

Approved: February 2, 2000

Date

*Carl Dean Holmes*

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:12 a.m. on January 26, 2000 in Room 522-S of the Capitol.

All members were present.

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

Conferees appearing before the committee: Rep. Dennis McKinney  
Ron Gaches, Kansas Gas Storage Industry

Others attending: See Attached Guest List

Chairman Holmes acknowledged the receipt of written comments from the Kansas Corporation Commission Staff regarding **SB 86** (Attachment 1). The comments were provided as a supplement to the hearing the previous day.

**HB 2597 Natural gas, underground storage; condemnation, procedure and compensation; migrated gas.**

Rep. Dennis McKinney, 108<sup>th</sup> District, was welcomed by Chairman Holmes. Rep. McKinney appeared in support of **HB 2597** (Attachment 2). He also submitted written testimony on behalf of Mr. Jon Black, an attorney from Pratt (Attachment 3), and five other landowners in Pratt and Kingman Counties; Kenneth Glenn (Attachment 4), Mark Betzen (Attachment 5), Stanley R. Withers (Attachment 6), Dean Dyche (Attachment 7) and Lloyd McClellan (Attachment 8).

Rep. McKinney responded to questions from Rep. Loyd, Rep. Alldritt and Rep. Sloan.

Ron Gaches, representing the Kansas Gas Storage Industry, appeared in support of **HB 2597** (Attachment 9). Mr. Gaches stated that this hearing provided the opportunity for the two opposing sides to come together in support of a compromise bill that provides equitable solutions to a number of complicated and difficult issues. He included a copy of his testimony presented before the Interim Committee on Environment and proposed language to amend the bill. He also stated that the current bill did not have the language making this the exclusive remedy to resolving impasses between the parties.

Mr. Gaches responded to questions from Rep. Krehbiel, Rep. Sloan, Rep. Alldritt and Rep. Klein.

Whitney Damron provided written testimony (Attachment 10) in support of **HB 2597** on behalf of ONEOK, Inc and Kansas Gas Service.

**Sub SB 243 Electric generation facility siting act applicable only to nuclear generation plants**

Rep. Sloan provided background information on the original bill.

Rep. Sloan moved to amend the bill to exempt construction of new electric transmission lines if they are built on existing right-of-way and outside the city limits. Rep. Alldritt seconded the motion. Motion failed.

Rep. Sloan moved to amend SB 243 to exempt property of an electric utility, other than a nuclear plant, from putting the new property into their rate base during the construction period. Motion died from lack of second.

Rep. Sloan moved to amend the bill to allow all new utility generation construction to be ruled a competitive business and assessed at the lower commercial tax rate, with special conditions. Rep. McClure seconded the motion. Motion failed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES in Room 522-S at 9:12 a.m. on January 26, 2000.

Rep. O'Brien moved to technically amend the bill to change the statutory dates. Rep. Loyd seconded the motion. Motion carried.

Rep. Loyd moved that the committee report Substitute SB 243, as amended, favorable for passage. Rep. O'Brien seconded the motion. Motion carried. Rep. Loyd will carry the bill.

Rep. Myers asked if a committee bill could be requested. Rep. Myers moved that a committee bill be introduced to address the merchant power plant deregulation and taxation. Rep. Dahl seconded the motion. Motion carried.

Meeting adjourned at 10:47 a.m.

Next meeting will be on Thursday, January 27 at 9:00 a.m.

# HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 26, 2000

NAME	REPRESENTING
DICK CARTER, JR	ENRON
Jack Graves	Panhandle Eastern - Kindey - Morgan
Norm Zeltman	Western Gas
Joe Duck	BPU KCK
Whitney Damron	KS Gas Service
Stella Johnson	KS Gas Service
Patrick Hurley	KAP
Ann Rider	Northern Natural Gas Co
Doug Lawrence	KEC
ED SCHAUB	WESTERN RESOURCES
John Bottley	Western Res.
Sandy Braden	Williams Companies
Cynthia Smith	KAPL
Ken Peterson	KS Petroleum Council
Jeff Wagoner	KCC



House Utilities Committee  
Comments of the Kansas Corporation Commission Staff  
January 25, 2000

I would like to submit the following information to supplement the discussions yesterday on SB 86.

The bill strikes K.S.A. 66-2002(j): "review the federal act and adopt additional standards and guidelines as necessary for enforcing slamming restrictions." The attorney general's office is addressing slamming complaints for residential consumers but its jurisdiction does not include complaints lodged by business consumers. Therefore, this section should not be deleted.

There were several questions regarding the deletion of "equal" in the definition of universal service. The wireline telecommunications companies are required to provide 1+ dialing parity pursuant to K.S.A. 66-2003(f); relevant KCC orders; 47 U.S.C. 251(b)(3); and, the FCC's dialing parity rules, 47 C.F.R. 51.209 - 51.215. The wireline local service providers will still be required to provide equal access through these provisions. The modification to the definition of universal service is consistent with the FCC's definition of universal service. Further, it is our understanding that wireless technology cannot now provide equal access. A carrier must provide all the services in the definition of universal service in order to qualify as an eligible telecommunications carrier. Section 332(c)(8) of the federal act specifically states that wireless providers are not required to provide equal access. In addition, the state universal service fund must be distributed in a competitively neutral manner. In summary, the modification to the definition of universal service will not alter a wireline company's obligation to provide equal access and will make the definition consistent with federal law.

There were some questions on Tuesday regarding the amount of money necessary to fund the deployment of enhanced universal service. Last year the Commission provided the Senate Commerce Committee cost estimates based on the information the companies provided the Commission in 1997. These estimates include the cost to make the services available. The estimates are attached.

Finally, there were some questions regarding access charges for the various carriers as they relate to toll rates. Attached is a chart showing the composite access charges for the incumbent local exchange providers effective March 1, 2000, after implementation of the access charge reduction for the rural companies and SWBT.

*HOUSE UTILITIES*

DATE: 1-26-00

ATTACHMENT 1

**SUMMARY 1**

**Estimates of Capital Costs and Support Required From the KUSF  
for Enhanced Universal Services.**

Total estimated capital costs for all enhanced services is **\$177 Million**.

Total support required on an annual basis from the KUSF to help pay for the enhanced services is **\$11 Million**.

A detailed representation for each company, for each enhanced service has been prepared as Attachment C and filed as highly confidential. Some of the data on Attachment C was gleaned from information furnished in February, 1998, for the infrastructure cost project, 98-GIMT-030-GIT. Since some of this data was designated as confidential in February, Staff believes individual company data should be treated as confidential.

Council Grove, Tri-County Telephone, Gorham Telephone, LaHarpe Telephone, and all companies in the Columbus Group of 12 Local Exchange Carriers (LECs) used the same capital costs and KUSF support requirements that were submitted in February, 1998, for the infrastructure cost study. All other companies submitted fresh data. Most companies wished to reserve the right to ask for additional KUSF monies in the future, if circumstances warrant.

The cost data from the Columbus Group is included in this analysis in spite of the Columbus Group's assertion that the data is unreliable. In the aggregate, this group would experience \$79 Million in capital costs, and require \$5.6 Million in support payments from the KUSF.

**SUMMARY 2**  
**Estimates of Capital Costs and Support Required From the KUSF  
for Enhanced Universal Services.**

Total estimated capital costs for all enhanced services is **\$97.7 Million**.

Total support required on an annual basis from the KUSF to help pay for the enhanced services is **\$5.4 Million**.

A detailed representation for each company, for each enhanced service has been prepared as Attachment D and filed as highly confidential. Some of the data on Attachment D was gleaned from information furnished in February, 1998, for the infrastructure cost project, 98-GIMT-030-GIT. Since some of this data was designated as confidential in February, Staff believes individual company data should be treated as confidential.

