

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairperson Sen. Pat Ranson at 1:30 p.m. on March 22, 2000 in Room 231-N of the Capitol.

All members were present except:

Sens. Hensley and Salisbury were excused

Committee staff present:

Lynne Holt, Legislative Research Department

Mary Torrence, Revisors of Statute Office

Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:

Commissioner John Wine, Kansas Corporation Commission

Others attending:

See attached list

Sen. Ranson announced the committee will hold a confirmation hearing for John Wine, who has been re-appointed to serve another four years as Commissioner of the Kansas Corporation Commission. She asked the committee to refer to confirmation papers distributed to the committee (Attachment 1) and introduced Mr. Wine.

Mr. Wine did not submit written remarks, but stated he wanted to review what has happened at the Kansas Corporation Commission during the past four years and to make some predictions. Mr. Wine presented the following to the committee:

Natural gas - It is the most stable and more orderly of the utilities; the commercial customers are able to choose their supplier, but he believes it will be a gradual process to move to residential deregulation.

Electrical - He believes deregulation of the generation phase is inevitable and believes the state should move in a cautious manner. He recalled that some of the states have adopted deregulation, but it is stalled in most of those states. He stated there are tax implications which need to be solved, and stranded costs also need to be addressed. He cannot guess what the U.S. Congress will do, but did predict deregulation of the distribution will come in a few years.

Telecommunications - He commented changes have taken place in this industry at break-neck speed, with changes coming as a result of technology and demand, great demand. This has to do with the fact that transmissions can come in different ways, and the delivery of these services has changed. He stated the government's role is to promote availability of services universally.

Mr. Wine continued by explaining the old structure of the commission is making transitional changes now and will include alternatives to resolve issues, such as dispute resolution and negotiation rulemaking as a more up-front approach to the old control and regulation. He added that the Commission will take on a greater role educating the public and in a consumer protection role. He also stated the Agency has appointed a Task Force to address future problems/changes, and he has attended the National Association formulating plans for the future with other states on a national level. He explained the Commission has a traditional regulatory role for non-utility functions, such as transportation, motor carrier safety, pipeline safety and the Conservation Division. He also stated the Conservation Division has increased the rate of plugging the wells and has brought down the cost of plugging them. Mr. Wine stated he is aware this committee has been holding hearings the past week regarding plugging wells and admits the Commission has not done enough to solve the problem of abandoned wells. He stated he has read the Committee's Draft Report and agrees with it and believes both the Senate and House have sent a clear message they want more done in this area; he reassured the committee that he has gotten a clear message regarding plugging of abandoned wells.

CONTINUATION SHEET

MINUTES OF THE SENATE UTILITIES COMMITTEE, Room 231- N Statehouse, at 1:30 p.m. on March 22, 2000.

Committee members questioned Mr. Wine generally regarding merchant power plants and allocating FERC refunds, which has been discussed in Sen. Morris' Energy Committee. Mr. Wine responded there is an open docket regarding that matter and how to distribute refunds, so he is reluctant to respond.

Sen. Barone referred to Mr. Wine's Statement of Substantial Interest for Appointment to State Office and Schedule "C" (attached to his Confirmation Summary), which requires listing interest holdings exceeding \$5,000 and asked if it was complete. Mr. Wine answered his Mother passed away in January, which would make some changes on that schedule. Sen. Ranson noted the Substantial Interests Statements are filed with the Secretary of State's Office each April, and the one attached to Mr. Wine's papers was signed in April, 1999. Mr. Wine admitted it needs to be updated which he will do next month, as required by law; he will also update his biography. He also discussed with Sen. Barone KCC internal security procedures and stated the Commission creates its own internal investigations for such matters and they are brought to Topeka for resolution.

