

Approved April 8, 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 March 28, 1989 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

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

Conferees appearing before the committee:

Margaret Miller, American Association of Retired Persons (AARP)  
Linda Weir-Engren, Citizens' Utility Ratepayer's Board (CURB)  
Ralph Turner, CURB  
Charlene Stinard, Kansas Natural Resource Center  
Margaret Ahrens, Kansas Chapter of the Sierra Club  
Margaret Bangs, Coalition for a Residential Utility Consumer Office (RUCO)  
Michael Woolf, Executive Director, Common Cause/Kansas  
Nadine Burch, Senior Advocate, Coalition for Aging  
George Dugger, Kansas Department of Aging  
Thomas E. Gleason, Independent Telephone Company Group  
Ed Bruske, President, Kansas Chamber of Commerce and Industry  
Treva Potter, Peoples Natural Gas  
Dick Compton, Midwest Energy  
Rob Hodges, Executive Vice President, Kansas Telecommunications Assoc.  
Michael Remondino, Controller, Rockwell International  
Randy Burleson, Empire District Electric Company  
Herman R. Simon, The Quaker Oats Company and Kansas Industrial Consumers

Chairman Dennis Spaniol called the meeting to order and noted that the minutes of March 21 had been distributed. There were no objections to the minutes of March 20 and they stand approved.

Senate Bill 120 - Unlawful sewage discharge penalties.

Representative Patrick proposed an amendment to strike the language following "thereto" on line 98 through the word "thereto" on line 100. He felt that this language would go beyond requirements of federal law. The agency should have the discretion to work out a settlement; then public interest groups could intervene in court. Representative Patrick moved his amendment. Representative Shore seconded. The motion passed. Representative Freeman, seconded by Representative Holmes, moved that Senate Bill 120 as amended be reported favorably. The motion carried.

Senate Bill 133 - Water appropriation permit fee for water power project purposes.

A motion was made by Representative Freeman, seconded by Representative Holmes, to recommend Senate Bill 133 favorably for passage. The motion carried.

Senate Bill 2 - Defining terms, changing fee requirements and clarifying language in the chemigation law; Re Proposal No. 1.

Staff explained the balloon amendment which would strike section 4 from

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
room 526-S Statehouse, at 3:30 ~~am~~/p.m. on March 28, 1989

the bill and clarify the amount of the fine. Attachment 1. It was noted that no policy change was involved in the amendments.

Representative McClure, seconded by Representative Holmes, moved that the clean-up amendment be adopted. The motion passed. Representative Holmes, seconded by Representative Mollenkamp, moved that Senate Bill 2 be reported favorably as amended. The motion carried.

House Bill 2539 - Relating to public water supply systems.

Representative Barr explained a balloon copy of an amendment. Representative Barr, seconded by Representative Freeman, moved that the amendments in the balloon be adopted. Attachment 2.

At the request of Representative Patrick, Joseph Harkins, Director of the Kansas Water Office, gave his interpretation of the last line of the amendment. It was that if a water supplier has a problem that requires some corrective action that is beyond his or her jurisdiction (for example, where a zoning might be needed as a solution) he or she would not be held accountable for failure to get zoning passed by the jurisdiction that does have that authority. The purpose would be not to require them to do anything that they cannot do.

Representative Patrick, seconded by Representative Lucas, made a motion to table House Bill 2539. The motion failed.

Discussion relative to the fiscal note on Representative Barr's amendment followed. A vote was taken on the amendment and the motion passed.

A motion was made by Representative Barr, seconded by Representative Sughrue, to recommend House Bill 2539 as amended favorably for passage. Following further discussion, a vote was taken and the motion passed.

Senate Bill 105 - Establishing the citizens' utility ratepayer board.

Margaret Miller represented the State Legislative Committee of the American Association of Retired Persons (AARP) as a proponent. Mrs. Miller also represented the Coalition for a utility customer advocacy office composed of AARP, Common Cause, Sierra Club, Retired Federal Employees, Kansas Natural Resource Council, Silver-Haired Legislature and other groups. She stressed that until the appointment of CURB, the residential and small business utility customer had no way to be represented, and felt it was only fair that all customers be represented independently in rate hearings. Attachment 3.

Linda Weir-Enegren, CURB Chairman, testified in support of Senate Bill 105. Her testimony gave background information on CURB and listed matters in which they had intervened. She pointed out that CURB exists at the discretion of the KCC Chairman and that consumers need for it to exist statutorily. Attachment 4.

Ralph Turner represented the Silver Haired Legislature, noting that he also was secretary of the Jayhawk Area Agency on Aging Board of Directors. Mr. Turner spoke in favor of Senate Bill 105, urging that the Citizens' Utility Ratepayers Board and Consumer Counsel be established as a matter of law. Attachment 5.

Charlene Stinard represented the Kansas Natural Resource Council in support of Senate Bill 105. She commented that while the current KCC Chairman seems supportive of the goals of CURB, a less committed chairperson could blunt the Board's access to files, staff support and financial resources. Attachment 6.

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Margaret Ahrens spoke on behalf of the Kansas Chapter of the Sierra Club, supporting Senate Bill 105. Her testimony included two recommendations to clarify funding and responsibilities. Attachment 7.

Margaret Bangs, Co-Chair of the Coalition for a Residential Utility Consumer Office (RUCO) presented testimony favorable to Senate Bill 105. She indicated that while the KCC staff represents the general public, it does not represent a specific class of customers, such as small ratepayers. Attachment 8.

Michael Woolf spoke on behalf of Common Cause/Kansas in favor of Senate Bill 105. His group believed that Kansas needs an independent and well-funded Residential Utility Consumers Office, but this bill would be a step in the right direction. Attachment 9.

Nadine Burch was a proponent for Senate Bill 105, representing the Kansas Coalition on Aging. She emphasized the importance of this legislation to assure the continued existence of CURB and provide the foundation upon which to build an effective organization to represent residential ratepayers in the utility rate-making process. Attachment 10.

George Dugger represented the Kansas Department on Aging, supporting Senate Bill 105 as a way to improve the functioning of the Citizens' Utility Ratepayers Board. He noted that as a result of being established by statute, CURB would become eligible for membership in the National Association of State Utility Consumer Advocates (NASUCA). This membership would provide access to technical assistance not presently available. Four proposed amendments were included in Mr. Dugger's testimony. Attachment 11.

Thomas Gleason, Sr., an attorney of Ottawa, Kansas, represented the Independent Telephone Company Group known as Assaria, et al. in opposition to Senate Bill 105. He stressed that if there is to be a legislatively mandated CURB, there should be an extension of the exemption for electric and telephone cooperatives with a membership of less than 15,000. He also urged exemption of telephone utilities serving less than 5,000 access lines. Attachment 12.

Ed Bruske spoke on behalf of the Kansas Chamber of Commerce and Industry, opposing Senate Bill 105. Following a 1987 survey of KCCI members, KCCI would not approve a separate group by statute, leaving that function within the KCC's existing authority. Attachment 13.

Treva Potter, representing Peoples Natural Gas, spoke in opposition to Senate Bill 105. Peoples was not opposed to consumers being represented, but believed that they were more than adequately represented by the KCC staff and attorney general's office, as well as the recently established CURB. Attachment 14.

Dick Compton, speaking on behalf of Midwest Energy, commented that while his company supported the concept of Senate Bill 105, they did propose some amendments. Attachment 15.

Rob Hodges, representing Kansas Telecommunications Association, opposed Senate Bill 105, noting that the existing structure should have an opportunity to demonstrate whether change is needed. There was further concern that this could increase the workload, and potentially the size, of the current KCC staff. Attachment 16.

Michael Remondino told the committee that Rockwell International and the Kansas Industrial Consumers, of which Rockwell International was a member, opposed Senate Bill 105. He cited four reasons for opposing the bill and recommended an amendment, should the bill be passed. Attachment 17.

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Randy Burleson, representing the Empire District Electric Company, opposed Senate Bill 105. He expressed concern that this would cause a duplication of service currently performed by the KCC staff. Attachment 18.

Herman R. Simon spoke on behalf of the Quaker Oats Company and the Kansas Industrial Consumers, opposing Senate Bill 105. They believed that to favor one group of ratepayers at the expense of others and use the taxpayers money to do so would be unfair and possibly unconstitutional. If the bill were to be seriously considered, an amendment was proposed to provide that CURB would represent "all ratepayers, including residentials, commercials and industrials." Attachment 19.

Written testimony was submitted by Conni L. McGinness, Director, Legislative Relations, Kansas Electric Cooperatives, Inc. Attachment 20.

Representative Gatlin requested the fiscal note on Senate Bill 105 and staff agreed to provide it to the entire committee.

The meeting was adjourned at 4:55 p.m.

