

Approved March 18, 1986  
Date

MINUTES OF THE Senate COMMITTEE ON Local Government

The meeting was called to order by Senator Don Montgomery at  
Chairperson

9:00 a.m./~~p.m.~~ on March 13, 1986 in room 531-N of the Capitol.

All members were present except: Senators Allen, Gaines, Mulich and Salisbury who were excused.

Committee staff present: Emalene Correll, Mike Heim, Lila McClaflin

Conferees appearing before the committee:

Louis Stroup, Jr. Kansas Municipal Utilities, Inc.

Gene Miller, General Manager of the Board of Public Utilities, Kansas City, KS.

Hearing on S.B. 428 continued. This bill relates to granting of franchises following annexation.

Letters from the Brown-Atchison REA, and the Flint Hills REA were presented in support of the bill. (Attachment I and II)

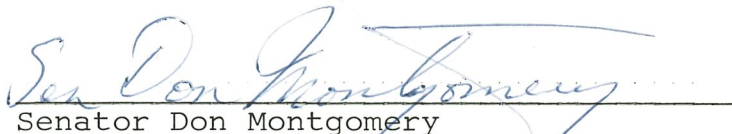
Louis Stroup, Jr. presented written testimony in opposition to the bill and the proposed amendments. He stated the proposed amendments single out cities served by municipally-owned electric systems and would discriminate against such cities by allowing cities served by private power companies or rural electric cooperatives to be able to obtain a franchise in newly annexed areas, but prohibits municipally-served cities the same rights. (Attachment III)

Gene Miller stated their opposition to S.B. 428. He presented a resolution from the Board of Public Utilities No. 4974. (Attachment IV) In summary the resolution stated, S.B. 428 would adversely affect the city and its inhabitants, by: (1) Requiring some inhabitants to pay the costs of nuclear power, while others pay the costs of coal-fired power. (2) Requiring the BPU to discriminate between city inhabitants in the provision of utility services, solely on the basis of when those inhabitants became city residents.

A lengthy discussion followed and the transcript of that is (Attachment V) of these minutes.

Senator Bogina moved to adopt the minutes of the March 10, meeting. Senator Steineger seconded the motion. The minutes were adopted.

The meeting adjourned at 10:00 a.m., the next meeting will be at 9:00 a.m., on March 17, 1986.

  
Senator Don Montgomery





ELECTRIC CO-OPERATIVE ASSOCIATION, INC.

P.O. BOX 230  
HORTON KANSAS  
66439-0230

Phone Day 913-486-2117

Night 913-486-3341

March 10, 1986

Senator Don Montgomery, Chairman  
Senate Local Government Committee  
State Capitol Building  
Topeka, Kansas 66612

Dear Senator Montgomery:

The Brown-Atchison Electric Cooperative Assn., Inc. is a member-owned cooperative utility serving in six counties of Northeast Kansas.

Being a rural member-owned electric utility we are suffering the same financial stress as our consumer-members. Considering the fragile nature of the rural economy, we cannot stand the additional economic stress that would be caused by losing territory we already serve.

Without SB 428, the potential for additional rural economic stress is very real. Please remember under SB 428 we are not expanding our service area. We are only trying to hold on to the territory we already serve.

Rural Kansans need the help of all senators, both rural and urban. Please work closely with Denny Burgess, our legislative advisor, and support SB 428.

Thank you for your past support and please continue to do all you can to help the rural folks of Kansas.

Sincerely,

THE BROWN-ATCHISON ELECTRIC  
COOPERATIVE ASSOCIATION, INC.

Michael F. Arnzen, General Manager

MFA/vk

cc: Denny Burgess, K.E.C.



AREA CODE 316  
767-5144

SERVICE AREA  
MORRIS, MARION, CHASE,  
GEARY, LYON, McPHERSON,  
HARVEY, DICKINSON, BUTLER  
AND WABAUNSEE COUNTIES

**FLINT HILLS**  
RURAL ELECTRIC COOPERATIVE ASS'N., INC.  
P. O. BOX B / COUNCIL GROVE, KANSAS / 66846



10 March 1986

Senator Don Montgomery  
Statehouse, Room 503-N  
915 S.W. Harrison St.  
Topeka, KS 66612

REF: SB 428 Annexation

Dear Sen. Montgomery:

Each electric distribution system, private and/or rural electric cooperative, serve within their respective certificated areas of Kansas.

This includes areas being served adjacent to towns and cities--where annexation occurs. Considerable areas--ultimately annexed--were being served by rural electric cooperatives and subsequently lost to the utility serving the city at the time of annexation.

SB 428 would require annexed areas to be served by the system serving the area prior to annexation--upon execution of Franchise Agreement with the city.

We respectfully request your influence to bring SB 428 out of committee--hopefully for favorable passage by the Senate.

You are to be commended for your dedication of service within the State Senate--and personal interest of good legislation for our State of Kansas.

Very truly yours,

FLINT HILLS RECA, INC.

  
Gerald F. Ridenour, General Manager

(Attachment II) S. LG

3/13/86

WE ARE—

Consumer owned and controlled. Business managed and operated. A Kansas Incorporated, tax and interest paying business.

SUBJECT: SB 428 and proposed amendments by rural electric cooperatives

TO: Senate Local Government Committee

FROM: Louis Stroup, Jr., executive director, Kansas Municipal Utilities, Inc.

KMU and its member cities continue to strongly oppose SB 428 and the proposed amendments for the reasons listed below. Also, our comments on the proposed amendments are shown on the attached ballon:

(1) There has not been a problem in the past under the Retail Suppliers Act from an electrical standpoint; only the fact that the rural electric cooperatives now want to change an industry-wide agreement on territory that they agreed to 10 years ago. The official rural electric cooperative position was stated in the attached material (attachment A) and we hold the cooperatives to that agreement.

This agreement, which included a section on annexation policy, agreed to by the cooperatives, would be stricken by repealing K.S.A. 66-1,176 which is requested by the proposed amendments.

(2) There appears to be a problem dealing with rural water districts and thus we would support the passage of SB 677 which the Committee voted to introduce to handle such problems.

(3) The proposed amendments single out cities served by municipally-owned electric systems and would discriminate against such cities by allowing cities served by private power companies or rural electric cooperatives to be able to obtain a franchise in newly annexed areas, but prohibits municipally-served cities the same rights.

(4) The proposed amendments would give the KCC jurisdiction within the city limits of cities for the purposes of this act -- authority which is strictly prohibited in current law (Section 3. K.S.A. 1,174). The KCC should not have an authority over who uses the streets and alleys of a municipality -- the granting of a franchise to a non-municipal entity is a privilege, not a right for private concerns. Elected city officials are responsible for who serves within the city's boundaries.

(Attachment III) S. LG

3/13/86

PROPOSED AMENDMENTS TO SENATE BILL NO. 428

"A ACT concerning cities; relating to granting of franchises following annexation."

Be amended:

In the title, in line 19, by adding the following:  
", amending K.S.A. 12-527, K.S.A. 12-811, K.S.A. 66-1,174, and K.S.A. 66-1,176, and repealing the existing sections."

By striking Section 1 in its entirety and adding new Section 1 to read as follows:

"Section 1. K.S.A. 12-527 is hereby amended to read as follows: 12-527. Whenever a city shall annex lands located within a rural water district organized pursuant to the provisions of K.S.A. 82a-612 et seq., the governing body of the city shall not furnish, make available, render or extend water service to customers in the annexed area served by a rural water district which requests a franchise from the city within sixty (60) days from the date of annexation. If an agreement cannot be reached concerning the terms and conditions of the franchise and its renewal, or if the franchise ordinance shall fail upon submission to a popular vote, the matter shall be submitted to the district court to determine the reasonableness of the terms and conditions of the franchise ordinance.

