

SUB

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Representative Kent Ott at
Chairperson

3:30 ~~a.m.~~/p.m. on February 28, 1985 in room 529-S of the Capitol.

All members were present except:

Representative Kathryn Sughrue

Committee staff present:

Ramon Powers, Legislative Research

Conferees appearing before the committee:

Kent Jackson, Fish & Game Commission
Representative Harold Guldner
Representative David Heinemann
Mike Quint, Vice-Mayor & City Commissioner, Garden City
Bob Phillips, Kansas Electric Cooperatives, Inc.
Keen Brastley, Attorney for Wheatland Coop

The meeting was called to order by Chairman Ott at 3:30 p.m. for the purpose of hearing HB 2307, HB 2255 and HB 2358.

Hearing HB 2307

Mr. Kent Jackson, Fish and Game representative, appeared before the committee in support of HB 2307. This bill is the result of a 1983 Interim Committee study, which passed the House last year.

Representative Webb moved to recommend HB 2307 favorable for passage.

Representative Holmes seconded the motion.

The motion passed.

Hearing HB 2255

Representative Guldner supported HB 2255 as a way to gain more vendors.

Kent Jackson of Fish & Game opposed HB 2255 due to negative fiscal note of \$9,281. See Attachment 1 (2)

Representative Webb moved to amend bill so there would be only a maximum of 25¢ increase in fee.

Representative Barr seconded motion

Motion passed.

Representative Guldner moved to recommend HB 2255 favorable for passage.

Representative Mollenkamp seconded motion.

Motion passed.

Hearing HB 2358

Representative Heineman testified in favor of HB 2358.

Mike Quint, Vice-Mayor and City Commissioner of Garden City, testified in favor of HB 2358. Attachment 2

Bob Phillips, Kansas Electric Cooperatives, Inc., testified in opposition to HB 2358. Attachment 3

CONTINUATION SHEET

MINUTES OF THE HOUSE ^{SUB} COMMITTEE ON ENERGY & NATURAL RESOURCES,

room 529-S Statehouse, at 3:30 ~~xxx~~ ^{am} /p.m. on February 28, 1985

The meeting adjourned at 5:00 p.m.

The Honorable Ron Fox, Chairperson
Committee on Energy and Natural Resources
House of Representatives
Third Floor, Statehouse

Dear Representative Fox:

SUBJECT: Fiscal Note for House Bill No. 2255 by Committee
on Energy and Natural Resources

In accordance with K.S.A. 75-3715a, the following fiscal
note concerning House Bill No. 2255 is respectfully submitted to
your committee.

House Bill No. 2255 increases the service charge fee from
\$.25 to \$.50 for each nonresident hunting, fishing or
furharvester license issued by agents designated by county
clerks. This fee may be retained by those agents selling the
licenses; none of the revenue from the service charge goes to
the state.

The Fish and Game Commission estimated that 65,786
nonresident licenses would be affected by the service charge
increase. Based on the assumption of the agency, the service
charge would have a negative impact on sales as would a license
fee increase. The agency estimates sales would drop by 323
nonresident licenses. This would result in a revenue loss of
\$9,281 from that anticipated in the FY 1986 Governor's Budget
Report.

Alden K. Shields
Alden K. Shields
Director of the Budget

AKS:SW:dh

FISCAL SUMMARY INFORMATION

FOR

DIVISION OF THE BUDGET

LEGISLATIVE RESEARCH DEPARTMENT

Bill Number: HB 2255

As Amended By: _____

Kansas Fish & Game Commission
Agency

Roy Schoonover
Prepared by

Administrative Officer II
Title

Feb 15, 1985
Date

1

Agency Explanation of Estimated Fiscal Impact

NOTE: Use this section to explain the assumptions and rationale employed in determining the estimated fiscal impact of the attached bill. Identify all revenues and expenditures associated with this proposal which are contained, in whole or in part, in the Governor's Budget Report. (Please use additional sheets as necessary).

This bill will amend existing statutes and specifically those sections concerning the collection of service charges by county clerks and their agents for issuing nonresident licenses.

The amount of a service charge fee that an appointed agent may collect and retain for each nonresident license sold is increased by this bill from not to exceed \$.25 to not to exceed \$.50. The bill further provides that the amount which the county clerk shall charge and retain for each nonresident license sold is increased from \$.25 to \$.50.

The increase in service charge provided for in this bill is, in effect, a \$.50 increase in license cost to the purchaser; therefore, assumptions that have been used in estimating the impact of license fee increases causing reductions in sales volume are applicable. Using 1983 license sales as the base for calculations and based on these assumptions, a reduction in nonresident license sales volume in the calendar year of implementation is projected. The fiscal impact of this bill would be a loss in revenue to the Fish and Game Commission fee fund amounting to approximately \$8,650, and a loss of approximately \$630 hatchery stamp fees.

If the new service charge fees provided by this bill are implemented, purchasers of nonresident licenses will pay approximately \$32,800 annually in additional charges for having their licenses written out.

The implementation of the provisions of this bill would not require additional operating expenditures by the Agency.

(Continued on reverse side.)

