

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES

The meeting was called to order by Chairman Carl D. Holmes at 9:14 a.m. on January 11, 2000 in Room 522-S of the Capitol.

All members were present except: Rep. Judy Morrison

Committee staff present: Jo Cook, Secretary
Lynne Holt, Research
Mary Torrence, Revisor

Conferees appearing before the committee: none

Others attending: See attached guest list

Chairman Holmes introduced the two new members of the House Utilities Committee. He welcomed Rep. Carl Krehbiel and Rep. Judy Morrison.

Chairman Holmes introduced Mary Torrence, Office of the Revisor of Statutes, who presented an overview of the interim Environment Committee report on underground storage of natural gas (Attachment 1). Mary explained that the interim committee was charged with studying the bill that was introduced last year (**HB 2045**) and looked at by both the Utilities Committee and a Utilities subcommittee. A substitute bill was recommended by the subcommittee.

Mary explained the current law regarding underground storage and the condemnation procedure for use of an underground formation for the storage of natural gas. The report explains the procedure required by the Kansas Corporation Commission. She also explained the Eminent Domain proceedings that must be followed.

Information was also included in the report on the current law regarding migrated natural gas.

Within the report was a list of issues raised during past legislative sessions. These issues include, but are not limited to: 1) determination of suitability of formation for storage, 2) property interest condemned. 3) compensation and damages, and 4) migrated natural gas.

Interim Committee activities included holding a hearing on a bill and with compromise language developed by property owners and gas industry representatives (**HB 2597**). The committee recommended the introduction of the bill and that it be sent to the House Committee on Utilities.

During the presentation, Mary explained some of the compromises reached between the land owners and the gas storage industry. She also stated there was a provision in the bill presented to the committee that was inadvertently left out of **HB 2597**. The provision was that the remedy proposed under the bill for resolving disputes would be the exclusive remedy for recovery for migrating gas. She stated that this would have to be inserted by amendment if the Committee wished to have that provision included in the bill.

Mary then responded to questions from Chairman Holmes, Rep. Dahl, Rep. McClure, and Rep. Sloan.

Chairman Holmes then opened the floor for committee bill requests.

Rep. Alldritt requested the committee sponsor a bill regarding cable operators who hold a franchise to provide cable service to provide any requesting Internet service provider access to its broadband Internet access transport services. Rep. Alldritt moved and Rep. Loyd seconded that the committee sponsor this bill. Motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 522-S, at 9:14 a.m. on January 11, 2000.

Chairman Holmes stated that if there were any individual bills that may be assigned to this committee, he would like them introduced as soon as possible. His intention is to have, over the next two weeks, background briefings on what's taken place over the summer and with the Corporation Commission. The third week of the session we will start having hearings on bills and start working bills. There will be committee bill requests on Thursday.

Meeting was adjourned at 9:45 a.m.

The next meeting will be Wednesday, January 12, 2000 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 11, 2000

NAME	REPRESENTING
Joe Long	UtiliCorp United Inc.
Bruce Graham	KEPCO
Mike Recht	AT&T
Doug Lawrence	KEC
Whitney Damron	KS Gas Service
Joe Dick	KCK BPU
Dave HOLTMAUS	Western Resources
Phil Carter	Enron
Ken Peterson	KS Petroleum Council
Ron Coches	Williams & Coastal
Sandy Braden	Williams & Coastal
Kevin Barone	KCTA
John Federico	KS Cable Telecom Assn.
Jim Miles	KEC
Doug Smith	SWKROA

UNDERGROUND STORAGE OF NATURAL GAS¹

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the introduction of a bill regarding underground storage of natural gas to the 2000 Legislature with the recommendation that it be sent to the House Committee on Utilities. The bill, which was drafted as a compromise between the interests of land owners and the gas storage industry, was brought to the Committee by the various parties involved.

BACKGROUND

The Committee was charged to study the issue of underground storage of natural gas (HB 2045).

Under Kansas law, a natural gas public utility that transports or distributes natural gas through pipelines in this state may condemn underground geological formations for the purpose of storing natural gas until the utility is ready to deliver the gas to customers. In recent years legislation has been introduced to address various aspects of this law.

Current Law—Condemnation Procedure

Kansas law establishes procedures for condemnation of underground formations for storage of natural gas. These procedures are found under the oil and gas law and in the Eminent Domain Procedures Act.

