

MINUTES OF THE HOUSE SUB COMMITTEE ON ENERGY

The meeting was called to order by Representative Jim Patterson at  
Chairperson

3:30 ~~a.m.~~/p.m. on February 28, 1995 in room 313-S of the Capitol.

All members were present except:

Committee staff present:

Theresa Kiernan, Revisor of Statutes' Office

Conferees appearing before the committee:

Representative Clarence Love  
Patrick H. Donahue, Kansas Legal Services, Inc.  
Representative Mike Peterson  
D. Wayne Zimmerman, Electric Companies Association  
Bob W. Storey, Union Gas System, Inc.  
Harold Shoaf, Kansas Electric Cooperatives  
Kathryn Peters, Board of Public Utilities, Kansas City, KS  
Jim Kaup, League of Kansas Municipalities

The meeting was called to order by Chairman Patterson at 3:30 p.m. to hold a hearing on HB 2331.

Representative Love briefed the committee on HB 2331 concerning utilities providing electric, gas and water service to residential customers. The bill requires prior notice by certified mail of termination of service for late payment or non-payment for such services. Representative Love explained often, in urban areas particularly, notification of termination of service is handled unfairly and his bill would bring about more fairness and uniformity.

Patrick H. Donahue, Legal Service, Inc., testified in support of HB 2331. He expressed concern that at the present time there is no uniform system of giving notice to Kansas residential customers before service is terminated and that the registered mail notice would be an effective measure for impressing delinquent customers with the seriousness of the action they face. (Attachment No. 1)

Representative Peterson testified in support of HB 2331. He related in his law practice he has handled many cases involving utility shutoffs, which he believes the utilities often handle unfairly. This bill, he said, will serve as a protection to the utility, as well as the customer.

D. Wayne Zimmerman appeared on behalf of the Electric Companies Association of Kansas in opposition to HB 2331. He stated this bill is unnecessary, as the KCC policy concerning billing practices is already established, is designed to protect the customer, and is working well.

Bob W. Storey representing Union Gas System, Inc. testified in opposition to HB 2331. He explained Union Gas System, Inc. has adapted guidelines for billing practices for utility companies as set out by the KCC. Requirement of a letter by certified mail would be very expensive and cumbersome to the utility and would not result in any additional benefits to the customer. (Attachment No. 2)

Harold Shoaf, Kansas Electric Cooperatives, spoke in opposition to HB 2331 explaining many Coop customers are farmers, and it would be difficult to insure delivery of certified mail to them. Also, he pointed out this bill would cause an undue amount of accounting for Cooperatives.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY  
room 313-S, Statehouse, at 3:30 ~~xxx~~ a.m./p.m. on February 28, 1985

Kathryn Peters, Board of Public Utilities of Kansas City, Kansas, said her board was unanimous in its opposition to HB 2331. She stated certifi- field mail would be expensive, that paying customers would end up under- writing non-paying ones.

Jim Kaup, Staff Attorney for the League of Kansas Municipalities, was unable to attend the hearing but sent prepared written testimony. The League's position is that HB 2331 is unnecessary and would only add to the cost of delivering utility service to residential customers; also, that adequate due process safeguards exist under current law.  
(Attachment No. 3)

The meeting was adjourned at 4:30 p.m.

TESTIMONY

OF PATRICK H. DONAHUE  
KANSAS LEGAL SERVICES, INC.  
IN SUPPORT OF H.B. 2331  
February 28, 1985

I am here today to testify in support of H.B. 2331. Kansas Legal Services provides legal assistance to over 200 low-income and older Kansans with utility problems each year. We are just one of many agencies who come to the assistance of residential customers or persons who have had or will have their utility service terminated.

We believe that, at the present time, there is no uniform system of giving notice to Kansas residential customers before service is terminated. Because adequate notice is required by the Constitution [Memphis Light, Gas and Water Div. v. Craft, 436 U.S. 1 (1978)], before termination occurs, it makes sense to have all Kansas utilities giving notice according to a consistent procedure. We believe that precedent exists in other consumer credit transactions for there to be a distinct notice of pending creditor action which is separate from a written bill. The registered mail notice proposed in H.B. 2331 would be a practical and effective measure for impressing delinquent customers with the seriousness of the action they face. This could improve the timeliness of collections. Additional benefits from the proposal include: (1) eliminating the doubt about when and if pre-shut off notice was received, and (2) the fact that the notice letter is a document which helping agencies could use to qualify needy individuals for financial assistance.

