

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Stan Clark at 9:30 a.m. on February 20, 2004 in Room 526-S of the Capitol.

All members were present except:

Senator Bob Lyon- excused
Senator Jim Barone- excused
Senator Susan Wagle- excused

Committee staff present:

Bruce Kinzie, Revisor of Statutes
Raney Gilliland, Legislative Research
Emalene Correll, Legislative Research
Ann McMorris, Secretary

Conferees appearing before the committee:

Bob Courtney, Olathe District Schools
Myrna Morrison, Spring Hill
Dr. Dale Rawson, Superintendent, Burlington
Larry Holloway, KCC
Bob Alderson, Atmos Energy
Bill Dowling, Midwest Energy, Hays

Others attending:

See Attached List.

Chairman Clark opened the hearing on

SB 522 - Natural gas public utilities, requirements relating to transportation customer.

Senator Brownlee had requested introduction of this legislation after being approached by the schools in her district who are having problems with transportation of gas. Representatives of school districts were contacted to bring their explanations to the committee.

Proponents:

Bob Courtney, Energy Manager, Olathe District Schools, supports **SB 522**, a bill of great interest to the school districts who are attempting to better manage scarce resources during difficult budgetary times. (Attachment 1)

Myrna Morrison, Treasurer, Spring Hill USD 230, reported savings to the district by transporting natural gas has been greatly reduced in the last school year when the local gas company started assessing imbalance penalties to customers transporting gas. Every month the entire gas service invoice must be analyzed and double checked for accuracy. She explained the discrepancies in their invoices in detail. (Attachment 2)

Dr. Dale Rawson, Superintendent, Burlington USD 244, summarized the problems that currently exist in his school district relating to the transportation of natural gas. (Attachment 3)

Neutral:

Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission, provided a broad overview of the background of natural gas transport.. He commented that **S.B. 522** places several statutory requirements on natural gas utilities, or LDCs, and natural gas marketers. The bill is unclear on who would enforce the notice and cashout requirements on marketers. The bill does not distinguish between the size and sophistication of customers and may create unintended opportunities for sophisticated customers and marketers to "game" the system at the expense of small commercial and residential sales customers. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE SENATE UTILITIES COMMITTEE at 9:30 a.m. on February 20, 2004 in Room 526-S of the Capitol.

Opponents:

Bob Alderson, Atmos Energy Corporation, expressed opposition to **SB 522**. The problems addressed in **SB 522** are not universal problems needing legislation to resolve. There is a need for better communication. (Attachment 5)

William N. Dowling, Vice President, Midwest Energy, Inc., Hays, KS, noted his company provides natural gas transportation service to over 4,000 customers. He expressed concerns of Midwest Energy with several aspects of the provisions in **SB 522**. The primary goal of an imbalance resolution process, through a cashout mechanism or other means, is to provide an incentive for all parties to schedule gas deliveries that are consistent with anticipated and actual demand. The preferred solution to problems that arise would seem to be to improve gas transportation programs, based on realistic expectations, through the current regulatory framework, rather than through legislative mandates. (Attachment 6)

Chairman opened for questions and further discussion.

The next meeting of the Senate Utilities Committee is scheduled for February 23, 2004. Chairman Clark urged committee members to arrive promptly as **SB 455** had many conferees to be heard.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 6

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: February 20, 2004

Name	Representing
BOB COURTNEY	OLATHE SCHOOL DISTRICT
Myrna Morrison	Spring Hill School District
Tim Meek	Spring Hill School District
DACE RAWSON	Burlington USD 244
Philip Scales	K.C.C.
Larry Hollway	K.C.C.
BILL DOWLING	MIDWEST ENERGY
LARRY BERG	" "
STEVE JOHNSON	Kansas Gas Service
PAM NORTH	" " "
Jeffrey	AQUILA, INC.
Diane Gjerstad	Wichita Public Schools
Pat May	AT&T Low Jim
Doug Campbell	Midwest Energy
Mark Schuster	Westar Energy
Tom Bruno	GB&A
Dana HOLTMAN	KEC

Senate Utilities Committee

Senator Clark, Chair

Senate Bill 522

February 20, 2004

*Bob Courtney
Energy Manager
Olathe District Schools*

Chairman Clark, Members of the Committee:

I am appearing in support of S.B. 522, a bill of great interest to the school districts who are attempting to better manage scarce resources during difficult budgetary times. I have served as the Energy Manager for the Olathe School District for twelve years. One of my duties is the management of the transport gas service. In addition, the district is a member of the Greenbush Energy Group, a natural gas buying consortium, made up of fifty school districts and sponsored by the Southeast Kansas School Service Center at Greenbush.

Schools are changing how they do business. A prime example is the change in how schools view utilities. For many school districts the largest expense after salaries and benefits is utilities. Transporting natural gas is but one example of school districts following the admonition of the legislature and the public "to act more like a business".

Traditionally, transportation service primarily served large industry. In an effort to be good stewards of tax dollars and manage rising costs, schools have undertaken the efforts necessary to comply with this complex business practice. My experience has been while business tends to focus on the dollars and sometimes overlook the pennies, school districts focus on the pennies, which turn into dollars.

Cash Out charges are an example of the pennies turning into dollars. Cash Out adjustments are by nature punitive. In fact, representatives from several utilities have told me "cash out is a necessary deterrent to encourage transporters to have the amount of natural gas put in the system and their usage in balance". If out of balance, customers are either using someone else's natural gas or putting excess natural gas into the system.

If a punitive cash out is necessary and meant to encourage customers to be in balance, utilities need to provide transportation customers a system in which the customer, with reasonable effort, can stay in balance and avoid punitive charges.

Timely communication is essential to such a system. On February 9th, the Wichita School District received a communication from their utility representative informing them of their Required Daily Quantity amounts to be in effect November 1, 2003 through October 31, 2004. The date on the correspondence was February 5, 2004.

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Nominations: Utilities have been casual about reading meters on the last working day of the month. If you don't know the number of days in the utilities' month, it's impossible to make nominations that match usage and avoid punitive penalties. To make matters worse, if the utility is early on the front month by a day or two, it makes the next month long by the same amount, or vice versa.

Changes of procedure or accounting practice may make things easier at the utility but, without advance notification, end users can find themselves out of balance and facing cash out charges. Advance notification is critical to customers being able to do their business in a proper fashion.

While timely invoice rectification is a convenience, the existing process is lengthy. Information must be exchanged from utility to pipeline to marketer making it common for billing invoices to lag usage by up to sixty days. When errors occur, it can take another sixty days to send the corrected information back through the system. Tracking these corrections is an expense in time and manpower. Olathe District Schools has been transporting gas since 1996. When we changed the number of school sites that were transporting gas as of July 1, 2003, the billing format for July showed state, county, and city taxes, unlike previous statements. It took until December 2003 to rectify all of the adjustments.

