

Approved: MARCH 4, 1999
Date

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairperson Sen. Pat Ranson at 1:00 p.m. on February 22, 1999 in Room 531-N of the Capitol.

All members were present except:

Sen. Morris was excused

Committee staff present:

Lynne Holt, Legislative Research Department

Mary Torrence, Revisors of Statutes Office

Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:

None

Others attending:

See attached list

Sen. Ranson asked the committee to review two sets of Minutes of the Meeting for approval later. She then referred the committee to **SB 217-concerning natural gas service; providing for competition in retail sales** and to a balloon of the bill, showing suggested amendments, (Attachment 1). She also called attention to suggested amendments from Atmos Energy Corporation, submitted by Bob Alderson (Attachment 2). Sen. Ranson asked Glenn Smith for information regarding the bill and if the Corporation Commission has the authority to institute retail choice. She also asked if the Commission has opened a docket dealing with retail choice and how the Commission will proceed. Mr. Smith answered they have opened a docket on retail choice; that there are no prohibitions regarding the Commission making retail choice available. He continued by stating the Commission has sent out a "Notice of Inquiry" to interested parties and when they receive information from that Notice, the Commission may proceed putting together a plan to institute retail choice. He stated the Commission will hold a hearing and will address concerns that have been brought forward by the conferees. Sen. Barone asked if the baseline outcome is predetermined and if the parameters are also predetermined, and Mr. Smith answered that is correct. Sen. Ranson then asked Walker Hendrix if, in his opinion, the Corporation Commission has authority to develop a fair and reasonable plan for retail choice. Mr. Hendrix answered it is his opinion the Corporation Commission could develop a fair and reasonable plan by holding hearings with everyone having input into the plan being developed. He stated one major concern is the stranded investment issue. He also agreed with Sen. Ranson that if a fair and reasonable plan were developed and legislation was needed, the Commission could come to the Legislature and request it; he stated he was comfortable with that scenario.

Sen. Ranson then asked Mary Torrence to explain suggested amendments to the committee and note the conferee offering the amendment from testimony given at the hearing on February 18. Ms. Torrence explained the amendments to the committee and noted that some are technical. The committee discussed ramifications relating to some of the changes. Sen. Clark asked questions regarding Chapter 66, the tax status and who has jurisdiction. Mr. Smith replied that the Commission has no jurisdiction over interstate transportation. Mr. Bartling discussed stranded costs and how that is affected because of a diluted customer base. Sen. Ranson stated the intent is not to give an advantage to the marketers, and she reminded the committee that they are discussing transportation only. The committee then discussed the tax ramifications and whether the commodity is taxed at the 25 or 33 percent rate. Mr. Johnson believes they pay severance tax on only the commodity that is inground, and Sen. Ranson asked if the commodity is taxed as property. Sen. Steffes stated that if the natural gas is stored, it would be treated as inventory and taxed as inventory. Sen. Barone stated the importance of being definitive regarding the tax for years after deregulation. He further stated the importance of whether it is a utility or non-utility, or whether it is commercial or industrial; and if the gas supplier would be taxed at the 25% rate, while the generation and transports would be taxed at the 33% rate. Ms. Gulley stated that the Department of Revenue will not allow property tax to be apportioned; that the utility is taxed at 33% and the non-utility, including commercial and industrial, is taxed at 25%. After discussing taxes, Sen. Ranson called attention to Subsection (d) and stated the tax law is being applied as it now exists, and Ms. Torrence asked if the

CONTINUATION SHEET

MINUTES OF THE SENATE UTILITIES COMMITTEE, Room 531-N Statehouse, at 1:00 p.m. on February 22, 1999.

committee's wishes are to address taxes at this time. Mr. Smith stated his concern regarding stranded costs and how it is applied, and Mr. Bartling voiced opposition to Subsection (c), Line 33, and his concern for a level playing field. Sen. Ranson called attention to new Subsection (g) and stated that the committee should not be in the business of causing existing contracts to be renegotiated or voided; that the object is to expand the field to retail choice.

Sen. Salisbury asked how passing this bill will help the small business or individual, will it lower their costs? Sen. Ranson stated the competition should create lower prices for the consumer, but Sen. Steffes responded it will create more competition, but he doubts it will result in savings to the consumer. Sen. Barone stated he has not received one phone call, asking for this bill. Sen. Ranson reviewed the various utilities' plans for transport only for school districts, and that our neighboring states of Nebraska and Iowa already have plans in place. Sen. Hensley asked who requested the bill, and Sen. Ranson answered the committee requested it, and when gas prices rose two years ago, consumers asked for it. Sen. Salisbury asked why the committee is considering the bill when the Corporation Commission has the authority to put the plan in place, and Mr. Smith agreed that the Corporation Commission has the authority to put the plan in place. Sen. Ranson stated this bill will say to the Commission to get its plan together. Sen. Barone then requested the committee ask the Revenue Department for estimates, and Sen. Ranson stated there is a fiscal note and read it to the committee. It defines the bill and states the need for the Commission to add a FTE to implement it. Sen. Clark made a motion SB 217 be amended as corrected/discussed, and it was seconded by Sen. Jones; the motion passed. Sen. Clark made a motion the bill be passed out of committee as amended, and it was seconded by Sen. Jones. Upon roll call vote of: Yes - 3; No - 7, the bill will not be passed out of committee.

