

Approved 4-1-86
Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at
Chairperson

9:00 a.m. ~~p.m.~~ on March 28, 1986 in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

Arden Ensley, Revisor of Statutes
Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Louise Cunningham, Secretary

Conferees appearing before the committee:

Robert L. Rives, Group Vice-President, Kansas Gas and Electric Co.
Mark Sholander, Assistant General Counsel, KCP&L
Kathy Peterson, Committee of Kansas Farm Organizations
Denny Burgess, Kansas Electric Cooperatives
Phil Lesh, Sunflower Electric Company
Louis Stroup, Jr. Executive Director, Kansas Municipal Utilities
Erne Mosher, League of Kansas Municipalities
Richard Kready, KPL Gas Service

HEARING AND ACTION ON S.B. 740 - Retail electric suppliers service territories

Arden Ensley, Revisor, had a balloon amendment to S.B. 740. He said when the bill was drafted a section was repealed that should not have been repealed and the way it is drafted now is as it was intended originally. A copy of the balloon amendment is attached. (Att. 1).

PROPOSERS:

Robert L. Rives, Group Vice-President, Kansas Gas and Electric Co., spoke in support of S.B. 740. He said the problem is that cities are annexing land and are reallocating the annexed areas to new power suppliers. This can result in rate increases from remaining customers to offset them. A copy of his statement is attached. (Att. 2).

Mark Sholander, Assistant General Counsel for KCP&L, said the retail electric suppliers have to anticipate their load and build their electric systems with the knowledge of exactly which territory they will be required to service. When municipalities annex and territories are taken away by the expanding municipal electric systems, it is harmful to the remaining customers. They support S.B. 740. A copy of his statement is attached. (Att. 3).

Kathy Peterson, Committee of Kansas Farm Organizations, said she was representing 21 rural and agricultural organizations and it was their unanimous decision to support S.B. 740. They feel they have real problems with annexations and will be forced to pay more as a result of declining rate bases. A copy of her statement is attached. (Att. 4).

These conferees all said they had no objection to the balloon amendment.

Denny Burgess, Kansas Electric Cooperatives, said last summer there was an attempt to solve the problems with S.B. 428 but this bill is not moving along. They just want to hold the territories they now are serving. This bill will stop anyone from "stealing territory" until the problem can be solved. The two-year moratorium will be a chance for the legislature to address the problem.

Phil Lesh, Sunflower Electric Co., said there has been an excellent relationship with the four generating districts served by Sunflower. In the past they have provided emergency services for each other. There are

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:00 a.m./~~pm~~ on March 28, 1986.

some problems in western Kansas and Sunflower is teetering on the edge of bankruptcy. It is critical for Sunflower to maintain their present loads. If the load decreases significantly it can force Sunflower into bankruptcy. It is very urgent that these territories be preserved. A copy of his statement is attached. (Att. 5).

OPPONENTS:

Louis Stroup, Jr., Executive Director of Kansas Municipal Utilities, said the RECs were trying to back out of an agreement they made with them and other members of the industry 10 years ago. A copy of his statement is attached. (Att. 6).

Erne Mosher, League of Kansas Municipalities, said they have no formal position because of the bills's recent introduction but they are adverse to any bill which attempts to prohibit cities from providing all city services to annexed areas. The annexed areas should receive utility type services at a lower cost to help offset the higher property taxes. He had amendments to the bill which would reduce the moratorium from two years to one year. It would clarify the application of the moratorium provision to municipal electric cities. It would remove section 2 entirely and would delete the proposed repeal of KSA 66-1,170. Some of this had already been handled by Mr. Ensley's balloon amendments. A copy of his statement and the proposed amendments are attached. (Att. 7). He said there are approximately 75 annexations per year and this has been fairly consistent.

Richard Kready, KPL Gas Service, said they were opposed to this bill and this kind of protectionism could set a bad precedent. It would not be fair to investor-owned electric companies and would hinder their growth. There would be no justification for continuing efforts to develop additional industrial parks. A copy of his statement is attached. (Att. 8).

A motion was made by Sen. Hayden and was seconded by Sen. Doyen to adopt the amendments submitted by Mr. Ensley. Motion carried.

A motion was made by Sen. Hoferer and was seconded by Sen. Frey to adopt the amendments submitted by Mr. Mosher which do not conflict with the previous amendments. The motion failed.

A motion was made by Sen. Vidricksen and was seconded by Sen. Doyen to recommend S.B. 740 as amended favorable for passage.

A substitute motion was made by Sen. Norvell and was seconded by Sen. Frey to recommend S.B. 740 be sent to interim study. The motion did not carry.

A substitute motion was made by Sen. Norvell and was seconded by Sen. Walker to delete the two year moratorium in favor of one year. The motion did not carry.

The committee reverted back to the original motion to recommend S.B. 740 as amended favorable for passage. Motion carried.

Meeting was adjourned at 10:05 a.m.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 3-28-86 Place 254-E Time 9:00

GUEST LIST

NAME	ADDRESS	ORGANIZATION
DAN MCGEE	GREAT BEND	CENTEL / WESTERN POWER
Randy Barleson	Columbas	Empire District Electric
Roy D. Shenkel	Shawnee	K. C. P. & L. Co.
MARK SHOLANDER	FAIRWAY	KCP & L Co.
Rick Kready	Topoka Topoka	KPL Gas Service
Louis Stroup Jr.	McPherson	KMU
Ed Hester	Topoka	League of B. Municipalities
Al Hanson	MISSION	KMIEA
BILL CREECH	TOPEKA	KCC
LARRY HALGOOD	TOPEKA	KCC
DICK COMPTON	HAYS	MIDWEST ENERGY, INC.
JEARY COOPER	TOPEKA	KCE
Bob Rivers	Wichita	KGE
Nancy Burgen	Topeka	KEC
Kathy Peterson	Topeka	Comm. of Ks Farm Organ-

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 3-28-86 Place 254-E Time 9⁰⁰

GUEST LIST

NAME

ADDRESS

ORGANIZATION

<i>Bob Kelly</i>	<i>Topeka</i>	<i>KEC</i>
<i>Mark Adams</i>	<i>Great Bend</i>	<i>Sunflower Electric</i>
<i>Tim Lee</i>	<i>Norton</i>	<i>Sunflower Electric</i>

SENATE BILL No. 740

By Committee on Ways and Means

3-19

0017 AN ACT relating to electric public utilities; concerning service
0018 territories of retail electric suppliers; amending K.S.A. 66-
0019 1,172 and ~~66-1,174~~ and repealing the existing sections and
0020 ~~also repealing K.S.A. 66-1,176.~~

and 66-1,176

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 66-1,172 is hereby amended to read as
0023 follows: 66-1,172. (a) Subject to the provisions of this act, the
0024 corporation commission shall cause the state to be divided into
0025 electric service territories. Within each such territory, only one
0026 (±) retail electric supplier shall provide retail electric service,
0027 and any such territory established for a retail electric supplier
0028 pursuant to this section shall be certified to such retail electric
0029 supplier by the commission and such area shall be provided
0030 retail electric service exclusively by such supplier. Each retail
0031 electric supplier shall continue to have the right to serve all
0032 customers being served by it on the effective date of this act,
0033 except that such suppliers, by agreement approved by the com-
0034 mission, may otherwise provide for electric service to such
0035 customers.