Without the necessary ingredients for a system which allows customers to avoid punitive cash out penalties, I suggest a system in which the utility finds another means as a deterrent. Perhaps, denying transportation service for a period of time to offenders of the system, similar to what is now in place to keep transporters from switching back and forth from general service to transportation service depending on market conditions.

The Greenbush Energy Group conducts annual training for clerks, business managers, and administrators who have the responsibility of managing the business of natural gas transportation service. The management of transportation service is not an easy business. It has many complexities and a significant amount of risk. Those who undertake to conduct this business in a proper fashion should get all the pennies for their efforts. They should not have to sacrifice because a punitive, cumbersome system is necessary to protect the utility and the pipeline.

I want to thank the committee for undertaking this issue. I realize there are often no simple answers to complex questions.

I will stand for any questions you may have.

**Senate Utilities Committee
Senator Clark, Chair**

Senate Bill 522

February 20, 2004

Myrna Morrison
Treasurer
Spring Hill USD 230

Chairman Clark, Members of the Committee:

My name is Myrna Morrison and I am appearing in support of S.B. 522. I am currently serving as Treasurer for Spring Hill USD 230. I retired from my full time position as Business Manager in July 2003 after working for the district for 27 years. At our Board of Education's request, I have continued to work part time assisting with business matters and other budgetary, financial and educational issues.

Spring Hill School District transports natural gas from Oneok Gas Marketing through the Greenbush Energy Group in an effort to save money on utilities, as they are one of the district's largest expenditures after employee salaries and benefits. In the past the district was able to save thousands of dollars a year by transporting natural gas. However, last school year our local gas company started assessing imbalance penalties to customers transporting gas. This has greatly reduced the amount of savings to all of the school districts served by this utility company and many problems have also escalated.

As one of my part time duties, our Superintendent asked me to continue to assist in monitoring our natural gas invoices as we have had so many problems. The invoices are rather complicated to understand for someone who is not familiar with them. In fact, we have had several instances where we have had our local utility company customer representative and the billing department staff located in Texas re-calculate our bills when adjustments needed to be made. Their billing methods are so complex that neither office ever came up with the same amounts due. We have received corrected invoices of the corrected invoices – and on and on, sometimes taking 6-8 months to resolve the problems and to get a correct invoice.

Every month the entire gas service invoice must be analyzed and double-checked for accuracy. Some of the inconsistencies we must check for are correct meter reading dates, actual usage, nominations, BTU factor rates, UAG charges, transportation charges (Spring Hill has two different rates), service charges, franchise fees, and most importantly the imbalance charges. Occasionally they have added taxes in from which school districts are exempt. Ironically, all of the errors in the invoices have been in the favor of the gas company.

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In October 2002, our gas service company began assessing school districts transporting gas imbalance charges, even though school districts were not notified of this major change, and this is when our main problems started. Spring Hill USD 230 has not had one correct invoice since that time. In addition, the company has changed their invoice format several times during this time period. I am sure this is just as frustrating to their local customer service staff, as well as to their billing staff in Texas as it is to the customers. It appears a lot of the problems are due to a lack of communications within their company. Their staff has all been very amiable in helping to correct these problems and have even called me several times in the evening at home to discuss some of the issues that needed to be resolved.

We have talked with the KCC about these problems several times and several of us here today have met with KCC staff as well. In July 2003, Senator Brownlee helped to set up a meeting with representatives from KCC, our local gas company and school districts transporting gas that are served by them. Many issues were discussed and the consensus of the group was that one of the biggest problems was communications from the gas company to the customers - it is hard for school districts to play the game if they don't know the rules. They also agreed the invoices were a problem and that they would be sent out in the future in a more detailed, understandable format, and they would not be changing them from month to month as they had during the past year. In addition, they would be correct. Unfortunately, this has not been the case. There have been at least two different formats since the meeting in July and we still have not received a correct invoice. If we did not thoroughly check these bills for errors and inconsistencies, it would have cost our school district a substantial amount of money since October 2002.

One of the major problems we have encountered has been with the meter reading dates. We were given a schedule listing the meter read dates to help us in figuring our nominations. However, our meters have not always been read on these dates. Our staff has started taking pictures with a digital camera for proof in cases of dispute. The problem when the meters are read on a different date than scheduled is that our nominations are off for two months causing the district additional imbalance charges. We do not receive our invoices for the previous month until the end of the next month, often times too late to make changes in our nominations if their numbers cause us to be out of balance.

Our district has spent much more staff time since October 2002 for additional time required reading meters, making and adjusting nominations, reconciling the invoices and dealing with problems. In addition, the savings of transporting gas has gone down significantly, taking money away that could be spent on teachers and materials to help better educate our students.

To save time today, I have attached a log for you to look over at your convenience of some of our issues with our gas company over the past several years that I shared with

the K.C.C. in July. Hopefully it will give you a full picture of some of the issues we have been struggling with and continue to deal with at the present time.

As more districts are now purchasing gas from third party marketers, it appears some utility companies have more fees and restrictions than others. Many of the utility companies in the state cooperate with the districts they serve in an attempt to help schools save money. Unfortunately, this is not the case with our local gas company. Consultants and marketers have told us that they are one of the most difficult companies to work with in the state. It is nearly impossible for schools to purchase third party gas and save any money because of the fees assessed by them.

I would like to personally thank Senator Brownlee on behalf of the Spring Hill School District for her help with these energy issues. Her support is very much appreciated by our district as well as all of the school districts in the state dealing with these problems. Our school district would appreciate your support of SB 522 to help rectify some of these problems. Thank you for your time in allowing me to speak today.

Myrna Morrison, Treasurer
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SUPPORTING ATTACHMENT TO TESTIMONY

UPDATED JULY 17, 2003 FOR THE MEETING WITH THE KANSAS CORPORATION COMMISSION

NATURAL GAS TRANSPORTATION ISSUES FOR SCHOOL DISTRICTS

- May 2001 – Notification from our local gas company that the minimum (threshold) annual volume of 3,000 mcf had been eliminated by change in tariff allowing all K-12 schools to qualify to transport natural gas
- June 2001 – Notice that our local gas company would not release their customers from their firm transportation until October 1, 2002, and customers would have to pay the firm capacity charge until that time.
- October 2001 – E-Mail from David Banks, Wichita Public Schools Energy Manager/Greenbush Energy Group Consultant explaining change in tariff for all K-12 schools to transport gas, however they would have to pay our local gas company for firm capacity charge on pipeline until October 1, 2002. Costs would eliminate all incentives to transport and would be an economic hardship.
- November 2001 – Letter from Greenbush Energy Group further explaining our local gas company's new gas tariff and process for eliminating the assigned capacity fee on October 1, 2002
- February 2002 – Letter and form from our local gas company with options to release capacity by October 1, 2002
- May 02 – Williams Pipeline filed to modify tariff to allow them to start having charges for daily balancing beginning September 1, 2002.
- July 02 – Williams proposed tariff for daily balancing charges and requirement for electronic flow meters was denied.
- October 2002 – Our local gas company began assessing school districts monthly imbalance charges.
- No official communication was received from our local gas company regarding the assessment of penalties for cash in/cash out, the start date or the reason for this change. We heard the reason was that our local gas company lost use of Woodward Marketing Storage Pool, but we are not sure who initiated this action. We feel the benefit would be to our local gas company not to have the storage field so they could implement new fees and penalties to

customers who transport gas. We were under the assumption from Oneok Marketing that this would start on November 1, 2002, but instead it started October 1.

