

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairperson Senator Stan Clark at 9:30 a.m. on February 26, 2002 in Room 231-N of the Capitol.

All members were present except:

Committee staff present:     Raney Gilliland, Legislative Research  
                                  Emalene Correll, Legislative Research  
                                  Bruce Kinzie, Revisor of Statutes  
                                  Ann McMorris, Secretary

Conferees appearing before the committee:

                                  Kim Gulley, League of Kansas Municipalities  
                                  Doug Lawrence, Westar  
                                  David Pierce, Washburn University

Others attending:    See attached list.

The chairman opened the hearing on

**SB 545 - Franchise agreements between public utilities and municipalities.**

Doug Lawrence, Westar Energy, presented a draft for **Substitute Senate Bill 545** and reviewed the basis for the request for this bill and the concerns that led to making the original request for **SB 545**.

(Attachment 1)

Kim Gulley, League of Kansas Municipalities, noted that the issues of concern raised by electric and gas utilities can be divided into two separate categories: 1) right-of-way management; and 2) franchise/business relationships. She noted that fee pass through was another concern of the electric and gas industries and the League does not oppose an expedited process for the consideration of these fees as long as KCC remains the entity responsible for determining which fees and how much are passed through to consumers. (Attachment 2)

Questions were raised on right of way franchises and a moratorium.

Chairman closed the hearing on **SB 545**.

Moved by Senator Brownlee, seconded by Senator Emler, to amend **SB 545** with **Substitute for SB 545** as presented by Westar Energy. Motion carried.

Moved by Senator Brownlee, seconded by Senator Emler, to pass out favorably **SB 545** as amended. Motion carried.

Chair opened the hearing on

**SB 547 - Rural Kansas self-help gas act.**

David Pierce, Professor of Law, Washburn University, presented the proposed amendments to **SB 547**, respectfully submitted by the Southwest Kansas Irrigation Association. (Attachment 3)

A series of letters for a period from October 28, 1997 thru October 4, 2001 from Peoples Natural Gas to their customers regarding their service were distributed to the committee by the Southwest Kansas Irrigation Association. (Attachment 4)

Kansas Corporation Commission distributed their proposed amendments to **SB 547**. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE SENATE UTILITIES COMMITTEE at on February 26, 2002 in Room 231-N of the Capitol.

After considerable discussion, the conferees were sent back to the table to reach a consensus on their proposed amendments to **SB 547**. The Chair stated the Committee would meet to consider their proposal at a meeting on the call of the chair.

Discussion and possible action on:

**SB 546 - Natural gas supplier, termination of franchises.**

Whitney Damron submitted amendments to **SB 546**. (Attachment 6)

Moved by Senator Emler, seconded by Senator Taddiken, to adopt the amendments to **SB 546** and to pass it out favorably as amended. Motion carried 7-2.

Approval of minutes

Moved by Senator Emler, seconded by Senator Barone, approval of minutes for meetings of the Senate Utilities Committee held on February 20, 2002, February 21, 2002, February 22, 2002, and February 25, 2002. Motion carried.

The next meeting of the committee will be on call of the chair.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 6

# SENATE UTILITIES COMMITTEE GUEST LIST

DATE: FEBRUARY 26, 2002

Name	Representing
Cynthia Smith	KCP&L
Justin Hanli	SWKIA
<b>David E. Guro</b>	<b>SWKIA</b>
MARK SCHREIBER	Westar Energy
Ron Appleft	Water Dist. No 1 of JoCo
Dan Houtsous	KEC
Jon K Miles	KEC
Whitney Jamron	KS Gas Service
Steve Johnson	KS Gas Service
Leslie Kaufman	Ks Farm Bureau
KARLA OLSEN	WESTAR ENERGY
Stuart Little	Westar Energy
Erik Sartorius	City of Overland Park
Bud Burke	KCP & L
Amy Campbell	Midwest
Lee Haynes	KCC
Sam Dawdy	KCC
John Pong	UCU
Bruce Graham	KEPC



**Testimony before the  
House Utilities Committee  
By  
Doug Lawrence, Vice President, Public Affairs  
Westar Energy  
February 26, 2002**

Chairman Clark and members of the committee, I am Doug Lawrence, vice president, public affairs for Westar Energy.

Westar Energy, along with other utilities, made the original request to introduce Senate Bill 545. I want to take a few moments to share some of our company's history with this issue and the concerns that led us to make the original request. I would also like to address the issues associated with a proposed compromise, which may make the moratorium bill moot.

