

Approved February 14, 1989  
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Dennis Spaniol at  
Chairperson

3:30 ~~am~~/p.m. on February 7, 1989 in room 526-S of the Capitol.

All members were present except:

Representative Holmes (excused)

Committee staff present:

Raney Gilliland, Legislative Research  
Mary Torrence, Revisor of Statutes' Office  
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

Conni McGinness, Director, Legislative Relations, Kansas  
Electric Cooperatives, Inc. (KEC)  
Perry Rubart, Board Member, Pioneer Electric Cooperative, Inc.  
Ulysses, Kansas  
Lewis E. Mitchell, General Manager, Wheatland Electric Cooperative,  
Scott City, Kansas  
Wilbur Leonard, Committee of Kansas Farm Organizations  
Representative Debara K. Schauf  
J. D. Spradlin, P.O. Box 67393, Topeka, Kansas

Chairman Dennis Spaniol began the meeting with requests for bill introduction.

Representative Sheila Hochhauser requested introduction of a bill designating Harney silt loam as the state soil of Kansas. The Chairman said he would recommend that the bill be referred to the Committee on Agriculture and Small Business. Attachment 1. A motion was made by Representative Grotewiel, seconded by Representative Lucas, to introduce this bill. The motion carried.

Another request for introduction concerned a bill prohibiting low cost sales of motor fuels, primarily gasoline, to be referred back to this committee or to the Transportation Committee. Representative Freeman, seconded by Representative Grotewiel, moved that this bill be introduced. The motion passed. Attachment 2.

Chairman Spaniol called attention to the minutes of January 30 and 31, which had been distributed.

House Bill 2104 - Voting on consolidation or merger of electric cooperatives.

Conni McGinness, representing Kansas Electric Cooperatives, testified in support of this bill. She indicated that this would clarify the application of the mail-in-ballot provision on consolidation and mergers to ensure greater member participation. Attachment 3.

Perry Rubart represented Pioneer Electric Cooperative, Inc. with testimony in favor of House Bill 2104. He commented that the existing statutory provision could be read in such a way that mail-in ballots are not allowed. Attachment 4.

Committee discussion followed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
room 526-S, Statehouse, at 3:30 ~~xxx~~/p.m. on February 7, 1989

Lewis Mitchell spoke on behalf of Wheatland Electric Cooperative, Inc. He commented that House Bill 2104 was a technical correction to existing law that should not be at all controversial. Attachment 5.

Further discussion followed.

Wilbur Leonard appeared on behalf of the Committee of Kansas Farm Organizations, speaking in support of House Bill 2104. He noted that mail or proxy voting is a universal practice of publicly held corporations, including electric utility companies, and it seemed only reasonable that it be extended to Kansas electric cooperatives. Attachment 6.

House Bill 2106 - Regulation of wind energy.

Representative Debara Schauf gave background information on the problems and practicality of wind energy in the production of electrical power. In her testimony she referred to the Parallel Services Act passed by the Kansas Legislature in 1979 which required retail utilities in Kansas to enter into contracts with cogenerators and small power producers upon request. A study on cogeneration and small power production development in Kansas 1979 to 1986 by a policy analyst for the Kansas Corporation Commission also was discussed. A copy of an article in the Belle Plaine News on March 16, 1988 indicated the seriousness of this problem in Representative Schauf's district. Some suggested corrections in the bill were included in her written testimony. Attachment 7. Further information had been obtained from the Kansas State University Extension Department. Attachment 8.

Considerable committee discussion followed relative to insurance, inspection and expense, as well as rules and regulations. Responding to a question of Representative Patrick, Representative Schauf offered to share a copy of the 1986 study by the Kansas Corporation Commission.

J. D. Spradlin of Topeka, Kansas testified in opposition to House Bill 2106. He agreed with the provisions which had been changed by Representative Schauf. He disagreed with Section 5 of the bill dealing with violations, but felt that some legislation was needed for safety purposes. Mr. Spradlin agreed to provide written copies of his testimony at a later date.

Turning to House Bill 2007 - Falconry permit and examination fees, Representative Freeman moved adoption of the amendments recommended by the Department of Wildlife and Parks at the hearing on the bill. Attachment 9. Representative Shore seconded the motion. Following committee discussion, a vote was taken and the motion carried. A motion was made by Representative Freeman, seconded by Representative Lacey, to pass House Bill 2007 as amended. The motion passed.

Taking up House Bill 2104 for final action, Representative Fry moved, seconded by Representative Shore, to report the bill favorably and request that it be placed on the Consent Calendar. The motion passed.

The meeting was adjourned at 4:20 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held at 3:30 p.m. on February 9, 1989 in Room 526-S.

Date: Feb 7, 1961

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Conni McGinness	Ks Electric Coops	Topeka	272-8740
Mike Peters	" " "	" "	" "
Perry Rubart	Pioneer Elec.	Ulysses	516-356-3632
Lester Murphy	Ks Electric Coops	Topeka	272-8740
Jonny C. Kempf	Sunflower Elec.	Hays	913 628-2845
Lewis Mitchel	Wheatland Electric	Scott City,	316-872-5995
Juan Manuel	Ks. Corporation Commission	Topeka	2347
Emily Wellman	Ks. Corporation Commission	Topeka	2756
Rebbi McCastill	Ks Dept. of Commerce	Topeka	6022
Wilbur Leonard	Comm Ks Farm Org.	Topeka	
Kesh McKee	Ks Livestock Assoc	Topeka	237-9358
DARRELL MONTEI	DEPT. WLD & PARKS	PRATT	672-5811
Doyle D Kelly	Kansas Farm Bureau	Manhattan	537-2241
Joe Lieber	Ks Co-op Council	Topeka	237-4085
Tony Potter		Topeka	235-2155
Tom Taylor	KPH Gas Service	Topeka	296-1927
Jim Ludwig	KPL	TOPEKA	256-8107

AN ACT designating Harney silt loam as the state soil of Kansas.

