

TESTIMONY OF
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HOUSE BILL 2132
HOUSE ENERGY AND ENVIRONMENT COMMITTEE
FEBRUARY 2, 2015

Mr. Chairman, members of the committee, my name is Dan Dobbins and I am a Senior Reservoir Analyst with Northern Natural Gas Company. I live in Lyons, Kansas and have worked for Northern for over 40 years. As one of over 100 Kansas employees of Northern, I am pleased to have this opportunity to provide these remarks on behalf of Northern in support of House Bill 2132. I am joined today by Mike Loeffler, Senior Director of Certificates, and External Affairs and Jim Talcott, Assistant General Counsel.

Northern operates underground natural gas storage facilities at Cunningham and Lyons, Kansas. The development and operation of underground natural gas storage fields by Northern is subject to FERC oversight and is governed by regulations adopted by FERC.

Because of the geological formations under Kansas and its location on the interstate pipeline grid, the underground storage of natural gas in Kansas

is an important industry. However, for such an industry to exist there must be appropriate protection for the injector's ownership of storage gas. Recognizing this, the Kansas legislature adopted K.S.A. 55-1210 in 1993. Paragraph (a) of that statute reads as follows:

- (a) All natural gas which has previously been reduced to possession, and which is subsequently injected into underground storage fields, sands, reservoirs and facilities, whether such storage rights were acquired by eminent domain or otherwise, shall at all times be the property of the injector, such injector's heirs, successors or assigns, whether owned by the injector or stored under contract.

We thought this law was clear, and protected the injector's title to injected storage gas. However, in a 2013 case involving Northern's Cunningham storage field (*Northern Natural Gas Company v. ONEOK Field Services Company, L.L.C., et. al*) the Kansas Supreme Court ruled that, under the current statute, underground natural gas storage operators lose title to injected storage gas that may be found beyond one mile of the storage field's boundaries, regardless of how the injected gas got there. Beyond one mile, the old common law "Rule of Capture" applies. As a result, third parties are free to drill wells around certificated underground natural gas storage fields with the hope that injected storage gas can be drawn to their wells and produced for their profit. This is not the public policy previously expressed by the Kansas legislature. Kansas House Bill 2132 will clarify that intention,

and provide that underground natural gas storage operators do not lose title to injected storage gas.

Please keep in mind we are not talking about native resources. The subject matter of House Bill 2132 is natural gas that has been produced, transported across the country, and injected into an underground storage facility in Kansas within a narrow geological strata 4,000 plus feet underground. The injected storage gas has been purchased and paid for by the injector or its customers. Through simple, inexpensive gas sampling we have the ability to conclusively distinguish native gas from injected storage gas.

This legislation will not harm landowners or producers, and will not curtail the exploration for native resources in Kansas. Producers will be free to drill wells and produce native oil and gas as they have for over 100 years. Producers will continue to perform their due diligence and invest in facilities where and when it makes sense to them. Discovering native reserves of oil and gas is not a risk-free proposition, and nothing about the exploration for native oil and gas will change as a result of this bill; if native oil and gas is found, the producers and other interest owners will be rewarded for their investment.

Storage operators have no interest in allowing storage gas to migrate and gain no advantage whatsoever from the problems that arise when it occurs. Underground natural gas storage operators develop and operate underground natural gas storage fields under the watchful eye of either the Kansas Corporation Commission or the Federal Energy Regulatory Commission. Neither of these regulatory bodies will certificate and authorize the operation of a storage field unless the operator can demonstrate the facility can safely be operated as a storage field. Finally, if and when a storage operator must extend its storage field boundaries, landowners and producers are protected under current Kansas law. If a storage field must be expanded, interest owners can negotiate arms-length agreements with the storage operator, or if a condemnation action is necessary, interest owners will be awarded compensation for all interests taken, including native oil and gas and land rights. Northern is required to fairly compensate landowners and other interested parties for the acquisition of gas storage leases. In fact, Northern acquired storage leases by negotiation on 30% of the acres recently acquired at the Cunningham storage field.

Northern has had ongoing disputes and litigation with third parties in Pratt, Reno and Kingman counties that produced and sold storage gas that Northern had injected into the Cunningham storage field. House Bill 2132 is

not intended and will not change the outcome of that litigation. House Bill 2132 is prospective in nature. If not passed, third parties will continue to be incented to construct wells outside underground natural gas storage fields and produce injected storage gas.

Storage facilities provide a valuable service to its customers. Northern's storage customers include Koch Energy Services, LLC, Flint Hills Resources, LP, DCP Midstream LP, and Oneok Energy Services Company LP. These customers use storage as a tool against volatile natural gas prices, and to effectively manage supply reliability, supply diversity, peaking ability, and balancing. The passage of House Bill 2132 will ensure the integrity of the ongoing operation of underground natural gas storage facilities in Kansas.

I look forward to any questions that you may have.

Statute 55-1210: Property rights to injected natural gas established. (a) All natural gas which has previously been reduced to possession, and which is subsequently injected into underground storage fields, sands, reservoirs and facilities, whether such storage rights were acquired by eminent domain or otherwise, shall at all times be the property of the injector, such injector's heirs, successors or assigns, whether owned by the injector or stored under contract.

(b) In no event shall such gas be subject to the right of the owner of the surface of such lands or of any mineral interest therein, under which such gas storage fields, sands, reservoirs and facilities lie, or of any person, other than the injector, such injector's heirs, successors and assigns, to produce, take, reduce to possession, either by means of the law of capture or otherwise, waste, or otherwise interfere with or exercise any control over such gas. Nothing in this subsection shall be deemed to affect the right of the owner of the surface of such lands or of any mineral interest therein to drill or bore through the underground storage fields, sands, reservoirs and facilities in such a manner as will protect such fields, sand, reservoirs and facilities against pollution and the escape of the natural gas being stored.

(c) With regard to natural gas that has migrated to adjoining property or to a stratum, or portion thereof, which has not been condemned as allowed by law or otherwise purchased:

(1) The injector, such injector's heirs, successors and assigns shall not lose title to or possession of such gas if such injector, such injector's heirs, successors or assigns can prove by a preponderance of the evidence that such gas was originally injected into the underground storage.

(2) The injector, such injector's heirs, successors and assigns, shall have the right to conduct such tests on any existing wells on adjoining property, at such injector's sole risk and expense including, but not limited to, the value of any lost production of other than the injector's gas, as may be reasonable to determine ownership of such gas.

(3) The owner of the stratum and the owner of the surface shall be entitled to such compensation, including compensation for use of or damage to the surface or substratum, as is provided by law, and shall be entitled to recovery of all costs and expenses, including reasonable attorney fees, if litigation is necessary to enforce any rights under this subsection (c) and the injector does not prevail.

(d) The injector, such injector's heirs, successors and assigns shall have the right to compel compliance with this section by injunction or other appropriate relief by application to a court of competent jurisdiction.

History: L. 1993, ch. 102, § 1; July 1.