

Approved

Date

Ken Grotewiel
2/25/91

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES

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

3:30 ~~xxx~~ p.m. on February 20, 1991 in room 526-S of the Capitol.

All members were present except:

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:

Janet Stubbs - Home Builders Association, and Mechanical Contractors Association
Ron Stryker - Kansas Alliance for Fair Competition, Inc.
Bruce Robinson - Anchor-Robinson Heating, Cooling and Refridgeration
Fred Stewart - Kansas Alliance for Fair Competition, and Stewart Plumbing and Heating, Inc.
Bruce Huffman - cfm Distributors, Inc., and Kansas Alliance for Fair Competition, Inc.
Jim Mlynek - President, O.K. Johnson Electric, Inc., and Kansas (Topeka) Chapter, National Electrical Contractors Association.
Ted Sanko - mechanical contractor, Norton, Kansas
Robert Carley - President, Wichita Chapter, National Electrical Contractors Association, Corporation Secretary of Southwestern Electrical Company, Inc., and charter member of Kansas Alliance for Fair Competition, Inc.
Monte Milstead - Kansas LP-Gas Association
Leanne Snyder - Kansas Plumbing, Heating, Cooling Contractors Association, and Wichita Chapter of National Electrical Contractors Association
Judy Krueger - Regional Advocate, U.S. Small Business Administration
Alan Alderson, attorney for Western Retail Implement & Hardware Association
Jack Graves - KNEnergy, Inc.
Aaron Harman - KNEnergy, Inc.
Al Borchert - District Manager, Kansas Peoples Natural Gas
Michael Hertling - Vice President, Kansas Public Service
Jim Ludwig - Kansas Power & Light Gas Service
William Mason, Regional Manager, Kansas Gas & Electric Company
Floyd Highland - Division Service Specialist, KNEnergy, Inc., Colby
Allen Spaur - Vice President and Manager, Kansas Kaw Valley and Eastern Kansas divisions of Greeley Gas Company
Turner White - Vice President of Communication & Marketing, Kansas City Power & Light Company
Jack DeBacker - President, DeBacker's, Inc.

Chairperson Grotewiel called the meeting to order and opened the hearing on HB 2361.

Janet Stubbs testified in support of HB 2361, stating that the conferees attending this meeting will demonstrate that the small business people who must compete with the utilities under current conditions cannot do so successfully. (Attachment 1)

Ron Stryker testified in support of HB 2361, stating that this bill would encourage free and open competition in the sale, servicing and installation of non-utility products and services; and does not require that utilities stay out of competition with small business. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES,
room 526-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 20, 1991.

Bruce Robinson, Anchor-Robinson, testified in support of HB 2391. He stated that the monopoly status that utilities enjoy carries with it special, unique responsibilities; a regulated monopoly must ensure that this economic power is not abusive to the economy and government must oversee all operations. (Attachment 3)

Fred Stewart testified in support of HB 2361. He stated that his main problem is with the Peoples Natural Gas "P.S.A.P" program and their selling equipment and appliances below fair market pricing. (Attachment 4)

Bruce Huffman, cfm Distributors, testified in support of HB 2361. He stated that in the past, they have enjoyed a good working relationship with the Kansas utilities; however, in the last couple of years, they have seen increased intrusion of utility companies in the heating and air conditioning contractor's business. (Attachment 5)

Jim Mlynek testified in support of HB 2361. He feels that the electric utilities, and, as far as he knows, 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. (Attachment 6)

Ted Sanko, Norton, Kansas, testified in support of HB 2361. He stated that the energy companies are unfairly competing for residential and commercial sales from his company. They are using trucks and equipment that are used in the utility business, and using that equipment to compete in the same market in Western Kansas. (Attachment 7)

Robert Carley testified in support of HB 2361, stating that he has witnessed the encroachment of the electrical utilities and he believes that it's time that some restrictions should be placed on a utility which has franchise protection for their operation. (Attachment 8)

Monte Milstead testified in support of HB 2361. He stated that it is difficult enough for a small business to compete with a large company in any instance; but when the large company has low-interest government funds available, enabling it to offer bonuses and low-interest financing such as shown on his attachment, it is almost impossible. (Attachment 9)

Leanne Snyder testified in support of HB 2361. She stated that when utility companies enter into the area of private enterprise, they currently retain many of their institutional advantages that have devastated contractors in all parts of the state that simply cannot compete with these advantages. (Attachment 10)