0036 (1) In all existing dual certified service territories the
0037 boundaries of the certified territory of each retail electric sup-
0038 plier shall be set at a line or lines substantially equidistant
0039 between such supplier's existing distribution lines and the
0040 nearest existing distribution line or lines of any other retail
0041 electric supplier in every direction, and the commission shall
0042 certify to each retail electric supplier such area which, in its
0043 entirety, is located substantially in closer proximity to its existing
0044 distribution lines than to the nearest existing distribution lines of
0045 other retail electric suppliers except that where a retail electric

Atch. 1
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ATT. ①

0046 supplier has, on the effective date of this act, an existing dis-
0047 tribution line located in dual certified service territory adjacent
0048 to the boundary of another retail electric supplier's single cer-
0049 tified service territory, the boundary between the certified terri-
0050 tories of the two retail electric suppliers shall be set at a line
0051 substantially equidistant between the existing single certified
0052 service territory boundary of the one retail electric supplier and
0053 the nearest existing distribution line of the other retail electric
0054 supplier.

0055 (2) The single certified service territories of all retail electric
0056 suppliers certificated on the effective date of this act shall remain
0057 unchanged subject to the provisions of subsections (a)(3), (a)(4)
0058 and (a)(5).

0059 (3) When a municipal retail electric supplier, on the effective
0060 date of this act, is the only retail supplier serving electricity
0061 within the boundaries of a single service territory certified on the
0062 effective date of this act, it shall be granted a single certified
0063 territory, the boundaries of which shall be established ~~one-half~~
0064 ~~(1/2)~~ 1/2 mile in every direction from its existing distribution lines,
0065 but no such territory shall extend beyond any boundaries of such
0066 original single certified service territory.

0067 (4) When a retail electric supplier, other than a municipal
0068 supplier, on the effective date of this act, is providing electric
0069 service within a single service territory then certified to it and a
0070 municipal retail electric supplier also is providing electric ser-
0071 vice in the same single certified service territory, the municipal
0072 retail electric supplier shall be granted a single certified service
0073 territory, the boundaries of which shall be established substan-
0074 tially equidistant between existing distribution lines of the two
0075 retail electric suppliers, but the municipal electric supplier's
0076 single certified service territory so designated shall not extend
0077 more than ~~one-half~~ ~~(1/2)~~ 1/2 mile in any direction from its dis-
0078 tribution lines or beyond any of the original single certified
0079 service territory boundary.

0080 (5) All single certified service territories or parts thereof
0081 existing on the effective date of this act, not assigned to a
0082 municipal retail electric supplier under provisions of this act as

0083 described in subsection (a)(3) or (a)(4) shall be retained as a
 0084 single certified service territory by the originally certified retail
 0085 electric supplier.

0086 (b) The commission shall cause to be prepared, no later than
 0087 June 30, 1979, maps of uniform scale to show, accurately and
 0088 clearly, the boundaries of the electric service territory of each
 0089 retail electric supplier, as established under subsection (a) of this
 0090 section. If the commission has authorized or required electric
 0091 service territories to be established pursuant to agreements of
 0092 retail electric suppliers, and any retail electric supplier fails to
 0093 reach agreement with any other retail electric supplier concern-
 0094 ing the boundaries of their respective electric service territories,
 0095 the commission shall have the power to fix the boundaries, for
 0096 the purpose of determining the electric service territory of any
 0097 retail electric supplier. Such power shall include the right to
 0098 hold public hearings and in any such hearing, the commission
 0099 shall consider all relevant facts including the following condi-
 0100 tions, as they existed on the effective date of this act:

0101 (1) The proximity of existing distribution lines of the retail
 0102 electric suppliers involved;

0103 (2) which supplier was first furnishing retail electric service,
 0104 and the age of existing facilities in the area; and

0105 (3) the prevention of duplicate electric lines and facilities
 0106 furnishing retail electric service within such territory.

0107 (c) *Notwithstanding any other provision of this act or the act*
 0108 *of which this act is amendatory, from and after the effective*
 0109 *date of this act and prior to July 1, 1988, each retail electric*
 0110 *supplier shall continue to have the right to serve all customers*
 0111 *being served by it within its certified territory as the same*
 0112 *existed on the effective date of this act and no changes in the*
 0113 *certified territory of any retail electric supplier shall be made*
 0114 *during such period without the agreement of the suppliers*
 0115 *involved and upon approval by the commission.*

0116 Sec. 2. K.S.A. 66-1,174 is hereby amended to read as follows:

0117 66-1,174. ~~A municipally owned or operated retail electric sup-~~
 0118 ~~plier shall be subject to commission jurisdiction as a public~~
 0119 ~~utility, as defined in K.S.A. 66-104,~~ with respect to all operations

(a) Notwithstanding the provisions of subsection (b) of this section, from and after the effective date of this act and prior to July 1, 1988, each retail electric supplier shall continue to have the right to serve all customers being served by it within its certified territory as the same existed on the effective date of this act, subject to any regulations of the commission applicable thereto, regardless of whether such territory has been annexed by and included within the corporate limits of a city and no changes in such certified territory shall be made during such period without the agreement of the suppliers involved and upon approval by the commission.

(b)

(reinsert stricken language)

(reinsert original language)

0120 within its certified territory extending more than three (3) miles
 0121 beyond its corporate limits ~~regulated by this act~~ A municipal
 0122 retail electric supplier shall be subject to regulation by the
 0123 commission in matters relating to the right to serve in the
 0124 territory within three (3) miles of the corporate city boundary,
 0125 except that the commission shall have no jurisdiction concerning
 0126 such retail electric supplier within its corporate limits ~~any por-~~
 0127 ~~tion of the corporate limits of such city which are included~~
 0128 ~~within such corporate limits on or after the effective date of this~~
 0129 ~~act.~~

(reinsert original language)

Sec. 4. K.S.A. 66-1,176 is hereby amended to read as follows:

66-1,176. Termination of service rights in annexed areas, certification to existing supplier or franchise holder. ~~All rights of a~~ (c)
 retail electric supplier to provide electric service in an area annexed by a city 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 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.

~~History: L. 1970, ch. 284, § 7, July 1.~~

0130 New Sec. 3. If any part or parts of this act are held to be
 0131 invalid or unconstitutional by any court, it shall be conclusively
 0132 presumed that the legislature would have enacted the remainder
 0133 of this act without such invalid or unconstitutional part or parts.

0134 Sec. 4. K.S.A. 66-1,172, 66-1,174 and 66-1,176 are hereby
 0135 repealed.

0136 Sec. 5. This act shall take effect and be in force from and
 0137 after its publication in the Kansas register.

(b) From and after the effective date of this act and prior to July 1, 1988, each retail electric supplier shall continue to have the right to serve all customers being served by it within its certified territory as the same existed on the effective date of this act, subject to regulations of the commission applicable thereto, even though such territory has been annexed by and included within the corporate limits of a city and no changes in such territory shall be made during such period without the agreement of the suppliers involved and upon approval by the commission.