The cost data submitted by the Columbus Group has been excluded from this report because of Columbus Group's reservations about the reliability of the information.

Company Name	Access Rates
Bluestem	0.0478900
Cass County	0.0464760
Columbus**	0.0367890
Council Grove@	0.0551753
CrawKan	0.0364116
Cunningham	0.0497571
Elkhart	0.1164858
Golden Belt	0.0510205
Gorham	0.0522970
H & B Comm	0.0518210
Haviland	0.0507806
Home	0.0499496
JBN	0.0387943
KanOkla	0.0540286
LaHarpe@	0.0523008
Madison	0.0322390
MoKan**	0.0614010
Moundridge	0.0405520
Mutual	0.0413780
Peoples Mutual	0.0416997
Pioneer	0.0522239
Rainbow	0.0528845
Rural	0.0556670
S & A	0.0497389
S & T( & Dighton)	0.0517026
South Central	0.0612439
So Cent of Kiowa	0.0612440
Southern KS*	0.0491158
Sunflower	0.0499261
Totah	0.0537150
Tri-County	0.0508063
Twin Valley	0.0516380
United Assn@	0.0469687
Wamego	0.0441035
Wheat State	0.0506535
Wilson	0.0379492
Zenda	0.0523020
Sprint/United	0.0463230
SWBT	0.0227260



STATE OF KANSAS

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TOPEKA  
HOUSE OF  
REPRESENTATIVES

ASSISTANT MINORITY LEADER  
COMMITTEE ASSIGNMENTS  
TRANSPORTATION  
CALENDAR & PRINTING  
ENVIRONMENT  
SELECT COMMITTEE ON  
INFORMATION MANAGEMENT

DATE: January 26, 2000  
TO: House Utilities Committee  
RE: House Bill 2597

I am here today to submit the testimony of Mr. Jon Black, an attorney from Pratt with extensive experience in purchases and leases of property for underground gas storage. Mr. Black has represented landowners in condemnation litigation regarding underground storage.

However, Mr. Black is actively involved in this issue because of his interest in securing just laws in this area. For his time spent on this legislative issue Mr. Black receives no compensation and has traveled to Topeka several times at his own expense.

I am also submitting written testimony by five landowners in Pratt and Kingman Counties who are not able to be here today.

In my own view (here I am speaking for myself, not Mr. Black) the committee should closely review Sub Section 3(c), p. 3 of the bill. To me, it makes little sense to limit the award of an eminent domain proceeding. The landowner went to eminent domain proceedings in order to find a fair value for the property to be taken against his will. Why limit the ability of the court to determine a fair value?

Because of the potential for unintended effects, section 3 is still being discussed by the parties involved to insure that landowners are justly compensated for their property.

*HOUSE UTILITIES*

DATE: 1-26-00  
ATTACHMENT 2

BEFORE THE STATE OF KANSAS  
HOUSE UTILITIES COMMITTEE

RE: HOUSE BILL 2597

SWORN TESTIMONY OF JOHN V. BLACK

My name is John V. Black. I am an attorney in Pratt, Kansas, and have recently concluded representing a considerable number of landowners in litigation involving the migration of injected gas in the Cunningham Gas Storage Field. I want to apologize for not appearing personally before the Committee today. My father, Dr. Black, who is 94 years old, has been having some health problems. The man staying with him at night has quit showing up for work, making it necessary for me to care for him at night and making it extremely difficult, if not impossible, for me to get to Topeka for a morning hearing.

The litigation I handled involved both a condemnation proceeding under the Kansas Statute and an action for trespass. In working with this litigation, I found there were several things working an injustice to the landowners in the current provisions of Article 12 of Chapter 55 of the Kansas Statutes Annotated. This Article deals with underground storage of natural gas and was amended in July of 1993, basically, at the request of Williams Gas Company, who had a problem involving migration of their storage gas. The first thing this 1993 amendment did was to remove the rule of capture, which had been the historic rule in Kansas, from application to storage gas. It specifically concerns storage gas that had leaked out of the storage formation where it was supposed to have been contained. The amendment was basically concerned with the rights of the gas company storing the gas and overlooked the rights of the landowners owning the surface and the formations to which the gas had leaked. Under state and federal law, the surface owner owns from the surface to the center of the earth. He has the right to the use of that property to the exclusion of all others, unless there has been some legal process to alter those rights.

The first problem we confronted in dealing with the litigation was the eminent domain procedure. I question whether it is right to use the sovereign power of the State to condemn private property rights for the monetary gain and convenience of large multi-national gas companies or pipeline companies under the guise of "public purposes". I think we all realize that these operations are not charity operations.

The gas distribution system has been partially deregulated and will eventually be completely deregulated. These multinational corporations should be able to negotiate at arms-length just as any individual would be required to negotiate at arms-length if they want to buy a storage facility, whether it be for natural gas,

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ATTACHMENT 3

grain, automobiles, or any other type of commodity. As our nation developed and public utilities and railroads were first being established, for public benefit, the right to use the sovereign power of the state was granted to public utilities. On the other side of the fence, the public utilities and railroads were regulated, and their profits were controlled. That is now history. Today, the pipelines are either being deregulated, or have been deregulated. Their facilities have been established, many times with the use of eminent domain, and they have grown from small reasonable companies to giant multinational companies. Their ownership is diverse. They have a distinct advantage over the small landowner when it comes to litigation. They have a distinct advantage over small landowners, when it comes to having studies done to show the condition of an underground formation. Yet, we have followed the old system of letting them use the power of the sovereign for eminent domain. Now, it is being used for private profit of large companies and their shareholders. This is far removed from the original concept.

One of the problems with the current system is what they are allowed to condemn, if the rights in gas storage that could be condemned were limited to the condemnation of a rental right for an amount to be established by the court or by appraisers, it would be fairer and much more equitable than condemning and taking the whole property right for what could be perpetuity for a one time payment.

Another right they take is the right to recoverable minerals in the formation. Once they inject their gas into the formation, it is like a secondary or tertiary recovery operation and many minerals that are native to the formation will be forced out and taken to the surface. There is no provision to pay the landowner for these minerals. Thus, we now have landowners who have had a property right taken away from them, namely, the right to use their formation for storage, and we have gone one step further and in effect confiscated their mineral rights on the speculative studies by engineers. Thus, I believe the mineral rights should not be condemned, but should be subject to a fair and equitable lease as is used in other oil and gas development.

In the condemnation proceedings, we encountered problems in the way the commodity being taken was valued. Statute and case law limited us to a standard that was set by showing the value of the property before and after the taking based on sales in the area. There was no requirement to show that these sales took into account the rental value of the subsurface formation, or the value of the minerals being taken. If a knowledgeable seller and a knowledgeable buyer had knowledge of the rental value of the formation, it would materially affect sales in the area. Thus, the standard applied completely ignored what was being taken. If eminent domain is to be used, it should specifically address the commodity being taken, namely the rental value

of the storage formation and the value of any minerals that may be taken. We were not allowed to do this in the condemnation case.

The following are five specific questions I believe should be taken into account in considering this bill: (a) the recoverable minerals, (b) past production, (c) compensation, (e) periodic payments, and (d) costs and attorney's fees. I am addressing these from the assumption that the Committee will allow the utility to go ahead and use the sovereign government's right for condemnation.

#### A. RECOVERABLE MINERALS

The first point was the matter on how to deal with recoverable minerals in the formation where the gas is being injected.

In the Northern Natural Gas Cunningham Gas Storage Field and KP&L Brehm Field there are separate oil and gas leases, just like you have a lease on any oil or gas well, covering the oil and condensate recovered from the storage formation. These leases were negotiated between the gas company and the landowners at arms-length. They provide for payment of an agreed royalty.

