Approved February 24, 1983
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES.

The meeting was called to order by SENATOR JAN MEYERS, VICE CHAIRPERSON at
Chairperson

9:00 a.m. a.m./p.m. on Thursday, February 24, 1983 in room 254-E of the Capitol.

All members were present except:

Senator Johnston (Attended House Elections Committee Meeting)

Committee staff present:
Fred Carman
Hank Avila
Rosalie Black

Conferees appearing before the committee:

SB 196 - Senator Bert Chaney
James Haines, Attorney, KG&E
Ed Schaub, Southwestern Bell

SB 196 -Ed Peterson, Attorney, KCC
David Claycomb, Attorney, Gas Serv. Co.
Bill Cordes, Peoples Natural Gas

SB 221 - Senator Jack Steineger
Dave Black, Attorney, KPL
Bill Cordes, Peoples Natural Gas

The meeting was called to order by Senator Jan Meyers, Vice Chairperson, who introduced Ed Peterson to discuss Senate Bill 196.

SENATE BILL 196

Mr. Peterson explained that KCC supports the act which would limit the number of rate increase requests to one per year for electric, gas or telephone utilities, however, as a practical matter it takes eight months for KCC to determine decisions for rate increases so the bill would not make a significant difference. The Commission recommends that the Committee consider legislation to allow for an exception in case a utility has a financial hardship.

Senator Chaney noted that the major change in his bill is in Line 29 through Line 31 which inserts, "No electric, gas or telephone public utility shall file or apply in any 12-month period for more than one increase in any rate or charge."

Representing the Electric Companies Association of Kansas, James Haines, pointed out that in KG&E's last three general rate increase cases, the new rates have been based upon a cost of doing business which was one year or more old by the time the new rates went into effect. Those costs were not adjusted for inflation. He added that even under present law, it is virtually impossible for the owners of a public utility in a period of rapid inflation to have a real opportunity to earn what KCC has determined to be a fair return on their investment. (See Attachment 1.)

Bill Cordes described regulations in Minnesota and New York that allow

SENATE BILL 196 (continued)

utilities to project costs that will be needed within the year. He suggested that Kansas establish the prospective test-period type of system.

Ed Schaub stated that in 1982, Southwestern Bell submitted approximately 90 new service or equipment offerings to KCC for approval which were submitted as a direct result of satisfying customer needs. In addition, throughout the year, the company submits changes in the prices it charges for competitive services. These price changes are required to reflect changes in costs of providing the service.

David Claycomb said that due to extremely poor earnings of the Gas Service Company, it has become necessary for the company to request emergency relief. Under SB 196, this procedure would not be available. In the present case, the result would be the termination of operations of the Gas Service Company. (See Attachment 2.)

SENATE BILL 221

Senator Steineger indicated SB 221 would be a good law for Kansas because it would stimulate the production of Kansas gas for royalty owners and gas producers. Also, it would bring some sanity back to gas pricing by forcing gas companies to turn off their "take or pay" practices and use the cheapest gas available. And, if suppliers use cheap gas from Kansas, the price to consumers would drop substantially. (See Attachment 3.)

Speaking in opposition, Dick Randall mentioned that the amendment would add uncertainty to the rate making process and would permit arbitrary interference by KCC into the contract obligations of utilities and common carrier pipelines. (See Attachment 4.)

Bill Cordes noted that the result of this bill would not be an elimination of "take or pay" and would not lower utility bills for Kansas consumers.

Dave Black also indicated that the effect of the bill would not lower costs to customers, but would place a tremendous financial burden on the State's principal utility companies. (See Attachment 5.)

Vice Chairperson Senator Meyers announced that lack of time and a large number of conferees prevented the Hearing for SB 221 to be completed and asked conferees to return when it is scheduled again. The Hearing for SB 223 will also be scheduled at a future date.

The meeting adjourned at 10:07 a.m.

Attachment 1

SENATE BILL NO. 196

STATEMENT OF JAMES HAINES

Electric Companies Association of Kansas

Good Morning. My name is Jim Haines; I am an attorney for Kansas Gas and Electric Company. I appreciate the opportunity you have given me to speak about Senate Bill No. 196. My remarks this morning are on behalf of the Electric Companies Association of Kansas which includes The Kansas Power and Light Company, Kansas City Power & Light Company, Empire District Electric Company, Western Power Division of Centel Company, and, of course, KG&E.

