Approved Ken Grotewiel
Date 2/5/91

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Representative Ken Grotewiel at
Chairperson

3:30 ~~a~~/p.m. on January 30, 1991 in room 526-S of the Capitol.

All members were present except:
Representative Lynch, excused
Representative Webb, excused

Committee staff present:
Raney Gilliland, Principal Analyst, Legislative Research
Mary Torrence, Revisor of Statutes' Office
Pat Mah, Legislative Research
Lenore Olson, Committee Secretary

Conferees appearing before the committee:

Bob Eye, attorney, Lawrence, Kansas
Bill Riggins, Consumer Counsel, Citizens' Utility Ratepayers Board
Shaun McGrath, Kansas Natural Resources Council
Scott Andrews, Kansas Chapter of the Sierra Club

Chairperson Grotewiel opened the hearing on HB 2029, and instructed staff to review their research on this bill.

Staff reviewed the background chronology of actions taken on particular dates relating to the proposed merger of Kansas Gas and Electric with Kansas Power and Light. Staff then addressed several issues relating to the merger and answered questions from the Committee. (Attachment 1)

Bill Riggins, Citizens Utility Ratepayers Board, testified in support of HB 2029, stating that on January 24, CURB voted unanimously to support this bill. Mr. Riggins stated that requiring the company to bear the cost of the acquisition premium should not prevent well-conceived and beneficial mergers from occurring - it will discourage uneconomic mergers, but that's good. (Attachment 2)

Bob Eye, Lawrence attorney, testified in support of HB 2029, stating the proposed merger is a manifestation of the "merger mania" that has swept over the United States economy in the last ten years. Mr. Eye also stated that the trend among merged companies has been that the heavy debt service it has required post-merger puts a serious financial strain on the merged entity. He also stated that this merger is motivated by the desperation and greed of KG&E's management and shareholders. Mr. Eye suggested amending Section 2 as shown on (Attachment 3)

Shaun McGrath, Kansas Natural Resource Council, testified in support of HB 2029, stating that merger expenditures will be offset in some small measure by reducing operating costs, but the bulk of it will be financed by either reducing stockholder dividends or increasing electric rates. He also stated that electric utilities want to burn more fuel, because that is the only way they know how to make money. (Attachment 4)

Scott Andrews, Kansas Chapter of the Sierra Club, testified in support of HB 2029, stating that this bill is a small but important part of the much needed re-organization of electric utility regulation in Kansas. He also stated that by providing review of utility merger situations we are one step closer to a utility regulatory system which puts energy efficiency on a level playing field with building new expensive generating capacity. (Attachment 5)

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES,

room 526-S, Statehouse, at 3:30 ~~xx~~n./p.m. on January 30, 1991.

Representative McClure requested introduction of a bill concerning radioactive materials; relating to storage, treatment, recycling and disposal thereof. (Attachment 6)

A motion was made by Representative Thompson, seconded by Representative Charlton, to introduce the bill requested by Representative McClure. The motion carried.

A motion was made by Representative Corbin, seconded by Representative Glasscock, to approve the minutes of January 28 and January 29, 1991. The motion carried.

The meeting adjourned.

EN[illegible]GY & NATURAL RESOUR[illegible]

GUEST LIST

COMMITTEE: _____ DATE: 1/30/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Matthew Richter	543 Marlatt Manhattan, KS	Legislative Intern
Scott Andrews	1971 Bowman Ct Topeka 66604	Sierra Club
Shaun McGrath	Topeka	KNRC
Bill Riggins	Topeka	CURB
Bob Eye	Lawrence	self
Laura MacClure	Glen Elder	
Patti Mackney	Lawrence	—
Scott Stockwell	Topeka	KCC
Frank Caro	Kansas City	Self.
Jack Glaves	Wichita	KN Energy
Jeffrey C Coonrod	Leawood	KG&E
JOHN C. BOTTENBERG	1120 - 800 SW JACKSON TOPEKA	KPL-GAS SERVICE
Jason C. Sutter	Lawrence Ks	
Randy Burkson	Columbus Ks	Empire Distrct Elec.
Earl Daugherty	Columbus KS	Empire Distric Elec.
Dan Hads	Overland Park	KCPL
Lois Tully-Gerber	Topeka	KEURP
BRUCE GRAHAM	TOPEKA	REPCO
Charles Garcia	Topeka	KCC
Jenifer Dodd	Lawrence	Rep. Charlton
Curt Carpenter	Great Bend	Centel
Louie Stroup Jr.	McPherson	KMU
Tim Hoyt	Tonganoxie	Gas Team Leader
James Power	Topeka	KDHE
George Goebel	Topeka	AARP-State Leg. Comm.