Corporation Commission Certificate

A natural gas public utility wishing to condemn an underground formation for storage of natural gas must file an application with the Kansas Corporation Commission. The Commission is required to hold a public hearing on the application. After the hearing, the utility cannot proceed with condemna-

tion proceedings unless the Commission makes the following findings and issues a certificate setting out those findings:

1. A finding that the formation is suitable for underground storage of natural gas;
2. A finding that it is in the public interest for the formation to be used for that purpose; and
3. A finding regarding the amounts of oil and native gas (gas not previously removed from the ground) in the formation.

Eminent Domain Proceedings

Filing and Applicable Law. After obtaining the Commission's certificate, a natural gas public utility may file a proceeding to condemn an underground formation, as well as other property interests that are required to examine, prepare, maintain and operate the underground storage facility. The proceeding is governed by the Eminent Domain Procedure Act and is brought in the district court of the county where the property is located.

Appraisers. The judge assigned the case appoints three disinterested residents of the county to act as appraisers, after receiving suggestions from the parties to the proceeding. At least two of the appraisers must have experience in valuation of property. The

¹ HB 2597 was recommended by the Committee.

appraisers view the property that is the subject of the proceeding and hear testimony of the parties. The appraisers then make an appraisal and assessment of damages and file a report with the court.

Compensation and Damages. The amount of compensation for the taking of property by eminent domain is to be based on the fair market value of the property and whether there is a taking of the entire property or only a partial taking. In addition, in awarding compensation and damages, the appraisers are directed to consider 15 factors that are set out in the Eminent Domain Procedure Act. The enumerated factors are not exclusive and are to be considered as a whole rather than each computed as a separate amount and added together. In addition to the factors set out in the Eminent Domain Procedures Act, the law governing natural gas storage requires the appraisers to take into consideration the finding of the Commission as to the amount of oil and native gas remaining in the formation for purposes of determining compensation and damages.

Current Law—Migrated Natural Gas

If a natural gas public utility injects natural gas into an underground formation, the gas may move from that formation to other formations. If the gas moves to a formation not owned by the utility, questions arise as to the respective rights of the utility and the owner of the formation where the gas has migrated. If a utility injects natural gas into an underground formation and the gas moves to a formation that has not been purchased or condemned by the utility:

- The gas remains the property of the utility and the owner of the property where the gas has migrated has no right to the gas; and
- The owner of the property where the gas has migrated may recover compensation for use of or damage to their property. If the property owners must bring suit to enforce their rights and they win, they

may also recover their costs and expenses, including reasonable attorney fees.

Issues

During consideration of legislation introduced in recent years, a number of issues have been raised regarding condemnation of underground formations for storage of natural gas. The following is a summary of those issues.

Determination of Suitability of Formation for Storage. One point of contention has been whether the Kansas Corporation Commission should conduct an independent study to determine whether an underground formation is suitable for storage of natural gas. There is no provision for this in current law. Because the utility must conduct tests to determine an appropriate location for underground storage before filing an application with the Commission, the utility's results are the basis of the Commission's findings unless the property owner incurs the expense of additional tests.

Proponents of an independent study have argued that most property owners cannot afford their own tests and cannot adequately defend their interests without an independent study paid for by the utility. Opponents, on the other hand, have asserted that an independent study is expensive and unnecessary duplication. They have expressed a belief that the Commission can evaluate the utility's test results and determine whether or not the formation is suitable.

Property Interest Condemned. Another issue is the nature of the property interest that is subject to condemnation. Proposals have been made to change the law to provide that condemnation of a formation is like a lease in nature (a "leasehold interest") rather than taking ownership of the formation. Condemnation of a leasehold interest would allow the property owner to recover compensation for minerals flushed from the formation because the property owner would retain

ownership of the formation. It also would provide for payment of rent over the life of the storage facility, which could take into account changes in the market value of the property.

Opponents of this change have argued that, in other condemnation proceedings, total compensation and damages are determined and paid at the time of condemnation. They have expressed the belief that a reasonably accurate estimate of compensation for minerals in the formation can be made at that time. They also have asserted that payments over a long period of time will create administrative problems, particularly when numbers of property owners may be involved.

Compensation and Damages. Proposals have been made to itemize and total the various elements of damage and property interests condemned, compensating the property owner separately for all damages and property interests taken. Proponents have argued that this would fairly compensate property owners for all interests taken and damages caused. Opponents have asserted that the sum of the parts will be greater than the value of the property as a whole. In addition, they have pointed out that this is counter to the way compensation and damages are determined in all other condemnation proceedings.

Migrated Natural Gas. Proposals also have been made to provide that natural gas injected underground by a utility becomes the property of the owner of the formation where it migrates if that formation is not owned by the utility. (This is known as the rule of capture. Prior to adoption of the current statute on migrated gas in 1993, the Kansas Supreme Court had determined this to be the law in Kansas.) In addition, these proposals have included provisions for the utility to compensate the owner of the formation for use of the formation.