Senate Bill 196 would prohibit an electric, gas, or telephone public utility from filing or applying for more than one increase per year in any rate or charge. I believe there are sound reasons which should cause you to take no further action in respect to the Bill.

Before discussing those reasons, it is necessary to consider the "bargain" which exists between the owners and the customers of public utility companies. In Kansas, as in other states, this "bargain" is contained in the public utility law (primarily Chapter 66 of the Kansas Statutes) and the court cases and constitutional provisions within which that law must be given effect. Although the public utility law in Kansas and the court cases and constitutional provisions within which that law must operate take up many

Att. 1

pages in the law books, the essence of the "bargain" which that law establishes can be stated in just a few sentences.

On one side of the bargain, a public utility is allowed to operate as a government approved monopoly. In return for that monopoly status, and on the other side of the bargain, a public utility is obliged to meet every financially responsible request for service within its service territory. The monopoly status of a public utility raises a problem - there is no competitive marketplace to regulate prices. The solution to this problem constitutes the other basic part of the "bargain." On one side of the "bargain" the price of public utility service is subject to government regulation and on the other side of the "bargain" the owners of a public utility company must be given an opportunity to earn a fair return on their investment in the facilities necessary to provide public utility service.

There is one more consideration which I want to mention before I enumerate the specific reasons which should cause you to take no further action in respect to Senate Bill 196. If you examine the income statement for a public utility company, or for that matter any investor-owned enterprise, you will see that the earnings applicable to the owners of the enterprise are what is left over after all other costs of doing business have been covered. All costs of doing business - operating and maintenance expenses, depreciation expense, federal, state and local taxes, interest charges,

and preferred stock dividends - all costs of doing business must be paid before a return can be paid to the owners. The point is that any increases in the cost of doing business which cannot be balanced by cost reductions or improved operating efficiency will constitute a direct and immediate reduction of the earnings applicable to the owners unless the price for that business's service or product is increased. In the case of a public utility, if it is not permitted to increase its price for utility service to reflect increases in the cost of providing that service, then one of the most fundamental conditions of the "bargain" between the customers and owners of the utility is broken, in short the owners no longer have an opportunity to earn a fair return on their investment in the facilities necessary to provide utility service.

Senate Bill 196, by prohibiting more than one rate increase in any twelve month period for gas, telephone, or electric public utility service would in some circumstances eliminate the opportunity of the owners of a public utility to earn a fair return on investment. The most obvious circumstance in which that would be likely to occur is in a period of rapid inflation such as we experienced in the 1970's. It is highly improbable that the owners of a public utility would have a real opportunity to earn a fair return on investment if the price for utility service had to be held constant during a twelve month period in which

the general rate of inflation reached double-digit proportions. That is particularly the case in Kansas because utility rates are based upon historical costs which are not adjusted for inflation. For example, in KG&E's last three general rate increase cases, the new rates have been based upon a cost of doing business which was one year or more old by the time the new rates went into effect. And as I said, those costs were not adjusted for inflation. The result is that, even under present law and practice in Kansas, it is virtually impossible for the owners of a public utility company in a period of rapid inflation to have a real opportunity to earn what the Corporation Commission has determined to be a fair return on their investment in facilities necessary to provide public utility service. Senate Bill 196 would only make that problem worse.

I suppose some people might respond to the points I have made so far by saying "so what?" In the short run there is no response to "so what" other than the equitable proposition that the "bargain" between the customers and owners of public utility companies should be kept, that is, if the owners are going to be held to their obligation to provide service on demand then the customers should be held to their obligation to provide a real opportunity to earn a fair return on the investment necessary to provide that service. But in the long run, there is an additional and very compelling response to the "so what?" response.

Investors will place their capital wherever it will earn the highest return consistent with the risk they are willing to take. I am not going to stand here and tell you that if Senate Bill 196 becomes law that investors will no longer be willing to commit capital to the utility industry in Kansas. But I can tell you with virtual certainty that a potential investor in the public utility industry in Kansas would view Senate Bill 196 as a measure which increases the risk of investment in a Kansas public utility. And to the extent that an investor perceives increased risk a higher rate of return is required - and this ultimately translates into higher rates.

There are other circumstances which could also require more than one increase in a twelve month period for public utility service. Let's briefly consider just one example. Federal, state and local tax rates are not permanently fixed. There is nothing to guarantee that increases in those tax rates would be synchronized with a public utility company's opportunity to apply for a rate increase only once every twelve months. Of course, any unexpected increase in the cost of providing utility service would be unlikely to be synchronized with the utility's annual opportunity to request an increase in rates.

