

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Ron Fox at
Chairperson

3:30 ~~XX~~ a.m./p.m. on March 25, 1985 in room 313-S of the Capitol.

All members were present except:

Representative Charlton (excused)

Committee staff present:

Ramon Powers, Legislative Research
Theresa Kiernan, Revisor of Statutes' Office
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

Cathy L. Kruzic, Travel & Tourism Director, Kansas Department
of Economic Development
Richard D. Kready, Manager of Governmental Affairs, The Kansas
Power and Light Company and The Gas Service Company
Mr. Don Low, Director, Utilities Division, Kansas Corporation
Commission
Mr. Christopher McKenzie, Attorney and Director of Research,
League of Kansas Municipalities

The first item taken up was SCR 1602--Directing state park and re-
sources authority to recommend inclusion of resort development in
federal reservoir master plans; Re Proposal No. 21. Cathy Kruzic,
representing the Department of Economic Development, spoke in sup-
port of this bill. Her prepared testimony indicates that the
Department would prefer that such a project be undertaken by the
private sectors, thus not reducing the availability of state general
funds. (Attachment 1) Chairman Fox suggested that the committee
might wish to review Proposal No. 21 of the interim committee re-
ports relative to this bill.

Regarding House Bill 2562--Franchise fees; certain compensation pay-
ments declared void, Richard Kready of Kansas Power and Light Company
was the first conferee. He stated that KPL Gas Service supported
this bill which would declare unenforceable provisions in utility
franchises commonly known as "favored nations clauses." He noted
that House Bill 2562 would serve to help avoid unnecessary increases
in the cost of natural gas service. (Attachment 2) Considerable
committee discussion followed Mr. Kready's testimony.

Mr. Don Low of the State Corporation Commission testified relative to
House Bill 2562. He said that the Commission had not had a chance to
discuss whether they wanted to support this bill, but he had a few
brief comments. He noted that in July, 1983, the Commission found
that most "favored nations clauses" were not in the public interest
and indicated that it would not approve of such clauses in franchise
agreements that were subject to its' review. He felt that the
Commission still would look askance at such clauses because they do
cause increases in franchise fees which are not related either to an
increase in cost of service or the value of the service that the city
is granting to the utility or in any other external change of events.
Mr. Low answered some questions of the committee. Responding to a
question of Chairman Fox, Mr. Low agreed that this bill generally
supports the philosophy that the Corporation Commission is following
now on franchise fees.

Mr. Chris McKenzie, representing the League of Kansas Municipalities,
made brief remarks regarding House Bill 2562. He noted that the
League did not have a position on the amendment contained in the bill.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
room 313-S, Statehouse, at 3:30 XX a.m./p.m. on March 25, 1985.

He said that the city officials he had talked to about most "favored nations clauses" had told him that in negotiations these had been suggested by utilities as a bargaining chip. He expressed concern about the discussion of the amendment on the cap. He offered to provide data regarding franchise rates for a public hearing if it was desired.

On taking up Senate Bill 120--Hazardous waste underground injection well permitting and regulation, Representative Patrick made a motion for an amendment on line 294, that if the application is denied, the Kansas Department of Health and Environment would figure what its costs were in determining whether or not to grant the permit. That amount would be subtracted from the \$25,000 and the difference would go back to the applicant. Representative Spaniol seconded the motion. After some discussion, Representative Patrick asked to change his amendment to reflect both sides of this. Representative Spaniol accepted the modification of the amendment. The amendment now was to set a maximum fee of \$25,000 but if it cost the agency less than \$25,000 to review and grant the license, the difference would be refunded to the applicant; if the application was rejected, the difference would also be refunded to the applicant. Discussion followed. A vote was taken and the motion carried.

Representative Ott made a motion to pass out Senate Bill 120 favorably. Representative Webb seconded the motion. After attention was called to the next amendment, the motion was withdrawn. Staff noted another amendment to the bill which was essentially a clarification defining a hazardous waste facility to include an injection well. Representative Ott made a motion to amend to clarify definition of a hazardous waste facility. Representative Webb seconded the motion. The motion passed. Representative Ott moved to pass out Senate Bill 120 as amended favorably. Representative Fry seconded the motion. The motion carried.