ATTACHMENT NO. 1

TESTIMONY CONCERNING HOUSE BILL 2331  
BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES SUBCOMMITTEE  
PRESENTED BY BOB W. STOREY  
REPRESENTING UNION GAS SYSTEM, INC.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

First, I want to thank you for giving me the opportunity to appear before you today in opposition to House Bill 2331.

To start with, I want to explain that Union Gas System, Inc. is a certificated public utility, subject to the laws of the State of Kansas and the rules and regulations of the Kansas Corporation Commission.

In approximately 1983, the KCC, recognizing the need for definite rules and regulations defining billing practices of public utilities in the state of Kansas, opened a series of investigative hearings to determine what billing practices should be initiated. As a result of those hearings, an order was issued which set out guidelines for public utilities to follow in supplying natural gas to their customers. Union Gas System, Inc. has adopted those guidelines, and has implemented the procedures as defined by the KCC. I would like to explain to the committee today what procedures are followed by Union Gas System, Inc. before terminating the service of any of its customers.

Let's assume for the moment that in Union Gas System's case a billing for the month in question is done on the 28th of the month, which would mean that for January, 1985, a bill was issued to the customer on January 28. That bill, of course, is

due and owing at the time it is issued. However, Union does not provide for a delinquent charge unless the bill is not paid by the 25th of the following month, or by February 25. Then Union allows an additional three days, so therefore if a customer pays the January bill on February 28, a penalty is not assessed to that particular customer. This in essence gives the customer a 30-day grace period in which to pay his or her bill without either the service being terminated or a delinquent charge being added to the billing. If in fact the January 28 bill is not paid by February 28, the customer receives in the February billing a 7-day notice of termination of service. The company allows an additional two days for mailing, so therefore from the date that the January billing is sent, the customer has 39 days to pay his or her bill before any type of termination proceedings are initiated.

Even after the 39-day period has expired, the company sends a representative to the residence of the person who is in default, to personally give that resident the chance to pay the bill, or make arrangements to pay the bill, so that termination of service need not be initiated.

During the cold winter months, or November 15 to March 30, in accordance with the KCC rules and regulations, in addition to all of the other contacts related above, the utility has the obligation, and does try to telephone the customer to offer him or her an even-payment plan in lieu of termination of service. This means that when Union goes out to contact the customer, or when Union contacts the customer by telephone, the customer has

the option of paying 25% of the past-due bill, or \$45.00, whichever is greater. Then the balance is evenly divided over a 12-month period and the customer may make monthly installments until the deficiency is paid.

In addition to the above, Union never cuts off service to any residence if the temperature is below 32 degrees Fahrenheit. Also, the utility does not terminate service after 4 o'clock in the daytime, and never on Fridays, weekends, or holidays. The reason for this, of course, is to give the customer the opportunity to contact the utility and make payment, or make arrangements to pay, before service is terminated.

On the bill issued by Union Gas System, Inc., there are phone numbers indicating where the customer may call 24 hours a day to discuss with a representative of the company a past-due bill or lack of service.

If House Bill 2331 is initiated, I would like to explain to the committee what the consequences would be.

First, I am sure the committee realizes that if a customer with a past-due bill receives a certified letter from a utility with return receipt requested, that customer normally is going to refuse to sign for the letter. So, there would be no way that the company could receive a return receipt, and the service could go on forever, with the past-due bills for the utility mounting each day or week.

If House Bill 2331 passes, then (in addition to all of the other mandates which Union and the other utilities have to

adhere to, as related in this testimony) there would be the extra required step of mailing, to all customers of Union Gas System, Inc. who are in arrears, a certified letter with return receipt requested. To give you an example of what the cost would be to the utility: In November, 1984, 4,941 customers were sent termination notices because of failure to pay their bills within the 30-day period; in December, 1984, 5,777 customers were sent termination notices; and in January of 1985, 8,446 customers were sent termination notices.