It is not fair or just to the mineral owners to make them give up their rights to the minerals under their property, which the gas company is condemning for storage use. It is bad enough to let the cavalier gas company condemn the use of their storage formation rather than negotiating a private contract. It is a further intrusion upon their rights when you confiscate their minerals rights based on speculative studies by engineers. I realize this can work both in their favor and against them, but it is fairer to all of the parties if there is simply a lease on the recoverable minerals.

In the Brehm Field, which is a Simpson formation in Pratt County, the lease on minerals from the storage formation was for a 3/16th royalty interest (A 3/16th royalty interest has become customary on negotiated leases). In the earlier Northern Natural Cunningham/Viola gas storage field in Pratt County, the accompanying oil and gas lease was for 1/8th royalty.

These terms should be negotiated at arms-length and should not be a "cram down" situation for either party. If the parties cannot arrive at a mineral amount, a court can certainly set that amount or it could be set by mediation. I do not think that would normally be necessary. However, when one can abuse the privilege of condemnation generously given them by the legislature, inequities and unfairness result.

If it is to be fair to all concerned, the gas companies must not be allowed to abuse the condemnation process. This is clearly what Northern Natural Gas Company did with their \$10.00 leases on the Simpson and

Arbuckle formations were crammed down the throats of the owners of 16,000 acres of land by threat of condemnation and deceit.

#### *B. PAST PRODUCTION*

With respect to the liability for past production, this is clearly to pay for minerals taken during the trespass without compensation. You might even say they have exerted unauthorized control over these minerals, which they did not have permission to take. Justice and equity would demand that there should be compensation for these minerals. Although the gas company may have paid someone other than the mineral owner for minerals produced, it was their mistake, not the owners of the minerals in the trespass formation. If they paid the wrong parties, it was clearly due to their error.

It is much more equitable for them to have to pay for this mistake than it is to look to the mineral owners and say the gas company made a mistake; we are just going to let them have the benefits of that mistake, and you are going to lose. If the proper studies are prepared for certification by the KCC, the gas company will have reservoir information from which they can determine the percentages of the reservoir in the trespassed area. From these studies they could allocate the percentages of production and compensate the mineral owners in the trespass area proportionately on that production.

#### *C. COMPENSATION*

Next, please consider the issue of compensation for the past use of the unleased storage area. It is grossly unfair to say the gas companies can use the formation or area for a period of time and not compensate for that use (pay rent). In the case in Pratt County, eighteen years is a long period of time not to compensate (pay rent) for the storage use. This allows the gas company to have the benefits of the unjust enrichment. If the gas companies are to have the privilege of condemnation, they should first have to pay for the fair rental value of the storage area they have trespassed upon.

They should be required to do what is just and equitable, to the landowners, before they subject the landowners to the condemnation proceedings. There are plenty of existing gas storage formation contracts that can be used as a standard to determine fair rental value of the storage. Evidence presented of these contracts could certainly be presented to and used by the KCC to set this fair rental value. The KCC should make the payment of the fair rental value a condition of their certification of the formation for storage.

#### *D. PERIODIC PAYMENTS*

What are the advantages and disadvantages of periodic payments? The only disadvantage I see to periodic payments is the one raised by one of the gas companies saying they did not like to write checks annually.

Contracts bargained at arms-length in the oil and gas industry for years have provided for delay rentals. These delay rentals have been paid in annual payments remitted to bank accounts of the Lessors. Likewise, contracts bargained at arms-length for underground storage of natural gas have provided for payments in annual rentals.

The rental payments used for gas storage are really no different from the delay rental payments. The only difference being the purpose for which they are made. They are far more fair and equitable than a lump sum payment; because first, they pay the current property owner for the use of their property.

Secondly, they provide for the effects of inflation. In the Northern Natural Gas Company Viola contract, there is a provision for increasing the annual payments by \$1.00 every five years to account for the effect of inflation. In the Richfield Gas Storage lease, the inflation factor is a \$2.00 increase every five years. In the Brehm Field Storage Lease, the inflation factor is 10 percent per annum compounded annually.

All of these arms-length bargained contracts provided for periodic payments and provide for compensation for the effects of inflation. They are more fair and just than the lump sum payment, because they provide for a current value payment for the time use of a portion of the owner's property.

In the Northern Natural Gas condemnation case, a lump sum payment was made based on speculation by the appraisers as to two factors:

1. Future value of the formation.
2. The period of time the formation was used. (Might be 20, 50 or 100 years.

Certainly, what is a fair rental for ten years would not be a fair rental for twenty, thirty or fifty years. The fair and equitable way to handle this is with an annual lease payment. The appraisers in the condemnation can easily set the value of the annual lease payment from evidence presented by the parties. This is a small consideration for the use of the great privilege of the right of condemnation. It is truly due process compensation for the property right being taken.

### *E. COSTS AND ATTORNEY FEES*

The Statute as it exists today provides that if the landowners prevail, they are entitled to recover reasonable attorney's fees. I have been told that at the time this compromise was put in the statute the parties' intent was that the landowner should not have to pay the trial costs and attorneys fees if they had to sue and prevailed. Those costs were to be borne by the gas company.

As this worked out in the Northern Natural case, only part of these costs were borne by the gas company. While the judge found the contingency contract to be reasonable and also found the hourly rates to be reasonable, he ruled compensation was to be made by the gas company only for the hourly rates and not to the attorneys based on their contract with the landowners.

Thus, the clause on attorney's fees should read that the "attorney's fees are to be allowed to the landowners in accordance with the contract with their attorney, if the court finds said contract to be reasonable." This would insure that the landowners are fully compensated for their damages by award from the court.

You may have read in the tobacco cases where there was argument about ordering the tobacco companies to pay contingency contracts. The U.S. Circuit Court Judge in the 7th Circuit stated that in order to obtain lawyers with the skill to handle the cases, the states were not willing to risk the high costs of hourly attorney's fees. Therefore, it was reasonable for them to contract on a contingency basis. Thus, the court held that the tobacco companies should pay based on the contingency contracts. That same type of principle applies in a case as complex as mineral condemnation cases.

With respect to attorney fees for the Corporation Commission proceedings. When the gas company applies to the Corporation Commission for certification of the formation, they place a large unwanted burden on the landowners. That burden is in the form of having to acquire expert opinions to answer the experts of the gas companies and to acquire counsel to present their case to the KCC. Since the landowners are not asked to have their land condemned and they are not asking to have the storage field established, it is only fair and equitable that those costs should be borne by the parties who are asking for the action by the KCC.

It is just not due process of law to place a burden on the landowners when they have not done anything wrong. They are not really happy or willing participants in the procedure. It is a procedure being started by a party who has already been given a privileged position in the law under the theory of meeting

public convenience. Thus, it is only fair there should be a mechanism in the Statute to insure that the landowners are not out expenses created for the convenience of the gas company.

In order to grasp the inequities and unfairness of the present statute, you really need to represent the mineral owners and landowners in a court case and deal with the claims and allegations and tricks of the pipeline and gas companies.

In 1993, these companies expedited a bill through the Legislature without the Legislature having adequate time to study and consider all of the issues involved and without the landowners and mineral owners having the time to adequately develop the issues and present them to the Legislature.

It was only after I represented landowners and mineral owners, in both a condemnation action and a trespass action that I came to realize the many facets of gas storage and the gross unfairness of the rules as they are today. We are dealing with cherished property rights that could not be taken or acquired by other than arms-length bargaining without the cherished privilege granted by the sovereign in the form of condemnation.

It must always be remembered that the greatness of our nation is embedded in our Constitution, which protects individuals and protects individual property rights. Anything that contravenes with these should be done only with extreme caution.