Finally, I believe you should consider the extent to which existing law protects customers from unwarranted rate increases - and I expect that the intent of Senate Bill 196

is simply that, to protect customers from unwarranted rate increases. Under present Kansas statutes and the rules and regulations of the Corporation Commission, the Commission has 240 days in which to rule upon requests for increased rates. Certainly, when good cause is shown, the Commission has discretion to act sooner than 240 days. Under normal circumstances, however, it takes 240 days for a public utility company to obtain a rate increase in Kansas. Now, what I want to emphasize is that rate increases are not there just for the asking. As you know, the Commission has a professional staff of accountants, engineers, financial analysts, economists, and lawyers as well as the authority to retain similarly qualified consultants in order to investigate the reasonableness of any request for a rate increase. And from direct personal experience I can assure you that such investigations are always undertaken and they are always thorough and rigorous. At the completion of such an investigation, a recommendation is made to the Commission with respect to the reasonableness of any requested rate increase. In addition, any customer of a public utility company is permitted to intervene and actively participate in rate increase proceedings. This frequently occurs and results in recommendations in addition to that made by the Commission Staff. In KG&E's recently concluded rate case, for example, the intervenors included the Kansans for Sensible Energy, the Sierra Club, two low-income customers

of KG&E represented by Kansas Legal Services, Vulcan Materials Company, and a group of industrial customers of KG&E. In addition, public hearings are held throughout a public utility's service area so that individual customers who do not wish to intervene but would like to make their views known are given that opportunity. It is on the basis of all that information that the Commission rules upon rate increase requests. What I am trying to get across to you is that the procedures which are presently in place in Kansas for handling rate increase requests are more than adequate to assure that public utilities do not receive unwarranted rate increases.

In summary, if Senate Bill 196 becomes law it will violate the constitutionally protected "bargain" between the customers and owners of public utility companies, namely that, in return for being obliged to provide service on demand at government regulated prices, the owners of public utility companies are entitled to a real opportunity to earn a fair return on their investment in the facilities necessary to provide utility service.

Thank you.

Claycomb

Attachment 2

THE GAS SERVICE COMPANY
2460 PERSHING ROAD, KANSAS CITY, MISSOURI 64108

IN RE: SENATE BILL NO. 196

COMMENTS

The Gas Service Company opposes passage of Senate Bill No. 196. The significant change in this legislation is to restrict public utilities to filing only one increase in any rate or charge within any twelve month period. Recently, it has been the experience of The Gas Service Company that in order to adequately recover escalating costs, due to inadequate rate relief, it has been necessary to file more than one rate case within twelve month periods. Under present structure, purchase gas adjustments are passed through to the consumer at least twice a year. These purchase gas adjustments arise out of rate increases granted to the pipeline suppliers by the Federal Energy Regulatory Commission. By application to the Kansas Corporation Commission, these increases are passed through to the consumer. Arguably, Senate Bill No. 196 would prevent this from occurring. The Gas Service Company simply cannot stay in business under these circumstances.

Presently, The Gas Service Company has on file with the Kansas Corporation Commission a request for an emergency increase and plans to file a request for a permanent increase in March of 1983. If the Company could not file an increase except after a twelve month waiting period, the Commission would be unable to grant any increase to the Company when it needed one even if the Commission, after consideration of all the issues, deemed it to be in the public interest to grant such increase. It is highly unlikely that the Commission on its own would investigate the Company's rates and then increase those rates without an application or filing on behalf of the Company. The legislation therefore ties the hands of the

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Commission as well as the public utility company.

The proposed legislation would have an adverse effect upon filings before the Kansas Corporation Commission. Presently, rates are established for the future based upon past experience. It is extremely difficult to review past experience and make accurate judgments concerning the future. The difficulty of making these projections and in requesting sufficient relief would increase dramatically if the utility and the Commission were limited as proposed. Presently, the Commission has flexibility to increase (or decrease) rates or charges in emergency situations. A classic example of such an emergency situation presently confronts The Gas Service Company. Due to extremely poor earnings of The Gas Service Company, it has become necessary for The Gas Service Company to request emergency relief. Under Senate Bill No. 196, this procedure would not be available. The result would in the present case result in the termination of operations of The Gas Service Company.

