



# KANSAS

CORPORATION COMMISSION

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**Before the Senate Utilities Committee  
Comments by the  
Staff of the Kansas Corporation Commission  
March 8, 2007**

**Senate Bill 325**

Thank you Mr. Chair and members of the Committee. I am Leo Haynos, Chief of Gas Operations and Pipeline Safety for the Kansas Corporation Commission. I am appearing today on behalf of the KCC Staff. The purpose of my testimony today is to provide an overview of the Commission order contained in docket 06-GIMG-400-GIG, also known as the “400 docket”. As you have heard over the last two days of testimony on SB 325, this docket established a framework for the Commission to use when establishing policy related to end use gas consumers connected to gas gathering lines. A synopsis of the order is attached to my testimony. If you would like to review the order in its entirety, I would refer you to the KCC website [at www.kcc.state.ks.us](http://www.kcc.state.ks.us) under the tab docket filings.

Before I begin discussing the order, I think it is important to provide some background into the differences between public utilities, common carriers, and gas gatherers. In reviewing the testimony before this committee in the 1990’s when the gas gathering statutes were written, it is apparent that the focus of the discussion at that time involved providing gas producers open access to gas gathering systems. Although some of the same consumers testified before you on SB 325, there is no record of any concerns being raised in the 1990’s by consumers not being able to get gas off the pipeline once it was put on. Consequently, the gas gathering statutes only address getting gas on the pipeline, not getting it off. The laws which recognize public utilities, common carriers, and gas gatherers as natural monopolies and provide KCC

oversight are found intertwined in both Chapters 55 and 66 of the statutes. The Kansas regulatory system provides the Commission with an extremely broad jurisdictional authority with little statutory or regulatory detail directing the Commission on the exercise of this jurisdiction. In many cases, there are specialized statutes that apply to one type of common carrier such as “public motor carriers” but in many of the situations dealing with public utility natural gas, electric, or telephone service, the Commission has established customs and practices that define the regulatory requirements. An Example of these practices that are not found in the statutes is the requirement to convert gas users to alternate energy sources if their service is abandoned.

In previous testimony on SB 325, there was some discussion about the difference between a common carrier and a public utility. In a recent Commission docket, Professor David Pierce from Washburn University provided an historical perspective of Kansas Public utility law. In his treatise, he states, “Kansas public utility and common carrier statutes are a patchwork of often overlapping legislative responses to monopoly power throughout the State's history. For example, many of the early statutes regulating railroads as common carriers also address other common carriers. This is the case with, for example, K.S.A. 66-154, which was enacted in 1905, prohibiting "any railroad company or other common carrier to grant . . . any rebate or drawback”. The Kansas public utility and common carrier statutes are the product of cumulative major enactments in 1905, 1911, 1923, 1929, and 1985, with numerous laws passed on the subject from 1883 to the present”.

I would view common carriers as a specialized type or subset of public utilities. The goal of the statutes governing common carriers is to ensure that rates and terms of service are listed in a filed tariff and that the rates and practices of the carrier are not unreasonable, preferential, or unduly discriminatory. A comparison of the Chapter 55 statutes governing gas gathering practices show the gas gathering statutes are very similar to those statutes that

govern common carriers. In essence, they are designed to provide the Commission with authority to arbitrate problems that the parties are unable to resolve among themselves. One of the problems the Commission struggled with in the 400 docket is the same problem we are discussing today. That is, Kansas law would require a common carrier to also be considered as a public utility subject to cost of service rate treatment and quality of service requirements that have been developed through past Commission practices. As you have heard in recent testimony, gas gathering systems provide multiple functions in the delivery of gas yet the pipelines are not designed to operate as distribution systems.