Sen. Ranson questioned Mr. Wine regarding his serving as Chairman of the Commission and found that he was appointed Chairman in September, 1997, and is still serving as Chair of the Commission. There was no further discussion. Sen. Lee made a motion John Wine be re-appointed as Commissioner of the Kansas Corporation Commission, and it was seconded by Sen. Brownlee. Roll call vote was taken, and Mr. Wine was recommended for re-appointment unanimously.

Sen. Ranson referred to the appearance of the Secretary of the Department of Transportation, E. Dean Carlson, before the committee regarding **HB 2897-public lands; relating to grants of easements.** The committee discussed the Department of Transportation's definition of public utilities and their Accommodation Policy. Sen. Ranson stated it clarifies their definition of public utilities and applies to all public and private utilities; she briefly read what is included in the definition.

Sen. Ranson announced that Ms. Torrance and Diana Edmiston (from the Conservation Division) were meeting to go over the proposed changes made yesterday to **Senate Sub for House Bill 2782-concerning oil and gas; relating to plugging of certain wells.**

Sen. Ranson then announced Ms. Holt has re-worked the Report by the Senate Committee on Utilities to the Senate Committee on Ways and Means (Attachment 2), and asked Ms. Holt to go over some of the revisions made by the committee yesterday. She advised the deletions the Committee made yesterday have been taken out of the text, and the changes made are in bold print. She began on Page 4, and changing the Abandoned Oil and Gas Well Fund from a no limit fund to a limit fund, according to Committee wishes. Paragraph 2 stipulates all operators be required to pay the \$50 fee for new and renewed licenses. Page 5 relates to the emphasis the Committee has placed on locating responsible parties and explicit language in the statute to authorize that administrative expenses be included for this purpose. She called the committee's attention to Attachment 1, which is the Conservation Division's recommendations regarding the process of bidding and attracting more qualified contractors to compete for state plugging contracts. The committee's recommendation to encourage bids to be awarded for entire projects rather than individual services, and to change the formula for compensation to contractors to a cost per well/flat fee for at least a twelve month period to compare the costs per well approach was discussed. Also, the committee's recommendation for a report to be submitted to the Senate Committee on Ways and Means and the House Committee on Appropriations during the 2001 session is outlined on Page 6. The committee discussed the changes, and Sen. Clark stated that the report should be by district, since the depth of the wells varies a great deal from his district to Sen. Barone's district, making sure they are comparing apples to apples. Tom Day (from KCC) stated that the approximate depth of the wells is known when they are bid; the actual depth of the well is known when it is drilled and capped off. The committee's recommendation is to request a report and analysis and that the report be by district. Sen. Barone stated it will be difficult for the report to be for a twelve-month period, if it is to be submitted to the 2001 session. Mr. Day stated the statute stipulates the KCC annual report be submitted to the Legislature by the first day of the session. Sen. Barone's suggestion to recommend an interim report next legislative session was agreed upon by the committee. Sen. Ranson referred to the last paragraph on Page 6 and the committee's opposition to the negotiated contracts, which was a recommendation of the

CONTINUATION SHEET

MINUTES OF THE SENATE UTILITIES COMMITTEE, Room 231- N Statehouse, at 1:30 p.m. on March 22, 2000.

Conservation Division; she noted the committee's recommendation is to change the bid process. Ms. Holt will correct the wording of the last paragraph. The committee also noted the last attachment to the report, which shows the number and percentage of abandoned wells plugged or scheduled for plugging with state funds by calendar year.

Sen. Clark made a motion the committee accept the report and that it be submitted to the Senate Ways and Means Committee, and the motion was seconded by Sen. Jones. A voice vote was taken, and the motion passed unanimously.

Sen. Ranson called the committee's attention to Minutes of Meetings for March 2, 7, 8 and 9. Sen. Steffes made a motion the Minutes be approved, and it was seconded by Sen. Brownlee; the motion passed and the Minutes were approved.

Meeting adjourned at 2:15.

No further meetings are scheduled.