CALUCULATIONS:

These calculations are based on the 1983 Nonresident License sales.

It is estimated that of the 70,329 nonresident licenses sold, 61,109 (94%) were sold by license vendors and county clerk offices. A high percentage of these licenses (over 93%) are estimated to have been sold by vendors; therefore, this estimate regarding reduced license sales is based on the maximum increased cost (\$.50) of a license to the purchaser.

Based on assumptions that have been used in estimating the impact of license fee increases on license sales volume, a reduction in sales of 5-day trip fishing license sales and in nonresident annual fishing license sales of 1.0% is projected, while the reduction in license sales for nonresident hunting licenses is projected at .25%.

Estimated Loss of Revenue as Result of Increased Cost of License:

Nonresident 5-Day Trip Fishing License	\$ 981.00	- 109 Licenses
Nonresident Fishing License	2,020.00	- 101 Licenses
Nonresident Hunting License	5,650.00	- 113 Licenses

Revenue Loss Due to License Sales Reduction	\$8,651.00 (rounded to \$8,650.00)
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Hatchery Stamp Fee Funds:

Reduction in sales of nonresident fishing licenses calculated at 210 licenses @ \$3.00, would result in a loss of \$630.00 in Hatchery Stamp Fees.

Estimated number of nonresident licenses sold with \$.50 increase in cost to purchaser is 65,786.

65,786 x \$.50 = \$32,893 (Added costs to nonresident license purchasers due to increase in service fee paid.)

COMPARISON OF RESIDENT LICENSE SALES - 1983 & 1984

(For 91 Counties)

	<u>Number of Licenses Sold</u>			<u>Revenue</u>		
	<u>1984</u>	<u>1983</u>	<u>% Change for 1984</u>	<u>1984</u>	<u>1983</u>	<u>% Change for 1984</u>
Jr. Furharvester	306	431	(29.0%)	\$ 2,295	\$ 3,233	(29.0%)
Adult Furharvester	5,931	6,606	(10.2%)	\$ 88,965	\$ 99,090	(10.2%)
Resident Fish (Inc. Comb. Lic.) Fee - 1983 = \$ 8.00 1984 = \$ 9.00	174,595	184,938	(5.6%)	\$1,571,355	\$1,479,504	6.2%
Resident Hunt (Inc. Comb. Lic.) Fee - 1983 = \$ 8.00 1984 = \$ 9.00	119,587	137,069	(12.7%)	\$1,076,283	\$1,096,552	(1.8%)
Total (all Resident Licenses)	300,419	329,044	(8.7%)	\$2,738,898	\$2,678,379	2.3%

Projections:

On basis of actual 1983 figures, approximately 68.5% of sales for resident licenses occurred in these 91 counties and agency offices for which final figures are available (also for 1984).

Total Revenue --All resident licenses - 1983 = \$3,912,261

Projected Total Revenue -All res. Lic.- 1984 = \$3,998,391

This would project to an estimated 2.2% (\$86,130) increase in revenue for resident licenses in 1984 over 1983.

COMPARISON OF NONRESIDENT LICENSE SALES - 1983 & 1984

(For 91 Counties)

	<u>Number of Licenses Sold</u>			<u>Revenue</u>		<u>% change for 1984</u>
	<u>1984</u>	<u>1983</u>	<u>% change for 1984</u>	<u>1984</u>	<u>1983</u>	
Nonresident Fishing	10,891	10,139	7.4%	\$ 217,820	\$ 202,780	7.4%
Nonresident Hunting Fee - 1983 = \$40.00 1984 = \$50.00	25,480	39,795	(35.9%)	\$1,274,000	\$1,591,800	(19.9%)
5-Day Trip Fishing Fee - 1983 = \$ 8.00 1984 = \$ 9.00	8,837	9,804	(9.8%)	\$ 79,533	\$ 78,432	1.4%
Total (all N.R. Licenses)	45,208	59,738	(24.3%)	\$1,571,353	\$1,873,012	(16.1%)

Projections:

On basis of actual 1983 figures, approximately 84% of sales for nonresident licenses occurred in these 91 counties and agency offices for which final figures are available (also for 1984).

Total Revenue --All Nonresident licenses - 1983 = \$2,228,656

Projected Total Revenue--All nonresident licenses - 1984 = \$1,870,658

This would project to an estimated 16% (\$357,998) decrease in revenue for nonresident licenses in 1984 over 1983.

TESTIMONY OF MICHAEL QUINT BEFORE THE HOUSE COMMITTEE ON
ENERGY & NATURAL RESOURCES: February 28, 1985.

May it please the ladies and gentlemen of the Committee.

I am Michael Quint. Professionally I am practicing in the firm of Heinemann & Quint of Garden City. Politically, I am Vice-Mayor of Garden City and a City Commissioner. I have been selected as a delegate of the people of Garden City to speak in support of H.B. 2358.

The changes envisioned by H.B. 2358 result from problems encountered by Garden City in trying to have some say in its energy future. Let me give you some of the background leading to our dilemma.