After the termination notices were sent to the customers, as related above, it is interesting to note that in November there were only 95 customers who had their service terminated. Of those, once contact was made by the utility, 71 were reconnected. In December there were 25 disconnects, and again after contact by the utility, 15 were reconnected. In January, 1985, there was only one disconnect, and after contact by the utility, that customer was reconnected. So, you can readily see the procedure which is being used by the utility is now working. Requirement of a letter by certified mail with return receipt requested would be very expensive and cumbersome to the utility, and would not result in any additional benefits to the customer.

We urge the committee to look unfavorably upon House Bill 2331. This is for the simple reason that the utility is providing adequate notice to its customers, and the additional legislation is not necessary.

Respectfully submitted,

BOB W. STOREY



# League of Kansas Municipalities

**PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565**

TO: Representative Jim Patterson, Vice-chairman,  
House Energy and Natural Resources Committee  
FROM: Jim Kaup, Staff Attorney  
DATE: February 28, 1985  
RE: League Opposition to HB 2331--Notice of Termination of Utility Service.

Because of the necessity of appearing before another legislative committee meeting at the time of this subcommittee's hearing on HB 2331, I regret that I am not able to personally offer the League's testimony regarding HB 2331.

The League, by action of one of its legislative review committees, has taken a formal position in opposition to HB 2331. Our concerns with this legislation fall into two general categories, first, the imprecise wording of the bill, and secondly, and more importantly, the fact that the proposed change represented in HB 2331 is unnecessary due to current law.

Regarding the wording of HB 2331, it is unclear at what point in the utility termination process the notice must go to the residential customer. Can the certified mail notice of termination be sent out accompanying the delinquency notice, or is it a notice which is intended to be mailed to the customer following any prior notice of a delinquency and notice of the right to the opportunity for a utility shut-off hearing? Another practical problem with HB 2331 is it makes no statement regarding the effect of a utility's non-compliance with the 10 day's notice requirement. Would non-compliance preclude the utility from terminating service, subject the utility to potential liability for a "wrongful" termination, or would it merely require going back to the customer a second time, with the certified mail requirement then being complied with?

As stated above, the more consequential problem with HB 2331 is that, simply put, the protection to utility customers which this bill attempts to provide is simply not needed given current law. In 1978 the U.S. Supreme Court ruled that a municipal utility must provide its customers with an administrative procedure for hearing compliants prior to termination of service in order to ensure against arbitrary or erroneous termination of utility service (Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1 (1978)). The U.S. District Court for the District of Kansas reached a similar conclusion in 1975 when it held that a city may not terminate water service to a customer for delinquent payments without providing for pre-termination notice and an opportunity for hearing (Donnelly v. City of Eureka, 399 F. Supp. 64 (D. Kan. 1975)). In a 1983 opinion (A.G. No. 83-124) the Attorney General recognized this line of case law and concluded that all utility services provided solely by municipally-owned or public utilities to their customers are constitutionally-protected property rights which cannot be terminated unless due process (i.e. notice and hearing) is provided. The Attorney General noted

"... it is generally recognized that public utilities... have the power and authority to discontinue a consumer's service for nonpayment of bills. ...Services such as electricity, gas and water provided by municipally-owned or public utilities, which are the sole source of such life-sustaining services, are considered to be entitlements or property rights protected by the due process clause of the 14th Amendment of the United States Constitution.... Before any customer's electric, gas or water services are discontinued, due process guarantees must be



afforded that customer. The utility given the utility must, therefore, give customers adequate notice of the pending termination of service, and an opportunity to contest the grounds for termination."

In short, under present law, a city must already meet due process requirements which require that the delinquent utility customer must be notified of the proposed termination action and notified that he or she has the opportunity to be heard at a meaningful time and in a meaningful manner on the subject of the termination.

Due to efforts by the League, and other interested parties, it is safe to say that Kansas municipalities which provide utility services have been made aware of their legal obligations to provide notice and hearing prior to service disconnections. The League has prepared a model utility termination ordinance which has been adopted, in various forms, by a large number of Kansas municipalities. The provision of that model ordinance relating to notice is set out below. You will note that the model ordinance recommends utilizing first class mail to ensure delivery of the notice, or in the alternative, personal service upon the customer or physically placing the notice of delinquency upon the structure on the property served by the utility.