WHEREAS, Kansas soils are among the most productive in the United States and Kansas ranks second in acres of prime farmland in this country; and

WHEREAS, The soil surveys were completed for all Kansas counties in 1987 and are a key to the use value in reappraisal; and

WHEREAS, Harney silt loam is representative of all the highly productive soils in Kansas, because it is found on 3.9 million acres in 25 counties: Now, therefore,

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

Section 1. The soil known as Harney silt loam is hereby designated as and declared to be the official soil of the state of Kansas.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

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2-7-89  
Attachment 1

HOUSE BILL NO. \_\_\_\_\_

By

AN ACT concerning motor fuel marketing and pricing; requiring certain price disclosures relating to motor fuel; prohibiting certain acts and providing penalties and other remedies for violations; declaring certain contracts to be void.

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

Section 1. This act shall be known and may be cited as the motor fuel marketing act.

Sec. 2. The legislature makes the following findings with respect to the marketing of motor fuel in Kansas:

(a) Marketing of motor fuel is affected with the public interest.

(b) Unfair competition in the marketing of motor fuel occurs whenever costs associated with the marketing of motor fuel are recovered from other operations, allowing the refined motor fuel to be sold at subsidized prices. Such subsidies most commonly occur in one of three ways: When refiners use profits from refining of crude oil to cover below normal or negative returns earned from motor fuel marketing operations; when a marketer with more than one location uses profits from one location to recover losses from below-cost selling of motor fuel at another location; and where a business uses profits from nonmotor fuel sales to cover losses from below-cost selling of motor fuel.

(c) Independent motor fuel marketers (i.e., dealers, distributors, jobbers and wholesalers) are unable to survive predatory subsidized pricing at their marketing level.

(d) Subsidized pricing is inherently predatory, is reducing competition in the petroleum industry and, if it continues

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unabated, will ultimately threaten the consuming public.

Sec. 3. It is hereby declared that the marketing of motor fuel in Kansas is affected with the public interest. It is hereby declared to be the legislative intent to encourage fair and honest competition and to safeguard the public against creation of monopolies or unfair methods of competition, in transactions involving the sale of, offer to sell or inducement to sell motor fuel in the wholesale and retail trades in this state. It is further declared that the advertising, offering for sale or sale of motor fuel below cost or at a cost lower than charged other persons on the same marketing level with the intent of injuring competitors or destroying or substantially lessening competition is an unfair and deceptive trade practice. The policy of the state is to promote the general welfare through the prohibition of such sales. The purpose of this act is to carry out that policy in the public interest, providing for exceptions under stated circumstances, providing for enforcement and providing penalties.

Sec. 4. As used in this act, unless the context otherwise requires:

(a) "Affiliate" means any person who, other than by means of franchise, controls, is controlled by or is under common control with any other person.

(b) "Basic cost of motor fuel" means:

(1) As applied to wholesale distribution, the invoice cost or replacement cost of the motor fuel, whichever is less, within five days prior to the date of sale, in the quantity last purchased, less all trade discounts except customary discounts for cash, to which shall be added all applicable state, federal and local taxes, freight charges not otherwise included in the cost of the motor fuel and cartage to the retail outlet, if paid by the wholesaler; and

(2) as applied to retailing, the invoice cost or replacement cost of the motor fuel, whichever is less, within five days prior to the date of sale, in the quantity last

purchased, less all trade discounts except customary discounts for cash, to which shall be added all applicable state, federal and local taxes and freight costs if paid by the retailer. In computing its basic cost of motor fuel, its costs of doing business and in meeting competition under section 8, a refiner that assesses a processing fee of any kind for credit card transactions must assess such fees in a like manner to its affiliates.

(c) "Competition" means and includes any person who competes with another person in the same market area at the same level of distribution.

(d) "Cost of doing business" or "overhead expenses" means and includes all costs incurred in the conduct of business, using generally accepted accounting principles, including but not limited to labor (including salaries of executives and officers), rent (which rent must be no less than fair market value based on current use), interest on borrowed capital, depreciation, selling cost, maintenance of equipment, transportation or freight cost, losses due to breakage or damage, credit card fees or other charges, credit losses and all types of licenses, taxes, insurance and advertising.

(e) "Cost to refiner" means that refiner's posted terminal price to the wholesale class of trade. If a refiner does not regularly sell to the wholesale class of trade at that terminal or does not post such a terminal price, it may use as its cost the posted price of any other refiner at any terminal within the general trade area which has motor fuel readily available for sale to the wholesale class of trade.

(f) "Cost to retailer" means, as applied to retail sales, the invoice or replacement cost of the motor fuel, whichever is less, within five days prior to the date of sale, in the quantity last purchased, less all trade discounts except customary discounts for cash, to which shall be added all applicable state, federal and local taxes, inspection fees and freight cost if paid by the retailer, plus the cost of doing business.

