

Approved February 27, 1990  
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 ~~xxx~~/p.m. on February 22, 1990 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Raney Gilliland, Principal Analyst, Legislative Research  
Mary Torrence, Revisor of Statutes' Office  
Pat Mah, Legislative Research  
Maggie French, Committee Secretary

Conferees appearing before the committee:

Representative Ginger Barr, Fifty-First District  
Representative Jeff Freeman, Seventeenth District  
Representative Elaine L. Wells, Thirteenth District  
Mr. Ronald A. Stryker, Bob Satzler Heating and Cooling and The Kansas Alliance for Fair Competition, Inc.  
Mr. Ray Omo, Ray Omo, Inc.  
Mr. Jim Smith, College Hill Plumbing and Heating, Topeka, Kansas  
Mr. Bruce Huffman, cfm Distributors, Inc.  
Ms. Mary Vincent, The Associated General Contractors of Kansas, Inc.  
Mr. Alan D. Borchert, Kansas District Manager, Peoples Natural Gas, Garden City, Kansas  
Mr. Turner White, Senior Director of Communications and Marketing for Kansas City Power and Light Company  
Mr. Aaron Harmon, District Manager, K N Energy, Inc., Phillipsburg, Kansas  
Mr. Marshall Clark, Kansas Electric Cooperatives, Inc.  
Mr. Jim Ludwig, Director of Governmental Affairs, KPL Gas Service  
Mr. Louis Stroup, Jr., Executive Director, Kansas Municipal Utilities, Inc. McPherson, Kansas  
Mr. Jerry Coonrod, Kansas Gas and Electric Company  
Mrs. Margie Braden, Chairman, Kansas Eisenhower Centennial Commission  
Mr. Richard Kaplan, Osage County Economic Development Corporation  
Mr. Chuck Yunker, Department Adjutant, Department of Kansas, American Legion  
Mr. Dick Koerth, Kansas Department of Wildlife and Parks  
Mr. Frank Caro, Kansas Corporation Commission

Chairman Dennis Spaniol called the meeting to order.

House Bill No. 2904 -- An act concerning public utilities, prohibiting certain practices by gas and electric utilities and their affiliates; providing penalties therefor.

Chairman Spaniol announced discussion would be deferred until the end of testimony.

Representative Ginger Barr, Fifty-First District, was recognized by the chairman. Representative Barr presented brief introductory remarks and called on Mr. Ronald A. Stryker, Bob Satzler Heating and Cooling and The Kansas Alliance for Fair Competition, Inc., to discuss the merits of House Bill No. 2904. Mr. Stryker testified as a proponent and cited examples of unfair competition (Attachment 1).

Mr. Ray Omo, Ray Omo, Inc., testified in support of House Bill No. 2904, discussing repair services by public utilities making it impossible for small companies to compete. He objected to public utilities selling appliances at invoice prices and stated he believes discriminatory expenses are underwritten by ratepayers. (Attachment 17)

Mr. Jim Smith, College Hill Plumbing and Heating, Topeka, Kansas, testified in favor of House Bill No. 2904 mentioning unfair competition in

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sale of appliances; work being taken away from contractors, and expenses for public utilities being underwritten by taxpayers.

Mr. Bruce Huffman, cfm Distributors, Inc., commented in his testimony as a proponent on House Bill No. 2904 that there has been increased intrusion by public utility companies in the heating and air-conditioning business; he wonders why the utilities are so interested in the contractor operations; why equipment and services are offered at below market costs, and that the States of Michigan, Oklahoma, California and Iowa are fighting unfair utility action. Attachment 16)

Ms. Mary Vincent, The Associated General Contractors of Kansas, Inc., presented her testimony in support of House Bill No. 2904, stating there is a problem with public utilities in the state performing installation services and sales of equipment in areas traditionally done by contractors (Attachment 2).

The chairman announced Mr. James E. Mlynek, Kansas (Topeka) Chapter, National Electrical Contractors Association, Inc., and Mr. Robert L. Carley, Southwestern Electrical Company, Inc., Wichita, Kansas, were unable to attend the hearing on House Bill No. 2904; however, their written testimony as proponents was distributed to the committee and will be made a part of the record (Attachments 3 and 4).

Mr. Alan D. Borchert, Kansas District Manager, Peoples Natural Gas, Garden City, Kansas, presented his views as an opponent to House Bill 2904, citing three primary reasons for selling and servicing appliances stating that revenues from the program must pay for all costs of the plan to ensure no subsidy from other customers; discussing cross-subsidization, etc. (Attachment 5.)

Mr. Turner White, Senior Director of Communications and Marketing for Kansas Power and Light Company testified against House Bill No. 2904. He believes the bill is restrictive; impairs ability to manage growth system energy demand, and inappropriately grants broad audit powers to an advocacy agency (Attachment 6).

Mr. Aaron Harmon, District Manager, K N Energy, Inc., Phillipsburg, Kansas, presented testimony as an opponent to House Bill No. 2904, discussing merchandising and repairs stating if the sale of gas-burning appliances is not encouraged the existing gas load may be lost and remaining customers would then have to pick up additional fixed costs incurred to operate the system (Attachment 7).

Mr. Marshall Clark, Kansas Electric Cooperatives, Inc., opposed House Bill No. 2904. He said it would make the difficult job of bringing reliable, affordable electricity to rural Kansas even more difficult (Attachment 8).

Mr. Jim Ludwig, Director of Governmental Affairs, KPL Gas Service, testified against House Bill No. 2904, commenting that the restrictions in the bill would cause a kind of protectionism that is bad for consumers and business alike (Attachment 9). He went on to say his company's greatest objection to the bill is that it is unnecessary legislation.

Mr. Louis Stroup, Jr., Executive Director, Kansas Municipal Utilities, Inc., McPherson, Kansas, testified in opposition to House Bill No. 2904. Mr. Stroup expressed his concern that the bill would interfere with the normal operations and maintenance of utilities on equipment and services (Attachment 10).

Mr. Jerry Coonrod, Kansas Gas and Electric Company, opposed House Bill No. 2904 stating that it is too broad in scope (Attachment 11).

Discussion followed with questions from the committee addressed to both proponents and opponents including inquiries whether or not the bill would,

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in any way, affect the pipeline safety bill; if there would be objections to the bill if it was limited to the original intent; the Kansas Corporation Commission's authority in dealing with cross-subsidization; advocacy of broad audit powers, and customers living in rural communities who are serviced by public utilities where there are no other services available for appliances and repairs. Mr. Jim Ludwig, KPL Gas Service, was requested to provide the committee with the percentage of gross revenues of his company from heat pump and air conditioner sales which, he stated, are nearly all sold to a direct dealer network. Representative McClure inquired about complaints filed with the Kansas Corporation Commission concerning cross-subsidization. Mr. Frank Caro, Kansas Corporation Commission, responded and advised the committee that no formal complaints have been filed with the Kansas Corporation Commission.

The chairman concluded hearings on House Bill No. 2904.

House Bill No. 2919 -- An act concerning state parks; changing the name of Melvern state park to Eisenhower veterans memorial state park.

Vice-Chairman Freeman called on Representative Elaine L. Wells, Thirteenth District, who outlined what is being done by House Bill No. 2919, describing the location of Melvern State Park and stating that residents have expressed favorable responses to the name change. In addition to her testimony supporting this bill, she read a letter she received from the mayor of the City of Melvern, Mr. Havard M. Kramer, who was unable to be present (Attachment 12). In response to a question from Representative Grotewiel, Representative Wells stated the name of the lake would not be changed. Discussion followed.

Vice-Chairman Holmes recognized Representative Freeman who thanked Representative Wells and Senator Jim Allen, Eleventh District, for the work they have done on House Bill No. 2919 and presented his testimony in favor of the bill. The committee discussed possible objections to using the Eisenhower name from areas more closely associated.

Mrs. Margie Braden, Chairman, Kansas Eisenhower Centennial Commission, presented testimony as a proponent on House Bill No. 2919 prepared by Ron Parks, Executive Director of the Kansas Eisenhower Centennial Commission, in his absence. She pointed out that six states already have Dwight D. Eisenhower parks, including one in Alaska, California, New Jersey, New York, Rhode Island, and two in Texas (Attachment 13). Discussion following included comments by Mrs. Braden that an advisory committee was established to plan for the Eisenhower Centennial and the committee attempts to determine whether or not suggestions are good or bad for Kansas before endorsement. In response to a question from Representative Krehbiel, Mrs. Braden replied that Melvern is a good location since it is much better to come from an area where it is acceptable and appropriate. She went on to say groups and communities throughout Kansas are encouraged to plan appropriate events to celebrate the Eisenhower Centennial.

Mr. Richard Kaplan, representing Osage County Economic Development Corporation, a non-profit organization functioning and expanding to work in various areas to promote new opportunities and tourism in Osage County, testified in favor of House Bill No. 2919. He stated he believes the name change will offset the low current visitation to the area and that comprehensive signage will be helpful since it will draw attention to the resources in the county.

Mr. Chuck Yunker, Department Adjutant, Department of Kansas, American Legion, commented that Mr. Darrell Bencken, State Headquarters, Veterans of Foreign Wars, was unable to attend the hearing; but that he and Mr. Bencken were in agreement that House Bill No. 2919 should be passed. He proceeded to present his testimony urging passage of the bill which he stated had been endorsed by the Department Executive Committee, American Legion, and by the Veterans of Foreign Wars (Attachment 14).

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Mr. Dick Koerth, Kansas Department of Wildlife and Parks, stated his department does not oppose the name change contained in House Bill No. 2919, but that it will require reposting of the state park and reprinting of certain department literature (Attachment 15).

Vice-Chairman Freeman concluded hearings on House Bill No. 2919.

The meeting adjourned at 5:03 p.m.

The next meeting of the committee is scheduled at 3:30 p.m., February 27, 1990.

