Approved Wednesday, March 14, 1984
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES.

The meeting was called to order by SENATOR ROBERT V. TALKINGTON at
Chairperson

8:30 a.m. a.m./p.m. on Wednesday, March 14, 1984 in room Supreme Court Room of the Capitol.

All members were present except:

Committee staff present:

Fred Carman, Hank Avila, Rosalie Black

Conferees appearing before the committee:

HB 2927 - Dick Compton, Midwest Energy at Hays; Bill Henry, KS Engineering Society; Claude Anderson, Garnett; Lance Burr, Lawrence; Lee Good, Wichita; Bob Phillips, KEC; James Haines, KG&E; Arthur Doyle, KS City Power & Light

The meeting was called to order by Senator Talkington, Chairman, for the second day of hearings on HB 2927.

HOUSE BILL 2927 - HEARING - OPPONENTS

Dick Compton, taking a neutral position, requested legislation modification in HB 2927 (See Attachment 1.) He testified against the concept of legislation that could increase a utility's cost of doing business.

Bill Henry, appearing on behalf of the Kansas Engineering Society, indicated the importance of preserving present statutory legislation which permits utilities to include property in their base which may be required to be used. (See Attachment 2.)

Claude Anderson discussed his touring of energy institutions in the U.S. in reference to safety and presented a chart showing budget over costs of the Garnett city water dam. (See Attachment 3.)

Lance Burr asked the committee to not allow Wolf Creek to come on line since the nuclear regulatory commission has not been able to produce a plan to deal with nuclear waste and Wolf Creek would be producing 30 to 40 tons of high level radioactive waste per year. (See Attachment 4.)

Lee Good said that anti-nuclear activists are responsible for contributing to the high cost of energy and will cost the industry billions of dollars that will ultimately be passed to ratepayers. (See Attachment 5.)

Bob Phillips representing Sunflower Electric Cooperative, and James Haines

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
Supreme Court Room
room _____, Statehouse, at 8:30 a.m. a.m./p.m. on March 14, 1984.

HOUSE BILL 2927 - HEARING - (con't)

and Arthur Doyle, both representing utility companies who own Wolf Creek, said the KCC already has authority to reduce rates for imprudence, mismanagement, or a lack of reasonable efficiency. Mr. Haines added that the expense of Wolf Creek will increase and delays could result if the people who are finishing the project must be called away to participate in hearings contemplated by HB 2927. (Attachment 6.)

The meeting adjourned at 10:30 a.m.

Robert V. Talkington

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1984

HOUSE BILL No. 2927

By Representatives Fox, Adam, Aylward, Baker, Barr, Blumenthal, Braden, Branson, Charlton, Cloud, Cribbs, Ediger, Francisco, L. Fry, Goossen, Grotewiel, Helgerson, Hensley, Hoy, L. Johnson, Knopp, Leach, Lowther, Luzzati, R.H. Miller, Murphy, K. Ott, Patrick, Roe, Rogers, Rolfs, Roper, Runnels, Schweiker, Shelor, Smith, Solbach, Spaniol, Sughrue, Turnquist, Vancrum, Wagnon, Darrel Webb, Whiteman, Wilbert and Wisdom

2-8

AN ACT concerning public utilities; relating to the valuation of property for ratemaking purposes; amending K.S.A. 66-128 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 66-128 is hereby amended to read as follows: 66-128. ~~Said~~ *The state corporation* commission shall ~~have the power and it shall be its duty to ascertain~~ *determine* the reasonable value of all or whatever fraction or percentage of the property of any common carrier or public utility~~; or whatever fraction or percentage of an electric generation facility property of any public utility which has constructed the facility without obtaining an advance permit under K.S.A. 66-1,159 et seq. and amendments thereto;~~ governed by the provisions of this act *which property is* used ~~or~~ and required to be used in ~~its the carrier's or utility's~~ its services to the public within the state of Kansas, whenever ~~it~~ *the commission* deems the ascertainment of such value necessary in order to enable the commission to fix fair and reasonable rates, joint rates, tolls and charges~~, and~~. In making such valuations ~~they~~ *the commission* may avail ~~themselves~~ *itself* of any reports, records or other things available to ~~them~~ *the commission* in the office of any national, state or municipal

officer or board. For the 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~~ and required to be used in ~~said~~ *the* public utility's service to the public, except that, any property of a public utility, the construction of which will be commenced and completed in one ~~(1)~~ year or less, may be deemed to be completed and dedicated to commercial service. ~~The commission may require a *common carrier or* public utility to defer inclusion of all or any portion of the reasonable value as so determined and permit the phase-in of such value over any period of time and in such increments as it determines to be appropriate. If the commission requires a *common carrier or* public utility to defer the inclusion of any portion of such reasonable value and orders a phase-in of such value, it may exclude [any or all of] the carrying or finance costs incurred after the date of its determination and throughout the period of any deferral or phase-in as so ordered~~.

New Sec. 2. The state corporation commission, in determining the reasonable value of property under K.S.A. 66-128, and amendments thereto ~~of a public utility which has constructed an electric generating facility without obtaining an advance permit under K.S.A. 66-1,159 *et seq.* and amendments thereto~~, shall have the power to evaluate the efficiency or prudence of acquisition, construction ~~and operation~~ or operating practices of that utility. In the event the state corporation commission determines that a portion of the costs of acquisition, construction or ~~operation~~ operating were incurred due in whole or in part to a lack of efficiency or prudence, or were incurred in the acquisition or construction of excess ~~electric~~ generating capacity, it shall have the power and authority to exclude all or a portion of those costs from such reasonable value as so determined.

~~New Sec. 3. The state corporation commission in determining the reasonable value of property under K.S.A. 66-128 and amendments thereto of a public utility which has constructed an electric generating facility without obtaining an advance permit under K.S.A. 66-1,159 *et seq.* and amendments thereto, shall also determine whether the public utility has "excess electric gen-~~

electric generating facility

which was constructed by a public utility without obtaining an advance permit under K.S.A. 66 1,159 et seq. and amendments thereto,

electric generating facility

~~erating capacity." "Excess electric generating capacity" for purposes of this act means any amount~~

For the purpose of this act, "excess capacity" means any capacity in excess of the amount ~~reasonably necessary~~ used and required to be used to provide adequate and reliable service [to the public within the state of Kansas] as determined by the commission. The commission may in its discretion prohibit or reduce the return on costs which were incurred in constructing, maintaining or operating excess ~~electric generating~~ capacity.

New ~~Sec.~~ 4 Sec. 3. The state corporation commission may at any time and in its sole discretion, whether or not ~~the a~~ facility is still under construction, initiate on its own motion a proceeding ~~with respect to any proposed electric generating facility which was not required to obtain an advance permit under K.S.A. 66-1,159 et seq. and amendments thereto,~~ to determine in advance whether the costs of such facility were reasonably~~,~~ or prudently ~~or necessarily~~ incurred ~~under section 2~~, or whether all or a portion of the costs of such facility are or shall be incurred in producing excess ~~electric generating~~ capacity ~~under section 3~~. The proceeding shall be commenced by the commission giving 30 days' written notice of the setting of the hearing of such proceeding to the public utility or utilities involved, and no other motion shall be required, but the procedure, hearing and appeal rights shall otherwise be as specified in K.S.A. 66-1,158 through 66-1,169c, and amendments thereto.