(b) Whenever a rural water district organized pursuant to the provisions of K.S.A. 82a-612 et seq., fails to request a franchise within sixty (60) days of the date of annexation, title to all facilities used for the transportation or utilization of water belonging to the water district shall vest in or become the property of the city upon payment by the city to the water district of the value of such property, as agreed by the governing body of the city and the board of directors of the district, or if such agreement is not made, then as determined by the city: Provided, That the board of directors of any such district may bring an action in the district court to determine the reasonableness of the amount of compensation fixed and determined by any such city. The governing body of the city and board of directors of the district may provide, on such terms as may be agreed, that water transmission facilities owned by the district and located within the city may be retained by the district for the purpose of transporting water to customers outside the city. In addition to compensation for such physical facilities the city may shall pay to the water district all severance and consequential damages which result from the purchase of the physical facilities and loss of service rights in the area annexed by the city, including an amount equal to that portion of outstanding indebtedness of the district which is properly attributable to the portion of the water district annexed by the city.

Repeals annexation section of current law in Retail Electric Suppliers Act of 1976. Nullifies major policy statement agreed to by rural electric cooperatives, KPL/Gas Service, municipal electric systems and others. Without this section, the original act would not have been passed.

← Opposes Section 1 and Section 2. Should deal with rural water districts in separate legislation -- SB 677 which the committee introduced earlier.

, adding new Section 2 to read as follows:

"Section 2. K.S.A. 12-811 is hereby amended to read as follows: 12-811. In any city wherein the franchise or service rights of a corporation supplying water, natural or artificial gas, electric light or power, heat, or operating a street railway, ~~has have expired or will expire~~ before the completion of the proceedings contemplated by this section, unless an earlier date is fixed by the franchise or applicable law, the governing body may by resolution declare it necessary and for the interest of such city to acquire control and operate any such plant. Upon the passage of such resolution an application may be presented in writing to the district court of the county in which such city is located, which shall set forth the action of the said city relative thereto, and a copy of the resolution so passed by the city, and praying for the appointment of commissioners to ascertain and determine the value of such plant.

Thereupon a time shall be fixed for the hearing thereof, of which either at least ten days' notice shall be given in writing, or at least thirty days' notice shall be given by publication once in the official city paper, to the person, company or corporation owning said plant and to all persons having or claiming liens on such property: Provided, That publication in the city paper shall not be made until an affidavit has been filed showing that actual service of notice cannot be made and that a diligent effort has been made to obtain such service, and said court shall make an order granting such application, and provide for the appointment and selection of three commissioners, one of whom shall be selected by the city, and one by the person, company, or corporation owning such plant, and the third shall be designated by the judge of the court, who shall be an expert engineer; and the said commissioners shall take an oath to faithfully, honestly and to the best of their skill and ability, appraise and ascertain the fair cash value of said plant and the appurtenances thereunto belonging or in any way appertaining to same; ~~but in the determination of such value said commissioners shall not take into account the value of the franchise or contract given or granted by said city to such person, company or corporation. and all severance and consequential damages which result from the purchase of the plant and loss of franchise or service rights.~~

The said commissioners shall carefully examine said plant and may examine experts and persons familiar with the cost, construction and reproduction cost of such plant, and resort to any other means by which they may arrive at the value thereof, and the city or the person, company or corporation owning such plant may produce such testimony before said commissioners as

in their judgment seems necessary and desirable. Said commissioners shall make their report in writing under oath and file the same with the clerk of the district court. Each party shall have ten days from the filing of said report to file exceptions thereto. Thereupon at a time to be fixed by the court, of which each party shall have ten days' notice in writing, a hearing shall be had upon the said report and the exceptions thereto, and the court thereupon shall confirm, reject or modify said report, and its decision therein shall be a final order from which an appeal may be taken to the supreme court. If any city by a majority vote of the electors voting upon the proposition at an election called and held according to law shall elect to take the property at the amount so ascertained, the governing body is hereby authorized to enact a proper ordinance providing for the issue of bonds according to law to be sold and the proceeds thereof used for the purchase of such plant.

If the city elects to pay the award of said commissioners as approved by the district court it may do so at any time within six months from the date of final order of the district court on the report of the commissioners if no appeal to the supreme court be taken, or from the final judgment in case thereafter an appeal is determined, by paying the amount of the award to the clerk of the district court, and thereupon the title, right and possession thereof. The court shall make all orders necessary to protect such city in the possession of the property and plant. When the purchase money is paid into court for such plant, it shall be paid out only upon the order of the court. If there area any liens or encumbrances upon such plant, the nature and extent thereof shall be ascertained by the court after fixing a time for the hearing, of which all parties in interest shall have sufficient notice. The ascertained liens and encumbrances shall first be paid out of the said fund and the balance to the person, company or corporation owning such plant.

By adding new Section 3 to read as follows:

"Section 3. K.S.A. 66-1,174 is hereby amended to read as follows: 66-1,174. A municipally owned or operated Every retail electric supplier shall be subject to commission jurisdiction as a public utility for purposes of administering this act. ~~as defined in K.S.A. 66-104, with respect to all operations within its certified territory extending more than three (3) miles beyond its corporate limits. A municipal retail electric supplier shall be subject to regulation by the commission in matters relating to the right to serve in the territory within three (3) miles of the corporate city boundary, except that the commission shall have no jurisdiction concerning such retail electric supplier within its corporate limits.~~

Would give KCC authority inside a city's city limits -- authority which is specifically prohibited under current law.

66-1,170<sup>th</sup> ~~act~~



By adding new Section 4 to read as follows:

"Section 4. K.S.A. 66-1,176 shall be amended as follows:  
66-1,176. (a) Whenever any city which is a municipally-owned or operated retail electric supplier shall annex any land the governing body of the city shall not furnish, make available, render or extend retail electric service in the annexed area, certified to another retail electric supplier which requests a franchise within sixty (60) days from the date of annexation. The governing body of the city shall not refuse or neglect to grant or renew a franchise upon reasonable terms and conditions, upon the request of a retail electric supplier certified to provide service in an annexed area. If an agreement cannot be reached concerning the terms and conditions of the franchise and its renewal or if the franchise ordinance shall fail upon submission to a popular vote, the matter shall be submitted to the state corporation commission for resolution in the same manner as provided for under K.S.A. 66-133.

*Reference  
12-2001*

Mandates a city give an exclusive franchise to a utility which is serving the newly annexed area (electric service only). Takes away rights of elected city officials to determine who provides electric services within a city.

(b) All rights of a retail electric supplier to provide electric service in an area annexed by a city which is not a municipally-owned or operated retail electric supplier shall terminate one hundred eighty (180) days from the date of annexation, unless said electric supplier is then holding a valid franchise for services in said area granted by the annexing city. Said period of one hundred eighty (180) days shall be extended to two hundred ten (210) days from the date of annexation if a franchise is granted to said retail electric supplier pursuant to referendum conducted according to applicable franchise laws of the state of Kansas within said period of two hundred ten (210) days. In the event service rights are terminated pursuant to this section, the commission shall certify such annexed area as a single certified territory to the supplier holding a franchise for or then providing retail electric service in the city immediately prior to the annexation.

Would allow private power companies and rural electric cooperatives who are serving within a city to obtain a franchise to provide electric service to newly annexed areas -- but would prohibit cities served by municipally-owned electric systems the same right. This is clearly discriminatory against municipal electric cities.

By adding new Section 5 as follows:

"Section 5. If any part or parts of this act are held to be invalid or unconstitutional by any court, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional part or parts."