The area of eminent domain should be selfishly guarded. Anything that expands the area of eminent domain reduces the rights of the citizens. In a democracy, citizen's rights are of primary concern. In a totalitarian type government, they are of little concern. Under socialization, they take a secondary seat to what leaders perceive to be the "interests of society". The United States became great based on democratic principles. I believe further socialization will only lead to its decline. Thus, I believe it is very important that we take an interest and a stand on legislation that has the potential of reducing the property rights guarded by the constitution.

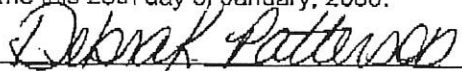
House Bill 2597 is a result of our meeting with the representatives of the gas companies and trying to reach an agreed bill which would be equitable to all concerned. I met with the gas companies and feel that we have come up with a solution which is much better than the existing law. There may be a few rough points that could stand a little polish, but basically, it is a giant step towards protecting the property owners' rights. Thus, I would ask that my testimony be considered in support of House Bill 2597. I respectfully urge that the utilities committee recommend its passage.



I am attaching hereto previous testimony of landowners that we submitted in support of the previous House Bill 2045. I would ask that you consider this testimony. Again, I apologize for the problems that have made it impossible for me to appear before the committee today and respectfully submit this testimony.

  
\_\_\_\_\_  
JOHN V. BLACK

Subscribed and sworn to before me this 25th day of January, 2000.

  
\_\_\_\_\_  
NOTARY PUBLIC

DEBRA K. PATTERSON  
NOTARY PUBLIC  
STATE OF KANSAS  
My Appl. Exp. 8/31/2001  
My Commission Expires:

BEFORE THE STATE OF KANSAS  
HOUSE UTILITIES COMMITTEE

RE: HOUSE BILL 2045

SWORN TESTIMONY OF KENNETH GLENN

My name is Kenneth Glenn. I live on a farm near Cunningham, Kansas. I own land and also farm land that is included in the Northern Natural Gas Company's Cunningham Gas Storage Field.

The Cunningham Gas Storage Field was established in 1976. It was initially for storage of gas in the Viola formation under the land. The landowners entered into contracts providing rental payments at \$4.00 an acre per year, with a clause to increase the rental payment by \$1.00 an acre every five years. I have been paid the rentals on my land. At times, the checks were late. At times, the checks were held up as they were trying to require me to sign a liability release before they would pay my rental checks.

In 1993, Northern Natural Gas Company, the operator of the Cunningham Gas Storage Field, determined that their gas was leaking into the Simpson formation underlying the Viola formation in the gas storage field. They sent land men to contact the landowners requesting them to sign a document deeding the minerals and the Simpson formation under the land to Northern Natural Gas Company. They offered to pay a one-time payment of \$10.00 per acre for this deed. I felt this was not reasonable, and they would not negotiate.

It was a "take or leave it" situation. If we refused to take the \$10.00 per acre they had arbitrarily set, they informed us they would condemn it, and we would have legal expense connected with that. They did, in fact, condemn it and paid \$55.00 an acre on the land in Pratt County. After the first contact, they had another individual contact us. At that time, they made the implication they might also condemn the Viola formation (which my attorney advised me was not possible), and we would lose the rentals on the Viola

HOUSE UTILITIES

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ATTACHMENT 4

formation. Many of the landowners at that time, particularly those who were older or retired and were relying on the rental payments to pay the taxes on their land, went ahead and signed up for \$10.00 an acre.

I do not feel it is right, just or equitable that I should be forced to sell my property rights (in this case, the rights to Simpson formation) to add to the profits of a large multinational gas company. In the process of the condemnation and a related lawsuit, our attorney contacted an expert witness, Mr. Bill Henry, a former Vice President of Northern Natural Gas Company. He has set up gas storage fields all over the United States and initially worked on Northern Natural's Cunningham Gas Storage Field. My attorney showed me papers that Mr. Henry prepared and calculated the income value of the Simpson formation under our land over the 17-year period that Northern had been using it without permission. This income value was \$684.00 an acre. I believe if there is that much value in the use of this acreage, the company should pay a fair rental amount annually, and not be allowed to take the formation away from us in this manner. I believe this is particularly true since the gas industry is now deregulated, and the gas storage under our land is principally going to other states.

I understand that the Fourteenth Amendment of the United State Constitution protects the property rights of landowners. I don't believe it is fair, just or equitable to allow a large corporation to use a landowner's property (in this case, the Simpson formation underlying my land) and derive a profit from it and not pay a fair rental to the landowners.

The condemnation process used on our property did not allow us to show the rental value of the property, but rather determined values based on the value of the surface of the land itself as established by before and after sales in the area. There was no necessity to show that these sales in any way took into account the rental value of the Simpson formation. Thus, rights were being taken away that were not even properly valued in the

action. I would also point out that any recoverable minerals in the Simpson formation were being taken away. The landowner is at a distinct disadvantage to show those recoverable minerals without great expense hiring geological experts. To give you an idea of the magnitude of the expense, Northern Natural Gas Company hired a company out of Dallas, Texas, to do a study and paid over \$625,000 for that study. Certainly, individual landowners cannot afford this. This is one reason I believe that a much better and equitable way to handle these storage leases is with a rental agreement and not letting them come in and use the sovereign powers of the government to take away the land rights.

In addition, under the statute, I understand we could be held liable for past production taken from our property. This would be production that might have occurred as a result of their trespass on our land. I do not believe this is just either. There is no provision made for compensation for the past use of the unleased storage area. Certainly, if there is going to be some claim for gas produced from it, there should be compensation for the use of the storage area.

I understand the large corporations feel that making monthly or annual rental payments is a nuisance. I wonder how they reconcile renting warehouses and other land. I don't believe it is any more fair for them to take our property rights than it would be for them to go into a large city and condemn a warehouse or a lot for storage that they wanted to use in connection with their operations. The same principles should apply.

In our action over the Cunningham Gas Storage Field, there was also the question of costs and attorneys fees. The statute as it exists today says the landowners should be allowed reasonable attorneys fees. We feel this should be modified to say, "allowed attorneys fees in accordance with the contract with their attorney, if the court finds that contract to be reasonable." We do not think they should be able to dictate what they think is reasonable attorney's fees.

The current statute also does not make provision for payment for past use of the formation. I feel it is very defective in that regard.

If the Committee feels that we should have to give up our property rights through the condemnation process, then I request that you pass House Bill 2045 which will at least remedy part of the complaints I have regarding the present system. I do not feel it is right to allow these companies to avoid bargaining at arms-length for what they want to use or need and just simply go to court using the sovereign power to condemn these rights and then do it under a system that doesn't even take into account the rental value of the formation.

Thank you for your consideration.

*Kenneth Glenn*  
KENNETH GLENN

Subscribed and sworn to before me this 4<sup>th</sup> day of February, 1999.

*Debra K. Patterson*  
NOTARY PUBLIC

(SEAL) DEBRA K. PATTERSON  
NOTARY PUBLIC  
My Commission Expires ESTABLISHED KANSAS  
My App. Exp. 8/31/2001

BEFORE THE STATE OF KANSAS  
HOUSE UTILITIES COMMITTEE

RE: HOUSE BILL 2045

SWORN TESTIMONY OF MARK BETZEN

My name is Mark Betzen. I live on a farm between Cunningham and Cairo, Kansas. Northern Natural Gas Company has their Cunningham Gas Storage Field under the land I own and farm. When the Cunningham Gas Storage Field was established in 1976, Northern Natural Gas Company negotiated storage contracts with the landowners in the storage field area. These contracts covered the use of the Viola underground formation for storage of natural gas. The contracts provided for annual rental payments to the landowners of \$4.00 an acre for the initial five-year period. This rental payment escalated \$1.00 an acre every five years after that. Though they have sometimes been late, the rental payments have been paid on my land. At times, I was required to sign a liability release document before they would pay my rental checks. I found this offensive.