Turning to Senate Bill 49--Electric public utilities to be separately regulated from other utilities and common carriers, Representative Barr moved to amend House Bill 2450 into Senate Bill 49, which basically would bring municipals under the power plant siting act. The motion was seconded by Representative Guldner. Representative Guldner explained that the amendment would require a municipality or distribution utility to prove to the Kansas Corporation Commission that they can produce electricity cheaper than building new plants. Representative Ott noted that he had asked to have House Bill 2450 introduced but had failed to ask for a hearing on it. He said that the Chairman had agreed to have a hearing next week so both sides of the issue could address it. He commented that following the hearing, he would make a motion that the committee pass it out or he would try to amend it onto another bill. Representative Foster felt that Senate Bill 49 was too important a piece of legislation to have another bill amended into it. Representative Foster then made a substitute motion to recommend Senate Bill 49 favorably for passage. The motion was seconded by Representative Rosenau. The voice vote was not decisive; by show of hands, there were 11 in favor and 8 opposed. The motion passed.

Chairman Fox noted that House Bills 2575 and 2578 would be taken up on Wednesday, March 27. Representative Ott announced that the Natural Resources Subcommittee would meet on Senate Bill 199 following adjournment of this committee on Tuesday, March 26. Attention was called to the full committee minutes of March 19 and the Natural Resources Subcommittee minutes which had been passed out.

The meeting was adjourned at 4:25 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held on March 26, 1985 at 3:30 p.m. in Room 313-S.

Date: March 25, 1985

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Don Low	KLL	44th Fl-50B	4191
Dennis Murphay	KDHE	Topeka	862-9360
D.J. Sabol	KDHE	Topeka	"
Rick McKee	K.L.A.	Topeka	232-9358
Chip Wheelen	Waste Mgmt, Inc.	Topeka	233-9512
Cathy Kruzic	KDED	Topeka	296-2009
Wilbur Leonard	Ks. Tel. Assn	Topeka	234-0307
Ray D. Shenkel	M.C.P. & L. Co.	Shawnee	354-1821
Chris McKinnis	League of Ks. Muncip.	Topeka	354-9565
BILL MINISH	VULCAN CHEMICALS	WICHITA	524-4211
BILL EWING	S.W. BELL TEL. CO.	TOPEKA	296-5606
Dave Mudrick	" " " "	"	296-8976
Bob Tate	KPL	"	296-6471
Randy Burleson	Empire Electric	Columbus	316 429 2375
Jeay Conrad	KGE	Topeka	354-1821
TREVA POTTER	NORTHERN NAT. GAS	TOPEKA	357-5121
Rick Kready	KPL Gas Service	"	296-6474

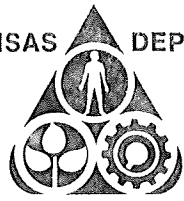
HOUSE COMMITTEE
ENERGY & NATURAL RESOURCES
Room 313 S

TESTIMONY
SCR 1602
KANSAS RESORT DEVELOPMENT

Cathy L. Kruzic, Travel & Tourism Director
Kansas Department of Economic Development

March 25, 1985

Attachment 1 -- 3/25/85
Energy and Natural Resources



Mr. Chairman and Members of the Committee:

A resort development on one of Kansas' larger federal reservoirs would truly be an asset to the tourism industry in our state. To repeat and to re-emphasize earlier testimony, Kansas needs a high quality lodge/resort type facility to host major association meetings of both Kansas based organizations as well as out-of-state or national organizations which include Kansans in it's membership.

We agree with the general model of the resort developments that were presented to the special Interim Committee which studied this issue over the past summer. It was stated that a proposed vacation/resort complex should "have access and orientation to a quality body of water, excellent ground and air transportation access and a proximity to major population centers."

As the lead agency for the promotion of Kansas for tourism, we work equally well with both non-profit and for profit organizations around the state. However, if the question is asked whether we would like to see the state undertake such developments or for a private developer to finance such an entity, we would ask that the project be undertaken by the private sectors; thus, not reducing the availability of state general funds, which finance approximately 65 percent of current Travel & Tourism Division's activities.

Testimony Before

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

House Bill 2562

By RICHARD D. KREADY
Manager of Governmental Affairs

THE KANSAS POWER AND LIGHT COMPANY
and
THE GAS SERVICE COMPANY

March 25, 1985

Mr. Chairman and Members of the Committee:

KPL Gas Service supports this bill, which would declare unenforceable provisions in utility franchises commonly known as "favored nations clauses." These provisions can cause the franchise fees paid to a city to automatically increase because the utility begins paying a higher fee to another city.