**The history**

As you recall, last year an extremely controversial battle ensued over right of way and franchise fee issues between telecommunication carriers and the League of Municipalities. The ultimate resolution of that legislative engagement was a late session moratorium on new franchise and right-of-way ordinances while a negotiated settlement was pursued. The result of that process was Senate Bill 397.

Senate Utilities Committee  
February 26, 2002  
Attachment 1-1

While the process of stand still and negotiate between the cities and telecommunication companies was in place, a number of cities continued to put in place new right of way ordinances that were applicable to everyone but telecommunication companies. Many of those ordinances continued to pursue provisions that were the center of controversy in the telecommunications fray.

In some cases, cities agreed to hold off enforcement of these new ordinances while the negotiations continued with telecommunications companies. Others did not. When Senate Commerce Committee heard SB 397, our company and others submitted written testimony pointing out the need for some similar provisions to ensure that all companies that used the rights of way in a city were treated equally. We were encouraged to stay out of the telecommunications bill to avoid damaging the carefully crafted compromise. We did. We also believed it was possible to use SB 397 as a basis for a second bill, which could address most, if not all, of our concerns. We were told by a number of cities that they wanted to wait until the summer to engage in negotiations because there are significant differences between the telecommunications industry and electric industry and that the solutions would likely involve different language and approaches. We are more than willing to work with and negotiate with the cities, but we believe such negotiations should be on the same terms and conditions under which the telecommunications compromise was negotiated. Which is why we requested SB 545.

## The issues

Today, Westar Energy faces a number of significant issues involving franchise and right of way issues. We are negotiating a new franchise with Wichita. Those negotiations have exposed a series of issues that we believe involve abuse of the authority granted by state franchise law and that would be prohibited by SB 397.

In the city of Wichita's most recent offer in our franchise negotiations, the city has taken a number of positions:

1. The city "retains" the right of purchase electric power for its own purposes, even though it does not have that right under current law.
2. Westar Energy would be required to give up any claims for compensation authorized by state and federal law in the event the franchise is terminated.
3. Despite a very short term (two years) the proposed franchise agreement has a blanket right to terminate the agreement at will and an ability to reopen the franchise agreement.

There are many other provisions involving facility design, tree trimming and others that are beyond issues required of other franchisees in Wichita and are not incorporated in other franchise agreements across the state.

Beyond the current negotiations, the city of Wichita has suggested in a 50 page white paper it issued a couple of weeks ago that “In addition to other options, one approach may be, ‘Franchise Alignment.’ In Franchise Alignment, public officials would review municipal franchises with Western Resources in the exercise of public responsibility. As franchises expire, varying municipalities across the State may coordinate alignment of short-term renewable extensions of franchises until the company is able to address relevant concerns.”

This suggests that cities use their franchise authority, to regulate all forms of our business beyond use of the right of way. SB 397 explicitly prohibited such regulation on the premise that the Kansas Corporation Commission has such regulatory authority.

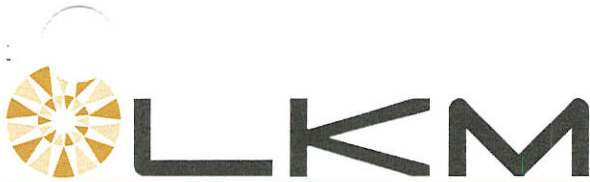
This suggests that the city is seeking to expand its efforts to apply these franchise provisions beyond its own locality to others in a coordinated effort. We believe this suggestion directly contradicts suggestions that passage of SB 397, and an education effort will overcome the problems we see developing in this arena.

Franchises require agreement between the city and the utility. Right of way ordinances do not. These can be imposed unilaterally, as we have seen in the course of the past several years. As such, these ordinances can impose significant new costs of doing business in a particular city. Wichita has been very active in this effort. You have probably heard much about mapping requirements and lane closure permits as examples.

An example of a costly right of way ordinance can be found in Wichita. We are involved in a significant problem regarding tree trimming in Wichita. Tree trimming is an expensive but necessary process to assure electric system reliability. As many learned in the most recent ice storm, falling limbs are a major cause of electric outages. Westar Energy has been working to trim trees to improve system reliability. We are spending approximately \$12 million per year. In Wichita, a right of way ordinance was adopted requiring permits and inspection and placing extreme limits on the amount of trimming that can be done. Compliance with this ordinance, while maintaining our trimming efforts would increase costs in the city of Wichita alone to \$40 million per year.

We have been involved in discussions with the League of Municipalities about an approach other than a moratorium. Any compromise this year, must at least allow us to recover the costs associated with these rapidly increasing costs associated with new unilateral mandates imposed by local cities. There must be some expedited process and some certainty of recovery of those expenses.