- School staff not knowing the official date, did not start reading gas meters in order to adjust their nominations until November 2002. Staff were also told there would be a total nomination and one invoice per district. Instead, in most cases, districts were billed by each school and penalties were assessed individually by meter, however this varied from district to district. In addition, some districts had several meters consolidated into one bill while other meters in the same district were billed separately. There seems to be no specific rules for all school districts transporting gas, nor consistency in their billing procedures.
- There have been problems with billings in all of the districts we have talked to. Nominations were entered incorrectly and meters were not read on last day of the month. For example, in November meters were read on November 27 instead of November 29. We have not been given dates meters would be read or the last day that revisions in nominations would be accepted by our local gas company. In December we had to give any changes by December 28, but the meters were not read until December 31, which left a greater chance of penalty. In January all of our meters were read on January 31 except for one at our elementary school – it was read on January 21, 2003. We have been reading our meters frequently in order to make changes in nominations as necessary so we can be as close to our actual usage as possible. When we saw the final meter reading we knew there was an error before we noticed the date read. I called the Customer Service regarding this problem because it was 270.3 mcf off from our nomination on that one-meter which would be a substantial penalty to the district. The Customer Service Representative told me it was not a problem and that they would never charge a penalty of any kind for something like that. I told her I did not think that was correct and that we would be charged. After talking with this representative, I called another service representative. He agreed with me that there would be a penalty if this was not corrected and it would also throw off our nomination for February by having an extra 10 days on it. He kindly said he would check into it for me. I was unable to get in contact with him again until February 25. At that time he said he was unable to get a copy of our billing and asked me to fax a copy to him so he could investigate it further.
- December 2002 – Districts starting calling our local gas company about concerns with their billing calculations and were told no changes could be made unless a specific error was identified and that they would not go back and review any accounts.
- January 2003 – After many complaints from school districts, our local gas company advised Oneok that all districts would have one combined bill starting in February – except for Spring Hill's, which would be combined in January.
- January 2003 – After several phone conversations with our service representative in Olathe discussing the many problems Spring Hill School District had encountered with the billings,

nominations, etc. they finally agreed to combine our individual billings into one monthly billing and to give a credit back to the district for the penalties incurred.

- February 18, 2003 – In the process of collecting information, I called Ron Ragan, our Oneok representative to see if he had received any written communications from our local gas company regarding their new imbalance charges. Mr. Ragan said he had only received verbal communication from them. He also indicated that he had sent out a letter in September to all Oneok customers served by our local gas company regarding this issue. Spring Hill School District did not receive this letter so I had him fax a copy to me. I shared this information with Bob Courtney of Olathe School District and David Banks, Greenbush Energy Consultant and they indicated they had not received the letter from Oneok either. If we would have received this letter explaining the changes in September it might have eliminated some of the problems, but we feel our local gas company should have been responsible for notifying customers in this substantial change in policy.
- Seventeen school districts served by this utility company are transporting gas, however two of these school districts – Independence and Coffeyville are exempt from the additional charges for imbalances.
- Concerns – We feel it is the intent of our local gas company to force school districts back to general service by imposing these penalties. Schools risk paying more for gas while trying to save money for their districts. Also, much staff time is required to read gas meters (daily/weekly) to be able to calculate if the monthly nominations are close to actual usage. Schools may need to get out of this savings endeavor in June 2003 at the end of our contract with Oneok. Every time a tariff is passed or regulation is met for schools to transport and save money, our local gas company imposes another regulation or penalty.
- February 27, 2003 – At 10:00 a.m. I received a phone call from Ron Ragan at Oneok advising that our local gas company was going into an Operational Flow Order beginning at 9:00 a.m. through March and that we would need to make daily nominations for our gas usage. I made a few phone calls regarding this and a little after noon I received another call from Ron Ragan advising that out of the blue Atmos had called him back and that schools were now exempt from the OFO.

March 2003 – Our local gas company changed their invoices from six individual billings with meter reads for each meter plus the cash out invoice to a combined billing. The combined billing no longer listed the meter readings nor the read dates and only has the usage for each meter listed on the invoice. By not receiving the readings and dates it makes it very hard to make our nominations to try to stay in balance and avoid the high penalties for being either over or under nomination. The invoice was not generated until April 25 so it was not received in time to change nominations for April. There were also several errors on the billing – all to the favor of the gas company. Spring Hill has two transportation rates – 3 @ \$0.1774 and 3 @ \$0.105. All of our gas was charged at the higher rate. We also have

two meter customer rates – 3 @ \$10.00 and 3 @ \$7.00. All meters were charged at the higher rate. The school district is tax-exempt, however tax was added to the invoice. It had not been charged in the past. Meter #4041149-540295-60 was listed twice on the usage – one at 9.0 Mcf and one at 81.2 Mcf. I called our local gas company for the meter reads toward the end of April, which I did receive, and it only had the information listed for the 9.0 Mcf. After many calls (probably 10) to various people at our local gas company I found out in May that a new meter was installed and this was part of a new pressure factor charge that we would now have every month. However, we were not notified of this, which put us out of balance. Note: Our local gas company did make a partial adjustment for this charge reflected on our payment made in June. If I had not spent a lot of time making phone calls and trying to figure out all of the errors it would have been a substantial cost to the district. Even with the adjustment made, we were overcharged \$1,657.93, which would not have been corrected if I had not been persistent in getting it fixed.

April 2003 – The invoice for April was not generated until May 20, so again it was not received in time to adjust nominations based on usage. Between our bookkeeper and myself we called nine times trying to get the meter readings. We finally received them on June 10. Again, this makes it nearly impossible to stay in balance to avoid penalties. The invoice was still not correct and I had to talk with the bookkeeping department, incurring several long distance calls trying to get our account corrected.

May 2003 – We received adjustments to our account from both our service representative and the utility company's bookkeeper. I put together a spreadsheet trying to balance out using both of their adjustments for February, March, April and May. After several phone calls and e-mails with them we finally arrived at an amount we could both agree to.

