Approved ______________________
Date

MINUTES OF THE House Sub COMMITTEE ON Energy.

The meeting was called to order by Chairman Holmes (Chairperson) at

3:30 ~~a.m.~~/p.m. on February 25, 1987 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Ramon Powers, Research Department
Theresa Kiernan, Revisor of Statutes Office
Betty Meyer, Committee Secretary

Conferees appearing before the committee:

Representative Grotewiel
Susan Beers, Salvation Army, Lawrence
Jim Kaup, Staff Attorney, League of Kansas Municipalities
Louis Stroup, Jr., Executive Director of KMU
Harold Spiker, KDHE
Stevi Stephens, Nuclear Awareness Network

Chairman Holmes called the meeting to order.

Representative Grotewiel presented HB 2327, concerning jurisdiction of corporation commission over municipal utilities. He stated some consistency is needed and that some utilities are inflexible in their policies. HB 2327 says policies of utility companies are not uniform. (Attachment 1)

Susan Beers stated the main problem is that people on fixed incomes cannot meet all payments for sewer, water, gas, etc., at one time, and if a person makes an effort to pay, she would like to see the utilities work with them.

Jim Kaup opposed HB 2327, saying it is unnecessary. He stated the League of Municipalities has handled the problems in the past and will continue to do so. (Attachment 2)

Louis Stroup opposed HB 2327 saying it attacks the integrity of local governing bodies to govern themselves. Also, he cited additional cost fostered by HB 2327 would be considerable and out of step with the legislative leadership. (Attachment 3)

Hearings on HB 2327 were closed.

Chairman Holmes ask Rep. Grotewiel to present HB 2328; a bill monitoring environmental impact of nuclear power generation facilities. Rep. Grotewiel is asking that the state become more involved in on-site monitoring at the Wolf Creek Generating Station. (Attachment 4)

Harold Spiker opposed HB 2328 stating it is too vague in defining the term "on-site monitoring." He asked the committee to evaluate all the information and clearly specify what additional monitoring is needed in the bill. (Attachment 5)

Stevi Stephens testified in support of HB 2328. She stated KG & E and the Nuclear Regulatory Commission cannot be trusted to disclose documentation to the public or to Kansas officials. (Attach. 6)

Rep. Grotewiel concluded by saying there is a role for the state in nuclear safety, and a higher standard of vigilance is needed.

Chairman Holmes adjourned the meeting at 5:30 p.m.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

KEN GROTEWIEL
REPRESENTATIVE, NINETY-SECOND DISTRICT
1425 W. MURDOCK
WICHITA, KANSAS 67203-3178
(316) 265-2704

STATE OF KANSAS

TOPEKA

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FEDERAL AND STATE AFFAIRS
TAXATION
LEGISLATIVE, JUDICIAL AND
CONGRESSIONAL APPORTIONMENT

February 25, 1987

MUNICIPAL UTILITY BILLING PRACTICES HB 2327

1) NOT ALL PEOPLE WHO HAVE TROUBLE PAYING THEIR UTILITY BILLS ARE DEADBEATS.

2) A FEW FACTS ABOUT MUNICIPAL UTILITIES.

3) THERE IS NO CENTRAL LOCATION FOR INFORMATION ABOUT MUNICIPAL UTILITIES.

4) THE KCC SETS OUT REQUIRED BILLING PRACTICES OF INVESTOR OWNED UTILITIES.

5) CUSTOMER PRACTICES OF MUNICIPAL UTILITIES VARY WIDELY.

6) PRACTICES OF ONE UTILITY COMPLICATE PAYMENT TO OTHERS.

7) GOING TO CITY HALL IS HOW DISPUTES ARE SETTLED.

8) SOME MUNICIPAL TRANSMISSION LINES ARE UNDER KCC REGULATION.

9) ATTEMPTS WERE MADE LAST YEAR TO PUT MUNICIPALS UNDER POWER PLANT SITING ACT.

10) OTHER STATES REGULATE MUNICIPAL UTILITIES.

11) KCC BILLING REQUIREMENTS ARE BEING USED MORE AND MORE AS GUIDELINES FOR MUNICIPAL PRACTICES.

12) COMPLETE COMPLIANCE WITH KCC BILLING REQUIREMENTS MAY BE TOO BURDENSOME ON LOCAL MUNICIPALITIES.

13) HOWEVER, SOME CONSISTENCY WOULD BE APPROPRIATE, PARTICULARY WITH THE COLD WEATHER RULE.

Handling Utility Delinquencies

by Jim Kaup, Staff Attorney
League of Kansas Municipalities

Many cities in Kansas presently operate their electric, gas, sewer and water utility systems with ordinances written decades ago. While probably adequate at the time they were originally drafted, many of these ordinances are in desperate need of updating, due largely to three forces at work over recent years: (1) utility bills have risen dramatically, now commonly running into hundreds of dollars per month per household, and consequently take on greater importance both for the buyer-customer and the seller-city; (2) the population has become more mobile, thereby worsening the problem of customers leaving town with unpaid utility bills and (3) the expectation of continued utility service is now seen as a "property right" of the customer, a right protected by the U.S. Constitution.

The following article is intended to help cities meet their two principle obligations in operating utility services: (1) the duty to supply utility services to customers, and in so doing, to respect and protect the property rights those customers have in the continued provision of those services, and (2) the duty to the community-at-large (which owns the utility) to operate the utility in a business like manner. Specifically, the focus is on the legal authority for, and restraints upon, the prevention and handling of delinquent utility accounts.

The reader is also referred to the "model" ordinance in the accompanying article on page 124 of the *Journal*. That ordinance provides one example of how many of the procedures described in this article may be written into law.

Termination of Utility Services

In 1978 the United States Supreme Court ruled that a municipal utility must provide its customers with an administrative procedure for hearing complaints prior to termination of service in order to insure against arbitrary or erroneous termination of utility service (*Memphis Light, Gas and Water Division* v. *Craft*, 436 U.S. 1 (1978)). The U.S. District Court for the District of Kansas reached a similar conclusion in 1975 when it held that a city may not terminate water service to a customer for delinquent payment without providing for pre-termination notice and an opportunity for a hearing (*Donnelly* v. *City of Eureka*, 399 F. Supp. 64 (D. Kan. 1975)). In an opinion issued August 17, 1983 (No. 83-124) the Kansas Attorney General recognized this line of case law and concluded that *all* utility services provided soley by municipally-owned or public utilities to their customers are constitutionally-protected property rights which cannot be terminated unless due process (i.e., notice and hearing) is provided. The Attorney General noted "...it is generally recognized that public utilities...have the power and authority to discontinue a consumer's service for nonpayment of bills. ...Services such as electricity, gas and water provided by municipally-owned or public utilities, which are the sole source of such life-sustaining services, are considered to be entitlements or property rights protected by the due process clause of the 14th Amendment of the United States Constitution.... Before any customer's electric, gas or water services are discontinued, due process guarantees must be afforded that customer. The utility offering the service must, therefore, give customers adequate notice of the pending termination of service, and an opportunity to co[illegible]he grounds for termination."

The customer's expectation of continued utility service is considered to be a "property interest" entitled to the due process protection of the 14th Amendment on the grounds that utility service is a necessity in modern life. This does not mean, however, that a municipal utility may not terminate utility service for failure to pay service charges which are justly due. The courts have simply said that notice to the utility customer that service will be terminated unless a delinquency is paid within a specified time is *not* enough; the customer must also be notified that he or she is entitled to a hearing at which time objections to the pending termination may be presented prior to that termination.

In short, a city must meet due process requirements which require that the affected customer must be *notified* of the proposed action and that he or she has the *opportunity* to be heard at a meaningful time and in a meaningful manner on the subject of the termination. It should be noted that an actual hearing is not required to be held if the customer does not request one.

Because hearings are to be held prior to termination, it is in the financial interests of the city to hold the hearing in a timely manner following notice of the delinquency. Timely resolution of the issue is also in the interest of the customer. While no specific number of days is "reasonable" or "unreasonable," a common practice among Kansas cities is to require a customer to notify the city of his or her request for a hearing within three working days following the notice and for hearings to be held witin 10 working days following the customer's request for the hearing.

The selection of an appropriate hearing officer or hearing panel is important. The legal requirements are merely that the hearing officer be empowered to carry out the decisions he or she makes. The city may so authorize any person—whether a city officer or employee or a private citizen. The primary questions the city will need to address in selecting a hearing officer are: whether a single officer or body should be appointed and whether a city officer or employee or private citizen(s) should be selected. The most common practice detected among Kansas cities is the designation of a single hearing officer by the mayor, with governing body consent. The only other caveat on this point is that it is not appropriate for the municipal judge to sit as the hearing officer, whether the judge is sitting as the judge of the municipal court or as simply a city official. This is because cities should strive to keep the hearing procedure an administrative one, not a judicial proceeding. Finally, in order to preserve the appearance of fairness, the city may wish

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[illegible]d appointing as its hearing off[illegible] [illegible]son who was involved in the initial determination that a delinquency exists.

Due process notice and hearings are meaningless unless the end result of the process is fair. The findings and actions of the hearing officer must have some support in the evidence and testimony presented at the hearing. Findings and actions which are wholly inconsistent with and contrary to the record arising from the hearing make a mockery of the due process procedure.

What should be the extent of the power given the hearing officer? Some cities will want the hearing officer to do more than simply address errors in utility billings. Those cities wish to establish "hardship" or "unforseen circumstances" as acknowledged grounds for preventing termination of services. For example, the city of Elwood has provided: "in making a determination of whether discontinuance should be ordered, the hearing officer shall consider, but not be limited to, the following factors: whether discontinuance is dangerous to the health of the customer, the customer's family, or residents of the premises; the weather; and the medical conditions, ages or disabilities of the customer, the customer's family or residents of the premises."

Other cities have adopted variations of the "cold weather rule" which the KCC requires of its jurisdictional utilities. A cold weather rule is designed to protect the health and safety of utility customers during periods of adverse weather conditions. The KCC rule, and the variations of it voluntarily utilized by a number of Kansas cities, prohibit discontinuance of service to customers who meet a "good faith test" which is based upon the customer's inability to pay current utility bills in full, cooperation by the customer with the utility in developing a payment agreement, making an initial payment equalling a certain percentage of the most recent billing, as well as part of the outstanding delinquency, and entering into a level payment arrangement with the utility.

In establishing the entire utility termination procedure, a review of relevant portions of the Kansas Corporation Commission's regulations regarding utility termination will be helpful to the city. While as a general rule municipal utilities are not subject to regulations of the KCC, adherence to these regulations imposed by the KCC upon its jurisdictional utilities should insure that the city's procedure is consistent with recognized due process requirements. In other words, there is a good degree of "safety" in following the procedures set down by the KCC.

Security Deposits

While many cities require customer deposits prior to the provision of any or all utility services, most security deposit ordinances are not drafted in a way which fully utilizes the deposit as a mechanism to discourage utility delinquencies from occurring. The simplest improvement that many cities could make in their current security deposit ordinances would be to increase the amounts of those deposits. Many cities continue to operate with security deposit requirements which were set at a time when the average utility charge was a mere fraction of today's typical billings. Obviously, a customer considering "skipping out" on a delinquency will not view the loss of a $20 security deposit in the same way he or she would a $100 or $200 security deposit.

The legal standard to be met in establishing the amount of a security deposit is "reasonableness." K.S.A. 12-822 provides that "the amount of deposit required shall at all times be reasonable and shall be based upon the value of the maximum service rendered..." The term "value of maximum service rendered" appears to be a reference to the cost of services delivered by the utility to the customer over a given billing period. As most cities bill on a monthly basis, a security deposit requirement which is based upon the charges estimated for the billing period during which the greatest charge for that service is historically made (e.g., August for electricity, January for gas) would be "reasonable" as required by K.S.A. 12-822. While most cities which have passed ordinances requiring deposits set out a dollar figure for such deposits, some cities have vested authority in a city officer to set the dollar amount of a security deposit, in accordance with certain guidelines. This type of procedure has benefits to the city in that it allows the city to tailor the deposit so that it is no higher or lower than is necessary to protect the city's interests. In some cities the determination of a particular deposit amount is based upon that customer's prior billing record, or upon a comparison to the billing records of other customers who have "similar" properties. Once that average billing is determined, the amount of the security deposit is set at that level. Some cities have placed maximums on the amount of security deposits that may be required, commonly limiting those amounts to no more than two month's average billing.