By adding new Section 6 as follows:

"Section 6. K.S.A. 12-527, K.S.A. 12-811, K.S.A. 66-1,174, and K.S.A. 66-1,176, are hereby repealed."

By renumbering Sections accordingly; on line 37 striking "2" and inserting "7".

And the bill be passed as amended.



## KANSAS ELECTRIC COOPERATIVES, INC.

5709 WEST 21ST STREET • TOPEKA • AC 913 272 8740

MAILING ADDRESS P.O. BOX 4267 • GAGE CENTER STATION • TOPEKA, KANSAS 66604

CHARLES ROSS  
General Manager

November 14, 1975

Senator Bob W. Storey, Chairman & Members  
Interim Committee on Transportation & Utilities  
State Capitol Building  
Topeka, Kansas 66612

Mr. Chairman and Members of the Committee:

The following information is presented as an official report to the Transportation and Utilities Interim Study Committee by the rural electric cooperatives of Kansas. This report relates to the several meetings that have taken place between representatives of investor-owned electric companies, municipal systems and rural electric cooperatives over the past several weeks regarding single certification of service territories for all retail electric suppliers in Kansas.

On July 17, 1975 Senator Storey and Representatives Harris and Weaver met with representatives of investor-owned electric companies, municipal systems and rural electric cooperatives on the fifth floor of the State Capitol Building. Chairman Storey advised those in attendance that it was the desire of the Interim Legislative Committee for electric utilities to meet together in an attempt to reach a mutually agreeable position on territorial service legislation. Chairman Storey further stated that House Bill 2047, as amended, was not to be studied by the Interim Committee during the summer. He did state however, that if agreement among the electric utilities was not reached, House Bill 2047, as amended, would be considered and action taken on the bill in the 1976 session of the Kansas Legislature.

At that meeting on July 17, 1975 speaking for the rural electrics, I advised all in attendance that the RECs would cooperate fully in any meetings with investor-owned companies and municipal systems in attempting to resolve legislation that would be fair and equitable for the division of service territories throughout the state. Further I personally telephoned Mr. Charles W. Edwards, Executive Vice President of Central Telephone & Utilities (Western Power Division) to establish a potential date and place for an initial meeting.

On August 13, 1975 corporate officials of each of the six investor-owned companies, three representatives of the rural electrics and three representatives of municipal systems met together in Topeka. The investor-owned companies (particularly KPL) listed nine issues they wanted considered in

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the deliberations. The RECs listed one issue. Several of the issues listed by KPL were already included in the language of House Bill 2047, as amended. It was discovered, after some confusion and after it was called to the attention of the investor-owned company representatives, that the version of House Bill 2047 they had was not the latest and therefore several of their listed issues were not germane. After listening to a lecture from a representative of the investor-owned companies, we agreed that further meetings would be held and dates were set for three such meetings.

On September 3rd, 17th and 30th, meetings were held at various locations. Several issues were discussed and some were at least tentatively resolved. However, at each successive meeting, representatives of investor-owned companies would suggest new schemes for dividing service territories rather than agreeing to division on an equidistance basis between existing electric distribution lines.

I must note here that of the 32 known states that do now have delineated service territories for retail electric suppliers within their boundaries, the general basis for such delineation has been equidistance between existing electric distribution lines. This concept allows each electric supplier to retain the service areas each has respectively developed. House Bill 2047, as amended, encompasses this same concept because it is the most fair and equitable method possible. Under this concept, undeveloped territory is maintained in closest proximity to the present facilities of each respective retail power supplier.

At the conclusion of the September 30th meeting another tentative meeting was scheduled for October 22nd, provided the RECs would agree to consider an annexation proposal. RECs have always contended that the present statutes pertaining to the issuing and granting of utility franchises by cities do apply and there is no need to add annexation provisos to House Bill 2047, as amended. Under present franchising statutes cities have the power to grant or deny a franchise to an electric utility which may have a part of its in-service facilities annexed into a city. If a franchise is denied, the annexed utility must give up its facilities and rights to service in the annexed area to the electric utility which is already franchised to serve in that city.

NOTE: Although it would have been to our great benefit, Kansas RECs have never attempted to include language in House Bill 2047 which would mandate that an REC absolutely retain the right to continue service in an annexed area. Several state legislatures have adopted such a provision relating to service territory integrity. Pennsylvania and South Dakota are two states that adopted such legislation in 1975. It would have been to the RECs advantage to include such a provision in House Bill 2047, as amended, since most annexations include REC services. The investor-owned companies currently are franchised in most cities in Kansas and it is difficult for an REC to obtain a franchise to continue to serve in areas which do become annexed. Since RECs have made heavy investments to provide service in areas that become annexed, they would like to continue to serve. We understand why local units of government - the cities themselves - want to have the right to decide which electric utility or utilities are to provide electric service within their incorporated boundaries. This is the principle of present franchise statutes and we subscribe to this principle although it is an issue that we could logically have included in House Bill 2047 to the detriment of the IOUs.

November 14, 1975

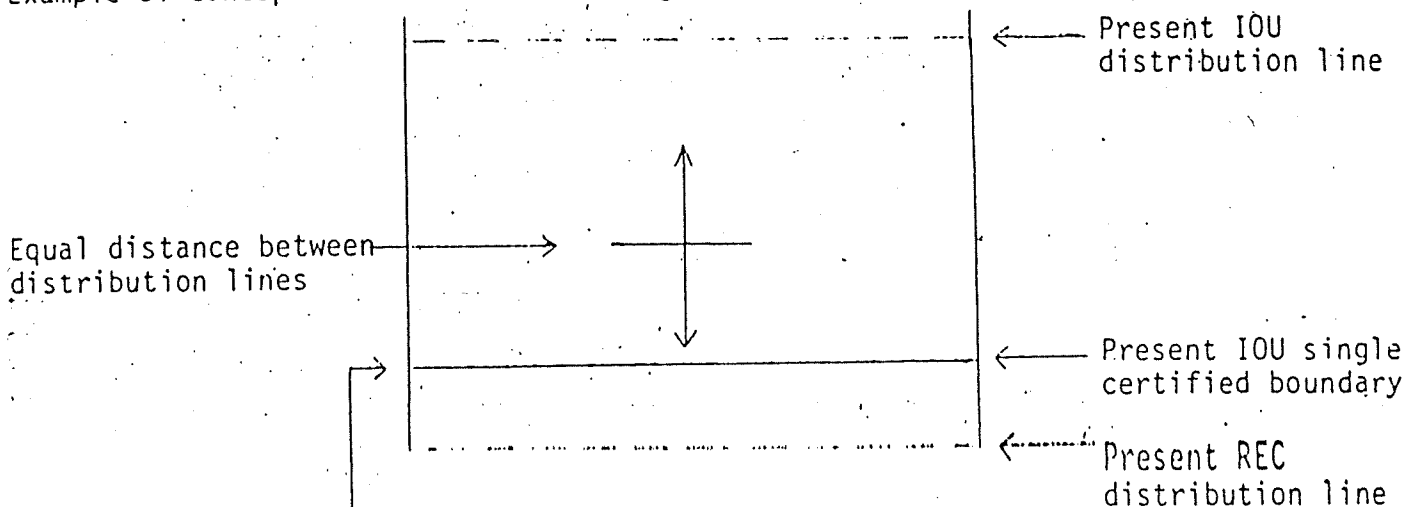
On October 8, 1975 I personally contacted and arranged a meeting with Mr. Bal Jeffrey, Chairman of the Board of KPL to discuss with him a possible annexation provision. Mr. Jeffrey had previously insisted that annexation had to be included in legislation. As a result of this meeting with Mr. Jeffrey another meeting between the three electric entities was scheduled for November 3, 1975. Mr. Jeffrey could not meet on the previously tentatively scheduled date of October 22, 1975.