Judy Krueger, U.S. Small Business Administration, testified in support of HB 2361. She stated that the entrance of government-regulated entities into the free market raises two general concerns. First, income from regulated utilities is guaranteed. Secondly, even without a subsidy, utilities may disrupt the marketplace through unfair competitive practices. (Attachment 11)

Alan Alderson testified in support of HB 2361. He stated that the Western Retail Implement and Hardware Association receives complaints from its members periodically due to practices which they believe are unfair and anti-competitive in nature. (Attachment 12)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES,
room 526-S, Statehouse, at 3:30 ~~am~~/p.m. on February 20, 1991

Jack Glaves, KNEnergy, Inc., testified in opposition to HB 2361. He stated that if this bill were adopted that a companion measure be adopted to require the unaffiliated contractors to provide the service abandoned by KN, presumably at rates to be determined by the KCC. (Attachment 13)

Aaron Harman, KNEnergy, Inc., testified in opposition to HB 2361. He stated that this legislation would force his company to establish an affiliate organization in order to maintain the current level of service to their customers, which would be burdensome to KN and costly to their existing customers. (Attachment 14)

Al Borcher, Peoples Natural Gas, testified in opposition to HB 2361. He stated that this bill conflicts with the views of most Kansans; the legislation is unnecessary; and the promoters of this bill seek not fair competition, but to stifle competition entirely. (Attachment 15)

Michael Hertling, Kansas Public Service, testified in opposition to HB 2361. He stated that utilities have experienced success in their non-utility efforts not because of unfair competition, but because of the trust they have achieved from their customers. (Attachment 16)

Jim Ludwig, KPL Gas Service, testified in opposition to HB 2361. He stated that the restrictions in this bill would protect contractors at the expense of consumers, and potentially deprives customers the benefits of sound energy management. (Attachment 17)

Bill Mason, KG&G, testified in opposition to HB 2361. He stated that this bill would certainly affect many social and volunteer programs that his company and employees have initiated and been involved in, i.e.: Project DESERVE, radio watch, safety educational programs, Boy Scout merit badge clinics, Junior Achievement, and loaned fan project to the disadvantaged. (Attachment 18)

Floyd Highland, KNEnergy, Inc., testified in opposition to HB 2361. He stated that this legislation will severely curtail the services they perform. (Attachment 19)

Allen Spaur, Greeley Gas Company, testified in opposition to HB 2361. He stated that if Greeley or other gas utilities that serve in the rural areas of Kansas elect not to continue to sell appliances and equipment because of this bill, some areas they serve will not have the sales and service available on a local level. (Attachment 20)

Turner White, KCP&L, testified in opposition to HB 2361. He stated that it deters positive, promotional energy efficiency and energy improvements partnerships between private contractors and utilities by extending inappropriate regulation over private contractors by the Kansas Corporation Commission. He also stated that it interferes with economic development and jobs producing programs frequently supported by utilities. (Attachment 21)

Jack DeBacker, DeBacker's Inc., testified in opposition to HB 2361. He stated that they have no fear of the KPL Gas Service Company competing in their market and believe that legislation such as this bill is misdirected to the extent it limits the ability of the KPL Gas Service Company to make promotions of load leveling management devices for utilization of both electrical and natural gas energy. (Attachment 22)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES,
room 526-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on February 20, 1991.

Written testimony on HB 2361 was provided by the following:

Marshall Clark, Director, Governmental Relations, Kansas Electric Cooperatives, Inc. (Attachment 23)

Irvin Rindels, Rindels Air Conditioning & Heating, Hugoton, Kansas (Attachment 24)

James C. Phillips, heating and air conditioning contractor, Emporia, Kansas (Attachment 25)

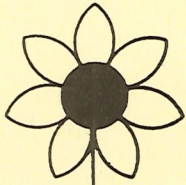
Chairperson Grotewiel concluded the hearing on HB 2361.

The meeting adjourned.