While setting utility security deposit amounts so as to discriminate between classes of customers on the basis of age, sex, race, national origin, marital status, handicaps, religion, etc. (e.g., setting a higher deposit for all customers who are single-parent heads of households) would be unlawful, the law does not say that only one fixed security deposit amount must be required of all customers. Because the purpose of the deposit is to provide security for payment of future service, it is lawful for a city to take into account such things as the customer's prior payment history or general credit record in setting deposit amount. For exam[illegible]f a new utility service applicant ca[illegible]rovide the city with a history of res[illegible]sible prior utility payments, then a higher utility deposit amount may be appropriate. Also, if a current or past utility customer seeks reconnection following a termination for an account delinquency, again, a higher security deposit may be necessary to insure payment of future services. The principle point to keep in mind when requesting different deposit amounts from different people is that the basis for such treatment *must be reasonable.* Arbitrary decisions, unsupported by formal guidelines used in setting deposit amounts, can result in lawsuits against the city alleging unlawful discrimination.

The KCC has established for its jurisdictional utilities certain standards for requiring and setting security deposits. The KCC authorizes a utility to require a deposit if the utility customer is shown to have "an unsatisfactory credit rating" or "insufficient prior credit history," if the customer fails to pay an undisputed bill before the delinquency date for three consecutive billing periods, or if the customer has an outstanding, undisputed and unpaid service account with a utility. The KCC's standards establish a maximum amount for security deposits. Those deposits are not to exceed "a projected average two month's bills."

In sum, the amount of security deposits *cannot* lawfully be set for the purpose of preventing, or discouraging, certain persons from receiving municipal utility services. But the city *can* lawfully vary the amount of the deposit from customer-to-customer when the basis for those variations is reasonably related to the degree to which those various customers are perceived as "good" or "bad" risks to pay their future utility bills. Cities are also reminded of their duty to pay interest on security deposits, with the percentage rate of such interest set by the KCC (K.S.A. 12-822).

Reconnection Charges

Another commonly used method of discouraging delinquencies is the imposition of a charge for reconnection after service has been discontinued. Such charges should not be characterized, or used, as a "penalty." They are *charges* assessed to compensate the city for all or part of its expenses incurred as a result of the customer's wrongful failure to pay a utility bill. Accordingly, the amount set for such a charge should have its basis in the real costs (e.g., labor and administrative expenses) which are incurred by the city in making a typical reconnection of service.

The practice in Kansas cities appears to be to establish a set dollar for such charge, rather than to merely provide an open-ended "actual cost" provision. Among the ordinances surveyed, recon-

nc... charges varied from $5 in ... r... and Clearwater to $25 in Pa...er a... ...ound City, with $10 being a common figure.

Landlord Liability

In some Kansas cities a high percentage of delinquent utility customers are property renters. Some of those same cities have created, by ordinance, landlord liability for the delinquent utility accounts incurred by their tenants as a means of *preventing* utility delinquencies from arising and as a means of *guaranteeing payment* of such delinquencies when they do arise. The basic concept of landlord liability is self-evident. Landlords are either made wholly liable for account delinquencies of their tenants, or they are made jointly liable along with their tenant for such delinquencies. Sample ordinance language creating joint landlord-tenant liability appears at Section 7 of the model utility ordinance on page 125.

The legal authority for the creation of landlord liability is certain well-recognized. As early as 1920 the U.S. Supreme Court, in *Dunbar* v. *New York* (251 U.S. 516) held that even where a tenant had expressly agreed to pay for water service furnished to premises there was no violation of the equal protection clause of the 14th amendment by reason of the fact that a lien against the property for unpaid charges had to be satisfied by the owner of the property. The court said the statute or ordinance imposing a lien on the property for unpaid charges becomes an element of every contract with the city to furnish water to the premises and the owner cannot claim that in paying for water furnished to property he or she is satisfying a contractual obligation incurred by another person. A legal authority has written "...a requirement in a statute making a landlord liable for light or water furnished by the city to his tenants is reasonable, ...and does not violate due process in requiring one person to pay the debt of another.... A lien authorized by statute may be imposed upon property for the collection of unpaid water charges incurred by the present or former occupant thereof, at least where an implied consent by the owner to the introduction of the utility to the property can be found."

Regarding the question of whether a landlord is charged with notice of a statute or ordinance imposing a lien on his or her property, one should refer to the 1974 Kansas case of *Steele* v. *Latimer* (214 Kan. 329) which stated that "parties are presumed to contract with reference to presently existing statutes, ordinances, regulations, the provisions of which will be read into and become part of a contract by implication as though expressly inserted therein, except where a contrary intention has been manifested." Consequently, a contract by a landlord is held to be implied from the fact that the landlord connects his or her property with the utility services provided by the municipality and permits his or her tenant to use the property.

As recently as 1983, the Kansas Supreme Court, in the case of *Cook* v. *City of Enterprise*, 233 Kan. 1039, upheld an ordinance creating landlord liability. The Enterprise ordinance, which provided for the creation of a lien upon the rental property, was upheld by the court which cited the *Dunbar* line of decisions in rejecting the plaintiff's due process argument.

While a city's legal authority for creating landlord liability is clear, some cities express reservations based on the fairness of requiring one party to pay a debt incurred by another. It is the belief of the author that placing legal responsibility upon landlords to pay for the utility bills incurred by their tenants should be viewed as simply a "cost-of-doing-rental business". The great majority of rental properties simply cannot be leased unless connected to municipal services. Consequently, those properties would have greatly diminished rental value if they were not connected. As it is the landlord who enjoys the economic benefit of the provision of such utility services, it is the landlord who should bear at least partial responsibility for seeing that the utilities so provided are paid for.

A city should also recognize that it is the landlord, not the city, who is in the ...tter position to insure that de... ...cies do not arise. The landlord ca... ...n out persons who are "bad risks," can make failure to pay utility bills a violation of the lease agreement, and can also monitor the utility payments of the tenant to insure that payments are not delinquent. Also, it should be kept in mind that the landlord who is forced to pay a utility delinquency of the tenant has the recourse of bringing a civil action against the tenant for recovery of the money owed.

It is reasonable to assume that the mere existence of landlord liability for tenant delinquencies has a deterrent value. When the landlord knows that he or she is subject to a legal duty to pay delinquencies, there is an incentive for the landlord, and the tenant, to treat utility bills with the same deference given the lease payment. Another telling argument in support of landlord liability ordinances is the simple fact that delinquencies are delinquencies, and *someone* must foot the bill for them. If the tenant-customer cannot be made to pay and if the landlord is not liable, then it will be the paying customers of the utility who do pay. Why should the ratepayers-at-large be required to pay for services provided in order for a businessperson to be able to lease property? Finally, it should not be overlooked that the landlord liability ordinances are effective in insuring that some party (and one likely to have assets) will ultimately be responsible for the payment of utility bills. In cities which have a history of frequent utility delinquencies attributable to tenant-customers who leave the city without benefit of forwarding addresses and without property which may be attached, such an ordinance may be extremely valuable.

How should such an ordinance be drafted and implemented? While the Kansas Supreme Court in the *Steele* case said that a landlord is on notice of a legal obligation to pay simply due to the existence of such an ordinance, it is probably desirable, both from a practical and policy standpoint, to go the extra mile in guaranteeing that the landlord knows and understands his or her potential liability. The city should consider a procedure whereby a landlord is informed of his or her liability at the time a tenant opens a utility account. At the minimum, notice should be provided immediately to a landlord once a delinquency arises.

There are several objectives which a landlord liability ordinance *should not* attempt to accomplish. First, a tenant entering upon occupation of a premise and seeking to receive utility services cannot be made liable, as a condition of receiving service, for the payment of delinquencies of a former tenant on the same property. Second, a city should not attempt to "punish" a landlord who is a party to a delinquency at rental property X by refusing to hook up, or disconnecting,

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ser[illegible] to rental properties Y and Z (whi[illegible] h[illegible] delinquencies). Third, it is a que[illegible] tic[illegible] practice to prohibit tenant B from opening a utility account at rental property X merely because tenant A has a delinquency which was incurred while at that same address. Although neither the U.S. nor Kansas Supreme Courts have dealt with this precise issue, three of the federal circuit courts have, concluding that denial of service to the new tenant would constitute a denial of equal protection.

A final drafting recommendation is to consider creation of a lien upon the property as a logical means of seeing that the creation of landlord liability will have its intended effect — the payment of the overdue account. The courts have consistently recognized that a lien may be imposed upon the property for the collection of delinquent charges incurred by the occupant, at least where an implied consent by the landlord to the introduction of the utility services to the property can be found. The imposition of a lien upon property for charges for a supplied utility to a user other than the owner does not deprive the owner of due process of law. The ability to impose a lien also serves as protection for the city when the rental property where the delinquency was incurred is conveyed, or is attempted to be conveyed, while the delinquency is still outstanding.

In reviewing a number of landlord liability ordinances on file with the League, two major categories arise: those which provide for the creation of a lien, and those which do not. Among the ordinances with the provision for a lien against the property are the following: *Alma,* which establishes joint landlord-tenant liability; *Sabetha* which provides that a landlord may sign a "guarantee" to waive a cash deposit required of the tenant; and *Toronto* which provides that there shall be no new connection for the moving tenant who leaves a delinquency at a previous rental property. Among the ordinances which provide for liens, and the utility services which are covered by such ordinances, are: *Blue Mound, Hanover, McFarland* (all services); *Manchester* (water); *Towanda, Potwin* (water, sewer, solid waste); *Howard* (gas, water, sewer), and *Neodesha* (sewer). Among the landlord liability ordinances which do not create liens upon the property are: *Harveyville* and *Marquette,* whose ordinances allow for both the situation where the landlord is the utility customer and where the renter is the customer. These ordinances call for written notice to be made to the landlord within 10 days after the tenant's bill becomes delinquent. Other cities which have passed landlord liability ordinances without lien provisions are: *Osborne, Madison, Eskridge* (all services); *Glen Elder* (water), and *Fredonia* (electricity, water).

Six City District Meetings Scheduled in May

For Newly Elected, Experienced and Appointed City Officials

The League of Kansas Municipalities has scheduled the following six city district meetings throughout the state during the month of May:

- **May 2, Wednesday, Afternoon Only — Western Cooperative Association, Home Office, WaKeeney**
- **May 3, Thursday, Afternoon and Evening — Silver Spur Convention Center, Dodge City**
- **May 10, Thursday, Afternoon Only — Elks Lodge Civic Room, Clay Center**
- **May 23, Wednesday, Afternoon and Evening — Red Coach Inn, Newton**
- **May 30, Wednesday, Afternoon Only — Holiday Inn, Chanute**
- **May 31, Thursday, Afternoon and Evening — Holiday Inn & Holidome, Lawrence**

The afternoon only meetings will begin at 1:30 p.m. and adjourn at approximately 4:45 p.m. The afternoon and evening meetings will open with registration pick-up at 2:30 p.m., followed by a general session; reception, dinner and program; and will adjourn at approximately 8:45 p.m.

Municipal Aesthetics, Issues and Legislative Briefings

The evening speaker at Dodge City, Newton, and Lawrence is Dean Bernd Foerster, Professor and Dean of the College of Architecture and Design, Kansas State University, Manhattan. A nationally-recognized authority, Dean Foerster will orally and visually address the topic, "Fashion or Vision: Development Patterns in Kansas." It will be an evening devoted to the aesthetics of cities, both here and abroad, and will be designed to heighten the awareness of the importance of the physical appearance of a community in terms of both social and economic values.

All afternoon general sessions will focus on major municipal issues of specific interest to Kansas officials and will include briefings on new state laws affecting Kansas cities. The agenda for all sessions will be the same so officials can choose to attend any meeting which is convenient to them in time and place.

Pre-registration Required

Pre-registration will be required at all meetings. There will be no registration fee for the afternoon only meetings. A registration fee of $15 per person will be charged for the evening meetings in Dodge City, Newton and Lawrence.

Registration forms and additional program information will be sent to city clerks, managers and administrators of League member cities in mid-April.

PLAN NOW TO ATTEND

Model Utility Termination Ordinance

This utility termination ordinance is a model ordinance prepared by the League of Kansas Municipalities and is intended to fully comply with all currently recognized due process protections utility customers enjoy. The ordinance was drafted to encompass electrical, gas, sewer and water services. The reader should recognize that some of the provisions of the ordinance may or may not be relevant to your city's particular situation and needs.

The following is an overview and explanation of the model ordinance: Section 3 of the model ordinance strives to provide a clear statement of precisely *when* a utility account delinquency occurs. An ordinance should provide precise dates as to when a utility billing first becomes delinquent. In the model ordinance, that date is the end of the 15th day of the month following the service.