(g) "Cost to wholesaler" means, as applied to wholesale distribution, the invoice cost or replacement cost of the motor fuel, whichever is less, within five days prior to the date of sale, in the quantity last purchased, less all trade discounts except customary discounts for cash, to which shall be added all applicable state, federal and local taxes, inspection fees, freight charges not otherwise included in the cost of motor fuel and cartage to the retail outlet if paid by the wholesaler, plus the cost of doing business.

(h) "Customary discount for cash" means and includes any allowance, whether a part of a larger discount or not, made to a wholesaler or retailer when such person pays for motor fuel within a limited or specified period of time.

(i) "Loss leader" means any motor fuel product sold at less than cost for the purpose of inducing, promoting or encouraging the purchase of other merchandise, where the intent and effect of such sale is to divert trade from or otherwise injure competitors.

(j) "Motor fuel" means any refined or blended motor fuel product, including gasoline, diesel fuel, aviation fuel, gasohol and all other fuel of a type designated for use as a motor fuel in self-propelled vehicles.

(k) "Person" means any person, firm, association, organization, partnership, business trust, joint stock company, company, corporation or other legal entity.

(l) "Refiner" means any person engaged in the production or refining of motor fuel, whether such production or refining occurs in this state or elsewhere, and includes any affiliate of such person.

(m) "Retailer" means and includes any person who is engaged in this state in the business of selling motor fuel at retail to the general public for ultimate consumption and includes any group of persons purchasing motor fuel on a cooperative basis from licensed distributors or wholesalers.

(n) "Sale" means any transfer, exchange, barter, gift,



offer for sale, advertisement for sale or solicitation of an order for motor fuel in any manner or by any means whatsoever.

(o) "Sell at retail" and "retail" mean to sell, offer for sale, advertise for sale or transfer motor fuel for consumption or use in the ordinary course of trade or usual conduct of the seller's business.

(p) "Sell at wholesale" and "wholesale" mean to sell, offer for sale, advertise for sale or transfer in the ordinary course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale.

(q) "Transfer price" means and includes the price used by a person in transferring motor fuel to such person's self or an affiliate for resale or distribution at another marketing level. Such price shall be determined using standard, functional accounting procedures.

(r) "Wholesale distribution" means the purchase of motor fuel for sale, consignment or distribution to another or receipt of motor fuel for sale, consignment or distribution to another, to one's own motor fuel accounts or to accounts of one's supplier.

(s) "Wholesaler" means and includes any person, including any affiliate of such person, who purchases motor fuel for sale, consignment or distribution to another or receives motor fuel on consignment for consignment or distribution to the person's own motor fuel accounts or to accounts of the person's supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier.

Sec. 5. All refiners engaged in commerce in this state are required to establish a transfer price and publicly disclose, upon request, their transfer prices on each grade of motor fuel transferred or sold to such refiner's self or an affiliate for resale at another marketing level of distribution.

Sec. 6. It shall be unlawful for any person engaged in commerce in this state to sell or offer to sell any grade of

motor fuel below cost or to sell or offer to sell it at a price lower than the seller charges other persons on the same day and on the same level of distribution, within the same market area, with the intent to injure competition, and the effect thereof. Profits generated or realized on the sale of services, commodities or other grades of motor fuel may not be used by a seller to subsidize prices on any grade of motor fuel.

Sec. 7. It shall be unlawful for any person engaged in commerce in this state to sell or transfer any grade of motor fuel to such person's self or an affiliate for resale at another marketing level of distribution at a sales price or a transfer price (including credit terms, discounts, rebates, allowances, services or facilities granted any of a supplier's own marketing operations in excess of those provided to a person who purchases for resale at the same level of distribution) that is below cost or lower than the price it charges a person who purchases for resale on the same day and at the same distribution level, within the same market area, with the intent to injure competition, and the effect thereof.

Sec. 8. (a) It is not a violation of this act if a difference exists between the transfer price or sales price of motor fuel of like grade and quality and the price charged to a person who purchases for resale at the same level of distribution (including any credit terms, discounts, rebates, allowances, services or facilities granted any of a supplier's own marketing operations in excess of those provided to a person who purchases for resale at the same level of distribution) if the lower price is due to a cost differential incurred because of a difference in shipping method, transportation, marketing, sale or quantity, in which such motor fuel is sold.

(b) It is not a violation of this act if the price of any grade of product is established in good faith to meet the specific price of a competitor in the same market area on the same level of distribution selling the same product or similar product of like grade and quality, and marketed in the same

manner, and upon the same terms.

Sec. 9. It shall be unlawful for:

(a) Any person engaged in commerce in this state to sell or use any grade of motor fuel as a loss leader with the intent to injure competition, and the effect thereof;

(b) any person, with the intent to injure competition, and the effect thereof, to offer a rebate, to offer to give a rebate or to offer a concession of any kind in connection with the sale of motor fuel; or

(c) any retailer to induce or attempt to induce or to procure or attempt to procure the purchase of any grade of motor fuel at a price less than cost to the wholesaler, with the intent to injure competition, and the effect thereof.

Sec. 10. When one wholesaler sells motor fuel to any other wholesaler, the former shall not be required to include in the selling price to the latter the cost to the wholesaler, but the latter wholesaler, upon resale to a retailer, shall be required to include in the selling price to the retailer the cost to the wholesaler.

Sec. 11. The provisions of this act shall not apply to a sale at wholesale or a sale at retail made in an isolated transaction and not in the usual course of business.

Sec. 12. Any contract, express or implied, made by any person in violation of the provisions of this act, is illegal and void and no recovery shall be had thereon.