COMMITTEE: E+NR

DATE: 2/20/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jim Lewis	Topka Topka	KPL
Bob Tate	Topka	KPL
Robert L. Carley	Wichita	NECA
James Stubbs		NBAK
Ron Stryker	Topka	Bob Stryker Mch
Bruce Robinson	TOPEKA	ANCHOR-ROBINSON
DEREK SHOLKLEY	TOPEKA	KPL
TURNER WHITE	KANSAS CITY	KCPL
Judy Krueger	USSBA Kansas City	USSBA
Tom Slattery	Topka	AGC of KS
JACK DeBAEKER	TOPEKA KS	DeBAEKERS INC
Ed Shamburg	Topka	KPL
FRED STEWART	Dodge City Kans	Stewart Plumbing
TED STANKO	NORTON, KANSAS	Garrett Pumps, Horizontal
Ron Flowers	1400 Ave A Dodge City KS	Jack of Hearts Seless Serv
James C Phillips	421 E 6th Emporia KS	Bob Crawford Inc.
REG CULP	1250 SALINE NORTH MOBILE CITY MO 64116	O'CONNOR COMPANY TRANE HVAC DISTRIBUTOR
PAUL PFANNENSTIEL	1250 SALINE N ILL MO 64116	O'CONNOR CO TRANE
H. DINES	TOPEKA	H. BILLIARD PARK ENERGY MGMT
Carl Carpenter	Great Bend	Centel
Tim McCarty	Merriam	Lang Htg & A/C
SUSAN B. HUFFMAN	Kansas City	CFM Distributors, Inc
L. BRUCE HUFFMAN	KANSAS CITY	CFM DISTRIBUTORS
E. SCHULIER	K.C.	SCHULIER Htg & A/C
Dennis Clark	Gardner	Santa Fe Htg & Refriger.



HOME BUILDERS ASSOCIATION OF KANSAS, INC.

Executive Director
JANET J. STUBBS

HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

HB 2361

February 20, 1991

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Mel Clingan 1967
Ken Murrow 1968
Roger Harter 1969
Dick Mika 1971-72
Terry Messing 1973-74
Denis C. Stewart 1975-76
Jerry D. Andrews 1977
R. Bradley Taylor 1978
Joel M. Pollack 1979
Richard H. Bassett 1980
John W. McKay 1981
Donald L. Tasker 1982
Frank A. Stuckey 1983
Harold Warner, Jr. 1984
Joe Pashman 1985
Jay Schrock 1986
Richard Hill 1987
M.S. Mitchell 1988
Robert Hogue 1989
Jim Miner 1990

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs and I am appearing today in support of HB 2361 on behalf of the Home Builders Association of Kansas and the Mechanical Contractors Association of Kansas.

The members of the Alliance for Fair Competition are Associate members of the HBAK and are considered a vital part of the building industry and the economy in the State of Kansas. Therefore, we have assisted in the organization of several conferees to present information which has been obtained through their personal experience with the subject which is before you today.

The "buzz" word in state government the past several years has been "eco-devo", economic development. The State of Kansas is spending thousands and thousands of dollars each year to attract businesses to our State. The ramifications of tax proposals are carefully weighed to avoid an adverse climate in Kansas vs. our surrounding states.

Yet, the conferees who are here today will demonstrate that the small business people who must compete with the utilities under current conditions cannot do so successfully. Therefore, we urge passage of HB 2361.

*ENR
2/20/91
Attachment 1*



Testimony before the:

HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES
HOUSE BILL NO. 2361

FEBRUARY 20, 1991

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

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to speak to you as a proponent of House Bill No. 2361. My name is Ron Stryker, I am the owner of a heating, cooling, and plumbing company in Topeka. On a volunteer basis I serve as the chairman for The Kansas Alliance for Fair Competition, Inc., a coalition of individuals, small businesses, and their industry associations primarily in the plumbing, heating, cooling and electrical trades from across the state. The Coalition seeks as it's primary objective to stop the unfair and anti-competitive business practices of regulated utilities in the State of Kansas.

House Bill No. 2361 would encourage free and open competition in the sale, servicing and installation of non-utility products and services. Competition that is not adversely influenced by the special advantages that a regulated monopoly has whenever they decide to venture out of their regulated activity and compete against the independent small business.

The Bill does not require that utilities stay out of competition with small business. 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 subsidization. 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.

We are aware that there are statutes that provide avenues for relief through the Kansas Corporation Commission complaint procedures. 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 requires that the business be represented by council. This avenue can cost thousands of dollars for only a small possibility of success.

E+NR

2/20/91

Attachment 2

We could intervene in a rate case, but again this could cost thousands of dollars and must be done each time a utility comes up for an increase. And besides, rate cases for utilities sometimes do not come up for 4 to 5 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.

Although the Kansas Corporation Commission sets out to prohibit the regulated utility from misallocating direct or indirect costs of an unregulated activity to the utility's regulated business (which we call cross-subsidization) actually preventing it is extremely difficult.

