

**Before the Senate Utilities Committee  
Comments by the  
Staff of the Kansas Corporation Commission  
February 13, 2012**

**Senate Bill 374**

Thank you, Mr. Chairman 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 in support of SB 374 which amends K.S.A. 66-1,150, 66-1,151, and 66-1,153. The passage of this bill will amend the following items related to the state's pipeline safety program:

- Update citations of the federal statutes which are referenced as the source of pipeline safety regulations adopted by the state of Kansas.
- Amend the maximum civil penalty that can be imposed for violations of pipeline safety regulations and for violations of the Kansas Underground Utility Damage Prevention Act.
- Consistent with long-standing past practice, update the statute with the types of entities that are billed for inspections performed by Commission Staff to include all operators of pipelines that are subject to pipeline safety regulations.

The Natural Gas Pipeline Safety Act (NGPSA) gives the United States Department of Transportation (USDOT) jurisdiction over all pipelines that transport flammable gas. However, the law allows the states to have primacy over intrastate gas transportation provided the states certify their pipeline safety oversight program with the federal government. In addition to establishing primacy of the state program, the certification process allows USDOT to provide federal grants for funding up to 80% of a state's pipeline safety program costs. One of the requirements for certification is the adoption of federal pipeline safety regulations. During the summer of 2011, the Commission updated Kansas regulations to include the latest amendments from the federal regulations. At that time the Kansas Joint Committee on

Administrative Rules and Regulations requested the Commission to update the Kansas statute to incorporate the correct citation of federal statutes that reference the NGPSA. It is Staff's opinion that the changes proposed in SB 374 accomplish this request of the joint committee.

As part of the certification process mentioned above, the USDOT establishes performance guidelines for state programs that must be met in order to receive full funding. One of the performance criteria selected by USDOT is the state program adoption of civil penalty amounts that are equivalent to the amounts prescribed for the federal government in the NGPSA<sup>1</sup>. At this time, USDOT has established a performance criteria that each state have the ability to impose civil penalties for violations of pipeline safety regulations in the amount of \$100,000 for each violation for each day the violation exists and a maximum of \$1 million for any related series of violations. If the states do not adopt these penalty amounts, USDOT will withhold a small portion of the federal funding provided in support of the state pipeline safety program. Staff estimates the amount that will be withheld if Kansas does not adopt the prescribed maximum penalties to be approximately \$13,000 per year. K.S.A. 66-1,151 was last updated in 1994 to match the federal penalty levels at that time. SB 374 will amend this statute to reflect the aggregate maximum penalty of \$1 million requested by USDOT while leaving the daily maximum single violation penalty at the current Kansas maximum of \$25,000. While civil penalties are a valuable enforcement tool, Staff believes the current maximum daily penalty amount of \$25,000 per violation serves as an effective deterrent to violations while at the same time protecting small operators from severe penalties for a single violation per day. It must be noted, however, that very few violations would be expected to last for only one day so a \$25,000 per violation per day penalty can reach a substantial amount in a short period of time. Should an operator continually fail to take corrective action to address a violation or have a series of violations, the maximum amount of \$1 million for any related series of

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<sup>1</sup> The January 3, 2012 reauthorization of the NGPSA has increased the maximum federal civil penalty amounts to \$200,000 per violation per day and to \$2 million for a series of related violations. At this time, USDOT has not adopted these amounts as performance criteria for state funding allocations.

violations will provide the necessary incentive to an operator to address a serious violation in a timely manner.

The third amendment addressed by SB 374 amends K.S.A. 66-1,153 to allow the commission to recover a portion of the costs for pipeline safety inspections from all operators of pipelines that are subject to state pipeline safety regulations. This statute is presently limited to only public utilities that are not assessed for Commission costs under K.S.A. 66-1503. At this time, the Commission provides regulatory oversight to 127 operators of intrastate natural gas pipelines. Of this number, there are 9 operators that are assessed for Commission costs based on a percentage of their revenue as per K.S.A. 66-1503. There are 63 additional operators that have been assessed under current provisions of 66-1,153 for a total amount of \$38,000. The remaining 55 operators are not assessed for pipeline safety inspections. The proposed bill would expand the definition of the type of operators subject to assessment to include all operators that operate pipelines under Kansas regulations.

K.S.A. 66-1,154 requires the Commission to promulgate rules and regulations that define the amount of the assessment under K.S.A. 66-1,153. The statute also requires the assessment be based on the number of active gas meters in each operator's system. The Commission's rules and regulations addressing this matter are found in K.A.R. 82-11-11. The annual assessment that is currently prescribed by the regulation is \$1 per active meter or \$100, whichever is greater. If SB 374 is passed, the Commission will need to amend this regulation to reflect the updated statute.

In summary, the Commission Staff supports passage of this bill which provides minor updates to the statutes governing pipeline safety regulation on intrastate natural gas pipelines.

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