Sec. 13. (a) In determining cost to the wholesaler and cost to the retailer, the court of jurisdiction shall receive and consider as bearing on the bona fides of such cost, evidence tending to show that any person complained against under any of the provisions of this act purchased the motor fuel involved in the complaint at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true costs, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such costs, evidence of the normal, customary and prevailing terms and discounts in

connection with other sales of a similar nature in the market area.

(b) Where a cost survey pursuant to recognized statistical and cost accounting practices has been made for a market area in which a violation of this act is committed or charged, to determine and establish on the basis of actual existing conditions the lowest cost to wholesalers or the lowest cost to retailers within the area, the cost survey shall be deemed competent evidence in any action or proceeding under this act as tending to prove actual cost to the wholesaler, or actual cost to the retailer complained against, but any party against whom any such cost survey may be introduced in evidence shall have the right to offer evidence tending to prove any inaccuracy of such cost survey or any state of facts which would impair its probative value.

Sec. 14. (a) Any person who violates this act shall be subject to a civil penalty not to exceed \$10,000 per violation for each offense. Any such person shall also be liable for attorney fees and shall be subject to injunctive relief. Each day that a violation of this act occurs shall be considered as a separate violation.

(b) Such penalty may be assessed and recovered in a civil action brought by the attorney general, or by any district attorney in any court of competent jurisdiction. If brought by a district attorney, the entire amount of the penalty shall be paid to the treasury of the county in which the judgment was entered. If brought by the attorney general, 1/2 of the penalty shall be paid to the treasury of the county where the action was brought and 1/2 shall be paid to the state treasury and credited to the state general fund.

Sec. 15. (a) Any person injured by any violation, or who would suffer injury from any threatened violation, of this act may maintain an action in any court of jurisdiction to prevent, restrain or enjoin such violation or threatened violation. If in such action a violation or threatened violation of this act is

established, the court shall enjoin and restrain, or otherwise prohibit, such violation or threatened violation and, in addition thereto, the court shall assess in favor of the plaintiff and against the defendant the costs of suit, including reasonable attorney fees. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff, in addition to such injunctive relief and cost of suit, including reasonable attorney fees, shall be entitled to recover from the defendant the damages sustained by the plaintiff.

(b) A person injured as a result of an act or practice which violates this act may bring a civil action for appropriate relief, including an action for a declaratory judgment, injunctive relief and for actual damages. Any actual damages found to have resulted from violations of this act shall be tripled by the court in making its award.

(c) The court, in making an award under this section, may award court costs and reasonable attorney fees to the party asserting the violation of this act. Any action brought under this act shall be brought within two years after the alleged violations occurred.

(d) The courts of this state are empowered with jurisdiction to hear and determine all cases brought under this section. Venue lies in any county where the defendant or any of them resides or does business or where the cause of action accrues.

Sec. 16. In any action brought under section 13, 14 or 15, upon a prima facie showing of a violation, the burden of rebutting the prima facie case thus made by showing justification shall shift to the defendant. A prima facie showing of a violation shall be constituted if the plaintiff shows that:

(a) The defendant's posted retail price is less than the posted terminal (or rack) price of the defendant or defendant's supplier, plus freight, taxes and a reasonable allowance for the cost of doing business. If the identity of the defendant's

supplier is unknown, the lowest terminal (or rack) price at the terminal closest to the retail facility in question shall be considered to be the terminal (or rack) price of defendant's supplier; or

(b) the plaintiff's purchase price from a refiner or wholesaler is greater than the refiner's transfer price, plus freight, taxes and a reasonable allowance for the cost of doing business.

Sec. 17. Upon complaint of any violation of this act made to the attorney general by any wholesaler or retailer or by any association of wholesalers or retailers, incorporated under the laws of the state, the attorney general shall investigate such complaint or cause such complaint to be investigated. If it appears from such investigation that any provision of this act has been violated, the attorney general shall institute and conduct or cause to be instituted and conducted a suit in the name of the state to prevent and restrain violations of this act.

Sec. 18. A person who purchases motor fuel for resale who has cause to believe that a refiner marketing motor fuel has violated section 6, 7 or 9 may, upon motion to the court and a proper showing of cause, obtain an order requiring the refiner to provide such person with the following information:

(a) The price or transfer price at which each grade of motor fuel is transferred to each level of distribution in the marketing of motor fuels together with information relevant to the market area which serves as the basis for the order; and

(b) the cost of, amount and nature of all discounts, rebates, allowances, services or facilities connected with the handling, sale or offering for sale of any motor fuel provided to each level of such person's marketing operations and to the local market area of the complainant.

Sec. 19. the provisions of this act are severable. If any part of the act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Sec. 20. This act shall take effect and be in force from and after its publication in the statute book.

KANSAS ELECTRIC COOPERATIVES, INC.

Testimony Before the House  
Energy and Natural Resources Committee

House Bill No. 2104  
Amendments to the Electric Cooperative Act

Tuesday, February 7, 1989

by

Conni L. McGinness  
Director, Legislative Relations

H. Energy and NR  
2-7-89  
Attachment 3

## TESTIMONY

May it please the Committee, my name is Conni McGinness, and I am Director of Legislative Relations for Kansas Electric Cooperatives, Inc. (KEC). KEC is the statewide service organization representing 34 rural electric cooperatives in the state, who in turn have a membership of over 160,000 consumers. I am speaking here today on behalf of KEC and its member systems in support of House Bill 2104, amending the Rural Electric Cooperative Act (K.S.A. 17-4601 et seq.).