Garden City is a city of the first class comprising approximately 22,000 citizens. We are the second largest municipally owned electric utility in Kansas behind only Kansas City, Kansas. A complete list of municipally owned electric utilities is attached to the written testimony and listed as Appendix A.

Garden City exclusively owns and operates the distribution system for its citizens. We have 7,147 residential customers and 1,154 commercial customers within the Garden City system. We receive our power through Wheatland Electrical Cooperative which is a distribution cooperative and from the Sunflower Electric Cooperative, which produces the power. A map showing the relative locations of the Wheatlands Cooperative and larger Sunflower system. It is listed as Appendix B.

Sunflower is made up of eight Electric Cooperatives who have recently been relegated to merely distributing Sunflowers power. The following list, attached as Appendix C, gives the member cooperatives of Sunflower, and the percentage of system power used by each cooperative.

In addition to owning our own distribution system we also own a power plant. That 12.5 MW plant was built some 25 years ago under an agreement with Wheatlands that they would run it and use the excess power for their own benefit. We have long since exceeded the power capacity of our own plant

and the plant itself has been assigned to the Sunflower Cooperative.

Sunflower has approximately 226KW capacity sitting in mothballs outside Garden City and a new 296KW coal fired plant that has come on line in the last two years. Garden City's power consumption represents 11.5% of all power consumed by the Sunflower Cooperative and 28.4% of the power consumed in the Wheatland Cooperative system.

Yet despite our major contributions to the Wheatland system, we have only a single vote. The President of Wheatlands tells us that Wheatlands has 7,000 members and 14,000 users. One member may account for 2 or more users if a separate utility hookup exists for water wells, barns, businesses ect. In the system, there are two municipalities that would be directly affected by the change anticipated by this bill, Garden City and Lakin. These two cities account for 30.69% of all sales in the Wheatland system.

Total Wheatland System Sales - 456,336,421 KWH

Total Garden City Purchases - 129,524,740 KWH

Total Lakin Purchases - 10,548,000 KWH

Total City Distribution System Purchase -
140,072,740 KWH

30.69% of the sales are represented by 2 of the 7,000 votes in the membership of Wheatlands.

We are not the only city in this position, even in the Sunflower system. Among the other cities similarly affected are: Norton of the Norton- Decatur Cooperative, Dighton of the Lane-Scott Electric Cooperative, Goodland of the Great Plains Electric Cooperative and Johnson connected with the Pioneer Electric Cooperative. There are many others in other cooperatives throughout the rest of the state.

You may ask, what does it matter to Garden City whether we have one vote or 7,000+. Obviously, it is our desire to have some say in the running of the Cooperative. Right now Garden City and the entire Sunflower system has the highest electric rates in the State of Kansas. Even after Wolfcreek comes on line and is incorporated into the rate base, Sunflower and probably Garden City will still be higher than anywhere else in the state. We find in our evaluation of the rate request that millions of dollars have been accrued by mismanagement especially in the sunflower system. For instance, more than \$10 million of expense is the result of a take or pay contract for electricity not needed once the Sunflower plant went on line almost 2 years ago.

What makes membership in the electric cooperative so important to us is that electric cooperatives are handled significantly different from "For-Profit" or stockholder utilities. Cooperatives are given by legislative preference and K.C.C. mandate, what amounts to a monopoly.

Your own committees recent bill on Wolfcreek (HB-2927-1984) treats cooperatives different from stock corporations. Financing costs of a phase-in is one example. In a practical sense, excess capacity is a non-existent concept involving cooperatives. If the members do not pay for cooperative excess capacity in rates, they will ultimately cover the cash flow loss through some other means.

The K.C.C. staff clearly reflected their position that cooperatives are handled differently than stock corporations at their meeting with Garden City Commissioners in June of 1984.

The K.C.C. itself has applied considerable pressure supporting cooperatives beyond the support available to stock corporations. In the last rate order, the K.C.C. stated:

"The Commission would not view favorably on any jurisdictional utility refusing to purchase Holcomb power if it is competitively priced and reasonably available. This Commission is prepared to assist Sunflower in this regard to the extent that it is proper."

(Page 23, Docket 137,068-U), and

"Sunflower is a rural electric cooperative generating and transmission utility. It is made up of eight member cooperatives who in turn consist of their members who are also their ratepayers. Therefore, there are no stockholders to bear the burden of costs imprudently incurred. In the case of an investor-owned utility the Commission can, if it finds that costs were unreasonably or imprudently incurred, refuse to allow those costs to be recovered through rates, thus shifting the costs to the stockholders. Sunflower has no stockholders, only members who are the ratepayers. Those members, like stockholders, have the power to elect or remove trustees and influence management decisions through their votes. In effect, by electing the trustees and allowing the policies of Sunflower, including the building of Holcomb to go forward, the members have participated in and approved the construction of this plant. Having done so, it would be irresponsible and in bad faith to now refuse to pay for the plant and attempt to defer all of the cost to future members who had no voice in making those decisions." (Page 8, Docket 137,068-U)

Obviously, participation in management is important to us and why membership, as now defined, is unfair to Garden City and other cities in a similar situation.