The recent order in the 400 docket tried to reconcile the various statutes with the operational concerns of providing end use consumers from gathering lines. The order sets out a framework for four of the five categories of gathering system end use consumers. The five categories can be described as follows:

1. Consumers supplied because of a leasehold agreement with a producing company: This type of supply arrangement was not contemplated in the 400 docket. Generally, it has been Staff's position that supply contracts associated with mineral lease agreements are part of a gas production operation and therefore not subject to gas gathering or public utility regulation.
2. Consumers supplied because of a right-of-way, (ROW) agreement with the gathering pipeline: Because ROW is necessary to operate a pipeline, the Commission concluded ROW consumers are incidental to a gas gathering service and these consumers are covered by the Chapter 55 gas gathering statutes. That is, the consumer has the right to appeal to the Commission if they believe the gas gathering company is "unduly discriminatory" in its rates and practices.

3. Consumers that are NOT rural gas user, (i.e. gas use for agricultural purposes), supplied retail gas sales from a gas gathering operator: This type of consumer such as a residence, business, or manufacturing facility would be considered a public utility customer. Therefore, the gathering system providing retail sales would be a public utility required to establish tariffs and set rates in compliance with public utility practices. The costs and obligations associated with serving this group of consumers would only apply to the public utility function of the gathering system, not to the producers using the gas gathering services.

4. Consumers that are rural gas users, (irrigators, feedlots, grain dryers, etc): Under K.S.A. 66-21012 companies providing gas service to rural gas users can not be considered as public utilities. Therefore, the Commission order considers this category of supplier exempt from public utility regulation.

5. Consumers that are customers of a certificated public utility or non profit utility that is supplied from a gas gathering system: The Commission considered the transportation of gas for retail sales to be a public utility function. Therefore, the gathering system operator providing this type of service could be considered a common carrier which is a specific type of public utility.

The Commission's order recognized the operational difficulties of providing distribution service from a supply limited gathering system. Therefore, the order established the previously discussed categories of service obligations only for existing customers and any new customers added at the discretion of the system operator. This decision is based on the fact that many of the end use customers connected to gathering systems in Kansas are former customers of federally regulated transmission systems. As such, the customer would have had recourse to the Federal Energy Regulatory Commission, (FERC), when disputes over service practices arose. When the gathering systems were unbundled from the interstate

transmission system, the end use customers were sold to a Kansas public utility or simply stranded with no ability to appeal to a jurisdictional authority. The Kansas public utilities that purchased the right to serve the consumers were also stranded in regard to resolution of disputes related to gas transportation contracts needed to serve their customers. The Commission's policy decision to apply the order's framework only to existing customers provides the customer with an avenue of regulatory recourse formerly available with the FERC while minimizing the impact on the gathering system's ability to perform its primary function of moving gas from production to transmission.

**OVERVIEW OF KANSAS CORPORATION COMMISSION FINAL ORDER  
IN DOCKET 06-GIMG-400-GIG**

**Prepared by Leo Haynos, Kansas Corporation Commission Staff.**

**February 20, 2007**

Para 37: The statutory definition of “gas gathering system” does not indicate what should be considered part of the gathering system beyond that used for the gathering function. Therefore, with regard to Commission authority over exit taps, the question is whether the legislature intended to exempt certain specific functions of “gathering systems” or whether it intended to enact an exemption covering all uses of any facilities classifiable as a “gathering system” using the statutory definition.

Para. 40: After reviewing the statute and the various suggested interpretations by the parties, the Commission concludes that the requirements of K.S.A. 55-1,103 to provide just, reasonable and non-discriminatory access and rates do not extend to exit taps. Such requirements are imposed on “gathering services,” “facilities essential” to such services, and “practices in connection” with gathering services. Exit taps do not appear to fall within any of these three categories. Gas gathering service clearly does not directly encompass exit tap service because exit tap service does not involve transporting natural gas “to a point of entry into a main transmission line” as set out in K.S.A. 55-150. Furthermore, as suggested by Staff, exit taps do not involve transportation of natural gas but rather distribution to end users. If exit taps are not directly involved in the gathering function, it would logically follow that exit tap facilities are not essential to gathering services,

Para 40: Therefore, the Commission concludes that it is without jurisdiction to regulate exit tap service pursuant to K.S.A. 55-1,101 *et seq.*, unless the exit tap service was obtained through a ROW agreement. Stated another way, where exit tap service is obtained through a ROW agreement, the Commission has jurisdiction over such service pursuant to K.S.A. 55-1,101 *et seq.*

Para 42: Furthermore, K.S.A. 55-1,107 appears to recognize that retail sales of natural gas from a gas gathering system require a certificate of convenience and necessity from the Commission.<sup>1</sup> These statutes thus reflect the fact that the use of any facilities for the conveyance and sale of natural gas generally comes within the definition of a public utility in K.S.A. 66-104.