The amendments proposed in H.B. 2104 are simple: it clarifies the provision regarding mail-in ballots in reference to a cooperative voting on consolidation or merger. The cooperatives are governed by boards of trustees who are elected by the consumer members. However, numerous important issues directly affecting the members, such as a decision to merge or consolidate, must be decided on by a vote of the membership.

KEC has two member electric cooperatives in southwest Kansas who will be taking the issue of consolidation to a vote of their membership. The two cooperatives combined cover 13 counties in Southwest Kansas and one county in Colorado. As you can see, covering that great of distance would make it difficult to get the consumer-members to attend a meeting to vote on whether or not they want their cooperative to consolidate.

The amendment we are supporting today merely clarifies the application of the mail-in-ballot provision on consolidation and mergers to ensure greater member participation. Allowing the membership to vote by mail ballots will ensure greater



participation in directing the cooperative system. These changes are reflected in lines 33, 38 through 40 for consolidations and lines 77 and 81 through 83 for mergers.

I thank the Committee for the opportunity to testify in support of H.B. 2104, and would welcome your questions.

Testimony of Perry Rubart on HB 2104

Before the House Committee on Energy and Natural Resources

February 7, 1989

Mr. Chairman, members of the committee, my name is Perry Rubart. I am from Ulysses, Kansas and am an elected board member of Pioneer Electric Cooperative, Inc. (Pioneer). I am here to testify in favor of HB 2104.

Pioneer is a cooperative formed in 1944 under the Rural Electrification Act of 1935 and appropriate statutes of the State of Kansas, and we brought electricity to many farms, ranches and rural homes for the first time when we began operations in 1945. We are regulated by the Kansas Corporation Commission. Pioneer is located in southwestern Kansas. Our main office is in Ulysses. We serve 9,892 customers with 3,699 miles of line. In our area it is not uncommon to drive 50 or 60 miles to get to a town. We are truly from rural Kansas as I know many of you are.

Pioneer is governed by a nine person board elected by our consumers. Each board member is elected to a three year term. We employ a general manager to manage our affairs and have 38 employees. We meet monthly to transact such business that requires board action or attention.

The Pioneer Electric Cooperative Board voted to put the issue of consolidation with Wheatland Electric Cooperative to a vote by our membership. Our lawyer has discovered a possible problem if "mail-in" ballots are used. The existing

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Attachment 4

statutory provision can be read in such a way that mail-in ballots are not allowed.

Mr. Chairman and members, our cooperative covers hundreds of square miles of southwestern Kansas. We would like to see as many of our members as possible vote on this important consolidation issue. If we are not permitted to use mail in ballots some of our members will have to drive as far as 90 miles to cast a ballot. Many members would have to travel over 40 miles. Distance, time and cost would disenfranchise many of our rural members.

It matters not whether one favors or opposes the issue of consolidation. What does matter is that we do everything possible to afford those who are eligible the right to vote.

I sincerely seek the support of each one of you for the adoption of this important bill.

I thank you very much for your time and attention and the courtesies you have extended to Pioneer.

Testimony of Lewis E. Mitchell

HB 2104

Before the House Committee on Energy and Natural Resources

February 7, 1989

Mr. Chairman, members of the committee, my name is Lewis Mitchell. I live in Scott City, Kansas and I am the General Manager of Wheatland Electric Cooperative (Wheatland), Inc. I am testifying in favor of HB 2104, a bill that would clarify the allowable use of "mail-in" ballots in elections concerning consolidations or mergers. Wheatland is a cooperative formed in 1948 under the Rural Electrification Act of 1935. We first energized our lines on June 18, 1949.

Wheatland is located in west central Kansas with its principal office in Scott City. We serve 13,466 consumers with 3,269 miles of line. Our service area covers all or parts of Greeley, Wichita, Hamilton, Kearny, Scott, Finney, Gray, Wallace and Logan counties in Kansas and part of Kiowa county in Colorado. Our service territory is roughly 75 miles from west to east and 60 miles from north to south. One can see then that long drives are the normal course rather than the unusual.

Wheatland is governed by a ten person board elected directly by the consumers. Each board member is elected to a three year term. Wheatland has 72 employees stationed throughout our service territory. The board meets on the third Tuesday of each month to handle regular business.

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The Wheatland board of directors voted to refer to our membership the issue of consolidation with Pioneer Electric Cooperative. Since that time, legal counsel has informed us that the results of the election could be challenged if "mail-in" ballots are used in the election process. This is indeed distressing to all of us because it could make casting a vote in the election very costly. We feel this was not the intent of any legislative body since almost all elected officials highly value and strive to protect each individuals right to vote. To us HB 2104 is a technical correction to existing law that should not be at all controversial. We feel that in Kansas, and particularly the rural areas, every effort needs to be made to insure the citizens right to speak. I would urge your support of the adoption of this measure.

I would like to take this opportunity to thank you for your time and effort on our behalf.

Committee of . . .

# Kansas Farm Organizations

Wilbur G. Leonard  
Legislative Agent  
109 West 9th Street  
Suite 304  
Topeka, Kansas 66612  
(913) 234-9016

TESTIMONY IN SUPPORT OF HB NO. 2104

BEFORE THE HOUSE COMMITTEE ON ENERGY

AND NATURAL RESOURCES

February 7, 1989

Chairman Spaniol and Members of the Committee:

I am Wilbur Leonard, appearing on behalf of the Committee of Kansas Farm Organizations. We appreciate this opportunity to add our support to the passage of House Bill No. 2104, pertaining to the consolidation or the merger of rural electric cooperatives. The amendment extends to such transactions the provisions of K.S.A. 17-4610(e). This subsection, reproduced below, authorizes electric cooperatives to provide voting by proxy or by mail.