It is therefore respectfully submitted that Senate Bill No. 196 should not be passed.

Attachment 3

STATEMENT BY SENATE MINORITY LEADER JACK STEINEGER
S.B. 221 FEBRUARY 24, 1983

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I APPRECIATE THE OPPORTUNITY TO TESTIFY FOR THE SECOND TIME IN TWO DAYS ON WHAT MANY KANSANS CONSIDER THE FOREMOST PROBLEM OF THIS LEGISLATIVE SESSION--THE OUTRAGEOUS, AN I DON'T USE THAT WORD LIGHTLY--OUTRAGEOUS NATURAL GAS PRICES BEING CHARGED KANSAS CONSUMERS. I DOUBT THAT THERE'S A SINGLE KANSAS LEGISLATOR WHO HASN'T HEARD COMPLAINTS FROM CONSTITUENTS ABOUT THE BURDENSOME AND OPPRESSIVE PRICES BEING CHARGED FOR NATURAL GAS, AND THE TIME HAS COME FOR ACTION, NOT EXCUSES.

AS STATE LEGISLATORS, WE ALL KNOW THAT MUCH OF THE PROBLEM HAS BEEN CAUSED BY FEDERAL POLICIES SET IN WASHINGTON, D.C. LITERALLY HUNDREDS OF BILLS HAVE BEEN INTRODUCED IN THE FEDERAL CONGRESS SINCE LAST FALL---ALL DIRECTED AT NATURAL GAS PRICES. BUT INTRODUCING BILLS AND CORRECTING INJUSTICE AREN'T THE SAME THING. SO FAR, THERE'S BEEN NO MEANINGFUL MOVEMENT AT THE FEDERAL LEVEL TO TAKE CONTROL OF RUNAWAY NATURAL GAS PRICES. LIKEWISE, EFFORTS TO REGAIN CONTROL OF GAS COMPANY BUSINESS PRACTICES---SUCH AS SIGNING "TAKE OR PAY" CONTRACTS AT SKY-HIGH PRICES---ARE NOT GAINING MOMENTUM.

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THE CURRENT NATURAL GAS SITUATION IN KANSAS IS OBSCENITY BILLIONS OF CUBIC FEET OF CHEAP NATURAL GAS, SOME OF IT COSTING LESS THAN 50¢ AN MCF, SIT UNTAPPED IN SOUTHWEST KANSAS WHILE KANSAS CONSUMERS ARE FORCED TO PAY FOR $6.80 GAS FROM WYOMING. THE AVERAGE PRICE OF NATURAL GAS IN KANSAS LAST YEAR WAS $1.18, ABOUT A SIXTH OF THE PRICE OF WYOMING GAS. AND, WHILE THE KANSAS PRICE ROSE SLIGHTLY LAST YEAR, PRODUCTION OF KANSAS GAS FELL 33%. "TAKE OR PAY" BUSINESS PRACTICES HAD A LOT TO DO WITH THE DECLINE IN KANSAS PRODUCTION, BUT THE MATERIAL HARM FLOWING FROM THESE CLAUSES ISN'T LIMITED TO SHUTTING DOWN KANSAS GAS WELLS.

IN A FILING LAST FALL WITH THE FEDERAL ENERGY REGULATORY COMMISSION, ONE KANSAS GAS SUPPLIER ACKNOWLEDGED THAT ITS "TAKE OR PAY" DEFICIENCY FOR 1983 WOULD AMOUNT TO NEARLY $150 MILLION, WITH THE TOTAL DEFICIENCY GROWING TO ABOUT $350 MILLION IN THE NEXT FOUR YEARS. IN OTHER WORDS, TODAY'S CONSUMERS WILL BE FORCED TO PAY OUT AN EXTRA $150 MILLION IN 1983 FOR GAS THAT'S NOT DELIVERED.

GAS COMPANIES CALL THEIR AGREEMENTS "TAKE OR PAY." WHAT THEY REALLY SHOULD BE CALLED IS "PAY OR PAY." KANSAS CONSUMERS GET TO PAY IF THEY DO__AND THEY GET TO PAY IF THEY DON'T. THAT'S WHY WE'VE INTRODUCED S.B. 221.