In summary, it is the League's position that HB 2331 is an unnecessary piece of legislation which would only add to the cost of delivering utility services to residential customers. Adequate due process safeguards exist under current law, and to impose an additional cost, which would be borne by either the taxpayers at large or the paying utility ratepayers, simply makes no sense.

#### Sec. 4. NON-PAYMENT OF UTILITY

**BILLS.** (a) An account delinquency and service discontinuance notice shall be issued in writing on the 16th day of the month with respect to any delinquent and unpaid utility service bill. Notice shall be sent by U.S. mail, first class, to the customer (and a copy also sent by U.S. mail, first class, to the occupant of the premises served if the occupant is not the customer) at the last known address of the customer as shown on the records of the city. Written notice may also be provided by personal service upon the customer by an employee of the city utility department or by any city law enforcement officer or by such city employee posting the written notice upon a door of a building upon the property serviced.

(b) The notice of account delinquency and service discontinuance shall provide the following information: (1) Name of customer and address where service is being provided. (2) Account Number. (3) Amount past due plus delinquency charges. (4) Notice that utility service shall be terminated upon failure to pay the delinquent billing plus delinquency charges within 10 days of the date of the mailing of the notice. (5) Notice that the customer has the right to appear and be heard at a hearing on the hearing date set by the city.

(c) The notice of account delinquency and service discontinuance shall be substantially in the following form:

#### NOTICE OF ACCOUNT DELINQUENCY

#### AND SERVICE DISCONTINUANCE. TO:

\_\_\_\_\_ your (electrical and/or gas and/or sanitary sewer and/or water) bill in the amount of \$\_\_\_\_\_ which was due \_\_\_\_\_, 198\_\_\_\_, remains unpaid and is now delinquent. The delinquency charge to be added to your bill is \$\_\_\_\_\_. You are hereby notified that the city intends to terminate your service on \_\_\_\_\_ at \_\_\_\_\_:00 (a.m.) (p.m.), unless you pay the amounts due as above stated or unless good cause be shown why such service should not be terminated. You are further notified that you are to appear in the \_\_\_\_\_ city hall on the \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_\_\_, at \_\_\_\_\_:00 (a.m.) (p.m.), then and there to show good cause as to why your service should not be terminated for non-payment of charges. Should you fail to attend the hearing or fail to request at least 24 hours prior to the above hearing date that the hearing be rescheduled, then you are notified that immediately following the hearing date such service or services shall be discontinued. Dated \_\_\_\_\_, 198\_\_\_\_, City of \_\_\_\_\_, Kansas. By: \_\_\_\_\_."

(d) Any utility customer receiving a notice of account delinquency and service discontinuance shall have the right to a hearing prior to disconnection. At such hearing, the applicant customer, and the city, shall have the right to present such evidence as is pertinent to the issue, may be represented by counsel, and may examine and cross-examine witnesses, how-

ever formal rules of evidence shall not be followed. The hearing shall be conducted by the \_\_\_\_\_ or such other hearing officer as may be appointed by the mayor, with the consent of the governing body. In the event the hearing officer finds utility service(s) should not be discontinued, the hearing officer shall so order and advise the city thereof. In the event the hearing officer finds utility service(s) should be discontinued, the hearing officer shall so order and advise the city thereof. Unless otherwise ordered by the hearing officer, utility service(s) shall be discontinued on the date that the order of discontinuance is issued by the hearing officer. Extensions of the date of discontinuance may be granted to enable the customer to make arrangements for reasonable installment payments or for other good cause shown. The customers shall be given notice of order of discontinuance in person, or by certified mail. In making a determination of whether discontinuance should be ordered, the hearing officer shall consider, but not be limited to, the following factors: Whether discontinuance is dangerous to the health of the customer, the customer's family or any other residents of the premises affected; the weather; unforeseen financial hardship of the customer; and the medical conditions, ages or disabilities of the customer, the customer's family or other residents of the premises.