Gas Association. Mr. Dillard also stated the Task Force did not want to create another bureaucracy and wanted to eliminate the problems with having to hire an attorney for representation before the Kansas Corporation Commission. He stated the proposed draft would not require representation of an attorney and that the Task Force envisioned an informal process.

Sen. Barone asked questions regarding defaulting on contracts, and Mr. Dillard cited problems with contracts, as some will soon expire and wells will have to be shut down. He emphasized the need for an informal process and rules to operate.

Mr. Wilson emphasized that new regulation is not wanted and the need for informal mediation. Sen. Lee questioned the number of independent producers in Kansas and what percentage of production is by major oil companies. They also discussed price posting and price transparency and why KIOGA objects to posting prices. Mr. Wilson admitted prices are set by natural competition, and that prices will accelerate as oil fields decline, as is the case in the Hugoton area. Sen. Barone also questioned Mr. Wilson regarding specific problems and monopolistic practices. Sen. Barone also questioned Mr. Wilson on the confidentiality clause and why it is in their recommendations.

Sen. Ranson announced the committee will hear a Minority Report from Tim McKee, Chairman of the Kansas Corporation Commission tomorrow as well as other opponents. She reminded the committee they will meet in Room 519-S on February 19.

Meeting adjourned at 2:30.

Next meeting will be February 18.

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: Feb. 17, 1997

NAME	REPRESENTING
Lew Jone Schneider	Ks. Livestock Assoc.
Marty Vanier	KS Ag Alliance
Walker Hendrix	CURB
Gene Smith	KCC
STEVE M. DILLARD	KIOGA
Don Schwanke	KIOGA
MONTGOMERY ESWE	OCE.
Bill Gifford	PanEnergy
Roger Tremude	KGC
Whitney Jansen	Aradarko Petroleum Corp
Tom (Burr)	Allens Assoc.
Pamela Buchanan - Syon	Intern - ^{Rep} Carol Holmes
Paul Stave	P. H. - K. N. & O. J.
Russ Bishop	PanEnergy Field Services -
Doug Smith	SWKBOA
Ken Potter	KS Petroleum Council
Charles Wilson	BEREXCO
ED SCHAUB	WESTERN RESOURCES
Martin Hawver	Hawver's Capital Reports

Attac h-1

STATE OF KANSAS

JOANN LEE FREEBORN
REPRESENTATIVE, 107TH DISTRICT
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AND PART OF CLAY AND DICKINSON COUNTIES
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

VICE-CHAIR: ENVIRONMENT
MEMBER: AGRICULTURE
PUBLIC HEALTH AND WELFARE
JOINT COMMITTEE ON CHILDREN
AND FAMILIES

Re: Senate Bill 148

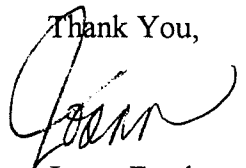
Hello, I am State Representative Joann Freeborn who served as Vice Chairperson on the Task Force which studied the Gas Gathering issue. Senator Ranson and members of Senate Utilities Committee I appreciate the opportunity to say a few words to you today.

The study committee met numerous times throughout the summer of 1996. We took testimony from a large and varied audience over the months we were reviewing the issue. One public meeting was held in Liberal, KS where business persons involved in the natural gas industry in Western Kansas had an opportunity to voice their concerns. This was particularly important as they do not all have the opportunity or the means to come to Topeka and attend hearings such as this today.

While most of us think of the free enterprise system as working best with the least restrictive regulation, we also recognize the need for some regulation of utilities as a protection for the various sectors of the Kansas economy. The committee took a vote and overwhelmingly voted that regulation of the "gathering" industry" was necessary. The struggle was to decide how least restrictive that regulation should be. The bill before you is the result of our deliberations.

A statutory description of the FERC authority in Kansas, guidelines for deciding discriminatory practices, and a venue for hearing complaints are included in SB 148. I would ask that you consider the deliberations of the task force as a guide for the work you have before you.

Thank You,


Joann Freeborn
District 107

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STEVE M. DILLARD
Statement Before the Senate Energy and Natural Resources Committee
February 18, 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 on which I believe you have been briefed.