Date: March 28, 1989

## GUEST REGISTER

## HOUSE

## COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Woody Woodman	KCPH	KCMo	816 556-2155
Connie McHennis	Kselect. Corp.	Topeka	272-8740
DICK COMPTON	MIDWEST ENERGY	HAYS	(913) 625-3437
Ed BEUSKE	K.C.C.T.	TOPEKA	357 6321
Joe HARKINS	RWU	TOPEKA	296-7185
Michael Wolf	Common Cause of KS	"	255-3022
Anne Smith	Hein & Ebert	Topeka	293-1441
Margaret Parr	Ks Chap Series Club	Topeka	275-7346
Charlene Stuard	Ks Natural Resource Council	Topeka	233-6707
TREVA POTTER	PEOPLES NAT. GAS	"	235-5996
Ron Jones	Kansas Public Service	Lawrence	843-7842
Tom Day	KCC	TOPEKA	296-3533
<del>Bill Ross</del>	United Tel. Co. of KS	TOPEKA	232-3826
<del>Mike Ross</del>	AT&T	TOPEKA	232-2128
James Power	KDHE	"	296-1531
Kevin Allen	KMEDA	Topeka	233-6456
Eric Miltel	kcc	Lawrence	—
Dr. Stacy Allan	CURB	4826 COUNTY LINE KCK 66106	432-2318
Chon Schneider	Rep Miller	115-S	710-73
Gary Hulet	KDHE	Topeka	296-1337
Rosemary Katz	Leadership Topeka	Topeka	235-9002
DAN MCGEE	CENDEL ELECTRIC	GREAT BEND	316 793-7841

Date: 3/28/89

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Tom Taylor	KPL Gas Service	Topoka	296-1927
Mike Remondino	Rockwell Int'l	4th + Park Atchison, Ks 66002	367-2121
Herman Simon	The Quaker Oats Co	Topoka	235 0021
George Goebel	AARP SLC	Topoka	272-3418
John D. Miller	AARP SLC	Topoka	272-1745
Cedric Moege	SHL	"	266-8972
Norm Stensert	GENERAL MOTORS	Den.	(803)-239-5590
Hanna J. Kidd	CURB	1195 Buchanan Topoka	235-1369
Linda Weir-Eneagon	CURB	1072 S W Central Wichita Ks	316-721-2820
Bill Higgins	CURB	4th Floor Making State Office Bldg	296-3355
Dennis Murphy	KDHE	Topoka	296-1592
RALPH H. TURNER	SILVER HAIRE LEGISLATURE	LAWRENCE	913-843-5825
Nadine Burch	KCOA	Topoka	913-298-1452
Margaret Bangs	Res. Utility Consumer Office (RUCO)	944 W. 1st St. Wichita, Ks	316-682-5763
George A. Dugger	Ks Dept. of Aging	Topoka	296-4586
A.W. Shills	A.A.R.P.	Wichita	722-3690
Bob Burkholder	AARP	Buhler, Ks	316-543-2705
Steve Lett	AARP	Ottawa, Ks	913-242-2048
Denny Koch	SWR TEL CO	Topoka, Ks	276-5658
Tommy Keagan	Fyd Tel Co	Ottawa, Ks	242-3775
Randy Berleson	Empire Electric	Columbus	316-489-2375
JERRY CONRAD	KGS&E	Topoka	257-1701



SENATE BILL No. 2

By Special Committee on Agriculture and Livestock  
Re Proposal No. 1

12-28

AN ACT concerning agriculture; relating to chemigation; amending  
K.S.A. 1988 Supp. 2-3302, 2-3304 and, 2-3305 ~~and 2-3306~~ and  
repealing the existing sections.

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

Section 1. K.S.A. 1988 Supp. 2-3302 is hereby amended to read  
as follows: 2-3302. As used in this act:

(a) "Chemigation" means any process whereby pesticides, fertilizers, ~~animal wastes~~ or other chemicals or ~~animal wastes~~ are added to irrigation water applied to land or crops, or both, through an irrigation distribution system.

(b) "Board" means the state board of agriculture.

(c) "Secretary" means the secretary of the state board of agriculture.

(d) "Operating chemigation equipment" for the purposes of this act shall include, but not be limited to:

- (1) Preparing solution and filling the chemical supply container;
- (2) calibrating of injection equipment;
- (3) starting and stopping equipment when injection of chemicals is involved; and
- (4) supervision of the chemigation equipment to assure its safe operation.

(e) "Anti-pollution devices" means mechanical equipment used to reduce hazard to the environment in cases of malfunction of the equipment during chemigation and includes but is not limited to interlock, waterline check valve, chemical line closure device, vacuum relief device and automatic low pressure drain.

(f) "Supervision" means the attention given to the chemigating

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3-28-89  
Attachment 1



- 118 (1) Chemical supply tank with manually operated valve;
- 119 (2) in-line strainer;
- 120 (3) positive displacement injector pump;
- 121 (4) air bleeder valve for injection pump; and
- 122 (5) calibration device.

123 ~~§ New Sec. 4. Any person who knowingly violates the Kansas~~  
 124 ~~chemigation safety law shall be fined by the court in a sum not~~  
 125 ~~exceeding \$5,000 per violation. This section shall be part of and~~  
 126 ~~supplemental to the Kansas chemigation law.~~

strike and renumber sections 5 and 6 accordingly

127 New Sec. 5. (a) Any person who violates any of the provisions  
 128 of the Kansas chemigation safety law, in addition to any other penalty  
 129 provided by law, may incur a civil penalty imposed under subsection  
 130 (b) in the amount fixed by rules and regulations of the secretary in  
 131 an amount not less than \$100 nor more than \$5,000 for each violation  
 132 and, in the case of a continuing violation, every day such violation  
 133 continues shall be deemed a separate violation.

134 (b) A duly authorized agent of the secretary, upon a finding that  
 135 a person or any employee or agent has violated the Kansas chem-  
 136 igation safety law, may impose a civil penalty as provided in this  
 137 section upon such person.

138 (c) No civil penalty shall be imposed pursuant to this section  
 139 except upon the written order of the duly authorized agent of the  
 140 secretary to the person who committed the violation. Such order  
 141 shall state the violation, the penalty to be imposed and the right of  
 142 such person to appeal to the secretary. Any such person, within 20  
 143 days after notification, may make written request to the secretary  
 144 for a hearing or informal conference hearing in accordance with the  
 145 provisions of the Kansas administrative procedure act. The secretary  
 146 shall affirm, reverse or modify the order and shall specify the reasons  
 147 therefor.

148 (d) Any person aggrieved by an order of the secretary made under  
 149 this section may appeal such order to the district court in the manner  
 150 provided by the act for judicial review and civil enforcement of  
 151 agency actions.

152 (e) Any civil penalty recovered pursuant to the provisions of this  
 153 section shall be remitted to the state treasurer, deposited in the  
 154 state treasury and credited to the state general fund.

1-2

- 192 (10) label information, especially chemigation instructions;
- 193 (11) applicable state and federal laws and regulations; and
- 194 (12) any other subject which the secretary deems necessary.

195 (c) The examination provided for in subsection (b) may be waived  
 196 for any individual who has been certified as a pesticide applicator  
 197 in the category of chemigation pursuant to the Kansas pesticide law.

198 (d) The chemigation equipment operator certification shall expire  
 199 on December 31 of the fourth calendar year after the year of issue.  
 200 A chemigation equipment operator certification shall be renewed for  
 201 a succeeding five year period upon payment of the certification fee  
 202 and passing the examination specified in either subsection (b) or (c).

203 (e) The fee for certification as a chemigation equipment operator  
 204 or for renewal of such certification shall be \$10. ~~\_\_\_\_\_~~ Insert section 6, attached

205 Sec. ~~6~~ 7. K.S.A. 1988 Supp. 2-3302, 2-3304 and, 2-3305 ~~and 2-~~  
 206 ~~3306~~ are hereby repealed. ~~\_\_\_\_\_~~, 2-3306 and 2-3308

207 Sec. 7 8. This act shall take effect and be in force from and  
 208 after its publication in the statute book.

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Sec. 6. K.S.A. 1988 Supp. 2-3308 is hereby amended to read as follows: 2-3308. (a) Except as provided by subsection (b), it is a misdemeanor punishable by a fine not exceeding \$500 for:

~~(1)~~ Any person ~~who engages~~ to engage in chemigation without first obtaining a permit as provided in this act ~~upon conviction shall be deemed guilty of a misdemeanor;~~

~~(b)~~ (2) any person ~~who engages~~ to engage in chemigation on a suspended or revoked permit ~~upon conviction shall be deemed guilty of a misdemeanor;~~

~~(c)~~ (3) any person ~~who tampers~~ to tamper with, or otherwise damages damage in any way, equipment specified in this act ~~upon conviction shall be deemed guilty of a misdemeanor; or~~

~~(d)~~ (4) any permit holder ~~who fails~~ to fail to immediately notify the secretary of any actual or suspected accident resulting from the use of chemigation ~~upon conviction shall be deemed guilty of a misdemeanor.~~

~~(e) Any person who has been convicted of a misdemeanor under this section shall be sentenced to pay a fine which shall be fixed by the court in a sum not exceeding \$500.~~

(b) It is a misdemeanor punishable by a fine not exceeding \$5,000 per violation for any person to knowingly:

(1) Commit any act described by subsection (a); or

(2) commit any unlawful act described by K.S.A. 2-3313 and amendments thereto.