We have continually tried to exercise our one membership. On several occasions, Wheatlands has refused to allow Garden City's representative to be seated or vote at the annual meeting. Only by recent intervention of the K.C.C., have we been able to obtain our vote. A copy of a draft memorandum verifying our membership is attached.

Considering how important this issue is to us, the people of Garden City ask your favorable report on this House Bill.

Respectfully Submitted,

Michael Quint

RESEARCH / INFORMATION

BULLETIN

published by league of kansas municipalities / 112 west seventh street / topeka, kansas 66603 / 913 354-9565
Vol. IV, No. 200 (Revised)
February 19, 1982

KANSAS CITIES WITH MUNICIPAL ELECTRIC SYSTEMS

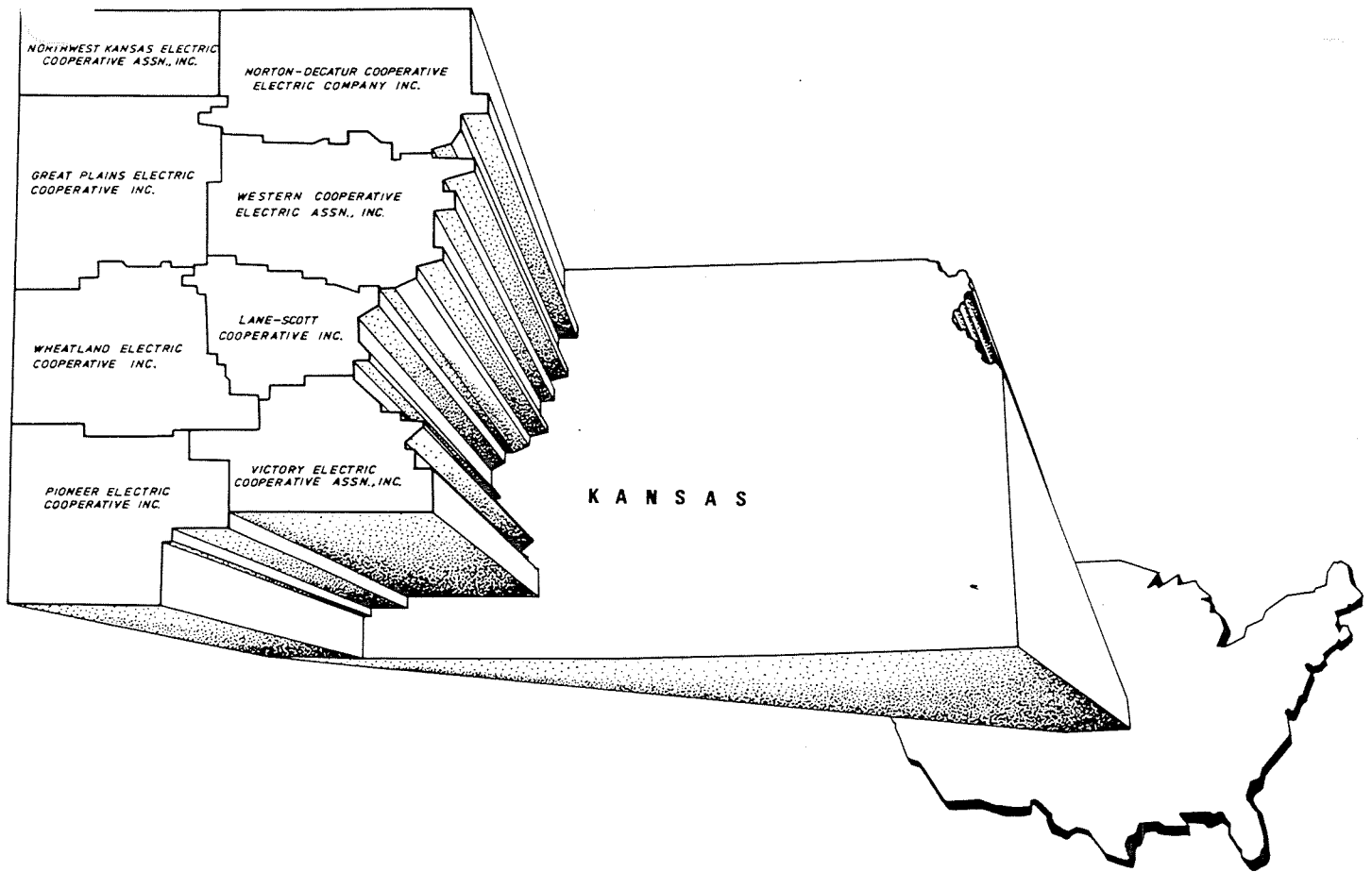
This report lists the 131 Kansas cities with municipal electric systems, together with their 1980 population. The total population of these cities (excludes outside service) is 462,718.

Also shown is whether the system provides for distribution only (D) or whether the city also has generating capacity (G). In many cities, electric power is purchased to supplement local generation. Some cities also wholesale electricity to other distributors, and many cities provide retail service to fringe areas.

