Approved 3/29/84
Date

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources.

The meeting was called to order by Representative David J. Heinemann at
Chairperson

3:30 ~~x.m.~~/p.m. on February 21, 1983 in room 313-S of the Capitol.

All members were present except: Representative Ben Foster (excused)

Committee staff present:
Ramon Powers, Legislative Research
Theresa Kiernan, Revisor of Statutes' Office
Pam Somerville, Committee Secretary

Conferees appearing before the committee:
Ron Fox, Kansas House of Representatives
Ken Grotewiel, Kansas House of Representatives
Brian Moline, Kansas Corporation Commission
John Myers, Office of the Governor
John Simpson, Fairway, Kansas
Diane Tegtmeier, Community Energy Associates
Roger Grund, Home Owners Tax
Lee Woodard, Kansans for Fair Electricity

Hearing for proponents on HB 2810 - public utilities; excess capacity. HB 2927 - Valuation of properties for public utilities for ratemaking purposes; HB 2964 - excess electric generating capacity.

Chairman Heinemann, in opening remarks, said the committee would conduct hearings on all three bills simultaneously in view of the fact that each was similar in structure. The bills, HB 2810, HB 2927 and HB 2964, contain provisions to allow the Kansas Corporation Commission the authority to determine what is excess capacity and how much of that excess capacity should be allowed in the rate base.

Representative Ron Fox, co-sponsor of HB 2927, addressed the committee on the contents of the legislation and stressed the fact that it was not an "anti-nuke" bill. He stated there were two central themes to the legislation: 1) to allow the corporation commission investagative powers and 2) the regulatory powers to deal with the answers to the questions. He stressed the fact the committee should only determine what powers the Corporation Commission needs, and not solutions. (See Attachment 1).

Representative Ken Grotewiel, sponsor of HB 2964, gave testimony in support of HB 2964. He stated the Kansas Corporation Commission has broad regulatory powers over utilities, however, such authority has been limited by both legislative and judicial decisions. Representative Grotewiel stated the provisions in HB 2964 were designed to broaden the power of KCC and clarify what techniques could be used by the Commission. (See Attachment 2).

Brian Moline, General Counsel, Kansas Corporation Commission, appeared in support of HB 2810. Mr. Moline stated the bill, requested by the Commission, was drafted in an attempt to address two important areas of regulatory discretion. He stated "it is fundamental law that state regulatory commissions exercise legislative authority when establishing rates. It is also fundamental that administrative bodies in general and regulatory agencies, in particular, have only such jurisdiction as is conferred by stated." (See Attachment 3).

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources,

room 313-S, Statehouse, at 3:30 ~~xxx~~/p.m. on February 21, 1984.

John Myers, Office of the Governor, appeared on behalf of the Governor to express support of legislation that would provide the Kansas Corporation Commission the maximum flexibility to exclude from the rate base portions of power plants which the Commission determines to be excess capacity. Mr. Myers stated the Governor believes that utilities and their investors should not be held harmless from financial responsibility for excess capacity at the expense of Kansas ratepayers. (See Attachment 4).

John Simpson, Fairway, Kansas, addressed the committee in support of HB 2927. Mr. Simpson stated the "bottom line" of the issue was that Kansans should not have to pay for the mistakes of management of KGE and KCPL. He went on to say that we live in a free enterprise system, and each investor takes the risk when buying stocks or bonds. (See Attachment 5).

Diane Tegtmeier, Consultant for Community Energy Associates, appeared in support of HB 2927. Ms. Tegtmeier gave the history surrounding initial hearings on construction of Wolf Creek, and that her data indicated Wolf Creek would not have been necessary until the year 1990, and if energy were conserved, probably never. She stated utility companies testified then (1974) that they would successfully finance Wolf Creek without Construction Work in Progress in the rate base. (See Attachment 6).

Roger Grund, Executive Director, Home Owner's Tax, appeared in support of the proposed legislation. Mr. Grund stated this was not an issue that his organization went looking for, but rather it found them. Mr. Grund indicated that figures and estimates that Wolf Creek increases would be around 50-80% were obtained from the Kansas Corporation Commission. He expressed concern about the impact the rate increases would have on rate payers in the community. (See Attachment 7).

Mr. Lee Woodard, appearing on behalf of Kansans for Fair Electricity, was the last conferee. Mr. Woodard, in prepared testimony, state that simply put, if Wolf Creek is allowed to go on line in its entirety, it would cause the largest percentage across the board major rate increase in the state's history. (See Attachment 8).

A brief question and answer period followed each presentation.

The Chairman announced that hearings would continue on Wednesday and Thursday (2/22 and 2/23/84) on HB 2810, HB 2927, and HB 2964.

There being no further business before the committee, the meeting was adjourned at 5:30 p.m.

The next scheduled meeting of the House Energy and Natural Resources Committee will be held in the Old Supreme Court Chambers, Room 313-S, on Wednesday, February 22, 1984.

Rep. David J. Heinemann, Chairman

Date 2-21-84

GUESTS

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

NAME	ADDRESS	ORGANIZATION
BILL EWING	TOPEKA	S.W. BELL
Genaro Gutierrez	Topeka	NCAMP
Gerald Dougherty	Humboldt	self
Barb Reimert	Topeka	KWPC
Don Snyder	Topeka	self
George A. Duggan	"	Ks Dept. on Aging
Ralph J. Turner	Lawrence	Kansas Coalition on Aging
Ron Calbert	Newton	U.T.U.
Helen Stephens	Prairie Village	LWV - Jo. Co.
Jim Flaherty	TOPEKA	KCC
[illegible]	Topeka	KCC
David W. Nichols	Topeka	KCC
JOE KING	LAWRENCE	Wilson, Hoover, King
Jan Johnson	Topeka	Budget Division
Rick Kaufman	KC	self
Marianne O'Connell	O.P. KS.	KS Resource Council
Keith Wiens	Newton	Harvey County Citizen's Energy Project
Charles Lesher	Chanute	Ratepayer
Whitney Damron	Topeka	KNRC
Steve Stephens	Lawrence	NAW
Diane Tegtmeier	Westwood	self
John Simpson	Fairway	"

Date 2/21/84

GUESTS

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

NAME	ADDRESS	ORGANIZATION
Dale Koll	RT2 Marysville, KS. 66508	
Leo & Lucille Schmitz	1403 Calhoun Marysville Ks 66508	
Marsha Marshall	DeSoto	KNRC
Marie Bailey	1617E 32nd Topeka	NAMP
Paul Johnson	Topeka	PACK
Fred Bentley	Whiting	Kansas Rural Center
Greg Schmitz	Marysville Ks	KNRC
John Vandeberg	Home Ks	
Jay Scott	Lawrence	Rep. Rolfs
Susan Harris	Belvue Ks	KNRC
Kathryn Hund	Paxico, KS	KNRC
Hazel Cramer	Topeka, Ks	NAMP
Al Noll	Winchester KS	Lear Jeff Elec Coop
Ken [illegible]	Topeka	Gov Office
O.C. Hanson	Topeka	NAMP
Vivian Henson	✓	NAMP
Martha Dodson	Topeka	NAMP
Leonard Dodson	Topeka	NAMP
C P Wetlaufer	Topeka	NAMP
Connell O. Carpenter	Topeka	NAMP
Joe Furjanic	Topeka	KASB
Bill Curtis	Topeka	KASB

Date 2-23-84

GUESTS

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

NAME	ADDRESS	ORGANIZATION
Ed Peterson		KCC
Marjorie Carson	1400 N. 69, KCK.	
Katherine Wahl	5100 W. 71 Terr. P.V. KS	
Elaine Shea	6025 Cherokee Dr., Fairway	
Mai Peterson	1516 Topeka Ave, Topeka	KNRC
Vicky Foth	1516 Topeka ave, Topeka	KNRC
Delores Tolar	P.O. Box 645, Lawrence, Ks.	Appropriate Technology Center, Lawrence
Leslie Abmann	Atchison Kans Rt 2 66002	
John Stitz	Rt 1. Box 481 A. Leavenworth Ks.	Farmer & Homeowner Catholic Rural Life
Rick Kready	Topeka	KPL / Gas Service Co.
Bob Hannigan	Topeka	A.G.'s office

member of Jackson county Please vote "NO"

STATE OF KANSAS

RON FOX
REPRESENTATIVE, TWENTY-FIRST DISTRICT
JOHNSON COUNTY

TOPEKA

COMMITTEE ASSIGNMENTS
VICE-CHAIRMAN: ENERGY AND NATURAL RESOURCES
MEMBER: ELECTIONS
NATIONAL CONFERENCE OF STATE LEGISLATURES COMMITTEE ON NATURAL RESOURCES AND ENVIRONMENT

HOUSE OF
REPRESENTATIVES

Testimony on HB 2927

Mr. Chairman and committee members, thank you for the opportunity to testify on HB 2927.

