

## **MINUTES**

### **SPECIAL COMMITTEE ON ENERGY, NATURAL RESOURCES, AND ENVIRONMENT**

September 20, 2007  
Room 241-N—Statehouse

#### **Members Present**

Representative Carl D. Holmes, Chairperson  
Senator Jay Emler, Vice-Chairperson  
Representative Josh Svaty, Ranking Minority Member  
Senator Marci Francisco  
Senator Mark Taddiken  
Representative Larry Powell  
Representative Gene Rardin  
Representative Schroeder

#### **Staff Present**

Hank Avila, Kansas Legislative Research Department  
Cindy Lash, Kansas Legislative Research Department  
Mary Galligan, Kansas Legislative Research Department  
Matt Todd, Office of the Revisor of Statutes  
Jason Thompson, Office of the Revisor of Statutes  
Mike Corrigan, Office of the Revisor of Statutes  
Renaë Hansen, Committee Assistant

#### **Others Present**

Representative Joe Hummerickhouse

#### **Morning Session**

Chairperson Carl Holmes called the meeting to order. He informed the Committee that it would focus on the second topic assigned to the Committee and return to the first topic later in the day.

He called attention to copies of the Executive Order 07-19 (Attachment 1). This order declared a state of emergency for Kiowa, Barton, Stafford, Pratt, Edwards, and Phillip counties as a result of severe weather, including, tornados, hail, high winds and flooding which struck, causing loss of life, personal injury, and excessive damage to businesses and homes.

The Chairperson then proceeded to open the hearings on Topic 3—Distribution and Transportation of Gasoline, Biofuel, and Diesel.

Chairperson Holmes called on Bruce Heine, Director of Government Affairs, Magellan Midstream Partners (Attachment 1a). Mr. Heine noted that Magellan:

- Owns and operates the nation's longest refined product pipeline system along with eighty-one petroleum distribution terminals in twenty-two states;
- Has been repairing the flood damage sustained at the Great Bend Petroleum Distribution Terminal;
- Hopes to have an ethanol blending plant in Great Bend;
- Is converting its loading rack from a top-loading rack to a bottom-loading one with an individual blending per customer capabilities;
- Is considering ways to transport ethanol and blended ethanol;
- Is exploring the possibilities of pipelines to transport the product; and
- Has plans later in the year to test putting bio-diesel 5 via a pipeline to distribution terminals.

Following Mr. Heine's presentation, Representative Powell inquired about the industry standard of coating the inside of the pipeline to prevent the alcohol from reacting with the pipe. Mr. Heine explained how the process works for transporting ethanol. Senator Taddiken asked if there had been actual experiences in this transportation form. Mr. Heine replied that Magellan has long standing experience on this type of transportation, but only with relatively short distances. He added that the company is exploring ways to transport the fuel thousands of miles. Senator Taddiken also asked how long bio-diesel remains blended once it was mixed. Mr. Heine answered that the fuel is used in a timely enough manner. Senator Emler raised the question of the fee cost of blending at the rack of the gasoline and alcohol.

The next conferee was Mike Hoeme, Director, Division of Motor Carriers, Kansas Corporation Commission (KCC) (Attachment 2). Mr. Hoeme emphasized issues associated with Executive Orders and their impact on motor carriers and the motoring public. He outlined the pertinent federal regulations that were invoked in cases of declared emergencies. Among other things, he noted that:

- Federal regulations define the term "emergency" very broadly;
- Emergency includes both natural and man made disasters;
- Emergencies are declared by the President of the United States, a Governor, Federal Motor Carrier Safety Administrator (FMCSA), and other federal, state or

local government officials, or by a request of a police officer;

Relief from regulations in regional emergencies is vested in the same persons that are authorized to declare an emergency;

- Exemption from the federal regulation in regional emergencies is granted only for the duration in providing relief for 30 days from the date of the initial declaration of the emergency or the exemption, whichever is less;
- Local emergencies can be declared by a federal, state, or local government official having authority to declare an emergency or by the FMCSA Field Administrator; and
- Local emergencies cannot exceed the duration of the trucker's assistance in providing emergency relief or 5 days from the date of the initial declaration of the emergency or the exemption from the regulations by the FMCSA Field Administrator, whichever is less.