The billings we receive are very difficult to understand and even harder to calculate. We received several revised bills since October. In addition, revisions made by their staff for the same invoices did not come out the same either. On some of the invoices I never could match their figures.

We have a few questions we would like to have answered at our meeting:

We have heard different stories about what really happened with the Woodward storage. We would like to know what the actual facts are.

When was the cash-out tariff approved that started in October 2002 and how were the penalty rates to be charged?

We were told that meters would be read on the last working day of the month however we have documentation that this is not the case. If meters are going to be read on different dates it would be nice if transport customers would know in advance so nominations could be adjusted accordingly.

Why were the actual meter readings and dates read eliminated from the invoice?

How can the errors and inconsistencies in the billings be corrected?

Why are transport customers not informed when changes are made that have a financial effect on the customer? Also, when a new charge is added or the method for figuring the usage (such as the meter pressure factor), the customer should be notified with an explanation of the change. This could be sent with the monthly invoice unless the charges occur during the month before notice can be mailed out – then the customer should be contacted by phone.

Again, I feel that the continual changing of rules of the game by our local gas company is done to discourage schools from transporting gas. Every change or error is to the advantage of our local gas company. In discussions with staff from other schools they have found this to be the case as well. I have spent an enormous amount of time this year dealing with natural gas and incorrect invoices. I feel our district did not suffer too badly economically this year but if I included the staff time of our district personnel I am not sure that would be the case. With the shortfall of funding for education we need to do everything possible to save money for our school districts. In the past, transporting gas was a way we could save funds for other educational needs, and in some cases that is paying for at least one teacher.

We appreciate the KCC looking into this matter and hope some resolution can be made.

Senate Bill 522
Friday February 20, 2004**Testimony of Dr. Dale Rawson, Superintendent, Burlington USD 244**

This testimony is offered in SUPPORT of Senate Bill 522.

The information provided is rather lengthy but helps exemplify the problems that currently exist in our school district related to the transportation of natural gas. The Executive Summary provides a brief overview and the documentation follows for those who are interested.

Executive Summary:

As explained in the following paragraphs, I will ask the committee to support Senate Bill 522 for the following reasons

1. The Cash Out penalties established by the utility company are punitive to the point of making transportation unfeasible. Modification and/or elimination of cash out penalties above those that are incurred from the interstate pipeline are requested.
2. The 'rules' of transporting natural gas have changed and the transport customer is not informed of those changes until well after the fact making it difficult or impossible to comply with the change in the rules. Improved communication is necessary and removal of cash out penalties for changes in rules that were not communicated should be eliminated.
3. Confusion in transport billings is prevalent. All organizations involved with transportation of utilities should be required to adopt common billing and communication procedures. Cash out penalties that are incurred due to errors in billings that are not the fault of the transport customer should be eliminated.

Background:

The following provides a short background of how gas transportation works in case some members of the committee are not familiar with the process.

Transporting natural gas can be thought of as purchasing gas on a wholesale market from the MARKETER and paying delivery charges to the INTERSTATE PIPELINE and the UTILITY to have the natural gas delivered to the school. Each of the above entities has different rules and since the commodity moves across state lines, some of the rules are regulated by the federal government.

The system (in simple terms) works as follows:

- On about the 15th of the month the school will 'nominate' the gas to the MARKETER for the following **calendar** month. For example, on or about January 15, the school calls the MARKETER and nominates 100/day for 29 days or 2900 units for the month of February. The MARKETER places the nominated gas in the INTERSTATE PIPELINE for transportation to the UTILITY.

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- The UTILITY delivers the gas to the school. Since the gas used fluctuates based upon building usage, outside temperature and wind the exact gas on a given day may vary. In the 'big picture' if the amount of gas injected into the INTERSTATE PIPELINE is not sufficient, the UTILITY may need to add gas from its reserves. Likewise, if too much gas is in the INTERSTATE PIPELINE, the UTILITY may need to take the excess out.
- At the end of the month, the nomination is compared with the actual gas delivered. The UTILITY bills the school for any amount used in excess of the nomination or 'cashes out' the school for any amount nominated above the amount delivered.
- The 'cash out' is based as follows:
 - For any amount from 0-10 percent delivered above the nomination, the UTILITY charges the school the highest cost of gas they paid during the month. For any amount from 0-10 percent delivered below the nomination the UTILITY pays the school the lowest price of any gas they purchased during the month.
 - For amounts that vary from 10.1 percent to 15 above or below the nomination, the UTILITY charges 120 percent of the highest amount or pays the school 80 percent of the lowest amount.
 - For amounts that vary greater than 15 percent, the UTILITY charges 140 percent of the highest rate or pays the school 60 percent of the lowest rate.

Problems with the System:

1. The Date The Meter is Read Has Not Been the Same. When the Cash Out system began in the fall of 2002, the UTILITY did not always read the meter on the last day of the month. If, for example, the 'meter man' was in town during the last week of the month, he would often read the meter and call it the monthly reading. While this doesn't make a difference to those on the retail market since the over/short is taken care of the next month, for the transport customers, it makes a major difference. For example, some meters were read as early at the 25th of the month. If a month had 30 days and the cash out was based upon a 30 day nomination, the early read (5 days divided by 30 days) would be an automatic error of 16.7 percent. Even if the school made a perfect nomination, the school would be 'long' by 16.7 percent in its nomination and would be cashed out.

Since this reading would be the beginning reading for the next month, even if the following month the meter was read on the last day of the month, the fact that the beginning reading was from the 25th of the prior month would result in the delivery appearing to be higher than the nomination for that month (i.e. 35 days of usage for 30 days of nomination.) This will result in the school's nomination being 'short' by nearly 16 percent (30/35) even if their nomination was perfect.

As the committee can see, even if the school perfectly nominated the actual gas delivered, a variance of the day the meter was read will throw one month long and the subsequent month short resulting in the school being penalized both months by the cash out system.

NOTE: To be fair to the UTILITY, following a meeting with the Kansas Corporation Commission last summer, the UTILITY (that serves our school) notified us of the meter read dates for the 2003-04 school year.

2. While the meter read dates are now known, the computation of nomination vs. delivery still varies. Following the meeting with the KCC, the UTILITY notified schools of the meter reading dates. By and large they are the last business day of each month. While this has helped, the following problems still exist.

The UTILITY indicated they would read the meter on the last business day of the month. It was not mentioned until later this fall that if they read the meter before the end of the calendar month, the nomination would be converted to a daily amount and reflect the days in the billing cycle.

For example, in November 2003, since the UTILITY took the Friday after Thanksgiving as a company holiday, the meter read date was November 26, 2003. Assuming a daily usage of 100/day, they computed the cash out on a total of 2600 units (100/day x 26 days) even though the MARKETER had nominated 3000 units for the calendar month. Likewise, in December, the UTILITY planned for 35 days (November 27-December 31). While this compounds the difficulty of trying to match the MARKETER's nomination with the UTILITY's deliveries, it can be done.