Mail or proxy voting is a universal practice of publicly held corporations, including electric utility companies, and we believe it is only reasonable that it be extended to Kansas electric cooperatives.

\* \* \* \* \*

K.S.A. 17-4610(e)

"Each member shall be entitled to one vote on each matter submitted to a vote at a meeting of the members.

Voting shall be in person, but, if the bylaws so provide, may also be by proxy or by mail, or both. If the bylaws provide for voting by proxy or by mail, they shall also prescribe the conditions under which voting shall be permitted. No person shall vote as proxy more than 3 members at any meeting of the members."

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Attachment 6

STATE OF KANSAS

DEBARA K. SCHAUF  
REPRESENTATIVE, EIGHTY-FIRST DISTRICT  
SEDGWICK AND SUMNER COUNTIES  
P.O. BOX 68  
MULVANE, KANSAS 67110  
(316) 777-4608



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: GOVERNMENTAL ORGANIZATION  
LOCAL GOVERNMENT  
INSURANCE

HOUSE BILL 2106

RE: WIND ENERGY GENERATING SYSTEMS

MR CHAIRMAN AND MEMBERS OF THE COMMITTEE:

THANK YOU FOR THE OPPORTUNITY TO DISCUSS THE REGULATION OF SMALL POWER PRODUCTION BY WIND ENERGY SYSTEMS IN KANSAS. I AM CERTAINLY NOT AN EXPERT IN PRODUCTION OR REGULATION OF WIND ENERGY AND IN FACT I HAVE PROBABLY LEARNED MORE THAN I EVER KNEW I WANTED TO KNOW ABOUT THE PROBLEMS AND PRACTICALITY OF WIND ENERGY IN THE PRODUCTION OF ELECTRICAL POWER.

THE PRODUCTION OF ELECTRICITY BY WIND GENERATORS BECAME POPULAR IN THE LATE 70'S AND EARLY 1980'S AS THE COST OF ELECTRICAL POWER ESCALATED AND THE FEDERAL GOVERNMENT OFFERED SOME VERY ATTRACTIVE TAX INCENTIVES TO PERSONS AND ENTITIES WHO INSTALLED THE SYSTEMS. IN 1979 THE KANSAS LEGISLATURE ESTABLISHED THE PARALLEL SERVICES ACT WHICH REQUIRED RETAIL UTILITIES IN KANSAS TO ENTER INTO CONTRACTS

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WITH COGENERATORS AND SMALL POWER PRODUCERS UPON REQUEST. AS I UNDERSTAND THE ACT IT REQUIRED TO UTILITIES, UNDER REGULATION OF THE KCC TO ESTABLISH A RATE THEY WOULD PAY FOR THE PURCHASE OF THE POWER GENERATED BY THESE INSTALLATIONS. THERE WAS ULTIMATELY SOME QUESTION ABOUT THE VALIDITY AND CONSTITUTIONALITY OF THE FERC RULES AND THE KCC'S PROCESS OF SETTING THE RATES. THERE WAS A LAWSUIT IN 1982 WHICH ULTIMATELY FOUND THAT THE KCC HAD ESTABLISHED RATES THAT EXCEEDED THE REQUIREMENTS OF FEDERAL LAW.

A STUDY ON COGENERATION AND SMALL POWER PRODUCTION DEVELOPMENT IN KANSAS 1979 TO 1986 WAS PRODUCED IN AUGUST OF 1986 BY A POLICY ANALYST FOR THE KANSAS CORPORATION COMMISSION. THE STUDY FOUND THAT THERE WERE 266 WIND GENERATION SYSTEMS CURRENTLY ON LINE IN 1986. ONLY 1.76% OF THE POWER PURCHASED BY KANSAS UTILITIES IN 1986 WAS BOUGHT FROM WIND GENERATORS RATED AT 20 KW OR BELOW. CLEARLY THE IMPACT OF THESE SYSTEMS ON THE UTILITY SYSTEM IN KANSAS WAS QUITE SMALL.

THE TAX CREDITS WERE DISCONTINUED IN 1985 FOR THE SMALL POWER PRODUCTION UNITS AND THE NUMBER OF SYSTEMS CURRENTLY IN USE HAVE DECLINED SIGNIFICANTLY. ALTHOUGH I WAS UNABLE TO OBTAIN THE EXACT NUMBER OF SYSTEMS STILL IN OPERATION, A SOURCE FROM THE KANSAS STATE UNIVERSITY ENGINEERING EXTENSION DEPARTMENT INDICATED HE FEELS LESS THAN HALF OF THE ORIGINAL UNITS ARE STILL IN OPERATION.



THERE ARE SEVERAL REASONS FOR THE DECLINING NUMBER OF UNITS IN OPERATION, THE ELIMINATION OF THE TAX CREDITS IS OBVIOUS, HOWEVER ANOTHER SIGNIFICANT REASON IS THE SHODDY CONSTRUCTION OF MANY UNITS AND THE DECLINE IN THE NUMBER OF COMPANIES INVOLVED IN THE MANUFACTURE, SALE, AND REPAIR OR MAINTENANCE OF THE UNITS. MANY OF THE UNITS WERE MANUFACTURED INITIALLY MORE WITH THE IDEA OF OBTAINING THE TAX CREDITS THAN WITH CONCERN FOR THE QUALITY OF THE EQUIPMENT AND ITS ACTUAL PRODUCTIVITY.

