

Approved: MAY 2, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Pat Ranson at 1:00 p.m. on May 1, 1998 in Room 531-N of the Capitol.

All members were present except:
Sens. Hensley, Lee and Salisbury were excused

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

Conferees appearing before the committee:
Ron Hein, Pioneer Natural Resources USA, Inc.
Don Schnacke, Kansas Independent Oil & Gas Associates
Ron Gaches, Williams Natural Gas Company & Coastal Corp.

Others attending: See attached list

Sen. Ranson announced the committee is meeting, at this late date in the session, to discuss:

SB 686-certain refunds of rates and charges received for reimbursement of ad valorem taxes in connection with the sale of natural gas; providing procedures therefor.

She explained Sen. Morris had requested the meeting and reminded the committee that the hearing on this bill was March 17 and told the conferees appearing before the committee at that time. Further, the bill has been blessed and Sen. Morris requested the committee meet to discuss the bill, add amendments and pass the bill out of committee; that a house bill -

HB 2332-regulation of natural gas gathering systems

remains in Conference Committee, and that he anticipates this bill, if it passes out of the Senate, could go to the Conference Committee for consideration. Sen. Morris then referred to information (Attachment 1), which was distributed to the committee earlier in the day. He explained the proposed amendment and stated this is an effort to help gas producers. The proposed amendment sets up a fund within the State Treasurers Office, and makes the Kansas Corporation Commission responsible for disbursing the funds; another change is that after August 31, 2000, the pro-rated funds would be given back to the producers.

Sen. Ranson then introduced Don Schnacke, who read a memo and suggested language for the bill (Attachment 2) and explained the changes. Members questioned Mr. Schnacke regarding the proposed new language, and Sen. Ranson stated it is her feeling that he does not think the proposal is a good idea and asked Mr. Schnacke if it was his opinion that the legislation is unconstitutional. He answered it is his opinion that Sen. Morris' proposal is unconstitutional as well as the original bill and that it will be challenged in federal court. Sen. Pugh asked for a review of happenings from the FERC Order to the present, which Mr. Schnacke and Sen. Morris related to the committee. Sen. Morris emphasized the problem for gas producers to refund funds to the ultimate consumer and stated that certain amounts have been paid for the period of 1993 back to 1988. They also discussed the reversal of FERC, which makes the producers liable for refunds from 1983 to 1988, those five years being in dispute. Mr. Schnacke also stated that March, 1998 was the deadline for paying all money into the refund account. Sen. Clark questioned Mr. Schnacke regarding money in the escrow account and a discrepancy in his proposal. Mr. Schnacke stated it is his observation that a great deal of money has been paid (by the March deadline), and that money is now in escrow because of that deadline and that some companies have asked for an extension of time.

Sen. Ranson than recognized Ron Hein, who enumerated options available regarding the FERC Order and problems locating the end consumer. He stated he is not optimistic the proposed legislation will be successful

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON UTILITIES, Room 531- -N, Statehouse, at 1:30 p.m. on May 1, 1998.

and also stated there is an attempt being made for Congressional relief on the federal level, and that there are Appeals pending. He stated the bottom line is that there is a very slim likelihood the legislation will do any good; that it will probably prompt litigation; that he is not asking the committee to move the bill. Sen. Ranson stated there is nothing the committee can do to change the FERC Order and asked Mr. Hein who he is trying to protect. Sen. Jones stated there ought to be an agency in the federal government for unclaimed property/money, as Kansas has in the State Treasurer's office. Mr. Hein responded there is no place to find the names, and Sen. Ranson returned to her question of "Why do you and Pioneer care?" Mr. Hein acknowledged that if the end consumers cannot be located, then Pioneer and other companies may keep the money; that there is no penalty.