Once this was understood, the school began to modify the nomination to reflect that the UTILITY would read the meter on the last business day and that the nomination would be shortened commensurately.

The current problem is that even though we now have the meter read dates, the UTILITY verbally notified the school in January that if there are only one or two days different from the last business day of the month and the calendar month, the UTILITY will use the MARKETER's full monthly nomination. For example, the last business day of February 2004 is February 27. At the 100/day example, this means we should have delivered 2700 units; however the UTILITY indicated that for this month they will use the 2900 units for the calendar month. It is impossible to accurately nominate when the method of comparing the nomination to the delivery changes.

While this school district was notified of the change by which the UTILITY would measure the nomination for cash out purposes, not all transport customers were notified of this. As a result, they will be subject to additional cash out penalties because the UTILITY modified the cash out rules and did not notify the transport customers.

It is believed that the UTILITY should clearly establish when it will prorate the nomination and when it will use the full month nomination. This notice should be to all customers and should be in writing. Cash out penalties should not be applied to transport customers when the UTILITY modifies the rules without providing written notice.

3. Other changes in the rules of operation are not communicated. As this testimony was being prepared on Monday February 16, contact with the UTILITY regarding discrepancies between what the school had nominated for use in November and December 2003 and what the MARKETER had billed the school as actually transported were discussed. At that time the UTILITY indicated that since November 2003, the

INTERSTATE PIPELINE has exercised flexibility in allocating a portion of the gas nominated. Simply stated, if the school nominates 100 units per day for 30 days for a total of 3000 units, the INTERSTATE PIPELINE may only allocate 2500 units on the pipeline. The UTILITY indicated that they will recompute cash outs based upon the allocation compared to the amount of gas provided. What this means is that even if the school is perfect with a nomination and the meter is read on the correct date, the school will **still** be charged penalties because the INTERSTATE PIPELINE didn't allocate what we nominated. **Frankly, given this notice, as of Monday February 16, the entire concept of transporting natural gas now appears untenable.**

It is believed that the school should be exempt from UTILITY applied cash outs when the MARKETER's nomination on behalf of the school is not honored.

SUMMARY:

While other concerns exist, in the recognition of the limited amount of time for this hearing, the following summary is provided. For those committee members who wish to explore the concerns in more detail, additional problems follow the summary.

The current system of transporting natural gas allows schools an opportunity to save money that can otherwise be spent for students. While I certainly appreciate the need of the UTILITY to encourage transport customers to be accurate with their nominations, the **current system of cash outs applied to schools is believed to be punitive** to the point of making transportation a risk not worth taking unless some improvement occurs. I ask that this system, or at least as it applies to school districts, can be modified or eliminated.

Additionally, **communication** from the UTILITY concerning changes in the rules governing transportation of gas and cash out procedures must occur in a timely fashion. As stated above, the school was notified on February 16 of a change that will be made retroactive to November 2003 that completely nullifies any ability to accurately nominate gas under the transport system. This is not good business practice.

While errors can and will occur, the punitive action of cash outs should not be applied to schools when the errors are not the fault of the schools.

Additional background information follows this testimony for those committee members who are interested.

Thank you for your time and consideration.

Additional Information (not part of planned testimony):

The focus of the Legislature is viewed as best being able to protect schools from UTILITY imposed cash out penalties that are in excess of those actually received by the UTILITY. It is for this reason that modification of the cash out provisions is requested.

Other problems with the transportation system exist. It is believed that these problems may be resolved through cooperative efforts of all involved parties and representatives of the Kansas Corporation Commission. Those problems are listed below:

- A. Adjustment factors vary and are not divulged until after the month is over. The UTILITY adjusts the delivery and nomination by the quality of the gas and the gas that is 'lost' in the system. These factors can reach as high as 5 percent of the total. The UTILITY may change the factors as it deems necessary but the school is not made aware of the change until after the fact. If the factors are changed, the result is that even a perfect nomination can be thrown off by not knowing the factors to be used.

It is requested that the UTILITY create a system to notify the transport customers of any modifying factors 30 days prior to the month they will be included in the cost calculation so that the customers have the opportunity to use those modifiers in computing the nomination.

- B. The cash out statement provided by the UTILITY does not consistently reflect the usage period for the statement. The cash out form provides limited space for the dates of service. When a two digit month (November – December) is presented, the statement will only allow one digit for the day. This results in the presentation of service being from 9/30-10/3 as the last date is truncated. This results in schools not realizing whether the last service date is 10/30 or 10/31.

It is requested the UTILITY modify the statement to accurately reflect the dates of service.

- C. Notifications are delayed beyond what is customary for good business practice. In the late summer/early fall of 2003, the Greenbush Natural Gas Purchasing Consortium 'hedged' a quantity of gas with the MARKETER. This means that a specified amount of gas based upon last year's usage is assigned to each transport customer at a fixed price. The 'hedge' started with nominations and infusions from the MARKETER to the INTERSTATE PIPELINE in November 2003. The notification as to the hedged amounts for our school district was not received until late January 2004.

This means we must now reexamine usage records and billings from November to ensure that the correct hedge was used.

It is believed that this information should have been provided earlier and it is requested that the KCC, UTILITY, MARKETER and school representatives reach agreement on reasonable billing dates for notifications.

- D. Billings are late. We generally receive our billing for nominated gas from the MARKETER about 5 weeks after the close of the billing period. For example, our billing for the November 2003 gas nominated was dated January 5, 2004.

The Cash out from the UTILITY usually appears in the third week of the month following the delivery. While this is within normal billing limits, the actual daily long of nominations as transmitted to the UTILITY from the INTERSTATE PIPELINE who in turn received them from the MARKETER is delayed much longer. When billing errors occur, it is not possible to resolve the errors until all this information is in hand. As a result, we often face late payment and/or 'shutoff' notification issues because we don't have the data available to ensure correct payment.

- E. Billing inaccuracies occur and are difficult to resolve since the MARKETER and UTILITY do not appear to communicate. During the past several months we have had several inaccuracies in billings. While errors do occur, the resolution of errors would be facilitated if there were better lines of communication between the MARKETER and the UTILITY. Listed below are examples of errors in the last six months:

September 2003: UTILITY error. The meter on one building was incorrectly read or incorrectly inputted into the system by the UTILITY. The result was that for the month of September our delivery was underreported and as a result we were cashed out at 40 percent of the incorrect amount. Subsequent attempts to correct the error resulted in further errors on the October and November statements that resulted in compounding the cash out error. A meeting with the UTILITY representative finally resolved the question. By the time we had it resolved the UTILITY had to write off \$3,374.99 in cash out penalties.