League of Kansas Municipalities

300 SW 8th Avenue  
Topeka, Kansas 66603-3912  
Phone: (785) 354-9565  
Fax: (785) 354-4186

To: Senate Utilities Committee  
From: Kim Gulley, Director of Policy Development & Communications  
Date: February 26, 2002  
Re: Electric and Natural Gas Franchise Issues

Thank you for allowing me to appear today on behalf of the League of Kansas Municipalities and our member cities. The issue of franchise agreements and right-of-way management is a critical and very complicated issue. We appreciate the opportunity to discuss these issues with the committee. The issues of concern raised by electric and gas utilities can be divided into two separate categories: 1) right-of-way management; and, 2) franchise/business relationships.

### 1) Right-of-Way Management

- **History**

While cities have been dealing with right-of-way management issues practically since their incorporation, recent events and trends have brought this issue to the forefront of municipal policy. Fueled in large part by the 1996 federal Telecommunications Act and the increasingly competitive telecommunications industry, cities are struggling to manage the growing number of facilities in their rights-of-way. At the same time, cities have educated themselves about the impact that these facilities have on the general public. Studies have been done and resources have been shared which outline the burden to the community that results when private companies use public property for business purposes. Cities have identified numerous fiscal, administrative, and safety burdens which are a direct result of utility companies utilizing the public rights-of-way.

In an attempt to address these very complex challenges, a number of cities have adopted right-of-way management ordinances. In some cases, cities have been forced to hire full time right-of-way managers in order to deal with these issues. The right-of-way management ordinances that have been adopted by most cities are designed to identify the users of the rights-of-way and establish rules and procedures for the use of this limited public resource. Most cities who have adopted such ordinances, applied them to all utilities in the right-of-way.

The negotiations with the telecommunications industry and the resulting legislation (SB 397) will force a review of all of these right-of-way ordinances. As part of the agreement between cities and the telecommunications industry, SB 397 contains language which indicates that existing franchises, with a couple of very specific exceptions, will not be invalidated by the new legislation. However, there is also language in SB 397 which makes it very clear that right-of-way management ordinances may not conflict with the new provisions which will go into effect July 1, 2002, if the bill is ultimately signed into law. This means that cities will have to review existing right-of-way ordinances and alter them if any of the provisions of the ordinance conflict with SB 397.

For this reason, the moratorium which was proposed in the form of SB 545 presents some very practical difficulties. SB 397 represents a significant change from current law and it will take some time to educate cities on its implications. Cities need the opportunity to review their existing right-of-way ordinances and alter them as necessary as a result of SB 397. Another moratorium would make the implementation of the right-of-way portion of SB 397 virtually impossible.

We have discussed right-of-way management concerns with representatives of the electric and gas industry. Those representatives have indicated a willingness to work with the League to ensure effective implementation of SB 397.

- **Implementation of SB 397**

The League is planning on providing education and assistance to cities over the next few months concerning SB 397. Because the representatives of the electric and gas industry have indicated concern that cities might treat them differently than the telecommunications companies under SB 397, we have committed to including these industries in our educational and informational efforts. Those efforts will include:

- Right-of-Way Management Summit;
- Workshops and roundtables during the LKM Annual Conference in October;
- Articles in the *Kansas Government Journal* to reach those unable to attend either session

In addition, the League has also committed to sit down with representatives of the electric and gas industry to discuss any issues of concern. It is our sincere hope and intention to keep an open line of communication between cities and these industries throughout the implementation of SB 397.

## **2) Franchise Issues**

The second major area of concern are the franchise issues as they relate to the electric and gas industry. Cities are specifically authorized pursuant to K.S.A. 12-2001 *et seq.* to franchise utility companies (and other entities) that utilize the public rights-of-way. The franchise agreement between cities and providers is a contract which sets out the business relationship between the public entity and the utility company. SB 397 also amends the city franchise statute. While it is made very clear in the legislation that telecommunications local exchange providers will have to continue to maintain that contractual relationship with cities, a number of telecommunications-specific changes are made to K.S.A. 12-2001. Most of these changes are a result of the competitive nature of this industry and the requirements of the 1996 federal Telecommunications Act.

From a business standpoint, electric and gas utilities are situated quite differently than telecommunications providers. They are regulated companies with a grant of exclusive service territory and a guaranteed rate of return. Electric and gas providers have expressed an interest in reviewing the franchise relationship with cities and the League

is committed to discussing those issues. However, we believe that it is important to discuss those issues in the context of the nature of their specific industries and not in the context of SB 397 as it relates specifically to telecommunications providers.