TESTIMONY TO THE SENATE TRANSPORTATION AND UTILITIES COMMITTEE
MARCH 28, 1986
ROBERT L. RIVES
GROUP VICE PRESIDENT
KANSAS GAS AND ELECTRIC COMPANY

The purpose of this testimony is to show why we support the concept of SB 740 and why it is in Kansas' best interests to do so.

When KSA 66-1,172 and 1,174 were adopted, the purpose was to benefit Kansans by helping to ensure the state of ample electric power. These measures were enacted at a time when memories of dislocations caused by natural gas shortages within many Kansas communities still were very fresh. The legislature wisely wanted to avert similar problems with electric energy.

By dividing the state into areas to be served by specific power suppliers, two things were accomplished. One, each supplier not only knew what areas it would have the opportunity to serve but those for which it was responsible to plan and construct facilities. Equally important, the supplier was assured of keeping the customers which developed in those areas, thus helping it secure needed long-term financing. The law also included provisions that permitted utilities to "trade" service areas when it was advantageous to do so. And it set in place mechanisms to work out disputes. These provisions have worked successfully.

The major problem which time has shown to exist is the ability of cities to annex land and to reallocate the annexed areas to new power suppliers. Frankly, our company has at times benefitted from this practice as cities we serve have grown. We also have lost some customers as cities with municipally owned utilities expanded. Municipally owned utilities almost always stand to gain as towns expand.

S.T.U 3/28/86
ATT. ②

Of particular concern to us now is the effect on our customers if we lose major industrial customers or well developed housing areas to annexation by municipalities which operate electric systems. We serve 11 large industries plus several residential and commercial customers which are adjacent to or near municipally owned systems. Annual revenues from these customers total about \$21 million. If we lose those customers and the revenues they produce, we would be compelled to seek rate increases from remaining customers to offset them.

Annexations of this kind not only deprive us of revenue but can also reduce our efficiency, thereby creating additional costs for the remainder of our customers. On April 5 we will stop serving a small group of customers annexed by a city which operates a municipal system. In this case, the community annexed the area to take six relatively large customers while leaving a farm and two homes for us to serve. With this selective takeover and annexation, the city "skimmed the cream" by extending its boundaries to include only the more profitable customers. Further, should those remaining customers someday become more profitable to serve, they also can be annexed. More importantly as these annexed industries' electric power requirements grow, the cities which have taken over service to them could choose to add more generating facilities by utilities that are not subject to the state's plant siting laws.

In summary, the state's area allocation legislation had important objectives. In many ways these are being met. However, the problem of annexation has proved to be a threat to the purpose of the existing act. Thus we support SB 740 and believe its adoption will be in Kansas' best interests.

(2)

COMMENTS OF KANSAS CITY POWER & LIGHT COMPANY
IN SUPPORT OF PROPOSED SENATE BILL NO. 740

Mr. Chairman and members of the Committee, my name is Mark Sholander, and I am Assistant General Counsel for Kansas City Power & Light Company. I am speaking here today on behalf of KCPL to express its support of Proposed Senate Bill No. 740. KCPL supports S.B. No. 740 because it would place under the jurisdiction of the Kansas State Corporation Commission the determination of which retail electric supplier should provide service within the territory annexed by any municipality after the effective date of S.B. No. 740. It would also impose a two year moratorium on changes in the territory served by any retail electric supplier, including municipal electric systems, to enable both the State Corporation Commission and the Legislature the opportunity to study what has become an increasingly serious problem. The passage of S.B. No. 740 is required to close a loophole in the current system of allocating service territories among the suppliers of electric utility service in Kansas.

The Retail Electric Suppliers Act (in K.S.A. 66-1,171) established as the public policy of the State of Kansas the "division of the state into territories within which retail electric suppliers are to provide the retail electric service" so as to avoid wasteful duplication of electric facilities and minimize disputes between retail electric suppliers. Pursuant to that policy, K.S.A. 66-1,172 currently provides for the division of Kansas into electric service territories, including areas served by municipal retail electric suppliers, within which only one supplier shall provide retail service.

S. 744 3/28/86
ATT. (3)

This system of service territory allocation was intended to enable retail electric suppliers, which must incur huge fixed costs in building both generation and transmission capacity, to plan and build their electric systems at least with the knowledge of exactly which service territory they will be required to serve. The Retail Electric Suppliers Act was thus intended to prevent the waste which happens if two retail electric suppliers build duplicative facilities intending to provide service to the same territory.

Unfortunately, there is a serious loophole in the current system. Although municipally owned electric suppliers are specifically included in the territorial allocation, the current K.S.A. 66-1,174 makes it clear that the Kansas State Corporation Commission does not have any jurisdiction over the retail electric service provided by a municipality within its corporate limits, including areas annexed by the municipality in the future. Thus, although municipal electric suppliers are specifically included within the current system of service territory allocation, municipalities can evade its clear intent and purpose merely by the device of annexing the area within which the municipality desires to provide service.

This is a serious loophole. Investor-owned retail electric suppliers such as KCPL must plan and build their electric systems so that they can meet future demand for electricity within their service territories. This cannot be done efficiently or effectively, however, if significant portions of that service territory can be taken away from them by an expanding municipal

electric system, without regard to the resulting duplication and waste of electric facilities and without any assessment (by the State Corporation Commission) of whether the change in suppliers would be in the public interest. It must be stressed that such loss of service territory to a municipality is very harmful to the remaining customers of the utility which loses the annexed service territory, because it is they who will ultimately be required to pay for the consequences resulting from that loss of business.

As a result, KCPL would urge adoption of the two year moratorium and the establishment of Commission jurisdiction over the right to provide retail electric service within territory annexed by municipalities, as provided by the proposed Senate Bill No. 740. On behalf of KCPL, I thank the Committee for the opportunity of giving these comments.

Committee of . . .

Kansas Farm Organizations

Kathy Peterson
Legislative Agent
2301 S.W. 33rd Street
Topeka, Kansas 66611
(913) 267-4356

STATEMENT OF
COMMITTEE OF KANSAS FARM ORGANIZATIONS
SUPPORTING SB 740
MARCH 28, 1986

Mr. Chairman and members of the committee:

My name is Kathy Peterson, representing the Committee of Kansas Farm Organizations. The CKFO is a group of 21 Kansas rural and agricultural organizations which works together to serve the interests of rural Kansas and agriculture. A list of the 21 member organizations is attached to my statement.

It was the unanimous decision of the Committee of Kansas Farm Organizations to support first Senate Bill 428 and more recently Senate Bill 740. These bills address a very real problem in rural Kansas.

The measures were the result of a 1985 Local Governments Interim committee study which stated, "The Committee finds that annexation can be burdensome on certain special districts and other units of government and utilities serving areas which are annexed. The Committee believes better notice provisions are needed to these entities and certain territorial protections are needed in regard to utilities."

The Committee recommended Senate Bill 428 which would require cities to grant franchises after annexation to the entities which served the areas prior to annexation.

But because that bill was so broad, it was the decision of the Senate Local Governments Committee to request an interim study on the impact of city annexation on utilities serving rural areas being annexed. We look forward to that study.