Mr. Hoeme next discussed tow trucks' role in responding to emergencies. He explained that:

- Exemptions are effective only when requested by an authorized federal or state officials, or local law enforcement who contacts tow truck companies to remove wrecked or disabled motor vehicles from the scene;
- The exemption is valid only for the duration of motor carriers' direct assistance in providing emergency relief, or 24 hours from the time of the initial request by the authorized persons, whichever is less;
- Upon termination of the assistance, a trucker is subject to the requirements of 390 through 399, the sections of federal regulations which provide relief from such regulations;
- The driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with parts 390 through 399;
- A driver who informs the motor carrier that he or she needs rest must be permitted at least ten consecutive hours off duty before the driver is required to return to such terminal or location;
- When the driver returns to the terminal or other location, he or she must be relieved from all responsibilities and duty; and
- Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo not destined for emergency relief effort, or when the motor carrier dispatches the driver or commercial motor vehicle to another location to begin operation in commerce.

Mr. Hoeme discussed the federal regulations as they pertain to the role of the drivers after the termination of the relief effort. He stated:

- When a driver has been relieved of all duties and responsibilities upon termination of direct assistance to a regional or local emergency relief effort, the motor carrier cannot require a driver to drive until:
  - He or she has met the requirements of the federal regulations pertaining to maximum driving time for property carrying vehicles and maximum driving time for passenger carrying vehicles; or
  - The driver has had at least 34 consecutive hour's off-duty when:
    - The driver has been on duty for more than 60 hours in any seven consecutive days at the time the driver is relieved of all duties, if the employing motor carrier does not operate every day in the week; or
    - The driver has been on duty for more than 70 hours in any eight consecutive days at the time driver is relieved of all duties, if the employing motor carrier operates every day in the week.

Finally, Mr. Hoeme stated that the transportation division of the KCC believes that every effort should be made to resolve the issue without an executive order; however in the case of the Greensburg Tornado or the Coffeyville Flood, all resources are required.

Following Mr. Hoeme's presentation Senator Francisco asked whether it was possible to identify a specific truck with the extended hours needed in the event an emergency was declared. Mr. Hoeme replied that much of the regulation waived pertains to the total hours of service. Senator Taddiken asked if any issues were encountered when the declaration went into effect. Mr. Hoeme said he was not aware of any problems.

Chairperson Holmes next called on Charles Robinson, Robinson Oil, Garden City (Attachment 3). Mr. Robinson provided the Committee information on fuel supply issues in southwestern Kansas. He outlined the problems at the Scott City Terminal during the summer of 2007. They included:

- No premium unleaded for weeks at a time;
- No unleaded or diesel fuel for 3-7 days at a time;
- Long lines, 2-4 hours waiting for fuel while prices change, and supplies are exhausted;
- Vague commitments when product will come back into the terminal;
- Poor scheduling of the product, at times the line is locked with another product; and
- Fuel Marketers that have the Scott City, Kansas terminal as a supply point, that is not primary or secondary, should be evaluated as to their need to pull product

out of Scott City. If a fuel supplier has set a fuel marketer up at Scott City for supply because of pricing, that is not fair for them to come “cherry pick” our primary source of supply because of price. Those of us that have Scott City as primary or secondary should have the first right to the product at that terminal.

Following Mr. Robinson’s testimony, Senator Emler asked Mr. Robinson about the petroleum product pipeline that originates in El Dorado and terminates in Aurora, Colorado. Mr. Robinson stated that it might be possible to receive from that pipeline in Scott City to meet fuel supplies.

The Chairperson called on John McClelland, General Manager, Garden City Co-op, Garden City, Kansas (Attachment 4). Mr. McClelland said that most shortages occur during the spring and summer months. During this time planting, tillage, irrigation and harvesting result in large demand from March to September. He added that the distribution system is generally under utilized during the winter months making it unlikely for the co-op to have significant capital investment in new additions to the current system. He summarized his recommendations by informing the Committee that:

- The petroleum industry is trying to be a reliable supplier of refined fuels;
- Natural disasters and mechanical emergencies will stretch the already thin fuel supply chain to its breaking point from time to time;
- Emergencies cannot be predicted, as a result, it is not practical to hold inventories to guard against shortages;
- State authorities should consider emergency implications outside the actual designated area;
- Rumors of potential fuel shortages or price spikes spread quickly and may dramatically increase demand at the worst possible time;
- The only reasonable action to implement in a short period of time is to relocate fuel supplies by using trucks; and
- The shifting of trucks from normal routes to longer hauls and longer lines will result in longer hours of service for truckers.

Following Mr. McClelland’s testimony, Representative Rardin asked whether the driver’s hours of service is the primary problem and whether there might be other options. Mr. McClelland replied the only way to respond to an emergency is by relocation of the product by truck. Senator Taddiken asked if more truckers were available. Mr. McClelland replied that about half of the year their facilities and trucks are underutilized. Senator Taddiken then asked if there was a storage facility used to alleviate the problem. Mr. McClelland replied that there was. Representative Holmes then asked about the diesel fuel supply and its availability. Mr. McClelland answered that a major factor in diesel fuel consumption was the change of irrigation pumps from natural gas to diesel fuel with some irrigation pumps now going electric.

