

Approved: Carl Dean Holman  
Date 3-9-93

## MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Vice-Chair Walker Hendrix at 3:30 p.m. on February 22, 1993 in Room 526-S of the Capitol.

All members were present except: Representative Lloyd, Chairman, excused  
Representative Lloyd, excused  
Representative Ruff, excused  
Representative Weinhold, excused  
Representative Kjer, excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
April Howell, Committee Secretary

Conferees appearing before the committee: Charles Jones, Director, Division of Environment  
Dan Karr, Kansas Department of Emergency Preparedness  
David E. Pierce, Professor of Law, Washburn University

Others attending: See attached list

Vice-Chair called the meeting to order and opened the hearing on **HB 2429**-Kansas Nuclear Safety Emergency Preparedness Act.

Charles Jones, Director from the Division of Environment presented his testimony in support of **HB 2429**. He outlined various emergency response activities in the unlikely event of a release from either Wolf Creek Generating Station (WCGS) or Cooper Nuclear Station. The adequacy of plans, procedures and capabilities are judged by the Federal Emergency Management Agency (FEMA) on the basis of plan and procedure review and annual graded exercises. The dollar investments incurred by KDHE in nuclear emergency preparedness have been covered by state general funds, and the effort has been staffed by borrowing people from their normal assignments. KDHE, in keeping with the philosophy of assessing fees against those responsible for causing costs, and to ensure adequacies of emergency response capabilities, supports this Bill. (Attachment I)

Dan Karr from the Kansas Department of Emergency Preparedness gave a brief description of their duties including all plans review, 24-hour communication link with the power plant, as well as reviewing and submitting a yearly letter of certification on behalf of the plant for continuous operations. In fulfilling these duties, the Adjutant General's Department has incurred various expenses. In 1992, the Adjutant General's Department, in conjunction with Wolf Creek Power Plant, entered into a Memorandum of Understanding to recover the costs incurred in support of Nuclear Power Plant emergency response activities. The Adjutant Department support **HB 2429** in that it provides a formalized mechanism for all state agencies involved to recover nuclear power plants emergency response incurred costs associated with their designated duties of public protection and response. (Attachment II)<sup>2</sup>

Vice-Chair Hendrix opened the floor for questions by the Committee and followed by closing the hearing and discussion on **HB 2429**.

The next topic for discussion concerned the regulating of natural gas production in which David E. Pierce, Professor of Law at Washburn University, who appeared at the request of the Vice-Chair to provide a basic background discussion concerning state and federal regulation affecting natural gas production. He outlined various regulations, limitations and restrictions and their impact on effective regulation. (Attachment III)<sup>3</sup>

The floor was opened for questions by the Committee.

The meeting adjourned at 4:25 p.m.

The next meeting is scheduled for February 23, 1993.

Date:

## GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

[illegible]



Testimony presented to  
House Energy and Natural Resources Committee

by

The Kansas Department of Health and Environment

H.B. 2429

The purpose of this testimony is to seek support for House Bill 2429, which would allow those state and local agencies responsible for nuclear emergency preparedness to recover their costs from nuclear generators.

In the unlikely event of a release from either Wolf Creek Generating Station (WCGS) or Cooper Nuclear Station, the State of Kansas and Coffey County are responsible for emergency response activities including:

1. identifying the nature and magnitude of the release;
2. defining the plume of contamination resulting from the release;
3. evacuating citizens in the exposure pathway;
4. caring for evacuees and surveying them for contamination;
5. sampling and analysis to determine contamination levels in the exposed areas; and
6. declaring exposed areas safe for rehabilitation.

Included in the overall emergency response effort would be the Adjutant General's Department, KDHE, the Board of Agriculture, Highway Patrol, Department of Transportation, Department of Wildlife and Parks, Army National Guard, and Coffey County and adjacent counties.

The adequacy of plans, procedures and capabilities are judged by the Federal Emergency Management Agency (FEMA) on the basis of plan and procedure review and annual graded exercises. Should FEMA conclude that significant inadequacies exist in nuclear emergency response capabilities, the operating license of Wolf Creek and Cooper Nuclear could be put at risk. Since the first graded emergency response exercise in 1984, FEMA has cited a number of "deficiencies" and "areas requiring corrective action" during graded exercises.