The great deal of attention this matter has generated demonstrates how crucial this problem is. The rural, agricultural sector of this state is in an economic turmoil. Production costs continue to climb while producers see land values and the price they receive for their commodities tumble. These economic conditions force our members to have very real concerns with the impact annexation has on the utilities they rely on and the price they will be forced to pay as a result of further declining rate bases.

S. T. H. 3/28/86
ATT. (4)

The provisions contained in SB 740 will give you the legislature adequate time to fully consider and address this problem, while giving rural residents needed protection. SB 740 is a temporary solution, but nonetheless an important measure to the rural residents represented by the Committee of Kansas Farm Organizations.

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Committee of . . .

Kansas Farm Organizations

Kathy Peterson
Legislative Agent
2301 S.W. 33rd Street
Topeka, Kansas 66611
(913) 267-4356

MEMBER ORGANIZATIONS

ASSOCIATED MILK PRODUCERS, INC.
KANSAS AGRI-WOMEN
KANSAS ASSOCIATION OF SOIL
CONSERVATION DISTRICTS
KANSAS ASSOCIATION OF WHEAT GROWERS
KANSAS COOPERATIVE COUNCIL
KANSAS CORN GROWERS ASSOCIATION
KANSAS ELECTRIC COOPERATIVES
KANSAS ETHANOL ASSOCIATION
KANSAS FARM BUREAU
KANSAS FERTILIZER AND CHEMICAL ASSOCIATION
KANSAS GRAIN AND FEED DEALERS ASSOCIATION
KANSAS LIVESTOCK ASSOCIATION
KANSAS MEAT PROCESSORS ASSOCIATION
KANSAS PORK PRODUCERS COUNCIL
KANSAS SEED DEALERS ASSOCIATION
KANSAS SHEEP ASSOCIATION
KANSAS SOYBEAN ASSOCIATION
KANSAS STATE GRANGE
KANSAS LIVESTOCK MARKETING ASSOCIATION
KANSAS VETERINARY MEDICAL ASSOCIATION
MID-AMERICA DAIRYMEN

TESTIMONY BEFORE THE
SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Senate Bill No. 740

March 28, 1986

Presented by

Phil Lesh

Thank you for the opportunity to testify. I will try to be brief.

My name is Phil Lesh and I am the Manager of Norton-Decatur Cooperative Electric Company, Inc., and I was recently elected Vice President of Sunflower Electric Cooperative. I am filling in for Steve Thompson who is in Washington, D.C. in the final phase of a debt-restructuring plan to avoid Sunflower bankruptcy.

Sunflower is a generation and transmission cooperative serving eight distribution cooperatives, one of which is Norton-Decatur. Sunflower was organized in the late 1950's, and has saved its members a considerable amount of money during that time. Loads have grown steadily until recent years.

I am testifying in support of Senate Bill No. 740 which would help to address Sunflower's concerns about losing its loads.

As manager of a distribution cooperative, I want to say that we have enjoyed good relations with the four municipal systems in our area, and are right now working with one to help them, at their request, to obtain emergency service.

But, there are problems now in other parts of Western Kansas which affect Sunflower, which has been teetering on the edge of bankruptcy.

The Sunflower Board, and the people in Western Kansas have grave concerns about the uncertainty of bankruptcy, but are not willing to raise rates to prevent it.

Because of this, the several creditors have been working on a restructuring plan, and we are very near complete agreement.

This plan will, if finally consummated, allow Sunflower to serve its members without any further rate increases related to Holcomb plant costs. Only renewed inflation would bring about increases.

But the critical element, the crucial element to this plan is that Sunflower members must maintain their present loads. If the present customer base declines, the plan will fail, and Sunflower will be right back facing bankruptcy.

The certificated service areas of the eight members is a property right, and the loads in those areas are security for the loans. If this territory erodes, the financing is jeopardized!

Those loads are now being threatened by cream-skimming annexation and municipal plans to build new power plants to serve loads now served by Sunflower. Ironically, in 1977, a municipal representative testified before this legislature suggesting that Sunflower increase Holcomb by 150,000 KW to serve municipals.

Sunflower has, since completion of the Holcomb plant, been selling surplus power to several cities, at a cost roughly half what the members pay, delivered over Sunflower's transmission system, and we can continue to do that in years to come. But, if cities are allowed to continue taking the good loads from Sunflower members, we may be again facing bankruptcy, and that will be detrimental to all of Western Kansas, including the municipals.

We feel it is urgent that these territories be frozen, to preserve Sunflower's ability to avoid bankruptcy.

Thank you.

KANSAS MUNICIPAL UTILITIES, INC.

Comments on: SB 740
Before Senate Transportation & Utilities Committee
March 28, 1986

Mr. Chairman, members of the Committee, I am Louis Stroup, Jr., executive director of Kansas Municipal Utilities, Inc., a statewide association of municipal electric, gas and water cities.

KMU is strongly opposed to SB 740 as it is written and we assert it is an end-run attempt to accomplish the very thing that SB 428 was attempting to do -- prohibit cities from extending utility services into newly annexed areas. The difference is, this measure pertains only to electrical service -- SB 428 pertained to all services.

As you probably know, the Senate Local Government Committee held hearings on SB 428 and failed to pass the bill out. Instead, the committee recommended it for summer study.

Some have said SB 740 is merely a "2-year moratorium" on making any changes in territory assigned to each retail electric suppliers in the state (subsection c on page 3). This is not correct -- SB 740 goes much further and deeper than merely being a "moratorium."

Sec. 2 of the bill would provide that the Kansas Corporation Commission has jurisdiction within a city for the purpose of territory -- an authority which is specifically prohibited in current law under the Retail Electric Suppliers Act which was passed in 1976 (K.S.A. 66-1,174).

S.T.U 3/28/86
ATT. (6)

Sec. 4 of the bill would repeal K.S.A. 66-1,176 -- the annexation section of the Retail Electric Suppliers Act -- the very heart of the difference between parties. It would seem unwise and unfair to repeal the very section (and issue) that the Senate Local Government Committee said should be studied this summer, before the issue can be studied or any determination made that this section on annexation should even be changed.

There are many reasons why we oppose SB 740 (and SB 428), but because of the shortness of time, I will limit my comments basically to our contention that some of the rural electric cooperatives (RECs) are trying to back out of an agreement they made with us and other members of the electric industry 10 years ago.

For those of you who were not here in the early 1970s, some background is needed to understand our strong opposition to this bill.

During the fall district meetings of rural electric cooperatives in 1971, requests were made of the statewide (Kansas Electric Cooperatives, Inc. - KEC) to begin development of a plan to protect their territory. Subsequently, at a KMU Board of Directors' meeting in McPherson on October 17, 1972, Charles Ross, then head of KEC, appeared and urged municipal support for KEC's proposed attempt to secure "single certification of territory" legislation. (Report of KMU Board meeting on this issue attached).

Later, at a specially called KMU Board meeting for the purpose of discussing KEC's proposed territorial legislation, 7 members of KEC urged KMU and municipal support. This special meeting was held in McPherson on December 19, 1972.