Before I discuss what HB 2927 does, I would like to discuss what it is not. First and foremost, it does not prejudge the most frequently asked questions related to Wolf Creek; is there excessive capacity, excessive cost or prudence in management? It is not an "anti-nuke" bill. It is not an attempt to address CWIP. Again, as the committee deliberates HB 2927, I would ask you to keep in mind what it is not as well as what it is.

There are two central themes to HB 2927. The bill was drafted to give the corporation commission the investigative powers to formulate and ask questions, many questions which have not been asked. It also gives them regulatory powers to deal with the answers to those questions. Rather than go through the bill, I have provided you with an outline of the major provisions of the bill.

The endorsement of any specific plan which offers a legislative solution is premature and may not be in the best interest of the investors and/or consumers. The most reasonable approach must be based upon a comprehensive indepth study of the economic and demand requirements of Wolf Creek. The financial integrity of

STATE CAPITOL
TOPEKA, KANSAS 66612
(913) 296-7669

4216 W. 73RD TERR.
PRAIRIE VILLAGE, KANSAS 66208
(913) 831-0467

Attachment 1
2-21-84

these companies should only be advanced by public disclosure. HB 2927 provides for one restriction. If the SCC finds in favor of a partial phase-in the additional carrying cost could not be passed on to the consumer.

The issue before this committee can not become one of the legislative solutions. The legislature does not have the time nor the expertise to deal with solutions. This committee should only deal with what powers the SCC needs. These hearings should be limited to the regulator powers question.

Finally, the bigger question of regulation and public trust must be addressed.

Since the utilities are in fact somewhat guaranteed a reasonable return by statute, inherent in this guarantee of return is a public trust that the utilities will exercise reasonable judgment in regard to necessity or cost. If reasonable judgment is not exercised, then the public trust has been violated and a reasonable rate of return should not be expected.

The question basic to issue is "Has that basic trust been violated?"

Giving the SCC the powers for full public review and disclosure by the SCC is the only way that question can be answered.

Outline of HB 2927

Sec. 1 is existing law, but is amended to allow SCC to determine what percentage of utility property is used in service to the public for rate base purposes.

Sec. 2 allows SCC to evaluate the prudence of construction practices and to exclude any portion of costs incurred due to lack of prudence.

Sec. 3 allows SCC to determine if a utility has excess generating capacity (beyond what it determines necessary to provide adequate and reliable service). If determined to be in excess, the costs of building such capacity may be excluded under Sections 1 or 2 or phased in under Section 6.

Sec. 4 allows the SCC to immediately initiate a proceeding to determine if costs of a facility were prudently incurred or incurred in building excess capacity. The expedited hearing and appeal procedure of the siting law is adopted.

Sec. 5 allows the SCC to make an advance determination of whether certain costs are to be excluded or phased in.

Sec. 6 allows the SCC to determine if certain costs shall be deferred and phased into the rate base. If phase-in is ordered, it must be over not less than ten nor more than fifteen years.

Sec. 7 requires the SCC, in the event it determines that certain costs shall be phased in, to permanently exclude all carrying costs associated with the portion excluded or disallowed which carrying costs are incurred during the period of phase-in; that is, the stockholders and investors shall be required to carry the portion of the costs determined to be excess for the phase-in period, and never be reimbursed by the ratepayers.

STATE OF KANSAS

KEN GROTEWIEL
REPRESENTATIVE, NINETY SECOND DISTRICT
611 WEST 12TH
WICHITA, KANSAS 67203

TOPEKA

COMMITTEE ASSIGNMENTS
MEMBER: ENERGY AND NATURAL RESOURCES
FEDERAL AND STATE AFFAIRS
ELECTIONS

HOUSE OF
REPRESENTATIVES

February 21,1984

TO: House Energy Committee

FROM: Ken Grotewiel

RE: HB 2964 (excess capacity)

The KCC is presently given broad regulatory power over utilities. Such authority has been limited by both legislative and judicial decisions. HB 2964 is aimed at broadening the power of the KCC by clarifying what techniques can be used by the Commission to regulate all utilities in the State.

Under by Bill;

1. Part of the cost of a plant would be excluded from the rate base if excess capacity resulted from its completion and operation (048-051)

2. Costs incurred by the utility in financing capacity excluded from the rate base could not be passed on to the rate payer (051-052)

3. If completed plants do not attain a "reasonable capacity factor", the Commission would be required to exclude part of the plant from the rate base in direct proportion to the plant's failure to operate efficiently. (059-063)

4. No part of a plant could be put into the rate base of a utility unless it was "commenced and completed" in one year. (0057)

I feel these four elements need to be part of any excess capacity bill and I urge the Committee members to include them in any bill that comes out of this Committee.

Attachment 2
2-21-84

TESTIMONY OF BRIAN J. MOLINE
GENERAL COUNSEL - KCC
ON HB 2810

HB 2810 WAS DRAFTED BY CORPORATION COMMISSION STAFF TO CLARIFY LEGISLATIVE INTENT IN TWO IMPORTANT AREAS OF REGULATORY DISCRETION. IT IS FUNDAMENTAL LAW THAT STATE REGULATORY COMMISSIONS EXERCISE LEGISLATIVE AUTHORITY WHEN ESTABLISHING RATES. IT IS ALSO FUNDAMENTAL THAT ADMINISTRATIVE BODIES IN GENERAL AND REGULATORY AGENCIES IN PARTICULAR HAVE ONLY SUCH JURISDICTION AS IS CONFERRED BY STATUTE.

THE KANSAS REGULATORY SCHEME FOR PUBLIC UTILITIES AND COMMON CARRIERS IS CONTAINED IN CHAPTER 66. K.S.A. 66-101 AND K.S.A. 66-141 GRANTS THE COMMISSION BROAD AUTHORITY:

"66-101

> THE STATE CORPORATION COMMISSION IS GIVEN FULL POWER, AUTHORITY AND JURISDICTION TO SUPERVISE AND CONTROL THE PUBLIC UTILITIES....AND IS EMPOWERED TO DO ALL THINGS NECESSARY AND CONVENIENT FOR THE EXERCISE OF SUCH POWER...."

66-141:

> THE PROVISIONS OF THIS ACT AND ALL GRANTS OF POWER, AUTHORITY AND JURISDICTION HEREIN MADE TO THE COMMISSIONERS, SHALL BE LIBERALLY CONSTRUED, AND ALL INCIDENTAL POWERS NECESSARY TO CARRY INTO EFFECT THE PROVISIONS....ARE HEREBY EXPRESSLY GRANTED....

Attachment 3
2-21-84

THIS SEEMINGLY CLEAR GRANT OF BROAD LEGISLATIVE AUTHORITY AND INTENT HAS BEEN CLOUDED SOMEWHAT BY COURT DECISIONS. HB 2810 ATTEMPTS TO CLARIFY LEGISLATIVE INTENT IN THE CRUCIAL AREA OF REGULATORY DISCRETION.