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: MARCH 22, 2000

NAME	REPRESENTING
Bob ECAPPAN	AT&T
MIKE REECHT	AT&T
JOLENE CRABILL	READ
J.C. LONG	UtiliCorp -
Jerry Shaffer	UtiliCorp -
Meg McGill	UtiliCorp
Mike Alexander	UtiliCorp
Cynthia Smith	KCIL
Jack Graves	Panhandle Energy/Merge - Duke
Judy Kungu	Governor's Office
Kathy Mackham	Gov's Office
SCOTT SCHNEIDER	MGA
TOM DAY	KCC
JOHN WINE	KCC

Senate Confirmation
Information
Not Scanned
Due to Confidential
Content

Attachment 1

March 22, 2000

REVISED DRAFT REPORT BY THE SENATE COMMITTEE ON UTILITIES TO THE SENATE COMMITTEE ON WAYS AND MEANS¹

This report responds to a recommendation by the Senate Ways and Means Committee that the Senate Committee on Utilities study:

1. impediments to more rapid oil and gas well plugging and remediation; and
2. projections of receipts and expenditures in the Abandoned Oil and Gas Well Fund, which were included in tabular form in the Senate subcommittee report on the Kansas Corporation Commission's FY 2001 budget.

Summary of Activities of Senate Committee on Utilities

- **Background Information.** We received information on oil and gas well plugging from staff of the Kansas Legislative Research Department (Lynne Holt) and the Division of Legislative Post Audit (Cindy Lash). Ms. Holt reviewed the existing funding mechanisms (Conservation Fee Fund and Abandoned Oil and Gas Fund) and a proposed funding mechanism (Well Plugging Assurance Fund in HB 2782) for plugging oil and gas wells. Ms. Lash reviewed the Post Audit report issued in February 1998 on a K-GOAL Audit performed on the Conservation Division's activities. She focused her review on the sections of the report addressing the plugging of abandoned wells. Maurice Korphage, Director, Conservation Division, provided background information on the funding and status of abandoned well plugging and remediation operations. Mr. Korphage offered several suggestions for attracting more qualified contractors to compete for state plugging contracts. He also outlined several ideas for expediting the process of bidding on plugging and remediation projects. (*See Attachment I.*)
- **Contract and Bidding Procedures.** We received testimony from Terri and Keith Splane, Splane Pulling and Roustabout Service, Inc; Ed Bideau, an attorney representing Mike Wimsett, W-W Production Company; Jim Kepley, K-W Well Service; and Fran Welch, Procurement Officer, Division of Purchases, Kansas

¹ **Bold print reflects the Committee's recommendations**

Italicized print reflects the Committee's amendments of March 21

Senate Utilities
3-22-00
Attach. 2

Department of Administration. Their presentations focused on the contract and bid procedures for abandoned well plugging jobs.

- **HB 2782.** On March 14, 2000, our Committee held a hearing on HB 2782, which would establish the Well Plugging Assurance Fund. This Fund would be used exclusively to pay the costs of investigations of abandoned oil and gas wells, as well as the plugging, replugging, and repairing of abandoned wells and remediation of sites. For all such actions, drilling had to begin on or after July 1, 1996. Any authorized activities would be financed by fees assessed operators for financial responsibility assurance. These fees are currently credited to the Conservation Fee Fund but would be redirected to the proposed fund. The fund would be interest bearing. No administrative expenses incurred by the Conservation Division may be paid from the fund. Our recommendations on this bill are outlined below.

Committee Definition of the Problems and Committee Recommendations

In our review, we focused on two interrelated problems:

1. the integrity of the abandoned well plugging and remediation process, which includes the existing funding mechanisms for financing the contractual plugging and remediation jobs and the Conservation Division's administrative oversight; and
2. the existing procedures used for bidding and contracting for these jobs.