ANALYSIS OF WATER

65-156.

Law Review and Bar Journal References: "Groundwater Pollution I: The Problem and the Law," Robert L. Glicksman, George Cameron Coggins, 35 K.L.R. 75, 190 (1986).

65-157.

Law Review and Bar Journal References: "Groundwater Pollution I: The Problem and the Law," Robert L. Glicksman, George Cameron Coggins, 35 K.L.R. 75, 190 (1986).

NUISANCES

65-159.

Law Review and Bar Journal References: "Groundwater Pollution I: The Problem and the Law," Robert L. Glicksman, George Cameron Coggins, 35 K.L.R. 75, 184 (1986).

WATER SUPPLY AND SEWAGE

Law Review and Bar Journal References: "Groundwater Pollution I: The Problem and the Law," Robert L. Glicksman, George Cameron Coggins, 35 K.L.R. 75, 184 (1986).

"Assembling Your State Groundwater Protection Strategy," Timothy L. Amsden, 35 K.L.R. 335, 341 (1987).

Attorney General's Opinions:

Secretary of health and environment, activities; water supply and sewage; implementation of clean water act; N.P.D.E.S. program. 87-154.

65-163. Public water supply systems; permits; complaints, investigations, orders; judicial review. (a) (1) No person shall operate a public water supply system within the state without a public water supply system permit from the secretary. An application for a public water supply system permit shall be submitted for review and approval prior to construction and shall include: (A) A copy of the plans and specifications for the construction of the public water supply system or the extension thereof; (B) a description of the source from which the water supply is to be derived; (C) the proposed manner of storage, purification or treatment for the supply; and (D) such other data and information as required by the secretary of health and environment. No source of water supply in substitution for or in addition to the source described in the application or in any subsequent application for which a public water supply system permit is issued shall be used by a public water supply system, nor shall any change be made in the manner of storage, purification or treatment of the water supply without an additional public water supply

system permit obtained in a manner similar to that prescribed by this section from the secretary.

(2) Whenever application is made to the secretary for a public water supply system permit under the provisions of this section, it shall be the duty of the secretary to examine the application without delay and, as soon as possible thereafter, to grant or deny the public water supply system permit subject to any conditions which may be imposed by the secretary to protect the public health and welfare.

(b) (1) Whenever a complaint is made to the secretary by any city of the state, by a local health officer, or by a county or joint board of health concerning the sanitary quality of any water supplied to the public within the county in which the city, local health officer or county or joint board of health is located, the secretary shall investigate the public water supply system about which the complaint is made. Whenever the secretary has reason to believe that a public water supply system within the state is being operated in violation of an applicable state law or an applicable rule and regulation of the secretary, the secretary may investigate the public water supply system.

(2) Whenever an investigation of any public water supply system is undertaken by the secretary, it shall be the duty of the supplier of water under investigation to furnish to the secretary information to determine the sanitary quality of the water supplied to the public and to determine compliance with applicable state laws and rules and regulations. The secretary may issue an order requiring changes in the source or sources of the public water supply system or in the manner of storage, purification or treatment utilized by the public water supply system before delivery to consumers, or distribution facilities, collectively or individually, as may in the secretary's judgment be necessary to safeguard the sanitary quality of the water and bring about compliance with applicable state law and rules and regulations. The supplier of water shall comply with the order of the secretary.

(c) Any action of the secretary pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. The court on review shall hear the case without delay.

History: L. 1907, ch. 382, § 3; L. 1909, ch. 226, § 1; R.S. 1923, 65-163; L. 1943, ch.

or the source thereof

COMPLAINT

OPTION #2

or preparation of plans to prevent pollution of said sources

ORDER

Whenever the secretary requires preparation of plans to prevent pollution, he shall provide technical assistance to the supplier, when requested. The supplier shall make appropriate efforts to implement such plan but shall not be accountable for failing to implement elements of the plan that exceed the authority of the supplier.

Technical Assist + Limitation on accountability.

H Energy and NR  
3-28-89  
Attachments + 2

I am here today to support SB 105 which would strengthen the Citizens Utility Ratepayers Board (CURB). I am representing the State Legislative Committee of the American Association of Retired Persons (AARP). AARP, both at the state and national levels, has long advocated representation for the residential consumer in utility regulatory proceedings. I am also representing the Coalition for a utility customer advocacy office. This Coalition is composed of AARP, Common Cause, the Sierra Club, the Retired Federal Employees, the Kansas Natural Resource Council, the Silver-Haired Legislature and several smaller groups.

Why do we need CURB strengthened? As you know, the Kansas Corporation Commission (KCC) requires legal representation for those wishing to intervene in rate hearings. Individuals and small businesses cannot afford this legal help since such help can easily cost thousands of dollars for one case. Banding together in CURB can provide legal representation. At the present budget this would cost only about 3¢ per customer per month. That 3¢ would fund all cases. Ratepayers have always been charged for all that the utilities spend on rate cases. Until CURB was appointed last year, ratepayers had no one to represent them. Consumer representation is not a new concept. Forty-one states now have such offices.

CURB has already helped residential and small business ratepayers who can reside in cities, in small towns or on farms. Last year when KPL Gas Service asked for a rate increase, about 60% of it was to be placed on the small ratepayers through a greatly-increased monthly service charge. Such an increase is very hard on the low- and fixed-income utility customer. Some of my AARP friends tell me that they spend at least 1/3 of their income on utilities. After CURB intervened in the KPL case, the KCC disallowed this large increase in the customer service charge, saving each gas customer about \$36 a year or over \$1 million per month for all customers. But we are very fortunate in Kansas; we have low gas prices, 33.4% below the national average.

CURB is now intervening in the United Telephone case in which the company has asked for a large increase in local service rates. AARP strongly supports universal telephone service and believes that the divestiture of AT&T has threatened that by a series of increases in local service charges to offset reductions in long-distance charges. Access charges to long distance have been increased although a large percentage of Kansans seldom use long distance.

We have just learned that the Union Gas Co. is requesting a rate increase of \$4.1 million, again with much of this increase to come on the monthly service charge. Union Gas has filed the information that they plan to spend \$310,000 on this rate case. This single case costs more than CURB's budget for an entire year; CURB will cover more than a dozen cases. Yet the amount that Union Gas will spend on a rate case will be a business expense and will be charged to ratepayers.

Utilities have always been allowed to spend whatever they want to in regulatory proceedings, with no cap placed on what they can spend. Large industries also have their legal staffs. But until the appointment of CURB, the residential and small business utility customer had no way to be represented. It is only fair play that all customers be represented adequately and independently in rate hearings. Ask the large industrial customers if they would like their lawyers to work under the supervision of the KCC. I believe there were at least 20 registered utility lobbyists last year who spent \$44,000 on lobbying--not including their salaries. On the other hand, we AARP members are volunteers. Utilities are regulated businesses given an opportunity to make a guaranteed rate of return. Other businesses in Kansas operate as free enterprises. They do not have this guarantee. As you know, many small businesses have gone broke in the last few years, particularly many farmers. It is only fair that farmers and small town and city utility customers be represented adequately in the regulatory process.

We urge that this Committee support SB105 to give the entire House an opportunity to vote on this bill. As you know, it passed the Senate 38-2 through bipartisan effort. The concept of SB105 is not a partisan issue but is of vital concern to all residential and small business utility ratepayers.

Margaret J. Miller, 6807 E. Bayley, Wichita KS 67207, (316) 686-2555

H Energy and NR  
3-28-89  
Attachment 3

March 28, 1989

Testimony before the Energy and National Resources Committee

by Linda Weir Enegren, CURB Chairman

The Citizens' Utility Ratepayer's Board was formed in January, 1988, by KCC Chairman, Keith Henley to represent the residential and small business ratepayer in utility matters before the KCC.

CURB is composed of five volunteer members, one from each Congressional District throughout the state.

CURB's first meeting was set for May 4, 1988. Staff was hired Sept. 1, 1988.

During its first eight months of operation CURB has researched and intervened in the following utility matters before the KCC:

KPL Rate Increase Case

Generic Billing Docket for Gas & Electric Companies

Fairmont Heights Water Company Rate Case

Union Gas Pipeline Safety Settlement

KPL Electric Rate Settlement

United Telephone Rate Case

KG&E Ripley Power Plant Closing

KG&E Show Cause Order

KCPL Show Cause Order

KG&E Church Demand Meter Issue

Sunflower/Garden City Rate Contract

KG&E Supervised Lender Application

To have accomplished all of this during our initial months of operation has required diligence on the part of each Board Member. Of the eleven public hearings which have been held, Board has been represented at all of them. Two or more Board members have attended eight hearings.