### **Fee Pass Through**

Representatives of the electric and gas industry have expressed concern that cities might impose unreasonable additional fees on them during this initial implementation period. Under current law, the Kansas Corporation Commission (KCC) makes the determination as to which costs are passed on to consumers. However, representatives of the industry have expressed concern that such costs cannot be considered until the next rate case.

To address this concern, it is my understanding that representatives of the industry are asking for an expedited process to allow the KCC to consider the pass through of any new fees imposed in a more timely fashion. The League does not oppose an expedited process for the consideration of these fees so long as the KCC remains the entity responsible for determining which fees and how much are passed through to consumers. Because we are dealing with regulated utilities in this case, we believe that the KCC is the appropriate body to consider such issues. Most importantly, having the KCC make such determinations assures that any aggrieved party, including cities, would have the opportunity to be heard on the issue. The League and our member cities are opposed to mandating the pass through in statute and taking away this opportunity to be heard.

### **Conclusion**

Cities in Kansas worked in good faith with the telecommunications industry to find a reasonable solution to the conflicts which arose during the 2001 session. We now need the time to make sure that the result of that work, SB 397, can be implemented. This will require a great deal of education and information. Cities across the state will have to take the time to review their current ordinances and policies to ensure that they are in compliance with the new bill. It is too early to tell exactly what impact this new structure will have on the electric and gas industry. However, the League is committed to working with representatives of these industries throughout the implementation of SB 397 and beyond to resolve any conflicts that may arise.

Thank you for the opportunity to appear before you today to discuss these very important issues. I would be happy to stand for questions or to provide any further information for the committee.

Proposed changes for Senate Bill No. 547 respectfully submitted by the Southwest Kansas Irrigation Association to the Senate Utilities Committee on February 26, 2002. All proposed changes are outlined in red and underscored.

Session of 2002

## SENATE BILL No. 547

By Committee on Utilities

2-8

AN ACT establishing the rural Kansas self-help gas act.

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

Section 1. As used in sections 1 through 5, and amendments thereto, the following words and phrases shall have the following meanings:

(a) "Certificate" means authority granted to a public utility to transact business pursuant to chapter 66 of the Kansas Statutes Annotated, and amendments thereto, to include any certificated area, territory or exclusive service rights;

(b) "city limits" means the area within the defined corporate limits of an incorporated city;

(c) “ existing gas service utility” means a public utility that presently owns, operates, maintains and is responsible for an existing gas service line that the public utility, or its predecessor in interest, constructed from its distribution system to the point of service physically located on the property being served and which is currently being used to provide the property with firm gas service. In no event will it include a public utility that merely owns, operates, maintains or is responsible for a meter or meter station and incidental pipeline connections;

(d) “ firm gas service” means the level of gas service which obligates the public utility to provide their customer with an unlimited supply of gas, available at all times and delivered to the customer’s property without interruption for any reason other than force majeure;

(e) “ gas” means natural gas as the term is commonly understood in the natural gas industry to include the meanings ascribed to the terms “ gas” and “ natural gas” in chapter 66 of the Kansas Statutes Annotated, and amendments thereto;

(f) “gas gathering system” means a natural gas pipeline system used primarily for transporting natural gas from a well head, or a metering point for natural gas produced by one or more wells, to a point of entry into a main transmission line or processing plant.

(fg) “ gas provider” means any person that provides gas, gas transportation, gas supply management or other gas services and any related facilities associated with delivering gas to a rural gas user;

utility (NPU), if the rural gas service is provided within an area where a public utility holds a certificate, the existence of such public utility and its certificate will not in any way limit the rural gas users, the NPU, or their gas provider, in establishing and maintaining the rural gas service provided for by this act.

Sec. 4. All facilities provided for in sections 1 through 5, and amendments thereto, will comply with all applicable pipeline safety laws.

Sec. 5. The provisions of sections 1 through 5, and amendments thereto, shall be known as the rural Kansas self-help gas act.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

(gh) “ gas supply system” means any well, pipeline, plant tailgate, meter or other facility which is a source of gas or which is associated with the transportation, treatment, processing or delivery of gas;

(hi) “ person” means an individual, association or other legal entity;

(ij) “ public utility” means a public utility or common carrier as defined in chapter 66 of the Kansas Statutes Annotated, and amendments thereto;

(jk) “ rural gas service” means all activities necessary or convenient to procure, manage, transport and deliver gas to a rural gas user; and

(kl) “ rural gas user” means any person desiring to use gas on property they own, lease or operate that is located outside city limits, ~~and~~ not presently receiving gas service from an existing gas service utility, and the property is presently being supplied, or in the past has been supplied, with gas from: a gas gathering system, an oil or gas well well head connection, or lead lines connecting a well head to a gas gathering system.-

Sec. 2. Any rural gas user who constructs its own pipeline connection to a gas supply system, and any gas provider assisting the rural gas user, shall not be considered a public utility. If the rural gas service is provided within an area where a public utility holds a certificate, the existence of such public utility and its certificate will not in any way limit the rural gas user, or their gas provider, in establishing and maintaining the rural gas service provided for by this act.