Date: 2-22-90

## GUEST REGISTER

## HOUSE

## COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Woody Woodman	KCPPL	KC Mo	816-556-2155
Wendy Pellow	Intern-Rep. Lynch	Lawrence	(713) 841-8365
Les Bisham	KLPGA	Topeka	351-1749
Bruce Huffman	cfm Distributors Inc	KCMO	816-842-5400
TREVA POTTER	PEOPLES NAT. GAS	TOPEKA	235-5915
ALAN BORCHER	PEOPLES NATURAL GAS	GARDEN CITY, KS	316-275-9261
Louie Stroup	KANSAS Municipal Utilities	M <sup>c</sup> Pherson	316 241-1423
MARSHALL CLARK	KANS. ELEC. COOPERATIVES INC	TOPEKA	272 8740
Lester Murphy	Kansas Elect COOP.	TOPEKA	272-8740
BILL OHLEMBER	KANSAS ELECTRIC COOPS.	TOPEKA	272-8740
Jamie Schwartz	KN Energy	Topeka	234 0001
WARON HARMAN	KN Energy	Phillipsburg	543-2135
Meely Schumall	Midwest Energy	Harv	605-6351
Erin Evans	—	Lebo, KS	256-6311
Chuck Junker	American Legion	Topeka, KS	233-9315
Jane Studler	WBAK	Topeka	233-9853
Pat Moody	Moody Htg & Hl	Wichita KS	(316) 262-7444
RICHARD BOWMAN	J.H. BOWMAN Co	WICHITA KS	(316) 265-7831
Janel Robinson	Cosgrove, Webb & Oman	Topeka	235-7511
Bill Higgins	C.U.R.B.	Topeka	296-1102
Emily Wollman	KCC	Topeka	296-2136
Dick Koeth	Dept of Wildlfp & Parks	Topeka	296-2281

Date: 2-22-90

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Randy Barleson	Empire District Electric	Columbus	316-929-2375
JERRY Conrad	KGE	Lawrence	913-354-1241
Jim Sind	College Hill Pk	Topeka	913-235-6901
MARY KENNEDY	A.S.E.	Topeka	266-4015
Ronald Stryker	Bob S. Feltz Heating Ks. Alliance for Fair Competition	Topeka	272-1633
John Reugest	Edger the Plumber Ks Alliance for Fair Competition	723 W 81st O.P. KS	913-642-2979
Terry Ann Schmidt	Ks All for Fair Competition	309 E 18th Dodge	316-227-3101
Ray Dano	Ks Alliance for Fair Competition	309 E 7th Dodge	316-227-3101
Proz Elaine Wells	Leg.		
Rich Caplan	Osage Court Econ. Dev. Corp	P.O. Box 3067 Lawrence 66046	913-841-7166
Turner White	KCP	1330 Baltimore 101MO	816-556-2900
Jim Ludwig	KPL	Topeka	296-1915
Carl Carpenter	Carrel	Great Bend	316-799-1285
Don Wilson	CEW Electric	Clay Center	913-637-3111
Tom Day	KCC	TOPEKA	
Frank Carro	KCC	Topeka	296-3360
Glenn Smith	KCC	Topeka	296-2763

BILL TITLE: An act concerning public utilities, prohibiting certain practices by gas and electric utilities and their affiliates; providing penalties therefor

HEARING DATE 2-22-90

CONFEREES	PROPONENT OPPONENT	NOTIFIED	ADDRESS	PHONE
Rep. Ginger Barr	Proponent	2-20-90	Fifty-First District	
Mr. Ron Stryker	Proponent	2-20-90	Bob Satzler Heating and Cooling	
Mr. Ray Omo	Proponent	2-20-90	Ray Omo, Inc.	
Mr. Jim Smith	Proponent	2-20-90	College Hill Plumbing and Heating	
Mr. Bruce Huffman	Proponent	2-20-90	cfm Distributors, Inc.	
Ms. Mary Vincent	Proponent	2-20-90	Associated General Con- tractors of Kansas, Inc.	
Mr. Alan D. Borchert	Opponent	2-20-19	Kansas District Manager, Peoples Natural Gas, Garden City, Kansas	
Mr. Turner White	Opponent	2-19-90	Kansas City Power & Light Company	
Mr. Aaron Harmon	Opponent	2-19-90	District Manager, K N Energy, Inc., Phillipsburg, Kansas	
Mr. Marshall C. Clark	Opponent	2-19-90	Kansas Electric Cooperatives, Inc.	
Mr. Jim Ludwig	Opponent	2-20-90	Director of Governmental Affairs, KPL Gas Service	
Mr. Louie Stroup	Opponent	2-20-90	Executive Director Kansas Municipal Utili- ties, McPherson, Kansas	
Mr. Jerry Coonrod	Opponent	2-22-90	Contract Lobbyist, Kansas Gas and Electric Company	





Testimony before the HOUSE COMMITTEE ON ENERGY AND NATURAL  
RESOURCES

FEBRUARY 22, 1990

By Ronald A. Stryker of - Bob Satzler Heating and Cooling and,  
The Kansas Alliance for Fair Competition, Inc.

Mr. Chairman and members of the committee, thank you for your time to have this hearing on issues that we feel to be very important to the utility rate payers and small independent businesses in the State of Kansas.

My name is Ron Stryker, I live here in Topeka.

I speak to you today as the owner of a small Heating and Air Conditioning company in Topeka and as the Chairman of the Kansas Alliance for Fair Competition, Inc. The Kansas Alliance for Fair Competition, Inc. is a coalition of individuals, small businessmen, and their associations primarily in the plumbing, heating, air conditioning, and electrical trades from across the state. Our businesses provide retail products, maintenance, and contractor services to the people of Kansas. We are in support of House Bill No. 2904.

Bill No. 2904 is essentially a rewrite of legislation recently passed in the State of Iowa. Additionally, in drafting this bill, we had the help of the National Alliance for Fair Competition, an organization developed to help coalitions like ours. We think that the proposed legislation is a good place to start. The Bill asks for free and open competition in the sale and servicing of energy related non-utility products and equipment. Competition that is not influenced by the special competitive advantages that a regulated monopoly has whenever they decide to venture out of their regulated activity and compete with independent small businesses. It is important that each of you have an understanding of a very critical element of this Bill. The term is cross-subsidation. Cross-subsidation occurs when direct or indirect costs of an unregulated utility activity are mis-allocated to a utility's regulated business. Another way to state this is when the utility uses assets, personnel, equipment or facilities which are paid for by the rate payers of Kansas to compete against small businesses in non-utility areas.

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*ATTACHMENT 1*

Utilities enjoy a very unique position in the business marketplace. While there are mechanisms established to prevent utilities from overcharging Kansas consumers, there are also mechanisms set up to insure that the utilities stay in business and receive a return on their assets. These utility revenue or rate issues are administered by The Kansas Corporation Commission. While the process is good, there are plenty of opportunities for a utility to hide overhead or operating expenses in the financial accounting for their utility function, that really should be allocated to non-utility enterprises. When this happens, the Kansas consumer effectively pays, through the utility rate base, for the regulated monopoly to compete against small business.

Bill No. 2904 does not require that utilities stay out of competition with small businesses. We want to make that clear. It states that they are welcome to compete against us as long as they do it through an affiliate and that the utility relationship with this affiliate be maintained without rate payer subsidation. We do not object to competition. Our industries are known for aggressive competition. All we ask is that when the regulated utilities do compete against us, that the competition be on a level playing field.

The average utility consumer in the State of Kansas shall benefit from Bill No. 2904. Why should the consumers have to pay for incentives, rebates, or other costs related to a utility getting into non-utility areas? You may hear that utility consumer incentives would disappear, there by hurting the consumer, if this bill becomes law. I submit to you that if there is no cross-subsidation, or put another way, if the utility consumers are not already paying for the utility to be in non-utility areas, then the utilities will set up an affiliate and compete in our industries offering the same incentives that they currently do. If they are competing unfairly, subsidized by the consumer, then their competition will stop.

We understand that our opponents may attack certain language details of Bill No. 2904 stating that the bill will create some adverse effects, which are not our intent. Unfortunately, we are not professional bill drafters or attorneys. Needless to say, we do not have a lot of experience in writing Kansas statutes. Please understand that we do not consider the words written in this bill to be gospel. Clarification may be necessary. The Citizens' Utility Ratepayers Board (CURB), is supportive of the concept behind the bill, and although not citing any particular problems with the bill, has volunteered the service of their attorney should the committee request the bill be rewritten in any area to accommodate existing Kansas statute.

We are aware that there are other statutes that provide avenues for relief through the Kansas Corporation Commission complaint procedures. You might ask why our organization did not seek this relief first. We have investigated these areas. The formal complaint procedure at the KCC is, for all practical purposes, unworkable for a small businessman. To use the formal procedure to intervene in a utility rate case requires that the business be represented by council. This avenue can cost thousands of dollars for only a small possibility of success. And besides, rate cases for utilities sometimes do not come up for 3 to 4 years. In a much shorter period of time, small companies in this state have been forced out of business. Legislative relief is our only true hope.

Here is one specific example of unfair utility competition, and we believe a classic example of a utility using their consumer rate base to subsidize a non-utility area.

KPL Gas Service 1989 Builder Program provided for special incentives for a builder to install an electric heat pump in a show house. Show homes on their lines that utilize an electric heat pump received the following special benefits:

Free electric hot water heater	\$140.00	wholesale cost
Free electric yard light	50.00	wholesale cost
Free financing for one year	300.00	conservatively
50% of the cost of a Realtors party	500.00	average amount
Parade of homes entry fee	250.00	
Personalized sales brochures	?	
2-5 year warranty on heat pumps	220.00	wholesale cost
Rebate to the heating contractor	<u>100.00</u>	
	<b>\$1560.00</b>	

That is \$1560.00 incentive to install one heat pump in a house. For the record, an average heat pump would only cost the consumer \$700.00 more than a standard air conditioner. Paying \$1560.00 as an incentive to install a heat pump at a \$700.00 premium is not generally considered to be a profitable business practice. And that's not all, who paid for the utility employee to make a sales call on the builder, who paid for the printing of the brochures, outlining the builder program, and who paid for the postage to mail this information from their office? What is even harder to understand is that this utility distributes natural gas in these same areas. If you were a new construction residential contractor who preferred to market an alternate system, you can bet that you would see this as unfair competition.

My company did some of these heat pump installations in 1989. The rebates paid to my business by KPL Gas Service were donated to the Kansas Alliance for Fair Competition, Inc.

Another example of unfair competition is the sale of Gas Air Conditioners by KPL Gas Service direct to the public in their territories. We have confirmed that they sell these units at or below cost to the homeowners. Who pays for the sales calls their marketing representatives make, for the mailers to promote these sales, for the booth space at home shows, and the free financing? Certainly these items are not paid by the profits on their sales. And where do they get the leads to call on these homeowners? Could it be through their mandated functions as energy use consultants? We call these activities rate payer cross-subsidation.

There are more details and examples to come. This completes my testimony. If you have any questions at this time, I will do my best to try to answer them.



TESTIMONY BEFORE THE HOUSE ENERGY AND  
NATURAL RESOURCES COMMITTEE

On HB 2904

by

THE ASSOCIATED GENERAL CONTRACTORS OF KANSAS, INC.

February 22, 1990

Mr. Chairman and members of the Committee my name is Mary Vincent. I am employed by The Associated General Contractors of Kansas. AGC of Kansas is a trade association representing commercial building contractors throughout the state. In addition to our general contractor members we have approximately 100 subcontractor associate members. Many of these subcontractors are electrical, mechanical and plumbing and heating contractors. It is on behalf of these members that we appear this afternoon.

