

Comments to:

Kansas Senate Committee on Utilities

February 21, 2007

On:

Senate Bill 325

By:

E. R. (Dick) Brewster

On Behalf of:

BP America, Inc

Mr. Chairman, Members of the Committee, for the record I am Dick Brewster, Government Affairs Director for BP America. I appreciate your time and attention today as I present our comments on Senate Bill No. 325.

First, let me say that we oppose S.B. 325. As you know a group of natural gas gatherers have held meetings with proponents of this bill, to review how those proponents might have what they refer to as “access” to natural gas from gathering systems. The two groups were unable to reach a compromise.

You have heard or will hear from representatives of other gas gathering firms the many and deep concerns this bill raises among gatherers. I won't be redundant, except to say we agree. The bill is confusing in many parts, but it does appear to put gathering operations under both common carrier and public utility regulations, at least when the gathering operation is providing, or is asked to provide exit taps along the gathering line.

Essentially the bill changes the nature of the gas gathering business, requiring that gathering operations provide end use gas from a gas stream not processed or prepared for end use customers; from a gas stream often not really suitable for end use.

There are many questions about how this would work. Whose gas is it that would be delivered through an exit tap? Could a gathering operation be required to sell gas through an exit tap if the gas were contractually obligated to another buyer? If the gatherer were merely transporting gas already sold to or owned by the NPU or whoever the gas tap was for, how can the gatherer maintain control of the quality of gas in the gathering system?

What of the gatherer's obligation to a processing operation or an interstate pipeline to deliver certain gas volumes? Once a gathering operation has begun to deliver gas through an exit tap it becomes a utility or common carrier and subject to those regulations. That obligation may go on even when the gatherer can no longer fulfill the obligation to the processor or interstate pipeline.

Of course, we've talked about the operational issues as well. Gatherers must maintain the gathering system, and that often requires down time. Lines must be pressure tested, or pigs run through the line to remove condensed moisture, or the operator must use smart pigs to try to determine corrosion levels and therefore the continued safety of the line. These activities require closing of any exit taps. Will that be allowed, given the new status as common carriers or public utilities? If not, how can the gathering operator be held responsible for the safe operation of the gathering line? Must a gathering operator seek KCC approval before every such event?

There are significant problems associated with making a gathering system something other than what it was designed to be. Of course there are some exit taps on gathering systems in existence now. So, providing gas via an exit tap is not an impossibility. Some of these taps are part of a right-of-way agreement, some are for other reasons, and some were granted simply because the gathering operator wanted to be a good neighbor. It seems to us the difficult operational and other issues, only some of which I've touched on, can be best worked through in contract negotiations, not through legislation or agency rule making.

Rest assured a gatherer now providing gas to an NPU or end user by way of these taps did not do so with the understanding that it would subject it to public utility or common carrier regulation. In fact, we all thought the opposite was true: gatherers assumed that these taps were incidental to the primary business of providing gathering services, and therefore exempt from such regulation.

It seems to me that if an individual or firm wants a gathering tap, it needs to approach a gathering operation with a specific proposal and begin negotiation. However, gatherers will naturally be very reluctant to even begin this process if they are faced with regulation as a public utility or common carrier.

This bill, giving the KCC jurisdiction over existing, or additional taps on the gathering line, changes the rules. This approach seems a little draconian, to say the least.

With your permission, Mr. Chairman and members of the Committee let me suggest another approach.

If the possibility of subjecting a gathering operation to regulation as a public utility or common carrier makes a gatherer shy away from agreeing to provide gas through an exit tap, let's try to remove that obstacle. I cannot tell you that removing this obstacle would result in any new gathering taps. But I can tell you that some gatherers we met with indicated a willingness to entertain concrete proposals from parties wanting such a tap, but only if they were assured they would not become utilities or carriers.

So, we've put together the attached proposed substitute bill for S.B. 325.

This proposal simply states that a gathering operation that provides gas to end users NPU's or other entities through an exit tap does not become a public utility or common carrier. It recognizes and keeps in place the existing limited jurisdiction of the KCC over gathering operations, but states essentially that providing gas to end users via an exit tap is incidental to the purpose, the exempt purpose of the gathering operation. It also states that the addition of a gathering tap is not required. It paves the way for a gathering operation to contract freely with a party for a tap, without fear of additional needless burdensome regulation.

This proposal seems worth a try, Mr. Chairman, members of the Committee. It does not convert the primary purpose of an existing business operation.

I've tried to be brief, and perhaps not gone in to the detail I'd like. But I know your time is limited. Let me urge your consideration of the proposed substitute as an attempt to let the issues presented here be resolved in voluntary negotiations, before taking the major step of changing the nature of an existing operation entirely.

Mr. Chairman, let me again thank you for your attention. I'll be happy to try to answer any questions you might have.

Respectfully Submitted.