Supporters of these proposals have argued that utilities should be required to compensate for use of another's property.

They also have asserted their belief that the threat of condemnation has prompted property owners to settle for minimal compensation for what amounts to trespassing on their property. Opponents of these proposals have asserted that condemnation proceedings do not contemplate compensation for past value but only value at the time of condemnation.

Other Issues. Other issues have arisen in discussions of underground storage of natural gas. Those include the definition of what constitutes a formation suitable for gas, storage, the payment of attorney fees in actions involving migrated gas, and whether recovery of compensation for migrated gas should be included in an award in a condemnation proceeding.

COMMITTEE ACTIVITIES

A hearing was held on the underground storage of natural gas during the Committee's October meeting. The Committee heard testimony from an attorney in private practice in Pratt, Kansas on condemnation litigation in which he has been involved regarding underground gas storage. The conferee had represented landowners in the proceedings. He reported his concern over: the price offered to condemnees for the use of the land; the disparity of awards from county to county (if land is in two counties, each county must hold condemnation proceedings); determination of value of underground storage (which also limits property rights, *i.e.*, surface options and restriction or availability of land for construction of buildings or irrigation); limitation for collection for trespass to three years; and difficulty in finding qualified appraisers.

Since the end of the 1999 Legislative Session, concerned parties have met and negotiated a compromise position that could be presented to the 2000 Legislature. A representative of the Kansas Gas Storage Industry presented the compromise bill draft to the Committee. Also participating in the development of the language were represen-

tatives of the following companies:

- Atmos Energy Corporation;
- CMS Panhandle Eastern Pipeline;
- Coastal Corporation;
- Enron/Northern Natural Gas Company;
- Kansas Gas Service;
- ONEOK/Mid Continent Market Center;
and
- The Williams Company/Williams Gas Pipeline Central.

Some of the key provisions of the draft language are as follows.

- The phrase “suitable for the underground storage of natural gas” is defined to authorize the Kansas Corporation Commission to determine that a geological stratum or formation is suitable for storage of natural gas upon a finding that the stored natural gas should not migrate to another stratum or formation. While it is not possible to forecast with 100 percent certainty that stored natural gas will not migrate, the Commission is authorized to make a determination that is a reasonable conclusion.
- The bill sets out the specific findings of the Commission that must be determined prior to a natural gas public utility exercising the right of eminent domain to create an underground gas storage facility.
- The bill sets forth the compensation that landowners will be provided by the gas utility in the event that eminent domain is used to take their property.
- The bill provides that an eminent domain proceeding involving property in two adjacent counties shall be brought in the

county where the greatest portion of the property is located and that the appraisers shall be appointed from among the disinterested residents of any of the counties in which the property is located.

- The bill provides that the owner of the property being condemned shall have the option of either a lump sum or annual payments as compensation in the eminent domain proceeding.
- The bill provides that gas injected into underground storage shall at all times be the property of the injector.
- The bill provides that the rule of “capture” shall not apply to gas injected into a gas storage facility.
- The bill describes the rights and obligations of the gas injector with regard to natural gas that has migrated outside of the underground storage facility.
- The bill provides that the injector shall not lose title to migrated gas if the injector can prove by a preponderance of the evidence that such gas was originally injected into the underground storage facility.
- The bill authorizes the injector to conduct tests at the injector’s sole risk and expense to determine the ownership of gas that may have migrated from a storage field.
- The bill describes the compensation that the injector shall pay for the prior use of a landowner’s property where gas has migrated.
- The bill provides that the compensation shall not exceed the highest acre rent being paid to other property owners for gas storage in the field from which the gas migrated. The compensation shall be limited to the time when the gas migrated to the other stratum, but not to exceed seven years prior to the landowner mak-

ing a written demand for compensation. The gas injector shall be liable for the landowner's legal fees if the compensation granted by the court is 15 percent above the last offer made by the injector within 75 days of the initial filing of the action.

- The bill provides that this shall be the exclusive remedy for the recovery of damages or compensation for this kind of controversy regarding migrated gas.

The Committee also heard from representatives of several other gas and oil companies who expressed support for this proposal. A representative of the Commission reported that after a cursory review of the language, the Commission did not have any problems

with the bill. The agency's main concern with prior drafts had been with possible costs to the Commission for gas storage suitability studies.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends the introduction of the previously described bill regarding underground storage of natural gas to the 2000 Legislature with the recommendation that it be sent to the House Committee on Utilities. The bill, which was drafted as a compromise between the interests of land owners and the gas storage industry, was brought to the Committee by the various parties involved.