Chairperson Holmes next called on Mary Jane Stankiewicz, Vice President and General Counsel of the Association of Ethanol Processors (Attachment 5 and 6). She indicated that most ethanol is shipped by rail from the plant to a terminal where it is blended and then taken to the gas retail station via tanker truck. She explained that much ethanol is going to Houston or California because these areas are faced with air quality problems. Ms. Stankiewicz said that because ethanol

is water soluble and is a solvent, it is impractical to put it in the same pipeline. Therefore this transportation issue will take a little more time to solve. Ms. Stankiewicz next spoke to the Committee on behalf of Kansas Grain and Feed Association and the Kansas Agribusiness Retailers Association ([Attachment 7](#)). She encouraged the Committee to study the impact of the overall loss of fuel supply to all areas during a crisis situation.

Following Ms. Stankiewicz' testimony, Senator Marci Francisco requested a detailed comparison between rural and urban markets on the use of ethanol.

The Chairperson next called on Galen Menard, Vice-President of Supply and Trading, National Cooperative Refining Association, McPherson ([Attachment 8](#)). Mr. Menard presented testimony concerning the impact to their company in terms of fuel supply and distribution over the last six months. He also explained that some of the specific upgrades they have done to their facilities and additions of fuel blend capabilities. He commented that it was doubtful that the number of tragedies that occurred in this geographical area the last year will ever happen again, especially in the same magnitude.

After Mr. Menard's presentation, Senator Francisco asked if the company ever thought about an appointment system whereby they could charge more for appointments for truckers to load at their terminals. Mr. Menard replied that would be a question to ask the previous speakers. He said the company sells primarily to three large customers. Senator McGinn inquired about the names of the three buyers of the McPherson oil refinery. Mr. Menard replied that CHS out of Denver Grove owns 60 percent, Growmark, Inc. owns 19 percent, with the remainder being owned by MFA out of Columbia, Missouri. Representative Holmes indicated that the supply of diesel fuel has been declining and asked Mr. Menard's thoughts on whether the United States was being "set up" by foreign nations that would result in higher prices during the winter season. McClelland replied that the price overseas has been three to four dollars per barrel higher and he said there was no incentive to buy from overseas to stock more. He added that it depends on how severe the winter becomes and how the hurricane season plays out. Representative Holmes added that the moderate gasoline price is due to the low price of the ethanol, and the import from Europe as gasoline is a by-product in Europe because most of their use is diesel fuel.

The Chairperson informed the Committee that additional testimony had been submitted by Leslie Kaufman, Executive Director, Kansas Cooperative Council ([Attachment 9](#)).

Representative Holmes also commented that the nation does not focus enough on investment to improve, and maintain the nation's infrastructure. He said that this lack of attention may prove economically detrimental in the long term.

### **Afternoon Session**

The Chairperson, reconvened the Committee meeting. He called on Frank Mussa, Environmental Scientist, Adjutant General's Office. Mr. Mussa discussed emergency preparedness issues and how the office responds to emergencies. He said that the Adjutant General's Office role is to work with the counties as a lead agency during an emergency. Mr. Mussa indicated that he would try to get specific answers from office personnel who were directly involved with any particular disaster.

Following Mr. Mussa's presentation, Representative Holmes asked about the situation on the fuel terminal for Greensburg and disruptions of fuel supplies during the disaster periods. He said he

was interested whether the lack of supplies hindered recovery efforts in the tornado disaster and what might be done to alleviate that in the future. Senator Taddiken also noted there was discussion concerning the definition of emergencies. He said he had questions on a waiver about waiting at terminals for fuel loading. Mr. Mussa replied that as a declaration of executive order individuals could exceed the maximum work time. Representative Holmes also asked about information on power being given and fuel given to emergency health recovery systems.

The Chairperson next called on Jeff Turnbull, Turnbull Oil, Plainville, Kansas ([Attachment 10](#)). Mr. Turnbull discussed shortages throughout northwest Kansas and the problems created in connection with such outages. He stated, among other things, that numerous people and facilities were out of product at crucial times during harvest and vacation travel. He also said that the cost to Turnbull Oil and consumers were:

- Increased freight bills;
- Increased payroll expenditures;
- Lost business from outages;
- Increased equipment costs to buy an additional fuel trailer to handle the same amount of past work; and
- Extreme frustration and stressful times.