Section 4 is designed to provide sufficient notice to the customer of the existence of the delinquency and the necessary steps to be taken by the customer to avoid termination of service. What constitutes "sufficient notice"? A 1950 U.S. Supreme Court decision provides a rule which is applicable today: "[A] fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated after all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections; and the notice must be of such nature that it reasonably conveys the required information and must afford a reasonable time for those interested to make their appearance; but if, with due regard to practicalities and pecularities of the case, those conditions are reasonably met, the constitutional requirements are satisfied." (*Mullane* v. *Central Hanover Bank and Trust Company,* 70 S.Ct. 652(1950)). Therefore, if notice is "reasonably calculated" to reach a person it is sufficient. Courts have long recognized that use of the U.S. mail is an adequate means of communication. Section 4 of the ordinance provides for U.S. mail notice to both the occupant and the owner of the premises (this is relevant to the issue of landlord liability; see Sections 6 and 7 of the ordinance). Delivery of the *written* notice of the delinquency may also be provided by personal delivery to the customer or by posting the written notice upon the premises.

The contents of the notice are of great importance. It is imperative that the delinquency notice convey the following minimum information: (1) Identification of the party to whom the notice is addressed; (2) a statement as to the existence of a utility delinquency, preferably providing dollar amounts of the delinquency and a statement as to which utility service or services are deemed to be delinquent; (3) a date on which service to the premises shall be

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ORDINANCE NO. ________

AN ORDINANCE DECLARING AND ESTABLISHING POLICIES AND PROCEDURES WITH RESPECT TO DELINQUENT UTILITY SERVICE BILLINGS: ESTABLISHING NOTICE REQUIREMENTS AND PROCEDURES; PROVIDING FOR HEARING AND FOR DISCONTINUANCE OF UTILITY SERVICES FOR NON-PAYMENT OF ACCOUNT; PROVIDING FOR RECONNECTION CHARGES AND DELINQUENCY CHARGES AND REPEALING ORDINANCES _____, _____, and ________ OF THE CITY OF ________________.

Be it ordained by the Governing Body of the City of ________________, Kansas:

Section 1. DEFINITIONS. As used in this ordinance, the following definitions shall apply:

(a) *Customer* shall mean the utility service account holder of record.

(b) *Person* shall mean natural persons and all corporations, partnerships, associations and all other types and kinds of organizations and entities, without limitation.

(c) *Utility Services* shall mean electrical service, gas service, sanitary sewer service and water service.

Sec. 2. DISCONTINUANCE OF UTILITY SERVICES. (a) The city may discontinue or refuse a particular utility service to any customer, without notice or hearing, for any of the following reasons:

(1) When the customer so requests.

(2) When it is determined by an employee of the city utility department, fire department or police department that the continuance of a particular utility service constitutes a dangerous condition presenting a likely immediate threat to health or safety of persons or to property on or near the customer's premises.

(b) The city may discontinue or refuse a particular utility service to any customer, following compliance with the notice and hearing requirements of Section 4 of this ordinance, for any of the following reasons:

(1) Non-payment of utility bills and charges as provided in Section 4 of this ordinance.

(2) When the customer misrepresents his or her identity or otherwise intentionally provides false information for the purpose of obtaining utility services from the city.

(c) The city may discontinue or refuse a particular utility service to any customer, following notice to the customer, for any of any of the reasons set out in this subsection. The customer shall have the right to a hearing within a reasonable time, not to exceed 10 days, following termination or refusal of service. If after such hearing the hearing officer finds in favor of the customer the hearing officer may order connection or reconnection of the service at no cost to the customer.

(1) When the customer refuses to grant employees of the city's utility department access to equipment installed upon the premises of the customer for the purpose of inspection, meter reading, maintenance or replacement.

(2) When the customer violates any rule, regulation or ordinance of the city pertaining to utility services, which violation adversely affects the safety of the customer or other persons, or the integrity of the city's utility services/ delivery system.

(3) When the customer attempts, causes or permits unauthorized interference, diversion, theft, tampering, damage or use of utility services or the utility services' delivery system situated or delivered on or about the customer's premises.

Sec. 3. UTILITY BILLING DATES; DELINQUENCY DATE. Utility billings shall be mailed on approximately the 5th day of each month for the previous month serviced. All billings for utility services shall be due and payable at the office of the city clerk on the 5th day of the month and must be paid in full by the 15th day of the month. Failure to make payment before the 16th day of the month shall result in the mailing of an account delinquency and service discontinuation notice.

Sec. 4. NON-PAYMENT OF UTILITY BILLS. (a) An account delinquency and service discontinuance notice shall be issued in writing on the 16th day of the month with respect to any delinquent and unpaid utility service bill. Notice shall be sent by U.S. mail, first class, to the customer (and a copy also sent by U.S. mail, first class, to the occupant of the premises served if the occupant is not the customer) at the last known address of the customer as shown on the records of the city. Written notice may also be provided by personal service upon the customer by an employee of the city utility department or by any city law enforcement officer or by such city employee posting the written notice upon a door of a building upon the property serviced.

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

d[illegible]nued if the delinquency continues; and (4) a statement informing the customer of his or her right to a hearing on the termination and how to request such hearing. Section 4 of the ordinance goes one step further by actually setting forth the form and contents of the delinquency notice to be used.

In sum, due process *notice* requirements are complied with if a notice of the utility delinquency is provided to the customer, together with the information that he or she has the opportunity for a hearing before a certain designated hearing officer(s) or body, and that failure of the customer to pay the delinquency or utilize the hearing may result in the termination of the utility service on a designated date.

In order to adequately protect the constitutional rights of the customer, it is obvious that in nearly all cases the hearing must be held *prior* to interruption of the utility service. The only rational grounds for termination of service prior to the holding of a hearing would be in those cases where either the customer requests such termination or termination is deemed to be necessary to protect public health, safety and welfare (see Section 2 (a) of the model ordinance).

Besides requiring a pre-termination hearing, what guidance does the law give as to the hearing? First, cities should bear in mind that they are not required by law to hold a pretermination hearing if the customer does not request the hearing. While the model ordinance establishes a specific time and place for the hearing as set by the city, a variation commonly used by cities in Kansas is for the customer to have the responsibility for requesting the hearing. Failure to make such a request within a given period of time would absolve the city from any duty to conduct the hearing. How formal should the hearing be? In 1978 the U.S. Supreme Court, in *Memphis Light, Gas and Water Division* v. *Craft* (436 U.S. 1 (1978)), noted that for a hearing to satisfy due process it need only be a procedure for *informal* consultation with designated personnel who are empowered to correct mistakes, and which procedure will afford a reasonable assurance against erroneous or arbitrary withholding of essential utility services.

Cities are thus left with severa[illegible]ns in constructing a hearing on uti[illegible] terminations. The city may select a procedure whereby the customer meets informally with the city official who has authority to correct errors in the utility billing. An alternative would be for the city to require a more formal hearing before a hearing officer or panel, complete with the right to counsel, the right to cross-examine witnesses, formal rules of evidence, and the preparation of a written statement of findings-of-fact. A third option would be a combination of the previous two — an informal pre-termination hearing designed to resolve errors in the billing, followed by the formal procedure to handle disputes not resolved at the informal stage. The model ordinance, at Section 4, attempts to take a middle road. The customer is to appear at a hearing time selected by the city to meet with the hearing officer. The customer has the right to be represented by counsel and to examine and cross-examine witnesses, although the hearing procedure is not meant to be hindered by formal rules of evidence.

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

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

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

Sec. 5. DISCONTINUANCE OF UTILITY SERVICES. City utility departments are hereby authorized to discontinue and disconnect utility services to any customer pursuant to the procedure set out in this ordinance. Customers shall remain responsible for furnishing the City with the correct address for billing purposes.

Sec. 6. LIEN UPON CUSTOMER'S PROPERTY. In the event any person shall neglect, fail or refuse to pay within 10 days following notice of discontinuance the utility billings and delinquency charges due the city, such billings and charges shall constitute a lien upon the real property served by the connection to the utility service, and shall be certified by the city clerk to the county clerk of ________ County, Kansas, to be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other taxes are by law collectible.

Sec. 7. LANDLORD LIABILITY. Owners and occupants of leased premises served by the utilities furnished by the city are jointly liable for payment of the cost of any utilities furnished by the city to such premises, whether such utility service is furnished upon the application and request of the owner or the lessee of the premises. The owner of any leased premises, or the owner's agent if leasing is through an agent, shall be notified of the delinquency of the occupant of the leased premises in the same manner as notice is provided to customers pursuant to Section 4 of this ordinance and at the same time of notice to the lessee-customer.

Sec. 8. LATE PAYMENT CHARGES AND RECONNECTION FEES. (a) Late Payment Charges. All bills delinquent after the 15th day of the month of the billing shall be subject to a 5 percent penalty, and to an additional 5 percent penalty on the 20th day of the month of the billing should such account remain delinquent.

(b) Reconnection Charges. Prior to reconnecting a utility service disconnected following a delinquency, the customer shall pay to the city the entire balance due and owing to the city at the time of reconnection. The customer shall also pay a reconnection charge of $______ for reconnection of electric service, $______ for reconnection of gas service, $______ for reconnection of sanitary sewer service, and $______ for reconnection of water service.

CHAPTER XV. UTILITIES

Article 1. General Provisions
Article 2. Water
Article 3. Electricity
Article 4. Sewers
Article 5. Solid Waste

ARTICLE 1. GENERAL PROVISIONS

15-101. DEFINITION. For purposes of this article "utility services" shall include water, electrical, sewer, solid waste (refuse) and other utility services provided by the city. (Code 198__)

15-102. DELINQUENT ACCOUNTS. Unless otherwise provided, water, electric, sewer, solid waste (refuse) or other utility service shall be terminated for nonpayment of service fees or charges in accordance with sections 15-103:104. (Code 198__)

15-103. NOTICE; HEARING. (a) If a utility bill has not been paid on or before the due date as provided in this chapter, a delinquency and termination notice shall be issued by the city clerk within five days after the delinquency occurs and mailed to the customer at his or her last known address. A copy also shall be mailed to the occupant of the premises if the occupant and the customer are not the same person.

(b) The notice shall state:

(1) The amount due, plus delinquency charge;

(2) Notice that service will be terminated if the amount due is not paid within 10 days from the date of the notice unless the date on the notice to pay the charges due shall be on a Saturday, Sunday or legal holiday, in which event such notice will give the consumer until the close of the next business day in which to pay the charges;

(3) Notice that the customer has the right to a hearing before the designated hearing officer;

(4) Notice that the request for a hearing must be in writing and filed with the city clerk no later than three days prior to the date for termination of service.

(c) Upon receipt of a request for hearing, the city clerk shall advise the customer of the date, time and place of the hearing which shall be held within three working days following receipt of the request.
(Code 198__)

15-104. SAME; FINDING. Following the hearing, if the hearing officer shall find that service should not be terminated, then notice of such finding shall be presented to the city clerk. If the officer finds that service should be terminated, an order shall be issued terminating service five days after the

date of the order. The customer shall be notified either in person or by mailing a letter to his or her last known address by certified mail, return receipt requested. However, if the order is made at the hearing in the presence of the customer, then no further notice need be given. The hearing officer has a right, for good cause, to grant an extension, not to exceed 10 days, for the termination of such service. (Code 198__)

15-105. UTILITY DEPOSIT. (a) At the time of making application for utility service, the property owner or customer shall make a cash deposit in the amount set by the governing body to secure payment of accrued bills or bills due on discontinuance of service. Receipt thereof shall be issued to each such depositor.

(b) Cash deposits for the indicated utility services shall be in the following amounts:

(1) Water Service - $______;
(2) Electric Service - $______;
(3) Sewer Service - $______;
(4) Solid Waste (trash) Service - $______.

(c) The deposit so made shall be kept by the city clerk in a separate account and deposited in a fund designated as the "meter deposit fund." Interest shall be payable at the rate determined by the state corporation commission yearly and credited to the customer's account January 1st of each calendar year.

(d) The deposit and interest accrued shall be payable in cash upon demand by the property owner depositing the same or it may be credited on the payment of any bill rendered; provided, that at the second interest payment date following the deposit required above, the city clerk shall refund the deposit of any depositor who is owner of the premises wherein such water service is being furnished and has not been delinquent in payment of any water service charge during the past year. Interest due and accrued shall not draw interest.

(e) Upon the discontinuance of any service at the request of the depositor, the deposit shall be refunded upon surrender of the original receipt therefor together with the accrued interest thereon less any amount due and owing the city for services furnished prior thereto.

(f) Any security deposit not refunded within three years after discontinuance of service shall be deposited in the water fund of the city upon compliance with the provisions of K.S.A. 12-822 as amended. (Code 198__)

15-105A. UTILITY DEPOSIT. (a) Each new customer making application for utility service shall make a cash deposit to the city in the amount as specified in subsection (b), the deposits to serve as a guaranty for the payment of service thereafter furnished to the customer's premises.

(b) Cash deposits for the indicated utility service shall be in the following amounts:

(1) Water Service - $______;
(2) Electric Service -$______;
(3) Sewer Service - $______; and
(4) Solid Waste (refuse) Service -$______.