I am here today to state KIOGA's support of SB 148 as recommended by the Task Force. There is overwhelming evidence in support of the need for regulation of gas gathering pricing and practices. The Task Force voted 11 to 1 in-favor of regulation of gas gathering after extensive research and testimony which was presented to the group. Real competition does not exist in most cases, regardless of what pipeline companies may present, and monopoly abuse is likely without effective regulation. The Task Force believed that a light-handed, complaint based regulatory system would be the best approach but, also gave the corporation commission the ability to use the Chapter 66 public utility and common carrier statutes in instances where the commission might require that authority. It is a sound concept which should be implemented.

The language in this bill that may have received the most attention is the language which includes the term "unfair" as it applies to gathering rates and services (used on page 2, lines 38 and 40; page 3, lines 8 and 9). KIOGA believes this type of wording is necessary to prevent monopoly abuse. The Assistant General Counsel to the KCC's Conservation Division was asked

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how the commission would react if the KCC proposed bill, which only prevented discrimination, was adopted into law, and the KCC determined that a major gas gathering system was uniformly and consistently increasing gathering rates to all of its producers to an unconscionably high level because it was engaged in monopolistic practices. The KCC counsel indicated the commission would be unable to address that issue because discrimination had not occurred. The term "unfair" was used in the bill rather than "unjust and unreasonable" which had been previously suggested by independent producers because certain Task Force members stated that "just and reasonable" language would require "cost-of-service, rate-base type ratemaking". While KIOGA doesn't agree that "just and reasonable" language would necessitate this type of ratemaking, independent producers wanted to insure that a standard of fairness and equity was established, and we settled for the term "unfair".

I also want to comment today on Concurrent Resolution No. _____. KIOGA is very much in support of an informal mediation process for complaints arising from gas gathering abuses. I believe the "Dillard/Wilson" proposed bill, which was a work product of the Task Force on Natural Gas Gathering that I co-authored, contained the first written provision for an informal mediation process contained in any of the drafted gas gathering legislation proposed at that time. This is a very important provision for independent producers. It allows access to a complaint forum without unduly burdensome legal fees and filings.

Missing from the resolution is a time frame in which complaints are to be heard and mediated. If possible, some sort of time frame should be recommended to insure prompt action on behalf of the commission. A producer runs the risk of losing its lease in the absence of production. If the producer is not willing to accept the terms the gatherer has offered, it has no choice but to cease production since the gatherer is the only means by which it can deliver his

production to the marketplace. Any delay can be used to the disadvantage of the producer. Therefore, prompt action by the commission must be insured.

Although the resolution establishing this mediation process is a good beginning, the resolution in itself is not enough. The parties on both sides of this issue should know the rules, and rules need to be specified. SB 148 as proposed by the Task Force on Natural Gas Gathering sets out the rules by which the parties can determine their actions with regard to gas gathering. Without these specific rules, the parties are not going to be able to determine whether or not they have a complaint, and whether or not the complaint has validity with the commission. The commission has no direction from this resolution other than simply being "urged" to investigate and mediate the complaints which it receives. Some basic set of rules of conduct need to be established so that all parties can evaluate their positions.

It is important to act on this issue during this legislative session. I have appeared to testify on the matter of gas gathering several times over the past two (2) years. Until this year, there has not been a sense of urgency; However, as "default" contracts expire in the next few months, state regulation is needed to prevent monopoly abuse as federal regulation disappears.

KIOGA encourages the legislature to adopt and pass the bill proposed by the Task Force on Natural Gas Gathering with only minor changes incorporating the "hotline" and mediation concept with certain time frame requirements to insure prompt action.

CHARLES B. WILSON
STATEMENT BEFORE THE SENATE UTILITIES
COMMITTEE
FEBRUARY 17, 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.

I know just the idea of new regulation goes against the grain of most Kansans. But first, allow me to quickly describe the nature of competition in the gas gathering business and why regulation is necessary.

It is my responsibility within the company to secure markets for both BEREXCO's crude oil and natural gas. Crude oil can be marketed either by pipeline connections or by truck transport. Natural gas, however, can be moved only by a pipeline connection. With oil, if a producer is not satisfied with a purchaser's service, practices or pricing, then the producer has the luxury of true free market competition, in that any another purchasing company is always available to bring in their truck to move the oil away. This is not the case with natural gas. Gas can only be moved from the well by a connected gathering pipeline. Typically in Kansas, once a producing gas well is connected to a gathering line that well is "married" to that line for the life of the well. If a well has significant reserves and there are several pipelines in the vicinity there may be some competition when a well is first completed. However, once decline sets in, the producer quickly loses its ability to attract competition. I am not being critical of gathering pipelines, it is merely the nature of the gathering business in Kansas. And, the nature of this business creates a natural monopoly for the gathering companies.