Para. 43: After due consideration, the Commission concludes that the legislature only intended to remove from utility regulation those functions or services which were to become subject to regulation under the gathering statutes, K.S.A. 55-1,101 *et seq.*, enacted concomitantly with K.S.A. 66-105a. Since we have found that exit taps, unless associated with a ROW agreement, are not a gathering service because they do not involve transporting natural gas to a point of

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<sup>1</sup> The statute reads, in relevant part: “In any retail natural gas service area where the commission has granted a certificate of convenience and necessity to sell natural gas at retail from a gas gathering system, the commission may issue other certificates of convenience and necessity to make such sales in such area. A person purchasing natural gas or gas gathering services from a person offering gas gathering services in a retail natural gas service area where the commission has issued more than one certificate of convenience and necessity shall not be assessed an exit fee for electing to purchase natural gas or gas gathering services from another person offering gas gathering services.”

entry into a main transmission line, this category of exit taps remains subject to regulation as a public utility service. We do not believe that other interpretations can be adequately supported.<sup>2</sup>

Para. 46: Exit taps that are provided pursuant to right-of-way agreements would appear to be integral to the operation of the gathering system. Although they are not technically gathering services, the Commission believes that they are the kind of secondary functions that the legislature intended to include within the scope of K.S.A. 55-150(d). Furthermore it would seem that such exit tap services would be subject to Commission review under K.S.A. 55-1,103 since they either involve “facilities essential” to gathering service or “practices in connection” with gathering services.

Para. 49: In a general sense, the Commission acknowledges that a gathering service could be deemed a “gas provider” pursuant to the Kansas Self-Help Gas Act. The Commission notes that for such a situation to arise, the customer served must be using the gas procured for “agricultural purposes” and must not presently be receiving gas service by an “existing gas service utility.”<sup>3</sup> Providing exit tap gas to a customer utilizing the gas for purely residential consumption would therefore not qualify a gas gatherer for the exemption contained in the Kansas Self-Help Gas Act.

Para. 50: The Commission notes that under its interpretation of the statutes, a gathering system’s transport or provision of natural gas in concert with a certificated public utility for immediate distribution to end users would be subject to regulation as a public utility service.<sup>4</sup> ... the Commission finds that the obligation to provide such transportation service should extend only to existing exit taps or exit taps that are provided at the discretion of the gas gatherer.

Para 57: The Commission finds that three key areas should be addressed: (1) curtailment of service to public utility exit tap customers, (2) curtailment of service to gathering system ROW customers, and (3) establishing a general benchmark for safe H<sub>2</sub>S thresholds in relation to the exercise of the Commission’s powers pursuant to K.S.A. 66-105a.

Para. 58: The Commission also concludes that any public utility who serves customers off of gathering systems is responsible for providing sufficient and efficient service regardless of the means by which such utility has secured its gas supply. If a utility finds that it can no longer provide service due to pending curtailment of gathering service gas, the utility must seek abandonment approval from the Commission.

Para. 59: The Commission concludes that when an exit tap customer who takes service pursuant to a ROW agreement is curtailed or denied gas service by a gathering company, the Commission is authorized to evaluate the reasonableness of the curtailment pursuant to its Chapter 55 jurisdiction over gathering services. However, the Commission should not become a forum for

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<sup>2</sup> Staff’s functionality analysis appears to be factually supportable but does not comport well with the statutory language. The Commission’s view of legislative intent better resolves some of the ambiguities in the statutes.

<sup>3</sup> “Existing gas service utility” is also defined in the Kansas Self-Help Gas Act. The term generally refers to traditional natural gas public utilities with existing natural gas infrastructure to serve end use customers.