H Energy and NR  
3-28-89  
Attachment 4

CURB is fortunate to have an especially effective attorney, Bill Riggins. Currently Bill is probably the only attorney working for the state who bears the total responsibility for researching, developing, and trying such a large number of cases as I have previously described.

Hundreds of consumers have responded to our initial efforts by volunteering their time, by testifying and by seeking additional information regarding utility matters.

CURB has been invited to meet with, and has met with management personnel from KPL, KG&E, ARKLA and Union Gas.

We appreciate the cooperative spirit in which such meetings have been initiated and held.

Why have consumers responded so positively to the formation of CURB? First, there is the matter of money. Today the average family spends one full month's income on utility bills. This is more than at any time in the past.

A continuing concern of CURB is the number of working consumers who can't (not won't, but can't) pay their utility bills. They are living so close to the edge, that any unexpected expense such as a medical or dental bill can throw them into a financial crisis.

Those on fixed incomes also have difficulty juggling expenses. When utility bills rise, they often go without food or medicine to see that their bills are paid. With utility bills continuing to rise it is doubtful their concern will cease.

Second, consumers are concerned about the lack of personal courtesy they receive in their dealings with the utilities. Words which we hear on a daily basis are "rude", "discourteous" and worse. We have heard countless tales regarding the unwillingness of utility employees to extend even the most basic assistance to customers.

Finally, consumers may not be experts but certainly they recognize the signs when something is wrong:

When 3500 households in the KG&E service area are temporarily disconnected from service because they cannot pay their bills, there is something wrong.

When a utility company in Wichita, Kansas - not New York City, but Wichita, Kansas - installs bullet proof glass in its windows - there is something wrong.

When an airplane manufacturing company can make their own electricity for less than the electric company can sell it to them, there is something wrong.

- These concerns are real. They have been brought about, partially because of the one sided representation before the Commission which has occurred in the past.

Any order which is issued by the KCC must be legally consistent with the evidence which is presented. When that evidence is only presented by large industrial customers and utility companies, the decision making process becomes skewed.

Ratemaking is partially a legislative process and partially a political process. With 45 paid utility lobbyists, consumers are at a disadvantage here, too, on the political side.

Fixing what is wrong is what CURB is all about. Giving a voice in utility matters is an idea whose time has come. However, whether it is made independent or continues as a part of the KCC, CURB desperately needs to exist statutorily.

This is because, in its present form, CURB probably is legally unable to appeal KCC orders which it considers to be incorrect.

A national association of consumer advocates has denied CURB membership because we do not exist statutorily.

To be an effective voice for consumers CURB must be able to disagree with any action taken by KCC staff, utilities, or the Commissioners.

Currently CURB exists at the discretion of the KCC Chairman. Should a disagreement arise between him and CURB, CURB's access to technical staff, as well as its budget for intervention costs could be shut off.

The 950,000 Kansas consumers whose interest CURB serves, deserve more than that.



Our nation offers many examples of resistance to change. Like the National Rifle Association's insistence that semi-automatic weapons belong on a merchandiser's shelf - regardless of the carnage left by that law - there are a handful of legislators and utility employees who truly believe that what is good for a utility is always good for Kansans.

And then there are the rest of us . . . those of us who have learned the most comforting lesson life offers to all who have left our youth behind - that for everything, there is a season and that sometimes change really does signal progress.

Still, over these past five years consumers certainly have come to understand that the utilities can influence some of the legislators some of the time - but I cannot begin to convey the depth of our gratitude to those of you who are proof - that they can't influence all of the legislators all of the time.

CURB really is your vehicle through which you can assure that your constituents' needs and concerns are fairly represented during the ratemaking process. Consumers need for CURB to exist statutorily. On behalf of consumers throughout the state, I urge your passage of Senate Bill 105.

TESTIMONY ON SENATE BILL 105 BEFORE THE ENERGY AND NATURAL RESOURCES  
COMMITTEE OF THE KANSAS HOUSE, MARCH 28, 1989.

MISTER CHAIRMAN AND MEMBERS OF THE COMMITTEE, I'M RALPH TURNER,  
DELEGATE FROM DOUGLAS COUNTY TO THE KANSAS SILVER HAired LEGISLATURE.  
I'VE RECENTLY COMPLETED TWO TERMS AS PRESIDENT OF THE BOARD OF DIRECTORS  
OF THE KANSAS SILVER HAired LEGISLATURE, INC. I'M ALSO SECRETARY OF  
THE JAYHAWK AREA AGENCY ON AGING BOARD OF DIRECTORS, AND WAS APPOINTED  
TO THAT BOARD BY THE DOUGLAS COUNTY COMMISSIONERS. FOR A GOOD MANY  
YEARS, I REPRESENTED THE KANSAS COALITION ON AGING ON THE CONSUMER  
INFORMATION BOARD OF THE KANSAS CORPORATION COMMISSION.

DURING THE YEARS, MY CHIEF CONCERN HAS BEEN FOR THE ELDERLY AND  
DISABLED -- PARTICULARLY THE LOW INCOME. I HAVE APPEARED BEFORE THE KCC  
AND GIVEN TESTIMONY ON MANY OCCASIONS, INCLUDING WOLF CREEK AND THE  
TRAILWAYS ABANDONMENTS. THE EXPERIENCE I'VE HAD IN THE PAST CONVINCES  
ME THAT RESIDENTIAL AND SMALL COMMERCIAL RATEPAYERS HAVE A NEED FOR A  
CONSUMER ADVOCATE.

WHEN I MAKE THIS STATEMENT, I'M NOT IN ANY WAY IMPLYING THAT THE  
KCC IS NOT SERVING RESIDENTIAL AND SMALL COMMERCIAL RATEPAYERS. HOWEVER,  
THE KCC AND THE KCC STAFF HAVE TO BALANCE EVERYBODY'S INTERESTS -- THE  
UTILITIES AND ALL CLASSES OF CUSTOMERS. UTILITIES ARE IN BUSINESS TO  
MAKE A PROFFIT -- THE SAME BEING TRUE OF THE LARGE CUSTOMERS OF UTILITIES.  
THEREFORE, IN BOTH CASES, THEY ARE PROTECTING THEIR OWN INTERESTS AND NOT  
THE INTERESTS OF THE SMALL RATEPAYERS.

INDIVIDUALS LIVING ON LOW AND FIXED INCOMES IN MANY CASES SPEND GREATER  
PARTS OF THEIR INCOMES ON UTILITY BILLS. THIS WAS TRUE THIS PAST WINTER

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DUE TO TEMPERATURES BEING CLOSE TO 0 DEGREES AND BELOW. IN PASSING, WHAT WE EXPERIENCED THIS PAST WINTER POINTS OUT THE IMPORTANCE OF ADEQUATE LIEAP FUNDING.

AS WE WELL KNOW, THE PRICE OF UTILITY SERVICE CONTINUES TO INCREASE, AND EXPERIENCE HAS BROUGHT OUT THE FACT THAT SENIOR CITIZENS WILL PAY UTILITY BILLS BEFORE THEY PAY ANYTHING ELSE -- MAYBE EVEN SHORTING THEMSELVES ON FOOD. THIS AGAIN MAKES IT IMPORTANT THAT SOMEONE ADVOCATE FOR THEIR INTERESTS SO THEY DO NOT GET LOST IN THE SHUFFLE OF HIGH UTILITY RATES.

I'D LIKE TO CITE A PERSONAL EXPERIENCE OF A CASE I AM DOING VOLUNTEER WORK ON. THIS LADY LIVED ALONE. HER SOLE INCOME WAS SOCIAL SECURITY OF LESS THAN \$400 A MONTH. THE COST OF HER UTILITIES WERE UPPERMOST IN HER MIND. FORTUNATELY, LIEAP FUNDS WERE AVAILABLE.

AT THE PRESENT TIME, 38 OTHER STATES HAVE A LAW THAT ESTABLISHES A CONSUMER UTILITY ADVOCATE. STATES SUCH AS MISSOURI, INDIANA, IOWA AND COLORADO. INDIANA ESTABLISHED SUCH AN OFFICE MORE THAN 55 YEARS AGO.

WE HAVE A CITIZENS' UTILITY RATEPAYERS BOARD AND A CONSUMER COUNSEL NOW AND THEY ARE DOING A GREAT JOB WITH WHAT LITTLE THEY HAVE TO WORK WITH. BUT THEY DON'T EXIST AS A MATTER OF LAW, AND THEY COULD BE GONE TOMORROW IF THE RIGHT PERSON OR PERSONS WANTED THEM TO BE GONE TOMORROW.

I WOULD HOPE THAT THIS COMMITTEE WOULD PASS ON THIS LEGISLATION FAVORABLY SO THAT SMALL RATEPAYERS IN KANSAS WILL BE ASSURED THAT THEY WILL HAVE SOMEBODY TRYING TO SAVE THEM MONEY ON THEIR UTILITY BILLS NOT JUST TODAY BUT NEXT YEAR AND IN YEARS TO COME.

THANK YOU. I APPRECIATE HAVING THIS OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE.