D Alma - 925	D Erie - 1,415	D Lakin - 1,823
D Altamont - 1,054	D Eudora - 2,934	G Larned - 4,811
G Anthony - 2,661	G Fredonia - 3,047	G Lincoln Center - 1,599
D Arcadia - 460	D Galva - 651	G Lindsborg - 3,155
D Arma - 1,676	G Garden City - 18,256	D Lucas - 524
G Ashland - 1,096	D Gardner - 2,392	D Luray - 295
G Attica - 730	G Garnett - 3,310	D Mahaska - 119
G Augusta - 6,968	G Girard - 2,888	D Mankato - 1,205
D Axtell - 470	D Glasco - 710	D Marion - 1,951
G Baldwin City - 2,829	D Glen Elder - 491	G McPherson - 11,753
G Belleville - 2,805	D Godd - 196	G Meade - 1,777
G Beloit - 4,367	G Goodland - 5,708	G Minneapolis - 2,075
D Blue Mound - 319	G Greensburg - 1,885	D Montezuma - 730
D Bronson - 414	D Haven - 1,125	D Moran - 643
G Burlingame - 1,239	G Herington - 2,930	D Morrill - 336
G Burlington - 2,901	D Herndon - 220	D Moundridge - 1,453
D Cawker City - 640	G Hill City - 2,028	D Mount Hope - 791
D Centralia - 486	D Hillsboro - 2,717	D Mulberry - 647
G Chanute - 10,506	G Hoisington - 3,678	G Mulvane - 4,254
D Chapman - 1,255	G Holton - 3,132	D Muscotah - 248
D Chetopa - 1,751	D Holyrood - 567	G Neodesha - 3,414
D Cimarron - 1,491	G Horton - 2,130	D Netawaka - 218
G Clay Center - 4,948	G Hugoton - 3,165	G Norton - 3,400
D Coats - 153	G Iola - 6,938	G Oakley - 2,343
G Coffeyville - 15,185	D Isabel - 137	G Oberlin - 2,387
G Colby - 5,544	D Jamestown - 440	G Osage City - 2,667
D DeSoto - 2,061	G Jetmore - 862	G Osawatomie - 4,459
D Dighton - 1,390	G Johnson City - 1,244	G Osborne - 2,120
G Ellinwood - 2,508	G Kansas City - 161,087	D Oswego - 2,218
G Ellis - 2,062	G Kingman - 3,563	G Ottawa - 11,016
D Elwood - 1,275	D Kiowa - 1,409	D Oxford - 1,125
D Elsmore - 104	G LaCrosse - 1,618	D Pomona - 868
D Enterprise - 839	D LaHarpe - 687	G Pratt - 6,885

D Prescott - 319	D Scranton - 664	D Troy - 1,240
G Protection - 684	D Seneca - 2,389	D Udall - 891
D Radium - 47	D Severance - 134	D Vermillion - 191
D Reserve - 105	D Seward - 88	G Wamego - 3,159
D Robinson - 324	G Sharon Springs - 982	G Washington - 1,488
G Russell - 5,427	G Stafford - 1,425	D Waterville - 694
G Sabetha - 2,286	G Sterling - 2,312	D Wathena - 1,418
G St. Francis - 1,610	G Stockton - 1,825	G Wellington - 8,212
G St. John - 1,346	D Summerfield - 158	D Willis - 85
D St. Marys - 1,598	D Tipton - 321	G Winfield - 10,736
D Savonburg - 113	D Toronto - 466	

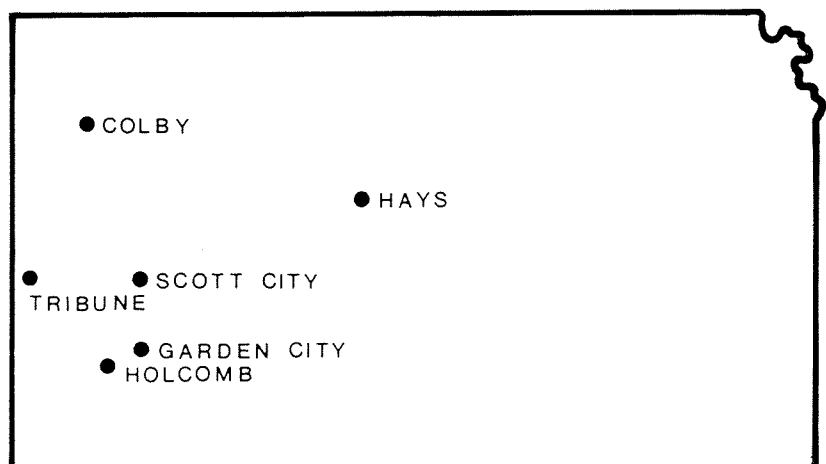
NOTE: In 1977, it was known that Chanute provided direct retail services to customers in Earlton, Iola retailed to customers in Bassett and Gas City, and Winfield retailed in Burden and Dexter. Further, McPherson wholesaled power to Moundridge, Pratt wholesaled to Iuka, and Winfield wholesaled to Oxford and Udall. It is not known that these practices continue.



At the end of 1983 Sunflower Electric Cooperative employed a total of 248 people.