These associate members advised our Board of Directors that there is a problem with public utilities in several parts of the state performing installation, service and sale of equipment in areas traditionally done by contractors. That in it self is not a problem, as long as everyone is on the same playing field.

**Associated General Contractors of Kansas, Inc.**

200 W. 33rd, Topeka, KS 66611

(913) 266-4015

FAX: (913) 266-2561

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ATTACHMENT 2

AGC has always held that the competitive bid system with award being made to the lowest responsible bidder is in the best interest of all.

However, if the work performed by public utilities is subsidized by the utility rate payers allowing the utilities to perform work at less than cost, then we have serious concerns. Because of these concerns our Board of Directors in September 1989 voted to support the goals of the Kansas Alliance for Fair Competition as we understand them.

We understand that it is the intent of HB 2904 to address the problems that have been brought to your attention this afternoon by the Alliance.

In the last few days we have been advised that HB 2904 may in fact go beyond the areas of concern of AGC and the Alliance. If this is the case and if the bill would have a harmful affect on the normal operation of the public utilities then we would respectfully request that the committee consider the issues of concern that have been presented, outside the contexts of HB 2904 and recognize the need to seek a solution to these problems either through substitute legislation or interim study.

Mr. Chairman and members of the committee thank you for the opportunity to appear this afternoon.



# NECA

## KANSAS (TOPEKA) CHAPTER NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, INC.

**H. KENT PELLEGRINO**  
Manager

TESTIMONY BEFORE THE  
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

February 22, 1990

James E. Mlynek

**President**

James E. Mlynek  
O.K. Johnson Electric Co., Inc.  
3508 Southeast 21st Street  
Topeka, Kansas 66607  
(913) 232-0067

Mr. Chairman and Members of the Committee:

**Governor**

D.L. Smith  
D.L. Smith Electrical  
Construction, Inc.  
1405 Southwest 41st Street  
Topeka, Kansas 66609  
(913) 267-4920

My name is Jim Mlynek and I am president of O.K. Johnson Electric, Inc. and the Kansas (Topeka) Chapter, National Electrical Contractors Association. I am here today in support of House Bill No. 2904.

**Vice-President**

Smitty G. Belcher  
Huxtable & Associates, Inc.  
815 East 12th  
Lawrence, Kansas 66044  
(913) 843-2910

We feel the electric utilities, and, as far as we know, all utilities, have an unfair competitive advantage when competing in private enterprise and should be made to compete on the same basis as all other contractors in the market.

**Treasurer**

Warren B. Merrill  
B & W Electrical  
Contractors, Inc.  
1416 West North Street  
Salina, Kansas 67401  
(913) 827-1122

As an example, let's look at lease lighting in the City of Topeka. We have to be licensed and have inspections on our work; K.P.L. does not have either. We pay approximately \$300 to get a service set up; K.P.L. connects to existing unfused overhead circuits. It costs us \$800 to \$1,200 to put up a wood pole with a luminaire depending on size and wattage. K.P.L. charges \$15 to \$20 per month. How can we compete with this?

We feel they bury the cost of lease lighting as an expense on their balance statement. This enables them to add the expense in their base rate over a period of years, and the Kansas Corporation Commission allows this to happen. Thus,



# NECA

KANSAS (TOPEKA) CHAPTER  
NATIONAL ELECTRICAL  
CONTRACTORS ASSOCIATION, INC.

H. KENT PELLEGRINO  
Manager

**President**

creating an unfair advantage for the utility company, and you  
and I end up paying for it.

James E. Mlynek  
O.K. Johnson Electric Co., Inc.  
3508 Southeast 21st Street  
Topeka, Kansas 66607  
(913) 232-0067

**Governor**

D.L. Smith  
D.L. Smith Electrical  
Construction, Inc.  
1405 Southwest 41st Street  
Topeka, Kansas 66609  
(913) 267-4920

**Vice-President**

Smitty G. Belcher  
Huxtable & Associates, Inc.  
815 East 12th  
Lawrence, Kansas 66044  
(913) 843-2910

**Treasurer**

Warren B. Merrill  
B & W Electrical  
Contractors, Inc.  
1416 West North Street  
Salina, Kansas 67401  
(913) 827-1122





# SOUTHWESTERN ELECTRICAL COMPANY, INC.



P.O. BOX 1602 • 1638 EAST FIRST STREET • WICHITA, KANSAS 67201 • (316) 263-1264 • FAX (316) 263-2665

HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES - 1990

Mr. Chairman, Members of the committee. My name is Robert L. Carley, I am a electrical contractor from Wichita doing electrical work through out the central area of the state.

I thank you for allowing me a few minutes of your time so that I may give my views on House Bill # 2904.

My company has been in business in this state since 1908. We have seen a industry grow to incompass each of our daily lives as much or more than any other industry. Electrical devices and power equipment make our lives more enjoyable and have become neccessities.

The few electrical contractors in 1908 have grown in Kansas to hundreds today. Each and every contractor was developed in a competitive enviroment, each have financed, managed, and developed his business on by his own efforts, I personally think that this is the American Way. I would like to see this method of competitive effort be allowed to grow an prosper with out encroachment by protected franchized utility companies.

Fair competion is all thats ask. This can not be accomplished if certain groups or type of business are allowed or permitted to use protected funds with a guaranteed rate of return as a basis to finiance any form of private business.

The electric utilities in the areas I am familar with are using utility equipment and man power to install electrical work on private property having no association with the responsiblity of providing power to the customer. These services are in direct conflict with

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ATTACHMENT 4*

recognized electrical contractors normal business.

We can not manufacture electrical power to sell, so why must we allow the protected power companies the privilege of doing electrical work on private property?

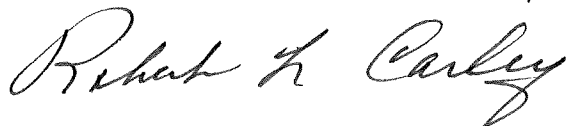
We also know that each dollar spent by the utility on private property is a part of the rate base and there fore has a direct bearing on the electrical rates charged to each customer on their lines.

We thrive on competition but lets make it fair competition. Let the utilities manufacture, distribute, advertise and sell their products at property lines of the user and confine their costs to the same area. They should cease charging all these unnecessary costs into the rate establishing base structure.

I would be happy to provide specific locations where lighting on parking lots, car sales lots, foot ball fields and even areas where local utility agents have performed electrical work on private property using utility equipment.

I thank you for your indulgence and ask for your support. I would try to answer any questions the chair or committee members may have.

Robert Carley  
SOUTHWESTERN ELECTRICAL CO., INC.



**KANSAS HOUSE BILL NO. 2904**

**TESTIMONY**

Chairman Spaniol, members of the House Energy and Natural Resources Committee, my name is Al Borchert. I am the Kansas District Manager for Peoples Natural Gas Company. Peoples distributes natural gas service to customers in southwest Kansas. The majority of our customers live in small rural towns.

I am testifying today in opposition to House Bill No. 2904.

As a part of our service to our customers, Peoples has always offered sales and service of appliances. Over the years, we have expanded many of these services in response to what our customers said they wanted and needed. We began our sales and service programs in the early 1930s to serve a market for gas appliances. Today, Peoples continues to sell and service appliances for three primary reasons:

1. **To respond to our customers' needs** -- We continue to survey the wants and needs of our customers. Since we have 32% of our Kansas residential customers buying the service contracts, we must be addressing a significant need. In a recent survey of our customers, a total of 89% of current PeopleService Appliance Protection program (PSAP) customers said they definitely or probably would renew their PSAP enrollments. In another survey, 82% of the respondents indicated that they felt it was an appropriate activity for utilities to be engaged in. Another important fact brought out in the survey indicates that more than half of our customers list Peoples as their preferred choice for appliance and equipment repair;
2. **To maintain a market in gas appliances** -- Historical data has shown that when a utility ceases to sell gas appliances, local appliance dealers gradually phase out the sale and display of gas appliances. This is due to the fact that it's easier to install

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an electric appliance--just plug it in--whereas gas appliances usually have a higher initial cost but have lower operating costs. Their motivation is to sell appliances, not a particular energy; and

3. **To retain or build load** -- Loss of existing gas appliances reduces load and increases the cost of providing service to our customer base.

In several states, heating equipment and appliance dealers and heating/cooling contractors have criticized utilities for providing space heating and appliance repair service. These critics unjustly accuse utilities of subsidizing service programs with ratepayer revenue and other "unfair" marketing advantages. Peoples strongly disputes all claims that we are competing with other local businesses unfairly. Rather, we believe that appliance dealers and contractors would like to see legislative prohibition of utility service programs, to their own unfair advantage.

In designing PSAP, Peoples set the following criteria:

1. Revenues from the program must pay for all costs of the plan to ensure no subsidy from other customers; and
2. Company policy requires that cross-subsidization not occur between utility and nonutility activities.
3. The program should be available to all of the Company's residential town plant heating customers.

The first criteria was important to ensure that Peoples was not unfairly competing with other appliance service companies. The second criteria, however, is equally important. Unlike other appliance service suppliers, Peoples cannot pick and choose its customers. All of the town plant

residential customers in the utility's service area must have the opportunity to have 24-hour service available to them at a reasonable cost. It's a natural extension of our responsibility to provide safe, reliable service.

Some home heating contractors have expressed a concern that the PSAP plan is anticompetitive. Until Peoples made it available, however, similar maintenance agreements were offered only in very large cities. The Company's market research identified a clear need for this type of service plan. And, its customers' responses have borne this out. Since Peoples' plan has been offered, several home heating contractors have begun to offer similar maintenance plans.

Peoples' PSAP Service Plan has been particularly well-received by senior citizens. Many others are single parents, working couples, or those not handy with home repairs who want protection against large, unexpected repair bills. The plan is completely voluntary. For those who enroll, it offers peace of mind year-round, not just in winter.

Peoples believes that this bill is unnecessary because the Kansas Corporation Commission is already authorized to review Peoples' records and accounting procedures to ensure that ratepayers do not subsidize Peoples' nonutility businesses. The risk of such subsidization appears to be the impetus behind House Bill No. 2904.

In conclusion, Peoples has been in the appliance sales and service business for more than 58 years meeting our customers' needs and desires to continue offering these programs. **We urge the Committee to vote in opposition to House Bill No. 2904.**

Respectfully submitted,

Al Borchert  
Kansas District Manager  
Peoples Natural Gas Company

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Testimony of Turner White for  
Kansas City Power & Light Company  
Kansas House Energy Committee - HB 2904  
February 22, 1990

Mr. Chairman and members of the Committee, I am Turner White, Senior Director of Communications & Marketing for Kansas City Power & Light Company. KCPL serves approximately 158,000 Kansas customers in ten counties of the state.