In order to meet responsibilities for nuclear emergency response, a number of state and local agencies expend significant resources. In FY 1991, which represents an average year, a total of fifty-nine (59) KDHE staff members participated in emergency planning and preparedness efforts related to Wolf Creek. That staff commitment represents 4,342 person hours with salary costs alone of \$96,753. Since 1986, KDHE has also spent approximately \$50,000 for equipment, and additional equipment investments are needed to ensure that KDHE can adequately meet its responsibilities.

Until this time, the dollar investments incurred by KDHE in nuclear emergency preparedness have been covered by state general funds, and the effort has been staffed by borrowing people from their normal assignments. The Power Generating Facility Fee Fund is restricted to costs associated with KDHE's environmental monitoring at WCGS and cannot be used for emergency preparedness purposes. The

House E & NR  
Attachment  
2/22/93

recent Memorandum of Understanding between Wolf Creek and the Adjutant General's Department address some of their emergency preparedness costs, but neither KDHE or any of the other state agencies have received funding through that mechanism. In fact, KDHE has no fund through which such monies could be received or expended. In keeping with the philosophy of assessing fees against those responsible for causing costs, and to ensure adequacies of emergency response capabilities, KDHE supports enactment of HB 2429.

Specific provisions of the bill include:

- A definition section.
- A requirement that persons engaged in the production of electricity through the utilization of nuclear energy at a nuclear facility shall pay fees for costs incurred by state and local agencies for emergency preparedness activities.
- A mechanism making the Adjutant General central in the review of agency budgets and assessment of fees.
- A provision for carrying over excess fees to be applied to the next year's needs.

It is anticipated that the fiscal note attached to HB 2429 will be subject to review by the Appropriations and Ways and Means Committees. For the purposes of this committee's deliberations, the total estimated fees charged to Wolf Creek would be \$530,538 in FY94 and \$385,000 the following year. KDHE's share of that funding would be approximately \$414,764 in FY94 and \$268,817 for the following year. The FY94 figure includes \$161,092 for one-time equipment purchases and facility renovations. Included in estimated salaries is funding for the hours contributed by the 65 staff members who will participate in nuclear emergency response activities, and funding for two FTE's to offset lost productivity in the programs most impacted by response requirements.

Attached to this testimony is a sheet showing how other states are handling emergency response funding. As you can see, the mechanism proposed by HB 2429 and the ballpark fiscal impacts are quite common.

In closing, KDHE urges your support for this bill. KDHE and representatives from the other emergency response agencies will be happy to try to answer any questions you might have.

Testimony presented by: Charles Jones  
Director, Division of Environment  
February 22, 1993

SURVEY OF FEES COLLECTED BY STATES  
FROM UTILITIES FOR EMERGENCY PREPAREDNESS  
FOR NUCLEAR POWER PLANTS  
BY  
KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT  
MARCH 1992

<u>State</u>	<u>Funding Authority</u>	<u>Nuclear Facilities</u>	<u>Fees</u>	<u>Notes</u>
Arkansas	Statutory	Arkansas 1 & 2	\$650,000/year	Fee for FY 92 Includes Env. Monitoring - \$75,000 goes to 5 counties
Illinois	Statutory	Byron 1 & 2 Zion 1 & 2 Quad Cities 1 & 2 LaSalle 1 & 2 Dresden 2 & 3 Braidwood 1 & 2 Clinton 1	\$590,000 one-time charge/station \$1.4 million one-time capital expenditure surcharge/station \$400,000/year/reactor	Up to \$500,000/year to IEMA Up to \$250,000/year to local governments Funds all nuclear facility related programs for emergency preparedness
Iowa	mou/contract with utility(s)	Duane Arnold Quad Cities (Illinois) Ft. Calhoun (Nebraska) Cooper (Nebraska)	\$675,516/year	For FY 92 Includes Env. Monitoring Activities
Louisiana	Statutory (Rad. Control)	River Bend 1 Waterford 3 Grand Gulf 1 (Mississippi)	\$210,000/year/site in LA \$152,000/year/site outside LA	Rad. Control Agency Only Rad. Monitoring & Emergency Preparedness Legislation to raise to \$283,000/year/site
	mou/contract with utility(s) (LEMA)		\$34,000/year/site	For LEMA
Missouri	mou/contract with utility(s)	Calloway Cooper (Nebraska)	\$368,000/year	2 year contract - for FY 92 & FY 93 Includes \$100,000 in capital improvements