Integrity of the Well Plugging and Remediation Process. In the Kansas Corporation Commission's most recent status report (March 15, 2000), the Commission noted that there were 9,953 inventoried abandoned wells requiring action. Of this total, 9,292 are ranked as Priority I wells. The Priority I category is considered to contain those wells which pose either an ongoing or potential threat to the environment. A total of 638 abandoned wells are in the Level A bracket of Priority I wells. The risks specifically associated with Priority I-A wells could be one or a combination of the following:

- The well is actively discharging, posing a significant risk to surface water.
- The well creates significant ongoing or potential impacts to groundwater supplies.
- The well poses an ongoing or current threat to public safety (e.g., active gas flows with danger of explosion in urban or suburban settings).

The Kansas Corporation Commission is responsible for plugging these wells and remediating sites when no responsible party can be located.

The problem confronting the State of Kansas is that the rate of plugging is fairly slow. Although the enactment in 1996 of House Sub. for SB 755 accelerated well plugging, there has been a decrease in the total number of wells plugged from CY 1997 (633) to CY 1998 (478) and CY 1999 (471) and the number might be even lower in 2000, as only 84 wells have been plugged to date. (See Attachment II.)

The Commission has attributed this sluggish performance to several factors, including depressed oil and gas prices, limited availability of contractors to perform plugging jobs, unfavorable weather conditions, and a limited number of staff positions to oversee the plugging and remediation operations.

We note that there is a correlation between depressed oil and gas prices and Conservation Fee Fund revenues. As most of the revenues credited to the Conservation Fee Fund come from oil production fees and gas assessments, depressed oil and gas production adversely impacts the Conservation Fee Fund. That Fund pays for, among other items, the investigation, plugging, replugging, plug testing, and remediation of contamination sites involving wells drilled on or after July 1, 1996. The Fund also pays for emergency plugging and nonpriority wells, as well as administrative expenses incurred by the Commission in monitoring and overseeing the entire abandoned oil and gas well program. (Moneys from the Abandoned Oil and Gas Well Fund are not authorized to pay for administrative expenses.) In order to preserve the integrity of the Fund, the Commission proposed reducing \$450,000 from the Fund for FY 2000 and FY 2001 for well plugging. The effect of this decision is a commitment of \$50,000 from the Fund for each of those years. Expenditures from the Conservation Fee Fund were \$115,293 in FY 1998 and \$46,932 in FY 1999.

As previously noted, the other fund currently used for abandoned well plugging and remediation is the Abandoned Oil and Gas Well Fund which was established in 1996 through enactment of House Sub. for SB 755 to fund investigation, plugging, and remediation operations associated with abandoned wells drilled prior to July 1, 1996. Projected expenditures for FYs 2001 and 2002 are \$1,600,000, which would reflect a decrease from actual expenditures in FY 1999 (\$1,844,819) and estimated expenditures of \$2,000,000 in FY 2000. The combined projected expenditures from both the Conservation Fee Fund and the Abandoned Oil and Gas Well Fund for the well plugging and remediation program in FY 2001 and FY 2002 indicates less commitment and not more commitment to accelerating the state funded plugging and clean-up process. Moreover, the demand transfers totaling \$1.2 million annually to the Abandoned Oil and Gas Well Fund are scheduled to terminate on July 1, 2002. The budget estimates raise the question of the Commission's internal commitment, as well as our collective commitment, to this end. The funding mechanisms available to the Commission raise the question of whether revenues are optimally used to plug wells and remediate sites that pose the greatest environmental and safety risk.

