COMMENTS OF DCP MIDSTREAM
(formerly Duke Energy Field Services)
ON SB 325
BEFORE THE SENATE COMMITTEE ON UTILITIES
FEBRUARY 21, 2007

Duke Energy Field Services has changed its name to reflect the ownership interest of Conoco Phillips and the spin-off of Duke Energy's gas business to Spectra Energy, but the Kansas gas gathering facilities of over 1,700 miles of gathering pipeline and the National Helium processing plant in Liberal and our opposition to being regulated as a public utility, or common carrier, has not changed.

On November 22, 2006 the KCC issued its Order in its "general investigation to determine a Commission policy regarding customers served directly or indirectly by gas gathering systems" (Docket 06-GIMG-400-GIG) setting forth "… how the Commission will likely interpret the various legal issues presented in the inevitable future proceedings before it as depletion in gas reserves in the Hugoton field continues…" (Paragraph 8 of "Order Denying Reconsideration" filed January 17, 2007. The matter is now on appeal in the Shawnee County District Court.

The Commission recited in Paragraph 10,

> "regardless of the outcome of legislative efforts, the Commission will address future matters brought before the Commission on a case-by-case basis, examining the specific facts and applicable provisions of law in those matters".

Although some would contend that legislative action is needed on this complex subject and, indeed, we are supportive of the proposed industry Bill that will be presented today, we are adamantly opposed to SB 325. Appended hereto is a critique of its provisions and our concerns.

We are one of the one hundred licensed gas gatherers in Kansas (Exhibit A). Our gathering and processing system, with 1,100 receipt points under some four hundred contracts with Kansas producers, was not constructed or intended nor has it ever operated as a public utility system, but SB 325 declares that we are a public utility (Section 4) and that we are a common carrier as to "secondary uses" of our system for transportation and distribution services on behalf of public utilities and end-use customers (Section 6). In other words, our facilities would be effectively taken from contractually dedicated service to our producer customers and rendered available to anyone willing to risk using unprocessed gas.

The threat of this Bill to the integrity of our system and our ability to continue to provide the vital service to our customers of getting their gas transported, processed and marketed is real and indefinable. It is not possible to determine the scope or extent of the demand on our system, but given contentions of demand by ethanol plants, cotton gins, pig parlors, feed lots and other high volume users, the potential to disrupt and diminish supply to our processing plant could be so injurious that it would not be possible to be compensated by KCC ratemaking methodology.

The fifth amendment to the United States constitution reads "… nor shall private property be taken for public use, without just compensation". We won't inflict a constitutional treatise on you, but SB 325, we believe, would lead to an attorney's litigation heaven.[1]

It threatens our investment and the tax base flowing from it. My client alone estimates 2006 property taxes for southwest Kansas of $4.4 million. The processing

[1] "The law does not imply a power in the regulatory bodies or in the courts to take the property of one party and give it to another in order to effectuate a just result" *Republic Natural Gas Company b Baker 197F2nd647 (1952)*

plants are only operating at 50-60% of capacity. The section in Seward County, where our plant is located, has an assessed valuation of $71 million. The diversion of significant volumes of gas from our system would not only render these facilities uneconomic, but could cause the already marginal wells to which we are connected, to be prematurely abandoned, wrought by reconfiguration of the systems resulting from meeting a public utility obligation of providing service upon demand. The mantra of the public utility obligation is "efficient and sufficient service at reasonable rates". The threatened transformation from a competitive, entrepreneurial business to a fully regulated entity is the most extreme treatment imaginable.

The necessity for this all encompassing and drastic legislation has not been made.

We recognize the problems faced by irrigators of unreliable wellhead gas supply resulting from the field depletion and associated problems. We have not, at this point, been required to terminate service on the farm taps that many years ago were transferred to Aquila that provide utility service, under KCC jurisdiction, to the irrigation customers. DCP is not a public utility and has no end-use customers. We have, upon occasion, accommodated requests by the non-profit utilities for the granting of taps for gas supply to their irrigation customers. These contracts are totally dependent upon our continued ability to provide available gas supply at the particular tap location. This service has been provided under current law, resulting solely from private negotiation. The hesitancy in making such service available is premised on the concern over being subjected to regulatory oversight, which the industry substitute Bill addresses. We obviously would be more favorably disposed to accommodate any future requests for such service by

NPUs if we had assurance that we are not thereby putting our neck in the regulatory noose.

We urge the proponents to support the substitute Bill and to give the gathering industry a chance to respond to requests for aggregating existing taps at delivery points that can operationally be supplied for more reliable service, but with recognition that the utilization of unprocessed gas from gathering systems can never be equivalent in reliability and safety to supply obtained from pipelines or public utilities. Gas supply from gathering systems, regulated or not, can never be a long-term solution to the reality of the unrelenting decline, in volume and pressure, of the reservoir. These systems were simply not designed nor intended for end-user service. Converting gas gathering to public utility or common carrier service doesn't recharge the Hugoton field. Any accommodation for irrigation, or any other use, must necessarily comport with existing contracts with our customers, the producers and transporters on our system.

Senate Bill 325 is inimical to our business purpose and our investment and adversely impacts our future planned investments, particularly obtaining enough volume to keep operating our processing plant (National Helium) and the associated facilities near Liberal, Kansas. It would potentially bestow public utility and common carrier status on the one hundred licensed gatherers in Kansas and would involve a tremendous expense resulting from the imposed regulatory burdens on our industry. Someone has to pay for the economists, accountants, engineers, lawyers and experts constituting the ratemaking industry. That "somebody" would be our industry and eventually the gas consumers. Unfortunately, this new regulatory boondoggle would fail to deliver any enduring satisfaction to those seeking its enactment. It is bad public policy, bad for

Kansas taxpayers and bad for maximizing the production of the remaining gas reserves, all without solving the dilemma of the agricultural community.

The issue before you is should you hobble this established business with a mandated public utility burden that deprives royalty owners, producers and the gatherers of the liquids and helium contained in the unprocessed gas that would be wasted by SB 325?

Why do we resist public utility status? Under SB 325 we would be obligated to provide exit taps and transport service to anyone requesting it, irrespective of the adverse impact on the primary function of our business. You can't operate a reliable gas gathering service half free / half slave. We either operate as the entrepreneurial service business that we are or as a fully regulated public utility and common carrier as envisioned by SB 325. Our business would be so hamstrung as to endanger our investment in both the gathering and processing functions as to effectively deprive us of our property without recompense.

Respectfully submitted

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