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Before the Senate Utilities Committee

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Proponent Testimony

On House Bill 2590

Submitted by Leo Haynos, Chief Engineer, Utilities Division

On Behalf of

The Staff of the Kansas Corporation Commission

Chair Delperdang, Vice Chair Turner, Ranking Minority Member Ohaebosim, and members of the committee, thank you for the opportunity to provide testimony in support of HB 2590 (Bill) on behalf of the staff of the Kansas Corporation Commission (Commission).

This Bill proposes to amend the maximum penalties that the Commission can assess for violations of Kansas pipeline safety regulations found in K.S.A. 66-1,151. The amendment is recommended in order to align Kansas maximum penalties with the maximum penalties found in federal pipeline safety law. The alignment with federal maximum penalty amounts is required if Kansas wishes to maintain enforcement authority over intrastate natural gas pipeline safety.

The safety requirements for pipelines transporting natural gas are established in federal law through the Natural Gas Pipeline Safety Act (NGPSA). The NGPSA allows states to establish primacy over intrastate pipeline safety regulations provided the State meets certain conditions listed in the Act. If the State certifies its safety program with the Pipeline and Hazardous Materials Safety Administration (PHMSA), which is a branch of the U.S. Department of Transportation, the Act precludes PHMSA from enforcing federal safety standards for an intrastate pipeline facility. State safety programs that are certified as intrastate programs are informally referred to as 60105 programs after the section of the Act that lists the conditions for certification. Since 1970, Kansas has been certified as a 60105 program and assumed responsibility for inspecting and enforcing pipeline safety regulations.

One of the various conditions for state certification listed in the NGPSA requires the state to have the authority to enforce safety standards through the use of civil penalties that are substantially the same as those stipulated by the Act.¹ It is important to note the Act does not require the enforcement authority (state or federal) to *impose* civil penalties. Instead, the Act simply sets a maximum penalty that *can* be levied for violations of the Act. At this time, the NGPSA maximum civil penalties are set to a maximum of \$200,000 for each violation, with a maximum for any related series of violations set at \$2,000,000.² However, maximum penalties established by the Act are subject to change when the NGPSA is reauthorized by Congress every four years. The history of NGPSA adjustments to the penalty maximum are as follows:

Pipeline Safety Act 1968: \$1,000/\$200,000
Pipeline Safety Act 1988: \$10,000/\$500,000
Pipeline Safety Act 1991: \$25,000/\$500,000
Pipeline Safety Act 2002: \$100,000/\$1,000,000
Pipeline Safety Act 2011: \$200,000/\$2,000,000

Kansas maximum penalty levels were partially amended by the legislature in 2012, when the upper limit for a related series of violations was increased to \$1 million, but the maximum level for an individual violation remained at the NGPSA 1991 level of \$25,000. Until 2023, PHMSA has renewed the Kansas pipeline safety program certification with the understanding that the KCC approach the legislature about fully meeting the federal condition required by the NGPSA.

In 2023, PHMSA notified Commission Staff that it was converting the Commission's certification under the NGSPA to a 60106 agreement³ for its underground gas storage inspection program. A 60106 agreement allows the Commission to continue inspecting intrastate underground gas storage facilities for compliance with federal pipeline safety code, but any violations found during the inspection will have to be referred to PHMSA for enforcement action. Within the last few months, the KCC received another letter from PHMSA stating that it is considering converting the remainder of the KCC pipeline safety program to a 60106 status if Kansas did not meet the condition regarding civil penalties.

¹ USC 60105(b)(7).

² USC 60122(a)(1).

³ See paragraph USC 60106 of the NGPSA.

Under a 60106 agreement, The KCC would still be eligible to receive reimbursement from PHMSA of up to 80% of its pipeline inspection program costs with only minimal changes to our routine inspection program. However, when enforcement becomes necessary, the loss of Kansas enforcement authority could significantly impact the Kansas regulated community.

It also must be noted that if Kansas is converted to a 60106 agreement, the maximum penalty level under PHMSA enforcement is higher than the amounts stated in the NGPSA. Under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, PHMSA is required to increase the penalty maximums to account for changes in inflation. Currently, the PHMSA maximum penalty – which changes every year – is set at \$266,015 for each violation for each day the violation continues, with a maximum administrative civil penalty not to exceed \$2,660,135 for any related series of violations.

In summary, KCC Staff supports the approval of HB 2590 in order to maintain the 60105 status for the pipeline safety program. The proposed amendment does not require the Commission to impose civil penalties. Instead, the Act simply sets a maximum penalty that can be levied for violations of the Act. Without approval of HB 2590, the KCC may lose the ability to issue any civil penalties or even resolve pipeline safety violations with Kansas operators. Instead enforcement would be transferred to the PHMSA, which has higher maximum penalties than those recommended in the proposed amendments.

This concludes my testimony, and I would be happy to answer any questions you may have.