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GUEST LIST

COMMITTEE: _____ DATE: 1/30/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
BRUCE H. ROBINSON	3637 DEVON, TOPEKA	ANCHOR-ROBINSON
STEVE KEARNEY	TOPEKA	PETE MCGILL ASSOC.
BILL SNEED	TOPEKA	UNITED CITIES
MIKE REECHT	TOPEKA	AT&T
JIM LUDWIG	"	KPL
TREVA POTTER	"	PEOPLES NAT. GAS
DAN STEVENS	Tulsa OK	TEXACO
ROBERT ANDERSON	Ottawa	MACCORT OIL

MEMORANDUM

Kansas Legislative Research Department

Room 545-N – Statehouse
Topeka, Kansas 66612-1586
(913) 296-3181

January 30, 1991

To: House Energy and Natural Resources Committee

Re: Merger of Kansas Gas and Electric with Kansas Power and Light Company

Background

Over the last several months, mergers of several of the largest utilities in the State of Kansas have been contemplated by the respective companies. Mergers of utilities in Kansas do not occur frequently, but not too long ago the state experienced the merger of Kansas Power and Light Company with the Gas Service Company. This merger was completed in 1983. Kansas Power and Light Company was, before the merger, a utility company that provided both electricity and natural gas to Kansas customers. The merger with Gas Service Company gave the company an expanded service base in the natural gas delivery aspect of its business. A new merger is in the process of review by the State (Kansas) Corporation Commission (SCC) and several federal agencies, including the Federal Energy Regulatory Commission (FERC), the Nuclear Regulatory Commission (NRC), and the Securities and Exchange Commission (SEC). Additionally, approval will be needed by the Public Service Commission of the State of Missouri and the Corporation Commission of Oklahoma. The current merger under consideration is that of the Kansas Power and Light Company (KPL) of Topeka and the Kansas Gas and Electric Company (KGE) of Wichita. Kansas statutes (Chapter 66) give broad authority to the SCC to regulate public utilities in the State of Kansas. The following outlines some of the more significant events leading up to the present time.

On July 23, 1990, the Kansas City Power & Light Company (KCPL) of Kansas City, Missouri, announced an unsolicited tender offer to purchase all outstanding shares of KGE. KCPL made an application to the SCC for approval of the acquisition and filed a motion for expedited hearing and order by the SCC.

On November 20, 1990, Kansas Power and Light Company and Kansas Gas and Electric Company filed a joint application requesting approval of a proposal to merge. This proposal was dated October 28, 1990. The proposal provided for KGE to merge with KPL as a wholly-owned subsidiary of KPL. KPL and KGE requested approval of the Commission of the proposed merger pursuant to the Commission's authority under K.S.A. 66-101.

By order of the Commission dated November 21, 1990, the Commission revised the procedural schedule and directed KPL and KGE to file their direct testimony on November 30, 1990; directed intervenors, KCPL included, to file direct testimony and exhibits on both applications on January 10, 1991; and directed SCC staff to file direct testimony and exhibits on both applications on January 16, 1991. All parties were directed to file rebuttal testimony on both applications on

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attachment 1

January 22, 1991. The Commission set the technical hearing for January 28, 1991. In its order of November 21, 1990, the Commission directed the parties to address in their testimony the principles that should guide how the merger costs and benefits, including the acquisition premium, should be allocated between ratepayers and shareholders, and among ratepayers.

On December 13, 1990, KCPL filed its Withdrawal of Application which notified the Commission of the withdrawal of its unsolicited tender offer to acquire KGE and the withdrawal of its July 23, 1990, application.

