

WRITTEN STATEMENT

ON BEHALF OF

KANSAS CORN GROWERS ASSOCIATION

To: Senate Transportation and Utilities Committee

**From: Ed Peterson, Attorney
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Kansas City, Missouri**

Date: February 20, 2007

Subject: Senate Bill 325

I am appearing on behalf of the Kansas Corn Growers Association this morning in support of Senate Bill 325. Several organizations recognize the need for the statutory changes that are included in SB 325, and we concur in one another's remarks. Other conferees will testify to the need for the provisions of SB 325 and the soundness of its policies. My task is to explain the way in which SB 325 remedies the statutory gaps that leave a significant number of rural natural gas customers unprotected and without access to natural gas service.

The problem occurs as a result of reduced federal regulation of gathering facilities and incomplete state efforts to fill the void left when federal regulators ceased oversight of gathering facilities in Kansas. Originally, most gathering facilities were operated as part of the interstate gas production and delivery system. In recent years federal regulators have withdrawn from regulation of the gathering systems and the companies themselves have restructured leaving intrastate gathering operations. There have been several attempts in Kansas to provide state regulatory oversight – most notably the Gas

Gathering Services statutes at K.S.A. 55-1,101 et seq. and the Kansas Self Help Act at K.S.A. 66-2101 et seq. These efforts failed to fully address the concerns of customers and consequently, the KCC was asked to exercise authority. In response, the KCC conducted an investigation, Doc. No. 06-GIMG-400-GIG, and issued an order that failed to deal with the gap in regulation, thus prompting this legislative initiative.

The Commission's order made three important findings:

1. The statutory scheme is unclear. The KCC order provides a detailed explanation of the gaps and inconsistencies between Chapter 66 (public utilities and common carriers) and Chapter 55 (gathering and production). The lack of clarity impacts KCC authority over both public utility aspects and gathering line aspects of the problem.
2. The KCC concluded that it had full authority to regulate, *existing taps* as public utilities, including the duty to serve, rate regulation, and abandonment. Arguably, this conclusion extends *greater* regulation to gathering lines with existing taps than was expressly stated in the statutes.
3. The KCC concluded that it did not have authority over *new* taps and that it had no power to regulate transportation or distribution of gas to persons under the Kansas Self-Help Act.

Despite the KCC's acknowledgment of the uncertainty of its statutory authority, it nevertheless created a new regulatory framework where existing taps receive all the benefits/disadvantages of complete utility regulation, while any new taps will experience none of the same benefits/disadvantages.

The approach taken in SB 325 is to amend the statutes to codify the KCC conclusions as to existing taps and to extend KCC authority to include new taps and transportation and distribution under the Kansas Self Help Act.

The codification of the KCC authority for full public utility regulation of existing taps is dealt with in Sections 3, 4, and 6 of SB 325. In Section 3, new language is added to K.S.A. 55-1,109 to make certain that public utilities that are operating gathering lines are subject to the Commission's authority in the event of a proposed abandonment. Section 4 of the bill amends K.S.A. 66-104, which defines public utilities, to exclude lines that perform gathering services only, thereby including as public utilities those lines that perform additional services such as transportation and distribution. This provision results in classifying as utilities all gathering lines that serve customers either directly or as transporters. Section 6 of Senate Bill 325 makes a corresponding change to K.S.A. 66-105a to clarify that lines that provide *gathering services only* are not public utilities, but that lines that perform the "secondary" functions of *transportation and distribution* will be treated as public utilities. These changes combined make clear that existing taps off gathering lines will be subject to the same rate and abandonment regulation that the KCC imposed with its order in Doc. No. 06-GIMG-400-GIG. I should note that these changes do not distinguish between taps based on date of service, and therefore, the conditions would apply to any future taps as well.

In addition to codifying the KCC authority over existing taps, Senate Bill 325 also includes amendments to confer clear authority to the KCC to resolve issues relating to new or proposed service taps. Section 2 of the bill amends K.S.A. 55-1,104 to authorize the KCC to review and correct any "fees, terms or practices" of a gas gathering service

provider. “Practices” would include the unreasonable refusal to serve or the imposition of unreasonable terms before agreeing to provide service. The mechanism for presenting and resolving such issues is the complaint procedure previously authorized by the Legislature. Thus, this provision stops short of imposing a duty to serve all potential customers as would be the case with a certificated utility. This provision does provide oversight by the KCC where customers seek service and are unable to obtain cooperation from the gathering service provider.

Senate Bill 325 addresses one additional area that was not specifically addressed in the KCC order: Non-Profit Utilities (NPU). These entities are currently subject to regulation as to safety and service territory. Most parties seem to agree that the NPU offers an effective and efficient way to address situations where service to one or more customers is jeopardized by declining gathering line conditions. In fact the NPUs have been a lifeline on more than one occasion. Despite the attractiveness of this alternative, the KCC order provided no assurances of future approvals or protection, and apparently the KCC would treat future NPUs as a new tap with no regulatory oversight over access to service. Section 5 of SB 325 would correct this situation by amending K.S.A. 66-104c(b) to provide express authority to the KCC to determine whether new service or abandonment of service to NPUs is in the public interest. Again, this approach stops short of requiring service to NPUs, but does allow the KCC to be the arbiter of whether service to an NPU is in the public interest.

Thank you for your attention; I would be happy to respond to any questions.