(c) In the event that utility service shall be disconnected or discontinued for failure to pay any bill due the city for such utility, such cash deposit shall be applied as a credit against all amount due from the customer to the city, and if there shall remain any surplus of such deposit, the same shall be returned to the customer.

(d) Deposits collected pursuant to this section shall be governed by the provisions of K.S.A. 12-822.
(Code 198__)

15-106. LANDLORD LIABILITY. (a) Owners of premises served by utility service under this article shall be liable for payment of the cost of any utility service account delinquency arising from service provided to such premises, regardless of whether the utility service was furnished upon the application and request of the owner or the lessee of the premises. This provision shall also apply when the premises are leased by or through an agent or other representative of the owner.

(b) In the event a delinquency arises involving leased premises, the owner or owner's agent shall be notified in writing of the delinquency of the lessee by first class regular mail within 10 days after the billing to the lessee becomes delinquent. Notice shall be sufficient if mailed to the last known address of the owner or owner's agent known to city personnel responsible for said mailing, after reasonable inquiry. If the delinquent billing, interest and penalty are not paid within 15 days of the mailing, the affected utility service may be discontinued and no further such service shall be furnished by the city to the premises until all billings for the utility service to said premises, interest, late payment charges and a reconnection charge, if applicable, is paid in full.
(Code 198__)

15-106A. LIABILITY OF PROPERTY OWNER; LIEN. (a) Lessors of leased premises served by utility service furnished by the city shall be ultimately liable for payment of the cost of any utility service furnished by the city to such leased premises, whether the service is furnished upon the application and request of the lessor or the lessee of such premises.

(b) If utility service is furnished by the city to leased premises, upon the application and request of the lessee, then all billings for such service furnished shall be made to the lessee. However, if the cost of such service is not paid, as and when they become payable, the lessor of the premises served shall be liable for the payment of such cost, plus all interest and penalties as provided by the laws of the city. The lessor shall be notified in writing by first class mail within 10 days after a billing becomes delinquent.

(c) If utility service is furnished to leased premises on the application and request of the lessor of the premises, then all billings for utilities furnished to such leased premises shall be made directly to the lessor, and the lessor shall be fully liable for the cost of service furnished.

(d) Such charges shall constitute a lien upon the real estate served, and shall be certified by the city clerk to the county clerk, to be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other taxes collectible by law.
(Code 198__)

15-107. PETTY CASH FUND. A petty cash fund in the amount of $1,000 is established for the use of the city utilities department, for the purpose of paying postage, freight, temporary labor, and other emergency expenses, including refund of deposits made to secure payment of accounts. (Code 198__)

15-108. SAME; DEPOSITS. The petty cash fund shall be deposited in the regular depository bank of the city and paid out on the order of the city clerk by check which shall state clearly the purpose for which issued. (Code 198__)

15-109. SAME; VOUCHERS. Whenever the petty cash fund becomes low or depleted, the city clerk shall prepare vouchers covering expenses as have been paid from the petty cash fund and shall submit such vouchers together with the paid checks to the governing body for review and allowance of the amounts from the regular funds of the utilities. Warrants issued therefor shall be payable to the petty cash fund and shall be deposited therein to restore said petty cash fund to its original amount. (Code 198__)

ARTICLE 2. WATER

15-201. SUPERINTENDENT OF WATER AND SEWAGE. The general management, care, control and supervision of the city water system shall be in the superintendent of water and sewage, who shall be appointed by the mayor with the consent of the governing body. (Code 198__)

15-202. REGULATIONS. The furnishing of water to customers by the city through its waterworks system shall be governed by the regulations set out in this article. (Code 198__)

15-203. SERVICE NOT GUARANTEED. The city does not guarantee the delivery of water through any of its mains and connecting services at any time except only when its mains, pumping machinery, power service connection are in good working order, and the supply of water is sufficient for the usual demand of its consumers. (Code 198__)

15-204. SERVICE CONNECTIONS REQUIRED. (a) The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purpose, situated within the city abutting on any street, alley, or right-of-way in which there is now located or may in the future be located public water mains, is hereby required at his or her own expense to make connection to such public water main.

(b) Before any connection is made to the city's water system an application must be made in writing to the city clerk by the owner of the premises, or his or her authorized representative, for a permit to make such connection.
(Code 198__)

15-205. APPLICATION FOR SERVICE. (a) Any person, firm or corporation desiring a connection with the municipal water system shall apply in writing to the city clerk, on a form furnished by the city for that purpose, for a permit to make the connection.

Code

of the

City of Stockton

Kansas

Published Under the Authority and by the Direction of

The Governing Body of the City of Stockton,

Kansas, this 2nd day of July, 1985

A Codification of the General Ordinances

Of The City of Stockton, Kansas

15-115. SAME; FEE. A fee of $250 shall be paid to the city clerk prior to a permit being issued providing access to the water supply at locations on property owned by the city. The fee may be waived or decreased if the proposed use of water is a public benefit. Such fees shall be credited to the general fund of the city. (Ord. 1272, Sec. 4)

15-116. SAME; CONTENTS OF PERMIT. The permit issued by the city clerk shall contain the following information:

(a) The date of termination of the permit.

(b) A description of the location of the point of diversion.

(c) A description sufficient to define the location of the place where the water is to be used.

Such descriptions shall correspond with the descriptions shown in the approval of application for temporary permit obtained from the State of Kansas. (Ord. 1272, Sec. 5)

15-117. BILLING. All water meters shall be read promptly on or before the first of each month, and records of such readings kept. Collections shall be made monthly. Statements will be sent to patrons on or about the first of each month, showing the water fee due for the preceding month, and the consumer will be required to pay the bill in full to the city clerk on or before the 15th day of the month. If the account is not paid on or before this date, a late payment charge of two percent of the amount due shall be added to the unpaid bill. If the account is not paid on or before the 20th day of the month, the service shall be discontinued pursuant to sections 15-118:120 of this article, and shall remain so until the account is paid in full and a charge of $10 shall be made for reconnecting such service. (Code 1959, 18-202; Code 1984)

15-118. DELINQUENT ACCOUNTS. Water or other utility service shall be terminated for nonpayment of service fees or charges as provided in sections 15-119:120. (Code 1984)

15-119. NOTICE; HEARING. (a) A delinquency and termination notice shall be issued by the city clerk within 10 days after the delinquency occurs and mailed to the customer at his or her last known address. A copy also shall be mailed to the occupant of the premises if the occupant and the customer are not the same person.

(b) The notice shall state:

(1) The amount due, plus late payment charge;

(2) Notice that service will be terminated if the amount due is not paid within seven days from the date of the notice;

(3) Notice that the customer has the right to a hearing before a designated hearing officer;

(4) Notice that the request for a hearing must be in writing and filed with the city clerk no later than three days prior to the date for termination of service.

(c) Upon receipt of a request for hearing, the city clerk shall advise the customer of the date, time and place of the hearing which shall be held within three working days following receipt of the request.
(Code 1984)

15-120. SAME; FINDING. Following the hearing, if the hearing officer shall find that service should not be terminated, then notice of such finding shall be presented to the utility superintendent. If the officer finds that service should be terminated, an order shall be issued terminating service five days after the date of the order. The customer shall be notified either in person or by mailing a letter to his last known address by certified mail, return receipt requested. However, if the order is made at the hearing in the presence of the customer, then no further notice need be given. The hearing officer has a right, for good cause, to grant an extension, not to exceed 10 days, for the termination of such service. (Code 1984)

15-121. LIABILITY OF LANDLORD. (a) Lessors of leased premises served by public utilities furnished by the city shall be ultimately liable for payment of the cost of any utilities furnished by the city to such leased premises, whether the utilities are furnished upon the application and request of the lessor or the lessee of such premises.

(b) If utilties are furnished by the city to leased premises, upon the application and request of the lessee, then the deposit required for such service shall be paid by the lessee and all billings for utilities furnished shall be made to the lessee. However, if the cost of such utilities are not paid, as and when they become payable, the lessor of the premises served shall be liable for the payment of such cost, plus all interest and penalties provided by all ordinances of the city, in excess of deposits available for such payment. The lessor shall be notified in writing by first class mail within 10 days after such billing becomes delinquent.

(c) If utilities are furnished to such leased premises on the application and request of the lessor of the premises, then all deposits shall be payable by the lessor, all billings for utilities furnished to such leased premises shall be made directly to the lessor, and the lessor shall be fully liable for the cost of all utilities furnished.
(Code 1984)

15-122. RATES. The rates for water furnished by the water system of the city shall be as follows:

Single Service:

Minimum monthly charge - $4.50 which allows the use of 2000 gallons.

Over 2000 gallons per month - $.85 per 1000 gallons or any portion thereof.

Multiple Service:

The minimum rate of $4.50 per month shall apply for each service regardless of whether two or more services are connected to the same water tap.

Mobile Home Courts:

The minimum rate for mobile home courts shall be $4.50 per month for each mobile home unit in the court on the date water meters are normally read unless the mobile home units have individual water meters.
(Ord. 1242, Sec. 1)

Code
of the
City of Wamego
Kansas

Published Under the Authority and by the Direction of

The Governing Body of the City of Wamego,

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A Codification of the General Ordinances

Of The City of Wamego, Kansas

CHAPTER XV. UTILITIES

Article 1. General Provisions
Article 2. Electricity
Article 3. Water
Article 4. Sewer
Article 5. Solid Waste

ARTICLE 1. GENERAL PROVISIONS

15-101. SUPERINTENDENT OFFICES; DUTIES. Within the utility and public works divisions of the department of public services, there are hereby created the following offices, each with the duties indicated:

(a) Superintendents of Production. The superintendents of production, subject to the directions of the city manager, shall supervise, manage, maintain and operate the electric plant and the waterworks plant of the city.

(b) Superintendents of Distribution. The superintendents of distribution, subject to the directions of the city manager, shall supervise, manage, maintain and operate the electric distribution system and the water distribution system, and sanitary sewers of the city.

(c) Superintendent of Public Works. The superintendent of public works, subject to the direction of the city manager, shall supervise, manage, maintain and operate the storm sewer system, park, streets, sidewalks and other public buildings and works of the city, except those under the supervision of the superintendents of production and distribution.

(d) Superintendent of Wastewater Treatment. The superintendent of wastewater treatment, subject to the direction of the city manager, shall supervise, manage, maintain and operate the wastewater treatment plant. (Code 1974, 16-101:103; Code 1986)

15-102. DEFINITION. For purposes of this article "utility services" shall include electrical service, water service and sewer service, charges and all applicable and authorized additions and penalties with respect thereto. (Code 1986)

15-103. BILLING; DELINQUENCY. All billings for utility services shall be due and payable at the office of the city clerk on the 1st day of each month and must be paid in full by the 15th day of that month after which date it shall be considered as delinquent. A late payment charge of eight percent of the total amount due shall be added to any delinquent account prior to payment. (Code 1974, 16-104, Ord. 915; Code 1986)

15-104. SAME; COLLECTION. All delinquent accounts for utility services shall, upon approval of the governing body, be turned over to an attorney or collection agency for collection. (Ord. 956, Sec. 18)

15-105. TERMINATION; NOTICE; HEARING. (a) A delinquency and termination notice shall be issued by the city clerk within five days after the delinquency occurs and mailed to the customer at his or her last known address. A copy also shall be mailed to the occupant of the premises if the occupant and the customer are not the same person.

(b) The notice shall state:

(1) The amount due, plus late payment charge;

(2) Notice that service will be terminated if the amount due is not paid within 15 days from the date of the notice;

(3) Notice that the customer has the right to a hearing before the mayor or other designated hearing officer;

(4) Notice that the request for a hearing must be in writing and filed with the city clerk no later than three days prior to the date for termination of service.

(c) Upon receipt of a request for hearing, the city clerk shall advise the customer of the date, time and place of the hearing which shall be held within three working days following receipt of the request.
(Code 1986)

15-106. SAME; FINDING. Following the hearing, if the hearing officer shall find that service should not be terminated, then notice of such finding shall be presented to the appropriate utility superintendent. If the officer finds that service should be terminated, an order shall be issued terminating service five days after the date of the order. The customer shall be notified either in person or by mailing a letter to his last known address by certified mail, return receipt requested. However, if the order is made at the hearing in the presence of the customer, then no further notice need be given. The hearing officer has a right, for good cause, to grant an extension, not to exceed 10 days, for the termination of such service. (Code 1986)

15-107. DEPOSITS. New customers of utility services shall, at the time of application for such service, deposit with the city:

(a) Electrical Service:
  (1) Residential service - $75.
  (2) Electric heat rate (if qualified) - $90.
  (3) Commercial service - amount to be determined by city clerk.

(b) Water Service - $20.

(c) Sewer Service - $10.

