COMMENTS REGARDING SENATE BILL 271
SUBMITTED BY SOUTHERN STAR CENTRAL GAS PIPELINE, INC.
TO THE SENATE COMMITTEE ON NATURAL RESOURCES
January 27, 2012

OVERVIEW: Southern Star Central Gas Pipeline, Inc. is not opposed to the general thesis of SB 271; namely, that the surface owner of real property, with respect to which the mineral interests have not been severed, owns all of the pore space (as we understand that term) in all strata beneath the surface of their real property. However, Southern Star is concerned about what we presume are potential unintended consequences that some of the corollary language of SB 271 may have upon surface owners, mineral interest owners, and gas storage operators in Kansas. Southern Star respectfully submits these comments to the Committee, in order to bring these concerns to your attention for consideration during the debate and discussion regarding SB 271.

BACKROUND: Southern Star is an interstate natural gas pipeline company. Some may remember Southern Star as the former Cities Service Gas Company and Williams Natural Gas Company. A major part of Southern Star's business and operations involve the underground storage of natural gas, which dates back as far as the 1930's in Kansas. In fact, Southern Star is the largest natural gas storage company serving Kansas, with seven operating storage fields in the State. As a result, Southern Star is the owner of many gas storage easements and gas storage leases of subsurface formations, including presumably "pore spaces," in Kansas.

SUBSTANTIVE COMMENTS:

With regard to SB 271, Southern Star has the following comments:

First and foremost, as a preliminary point, to avoid any ambiguity or uncertainty we believe it is important that the operative term "pore space" be expressly defined. For example, are the provisions of SB 271 relating to pore space intended to govern subsurface formations utilized for underground gas storage and/or for carbon sequestration?

With regard to Section 1. (a): While generally true, the statement contained here appears to be overly broad, as it does not take into account situations in which ownership interests in the pore space has previously been severed. This Section, as currently drafted, creates

ambiguity and could lead to disputes among interest owners. Accordingly, we would suggest adding the following clause at the end of line 6: " . . . unless the ownership interest in such pore space previously has been severed from the surface ownership, either by express conveyance of the pore space or by express reservation of the pore space from a conveyance of the surface ownership."

Likewise, with regard to Section 1.(b), it appears the unless clause beginning on line 9 would more accurately convey the intended meaning, if revised the same as the above revision to Section 1.(a): " . . . unless the ownership interest in such pore space previously has been severed from the surface ownership, either by express conveyance of the pore space or by express reservation of the pore space from a conveyance of the surface ownership."

Finally, with regard to both sentences of Section 1.(d), to the extent the language states and implies that mineral interests in all instances have dominance over other unspecified interests, it is contrary to the contractual provisions of some gas storage contracts and possibly contrary to Kansas common law. For example, when mineral interests are leased by the surface owner *after* the surface owner's previous grant or conveyance of subsurface (pore space?) rights to a gas storage operator, the parties may agree that the mineral lease is "subject to" the gas storage owner's rights. In such instances, the gas storage rights are dominant to the mineral interest. (*See Reese Exploration v. Williams Natural Gas Co*, especially the discussion beginning on p. 10 of the Opinion, attached). The right and ability of the surface owner and of the gas storage operator to enter into contracts containing such provisions are important to both parties. That is, the inclusion of such "subject to" language may allow the surface owner to lease his/her mineral interest even after conveying gas storage rights, when they otherwise might not be able to do so. And, the "subject to" language is important to the gas storage operator, in order to ensure adequate protections are taken by the subsequent mineral interest lessee to maintain the safe operation of the gas storage facility, when drilling over or through the gas storage formation. Unfortunately, as currently drafted, SB 271 would appear to deprive both parties of such contractual benefits. We believe it would be best to delete subsection (d) in its entirety or, absent that, to replace it with the following simple statement: "Nothing in this section shall be construed to change or alter the common law or any contractual agreement with regard to the relative rights between any mineral interest owner and the owner of any underground gas storage interest."

For more information or questions, please contact:

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