November 2003: MARKETER error. The November nomination was adjusted on November 12 and again on November 21. The MARKETER confirmed the changes by e-mail; however, the November 12 nomination change to the INTERSTATE PIPELINE and subsequently to the UTILITY did not occur. As a result, on November 21, the MARKETER, modified the nomination so that the total for the month would be what the school intended. This resulted in the final days of the month having a much higher nomination that was expected. While this would not normally be a problem, the fact that the UTILITY read the meter on November 26 resulted in 4 days of the incorrect nomination being unapplied in November and being applied to December. This error placed the nomination and delivery in imbalance. It was not until December 11 that the school was able to ascertain from the UTILITY what had actually been nominated for them by the MARKETER for the month of November. The school was required to pay the cash out since it was not an error of the UTILITY.

November 2003: MARKETER ERROR/CONFUSION. The billing for gas from the Marketer should be for what is nominated. The November billing did not match the nomination. The MARKETER's representative corrected the error in January.

December 2003: MARKETER ERROR/CONFUSION. The billing for gas from the Marketer should be for what is nominated. The December billing was for 1929 units of gas

and the nomination was for 2016. The MARKETER's representative is investigating this error as of the date of this memorandum.

- F. Business hours of the MARKETER and UTILITY are not standard. As mentioned earlier, the UTILITY takes the Friday after Thanksgiving off. This was not known until the meeting with the KCC. The MARKETER also appears to have flexible hours around holidays. Due to the moderate winter weather in December, I determined to review the nomination and modify it on the morning of December 26. When I called the MARKETER, the message indicated the MARKETER was taking the day off. Since this was a Friday, I was unable to request a change until Monday December 29. Since it takes 24 hours to make the change effective, I could only modify the dates of December 30 and 31. Even by taking the nominations to zero, I was still long on the nomination and faced cash out penalties. Had I been able to make the change effective December 27, I could have been much closer.

It is requested that both the MARKETER or UTILITY provide the transport customers with their business days and hours well in advance.

While these problems may be beyond the scope of legislation, the committee is asked to understand how time consuming the resolution of these errors becomes. If **communication** between the MARKETER and the UTILITY with respect to billings occurred, it would be beneficial the transport customer. Likewise, if a system were available to allow the customer to **verify nominations and deliveries via web access or earlier billing procedures**, it could resolve many of the errors before they reach billing status. As it stands now, both companies have their own systems and mistakes are not readily recognized or corrected.

In closing, it should be noted that no 'blame' is attached to either the MARKETER or the UTILITY. In all cases, representatives from both companies have diligently tried to resolve the errors. The problem is that the scrutiny with which the transportation of natural gas must undergo to ensure that the customer is not placed at a disadvantage is enormous and represents a sizeable investment in terms of time.

There have been occasions when the entire concept of transporting natural gas has been questioned as not being worthwhile; however, the current rules will prohibit reentry into the transport method for a specified period of time if we withdraw from it due to the frustration and errors that seem to continue each month. Given that the savings can be substantial and that those savings are translated into more services for school children, it is hoped that the system can be improved so that transporting can be achieved in the manner for which it was intended.

Further questions may be addressed to:

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BEFORE THE SENATE UTILITIES COMMITTEE

PRESENTATION OF THE

KANSAS CORPORATION COMMISSION

February 20, 2004

SB 522

Thank you Chairman and members of the Committee. I am Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission. I appreciate the opportunity to be here today to testify on SB 522.

This bill makes certain requirements on natural gas utilities for customers that purchase and transport their own natural gas, and upon the natural gas marketers that provide this service for these “transport” customers. Before commenting on the bill, I would like to provide a broad overview of this process and explain how customers transport natural gas. While I will not touch upon all of the details and nuances of the process, I do hope that this general discussion will be helpful.

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Background on Natural Gas Transport

Until the late 1970s and early 1980s the price of natural gas produced at the wellhead was regulated. To address increasing scarcity of natural gas supplies, the price of natural gas was deregulated at the wellhead. This action allowed natural gas prices to fluctuate in response to supply and demand. The result was that private enterprise responded to the demand, and subsequently higher prices for natural gas, by increasing drilling and exploration. This additional investment and effort increased the supply of natural gas and actually stabilized natural gas prices throughout the 1980s and 1990s. Economists have a saying, “the cure for high prices is high prices.” Certainly the deregulation of natural gas caused a short-term price increase, but the response of private industry to increased commodity prices increased production and provided adequate natural gas supplies for many years.

While the price of natural gas had been deregulated at the wellhead, there was an increasing concern that most natural gas producers were forced to sell to the interconnected large gas pipelines. The gas pipelines then sold gas to the natural gas utility that distributed it to the retail customers. The natural gas utilities that provide this distribution service are called Local Distribution Companies or LDCs. In many cases the LDC and the larger natural gas pipeline were one and the same. In an effort to assure that natural gas producers would have ability to receive competitive prices for their product, the merchant function was removed from the transport function of the natural gas pipelines. Additionally, LDCs were separated from the natural gas pipelines. LDCs were then required to buy natural gas directly from the producers, and then pay the natural gas pipeline rates for transporting the gas they had purchased. As a result, the natural gas pipelines no longer have a monopoly on buying and selling gas to the LDCs, and instead provide only a transportation service.

Today, the distribution rates for the LDCs, and the transportation rates for the pipelines, are regulated, while the price for natural gas at the wellhead fluctuates in response to supply and demand, just like any other freely traded commodity. For many retail natural gas customers the change is transparent. The LDC simply purchases and transports the natural gas for these “sales” customers who repay the LDC gas costs through the purchased gas adjustment or PGA.

Because the natural gas utility, or LDC, has no direct interest in the pipeline or the natural gas it purchases for its customers, it began to make sense to allow larger and more sophisticated customers to transport their own natural gas. Larger and more sophisticated customers desired to purchase natural gas in a way that differed from the the LDC, or may simply wanted to hedge their gas costs differently, and for that reason these “transport” customers preferred to purchase natural gas and arrange their own pipeline transportation, while paying the LDC for its distribution costs. Nonetheless, because the pipeline no longer marketed natural gas, both the LDC and the transport customers are required to put the same amount of gas into the pipeline as they withdraw. This requirement to make sure that the LDC or the transportation customer puts in the same amount of gas that is withdrawn from the pipeline is known as “balancing”.

While the transport customer buys gas and puts it in the pipeline, the pipeline delivers it to the LDC. The LDC then distributes the gas to the transport customer. For this reason the LDC is held responsible by the pipeline to balance both the requirements for the “sales” and the “transport” customers. This results in some complication because the LDC is assessed a penalty if it withdraws a different amount of gas from the pipeline than is put in, regardless of whether or not this “imbalance” is caused by the LDC incorrectly purchasing gas for its sales customers, or the transport customer incorrectly meeting its gas needs.