At the co-op's corporate headquarters located in Hays, 46 employees were on the payroll in December of 1983. Western Kansas' first coal-fired generating unit, Holcomb Station Unit No. 1 had 112 workers and Sunflower's Garden City offices listed 73 employees. Two workers were stationed in Colby to serve as extensions of the Garden City-based line department. The co-op's gas operations department, located near Tribune, had a total of 15 on the payroll.

During the year, Sunflower's Jess Taylor Generating Plant located near Scott City was retired. Seven of the nine workers employed there transferred to the Garden City Offices. Of the remaining two, one began working with the local distribution cooperative and the other is Sunflower's first retiree.



COMPARATIVE BALANCE SHEET - MMH

	December 31				April 30	April 30
	1980	1981	1982	1983	1983	1984
Great Plains	80,797	74,626	64,080	60,368	60,559	60,514
Northwest Kansas	38,439	37,054	36,743	36,614	35,950	37,135
Western	114,167	125,672	146,344	156,642	148,025	158,571
Norton-Decatur	68,980	65,341	68,845	68,865	66,696	68,758
Lane-Scott	59,755	57,587	59,273	61,141	59,198	62,511
Pioneer	187,099	179,692	168,780	153,856	153,586	166,790
Victory	22,675	23,318	19,366	17,635	18,973	17,686
Wheatland	419,479	432,560	461,620	464,586	462,101	469,222
Other	<u>9,650</u>	<u>75,499</u>	<u>54,184</u>	<u>215,842</u>	<u>73,322</u>	<u>399,260</u>
Total	<u>1,001,041</u>	<u>1,071,349</u>	<u>1,079,235</u>	<u>1,235,549</u>	<u>1,078,410</u>	<u>1,440,447</u>

M E M O R A N D U M

MARCH 19, 1984

TO: CHAIRMAN LENNEN
COMMISSIONER LOUX
COMMISSIONER DICK

DRAFT

FROM: MARTIN AHRENS

RE: CITY OF GARDEN CITY
MEMBERSHIP IN WHEATLAND COOP.

INTRODUCTION

THIS MEMO ADDRESSES THE ISSUE OF WHETHER THE CITY OF GARDEN CITY IS A MEMBER OF WHEATLAND ELECTRIC COOPERATIVE.

THE ARTICLES OF INCORPORATION OF WHEATLAND ELECTRIC COOPERATIVE, AS FILED WITH THE OFFICE OF SECRETARY OF STATE, INDICATE THAT THE COOPERATIVE WAS ORGANIZED UNDER THE ELECTRIC COOPERATIVE ACT K.S.A. 17-4601 ET SEQ.

MUNICIPAL CORPORATIONS

K.S.A. 17-4609 STATES THAT EACH INCORPORATOR OF THE COOP IS A MEMBER. THE STATUTE CONTINUES BY SAYING THAT:

...NO OTHER PERSON MAY BECOME A MEMBER THEREOF UNLESS SUCH OTHER PERSON AGREES TO USE ELECTRIC ENERGY OR OTHER SERVICES FURNISHED BY THE COOPERATIVE WHEN THEY ARE MADE AVAILABLE THROUGH ITS FACILITIES.

THE CITY OF GARDEN CITY, ALTHOUGH NOT AN INCORPORATOR, HAS USED ELECTRIC ENERGY PROVIDED BY WHEATLAND AS EVIDENCED BY THE FIRM POWER CONTRACTS AND AMENDMENTS ON FILE WITH THIS COMMISSION.

IS THE CITY OF GARDEN CITY, AS A MUNICIPAL CORPORATION, CONSIDERED A "PERSON" UNDER K.S.A. 17-4609? THE DEFINITIONS SECTION OF THE ACT K.S.A. 17-4603(B) STATES THAT A "PERSON" MEANS:

...ANY NATURAL PERSON, FIRM, ASSOCIATION, CORPORATION, BUSINESS, TRUST, PARTNERSHIP, FEDERAL AGENCY, STATE OR POLITICAL SUBDIVISION OR AGENCY THEREOF OR ANY BODY POLITIC.

THE GENERAL TERM "CORPORATION" IS USED AND IS NOT LIMITED BY TERMS SUCH AS "FOR PROFIT", "CLOSE" ETC. CONSEQUENTLY, THE LEGISLATIVE INTENT APPEARS TO INCLUDE ALL CORPORATIONS. FURTHER, BLACKS LAW DICTIONARY, 5TH EDITION, DEFINES THE TERM "BODY POLITIC" AS:

...A TERM APPLIED TO A MUNICIPAL CORPORATION, SCHOOL DISTRICT, COUNTY OR CITY

FOR THESE REASONS, MUNICIPAL CORPORATIONS APPEAR TO BE INCLUDED WITHIN THE TERM "PERSON" AS THAT TERM IS USED IN K.S.A. 17-4609. CONSEQUENTLY, KANSAS STATUTES ALLOW MUNICIPAL CORPORATIONS TO BE MEMBERS OF ELECTRIC COOPERATIVES.