IN ORDER TO UNDERSTAND THE EFFECTS OF HB 2810, ONE MUST FIRST VIEW THE DECISION IN THE CASE OF KG&E v. KANSAS CORPORATION COMMISSION (218 KAN. 670, 1976). IN THAT CASE, THE KANSAS GAS AND ELECTRIC COMPANY APPEALED A DECISION BY THE CORPORATION COMMISSION WHERE THE COMMISSION HAD EXCLUDED A PORTION OF THE LACYGNE PLANT BECAUSE MECHANICAL FAILURE PREVENTED THE PLANT FROM OPERATING AT FULL CAPACITY. THE COURT HELD THAT PORTIONS OF PLANT IN SERVICE COULD NOT BE EXCLUDED FROM RATE BASE SIMPLY BECAUSE OF MECHANICAL FAILURE. THE COURT STATED THAT PORTIONS OF PLANT MAY BE EXCLUDED IN LIMITED CIRCUMSTANCES SUCH AS WHERE THE PLANT IS OBSOLETE. THE OPINION ALSO SUGGESTED THAT THE COMMISSION MIGHT BE ABLE TO EXCLUDE PORTIONS OF PLANT WHERE THE UTILITY OWNED CAPACITY FAR IN EXCESS OF NEED; HOWEVER, ADDITIONAL LANGUAGE IN THE OPINION TENDS TO NEGATE THIS AUTHORITY AND INDICATES JUST THE CONTRARY, THAT THE COMMISSION MAY NOT HAVE AUTHORITY TO EXCLUDE A PORTION OF A PLANT UNIT WHICH REPRESENTS EXCESS CAPACITY FROM THE RATE BASE. CONFUSION HAS RESULTED FROM THE KG&E DECISION; WE ONLY KNOW THAT THE COMMISSION CURRENTLY LACKS THE AUTHORITY TO EXCLUDE A PORTION OF A PLANT WHERE THAT PLANT HAS FAILED SIMPLY BECAUSE OF MECHANICAL FAILURE AS IN THE INSTANCE OF THE LACYGNE PLANT.

As a result of the KG&E v. KCC case, a gap exists in the regulatory scheme. Although the Commission would have jurisdiction through the Plant Siting Act to deny permission for new, impractical or unnecessary construction of new generation, the Commission's authority to address problems arising from plant currently in rate base or under construction without going through the siting process is cloudy. HB 2810 amends K.S.A. 66-128 to insert language which would give the Commission authority to exclude a portion of a generating unit from rate base. Without this authority over current plant, the Commission lacks an important enforcement mechanism by which it can insure that resources are efficiently and fully utilized.

The new Section 2 in HB 2810 attempts to clarify legislative intent where the utility has constructed or acquired new plant and is attempting to have the plant put in rate base and earn return for the first time. Rate base investments include power plants, transmission lines, office space, equipment, etc. with a useful life of one or more years. Ordinarily, a utility is entitled to a rate of return only on plant included in its rate base. Inclusion in rate base of investment in generating capacity in excess of current system needs results in higher rates for consumers; exclusion, on the other hand, puts the financial burden for such excess on utility companies and, in some cases, investors. Such a decision obviously involves sensitive balancing of the competing interests on consumers, utility companies and investors. A number of time

TESTED AND COURT APPROVED FACTORS SHOULD INTERPLAY IN THE DECISION MAKING PROCESS: HOW THE RISK OR CARRYING COSTS ON INVESTMENTS SHOULD BE APPORTIONED BETWEEN RATEPAYER AND INVESTOR; THE EXTENT TO WHICH THE PRUDENCE OF THE ORIGINAL CONSTRUCTION DECISION WEIGHS IN DETERMINING RATEMAKING TREATMENT AND THE BENEFIT THAT MUST ACCRUE TO CURRENT RATEPAYERS BEFORE AN OBLIGATION ARISES TO PAY FOR CAPACITY.

THE CRUX OF THE MATTER CENTERS AROUND THE DIFFICULT PROCESS OF FORECASTING LEVELS OF DEMAND. AN ELECTRIC UTILITY MUST FORECAST DEMAND FAR ENOUGH IN ADVANCE TO ALLOW NEW GENERATING CAPACITY TO BE IN OPERATION WHEN THE ANTICIPATED DEMAND OCCURS. LEVELS OF DEMAND ARE FORECAST TEN OR MORE YEARS IN ADVANCE. DEMAND DEPENDS ON MANY VARIABLES INCLUDING PRICE, CONSERVATION, CONSUMER INCOME, GENERAL ECONOMIC ACTIVITY, NUMBER OF CUSTOMERS AND THE ABILITY OF UTILITIES TO ADJUST FORECASTS TO CHANGES IN THESE AND OTHER VARIABLES. BASED UPON THESE AND OTHER FORECASTS, THE UTILITY MUST MAKE SUCH HARD DECISIONS AS WHETHER TO CONSTRUCT NEW PLANT, WHETHER TO SELL POWER FROM EXISTING UNITS OF GENERATION AND WHETHER TO ENTER INTO LONG TERM PURCHASE POWER AGREEMENTS.

THE QUESTION THAT UTILITY REGULATORS MUST ANSWER IS: WHO SHOULD PAY FOR ERRORS IN FORECASTING? RATEPAYERS, INVESTORS OR A COMBINATION OF BOTH? SUCH AN IMPORTANT QUESTION SHOULD BE ANSWERED IN THE QUASI-JUDICIAL ATMOSPHERE OF A HEARING AND BASED UPON EVIDENCE, UNDER OATH, TESTED THROUGH CROSS EXAMINATION.

THE COMMISSION STAFF HAS ALWAYS BELIEVED THAT AUTHORITY TO ADDRESS EXCESS CAPACITY EXISTS IN THE BROAD GRANT OF POWER IN K.S.A. 66-101 AND 141. ANOTHER RECENT CASE, HOWEVER, HAS FURTHER CAUSED US TO SEEK TO CLARIFY LEGISLATIVE INTENT BY ASKING THAT THE POWER BE EXPRESSLY GRANTED.

IN KANSAS CITY POWER AND LIGHT CO. V. STATE CORPORATION COMMISSION, 9 KAN APR 2, 49, THE KANSAS COURT OF APPEALS REVERSED AN ORDER OF THE COMMISSION IN A TRANSMISSION LINE SITING INQUIRY (K.S.A. 66-1,177 ET SEQ) THAT DENIED A PERMIT ON THE GROUNDS NECESSITY HAD NOT BEEN PROVEN. THE COURT STATED:

> "THE PROVISIONS OF THE KANSAS SITING ACT ONLY DIRECTS A DETERMINATION OF THE REASONABLENESS OF THE LOCATION OF THE PROPOSED ELECTRIC TRANSMISSION LINE. NO AUTHORITY IS GRANTED TO DETERMINE THE NECESSITY OR PUBLIC CONVENIENCE OF THE LINE. (EMPHASIS SUPPLIED)

THIS RULING WOULD APPEAR TO PLACE THE COMMISSION IN THE PARADOXIAL POSITION OF BEING ABLE TO GRANT A SITING PERMIT FOR A TRANSMISSION LINE AND THEN, IN A LATER PROCEEDING, ADDRESSING THE QUESTION OF WHETHER TO ALLOW THE LINE INTO RATE BASE. THE NARROW READING OF COMMISSION AUTHORITY IN THIS CASE INDICATES THE NEED FOR THE LEGISLATURE TO CLARIFY THEIR INTENT REGARDING COMMISSION POWER TO EXCLUDE FAILED, UNNECESSARY OR UNNEEDED PLANT FROM RATE BASE.

I HAVE SEEN A DRAFT OF SUGGESTED AMENDMENTS TO HB 2810 WHICH WOULD SEVERELY LIMIT THE COMMISSION'S AUTHORITY. FIRST,

THE AMENDMENT DELETES THE FOLLOWING LANGUAGE CURRENTLY FOUND IN K.S.A. 66-128:

> "FOR PURPOSES OF THIS ACT, PROPERTY OF ANY PUBLIC UTILITY WHICH HAS NOT BEEN COMPLETED AND DEDICATED TO COMMERCIAL SERVICE SHALL NOT BE DEEMED TO BE USED OR REQUIRED TO BE USED IN THE PUBLIC UTILITY'S SERVICE TO THE PUBLIC, EXCEPT THAT, ANY PROPERTY OF A PUBLIC UTILITY, THE CONSTRUCTION OF WHICH WILL BE COMPLETED IN ONE YEAR OR LESS, MAY BE DEEMED TO BE COMPLETED AND DEDICATED TO PUBLIC SERVICE."