In 1993, it was discovered by Northern Natural Gas Company, a division of Enron, a large multinational corporation and the operator of the Cunningham Gas Storage Field, that their gas had been leaking into the Simpson formation underlying the Viola formation in the gas storage field. Northern Natural Gas testified before the Kansas Corporation Commission that this started shortly after they started injecting gas into the formation in 1976. They sent landmen out to contact the landowners requesting them to sign a document deeding to them the minerals and the Simpson formation under their land for a one-time payment of \$10.00 per acre. I felt this was not reasonable and would not sign the agreement.

Northern Natural Gas Company would not negotiate with me on the purchase of my property rights in the Simpson formation. They sent a second agent to see us later. He told us if we did not sign the agreement and sell our Simpson formation to Northern Natural Gas Company for \$10.00 an acre, they would take us to court to condemn it. He further said we

*HOUSE UTILITIES*

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would have high legal expenses connected with the condemnation action. He made the implication that we might possibly even have our rights to the Viola formation condemned and lose those rentals. Our attorney informed us that they could not do this. Many of the other landowners in the area who were elderly and retired feared the loss of their rentals in the Viola and went ahead and sold their interest for \$10.00 an acre. We fought the condemnation action and were awarded \$55.00 an acre in Pratt County where our land is located.

I do not feel it is fair or right that I should be forced to sell my property rights, namely the right to the Simpson formation and the storage rental value of it, any more than it would be right to force me to sell a barn or a tank or some other vessel located on my property for the use of a large multinational gas company that operates for the profit of its shareholders.

Our attorney contacted an expert, Mr. Bill Henry. He furnished us information regarding the income that would have been derived by Northern Natural Gas Company from the use of the Simpson formation over the 17-year period. He calculated that income to be \$684.00 an acre. This gave us an income value of the formation. I believe landowners should have the right to receive a fair rental value for the use of their storage area in the Simpson formation under their land. I find it offensive that I had to give up this property right to satisfy the profit motive of a large multinational gas company. In effect, they took away my rights to receive part of the rental value of my land forever.

When the gas industry was regulated, I can understand the public convenience, necessity, and the theory in allowing them to use the rights of the sovereign to condemn property. Now that the gas companies are deregulated, I feel it is wrong to allow these large corporations to take away property rights of the citizens of Kansas for the benefit of their stockholders. I feel they should have to negotiate a rental contract at an arms-length basis and pay a fair rental value for the use of the property.

The Fourteenth Amendment of the United States Constitution specifically protects the property rights of landowners. I feel it violates the spirit of the Fourteenth Amendment, and it is

not fair or equitable to allow a private corporation to use a landowner's property, in this case the Simpson formation underlying their land, to derive a profit from it and not pay a fair rental value to the landowner. The condemnation process currently established determines the value of the property by taking an estimate of the value of the property before and after the condemnation. This statutory scheme does not allow the courts to take into account the fair rental value of the property, and it allows the gas company to take the property in its entirety rather than establishing a rental value for them to pay. It has no relationship to the income stream or the benefits derived from the taking of the property by the taker. It does not take into account the amount of value this income stream would contribute to the property for its owner.

For the above reasons, the present statutory scheme is unfair and inequitable. It denies property owners the full right to the use and enjoyment of their property or to receive the benefits from their property. I feel House Bill 2045 will go a long way to correct this. I respectfully ask that you pass the same.

Mark S. Betzen  
 MARK BETZEN

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
 NOTARY PUBLIC

(SEAL)  
 My Commission Expires:



BEFORE THE STATE OF KANSAS  
HOUSE UTILITIES COMMITTEE

RE: HOUSE BILL 2045 + 2597

SWORN TESTIMONY OF STANLEY R. WITHERS

My name is Stanley R. Withers. I live in Pratt, Kansas. I am the manager of my father's L.L.C., which owns farmland included in the Northern Natural Gas Company's Cunningham Gas Storage Field.

The Cunningham Gas Storage Field was established in 1976. It was established to store gas in the Viola formation under the land. The landowners entered into rental contracts, which provided for payments of \$4.00 per acre per year, with a clause to increase the rental payment by \$1.00 an acre every five years. We also have a well site on the property, and there is rental to be paid on it each year. We have been paid the rentals. However, at times the rentals were late in being paid. Northern Natural Gas has a policy that before they will issue us a check, they want us to sign a liability release on the property. I do not believe they should hold a rental check hostage to get a liability release signed. I feel this is improper.

In 1993, Northern Natural Gas Company, the operator of the Cunningham Gas Storage Field, determined their gas was leaking into the Simpson formation, which is under the Viola formation in the field. They sent land men to contact the landowners requesting them to sign a document deeding the minerals in the Simpson formation and the Simpson formation under the land to Northern Natural Gas Company. They offered to pay a one-time payment of \$10.00 per acre for this deed. We felt this was not reasonable, and they would not negotiate the purchase price.

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It was a "take it or leave it" situation, and if we refused, they told us there would be a condemnation proceedings. There was a condemnation proceedings. They were ordered to pay \$55.00 an acre on this Pratt County land. I would note, after the first contact, they later contacted many of the people in the field and told them if they didn't sign up for \$10.00, they might even lose the rentals they got on the Viola formation (our attorney advised us this was not possible). Many of the landowners in the area fearing the loss of the Viola rentals particularly those who were older or retired and were relying on the rentals to pay their taxes went ahead and signed up for \$10.00 an acre.

I do not feel this was right, just or equitable that I should be forced to sell my property right (in this case, the rights to the Simpson formation under my land), to add to the profits of a large multinational corporation. When we were fighting the condemnation, our attorney contacted an expert witness, Mr. Bill Henry, a former Vice President of Northern Natural Gas Company. Mr. Henry has been instrumental in setting up gas storage fields all over the United States and is knowledgeable of the value of gas storage. My attorney showed me papers that Mr. Henry prepared calculating the income value of the Simpson formation under our land over the 17 year-period that Northern Natural Gas Company has been using it without permission, i.e. trespassing. This income value was \$684.00 an acre. I believe if there is that much value in the use of this acreage, the company should pay a fair rental amount annually and not be allowed to take the formation away from us in this manner. I believe this is particularly true since the gas industry is now deregulated, and gas storage under our land is principally going to other states.

I own what used to be a warehouse and pipeyard for a gas company on the south side of Pratt, Kansas. I certainly do not feel it would be right to let a gas company come in and condemn that storage property and take it from me. The County at this time is trying to purchase it and trying to negotiate with me. I realize they may have the right to use eminent domain and condemn my property for public use. I do not think a gas company should be able to come in and do that simply because they wanted it for storage for profit. I see no difference between this and gas storage under my land.

I do not feel the condemnation process used on our property was fair for the following reasons: (1) it took more than just a rental contract, it took the whole interest; and (2) it did not take into account the rental value of the formation. The standard used in determining the value of the property was comparable sales in the area before and after, and these sales had nothing to do with the rights of the Simpson and their value. Thus the rights being taken away were not even properly valued in the condemnation action.

The statements made were that the primary production in the Simpson formation had been exhausted. I don't know whether it had or not, but I think there is a chance that is true. However, there was no value put on the minerals that would be recovered by repressuring with gas. These were minerals that belonged to me as a landowner and that Northern Natural Gas Company will extract from the Simpson formation by storage of gas. Thus, this value should have also been taken into account in the condemnation.