To address this problem LDCs attempt to recover any penalties they incur from the activities of transport customers by requirements and penalties to assure that the transportation customers have properly balanced their gas usage. This prevents sales customers from paying for penalties that were not incurred on their behalf and also encourages the transport customers to properly balance their requirements without “gaming” the gas and transportation purchased by the LDC for its sales customers. Needless to say this, is a complex process. Not only must transport customers and LDCs purchase gas, they must also arrange pipeline transportation and properly schedule deliveries of the gas they purchase. For many smaller natural gas transportation customers, and even LDCs, natural gas marketers handle this complicated purchasing and delivery function.

Comments on SB 522

Senate Bill 522 places several statutory requirements on natural gas utilities, or LDCs, and natural gas marketers. For both marketers and LDCs this bill limits the imbalance adjustments to a specified formula and requires 30 day notice for month of service. Additionally this bill requires natural gas public utilities to comply with the KCC’s billing standards or be subject to penalty. We have several concerns with the language of this bill.

The Federal Energy Regulatory Commission, or FERC, sets imbalance penalties assessed by the pipeline to the LDC. While this bill would only allow the LDC to recover a specified amount from the transport customers, there is no guarantee that this would be the same amount that the LDC would have to pay the pipeline for any imbalance caused by the transport customers. Eventually, the LDC’s sales customers would likely end up paying for the difference between the imbalance charge that the LDC is allowed to collect from transport customers under this bill, and the amount that the FERC allows the pipeline to impose on the LDC. This could

have the unintended consequence of raising the cost of natural gas service for many residential and small commercial customers.

The 30-day notice requirement is not unreasonable for normal monthly balancing requirements. Nonetheless, many pipelines go to a daily balancing requirement during emergencies, and we are concerned that this provision could be construed to make the LDC responsible for transportation customer imbalances in these situations when there is no possibility for a 30-day notice. While we do not believe the current language creates this problem, we are concerned it could be incorrectly construed to saddle the natural gas utility and its sales customers with daily imbalance costs caused by transport customers.

The bill also is unclear on who would enforce the notice and cashout requirements on marketers. While the KCC notes that this places a requirement on marketers, we also note that the bill does not grant the KCC jurisdiction over their activities. While we are certainly not proposing to take this jurisdiction, the bill is unclear on who would enforce the marketers to comply with these requirements.

While the bill does endorse the KCC's billing standards, we note that these are already requirements of jurisdictional gas utilities. We believe the KCC already has the authority to enforce compliance to this and other KCC requirements.

Finally, it should be noted that there are many different types of transport customers, varying from large industrial users to hospitals and schools. Certainly we are sympathetic to efforts to help transportation customers, and in particular school districts, to control their natural gas costs. Nonetheless, we note that this bill does not distinguish between the size and sophistication of these customers, and may create unintended opportunities for sophisticated

customers and marketers to “game” the system at the expense of small commercial and residential sales customers.

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**LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

**TESTIMONY OF BOB ALDERSON
ON BEHALF OF ATMOS ENERGY CORPORATION
BEFORE THE
SENATE COMMITTEE ON UTILITIES
FEBRUARY 20, 2004**

Chairman Clark and Members of the Senate Committee on Utilities:

I am Bob Alderson, a lawyer in private practice in Topeka, and I am appearing today on behalf of Atmos Energy Corporation in opposition to Senate Bill No. 522. Thank you for the opportunity to appear before the Committee.

SB 522 was introduced by this Committee at the request of Senator Karin Brownlee, a member of the Committee. Atmos understands that the impetus for the proposed legislation is a glitch in Atmos's billing program. However, we also submit that the bill is a result of a failure in communication.

Utilities have a responsibility under the billing standards to read meters correctly and remit bills correctly, and Atmos certainly understands that a failure to satisfy these standards can cause concern for its customers who are affected. But, when errors do occur, Atmos believes there needs to be effective communication between these customers and Atmos to correct the errors, rather than an attempt to legislate directions that are already in place.

Transportation customers on the Atmos Energy system have been subject to a cashout of the positive or negative imbalances resulting from nominating volumes of gas different than the volumes of gas that the transportation customer actually uses. The methodology for this cashout calculation was based on the highest indexed price for the difference when volumes delivered were less than volumes actually used, and based on the lowest indexed price for the

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difference when volumes delivered were greater than volumes actually used. This methodology was approved by the Kansas Corporation Commission in the filed tariffs, and was set up in this way to encourage transportation customers to work with their agent to receive only the volume of gas that they actually used.

Atmos Energy recognized that there was a better way to handle its transportation customers' imbalances and modified its cashout methodology in its recent tariff filing that was approved by the KCC on January 5, 2004, with an effective date of February 1, 2004. The cashout method being recommended in this bill is the same method that Atmos Energy will use under its new tariff, except that Atmos Energy actually went a step further and allowed its transportation customers to pool their volumes with their agent under a pooling agreement, which gives the agent 30 days to correct the positive or negative imbalance before there is a cashout. Under this new methodology, it will be very rare, indeed, if any transportation customer or agent is ever cashed out.

With respect to providing written notice to the transportation customers as to when the meters will be read for billing purposes, Atmos Energy already does that. Atmos also believes that the other regulated utilities either routinely provide this information to their transportation customers or will provide it on request. This is not something that needs to be legislated.

The final part of SB 522, Section 1 (b), came about because of a modification to the Atmos Energy billing program that dropped the last number in the date of the ending meter reading when the bill was printed. On the computer screen, the bill read correctly, but the print program caused the last digit on the ending meter reading date to be omitted. Once this was brought to our attention, the problem was fixed.

This bill is unnecessary. The problems addressed in SB 522 are not universal problems needing legislation to resolve, but rather misunderstandings or correctible errors or changes in methodology that have already been corrected. Atmos always stands ready to address any billing errors or other problems brought to its attention by its customers. That is the key. When a customer experiences problems with the billing system Atmos has in place, these

problems can be resolved most expeditiously when the customer communicates with Atmos.

Thank you for your attention to these remarks. I will stand for questions at the appropriate time.

**Prepared Testimony to Senate Utilities Committee
Regarding SB 522
William N. Dowling, Vice President
Midwest Energy, Inc.
February 20, 2004**

Good morning Chairman Clark and members of the Utility Committee. On behalf of Midwest Energy, Inc. I would like to thank you for the opportunity to discuss our concerns with the proposed Senate Bill No. 522. I am Bill Dowling, the Vice President of Energy Management and Supply for Midwest Energy, Inc. As you are well acquainted with our company, I won't spend any time giving you background on our organization except to say that we do provide natural gas transportation service to over 4,000 customers (out of our total of 42,500 gas customers) that have chosen to purchase their natural gas requirements from other suppliers while relying on Midwest to deliver that gas to them.

