

MINUTES

SPECIAL COMMITTEE ON UTILITIES

November 27, 2006
Room 514-S—Statehouse

Members Present

Senator Jay Emler, Chairperson
Representative Carl Holmes, Vice-Chairperson
Senator Janis Lee, Ranking Minority Leader
Senator Pat Apple
Representative Annie Kuether
Representative Robert Olson
Representative Richard Proehl
Representative Mark Treaster

Members Absent

Representative Lynne Oharah

Staff

Mary Galligan, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes Office
Ann McMorris, Committee Secretary

Conferees

Leo Haynos, Kansas Corporation Commission
Don Low, Kansas Corporation Commission
Jere White, Kansas Corn Growers Association
Kirk Heger, Southwest Irrigation Association
Maria Seidler, Southwest Kansas Non-Profit Utilities
Rick Hanson, Hanson Engineering
Ed Peterson, Counsel, Kansas Corn Growers Association
Ron Oliver, farmer, Seward County, Kansas
Richard Wenstrom, PEK Irrigators, Inc.
Dick Brewster, Director, Government Relations, BP
William B. McKean, American Pipeline Co. and Woolsey Operating Company
Jon Callen, Edmiston Oil Company
Steve Dillard, Pickering Drilling Co., Inc.

Steve Johnson, ONEOK
Russell Bishop, Duke Energy Field Services (for Jack Glaves)

The Special Committee on Utilities was called to order by Senator Jay Emler, Chairperson, on Monday, November 27, 2006, at 9:30 a.m. in Room 514-S of the Statehouse.

Moved by Representative Holmes, seconded by Senator Apple, the minutes of the September 15, 2006, meeting of the Special Committee on Utilities be approved as distributed. Motion carried.

Mary Galligan called attention to the responses for information requested at the last meeting which have been inserted in the Committee notebooks:

- Kansas One-Call's position on future legislation by Tom Shimon, Executive Director;
- One-Call spreadsheet on cities not in One-Call from League of Kansas Municipalities; and
- Underground Facility Locating Technologies by Leo Haynos, Kansas Corporation Commission (KCC).

Overview of SB 576

Mary Galligan of Legislative Research, noted SB 576 would give the KCC some limited jurisdiction over gas gathering systems and access to those systems. The bill would authorize the KCC to review practices relating to offering gas gathering services which are in current law, and transportation or access to gas gathering facilities which would be a new definition added by the bill. That review and jurisdiction would be in order to determine whether the practices are discriminatory or unduly preferential. The bill provides for the Commission to create an informal complaint resolution process. The bill also requires utilities to receive Commission approval prior to abandoning a customer if the customer files a complaint.

Kansas Corporation Commission Jurisdiction

Leo Haynos, KCC, commented on gas gathering system functions as they pertain to KCC's jurisdiction. He provided a diagram of a gas gathering system (Attachment 1).

Kansas Corporation Commission Gathering Service Investigation

Don Low, KCC, reviewed Docket No. 06-GIMGH-400-GIG. This docket was initiated in October 2005, in order to address legal and policy issues surrounding natural gas services to end users from gathering systems. The findings of the Commission are summarized in paragraphs 61 and 62 of the Order which was issued on November 22, 2006 (Attachment 2).

Committee members discussed and asked about inclusion of irrigation systems and whether the term "business" included irrigation; from where 15ppm H₂S originated; how poisonous is this gas; how many customers used public right of way; and the terms of the original contracts which should be filed in the courthouse.

Chairperson Emler opened the hearing on SB 576 – an Act concerning Natural Gas, relating to gas gathering facilities.

Proponents

Jere White, Executive Director of the Kansas Corn Growers Association, spoke in favor of SB 576. The bill assures that rural customers on natural gas gathering lines are given the same consumer protections as other natural gas customers in the state. The proposed legislation clearly establishes that the KCC has authority to make final decisions over access to service and termination of service. He noted - "we are here because the evolution of natural gas in Kansas has left disenfranchised consumers without protections" ([Attachment 3](#)).

Kirk Heger, Southwest Kansas Irrigation Association, and a farmer in Stevens County who purchases gas for irrigation purposes, spoke of the concerns for future service and the cost of investment to bring gas to their property. He noted the success of non-profit utilities formed in Southwest Kansas and how vital the gas supply is to their agricultural economy and the farming communities ([Attachment 4](#)).

Maria Seidler, Southwest Kansas Non-Profit Public Utilities, spoke in favor of this bill as a means to allow farmers to have access to the source of gas supply that is under the monopoly control of pipelines ([Attachment 5](#)).

Rick Hanson, representing Southwest Kansas Irrigation Association and the Southwest Kansas Non-Profit Public Utilities, provided a resume of his work experience as an engineer in various capacities in the gas industry and has an in-depth knowledge of the operational issues that gathering companies have raised ([Attachment 6](#)).

Ed Peterson, Counsel for Kansas Corn Growers Association, reviewed the impact of SB 576 and the KCC involvement. He noted that well-established procedures are already in place that the Commission can use to efficiently handle any disputes that customers and gas gathering operators are unable to resolve themselves. The new Commission's order (in Doc 06-GIMG-400-GIG) sets forth the Commission's interpretation of its statutory authority ([Attachment 7](#)).

Ron Oliver, farmer from Seward County, Kansas, asked the question "Where do I go to get my gas supply if the gatherer can say no?" He is dependent on irrigation gas for his farming operations ([Attachment 8](#)).

Richard Wenstrom, farmer in Central Kansas and on the Board of Directors for PEK Irrigators, Inc., provided a history of PEK, current description, and list of future needs ([Attachment 9](#)).