Today, I am here to oppose HB 2904 because it:

- o **restricts** the ability of Kansans to make the best energy efficiency decisions they can;

- o **restricts** our customers' reliance on their utility company for accurate, reliable and timely programs and information about energy and energy use;

- o **impairs** the ability of utilities to manage the growth of system energy demand in order to achieve cost-beneficial supply options for existing and prospective customers;

- o **precludes** utilities from encouraging the development of qualified small businessmen and women who sell, install and service HVAC (heating, ventilation and air conditioning) and other energy related equipment and services;

- o **inappropriately** grants broad audit powers to an advocacy agency.

Our customers tell us overwhelmingly that they want reliable information and programs about efficient energy options, audits, modernization programs and services. They want to know that their utility company has investigated the reliability and efficacy of

claims in the marketplace and is prepared to recommend the best range of options. In a survey of customers as recently as four months ago, 61% of our customers said they believed we provided programs which **help them control energy use**, and indicated they valued those programs. 52% said that they believed we **kept the public informed** about energy and energy use, and indicated they wanted us to continue doing so. However, our customers said we could do much better. Nearly 40% felt KCPL needed to **do more on controlling energy use**; nearly 48% said KCPL could **do better on keeping them informed** about energy options. 59% of our customers said that a guarantee offered by the utility on heating and cooling equipment, or on other major appliance for their homes, would **increase their confidence** in the equipment and its reliability.

HB 2904 would effectively legislate **against these customer desires** by restricting our ability to communicate and to offer tangible benefits to customers as their energy supplier. In fact, the bill would **prohibit** us from communicating by name -- the very activity Kansans want us to do most.

Our marketing programs encourage customers to buy and install high-efficiency appliances and equipment, to maintain safe wiring and practices in their homes and businesses, and to take advantage of the latest proven technology in new home and existing home construction. KCPL does not do any of these things directly. We rely on the hundreds of small businessmen and women to provide high-quality, reliable products and services to our customers.

However, because we will be the customer's energy supplier long after a contractor has completed his work and because we will be expected to provide the best value to our customers despite the level of quality and reliability of equipment and its installation, we have a vested interest in customers having the best possible contractors do the work. By advertising and communicating with customers about the best place to buy equipment and services, we fulfill the same, valuable role as the Consumer's Union does in its monthly Consumer Reports magazine. Further, we are encouraging customers to buy locally from people in their own communities who can do excellent energy-related work. HB 2904 would eliminate this "market-pull" effect by restricting the company from evaluating and communicating the best options for our customers. It would take away the role of the company in helping customers receive the best value for their energy dollar in the future.

Just as seriously, HB 2904 would prohibit KCPL from developing programs to shape and manage electric load at just the time when we need more than ever to explore all possible means to energy efficiency. Beneficial programs which would be jeopardized by the bill include voluntary and mechanical control of major energy users, such as air conditioning units; programs to install, service and communicate the benefits of high-efficiency appliances, even as demonstration projects in model homes; new rate designs and rate menus; and, commercial-customer pilot projects such as cool storage and lighting design. Just as an example, KCPL's Li'l Shavers program, the air conditioning load control program which will help



KCPL control its peak-load growth, would be restricted and potentially prohibited by the bill.

In sum, this bill would make it very difficult for KCPL to manage the growth in its peak load which is the primary driver of the need for new generating capacity and the largest single component of expense to customers on their monthly electric bill. Similarly, KCPL will be restricted in its ability to improve its system load factor and thus increase the operating efficiency of its generating plants, which benefits all of its customers.

Finally, this proposed legislation would grant broad audit powers to the Citizen's Utility Ratepayer Board, whose role as representative of a particular class of customers would prohibit it from performing a truly independent audit. This would not only put CURB in an awkward position, but it could violate our due process rights.

In summary, our customers just four months ago told us they value most the attributes of **dependability, competency, promptness and trustworthiness** in their electric utility. We demonstrate these attributes to them daily in programs and services the company offers and provides. HB 2904 would restrict, impair and in some cases prohibit customers from receiving what they expect and want most from their utility company besides reliable electric service, namely good information. By restricting KCPL's ability to manage its peak-load growth and system load factor, the bill would actually lead to an increase in our cost of providing electricity. Therefore, I urge you to defeat HB 2904.

Testimony of Aaron Harman, K N Energy, Inc.  
Before the Energy and Natural Resources Committee  
Kansas House of Representatives  
February 22, 1990  
Topeka, Kansas

I am here today to testify on behalf of K N Energy, Inc. ("K N") in opposition to HB 2904 which, if passed, would prohibit companies such as ours from selling, installing or repairing gas-burning appliances. This legislation would force K N to establish an affiliate organization in order to maintain the current level of service to our customers. Not only would this be burdensome to K N, it would be costly to our existing customers.

K N Energy began to sell, install and repair gas burning appliances more than 50 years ago. We were a new company at that time and needed to build natural gas load in order to justify extending our pipeline system to areas and communities that had no gas service. We continue our merchandising and repair efforts today as a means of maintaining that gas load. If we do not encourage the sale of gas burning appliances, we may lose existing gas load. If gas load is lost, under rate making principles, remaining customers would then have to pick up additional fixed costs incurred to operate K N's system.

K N provides gas service at the retail level to more than 23,000 customers in 58 communities across western Kansas, most of which are small, rural communities. There is an average of 396 customers in each community. In some of the smaller communities served by K N, we are the only local appliance dealer. K N Energy has 68 service personnel in Kansas trained to

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sell, install and repair gas-burning appliances. In many cases, no one else is close at hand to repair the gas-burning appliances, let alone to sell and install such appliances. There is insufficient market to sustain such activities solely through an affiliate. The costs of a separate business would be prohibitive.

With a few exceptions for certain new high efficiency equipment requiring special certification from the manufacturer to repair, we will service all makes of gas burning equipment, regardless of its age or manufacturer. Our customers certainly appreciate the convenience and consistency of service.

K N estimates that approximately 35% of our service personnel's time is spent selling, installing and repairing gas equipment. Elimination of this time would not result in a reduction of gas rates as our merchandising function is not subsidized by rates, but rather independently stands on its own.

Because of K N's activity in the sale, installation, and repair of gas appliances, our customers have gained confidence in K N's ability to provide safe, efficient service. Typically, the customer who purchases equipment from K N does so because of the service we provide, knowing we have been in business for more than 50 years and counting on the fact that we will be in business for a long time to come.

In the larger communities, where there are other appliance dealers and repair businesses, K N cooperates, as well as competes, with such businesses. We encourage natural gas appliance sales by our competitive dealers through our dealer incentive program. This program compensates the dealers for gas appliances they sell.

There are many independent contractors in the small communities who utilize K N for repair parts, venting materials and similar parts or materials. If K N is forced out of the repair and installation business, there would be little need to maintain an inventory of these supplies and repair parts. The small independent dealer would then be forced to maintain a larger inventory of repair parts, and the gas-consuming customer would have to pay for the added expense, or order such parts from other areas necessitating delays and inconvenience to customers.

In considering this legislation, we feel the well-being of the customer should have the highest priority -- and we feel that passage of HB 2904 would impose a grave injustice upon the natural gas consumers within K N's service territory.

We appreciate the opportunity to present these comments for your consideration.

Aaron Harman  
Regional Manager  
K N Energy, Inc.  
205 "F" Street  
Phillipsburg, KS 67661  
(913) 543-2135

KANSAS ELECTRIC COOPERATIVES, INC.

TESTIMONY ON H.B. 2904

Mr. Chairman, members of the Committee. Thank you for the opportunity to appear in opposition to House Bill 2904.

I'm Marshall Clark from Topeka, and I'm employed by the Kansas Electric Cooperatives, Inc. (KEC). We are the statewide association representing thirty-two rural electric distribution cooperatives and the two generation and transmission cooperatives serving some 180,000 consumer-members across Kansas.

We agree that utilities, which enjoy certain business privileges because of their monopolistic structure should not use those privileges for unfair advantages over private-sector, free enterprise businesses.

However, in trying to rectify that situation, the bill (H.B. 2904) contains quite a bit of language which we interpret as harmful to a number of programs and services which some of the KEC member cooperatives provide to their consumers.

Bear in mind that all rural electric cooperatives, both distribution and generation and transmission, are not-for-profit, rate payer and consumer-owned. We are not encumbered with the profit motive.

The relatively few services we provide or products we supply are generally those which encourage the efficient use of electricity or simply the use of electricity. With the continued loss of rural population and the demise of the rural business base, we must do some of these things to survive.

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Electricity must be sold in order to keep rural electric rates affordable, even though they are already 10% - 20% higher than urban rates. H.B. 2904 would eliminate these efforts to the detriment of rural electric consumers.

Kansas Electric Power Cooperative, Inc. (KEPCo) is a generation and transmission cooperative which supplies all of the power requirements of its twenty-four owner distribution cooperative members. As you know, KEPCo has a 6% interest in the record-breaking Wolf Creek Nuclear Plant, which is operated by Wolf Creek Nuclear Operating Corporation. The corporate structure of (WCNOC) makes it an affiliate of the owner utilities. H.B. 2904 eliminates certain vital financial arrangements which allow WCNOC to exist.

Our opposition to H.B. 2904 is based on various concerns such as these which we feel very strongly would make our already difficult job of bringing reliable, affordable electricity to rural Kansans even more difficult. Please keep these concerns in mind as you make your deliberations.

We are always available for questions. Thank you very much.



TESTIMONY  
TO  
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE  
HB 2904  
FEBRUARY 22, 1990  
BY JIM LUDWIG, KPL GAS SERVICE

Mr. Chairman and Members of the Committee:

KPL is opposed to HB 2904. The bill is intended to restrict the services provided by regulated public gas and electric utilities and their affiliates "engaged in the sale, lease, rental, installation, construction, modernization, retrofit, maintenance or repair of equipment, products or services." These restrictions would cause a kind of protectionism that is bad for consumers and business alike.

In a word, the bill is unnecessary. The KCC already has the authority to review dealings between public utilities and their subsidiaries. See K.S.A. 66-1401 et seq. (Attached). Clearly, the Commission can take any action necessary to ensure that utilities do not subsidize their subsidiaries with customers' money.

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Besides HB 2904 being unnecessary, we see many technical problems in its language. At a minimum, the following sections ought to be amended, clarified, or eliminated.