~~New Sec. 5. The state corporation commission in conjunction with or separate from other proceedings may at any time in its sole discretion, whether or not the facility is still under construction, initiate on its own motion a proceeding with respect to any proposed electric generating facility which was not required to obtain an advance permit under K.S.A. 66-1,159 et seq. and amendments thereto, to determine in advance if, in the event the public utility completes construction of the facility: (1) Any portion of the costs of construction of such facility (including carrying costs of funds borrowed to construct the facility) are to be excluded from the reasonable value of the property of the public utility used in serving the public in Kansas, under section~~

electric generating facility

the electric generating

electric generating facility

under section 2.

~~2; (2) any portion of such costs is to be deferred and phased into the reasonable value of such public utility property under section 6; or (3) any future carrying costs or finance charges are to be excluded or disallowed as provided under section 7. The proceeding shall be commenced by the commission giving 30 days' written notice of the setting of the hearing to the public utility or utilities involved, on its own motion, and no other notice shall be required, but the procedure and hearing and appeal rights shall otherwise be as specified in K.S.A. 66-1,158 through 66-1,160e, and amendments thereto.~~

~~New Sec. 6. In determining the reasonable value of property of a public utility which has constructed an electric generating facility without obtaining an advance permit under K.S.A. 66-1,150 *et seq.* and amendments thereto, the state corporation commission, if it determines that a portion of costs incurred in constructing or operating an electric generating facility were incurred due to lack of prudence in plant acquisition, construction or operation or inefficient operation, or if it determines that the operation of such facility will result in excess electric generating capacity, shall have the power and authority to require a public utility to defer and phase such costs into such reasonable value over not less than 10 nor more than 15 years in substantially equal increments.~~

New ~~Sec. 7~~ Sec. 4. In the event the commission finds that a portion of costs were incurred due to lack of prudence in ~~plant~~ acquisition, construction or operation ~~or~~ and were incurred to build a facility which in whole or in part represents excess ~~electric generating~~ capacity ~~as defined in section 3~~, the commission shall exclude that portion of the carrying or finance charges incurred after the date of its finding~~, or throughout the period of any deferral or phase in of costs required under section 6, and thereafter, to finance or refinance the portion of the costs of such facility so incurred~~, and no part of ~~such~~ the carrying or finance costs excluded shall ever be or become part of the reasonable value of public utility property so used or required to be used. The commission ~~shall also~~ also shall not authorize the recovery as operating expense or in any other manner of the carrying or

electric generating facility

as defined in section 2,

finance costs ~~associated with the costs of such facility so excluded and the revenue requirements of the public utility shall not be adjusted due to such carrying or finance costs~~ so excluded.

Nothing in this act shall limit the commission's authority to adjust revenue requirements of any ~~common carrier or~~ public utility if the commission determines the revenue requirement requested is either a return of or a return on cost which results from inefficiency or a lack of prudence.

electric generating facility, as defined in section 2

[New Sec. 5. Any common carrier or public utility subject to the provisions of this act which constructs a facility shall make and send monthly financial reports to the state corporation commission. Such reports shall include the following information, as of the date of the report, the: (a) Actual costs incurred; (b) total estimated cost of the facility; (c) percentage of the facility which is actually completed; (d) estimated date of first commercial operation; and (e) any other information required by the commission. Such reports shall be prepared and certified in the manner and form required by the commission.

an electric generating

[New Sec. ~~5~~ 6. (a) If any portion of an electric generating facility is determined to be excess capacity and if the facility is a nuclear fission power plant, the state corporation commission shall determine whether ~~(1)~~ there has been ~~developed and~~ approved by the United States government through its authorized agency, a proven technology or means for the disposal of high-level nuclear waste ~~and (2) such technology or means for disposal of such waste~~ [which] is available for use at or by the plant.

[If the commission finds that no such technology for disposal exists, it shall be presumed that the costs of acquisition, construction or operation of the facility were incurred due to a lack of prudence and the commission shall not include such costs in the reasonable value of the public utility property.

[(b) When used in this section, "technology or means for the disposal of high-level nuclear waste" ~~means a method for the permanent and terminal disposition~~ [includes but is not limited to temporary on-site storage] of high-level nuclear waste~~. Such disposition shall not preclude the possibility of~~ [or] an approved process for the retrieval of such waste.]

New Sec. ~~8~~ 5 [7]. The provisions of this act are declared to be severable, and if any section, sentence, clause or phrase of this act shall for any reason be held to be invalid or unconstitutional, the validity or application of the other provisions of the act shall not be affected, it being the intent of the legislature that the act shall stand notwithstanding the invalidity of any part.

Sec. ~~9~~ 6 [8]. K.S.A. 66-128 is hereby repealed.

Sec. ~~10~~ 7 [9]. This act shall take effect and be in force from and after its publication in the Kansas register.

Attachment 1

Comments of Dick R. Compton
before the
Senate Transportation & Utilities Committee
on House Bill 2927

Mr. Chairman and Members of the Committee, I appreciate the opportunity to appear before you today with comments regarding the proposal before you in the form of House Bill 2927.

My name is Dick Compton, and I am Director of Governmental Affairs at Midwest Energy, which headquarters in Hays. Midwest serves approximately 30,000 electric customers at retail in a twenty-two county area of central and northwest Kansas. Midwest also serves approximately 10,000 natural gas customers at retail in Ellis and Trego counties.

My comments today are not as a proponent of House Bill 2927, nor are they as an opponent if the language can be modified to accomodate some of the concerns we have with the current wording.

Under the current wording the KCC is given the authority, and it would appear that they are nearly mandated, to eliminate any costs from a public utility's rates under which the utility bills its customers that are associated with excess plant capacity. The committee needs to be aware that all of a utility's capital accounts under which its assets are booked are commonly referred to as plant accounts. In other words, the term "plant" in the proposed legislation does not direct itself to generating plants. On the contrary, it directs itself to the cost of all of the capitalized assets and facilities the utility

Atch. 1

owns. Transmission lines, distribution lines, trucks, computers, office facilities and etc. are all included in a utility's plant.

In the planning and construction process, Midwest, as well as all other utilities, commonly provide for excess capacity in many of the facilities it constructs to provide service. This excess capacity is provided at today's costs for anticipated future load and customer growth. We think this is good business, and we are confident such practices can be justified to reasonable regulatory authorities as prudent.

Our concern is the cost of proving prudence. We are confident that substantial additional legal, accounting and perhaps consultant expenses would be incurred in proving prudence to the Commission in nearly each and every rate hearing. It hardly seems reasonable or responsible for this body to place legislation in effect that could and probably would increase a utility's cost of doing business. This is especially true in an era when we are all concerned about the level of charges that are already being billed Kansas utility customers to cover the cost of providing their service. When one considers that the added cost burden will ultimately be born by the customer and could be incurred to prove the prudence of something so nebulous as why a 4-0 conductor rather than 2-0 was used on a particular transmission line, or why a 25 kVA transformer was used in some instance rather than a 10 kVA, then we would question the prudence of the legislation.