Following Mr. Turnbull's presentation, Senator Emler and Representative Holmes asked Mr. Turnbull about the difficulties of keeping fuel available at a consistent rate. Mr. Turnbull replied that it is a difficult process. He indicated that complying with regulations consumes a considerable amount of time to make changes to differences in supply and demand fuel market. Mr. Turnbull then explained his business as a small fuel supplier compared to a large company.

The Chairperson next called on Marvin Spees, Capital City Oil (CCO), Topeka ([Attachment 11](#)). Mr. Spees presented testimony on the company's full-line oil distribution to commercial, industrial and agricultural accounts. He said that Topeka has been out of diesel fuel about one-third of the time this summer. He also indicated that Magellan's hub terminal plan did not allow product for the Topeka terminal. Mr. Spees also told the Committee CCO averaged \$10,000 per month in extra common carrier fees and about \$7,000 in driver overtime pay per month. He suggested anything the Legislature can do to build new refineries or expand existing refineries would be greatly helpful.

Senator Taddiken asked about an E-85 vehicle and the possibility of getting this vehicle to Mr. Spees terminal. Mr. Spees replied that there is not a shortage of crude oil, but the ability to refine it. Representative Holmes asked whether this is a problem only in Kansas. Mr. Spees replied that it was a national problem.

Chairperson Holmes next asked the Committee to discuss the topic concerning the distribution and production of fuels.

Representative Powell said the Committee should look at how emergency hours of service are acquired, so that drivers can provide fuel where it is needed more quickly.

Senator Emler said that the waiting time for truckers needed to be reduced to allow them to be paid for the time they are working.

Senator Francisco asked whether the KCC could alter the sleeper-birth time as defined in federal regulations so it does not count against the fourteen hour work day of the trucker.

Senator McGinn said the Committee might want to investigate where bio-diesel actually fits under rules and regulations. She would like to know that safety and quality requirements are in place and that there is an entity making sure the proper procedures are followed.

Representative Hummerickhouse stated that there is not enough refinery capacity in Kansas and that it might be necessary to expand the refinery incentives.

Representative Holmes explained Kansas is moving towards refineries, and that the industry may provide some details without revealing any non-publicized information about pipeline and refineries. He said the incentives should be given time to work.

The Chairperson opened the hearing on the topic, Comprehensive Study of the Energy Efficiency of the State and Local Government Buildings.

He called on Don Cawby, City of Parsons ([Attachment 12](#)). Mr. Cawby discussed the City of Parsons' use of the Facilities Conservation Improvement Program, (FCIP). He noted the following:

- The guaranteed energy savings by an Energy Service Company encourages cities to use such entities;
- Parsons participated because of out-dated and antiquated water meter reading and meter replacement programs. An antiquated financial software was also a concern;
- After looking at the entire scope of the audit and finalizing assumption, Custom Energy and the City of Parsons agreed to a scope of \$7 million worth of energy efficient improvements; and
- There should be energy-efficient standards, which all new buildings should meet.

The Chairperson next called on Kevin Green, Vice President, Custom Energy ([Attachment 13](#)). Mr. Green presented information on their participation in the State's Facility Conservation Improvement Program. He noted, among other things, that:

- Energy saving programs have been a tremendous benefit to taxpayers;
- By redirecting existing funds through energy efficiency, state and local governments make better use of existing dollars rather than burdening the taxpayer with additional costs; and
- New systems, equipment, and infrastructure allow facility maintenance efforts to be more focused on preventative activities that extend the life of equipment and keep systems running at peak efficiency.

Following Mr. Green's testimony, Representative Svaty asked where the company primarily worked. Mr. Hahs, who accompanied Mr. Green, replied that they work mostly in Kansas and Missouri but have a national presence in 38 states. Representative Svaty asked if the company programs were focused on the government or public sector. Mr. Hahs answered that with Energy Star they are beginning to work with the industrial sector.



Senator Taddiken asked whether Energy Star could be improved. Mr. Hahs noted that Kansas has the premier program through the Kansas Energy Office. The Office uses a kit to spread the message throughout the country. He suggested that educating all government entities from both small and large communities would make a difference.

Senator Francisco asked if they focused on older buildings or whether they are working on new construction. Mr. Hahs says they are moving in the direction of making savings for new business construction.

Representative Holmes asked Mr. Cawby how he convinced the city council to approve the energy-efficient project. Mr. Cawby answered that the first step was to have a pre-negotiated contract to make the commission comfortable. Secondly, they had some pressing upgrades and it helped that they had projects that helped pay for themselves over time. He noted that it was a long process. He believes there needs to be an educational process on the design of the building so that architects may use designs in retrofit and for new design. It is important to look at the fixed costs of running/maintaining the building after its' design. Additionally, the smaller communities need education in how to get these programs implemented.