Sen. Barone then asked if there are any administrative provisions for costs associated with the bill and if this legislation will help or hurt the gas producers. Mr. Hein then answered that, with the proposed changes to the bill, it may help. He also asked Mr. Schnacke the same questions, and Mr. Schnacke answered that it is beneficial to take the escrow agents out; that the independent producers have been adamant regarding the state mandating policy. Sen. Brownlee confirmed that the interest is being compounded, and Sen. Ranson stated the interest continues to accumulate. Mr. Schnacke added that Appeals requested that Congress address the continuing interest problem. Sen. Ranson then asked Tom Day (of the Kansas Corporation Commission) if there is a fiscal impact to the Corporation Commission to locate consumers for a refund. Mr. Day indicated there will be additional expense to the Commission, and that there is no allowance for recovery. Sen. Steffes stated the committee did not act on this legislation previously, and he thought it was a wise decision; that it would be a nightmare to administer to find the rightful owners of the refunds and that the clause, "or for any other reason" is not effective. Sen. Morris stated the proposal makes it incumbent on the consumer to make a claim for refund, not that the Corporation Commission has to go out looking for those owed a refund.

Sen. Ranson asked Jamie Clover Adams (Legislative Liaison to the Governor) if the Governor is prepared to use state resources to defend the proposal in Court, in light of the fact that it may be unconstitutional. Ms. Adams responded the Governor will support the legislation if it gives one small advantage to the producers. Sen. Ranson then asked Ms. Torrence, the legislative revisor, if this legislation would be in conflict with the Statutes, and she responded she does not believe there is any conflict. Ron Gaches briefly explained that when the bill was heard previously, the companies he represents did not direct him to take a position - that they will not comply with state regulations in conflict with the existing FERC Order. Sen. Morris stated his motivation for requesting this meeting to look again at the bill is to provide any help we can give to the producers.

Sen. Ranson then outlined two alternates for the committee. Sen. Jones then made a motion to amend SB 686, using the language provided to the committee, except to strike reference to escrow agents and the words, "or for any other reason". Sen. Morris seconded the motion, and the proposal was adopted. Sen. Jones made a motion the bill be passed as amended, and it was seconded by Sen. Morris. Roll call vote was taken, and the motion passed.

Meeting adjourned at 2:05.

No other meeting is planned

A-1

SENATOR PAT RANSON

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KANSAS SENATE



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UTILITIES
JOINT COMMITTEE ON ECONOMIC
DEVELOPMENT
VICE-CHAIRPERSON:
COMMERCE
INTERSTATE COOPERATION
MEMBER:
WAYS AND MEANS
LEGISLATIVE POST AUDIT

ASSISTANT MAJORITY LEADER/WHIP

TO: Utilities Committee Members

FROM: Senator Pat Ranson

DATE: May 1, 1998

RE: SB 686

Attached is a proposed bill requested by Senator Morris in regard to FERC Order to collect past ad valorem taxes. It can be placed in SB 686.

There will be a meeting of the Utilities Committee called sometime during the day.

Please talk to Steve Morris if you have questions about the proposed bill.

Senate Utilities
5-1-98
1-1

Section 1. (a) Definitions:

(1) As used in this section, "refunds" means refunds of rates and charges paid by a first seller to an interstate pipeline or intrastate pipeline or placed in escrow by the first seller, and any interest thereon, prescribed by the Federal Energy Regulatory Commission under the Natural Gas Policy Act for reimbursement of Kansas ad valorem taxes in connection with the first sale of natural gas during the period October 4, 1983, through June 28, 1988.

(2) As used in this section, "undisbursed refunds" means refunds as defined in subsection (1) hereof which have not been disbursed by the interstate pipeline or intrastate pipeline due to a failure to locate the purchasers of natural gas in connection with the first sale of natural gas during the period October 4, 1983, through June 28, 1988.