I have briefly expressed to you Midwest's major concerns with the legislation under consideration, and now I would like to

briefly mention some points you may want to ponder as you consider the question of excess capacity. I mention these only as a precaution.

1. In determining the amount of cost associated with excess capacity the KCC is supposed to disallow under House Bill 2927; are they supposed to:
   a. disallow the cost associated with the un-used new capacity which will invariably be the highest installed cost, but also the capacity from which the lowest cost energy can be obtained; or should they:
   b. disallow the cost associated with un-used existing capacity from which the highest cost energy will be obtained; or should they:
   c. disallow the cost associated with a blend of all the Company's capacity?
2. Depending on the method chosen by the KCC in disallowing costs associated with excess generating capacity, should the affected Company be allowed any discretion in how its generation capacity is dispatched?
3. If the state legislates out of existance a portion of a Company's generation capacity, is there a chance that the Internal Revenue Service would rule that this portion of the facilities could not be used in calculating any investment tax credits that could otherwise be avail-able. If so, such legislation could certainly be counter-productive.

4. If such capacity is legislated out of existance, will the accellerated depreciation schedule normally allowed when computing income tax by the Internal Revenue Service be affected in any way? This also may be counter-productive.

5. Would the affected Company be expected to pay property taxes on the entire facility? It hardly seems reasonable for one state agency to consider the entire facility while another is not allowed to.

6. Is there any chance that once the excess capacity is needed, the company's stockholders would be entitled and justified to sell such capacity to the Company for use in service to its customers at the current replacement cost?

In closing, should the committee determine this type of legislation to be necessary, I would urge you to narrow its scope so it can not lead to proof of prudence when such a process would probably cost more than it could ever be worth to Kansas utility rate payers.

Thank you again for allowing me to appear with these comments on this proposed legislation.

I would be happy to attempt to answer any questions the committee may have.

Attachment 2

Kansas Engineering Society, Inc.
216 West Seventh, P.O. Box 477
Topeka, Kansas 66601 (913) 233-1867

Testimony to the Senate Transportation & Utilities Committee

RE: H.B. 2927
March 14, 1984

Mr. Chairman, members of the committee I am Bill Henry Executive Vice President of the Kansas Engineering Society. I appear today on behalf of the Society because of certain concerns members of our organization have with the changes made by the House of Representatives in H.B. 2927.

We well understand the concerns behind the passage of H.B. 2927 and particularly in reference to the Wolf Creek Power Plant. However engineers of our organization who have experience in power work see certain service problems that may result as the result of the proposed legislation.

The first area of concern our members have relates to the language set out in line 41, specifically;

"Which property is used and required to be used."

Our State Supreme Court has interpreted the use of the word "and" as conjunctive-which means that if you change present law from "used or required to be used" to "used and required to be used," the property to be included in the utility's base must be used and required to be used.

We believe it is important to preserve the present statutory language which permits utilities to include property in their base which may be "required to be used."

The reason is that back-up equipment such as turbine fans, generators and other replacement parts, while not in actual use at a particular time, should be included in the utility's property base. The concept behind this theory is that in providing services to its customers a utility should have certain stock parts on-hand to replace parts which may go down.

Turbine blades for a power plant cannot be found over night. Indeed, a turbine or generator may take six months to be built; if such a piece of equipment goes out the customers of the utility cannot sit around for that period of time to wait for another turbine fan or generator. With this language change to "and" the commission has the power to disallow the the inclusion of such replacement parts in the property base of any utility.

Atch. 2

We believe that replacement parts and feel inventories should be allowed in the property base of utilities.

The Society's second concern is in new section 2, page 3, in the definition of "excess capacity."

Any power plant, which takes ten to fifteen years to bring on line, is going to have some excess capacity.

In its current form we believe H.B. 2927 would give complete discretion to the Kansas Corporation Commission to disallow any excess capacity.

Granted, the excess capacity that exists with the Wolf Creek Plant may be too great to be allowed at this time.

However, if H.B. 2927 is enacted the law therein will be the standard on which all utilities must base their capital improvements and plans for the future.

It will be difficult for our State's utilities to plan for the future because they will be under the gun so to speak, to build only for the future facilities that meet minimal estimates of projected growth.

This idea on its face seems valid-the utilities should only build to meet the needs of their customers so as to keep costs down.

Our problem is that we can see this scenario developing in the future. Instead of planning for a large plant a utility will probably have to guide its decision making toward the direction of building small megawatt generators, which in the long run would deny the advantage of economy of scale. There is no doubt it costs more to construct and run several small plants than a single large megawatt facility.

Not only are the construction costs higher in the aggregate for such small facilities but the operating costs of several small plants will be equally higher for the materials needed to produce power at such facilities.

For example, power plants require water for cooling.

It is no secret that water in the near future will grow to be Kansas' most valuable resource. It is now a major factor in our state economy and its importance will grow, not diminish, in the future.

This legislature has recognized the importance of guarding this valuable resource. We feel that to protect that resource, we should encourage users of water, including utilities, to use it in the most conservative fashion. There is no doubt that a single large facility will use less water in its cooling operations than many smaller megawatt facilities.

How then should we make allowance for this economy of the scale in H.B. 2927. Perhaps the answer would be to set out some cost/benefit standards within the statute of what excess capacity could amount to and still be included in the rate base.

We hope the committee will review the concerns we have voiced and consider them in its final action on H.B. 2927.

Respectfully submitted,

William M. Henry
Executive Vice President
Kansas Engineering Society

WMH:mg

Attachment 3

HOUSE BILL #2927

I am Claude C. Anderson, I and my brother run the family business which is 91 years old in Garnett, Kansas. We are among the endangered species selling Fords and Ford products and high interest.

Our interest rate in 1979 went from 8% to 22% in less than 2 years. One half of the car and impliment dealers are out, never to return, plus all kinds of small business. Ford Motor Company lost 385 parts suppliers.

I have toured all kinds of energy institutions in the United States, Los Alamos Laboratory in New Mexico, Hansford in Washington, Oak Ridge in Tennessee, Trogan in Oregon, Idaho National Laboratory, Fort St. Varin in Colorado which used thorium, and uses helium gas to transfer the heat. I have been to 2 space centers - Nasa in Alabama, Johnson Space Center in Huston, Texas. I went to North Shore where 160 wells produce 175,000,000 barrels per day. This is 20% of the United States supply.

Wolf Creek Nuclear Plant is about the same capacity as Hoover Dam. All the Dams in Western Missouri, Northeastern Oklahoma, North Arkansas all put together are needed to make up the capacity of Wolf Creek. So if the pay off of a project is delayed until it is needed, you will be paying interest on interest on interest, plus the cost of the plant. By the time it is needed you are out of electrity and should have started a power plant several years back. So what happens when the interest and costs are not worked into the power rate? It will take longer to pay off the cost.