After consideration of motions for extensions of time by the intervenors, as well as the Commission's determination that a change in the procedural order would be in the best interests of all parties, the Commission issued a revised schedule as follows:

January 25, 1991	Intervenors file testimony and exhibits on KPL/KGE's joint application
February 6, 1991	SCC staff files direct testimony and exhibits on KPL/KGE's joint application
February 18, 1991	All parties file rebuttal testimony on KPL/KGE's joint application
March 1, 1991	Prehearing Conference at the SCC
March 4, 1991	Hearings commence at the SCC Issues

Issues

One of the issues before the Commission and now before the Legislature is the issue of whether merged public utilities should be permitted to pass along the costs of the merger to the ratepayers. One of these issues involves who is responsible for the payment of the "acquisition premium," sometimes referred to as the "acquisition adjustment." The "acquisition premium" is the difference between the acquisition cost (the amount paid for the assets of the acquired utility) and the net book value (original cost less depreciation) of the acquired utility's shareholder equity. In the application of approval of merger for KPL and KGE, KPL requests that the SCC authorize the amortization of the acquisition premium beginning with the effective date of the companies' next general rate change. KPL also requests that the Commission authorize this amortization amount to be included as a component in the cost of service of any future rate change determination. The utilities in the application acknowledge that the inclusion of the acquisition premium would independently have some upward impact on ratepayers. The utilities, in their Application for Merger, argue that the cost savings to be realized through the merger substantially exceed this amortization amount, resulting in overall lower rates to customers than would otherwise have occurred absent the merger and the incurrence of the acquisition costs. The utilities, in their application to the Commission, state that, in no event, will the combined companies propose to recover acquisition costs in excess of the cost savings resulting from the merger.

This issue is directly addressed in H.B. 2029, by prohibiting the State Corporation Commission from permitting recovery of or return on any part of the acquisition premium.

Another issue regarding the merger of public utilities emerged after the action of the Board of Directors of Kansas Gas and Electric on October 26, 1990. At this time the Board of Directors decided that it was in the best interests of the Company and the holders of common stock to take a series of actions as a result of the action of KCPL to acquire KGE. Besides the action of entering into a friendly merger agreement with KPL, several other actions were taken to "ensure the continued good services of KGE's officers and employees" and "ensure that officers and employees would have reasonable financial security if terminated." These actions included the amendment of the KGE Long Term Incentive Plan, the Executive Salary Continuation Program of KGE, the Senior Executive Death Benefit Agreements between KGE and certain employees, the Executive Deferred Compensation Agreements between KGE and certain employees, the Retirement Plan for Employees of KGE, the modification of certain severance agreements, and the approval of the payment of attorney fees and interest to officers and employees with respect to disputes under the above arrangements. The issue that these actions give rise to is whether the cost should be borne by ratepayers or by the shareholders.

This issue is addressed by H.B. 2029 in that it would prohibit the recovery of or return on the costs of any executive stock option, executive salary continuation, executive severance pay, or other executive compensation arrangements, offered as a part of the merger.

The last issue that H.B. 2029 addresses is that of excess capacity. "Excess capacity" is defined in K.S.A. 66-128c to mean any (electric generating) capacity in excess of the amount used and required to be used to provide adequate and reliable service to the public within the State of Kansas as determined by the Commission. The bill would require when there is a merger of public utilities, both of which own electric generating capacity, the SCC determine if the excess capacity should be prudently sold to other public utilities doing business in Kansas. K.S.A. 66-128c currently gives the SCC the discretion to prohibit or reduce the return on costs which were incurred in constructing, maintaining, or operating excess capacity.

91-90/rg

TESTIMONY OF WILLIAM G. RIGGINS BEFORE THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES JANUARY 30, 1991

Good afternoon. I'm Bill Riggins, Consumer Counsel for the State of Kansas. I represent the Citizens' Utility Ratepayers Board (CURB) in public utility matters, and I am testifying today on CURB's behalf. I want to thank you for allowing me to make a few comments this afternoon regarding H.B. 2029.

As you know, CURB represents the interests of residential and small commercial ratepayers in utility matters. Given that duty, CURB's interest in the subject matter of H.B. 2029 is obvious. At a special meeting on January 24, CURB voted unanimously to testify in support of the bill.

The bill addresses three valid merger-related concerns. Two of those concerns are applicable to all utility mergers, the third to mergers between electric utilities. First, the bill states that ratepayers shall not bear the cost of merger acquisition premiums -- i.e. the difference between the price of the merger and the net book value of the assets being acquired by the purchasing company. Second, the bill states that ratepayers shall not bear the cost of any inducements offered to top management in order to make the merger come about. Finally, the bill seeks to encourage the prudent transfer of one utility's excess capacity to another part of the state where that capacity is needed.