Joe Pajor, Assistant Director of Public Works, City of Wichita, discussed the City of Wichita's energy management efforts. He described the City's four phases of energy management: an initial period from the mid-1970s to the mid-1980s. During this period the City trained its building and operating staffs on why energy was important and created expectations of staff. The second period emphasized audits on large to medium buildings. Mr. Pajor indicated that in this phase an energy service provider analyzed the facilities and utility bill histories. The provider also analyzed, designed, and built the candidate facility improvements to be made. The fourth phase, according to Mr. Pajor, is the combination of efficiency of energy converting and consuming systems combined with the use of information processing (Attachment 14).

Following Mr. Pajor's testimony, Senator Francisco asked whether the City of Wichita was getting help from utility companies. Mr. Pajor replied that city officials have looked at other states' policies. He said that in other states they decide which programs are economically the best to implement. He also noted that it was better to build it right the first time and not build it and then fix it.

Senator Emler asked Mr. Payor for a written proposal that would keep the Legislature from mandating items without the necessary funding. Mr. Pajor suggested that they needed to contact the League of Municipalities to decide which suggestions would be most beneficial.

Senator Francisco asked if the City of Wichita had been involved in the LEEP program and Mr. Pajor replied that the City has been involved, but recently contracted out to other firms to carry out those programs.

Senator McGinn suggested that the Committee consider using the demand transfer again for energy project purposes.

Representative Holmes asked whether the state considered energy issues when constructing new buildings. Mr. Pajor replied that Wichita does not have a set plan, and that in the past there was very little interest in energy codes. Mr. Pajor recently asked the designers if the projects comply with the new international code. Representative Holmes then asked which codes would be the best. Mr. Pajor answered he was unaware which were the most energy and cost effective.

The Chairperson called on Marilyn Jacobson, Director of Facilities Management, Kansas Department of Administration-Energy Audits of State buildings (Attachment 15). Ms. Jacobson discussed in greater depth the energy audit process used by the Department of Administration to

manage buildings. She indicated that the process involves three steps:

- Preliminary Assessment which involves selecting which of the ten Energy Services Companies the agency would like to participate within the preliminary analysis;
- Investment Grade Audit (IGA), which involves entering into a detailed Investment Grade Audit; and
- Performance Contract, which follows the IGA and leads to the opportunity to enter into a performance contract to complete the energy conservation measures.

Following Ms. Jacobson's presentation, Representative Hummerickhouse asked how long they expected the Eisenhower building audit to take. Ms. Jacobson replied that the agency is looking at the investment phase of the audit next month.

At this point, the Committee deliberated on items it wished answered. Senator Taddiken asked whether there was a way to develop a standardized contract for cities to use these services. He said that it was difficult to have a total standard contract but one could be made that could be considered for a specific city or project, or both.

Senator Taddiken stated that the 20-year payback resulted in limiting opportunities. He raised the question of changing the duration of the payback. He also wanted to know if, when the state leases buildings, whether the state gives credit to more energy efficient buildings.

Representative Powell stated that there is already a rule when the state leases a building based on square footage for employees. Representative Hummerickhouse pointed out that he thought it was 250 square feet per person. Marilyn Jacobson verified that standard number. Representative Hummerickhouse suggested that all buildings be looked at that are leased for state use, especially if the code of square footage per person was higher than the allotted amount.

Senator Francisco asked if there was enough KCC staff to adequately respond to the energy efficiency and awareness and energy performance needs of the citizens of Kansas. Casey Lauer, KCC, said the KCC might have to consider whether had staff to evaluate each school district's and each state building's participation in the program. Mr. Green pointed out that with the many school districts and state buildings, it is inconceivable that anyone could possibly evaluate and implement these programs. Liz Brosius explained that if KCC needs additional staff it could in fact hire more without legislative directive.

Representative Holmes asked staff to look at legislation of six other states to see if it could work. He suggested each legislator look through that list and find something useful.

Senator Taddiken asked if there was a level of LEED whereby the state might meet the IEEC code for energy efficiency.

Senator Francisco asked in relationship to weatherization and the LEEP program if there is a way to tie that to energy efficiency.

The Chairperson then reminded the Committee that the next meeting is scheduled for October 22, 2007.

The meeting adjourned at 3:50 p.m.

Prepared by Renae Hansen  
Edited by Hank Avila

Approved by Committee on:

October 22, 2007

(Date)