Att. 3

GARNETT CITY WATER DAM

Start	1970	1983
$350,000	1 Million	3.3 Millioh

GARNETT 2400 K W POWER PLANT

1966	1971	Install 1981
$300,000	$600,000	1.5 Million

COMBINED

1960	1973	1982
$20,000	$40,000	$85,000

WOLF CREEK

8 50 Million 2.65 Billion

Nuclear fuel cost will be more stable than coal and could become cheaper with new brake through using Laser Beams to help process. Coal and freight will edge up.

Representative Miles LeBoy of was quoted as saying the Kansas House passed the biggest anti-Nuk bill.

Our Representative Mr. Teagarden quoted in our local paper, let the stock holder pay for the plant. Stock holders money is all ready in the plants. Our Governor was quoted as saying to let them pay for their error. Mismanagement is quoted as running the cost up.

The Kinny Committee after Three Mile Island, President Carter appointed only 2 Nuks on the committee. Out of this came all kinds of Fairy Tales on safety.

Acid rain from coal and oil, when environmentalists get hold of this, look out for the cost.

Let the K.C.C. and power company work raises out. If the Senate passes this, the K.C.C. will say our hands are tied. We can't do this or that, because the Legislators say we can't. The plant has to be paid for and the people will need the electricity.

Coffee County taxes from the Power Company are close to 9 million dollars a year. If surplus power is not worked in, maybe there should be a tax credit allowed.

After all this helliblue about Wolf Creek, large power companies might take a long look at Kansas when more power plants are needed.

Claude C Anderson
Garnett Kan

CITY OF GARNETT

	K W
1930	360
1931	370
1932	370
1933	390
1934	400
1935	455
1936	490
1937	510
1938	490
1939	530
1940	530
1941	580
1942	580
1943	540
1944	500
1945	710
1946	800
1947	910
1948	1060
1949	1125
1950	1080
1951	850
1952	850
1953	890
1954	1100
1955	1150
1956	1250
1957	1330
1958	1340
1959	1530
1960	1725

	K W
1961	1780
1962	2050
1963	2600
1964	2800
1965	2860
1966	3410
1967	3000
1968	3520
1969	4000
1970	4475
1971	4320
1972	4800
1973	4800
1974	5300
1975	5350
1976	5700
1977	6200
1978	6400
1979	5600
1980	7400
1981	6300
1982	6400
1983	6500

No Nukes in the Bread Basket

Attachment 4

Lance W. Burr
Attorney and Counselor at Law
1203 Iowa
Lawrence, Kansas 66044

Office 913-842-1133

June 25, 1979

The Honorable John Carlin
Governor of Kansas
State Capitol Building
Topeka, Kansas 66612

Re: The retainment and disposition of deadly nuclear reactor waste products

Dear John:

First let me say thanks for doing an excellent job as Governor, and also thanks for the obvious deliberation you give to important issues of our times. I am writing you about such an issue.

I note from recent newspaper articles, that you are becoming more familiar with the proposed nuclear reactor facility near Burlington, Kansas. As you can see, there is much to learn, and I have been trying to educate myself concerning reactors ever since the late 60's and early 70's when the Attorney General's Office, through Bill Ward and to a lesser extent, myself, took an active role in helping to prohibit the federal government from making Kansas a burial ground for deadly nuclear waste. Governor Docking was impressed with Bill Ward's persistence and the input from others and told them, they could not store the waste in Kansas. Too dangerous!

In 1974, when I ran in the Democratic Primary for Attorney General, I had by that time, learned enough to know that it is extremely foolish for human beings to create a waste product as toxic and deadly as nuclear reactor waste without knowing what to do with it. A reality that will keep haunting government officials is the undisputed extreme danger of this waste to human beings and other animals. Some of it has an estimated life span of hundreds of thousands of years. To continue to create this deadly waste in alarmingly greater quantities, without any possibility whatsoever of finding an adequate storage place for it, represents not only an insane approach to the creation of energy, but it is also a grave threat to the health and safety of myself, my family and other persons, not only in the State of Kansas, but in the other states of this Union and potentially throughout the world. The federal government has breached its fiduciary duty to the public to discontinue the production of this deadly waste until it can be disposed of safely. It's time for the states to assume their historical role as protectors of the health and safety of their citizens.

Atch. 4

For the first time in the history of the promotion and use of nuclear reactors, United States citizens and citizens throughout the world, have recently had an opportunity to become just a tiny bit more educated about nuclear reactors. However, none of us need to become extremely well educated in the area to appreciate the obvious danger that was perpetrated upon the citizens of the state of Pennsylvania. It is obvious to all of us that the bottom line at Three-Mile Island is that they (the operators and the NRC) don't know how to do it very well yet. Excessive radiation will kill you and it doesn't take very much. Our government officials may tell us that "misleading instruments played a bigger role than human error" at Three-Mile Island. What the hell is an average citizen like myself supposed to make of such mumbo jumbo?

Now I am sure that you have been hearing a lot of rather interesting arguments on either side of the issue of whether or not the concrete and other materials that they are putting into the plant at Burlington will be able to control a reactor core and radiation. Maybe all the "experts" are going to tell you just how really safe a reactor facility is. I must admit that I am certainly not an expert in that area, but from what I have been able to discern, I certainly don't want to live near a nuclear reactor facility because I think they are too dangerous. Therefore, I will defer to the so-called experts on that issue and offer you my expert secondhand knowledge of nuclear waste.

But before I do, let me submit to you that I think as Governor of Kansas, you have the power to seek and obtain an injunction to prohibit any further construction at Wolfcreek on the basis that in view of the serious problems at Three-Mile Island and other reactor plants, such generating facilities pose too grave a threat to the public and agriculture of this state for a number of reasons:

1. Human error
2. Mechanical error
3. Conditions in the crust of the earth in Kansas beyond human control. (See articles on earthquakes in Kansas and Missouri)
4. Inability to control radiation as safely as all other dangerous materials may be controlled presently
5. Sabotage by terrorists due to easier commercial accessibility.

The list could go on. The Governor's office should at least challenge the industry and the federal government in the courts and see if the Supreme Court of the United States agrees that the State of Kansas, as a sovereign power, has the duty and the right to protect the health and safety of its inhabitants. The Governor does not have to wait until the danger is immenent before action can be taken. It is a State's right to protect the health and welfare of its citizens and the federal government should not be allowed to infringe upon it under this factual situation. And the State does not have to be absolutely "right" about all the dangers of nuclear plants in order to prevail in this matter.

But the above reasons are not the most important reasons why further construction of the plant should not be allowed. The single compelling reason is nuclear waste. And one need not be an expert to appreciate and realize its imminent threat to all forms of life on the planet.

With regard to the law, as far as I know, there is no question over the fact that you, as Governor of the State, have the power to stop the construction of a nuclear power plant in Burlington and to obtain an injunction against the creation, transportation, relocation or dumping of nuclear waste in the State of Kansas. I will commit myself to file an amicus curiae brief, to accompany that of your legal advisors, demonstrating to the Courts of Kansas why they have the power and authority to enjoin further construction of the plant and the creation, transportation, relocation or storage of nuclear waste in Kansas.