Sec. 3. When two or more rural gas users combine pursuant to K.S.A. 66-104c, and amendments thereto, to operate as a nonprofit public

SWK Irrigation

October 4, 2001

**PEOPLES NATURAL GAS**  
**ENERGY ONE**

Dear Valued Customer:

As a natural gas customer served from a gas gathering system, you are receiving service from Peoples Natural Gas. Peoples obtained the right to serve you from the gathering system or the pipeline company that owns the facilities that run near or across your property. The facilities used by Peoples to deliver your gas requirements are not owned, controlled, managed or operated by Peoples; the lines are totally controlled by the owner of the gathering system. As a result, Peoples and its customers have been, or may in the future be, impacted by the pipeline owner's decisions.

Since 1995, Peoples has been aware that gathering system owners are reducing the operating pressure in gathering lines to improve gas recovery from the reservoir. The owners have stated that gathering systems were created to gather gas, and are not primarily for gas distribution. Their focus therefore is gathering natural gas, while the distribution function is of secondary importance. Their program of pressure reduction will ultimately result in lower pressure in gathering fields, and farm taps such as the one serving you will be affected. A continuing decline in pressure will ultimately make natural-gas-fueled irrigation engines that are being served through the tap inoperable with the existing equipment.

While Peoples has no control over gathering system or interstate pipeline operating pressures, we continue to work to provide a solution to this problem. We have been successful to date in that no significant loss or interruption of service has occurred.

The 1997 Kansas legislature passed Senate Bill 333, which provides regulatory oversight of certain gas gathering systems in Kansas. In response, the Kansas Corporation Commission recently proposed regulations under the gas gathering bill. One of the regulations, K.A.R. 82-3-804(a) states:

*Any public utility providing service from a gas gathering system and determining that it lacks sufficient services or facilities to serve the needs of any person wishing to utilize the utility's services within the utility's certificated service area shall, not later than November 1 preceding the calendar year of service, give written notice to the Commission and to each person that it will be unable to provide the service. Such notice shall contain a detailed explanation of the reason(s) for the utility's inability to perform the services and shall include any substantiating data and information relied upon by the utility in making such determination.*




This letter is being sent to notify you of the owner/operators' pressure reduction plans and make you aware that if pressure reductions continue, a service problem could arise. It is not our intention to abandon service to any of our customers. We will continue to address the pressure reduction issue so that we can continue to provide safe and reliable gas service to you.

Our most recent effort to find a solution is People's Gathering System Low Pressure Service Tariff, which provides discounted rates to customers who install a compressor at their expense to maintain their supply pressure. If you have any questions regarding this new tariff or your particular service, please contact Don Bowlby in our Garden City office at (316) 275-1183.

As we continue to address the declining pressure situation, we will keep you advised of options to minimize disruption to our customers.

Sincerely,



Michael L. Deggendorf  
Vice President of Market Services  
UtiliCorp United Inc.

October 10, 2000

**PEOPLES NATURAL GAS**  
**ENERGYONE**

Dear Valued Customer:

As a natural gas customer served from a gas gathering system, you are receiving service from Peoples Natural Gas. Peoples obtained the right to serve you from the gathering system or the pipeline company that owns the facilities that run near or across your property. The facilities used by Peoples to deliver your gas requirements are not owned, controlled, managed or operated by Peoples; the lines are totally controlled by the owner of the gathering system. As a result, Peoples and its customers have been, or may in the future be, impacted by the pipeline owner's decisions.

Since 1995, Peoples has been aware that gathering system owners are reducing the operating pressure in gathering lines to improve gas recovery from the reservoir. The owners have stated that gathering systems were created to gather gas, and are not primarily for gas distribution. Their focus therefore is gathering natural gas, while the distribution function is of secondary importance. Their program of pressure reduction will ultimately result in lower pressure in gathering fields, and farm taps such as the one serving you will be affected. A continuing decline in pressure will ultimately make natural-gas-fueled irrigation engines that are being served through the tap inoperable with the existing equipment.