# Kansas Natural Resource Council

Testimony before the House Committee on Energy and Natural Resources  
SB 105: establishing a citizens' utility ratepayer board

Charlene A. Stinard, Kansas Natural Resource Council

March 28, 1989

My name is Charlene Stinard and I represent the 700 members of the Kansas Natural Resource Council who promote sustainable natural resource policies for the state of Kansas.

When Kansas Corporation Commission Chairman Keith Henley created the Citizens' Utility Ratepayer Board in 1988, Governor Hayden responded with five excellent appointments. The board followed suit, hiring an experienced advocacy attorney.

The CURB provides legal representation in utility rate cases before the KCC for residential and small business customers. There are two reasons to grant statutory authority for an independent Board.

First, while the current KCC chairman seems both sympathetic to and supportive of the goals of the CURB, a less committed chairperson could blunt the Board's effectiveness by restricting access to files, staff support, and financial resources.

Second, an independent Board could be eligible for financial and technical assistance available through the national association of utility customer advocates, expanding the effective use of existing resources.

The bill amended and passed by the Senate grants statutory authority for an independent CURB. The passage of SB 105 sends a powerful message that legislative commitment exists to ensure fair representation for residential and small business consumers in utility rate hearings.

We urge the Committee's full support for this effort.



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# SIERRA CLUB

## Kansas Chapter

Citizens' Utility Ratepayer Board

Testimony Before House Committee on Energy and Natural Resources

March 27, 1989

I am Margaret Ahrens, lobbyist for the 2200 members of the Kansas Chapter of the Sierra Club. The Sierra Club has long-standing concerns for the conservation of our natural resources. Because of the close relationships between utility rate structures and conservation, our members have supported the institutionalization of a citizens' utility ratepayer board (CURB) in Kansas for the past several years. We believe that an independent CURB is the appropriate structure for evaluating rates and rate structures for the small energy user.

However, it is not in rate issues alone that consumers may presently not be represented. The small consumer deserves to be heard on matters of service and safety. I have personal experience with the need for this voice. In Minnesota I served on a utility advisory committee with a charge to advise the utility on shut-off policy. In addition, I sat for a year on the citizens' advisory committee to the Minnesota Environmental Quality Board struggling with the farmers' revolt over the extension of high voltage transmission lines over their fields. I came away from these experiences with the conviction that the needs of the small consumer are NOT given appropriate consideration in the utility--state utility commission process. Residential and commercial sectors together pay the largest share of electricity revenues in Kansas--in 1986, \$1,303,000,000 compared with \$368,600,000 paid by industry --yet because of the cost of information and the price of representation, their voice is fragmented and unheard.

With current rate structures, large users of electricity pay lower electric rates. This policy works the same way we have seen in water: the heavy user has received exactly the wrong message from the economy. With water we have hesitated in telling consumers with price signals that abundant and clean water is not longer "free". In the production of electricity the case is the same.

The burning of fossil fuels for the generation of energy is directly related to "the greenhouse effect", which may be related to our current drought. Nuclear power generation has the citizenry deeply concerned. But where are the signals in the Kansas rate structures that tell small AND large electricity consumers to invest in more efficient energy systems or practices?

The savings to the public and the environment brought on by such signals can be astronomical. For example, while California and Texas grew in the same numbers between 1980 and 1985, electricity demand

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growth increased 4.5% in Texas and only 1.4% in California. Texas had to build 11 1,000 megawatt power plants while California needed only 3 1/2. Energy conservation became big business in California. All rate payers "profited" by the least cost energy planning instituted there.

We support SB 105 but would make these recommendations to clarify funding and responsibilities:

Specify a mechanism for funding the CURB. We favor an assessment on utilities to be paid by those consumers served by the CURB over use of the General Fund.

Specify that the budget of the CURB will be separated from that of KCC. Separate budgets should not dictate separate support staff.

We applaud you for your concern for the citizens and businesses in Kansas who deserve an independent voice in utility- commission matters. We believe that that voice will conserve dollars and resources for all Kansans in the future.

March 28, 1989

HEARING ON SB 105 BEFORE THE HOUSE ENERGY & NATURAL RESOURCES COMMITTEE

I thank you for the opportunity to appear before you today, Mr. Chairman and members of the committee. I am Margaret Bangs, Co-Chair of the Coalition for a Residential Utility Consumer Office whose members include the American Association of Retired Persons, The Retired Federal Employees of Kansas, The Silver Haired Legislature, Common Cause, Sierra Club, and the Kansas Natural Resources Council. Members of our coalition strongly support SB 105 which would establish by legislative statute an independent Citizens Utility Ratepayers Board.

The passage of this bill would insure the permanence and stability of CURB. There might not always be a chairman of CURB as dedicated, tireless and effective as Linda Weir-Enegren, nor a KCC Chairman as supportive of a CURB within the KCC as Keith Henley. Governor Mike Hayden has also demonstrated his support for small ratepayer representation in the regulatory system when he appointed a task force, of which I was a member, in 1987 to recommend to him legislation which would provide small ratepayers representation in the regulatory process.

Forty-one states, including neighboring Missouri, Oklahoma and Colorado, already have utility consumer advocate offices because their state legislators recognized that small ratepayers were not being adequately represented in the rate-making process. A CURB, established by legislative statute and adequately funded and staffed, opens up the regulatory system, giving all--not just the economically powerful-- a chance to make their case, to intervene before the KCC, thus correcting a flaw or weakness that existed previously.

The KCC is mandated by law to balance the needs of the utilities and the interests of their customers. This is not easy to do; and when the KCC has to make these difficult and hard decisions, small ratepayers must be heard, thus achieving a more level playing field. By law, the KCC balances interests and does not favor any party. The KCC is definitely not a consumer protection agency. While the KCC staff represents the general public, it does not represent a specific class of customers, such as small ratepayers.

By creating CURB, KCC Chairman Henley demonstrated his recognition of the need for specific small ratepayer representation. Both Commissioner Wright and Commissioner Kowalewski have also voiced their support for small ratepayer representation, saying they believe it will enhance their decision-making process and increase consumer confidence in the process of government regulation. The more information, the better, they say, when they must make million dollar, even billion dollar decisions. Yet, some critics in the past have maintained that an independent ratepayers board would be a duplication of the KCC itself.

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Some critics say that utility ratepayers, who also happen to be voters, are satisfied and have no quarrel with their utility bills. This is not what members of our coalition have been hearing; and a 1988 survey for the Wichita-Sedgwick County Partnership for Growth, or Wi/SE, found that the three major concerns or complaints of the residents of Sedgwick County were roads, taxes and utility bills. Other critics of a consumer utility advocate office point to cost, but it is the supreme irony that utility customers are assessed on their bills for the expenses that utilities incur while seeking rate hikes before the KCC. Not many ratepayers are aware of this irony, that they are paying for the effort to raise their bills.

Between utilities and their customers there has always been an imbalance both of financial power and political power. Small ratepayers have lacked the clout that the utilities and large industrial customers possess. Some 100 utilities come under KCC jurisdiction, and the majority have at least one lobbyist who roams the corridors of the Capitol. They can have, therefore, a nearly one-on-one relationship with the 165 members of the legislature. Not many small ratepayers are able to personally petition their legislators and be heard in this manner, nor do they often have an opportunity to take a legislator to lunch.

It is exceedingly gratifying and encouraging that the full Senate has passed SB 105 by a 38-2 vote and that the bill is now before this House Committee hearing. It is my deep hope that you will vote favorably on this bill which will establish an independent CURB by legislative statute and that it will also be passed by the full House. I do thank you.

Margaret Bangs  
944 St. James Place  
Wichita, KS 67206  
3-16-682-5763





**COMMON CAUSE / KANSAS**

701 Jackson, Room B-6 • Topeka, Kansas 66603

March 28, 1989

Statement in Support of Senate Bill 105  
Presented to the House Energy & Natural Resources Committee  
by Michael Woolf, Executive Director

As a member of the Coalition for a Residential Utility Consumers Office, Common Cause/Kansas rises in support of Senate Bill 105.

Common Cause advocates open and accountable government and supports proposals to increase public participation and representation in all levels of government, including state agencies such as the KCC.

Common Cause/Kansas still believes that Kansas needs an independent and well-funded Residential Utility Consumers Office, but we believe that this proposal, which makes the Citizens Utility Ratepayers Board statutory, is a step in the right direction.

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Testimony on SB 105  
House Energy & Natural Resources Committee  
March 28, 1989  
Presented by Nadine Burch  
For the Kansas Coalition on Aging

My name is Nadine Burch. I am the Senior Advocate for the Kansas Coalition on Aging. I appreciate the opportunity to appear before the committee this morning to express the support of KCOA for SB 105.

Utility costs represent a significant portion of the budgets of many older Kansans. While retirement income is generally less than pre-retirement income, utility rates do not differentiate between workers and retirees. In discussing this bill with an older woman who has a part-time minimum wage job, I learned that her monthly level-payment gas and electric bill is greater than the bi-weekly paycheck she receives from her employer. Ratepayers, especially those of limited means, need an advocate to represent them in the rate-setting process.