On November 3, 1975 a final meeting took place in Kansas City, Missouri between representatives of investor-owned companies, municipal systems and rural electrics. At this meeting REC representatives informed the other participants we would agree to a time limit to be included for obtaining a franchise from a city which had annexed areas served by an REC. We pointed out that Mr. E. A. Mosher, Executive Director of the League of Municipalities, had proposed in writing that a time limit for obtaining a franchise after annexation might logically be set at up to two years.

Various periods of time from 30 days up to two years allowable for obtaining a franchise after annexation were discussed at the meeting. However, before agreement was reached, investor-owned representatives again injected a new proposal for dividing service territories. The new wrinkle they insisted on would be to measure from the outside edge of their present single certified territory boundaries equidistance to the closest existing distribution line of an REC. They insisted on this concept even though their nearest distribution line might be a considerable distance inside their single certified service territory boundary.

As REC representatives we said, "We agree that you can retain your present single certified territories as they relate to a division of territory between RECs even though your now existing distribution lines may be a considerable distance inside the boundary of your single certified territories. However, when an REC's nearest distribution line is closer to an IOU's present single certified territory boundary than an IOU's distribution line, the IOU's present single certified boundary should become the dividing line." The investor-owned representatives refused to agree to this fair concept. They insist on more.

Example of concept to which RECs have agreed:



Because IOUs would be allowed to retain their present single certified territories, we agree the dividing line between IOU and REC would be here.

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Additionally, the investor-owned representatives have not agreed to divide service territories equal distance between their present distribution lines and a municipal systems present distribution lines when a municipal system has a distribution line already located within an IOUs present single certified territory and is now serving customers. This is inspite of the fact that municipal systems under provisions of House Bill 2047, as amended will forfeit their present right to serve anyone they choose within a three mile radius of said municipal system.

As a result of this stalemate, the November 3rd meeting adjourned without agreement and with no further scheduled meetings.

However, on November 12, 1975 after discussing unresolved matters with rural electric leaders throughout the state, I attempted to contact Mr. Bal Jeffrey by telephone to arrange another possible meeting with him. If the RECs are to make any further compromises; the investor-owned companies must make some key concessions if agreement is to be reached. A meeting did not take place as Mr. Jeffrey was out of the state the entire week.

Mr. Chairman, and members of the committee, the rural electrics said we would cooperate in meeting with representatives of the investor-owned companies and municipal systems. We have kept that promise. Throughout these negotiations we negotiated in "good faith" in an attempt to get issues settled. We made concessions and compromised. We believe others must compromise too. In the process of these meetings the rural electrics have agreed to two fundamental issues that are not now included in House Bill 2047, as amended.

1. As it relates to rural electrics, we agree that in division of territory, RECs will not take any of the investor-owned companies present single certified service territories even though division of territory on an equidistance basis between existing distribution lines might actually cut through such present single certified territories.

2. We have agreed to place a time limit for obtaining a franchise from cities which annex REC services. We are willing to agree to a period of up to 180 days after such annexation or immediately following a franchise referendum conducted by a city for such purpose.

We are agreeable to inclusion of these two provisions in House Bill 2047, as amended.

The municipal electric utilities have likewise made a concession. The present House Bill 2047, as amended, entirely excludes municipal systems from jurisdiction of the Kansas Corporation Commission except for territory. As an addition, municipal representatives have stated they would agree to remain under complete jurisdiction of KCC outside the three mile radius of their corporate limits just as they are now by state statute.



November 14, 1975

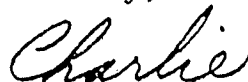
The rural electricians are willing to cooperate in further negotiations with the investor-owned companies. However, from our experiences of recent weeks we are uncertain as to whether they want to resolve this issue at all. Because of the circumstances, we must return this matter to the attention of the legislature.

Mr. Chairman and members of the committee on the basis of this report, the rural electricians respectfully request that the Interim Committee on Transportation and Utilities recommend that the present House Bill 2047, as amended, be recommended favorable for passage to the 1976 session of the Kansas Legislature. In the spirit of "good faith" we agree that the provisions agreed to by the RECs and municipal systems as outlined in this letter should be included as amendments to the present House Bill 2047, as amended. We also respectfully request that the committee consider deletion of Section 6B of House Bill 2047, as amended. In our discussions, investor-owned utilities tentatively agreed that the present language in Section 6B should be eliminated.

The public interest of the people of the state of Kansas will best be served when the matter of delineating service territories for all retail electric suppliers in the state is accomplished fairly and equitably.

To each member of the committee, we sincerely thank you for your interest and cooperation on this issue, and ask for your favorable vote to recommend House Bill 2047, as amended, to the 1976 Kansas legislature favorable for passage.

Cordially,



Charles Ross  
General Manager

CR:dh

BOARD OF PUBLIC UTILITIES RESOLUTION  
NO. 4974

WHEREAS, the Board of Public Utilities of Kansas City, Kansas, would be adversely affected by Senate Bill No. 428, and wishes to indicate to the Kansas Legislature its opposition to the bill, and the reasons for this opposition.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC UTILITIES OF KANSAS CITY, KANSAS, AS FOLLOWS:

The Board of Public Utilities of Kansas City, Kansas, [BPU] states the following in opposition to S.B. No. 428:

The BPU is a municipally owned and operated electric and water utility, charged with the duty of producing and supplying the City and its inhabitants with water and electric energy for domestic, commercial and industrial purposes and for public use in the City; and

The BPU has always complied with these legal obligations, and has used its best efforts to provide the City and its inhabitants with efficient and economical utility services; and

These efforts have included the construction and maintenance of coal-powered electric generating plants, built with sufficient capacity to serve present and future citizens and to provide a basis for economic development, and the establishment of firm and stable coal reserves, without reliance upon high-priced nuclear generation; and

(Attachment IV) S. L. G.

3/13/86

Upon annexations of land by the City, the BPU has always promptly extended utility services as required by law, providing services to all residential, commercial and industrial users without discrimination or differentiation between customers, and has always paid fair market value for facilities being acquired, upon annexation, both inventory and severance damages, and

In the area of Wyandotte County proposed to be annexed by Kansas City, Kansas, which annexation was denied by the Wyandotte County Commissioners:

1. Electricity to a large portion of such area is presently being provided by the BPU, through its border customer agreement with Kansas City Power and Light [KCPL], from the BPU coal-powered generation facilities.

2. KCPL resells the BPU electricity to customers in such area at a higher price than BPU customers would pay for electricity, which higher price is based on KCPL's higher electricity rates, caused in part by the higher cost of nuclear energy.

3. There are only some 500 residential customers, 9 commercial customers, and 1 industrial customer in such area.

4. Water to a large portion of such area is presently being provided by the BPU, through a contract with Rural Water District No. 2 of Wyandotte County, Kansas, from the BPU water

treatment plant in Kansas City, Kansas.

5. Rural Water District No. 2 resells the BPU water to customers in such area at a higher price than BPU customers would pay for it.

6. There are only some 220 water customers in such area.

7. BPU was prepared to pay fair market value for all electric and water facilities which would have been acquired in such annexation, and to take all steps necessary to ensure that customers in the areas being annexed were treated fairly and nondiscriminatorily.