MEMBERSHIP

IT IS NECESSARY TO EXAMINE THE DOCUMENTS, PREPARED BY THE PARTIES, WHICH DEFINE THEIR RELATIONSHIP. THE OPERATING AGREEMENT BETWEEN THE CITY OF GARDEN CITY AND WHEATLAND ELECTRIC COOPERATIVE WHICH WAS SIGNED ON FEBRUARY 22, 1960 BY HAROLD FANSLER SR., MAYOR OF GARDEN CITY AND H. PRESTON PALMER, PRESIDENT OF WHEATLAND ELECTRIC, STATES IN ARTICLE IV SECTION 3, WHICH SECTION IS ENTITLED MEMBERSHIP:

ON OR BEFORE THE DATE OF CONNECTION, THE CITY SHALL BECOME A MEMBER OF THE COOPERATIVE.

ARTICLE I SECTION 6 OF THE OPERATING AGREEMENT DEFINES THE TERM "DATE OF CONNECTION":

WHEN THE PLANT IS READY FOR COMMERCIAL OPERATION, THE CITY SHALL DELIVER POSSESSION FOR OPERATION THEREOF TO THE COOPERATIVE AND THE COOPERATIVE SHALL THEREAFTER OPERATE THE PLANT. THE TIME OF DELIVERY BY THE CITY TO THE COOPERATIVE SHALL BE CALLED THE "DATE OF CONNECTION".

THE PLANT TO WHICH ARTICLE I, SECTION 6 REFERS IS THE 12,500 KILOWATT GARDEN CITY ELECTRIC GENERATING PLANT WHICH WENT INTO COMMERCIAL OPERATION IN THE SPRING OF 1962 AND TO WHICH THE CITY DELIVERED POSSESSION FOR OPERATION ON OR ABOUT THE SAME TIME.

THE AGREEMENT, AS PROVIDED IN ARTICLE IV SECTION 2, HAS AN INITIAL TERM OF 30 YEARS AND CONTINUES THEREAFTER FROM YEAR TO YEAR UNLESS ONE OF THE PARTIES TERMINATES THE AGREEMENT. HOWEVER, NEITHER PARTY HAS TERMINATED THE AGREEMENT.

IN ADDITION, THE COOPERATIVE HAS PAID CAPITAL CREDITS TO THE CITY AS A PART OF THE CITY'S MEMBERSHIP BENEFITS. WHEATLAND CONSIDERS SALES TO GARDEN CITY AS MEMBER SALES FOR PURPOSES OF MEETING THE 85% MEMBER SALES REQUIREMENT.

FURTHER, THE COOPERATIVE, ON JULY 15, 1959, ISSUED A MEMBERSHIP CARD FOR THE CITY AND ASSIGNED THE CITY A MEMBERSHIP NUMBER OF 13,900. ONLY MEMBERS ARE ISSUED MEMBERSHIP CARDS AND ARE ASSIGNED MEMBERSHIP NUMBERS. HOWEVER, THE ISSUE IS CLOUDED

BY THE FACT THAT THE CITY HAS FAILED TO PAY A MEMBERSHIP FEE AS PROVIDED IN ARTICLE 1 SECTION 1 OF THE COOP'S BYLAWS NOR HAS THE COOP ISSUED A MEMBERSHIP CERTIFICATE TO THE CITY AS PROVIDED IN ARTICLE 1 SECTION 2 OF THE COOP'S BYLAWS.

FINALLY, THE MINUTES OF THE COOP'S APRIL 1967 ANNUAL MEETING INDICATE THAT THE CITY WAS REPRESENTED AND VOTED IN PERSON OR BY PROXY. BOTH K.S.A. 17-4610(E) AND ARTICLE 3 SECTION 5 AND SECTION 6 OF THE COOP'S BYLAWS STATE THAT MEMBERS CAN VOTE. THE FACT THAT NON-MEMBERS ARE NOT MENTIONED INDICATES THAT NON-MEMBERS CANNOT VOTE.

CONCLUSION

KANSAS STATUTES ALLOW MUNICIPAL CORPORATIONS SUCH AS GARDEN CITY TO BECOME MEMBERS OF AN ELECTRIC COOPERATIVE. THE PARTIES RELATIONSHIP AS EVIDENCED BY THE OPERATING AGREEMENT, MEMBERSHIP CARD AND NUMBER, CAPITAL CREDITS PAYMENT AND VOTING RECORD ALL INDICATE THAT THE CITY OF GARDEN CITY IS A MEMBER OF WHEATLAND ELECTRIC COOPERATIVE, INC.

CC: BRIAN MOLINE
DON LOW
TERRY MUCHMORE
KENT FOERSTER
KIRBY VERNON
DAVE NICKEL
DON MARKER

STATEMENT
ON BEHALF OF
KANSAS ELECTRIC COOPERATIVES, INC.
TO THE
HOUSE SUBCOMMITTEE ON ENERGY & NATURAL RESOURCES
HB 2358
FEBRUARY 28, 1985

The attached statement is submitted for your information
and for inclusion in the Committee record.

Kansas Electric Cooperatives, Inc. is a statewide trade association with membership consisting of 36 rural electric cooperatives (two generation and transmission cooperatives and 34 distribution cooperatives) serving Kansas.