SECONDLY, THE AMENDMENT:

(1) LIMITS APPLICATION OF THE ACT TO PLANT OF AN ELECTRIC UTILITY WHICH BECOMES USED OR REQUIRED TO BE USED AFTER THE EFFECTIVE DATE OF THE ACT AND WHICH WAS NOT THE SUBJECT OF A COMMISSION PERMIT PURSUANT TO THE SITING ACT,

(2) "DEFERS" REVENUE REQUIREMENTS RATHER THAN ADJUSTS THEM,

(3) STRIKES LANGUAGE AUTHORIZING THE COMMISSION TO ADJUST THE REVENUE REQUIREMENT OF A UTILITY OR COMMON CARRIER IF THE REVENUE REQUESTED CONSTITUTES EITHER A RETURN ON OR A RETURN OF COSTS WHICH RESULT FROM IMPRUDENT PLANT ACQUISITION, CONSTRUCTION OR OPERATION AND INEFFICIENT PLANT OPERATION, -

(4) MODIFIES LANGUAGE IN SB 2810 WHICH AUTHORIZES THE COMMISSION TO ADJUST REVENUE REQUIREMENTS IF THE REVENUE REQUESTED CONSTITUTES EITHER A RETURN ON OR A RETURN OF COSTS WHICH RESULT FROM CAPACITY IN EXCESS OF SYSTEM REQUIREMENTS TO

READ THAT SUCH COSTS CAN BE "DEFERRED" IF THEY REPRESENT CAPACITY "UNREASONABLY" IN EXCESS OF "PROJECTED" SYSTEM REQUIREMENT "WITHIN A REASONABLE PERIOD OF TIME THEREAFTER, AND

(5) MODIFIES LANGUAGE IN THE BILL WHICH AUTHORIZES THE COMMISSION TO ADOPT A METHODOLOGY FOR THE INCREMENTAL INCLUSION OF COSTS PREVIOUSLY EXCLUDED FROM THE VALUE OF PROPERTY USED OR REQUIRED TO BE USED AND MANDATES THAT THE COMMISSION "SHALL" ADOPT A METHODOLOGY FOR THE "AUTOMATIC" INCLUSION OF DEFERRED COSTS "INCLUDING REASONABLE CARRYING CHARGES THEREON ALL WITHIN NOT MORE THAN FOUR YEARS THEREAFTER."

IT IS OBVIOUS THAT THE AMENDMENTS:

(1) ELIMINATE THE CURRENT STATUTORY PROHIBITION ON CONSTRUCTION WORK IN PROGRESS (CWIP) IN EXCESS OF ONE YEAR. COMMISSION COULD, UNDER THE AMENDMENT, INCLUDE LONG TERM (CWIP IN RATE BASE,

(2) ELIMINATE THE CURRENT BILL'S LANGUAGE REGARDING MANAGEMENT IMPRUDENCY,

(3) ELIMINATES ANY COMMISSION INQUIRY OF EXCLUDING EXCESS CAPACITY COSTS IN FAVOR OF A LEGISLATIVELY MANDATED DEFERRAL OF SUCH COSTS, AUTOMATICALLY, OVER NO MORE THAN FOUR YEARS.

HB 2927 ALSO INHIBITS COMMISSION FLEXIBILITY. HB 2927:

(1) AUTHORIZES THE COMMISSION TO EVALUATE THE PRUDENCE OF ACQUISITION, CONSTRUCTION AND OPERATION PRACTICES OF A UTILITY AND, IF THE COMMISSION FINDS THAT COSTS WERE INCURRED DUE TO A LACK OF PRUDENCE OR WERE INCURRED IN THE ACQUISITION OR CONSTRUCTION OF EXCESS ELECTRIC GENERATION CAPACITY, THE

COMMISSION IS AUTHORIZED TO EXCLUDE ALL OR A PORTION OF THE COSTS FROM THE REASONABLE VALUE OF UTILITY PROPERTY.

(2) REQUIRES, THAT IN DETERMINING THE REASONABLE VALUE OF UTILITY PROPERTY, THE COMMISSION DETERMINES WHETHER THE UTILITY HAS EXCESS GENERATING CAPACITY (DEFINED AS ANY AMOUNT IN EXCESS OF THE AMOUNT OF CAPACITY REASONABLY NECESSARY TO PROVIDE ADEQUATE AND RELIABLE SERVICE) AND, IF SO, THE COMMISSION IS AUTHORIZED TO "PROHIBIT" OR "REDUCE" THE RETURN ON COSTS WHICH WERE INCURRED IN "CONSTRUCTING, MAINTAINING OR OPERATING EXCESS ELECTRIC GENERATING CAPACITY".

(3) AUTHORIZES THE COMMISSION TO INITIATE, AT ANY TIME, A PROCEEDING TO DETERMINE WHETHER THE COSTS OF ANY PROPOSED ELECTRIC GENERATING FACILITY UNDER CONSTRUCTION OR CONSTRUCTED WERE REASONABLY, PRUDENTLY OR NECESSARILY INCURRED OR WILL HAVE BEEN INCURRED IN PRODUCING EXCESS CAPACITY SO LONG AS THAT FACILITY WAS NOT GRANTED A PERMIT UNDER THE SITING ACT.

(4) AUTHORIZES THE COMMISSION TO INITIATE A PROCEEDING TO DETERMINE WHETHER COSTS OF ANY PROPOSED ELECTRIC GENERATING FACILITY UNDER CONSTRUCTION OR CONSTRUCTED (INCLUDING CARRYING COSTS) ARE TO BE EXCLUDED FROM THE REASONABLE VALUE OF PROPERTY USED IN SERVING THE PUBLIC OR ARE TO BE DEFERRED AND PHASED INTO THE REASONABLE VALUE OF UTILITY PROPERTY AND WHETHER FUTURE CARRYING COSTS ARE TO BE EXCLUDED FROM THE REASONABLE VALUE OF UTILITY PROPERTY.

(5) AUTHORIZES THE COMMISSION TO DEFER AND PHASE INTO THE REASONABLE VALUE OF UTILITY PROPERTY OVER "NOT LESS THAN 10 OR

MORE THAN 15 YEARS" IN SUBSTANTIALLY EQUAL INCREMENTS, COSTS INCURRED IN "CONSTRUCTING OR OPERATING" AN ELECTRIC GENERATING FACILITY WHICH WERE DUE TO "LACK OF PRUDENCE IN PLANT ACQUISITION, CONSTRUCTION OR OPERATION OR INEFFICIENT OPERATION" OR WHICH RESULT IN EXCESS ELECTRIC GENERATING CAPACITY, AND

(6) REQUIRES THAT IN THE EVENT THE COMMISSION FINDS THAT COSTS WERE INCURRED DUE TO LACK OF PRUDENCE IN PLANT ACQUISITION, CONSTRUCTION OR OPERATION OR WERE INCURRED TO CONSTRUCT A FACILITY WHICH IN WHOLE OR IN PART REPRESENTS EXCESS ELECTRIC GENERATING CAPACITY, THE COMMISSION "SHALL EXCLUDE THAT PORTION OF CARRYING OR FINANCE CHARGES INCURRED AFTER THE DATE OF ITS FINDING OR THROUGHOUT THE PERIOD OF ANY DEFERRED OR PHASE-IN OF COSTS" AND "NO PART OF SUCH CARRYING OR FINANCE COSTS EXCLUDED SHALL EVER BE OR BECOME PART OF THE REASONABLE VALUE OF PUBLIC PROPERTY SO USED OR REQUIRED TO BE USED.

WHILE VERY SIMILAR TO HB 2810, HB 2927 APPEARS TO:

(1) STRONGLY SUGGEST AN UNPRECEDENTED PRE-RATE CASE HEARING ON SYSTEM REQUIREMENTS,

(2) REQUIRES A DEFERRAL PERIOD OF NOT LESS THAN 10 NOR MORE THAN 15 YEARS,

(3) FORBIDS, WHATEVER THE CIRCUMSTANCES, THE CARRYING OR FINANCE COSTS OF CONSTRUCTION OF EXCESS CAPACITY TO BE EVER DEEMED PART OF RATE BASE.

(4) IS WOLF CREEK SPECIFIC RATHER THAN BROADBASED.