But before the legal question can be dealt with, I must proceed to determine whether or not you, as Governor of the State of Kansas, feel that the waste produced by the plant being built at Burlington is so dangerous that no additional waste should be produced from any plant, not only in Kansas, but throughout the United States, until such time as the federal government or a state government, or any other respected authority can provide you and me and the rest of the citizens of this state and of this country an adequate program for detoxifying this waste and storing it. And, please don't think for a minute that any of us can avoid the waste issue by saying that we will sure keep the federal government from dumping any waste in Kansas. That is not good enough. If we are producing waste here in Kansas, where will it be dumped? If we don't want to dump in the State of Kansas, will we ask another state to do that which we have refused to do?

Well, what about these waste products? Are all of us concerned about waste products heretics and alarmists to be pushed in the corner? Or is there a chance that what many of us are concerned about at least should be looked into? Presently, I am so desperate that I would accept an explanation from anyone - layman, scientist, philosopher, or whoever - that could provide any of us with any adequate plans for the storage of nuclear waste garbage. If representatives from the utilities ever, at any time, indicate to you that there is an adequate plan for the storage and detoxification of this waste material, please question it. Then ask them to tell you where and how the waste is presently being contained. Then please ask them to tell you whether or not any nuclear waste has been dumped into the oceans of the earth in metal canisters. The rest of the questions could go on and on. There are source people that would help you in this matter if you request their help.

The facts about waste, you can obtain most anywhere. In fact there has been surprising little disagreement about the toxicity of nuclear wastes. Experts may disagree on the length of half life, but when we are talking about thousands and millions of years, you will find their disagreement to be pretty irrelevent to the issue at hand.

It is my understanding that there are three basic levels of waste in layman's terms: low level waste; transuranic waste containing alpha-particle emitters like plutonium, which remain highly toxic for thousands of years; and high level wastes such as spent fuel and federal government weapon's waste. High level wastes produce deadly radiation for hundreds of years. Plutonium 239

has a half life of approximately 24,000 years and several hundred thousands of years will pass before its danger to humans and other forms of life is extinguished.

The following is a quote from an article by Kenneth Weaver, Senior Assistant Editor of National Geographic, entitled "The Promise and Peril of Nuclear Energy." The article appeared before the Three-Mile Island incident and gives a fair and readable assessment concerning the whole nuclear question. I am enclosing my copy of the entire article. This following quote deals with emissions from radioactive substances.

> "In nature are found some 60 varieties, or isotopes, of chemical elements that are radioactive. That is, they continuously transform, or decay, into new elements, giving off high-energy radiation in the process. Some two hundred other radioisotopes are created artificially in nuclear machines, such as reactors.
>
> "When emissions from radioactive substances enter the human body, they injure cells by ionizing (tearing electrons from) atoms. If the damage is slight, or takes place slowly, the body usually makes repairs. But if damage is great, adequate repairs are impossible and the biological consequences can be severe: illness, reduced life expectancy, eventual cancer. Or genetic defects may appear in future generations.
>
> "The time it takes a radioactive element to decay is measured by its half-life. After one such period, half the original radioactivity remains; after two half-lifes, a fourth; after 20 half-lives, only a millionth.
>
> "Some radioactive elements decay swiftly. Iodine 133 has a half-life of only 21 hours. But for iodine 131 the half-life is 8.1 days, and for iodine 129 it is 17,000,000 years.
>
> "Certain parts of the body, such as the gonads, thyroid, and bone marrow, are especially sensitive to radiation. Moreover, some radioisotopes have particular affinities. Strontium 90, for example, is a bone seeker. Iodine becomes concentrated in the thyroid instead of being eliminated.
>
> "Iodine 131, cesium 137, and strontium 90 - all produced in nuclear reactors - are especially hazardous to man if they get into the food chain, because of biological concentration.
>
> "Most scientists believe it is prudent to assume there is no safe level of ionizing radiation, even though we constantly get some radiation from such natural sources as cosmic rays and granite in buildings."

I am an expert enough to know that not only have no adequate solutions been proposed and carried out concerning the storage and detoxification of nuclear

waste, but even the so-called experts themselves (men and women trained all of their adult lives to operate reactor facilities) confirmed the fact that a meltdown at one time was possible at Three-Mile Island. How much more of an expert do we all have to become in order to get the point across that we are proceeding too quickly with the nationwide proliferation of nuclear reactor plants? I am certainly not going to suggest that scientists and physicists will never be able to control nuclear power. In the years to come, they may very well be able to make reactor plants perfectly safe and be able to detoxicate waste materials produced by fision plants. As you probably know, it is hoped that the fast breeder reactor will use plutonium for fuel. I say full steam ahead on the research, but let's do the research in the laboratory and not in the middle of one of the most beautiful and prolific farm areas in the world. Sure, it will result in a great economic loss, but I implore you to do it now before any further expenses are incurred in the continued construction of the Burlington plant.

John, I really think it is important for you to move fast on this issue and make it a top priority item. You would certainly not be the first Governor, nor would this be the first state, to take bold action to effectively stop the construction of a nuclear power plant. In addition, we do not have to have a majority vote on issues such as this, because the Governor and the Attorney General of this state have the power to move and be effective in areas concerning the health and safety of the citizens of Kansas.

The health we are talking about here is not only our own, but the health of all the human beings that will follow us. There is every chance that it is already too late with regard to the tremendous amount of waste that has already been produced. There is estimated to be 500,000 tons of highly radioactive defense waste material and 64 million cubic feet of less radioactive waste. It is estimated that commercial nuclear power plants are adding 30 to 40 tons to existing waste dumps each year. There is no question but that the most prudent course of action to take is to stop the continued creation of this waste until we know how to change the fact that some of it is toxic for thousands and millions of years. In a recent AP article, the author Terry Kirkpatrick reports that, "Four states have in effect halted the building of new reactors until they see proof that wastes can be safely disposed of." (Emphasis added) (See attached article)

If what he is saying is true, valuable precedent has already been set with regard to the waste issue. I hope you feel that it is time for the Governor's office to request an injunction.

I want to make one other request. Some time back, certain persons were found guilty of violating some private property statutes when they circled hands on the railroad track that was carrying the reactor core to the Burlington site. I think their actions were justified under the compulsion statute which basically states that if you are compelled to break a law in order to stop some more serious act from occurring, then it can be used as a defense. Certainly, if the law applies to anything, it applies to this nuclear waste issue. I would aks that you do whatever you may legally do to pardon all those people convicted in the peaceful demonstration when the reactor core was transported

into the Burlington area. Of course, as you may know, some of those convicted have appealed the convictions and it is very possible that they will win on this compulsion argument. In any event, I think all of us should thank these people for subjecting themselves to a good deal of harrassment and expense in order to call attention to this grave situation.

Thank you for giving consideration to my requests. Please let me know what your decision is going to be regarding the matters mentioned above. I will remain available to help in any way that I can. Best wishes.

Sincerely,

Lance W. Burr
Attorney at Law

LWB:cam

cc

P.S./I am sending a copy of this letter to the press in hopes that attention will be given to this nuclear waste problem. I am enclosing a few articles and cartoons, a picture being worth a thousand words in some cases. LWB

Attachment 5

Lee C Good
2856 N Fairmount
Wichita Ks. 67220
Phone 683 2497
March 12 1984

Today, there is much controversy about who should pay for Wolf Creek. One group that I believe in all justice should at least pay for the cost over run is the anti nuclear activists and their leaders.