<sup>4</sup> Additionally, when common carrier transportation service is not regulated by the FERC, it may fall under K.S.A. 66-105, and therefore allow for common carrier regulation by the Commission.

the resolution of private contractual disputes. Rather, the Commission should focus on whether curtailment of service is “just and reasonable.” The Commission will defer to the district court matters of contractual interpretation.

Para. 60: If a gas gatherer can justify its disconnection of exit tap customers by presenting substantial evidence that conditions impacting safety and/or health exist, the Commission will not disturb the decision to curtail service. As a general rule, however, the Commission adopts Staff’s recommendation that H<sub>2</sub>S concentrations in excess of 15 ppm in gas provided for residences or other confined domestic uses is not safe and any such concentrations would warrant curtailment.

Para 61: First, the Commission finds and concludes it lacks jurisdiction under the gas gathering statutes to require open access to remove gas from a gathering system. K.S.A. 55-1,101 *et seq.* The statutes do not present a clear legislative intent to mandate exit taps on gas gathering systems.

Para. 62. The Commission finds and concludes it has varying jurisdiction over existing exit taps. The category of exit tap and type of jurisdiction found herein are as follows:

- Exit taps provided under right-of-way agreements between the landowner and the gas gatherer are considered essential to the gatherer being able to provide gas gathering services. This category of exit tap falls within the purview of the gas gathering statutes K.S.A. 55-1,101 *et seq.* and is therefore exempt from public utility jurisdiction under Chapter 66. Customers served by this type of exit tap would have recourse to the KCC under the provisions of the gas gathering statutes.
- Exit taps providing gas for agricultural purposes such as operating irrigation equipment or providing fuel for feedlots are exempt from regulation under the Kansas Self-Help Gas Act, K.S.A. 66-2101 *et seq.*, depending on each specific fact situation.
- All other exit taps are not essential to the gathering system or to providing gathering services. Because these exit taps do not fall under the definition of a gas gathering system or a rural gas user, they are not exempt from utility jurisdiction under K.S.A. 66-105a. Commission jurisdiction over this category of exit taps varies depending on the use of the tap, for example:
  - Exit taps providing gas directly to a residence or business fall under public utility regulation. *(As such the gas gathering operator would be required to acquire a certificate of convenience and provide sufficient and efficient service to its customers. In this case sufficient and sufficient service would take into consideration the available supply and other competing market conditions; -- Staff)*
    - *Exit taps providing transportation service to a public utility such as Aquila, may be considered as a common carrier which is a specific type of public utility.-- Staff*