As a landowner or even the group of landowners I was working with could not afford the expense to do the geological studies to establish the recoverable minerals or

the geological characteristics of the formation. To give you an idea of the magnitude of the expense, Northern Natural Gas Company has testified that they hired a company out of Dallas to do the study and paid over \$625,000 for the study. You can easily see that a few individual landowners cannot afford this type of expense. This is one of the reasons I believe it would be much better to handle these storage leases with a rental agreement negotiated at arms-length and not rely on the sovereign powers of the government to take away the land rights. It must be remembered that our rights to the land are protected under the Fourteenth Amendment of the United States Constitution and they should not be dealt with lightly.

I understand that large corporations do not like to make monthly or annual rental payments. They feel it is a nuisance. However, I would point out that they do rent warehouses and other land and make monthly payments, and they hire employees and pay them monthly. I do not believe it is any more fair for them to take our property right to avoid making payments than it would be for them to take property rights in a city or condemn the warehouse I have just because they do not want to make payments, or in some way try to diminish their obligation to pay their employees because it is inconvenient.

In the action we have maintained over the Cunningham Gas Storage Field, there was also a questions of the costs and attorney's fees. The statute as it exists today does not make it clear that the legislature's intent was that the landowners if they prevailed should not have to pay attorney's fees and court costs. I feel the statute as it is written should be modified to say that they would be allowed attorney's fees in accordance with the contract with their attorney if the court finds that contract to be

reasonable. We do not think it should be left up to the oil company to determine what is or isn't reasonable on the contract.

Another problem with the current statute is that it does not make provision for payment of the use of the formation during the period of the trespass. There should be a statutory way to set that value and order it paid without having to go to the expense of a lawsuit. I would point out that the present lawsuit we have been involved in has been appealed to the Tenth Circuit Court of Appeals in Denver, Colorado, and the expenses in connection with that lawsuit have been a burden for all of the landowners.

If the Committee feels that we should give up our property rights through condemnation, then I request that you pass House Bill 2045, which will at least remedy part of the complaints I have regarding the present system and make it somewhat more palatable to landowners. I do not feel it is right to allow these companies to avoid bargaining at arms-length for what they want to use to generate profits for their companies. I do not think they should be able to simply go to court using the sovereign power of the state to condemn these rights and then do it under a system that does not even take into account the fair rental value of the formation. If they have to take an interest, it should be a leasehold interest and not an ownership interest.

*Sworn*  
Stanley R. Withers  
STANLEY R. WITHERS

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
NOTARY PUBLIC

(SEAL)  
My Commission Expires:

SWORN TESTIMONY OF DEAN DYCHE  
REGARDING HOUSE BILL 2045

TO BE PRESENTED TO THE HOUSE UTILITIES COMMITTEE ON FEBRUARY 5, 1998

My name is Dean Dyché, and I live in Cunningham, Kansas. I own land that is in the Cunningham Gas Storage Field.

The Cunningham Gas Storage Field was established in 1976. At the time it was set up, the landowners negotiated contracts for the use of the Viola Formation under their land for storage of natural gas. These contracts provided for annual rental payments of \$4.00 an acre, which would increase every five years by \$1.00 an acre. I have been paid these rentals on my land, although at times I was required to sign liability release documents before they would pay my rental checks. In 1993, Northern Natural Gas, the operator of the Cunningham Gas Storage Field, determined that their gas was leaking into the Simpson Formation underlying the Viola Formation in the gas storage field. They sent agents to contact the landowners requesting them to sign a document deeding to them the minerals and the Simpson Formation under their land for a one-time payment of \$10.00. I felt this was not reasonable.

A second agent came to see us later. He told us that if we did not sign the agreement and sell them our formation for \$10.00 an acre, they would take us to court and condemn it. They made the implication that we might possibly lose the rentals in our Viola Formation. Many of the other landowners in the area who are retired went ahead and sold their interest for \$10.00, because they were apprehensive of losing the rentals in the Viola Formation. I did not accept the \$10.00. We went to condemnation and were awarded \$55.00 an acre in Pratt County, \$25.00 an acre in Kingman, which was appealed and finally settled for \$45.00 an acre.

I do not feel it is right that I should be forced to sell my property rights, namely the right to the Simpson Formation, to add to the profits of a large, multinational gas company. Our attorney contacted an expert, Mr. Bill Henry. He is a former Vice President of Northern Natural Gas Company and an individual who has been involved in setting up gas storage fields all over the

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DATE: 1-26-00

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United States. He calculated the income value of the Simpson formation over the 17-year period that Northern had been using it. He calculated that income value to be \$684.00 an acre. The landowners should receive a fair rental value for the use of their formation on an economic endeavor of this size. This is particularly true since the gas industry has been deregulated.

The United State Constitution protects the property rights of landowners. It is not fair or equitable to allow someone to use the landowners' property, in this case the Simpson formation underlying their land, and derive a profit from it and not pay a fair rental to the landowners. The condemnation process currently established determines the value of the property being taken by an estimate of the before and after values of the property. The statutory scheme does not allow the courts to take into account the rental value of the property being taken. It is no relationship to the income stream this property should produce for its owner.

For the above reasons, the present statutory scheme is unfair and inequitable, and it denies the property owners the full right to use and enjoy their property or receive the benefits of their property. I feel House Bill 2045 will go a long way to correct this. I respectfully ask that you pass the same.

Dean Dyché  
DEAN DYCHE

Subscribed and sworn to before me this 3rd day of February 1999.

Debra K. Patterson  
NOTARY PUBLIC



BEFORE THE STATE OF KANSAS  
HOUSE UTILITIES COMMITTEE

RE: HOUSE BILL 2045

SWORN TESTIMONY OF LLOYD MCCLELLAN

My name is Lloyd McClellan. I live on a farm near Cunningham, Kansas. Northern Natural Gas Company has their Cunningham Gas Storage Field under land I own. Due to my age and health condition, I did not feel I was able to testify before the House Utilities Committee regarding House Bill 2045. I submit the following information and please ask the Committee to consider my testimony in support of the bill.

In 1976, Northern Natural Gas Company came to us to rent the Viola formation under our land so they could establish a storage field for natural gas. They presented us with contracts providing an annual rental payment of \$4.00 per acre for the first five years, which increased \$1.00 an acre for each five years thereafter. I have been paid the rentals on the Viola formation under my land. Sometimes they have been late, and sometimes they have demanded my signature on a liability release document before they would pay my rental check. After signing this initial contract, I learned that about the same time Kansas Power and Light negotiated a rental contract at arms-length, with no threats of condemnation, for land in Pratt County, which is about 15 miles from the Cunningham Gas Storage Field, and paid \$10.00 an acre with an escalation clause for the rental to increase each year.

In 1993, Northern Natural Gas, the operator of the Cunningham Gas Storage Field, determined that their gas was leaking into the Simpson formation, which underlies the Viola Formation, and is also under my land. They sent land agents to contact the landowners requesting them to sign a deed granting Northern Natural Gas the minerals and the rights to the Simpson formation under this land for a one-time payment of \$10.00 per acre. I did not feel this was just and reasonable and would not sign the deed. Later, they sent a second agent to see us. He informed us that if we did not sign the agreement and sell the Simpson formation under

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our land to Northern Natural for \$10.00 an acre, there would be a court proceedings to condemn this acreage, and we would have great legal expense. The implication was made that we might even lose the rentals from the Viola formation, as it might be condemned as well. My attorney has since advised me that it was not possible to condemn the Viola formation that they had rented. Many of my friends who own land near me were apprehensive they would lose the benefits of the Viola rental agreement and signed the deed selling their Simpson formation to Northern Natural Gas Company for \$10.00 an acre. We were then involved in a condemnation action in Pratt County and were awarded \$55.00 an acre in the condemnation.