Barry Commonor, one of their gurus, while sitting in a prominent newspapar's office a number of years ago explained their anti nuclear battle plan. He said he and others would sue in the courts and intervene at regulator hearings. They would do anything possible to delay and delay, thus making nuclear energy uneconomical. They have succeeded beyond any thing I could have possibly dreamed of and will cost the industry billions and billions of dollars that will ultimately cost the rate payers in some form or other. They have lobbied for increasing the safety of the plants to the point that the added complexity actually decreased safety. This is an industry that was already one of the safest in the world. No lives have been lost to date from the operation of a nuclear reactor. The sad result of this is, that these billions and billions of dollars could not be spent where they could save lives. We could have spent the money more effectively to improve high way safety where upwards of 50,000 lives are lost every year, for cancer research and many other areas where people really do lose their lives. But no, we had to spend it in mandating 258 changes that required the builders to tear out and change and modify and modify and delay and delay and 15% or more interest to compound and compound.

Atch. 5

Our legislature, in its wisdom, acceded to pressure brought upon them and passed a law disallowing construction interest in a utilities rate base, which was good politics and saved a few pennies in electric rates. But of course this allowed those interest rates to compound and compound and add dollars to electric rates later when the "chickens come home to roost". But witness the copious crockadile tears when the anti-nukes show up at rate hearings. I wonder how many of them contribute to funds to help the needy pay their utility bills.

I am very angry at the ant-nukes and the high electric rates from nuclear utilities that they have brought about by their political agitation and by their untruths and half truths. I don't like to pay high utilitiy bills any more than any one else, but I differ from many people in one respect, I know who is primarily responsible for it.

I noticed in monday mornings Wichita Eable & Beacon that the Senate voted 450 thousand dollars to the KCC to study Wolf Creek. The article stated that this would cost the taxpayers nothing. because the good old whipping boy will pay for it. The utilities also pay the costs for the traveling rate hearings. Of course this isn't strictly true. The ones who really pay for all these expenses in the long run are the rate payers. I deplore the allocation of money for use of the KCC to use for more political gain by obtaining the approval of the anti nuclear activists and others who have conspired to crush nuclear power in this country.

The rest of the world seems to be making good use of nuclear power at about one third the cost and they don't have any better utility management than we do, But they sure have something better maybe it is their regulatory climate

I understand that there are about 300 nuclear power planta producing electricity in 25 countries world wide. Many of these plants have been built with American technology and even in some cases by American contractors. Why has all this difference in cost come about? There is only one thing that is radically different, the political climate and thus the pressure on regulation brought about by the anti nuclear activists.

Why can't we work together to solve this problem for the good of Kansas instead of continually beating on KG&E. Regardless of whose fault it is, what is past can not be undone. lets be fare and get on with it.

I don't own any utility stock and I wouldn't think of owning any utility stock as long employees and stockholders are at the mercy of a political majority that seems to revel in their power to regulate a utility for political gain and at the expense of the rate payers although most are not aware of this fact.

Thank you very much for the opportunity to express my opions here today

Lee C Good

TESTIMONY PRESENTED BEFORE THE
SENATE TRANSPORTATION AND UTILITIES COMMITTEE
ON HB 2927
BY BOB PHILLIPS
KANSAS ELECTRIC COOPERATIVES, INC.
MARCH 14, 1984

Mr. Chairman and Members of the Committee:

My name is Bob Phillips and I am employed by Kansas Electric Cooperatives, Inc., as General Counsel and Director of Governmental Affairs. KEC is the statewide association of rural electric cooperatives in Kansas. I am appearing before you this morning to represent the concerns of Sunflower Electric Cooperative and its members with respect to the proposed legislation you are now considering.

Sunflower Electric Cooperative is a generation and transmission utility which provides electric power to its eight member-owned distribution cooperatives in Western Kansas. Sunflower's member cooperatives are organized and operated under state statutes as non-profit, consumer-owned, membership corporations.

As we understand it, the intent and purpose of HB 2927 is to grant the necessary powers to the State Corporation Commission to effectively deal with the problem of excess capacity. Brian Moline, General Counsel for the Corporation Commission, provided you with written testimony yesterday that indicates a gap exists in the regulatory scheme in Kansas. To quote Mr. Moline, "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." Our concern with HB 2927 is the effect it may have with respect to plants constructed with Commission approval, after issuance of a siting permit.

Atch. 6

Planning for the Holcomb generating facility began in 1974 with a study conducted by an independent consulting firm which considered the options available to Sunflower to meet its projected loads. When the Sunflower Board of Trustees firmed the proposal to construct a coal-fired facility, a unit-sizing study and a power cost study were prepared. The decision to construct a 280 MW coal-fired unit was finalized in 1978, the same year Congress passed the Power Plant and Industrial Fuel Use Act which prohibited the use of natural gas for existing base load electrical generation after December 31, 1989. At that time all of Sunflower's generation was gas and oil fired.

But Sunflower was not alone in the decision to construct the plant. On February 21, 1978, Sunflower applied to the State Corporation Commission for a permit to construct the Holcomb generating station pursuant to the Power Plant Siting Act enacted in 1976 by this Legislature. The matter of Sunflower's permit was heard in Garden City, Kansas, with six full days of hearings, creating a transcript of 747 pages and 36 exhibits.

Attached to the testimony you will find a copy of the order issued to Sunflower in October of 1978 to permit the construction of a 280 MW generating facility. We have highlighted for your information the provisions in the order which indicated the Commission's findings:

1. The decision to install a new base load facility as opposed to purchasing power from other sources or participating in other power plants was reasonable (p.6);
2. The decision to use coal as the energy source was acceptable (p.6);
3. There was a need for the development of a new power generation source in the western part of the state to provide a

reliable power supply to consumers in that area (p.6); and finally

4. The conclusion that "...there is a need for a new electric generating facility in the western part of the state, and that the 280 MW unit proposed in this matter appears reasonable for the applicant's needs in 1983." (p.7)

Also please note in the final paragraph that the Commission specifically retained jurisdiction of the subject matter and the parties for the purpose of entering further orders as they might deem proper.

On August 16, 1983, the Holcomb generating unit was placed in commercial operation, on schedule and on budget.

In June of 1983, Sunflower applied for permission to increase its rates on an interim basis, requesting that one-half of the Holcomb generating unit be phased into rate base. In that decision the Commission found that Sunflower had excess capacity at the time. Nevertheless, at page 9, the Commission ruled and I quote, "This Commission, REA, and Sunflower and its members must share the responsibility for the decision to build the plant and the failure to recognize until it was too late that it would not be fully needed until long after its completion." The Commission recognized in its order that the only option available, other than deferral, was to intentionally force Sunflower into a default position. The Commission rejected this option as irresponsible and a dereliction of its duty acknowledging there would be dire ramifications for years to come not only to Sunflower but for the entire State of Kansas.

