DCP MIDSTREAM
COMMENTS RE: SB 325
2-21-07

What does SB 325 change with respect to KCC's Chapter 66 jurisdiction over gas gathering owners and operators?

Section 4 amends the "public utility" definition of K.S.A 66-104a to include gas gathering systems performing "gathering services" as defined by K.S.A 55-1,101, i.e. the gathering or preparation of natural gas for transportation with certain exemptions. The bottom line – DCP Midstream would become a public utility, with all of the ramifications thereof.

Section 5 amends K.S.A 66-104c, which has exempted from KCC regulation, the non-profit utilities created under the Rural Kansas Gas Users proviso to specifically grant the commission jurisdiction over the addition or termination of pipeline and gathering line taps to serve such utility. Currently the existing non-profits have, on occasion, received service taps by negotiated contracts with gathering systems, including my clients, without the necessity of obtaining KCC approval. This provision would presumably require a formal application and probable hearing on the granting or termination of either a pipeline (interstate transmission lines) or gathering line taps. Presumably, the proponents would utilize this section to mandate granting of a tap by either interstate pipelines or gathering systems, presenting an interesting conflict with jurisdiction by the FERC, with respect to the interstates.

Section 6 amends K.S.A. 66-105a which was adopted in 1997 in connection with the enactment of the Gas Gathering Act, to exclude gas gathering systems from public utility and common carrier regulation. Section 6 would apparently retain the exemption for "the primary use" of any gas gathering system, but eliminate the exemption by providing "... except that the term 'common carriers' shall include secondary uses of gas gathering systems for transportation and distribution services on behalf of public utilities and end-use customers within the state of Kansas, not excluding transportation and distribution of gas to future delivery points requested by public utilities and end-use customers within the state of Kansas" (Lines 12-17).

The apparent effect of this amendment is to invoke KCC common carrier regulation with the effect of requiring gas gathering systems to provide, upon demand, transportation and distribution of gas to any point requested by public utilities and end-use customers within the state. It is perplexing as to how this common carrier obligation for "secondary uses" of the gas gathering system is reconciled with the amendment of Section 4 that bestows "public utility" status on gas gathering systems, without limitation. Presumably, the conclusion is that we are a public utility for all purposes, notwithstanding our primary business of delivering gas from the wellhead to transmission lines and are also subject to common carrier status to all comers as a secondary use of the system.

Currently, there is not an established ratemaking regimen for regulating gas pipelines as common carriers, although K.S.A. 66-128 and related statutes provide for full blown cost of service, ratemaking authority. Sufficient to say, our business would be severely impacted by either a public utility or common carrier classification.

Although the KCC order, dated 11-22-06, in docket # 06-GIMG-400-GIG concluded that exit taps currently providing gas to a public utility fall under common carrier regulation when such exit taps are provided at the discretion of the gas gatherer, no such jurisdiction was expressed as to transportation and distribution of gas to end-use customers. Clearly, Section 6 expands the Commission jurisdiction beyond its own interpretation of its existing authority which, of course, is currently subject to pending petitions for judicial review in the Shawnee County District Court.

Section 7(f) amends the definition of "gas provider" in K.S.A. 66-2101 (Rural Kansas Self Help Gas Act), apparently to include gas marketers and similar entities, also making them subject to KCC jurisdiction under chapter 66. Interestingly, K.S.A. 66-2102, which declares "gas providers" not to be public utilities is not amended and is thus in conflict with Section 7(f). We would be a public utility under 2101, but declared not to be under 2102 of the same Act.

AMENDMENTS TO CHAPTER 55

The existing gas gathering statutes, K.S.A. 55-1,101 et seq, adopted in 1997 and administered by the Conservation Division of the KCC are proposed to be amended, to wit:

Section 1 of SB 325 (Lines 23 – 27) would require filing with the KCC gas gathering facility maps, including the location of all wells connected to the system and all interconnects for both receipt and delivery of gas. Aside from security considerations this would be a very onerous obligation. Although segmented maps are filed with the Commission (K.A.R. 82-3-801(5)) they do not include well locations or receipt and delivery points. In fact, a gas gathering operator does not necessarily know the location of all wells connected to the system. The operator simply knows the receipt points for a particular producer/operator.

Section 2 amends K.S.A. 55-1,104(a) to enable any person who may be adversely affected, including other governmental agencies and entities, to request Commission review of gatherers' fees, terms and practices. Obviously, the Commission is currently empowered to do so and why this amendment is necessary or appropriate is not clear. The proposed amendment of Sub-section b, which adds a similar broadening to the class of claimants smacks of potential public harassment, given the broad scope of "adversely affected". The need for such an amendment escapes us.

Section 3 amends K.S.A. 55-1,109 being applicable to public utilities providing service from gas gathering systems which, I trust will be responded to by those entities.

Respectfully Submitted:
Jack Glaves