Within the public utility business, 20-year franchises often are agreed to between a city and a utility. These franchise agreements call for the utility to provide a particular level of service to all citizens and functions of the city throughout the 20-year period, in exchange for the city permitting the utility the right to serve that community during the same 20-year period.

KPL has negotiated franchises for many years that call for a franchise tax of 2% on our natural gas sales in exchange for the privilege of using the public rights-of-way. We have had some communities that wanted us to collect a larger fee from their citizens under the franchise tax, but KPL has been adamant about collecting no more than that 2% surcharge.

Some communities have required us to include favored nations clauses in the franchise agreement, providing them the opportunity to require us to increase the rate of the franchise tax we collect from residents

in the event we agree to a larger franchise fee in and for any other community. In other words, should our philosophy change for any reason and we (KPL) agree to a franchise tax of greater than 2% on natural gas sales in any other community, (i.e. 3%), then all cities in which our contract includes a favored nations clause could require us to collect a similar (3%) fee. Recognizing that much can change within a 20-year period, we have permitted this language in a few of our franchises in case something unforeseeable would take place to change our corporate philosophy.

KPL's philosophy has not changed -- we still believe that a 2% franchise tax on customers' gas bills provides reasonable but adequate revenues to compensate the city for our use of public rights-of-way to serve the city's residents. However, a year ago last October, KPL acquired The Gas Service Company, which pays franchise fees in Kansas amounting to as much as 5% of gross revenues and ranging up to 10% in Missouri.

To take advantage of savings for customers made possible through economies of scale and to eliminate duplication of services and facilities, KPL now is proceeding toward merging our subsidiary, Gas Service, into KPL.

When KPL negotiated its existing franchises -- some were agreed to nearly 20 years ago -- we did not contemplate this situation we now face of merging Gas Service into KPL. In fact, for many years favored nations clauses have acted as a lever to prevent franchise fee increases. But, with the impending merger, KPL will in fact be paying higher fees to the cities previously served by the Gas Service Company, and the potential exists for substantial natural gas franchise fee increases in those KPL cities with the favored nations clauses. Those higher payments -- which are collected from our customers in those cities -- could total as much

as \$2 million annually. Although we foresee nothing at this time that would affect our electric customers, a similar triggering of the clause in our electric franchises could result in additional increases of more than \$8 million. These increases in franchise fees are nothing more than tax increases triggered by events having no relationship to the revenue needs of those cities, or the level of service we provide customers in those cities. Under our franchise contracts, we could be required to collect this higher tax even though it was brought about by events never contemplated by either KPL or the cities involved.

I say these increases may occur because there is room for doubt. First, we certainly would resist the triggering of favored nations clauses under this scenario through all available means. Also, most of the clauses will not occur automatically, but must specifically be triggered by the city involved. It would therefore require officials in those cities to decide if they want to impose this additional tax burden on their citizens. However, the potential for great harm is clearly present.

This proposed legislation (H.B. 2562) would protect KPL customers in communities having franchise agreements with KPL from suddenly having their natural gas bills increase simply because our company has acquired a subsidiary that had agreed to higher franchise fees in the past.

The KCC has also expressed concern about operation of these favored nations clauses because they impose increases totally unrelated to the operating costs of the city which triggers the clauses. However, since there is no specific standard in Kansas statutes for setting a fee, there is no solid basis for determining that the fees paid are unreasonable.

This bill would not decrease the tax collected on behalf of any city -- it merely would prevent the unnecessary escalation of this tax, and thereby prevent the unnecessary escalation of consumers' natural gas utility rates.

By making franchise fee favored nations clauses unenforceable because they are deemed not in the interest of public policy, this bill would resolve this potentially harmful problem facing KPL's customers. I would point out that, as drafted, the bill is not entirely clear as to whether it would apply to franchises granted under K.S.A. 12-824 as well as those granted under K.S.A. 12-2001. By adding language that it refers to franchises granted pursuant to any provision of law, the bill would be unambiguous in this regard.

Again, let me state that KPL believes House Bill 2562 is in the interest of the people of Kansas, would serve to help avoid unnecessary increases in the cost of natural gas service, and should be made part of the law of the State of Kansas.