KEC representatives at the KMU Board meeting were:

Charles Ross, KEC general manager, Topeka
Fred Stone, manager, Kaw Valley Electric, Topeka
Lowell Abeldt, KEC President, D.S.&O., Hope
Jack Hutchinson, manager, Sedgwick County Electric, Cheney
Ken Conaway, Pioneer Electric, Ulysses
Jack Goodman, manager, Central Kansas Electric, Great Bend
Ken Erickson, manager, PR.&W. Electric, Wamego

(Report of KMU Board meeting minutes on this attached).

KMU did agree to support the KEC proposal, but only with the insistance that it contain an annexation provision that would allow a city to determine who would serve in newly annexed areas.

Kansas Power & Light also insisted on the annexation provision. The RECs agreed to that provision and it is in current state law (K.S.A. 66-1,176 - copy attached).

The reason the cities insisted upon the annexation provision is because they gave up a great deal of territory to support the KEC proposal. It was the trade-off that KEC agreed to to get our support for single certification of territory.

Prior to 1976, municipal electric systems could serve any loads within a 3-mile radius of their city limits. Private power companies and RECs operated in both single and dual, overlapping service territories and were guided in disputes by wire stringing rules issued by the KCC. Under the 1976 act, a municipal electric city gave up a minimum of $2\frac{1}{2}$ miles of service territory and in some cases, a full 3-miles (sample graph attached). Under the 1976 act, a municipal was limited to a $\frac{1}{2}$ -mile of territory or area between existing lines, which ever was less.

Following several unsuccessful attempts to get the measure passed, the proposal was placed before the Interim Committee on Transportation & Utilities in 1975 and subsequently all 3 segments of the electric industry were instructed by legislators to try and reach a compromise. A series of industry-wide meetings were held on the following dates (in which KMU participated as did representatives of the RECs and companies):

August 13, 1975
September 3, 1975
September 30, 1975
November 3, 1975

Attached is a copy of a November 14, 1975, letter from then general manager of KEC, Charles Ross, to then chairman of the interim committee, Senator Bob Storey, which shows the RECs agreed to the annexation provision and understood its future ramifications.

Again, I would like to stress that municipal-electric cities gave up a tremendous amount of territory to reach an agreement with the RECs and if the annexation provision had not been part of the bill, there would not have been a service territorial act.

Also attached for the Committee's information is a copy of Charles Ross' testimony on February 10, 1976, which supported the amended version (including the annexation provision) before the Senate Transportation & Utilities Committee.

In conclusion, I would like to make the following comments:

(1) I feel the main reason behind the RECs attempt to break their 10-year-old agreement that led to the passage of the territorial act is because in many cases they are no longer competitive with many municipal electric systems and private power companies -- but that is no justification to try and back out of the agreement. We hold them to the agreement reached in good faith 10 years ago -- or if they want to return to the old days, then give our systems back the 3-miles of territory we gave up.

(2) SB 740 is not necessary if a study of the issue is forthcoming this summer.

(3) SB 740 is not merely a "moratorium" bill, but would actually repeal the very issue that would be studied this summer -- a section of current law that has not yet been determined necessary to change.

(4) The current "annexation" section of the Retail Electric Suppliers Act has worked well during the last 10 years and there is no need to change. In the last 6 years, the 33 distribution cooperatives listed in the KEC Directory have a net gain of nearly 10,000 new customers, according to data published by KEC. Thus, the current annexation section in the Retail Electric Suppliers Act seems not to be harmful to the RECs.

Attachment A

Quote from KMU Board of Directors meeting held in McPherson on October 17, 1972:

"Charles Ross, Kansas Electric Cooperatives, Inc., Topeka, presented information on the single certification of territory legislation being jointly explored by KMU and KEC. Following a lengthy discussion, the board voted to support the KEC legislat(ion). One area that will need additional thought is placing a time limit on another utility removing itself from an area which is annexed by a municipality which owns its own electric generation or distribution system."

Attachment B

Quote from KMU Board of Directors meeting specially called in McPherson on December 19, 1972:

"The KMU board then met in joint session with a territory committee of Kansas Electric Cooperatives, Inc., to discuss support of the single certification of territory legislation that KEC intends to submit to the 1973 Kansas legislature.

The KMU board, on October 17, 1972, had approved support of the legislation; but later, at the request of the executive director, indicated it might want to reconsider their support. Thus, the board was called together December 19, 1972, specifically to reconsider this legislation and support thereof.

Following a briefing by KEC representatives and serious discussion among the board members, it was moved, seconded and approved by a 9-3 vote to support KEC's single certification legislation subject to final document approval."

The 7 KEC representatives meeting with the KMU Board were:

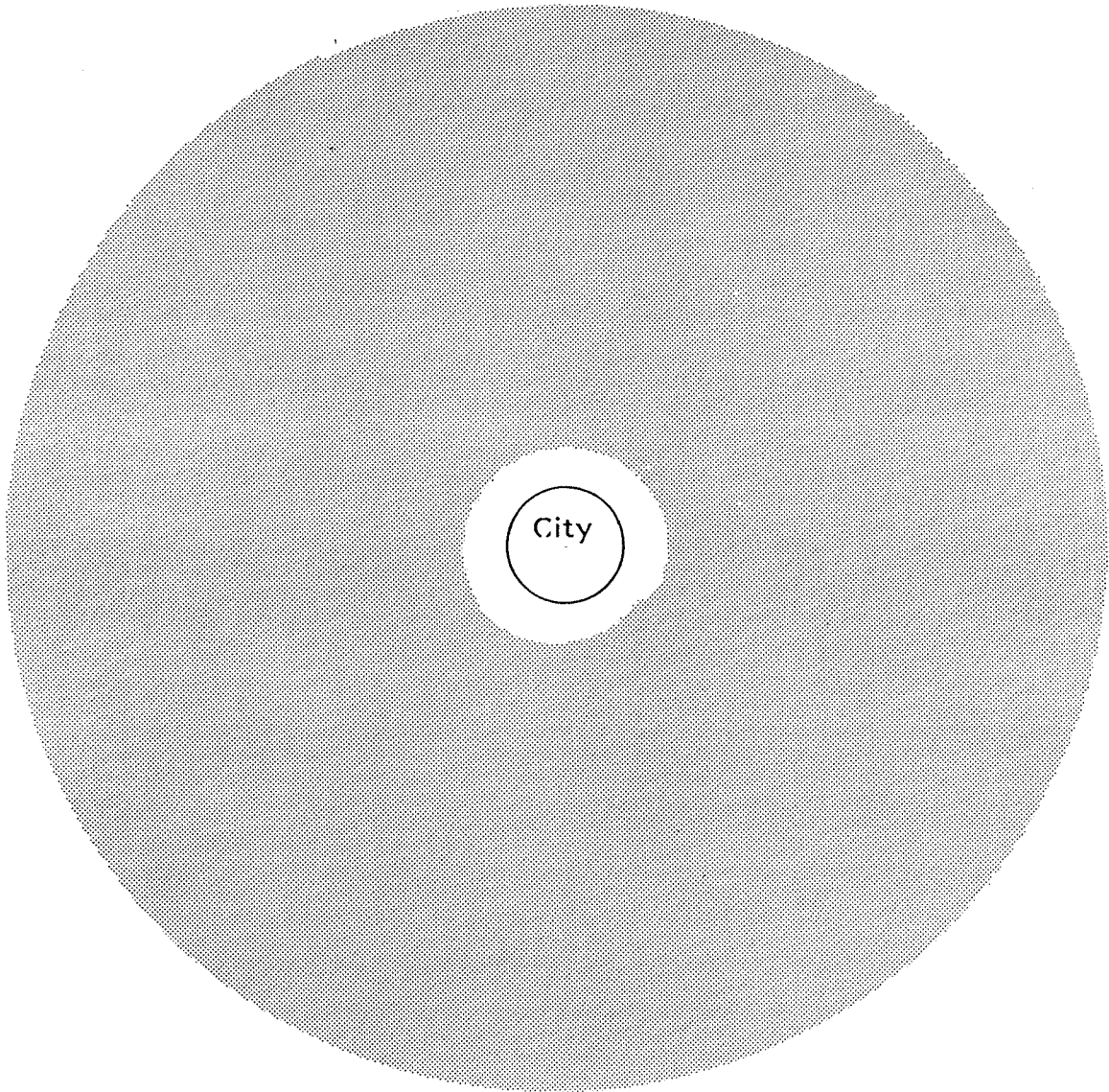
Charles Ross, general manager of KEC, Topeka
Fred Stone, general manager of KaW Valley Electric, Topeka
Lowell Abeldt, KEC President, D.S.&O., Hope
Jack Hutchinson, general manager, Sedgwick County Electric, Cheney
Ken Conaway, Pioneer Electric, Ulysses
Jack Goodman, general manager, Central Kansas Electric (now Midwest Energy), Great Bend
Ken Erickson, general manager, P.R. & W. Electric, Wamego