CONCLUSIONS:

ALTHOUGH THE COMMISSION HAS JURISDICTION UNDER THE PLANT SITING ACT (K.S.A. 66-1,158, ET SEQ) TO DENY PERMISSION FOR NEW, IMPRACTICAL OR UNNECESSARY CONSTRUCTION OF ELECTRIC POWER PLANT, THE COMMISSION APPEARS TO HAVE NO DEFINITIVE, EXPRESS AUTHORITY TO ADDRESS PROBLEMS ARISING FROM PLANT CURRENTLY IN RATE BASE OR NEW PLANT EXEMPTED FROM THE PLANT SITING ACT.

UNLIKE HB 2927 OR THE PROPOSED AMENDMENTS TO 2810, THE ORIGINAL 2810 DOES NOT REQUIRE EXCLUSIONS OR MANDATE SPECIFIC TIME FRAMES. IT MERELY INSURES THE COMMISSION HAS THE FLEXIBILITY NEEDED TO ADDRESS THE COMPLEX AND VEXATIOUS QUESTION OF APPORTIONING COSTS DUE TO EXCESS GENERATING CAPACITY. THE BILL MERELY CLARIFIES LEGISLATIVE INTENT AND AFFIRMS COMMISSION POWER TO EXCLUDE FROM RATE BASE A PORTION OF EQUIPMENT OR PLANT THAT IS NOT CURRENTLY BEING USED TO SERVE CUSTOMERS. IN ITS PRESENT FORM, HB 2927 IS TOO RESTRICTIVE IN THAT IT APPLIES ONLY TO THE WOLF CREEK PLANT. EXCESS CAPACITY IS A STATEWIDE AND UTILITYWIDE PHENOMENON AND HB 2937, ON IT'S FACE, WOULD NOT APPLY TO THE HOLCOMB PLANT NOR TO TELEPHONE CONSTRUCTION OR OPERATIONS.

IT SHOULD ALSO BE NOTED THAT HB 2810, UNLIKE HB 2927, DOES NOT CONFINE THE PRESCRIPTION FOR EXCESS CAPACITY TO PARTIAL RATE BASING BUT WOULD ALSO ALLOW OTHER TREATMENT SUCH AS DEPRECIATION ISSUES, RETURN ON EQUITY AND OTHER INCENTIVE MECHANISMS.

A BRIEF COMMENT ON HB 2964. WHILE ADDRESSING AND DEFINING EXCESS CAPACITY, HB 2964 WOULD ALSO BE TOO RESTRICTIVE IN

PRESCRIPTION BY LIMITING COMMISSION ACTION TO RETURN OF OR ON EQUITY.

IT WOULD BE DIFFICULT, IF NOT IMPOSSIBLE, TO PREPARE A STATUTE THAT WOULD ADEQUATELY COVER ALL THE CONTINGENCIES OF RATEMAKING. THE AVERAGE MAJOR RATE CASE WILL TAKE THOUSANDS OF HOURS OF PREPARATION INVOLVING EXPERTISE IN ACCOUNTING, ENGINEERING, ECONOMICS AND OTHER DISCIPLINES. THE HEARING PROCESS ALLOWS THE SIFTING OF MASSES OF DATA AND HIGHLY COMPLEX TESTIMONY, MUCH OF IT CONFLICTING.

THE ESSENCE OF RATEMAKING IS THAT THE LEGISLATURE MANDATES AND DELEGATES BROAD GENERAL PRINCIPLES TO BE APPLIED TO DISCRETE FACT SITUATIONS IN AN EVIDENTIARY TYPE HEARING, UNDER OATH, SUBJECT TO JUDICIAL REVIEW. SUCH A PROCESS INSURES FAIRNESS, FLEXIBILITY AND ACCOUNTABILITY. HB 2810, AS IS, COMPLEMENTS THIS LONG-STANDING PRINCIPLE AND THE BILL SHOULD BE PROPOSED.

CC: CHAIRMAN LENNEN
COMMISSIONER LOUX
COMMISSIONER DICK
KIRBY VERNON
KENT FOERSTER
DAVID NICKEL
DON LOW
TERRI MUCHMORE
WILLIAM GREEN
BOB FILLMORE
ED PETERSON
CURTIS IRBY
MARTIN AHRENS

STATE OF KANSAS

OFFICE OF THE GOVERNOR
State Capitol
Topeka 66612-1590

John Carlin *Governor*

Testimony to House Energy and Natural Resources
by
John Myers
February 21, 1984

Mr. Chairman, Members of the Committee:

I appear today on behalf of Governor Carlin in support of legislation which would provide the Kansas Corporation Commission with maximum flexibility to exclude from the rate base portions of power plants the Commission determines to be excess capacity. The Governor believes that utilities and their investors should not be held harmless from financial responsibility for excess capacity at the expense of Kansas ratepayers. The Governor has previously recommended such legislation, and the need for its enactment is made urgent by the prospect of commercial operations of the Wolf Creek Generating Station.

The Wolf Creek power plant is nearing its scheduled completion date. The time approaches when decisions must be made about its treatment in the rate bases of Kansas Gas and Electric Company, Kansas City Power and Light and Kansas Electric Power Cooperative, Inc. If the Kansas Corporation Commission is compelled to treat the Wolf Creek rate case under current statute and no recognition is given by this Legislature to the new regulatory issues raised by this case, the result may be a near doubling of electrical energy prices in a large portion of Kansas.

Decisions made this session to clarify or alter the authority of the Kansas Corporation Commission will touch the lives and pocketbooks of hundreds of thousands of ratepayers, will determine the fate of major electric utilities and will have a sweeping and long-lasting effect on the health and vigor of the Kansas economy, including an influence on the geographic pattern of economic development in the state for decades to come.

The interest of Kansas, and the economic future of much of our state, depends upon our ability to steer a reasonable course

Attachment 4
2-21-84

through what will be by any measure a very difficult decade of adjustment by both the principals who built Wolf Creek and the ratepayers who use the power generated there.

Economic concerns about Wolf Creek share a common denominator: total project cost. The current estimate is $2.67 billion, several times that of the original estimate. Further increases in projected cost, deemed likely by some, would mean trouble in exponential proportion for both customers and utilities: utilities, because they are already at the margin of their borrowing ability; and customers, because they may need no new capacity -- especially so much and at such a premium price.

The addition of Wolf Creek capacity results in reserve margins for KCPL and KGE of 50 to 58 percent, considerably larger than the 15 to 20 percent reserve margin range considered standard within the industry, and within which most power pool membership requirements are set. Under projections supplied by the utilities to the corporation commission in 1983, the reserve margins will not return to the industry standard range until well into the 1990s. The question of whether the ratepayers or the stockholders should pay for the costs of building generating capacity far in excess of any immediate, near-term or even intermediate term demand for power lies at the heart of all proposed Wolf Creek legislation.

Excess capacity, combined with huge project cost, raises the spectre of rate shock. KG&E has estimated that placing all of the plant in the rate base immediately would require an 84 percent rate increase. There is a danger that such an unprecedented rate increase will provoke an unprecedented consumer response. Classic economic forces may bring a pronounced relative decline in electrical usage. Reduction in usage, whether absolute or relative to projected growth, will create pressure for even higher rates to satisfy the revenue requirement created by the plant, leading to a cycle of reduced sales followed by higher rates. Proposals to phase-in the rate increase will not counter this so-called "spiral of impossibility," especially if the increases are made predictable and certain. Rather than achieving customer acceptance of higher rates, a schedule of rate increases may just extend the time span for customer response.

While the Governor believes that the issues presented by Wolf Creek require an assertion of ratepayer interests in shifting the cost of excess capacity and avoiding rate shock, he also recognizes that the state has an interest in maintaining stability in the provision of electric service and in the solvency of its public utilities. The financial condition of the Wolf Creek utilities, especially Kansas Gas and Electric, is serious. That the Wolf Creek project has caused them to overextend themselves is evident from a number of financial indicators, including bond ratings that have slipped to near-speculative grades. The Governor does not accept the

utilities' argument, however, that the state contributed to their plight by disallowing construction-work-in-progress in their rate bases. To the contrary, Wolf Creek may be a good example of the wisdom of the state's CWIP policy. If CWIP had been allowed the total cost of the Wolf Creek project would not have been significantly less, as claimed by the utilities. Instead, the ratepayers of those utilities would have become forced financiers for eight to ten years, with no return on investment, of an increasingly questionable project. Of course their contributions would have improved the cash flow position of the utilities. But the risks (and returns) associated with the prudence and need of utility investment properly belong with the stockholder, not the ratepayer.