LAST SESSION IN MARCH AN INCIDENT OCCURRED IN MY DISTRICT WHICH MADE ME MORE AWARE OF THE PROBLEMS OF ELECTRICAL WIND GENERATION. AS YOU WILL SEE BY THE ATTACHED ARTICLE FROM THE BELLE PLAINE NEWS THERE WAS AN INCIDENT WITH A FAULTY GENERATOR WHICH CREATED PROBLEMS FOR THE OWNER AND RESIDENTS LIVING NEAR HER HOME IN SOUTH BELLE PLAINE.

SINCE THAT TIME I HAVE HAD THE OPPORTUNITY TO VISIT WITH SEVERAL OTHER PEOPLE INCLUDING SOME OF MY NEIGHBORS WHO PURCHASED SIMILAR SYSTEMS IN THE EARLY 1980'S. THEY HAVE EXPRESSED FRUSTRATION AT THE DIFFICULTY IN MAINTAINING THEIR SYSTEMS AND THE UNRELIABILITY OF MANY OF THE FIRMS WHO WERE ACTIVE IN THE SALE OF ELECTRICAL WIND GENERATORS. AS A RESULT OF THOSE CONTACTS I DECIDED TO INTRODUCE LEGISLATION WHICH WOULD OPEN THE DISCUSSION ON FUTURE REGULATION OF THE SYSTEMS. IT IS NOT MY INTENT TO DISCOURAGE THE CONCEPT OF WINDMILLS FOR ELECTRICAL POWER, BUT TO OFFER SOME REASONABLE DEGREE OF PROTECTION TO CONSUMERS WHO PURCHASE THE UNITS BY REQUIRING

SPECIFIC CRITERIA FOR THE OPERATION, INSPECTION, MAINTENANCE, AND REPAIR OF THE UNITS. ALTHOUGH WIND GENERATION OF ELECTRICAL ENERGY IS NOT A HOT TOPIC IN TODAY'S ENERGY WORLD, IT SHOULD BE OBVIOUS THAT IT IS A VIABLE SOURCE OF POWER THAT WAS PERHAPS A LITTLE AHEAD OF ITS TIME IN THE 70'S AND EARLY 80'S.

ATTACHED TO MY TESTIMONY YOU WILL FIND A LETTER FROM MR. DENIES MATTESON WHO IS WITH THE KANSAS STATE UNIVERSITY DEPARTMENT OF EXTENSION FOR ENGINEERING. HE WAS UNABLE TO BE HERE TODAY, BUT FAXED ME A LETTER WITH SOME HELPFUL SUGGESTIONS THAT I WANTED TO SHARE WITH YOU.

ONE AREA HE ADDRESSED WAS A SUGGESTION THAT IN THE FUTURE, COMPANIES WHO ARE ALLOWED TO SELL ELECTRICAL WIND ENERGY SYSTEMS BE REQUIRED TO MEET CERTAIN GUIDELINES WITH REGARD TO TRUTH IN ADVERTISING. I FEEL THAT IS A VALID SUGGESTION, HOWEVER I'M NOT QUITE SURE HOW WE WOULD OR COULD DO THAT LEGISLATIVELY.

WITH REGARD TO THE BILL UNDER CONSIDERATION IN THIS COMMITTEE TODAY, I NEED FIRST TO CALL YOUR ATTENTION TO A CORRECTION I WOULD SUGGEST IN LINE 26. IT WAS NOT MY INTENT TO REGULATE ALL FORMS OF WIND ENERGY PRODUCTION AND I AM CONCERNED THAT THE WORDS....OR MECHANICAL POWER....WOULD BE INTERPRETED TO INCLUDE THE WATER PUMPER WINDMILLS YOU SEE SPOTTED ACROSS THE STATE. I WOULD SUGGEST THAT THOSE WORDS

BE DELETED ON LINE 26, AND FURTHER THAT WHERE EVER THE WORDS ....WIND ENERGY SYSTEMS... APPEAR IN THE BILL THE LANGUAGE BE CLARIFIED TO DEAL ONLY WITH THE GENERATION OF ELECTRICITY.

IF YOU WILL REFER WITH ME TO SECTION 3, SUBSECTION (b):

A SECOND CONCERN THAT HAS COME TO MY ATTENTION IS THE IMPRACTICALITY OF REQUIRING AN INSPECTION OF ALL ELECTRICAL WIND ENERGY SYSTEMS CURRENTLY IN OPERATION ON THE EFFECTIVE DATE OF THIS ACT. DURING MY RESEARCH I WAS UNABLE TO EVEN ESTABLISH THE EXACT NUMBER OF SYSTEMS ON LINE IN THE STATE AT THIS TIME, LET ALONE KNOW WHERE THEY ARE. I DO BELIEVE, HOWEVER, THAT IF WE WOULD REQUIRE THAT ANY SYSTEM CURRENTLY IN OPERATION THAT GOES DOWN FOR REPAIR OR MAINTENANCE BE REQUIRED TO HAVE SOME SORT OF INSPECTION BEFORE GOING BACK ON LINE IT WOULD ADDRESS THE PROBLEM. I WOULD SUGGEST AN AMENDMENT ON LINE 37 TO DELETE IN OPERATION AND INSERT INSTEAD THE WORDS ... WHEN REPAIRED...