I will address each of these issues in more detail. As a preliminary matter, I would state that, generally, I would expect CURB, in a given case, to take the same position on these issues as does H.B. 2029. However, under the current state of the law, or

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Attachment 2

the lack of it, there is no assurance that the KCC, or the courts, would do likewise.

Again, as a preliminary matter, during my discussion of these issues, I'll be referencing a couple of merger proposals that we've been investigating the past six months -- the efforts of KCPL and KPL to purchase KG&E.

I will discuss only briefly the topic of incentives offered to top management to secure a merger agreement. It seems to me that it would be very difficult to craft a defensible argument that the cost of those incentives should be borne by ratepayers. Yet those incentives can be an important factor in determining whether a given merger agreement will be reached. For an example, one needs look no further than the KPL/KG&E "friendly" merger proposal, which was a response to a KCPL merger proposal that KG&E regarded as hostile. Significant portions of the KPL/KG&E merger agreement and of the KPL/KG&E merger filing with the Securities and Exchange Commission are devoted to the subject of executive compensation arrangements. Given that fact, and the fact that KG&E top management was attempting to fight off the KCPL merger proposal, one must assume that protection of KG&E top management was a priority in negotiations between KG&E and KPL.

The KPL/KG&E merger proposal also provides a good context for discussing Section 2 of the bill, which addresses excess capacity. Both KPL and KG&E currently have excess capacity, although KG&E's excess capacity situation is much more pronounced. All of that excess capacity, for both companies, is in rates. If the proposed

merger between the companies does occur, clearly it would be in the public interest to encourage the new company to make that excess capacity available for purchase by other Kansas public utilities that need it. That is what Section 2 does. This is a very important issue, and Section 2 is a very important declaration of public policy. We must avoid a situation in which ratepayers of one company are burdened by the cost of excess capacity while ratepayers of a neighboring company unnecessarily are bearing the burden, in terms of dollars and environmental degradation, of a new power plant.

Finally, the issue of the acquisition premium. Again, the recent merger activity in our state provides the most striking testimony of how significant this issue is. The KCPL merger proposal involved an acquisition premium of $258 million. KCPL proposed including the entire premium in the Company's ratebase, which means the great majority of the premium would be borne by ratepayers. The KPL merger proposal involves an acquisition premium of $388 million -- 50 percent higher than KCPL's. KPL's offer of $32 a share for KG&E stock is 62 percent higher than the market price of KG&E stock, $19.75, on the eve of the offer. KPL proposes that it recover the premium out of merger savings which will be estimated from time to time. Those savings traditionally would be flowed through to ratepayers. Under this proposal, KPL bears the risk, at least initially, that the merger savings will be inadequate to cover the costs. However, it is clear that, by asking ratepayers to forego sharing in the savings until the

premium is paid, KPL is asking its ratepayers to pay some unspecificied amount, up to the full amount, of the acquisition premium.

Recovery of acquisition premiums from ratepayers directly contradicts standard utility regulatory practice. The earnings of a utility, and its rates, are primarily a function of the utility's ratebase, that is, the value of its assets. By permitting pass-through of acquisition premiums to ratepayers, rates would be based not on the value of a utility's assets, but on the basis of a purchase price in excess of their value. This is called "inflated ratebase" and it means higher rates for consumers even though the worth of the assets being used to provide them with utility service is unchanged. Inflated ratebase also creates a vicious circle in the valuation process -- i.e. purchase price depends on earnings which depend on purchase price. This is why the general rule, in jurisdictions that have dealt with this issue, is to prohibit recovery of the acquisition premium through rates.

It also is worth mentioning that in a recent merger case in Utah, the purchasing utility did not even request recovery of the acquisition premium. In a California merger case, the utility dropped its request for recovery of the acquisition premium during negotiations with other parties to the case. Apparently, those companies believed that their shareholders still would benefit even though rates would continue to be based on the net book value of the company's assets. In these cases we can presume that the purchasing companies would have been willing to pay an even higher

2-4

premium if they had expected to recover that premium from ratepayers.