(Ords. 797,915; Code 1986)

15-108. SAME; INTEREST. Deposits for utility services shall bear interest at the rate established by the Kansas Corporation Commission, as provided by law, with such interest to be credited once a year on the first day of January succeeding such deposit and on the first day of January thereafter, to the credit of such customer's outstanding account, unless, prior to the first day of January, such customer shall request the payment of such interest in cash, in which event payment of interest shall be made as requested. And such advance deposit together with any interest due thereon may be applied to the payment of any accrued bill or bills due to discontinuance of service. The city shall keep a separate record of such deposits and credit the interest

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city, a service charge of $1 for each electrical and water service connection or shutoff shall be paid by the consumer. (Code 1972, 22-16)

15-107. SAME; TEMPORARY SERVICE; CHARGES. (a) Applications for temporary electric or water services shall be made to the office of city clerk, upon such forms as may be required by the city manager, by contractors or others having no established place of business when electricity or water maybe required for use in the construction of a building or operating electrical equipment or similar purposes as may be required. The city manager is authorized to make temporary service connections for any such purposes upon the filing of a proper application and entering into agreements as may be required for such services. The city manager may cause the necessary connections to be installed and may meter the water and electricity to be supplied by any such connection; provided, the charges required to be paid shall be $1 for each installation and $1 for each disconnection and the consumer shall pay the regular rates for electricity and water on the basis of fractional months as hereinafter provided.

(b) When any customer shall receive water or electric services for temporary purposes for a period of less than one month or shall order his or her service discontinued after receiving the same for a period less than one month, he or she shall be charged and billed on the basis of one month. The service charge shall be determined on the basis of one month service of water or electricity at the applicable rate class shown by the meter reading at the time service is discontinued.
(Code 1972, 22-17)

15-108. DEPOSITS FOR SERVICE; AMOUNTS. All applications for regular electric or water services, as provided by section 15-106 shall be accompanied by a deposit of $10 for water service and a deposit of $50 for electric services in a dwelling house or residence, but for service in any location other than a dwelling or residence to be used in connection with any commercial or business enterprise or profession or otherwise, the deposit shall be a minimum of $100 and/or equal to the estimated cost of two months service at a demand estimated by the city manager sufficient in amount to hold the city free from loss which may be occasioned by the failure of the service user to pay any bills legally rendered by the city for electric current and water used upon the premises in connection with any such enterprise or profession; provided, if at any time it appears that the existing deposit of any service is not equal to the maximum service being rendered, the city manager may require an additional deposit and the service may be discontinued until such additional deposit is made. The deposits herein required shall be security for the payment of bills for service rendered and such deposit, together with the interest due thereon, shall be applied by the city to the payment of any accrued bills due as provided in sections 15-108 and 15-109. (Ord. 1919, Sec. 1; Code 1984)

15-109. SAME; INTEREST. (a) The city shall pay interest on any deposit hereinbefore required at the rate determined by the State Corporation Commission. Such interest shall be credited on the first day of January of each year to the depositor's account, unless prior to the first day of January such depositor shall request the payment of such interest in cash, in which

event payment of interest shall be made as requested. Such interest may also be applied to any accrued bills due on discontinuance of service and upon discontinuance of service the amount deposited less any amounts due to the city for services shall be returned to the depositor or his or her authorized agent; provided, if the consumer fails to pay the amount due the city for electric or water services upon the final disconnection or shutting off of service, the amount of the deposits shall be applied as liquidated damages, and the balance of the deposits, if any, shall be returned to the depositor; provided further, if no interest shall be paid upon any deposit after service has been disconnected.

(b) Any amount of security deposit, and the accrued interest thereon remaining in the account of any customer of a municipally owned utility who has discontinued service with such utility shall be placed in the operating fund of such utility, upon the following conditions:

(1) Such money has remained on deposit with the municipal utility for a period of more than three years from the date service was discontinued;

(2) No demand for such money has been made at any time during the three year period;

(3) The whereabouts of the person to whose account the money is credited is unknown and a reasonable effort has been made to determine the same; and

(4) Following the expiration of the three year period, the utility has published, once each week for two consecutive weeks in a newspaper of general circulation in the county in which the utility is located, a notice listing any person whose deposit remains on account and that a demand for such money must be made within 60 days. Any security deposits remaining in the account of any such customer 60 days after the last publication of such notice shall be placed in the operating fund of such utility.

(Ord. 2136, Sec. 2)

15-110. UTILITY BILLS; PAYMENTS; DELINQUENT; TERMINATION NOTICE. (a) All utility bills to consumers for electricity, water and sewer shall be due and payble on the first day of each month at the office of the city clerk. A penalty of 10% of the amount due will be added to the bill if such bill is not paid by the 10th day of the month; provided, if the office of the city clerk shall not be open on the 10th day by reason of section 15-110(e), payment may be made without penalty on the next succeeding business day.

(b) If payment of utility bill with penalty included is not paid by the 15th day of such month, a delinquency and termination notice shall be issued. The delinquency and termination notice shall provide the consumer with the following information:

(1) Amount due on the unpaid balance;

(2) Amount due by reason of the 10% penalty called for herein;

(3) The consumer's right to a hearing before the city manager or his or her agent;

(4) Notice that service shall be terminated five days after the mailing of such delinquency and termination if the bill remains unpaid, unless such consumer requests a hearing as set forth herein. A request for hearing must be made within the five day period, set forth in this provision, and must be filed with the city clerk.

(c) The department is hereby authorized to disconnect and discontinue utility services for electricity, water and sewer for any consumer who fails to pay the utility charges as herein set forth.

(d) Any utility disconnected or discontinued for nonpayment of delinquent utility bills shall be reconnected only upon payment of such delinquent bill, with the interest thereon and the sum of $5 reconnect charge.

(e) The city clerk's office shall be open for the payment of utility bills from 8:00 a.m. until 12:00 noon and from 1:00 p.m. until 5:00 p.m., Monday through Friday except any day observed as a holiday by the city or as otherwise provided by the governing body.
(Ord. 1979, Secs. 1:5)

15-111. CONSUMER'S RESPONSIBILITY FOR SERVICE FAILURES; FEE FOR SERVICE CALLS. Each consumer of water or electricity supplied by the city shall be responsible for all failures which occur in the water or electrical services, connections, installation or apparatus on the consumer's side of the meter; provided, when any employee of the water and electric department shall answer a service call for any consumer and it appears that the failure in the service is not the responsibility of the city, a charge of $1 shall be made for each such service call. The same shall be billed to the customer as a miscellaneous charge on the monthly statement and collected as a part of the bill. (Code 1972, 22-21)

15-112. READING METERS; RIGHT OF ENTRY. The city reserves the right for the purpose of reading electrical and water meters or the inspection of electrical and water installations, wires, fixtures, or lines that duly authorized employees of the city may legally enter upon private grounds or premises at a reasonable hour during the daytime or in cases of emergencies at any time to read all such meters or to make necessary inspections and examinations. All meters shall be read monthly and reported to the city clerk. (Code 1972, 22-22)

15-113. DAMAGING PROPERTY. It shall be unlawful for any person wilfully and maliciously to injure or destroy any machinery, wires, poles, transformers, meters, pipes, hydrants, meter boxes, meter box covers or other fixtures or any other property of the city used for the production or distribution of electricity and water, or to carry away from the buildings or grounds of the city any property belonging to or used for the purpose of supplying electricity or water. (Code 1972, 22-23)

15-114. UNLAWFUL ACTS. (a) Any person who, without the consent of a duly authorized officer of the city, shall make a connection of any wire, conduit or device to any electrical service or transmission line used to carry electricity or shall tap or make any connection to any water pipeline of the city for the purpose of securing unmeasured electricity or electrical current or water owned or used by the city; or shall prevent any electrical or water meter from properly measuring or registering electricity, electrical current or water; or shall knowingly take, receive, use or convert to his or her own use, or take use of another, any electricity, electrical current, or water, which has not been metered or measured; or shall knowingly cause, procure or

permit electricity or electrical current to be taken from any electrical or transmission line, or water to be drawn or taken from any waterline of the city, without having made application therefor and having the same approved; or shall cause, procure, permit, aid or abet any person to do any of the aforesaid acts, shall be punished as provided in section 1-112.

(b) Any person or person who, without the consent of a duly authorized officer or employee of the city, shall tamper with, remove or carry away any city owned water meters, manhole covers, water valve lids, water service meter covers or lid; or shall turn on or tamper with any city fire hydrant, water valve, or water connection located on city property, or on city streets, alleys, parkings or parks, or any person or persons who shall cause, procure, permit, aid or abet any person or persons to do any of the aforesaid acts, shall be punished as provided in section 1-112.
(Code 1972, 22-24)

ARTICLE 2. ELECTRICITY

15-201. INSTALLATION AND MAINTENANCE OF WIRING SERVICES. The cost of original installation of all wiring services, all extensions thereafter made and all repairs to the same, shall be entirely at the cost of the owner of the premises. Such services and wiring shall at all reasonable times be subject to inspection by the city manager or duly authorized employees of the city, and they shall have free access at all reasonable times to all parts of every building in which electricity is delivered, to examine the wires and fixtures. Any repairs found to be necessary upon any such inspection shall be made promptly by the owner of the premises. The city reserves the right to discontinue service until such repairs be made. (Code 1972, 22-30)

15-202. METERS; FURNISHING; LOCATING. All electricity furnished by the city to any consumer shall be measured by meters furnished by the city for that purpose. The city manager or his or her duly authorized agent may designate the location of all electric meters. (Code 1972; 22-31)

15-203. SAME; CARE; REPAIR. (a) The electrical service consumer shall be responsible for the care of all meters installed for his or her use and for any accident or wilful damage thereto. In the event of any such damage to the meter, the consumer shall promptly notify the city manager and it shall be his or her duty to have the necessary repairs made and charge the cost of the repairs to the consumer.

(b) No meter under any circumstances shall be removed or repaired except by duly authorized employees of the city under the direction of the city manager.
(Code 1972, 22-32)

15-204. SAME; SEALS. The city shall put a seal on all meters, and if such seals are broken or removed, the city manager shall cut off the electrical service and such service shall not be resumed until the consumer shall pay to the city, the sum of $1, in addition to any penalty levied on conviction. In the event of a second offense by reason of breaking or removing any such meter,

Testimony of Kansas Municipal Utilities, Inc.
On House Bill 2327
House Energy & Natural Resources Subcommittee
February 25, 1987

Mr. Vice Chairman, members of the subcommittee, I am Louis Stroup, Jr., executive director of KMU, a statewide association of community-owned water, gas and electric systems.

We are strongly opposed to HB 2327 for the following reasons:

(1) Historically, the Kansas Legislature has allowed our municipal systems to be governed by locally-elected officials -- officials elected by the people they serve. This bill calls for duplications of regulation and authority that has existed with locally-elected officials since the first municipal electric system was established in 1888.

(2) The bill deminishes the Home Rule Authority of elected city officials -- authority granted by the Kansas Legislature. It attacks the integrity of local governing bodies to govern themselves and removes policy making decisions in billing practice matters.

(3) We believe local control is better, more flexible and therefore more responsive to local needs. Arbitrary or mandated uniform billing practices do not provide for any flexibility and may not be the best solution for local situations.

(4) Small municipal utilities operate in a difference environment than do large private utilities who may have up to 200,000 customers and annual revenues in the hundreds of millions of dollars. This bill would apply the same rules and regulations to all sizes of utilities. We submit the impact of this bill is much greater on a city such as Abbeyville which has 138 gas customers and annual revenues of only $9,824, than it does have on KPL Gas Service or KGE, for example. The same would apply to Elsmore with 115 electric customers and revenues of $19,111.

(5) This bill singles out only a portion of the community-owned utilities on which to impose state regulation. It would cover 125 of the 126 community-owned electric systems, the 69 community-owned gas systems, but none of the state's 497 remaining community-owned water systems. The bill implies that city officials are capable of handling billing practice matters for water operations, but not gas and electric -- and we deeply disagree with that implication.

(6) We have not heard of any public outcry that indicates local control is not working or that any changes need to be made.

(7) As mentioned before, not only does this bill infringe on the rights of cities to govern themselves, but most importantly it also would add a great deal of cost to community-owned utility operations. This would be unnecessary and unwanted cost --- cost that would be paid solely by municipal ratepayers. I think if you asked a ratepayer if he or she wanted KCC jurisdiction or lower rates --- you know the answer you would receive.

The additional cost fostered by this bill would be considerable. It would increase paperwork and require many man-hours of extra work. In many cases, cities might have to add employees to handle the work load. To get an idea of this potential cost, just assume that the 125 electric systems had to add one employee at a cost of $20,000 annually -- that would add $2.5 million to the cost of municipal electric service each year alone. And if hearings before the KCC were necessary, there would be more cost for legal counsel and possibly other outside consultants.