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THIS BILL WOULD AMEND K.S.A. 66-107, THE BASIC LAW COVERING DISCRIMINATORY AND UNJUST RATES. THIS BASIC STATUTE PROHIBITS AND DECLARES VOID EVERY "UNJUST" RATE.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THERE'S HARDLY A PERSON IN THIS STATE WHO CONSIDERS IT "JUST" TO FORCE KANSANS TO BURN $6.80 GAS WHILE $1.18 GAS GOES UNUSED. THERE'S HARDLY A PERSON IN THIS STATE THAT CONSIDERES IT "JUST" TO CURTAIL THE PRODUCTION OF CHEAP KANSAS GAS IN FAVOR OF IMPORTING EXPENSIVE GAS FROM WYOMING, OKLAHOMA AND TEXAS.

SO THIS BILL CARRIES OUT, IN THE STATUTE, WHAT WE ALL KNOW TO BE THE TRUTH: RATES BASED ON EXPENSIVE "TAKE OR PAY" GAS ARE UNJUST. AND UNJUST RATES, UNDER OUR LAW, OUR VOID.

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THIS WILL BE A GOOD LAW FOR KANSAS. FIRST, IT WILL STIMULATE THE PRODUCTION OF KANSAS GAS. THERE'S NOT A ROYALTY OWNER OR GAS PRODUCER WHO WOULDN'T APPRECIATE ENHANCED PRODUCTION.

SECOND, IT WOULD BRING SOME SANITY GACK TO GAS PRICING BY FORCING GAS COMPANIES TO TURN OFF THEIR "TAKE OR PAY" PRACTICES AND USE THE CHEAPEST GAS AVAILABLE. AND IF SUPPLIERS USE CHEAP GAS---SUCH AS THE GAS ABUNDANTLY AVAILABLE IN KANSAS---THE PRICE TO KANSAS CONSUMERS WOULD DROP SUBSTANTIALLY. WHAT KANSAS CONSUMER---RESIDENTIAL, BUSINESS OR INDUSTRIAL---WOULDN'T WELCOME CHEAPER GAS?

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AS AN ATTORNEY, I REALIZE THAT THE GAS COMPANIES FIRST ATTACK ON THIS BILL WILL BE TO QUESTION ITS CONSTITUTIONALITY. THEY'RE GOING TO SAY "TAKE OR PAY" IS A FEDERAL QUESTION---THAT KANSAS DOESN'T HAVE ANYTHING TO SAY ABOUT GAS POLICIES AND RATES.

I WOULD SUGGEST TO THEM, FIRST, THAT THEY READ THE CONSTITUTION. STATES HAVE THE RIGHT TO PROTECT THE HEALTH, SAFETY AND WELFARE OF THEIR PEOPLE. IT'S KNOWN AS THE POLICE POWER.

WHEN GAS RATES THREATEN THE HEALTH, SAFETY AND WELFARE OF OUR CITIZENS, WE HAVE THE RIGHT TO CONTROL THOSE RATES. WE HAVE THE RIGHT TO DETERMINE WHAT'S FAIR AND JUST---AND WHAT'S UNFAIR AND UNJUST. NO WHERE IN THE CONSTITUTION DOES IT SAY THAT GAS COMPANIES HAVE MORE POWER THAN STATES. NO WHERE DOES IT SAY THAT KANSAS GAS RATES BELONG EXCLUSIVELY THE FEDERAL BUREAUCRATS.

THAT'S NOT TO SAY THERE AREN'T SOME LEGAL QUESTIONS INVOLVED CONCERNING THE RELATIONSHIP OF STATE AND FEDERAL LAW. MY SUGGESTION TO THIS COMMITTEE---AND THE LEGISLATURE---IS THAT WE PASS THIS BILL INTO LAW. THEN, IF THE "TAKE OR PAY" GAS COMPANIES THINK THEY HAVE A LEGITIMATE COMPLAINT, LET THEM SUE US. LET THEM TAKE US TO COURT---AND WE'LL GET TO THE BOTTOM OF THIS "TAKE OR PAY" INJUSTICE ONCE AND FOR ALL.

BEFORE CLOSING, I WOULD LIKE TO MAKE ONE OTHER POINT. WE CAN EXPECT A CHORUS OF UNCONSTITIONALITY TO RISE, AS USUAL, WHENEVER KANSAS ATTEMPTS TO CONTROL THE BUSINESS PRACTICES OF GAS COMPANIES.