Sen. Ranson then referred the committee to the Minutes of the Meeting for February 10 and 11. Sen. Brownlee made a motion the Minutes be approved, and it was seconded by Sen. Barone; the Minutes were approved.

Sen. Ranson announced the committee will meet tomorrow at 1:00 p.m.

Meeting adjourned at 2:30.

Next meeting will be February 23.

SENATE BILL No. 217

By Committee on Utilities

2-3

*Senate Utilities
2-22-99
Attach. 1*

to retail customers [Midwest Energy]

(4) "Exempt utility" means any natural gas utility owned or operated by a municipality, unless the governing body of the municipality elects to allow the utility's retail customers to select their retail suppliers. [Kansas Municipal Utilities; Utilicorp]

(5) "Retail customer" means the end user of delivered natural gas. [Midwest Energy]

giving due consideration to the respective interests of natural gas public utilities, retail suppliers, retail customers, municipalities and other affected persons, [Atmos]

[Atmos; KCC]

other than retail customers of an exempt utility, [Kansas Municipal Utilities; Utilicorp]

from which to purchase natural gas not later than [Atmos]

includes distribution and transportation, but does not include the business of selling natural gas as a commodity to retail customers unless such business is combined with distribution [CURB]

used in distribution or transportation [CURB]

or both

used by a retail supplier in the sale of natural gas as a commodity to retail customers [CURB]

(f) Nothing in this section shall be construed to limit the right of a natural gas public utility or any subsidiary or affiliate thereof to serve as a retail supplier. [Atmos; KCC]

(g) Before July 1, 2002, any city of this state may revise the franchise fee provisions of any natural gas franchise agreement of the city to ensure that franchise fees are paid on all natural gas distributed by the franchised entity without regard to the retail supplier. [League of Kansas Municipalities]

(h) On or before the first day of the regular legislative session in 2000, 2001, 2002 and 2003, the commission shall submit to the senate and house standing committees on utilities a report regarding the implementation of the provisions of this section. [Utilicorp]

9 AN ACT concerning natural gas service; providing for competition in
10 retail sales.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) As used in this section:

14 (1) "Commission" means the state corporation commission.

15 (2) "Distribution" means the business of distribution of natural gas
16 or the ownership, operation or control of distribution facilities.

17 (3) "Distribution facility" means any plant or equipment, other than
18 a transportation facility, that is used for the distribution of natural gas.

19 (4) "Retail supplier" means a person or entity selling or offering to
20 sell natural gas at retail in this state.

21 (5) "Transportation" means the business of transporting natural gas
22 or the ownership, operation or control of transportation facilities. "Trans-
23 portation" does not include delivery of natural gas service to a retail
24 customer.

25 (6) "Transportation facility" means any plant or equipment that is
26 used for the transportation of natural gas and is under the jurisdiction of
27 the federal energy regulatory commission.

28 (b) The commission shall develop and implement a plan to allow
29 retail natural gas customers in this state to select a retail supplier
30 ~~of the customer's choice on and after July 1, 2002.~~

31 (c) On and after July 1, 2002, for the purposes of chapter 66 of the
32 Kansas Statutes Annotated, "natural gas public utility" ~~does not include~~
33 ~~the business of selling or offering to sell natural gas at retail.~~

34 (d) For all taxable years commencing on or after July 1, 2002, for the
35 purposes of K.S.A. 79-1439 and amendments thereto:

36 (1) Natural gas public utility property, whether real or personal, tan-
37 gible or intangible, includes only property ~~subject to regulation and in-~~
38 ~~cluded in natural gas public utility rate bases by the commission, and~~

39 (2) all other property ~~of a retail supplier~~ shall be considered property
40 used for commercial and industrial purposes.

41 (e) Nothing in this section shall be construed to limit or otherwise
42 affect the commission's jurisdiction, authority and duty to regulate dis-
43 tribution as a public utility.

*Senate Utilities
2-22-99
Attach. 1*

A-2

**ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.**
ATTORNEYS AT LAW

W. ROBERT ALDERSON, JR.
ALAN F. ALDERSON*
JOSEPH M. WEILER
DARIN M. CONKLIN
MARK A. BURGHART*
DANIEL W. CROW**
JOHN E. JANDERA
LESLIE M. MILLER

2101 S.W. 21ST STREET
TOPEKA, KANSAS 66604-3174

(785) 232-0753
FACSIMILE: (785) 232-1866
E-mail: alderson1@cjnetworks.com

MAILING ADDRESS:
P.O. BOX 237
TOPEKA, KANSAS 66601-0237

LL. M TAXATION
LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

MEMORANDUM

TO: Senate Committee on Utilities
FROM: Bob Alderson on Behalf of Atmos Energy Corporation
RE: Senate Bill No. 217
DATE: February 17, 1999

During yesterday's hearing, Jim Bartling, speaking on behalf of Atmos Energy Corporation, the parent company of United Cities Gas Company and Greeley Gas Company, advised the Committee that Atmos is generally in support of SB 217, although he noted the need to clarify some of the bill's provisions. The purpose of this memorandum, therefore, is to identify these proposed clarifying amendments.