One major hearing would cost more than Abbeyville's total annual gas revenues and would have a devastating impact on that city's rates

and its ratepayers.

This unwanted and unnecessary higher cost defeats our municipal philosophy of providing reliable service at the lowest possible cost.

(8) And finally, we are deeply concerned about the fiscal impact of this bill on the state budget. I'm sure it would require the KCC to add employees to handle the extra work load caused by adding 125 electric utilities and 69 gas utilities to its jurisdiction.

This seems to be out-of-step with Governor Hayden and the legislative leadership which is seeking ways to lower the state budget cost, not increase it.

KEN GROTEWIEL
REPRESENTATIVE, NINETY-SECOND DISTRICT
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STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ENERGY AND NATURAL RESOURCES
FEDERAL AND STATE AFFAIRS
TAXATION
LEGISLATIVE, JUDICIAL AND
CONGRESSIONAL APPORTIONMENT

February 25, 1987

ON-SITE MONITORING AT THE WOLF CREEK NUCLEAR PLANT HB 2328

1) OXYMORON: PARADOXICAL CONJUNCTION OF TERMS

    EXAMPLES INCLUDE: JUMBO SHRIMP, MILITARY INTELLIGENCE, LONELY CROWD, LIVING DEATH, AIRLINE FOOD & LOUD SILENCE

    TODAY'S ADDITION: NUCLEAR SAFETY

2) NRC'S OVERRIDING ROLE IN NUCLEAR SAFETY

3) SAFETY RECORD OF NUCLEAR PLANTS AND PERFORMANCE OF THE NRC

4) NRC EFFORT TO ELEMINATE STATE/LOCAL ROLE IN EMERGENCY PLANNING

5) STATE LIABILITY IN THE EVENT OF AN ACCIDENT

6) WOLF CREEK SAFETY ISSUES

7) LACK OF PROPER COMMUNICATION CHANNELS

8) INVOLVEMENT OF OTHER STATES IN NUCLEAR SAFETY

9) STATE OPTIONS FOR INVOLVEMENT

    A) SEPARATE KDHE DIVISION OR CABINET LEVEL DEPARTMENT

    B) TIGHTEN UP INFORMATION FLOW

    C) MAINTAIN A "WATCHDOG" POSTURE

10) "WATCHDOG" OPTIONS

    A) DIRECT CONNECTION TO WOLF CREEK RADIATION MONITORS

    B) REQUIRE KDHE TO HAVE A RESIDENT INSPECTOR WHO WOULD WORK WITH ANY NRC INSPECTORS ON THE PLANT SITE

    C) DO ON-SITE MONITORING SEPARATE FROM COMPANY MONITORING

IT'S A MATTER OF TRUST.

House Subcommittee on Energy
2-25-87 #4

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON H.B. 2328

PRESENTED TO:

BACKGROUND INFORMATION

This bill would amend K.S.A. 65-3021 and 65-3022 to require the Secretary of Health and Environment to establish a program to conduct on-site monitoring of the environmental impact of nuclear power generation facilities and to adopt rules and regulations to provide for the collection of fees from the owner/operator of such facilities to defray the costs incurred in conducting the program.

These statutes, as they currently exist, authorize and direct the Secretary of Health and Environment to adopt rules and regulations to establish and provide for the collection of fees to defray the costs of determining and monitoring the overall radiological environmental impact of nuclear power generation facilities. In accordance with these statutes, K.A.R. 28-19-80 et. seq. were subsequently promulgated and a preoperational radiological environmental monitoring program fully implemented at the Wolf Creek Generating Station (WCGS) in October 1983. Operational monitoring began in May 1985 when the reactor was first started up. This monitoring program includes continuous measurement of ambient gamma radiation levels and air sampling as well as a routine sampling schedule for surface water, ground water, milk, food products and crops, vegetation, soil, game animals, fish and aquatic biota, and vegetation. In developing and conducting the preoperational and operational monitoring programs for WCGS, every effort has been made to avoid unnecessary duplication of effort and minimize expense. Our current operational monitoring represents that level of monitoring and sampling which the Department considers essential in order to meet its statutory and regulatory responsibilities to assess the radiological environmental impact of WCGS.

In addition to this monitoring program, the Department is involved in various other programs and activities to insure the health and safety of the people of Kansas. Although we do not directly regulate the operation of the Wolf Creek Generating Station, we do play an important role in nuclear safety. These activities and programs include:

1. Document Review

   We receive, although not always timely, copies of all pertinent documentation relative to the regulation of Wolf Creek (with the exception of certain safeguards information). This information includes:

   a. Inspection reports
   b. Investigation reports
   c. Notices of violation, licensee replies and corrective action reports
   d. NRC informational notices
   e. Licensee reportable event reports to NRC
   f. Meeting notices
   g. Wolf Creek Technical Specifications
   h. Wolf Creek Generating Station operating license
   i. A controlled copy of KG&E's Emergency Response Plans and Procedures for WCGS

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These documents are reviewed by two KDHE Health Physicists and are maintained in our Wolf Creek files.

2. Environmental Monitoring for NRC

   The Department has a cooperative agreement with NRC under which we receive limited funding in return for conducting a radiological environmental monitoring program at WCGS for them. Under this agreement, the Department operates the NRC's environmental dosimeter (TLD) monitoring network for them and provides monitoring data to the NRC from selected KDHE monitoring and sampling sites. With the exception of their TLD network, the NRC has exclusively selected monitoring and sampling sites which the Department shares with KG&E as part of our monitoring program.

3. Emergency Plans and Procedures

   Although we are continually working to better develop them, KDHE has extensive and detailed emergency response plans and procedures for WCGS and, although our staff does have other duties and responsibilities, we do strive to maintain a high level of preparedness to respond to an emergency at WCGS.

4. Exercises and Drills

   KDHE participates in a minimum of two emergency response drills and a full scale emergency response exercise for WCGS each year to maintain our emergency preparedness. This does not include the numerous practice drills and exercises.

5. Training

   KDHE has and continues to participate in joint State/Utility/Coffey County efforts to provide adequate training for the 700-800 individuals who may be involved in responding to an emergency at WCGS.

The Department is currently doing all that the existing Kansas Statutes authorize us to do in providing for nuclear safety.

The existing statute (65-3021 et. seq.) already apparently provides the Department with both on-site and off-site monitoring authority, since it does not expressly limit such monitoring to off-site nor prohibit on-site monitoring. Since the Nuclear Regulatory Commission (NRC) has exclusive regulatory authority on-site at all nuclear power plants, the State would have no regulatory authority on-site at WCGS. However, federal law does not expressly prohibit on-site monitoring by the states and it may be possible to work out a cooperative agreement with the NRC for a state on-site monitoring program.

There are only two types of additional on-site monitoring which would be feasible for the Department to consider conducting and which we are not already doing.

1. Remote Effluent Monitoring

   This would involve the establishment of a remote effluent monitoring system which utilizes the utilities existing isokinetic sampling and

monitoring units at each engineered gaseous and liquid effluent release point at the plant. These units would be connected to a central computer facility in Topeka by a dedicated, high-speed telecommunication line. This system could also be installed so as to provide real-time meteorological and plant status information through a data interface with the utility's computer system. Installed in this manner, such a system would be designed to detect and measure any radioactive releases occuring from the plants engineered release points and provide this information to the central computer facility in Topeka. Information and data on existing weather conditions and plant status would also be provided for use in estimating off-site impact.

To date, only the state of Illinois has utilized such a system and it has been designed primarily to provide data and information during an accident situation. Such systems are not appropriate for environmental impact assessment. These systems are also very expensive. Illinois currently assesses each nuclear power plant in that state:

1. a one time initial charge of $590,000;
2. an annual fee of $400,000; and
3. a one time capital expenditure surcharge of $1,400,000

Although some of these funds go toward emergency preparedness efforts, most are assessed to fund the installation, maintainence and operation of the remote effluent monitoring system. To date, this system has proven to be unreliable and very costly for the state of Illinois to maintain, with questionable value in insuring the health and safety of the population.

Estimated costs for the Department to implement such a program in Kansas are $1,093,487, with an annual cost thereafter of $98,616.

2. State Oversight Program

Although the receipt of NRC inspection reports, notices of violation, and licensee corrective action reports do keep the Department informed, they do not provide actual "oversight" of NRC's regulation of WCGS, since Department staff does not accompany the NRC inspector(s) and actually participate in the inspection or witness the cited violations. The NRC has two full-time on-site resident inspectors assigned to WCGS. Two or three states have negotiated cooperative agreements with the NRC to provide a state on-site resident inspector at certain nuclear power plants. While such inspectors would have no regulatory authority at the facilities, they could provide state oversight of NRC's program.

Although such a state oversight program at WCGS may be possible through a cooperative agreement with the NRC, it would require the hiring of a health physicist or nuclear engineer along with associated operational costs. In our review and monitoring of NRC's inspection and investigation reports, we have found no reason to question the NRC's ability, commitment or diligence in carrying out their regulatory responsibilities. Accordingly, we are not certain what would be gained by providing this additional state oversight.

Estimated costs for the Department to implement such a program are $52,463, with an annual cost thereafter of $45,055.

As provided for in the bill and as is currently being done under existing statutes, these costs could be fully recovered through fees assessed on the utilities which own and operate such facilities, which would ultimately be passed on to the rate-payers.

WEAKNESSES

A major concern with this bill is that, while it would mandate the Secretary to do on-site monitoring of environmental impact, it is not clear exactly what on-site monitoring is intended. The bill is apparently intended to provide the Department with the statutory authority to establish and provide for the collection of fees to defray the cost of determining and monitoring the overall radiological environmental impact of nuclear power generating facilities in Kansas, both on-site and off-site. However, the existing statute (65-3021 et. seq.) already apparently provides the Department with such authority since it does not expressly limit such monitoring to off-site nor prohibit on-site monitoring.

DEPARTMENT'S POSITION

The Department is unable to decipher what the legislative intent is behind H.B. 2328. The bill mandates the Secretary of Health & Environment to do "on-site monitoring," but does not define what kind of "on-site monitoring" the legislature intends. In other words, the term "on-site monitoring" is too broad and vague. The problem is further compounded by the fact that the existing law mandates the Secretary to consider monitoring programs conducted by other persons and, where possible, the Secretary is ordered to avoid duplication of effort and expense. As written, H.B. 2328 therefore sends an unclear and, to some extent, a conflicting directive to the agency.

We have described in our testimony the environmental monitoring presently being conducted at WCGS - by KDHE, NRC, and the utility. We have also described the monitoring programs of some other states that go beyond what KDHE is presently doing and the costs associated with such additional monitoring. We recommend that this committee evaluate all of this information and clearly specify in the bill what additional monitoring is intended. This is essential for KDHE to carry out the wishes of the legislature. We also recommend some clarification in the bill that any on-site monitoring that the legislature deems appropriate to be carried out by KDHE be done consistent with federal law.

February 26, 1987

nuclear · awareness · network
1347½ massachusetts • lawrence, kansas 66044 • (913) 749-1640

My name is Stevi Stephens and I am the Director of the Nuclear Awareness Network. I am grateful for this opportunity to speak before you today in support of HB 2328.

I am here to talk about trust. The entire concept of maintaining the status quo and of not mandating that KDHE perform on-site monitoring at Wolf Creek, relies on trust. This legislature, and in turn the citizens of Kansas, are at present trusting KG&E to provide accurate and prompt data of on-site radiological monitoring. I assert that such trust is extremely misplaced, and that such is potentially jeopardizing our environment and the health and safety of Kansans.

I contend, as a general rule, it is not wise public policy to allow a company which faces penalties for violations to monitor itself. More specifically, KG&E has an abysmal history of not disclosing information, and of falsifying and destroying documentation. Regrettably, the NRC, which regulates them, has a record just as dismal.

House Subcommittee on Energy
2-25-87 #6

It is imperative that this legislature be aware of some of the major instances of such intentional deceptions by KG&E and the NRC if you intend to continue to rely on them for this critical information and not pass this bill.

I will attempt to condense the voluminous information you see here before you today. All of these documents are relative to this bill because they represent documents which KG&E and/or the NRC have attempted to keep from public purview. I have obtained these, not through cooperation by KG&E and the NRC, but through Freedom of Information Act (FOIA) requests, law suits and from workers at the Wolf Creek plant.

If indeed the checkered histories of KG&E and the NRC indicate that they have repeatedly withheld or willfully destroyed or falsified documentation, why should we assume the documentation they provide for on-site radiological monitoring is accurate? I, for one, do not think we can. The serious deviations in the operation of Wolf Creek's quality control documentation program begs for more state oversight. I would like to cite just a few examples:

1) The Quality First (Q1st) program was instituted at Wolf Creek as a means to insure plant workers had a way to report allegations which in turn would be investigated and resolved by KG&E management. Kent Brown, Vice president Nuclear at KG&E has told the NRC that they consider the program to be "a very

important part of what we are doing at Wolf Creek to assure excellence in the operation of the plant". I, too, agree it is a very important part of what they are doing at Wolf Creek.