<u>State</u>	<u>Funding Authority</u>	<u>Nuclear Facilities</u>	<u>Fees</u>	<u>Notes</u>
Nebraska	mou/contract with utility(s)	Cooper Ft. Calhoun	\$276,556/year	For FY 1991 \$204,556 for State Civil Defense and \$72,000 for Rad. Control
Oregon	Statutory	Trojan	\$461,250/year	Includes: \$142,400 to State Rad. Control \$262,850 to counties \$48,500 to OEMA \$7,500 to Oregon State Univ. Legislation to raise to \$537,500/year
			\$375,000/year	State on-site resident inspection program
Pennsylvania	Statutory	Susquehanna 1 & 2 TMI 1 Peach Bottom 2 & 3 Beaver Valley 1 & 2 Limerick 1 & 2	\$250,000/year/facility	\$150,000/year/facility to Rad. Control Program for: Env. Monitoring LLRW Inspections Plant Inspection Program \$100,000/year/facility to PEMA

- (1) Note: Survey performed by: Harold L. Spiker, Chief  
Environmental Radiation and Emergency Preparedness Section  
Bureau of Environmental Health Services
- (2) Note: IEMA is Illinois Emergency Management Agency; LEMA is Louisiana Emergency Management Agency; and so forth.
- (3) Note: This information is the result of a limited telephone survey of a sampling of states known to have emergency preparedness programs funded by nuclear power plant utilities. It is not intended to be all-inclusive, but rather to provide a representative overview of states funding for emergency preparedness efforts for nuclear power plants. Because of the differences in how each state manages such funding efforts, caution must be used comparing dollar amounts.

Testimony Presented To  
House Energy and Natural Resources Committee  
by  
The Adjutant General's Department  
House Bill 2429

Wolf Creek Generating Station began commercial operation on September 3, 1985. Federal law requires the State of Kansas to develop and maintain emergency response plans, exercise specific procedures and respond to any incident that may jeopardize the health and safety of the public. The Division of Emergency Preparedness is responsible for all plans review, 24-hour communication link with the power plant, as well as reviewing and submitting a yearly letter of certification on behalf of the plant for continuous operations.

The Adjutant General's Department Division of Emergency Preparedness has incurred various expenses over the years in fulfilling our mission. In 1992, the Adjutant General's Department in conjunction with Wolf Creek Power Plant has entered into a Memorandum of Understanding to recover the costs incurred in support of Nuclear Power Plant emergency response activities. This action taken in accordance with K.S.A. 48-916b and with the Governor's concurrence allowed for the recovery of the costs of this agency's involvement, offsetting State General Revenue Funds.

House E & NR  
Attachment 2  
2/22/93

During our negotiation with Wolf Creek on the amount, we did not encounter any resistance to recovering the needed funds for planning and preparedness for radiological accidents or incidents involving Wolf Creek Generating Station.

H.B. 2429 provides a formalized mechanism for all state agencies involved to recover nuclear power plants emergency response incurred costs associated with their designated duties of public protection and response.

c:HB2429



# REGULATING NATURAL GAS PRODUCTION

by

David E. Pierce

Professor of Law  
Washburn University School of Law

Monday, February 22, 1993

## I. Background Statement

I am a Professor of Law at Washburn University's School of Law where I teach courses in oil and gas law and natural gas regulation. On February 19, 1993 I was contacted by Walker Hendrix, Vice Chair of the House Energy and Natural Resources Committee, and asked to appear before the Committee today to provide a basic background discussion concerning state and federal regulation affecting natural gas production. My goal today is to provide an overview of the evolving state and federal regulatory systems that control the production and marketing of natural gas.

## II. The Rule of Capture

Absent state regulation, a person can drill wells bottomed anywhere within the surface boundaries of their property and produce as much oil and gas from their wells as physically possible. If this causes oil and gas to migrate from adjacent properties, the person that "captures" this oil and gas through wells bottomed on their land obtain title to the "captured" oil and gas. To maximize drainage from adjacent properties, property owners would drill close to their neighbor's lands, drill many more wells than technically required to recover the resource, and produce them to obtain the maximum short-term volumes of production possible. These practices resulted in waste of the resource when brought to the surface, damage to the reservoir, excessive capital investment to recover the resource, and injury to the correlative rights of other owners in the reservoir.

## III. Conservation Regulation

Producing states responded to the negative impacts of the rule of capture by adopting some new rules to play the capture game. In Kansas, for example, K.S.A. § 55-701 (1983) prohibits the production of natural gas "in such manner and under such conditions and for such purposes as to constitute waste . . . ." "Waste" is

House E & NR  
Attachment 3  
2/22/93

defined to include its "ordinary meaning" plus "economic waste,"<sup>1</sup> underground waste and surface waste." K.S.A. § 55-702 (1983).