The provisions in the proposed Bill concern us on several levels. Before raising those concerns though, it might be helpful to give you a very brief overview of the transportation program at Midwest, and the role of the players involved.

Customers that elect to purchase their natural gas from other suppliers will enter into a contract with a gas marketer to provide that gas. In order to provide that gas to the customer, the marketer must make arrangements to have gas delivered from an interstate pipeline to our distribution system. Midwest fulfills the same role for those customers that purchase their gas directly from Midwest. Both Midwest and the marketer(s) serving customers inside our system must schedule (nominate) gas that the interstate pipeline will "ship" across the interstate pipeline system to our distribution system. Each "shipper" must make these nominations in advance, anticipating the volumes that will be required by all their respective customers in aggregate. Needless to say, this advance nomination seldom exactly matches the volumes actually consumed by the customers.

After the end of each month there will then remain some amount of imbalance that must be resolved, often through a process of "cashing out" that imbalance. On our system, the

imbalance cashout process really consists of two separate steps. First, the marketer (and Midwest) have an imbalance calculated for them individually by the interstate pipeline. For most of the interstate pipelines we work with, this imbalance is calculated as the difference between a shipper's nomination and the volume assigned to that shipper by the interstate pipeline as a proportion of the total amount of flowing gas. In other words, it is not tied to the volume of gas consumed by any specific customers; rather, it recognizes the imbalance only on the interstate pipeline incurred by each shipper. At the second step of the process, Midwest then balances individually all the marketers serving customers on our distribution system. This is done by calculating the difference between the volume allocated by the interstate pipeline and the sum of each marketer's customers' actual volumes.

With this as a background, I would like to express some concerns of Midwest Energy with several aspects of the proposed Bill.

1. The term "public utility" as specified in KSA 66-1,200 and 66-104 would seem to include interstate pipeline companies. If so, then there is a jurisdiction issue here in that all cashout provisions administered by an interstate pipeline are subject to the jurisdiction of the Federal Energy Regulatory Commission via a FERC-approved tariff. The supervision exerted on an interstate pipeline as to rates and terms of service by the Kansas Corporation Commission is somewhat limited compared to the Commission's supervision of local gas distribution utilities. The interstate pipelines use FERC-approved procedures that include provisions for both the rate at which imbalances are cashed out, and the timing under which this is accomplished.
2. The local distribution companies, or LDCs, like Midwest generally design their cashout provisions to fit logically with those of the interstate pipeline(s) from which they take delivery of natural gas into their distribution systems. Midwest has such provisions on file with the Kansas Corporation Commission that were designed to fit with those interstate pipeline practices. On our system, we work with several different interstate pipelines, and must have procedures in place that

- will work with the different pipelines' balancing program. There have also been significant changes in the imbalance resolution provisions on several interstate pipelines serving Midwest over the past few months, and we must be able to adjust our processes and practices accordingly from time to time.
3. There is some question in my mind regarding the language of paragraph (1). It refers to a "cashout adjustment calculation for any nomination imbalances for a given month for such transportation customer". In our system we bill the gas marketer, not the individual customer, for any imbalance incurred, in aggregate, by the customers contracting with that marketer. To the extent a marketer bills the individual customer directly for any imbalance gas we are not involved. In essence this becomes an issue of transfer of risk and responsibility.
 4. Also in paragraph (1) the requirement that a public utility "use a monthly average to determine such cashout rate for the month in which the imbalance occurred" is inconsistent with the balancing provisions a marketer or LDC faces on many interstate pipelines. Most of the pipelines base their cashout rates, except for so-called "operational flow orders" or "periods of daily balancing" on first-of-month indices, or on more specific index averages. (Kinder Morgan Interstate: Average of the weekly averages of several indices; Southern Star: First of month, tiered, with penalties for magnitude of deviation from a tolerance volume.) Midwest currently uses first-of-month prices for setting the cashout rates, and assesses penalties for volumes beyond the allowed tolerance. Perhaps more importantly, we also allow marketers to "swap" their imbalance with other marketers having an opposite position, thereby avoiding a cashout entirely in most cases. This seems to strike a reasonable balance among all the parties' interests.
 5. Some interstate pipelines, and some LDCs like Midwest, use a penalty rate for some or all of the imbalance volumes. The idea is to provide an incentive for marketers to avoid "gaming the system" through the imposition of penalties. Absent this penalty structure, marketers may perceive an incentive to game the system by nominating low amounts during periods in which daily prices are high, and vice-versa. The result of such gaming is that captive customers, i.e.,

residential customers, end up paying more for gas because those gaming the system pay only the average price, not the actual price.

6. During the so-called “operational flow orders” or “periods of daily balancing” mentioned previously the interstate pipelines often switch to daily indices for cashing out imbalances. This keeps the cost of the imbalance consistent with prevailing market conditions, and again provides an incentive to avoid imbalances to the extent possible.
7. The language of paragraph (1) is not sufficiently specific in that it doesn’t define the “monthly average”. Is it an average of weekly averages, an average of daily averages, an average of daily “highs”, etc.? This would seem to be a question better addressed by the regulatory commission having jurisdiction over an LDC or interstate pipeline.
8. We assume the intent of paragraph (2) is to provide notification in advance as to the precise beginning and ending date of each period over which balancing calculations will apply. In its simplest form, this implies advance notice of meter reading dates. In practice we read the meters for transportation customers as close to the end of the month as possible to approximately coincide with the billing period of the interstate pipeline, but we can not specify in advance a precise date that a specific customer’s meter will be read each month. Since we read customer’s meters nearly every day each month, a number of different factors cause the reading date for a specific customer to occasionally vary by a few days.
9. In order to specify in advance a precise meter reading date we would likely need to install electronic flow meters (EFM) at each transportation customer location. Given our large number of transportation customers, we have not yet made the investment to install EFMs, and therefore can not state precisely, in advance, when a specific meter will be read. Midwest would incur significant costs if it were required to install EFMs on all transport customers in order to meet the requirements in the proposed legislation.

The primary goal of an imbalance resolution process, through a cashout mechanism or other means, is to provide an incentive for all parties to schedule gas deliveries that are consistent with anticipated and actual demand. Because LDCs like Midwest deal primarily with the gas marketers, who in turn represent a number of end-use customers, our balancing transactions are with the marketers, not the individual customers. The issues surrounding this Bill seem to revolve around reasonable expectations of the market participants, and open lines of communications between the LDC, the gas marketers and the individual customers. The preferred solution to problems that arise would seem to be to improve gas transportation programs, based on realistic expectations, through the current regulatory framework if necessary, rather than through legislative mandates.

Midwest Energy, Inc. appreciates the opportunity to discuss our concerns regarding Senate Bill No. 522. Thank You.

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