•Section 2(a) (1), page 2, lines 32-34. Prohibits "sale[s] . . . of . . . products" by a utility except through an affiliate. This would obviously require KPL to move its sales of gas lights, air conditioners, and heat pumps into an affiliate. Less obvious, however, is the sale of natural gas. Since natural gas is a "good" under the commercial code - and hence, a "product" for the purposes of HB 2904 - this section could be construed as requiring a utility to sell natural gas through an affiliate. A utility could provide "[e]mergency service" through the utility itself since that is specifically exempted from the affiliate requirement, section 2(e) (1), page 3, lines 37-40. The utility could also transport natural gas throughout its service area since that is a service. Sales of natural gas, however, would have to be separated and subsumed under an affiliate.

The best solution would be to amend this section to exempt provision of goods or services under KCC-approved tariffs from the affiliate requirement.

•Section 2(a) (4), page 2, lines 41-42. Prohibits loans or guarantees. This should be amended to delete guarantees and to allow loans repayable at market interest rate. Other corporations can engage in such transactions. Loans are not cross-subsidization. Why should public utilities be prohibited from such actions if there is no unfair advantage or cost to customers?

•Section 2(a) (5), page 3, lines 1-4. Prohibits purchasing of the affiliate's securities at less than fair market value. This section makes little sense for wholly-owned subsidiaries. Stock of such affiliates will not be sold on the open market. How, then, can market value be determined? This section should be deleted.

•Section 2(a) (8), page 3, lines 11-13. Prohibits a utility from pricing a service to an affiliate "at less than the fully allocated cost of the service, including a 5% add-on to the labor portions of the cost." This provision makes no sense. If the affiliate locates in the utility's service area, this language would require utility services to be priced at a special rate to the affiliate rather than the tariffed rate. At a minimum, this section needs to be limited to services other than those provided on a tariffed basis to similarly situated customers of the public utility.



•Section 2(d), page 3, lines 30-35. Requires an annual audit of affiliate transactions by an independent auditor selected by the KCC and CURB. There are no guidelines established concerning the scope or cost of the audit. Such audits can be costly and would be borne by the public utility's shareholders even if no evidence of wrongdoing is discovered. Perhaps an audit should not be initiated unless a complainant shows reason to believe the provisions of the bill are being violated. Further, the utility should not have to bear the cost of the audit if no violations are discovered.

•Section 5(a), page 4, lines 42-43 and page 5, lines 1-12. Provides complaint procedure before the KCC with recovery of attorneys' fees, expenses and costs, and treble damages "suffered by reason of unfair competition." First, such a procedure cannot be held before the KCC. Under the Kansas constitution, public utilities, like other persons or businesses, have the right to jury trials concerning such claims. Kansas Constitution, Bill of Rights, Article 5. Second, while it may be appropriate to disallow the costs of an award in a utility's rates, prohibiting the cost of a successful defense in rates is clearly unfair since the costs of such a defense would be a necessary and ordinary business expense. Public utilities are generally allowed recovery of prudently incurred expenses. The statutory prohibition of recovery of necessary costs of litigation would be unlawful. See State ex rel. Southwestern Bell Telephone Company v. Public Service Commission, 262 U.S. 276, 289, 43 S. Ct. 544, 67 L. Ed. 981 (1923).

HB 2904 is fraught with problems, and we doubt, even if enacted with the revisions we have outlined, it would bring about any benefit to consumers. Our greatest objection is that it is not necessary.

act shall not require a motor common carrier or contract carrier with certificate or permit authority to provide wrecker or towing service to obtain any additional permit or authority under this act to perform the services so authorized, when such services are performed with a vehicle properly registered with the commission by such carrier.

**History:** L. 1984, ch. 25, § 2; May 24.

**66-1331. Equipment and insurance requirements; applications and issuance of permits.** Any person may apply to the state corporation commission for a local wrecker carrier permit. Applications shall be on forms provided by the commission and shall be supported with documentary and other evidence as the state corporation commission requires. Local wrecker carriers are required to comply with requirements of law relating to motor vehicle equipment, safety insurance and liability which are applicable to common carriers. When proper application is received, the commission shall issue the applicant a local wrecker carrier permit.

**History:** L. 1984, ch. 25, § 3; May 24.

**66-1332. Fee for permit; identification of vehicles; marking on sides of vehicles.** (a) Applications for a local wrecker carrier permit shall be accompanied by a filing fee of \$10. Each holder of a local wrecker carrier permit shall pay an annual fee to the state corporation commission of \$10 for each self-propelled motor vehicle operated under the permit. Upon payment of such fee, the commission shall issue identification for the vehicle.

(b) All vehicles operated under a local wrecker carrier permit shall have painted or durably marked on each such vehicle on both sides thereof, in plain letters not less than two inches in height and with not less than ¼ inch stroke, the word "local," the gross weight for which the vehicle is licensed and the name and address of the owner or lessee of the vehicle.

**History:** L. 1984, ch. 25, § 4; May 24.

**66-1333. Rules and regulations.** The state corporation commission may adopt rules and regulations for the administration of this act.

**History:** L. 1984, ch. 25, § 5; May 24.

**66-1334. Violation of act misdemeanor.** Violation of this act or rules and

regulations adopted thereunder is a misdemeanor. Any person convicted of such a violation shall be punished by a fine not exceeding \$500.

**History:** L. 1984, ch. 25, § 6; May 24.

#### Article 14.—HOLDING COMPANIES

##### Cross References to Related Sections:

Assessment of costs and expenses of utility investigations, see ch. 66, art. 15.

Affiliated interests, see, also, 66-1213 to 66-1216.

#### **66-1401. Jurisdiction over holding companies; "affiliated interests" defined.**

(1) The state corporation commission shall have jurisdiction over holders of the voting capital stock of all public utility companies under the jurisdiction of the commission to such extent as may be necessary to enable the commission to require the disclosure of the identity in respective interests of every owner of any substantial interest in such voting capital stocks. One percentum or more is a substantial interest, within the meaning of this subdivision.

(2) Such commission shall have jurisdiction over affiliated interests having transactions, other than ownership of stock and receipt of dividends thereon, with utility corporations and other utility companies under the jurisdiction of the commission, to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including access to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions; and to the extent of authority to require such reports to be submitted by such affiliated interests, as the commission may prescribe. For the purpose of this section only, "affiliated interests" include the following:

(a) Every corporation and person owning or holding directly or indirectly ten percentum or more of the voting capital stock of such utility corporation.

(b) Every corporation and person in any chain of successive ownership of ten percentum or more of voting capital stock.

(c) Every corporation ten percentum or more of whose voting capital stock is owned by any person or corporation owning ten percentum or more of the voting capital stock of such utility corporation or by any person or corporation in any such chain of successive ownership of ten percentum or more of voting capital stock.

(d) Every person who is an officer or director of such utility corporation or of any corporation in any chain of successive ownership of ten percentum or more of voting capital stock.

(e) Every corporation which has one or more officers or one or more directors in common with such utility corporation.

(f) Every corporation which the commission may determine as a matter of fact, after investigation and hearing, is actually exercising any substantial influence over the policies and actions of such utility corporation even though such influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this section.

(g) Every person or corporation who or which the commission may determine as a matter of fact, after investigation and hearing, is actually exercising such substantial influence over the policies and actions of such utility corporation in conjunction with one or more other corporations and/or persons with which or whom they are related by ownership and/or blood relationship or by action in concert that together they are affiliated with such utility corporation within the meaning of this section even though no one of them alone is so affiliated: *Provided, however,* That no such person or corporation shall be considered as affiliated within the meaning of this section if such person or corporation is otherwise subject to the jurisdiction of the commission or such person or corporation shall not have had transactions or dealings other than the holding of stock and the receipt of dividends thereon with such utility corporation during the two-year period next preceding: *Provided further,* No foreign holding company shall acquire the stock or control of a local operating unit or public utility in its own name or through a trustee without first entering into an agreement to keep the state corporation commission fully informed as to the transactions between the subsidiary or local operating unit and the holding company, and to submit to the jurisdiction of the commission insofar as such transactions affect the rate or charge to be made by the subsidiary or local operating unit.

**History:** L. 1931, ch. 239, § 1; March 9.

**Research and Practice Aids:**

Public Service Commissions—6.3.  
C.J.S. Public Utilities § 39.

**CASE ANNOTATIONS**

1. Invalid preliminary investigation orders of commission cannot be enjoined. *State Corporation Comm. v. Wichita Gas Co.*, 290 U.S. 561, 54 S.Ct. 321, 323, 78 L.Ed. 500.

2. Commission has authority to determine reasonableness of city-gate charge by affiliated company. *State, ex rel., v. Capital Gas & Elec. Co.*, 139 K. 870, 873, 33 P.2d 731.

**66-1402. Submission of contracts with affiliated interests to commission.** No management, construction, engineering or similar contract, hereafter made, with any affiliated interest, as hereinbefore defined, shall be effective unless it shall first have been filed with the commission. If it be found that any such contract is not in the public interest, the commission, after investigation and a hearing, is hereby authorized to disapprove such contract.

**History:** L. 1931, ch. 239, § 2; March 9.

**CASE ANNOTATIONS**

1. Invalid preliminary orders of commission cannot be enjoined. *State Corporation Comm. v. Wichita Gas Co.*, 290 U.S. 561, 54 S.Ct. 321, 323, 78 L.Ed. 500.

2. Commission has authority to determine reasonableness of city-gate charge by affiliated company. *State, ex rel., v. Capital Gas & Elec. Co.*, 139 K. 870, 873, 33 P.2d 731.

**66-1403. Showing required for fixing or charging rates.** In ascertaining the reasonableness of a rate or charge to be made by a public utility, no charge for services rendered by a holding or affiliated company, or charge for material or commodity furnished or purchased from a holding or affiliated company, shall be given consideration in determining a reasonable rate or charge unless there be a showing made by the utility affected by the rate or charge as to the actual cost to the holding or affiliated company furnishing such service and material or commodity. Such showing shall consist of an itemized statement furnished by the utility setting out in detail the various items, cost for services rendered and material or commodity furnished by the holding or affiliated company.

**History:** L. 1931, ch. 239, § 3; March 9.

**Cross References to Related Sections:**

Assessment of costs against utility, see ch. 66, art. 15.

**CASE ANNOTATIONS**

1. Purpose, application and requirements of section determined in construing statute. *Southwestern Bell Tel. Co. v. State Corporation Comm.*, 169 K. 457, 460, 461, 462, 463, 466, 468, 471, 472, 473, 474, 219 P.2d 361.

2. Injunction enjoining commission from interfering

with collection of increased telephone rates improperly granted. *Southwestern Bell Tel. Co., v. State Corporation Commission*, 169 K. 509, 510, 512, 513, 514, 515, 219 P.2d 377.

3. Burden on utility to establish proper expense allocations. *Wichita Gas Co. v. Public Service Comm.*, 2 F. Supp. 792.

4. Invalid preliminary orders of commission cannot be enjoined. *State Corporation Comm. v. Wichita Gas Co.*, 290 U.S. 561, 54 S.Ct. 321, 323, 78 L.Ed. 500.