We believe there is a better way to use these revenues to “get the greatest bang for the buck” and therefore recommend a funding option that requires the Conservation Division to plug those wells which are potentially the greatest sources of contamination. This option would involve amending HB 2782 to transfer statutorily authorized financial assurance fees collected from operators to the Abandoned Oil and Gas Well Fund. These funds are currently credited to the Conservation Fee Fund and are used for plugging operations for wells drilled on or after July 1, 1996. We believe the date of July 1, 1996, is an artificial date that diverts some funding from being used for plugging and remediation on the most dangerous, highest priority sites. We do not believe that a new fund is needed, as would be established in the House version of HB 2982. Indeed, in our view, such a fund would only perpetuate the artificial juncture that we seek to eliminate. We would recommend eliminating the sunset date of July 1, 2002, for termination of the demand transfers to the Abandoned Oil and Gas Well Fund. The Conservation Division’s plugging and remediation process will clearly continue for many years beyond 2002, even under the most propitious conditions which do not seem to exist. We note that since January 1, 1996, only 2,172 inventoried Priority I abandoned wells have been removed from the inventory list. As noted above, there are still 9,292 Priority I wells requiring action. Finally, the Abandoned Oil and Gas Well Fund should be a limit Fund (it is currently a no limit fund.) We also recommend that administrative and personnel expenditures from the Fund be authorized governed by line item appropriations to ensure that they receive ongoing legislative scrutiny. Moreover, the bill should clarify for which administrative purposes the Division may expend moneys from this Fund. We would note that such purposes should include activities involving the statutorily authorized investigation activities and contractual expenditures for locating potentially responsible parties.

On a related matter, we recommend all operators pay at least \$50 annually in financial assurance fees. HB 2782 should be amended to reflect this policy recommendation. The Commission collects a \$50 annual fee for operators with acceptable records of compliance and a fee equal to 3 percent of the bond amount for operators who fail to meet the conditions of acceptable compliance (other financial assurance options also are statutorily authorized). However, the Commission does not require operators who obtain performance bonds and letters of credit to remit a fee. The intent of the 1996 law seems to have been to use financial assurances to pay for plugging future abandoned wells for which no responsible party can be found. Therefore, it only seems fair to us that, as a precondition for new and renewed licenses, all operators be required to pay at least \$50 annually. If all operators had paid that fee in 1999, the Commission would have received an additional \$5,050. (A total of 101 operators provided financial assurance through surety bonds or letters of credit and did not remit any fees to the Commission.)

The integrity of the abandoned well plugging and remediation process might be affected by the funding mechanisms available to the Commission. However, the number of abandoned wells that become the Commission’s responsibility could conceivably be reduced (as well as the corresponding costs) if the Commission’s efforts to locate potentially responsible parties and make them pay are aggressively undertaken. In the Division of Post

Audit's report (February 1998), the auditors noted insufficient documentation of the researchers' efforts to locate responsible parties. The report recommended that the Conservation Division ensure staff was making and documenting all efforts to locate those parties and determine financial viability before concluding that the Division should not pursue them further. The Commission responded to that finding and recommendation by noting that the Division was developing a procedure to do so and that the Division was working closely with the Department of Administration on collection of fines and recoupment of costs. The Commission proposed to contract for researching potentially responsible parties for both wells and remediation sites. **We concur that more serious efforts are needed to locate potentially responsible parties and we would recommend that language in the statute pertaining to the Division's authorized administrative expenses be clarified to explicitly include this type of activity.**

The Bidding Process and Contractual Costs. We focused our attention on the bidding process and existing contractual procedures for the following reasons:

1. an improperly designed and implemented bidding process could result in greater cost and less productivity to the state; and
2. contractual procedures might result in greater costs to the state, as well as more inefficiencies in work performed. Both these issues obviously impact the Conservation Division's budget, as well as the integrity of the entire abandoned well plugging and remediation process.