Thus, even if the proposed annexation had been approved, the annexation would have affected few customers of KCPL, KPL or Rural Water District No. 4, those customers would have received lower utility bills, and upon annexation, those customers would have been treated as all other customers of the City; and

In summary, S.B. No. 428 would adversely affect the City and its inhabitants, by:

1. Requiring some inhabitants to pay the costs of nuclear power, while others pay the costs of coal-fired power.

2. Requiring the BPU to discriminate between City inhabitants in the provision of utility services, solely on the basis of when those inhabitants became City residents.

For the reasons stated in this Resolution, the Board of Public Utilities of Kansas City, Kansas, hereby expresses its opposition to Senate Bill No. 428, and urges the Senate Local Government Committee and the Kansas Legislature to vote against such bill.

The foregoing resolution is adopted by the Board of Public Utilities of Kansas City, Kansas, this 12th day of March, 1986.

THE BOARD OF PUBLIC UTILITIES  
OF KANSAS CITY, KANSAS

By *Chp*  
~~Acting~~ President

ATTEST:  
*Joe Dick*  
~~Acting~~ Secretary

Approved as to form:  
*Kathryn Pruessner Peters*  
Kathryn Pruessner Peters  
Assistant City Attorney



TRANSCRIPT OF HEARING ON SB 428

(Transcribed from tape recording by  
Committee Secretary Lila McClaflin)

March 13, 1986

9:00 a.m.

Senate Local Government Committee

STROUP: ... Second I would like to reiterate that there appeared to be a problem with rural water districts and we would support the passage of SB 677 which the committee voted to introduce earlier if they had a problem. I think the two other major things that the proposed amendments do; one, it singles out cities served by municipally owned electric systems and discriminates against such cities by allowing cities who are served by private power companies or rural electric cooperatives to be able to obtain a franchise in a newly annexed area but would prohibit municipally served cities the same rights. I think the last point I would like to make, Mr. Chairman and Members of the Committee, is under current law the KCC has no jurisdiction for territorial purposes inside the cities' limits. The proposed amendments would give the KCC authority inside the city limits of the city for territorial purposes. I would be glad to answer any questions.

MONTGOMERY: You want to point that out in the section?

STROUP: The last point, Mr. Chairman?

MONTGOMERY: Yes.

STROUP: Yes, look at my balloon here. Page 3 of the proposed amendments, Mr. Chairman, down there in Section 3.

MONTGOMERY: On your balloon.

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STROUP: On my balloon, yes. On page three of the proposed amends down there strikes the language that prohibits the KCC authority inside the city limits. The Retail Electric Suppliers Act specifically prohibits the KCC having any jurisdiction in the city limits for territorial purposes within the three miles limits of the cities. That is the other change in the proposed amendments. That is all I have, Mr. Chairman.

MONTGOMERY: Any questions of Louis? Senator Steineger.

STEINEGER: How many municipally owned utilites are there in the State of Kansas?

STROUP: One hundred and twenty eight.

STEINEGER: And how do their rates compare to the costs of service as compared with investor-owned utilities and RECs? The RECs, where do they get their power, they don't generate electricity?

STROUP: I can't speak for all the RECs, but they have two generation and transmission entities, Sunflower and Wheatland has some generation and KEPCo, is their power supplier and are planning to get involved in ownership of Wolf Creek, and Senator, the rates, I'm not a rate expert but I would assume that a lot of our cities have a little bit higher rates than some of the companies, but not all the companies, and we have cities that have lower rates than some of the companies.

STEINEGER: Hasn't KEPCo entered into take or pay contracts with Wolf Creek? -- KEPCo.

STROUP: They own part of Wolf Creek, yes sir, but as far as the type of contracts they have, I don't know.

STEINEGER: Thank you, that is sufficient.

MONTGOMERY: Is there any other questions of Louis? (pause)

Thank you, Louis.

STROUP: Thank you, Mr. Chairman.

MONTGOMERY: Anyone else here, I have Gene Miller of Kansas City, Kansas.

MILLER: I am Gene Miller, the general manager of the Board of Public Utilites in Kansas City, Kansas, the largest municipal utility in the state. I have a resolution that was adopted unanimously by our elected board last evening in opposition to this bill. Primarily, my purpose of being here is just to provide an opportunity to attest to you that the act in existence is working. We have experience in working with Kansas City Power and Light, with rural water districts, and the working arrangements under the existing act and laws are effective. On the western border we've been with the utility two years so I can't personally attest to the experience of annexation in the 1970's, but we're still experiencing a satisfactory relationship with phasing in a transition of customers with the Kansas City Power and Light. We have a border line agreement which works on an individual basis and we don't try to use the economy and phasing in that service. The recent experience of proposed annexation in Western Wyandotte County, which was eventually voted down by the County Commission, but we did do an extensive study into the transition of serving that area. Most of the area presently being served by Kansas City Power and Light is actually being served through five, well actually the area in question is served through three metering points the energy being supplied from the Board of

Public Utilities into the area and metered by Kansas City Power and Light. The same, very similar arrangement exists with the rural water district in which the BPU provides water to the district in which there is a meter and sells to the customers in the area. Also, just another point I wanted to make is that we have over the years included the growth and what we would project as expansion of corporate boundaries in our long range plans and included in that was the additional generating capacity to our facilities, coal fired facilities, and also to our water processing plant. So we have invested with the plan of taking into consideration the expansion needs of the community. Other than that, I just wanted to attest to the fact that it is working in Kansas City, Kansas and I would be happy to respond to any questions.

MONTGOMERY: Senator Ehrlich.

EHRlich: Thank you very much, Mr. Chairman. Your testimony here on the resolution, is it Senate Bill 428, it is not directed to the amendments that have been offered to the bill. Are you saying most of Senate Bill 428, as is, or the balloon copy.

MILLER: As I understand the amendments they are more objectionable than the original bill.

EHRlich: It doesn't state that in your resolution though, does it? It just speaks to Senate Bill 428.

MILLER: That is correct, but I was aware of the amendments at the last minute and we didn't get them incorporated into here.

EHRlich: That's all I wanted to hear....

MONTGOMERY: Do you wheel power over any other lines outside your jurisdiction?

MILLER: We have a wholesale agreement through the Kansas Municipal Energy Agency and we have a wholesale agreement which is actually a plant participation agreement with the City of Columbia, Missouri. Those are participation agreements in one of our Nearman Creek Power station the latest addition to our generating capacity.

MONTGOMERY: But that is not over your lines though, you do not own those lines?

MILLER: No, we do not.

LANGWORTHY: Along that same line, do you also sell power in other parts of Kansas?

MILLER: No, only through the participation agreement in one of our plants through Kansas Municipal Energy Agency. We are restricted by law to serve only within the corporate limits of Kansas City, Kansas on a retail basis.

LANGWORTHY: What do you mean by what you just said though with your agreement.

MILLER: I don't know the specific act, but it is the the retail suppliers act, I believe, what's the terminology....

STEINEGER: Kansas Retail Electric Suppliers Act and that was...

LANGWORTHY: Would someone explain that.

STEINEGER: Well I can because I was here and in this balloon you have a copy of the letter. There was a long interim study on the question of allocation service territory to serve the territories of the investor-owned utilities, the question of rural electric cooperatives and their territory, the same questions we are dealing with here now of what happens when annexation takes place



dealt with the question of cities selling power outside of the city limits and after, I think perhaps a year, arguing among the various utilities. This Kansas Retail Electric Suppliers Act, was agreed upon and passed and enacted into law. That's the reason you have attached the letter from the RECs buying off on this agreement. The quid pro quo was the municipalities would not sell power outside their districts unless there was general agreement, outside their city limits. If you find the time to read that letter it spells out rather carefully what the agreement of the rural electric was.

LANGWORTHY: Is this Attachment A?