THE LANGUAGE IN SECTION 4 WHICH REQUIRES A POLICY OF LIABILITY INSURANCE FILED WITH THE KCC WOULD ALSO HELP TO TRACK THE NUMBER OF UNITS IN OPERATION IN THE STATE.

SOME OF THE RESEARCH AND POLICY RECOMMENDATIONS OF THE STUDY BY THE KCC I MENTIONED EARLIER WAS TO COLLECT DATA ON THE RELIABILITY OF PARALLEL GENERATION SYSTEMS, FURTHER CLARIFY THE FACTORS INFLUENCING

THE DECISIONS TO PURCHASE AND USE PARALLEL GENERATION, AND IDENTIFY WAYS TO FURTHER ENCOURAGE PARALLEL GENERATION IN KANSAS. THE 1986 STUDY INDICATED THAT 85% OF THE ELECTRICAL WIND GENERATORS IN KANSAS WERE USED AT RESIDENCES, HOWEVER IN WESTERN KANSAS ST. MARY'S OF THE PLAINS IS CURRENTLY USING 2 OR 3 GENERATORS AND PLAN TO ADD AN ADDITIONAL UNIT IN THE FUTURE, AND THERE ARE A NUMBER OF FEEDLOTS WHICH USE SIMILAR SYSTEMS.

I WOULD ENCOURAGE THE COMMITTEE TO CONSIDER THE PROVISIONS OF MY PROPOSAL AND ASK THAT A SERIOUS ATTEMPT BE MADE TO AMEND AND PASS HOUSE BILL 2106.

# Belle Plaine News

WEDNESDAY, MARCH 16, 1988

## Wind Generator Poses Problems

The southeast part of Belle Plaine drew in spectators and the Channel 3 news crew, as a wind generator was disassembled on Saturday, March 12. Residents of that area had been aware of the faulty generator for over a week.

On March 3 police officer Paul Meinecke answered a complaint from residents who were worried that the blade on the unit would fly off in the extremely high wind.

Meinecke informed the owner of the generator, Harryet Kunc on South Washington, that it needed to be taken care of. On Thursday, March 10, late in the afternoon, Kunc explained to the police department that

she couldn't find anyone to help her with the problem. The motor was removed for repair some time ago but was never replaced since the windmill generator company filed bankruptcy shortly after problems occurred. The brake, which was separate from the motor, locked the blade in place and had apparently broken loose during recent high winds. She asked the city for assistance in getting the generator stopped.

Police chief Steve Durst said, "we talked to everyone imaginable to see if anyone might have an idea." After discussing many ideas they tried to carry out a plan shortly before midnight on Friday.

The Wichita Fire Department was called down with an aerial truck. The plan was to spray water upwind on the blade to slow down or stop it and then secure the blade. However, with the wind gusting to 35 mph it became inevitable the plan could not be carried out safely.

Around 2:00 a.m. Saturday morning residents south of the old railroad tracks were awakened and given a letter from Mayor Jerry Slaughter and Civil Defense Director Bernald Burrows informing them that the generator was posing a hazard to residents and property in that area. It was recommended that they evacuate the area until the the wind subsided and the generator could be disabled.

Saturday morning Belger Cartage in Wichita was contacted. They sent a crew to see if there was anything they could do. They talked with Mrs. Kunc and contracted the job.

The large crane was used to cover the blade with a net and tarp. After the blade was stopped, two crewmen were raised to start removing the blade. Before dark the entire unit, including the tower had been removed.

Durst said after the unit was disassembled it was discovered that the welds on the base plate were broken and the area around the bolts were cracked. "I don't think it would have been much longer before it came down," commented Durst.

Durst added that the city "acted as a finder. We helped her (Mrs. Kunc) find someone to do the job. She was 100 percent cooperative. She had been trying to get it corrected."

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The wind generator on South Washington was disassembled Saturday, March 12. (Brown Photo)

February 7, 1989

Dear Representative Schauf,

I have reviewed House Bill No. 2106 and would like to make the following observations concerning the bill.

I wish regulations on wind energy systems were in place during the period of promotion for energy tax credits. There are windmills all over the state that are not operating. Many of these machines were designed to take advantage of the tax credits and were lacking the proper design necessary for a long and safe life.

Many of these machines are poorly designed and due to the poor design and poor quality materials will never be able to operate without continual major maintenance, or in some cases major re-design. These machines will probably not be helped by this bill, however, strict regulation on the installation of new machines may prevent poorly installed new machines.

I have reservation about the need to inspect all existing wind systems, as defined by this bill. There are literally hundreds of water pumper windmills in the state. These machines are designed with a different technology than the wind-electric systems. They are also operated in rural areas where the possibility of endangering others are minimal. For these reasons I would recommend the bill only include windmills used to produce electricity.

I would also like to see a regulation requiring the submittal of all design and sales literature to the KCC for approval before selling within the state. Many of the past problems would have been avoided with careful evaluation of design and sales literature.

I hope this bill will stimulate a discussion of the problems encountered by wind-electric systems. If I can be of assistance in any way, please feel free to contact me. I will look forward to hearing from you regarding the fate of this bill.

Sincerely,



Dennis K. Matteson  
Extension Specialist,  
Small Small Business Energy

cc Emily Wellman, KCC

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- (e) For the calendar year 1989, the fee for falconry permits shall be as follows: (1) Apprentice falconry permit --- \$100.00; (2) General falconry permit --- \$200.00; and (3) Master falconry permit --- \$300.00.
- (f) for the calendar year 1989, the falconry testing fee shall be \$50.00.

Sec. 3 ---- statute-book Kansas register.

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