Attached to this Memorandum is a copy of Section 1 of SB 217, showing "balloon" amendments we are proposing. These amendments address the following issues:

- As Jim Bartling advised the Committee, Atmos believes that the plan developed by the KCC to provide retail natural gas customers with the ability to select retail suppliers of their choice should be a collaborative effort. We believe the plan developed by the KCC should give due consideration to the respective interests of retail natural gas customers, natural gas public utilities, retail suppliers, municipalities and other affected persons. In order to insure the likelihood that the plan will achieve customer satisfaction, it should afford adequate incentives to utilities and other service providers to make the plan successful. The amendments to subsection (b) in Line 28 address this objective.
- Atmos believes that the KCC should be given sufficient latitude to develop a plan which recognizes the substantial differences among the natural gas public utilities, including the ability to authorize pilot

Senate Utilities
2-22-99
ATTACH. 2

programs and, where appropriate, to permit a utility to implement "customer choice" prior to the bill's deadline of July 1, 2002. The amendments to subsection (b) in Lines 28 to 30 are intended to accomplish such purposes.

- We concur with comments of other conferees at yesterday's hearing, suggesting that the bill should be clarified as to the ability of a natural gas public utility and any of its subsidiaries or affiliates to also serve as retail suppliers. The amendment proposed to subsection (c) in Line 33 is intended to provide such clarification.
- We concur with the comments made during yesterday's Committee discussion that expressed the need to clarify the distinction being drawn in subsection (d) between the classes of property used to deliver natural gas for purposes of taxation. However, since such clarification already has been assigned to the Revisor's Office, we will not propose any specific amendments in this regard.
- Finally, as noted above, Atmos firmly believes that the KCC should be provided sufficient flexibility to enable customer choice to be implemented for a natural gas public utility and its customers prior to July 1, 2002. However, we note that the provisions of subsections (c) and (d) propose specific changes in various statutes to accommodate the implementation of the KCC's plan to provide customer choice to retail natural gas customers, but the effective date of these changes is July 1, 2002. We respectfully suggest that the Committee give consideration to appropriate changes in subsections (c) and (d) to accommodate the possibility that a customer choice program may be implemented prior to July 1, 2002.

I regret that a court appearance in Atchison will prevent me from being in attendance at the Committee's meeting today. However, the proposed amendments suggested above and noted on the attached "balloon" amendment of Section 1 were developed under the guidance of Jim Bartling, and he will be present to respond to any questions the Committee may have regarding the proposed amendments. Thank you for your consideration of these suggestions.

WRA:sdw\gaa

Enclosure

SENATE BILL No. 217

By Committee on Utilities

2-3

8-3

9 AN ACT concerning natural gas service; providing for competition in
10 retail sales.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) As used in this section:

14 (1) "Commission" means the state corporation commission.

15 (2) "Distribution" means the business of distribution of natural gas
16 or the ownership, operation or control of distribution facilities.

17 (3) "Distribution facility" means any plant or equipment, other than
18 a transportation facility, that is used for the distribution of natural gas.

19 (4) "Retail supplier" means a person or entity selling or offering to
20 sell natural gas at retail in this state.

21 (5) "Transportation" means the business of transporting natural gas
22 or the ownership, operation or control of transportation facilities. "Trans-
23 portation" does not include delivery of natural gas service to a retail
24 customer.

25 (6) "Transportation facility" means any plant or equipment that is
26 used for the transportation of natural gas and is under the jurisdiction of
27 the federal energy regulatory commission.

28 (b) The commission shall develop and implement a plan to allow all
29 retail natural gas customers in this state to select a retail supplier of the
30 customer's choice on and after July 1, 2002.

31 (c) On and after July 1, 2002, for the purposes of chapter 66 of the
32 Kansas Statutes Annotated, "natural gas public utility" does not include
33 the business of selling or offering to sell natural gas at retail

34 (d) For all taxable years commencing on or after July 1, 2002, for the
35 purposes of K.S.A. 79-1439 and amendments thereto:

36 (1) Natural gas public utility property, whether real or personal, tan-
37 gible or intangible, includes only property subject to regulation and in-
38 cluded in natural gas public utility rate bases by the commission; and

39 (2) all other property of a retail supplier shall be considered property
40 used for commercial and industrial purposes.

41 (e) Nothing in this section shall be construed to limit or otherwise
42 affect the commission's jurisdiction, authority and duty to regulate dis-
43 tribution as a public utility.

, giving due consideration to the respective interests of natural gas public utilities, retail suppliers, retail natural gas customers, municipalities and other affected persons,

from which to purchase natural gas not later than

, but nothing in this section shall be construed as limiting the right of a natural gas public utility or any subsidiary or affiliate thereof to serve as a retail supplier