The examples I've just mentioned illustrate an important point -- requiring the company to bear the cost of the acquisition premium should not prevent well-conceived and beneficial mergers from occurring. It will discourage uneconomic mergers, but that's good. Remember that we are discussing monopolies. Mergers are commonplace in the competitive sector. If mergers between competitive companies don't work out, the quality of the product deteriorates and/or the price becomes unreasonable, and consumers go elsewhere to make their purchases. Most utility consumers do not have that ability. They rely upon regulation to provide the protection that the marketplace otherwise would provide. This bill assures that such protection will occur.

I appreciate your time and attention. I'll try to answer any questions you may have. Thank you.

ROBERT V. EYE
LAWYER
SUITE 303
700 MASSACHUSETTS
LAWRENCE, KANSAS 66044
(913) 749-2131

January 30, 1991

TESTIMONY CONCERNING HOUSE BILL NO. 2029

My name is Robert V. Eye. I am a lawyer practicing in Lawrence, Kansas, with a considerable part of my practice focusing on various regulatory issues including those related to electric utilities. I am here today to discuss and support House Bill 2029.

As this committee knows, House Bill 2029 was prompted by concerns that the proposed merger of Kansas Power and Light and Kansas Gas and Electric would result in windfall gains for some at the expense of ratepayers.

Initially, I urge the members of this committee to review the report concerning the proposed merger that has been prepared for the Citizens Utility Rate Payer Board (CURB) by its consultants. This report is an excellent analysis of the financial and ratepayer impacts that would flow from the proposed merger. The report concludes, among other things, that the proposed merger is not in the best interests of ratepayers and therefore CURB recommends that the Kansas Corporation Commission to not approve the merger.

The proposed merger of Kansas Power and Light, and Kansas Gas and Electric is a manifestation of the "merger mania" that has swept over the United States economy in the last ten years. The adverse lessons of merger mania have apparently not been learned by Kansas Power and Light and Kansas Gas and Electric. The trend among merged companies has been that the heavy debt service it has required post-merger puts a serious financial strain on the merged entity. Servicing the debt comes before investment in research and development, improved production facilities, customer service and other activities normally associated with a healthy forward looking business entity.

Make no mistake, this merger is motivated by the desperation and greed of KG&E's management and shareholder. KG&E management is desperate to escape a hostile takeover by Kansas City Power & Light which would likely result in a radical reduction of management staff at KG&E. KG&E management and shareholders are greedy in as much as under the current merger plan they would realize windfalls resulting from the purchase of their stock holdings by KPL.

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Attachment 3

HB 2029 should be thought of as a raterpayer protection measure. Section 1 of HB 2029 would preclude ratepayers from paying the socalled acquisition costs and the executive compensation plan costs of the merger. These items are appropriately excluded from charges to ratepayers because such do not benefit ratepayers in any meaningful way.

Section 2 of HB 2029 is worthy to the extent that it intends to protect ratepayers from the costs related to excess generating capacity owned by the merged utilities. However, I would suggest that section 2 be amended to require that, no rate of return be allowed on that part of the merged utilities generating capacity which is in excess of that which is needed to prudently meet customer demand.

Presently, section 2 directs the KCC to make (1) a determination as to whether excess capacity exists and (2) a determination as to whether it should be sold to some other jurisdictional utility. Two problems emerge in this approach.

First, it is problematic whether the KCC could constitutionally order a jurisdictional utility to sell any of its assets. Utilities could argue that such an order interferes with constitutionally protected property and due process rights and has the effect of unlawfully interfering with management prerogatives.

Second, the language in section 2, as it is currently worded, does not direct the KCC to take any action as an alternative to ordering that the excess generating capacity be sold to some other jurisdictional utility. If section 2 is amended to direct the KCC to deny a rate of return on excess capacity ratepayer interests can be protected while still functioning within the traditional scope of regulatory authority.

In conclusion, the acquisition premium cost related to this merger represents a profligate waste of ratepayers money. If the $388,000,000 that will be required to pay the acquisition premium could instead applied to weatherization, research and development of renewable and sustainable energy sources, forestall generation acquisition or other activities to actually enhance service perhaps this cost could be justified. However, when the $388,000,000 will go simply to service an unnecessary debt and to pay consultants' fees and attorneys' fees, ratepayers interest are not well served.

This concludes my testimony. I will happy to respond to any questions that the committee may have.