Regardless of the origins of the financial difficulty of the Wolf Creek utilities and the claims which might be made now against the risk-takers, it's not clear that pressing those claims to their extreme limit would be in the best interests of either the ratepayers or the state generally. Governor Carlin believes that a steady-handed and moderate course is essential. The commission must have authority to balance the guarantees demanded by the utilities against the legitimate consumer objections to charges for excess capacity.

It is doubtful whether the Commission is equipped with that authority now. The Kansas Supreme Court, in the 1976 case of Kansas Gas and Electric Co. v. State Corporation Commission, rejected the Commission's order to exclude a portion of the La Cygne plant from rate base: "We discern nothing in the statute which authorizes the commission to determine that a certain facility is partially used or required to be used and partially not. If the legislature had so intended, it would have been a simple matter to include in the statute such words as 'or whatever fraction or percentage of such property is used or required to be used.'" This simple matter would be resolved by inserting into law the very language cited by the Court. It is not for us to determine how much of this plant represents unneeded capacity -- that is a question for the Commission to hear and decide upon the evidence. What is clear, however, is that absent new law the Commission may have no legal choice but to include all of the plant and to include it immediately. The associated rate increase would, by Kansas Gas and Electric Company computations, exceed 80 percent. The shock that would surely follow is unacceptable.

Governor Carlin feels strongly that legislation must be enacted this session to ensure that the Kansas Corporation Commission has explicit authority to protect consumers against the cost of generating capacity they do not need and cannot afford. The legislation must make clear the Commission's authority to determine excess capacity, to exclude all or some portion of that capacity from the rate base of the responsible electric utilities -- whether or not it represents a fraction of a generating plant -- and to make accompanying adjustments to

revenue requirements of the utilities. The authority of the KCC in this regard must be precise and unambiguous, but the powers granted must themselves permit the Commission enough flexibility to weigh and balance the interests of all parties.

Several legislative vehicles exist which are or could be made suitable to remedy the deficiencies of existing law. For this reason Governor Carlin is not endorsing a particular proposal at this time. The Governor is committed to enactment of a proposal which meets the objectives stated above and is prepared to cooperate in whatever manner appropriate and necessary to that end.

Statement of John M. Simpson, 5613 Suwanee Road, Fairway Kansas 66205, (913) 384-9144.

February 21, 1984.

I am here to urge you to support HB2927 and ask that you work for its passage. This is one of the most important consumer protection bills ever to come before the legislature.

The bottom line in this issue is that Kansans should not have to pay for the mistakes of the management of KGE and KCPL. Kansans should only have to pay reasonable electric rates.

In our free enterprise system, each investor takes risks when he buys a stock or bond. The shareholders and bondholders of KGE and KCPL understood that. They knew there was no guaranteed return on or of their money.

These investors failed to do the careful analysis of the utilities that any good investor should do. The experts on Wall Street have been more interested in selling the bonds and stocks of KGE and KCPL than they were in taking a hard look at the policies and management of two rather small utilities that decided to play the nuclear game.

The so called wizards of Wall Street did not bother to make the kind of analysis that the Wichita Eagle did. Had the Wall Street bankers taken the time to ask a few questions and delve into the details of KGE's finances, they would have found out that KGE bet the company on Wolf Creek - - just as Howard Hansen, KGE's senior vice president for finance said they did.

That is a risk that management just does not take. In the Kansas City Times, February 11, 1984, in George Will's column, Felix Rohatyn, said in discussing President Reagan's budget deficits - "There is a level of risk in business that is unacceptable, and that is called 'betting the company.' We're in the process of betting the company". KGE's management took that risk. They have admitted they acted imprudently. The gamble was a dismal failure, and now a wolf is at our door.

Therefore, who bears the consequences? Who will the wolf devour? KGE and KCPL have the nerve to ask that it be many Kansas electric consumers. Just as "betting the company" was unacceptable, so to is their much discussed phase in plan they tried to hatch in the dark of night with the Republican leaders of the legislature. The retired Kansan

Attachment 5
2-21-84

on a limited fixed income and the struggling Kansas Farmer should not have to bail out Wall Street Bankers and brokers, foreign note holders, and the stockholders of KGE and KCPL many of whom live far from our borders and think of Kansas only when the Wizard of Oz reruns on their television screens.

Passage of this bill will not cause the lights to go out in the KGE and KCPL service areas. But just as KGE and KCPL intimate, the lights may go out for them. They hint that they face bankruptcy if they do not have a guarantee that all of the costs of Wolf Creek can be included immediately or phased into the rate base. I agree that that might happen.

The most important point that I want to make to you to day is that bankruptcy is not necessarily bad in this instance. There are more winners than losers under such a scenario. Certainly it is not a reason to defeat HB 2927. In fact the people of Kansas will probably be winners if KGE and KCPL do not survive.

How are Kansas consumers winners under such circumstances?

First. As I have said, the lights will not go off. Kansas electric utilities now have capacity in excess of desirable reserves that is equal to the generating capacity of Wolf Creek. These reserves can be called on. The remaining KGE and KCPL generating facilities can be operated through a trustee in bankruptcy. With these ample resources, there is little threat of disruption of service for KGE and KCPL customers. Wolf Creek is not even needed until about 1990.

Second. Kansans will be richer and more in control of their finances. Over one billion dollars in unpaid Wolf Creek construction costs will be saved if the plant is not completed. That is the amount needed to complete the plant, assuming its costs are 3 billion dollars, and I assure you it will cost that much. At least 400 million dollars will be saved by not having to decommission the plant. That much or more will not have to be spent to store the radioactive wastes produced by Wolf Creek. That is almost 2 billion dollars that will be saved for electric consumers if the plant is not completed. Kansans would then be free to use that money to insulate their homes, conserve energy in other cheaper ways, and build electric generating facilities that cost much less than Wolf Creek.

Third. KGE and KCPL want us believe the Kansas economy would be seriously damaged if they go broke. Exactly the opposite is true. The Kansas economic climate would be improved. By not using Wolf Creek electricity, many Kansas businesses would be able to use less expensive electricity provided by other utilities. Rather than having their

products priced out of the market by the exorbitant rates of KGE and KCPL, these businesses can keep their costs down by using cheaper electricty from utilities that made the right decisions. They can compete and keep Kansas workers on the job and in the ranks of the unemployed.

Other winners in the event of the demise of KGE and KCPL would be Kansas electric utilities. Kansas Power and Light Company would undoubtedly benefit. Just as it picked up a struggling Gas Service Co., it could acquire the economical parts of the KGE and KCPL systems and emerge as a very strong, well managed utility. The same would be true for Sunflower Electric and other REC's - and the municipals such as the Kansas City Board of Public Utilities. Each would very likely find its credit rating strengthened and, where applicable, the price of its stock enhanced.

As evidence that non-nuclear utilities benefit when the nuclear utilities struggle, you only need to check recent editions of the Wall Street Journal. The non-nuclear utility stocks have strengthened , while the nuclears have taken a real, and justified, beating.

The passage of this bill produces countless winners. There are no losers, unless your are part of the KGE and KCPL management, unless you are a wall street banker, or unless you are an investor who forgot how the market system operates.

You as legislators have been given the rare opportunity to correct the mistakes of past legislatures that bought the KGE and KCPL line about the wonders of nuclear power. Please, do not save the face of executives who "bet the company". Do not bail out a faceless bondholder clipping his coupons in a cubicle at the Chase Manhattan Bank. Instead, I ask you to do the right thing, the fair thing. I ask you to help Kansas consumers. Listen to their voices and meet their very desperate needs.

The Wichita [illegible] Beacon

When Time Comes, Customers Will Pay

KG&E 'Bet Company on Wolf Creek'

Feb. 12, 1984

If KG&E finally gets its rate hike, Kansans will be paying to keep the utility afloat — not for needed electricity. If KG&E doesn't get the full increase, its shareholders — and possibly its lenders — face potentially serious losses.

"We bet the company on Wolf Creek," said Howard Hansen, KG&E senior vice president for finance.

KC TIMES 2-11-84

Why Reagan is vulnerable a

Washington Post Writers Group

WASHINGTON—From the moment Howard Baker called President Reagan's combination of tax cuts and defense increases a "riverboat gamble," the gambling motif has figured prominantly in discussion of economic policy.