The Q1st program is at the heart of understanding why the State of Kansas cannot rely solely upon KG&E's documentation for on-site monitoring. What has happened with allegations of many problems brought to the Q1st program is that they have fallen into a "black hole". They have not been resolved, they have been covered up by Wolf Creek and NRC personnel. Further, inspectors who brought problems to the attention of management were harassed and fired. I know this because I possess thousands of pages of copies of the actual Q1st files. The evidence of allegations in the files in my possession indicates that the management at Wolf Creek is willing to do virtually whatever is necessary to avoid disclosure of incriminating and embarrasing information.

Let me explain. This committee was active in passing HB 2927 during the 1985 session. A major provision of that bill disallowed costs of imprudent management from inclusion in the rate base. Yet during the Wolf Creek rate hearings that same year, KG&E persuaded Shawnee County District Court Judge James McNish to sign an <u>ex parte</u> temporary restraining order on an attorney, Bob Eye, who represented ALERT, a group of 700 small businesses located in the Wichita area, as well as on myself and NAN members. That gag order restricted us from disclosing information and disallowed an attorney involved in the legal procedings before the KCC to introduce evidence of serious

imprudent management practices including falsification and destruction of documents, withholding documents, cover-ups of intentional scheduling and cost over-runs, and cover-ups of extensive re-work that will be required in the future at ratepayers expense. I am enclosing as Attachment 1 portions of the single Q1st file which did become part of the public record. Even though these documents were clearly relevant to the KCC rate hearings, KG&E's objective was to withhold this information from the regulating body and the public, not disclose it. KG&E simply cannot be trusted to disclose damaging documentation.

2) Another example more closely related to this bill is a Freedom of Information Act (FOIA) request I submitted to obtain information about a "release of containment atmosphenere" from Wolf Creek. I learned of this incident from a concerned plant worker. The documents obtained show on July 26, 1985 "for 40 minutes there was air flow from containment leaking past closed exhaust fan discharge dampers, up the stack and to the outside atmosphere." The worker who discovered the open dampers reported it at 6:00 p.m., called his supervisor and both determined this incident was a violation and was required to be reported under an NRC Licensee Event Report (LER) procedure. They immediately requested chemists to take air "grab samples" in the containment to determine radiation levels, yet this did not occur until 9:00 p.m. Not only is the 3 hour gap worrisome, but the report was "revised" one week later so as to not be reportable under NRC LER regulations. Nonetheless, two months later the NRC issued a violation to KGE.

The 40 minute radiation release on July 26, 1985 was not the subject of a KDHE announcement to the public nor did Wolf Creek management take the initiative to warn the public of it. Ostensibly, KDHE didn't announce it because the department wouldn't have known about it until the release of the semi-annual radiological release report 8 months later. This bill would allow KDHE to independently monitor Wolf Creek and serve as a "real time" check on its radiation releases.

Had Pennsylvania state officials had on-site monitoring at Three Mile Island in 1979 they would have known that the plant was discharging significant amounts of radiation during the accident. Instead, TMI management withheld this information from state officials for two days. During the two days state officials were stymied in their efforts to take the necessary steps to protect their citizens from needless exposure to radiation. Redundant safety systems are one of the means that assures the public is protected from the dangers of nuclear power. Redundant monitoring systems are no less important.

Some may argue that the NRC's oversight of KG&E is sufficient to protect the health and safety of the Kansas public and our environment. However, their involvement with Wolf Creek indicates that the state should be taking a considerably more active roll in monitoring activities. The NRC, too, has a bleak history of withholding documentation from the public and not being responsive to inquiries. In short the state of Kansas

cannot trust the NRC to disclose damaging documentation either. NAN is currently involved in a lawsuit with the NRC for failure to disclose documents pursuant to a FOIA request.

3) In February 1985, 106 members of this legislature requested the NRC not license Wolf Creek until all on-going investigations were completed.

The NRC basically ignored you. When they did send this 15 pound letter it did not respond to your concerns, instead it contained documents pertinent to the investigation and resolution of the falsification of Miscellaneous Structural Steel Welding Records which had called into question 1/2 of the welds at the plant. This caused quite a stir in Washington with Congress because they were curious how such a serious problem got by the attention of KGE Quality Control. After months of inspections, hours of hearings, and reams of documents the NRC accepted KG&E's explanation that it was an isolated incident and had not been brought to their attention.

What this 15 pounds of crud did not include was this memo which I have included as Attachment 2. This, along with others, shows the structural steel problem was indeed brought to KG&E's attention fully one year earlier. The inspector who brought it to their attention was harassed and fired. When he filed a law suit in this county against KG&E and threatened to go to 60

Minutes he was offered a $30,000.00 out of court settlement. His allegations were then "papered over".

4) The NRC inspected the Q1st program numerous times and voiced serious concerns about documentation and management problems. So extensive were their concerns that the Office of Investigations (OI) within the NRC requested the NRC Commissioners to allow them to investigate the "character and suitability of senior management at KG&E. The Commissioners, however, did not support the investigation because, as we later learned in depositions, the NRC does not have regulations governing investigation of these issues. I have been to the Attorney General's office on a number of occasions to encourage him to get involved in investigating criminal activity by KG&E management. He insists it is within the NRC's jurisdiction. However, the NRC is not investigating, as Attachment 3 shows.

I submit to you that the character and suitability of management at Wolf Creek has everything to do with your continued trust in allowing KG&E to remain the sole on-site monitor, and should be the impetus to pass this bill as a step toward getting the state more involved in the over-sight at Wolf Creek.

5) It was not until NAN filed a lawsuit against the NRC that it was able to dislodge the transcript of the closed hearing held by the NRC on the day of licensing Wolf Creek. This is the most abhorent example of regulatory irresponsibility I have ever seen.

It shows the NRC licensed Wolf Creek without resolving serious concerns. NAN will be happy to provide copies of this document to any interest person.

Not to belabor the point, but it is significant to note there is a 4,000 page investigation report being withheld from Congress as well as the public. This investigation was done on NRC Region IV, the branch which oversees Wolf Creek. It brings into serious question the effectiveness of the entire regulatory oversight at Wolf Creek. We are attempting to dislodge this through our lawsuit. The report apparently underscores the concerns voiced by Congressman Glickman in July, 1986. (Attachment 5)

In closing, the purpose of this testimony has been to give just a few examples of why KG&E and the NRC cannot be trusted to disclose documentation to the public or to Kansas officials. Their history speaks for itself. It is imperative that the State of Kansas become more actively involved at Wolf Creek. Passage of HB 2328 would be the first step toward this.

CONFIDENTIAL

KANSAS GAS AND ELECTRIC COMPANY

WOLF CREEK GENERATING STATION

TO: R. Foster

FROM: C.A. Snyder

DATE: September 29, 1984

SUBJECT: Transfer of Quality First File QCI 84-139T for the Legal Departments Evaluation and Action

CONFIDENTIAL DISK

KQ1WLK 84-010

On 9/27/84, an exiting DIC employee assigned to the KG&E rate case reconciliation effort, alleged concerns of wrong doings.

Quality First has reviewed the individuals concerns and determined that they are not quality related, but are of potential legal concerns. Therefore, we are transferring this file to your office for further processing.

Please note that the employee signed a Confidentiality Agreement form.

By process of this letter, with a copy to G.L. Koester, Quality First considers this file closed.

CAS/OLT/nn

cc: G.L. Koester

Attachment 1

FORM KQ-46 REV 1/84

QUALITY RECORD OF CONCERN

File No. QC1 84-139T

PERSONAL/CONFIDENTIAL

DATE/TIME OF CALL RECEIVED OR INTERVIEW CONDUCTED: 9/27/84 9:00 AM/PM

RECEIVED BY: ROBERT W. JONES Ans. Device? Yes/No (No circled)

CONCERNED INDIVIDUAL:

ADDRESS/STATION NO.:

TELEPHONE NO.:

ALTERNATE PHONE:

EMPLOYER: DIC

DATES OF EMPLOYMENT: 7-82 - 9-84

POSITION: RECONCILIATION ENGINEER

STATEMENT OF PROBLEM: FEEL IN LONG RUN WILL HURT THE RATE CASE
SEE INTERVIEW NOTES

System I.D:

Bldg/Location:

Procedure:

Hardware/Equipment I.D.:

Contractor/KG&E:

Date/Time:

Records:

Activities in Progress:

ADDITIONAL INFORMATION: LESLIE GLEASON, SECT. ALMOST EVERYONE IN GROUP WILL SUBSTANTIATE

SUPERVISOR/FOREMAN NOTIFIED: Yes/No (Yes circled) (Date/Time) ON GOING

SUPERVISOR/FOREMAN NAME: CHUCK LINDERMAN

IF YES, RESULTS: NONE - IS THE PROBLEM

IF NO, WHY NOT?

NAMES OF OTHER INDIVIDUALS WHO MAY BE ABLE TO PROVIDE ADDITIONAL OR SUPPORTING INFORMATION RELATING TO SUBJECT CONCERN:

METHOD TIME FRAME ESTABLISHED FOR CONTACTING THE INDIVIDUAL:

QUALITY INVESTIGATOR ASSIGNED TO INVESTIGATION: Transferred to Legal

[signature] 9/25/84

File # QC1 84-139T

INVESTIGATIVE WORK PLANS

File Closed ______
Date

Team Leader RW JONES

CONCERN NUMBER	CONCERN	ACTION	Investigator	DATE TBD	DATE COMPLETED	SUBSTANT. YES	SUBSTANT. NO
1.	Bechtel control of Reconciliation effort does not allow Reconciliation personnel freedom to include all information gathered into the Reconciliation Packages that are presented to the Kansas Corporation Committee.						
2.	The group leader restricts investigative reporting, Documentation is destroyed. None of the packages can contain anything that is detrimental about design. All NRC mandates are included.						
3.	Even with SNUPPS there is a high amount of interference and integration problems. All prior documentation destroyed.						

File # QC I 84-139T

INVESTIGATIVE WORK PLANS

File Closed ____________ Date

Team Leader R W JONES

CONCERN NUMBER	CONCERN	ACTION	Investigator	DATE TBD	DATE COMPLETED	SUBSTANT YES	
4.	The group lead edits all packages. Many times re-writes entire packages after being approved by the KG&E committee (Chas. Heston, etc.) then sends them to Kansas Corporation Committee without re-review.						
5.	Reconciliation personnel are not allowed to talk or write about Bad Management, Design or related problems or are they allowed to use poor productivity as a reason for cost overruns.						
	Note: see interview notes						

DEFECT/DEFICIENCY REPORT

INITIATOR

NO: 85-105 REVISION △1

Proposed LER No: ~~85-055~~ N/A

ct/Deficiency: Air flow thru Containment Purge from Containment to Environment without a release permit

(Indicate specific equipment/part identification, numbers, procedures, etc.)

Discovered at: 7-26-85/1800 (Date/Time) By: Steve Austin (Initiator)

II. SECTION SUPERINTENDENT/SHIFT SUPERVISOR

Potentially Reportable [X] YES [ ] NO Per: 50.73 (a)(2)(i)(b)

Plant Manager/Call Superintendent Notified: 7-26-85 (Date) 1900 (Time)

RMS File Designator: KØ1-ØØ3 Maintenance Request Issued: No.

Attachment Ø33-2 completed and attached: [ ] YES [X] NO

ENS Reportability: [ ] Immediate [ ] 1 Hour [ ] 4 Hour [ ] 24 Hour [ ] Other 30 days

Reportability (if required) made by:

Continuous Open Communication Channel required: [ ] YES [X] NO

ents/Recommendations: See attached sheet for comments and recommendat

Section Superintendent/Shift Supervisor: [signature] 7-26-85/205 (Date/Time)

III. PLANT MANAGER

SEE ATTACHED REPORTABILITY EVALUATION

Reportable: Rev △1 ~~[X]~~ YES [✓] NO (mm 8-6-85) Per: ~~10CFR 50.73(a)(2)(i)~~ mm 8-6-85

ENS Reportability: [ ] Immediate [ ] 1 Hour [ ] 4 Hour [ ] 24 Hour [ ] Other N/A

Followup Written Report Required: [ ] NONE [ ] 5 DAYS [ ] 15 DAYS ~~[X]~~ 30 DAYS (mm 8-6-85) OTHER: N/A Rev

Licensing Notified: 7-29-85 (Date) 0906 (Time)

NRC Resident Notified: Cummins 7-29-85 (Date) 0912 (Time)

PSRC Review Required: ~~[X]~~ YES (mm 8-6-85) [✓] NO (Rev △1) Action Assigned to: M.G. WILLIAMS

Comments/Recommendations:

Plant Manager/Call Superintendent: [signature] 7/29/85 1092

REVISION △1 [signature] 8/7/85 0822 (Date/Time)

12/3/85 FOIA 706 VSP Appx A13

A13

Attachment Ø33-1
Page 1 of 2

ADM Ø1-Ø33
Rev. 13
Page 31 of 89

~~Attachment 7~~

DANIEL INTERNATIONAL — INTER-OFFICE COMMUNICATION

Form 16-99 (Rev. 6-75)

TO: Chris Phillips DATE: October 5, 1983

FROM: J. R. Cook PQE - 329

SUBJECT: CAR-1-C-0031

Revised corrective action is rejected for the following reasons:

1. Action taken to correct items identifed - not stated.
2. Action taken to prevent recurrence - not stated.
3. Corrective action date not stated.
4. In regards to item #3, this CAR cannot be closed until MSSWR discrepancies in all "Q" areas have been resolved, not just for the Fuel Bldg.
5. Structural steel is still being installed in the Reactor Bldg. at the steam generator platforms. Also documentation will be required for minor repairs and rework/repairs required by NCR's.