5. No presumption of reasonableness of payments made by the utility under this statute. *Southwestern Bell Tel. Co. v. Kansas Corporation Commission*, 4 K.A.2d 44, 47, 48, 49, 55, 602 P.2d 131.

### Article 15.—COSTS AND EXPENSES OF INVESTIGATION AND REGULATION; HEARINGS

**66-1501.** Authority of commission to assess expense of investigation against utility; appeal; bond. Whenever, upon any investigation of a public utility made by the state corporation commission, on its own initiative or upon complaint filed, the commission shall find that any rate, toll, charge or schedule or joint rate is unjust, unreasonable, excessive, insufficient or unjustly discriminatory or preferential or otherwise in violation of the public utility act; or that any measurement, regulation, practice, act or service is unjust, unreasonable, unsafe, insufficient, preferential or discriminatory or otherwise in violation of the public utility act; or it shall find that any service is inadequate or that any service that can reasonably be demanded is not being furnished; or when an investigation is necessary because of an application by a public utility and such application is not justified, the commission shall ascertain and declare and by order fix the expenses incurred by the commission upon such investigation and shall by such order direct such public utilities to pay to the state treasurer to reimburse the fund appropriated for the public service commission an amount to cover the expenses so incurred: *Provided*, That such order shall not become operative unless the matter in connection with which such investigation shall have been made shall have been finally determined, by appeal or otherwise, adversely to such public utility. The commission shall cause a certified copy of all such orders to be delivered to an officer or agent of the public utility affected thereby, and all such orders shall, of their own force, take effect and become operative twenty days after final determination of the inves-

tigation by appeal or otherwise: *Provided*, That if appeal is taken by any public utility a surety bond shall be furnished by such utility to secure the payment of such expenses in case the order of the commission shall be sustained.

**History:** L. 1931, ch. 240, § 1; March 19.

#### Revisor's Note:

Transferred from 74-602d.

#### Research and Practice Aids:

Public Service Commissions—11.  
C.J.S. Public Utilities § 46 et seq.

#### CASE ANNOTATIONS

1. Mentioned; procedure for appealing decisions of commission fixed by statute. *City of McPherson v. State Corporation Commission*, 174 K. 407, 414, 417, 257 P.2d 123.

2. Referred to in determining that court did not have authority to substitute its judgment for commission which denied rate increase in part. *Central Kansas Power Co. v. State Corporation Commission*, 221 K. 505, 514, 561 P.2d 779.

**66-1502.** Assessment of expenses of investigations or appraisals of public utilities and common carriers; payment. Whenever, in order to carry out the duties imposed upon it by law, the state corporation commission, in a proceeding upon its own motion, on complaint, or upon an application to it, shall deem it necessary to investigate any public utility or common carrier or make appraisals of the property of any public utility, such public utility or common carrier, in case the expenses reasonably attributable to such investigation or appraisal exceed the sum of one hundred dollars (\$100), including both direct and indirect expenses incurred by the commission or its staff, shall pay such expenses which shall be assessed against it by the commission, except that no such public utility or common carrier shall be assessed for payment of such expenses, unless prior to the incurring of any such expense the state corporation commission shall give such public utility or common carrier written notice that it is contemplating the making of such investigation or appraisal. Said notice shall state in general terms the nature, scope and purpose of such investigation or appraisal and shall also fix a date not less than ten days following the date of such notice, when such public utility or common carrier may be heard as to the necessity of such investigation or appraisal and may show cause, if any, why such investigation or appraisal should not be made or why the costs thereof should not

TESTIMONY ON HB 2904  
Before House Energy & Natural Resources Committee  
February 22, 1990

Mr. Chairman, members of the Committee, I am Louis Stroup, Jr., executive director of Kansas Municipal Utilities, Inc., a statewide association of municipal gas, water and electric cities which was founded in 1928.

We are opposed to HB 2904 for a number of reasons and we find the wording and intent of the bill very confusing.

(1) The bill starts out with a fairly narrow declaration stating it to be public policy to promote free and open competition in the sale and servicing of energy-related and nonutility products and equipment --but nowhere is there a definition of "energy-related and nonutility products and equipment." It appears the intent is to basically prohibit the sale or servicing of nonutility owned products and equipment, but it covers much more than that -- including utility owned equipment. It is all encompassing.

(2) As written, the definition of "public utility" would include 14 municipal electric generating systems and the Kansas Municipal Energy Agency -- a joint financing agency consisting of 32 member cities. KMEA melts the credit of the member cities to issue bonds on their behalf for many things such as power purchases from other utilities, new generation, construction of substations and interconnections, engineering services, etc.

(3) Under Section 2 on page 2, the bill asserts a public utility shall not do a number of things except by an affiliate -- municipal utilities do not have affiliates. Must we establish affiliates if we are to install our own electric distribution lines, maintain our own lines, improve our own lines or repair them? Historically, most municipal electric systems improve, repair and maintain their own electric distribution lines -- and in many cases, construct them, too. There is nothing anti-competitive about city crews working on city owned equipment and facilities.

(4) The same section appears to be somewhat in conflict with subsection (2) on pages 3 and 4 which say construction, maintenance or repair of public utility property necessary for the generation, transmission or distribution of electricity, gas or steam is not prohibited if the work performed is necessary to protect public safety or to avoid interruption of service. Not all work that is needed falls into the area of "public safety" or "to avoid interruption." Some is just normal routine maintenance or upgrading.

H ENERGY AND NR  
2-29-90

ATTACHMENT 10

(5) The bill implies that utilities could not go out and move lines for house-moving purposes or make changes on utility rights-of-way -- in other words, our municipal utilities couldn't work on their own equipment without setting up an affiliate.

(6) The bill would impact rental light programs for our rural areas. Apparently municipal utilities would have to establish an affiliate to conduct such a program. A number of the municipal electric systems that have a large number of rural customers have yard light rental programs in which a customer may request that the utility install and maintain yard lights or the customer may go to Wal-Mart or any other retail outlet and purchase the yard light. For safety reasons, most utilities do not let nonutility personnel install or maintain lights located on the utility's poles; but if the light is installed on the farm house, out buildings or on a nonutility pole, that's a different matter.

(7) The bill appears to prohibit the various cities from helping each other out in emergency situations such as ice storms, tornadoes, etc. -- actions which are necessary but not required by law or by the Kansas Corporation Commission as stated in (e)(1) on page 3 of the bill.

(8) We are very uncertain about whether or not KMEA would be considered an "affiliate" of the member cities and exactly what implications this would have on KMEA even though KMEA is a "public utility" under the bill. On page 4, Section 3(b) it states an affiliate shall not share the use of premises, equipment, inventory, personnel or other resources of the public utility. This would be an impossible situation for KMEA since city elected officials as well as city employees serve on the KMEA board of directors.

(9) Sections 5 and 6 describe violations, fines and asserts that any fines paid shall be excluded from the utility's costs -- this is impossible in a municipal utility operation where there is no profit involved. Any such fines would have to come from utility revenues which are paid for directly by ratepayers.

It appears the original intent of the bill was to prevent utilities from selling and servicing nonutility owned appliances -- but this bill as written is much, much broader and would interfere with the normal operations and maintenance of a utility's own equipment and services. For those reasons, along with those mentioned previously, we strongly urge your opposition to this bill.

11

TESTIMONY OF KANSAS GAS AND ELECTRIC COMPANY  
BEFORE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE  
February 22, 1990  
HOUSE BILL 2904

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM JERRY COONROD, REPRESENTING THE KANSAS GAS AND ELECTRIC COMPANY

FOR THE MOST PART, PROGRAMS OFFERED BY UTILITIES TO THEIR CUSTOMERS ARE DESIGNED TO BENEFIT THE CUSTOMER AS WELL AS THE COMPANY AND THE MAJORITY OF THESE PROGRAMS, IN SOME MANNER, BENEFIT THOSE WHO THE BILL REFERS TO AS "NON UTILITY ENTERPRISES".  
FOR EXAMPLE:

KANSAS GAS AND ELECTRIC OFFERS TO ITS RESIDENTIAL CUSTOMERS A FINANCE PROGRAM FOR THE PURCHASE OF A HEAT PUMP. THE PURCHASE AND INSTALLATION OF THE EQUIPMENT IS BETWEEN THE CUSTOMER AND THEIR DEALER AND INSTALLING CONTRACTOR. TO DATE, KG&E HAS NOT RECEIVED A COMPLAINT FROM A NON-UTILITY ENTERPRISE IN REGARD TO UNFAIR PRACTICE AS WELL THEY SHOULDN'T, BECAUSE THE PROGRAM BENEFITS ALL THAT ARE INVOLVED. IN FACT THIS PROGRAM CAME INTO BEING AT THE URGING OF WICHITA EQUIPMENT SUPPLIERS. YET, UNDER HB 2904, SHOULD IT BECOME LAW, THIS PROGRAM COULD NO LONGER EXIST. THE BILL DOESN'T STOP HERE. IT EVEN PROPOSES TO CONTROL THE OPERATIONS AREA OF OUR INDUSTRY. JUST 60 MILES SOUTH OF HERE SETS THE LARGEST SINGLE PROJECT EVER CONSTRUCTED IN THE HISTORY OF THIS STATE, THE 3.5 BILLION DOLLAR WOLF CREEK NUCLEAR GENERATING STATION. THIS PLANT OPERATES SO WELL THAT IT HOLDS EVERY CONCEIVABLE PRODUCTION RECORD FOR A NUCLEAR PLANT AND PROBABLY MOST POWER PLANTS REGARDLESS OF FUEL SOURCE. WOLF CREEK EMPLOYEES 1244 PEOPLE OF WHICH OVER 80% ARE NATIVE KANSANS AND IT HAS AN ANNUAL PAYROLL OF 43.5 MILLION DOLLARS.  
HB 2904 WOULD OUTLAW THE WOLF CREEK NUCLEAR OPERATING COMPANY.

I CAN GIVE YOU OTHER EXAMPLES, BUT THESE TWO CLEARLY SHOW HOW BROAD IN SCOPE THIS PROPOSED BILL REALLY IS.

WE OPPOSE HB 2904.

THANK YOU

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2-22-90  
ATTACHMENT 11

ELAINE L. WELLS  
 REPRESENTATIVE, THIRTEENTH DISTRICT  
 OSAGE AND NORTH LYON COUNTIES  
 R.R. 1, BOX 166  
 CARBONDALE, KANSAS 66414  
 (913) 665-7740



TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 MEMBER: AGRICULTURE AND SMALL BUSINESS  
 INSURANCE  
 PUBLIC HEALTH AND WELFARE  
 PENSIONS, INVESTMENTS AND  
 BENEFITS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

TESTIMONY

on

HOUSE BILL NO. 2919

February 22, 1990

by

REPRESENTATIVE ELAINE L. WELLS

Thank you Mr. Chairman for hearing this bill and to you, Committee for the opportunity to testify on it.