66-1,176. Termination of service rights in annexed areas; certification to existing supplier or franchise holder. All rights of a retail electric supplier to provide electric service in an area annexed by a city 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.

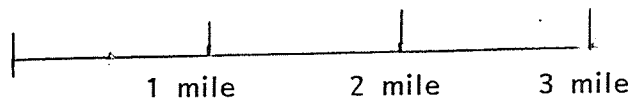
History: L. 1976, ch. 284, § 7; July 1.

ELECTRIC TRANSMISSION LINES

Attachment D



Shaded area represents minimum amount of territory (2½ miles) given up by cities in agreeing to Retail Electric Suppliers Act, provided annexation section was contained in act.



SCALE: 1" = 1 mile



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

November 14, 1975

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

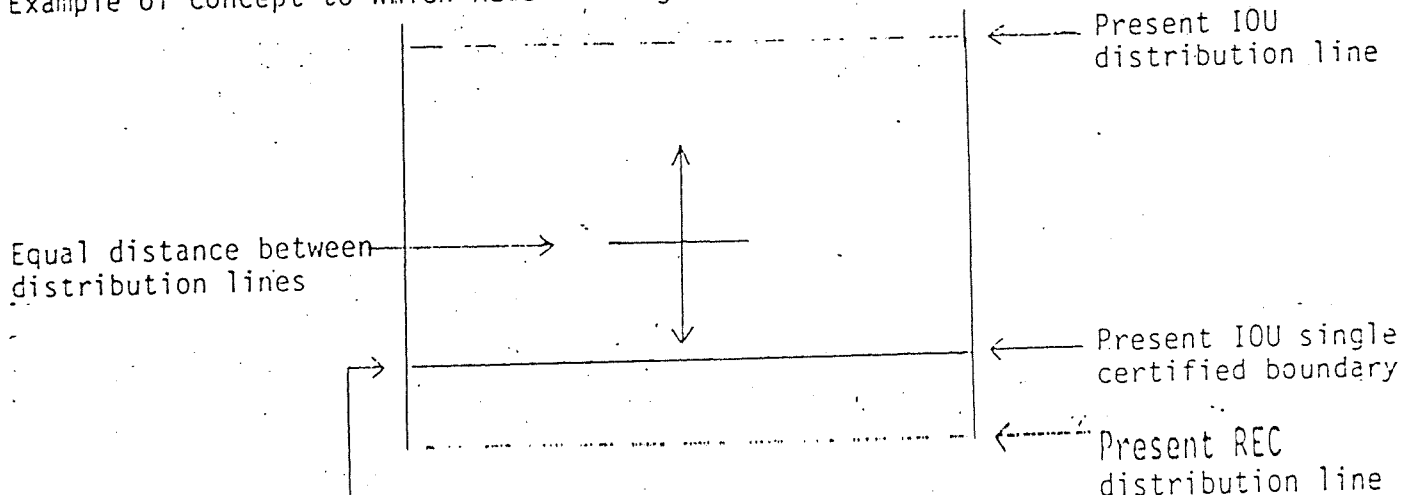
On October 8, 1975 I personally contacted and arranged a meeting with Mr. Bal Jeffrey, Chairman of the Board of KPL to discuss with him a possible annexation provision. Mr. Jeffrey had previously insisted that annexation had to be included in legislation. As a result of this meeting with Mr. Jeffrey 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 RECs nearest distribution line is closer to an IOUs present single certified territory boundary than an IOUs distribution line, the IOUs 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.

November 14, 1975

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

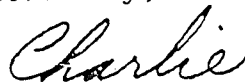
The rural electricians are willing to cooperate in further negotiations with the investor-owned companies. However, from our experiences of recent weeks we are uncertain as to whether they want to resolve this issue at all. Because of the circumstances, we must return this matter to the attention of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

Attachment F.

TESTIMONY ON HOUSE BILL 2047 AS AMENDED BEFORE THE SENATE TRANSPORTATION AND UTILITIES COMMITTEE, FEBRUARY 10, 1976

Mr. Chairman, and members of the Committee, My name is Charles Ross. I am General Manager of the Kansas Electric Cooperatives, Inc., the statewide association of all rural electricians in Kansas who serve more than 119,000 consumer members with electricity.

House Bill 2047 as amended is compromise legislation supported by most of the electric utility industry in Kansas.

Mr. Chairman, you will recall that, as Chairman of the Summer Interim Transportation and Utilities Study Committee, you requested representatives of all segments of the electric industry in Kansas to meet with you on Thursday, July 17, 1975, relating to territorial legislation. Consequently, representatives of each of the investor owned companies, the municipal electric utilities, and rural electricians did meet on Thursday, July 17, here in the Statehouse with you, Representative Fred Harris and Representative Fred Weaver. At that meeting, Mr. Chairman, you suggested that representatives of the electric utility industry attempt to reach agreement on proposed legislation relating to service territories. You further stated that if agreement could not be reached House Bill 2047 as amended would be considered by the 1976 session of the Legislature.

As a result of your July 17 request, Mr. Chairman, a series of five negotiating sessions were held between the corporate heads of each of the six investor owned companies, representatives of the municipal systems, and representatives of the rural electricians.

Some resolvement progress was made in these five sessions, but agreement between all entities involved did not occur. Therefore, the Transportation and Utilities Interim Study Committee received two reports at its final meeting on November 18, 1975. Mr. Charles W. Edwards issued his report as a representative of the investor owned companies, and I made a report on behalf of the rural electricians. It was evident to the committee that basic issues had not been resolved at that time.