Kans Natural Resource Council

January 30, 1991

Testimony to the House Energy and Natural Resources Committee

Re: HB2029 - Concerning Public Utility Mergers

From: Shaun McGrath, Program Director

My name is Shaun McGrath. I am the Program Director for the Kansas Natural Resource Council, a private, non-profit, organization which advocates sustainable resource policies for the state. Our membership is over 900 statewide.

I stand before you today to testify in favor of HB2029.

HB2029 addresses three questions which arise from the increased acquisitions and mergers activity in the public utilities industry.

First, the bill responds to the question "should the ratepayer be required to pay for speculative acquisition premiums (the cost above and beyond book value) of mergers? Section 1 (a) clearly and correctly says "no".

Electrical utilities are not typical private businesses. They are monopolies. In exchange for regulation by the Corporation Commission, they are free from retail competition within their service territories. The regulatory process is supposed to offset the absence of competition in a regulated public utility. Yet if that regulatory process results in the ratepayer paying for acquisition premiums, utility mergers will be determined not by potential gains in efficiency, but by the magnitude to which the ratepayer can be forced to pay for utility speculation.

KPL Gas Service of Topeka has offered Kansas Gas & Electric of Wichita a merger paying $32 per share for stock which has been selling for around $18 per share. This offer exceeds the book value by an estimated $388 million.

KG&E is not the only Kansas electric utility for sale. Centel, a Chicago based corporation has announced a deal to sell its Great Bend based Kansas utility to Utiliticorp of Kansas City, Missouri for $346 million. The purchase price of Centel exceeds book value by an estimated $66 million.

Mergers and acquisitions take place because someone expects to make money. Expenditures will be offset in some small measure, by reducing operating costs, but the bulk of it will be financed by either reducing stockholder dividends or increasing electric rates. Rest assured, utilities have no intention of reducing dividends. We need to learn from the Savings & Loan debacle that insuring management decisions at public expense is a poor route to good use of capital.

Secondly, HB2029 addresses the question, "should bad management be rewarded at the public's expense?" In the case of KG&E, bad management decisions made the utility vulnerable to acquisition. KG&E owns a 47% interest in the Wolf Creek nuclear generating station at Burlington. Wolf Creek came on line in 1985 at a cost of over $3 billion. KG&E had been in poor economic condition due to its huge investment in the nuclear plant. Moreover, construction of the plant resulted in KG&E having far more generating capacity than their customers needed. Together, excess generating capacity and the high costs of construction drove customer rates up and stockholder dividends

(continued on other side)

E&NR

1/30/91

Attachment 4

1516 Topeka Avenue • Topeka, Kansas 66612 • (913) 233-6707

down. Its stock price was low because its dividends were low, not as a result of unfair regulation, but poor management decisions.

Section 1 (b) of HB2029 would protect the ratepayer from financing 'golden parachutes' for the people who made those decisions.

Thirdly, HB2029 considers the question, "should ratepayers pay for electricity which is not needed?" In the case of the KG&E/KPL merger, why KPL is willing to pay such a high price for a debt-burdened KG&E with expensive generating capacity that neither of them needs is difficult to understand.

Equally important to the question of 'who should pay', is the more fundamental implication of excess capacity. So long as utilities have more energy than they can sell, they will attempt to encourage demand. Consequently, there is a built-in bias against efficiency and conservation.

Yet conservation programs offer the cheapest, safest supplies of energy. Amory Lovins of the Rocky Mountain Institute claims that, since 1979, the U.S. gained more than seven times as much new energy from conservation as from all net increases in energy supply. Because of the reductions in energy intensity achieved, the U.S. energy bill has declined $150 billion per year. Further, if the U.S. were now as efficient as its competitors in Europe and Japan, it would realize an additional savings $200 billion per year. Just this difference in energy intensity between the U.S. and Japanese economies now creates an automatic cost advantage on the order of 5% for the typical Japanese export.

We think it's time to wake up. Public policy and big business goals consistently encourage energy consumption and discourage energy efficiency. Electric utilities want to burn more fuel, because that is the only way they know how to make money.

Electric utilities are public monopolies, and they must serve a broader public purpose. They can and should become effective tools for achieving a dramatic increase in the efficiency of energy use, and they can make money doing it. Investing management talent and the ratepayers money in pursuit of corporate growth merely for the sake of size is a great leap backwards, and that is not the direction we need to go.