The gentleman who proposed this bright and timely idea is unable to be here today but I'm compelled to tell you how hard he's been working on it and that he's not even one of my constituents.

Bob Johnson of Ottawa called me several months ago to see what it would take to rename the state park at Melvern after Eisenhower and in memory of all veterans. He is a retired attorney who worked for Senator Frank Carlson in Washington, D.C. He's been active in the political process and has traveled extensively throughout the United States.

He indicated that other states have parks that are named in memory of Eisenhower and the veterans, and felt that this year would be perfect for naming one in Kansas. And, Melvern, with its close proximity to the State Capitol, a great tourist center, would only seem appropriate, not only for Kansans but those from other states.

H ENERGY AND NR  
 2-22-90  
 ATTACHMENT 12



For those of you who do not know where the Melvern Reservoir is, it is located in Osage County, approximately 35 miles south of Topeka on Highway 75. It is approximately five miles from I-35 off the famous BETO Junction exit (that's short for Burlington, Emporia, Topeka and Ottawa).

The lake is relatively undeveloped so there would be no fear of having a negative impact on the free enterprise system by adding more competition for already established tourist attractions in the area. In fact, "Melvernites" have expressed to me their support of the name change. Attached is a copy of a letter from the Mayor of Melvern. Since he could not be here today I'd like to read it.

The fiscal note for the name change is minor. It will cost approximately \$4 thousand to \$6 thousand to change the signs. As the Department of Wildlife and Parks update their brochures, the name change can be incorporated.

As a supporter of our state's "Favorite Son", and of the men who have served our country in war and peacetime, the name "Eisenhower Veterans Memorial State Park" will help commemorate their significance in Kansas, and will bestow honor to them.

Mr. Johnson worked to get the support of the veterans' groups and the Eisenhower Commission and they are here to testify today.

I hope you will join them and the sponsors of this bill by supporting H.B. 2919.

I'll be happy to respond to questions.

Honorable Elaine L. Wells  
Representative, Thirteenth District  
R.R. 1 Box 166  
Carbondale, Kansas 66414

Dear Representative:

In regard to renaming the Melvern State Park to becoming the Eisenhower Veterans Memorial State Park, I wish to report that the majority of our community seem quite favorable to this change. In fact we feel quite honored to have our State Park considered for this historical name and that it might afford another historical site for our state.

I might also add that having two major highways crossing our state so near our park would certainly make it quite accessible to any wishing to visit the park.

We, the Melvern Community, would be most happy for any consideration shown us as to this new name change.

In all sincerity,

*Howard M Kramer*

Havard M. Kramer, Mayor

hmk/bs

I am Ron Parks, Executive Director of the Kansas Eisenhower Centennial Commission. I appear before you in support of House Bill 2919, which changes the name of Melvern State Park to Eisenhower Veterans Memorial State Park.

The Kansas Eisenhower Centennial Commission was created, as you know, by the state legislature in April of 1987. The enabling legislation charged the Commission with making Kansans and non-Kansans more familiar with the life and times of Dwight D. Eisenhower. To that end we have developed a number of educational and tourism-related programs which have been or are in the process of being disseminated through the state.

Kansans are commemorating the centennial of the birth of Dwight D. Eisenhower because we are proud of our most distinguished son and because we seek to enlarge our understanding of his world and our own.

As soldier, president, and statesman, Dwight D. Eisenhower was a towering person of the three middle decades of this century; his presence on the national and international scene had a profound effect upon the present and upon our future. His biographer, Kenneth Davis, observed that "the essential Eisenhower . . . was a selfless nonpartisan hero, the symbol of unity of mankind, a leader toward that world order which is so

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clearly necessary if a civilized human freedom is to survive." His journey to the summit of global affairs began in Kansas where, for two decades, his character, intellect, and beliefs were shaped by his family and the social and cultural environment of Abilene.

Naming this park the Eisenhower Veteran's Memorial State Park would place the dimensions of time and place in their most fitting context. It is appropriate that we should honor the memory of Dwight Eisenhower by naming a park for him 100 years after his birth. And it is right that a park should be named for him in Kansas, his home state. But beyond these obvious reasons, there is the context of Dwight Eisenhower's life.

I quote from Eisenhower's biographer, Stephen Ambrose, who wrote:

Four activities that young Dwight concentrated on and became proficient in were exploration, hunting and fishing, cooking, and card playing. All four became passions that he enjoyed the rest of his life. Man and boy, nothing delighted him more than going into a new area, getting a feel for the lay of the land, shooting some quail or catching some trout, cooking them over an open fire, and ending the day with a marathon session of poker or bridge.

His instructor was an illiterate fifty-year-old man,

Bob Davis, who made his living from the Smoky Hill River, shooting ducks, catching fish, and trapping muskrat and mink. Davis enjoyed Little Ike's company and always welcomed him to his camp. He taught the boy how to paddle a flatboat, how to find north on a rainy day, how to read the folds in the surrounding countryside and figure out the drainage, how to hunt, fish, and trap, how to cook what they had shot or caught.

I think, too, that it is appropriate to point out that our neighbor state to the east has not only named a federal reservoir in honor of its most famous son, Harry S. Truman, but also has named the state park located on the shores of that same reservoir the Harry S. Truman State Park. Indeed, it is true that six states already have Dwight D. Eisenhower parks, including one in Alaska, California, New Jersey, New York, Rhode Island, and two in Texas.

For these reasons, the Kansas Eisenhower Centennial Commission urges passage of House Bill 2919.

AMERICAN LEGION, DEPARTMENT OF KANSAS

STATEMENT IN SUPPORT OF HB 2919

Thursday, February 22, 1990

Thank you for allowing me this opportunity to speak to you today in support of House Bill 2919 which calls for the renaming of the Melvern State Park in Osage County in honor of President and General Dwight D. Eisenhower.

During its regularly scheduled Executive Committee meeting held in Junction City, Kansas on February 2, 1990 The American Legion, Department of Kansas, endorsed the proposal to name a State Park the "Eisenhower Veterans Memorial Park" as a fitting tribute to a Kansan whose life so impacted not only our state and nation, but also the world. The American Legion feels the timing for such a tribute is quite appropriate in this the Centennial of Ike's birth.

Some may question the inclusion of the word "Veteran" in HB 2919; the Legion feels that inclusion is quite appropriate because so much of Ike's life and philosophy was shaped by his experiences as a veteran of World War I and World War II. As a General, Eisenhower sought to end Wars by winning them; as a President he sought to end wars by avoiding them unless absolutely necessary. Yet Eisenhower never forgot those who maintain our peace.

The American Legion and I urge your passage of HB 2919. Again thank you for allowing me this opportunity to address you today.

Sincerely,



CHUCK YUNKER  
Department Adjutant

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2-22-90  
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H.B. 2919

Presented to: House Energy and Natural Resources Committee

February 22, 1990

Prepared by: Kansas Department of Wildlife and Parks

H.B. 2919 would change the name of the Melvern State Park to the Eisenhower Veterans Memorial State Park. The Department does not oppose this name change. It will require reposting of the state park and reprinting of certain Department literature. The reposting can be accomplished in a relatively short time. Literature reprints would be phased in over a longer time period. Reprinting of material specific to the park would take priority over more general material which references the park. The latter would be edited and reprinted as a part of regularly scheduled updating.

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*2-22-90*

*ATTACHMENT 15*

House Bill Number 2904

Testimony before the House Committee on Energy and Natural Resources.

February 22, 1990

Mr. Chairman & Committee members:

I am Bruce Huffman, V.P of cfm Distributors Inc., a KS corporation doing business out of Kansas City, Mo.

We are a major wholesale distributor of heating and air conditioning products in KS and MO. Our customer base and employee base are almost evenly divided between the two states.

In the past, we have enjoyed a good working relationship with the Kansas utilities. However in the last couple of years, we have seen increased intrusion of utility companies in the heating and air conditioning contractors business.

I've been in this business all my adult life and in the wholesale distribution business over 20 years. I know the profit margins in both the contracting and the wholesale side of the business. The is not a growth industry. It is highly competitive with excess capacity.

So, I wonder why the utilities are so interested in the contracting business. Utilities are major "for profit" corporations run as regulated monopolies. Many are Fortune 500 companies. The only answers I can see are not good for Kansas businesses or the gas or electric rate payer.

1. If a utility can hide some of the expenses of running a non-regulated contracting business in their utility operations it would help them increase the gas or electric rate to the consumer.
2. If they can hide some capital investment in a non-regulated contracting business they'll get a guaranteed return on that investment-- again paid by the rate payer.
3. They can use their enormous size and monopoly advantages to force smaller independent businesses out of business with low cost equipment and services. Then they are in a position to set their own price when the competition is gone.

There is no question that some homeowners benefit from below market costs for equipment and services that the utilities are offering. These reduced costs are not a result of their buying power. I'm familiar with wholesale margins and they sell substantially below cost. These low prices must come from CROSS-SUBSIDIZATION with all the rate payers underwriting the benefits available only to select consumers.

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2-22-90

ATTACHMENT 16



To support some of my points:

January 26, 1989, Michael Manadcina speaking for KCPL said if the contractors don't start selling a lot more heat pumps in the next couple years KCPL will be looking at getting into the heat pump installation business. He also stated it can be a very profitable operation for a utility.

The states of Michigan, Oklahoma, and California among others are fighting unfair utility competition. An Iowa law was passed in 1989 regulating unfair utility methods. National associations for heating, plumbing, and electric contractors are organizing nationally to fight utilities. Even the Small Business Administration is beginning to fight unfair utility actions.

Mr. Barry Burnett, B & B Heating & Air Conditioning, Inc., the national "Residential Contractor of the Year" is a customer of my counterpart in Seattle, WA. A publication of his statements concerning utility competition is attached. He is a sophisticated, big contractor. How can a normal Kansas contractor compete against a utility if this major contractor cannot? The utility intrusion problem is a real threat.

There is strong evidence of cross-subsidization:

1. KPL Gas Service indicated they spent approximately \$400,000 in gas air conditioning advertising in 1988. They sold approximately 400 units or about \$1,000 per unit in advertising costs. This is more than the average cost of an electric air conditioner.
2. The Trane Co is a major Air Conditioning manufacture. A letter from the Trane Co office manager in Wichita KS is attached.
3. KPL Gas Service is now bidding heating and gas air conditioning new housing systems in the Kansas City area for just over \$600 per ton. Most contractors pricing is in the \$850-900/ ton range. These lower than market prices cannot be justified by better purchasing power.