I did not feel it was right that in the condemnation case the rental value of the formation was not allowed to be considered. Actually, this was a property right we were losing. Our attorney contacted an expert who is a former Vice President of Northern Natural Gas Company and who was involved in setting up not only gas storage fields for Northern Natural, but also gas storage fields all over the United States. He calculated the income value of the Simpson formation over the 17-year period that Northern Natural Gas Company had been trespassing on and using it. He set this value at \$684.00 an acre. I feel the landowner should be entitled to receive the fair rental value for the use of the formation under their land on an economic endeavor of this size. I feel this is particularly true since the gas industry is now deregulated.

The Fourteenth Amendment protects the property rights of the landowners. If their rights are to be taken, the bundle of rights being taken and their value should be considered. It is not fair or equitable to allow a corporation to take the landowner's property for their private use and benefit. In this case, the Simpson formation underlying our land was taken for the private use and benefit of Northern Natural Gas Company. They will derive a profit from it. They will not pay a fair rental for its use. The current condemnation process that was used in taking our property did not consider the fair rental value of the property. It considered the value of the property before and after the taking. Since the property had never been rented, that rental value was not factored in to the before and after values. In fact, the before and after values

were established by using sales of land in the area which had nothing to do with the consideration of the rental value of the formation (the storage value of the formation).

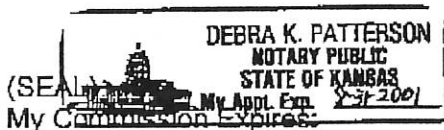
I don't believe a large multinational company or anyone for that matter should be able to take property that is suitable for use for storage such as a warehouse, a barn, or another building and not compensate for the rental value of the property. It is not fair for a large private corporation to use the powers of the government to take property from the citizens for the corporation's private use and benefit, or the benefit of its stockholders. I believe the corporation should be required to negotiate rental contracts at arms-length with the individuals who own the property. It is no more right for them to be able to take the Simpson formation under my property than it would be for them to be able to take a warehouse in Wichita, Kansas, by condemnation just for their use and benefit. It is particularly unfair when the process used has no relationship to the income stream the property would produce. I believe the company should be required to pay a reasonable annual rental for the use of the Simpson formation under our property.

For the above reasons, I feel the present statutory scheme is unfair and inequitable and does not consider my constitutional rights and my property. It denies me the full use, enjoyment and benefit of my property. I feel House Bill 2045 will go a long way to correct this. I respectfully ask that you pass the same.

Lloyd McClellan  
LLOYD MCCLELLAN

Subscribed and sworn to before me this 4th day of February, 1999.

Debra K. Patterson  
NOTARY PUBLIC



**McGILL  
GACHES**



**& ASSOCIATES** INC.

**GOVERNMENT AFFAIRS & PUBLIC RELATIONS**

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Testimony in support of House Bill 2597

Presented by Ron Gaches of McGill, Gaches & Associates

On behalf of Kansas Gas Storage Industry

Before House Utilities Committee

Wednesday, January 26, 2000

*HOUSE UTILITIES*

DATE: 1-26-00

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## Testimony of the Kansas Gas Storage Industry in support of House Bill 2597

This hearing presents the opportunity for two opposing sides to come together in support of a compromise bill that provides equitable solutions to a number of complicated and difficult issues. The language of this bill, HB 2597, is the result of hundreds of hours of discussion and negotiation. It is certainly not the bill that either side would have drafted on its own accord. Instead, it is the result of a genuine give and take of opinions and concerns expressed by landowners and their representatives and the Kansas gas storage industry and its representatives. It is my pleasure today to speak on behalf of the gas storage industry in support of the bill.

Attached are two items for your review and consideration. The first is a copy of the testimony presented on behalf of the gas storage industry before the Special Committee on Environment on October 15, 1999. This testimony provides a brief summary of the three-year history of this issue and describes the many compromises contained in the bill. Mary Torrance has previously provided this Committee with a very fair and thorough review of this history and the contents of HB 2597.

The second item attached is a recommended amendment to the current bill draft. This language was developed in response to concerns that Section 3 (c) appearing on page three, lines 11-18, regarding compensation of landowners was too restrictive. Specifically, the language in lines 13-14 that creates a cap on annual lease payment was a concern to some legislators. Although it was certainly the intent of the industry to create a firm cap on lease payments, and this language was previously agreed to by the proponents of the original gas storage bill, the industry agrees that the language could have some unintended consequences in some fact situations. The suggested amendment is the result of negotiations that have taken place over the past week and has the support of Mr. Jack Black, who appeared in support of the original bill, and Doug Smith, representing the SW Royalty Owners Association.

The gas storage industry considers this bill in its entirety to be an acceptable resolution of the concerns facing landowners involved in the development or operation of a gas storage field. We believe it is a well-balanced bill. It has been very difficult to get this far and suggestions for other additions or changes to the bill that upset the careful balance of interests represented herein will generally be resisted.

I would like to remind the committee that language making this bill the exclusive remedy for these conflicts was inadvertently omitted from the bill. With the addition of the exclusive remedy language and the amendment attached we urge your favorable consideration of HB 2597.

**Testimony before the Special Committee on Environment  
Presented by Ron Gaches  
On behalf of Kansas Gas Storage Industry  
Friday, October 15, 1999**

Maintaining an adequate supply of low cost natural gas for use by Kansas consumers is the purpose of underground storage of natural gas. The companies that fulfill this public service are an integral part of the natural gas industry in Kansas. Collectively, these firms provide thousands of Kansans with well paying jobs and pay millions of dollars in property, income and sales taxes to the State of Kansas and our local units of governments.

The issue before you today first surfaced in the Kansas legislature during the 1998 legislative session as HB 2522 before the House Judiciary Committee. The bill was the subject of hearing in March of that year before Chairman Tim Carmody's committee. The committee took no action on the bill that year.

The issue returned this past legislative session as HB 2045 and was the subject of hearings before the House Utilities Committee. Several conferees on both sides of the bill appeared before the committee and discussed the many legal, public policy and equity issues presented to the committee. Due to the complexity of the issues, and the broad disparity of positions represented by the bill proponents and opponents, a subcommittee was appointed to work the bill. The subcommittee was chaired by Representative Ward Loyd.

The subcommittee held additional hearings on HB 2045 and recommended that the issue be referred for interim study. During the subcommittee deliberations, representatives of the gas storage industry pledged to work towards a compromise with bill proponents if, in fact, a middle ground could be found.

A minority report was filed with the subcommittee report that urged immediate action on the bill. Subsequently, the House Utilities Committee recommended HB 2045 favorable for passage in a form that the gas storage firms continued to oppose.

Ultimately, several members of the House Utilities Committee and House leadership asked the various representatives of the gas storage industry if we would meet with the bill proponents and try to work towards a compromise resolution of the most important issues of controversy. These issues included:

- The manner in which a gas storage company can condemn property for gas storage purposes
- The nature of the interest taken by a gas storage company for the purpose of storing gas
- The method of calculating compensation owed landowners for the taking of their land for gas storage purposes
- The definitions of "natural gas," "native gas," and "suitable for underground storage of natural gas"
- The ownership of natural gas that has migrated out of a gas storage field onto property of an adjoining property owner

- The rights of landowners regarding natural gas that has migrated outside of an underground storage field and on to neighboring land
- The compensation of landowners for non-authorized use of their property for storage of migrated gas
- The awarding of attorneys' fees to landowners who receive a judgement against gas injectors

Representatives of the Kansas gas storage industry met on July 14 in Topeka and again on August 12 for the purpose of developing an industry consensus on these issues. The firms participating in these meetings are listed at the end on my testimony.