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Our most recent effort to find a solution is Peoples' Gathering System Low Pressure Service Tariff, which provides discounted rates to customers who install a compressor at their expense to maintain their supply pressure. If you have any questions regarding this new tariff or your particular service, please contact me in our Garden City office at (316) 275-4378.

As we continue to address the declining pressure situation, we will keep you advised of options to minimize disruption to our customers.

*Lynn R. Walker*

Lynn R. Walker  
Consumer Market Representative  
Peoples Natural Gas / EnergyOne

October 26, 1999

**PEOPLES NATURAL GAS**  
**ENERGY ONE**

Dear Valued Customer:

As a natural gas customer served from a gas gathering system, you are receiving service from Peoples Natural Gas. Peoples obtained the right to serve you from the gathering system or the pipeline company that owns the facilities that run near or across your property. The facilities used by Peoples to deliver your gas requirements are not owned, controlled, managed or operated by Peoples; the lines are totally controlled by the owner of the gathering system. As a result, Peoples and its customers have been, or may in the future be, impacted by the pipeline owner's decisions.

Since 1995, Peoples has been aware that gathering system owners are reducing the operating pressure in gathering lines to improve gas recovery from the reservoir. The owners have stated that gathering systems were created to gather gas, and are not primarily for gas distribution. Their focus therefore is gathering natural gas, while the distribution function is of secondary importance. Their program of pressure reduction will ultimately result in lower pressure in gathering fields, and farm taps such as the one serving you will be affected. A continuing decline in pressure will ultimately make natural-gas-fueled irrigation engines that are being served through the tap inoperable with the existing equipment.

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A Division of UGI Corp World

REMOVED - Baytown, TX	EXHIBIT <u>1</u>
	DATE <u>3-1-00</u>
	<u>Staff Cross</u>

4-5

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Don Bowlby  
Consumer Market Representative  
Peoples Natural Gas

**PEOPLES NATURAL GAS**  
**ENERGYONE**

October 28, 1997

Dear valued customer,

As a natural gas customer served from a gas gathering system, you are receiving service from Peoples Natural Gas. Peoples obtained the right to serve you from the gathering system or the pipeline company that owns the facilities that run near or across your property. The facilities used by Peoples to deliver your gas requirements are not owned, controlled, managed or operated by Peoples; the lines are totally controlled by the owner of the gathering system. As a result, Peoples and its customers have been, or may in the future be, impacted by the pipeline owner's decisions.

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Consumer Market Representative  
Peoples Natural Gas

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- 17. service rights;
- 18. (b) "city limits" means the area within the defined corporate limits
- 19. of an incorporated city;
- 20. (c) "existing gas service utility" means a public utility that presently
- 21. owns, operates, maintains and is responsible for an existing gas service
- 22. line that the public utility, or its predecessor in interest, constructed from
- 23. its distribution system to the point of service physically located on the
- 24. property being served and which is currently being used to provide the
- 25. property with firm gas service. In no event will it include a public utility
- 26. that merely owns, operates, maintains or is responsible for a meter or
- 27. meter station and incidental pipeline connections;
- 28. (d) "firm gas service" means the level of gas service which obligates
- 29. the public utility to provide their customer with an unlimited supply of
- 30. gas, available at all times and delivered to the customer's property without
- 31. interruption for any reason other than force majeure;
- 32. (e) "gas" means natural gas as the term is commonly understood in
- 33. the natural gas industry to include the meanings ascribed to the terms
- 34. "gas" and "natural gas" in chapter 66 of the Kansas Statutes Annotated,
- 35. and amendments thereto;
- 36. (f) "gas provider" means any person that provides gas, gas transportation,
- 37. gas supply management or other gas services and any related facilities
- 38. associated with delivering gas to a rural gas user;
- 39. (g) "gas supply system" means any well, pipeline, plant tailgate, meter
- 40. or other facility which is a source of gas or which is associated with the
- 41. transportation, treatment, processing or delivery of gas;
- 42. (h) "person" means an individual association or other legal entity;
- 43. (i) "public utility" means a public utility or common carrier as defined