TESTIMONY BEFORE
HOUSE SUBCOMMITTEE ON ENERGY & NATURAL RESOURCES

HB 2358

FEBRUARY 28, 1985

BY

BOB PHILLIPS

KANSAS ELECTRIC COOPERATIVES, INC.

Mr. Chairman and members of the Committee:

My name is Bob Phillips and I serve as general counsel and director of governmental affairs for Kansas Electric Cooperatives, Inc. (KEC) which is the statewide organization representing thirty-six (36) electric cooperatives serving electricity to more than 333,000 Kansans.

The electric cooperatives of Kansas are incorporated under our state statutes as non-profit, membership corporations. Cooperatives are truly unique entities in the world of regulated utilities because they are owned and operated by the people they serve. Members of an electric cooperative are the owners and the consumers of the business. Under the Electric Cooperative Act rural Kansans, farmers and ranchers, organized their own cooperative corporations to supply the power and energy they needed in remote areas of our state when no one else would do the job for them.

The relationship between a cooperative member-consumer and the cooperative is governed by the Articles of Incorporation and the cooperative bylaws which are also adopted, amended, or repealed by the members at annual membership meetings called

pursuant to statute. Each member has one vote regardless of the amount of electricity used or the number of electric service accounts maintained. The members are also bound by the cooperative's Rules and Regulations which set out specific responsibilities of the cooperative and the membership.

Membership in a cooperative is ordinarily obtained through an application made by the prospective member and accepted by the cooperative. When individuals become members they enter a written contract for service and agree to be bound by the cooperative's articles of incorporation and by-laws, and the rate schedules and rules and regulations for service approved by the KCC. These documents enumerate the rights, duties, and obligations that arise out of the cooperative-member relationship.

There is more involved in the cooperative-member relationship than the right to vote at the annual membership meeting. Each cooperative member has an obligation to use power furnished by the cooperative. The amounts paid for this power, fund the operation of the cooperative. Any amounts received in excess of the losses, costs, and expenses of providing service are refunded to the members in the form of capital credits, this allows the cooperative to operate on a non-profit basis. The excess amounts are credited to each member's capital credit account until the cooperative can retire the credits on a revolving basis without impairing the financial condition of the cooperative. K.S.A. 17-4623 also governs distribution of capital credits and requires such distribution be made to members.

HB 2358 would automatically deem all municipal utility customers as members and owners of the electric cooperative which supplies wholesale power to their municipal utility system. These municipal consumers would be allowed to enjoy the benefits of cooperative membership and ownership without entering any contractual relationship with the cooperative or satisfying membership duties and responsibilities. A contract exists between the cooperative and each of its members which is protected by the constitutional safeguards inhibiting laws impairing the obligation of contracts, depriving persons of property without due process or denying the equal protection law. (18 Am. Jur. Cooperative Associations, §13, Pg. 273). This bill has the potential to violate all of these constitutional protections but it most clearly violates the due process clause by depriving present members of ownership rights without due process of law. The municipal consumers automatically and artificially receive ownership rights when they are statutorily deemed members even though these persons have:

- o no ownership interest or equity in the electric cooperative;
- o no obligation to purchase or receive any electric energy or services furnished by the cooperative;
- o no contractual relationship with the cooperative; and
- o no obligation to comply with the rules and regulations or rates established by the electric cooperative under the jurisdiction and control of the state corporation commission.

HB 2358 creates a new group of municipal members with rights to capital credits, when they are retired, and rights to distributions of property upon dissolution of the cooperative. These rights are usually balanced by membership obligations; however, the municipal members would not be subject to these obligations because there is no contractual relationship between the cooperative and the municipal members. This will dilute the ownership rights of the present members without their consent and without due process of law. This bill would legislate away significant property rights belonging to present cooperative members. The present cooperative members would have: no right to accept or reject these new members; no opportunity to object or consent to the dilution of their ownership of the cooperative; and, no right to require anything in return for bestowing membership rights on the municipal members. In this respect the bill is unconstitutional.

No state, in which RECs are located, mandates automatic membership for any person or group. Most states, including Kansas, require that a member must use or agree to use electric power furnished by the cooperative and must meet additional qualifications for membership outlined in the cooperative's articles of incorporation and bylaws.

The interests of municipal utility customers are not left unrepresented in the present cooperative structure when a cooperative sells wholesale power to a municipality. The municipality is considered a member of the cooperative and as such may express the concerns of its consumers. The wholesale

power rate must be approved by the Corporation Commission based on the traditional ratemaking standard of just and reasonable.

The municipal utility or any citizen may file a petition to intervene before the state corporation commission to protest the wholesale rate. It is unreasonable to deem municipal customers as members of the cooperative which provides wholesale power to the city, when wholesale rate jurisdiction is provided by law.

The entire thrust and intent of HB 2358 is unfair and highly discriminatory to the present cooperative members who are fulfilling their membership obligations. This bill deprives present members of ownership rights in an unconstitutional manner.

Thank you for the opportunity to appear and offer testimony.