The Kansas Corporation Commission (KCC) is given broad authority in K.S.A. § 55-703 (Supp. 1992) to regulate the production of natural gas to prevent waste and protect correlative rights. Although the focus of the statute is to prevent "waste," the Commission must ensure that in restraining the free exercise of the rule of capture all affected parties are dealt with fairly. The techniques adopted by the KCC to restrain the rule of capture include well location restrictions and production limitations.

#### **A. Location Restrictions**

Absent the adoption of special field rules, K.A.R. § 82-3-108(a) limits the drilling of a gas well "nearer than 330 feet from any lease or unit boundary line." This provision ensures a minimum set-back from adjacent properties to provide some protection from drainage. The number of wells that can be drilled on a single tract of land is limited by K.A.R. § 82-3-312(b) which provides for a "standard drilling unit" of 10 acres. This well density requirement is enforced by reducing the amount of gas that can be produced from a well whenever the drilling unit includes less than the required 10 acres. K.A.R. § 82-3-312(c) & (d).

#### **B. Production Limitations**

Limiting the location of a well does not address harm that may be inflicted on the reservoir by excessive production from a properly located well. Absent the adoption of special field rules, K.A.R. § 82-3-312(a) limits daily production from any gas well to 25% of the actual open flow potential of the well.<sup>2</sup> However, the KCC provides for a minimum daily allowable of 65 Mcf (thousand cubic feet). K.A.R. § 82-3-312(a). Therefore, if the open flow potential of a well is 1000 Mcf/day, and it is located on a standard drilling unit, the daily allowable will be 250 Mcf/day (1000 x 25%).

However, where the wells are capable of producing significant volumes of gas, the KCC will typically establish special field rules that utilize custom-made spacing, density, and allowable

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<sup>1</sup>"Economic waste" is defined to mean the wasteful use of natural gas. K.S.A. § 55-702 (1983).

<sup>2</sup>K.A.R. § 82-3-303 details the test that will be used to calculate the open flow capacity of a well.

formulas.<sup>3</sup> Often times the special field allowables will be established following "market demand" hearings which attempt to project the demand for gas from the field during a designated period, such as six months.<sup>4</sup> In determining market demand the commission must consider: "the reasonable current requirements for current consumption and use within and without the state, and such other factors, conditions, or circumstances that would aid in establishing the market demand." K.S.A. § 55-703(a) (Supp. 1992).

Once the market demand is determined for the common source of supply, the demand is "prorated" among the wells in the reservoir by assigning each well an "allowable." This is often called "market demand prorationing" and the resulting allowables represent a property's proportionate share of the market demand which the producer can attempt to meet through production.

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<sup>3</sup>K.S.A. § 55-703(a) (Supp. 1992) specifies:

In promulgating rules, regulations and formulas, to attain such results the commission shall give equitable consideration to acreage, pressure, open flow, porosity, permeability and thickness of pay, and such other factors, conditions and circumstances as may exist in the common source of supply under consideration at the time, as may be pertinent.

<sup>4</sup>K.S.A. § 55-703(a) (Supp. 1992) provides, in part:

Whenever the available production of natural gas from any common source of supply is in excess of the market demands for natural gas from the common source of supply [excess supply situations], or whenever the market demands for natural gas from any common source of supply can be fulfilled only by the production of natural gas from the common source of supply under conditions constituting waste [excess demand situations], or whenever the commission finds and determines that the orderly development and production of natural gas from any common source of supply requires the exercise of its jurisdiction [commission's discretion], then any person . . . may produce only that portion of all the natural gas that may be currently produced without waste and to satisfy the market demands [prevent waste], as will permit each developed lease to ultimately produce approximately the amount of gas underlying the developed lease and currently produce proportionately with other developed leases in the common source of supply without uncompensated cognizable drainage between separately owned, developed leases or parts thereof [protect correlative rights].

### **C. Ratable Take Requirements**

Historically, the gas market has consisted of a producer that removes gas from the ground and then sells it at or near the field of production to a gas pipeline company under long-term gas sales contracts. The pipeline company would take title to the gas, transport it through various pipeline networks, and then sell it to end users and local distribution companies (LDCs). Gas pipeline companies were not operated as common carriers--they typically refused to transport gas for third parties. This often left producers at the mercy of pipelines for the marketing of the producers' gas. States attempted to respond to this problem by requiring pipelines to take gas ratably from individual producers within a reservoir and among various reservoirs within the state.<sup>5</sup> For example, K.A.R. § 82-3-301 provides:

In each common source of supply under the jurisdiction of the commission, each purchaser shall take gas in proportion to the allowables from all the wells to which it is connected. Each purchaser shall maintain all such wells in substantially the same proportionate status as to overproduction or underproduction. . . .