If NCR's are to be generated, what will the disposition be? AP-VI-12 requires an action taken to correct items identified.

It appears that Civil management is shifting the responsibility for identification and documentation of this CAR to the CRG at time of review and system turnover. This CAR needs to be identified, documented and resolved by the responsible manager, prior to system turnover.

J. R. Cook 10/6/83

J. R. Cook
Project Quality Engineer

Attachment 3

May 31, 1985

FOIA-161 #C 6/19/85

MEMORANDUM FOR: Robert D. Martin, Regional Administrator
Region IV

FROM: Ben B. Hayes, Director
Office of Investigations

Original signed by:
Ben B. Hayes

SUBJECT: WOLF CREEK GENERATING STATION - STATUS OF CHARACTER ISSUE CONCERNS PERTAINING TO SENIOR MANAGERS

On December 21, 1984, I forwarded to you a memorandum prepared by William Ward regarding the Office of Investigations (OI) evaluation of the Kansas Gas and Electric Company (KG&E) investigative program at the Wolf Creek Generating Station (WCGS). As a result of this and additional information of a character/suitability nature, OI requested guidance from the Commission as to whether these matters warranted an OI investigation (memorandum dated December 24, 1984, enclosure 1).

Commissioner Roberts questioned whether the alleged circumstances have a direct and significant relationship to NRC's regulatory responsibilities, and he posed several questions concerning the initiation of an OI investigation (memorandum dated January 8, 1985, enclosure 2). OI responded to Commissioner Roberts in a memorandum dated January 15, 1985 (enclosure 3). On February 19, 1985, Samuel J. Chilk, Secretary, NRC, informed OI that a majority of the Commission does not support the initiation of an investigation of senior managers at the WCGS regarding these matters (enclosure 4).

In view of the above, no additional investigative effort will be directed by OI toward the character and/or suitability issues which have been brought to the attention of the Commission. This includes the concerns identified in OI Report of Inquiry Q4-85-001, dated February 21, 1985.

Enclosures:
As stated

cc w/enclosures:
W.J.Dircks, EDO
H.Denton, NRR
R.K.Herr, OI:RIV

Distribution:
OI:s/f Wolf Creek Fac File
✓OI:case file: Q-4-85-001
OI:c/f
OI:r/f
ECGilbert

OI	OI	OI
ECGilbert/jh	RAFortuna	B. B. Hayes
05/30/85	05/ /85	05/30/85

DW:Memo/RMartin

~~Attachment 4~~

COMMENTS OF REP. DAN GLICKMAN
BEFORE THE
SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT
OF THE
COMMITTEE ON THE INTERIOR
JULY 22, 1986

Mr. Chairman and members of the Subcommittee, I appear before you today to testify in support of H.R. 4835, to create an Office of Inspector General in the Nuclear Regulatory Commission. This office would replace the Office of Inspector and Auditor which currently exists within the NRC.

I will be brief, as I realize you have a full slate of witnesses, and will limit my testimony to telling my story of working with the NRC on questions related to the Wolf Creek Generating Station in Burlington, Kansas. As a case in point of why an independent Inspector General is badly needed at the NRC, my story could easily be entitled "Sweeping It Under the Rug."

My story begins in the spring of last year (1985) when I was informed of potentially unresolved allegations of worker harrassment and intimidation, drug use and falsified documents which had been filed with Wolf Creek's Quality First program. The Quality First program was initiated by the owners of Wolf Creek in March of 1984 to investigate employee concerns about safety and wrongdoing at the plant. The program was not designed to meet a regulatory requirement, but since its inception, the utility has cited the program as an example of how seriously it regards safety concerns.

When I inquired about the NRC's review of the Quality First files, in light of the utility's upcoming request for a full-power operating permit, I was told that fifty percent of the files had been reviewed during six different visits to the Wolf Creek site. On May 24 (1985), I wrote the Commission, requesting that "prior to issuance of a full-power operating permit, files from the licensee's Quality First program will have been adequately reviewed by NRC staff so as to provide full assurance to the Commissioners that the Quality First files contain nothing that could affect the safe operation of the Wolf Creek Generating Station."

The next day, the NRC initiated a 100 percent review of the files from the Quality First program. A little more than a week later, the Commission unanimously voted to lift the low-power operating permit at Wolf Creek and issue its owners a full-power license--but not before the NRC had swept a few things under the rug.

Hours before the Commissioners voted to license Wolf Creek, they were informed that the plant's owners and operators had done a sloppy job of investigating workers' complaints about construction records, harrassment of workers, and drug use at the plant. They were told that there were "a litany

~~Attachment 5~~

of false documents" allegations, which were not reported to the NRC, and allegations of drug use and sale, both on and off the plant site. Although the technical staff concluded that their review of technical and specific safety concerns within the Quality First files did not leave open significant safety issues, the files reviewed by the Office of Investigations (OI) on allegations of wrongdoing raised new questions. After reviewing 112 such allegations, the OI staff found that the utility's investigation or follow-up of two-thirds of them was flawed or inadequate. A transcript from the closed briefing reveals an extended discussion of whether or not this raised any safety concerns, and whether or not it should affect the pending question on full-power licensure. When asked if the wrongdoing files had "safety implications," Commissioners were told that cases of worker harrassment and intimidation might have "a safety impact" if they hadn't been fully investigated by the licensee. Later, the Commissioners were told that the safety question "puts us in a bind. We don't know what will be found when Ben (Hayes, of the Office of Investigation) looks further." "We are opening up a can of worms," commented one Commissioner. "It is not clear to me," another Commissioner commented, "that . . . . the fault doesn't lie at least in part at our door step . . . . we were free to walk in any time and look at those files."

The briefing concluded with the Commissioners being informed that the Region IV Administrator and the Office of Investigations had struck an agreement to "meet with the applicant on some of these issues and we may find it necessary to protect the Commission here to do our own investigation to validate if nothing else the applicant's conclusion there." At the licensing hearing which followed, the staff stated that they planned to pursue with the licensee concerns about the adequacy of the investigatory followup in the Quality First program, and the licensee pledged to work closely with the NRC to resolve those concerns.

Subsequently, the Office of Investigations met with the Region IV Administrator and his staff to review the problem files in the Quality First program. From the cases reviewed, ten were chosen as having obvious investigative deficiencies. Out of those ten, OI decided to select three cases in differing subject areas as a sampling for further OI examination. These cases were opened and have since been closed.

In January of this year, six months after the full-power license had been issued and several months after Wolf Creek had gone critical, the Commissioners voted unanimously to authorize the Office of Investigations to open a new investigation into the Quality First program. However, it was another six months until it actually got underway last month.

My experience with the Nuclear Regulatory Commission has left me less than confident in the NRC's ability and commitment to carry out its regulatory reponsibilities. Its diligence in responding to questions potentially affecting safety is neither timely nor adequate. Meetings with NRC staff have convinced me that communication between technical staff and investigative staff is poor; I often get the sense that the right hand doesn't know--and

perhaps doesn't want to know--what the left hand is doing. And that brings me to the climax of my story.

Recently I secured from the NRC's Public Documents Room an internal NRC memo and a letter to the licensee, both evidencing the fact that very serious questions had been raised about the adequacy of the Quality First program's investigations into wrongdoing. These documents were dated approximately six months before the last-minute, pre-licensing review of the program in May of last year. The memo posed questions about the design of the Quality First program, the effectiveness of its investigations and follow-through, whether or not certain allegations were being reported to the NRC, and the prevalence and seriousness of worker harrassment and intimidation. It also raised questions about specific allegations including: a Quality Control inspector who asserted that he was harrassed after he complained about being ordered to inspect in accordance with what he felt were inadequate procedures; and another Quality Control inspector who claimed that he was blackballed from employment at another nuclear site, after being subjected to an illegal search of his car at which time documents contained in a box of his personal possessions were removed and destroyed by licensee officials.

The second document, a letter to the licensee, concludes that although a Region IV staff inspection of the Quality First program did not identify any "violations or deviations," the inspectors did identify deficiencies "requiring some correction to help ensure an effective program." However the nature of that correction is not spelled out.

It is interesting and, I believe, troubling to note that although these two studies of the Quality First program occurred at the same period in time, they came to somewhat conflicting conclusions about qualifications of the investigative personnel and the degree to which the program was being effectively implemented: the Region IV report on the program was less critical than the Office of Investigations'. Both, however, concluded that the processing of allegations of wrongdoing was deficient and that there was a lack of feedback to utility management with regard to concerns tracking, analysis, job performance, or suggested improvements.

In the interest of time, I will not go into further detail on these documents, except to say that they contain information which I believe warranted immediate and further review, investigation, and mitigation. To my knowledge, that did not occur. Instead, these concerns were swept under the rug, only to be aired again in the days and hours before the full-power license was issued last June.

My story ends, but the questions begin, both with regard to the Wolf Creek Generating Station and the policies of the Nuclear Regulatory Commission. I will stick to the policy questions today, although the documents raise disturbing questions relative to Wolf Creek which I will pursue outside of this hearing.

The most obvious question is why did the NRC wait until one week before

the full-power licensing hearing to conduct a 100 percent review of the Quality First files? Why were the earlier two documents, raising serious questions about the investigatory follow-up of wrongdoing allegations at the plant, seemingly swept under the rug? Why weren't all of the questions surrounding the Quality First Program answered before the plant was licensed and operating? Why, as of this spring, had there been no changes in the operation of the Quality First program, even though public commitments had been made at the licensing hearing to work with the NRC to clear up concerns about the program? This question is particularly compelling since the NRC decided against adding Quality First-related conditions to the full-power license, based on assurances that the utility would improve the program.

Beyond these obvious questions are more generic questions related to utilities' self-policing or safety concerns programs. Most basically, can a utility police itself? (I happen to think the answer to that is no, given the incredible financial pressures faced by most utilities.)

Is the NRC relying, in any way, on these programs to hear and investigate workers' complaints on items which come under the NRC's jurisdiction? Do utilities see these programs as a replacement for certain reporting requirements to the NRC? Are workers complaints being short-circuited and inadequately resolved, due to intentional or unintentional inadequacies in these sorts of programs? Are bad self-policing programs better or worse than none at all? Why does there appear to be no clear policy interpretation on the reportability of allegations of wrongdoing? Are allegations of harrassment and intimidation required to be reported to the NRC? What about falsified documents? What about allegations of a "significant breakdown" in a utility's Quality Assurance program? Are plants routinely licensed, even though there are outstanding questions about wrongdoing by the licensee? Why has the Commission still not developed a policy or regulatory framework for the mannner in which self-policing programs will interface with the Nuclear Regulatory Commission? I might interject at this point that although the Commissioners discussed the need for this sort of policy statement at the pre-licensing briefing, I am not aware that any policy has been formulated. In fact, the NRC informed me that they do not even have a list or "headcount" of such programs, even though more utilities are moving to set up such programs.

Finally, as suggested by the differences in the tone of the memo and letter I have referenced, as well as the discussion during the closed briefing prior to licensing, is there a tendency on the part of technical and licensing staff to downplay and/or ignore allegations of wrongdoing by licensees--or to treat them as isolated incidents without generic implications for safety? Is it true, as Assistant Attorney General Stephen Trott stated in a letter to the Commission early last year, that "Prior to and since the creation of OI there has been some opposition as well as resistance within the NRC to the detection and disclosure of wrongdoing by NRC licensees."?

It is my belief that all of these questions reflect the need for an Independent Inspector General at the Nuclear Regulatory Commission. The sort of delays I have recounted and the sweeping of concerns and policy

implications under the rug provide a compelling case for passage of H.R. 4835. Although the legislative days left in this session are numbered, I would urge prompt action on this bill.