WE ALL REMEMBER THE PRICE PROTECTION ACT PASSED BY THIS LEGISLATURE SEVERAL YEARS AGO. THAT ACT WAS PASSED OVER THE STRONG OBJECTIONS OF THE GAS INDUSTRY. THEY TOLD US, TIME AFTER TIME, YOU CAN'T DO IT. IT'S UNCONSTITUTIONAL. WELL, LET'S LOOK AT THE RECORD.

THE NATURAL GAS PRICE PROTECTION ACT HAS BEEN UPHELD ON FIVE OCCASIONS SO FAR. IT WAS UPHELD BY BOTH THE KANSAS SUPREME COURT AND THE SUPREME COURT OF THE UNITED STATES. IT WAS UPHELD BY TWO FEDERAL DISTRICT COURTS. IN FIVE COURT TESTS, KANSAS WON FIVE TIMES. ONE APPEAL IS STILL PENDING, BUT IT APPEARS THE CHANCES OF KANSAS LOSING THAT APPEAL ARE MINIMAL.

FIVE OUT OF FIVE. THAT'S NOT A BAD RECORD FOR A BUNCH OF CITIZEN LEGISLATORS WHO ACTED IN THE PUBLIC INTEREST INSTEAD OF LISTENING TO ENERGY COMPANY LOBBYISTS. THAT'S ALL I'M ASKING TODAY. LISTEN TO THE PEOPLE. LOOK AT THE PUBLIC INTEREST--- AND THEN DO WHAT'S RIGHT.

THANK YOU VERY MUCH.

Attachment 4

TO: Senate Committee
BY: R. D. Randall
RE: Opposition to S.B. #221

February 24, 1983

Mr. Chairman and members of the Committee, I am Dick Randall, General Counsel for Petroleum, Inc., and Chairman of the KIOGA Legislative Committee. We are opposed to passage of S.B. #221.

We assume the purpose of this bill is to force utilities and common carrier pipelines to sell their cheapest natural gas first, regardless of contract obligations. The bill declares any rate unjust, if it: (a) includes "take or pay" contract gas, and (b) exceeds the price at which any other gas is available. The purpose is desirable, but the method is not.

Most gas purchase contracts in Kansas and in other states have some form of a take or pay clause. The purpose of such clauses is to satisfy the purchasers need for a long term supply of gas, and at the same time satisfy the producers need for a minimum income from his gas well.

Natural gas is produced only when it is being sold. Oil can be stored in tanks, but natural gas must be sold as it is produced. The pipeline purchaser (not the producer), regulates the production of gas from each gas well on its system.

The producer wants take or pay language in his gas contract, so the purchaser will pay for a minimum amount of gas, even though no gas is taken. Such pre-payments satisfy the implied covenant to market of the lease, and keep the well economic by paying monthly operating costs.

The purchaser has a specified time (usually 5 years), in which to make-up (take) the gas already paid for. The formulas for taking make-up gas vary, but the objective is to prevent any loss by the purchaser. Our experience has been that take or pay clauses are very seldom activated. Only 2 wells of ~200 have take or pay clauses activated.

Paragraph (b) establishes the presumption that take or pay clauses cause unjust rates and are inherently bad. Unjust rates are caused by excessively high contract prices, not by take or pay clauses. The current law adequately defines the standards for determining unjust rates, and the reference to take or pay clauses only confuses those standards.

This amendment would add uncertainty to the rate making process. It would permit arbitrary interference by the KCC into the contract obligations of utilities and common carrier pipelines. When is natural gas otherwise available at a lower price? No specific standards for such a determination is given in this bill.

It is often said that bad facts make bad law. We urge you not to tamper with existing rate making law to solve a unique, short term gas price problem. Apparently that problem is being corrected by the parties, and the damage already done cannot be corrected by this bill.

We urge you to vote "no" to S.B. #221.

Thank you.

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Attachment 5

SENATE BILL NO. 221

Testimony of David S. Black
Senior Vice President - Law
The Kansas Power and Light Company

Senate Bill 221 is intended, as we understand it, to prevent a public utility such as KPL from passing on to its customers any costs incurred under take-or-pay provisions of any gas purchase contract.

Although the purpose of this legislation is to protect consumers from increases in their gas bills, its effect could be to place tremendous financial burden on the State's principal utility companies, jeopardizing their continued ability to serve the public.