## **IV. IMPACT OF FEDERAL REGULATION**

### **A. Ratable Takes**

Federal regulation has traditionally impaired the ability of States to effectively regulate the production of gas to prevent waste and protect correlative rights. Section 1(b) of the Natural Gas Act gives the federal government exclusive jurisdiction over the:

[T]ransportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale . . . and to the natural gas companies engaged in such transportation or sale . . . .

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<sup>5</sup>For example, K.S.A. § 55-703(a) (Supp. 1992), provides:

[T]he commission shall regulate the taking of natural gas from any and all common sources of supply within this state in order to prevent the inequitable or unfair taking of natural gas from a common source of supply by any person [including purchasers] . . . and to prevent unreasonable discrimination in favor of any one common source of supply as against another and in favor of or against any producer in any common source of supply.



However, the Act expressly reserves to the States the ability to regulate intrastate transportation, direct sales for consumption, local distribution of natural gas, and the "production or gathering" of natural gas.

In Northern Natural Gas Co. v. State Corporation Comm'n, 372 U.S. 84 (1963), the Court held that a state could not impose ratable take requirements on an interstate pipeline company. The Court held that such requirements, being directed at the pipeline purchaser, could have an impact on their purchasing practices and the ultimate price consumers paid for gas. Therefore, after Northern, the States could not rely upon the interstate pipeline to assist in maintaining ratable takes.

## **B. Pipeline Access**

Beginning in 1984 the Federal Energy Regulatory Commission (FERC) began to issue generic orders that would gradually change the basic structure of the natural gas industry. Interstate pipelines would change from their traditional role of gas purchaser/transporter/seller to that of transporter. End users, LDCs, and producers would assume the roles of purchasers and sellers of gas. New entities, called gas marketers and gas brokers, also came into being to fill the role of bringing willing buyers and sellers together and arranging transportation for their gas deals. The impact on interstate pipelines has been dramatic: several years ago less than 10% of a pipeline's business would be "transportation" service; today over 80% of the volumes moving on interstate pipelines are "transportation" volumes.

The end result of FERC's Orders is "open access" to the various "unbundled" services of the interstate pipeline. Producers, end users, and LDCs are now able to buy and sell gas and have it transported on pipelines with the only limitation on access being the availability of pipeline capacity.

## **V. IMPACT OF RESTRUCTURED MARKETING SYSTEM ON STATE REGULATION**

As pre-restructuring long-term gas sales contracts expire, and as pipeline capacity and other pre-restructuring problems are worked out, gas producers should have ready access to interstate pipeline facilities to pursue marketing opportunities. This should reduce the need to adjust production rates to ensure that producers have a fair opportunity to market their gas. The primary focus of regulation will be upon determining the maximum efficient rate at which a well can produce without damage to the reservoir.

However, the State will continue to play a role in ensuring that bottlenecks in the system do not occur. For example, getting

gas from the wellhead to the transporting pipeline may require movement through a gathering system. The gathering system may not be subject to the same open access policy applied to the transportation pipeline. Also, bottlenecks may develop at the user end of the pipeline when gas exits the transportation pipeline and enters into facilities owned by LDCs.

Some states, notably Louisiana, Oklahoma, and Texas, are adjusting their gas production controls to reduce allowables to address what they perceive to be a gas supply far exceeding demand. As one commentator has noted:

In response to a decade-long problem of low natural gas prices, several states have taken steps to institute statewide limitation of gas production or prorationing. The goals of such regulation are to manage gas surplus, stabilize prices, prevent shortages, and encourage conservation and new drilling.

1 B. Kramer & P. Martin, **The Law of Pooling and Unitization** §5.01[3], 5-10 (3d ed. 1992). It would seem that a better approach would be to ensure that all producers have a fair opportunity to market their gas without concern for the volumes sold or the price received. So long as the gas can be produced without waste, and all affected parties are treated equitably, the State effectively limits the negative impacts of the rule of capture. The State also avoids the risk of placing an artificial value on the commodity when a competitive market to value the commodity already exists. The federal experience tells us that a government-fixed price for natural gas has always been either too high or too low.