We initiated a dialog with Jack Black via a phone call during our meeting on July 14 that has continued right up until this meeting. We appointed a smaller group of attorneys representing several of the participating firms to work up a revised draft of HB 2045 and entered into direct discussions with Mr. Black in an effort to reach a compromise on these issues.

I am pleased to report that those efforts have been successful and result in the bill draft that is attached to my testimony. I won't try to review the technical and legal details of this draft for you except to note a few of the most important provisions.

Section 1 (f) defines the phrase "Suitable for the underground storage of natural gas." This definition authorizes 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. We have learned from past experience that is not possible to forecast with one hundred percent certainly that stored natural gas will not migrate. The KCC is authorized to make a determination that is a reasonable conclusion.

Section 2 sets out the specific findings of the KCC that must be determined prior to a natural gas public utility exercising the right of eminent domain to create an underground gas storage field.

Section 3 (a) sets forth the compensation that landowners will be provided by the gas storage company in the event that eminent domain is used to take their property. This language is the product of a compromise position agreed between the gas storage companies and Mr. Black negotiating on behalf of bill proponents.

Section 3 (b) 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 the appraisers shall be appointed from among the disinterested resident of any of the counties where the property is located.

Section 3 (c) 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.

Section 4 (a) provides that gas injected into underground storage shall at all times be the property of the injector.

Section 4 (b) specifically provides that the law of “capture” shall not apply to gas injected into a gas storage field.

Section 4 (c) describes the rights and obligations of the gas injector with regard to natural gas that has migrated outside of the underground storage. The description of these rights and obligations compromise the most substantive parts of this proposal and reflect a careful balancing of the interest of the gas injector and those of a landowner where gas has migrated.

Section 4 (c) (1) provides that the injector shall not lose title to such gas if the injector can prove by a preponderance of the evident that such gas was originally injected into the underground storage. The section clearly puts the legal burden on the injector to prove the ownership of migrated gas. Fortunately, not all gas is alike. Modern technology permits a highly accurate determination of the identity of gas.

Section 4 (c) (2) authorizes the injector to conduct test at the injector’s sole risk and expense to determine the ownership of gas that may have migrated from a storage field. The injector will be liable for all such expenses including, but not limited to, the value of any lost production of other than the injector’s gas. This means that the injector will compensate the landowner for any gas produced as a result of these tests that is not the injector’s gas.

Section 4-(c) (3) describes the compensation that the injector shall pay for the prior use of a landowner's property where gas has migrated. This language is some of the most important in the bill and gets to the heart of the controversy that led to the introduction of the original bill. Simple stated the section requires the injector to pay for prior us of a stratum where injected gas has migrated, meaning that a landowner will be compensated for the migration of injected gas.

The compromise 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 making a written demand for compensation. And the section gives the landowner up to two years to request compensation after the time when they had knowledge or ought reasonably to have had knowledge of the migration of injected gas.

Finally, this section describes when the gas injector shall be liable for the landowner’s legal fees if the landowner goes to court to dispute the offered compensation for storage of migrated gas. This language does not give the landowner a free legal shot at the gas injector. Instead, it provides that the injector will be liable for the landowners legal fees if the compensation granted such landowner is 15 percent above the last offer made by the injector within 75 days of the initial filing of the action. In effect, if the injector’s offer was a fair offer, the landowner does not get their attorney’s fees paid. But if the offer was not a fair offer, that being 15 percent below the determination by the court, the landowner’s attorney’s fees will be paid by the storage company.

Section 4 (c) (4) provides that this language shall be the exclusive remedy for the recovery of damages or compensation for this kind of controversy regarding migrated gas.

Attached to my testimony is a draft of the compromise bill. We are hopeful that the committee will endorse the draft and recommend it favorable for introduction to the 2000 legislature.

As I said before, the draft represents a carefully crafted compromise between interests that were far apart at the beginning of the 1999 legislative session. Our industry group has endorsed this compromise but reserves the right to review any further amendments.

I would be glad to answer your questions. We also have a number of industry specialists in attendance today who will help with technical and legal issues.

Participants in the Kansas Gas Storage Industry meetings included:

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



Kansas Gas Storage Bill – HB 2597  
Proposed Amendment to Page 3, Lines 11-18

The language to be deleted is underlined. The new suggested language is in *italic*.

(c) The amount awarded for the rights appropriated, at the option of the owner of the property being condemned, exercised in writing, shall be either a lump sum or in the form of annual payments which shall not exceed the highest existing *in which event such payments shall be based on current* rates payable under negotiated leases or other granting instruments in the subject storage field for surface utilization and substratum storage rights, as applicable. If data on such rates do not exist or are unavailable, the rates payable in comparable storage fields in the state shall be utilized in making such award.

**WHITNEY B. DAMRON, P.A.**  
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January 25, 2000

The Honorable Carl Holmes, Chairman  
House Utilities Committee  
Room 115-South  
State Capitol Building  
Topeka, Kansas 66612

Re: HB 2597/Natural Gas Storage

Dear Chairman Holmes:

Attached to this letter is a copy of testimony to be submitted on HB 2597 on behalf of my clients ONEOK, Inc., and Kansas Gas Service, a subsidiary of ONEOK. Another subsidiary of ONEOK is also on record supporting this bill as noted in my testimony, Mid Continent Market Center.

Although we are supporting the gas industry position on this bill through our submitted testimony, I did wish to make you aware that Mr. Galen Biery, an attorney with Kansas Gas Service, will be in attendance at the hearing on HB 2597. Mr. Biery is a recognized expert on eminent domain and condemnation proceedings and his expertise may be of value to your committee should they have questions in this area.

On behalf of ONEOK, Inc., Kansas Gas Service and Mid Continent Market Center, we thank you and your Committee members for their continued deliberation on this important piece of legislation. Thank you.

Sincerely,



Whitney Damron

Attachment

*HOUSE UTILITIES*

DATE: 1-26-00

ATTACHMENT 10

**WHITNEY B. DAMRON, P.A.**  
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**SUBMITTED TESTIMONY**

**TO:           The Honorable Carl Holmes, Chairman  
              And Members Of The  
              House Utilities Committee**

**FROM:       Whitney Damron**

**RE:           HB 2597 – Underground Storage of Natural Gas**

**DATE:        January 26, 2000**

On behalf of Kansas Gas Service and Mid Continent Market Center, two Kansas-based sister corporations, and their parent company, ONEOK, Inc., we hereby offer our support for HB 2597 as agreed upon by industry representatives and bill proponents.

By way of information, Kansas Gas Service (KGS) is a local distribution company for natural gas in Kansas, providing service for over 600,000 customers in our state. Mid Continent Market Center (MCMC) is engaged in the intrastate transportation and storage of natural gas in Kansas. ONEOK, Inc., the parent company of these entities, is a Tulsa, Oklahoma-based natural gas and energy concern.

MCMC is regulated as a utility by the Kansas Corporation Commission. The company serves native Kansas markets, including Kansas Gas Service and the major towns of Pratt, Great Bend, Salina and Manhattan. The Company also interconnects with several interstate pipelines and transports and stores gas for shippers served from these pipelines. MCMC presently has two storage fields operating in Kansas: the Brehm Storage Field, located outside of the City of Pratt and the Yaggy Storage Field, located outside the City of Hutchinson.

Representatives of ONEOK, KGS and MCMC have been an active participant in the debate over gas storage legislation during the past three years. We are pleased a compromise piece of legislation has been agreed to by all parties and stand before you as a supporter of this legislation in its agreed-upon form.

On behalf of ONEOK and its Subsidiaries, we thank you for your consideration of HB 2597 and are available for questions during your consideration of this legislation.