STEINEGER: Yes, and so that was the genesis of that act.

LANGWORTHY: How often are these agreements reratified or reapproved?

STEINEGER: Oh, I don't think they have been reapproved or reratified or anything in ten years. But, you see, it's really in gallin in tertia est. The state has been divided up into, this is KCP&L's territory, this is KP&L's territory, this is the REC territory, and those territorial boundaries, like sovereign nations, are generally held to be impregnable and unattackable and next to holy. But this question of outlying territory, outlying the city boundaries, has always been recognized as a problem and was specifically dealt with in the Kansas Retail Electric Suppliers Act. I think that gives a fair and accurate recital.

LANGWORTHY: But Kansas City, Kansas is through the Kansas Retail Electric Suppliers Act taking, wheeling power over other lines to some other place in Kansas.

STEINEGER: No, that is a different proposition. The legislature created here, I guess five or six years ago, the KMEA (Kansas Municipal Energy Act) which in effect has become a wholesaler of electrical power to other little cities in the state. KMEA does not have any of its own generating facilities, isn't that right?

MILLER: Yes, that is correct.

STEINEGER: So, KMEA buys its power from other generating facilities, I think buys from investor-own entities, it buys an excess of peak energy from Kansas City, Kansas Board of Public Utilities, and then acting in a wholesale capacity retails that out to other little cities in Kansas.

LANGWORTHY: Now, are they under the control of the Kansas Corporation Commission?

STEINEGER: No, cities are not right?

MONTGOMERY: Neither is KMEA.

LANGWORTHY: I meant KMEA.

STEINEGER: And neither is KMEA. Isn't that right?

STROUP: KMEA is under the full jurisdiction of the Kansas Corporation Commission.

*Langworthy:*  
SALISBURY: They are?

STROUP: Yes, Senator, they are.

STEINEGER: KMEA was devised as a way to provide lower priced power to other cities that did not have their own generating municipal generators.

LANGWORTHY: Thank you.

MONTGOMERY: I was trying to read that letter here. I have never found anything in any of the reading that I have that there was

any official action taken on behalf of the RECs. Most of it is just from the manager, Charlie Ross, in reading it most of the time that they had the meeting with the official board that the official board rejected it. I am not sure whether Charlie had the authority to make the agreement or not and I don't know if there is an official agreement. If you dig into it, you can't find anything in the minutes where they officially agreed to it. It is all pretty much just, from what this letter even says, pretty much just one individual stating his opinion and every time in <sup>o</sup>the meeting, Bal Jeffreys and they got together it didn't seem like they agreed on anything. I'm not sure there is any official agreement ever been documented.

STEINEGER: Mr. Chairman, the general manager or president of any corporation undertakes to commit that corporation it is presumed that he has the authority to do so, unless proven otherwise.

MONTGOMERY: Well, I would think that anything of this magnitude there would have to have been some official agreement signed by the chairman of the board.

STEINEGER: I think the agreement was memorialized, Mr. Chairman, in the Kansas Retail Electric Suppliers Act, and that was the agreement.

MONTGOMERY: Well, the whole problem gets down to whether, it's just a little bit like the annexation whether it has been abused or not and laws don't always last forever. Sometimes they need some correction and I am sure that's what has been brought about this matter is that the annexation procedures that have been

taking place in the state were getting involved in other territory.

STEINEGER: Mr. Chairman, I must say that mere allegations do not constitute facts and empty words do not constitute facts. So, let's see the problem, the real living existing problem and not empty words or allegations.

MONTGOMERY: I think we've got proof of that if somebody wants to.

STEINEGER: I think that what the Committee needs is a measure of the magnitude of the real problem. There is a problem on the other side to, and I wanted to ask Mr. Miller a couple of questions. You stated that, number one, what is the approximate value of the Nearman Plant that is owned and operated by the Kansas City, Kansas Board of Public Utilities?

MILLER: Oh, about \$200 million.

STEINEGER: And, what is it capable of producing in its present configuration?

MILLER: 235 megawatts.

STEINEGER: And, does that plant presently have excess generating capacity?

MILLER: Yes, it does.

STEINEGER: Was that specifically designed into the facility?

MILLER: Yes, it was.

STEINEGER: And why was that excess capacity designed into the facility?

MILLER: As I stated before, that was in anticipation of growth and in logical expansion of the corporate limits of Kansas City, Kansas.

STEINEGER: In fact, is it not a fact that down there on the Nearman site you already have the foundations in for one, two or three additional generators?

MILLER: That is correct.

STEINEGER: And what's the municipality's capital investment cost on just those three beds that are sitting there waiting for future expansion? Do you know?

MILLER: Oh, offhand I would say probably \$25 to \$35 million, somewhere in that range.

STEINEGER:: And those are sitting there solely to accommodate the additional growth of the city? Is that right?

MILLER: That was the plan at the time the decision was made, yes.

STEINEGER: And when those decisions were made, the municipality was relying on the Kansas Retail Electric Suppliers Act as being the law of the land, is that correct?

MILLER: That is correct.

MONTGOMERY: Under that act, what had you proposed to do if you would have bought or if they would have annexed the territory of Wyandotte County that was proposed, what would you have proposed to do with the service company presently serving electricity in there.

MILLER: We would have had an excess capacity for a longer period of time.

MONTGOMERY: Well, were you proposing to, I think in the agreement it says you have got 80 days, I think, to offer them a franchise or else pay for their equipment and a reasonable amount for their future loss? Was that an intention of the -



MILLER: It was an intention of the BPU to acquire the physical property and pay for, I don't know what the terminology is, for revenue loss which was done in the mid-1970s when there was a further annexation and anticipated doing that again, yes.

MONTGOMERY: Okay. That is what I was wondering. Senator Daniels.

DANIELS: Good morning. When did you during the first part of your presentation you may have told us. When was your plant constructed with all of your excess capacity.

MILLER: The plant went on line in 1981.

DANIELS: But the planning for the plant began in ?

MILLER: Probably five years earlier.

DANIELS: Five years earlier?

MILLER: Also, we have three plants. We have Kaw Plant, we have Quindero Plant, and Nearman, the latter two being located on the Missouri River and Kaw is on the Kansas River. And our planning process is to keep the coal fired units in service longer than was anticipated, avoiding additional fixed costs and so on. This is, all combined in our comprehensive planning effort for energy capacity.

DANIELS: Your long-term comprehensive planning was for five years, is that right?

MILLER: It was much longer than five years. It takes us, right now, six to eight years to build a coal fired plant, from decision to putting it on line.

DANIELS: What you are saying is that you as the company developed comprehensive long-term plans, what period of time do you plan ahead is it five years, eight years, what?

MILLER: Ten years.

DANIELS: Ten years time. Different organizations use different times some go for 15, some go for 20. All this time then, as your plant come on line in 1981 and now until 1986 your excess capacity has just been there.

MILLER: Yes.

DANIELS: You are not making any return, of course, on it not being used.

MILLER: We have capacity of approximately 715 megawatts, three plants combined, and our peak load has been in the vicinity of 410 to 415 megawatts. And so with reserve interconnection agreements with the Kansas City Power and Light and so forth, reserve capacity and so forth, we anticipate we will not additional generation until 1997.

DANIELS: Until 1997, and yet, I guess that is longer than ten years from now. But that excess capacity then and the ability to last until 1997, will include how much additional service?

MILLER: That is correct.

DANIELS: How much?