Despite a low budget and small staff, CURB has effectively represented the interests of residential ratepayers in utility rate cases. CURB's efforts in one rate case resulted in a savings of \$.50 per month for ratepayers who receive electric service from Kansas Power & Light. In addition to their actions in rate cases, CURB represents ratepayers who file formal complaints against utility companies with the KCC. For someone who believes that he or she has been overcharged, the availability of an advocate who understands the system is invaluable.

Passage of this legislation will provide The Citizens' Utility Ratepayers Board with statutory recognition which will enhance its independence. We believe that this independence will allow CURB to more effectively advocate for residential utility ratepayers. It will also allow CURB to gain access to the national network of similar agencies. Information gained from this network will enhance CURB's ability to represent consumers. Most importantly, this legislation will help to assure the continued existence of CURB and provide the foundation upon which to build an effective organization to represent residential ratepayers in the utility rate-making process. We urge the committee to support SB 105.

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DEPARTMENT ON AGING  
 Docking State Office Building, 122-S  
 915 S.W. Harrison  
 Topeka, Kansas 66612-1500  
 (913) 296-4986

Mike Hayden  
 Governor

Esther Valladolic Wolf  
 Secretary of Aging

TESTIMONY BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE  
 SB 105  
 MARCH 28, 1989

The Kansas Department on Aging (KDOA) supports SB 105 as a way to improve the functioning of the Citizens' Utility Ratepayers Board. As a result of being established by statute, CURB will become eligible for membership in the National Association of State Utility Consumer Advocates (NASUCA). NASUCA membership will provide access to technical assistance not currently available and enable CURB to make better use of its limited resources.

Proposed Amendments

Amendment #1 - Support Staff

Passage of this bill will to some extent allay consumer concerns about the functional independence of CURB. Some additional clarifications in this bill would go further in assuring consumers of a truly independently functioning body. As currently written, this bill limits the CURB board to employing only one person, the consumer counsel. KDOA supports modifying Section 1 (e) to allow the board, subject to appropriations, to employ such supportive staff as necessary. The total reliance on the Kansas Corporation Commission for supportive staff places the CURB in an awkward position and contributes to the perception that CURB is not functionally independent.

Amendment #2 - Witnesses

KDOA also supports modification to the bill to specifically provide that the CURB may utilize consultants/expert witnesses. This activity is critical to the effective functioning of the CURB. Although it is implicitly provided for in Section 2 and funds are included in the KCC appropriations bill (2064), it would be preferable to explicitly provide for this power in the authorizing legislation.

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### Amendment #3 - Funding

The Committee may also wish to identify a funding mechanism for CURB in this bill. Because of the relatively small amount of money involved, we think it prudent to keep the funding mechanism simple and thus favor funding the CURB in the same manner that the KCC is funded - i.e. assessment upon the utilities which include this expense in their rate base.

### Amendment #4 - Budget Process

The Committee may also wish to address CURB's budget process in this bill. This year the KCC established CURB's A and B level budget allocations. To keep the CURB independent in fact and in appearance, we recommend that the Budget Division set CURB's A and B level allocation.

### Conclusion

In conclusion, KDOA supports a strong, functionally independent CURB. SB 105, with the modifications we have suggested, goes a long way toward this goal, and we urge its favorable consideration by this Committee.

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STATEMENT OF THOMAS E. GLEASON  
IN OPPOSITION TO SENATE BILL 105

Mr. Chairman and Members of the Committee, my name is Thomas E. Gleason, Sr. I am an attorney of Ottawa, Kansas, and a registered lobbyist on behalf of the Independent Telephone Company Group known as Assaria, et al.

The Independent Telephone Company Group, Assaria, et al. consists of sixteen certificated telephone utilities of the state whose primary common characteristics include their size which is small (none of the companies serves more than 5,000 access lines) and that they serve essentially the rural areas and small incorporated communities throughout the State of Kansas.

On March 15, 1989, I wrote to the chairman expressing our group's views on SB 105 and mailed a copy of that letter to each of the members of the committee. I won't burden you with a repetition of the contents of the letter. We merely want to be on record as follows:

1. We are generally opposed to a legislatively mandated CURB for the reason that we feel the existing CURB organization within the State Corporation Commission adequately serves the needs of the residential and small commercial telephone customers of the state.

2. The exemption of electric and telephone cooperatives from the legislation should be extended to include any certificated telephone utility serving less than 5,000 access lines.

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3. The present language of SB 105 which includes the authority for the CURB organization to initiate proceedings before the KCC is unneeded and might be destructive of the current relationship as between the legislature and the KCC.

I do believe I should expand briefly on two of the stated objections. Small telephone utilities should be exempted from any CURB legislation for the reason that the primary objectives of CURB legislation simply do not apply. I assume we all agree that the CURB movement originated with the anticipated "rate increase shock" which was feared might flow from construction costs of the Wolf Creek Nuclear Generating Station. The concept was extended to telephone utilities primarily due to the concern for the customer rate effects which might flow from the court ordered breakup of American Telephone and Telegraph Company. Neither of those elements has any significant application to the regulation of small certificated telephone utilities or the rates they charge their residential and small business customers. In addition the relationship between small telephone utilities and their customers (whether or not they may be cooperative organizations) is an entirely different relationship than that as between large telephone utility holding companies and their customers. We suggest that communication with your constituents who are served by small rural oriented telephone companies would

verify the differences in those relationships. It would demonstrate that whatever need there may be for a legislatively mandated CURB organization should not apply to small telephone utilities.

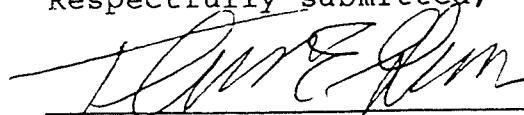
The third basis of our objection to the proposed legislation has to do with the language which authorizes the CURB organization itself to initiate actions before the KCC. We believe that that language has a potential for interfering with the current relationship between the legislature and the Commission. Under the present statutes and rules and regulations, proceedings may be initiated before the KCC either by customers, the utilities or the Commission itself. The KCC as this legislature's administrative agent in the regulation of utilities is directly answerable to the legislature so that the legislature has overall oversight and control of the scope of proceedings before the KCC. There is no language in the proposed CURB legislation other than the sunset provision which similarly places the legislature in a position of oversight and control over the activities of the CURB. It is our position that if the objective of the CURB is to protect the interests of the residential and small commercial customers as to rates and services then the existing rules and regulations provide full access to the Commission for a determination of any rate or service issues which effect those customers.

We are concerned that the present language of SB 105 would permit the CURB organization, as consumer advocates independently of customers direct involvement, to impose burdensome, time consuming, and expensive proceedings before the KCC which might be wholly unrelated to local residential and small commercial customer concerns. We therefore urge that the language which authorizes the CURB itself to initiate proceedings before the KCC be deleted. It is inconceivable to us that any legitimate concern of the CURB organization could not be pursued through a directly involved and effected customer under the existing Commission regulations.

The fact that regulatory processes have become increasingly burdensome is one of the reasons that we feel small telephone utilities should be exempt from any CURB legislation. We feel very strongly that the CURB authority to initiate proceedings other than through a concerned and effected customer of the utility could very well add to the small telephone companies' regulatory burden.

Thank you for this opportunity to appear and state our position so that the legislature will be in a position to make a more fully informed judgment.

Respectfully submitted,



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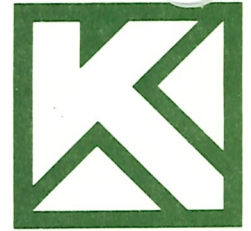
Thomas E. Gleason,  
THOMAS E. GLEASON, CHARTERED  
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Post Office Box N  
Ottawa, Kansas 66067  
(913) 242-3775  
Supreme Ct. Att. Reg. No. 04201



# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the  
Kansas State Chamber  
of Commerce,  
Associated Industries  
of Kansas,  
Kansas Retail Council

March 28, 1989

### KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Energy and Natural Resources

by

Ed Bruske  
President

Mr. Chairman and members of the Committee:

KCCI is opposed to Senate Bill 105 which would establish by statute a Citizens Utility Ratepayers Board (CURB). The key word in our opposition is "statute." We have no opposition as it relates to the Kansas Corporation Commission (KCC) establishing or, in this case, expanding the influence of citizens or a certain segment of the business community into the ratemaking process, even though we were under the assumption that this process was already being considered in the KCC deliberations to protect the consumer.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

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There isn't a month goes by that we don't receive calls from our members, large and small, regarding their concerns as it relates to a particular rate, or a proposed rate case. We always inform our members to make their concerns known to the Kansas Corporation Commission, either by letter or appearing at the Corporation Commission meeting.