(b) Any interstate or intrastate pipeline or any escrow agent that has received refunds, as defined in subsection (a)(1) hereof, shall remit all undisbursed refunds, as defined in subsection (a)(2) hereof, to the state treasurer as the State Corporation Commission determines may be required to pay under this act, designating the amount of the undisbursed refunds which were received from each first seller. Upon receipt of any such amount, the state treasurer shall deposit the entire amount into the natural gas refund fund with a designation of the appropriate first seller as to each amount.

(c) Before July 1, 2000, any purchaser of natural gas during the period October 4, 1983, through June 28, 1988, claiming a share of undisbursed refunds, or a pipeline on behalf of the purchaser, may apply to the state corporation commission for such refund. Upon submission of evidence satisfactory to the commission that the purchaser paid the Kansas ad valorem taxes during the period at issue and such purchaser is entitled to the undisbursed refund and the amount thereof, the commission shall cause the appropriate amount to be paid from the natural gas refund fund with any applicable interest, and shall make the appropriate adjustment to the account for the respective first seller.

(d) Not later than August 31, 2000, the state corporation commission shall cause all moneys that have been designated to a specific first seller in the natural gas refund fund and have not been expended for undisbursed refunds pursuant to this section, to be paid to such first seller with appropriate interest.

(e) There is hereby created in the state treasury the natural gas refund fund, an interest-bearing account of the state treasury, to be used to ensure that undisbursed refunds, as defined in subsection (a)(2) hereof, are only disbursed to the purchasers that actually incurred such costs during the relevant time period. Moneys credited to the natural gas refund fund shall be used only to pay refunds of rates and charges as defined in section (a) hereof. Expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the state corporation commission or a person designated by the chairperson.

(f) On September 1, 2000, the natural gas refund fund is hereby abolished.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

SENATE BILL No. 686

By Committee on Ways and Means

3-12

9 AN ACT concerning certain refunds of rates and charges received for
10 reimbursement of *ad valorem* taxes in connection with the sale of nat-
11 ural gas; providing procedures therefor.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) ~~As used in this section, "refund" means a refund of~~
15 ~~rates and charges received for reimbursement of Kansas ad valorem taxes~~
16 ~~in connection with the sale of natural gas, and any interest thereon, or~~
17 ~~ordered by the federal energy regulatory commission.~~

18 (b) ~~Any first seller of natural gas that has been ordered by the federal~~
19 ~~energy regulatory commission to pay refunds shall remit to the state trea-~~
20 ~~surer such amounts as the state corporation commission determines may~~
21 ~~be required to pay such refunds as provided by this act. Upon receipt of~~
22 ~~any such amount, the state treasurer shall deposit the entire amount in~~
23 ~~the state treasury and credit it to the first seller's account in the natural~~
24 ~~gas refund fund.~~

25 (c) Before July 1, 2000, any purchaser of natural gas claiming a refund
26 may apply to the state corporation commission for such refund. Upon
27 submission of evidence satisfactory to the commission that the purchaser
28 is entitled to the refund and the amount thereof, the commission shall
29 cause the refund to be paid from the appropriate first seller's account in
30 the natural gas refund fund.

31 (d) Not later than August 31, 2000, the state corporation commission
32 shall cause all moneys that have been credited to a first seller's account
33 in the natural gas refund fund and have not been expended for refunds
34 pursuant to this section to be paid to such first seller.

35 (e) There is hereby created in the state treasury the natural gas refund
36 fund. ~~Moneys credited to the fund shall be used only to pay refunds of~~
37 ~~rates and charges received by first sellers of natural gas for reimbursement~~
38 ~~of Kansas ad valorem taxes in connection with the sale of natural gas, and~~
39 ~~interest thereon, as ordered by the federal energy regulatory commission.~~
40 Expenditures from such fund shall be made in accordance with appro-
41 priation acts upon warrants of the director of accounts and reports issued
42 pursuant to vouchers approved by the chairperson of the state corporation
43 commission or a person designated by the chairperson.