Speaking of Mr. Reagan's policy of hoping the recovery can survive at least

GEORGE F. WILL

several years of inaction on the deficits, Felix Rohatyn, the investment banker, says: "There is a level of risk in business that is unacceptable, and that is called 'betting the company.' We're in the process of betting the company." Now Democrats can campaign on the question: "Do you really want to play Reagan roulette?"

If Democrats have enough cleverness to bait a hook with, they will say: "Reagan said in the State of the Union address that government's share of GNP 'is more than we can afford.' But the Great Communicator won't communicate anything specific about what he plans to cut. Discretionary domestic spending could be abolished without balancing the budget, so his opposition to new taxes and his silence about spending cuts speak clearly: A vote for Ron Reagan is a vote to cut middle-class en tlements, especially Social Security a Medicare."

However, most Democrats have an a most majestic incapacity for sensib analysis. Today they are misjudging M Reagan's strengths and weaknesses.

His strength is not that he is a gre communicator. He isn't. He is terrific making people feel good about the selves and their country. That talent necessary for any president — nec sary, but not sufficient.

Mr. Reagan has an important case make for his most misunderstood re rection of national policy — his resto tion of civil rights values and rejectio "race-conscious remedies" for gove ment approved minorities. But he h left the making of his case to other c cials, who have been drowned out by cial policy entrepreneurs who wan dominate a federal civil rights indus dispensing ethnic entitlements.

Mr. Reagan's real strength is his p sona: He is seen as manly, standing clear values. But the way he is stand regarding deficits may worsen his r weakness. Democrats mistakenly th his principal weakness is the percept that he is "unfair" or bellicose. Actu his most serious potential weakne

Testimony of

Diane Tegtmeier on

H.B. 2927

House Energy and Natural Resources Committee, February 21, 1984

Chairman Heineman and members of the Committee, I am grateful to you and the sponsors of H.B. 2927 for giving me the opportunity to address this important issue. I am Diane Tegtmeier and I live in Westwood, Kansas. I am a consultant with Community Energy Associates, a group which works with Kansas communities to develop energy efficiency programs. I was a volunteer lobbyist here from 1974 through 1979 for the Mid-America Coalition for Energy Alternatives. Because of our long-term involvement in utility and Wolf Creek matters, I feel I can offer an historical perspective concerning the issues of ~~prudent~~ reasonable judgement, prudent management and excess capacity.

The Mid-America Coalition was opposed to the construction of the Wolf Creek plant in 1973 for a number of reasons. As intervenors in the Nuclear Regulatory Commission (NRC) construction permit hearings, we contended that KG&E and KCP&L grossly underestimated the cost of capital for construction. Their estimated interest rate seemed ludicrous even in 1974. As the Bond ratings were beginning to slip for the utilities in 1976, we were successful in re-opening the hearings on this issue. However, the NRC clung to the same dreams as KG&E and KCP&L by predicting financial stability for the utilities. The utilities testified then that they could successfully finance the Wolf Creek plan without Construction Work in Progress in the rate base.

We also contended in 1979 that consumer response to increased electricity prices would reduce the growth in peak demand to between 2.3% and 2.7%/year. We were a little high. KG&e's peak increased only 1.8%; KCP&L's 2.3% annually since 1976. They predicted around 6 - 7%.

Our data showed that Wolf Creek wouldn't be needed until at least 1990 and if energy efficiency measures were taken, probably never. Some utiliites postponed or cancelled massive construction in favor

Attachment 6 2-21-84

of efficiency investments, and they are not the ones marching hat in hand to Wall Street and state legislatures.

We were no better at predicting the future than the utilites were. We just used state of the art mathematical models and an understanding of utility economics. Every tool and every bit of information available to us, was available to the utilities.

Citizen group intervenors were'nt the only ones questioning the investment in large nuclear plants at that time. Kansas Power & Light chose not to take the risk, based on some wise and prudent engineering predictions. As a result, they're not sweating out bankrupcy.

Also, at about that same time, I heard the editor of a nuclear trade journal speak to the Atomic Industrial Forum in Kansas City. Our local utilities were there too. He warned that electric utilities really weren't prepared to handle the technical and financial problems of nuclear power plants and that they were "being led down the garden path by the vendors", i.e. Westinghouse, G.E., etc.

These warnings could be pushed aside if you're excited about building a big new power plant and the federal government is lauding your plans to help America reach energy independence. However, by the time Kansas City Power and Light tried to sell 40% of its Wolf Creek share to Nebraska and each utilitiy was growing at least 4% less than they predicted, it was time to get objective and Prudent. Any decision to continue construction after this time can only be viewed as irresponsible.

Interest rates were soaring and other utilities were taking prudent steps to postpone or cancel nuclear plants. When the Rancho Seco plant was cancelled in California, I personally showed Wilson Cadman of Kansas Gas and Electric an analysis of ~~their~~ California's reasons for cancellation and pointed out the comparable circumstances. They shrugged it off with a chuckle, saying they saw no relationship.

Stockholders were warned of risks to their investments by resolutions presented at company annual meetings. They voted to go

full speed ahead. The only responsibility the ratepayers of these utilities have for this problem is to have made the market decisions favoring efficiency over wasteful consumption.

At the hearings held here on the proposed sale of generating capacity from Wolf Creek to Nebraska, the retiring President of KCP&L said to me that if they knew then (1972) what they know now (1977) they never would have gotten "into this mess". Prudent executives stop then and evaluate alternatives, and there were utility economists around then who could have helped them.

I've tried to highlight for you the facts showing that re-direction of Wolf Creek plans was not only possible, but clearly indicated as early as 1974. The utilities charge that if the Legislature had been prudent, they would have allowed ~~the KCC~~ them to begin charging customers many years ago for a plant we all know now isn't needed. Many among you questioned the need for power and the need to divert water from the John Redmond Reservoir for cooling the Wolf Creek Plant. However, the utility position prevailed over the facts when the water contract was initially approved, when Wolf Creek was grandfathered out of the power plant siting bill and when the Legislature chose not to reconsider the sale of water when it looked like some of the power was going to Nebraska.

I would have thought 10 years ago that it would be a great satisfaction be be proven correct in our contentions about Wolf Creek. But, as many of us talk about this we find there is no joy -- no joy in opportunity lost or in knowing that no matter what is decided here or at the KCC, that nearly $2 billion has already been wasted and that people who never had a voice in the decisions will be hurt. We only ask that now, as the new information is before you that you give the KCC the flexibility in H.B. 2927 that they will need to pick up the pieces.

HOME OWNERS TAX

February 21, 1984

TESTIMONY BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE ON GENERATION OF EXCESS ENERGY...H.B.'s 2810, 2927 & 2954.

This is not an issue that our organization went looking for. It is an issue that found us. When newspaper accounts of probable increased KG&E rates, in the range of 50% to 80%, when Wolf Creek goes on line, reached the Home Owner and Small Business people, our telephone started ringing off the hook with these people wanting to know what we were going to do about fighting it.

To see how widespread this concern was, we commissioned a Telemarketing firm to make telephone calls to business owners and corporation executives. This survey is still ongoing and has convinced us that this is going to be the hottest issue in this election year. We have encouraged our supporters to write to their Legislators, expressing their concerns directly to you, so those of you in the Wichita-Sedgwick County area can expect to hear from your constituency.

Incidentally, we have been using the figures, and estimates, furnished to us by the Kansas Corporation Commission which "estimates that KG&E and KCP&L will experience rate increases attributable to the Wolf Creek plant falling within a range between fifty and eighty percent."

Word of our survey reached the local manager of KG&E and he called me to say that the figures that he heard that we were using were from the Wichita Eagle-Beacon and that they were incorrect. I assured him that the figures that we were using were furnished to us by KCC. He said, "Well, those are their figures. I want to send you ours."

I have not yet received their figures but, if we are to believe the Wichita Eagle-Beacon report published in this morning's paper, their figures would admittedly increase rates by an unbelievable 95%!