Because of these calls and the conversations concerning the creation of CURB in 1987, we decided to survey our members in September of 1987 on a number of issues, CURB included. As a result of that survey, we received 473 responses from our membership. The overwhelming percentage of those responding believed that there was some need to have the Kansas Corporation Commission pay particular attention to the effects of the utility rate increases on business, both large and small. However, in regard to the question concerning the specific creation of a Citizens Utility Ratepayers Board by statute, 72% of the respondents objected to the newly created board. As a result of that poll, KCCI supported the creation of a consumer ratepayers board operating within the existing KCC structure, and agreed to the filling of an existing legal position to assist the board. We even encouraged the Kansas Corporation Commission to place more emphasis on small business as it related to utility rates. But, under no condition did we approve of a separate group created by statute.

In closing, we feel that the Kansas Corporation Commission, through internal management readjustment, can place additional emphasis on this particular subject. In our opinion, there is no justification for creating an additional agency within an agency. If the legislature feels that additional emphasis, or representation, should be given to the citizens and a certain segment of the business community, then they can insist that this take place at the time of the budgetary process when they review the Corporation Commission budget at budget hearing time.

We hope this committee will reject the concept of a Citizens Utility Ratepayers Board by statute and will keep such a function within the Kansas Corporation Commission's existing authority.

TESTIMONY PRESENTED TO THE HOUSE ENERGY AND NATURAL RESOURCES  
COMMITTEE ON MARCH 28, 1989

Mr. Chairman and Members of the Committee:

I am Treva Potter representing Peoples Natural Gas. I am here today to speak in opposition to Senate Bill 105 because we are opposed to the concept of a statutory CURB. We are certainly not opposed to consumers being represented, but we believe they are more than adequately represented by the KCC staff and the attorney general's office, as well as the recently established CURB. The KCC staff and the commissioners have always done an excellent job in this capacity and while it is true that the commissioners are charged with weighing all the facts in a rate case, the staff is charged by law to represent the interests of the public. The CURB as presently established has only been effectively operating for a few months and we do not believe this a long enough period to determine its true worth. Again I want to emphasize that we are not against the consumer being represented. As I said, we believe they are already represented by the KCC and that CURB duplicates, and in some cases, competes with the protection the KCC provides the consumer -- and at more cost to the consumer. In these times of rate stability, this does not seem to be justified. However, Kansas already has a CURB. Why not see how well it functions in its present form before "setting it in cement."

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SENATE BILL No. 105

By Senators Morris, Ehrlich, Reilly, Thiessen, Vidricksen, Winter  
and Yost

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AN ACT establishing the citizens' utility ratepayer board.

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

Section 1. (a) There is hereby established a citizens' utility ratepayer board which shall consist of five members appointed by the governor. One member shall be appointed from each of the congressional districts. *The members of the board shall serve for a term of four years, except that the members of the first board shall serve for the following terms: (a) Two members shall serve terms of two years following the date of appointment; and (b) three members shall serve terms of four years following the date of appointment.* All vacancies in office of members so appointed shall be filled by appointment by the governor for the unexpired term of the member creating the vacancy.

(b) The board shall organize at its first meeting by the election from its membership of a chairperson and by the adoption of such rules of procedure as it deems necessary for conducting its business.

(c) The board shall hold such meetings as in its judgment may be necessary for the performance of its powers, duties and functions. Appointive members of the board shall receive compensation, subsistence allowances, mileage and other expenses for attending meetings of the board as provided by K.S.A. 75-3223, and amendments thereto.

(d) The state corporation commission shall provide such technical and clerical staff assistance as may be requested by the board in the administration of the provisions of this act.

(e) The board shall administer this act and shall have and may

may

reasonable

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47 exercise the following powers, duties and functions:

- 48 (1) Employ an attorney as a consumer counsel;
- 49 (2) guide the activities of the consumer counsel;
- 50 (3) recommend legislation to the legislature which in the board's
- 51 judgment would positively affect the interests of utility consumers;
- 52 (4) ~~adopt rules and regulations necessary to carry out the~~
- 53 ~~purpose of this act.~~

54 Sec. 2. The consumer counsel may do the following:

55 (a) Represent residential and small commercial ratepayers before  
56 the state corporation commission;

57 (b) function as an official intervenor in cases filed with the state  
58 corporation commission, ~~including rate-increase requests;~~

59 (c) ~~initiate actions before the state corporation commission;~~  
60 ~~[initiate actions before the state corporation commission;]~~

61 (c) ~~(d)~~ ~~[d]~~ represent residential and commercial ratepayers who file  
62 formal utility complaints with the state corporation commission;

63 ~~(e) [(e)]~~ -- intervene in formal complaint cases which would  
64 ~~affect ratepayers; and --~~

65 ~~(f) handle other utility-related matters affecting ratepayers.~~  
66 (d) ~~(e) [(f)]~~ -- make application for a rehearing or seek judicial review  
67 of any order or decision of the state corporation commission.

68 Sec. 3. Neither the board or the consumer council shall  
69 have the power or authority concerning any action taken by an  
70 electric or telephone cooperative with a membership of less than  
71 15,000.

72 Sec. 4. The provisions of sections 1 through 4 shall expire on  
73 July 1, 1991.

74 Sec. 4 5. This act shall take effect and be in force from and  
75 after its publication in the statute book.

76

in proceedings involving applications for general rate increases and other proceedings initiated by the state corporation commission.

by a utility

small

and

in cases where the consumer counsel intervened before the issuance of such order or decision.



**KANSAS TELECOMMUNICATIONS ASSOCIATION**

Testimony before the  
House Committee on  
Energy and Natural Resources

SB 105

March 28, 1989

Mr. Chairman, members of the Committee, I am Rob Hodges, Executive Vice President of the Kansas Telecommunications Association. Our membership is made up of 32 telephone operating companies and other firms and individuals who provide service to and support for the telecommunications industry.

The KTA appears today to oppose SB 105 and to question the necessity of enacting the bill, insofar as it would make changes in the Citizens' Utility Ratepayer Board (CURB) before experience with the existing structure has had an opportunity to demonstrate whether change is needed.

Further, the bill could create an entity intended to reduce costs, which instead raises the cost of utility service by greatly increasing the workload, and potentially the size, of the current Kansas Corporation Commission staff. Note that lines 43 through 45 of the bill commit KCC resources on an "as requested" basis rather than on an "as is determined reasonable" basis. KTA believes that such language places the ability to make significant spending decisions in the wrong hands. The KCC decides whether a utility's request is appropriate. That same body should decide whether a request from the CURB's is appropriate, too.

A technical point which our members raised in discussing the bill concerns the proposed number of members for the CURB. Because the state may lose one of its Congressional districts, we suggest that language regarding the size of the CURB not specify a number of members, but rather direct the Governor to appoint a representative of each Congressional district to serve a four-year term.

*H Energy and NR  
3-28-89  
Attachment 16*

To reiterate, it is the position of our association that the CURB should be allowed more time to operate in its present form before a decision on organizational change is considered. If the Kansas Corporation Commission no longer effectively represents utility customers, creation of a new, free-standing agency may be examined as an alternative.

Thank you for this opportunity to present KTA's opposition to SB 105.

Off-Highway Products & Driveline Division  
Rockwell International Corporation  
Metal Castings-Atchison Plant  
Fourth and Park Streets  
P.O. Box 188  
Atchison, Kansas 66002



Rockwell  
International

(913) 367-2121

March 28, 1989

Michael L. Remondino  
Controller  
Off-Highway Products & Driveline Division  
Rockwell International  
Atchison, Kansas 66002  
367-2121 - Ext. 241

1. Senate Bill 105 would establish a new state agency, the Citizens Utility Ratepayers Board ("CURB"). A principal function and duty of CURB will be to represent two groups of ratepayers (residential and small commercial) in rate case proceedings before the Kansas Corporation Commission.
2. My company and the Kansas Industrial Consumers, of which my company is a member, opposes this CURB bill for the following reasons:
  - a. We believe it is unfair and unjust for the state of Kansas to favor one group of ratepayers at the expense of another group of ratepayers. Each utility rate case proceeding involves two basic questions. The first is how much of a rate increase to grant a utility and the second is to determine how to allocate that increase among residential, commercial, and industrial ratepayer groups. The statutory mandate that requires CURB to represent only residential and small commercial ratepayers, of necessity, will result in CURB's opposing industries in rate case proceedings and seeking to allocate greater amounts of revenue to industrial ratepayers.
  - b. It is the policy of the state of Kansas to encourage industrial development. This bill is counter-productive in that regard and can only lead to increased industrial rates, thus making existing Kansas companies less competitive in the national and world markets and also within each of their own companies and, further, making it more difficult to obtain new industries and jobs for the state of Kansas.