On about December 1, 1975, I called Mr. Balfour Jeffrey, Chief Executive Officer of Kansas Power and Light Company, to inquire of him if the investor owned companies would like to meet further to discuss and negotiate issues in an attempt to reach a compromise that could be supported by all segments of the industry. Within a few days Mr. Jeffrey got back to me and said he had contacted the corporate heads of the other investor owned companies and most indicated they had no desire to meet further on the issues. Consequently, I asked Mr. Jeffrey if he, representing Kansas Power and Light Company, would like to meet further to discuss unresolved issues. He assured me he would. Therefore, several meetings between Mr. Jeffrey and representatives of the rural electricians took place through the next several weeks. Compromises were agreed to by the parties involved, including the Kansas Municipal Utilities.

Mr. Jeffrey agreed to advise the corporate heads of the other investor owned companies of any progress being made and concepts being considered. I believe he did just that, so that representatives of the entire industry were apprised of compromise agreements being considered.

This is the compromised process through which House Bill 2047, as further amended, progressed. It has required a great amount of time and determined effort by several people. No entity is totally satisfied with all of its provisions, but most of the industry has agreed to support it. It is the same legislation that merited the support of the House of Representatives, with an overwhelming 109 to 15 vote.

House Bill 2047 provides exactly what most other states have already accomplished because of legislation, and what most state Public Service Commissions endorse as effective regulation. Under the jurisdiction of the Kansas Corporation Commission, each retail electric supplier will be assigned specific service territories. All of the state will be so assigned to eliminate future disputes among suppliers and confusion among consumers.

Mr. Chairman, and members of the committee, I respectfully remind you again that it was the legislature itself that directed the Kansas electric industry to work together to resolve the issue of electric service territories. Most of the industry has fulfilled that directive through this compromise legislation. Now I respectfully ask this committee to recommend House Bill 2047 in its present form without any additional amendments to the full Senate favorable for passage.

Thank you Mr. Chairman and members of the committee for your interest and your support.



League of Kansas Municipalities

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

TO: Senate Committee on Transportation and Utilities
FROM: E.A. Mosher, Executive Director
DATE: March 28, 1986
SUBJECT: SB 740--Electric Territorial Act; City Annexations

The League does not have a formal board or committee position on SB 740, because of its recent introduction. However, we have taken a position against SB 428, the predecessor bill to SB 740. Further, by city convention action and long tradition, we have opposed bills to require municipal utilities, operating under locally elected governing bodies, to come under KCC jurisdiction.

I would also note that we have a special adversity to bills which attempt to prohibit cities from providing all city services to annexed areas. The principal opposition to city annexation is that the property becomes subject to higher city taxes, an almost universal result, frequently compounded by the fact that property within cities is subject to county road and bridge taxes but none of the money is spent within cities. The paradox is that cities would be prohibited by bills like SB 428 or SB 740 from providing municipal utility type services at a lower cost to annexed areas to help offset the higher city property taxes.

Proposed Amendments

We request four amendments to SB 740, as shown in the attached. These amendments are as follows:

- (1) Reduce the moratorium from two years to one year.
- (2) Clarify the application of the moratorium provision to municipal electric cities.
- (3) Remove Section 2 entirely.
- (4) Delete the proposed repeal of K.S.A. 66-1,170.

Amendment 1. We understand that an interim legislative study on the entire territorial act has been essentially agreed to. We don't think this should require two years. Perhaps the 1988 date on line 109 was inadvertent, and the sponsors, whomever they may be, really planned for a one-year moratorium, until July 1, 1987.

Amendment 2. While we interpret the thrust of SB 740 as primarily an anti-municipal system bill, we also understand that the new provisions of subsection (c) would be applicable to private systems and RECs, as well as to municipal electric systems. The meaning of the moratorium provision may be adequate

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Directors: Robert C. Brown, Mayor, Wichita • Robert Creighton, Mayor, Atwood • Irene B. French, Mayor, Merriam • Donald L. Hamilton, City
Clerk/Administrator, Mankato • Carl D. Holmes, Mayor, Plains • Paula McCreight, Mayor, Ness City • Jay P. Newton, Jr., City Manager, Newton •
John E. Reardon, Mayor, Kansas City • David E. Retter, City Attorney, Concordia • Arthur E. Treece, Commissioner, Coffeyville • Dean P. Wiley,
City Manager, Garden City • Douglas S. Wright, Mayor, Topeka • Executive Director: E.A. Mosher S.744 3/28/86 ATT. (7)

for non-municipal systems, but leaves some problems as to cities with municipal systems which have recently annexed or which may now be in the process of annexation.

As Committee members probably know, cities have been required since 1974 to develop service extension plans, with a timetable, as to proposed annexations except (1) those petitioned for and unilaterally annexed, and (2) those petitioned for and approved by the board of county commissioners. Normally, the change from non-municipal electric service to municipally-owned service does not occur on the day the annexation ordinance takes effect. The official service extension plan normally schedules a future date, within the provisions of K.S.A. 66-1,176, which recognizes the time-frame of 180 to 210 days.

While we question the need for any moratorium, if we are going to have one, it ought to make sense in practical operation. It ought not to retroactively apply to a fact situation where the annexation occurred some months ago, but the actual transition from a non-publicly owned system to a publicly owned system has not yet occurred. The amendment we propose fixes the moratorium date at a rational point, namely, the date of any annexation which takes effect after the effective date of the law.

While this amendment provision, like the bill, will jeopardize some service agreement plans applicable to annexations now underway, but not completed, it does protect the service rights and interests of private parties, as well as the city, for an annexation that has already been completed. For example, an owner who requested annexation of a piece of property with the understanding that the property would benefit from municipal electric service after annexation, would be protected--but only if the annexation was completed prior to the time the act takes effect. The amendment we propose is essential to fix a firm date on which the proposed moratorium would apply.

Amendment 3. We propose the complete elimination of Section 2. The provisions of Section 2 not only amend the law to bring the three mile area within KCC jurisdiction, but goes on to even prohibit a municipal electric system from serving territory within its corporate limits. We consider this totally inconsistent with the moratorium provision in subsection (c) of Section 1. A moratorium is irrelevant if Section 2 is passed. Why have a moratorium, and why have an interim study, if we are going to gut the 1976 territorial act and deny cities the right to serve property located within the city limits unless approved by the KCC?

If there are any constitutional questions about the continued existence of K.S.A. 66-1,174, with the existence of the subsection (c) moratorium, then 66-1,174 could be included in the bill, unchanged except for the clause "Subject to the provisions of this act."

Amendment 4. Finally, we have the sleeper. It is the barely noticeable repeal of 66-1,176, which tears the heart out of the 1976 territorial act. This is the provision which terminates the service rights of private companies and RECs in annexed areas absent a franchise agreement. Because of its importance, it is reproduced with the proposed amendments.

Our objections to the repeal of this section are similar to Section 2. It is inconsistent with the moratorium as well as the legislative study proposal. It makes the moratorium a smoke screen.