(1)

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(2) As used in this section, "undisbursed refunds" means refunds as defined in subsection (1) hereof which have not been disbursed by the interstate pipeline or intrastate pipeline due to a failure to locate the purchasers of natural gas in connection with the first sale of natural gas during the period October 4, 1983, through June 28, 1988.

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during the period October 4, 1983, through June 28, 1988,

share of undisbursed refunds, or a pipeline on behalf of the purchaser,

paid the Kansas ad valorem taxes during the period at issue and such purchaser is entitled to the undisbursed refund and the amount thereof, the commission shall cause the appropriate amount to be paid from the natural gas refund fund with any applicable interest, and shall make the appropriate adjustment to the account for the respective first seller.

designated to a specific first seller

undisbursed

seller with appropriate interest.

an interest-bearing account of the state treasury, to be used to ensure that undisbursed refunds, as defined in subsection (a)(2) hereof, are only disbursed to the purchasers that actually incurred such costs during the relevant time period. Moneys credited to the natural gas refund fund shall be used only to pay refunds of rates and charges as defined in section (a) hereof.

28-1

1 (f) On September 1, 2000, the natural gas refund fund is hereby abol-
2 ished.

3 Sec. 2. This act shall take effect and be in force from and after its
4 publication in the Kansas register.

1-4

A-2

MESSAGE:

Dear Don:

Although the intent is good, in my opinion, this bill could result in disaster.

1. FERC is the authority designated by Congress to prescribe remedial action for maximum lawful price violations under the NGPA. Obviously, this legislation is unconstitutional as attempting to legislate in the federal domain.
2. At this time, FERC has only authorized escrowing of disputed amounts of the refund. Many producers, however, to avoid the high prescribed interest rates of FERC, which are compounded quarterly, also deposited into escrow amounts attributable to interest, royalties, and the portion of the 1983 tax reimbursements prorated to production prior to October 3, 1983, while issues with reference to interest, prorated 1983 taxes, and collectibility of royalties are being determined. They have asked FERC for approval of depositing those amounts into escrow. If this legislation would be adopted, I would think that FERC would certainly deny approval of escrow for those amounts and might even reverse its prior order permitting payment of disputed amounts into escrow. If this should happen, the producer will have parted with the money going into escrow and then into the state treasury, and will lose interest on those funds, and at the same time will continue to incur interest at the prescribed compounded FERC rates until payment is made directly to the pipeline. In fact, under threat of penalties or other sanctions, the producer could be compelled to make payment directly to the pipeline, notwithstanding prior payment into escrow, and this would constitute a double payment while things were being sorted out.
3. This places the banks who have been willing to serve as escrow agents in an awkward position. We had difficulty convincing some of the banks that it was safe to serve as escrow agent. If this legislation goes through, I would think all of them would hand the money back and refuse to serve.
4. Since some of the amounts in escrow are disputed amounts to which the pipeline company may not be ultimately entitled, this ties up all of those funds and removes the producer from being a party to the dispute.

Although as previously stated, the bill in my opinion would still be unconstitutional, nevertheless, I do not think the producers would have any objections to it if it only compelled the pipeline companies and not the escrow agents to pay any funds into the natural gas refund fund. Also, it should include any "undisbursed refunds" received by the pipelines in the future which are not disbursed within 30 days for whatever reason. Several of the pipelines have applied to FERC requesting that they not have to disburse the funds because of prior settlement agreements with the local distribution companies and for other reasons.

There could be some benefit in adopting the legislation if it were directed only to the pipelines and not the escrow agents, as it possibly could make the pipelines easier to deal with as they will either have to disburse the funds immediately or have the funds tied up with the state. On the other hand, I doubt if the pipelines will pay much attention to it except to challenge it immediately in federal court.

If it is to be adopted, I re fax the bill with my suggested interlineations.

The above are my very quick thoughts and those of my partner, Roger Theis, who has also worked with me on this matter.

RRB

Senate Utilities
5-1-98
2-1

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** or is not disbursed within 30 days after receipt*