H Energy and NR  
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Attachment 17



- c. Industries served by Kansas Power & Light Company are presently subsidizing other ratepayer groups by approximately \$6.5 million per year, based upon cost studies prepared by that utility and filed or presented in gas and electric rate case proceedings before the Kansas Corporation Commission. We believe that these subsidies are unfair and should be eliminated. The passage of this CURB bill inevitably can only lead to increases in these subsidies.
- d. Residential ratepayers are not being discriminated against in Kansas. Kansas already has some of the lowest residential rates in the country. For example, the residential rates of Kansas Power & Light Company of Topeka rank 145th lowest of 214 utilities throughout the country. While residential rates of nuclear utilities rank higher, this is solely attributable to the cost of the Wolf Creek nuclear generating plant, not to any discrimination on the part of the Commission or its Staff. In fact, the Commission Staff typically, in our judgment, primarily represents the interests of the residential ratepayers.
- e. We ask that you vote NO on this bill.
- f. If in good conscience a NO vote is not possible, then certainly an amendment to the bill should be made changing the name of the council to Consumer Utility Ratepayers Board "CURB" and amending Section 2(A) of the bill to read that the consumer council may "represent all ratepayers, including residential, commercial, and industrial ratepayers before the State Corporation Commission".

Thank you.



M. L. Remondino

Statement of Randy Burleson  
The Empire District Electric Company  
Before The House Energy and Natural Resources Committee  
March 28, 1989

Chairman Spaniol and Members of the Committee:

My name is Randy Burleson. I am here representing the Empire District Electric Company in opposition to SB 105 which gives statutory recognition to CURB. Thank you for the opportunity to appear.

Empire is an Investor Owned Electric Utility serving approximately 9000 Kansas customers in Cherokee County.

Empire's principal opposition to SB 105 is two-fold. First, we feel establishing a CURB statutorily is a duplication of service which is currently performed very effectively by the KCC staff and secondly, once CURB is established their original intentions of saving small ratepayers money would not necessarily occur but instead by pursuing their objectives they would grow in staff and budget. The long term effect of this growth and duplication could result in a gradual erosion of the KCC's ability to balance the interests of all parties.

The KCC is charged with the responsibility of balancing the interests of the customers, company, and investors. This regulatory direction must be maintained to insure Kansas has an adequate supply of reliable and reasonably priced utility service. A regulatory environment weighted heavily in favor of one class of customer would cause less favorable positions to the other parties which in turn could increase the cost of doing business. While some classes of customers may feel their interests are not being protected, in reality the KCC has a very good track record when compared to the rest of the county.

One way to gauge whether a CURB is needed is to look at the accomplishments of the KCC without CURB.

Just this month the Commission issued an order updating the billing practices of the gas, electric, and water utilities in Kansas. The staff and Commissioners recognized there were several needs not being met and made many changes on behalf of the small ratepayer. In a lot of cases the new requirements in the order were already being practiced by some of the utilities, the KCC just implimented them state wide. CURB took part in this proceeding but the vast majority of the needs had already been recognized by the staff. The changes ordered will make it easier for customers to acquire and maintain service.

The original billing practice docket was opened in March of 1978 and was continued in 1983 when the present Kansas Cold Weather Rule was developed and adopted.

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In the 70's and early 80's when the utility companys were facing many challenges consumer protection groups were being formed throughout the states and the KCC was able to regulate effectively without help. In fact, today many of the states with CURB type organizations are not thought to be as concerned with the small ratepayer as Kansas is. This shows up in regulatory rankings given the KCC by the investment community.

Also, in CURB's absence, many of the utilities have implemented programs designed to help the less fortunate. These include Project Help and Project Deserve along with Neighborhood Watch and Gatekeeper to help the elderly.

Another indicator of the KCC's commitment to the small ratepayer has been brought out by the proponents of this bill. They claim the large industrial user and the utilities are heavily represented in rate proceedings and the small user's voice is not being heard. Generally, it could be argued the reason for the large users and the utilities making such an effort is because of the staff's past practice of ensuring the small customer is considered.

And, finally, one of the largest single regulatory challenges a Commission could face, The Wolf Creek Hearings, were held and a decision was rendered that enabled all parties to remain whole. I am not aware of any party receiving preferential treatment in that case, which is usually a sign the critical balance was maintained. The results of these hearings have certainly not been the case in other parts of the country where new plant expansions were undertaken.

The other concern we had dealt with the growth CURB may have once given statutory recognition. In 1974 the General Assembly of Missouri established the Office of Public Council, with a budget of \$30,000.00 and one staff person. Their 1986 report outlines a budget of \$572,211.00 and 14 staff people consisting of accountants, economists, attorneys, and clerical support. There is no reason to expect the Kansas CURB growth rate to be any differant.

In conclusion, the KCC is very capable of ensuring all parties of a rate case are considered, including the small residential and small commercial. Their past practice and national reputation verify the fairness shown to all customer classes. The creation of a CURB is simply not needed given the decreased regulatory activity occuring today. I would suggest to the Committee that before you establish a new entity to duplicate the services of an existing one, take a closer look at the Commission Staff and I am sure you will find the job being very well done.

I urge you to defeat this proposed legislation and I would attempt to answer any questions.

TESTIMONY TO BE PRESENTED TO THE  
HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES  
ON TUESDAY, MARCH 28, 1989 AT 3:30 P.M.

Chairman Spaniol, committee members, my name is Herman R. Simon. I am the Plant Manager of The Quaker Oats Company pet foods plant here in Topeka. I am speaking today on behalf of The Quaker Oats Company and the Kansas Industrial Consumers, of which my company is a member. The Kansas Industrial Consumers is comprised of a group of large industrial customers concerned about utility costs in their manufacturing operations.

I am here today to express opposition to Senate Bill 105, which would establish by statute the Citizens' Utility Ratepayer Board (CURB). The proposed legislation is opposed on the basis it is not in the best interests of either the ratepayers or taxpayers. To favor one group of ratepayers at the expense of others and use the taxpayers money to do this is patently unfair, unjust, discriminatory, and perhaps even unconstitutional.

Utility rate cases involve two questions. The first is how much of a rate increase to grant a utility, the second is to determine how the increase is allocated through ratepayer groups. The proposed legislation will require CURB to represent only residential and small commercial ratepayers. By the very nature of the classes they represent, they will oppose industries seeking fair share allocation.

Kansas is encouraging industrial development in many ways. These bills are counter productive in this regard because they clearly favor other ratepayer classes. The point being, as industrial utility rates escalate, Kansas companies lose their competitive edge to companies operating in other states as well as to plants within their own company.

The Kansas Industrial Consumers recently met with Governor Hayden regarding industry having cost-based rates to remain competitive and viable in today's highly competitive environment. We submit that these bills run counter to the Governor's desire, and desire on many legislators I might add, to encourage economic development in the state of Kansas.

Residential ratepayers are not being discriminated against in Kansas. Kansas already has some of the lowest residential rates in the country. For example, the residential rates of Kansas Power & Light Company of Topeka rank 145th lowest of 214 utilities throughout the country.

Industries served by Kansas Power & Light Company are already subsidizing other ratepayer groups by approximately \$6.5 million per year, based upon cost studies prepared by that utility and filed or presented in gas and electric rate case proceedings before the Kansas Corporation Commission. The passage of these CURB bills inevitably can only lead to increases in the subsidies.

We believe it is fundamentally wrong to have a statute authorize state funds for what is basically a lobbying effort for a select group. It is outright discriminatory. While we oppose this bill, if it is to be seriously

considered, it should be amended to provide that CURB would represent "all ratepayers, including residential, commercial and industrial." Fairness, equity and common sense require this change.

We ask that you vote NO on this bill.

This concludes my testimony. I would like to thank the committee for the opportunity to express our viewpoint.

TESTIMONY

Before the House Energy & Natural Resources Committee  
S.B. 105, Establishing a Citizens' Utility Ratepayers Board

Tuesday, March 28, 1989

By Conni L. McGinness  
Director, Legislative Relations  
Kansas Electric Cooperatives, Inc.

H Energy and NR  
3-28-89  
Attachment 20

## TESTIMONY

May it please the Committee, my name is Conni McGinness, and I am Director of Legislative Relations for Kansas Electric Cooperatives (KEC). KEC is the statewide service organization representing 34 rural electric cooperatives in the state, who in turn have a membership of over 170,000 consumers. I am speaking here today on behalf of KEC and its member systems in opposition to S.B. 105.

The electric cooperatives of Kansas are opposed to the establishment of a Citizens' Utility Ratepayers Board. Not only does it create another bureaucracy, but also a second watchdog agency. Do we really need to spend taxpayer's, or ratepayers' as the case may be, money for duplication in services that are already being provided by the Kansas Corporation Commission? No one has said the Kansas Corporation Commission has not done their job and has not looked out for the residential and small business ratepayer.

No one wants to see an increase in utility bills, especially utilities; the lower the rates we can provide, the more economical it becomes for the consumer to use electricity.

We serve mostly rural and sparsely populated areas and have relatively few "large loads." Our consumers or ratepayers, are our members. Our member/consumers own their electric cooperative. They elect a board of trustees who in turn answer to the members, the consumer ratepayers. I represent that consumer, that member, and that is who I answer to, as do all of the electric cooperatives. Why do we need another layer of bureaucracy, a duplication of services?

Thank you for allowing me to testify today, and I would be willing to answer any questions you may have.