Throughout the hearings yesterday the witnesses repeatedly accused and inferred that all excess capacity construction is the result of utility imprudence and that utility companies and their

investors should be held solely responsible. The Committee cannot be forced to accept this presumption. As consumer-owned utilities, we clearly recognize the concern over the excess capacity issue and its potential effect on ratepayers, but there are many factors which must be considered and weighed in an evidenciary type proceeding before reaching this conclusion. One proponent of the bill testifying yesterday made a joke referencing the loss of generation due to frozen coal piles at power plants in Eastern Kansas and elsewhere this past winter. It is a fact that for several weeks during this time Sunflower was operating the Holcomb unit at its maximum rated capacity to supply power to the utilities which lost their generating capability.

The fact remains in the case of Sunflower, there was Commission involvement and approval of construction from the beginning. There were also third parties who supported Sunflower's construction from the beginning and curiously enough one of those supporters appeared before you yesterday and leveled criticism solely on Sunflower. In the plant siting hearing the City of Garden City officially intervened before the Commission and strongly supported Sunflower's construction of the Holcomb plant. Later in a hearing on January 23, 1979, before the Senate Energy and Natural Resources Committee on SB 83, which was introduced to halt Holcomb construction efforts, Mr. Duane West personally appeared to support Sunflower. The last page attached to the testimony is a copy of the minutes from that meeting which recorded Mr. West as testifying that the plant was "essential" to Western Kansas power needs.

Additionally, the Commission required that an independent, nationally reputable management consulting firm review management's

decision-making process to construct the plant. Theodore Barry and Associates was employed for this purpose and the Commission specifically approved the scope of the work. The findings of the management audit, which were introduced in evidence at the siting hearing, approved the decision-making process and confirmed the plans to construct the Holcomb plant.

Sunflower has been able to arrange for a line of credit to finance the interest costs on the portion of its plant which is not now included in the rate base. Before additional plant can be included in rate base Sunflower must come before the Commission for rate approval. This leads us to the specific concerns with respect to HB 2927. If you will recall, section 4 of the bill provides a two-prong test:

> "In the event the Commission finds that a portion of costs were incurred due to lack of prudence in plant acquisition, construction or operation and were incurred to build a facility which in whole or in part represents excess capacity, the Commission shall exclude that portion of the carrying or finance charges incurred after the date of its finding, and no part of the carrying or finance costs excluded shall ever be or become part of the reasonable value of public utility property so used or required to be used." (Lines 146-157)

We are concerned that this provision may be interpreted to achieve exactly the result the Commission deemed inappropriate in the Sunflower rate order. It is not appropriate to place the entire burden of responsibility on the utility company for excess capacity construction and mandate the Commission ordered exclusion of all carrying or finance costs for capacity not placed in rate base when the utility in question has been issued a siting permit by the Commission.

Most certainly this is not acceptable in the case of an electric cooperative. An electric cooperative cannot shift the carrying and

finance charges to stockholders rather than ratepayers --- it is impossible. The ratepayers are the investors, the stockholders. If the provisions of section 4 are triggered, the result for Sunflower would be the unwinding of its financial arrangements and default.

Mr. Chairman and Members of the Committee we appreciate the opportunity to express these concerns for your consideration and Committee action.

Attachment 6

HOUSE BILL NO. 2927
As Amended by House Committee and
House Committee of the Whole

STATEMENT OF JAMES HAINES

Good morning. I am Jim Haines, an attorney for Kansas Gas and Electric Company. Thank you for this opportunity to discuss H.B. 2927, as amended.

KG&E is opposed to H.B. 2927. It could be used to hold utility companies to an impossible standard of perfection in their planning and operation. Whether or not imprudence, mismanagement, a lack of reasonable efficiency, or unreasonable excess capacity were found, H.B. 2927 would give the Corporation Commission unlimited discretion to require a utility to defer rate recognition of the value of new facilities "over any period of time and in such increments as it determines to be appropriate" and to permanently exclude carrying charges on such value. In the short run, H.B. 2927 appears to have the sole purpose of throwing another roadblock in front of Wolf Creek. In the long run, H.B. 2927 jeopardizes the availability of an adequate and reliable supply of public utility facilities and services in Kansas.

Some will tell you that H.B. 2927 is necessary so that the Commission can reduce utility rates when it finds imprudence, mismanagement, or a lack of reasonable effi-

ciency. Anyone who has read the Kansas public utility statutes, however, knows that that isn't so. K.S.A. 66-101 clothes the Commission with "full power, authority and jurisdiction to supervise and control the public utilities." K.S.A. 66-107 requires every public utility "to furnish reasonably efficient and sufficient service . . . and facilities." (Emphasis added.) K.S.A. 66-110 gives the Commission full power and authority to investigate for "unreasonably inefficient" acts or practices. And K.S.A. 66-128, the statute which H.B. 2927 would amend, permits a utility the opportunity to earn a return only on the "reasonable value" of its utility property.

Certainly, the Commission knows that it presently has authority to reduce rates for imprudence, mismanagement, or a lack of reasonable efficiency. In Kansas City Power & Light Company's last rate case, Docket No. 133,002-U, the Commission reduced KCPL's revenue requirement as a result of the alleged poor performance of the LaCygne 1 generating plant. In KG&E's last permanent rate case (Docket No. 134,792-U), the Commission stated that LaCygne 1's performance was "certainly a factor" in the determination of KG&E's allowed return on equity. Just last week the Commission concluded a hearing in Docket No. 106,850-U in which its chief engineer testified that the Kansas owners of the Jeffrey Energy Center should not be permitted to include in rates a portion of their December, 1983, fuel costs, since,

in his judgment, such costs resulted from inefficient management and operation of the Jeffrey coal inventory and coal handling equipment.

H.B. 2927 is simply not necessary to authorize the Commission to reduce rates for imprudence, mismanagement, or a lack of reasonable efficiency.

Some will tell you that H.B. 2927 is necessary to give the Commission investigative and information gathering powers with respect to utility facilities under construction. Under K.S.A. 66-101 and 66-110, the Commission presently possesses and fully exercises broad investigative and information gathering powers with respect to such facilities. The Commission began investigating the Wolf Creek project at least as early as 1977. That investigation has been continuous and of a formal nature since the spring of 1980. The owners of Wolf Creek have had to purchase a 14' by 70' mobile home and equip it with telephones, desks, chairs, file cabinets, etc. in order to accommodate the Commission's permanent and special Wolf Creek staffs. The volume and scope of information which the Commission's Wolf Creek staff has required KG&E to produce have been vast. We have been required to produce everything from the minutes of our board of directors' meetings to the reasons for overtime work at Wolf Creek.

No - H.B. 2927 is not necessary to give the Commission investigative and information gathering powers with respect to utility facilities under construction.

Some will tell you that H.B. 2927 is necessary to permit the Commission to effectively deal with the rate implications of excess capacity. I concede that, in the absence of imprudence, mismanagement, or a lack of reasonable efficiency, the existing law in Kansas is at least ambiguous concerning the Commission's authority to deal with excess capacity. But I do not concede that anything more than New Section 2 of H.B. 2927 is required to resolve that ambiguity. And that concession is subject to considerable qualification. Remember that the Commission presently possesses authority to reduce rates when it finds imprudence, mismanagement, or a lack of reasonable efficiency. New legislation, therefore, is not needed to enable the Commission to deal with excess capacity which results from imprudence, mismanagement, or a lack of reasonable efficiency. New legislation is, at most, required only to deal with the situation in which excess capacity occurs despite prudence, good management, and reasonable efficiency. H.B. 2927 is ill-conceived for that purpose. It is potentially punitive when it should be decisively constructive; it potentially engenders opposition between utility investors and customers when it should foster cooperation.