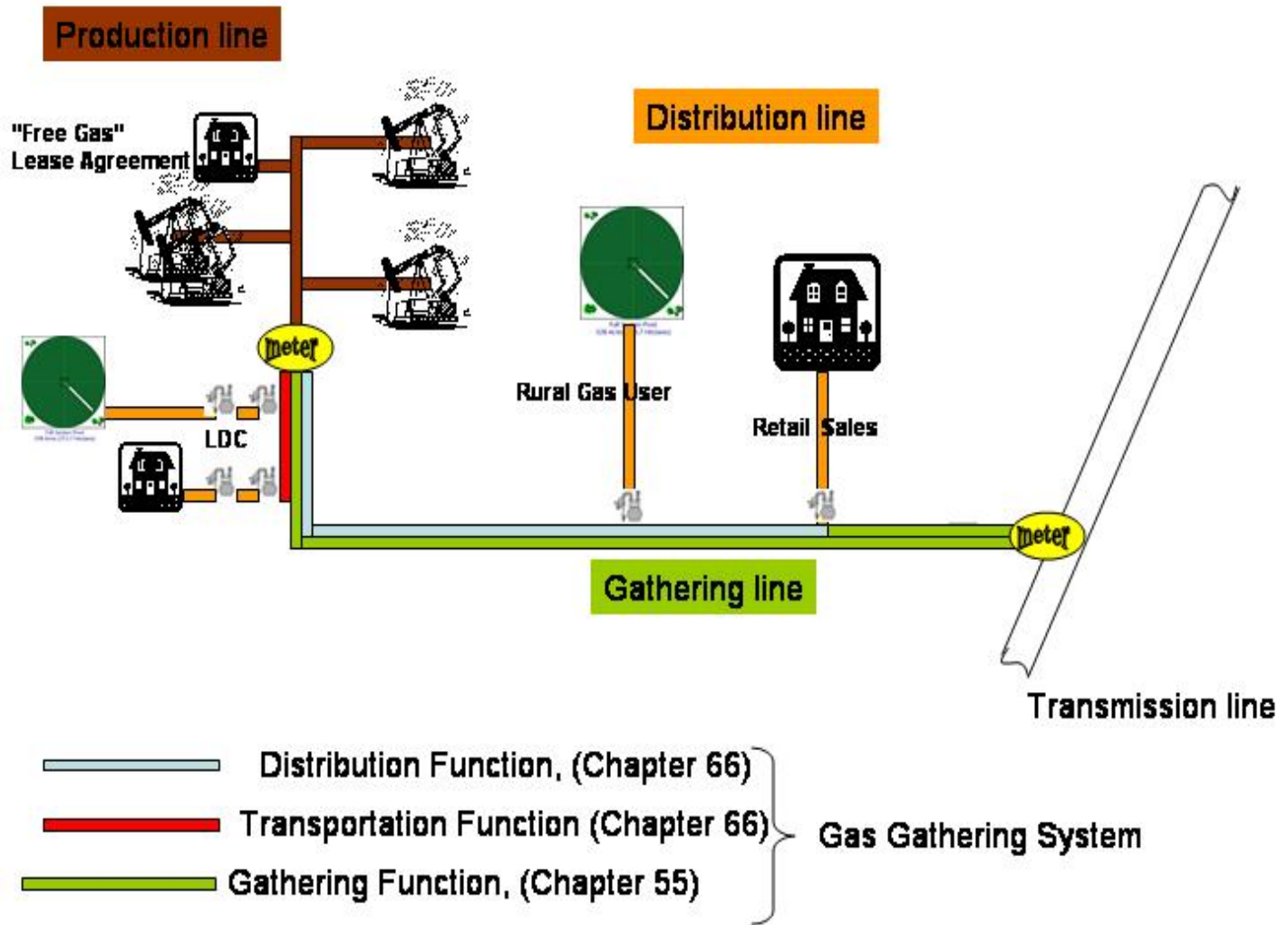
- The Commission will exercise such regulation only with regard to existing exit taps or exit taps that are provided at the discretion of the gas gatherer.

Para. 63. In addition to making jurisdictional pronouncements, the Commission investigated establishing policy in three key areas:

- curtailment of public utility exit tap customers;
- curtailment of right-of-way agreement customers; and
- a safe operational threshold for the concentration of H<sub>2</sub>S in the gas stream.

Under current law and Commission precedent, when a public utility can no longer provide service due to curtailment of its gas supply, it must seek abandonment approval from the Commission. Based on the facts of each case, the Commission will decide what conversion costs, if any, should be paid by the public utility. Next, when right-of-way agreement exit tap customers are curtailed, the Commission will evaluate the curtailment under the just, reasonable and not unduly preferential standard of K.S.A. 55-1,103. Matters involving right-of-way agreement interpretation will be deferred to District Court. Finally, as a general rule, the Commission adopts Staff's recommendation that H<sub>2</sub>S levels in excess of 15 ppm in gas provided for residential and business use are not safe. However, if a gas gatherer can justify its disconnection of exit tap customers by presenting substantial evidence that conditions impacting safety and/or health exist, the Commission will not disturb the decision to curtail service.

Para. 64. The Commission believes this Order is based on a reasonable interpretation of the statutes and gives gas gatherers and exit tap customers a framework to follow. Further, given the determinations contained herein, the Commission concludes this general investigation.



Generalized Schematic **Physical Flow** of Natural Gas in U.S.