They can't buy this much better or operate this much cheaper. The evidence says CROSS-SUBSIDIZATION.

The rate payers are paying the bill to help utilities force Kansas businesses out of business.

Kansas has responsible, fair, and knowledgeable heating and cooling contractors covering almost every community in the state. Manufactures and distributors are doing extensive training to educate the contractors as new products are introduced.

Contractors throughout most of the state are licensed. The contractors generally must call for a permit to do the work and upon completion, must have a city official inspect the work. In many cases, the utilities are not subject to these quality and safety controls.

Your action on this bill is needed to maintain these vital, non-agricultural businesses in KS. I support House Bill Number 2904.

# Contracting Business

THE MAGAZINE OF MECHANICAL SYSTEMS & DESIGN/BUILD CONTRACTING

**RESIDENTIAL CONTRACTOR  
OF THE YEAR**



**B&B HEATING &  
AIR CONDITIONING, INC.**

**DESIGN/BUILD SEMINAR  
PART 1**

16-3

## B&B HEATING

repeated. Once a salesman did the initial engineering, and all the floor plans and specifications were computer inputted, whenever B&B won a contract on a new subdivision, the plans are just called up from disk.

"For example," Burnett explains, "A developer might have 20 home plans and in any particular tract project they build each type 20 times. After we've sold a builder once, all those floor plans and specifications remain stored on the system for instant recall when we sell him again."

Using a computer-aided drafting/manufacturing system, B&B engineers can call up all specifications and drawings while simultaneously downloading to the computerized plasma cutting system where all the ductwork for a job is

## AN HISTORICAL PERSPECTIVE

**B**ut how did B&B Heating get to where it is today? "When my father and I first opened shop in 1976, we were a two-man operation with Dad selling and me installing. We opened a 1,900-sq.-ft. warehouse. For the first month it was just the two of us. Then we hired two installers.

"Our first full year in business we did \$1 million in gross sales, had a crew of six, and had expanded the warehouse to 2,700 sq. ft."

The following year B&B Heating relocated to a 4,000-sq.-ft. facility. To that point, Barry's father ran the business, but in 1977, Barry took over as president. That year the company grew to \$2.5 million in sales and the first foreman was hired. Barry's father retired from the business in 1978. Then the recession revolutionized the hvac market in Seattle.

"When the recession hit in 1978-79, the heating market changed in the Pacific Northwest and we had to change our business focus. We began doing more retrofit work."

At the time, the State of Washington had extremely low electric rates, yet gas rates were high, compared to the rest of the country. So heat pumps were hot in the marketplace and B&B shifted gears to retrofit them in the residential market. By the time the recession began to seriously hurt the new installation business, Burnett was sufficiently diversified into retrofit that B&B didn't lose any ground.

"In fact we grew during those years," he says. "Growth wasn't rapid, but it was growth and we were still profitable."

Once the recession slowed, the company sold its service business, started a new one, and began planning for a new facility. The new service company focus was: capitalizing on B&B's existing residential customer base, selling residential maintenance agreements, and "building the service division based on all our own work."

It was also during this time that utility rates went topsy-turvy. Suddenly gas was much more cost effective and the retrofit market for gas changeouts looked extremely promising. Unfortunately the local gas utility thought so too and slowly put a stranglehold on the gas retrofit market. Many small hvac contractors went out of business.

"I never had a market I wanted to get into that I couldn't, except for gas retrofit. No matter what we tried, the utility would hammer us. We don't have a rate base to cover our costs or access to a customer list with thousands of names on it like they do."

B&B couldn't come close to competing with them so in self defense, they began searching for other lucrative markets.

Today those markets include large custom homes, tract housing, light commercial, and residential service. ■

## B&B HEATING

the tract home division. Besides focusing on providing the best, fastest, and highest quality hvac installations, Burnett also provides many non-hvac related services.

Among them, B&B helps builders promote their projects to the community. On a recent project where the company installed through-the-wall packaged units in the condominiums of a senior citizen community development called Providence Point, B&B used its manufacturing co-op dollars to pay for promotional materials and advertising for the new community.

The promotions included brochures, flyers, and a community telephone book. Not once did B&B promote its itself. Burnett paid for the printing and distribution. Says Executive Vice President Edwin Olsen, "You can't find a better company to work with."

While the tract housing business flourishes, the rise in

*B&B engineers are part of the Design Team with architects and builders to make sure the hvac system they design and install works with the overall home aesthetics as well as providing homeowners' comfort requirements.*

custom-built homes also steadily contributes to B&B's growth, especially in light of the new tax laws. Burnett sees people spending more on their homes than in the past.

"With the new tax law, the only real write-off an individual has is his home. So if that's your only write-off, you may as well live in a dandy home. People buy more custom homes here than ever before. We do many where heating systems costing up to \$50,000 are common."

B&B Heating is tied into 20 to 30 architectural firms specializing in designing custom homes. B&B engineers are part of the Design Team and work with the architects and builders to make sure the hvac system they design and install works with the overall home aesthetics as well as providing homeowners' comfort requirements.

"Some of these homes are so large, they require two or three separate heating systems. We zone some using the Parker VVT system," says Harold Meek, B&B residential sales manager. "One thing we plan on doing in the near future is selling service contracts to custom homeowners who have a VVT system based on our ability to monitor the equipment remotely, like we do now commercially."

**W**ith the General Residential and Affordable Housing Divisions doing so well, Burnett is free to pursue the ultimate strategic plan now: B&B is strong enough to have its own financing and is able to buy down financing to compete with the gas utility.

"Now we are ready to get back into the retrofit market and fight for some of that turf," Burnett says. Late in the fourth quarter, 1988, B&B restarted its Residential Retrofit Div.

"For now," Burnett continues, "we are just trying to get a small foothold. To truly compete we've got to grow to become a \$20 to \$30 million contractor. We can ride the new construction market to get there while simultaneously building our retrofit department. Once we achieve those kind of sales, B&B will be ready to do battle with the utility."

He also B&B Servi service ag

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Wichita Sales and Service  
Commercial Systems Group  
The Trane Company

120 Ida 67211  
P O Box 11725  
Wichita KS 67202 0725  
316 265 9655

John F Knipp  
Office Manager

FEBRUARY 14, 1990

Stryker Mechanical  
3368 Southwest Gage Blvd  
Topeka, KS 66614

Attn: Ron Stryker

RE: Alliance for Fair Competition

Mr. Stryker,

Per our 2/14/90 phone, I have a serious concern with utility companies involvement in the HVAC Equipment sales market.

Two specific instances come to mind in the last 5 years:

1. A local project was designed and bid with two 300 ton direct gas fired chillers as base bid with an alternate bid for electric Centrifugal Chillers. After bids were evaluated, the owner was not interested in the base bid (no pay back for the additional first cost add). The alternate was the economic, logical, proposed candidate. However, before the purchase decision was made, the local gas utility approached the owner with a 'lease-purchase' agreement that changed the pay back economics and the base bid was installed.
2. An existing 1250 ton project had an ice bank refrigeration system added on a 'lease-purchase' agreement between the owner and the local electric utility co.

GAS  
CHILLER

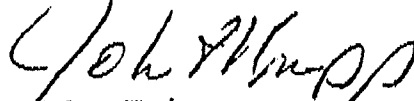
16-5

In the above case 1, not only were the economics of payback altered by the gas utility, Japanese manufactured and furnished chillers were purchased. Why should consumers who have no choice of their gas utility supplier be forced to pay for an uneconomic foreign product? Does Kansas care about balance of trade?

In both cases, I seriously question the logical economic justification for the utility company's behavior.

I hope the above will offer some insight into unfair competition I have witnessed in Wichita.

Yours very truly,

  
John Knipp

JK/pj

TH/pj

16-6

Testimony before the House Committee on Energy and Natural Resources.

February 22, 1990

By Raymond E. Omo-  
Ray Omo Plumbing & Heating  
Kansas Alliance for Fair Competition, Inc.

Mr. Chairman and members of the committee:

My name is Ray Omo. My wife and I own a plumbing and heating business in Dodge City, Kansas. I'm also a member of the Kansas Alliance for Fair Competition, Inc. and support House Bill No. 2904.

I would like to enlighten you on some of the problems we, as business people, have in fighting the public utilities.

1) Bill stuffers: Every month we open our gas bill and find pieces of sales literature, service agreements, sales on Bar-B-Ques and equipment, etc. These stuffers are very professionally done and require good money to print, not to mention the professional cost that was incurred to design these stuffers. I have to ask; what portion of mailing expense should be paid by the rate payer? What portion should be paid by the service and sales division of the Public Utility? Could this be an example of cross-subsidation? I think so!

2) Service Agreements: We are constantly bombarded with advertisements from TV, radio and newspapers regarding People's Natural Gas's P.S.A.P. \$5.95 (Nov. 1990; \$6.95) service agreements for gas or electric water heaters and clothes dryers and for furnaces. It seems very strange to me that a public utility can do this repair work for such a small amount, compared to other service companies in this business. It would appear to me that some of the costs could be mis-allocated to the utility's regulated business. There is no company in southwest Kansas that can compete. I cite to you an example involving a company in Hugoton, Kansas (population approximately 3,100) who, in the mid 1970's, established a heating, air conditioning, and white goods appliance sales and service store and employed a full-time appliance serviceman. In the mid 1980's, after the Public Utility started the \$5.00 service contracts, their business started to decline and eventually they had to let their serviceman go. This problem also shut down the sales of appliances for this company. The company's name is Rindel's Air Conditioning and Heating, Co.

3) Direct Selling of Equipment: The local utility, People's Natural Gas, are usually the first to be called in the event that a customer has a furnace problem, smells gas, or any number of other complaints. This gives the utility a very definite advantage to, first, sell the customer their P.S.A.P. program or, if they are already a customer, sell them a new furnace or water heater. Quite often, other service and sales companies do not even get a chance to respond to the call because the gas company has already advised the customer to have the equipment financed and the monthly payment added to their gas bill. . We have

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2-22-90*

*ATTACHMENT 17*

had customers, who were offered a \$100.00 incentive to install gas lines in order to switch from electric to natural gas. The utility then offered to sell appliances at their invoice price! We had the small town of Wright, Kansas recently switch to natural gas. People's paid each new customer a \$100.00 incentive to switch. The Wright, KS. project incentives seem to be discriminatory expense underwritten by all rate payers!

The practice of energy audits by the local utility is a very unfair practice, in that it gives the utilities access to the audits which are a valuable marketing tool for the present and the future supply, installation, and servicing efforts. Also, since the audits are subsidized by the rate payers, other audit competitors do not stand a chance.