Written testimony was provided by:

- Pioneer Natural Resources U.S.A. Inc. ([Attachment 10](#)); and
- SWKROA (Southwest Kansas Royalty Owners Association) ([Attachment 11](#)).

Following each of the presentations, the Committee questioned the presenter on the issues they had brought out.

The Committee recessed at 12:00 noon and reconvened at 1:30 p.m.

Opponents

Dick Brewster, BP Government Affairs Director, BP America Inc., supported open access by producers to have a way to get their gas to the marketplace—that is, into a processing plant and interstate pipeline. They do not support SB 576, which turns gathering systems and operators into quasi-utilities. They feel this is not good policy or in the best interest of the producers, operators, processors, or the people of Southwest Kansas. Mr. Brewster reviewed the efforts made by BP to assist users and commented on the KCC Order on Docket No. 06-GIMG-400-GIG ([Attachment 12](#)).

William B. McKean, representing American Pipeline Company, LLC and Woolsey Operating Company, LLC, explained their opposition to SB 576 as a producer and gas gatherer serving other producers. He noted their concerns for safety for the end users as raw gas is unpredictable and can contain undesirable impurities such as Hydrogen Sulfide. He urged that no new regulations on their industry be imposed as this will hurt the economic interests of their current investors in the wells that they operate. The costs of the new regulation outweighs the benefits to the rural end users ([Attachment 13](#)).

Jon Callen, current president of KIOGA, and president of Edmiston Oil Company, Inc., noted that: (1) defining a gas gathering system is not as easy as it sounds; (2) SB 576 would interject the KCC into the argument of turning gathering lines into common carriers; (3) the bill would require the KCC to become the arbiter of disputes of consumers and pipelines; and (4) the issue of governmental interference in private business practices. Mr. Callen stated that the proposed bill could threaten industry's ability to explore for, and produce, natural gas in our state by increasing operating expenses and reducing the reliability of pipelines to purchase their gas ([Attachment 14](#)).

Steve Dillard, Pickrell Drilling Company, Inc. of Wichita, commented that requiring line taps for consumers on gas gathering systems can have a negative impact on producers. He voiced his concerns over gas quality before processing, and provided examples when a line is shut-in and curtailment occurs because the quality of the gas caused the irrigators' problems with engines. SB 576 will result in Kansas natural gas producers experiencing financial losses through reduced gas sales and increased gathering charges ([Attachment 15](#)).

Steve Johnson, ONEOK, Inc., stated one of the fundamental problems with SB 576 was that it failed to recognize that it is impractical with today's technology to properly deplete a natural gas field and serve retail customers on the same pipelines. He commented on the various areas that SB 576 involves and the grave concerns over open records, rewriting of contracts of gas gatherers, and new and unnecessary regulations on gas gatherers ([Attachment 16](#)).

Russ Bishop presented the testimony prepared by Jack Graves of Duke Energy Field Services. Mr. Bishop stressed their main concern is the open access requirements of SB 576. He elaborated on the problems and summarized the concerns as set forth in his testimony. Mr. Graves had expressed his concerns with SB 576 in various areas and concluded that the added cost of doing business in Kansas would discourage investment and result in further consolidation and limitation of options to the producers, casting a pall on exploration and production of new and remaining reserves ([Attachment 17](#)).

Questions by the Committee directed at various opponents covered contracts on gas gathering, various services provided, safeguards on gas gathering as opposed to other utilities, farm taps, and safety. Leo Haynos of KCC responded to earlier questions on right of way use, and noted ag-user irrigation is not regulated by KCC.

Chairperson Emler closed the hearing on SB 576.

Chairperson Emler summarized the deliberations and asked the Committee for recommendations on the two issues on the table. (1) SB 576; and (2) One-Call.

SB 576

Senator Apple suggested since irrigation operations are of great concern that possibly the gas gathering line people, irrigation users, and the KCC could get together and resolve some of the issues and bring their findings back to the Committee. This group could confer about (1) agreements for irrigators to access gas gathering lines and liability incurred by the gas gatherers; (2) farming and ethanol plant issues; (3) a definition of business and farming and where the ethanol plants fit in; and (4) the issue of access vs. availability. They were directed to bring this clarification report back to the Committee on December 15 with compromises that could be addressed in another bill. Jere White, Dick Brewster, and KCC agreed to be coordinators. Possible meeting date of December 14 was discussed and location, which will be set by the coordinators and notification sent to the participants.

Chairperson Emler noted the KCC docket is still open and under consideration and this would take 60 to 90 days to complete.

Security issues may need to be considered and the language in the bill be brought into line with the legislation that has been passed.

Review of gas agreements was done by Professor Pierce of Washburn and request of Senator Lee to see that report. Note: it has been emailed to all the Committee.

One-Call

Senator Apple reported on his findings in regard to calls received and incidents reported and suggested a possible solution of One-Call with a two tier system of (a) current facilities (Kansas One-Call), and (b) water/waste water call option.

After considerable discussion, Chairperson Emler asked the Committee for suggestions for proposed legislation to be introduced in the 2007 Legislature. In summary, he suggested a bill be drafted that: (1) makes it a requirement of the water utility to be a part of One-Call with ability to opt-out; (2) there is an obligation on the part of the excavator (contractor) to call One-Call and if the water utility is known, to call that entity as well; and (3) that there is a limited liability if water utility opts out of joining One-Call, does not mark waterlines or mismarks a waterline.

Staff was directed to prepare a report on the two issues for the Committee's further consideration at its December 15 meeting.

The next meeting of the Committee is scheduled for December 15, at which time the Committee will make its recommendations on proposed legislation and introduction of bills. The Committee adjourned at 4:00 p.m.

Prepared by Ann McMorris
Edited by Dennis Hodgins

Approved by Committee on:

(date)