KPL operates three separate and distinct gas systems in Kansas. Its Main System serves over 100,000 customers and is supplied almost entirely with gas purchased from Kansas gas fields, the two largest being Hugoton and Spivey-Grabs. KPL has over 100 separate gas purchase contracts with producers from Kansas fields amounting to about 50 BCF annually. About 75 of these contracts, representing 40 BCF annually, contain various take-or-pay provisions which KPL had to agree to during negotiations in order to secure a long term gas supply. Typically, producers require take-or-pay clauses in contracts to be able to secure financing. Essentially, take-or-pay clauses provide that the purchaser must take a specified minimum volume of gas which, if not taken during a contract year nor made up within a specified period, must be paid for nonetheless.

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On its Main System, KPL has never passed on charges to its customers from the operation of take-or-pay clauses. It has, on occasion, because of temporary market conditions, chosen to take less than the contract minimums under certain of its contracts within a contract year; but we have always made up those minimums within the specified period and thus, never have paid for gas not taken, nor do we intend to.

In the foreseeable future, we do not expect that KPL will be exposed to the operation of take-or-pay clauses, because we have diverse markets for our gas and underground storage capability that will allow substantial variation in market demand without exposure to take-or-pay charges. So on KPL's Main System, the proposed legislation will have no effect whatsoever on KPL or upon its customers.

However, the situation could be entirely different on the two other gas systems that KPL operates in Kansas. We serve customers in the Northeast part of the state (notably Atchison, Leavenworth, Lansing, and Emporia) with gas that is purchased from Northwest Central Pipeline Corporation. Similarily, we distribute gas to nine other Kansas towns that is purchased from Northern Natural Gas Company.

These two interstate pipeline companies acquire their gas under hundreds of different contracts with many independent producers and all are subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission. We understand that many of these contracts contain some type of take-or-pay

provision and of course, KPL is not a party to any of these contracts.

In the management of its gas supply in an uncertain market, interstate pipelines are necessarily exposed to substantial potential payments to their producers because of take-or-pay considerations---particularly during this current economic downturn which has resulted in sharply curtailed demand for gas. Such payments have normally been allowed by FERC as purchased gas adjustments and pipelines have been permitted by FERC to pass them on to their utility customers. These increases in prices to the utilities have universally been treated by state regulatory commissions as necessary purchased gas costs over which the utility has no control.

To deny a utility the opportunity to recover its purchased gas costs would clearly be confiscatory. Moreover, the possible magnitude of such costs would have the very real potential of forcing bankruptcy on the State's gas utilities which purchase in the interstate market. Such a calamity would scarcely serve the interests of the ultimate Kansas gas customer that this proposed legislation is intended to protect.

It is clearly the responsibility of FERC to scrutinize the legitimacy of all charges incurred by the interstate pipelines before any portion of them can be passed on to the local gas utility company. Indeed, in proceedings now pending before FERC, that agency and numerous intervenors including the state of Kansas and the state's principal gas utilities, are questioning the nature of take-or-pay costs incurred by Northwest Central

Pipeline Co., to determine whether they are appropriate elements of the pipeline's purchased gas costs. This is the forum in which that decision is properly made. But to the extent they are approved, those charges-- whether incurred under take-or-pay contracts or not--become part of the purchased gas cost of the utility. KPL will purchase some $50 million worth of gas from interstate pipelines in 1983. If this bill is enacted into law, and KPL is unable to recover all of its purchased gas costs, it will simply be unable to pay its supplier for the gas it buys, thus breaching its contract and subjecting itself to legal action for damages, and the prospect of losing the gas supply.

We do not suggest that the purchased gas costs, including take-or-pay charges actually incurred by a utility purchaser under provisions of contracts that it has entered into directly with its producer or pipeline suppliers should not be closely examined by the Kansas Corporation Commission to determine whether the utility has acted prudently in the negotiation of such provisions or in the management of its purchases and its resale market. The Kansas Corporation Commission clearly has that legal responsibility which it exercises with diligence. Such judgments, however, can only be made on a case by case basis after examination of the factors affecting each such utility.

This proposed legislation, however, makes a single sweeping legislative judgment that the portion of a utility's purchased gas cost which may represent take or pay charges incurred by its supplier and approved by FERC, is unjust and unreasonable irrespective of the circumstances and without regard to the fact that the utility purchaser had no part whatever in incurring any such contractual obligation between the pipeline and the gas purchaser.

KPL believes that this proposed legislation is wholly unnecessary and in fact, could seriously damage or even destroy a gas utility in Kansas upon which the citizens of this state depend. We believe Senate Bill 221 should be rejected.