MILLER: How much additional service? Well, -

DANIELS: Did you anticipate, in other words, gaining a lot more customers with that amount that annexation or industrial use, development would --

MILLER: Just to give an example of the area which was considered and rejected in Wyandotte County just recently, the area contained about 500 residential customers, about 11 or 12 commercial customers and 1 industrial customer, so and again so all of these, nearly all of these are now served through our energy so this was

again a plan that was, you know could be changed by investment of Kansas City Power and Light into that area. I think in our judgment would not be a sufficient investment.

DANIELS: Thank you.

MONTGOMERY: Senator ---

LANGWORTHY: When you made your projections and built your plant were you basing your projections solely on the growth in the City of Kansas City, Kansas or were you counting on the Kansas Municipal Energy Act to be able to wholesale out power around the state?

MILLER: I won't be specific, but related to the Kansas Municipal Energy Agency was a participation agreement. Let me make that clear, in other words, they bought a portion of our latest generating unit. We didn't project the sale of wholesale energy in the capacity decision, additional generating capacity decision, only that portion that of participation agreement of that portion of the plant it would include that in our decision.

LANGWORTHY: And how much was that?

MILLER: I think that was 18 megawatts -- 18 megawatts.

LANGWORTHY: And how much are you using now. I mean, how much of the 18 megawatts.

MILLER: Well, you have to consider that we have got this plant spinning we use that, it is our most efficient plant, so we have that utilized as much as we can 90% of the time and the smaller, older units located at our other generating facilities are the ones that are least used for efficiency reasons but they are capacity and are these available.

LANGWORTHY: Can you say about how many megawatts you are wholesaling?

MILLER: Wholesaling? Through the participation agreement we have a 20 megawatt agreement with Columbia, Missouri.

LANGWORTHY: Let's leave Missouri out, I don't want to deal with Missouri, I don't care about that .

MILLER: I think we have two small communities that are on a specific individual contract. Those combined are probably three megawatts.

LANGWORTHY: Okay, well I guess. --

STEINEGER: I guess I imagine that's so, strictly speaking not wholesaling KMEA because they now own a piece of the rock is that its -

MILLER: That is assuming - that is the easiest way of saying it, it is still ownership by BPU but they technically have paid for and we will pay for over the life of the plant they have a right to have that energy.

LANGWORTHY: Okay, well I guess you can't leave Missouri out, but I was trying to only figure how much you were, how many megawatts you were selling in Kansas or had contracted or an agreement with -

MILLER: Well, right now of course the two small cities, I think that is about a three megawatt obligation but those are through a contract for renewal.

LANGWORTHY: But you would happily sell much more...

MILLER: At this point in time yes, yes.

LANGWORTHY: OK.

MILLER: I guess the major purpose that I intended for being here

is that Kansas City, Kansas existing laws and regulations are working.

LANGWORTHY: Sounds like it.

MONTGOMERY: Senator Bogina.

BOGINA: Mr. Chairman, I guess this is not one of the more simple acts. I heard a little while before when Senator Steineger was talking to the conferee about you had foundations out there to be able to build some additional generators to serve Kansas City, Kansas. Now, I also then heard you say well I've got excess capacity until 1997 and I also read in here that you are discussing serving 500 residential customers. Do you need the extra foundations for these 500 customers, 9 commercial customers, and one industrial customer, do you need that to serve a bigger part and why do you need the other foundations, what are you going to serve with those other foundations you have got out there?

MILLER: Additional generating capacity.

BOGINA: To who?

MILLER: To who -- well, first of all we said the original power station, Kaw power station, is just through obsolescence will be retired. Of course, we will try to keep the units in service as long as we can but just through obsolescence they will be retired in our projection 1997.

BOGINA: Okay, 1997, then what do you have? Will you have excess capacity in 1997?

MILLER: No, we will not. We will get that in line and we will have to invest in additional capacity and that is part of the

equation. I can't stand here and represent that we have additional foundations and that investment near Nearman Creek station is solely on the basis of annexation anticipation. That is merely a part of, but it is an important part of that planning process.

BOGINA: In your long-range plans, your ten year plans, what area had you contemplated serving in those ten year plans?

MILLER: We have contemplated serving the western portion of Wyandotte County.

BOGINA: These 500 customers?

MILLER: These 500 customers and actually we have projected them, this is the northwestern part of Wyandotte County, and we have also looked at, in our planning process, serving the entire Wyandotte County, all of Wyandotte County.

BOGINA: Which, as I understand, was all of the residents, in annexation of the proposed basically took all of Wyandotte County.

MILLER: There was just a small portion left to the south of K-32.

BOGINA: But it is not in that area, it is in another area, right?

MILLER: Right.

BOGINA: So, in essence, your long-range, ten year plans, you have contemplated serving all of Wyandotte County and you needed all of that capacity to do just that.

MILLER: No.

BOGINA: What is the other capacity for, besides KMEA and Columbia, Missouri?

MILLER: Our capacity, for instance, well let me say that residential usage can account for only about 27% of our total load in

Kansas City, Kansas. For the most part, I think it is about 37-38% of our load is industrial load and that is the biggest equation into our planning process and the development of the 435 corridor and so forth, industrial parks and industrial development is important and that is a portion of that is in that annexed, or the proposed annexed area, area to be annexed.

BOGINA: The 435 corridor, goes up the eastern part of that, is that correct?

MILLER: Correct.

BOGINA: Not in the middle of it, towards the eastern part of it.

MILLER: Along the river, yes, the Missouri.

BOGINA: Thank you.

MONTGOMERY: Senator.

EHRlich: Thank you, Mr. Chairman. All three of your plants are coal fired?

MILLER: Yes.

EHRlich: Where are you getting your stable coal reserves from.

MILLER: For the newest plant we are getting from Wyoming and for Quindero and our older units we are getting it from southern Illinois.

EHRlich: Who is transporting this coal, which railroad.

MILLER: From Illinois, the Northern Illinois Central Gulf and from Wyoming, Burlington-Northern.

STEINEGER: Mr. Chairman, I might just follow-up so that we get some idea of the impacts of this. And when you built these plants, the Nearman plant, and with its additional capacity you discovered more on your load, a new road, annexation, new

industry locating in the newly annexed areas, etc. Did the Board of Public Utilities at the same time assure itself of a coal supply to run this new plant and, if so, how much coal supply has BPU contracted for.

MILLER: We, yes we acquired a coal mine in southern Illinois jointly with another utility in Missouri which assures us of a long-term coal supply and also we have a long-term coal supply for the Wyoming coal through a consortium of Western Fuels Association with other municipals and other publicly owned utilities throughout the country.

STEINEGER: Now are these coal contracts likewise tied to fuel, the additional capacity when you expected it or expect it to come on line? In other words, BPU committed on this coal based on everybody's best estimates as to having that coal to supply the additional capacity when it comes on line.

MILLER: Yes, that was part of the plan. We have a ...(inaudible)... we had a take or pay which was based upon our projected usage of our demand for energy. So we are committed, yes.

STEINEGER: Did the Board of Public Utilities also buy a coal train?

MILLER: Yes, we have two coal trains. One serving the Missouri mine and a coal train serving the Wyoming mine and actually a joint participating in a third train for the Wyoming coal.

STEINEGER: All this coal, all this capacity and storage and stockpile and everything is all designed to meet the future needs of this utility as you expected it would be?



MILLER: That is right. Part of the investment in Nearman was for the additional, in other words coal handling facilities were installed in anticipation of units #2 and #3.

STEINEGER: Is there any way you could put a price tag, could you come up with a price tag, as to how much the ratepayers in the City of Kansas City, Kansas have expended and are committed to expend in order to have the additional capacity that we all thought would be needed under the Kansas Retail Electric Suppliers Act when that time came into being? Could you put a number to that?

MILLER: I would strictly be picking a figure out of the air, I would rather not - just say it is significant.