If you are concerned about the Commission's authority to deal with the rate implications of excess capacity, then nothing beyond New Section 2 of H.B. 2927 is required. And, to make it consistent with existing law, the

standard in that section should be changed to "reasonable efficiency" and "imprudent acquisition or construction."

Now, let's consider the matter of excess capacity -- not excess capacity which results from imprudence, mismanagement, or a lack of reasonable efficiency because, as I have said, the Commission presently has, as it should, the authority to deal with that -- let's consider the matter of excess capacity which occurs despite prudence, good management, and reasonable efficiency. Listen to what the Kansas Supreme Court has repeated about the matter:

> "Unquestionably, electric utilities must plan for the future. To construct generating plants only when the need arises is, of course, ridiculous, and to construct it only for those needs without anticipating future growth would be even more ridiculous. If such were the case, electric utilities would always be operating behind their current load requirements instead of ahead. Add to this the current problems of fuel for generation, and we must also acknowledge the need for innovation and to encourage a search for alternate methods of generation . . . recognizing the declining availability of natural gas."

(Kansas Gas and Electric Co. v. State Corporation Commission, 218 Kan. 670, 677 (1976)).

The Court took that sound reasoning from the Corporation Commission's Order in Docket No. 99,486-U.

Let me explain what I believe is wrong with H.B. 2927's treatment of excess capacity.

FIRST: The penalty for excess capacity is not contingent upon a finding that such excess resulted from imprudent planning. It takes 10 to 15 years to plan and construct a major generating facility. H.B. 2927 would authorize the Commission to prohibit rate recognition of whatever portion of a new generating facility is not immediately used or required for use, even though 10 to 15 years earlier, when the decision to build the facility had to be made, the information available indicated that the facility would be necessary and was the most economical alternative.

H.B. 2927 would condition the opportunity to earn a fair return on the ability to accurately predict the future. Nobody can simultaneously meet that burden and the duty to serve the public on demand. If you want the opportunity to earn a fair return to be conditioned upon the ability to accurately see 10 to 15 years into the future then you should also eliminate the obligation to provide service upon demand.

SECOND: H.B. 2927 does not recognize that it is, for all practical purposes, impossible to always exactly match electric generating capacity with the demand for electric energy. Electric load grows very gradually. Generating capacity, by contrast, is usually added in large chunks, from 200 MW to as much as 1200 MW, with the expected result that capacity reserve margins fluctuate over time. Large power plants offer significant economies of scale not only in their construction but also in their operation. The cost benefit of these economies of scale balances the temporary cost of some capacity in excess of immediate needs.

THIRD: When it is considered that electric public utility service is indispensible to the welfare of individuals and the prosperity of commerce and industry, I believe we should favor a system which, if it errs, errs on the side of having too much generating capacity rather than too little.

H.B. 2927 would reward an electric public utility for having too little capacity and penalize it for having too much when, in fact, the prosperity and welfare of a community can

be irreparably damaged by the unavailability of adequate and reliable electric energy while the availability of too much is soon negated by load growth and the economies of scale to be gained from large generating facilities.

FOURTH: H.B. 2927 does not take into account the possibility that an electric public utility faced with excess capacity has taken prudent measures to alleviate such excess. For examples, when KG&E was planning Wolf Creek, the Kansas Electric Cooperatives, through a federal antitrust lawsuit, forced KG&E and KCPL to permit them to be a 17% partner in Wolf Creek. From that point in the early 70's, KG&E's capacity planning was based upon the cooperatives maintaining that 17% interest. Subsequent government action, however, reduced that interest to 6%. KG&E was forced to back away from a sale of its interest in Jeffrey 3 as a result of onerous conditions which the Commission would have placed on the sale. The owners of the Jeffrey Energy Center, including KG&E, have indefinitely delayed the construction of Jeffrey 4. Finally, as soon as KG&E recognized that Wolf Creek would temporarily result in some

capacity above reserve requirements, KG&E mounted a vigorous effort to sell participation power.

FIFTH: By authorizing the Commission to prohibit eventual rate recognition of the carrying charges associated with the value of excess capacity, H.B. 2927 does not recognize the future value to customers of having generating capacity locked-in at present as opposed to future costs. A power plant constructed between 1977 and 1985 will cost less than a power plant constructed during a later period. If Wolf Creek were not coming on line in 1985, KG&E would have to bring a major generating facility on line in the late 80's. With Wolf Creek, such a construction project will not be necessary and thus KG&E's cost to provide electric service, perhaps for the rest of this century, will be based largely on the embedded costs of the 60s, 70s, and 80s.

SIXTH: H.B. 2927 would prohibit rate recognition of the value of excess capacity but it is silent with respect to whatever cost benefit such capacity may create for customers. For example, it is anticipated that

Wolf Creek will reduce KG&E's fuel expenses by a minimum of $25 million during its first full year of operation and by substantially greater amounts thereafter. Also, during severely cold weather when gas is curtailed and coal plants cannot operate at full capacity or at all, Wolf Creek would reduce or eliminate the need for expensive purchased power from other utilities. H.B. 2927 by its silence on the matter, would give customers all the potential benefits of so-called excess capacity without necessarily requiring customers to eventually cover the carrying costs of such capacity.

SEVENTH: By essentially defining excess capacity in terms of "amount," H.B. 2927 ignores the fact that electric utility generating systems are oftentimes subject to unique circumstances such that an "amount" of generating capacity which would be excess in one system would not be excess in another. Consider, for example, that KG&E's generating system contains 1000 megawatts of gas-fired capacity, 300 megawatts of which is more than 30 years old. In determining the "amount" of KG&E's generating capacity it is not appropriate to give KG&E's gas-fired units full credit for their nominal "amount" of capacity.

Before I conclude, I ask you to consider two more items. First, H.B. 2927 will not stop Wolf Creek. It will make it more expensive by virtue of increasing the risk of investing in it and the delays which could well result if the people who are finishing the project must be called away to participate in the hearings contemplated by H.B. 2927. Second, if you must pass H.B. 2927, you should add an additional section to it, as follows:

> To the extent that the Commission denies rate recognition of the value of, or the total revenue requirement associated with, the property of any common carrier or public utility and does not adopt a plan for the incremental and orderly rate recognition, within a reasonable period, of such value or revenue requirement, including reasonable carrying charges during the deferral period, the Commission shall have no jurisdiction over such property for any purpose and shall set rates, joint rates, tolls and charges as if such property did not exist.

If you pass a law such as H.B. 2927 which authorizes the Commission to permanently deny the opportunity to receive a return on or a return of funds invested in facilities intended for use in serving the public within Kansas, then simple fairness requires you to provide in that same law some avenue for investors to be made whole without further interference from the State of Kansas.

Thank you for your patience; I will be happy to answer questions.