Again, if there are any constitutional questions about the continued existence of K.S.A. 66-1,176, with the existence of the subsection (c) moratorium, then 66-1,176 could be included in the bill, unchanged except for the clause "Subject to the provisions of this act."

Conclusion. Finally, we raise the fundamental question-- what's the public problem? Beyond rumors and speculations, what and where is the problem? Anyone who thinks cities are going to go hog wild in annexation doesn't understand the legal and procedural restraints on annexation, nor the basic disposition of local city officials, nor the realities of our history. Since 1974, cities have picked up obligated service requirements in annexation. Providing municipal electricity has never been profitable enough to offset other public service obligations. The annexation bill now in conference committee proposes even greater obligations, with a procedure to trigger mandatory deannexation on the failure to provide services, which must be prescribed "in detail," and be equal to or better than prior to annexation.

We are not aware of any cities that helped create the rate problems of Wolf Creek or Sunflower. Why should cities, and the people and property within cities, be denied the benefits of municipal service, to the profit of someone else? I appreciate the fact that most people profess not to like cities, even though 78 percent of all Kansans live within them, and roughly another 10 percent live in areas adjacent to cities. Given current and prospective economic realities, I would suggest to you a positive approach of nurturing the growth and development of our cities is in the best interest of all, including those who live outside cities but who need non-farm jobs.

We would suggest to you that the best approach is simply to kill SB 740. At the minimum, we urge your approval of the amendments.

SENATE BILL No. 740

0017 AN ACT relating to electric public utilities; concerning service
0018 territories of retail electric suppliers; amending K.S.A. 66-
0019 1,172 and ~~66-1,174~~ and repealing the existing sections and
0020 also repealing K.S.A. 66-1,176.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 66-1,172 is hereby amended to read as



Am. No. 1 0107 (c) *Notwithstanding any other provision of this act or the act*
0108 *of which this act is amendatory, from and after the effective* [7
0109 *date of this act and prior to July 1, 1988, each retail electric*
0110 *supplier shall continue to have the right to serve all customers*
0111 *being served by it within its certified territory as the same*
0112 *existed on the effective date of this act and no changes in the*
0113 *certified territory of any retail electric supplier shall be made*
0114 *during such period without the agreement of the suppliers*
0115 *involved and upon approval by the commission.*

Am. No. 2 The provisions of this subsection shall apply to any certified territory of a retail electric supplier annexed into a city when the annexation ordinance required of K.S.A. 12-523 for any such territory has not taken effect by publication in the official city newspaper on or before the effective date of this act.

Am. No. 3 0116 ~~Sec. 2. K.S.A. 66-1,174 is hereby amended to read as follows:~~
0117 ~~66-1,174. A municipally owned or operated retail electric sup-~~
0118 ~~plier shall be subject to commission jurisdiction as a public~~
0119 ~~utility, as defined in K.S.A. 66-104, with respect to all operations~~
0120 ~~within its certified territory extending more than three (3) miles~~
0121 ~~beyond its corporate limits regulated by this act. A municipal~~
0122 ~~retail electric supplier shall be subject to regulation by the~~
0123 ~~commission in matters relating to the right to serve in the~~
0124 ~~territory within three (3) miles of the corporate city boundary,~~
0125 ~~except that the commission shall have no jurisdiction concerning~~
0126 ~~such retail electric supplier within its corporate limits any por-~~
0127 ~~tion of the corporate limits of such city which are included~~
0128 ~~within such corporate limits on or after the effective date of this~~
0129 ~~act.~~

0130 New Sec. ~~3~~. If any part or parts of this act are held to be [2
0131 invalid or unconstitutional by any court, it shall be conclusively
0132 presumed that the legislature would have enacted the remainder
0133 of this act without such invalid or unconstitutional part or parts.] 3

Am. No. 4 0134 Sec. ~~4~~. K.S.A. 66-1,172, ~~66-1,174~~ and ~~66-1,176~~ are hereby [3
0135 repealed.] is
0136 Sec. ~~5~~. This act shall take effect and be in force from and [4
0137 after its publication in the Kansas register.] 4

66-1,176. Termination of service rights in annexed areas; certification to existing supplier or franchise holder. All rights of a retail electric supplier to provide electric service in an area annexed by a city 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.

History: L. 1976, ch. 284, § 7; July 1.

Testimony Before

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Senate Bill 740

RETAIL ELECTRIC SUPPLIERS' TERRITORIES

By RICHARD D. KREADY

KPL GAS SERVICE

Director of Governmental Affairs

March 28, 1986

Mr. Chairman and Members of the Committee:

KPL Gas Service has spent a great deal of time studying the possible effects of SB 740, which would freeze existing electric service territories and deny urban utilities the opportunity to grow with the cities they serve. We could benefit from the enactment of SB 740 since we are the electric supplier along the north portion of the new I-435 corridor in Wyandotte county. Should this proposal become law, there would be assurance that we could continue to serve that area with electricity until at least July 1, 1988 even if that area is annexed into Kansas City, Kansas and even though the KCK Board of Public Utilities would be providing other utility services to those same customers.

Despite our possible temporary benefit in that particular area, we are opposed to changing the current laws by freezing electric territories. The Senate Local Government committee is recommending interim study of utility territory issues. While the study is being conducted to determine, among other things if it is necessary and/or appropriate to freeze electric territories, current law should remain in effect.

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ATT. (8)

Many years of legislative study was culminated to enact the existing Retail Electric Suppliers Act. Provisions of that act permit the city governing body to decide if it is in the best interest of its citizens to grant a new franchise to the electric utility that has been serving the newly annexed area, or if it is in the best interest of their community to be served by only one electric supplier, the one currently serving the rest of the city. This decision has not always been resolved the same way. Just as the act has provided, those elected officials have made the best decision they could at that point in time, for the citizens of their community.

A great deal of legislative time and effort was expended a decade ago to resolve everyone's concerns about the annexation issue's relationship to the Retail Electric Suppliers Act, and we don't believe there is adequate justification to warrant disruption of those agreements at this time.

Although passage of SB 740 would "only" freeze the electric territorial borders for approximately two years, we fear this kind of protectionism could set a bad precedent. If territories are frozen, the utilities that now serve the state's urban areas will be prohibited from serving new areas of those cities. Eventually the territory our company is allowed to continue serving in most towns will be viewed as the core city--the inner city--while the electric suppliers that currently specialize in serving rural needs will be expected to redesign their systems to provide for all of the new urban and industrial expansion throughout Kansas.

I question not only whether this is fair, but whether this is a wise policy. The investor-owned electric companies serve the over-whelming majority of Kansas cities. We have systems designed to provide reliable service to our urban customers at reasonable rates. Investor-owned electric utilities are also deeply involved in economic development throughout this state to promote growth for our communities, and thus growth for our companies. Should this bill become law, and investor-owned utilities be confined to their current service territories, there would be little or no justification for our continuing efforts to develop additional industrial parks and we would be less able to hold down the cost of electricity for all of those we serve by spreading our overheads to an increasing number of customers.

As stated earlier, the Senate Local Government committee is recommending interim study of these utility issues. We do not believe it is justified to change existing law by freezing its application, especially since the interim committee can address in the next few months any problems which might exist in present law.