STEINEGER: You have \$37 million in the foundations alone, right? You have got 20 year coal contracts, two-and-one-half-trains.

MONTGOMERY: I think what we are trying to do and we run into this problem with annexation is to try to somehow, including the water and also the electric, is to provide for the people that are in the area that are annexed, provide some basis for that service company serving that area to either be granted a franchise to continue to service that area or else provide a means for them to be paid for their actual physical facilities plus what they might have expected to have from revenues, such as if a line was built in there with bonds similar with the water supply lines of these rural water districts. The way we can read the law there is no present method to determine what the actual value of that facility shall be, as far as the physical plant, the lines, the anticipated revenue and the service. That is the problem we are running into is where the cities annex the area,

they come in and if they just decide they don't want to give them a franchise, within 180 days they are out. They don't even have to pay for the facilities or they don't have to pay for what they think might be the loss of revenue to those companies. So in other words, what is happening then you have put some of those smaller companies in a financial situation where they have got to raise their rates tremendously higher on the other customers in order to pay off the bond indebtedness. I don't think that is an unreasonable thing to try to resolve and the territorial rights, I don't have any problem with that. I can see where they were justified, but there ought to be some rights, some way, the same as we are looking at the whole annexation picture, there ought to be some way to protect the rights of those that have went in there and been furnishing electricity or water to those rural residents without being just shoved out when one of the cities annex that happens to have a municipal supply of water or electricity. And that is all we are trying to address in this situation is some means, some reasonable, and we wanted to cite you some cases, I think if some of these gentlemen sitting around the room want to cite the cases, there have been many cases where it has been done with the electric utility people by municipalities. They have come in and said we want the territory, they just simply take it. They don't have to buy them out, and in a case or two I think they have made an effort to buy them out. But reading the language in the statutes and Mike went through the books, there are no provisions in there where they actually can put a value on, or it doesn't, they don't have to, just

simply don't have to. That is the problem we are trying to solve. We are not trying to get into the territorial jurisdiction procedures that happened years ago. The language is written to where we are infringing on that and that is not the intent. The intent is to try to protect those people that have been in those areas serving, either through water or electricity, and that is our problem.

MILLER: Mr. Chairman, the experience in Kansas City, Kansas in that regard my people feel has been very satisfactory. Obviously, there is some differences of opinion on the physical value in taking, in the experience we have had, we have gone to an arbitrator and an arbitrator has made that decision, in a very logical, I think, and very logical and business-like manner.

MONTGOMERY: Well, have you read section 4 under the proposed changes?

MILLER: No, I have not.

MONTGOMERY: Well, to me that is exactly what we are trying to do in there. It says "Whenever any city which is a municipally owned or operated retail electric supplier shall annex any land the governing body of the city shall not furnish, make available, render or extend retail electric service in the annexed area certified to another retail electric supplier which requests a franchise within 60 days of the date of the annexation. The governing body of the city shall not refuse nor neglect to grant or renew a franchise upon reasonable terms and conditions upon the request of the retail electric supplier certified to provide service in the annexed area. If an agreement cannot be reached

concerning the terms and conditions of the franchise and its renewal or if the franchise ordinance shall fail upon submission to a popular vote, (which is already in the law), the matter shall be submitted to the state corporation commission for resolution in the same manner as provided for under K.S.A. 66-133." And that is a provision to where they would come in and find out how much money it would take to pay off the amount of loan of the area that is being taken and I really don't see why you are objecting to that particular clause. Now, if you are objecting to the one prior to that where some language is stricken, I think we can address that, but -

MILLER: Well, I would rather -

STROUP: Mr. Chairman, I read that as the city has to give them a franchise, I think, I agree with you that there is -- Senate Bill 428 and proposed amendments do not speak to the issue that you just mentioned. I read this to say that the city shall not, I mean must grant a franchise. And if the whole problem is to reimburse the co-ops, for example, when a city annexes in that area, that is a whole different story, but 428 and those amendments go much, much further than that.

STEINEGER: Mr. Chairman, let me quickly say based on your statement then there is no disagreement I think certainly all of us feel that when they annex, the city annexes, they should pay.

MONTGOMERY: That is right. And that is what we are trying to address here.

STEINEGER: And if they cannot agree as to what the amount of the payment would be, let it go to district court or let them have an

arbitrator, or whatever. And likewise, I think there is agreement and appreciation that they have got bonded indebtedness and so forth that they are using and that has a value, I mean the loss of this. So if that is the sense of the committee why we can certainly come to agreement rather quickly.

MONTGOMERY: Well, I think up here where it says to renew a franchise upon reasonable terms, now that is probably where you would have to go to the court because if they did not consider it reasonable why that wouldn't be, that wouldn't say they have to grant it to them if it is not reasonable, that is when they would, there is a provision in there if you will look back where you can submit it to a popular vote, who they want to serve the area, and if that fails then the matter shall be submitted to the state corporation commission for resolution in the same manner provided under this other statute.

STROUP: I don't read that section to be just that. I read that section, Mr. Chairman, to say that a municipally owned electric utility must grant a franchise within the area. And I don't agree with you, but I agree with Senator Steineger we would support something along the lines you mentioned but these words don't do it at all and Section (b) goes one step further. One of the complaints apparently of the cooperatives...(inaudible)... opposing would make sense suddenly it is alright for Centel which serves inside the city limits of Dodge City, it is alright for Centel to serve new annexed areas if they can get a franchise or a co-op that serves inside the city limits of a city, it is alright for them to serve that new franchised area if

they can get a franchise, but not a municipally-owned city cannot do it. I think that reasoning is a little bit flawed. I just disagree Mr. Chairman, respectfully that these words do not say what we would be glad to change the words and would be dealing with exactly what you said, Mr. Chairman, we could reach agreement on it very easily.

STEINEGER: Mr. Chairman you know I think maybe we all agree it is just a question of interpretation and the way we read these amendments because ...so we would... I will be happy to get with the revisor because I think it could be drawn up actually very simply. This is not really unusual problems, but ... and there are 128 municipal energy agencies in this state concerned and involved in this and I am sure many of them, are like Kansas City, Kansas have substantial taxpayer dollars invested in their plants and their facilities ultimately on any with a view toward...

MONTGOMERY: I don't disagree with you there Senator, but I still think those people that have been serving the area have some dollars invested too and to just simply say hey when we annex you and you're gone hell with you, to me that doesn't make good policy, and if we can write the language I think that is all that they are asking for is some sort of protection to guarantee them that they are just not kicked out and left there with an investment that they cannot recoup in any manner. I think we can work on that. Well, we haven't got time to do that today. I think its 5 minutes till, so we will address the language, I'll visit with the other members and we will try to take this up. I do want to tell the committee members that are here that we will have to start to work Monday and continue right on it every day

that we have left and that is only about ten days and that is two weeks and we will have a full schedule each day and we are going to have to hear bills and take action. We have some 40 some bills that the House has sent over, and Representative Sand's assured me that at least 36 of them he would like to have action on. I would appreciate it very much, I know 9:00 is kind of tough, but we will try to let the hearing process, I am not going to, some of the bills dealing with certain areas we are going to try to group those and we will try to hold down the hearing process so we can get the bills out with action and not have to have a lot of extra meetings, that's the intent. So if you can be here soon after 9:00 as possible we will be able to get in a full hours time. Thank you.

Let's do the Minutes. We've got the Minutes here, anybody read them. Bogina so moved. Steineger seconded. Moved and seconded that we adopted the Minutes as written, all in favor say nye opposed say no. Motion carried and the minutes were adopted.

Thank you. The meeting adjourned.