Please consider the following:

*KG&E's electricity use declined for the 3rd straight year. In 1974, KG&E misforecasted a 7% annual growth rate. They are now forecasting a 2½% growth rate, IF, and it's a mighty big IF, the 2½% forecast is correct, power from Wolf Creek will not be needed until 1995. If it is too high, the power from Wolf Creek will not be

HOT Testimony (Cont'd)

needed until far into the next century!

*The KCC estimates that KG&E will be generating 57.7% excess power over peak demand requirements when Wolf Creek goes on line. This is the primary issue that your Committee is concerned with today.

Let me tell you why we believe that this figure is way too low and what effects this could have on the KG&E and KCP&L service areas.

One power-intensive company, in Wichita, has said that an 80% increase in his electric bill would cause him to pay an additional $10,000 per month! And, he said, in his intensely competitive industry, there is no way that he could remain competitive. His only alternatives, if any rate increase is approved for generation of excess power, is to move to another community or to take steps to generate his own power. Regardless of the option he would choose, KG&E's rate base would shrink and the additional burden would be shifted to the rest of us. And, he is just one company...a small business!

What happens if other large energy users choose to generate their own power or move to other locations? It could cost thousands of jobs and have an economic impact that could be disastrous to our State's largest city!

KG&E, a monopoly utility now reportedly has long-term debt of $753 million with an annual interest payment of $66 million. We cannot imagine any "large institutional investors" jumping at the chance to refinance KG&E's debt and, with their record of misforecasting and apparent mismanagement over the past ten years, the financial future of KG&E is, at best, in horrible shape! With their bonds rated as "speculative" and given the record of cost overruns with nuclear power plants around the nation, their chances of selling bonds to finance a plant that is surplus to it's peak demand requirements, are slim to none, in our opinion.

Perhaps the kindest thing that you could do is to force a halt to Wolf Creek before many more millions of dollars are poured into this unneeded facility. And, finally, we should all be looking for ways to end the monopoly and bring competition to the public utility field. Electricity generated by others could flow over the same utility lines as that generated by KG&E, couldn't it?

Thank you for your kind attention and the opportunity to let our views be known.

PRESENTED BY: Roger M. Grund, Sr., Executive Director

TESTIMONY OF LEE H. WOODARD
BEFORE THE ENERGY AND NATURAL RESOURCES COMMITTEE
OF THE KANSAS HOUSE OF REPRESENTATIVES

My name is Lee H. Woodard. I am an attorney practicing in Wichita, Kansas with the law firm of Woodard, Blaylock, Hernandez, Pilgreen & Roth. I am here to urge passage of House Bill 2927 and I am speaking on behalf of Kansans For Fair Electricity - a grass roots organization that has only recently come into existence in response to the problems created by Wolf Creek.

Before proceeding, I would like to thank you, Mr. Chairman, for this opportunity to speak before the Committee.

At this point, it makes little sense to talk about specific Wolf Creek costs or figures because no one knows what they will eventually be. However, based upon past experience, we should expect the eventual cost of Wolf Creek to exceed $3 billion; and indeed, Kansans For Fair Electricity think that this is inevitable. Also, based upon past history, KG&E's projection of a 95% increase in rates should be considered a conservative estimate, and we should expect rates that will be substantially more than double the present level.

In any event, the first important point -- one that KG&E and KCP&L do not deny -- is that the increase in rates will be tremendous. Simply put, if Wolf Creek is allowed to go on line in its entirety, this will cause the largest

Attachment 8
2-21-84

percentage across the board major rate increase in the state's history.

The second point is that hardly a day goes by without some revelation strongly indicating that:

1) Wolf Creek will result in excess capacity far beyond what is reasonably necessary to meet the needs of the public;

2) Major decisions by KG&E and KCP&L concerning Wolf Creek -- including the decision to continue construction when it was more feasible to discontinue construction -- were not reasonable and constituted mismanagement;

3) That a significant part of Wolf Creek's costs were due to other inefficiencies or mismanagement.

In a nutshell, evidence mounts daily indicating that Wolf Creek -- an almost $3 billion proposition -- is in large measure either not needed or is in significant part the result of mismanagement. However, the actual facts have not been established through an in-depth investigation and the true extent and nature of the problem remains unknown. Thus, an appropriate Wolf Creek solution cannot be fashioned.

What must be done is clear. The Kansas Corporation Commission must be given the tool to perform the necessary investigation and protect the ratepayers if it is determined that Wolf Creek will result in large excess capacity or if significant Wolf Creek costs are due to mismanagement by KG&E or KCP&L. The tool that will allow the Corporation

Commission to accomplish this end is found in House Bill 2927. Although, from our perspective, this legislation is not perfect, we find it to be the most acceptable of all of the proposals now in the legislature of which we are aware.

Failure of the legislature to act would, in our opinion, mean one of two things.

First, the legislature, or at least many of the members following a do nothing approach, would have somehow concluded that the mounting evidence on this complex matter is simply not true. In such case, the legislature and those members should let the public know the basis for their conclusions.

Second, the legislature and those members voting for a do nothing approach could simply believe that all of Wolf Creek should go on line despite the evidence pointing to excess capacity and mismanagement under the philosophy that no matter how bad a judgment or action by a utility, the ratepayers must pay, and the utilities, and their investors and management must be protected.

The public will not sit still for inaction on either of these grounds. Based on current information, failure of the legislature to act will result in KG&E and KCP&L ratepayers being charged exhorbitant rates which will cover costs for something they do not need and which arise from mismanagement. This would violate the very essence of utility regulation which in Kansas has long rested on the principle that utility rates should only include costs for

investment that is used or required to be used for the service rendered. This is no more than saying that government should not force the public to pay for a service the public does not receive. Indeed, a contrary rule would not only be contrary to fundamental fairness, but there is a question in our mind as to whether it could pass constitutional muster. The issue is whether state government can constitutionally require the public to pay rates for a necessity of life which are grossly out of proportion to the service received because the rates include major costs for excess capacity as well as large costs due to mismanagement. However, it is not necessary to consider such matters if House Bill No. 2927 is enacted. The Corporation Commission will then have the tool that it needs in order to ferret out such costs and require that they be borne by KG&E and by KCP&L and their investors.

In short, the State of Kansas must meet the problems created by Wolf Creek in two stages. First, appropriate tools must be handed to the State Corporation Commission by the legislature. Second, the Kansas Corporation Commission must take and apply those tools in a responsible manner. Based upon past history, we believe that the Commission can meet this challenge given the proper means.

In closing, I wish to make several additional points.

There has been quite a bit of talk by utility officials and others to the effect that all of Wolf Creek must be charged to the ratepaying public in order to avoid financial

disaster for KG&E -- even bankruptcy. We do not wish bankruptcy upon KG&E, and hopefully such will not occur after the Corporation Commission has taken action following the enactment of House Bill No. 2927. However, an argument based upon potential bankruptcy should not deter you from adopting this bill. In a business situation bankruptcy is ordinarily caused by poor decisions that result from mismanagement. Thus, to accept an arguement that House Bill 2927 should not be adopted because it could lead to bankruptcy would send out the signal that the ratepaying public will bail out utilities in the event they make such bad decisions that bankruptcy becomes a reality. This may be the signal, but I can assure you that the public will not stand for it.

There is no reason to require the public to underwrite improper and unreasonable management decisions of the proportion involved in Wolf Creek, and which would be borne by stockholders and bondholders of any other business. Utility investors should be sufficiently protected by the fact that utilities have a monopoly for the purpose of providing a basic necessity of life. They also, by definition, receive compensation for risk of investment in the form of interest and dividends. This is risk they freely assume in the securities market place. However, if KG&E and KCP&L have its way, this risk will be entirely underwritten by the public and in essence, state government

will be requiring its citizens insulate investors from risk in the event of poor management decisions.

Finally, no one should forget that electricity is a basic necessity of life. Every summer, and every winter, we read in the papers about people dying from the elements because of the lack of electricity. During the summer, the papers reported cases of death from heat because people simply did not turn on air conditioning, due to bills that were already too high.

The mandate must go to the Corporation Commission to cut out Wolf Creek costs that are for excess capacity and Wolf Creek costs that are due to mismanagement or inefficiency. The Commission must also be given the tool to carry out this task. House Bill No. 2927 fits this purpose and if as a result utility investors must bear Wolf Creek costs, then this is as it should be, as it is their management that incurred them.

Thank you.