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In Oklahoma and Texas, due to a number of reasons, it is not unusual for a gas well to not only have competing pipelines nearby, but to also have more than one gathering pipeline connected to a well. That provides competition in a perfect form! Unfortunately in Kansas, such competitive opportunities are exceptionally rare. Which is why Kansas can not adopt regulations which mirrors Oklahoma or Texas. I have been involved in over 75 Kansas gas well pipeline connections since 1985, and I can show only a few instances where our wells had a multiple choice of gas gathering company alternatives to chose from. And it is worth noting that only 3 of our Kansas gas wells are connected to more than one gathering system.

If pipelines are free to establish gathering rates and practices subject only to competitive market forces, producers and wells with less than significant reserves will be disadvantaged in negotiations with the gatherers. Only active drillers, newer wells or wells with significant reserves will command the ability to negotiate with any presence. Otherwise, pipelines will be in a position to unjustly and unfairly take advantage of producers when their gas wells are past their prime, which will result in premature abandonment of remaining reserves and economic waste for the state.

Under FERC, the gathering systems owned by the interstate transmission pipelines were Federally regulated. When FERC began the de-regulation process through out the nation, it was done so **with the understanding the individual state corporation commissions would provide an adequate forum for producer's complaints regarding gathering practices.** That fact has been stated in proceeding after proceeding.

The Task Force, after extensive study this past summer and fall, by a vote of 11-1 agreed that regulation by the KCC is necessary. **Without some form of regulation, the Task Force believed a gathering company would be set free to take advantage of its monopolistic position in determining gathering rates.**

You have before you Senate Bill 148, which is a product of the Task Force. This bill primarily provides a forum, under New Sec. 3. (page 2, line 26...) for an aggrieved producer to have the KCC act as a referee between the producer and the gathering company. There is a provision for either an inexpensive informal get together, or a formal hearing, or both.

However, should gathering companies engage in (under page 2, line 20...) abusive, monopolistic practices inimicable to public interests, then heavy-handed regulation under Chapter 66 could become applicable.

In KCC Chairman McKee's minority report to the Task Force regarding SB 148, he expressed his support for informal mediation, as stated in New Sec 3. However, he is critical of the mechanics of the hearing process. I agree, it may not have been the intent of the Task Force to have two evidentiary hearings, but I would request you challenge him for a specific change in the language instead of allowing him to just criticize it.

I also want to point out (on page 3, line 12) that **this bill would not interfere with existing producer/gatherer contracts.** This bill would apply only to new deals.

Within the bill, under New Sec 3., the use of the phrase "unfair" fees or practices has been criticized. Maybe it is too simple of a term, but it is the cornerstone of what we want. Fairness. When competition does not exist, when there is not a level playing-field, and a gathering company is allowed to take advantage of its monopolistic position, not only the producers, but innocent parties that are not part of the bargaining process are at risk. These other parties are: royalty owners, county ad valorem values, state severance taxes and the natural resource itself. We believe the KCC can act as the judge of fairness when the facts are presented, just as judges and juries do every day in court rooms across the land. To me, its not vague when the KCC is given the role of being the judge.

I have now addressed the prevailing lack of competition and resulting need for regulation, now allow me to address the sense of urgency for legislation.

As you have been already briefed, when the FERC began the de-regulation process, they created a "default" period of two years. This was to allow ample transition time for contracts to remain frozen, or at least provide a ceiling for negotiated rates and services, while the states implemented go-forward legislation. We are now at the end of this default period and producers are now beginning to receive notices of requests to re-negotiate their rates. This is the third legislative session to address this issue. I believe it has been studied more than adequately by a House special committee, a

KCC study and now by the Task Force. The producers and royalty owners of Kansas need Senate Bill 148 passed this year.

To conclude:

- **We have an industry which is subjected to a natural monopoly.**
- **FERC regulations have expired.**
- **The transition period is expiring this year.**
- **FERC has assumed the states will provide forums for gathering complaints.**
- **Senate Bill 148 provides that forum with light-handed regulation for the benefit of all Kansas' interests.**

I support and recommend that you adopt Senate Bill 148 at this time.