- 9. AN ACT establishing the rural Kansas self-help gas act.
- 11. *Be it enacted by the Legislature of the State of Kansas:*
- 121. Section 1. As used in sections 1 through 5, and amendments thereto,
- 13 the following words and phrases shall have the following meanings:
- 14. (a) "Certificate" means authority granted to a natural gas public utility to transact
- 15. business pursuant to chapter 66 of the Kansas Statutes Annotated, and
- 16. amendments thereto, to include any certificated area, territory or exclusive
- 17. service rights;
- 18. (b) "city limits" means the area within the defined corporate limits
- 19. of an incorporated city;
- 20. (c) "existing gas service utility" means a natural gas public utility that presently
- 21. owns, operates, maintains and is responsible for an existing gas service
- 22. line that the natural gas public utility, or its predecessor in interest, constructed from
- 23. its distribution system to the point of service physically located on the
- 24. property being served and which is currently being used to provide the
- 25. ~~property with firm gas service. In no event will it include a natural gas public utility~~
- 26. that merely owns, operates, maintains or is responsible for a meter or
- 27. meter station and incidental pipeline connections;
- 28. (d) "firm gas service" means the level of gas service which obligates
- 29. the natural gas public utility, unless otherwise agreed between the natural gas public
- 30. utility and the customer. to provide their customer with an unlimited supply of
- 31. gas, available at all times and delivered to the customer's property without
- interruption for any reason other than force majeure;
- 43. (i) "public utility" means a natural gas public utility or common carrier as defined



- 1. in chapter 66 of the Kansas Statutes Annotated, and amendments thereto;
- 2. (j) "rural gas service" means all activities necessary or convenient to
- 3. procure, manage, transport and deliver gas to a rural gas user; and
- 4. (k) "rural gas user" means any person desiring to use gas on property
- 5. they own, lease or operate that is located outside city limits and not presently
- 6. receiving gas service from an existing gas service utility.
- 7. Sec. 2. Any rural gas user who constructs its own pipeline connection
- 8. to a gas supply system, and any gas provider assisting the rural gas user,
- 9. shall not be considered a public utility. If the rural gas service is provided
- 10. within an area where a public utility holds a certificate, the existence of
- 11. such public utility and its certificate will not in any way limit the rural gas
- 12. user, or their gas provider, in establishing and maintaining the rural gas
- 13. service provided for by this act.

- 14. Sec. 3. When two or more rural gas users combine pursuant to
- 15. K.S.A. 66-104c, and amendments thereto, to operate as a nonprofit public
- 16. utility (NPU), if the rural gas service is provided within an area where a
- 17. public utility holds a certificate, the existence of such public utility and
- 18. its certificate will not in any way limit the rural gas users, the NPU, or
- 19. their gas provider, in establishing and maintaining the rural gas service
- 20. provided for by this act.
- 21. Sec. 4. All facilities provided for in sections 1 through 5, and amendments
- 22. thereto, will comply with all applicable pipeline safety laws.
- 23. Sec. 5. The provisions of sections 1 through 5, and amendments
- 24. thereto, shall be known as the rural Kansas self-help gas act.
- 25. Sec. 6. This act shall take effect and be in force from and after its
- 26. publication in the statute book.

5-2

- 4. (k) "rural gas user" means any person currently using natural gas from a wellhead or gathering facility for agricultural purposes ~~desiring to use gas~~ on property
- 5. they own, lease or operate that is located outside city limits and not presently
- 6. receiving gas service from an existing gas service utility.
- 7. Sec. 2. Any rural gas user who desires to constructs its own pipeline connection
- 8. to a gas supply system, and any gas provider assisting the rural gas user,
- 9. shall not be considered a public utility. If the rural gas service is provided
- 10. within an area where a public utility holds a certificate, the rural gas user or its gas provider shall first
- notify the existing gas service utility of their intent to provide a rural gas service. ~~the existence of~~
- 11. ~~such public utility and its certificate will not in any way limit the rural gas~~
- 12. ~~user, or their gas provider, in establishing and maintaining the rural gas~~
- 13. ~~service provided for by this act.~~

Sec. 3. (a) When notified pursuant to Sec. 2, an existing gas service utility shall have 30 days to develop plans and propose an offer to the potential rural gas user for providing rural gas service. The proposed plan shall include plans for installing facilities, price of natural gas, and projected completion date.

(b) Failure of the existing gas service utility to propose an offer or complete the project by the projected completion date pursuant to Sec. 3(a), unless otherwise agreed to by the rural gas user and the existing gas service utility, shall cause the existing gas service utility to waive its exclusive right to serve the rural user.

(c) If the potential rural gas user does not accept the offer presented by the existing gas service utility, the existing gas service utility shall release the rural gas user from the certificated area or may request from the state corporation commission a determination to approve the utility's plan or allow the rural gas user to use a different public utility or gas provider to provide rural gas service.

(d) Upon request for determination described in paragraph (c) of this section and upon receipt of the proposed plans from the existing gas service utility and from the rural gas user or their provider, the state corporation commission shall have 30 days to complete such determination. The state corporation commission may suspend its determination for an additional 60 days for sufficient cause.