We commend the House Energy and Natural Resources Committee for introducing this bill, and urge that it be passed.

SIERRA CLUB

Kansas Chapter

Testimony to House Energy and Natural Ressoures

H.B. 2029 Utility Mergers

My name is Scott Andrews and I represent the 3300 members of the Kansas Chapter of the Sierra Club. We support the passage of H.B. 2029. We believe this bill is a small but important part of the much needed re-organization of electric utility regulation in Kansas.

Why should the ratepayers pick up the tab of inefficient management by utilities? The excess generating capacity is expensive and is being used as an excuse for not investing in improvements in energy efficiency. The problem is compounded in the case of a merger of two utilities which both have excess capacity. By providing review of such situations we are one step closer to a utility regulatory system which puts energy efficiency on a level playing field with building new expensive generating capacity.

The Sierra Club urges the members of the Committee support H.B.2029 and improved electric utility regulation in Kansas.

E+NR
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Attachment 5

HOUSE BILL NO. ____

By xx

AN ACT concerning radioactive materials; relating to storage, treatment, recycling and disposal thereof.

WHEREAS, It is the policy of this state to prevent the release to the environment of radioactive materials resulting from human activities; and

WHEREAS, The U.S. Congress, Nuclear Regulatory Commission and Environmental Protection Agency have promulgated measures intended to make possible federal deregulation of certain radioactive materials; and

WHEREAS, Such deregulation would result in virtually unrestricted disposal or release of these radioactive materials into landfills, incinerators, transportation systems, waterways, sewage systems, recycling centers, consumer products or other parts of the environment; and

WHEREAS, Such dissemination of radioactive materials in the environment would represent an unnecessary increased risk to the health, safety and welfare of the citizens of this state; and

WHEREAS, Such monitoring and verification of the absence of unacceptable risks resulting from federal deregulation will be more costly to the state than the current regulatory regime; and

WHEREAS, The Legislature of the State of Kansas hereby declares that radioactive materials shall continue to be subject to regulatory control by the state; and

WHEREAS, The Legislature declares that it is the purpose of this statute to guarantee that all radioactive materials which were subject to regulation by this state or the U.S. Nuclear Regulatory Commission as of January 1, 1989, shall remain subject to regulation by this state, and shall be stored or disposed of only in licensed or approved radioactive waste storage or

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1/30/91
Attachment 6

disposal facilities: Now, therefore,

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

Section 1. (a) As used in this act:

(1) "Radioactive materials" means any radioactive waste or other radioactive materials resulting from activities of the United States government, licensees or contractors of the United States government, nuclear regulatory commission licenses or licensees of agreement states pursuant to the atomic energy act (42 U.S.C. 2021), that satisfied the definition of low-level radioactive wastes in the low level radioactive waste policy act {(42 U.S.C. 2021b(9)(a)} as of January 1, 1989. Radioactive materials do not include naturally occurring radionuclides, uranium mill tailings or high-level radioactive waste.

(2) "Facility approved by the state" means a facility for which there is a license, permit, letter of agreement or other means by which the state officially accepts the storage, treatment, recycling or disposal method for radioactive materials. Such approval shall include, but not be limited to, certification by the appropriate state agencies that the facility will comply with all applicable state and federal laws and regulations pertaining to radioactive and hazardous materials and wastes, air and water pollution control and any other environmental and fiscal responsibility laws and regulations.

(b) Notwithstanding any declaration by the United States government that certain radioactive materials may be exempt from federal regulatory control or below federal regulatory concern, no radioactive materials may be stored, treated, recycled or disposed of in this state except at a facility approved by the hazardous waste disposal facility approval board or the secretary of health and environment expressly for the storage, treatment, recycling or disposal of radioactive materials. No facility for storage, treatment, recycling or disposal of radioactive materials that are or become exempt from federal regulatory control or below federal regulatory concern shall be approved by

the board or secretary unless the facility, at a minimum, complies with all requirements applicable to such a facility on January 1, 1990.

(c) Radioactive waste may not be incinerated in this state.

(d) Any person may bring an action in the district court for injunction, damages or other appropriate relief for violation of this section by any party. Upon a finding that a violation has occurred, the court shall award costs of litigation, including reasonable attorney and expert witness fees, and reasonable costs for monitoring and testing in support of expert testimony and advice.

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