Bidding Process. Private companies are hired to plug abandoned wells. The Division of Purchases seeks formal bids for all contracts expected to exceed \$10,000. The Division is supposed to mail the Request for Quotation (RFQ) to those potential bidders the Kansas Corporation Commission has recommended as well as any that the Division of Purchases may choose to add. The RFQ is also posted on the Division of Purchases' website and in the Division's reception area. The jobs are generally awarded to the lowest responsible bidder, taking into consideration conformity with specifications, terms of delivery, and other conditions imposed in the call for bids. The Division of Purchases has authorized the Conservation Division to award contracts expected to cost \$10,000 or less. According to the Post Audit report, such contracts accounted for one-third of all the money spent for plugging abandoned wells in FY 1997. The Post Audit report identified various deficiencies with the process used by the Conservation Division in a sample of 15 smaller well-plugging projects handled by the Division's district offices. Although the Post Audit report recommended the Conservation Division work closely with the Division of Purchases to develop a standard bid procedure, there still appears to be concern about the transparency of the bid process and its inherent fairness. The Commission indicated it has posted information on both opportunities for plugging contractors and the state bid procedures on its website. **We encourage continued efforts to notify all plugging contractors licensed by the Commission (currently 220 contractors; 160 of them have active truck or rig tags) of bid opportunities. Because a notable portion of the contractual abandoned well plugging work is \$10,000 or less, we would recommend the Division of**

Purchases require all plugging and remediation jobs, regardless of cost, to be competitively bid using the RFQ procedures that govern contractual amounts exceeding \$10,000. We note that this recommendation would encourage bids to be awarded for entire projects rather than individual services.

Contractual Procedures. The Commission compensates contractors for plugging jobs on a time and material basis and not on a cost per well/flat fee basis. **We recommend that the Conservation Division and the Division of Purchases, in developing specifications, change the formula for compensation to contractors to a cost per well/flat fee basis for at least a twelve months period.** We note that the cost per well/flat fee approach is commonly used for plugging contracts with the private sector and is the basis for compensation in Oklahoma. It allows one to compare contractors' bids more easily and prevents equipment and materials from being used inappropriately. The average cost is currently approximately \$2,500 to plug an abandoned well. The Conservation Division should use the cost per well/ flat fee approach for a twelve months basis, compare the average per well costs of using that approach to the time and materials approach used in the previous twelve months (adjusting for inflation), and report its findings to the Senate Committee on Ways and Means and House Committee on Appropriations during the 2001 Session.

Interim by Dist.

On a related matter, we do not concur with one option posed by the Conservation Division Director for attracting more qualified contractors to compete for state plugging contracts. That option was to limit the number of contractors to one project at a time. (See Attachment 1.) It might not make financial sense to do that if a contractor is working on a site in close proximity to the site of the proposed project. A contractor might be able to bid the work at a lower price simply because his or her equipment is already in the vicinity of the proposed project.

Attachment I

Speed overall process of bidding on projects and Plugging / Remediation Operations

- **Develop negotiated Bid Process for “approved plugging contractors” and “approved investigation / remediation contractors**
- **Contract out site surveys for identification of well locations at abandoned lease sites**
- **Contract out research for potentially responsible parties (PRP’s) for both wells and remediation sites**
- **Contract out site supervision of plugging contractors independent of contractors**

Attract More Qualified Contractors to Compete for State Plugging Contracts

- **Post information on opportunities for plugging contractors on KCC web site**
- **Send information on how to bid on state contract to all licensed plugging contractors**
- **Offer bonus to contractors who complete work ahead of schedule**
- **Limit number of contractors to one project at a time**

Attachment II

**Abandoned Wells Plugged or Scheduled for Plugging with State Funds
By Calendar Year**

Year	Priority IA	Priority IB	Priority IC	Priority II	Total Wells
1996	167 (64.8%)	61 (23.6%)	30 (11.6%)	0	258
1997	375 (59.3%)	167 (26.4%)	89 (14.0%)	2 (0.3%)	633
1998	422 (84.8%)	46 (9.2%)	24 (4.0%)	6 (1.2%)	478
1999	463 (98.4%)	3 (0.6%)	2 (0.4%)	3 (0.6%)	471
2000	84				84
Totals	1511	277	145	11	1944

(% = Wells in each Category Plugged / Total Wells Plugged for that Calendar Year)

Conservation Division
March 17, 2000

2-8