- 14. Sec. 3. 4.
- 21. Sec. 4. 5.
- 23. Sec. 5. 6. The provisions of sections 1 through 5 6, and amendments
- 25. Sec. 6 7.

## SENATE BILL No. 546

By Committee on Utilities

2-8

9 AN ACT concerning retail natural gas suppliers; relating to franchise  
10 agreements; compensation.

11

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

13 Section 1. (a) When the service rights of a retail natural gas supplier  
14 are terminated by a city during the period in which a valid franchise is in  
15 effect and the service rights are assumed by the terminating city, or an  
16 entity acting on behalf of or as an agent for the city, the governing body  
17 of the city shall acquire from the terminated supplier the parts of the  
18 local natural gas distribution system necessary to serve all customers  
19 within the previously franchised area and the terminated supplier shall  
20 sell the system to the governing body of such city for which it shall be  
21 fairly compensated. Such compensation shall be an amount mutually  
22 agreed upon by the affected parties or an amount determined by the  
23 following formula:

24 (1) The depreciated replacement cost for the gas utility facilities in  
25 the territory in which the service rights have been terminated. As used  
26 in this paragraph, "depreciated replacement cost" means the original in-  
27 stalled cost of the facilities, adjusted to present value by utilizing a na-  
28 tionally recognized index of utility construction costs, less accumulated  
29 depreciation based on the book depreciation rates of the selling utility,  
30 as filed with and approved by the state corporation commission, which  
31 are in effect at the time of acquisition;

32 (2) the depreciated replacement costs of the remaining proportion of  
33 any take or pay contracts or participation agreements;

34 (3) the depreciated replacement cost for the gas utility facilities out-  
35 side the affected territory used in providing service to the formerly fran-  
36 chised area. Such facilities shall include all compression, regulating or  
37 transmission facilities throughout the terminated utility's integrated sys-  
38 tem, the value of which shall be determined by the depreciated replace-  
39 ment cost formula in paragraph (1) multiplied by the percentage of the  
40 terminated utility's total retail sales to customers in the affected area  
1 during the 12 months next preceding the effective date of the sale;

2 (4) all reasonable and prudent costs of detaching the gas system fa-  
43 cilities to be sold, including the reasonable costs of studies and inventories

6-2

1 made to determine the facility's value and all reasonable and prudent  
2 costs of reintegrating the remaining gas system facilities of the retail gas  
3 supplier whose service rights are terminated;

4 (5) an amount equal to the net revenues received during the 12  
5 months next preceding the date of termination of the service rights from  
6 the customers within the affected area of the retail gas supplier whose  
7 service rights are terminated. As used in this paragraph, "net revenues"  
8 means the total revenues received by the terminated utility for gas service  
9 within the affected area less franchise and sales taxes collected, ~~the cost~~  
10 ~~of gas recovered in the revenues and labor, maintenance, administration~~  
11 ~~and insurance.~~ This number shall be multiplied by the number of years  
12 remaining in any franchise contract; and

and

13 (6) an amount equal to the state and federal tax liability created by  
14 the taxable income pursuant to the provisions of this paragraph and par-  
15 agraphs (1), (2), (3), (4) and (5) by the retail gas supplier whose service  
16 rights are terminated, calculated, without regard to any tax deductions or  
17 benefits not related to the sale of assets covered herein.

18 (b) If the parties are unable to agree upon the amount of compen-  
19 sation to be paid pursuant to this act after 60 days following the date of  
20 termination of service rights, either party may apply to the district court  
21 having jurisdiction where any portion of the facilities are located for de-  
22 termination of compensation. Such determination shall be made by the  
23 court sitting without a jury.

24 Sec. 2. In addition to the fair cash value of any plant and appurte-  
25 nance thereto determined pursuant to K.S.A. 12-811, and amendments  
26 thereto, a retail natural gas supplier whose service rights have expired by  
27 reason of failure of the renewal of a valid franchise shall be entitled to  
28 compensation for all reasonable and prudent costs of detaching the gas  
29 system facilities to be sold and all reasonable and prudent costs of rein-  
30 tegrating the remaining gas system facilities of such retail gas supplies  
31 less the value of all gas system facilities replaced by the new facilities  
32 required for the reintegration of the remaining gas system facilities, plus  
33 an amount equal to the gross revenues received from the customers  
34 within the affected area during the 12 months next preceding the date of  
35 expiration of the most recent valid franchise, less taxes/

and the cost of gas.

36 Sec. 3. This act shall take effect and be in force from and after its  
37 publication in the statute book.

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