Few competitors can match these subtle, but powerful, advantages which a utility brings to a non-regulated activity. As examples:

1. Enclosing bill stuffers with the regular utility bill.
2. Providing market data and credit data.
3. Providing below market consumer financing.
4. Using utility personnel, from technicians to energy use consultants.
5. Providing office space and computer time.
6. Using the utilities tools and vehicles.

All of the "sharing" of these assets can be hidden from a KCC auditor with very little difficulty.

You shall hear examples of these abuses and more later today in the testimonies that follow. It is because of cross-subsidization that a small utility in Kansas can sell and install appliances below the price of national retailers as large as Payless Cashways, or Montgomery Wards, or utilities in Douglas or Norton counties can offer service agreements on home appliances at 65% below the cost of similar offerings from a huge company like Sears. When this happens, and it is happening, the Kansas consumer effectively pays, through the utility rate base, for the regulated monopoly to compete against small business.

Utilities will generally have you believe that non-utility operations are good for the consumer. Mr. Aaron Harmon of KN Energy, Inc., in his testimony before this committee on February 22, 1990 stated "If we do not encourage the sale of gas burning appliances, we may lose existing gas load." Mr. Marshall Clark of Kansas Electric Cooperatives, Inc. at the same hearing stated, "We are not encumbered by 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."

And finally Mr. Jim Ludwig of KPL Gas Service in a letter written in response to his testimony at the February 22, 1990 hearing wrote that the \$537.50 spent by KPL Gas Service on each of 98 builder homes to promote the use of electric heat pumps was paid for by the electric use generated by the heat pumps, free electric water heaters and free yard lights.

Do you hear what these utility representatives are saying? These utilities have entered into these non-utility enterprises to get market share, to gain gas load if a gas utility, to gain electric load if an electric utility, or more simply put to beat the other utility in the area. If they would have us believe that an electric utility must do these things to lower consumers unit costs, doesn't it follow that the other utility in town would lose gas load which would increase it's consumer's unit cost. This will happen every time. For every winner, there must be a loser. For every consumer that wins, there is one that loses. These people are telling you that they are giving away the products and services of our industry, indeed the hopes and dreams of many a small business person, so that they can get market share. As hard as it is to take, the truth is our businesses may mean nothing to them. Forcing the independent out of business is just a means to an end. And in the end, when very few independents survive, who then will be the beneficiary.

Since it is impossible for even the largest free enterprise business to compete against utilities who venture out into ancillary activities we are certain there must be subsidization from the utility rate base. We have found out several of their tricks, but as sure as we point these out to you, a clever utility accountant will figure out another way to play with the allocation of numbers. Should we really have to prove to you or the KCC that cross-subsidization exists. Isn't it enough for you to know that for whatever the reason, utilities are giving away the heart and sole of our businesses just so that they can sell more power, that they compete against us unincumbered by the profit motive, which we must have to survive, and sell our products and services at or below cost. Isn't it enough for you to know that if you don't take legislative action soon, independent, retail oriented, heating, cooling, plumbing and electrical businesses in some parts of this state shall be a thing of the past.

As a coalition we have prepared several examples of unfair competition. I have enclosed with my written testimony copies of three specific cases.

The first item is a letter from Mr. John Knipp of the Trane Company outlining how the intervention of KPL Gas in the normal bid process took

utility business away from KG&E by providing a lease purchase on a Japanese made gas chiller at the expense of a local heating and cooling equipment supplier.

The second item is a collection of copies of bill stuffers mailed with Kansas Public Service, KN Energy, Inc., and Peoples Natural Gas customer invoices. These bill stuffers promote warranty agreements on household appliances with plans that cost from \$84.00 to \$131.00 per year. Please note that there are no requirements or prior inspection on the condition of these appliances they are going to warrant. A similar agreement from Sears would cost \$399.00 per year and would only be offered if the major appliances were recently purchased.

The third item is the testimony of Mr. Duane B. Wood of Gardner, Kansas. Mr. Wood writes that KPL Gas Service is selling 3 ton gas air conditioners in his area at \$790.00 below his current wholesale cost! That is not his selling price, that is his cost! This committee heard testimony February 22, 1990 that KPL Gas reported marketing expenses in 1988 which averaged approximately \$1000.00 for each gas air conditioner that they sold. We suspect that their "marketing expense" might have a better accounting entry titled "Loss on the Sale of Air Conditioning Equipment". But of course they won't do that, because the KCC wouldn't allow the loss, but they will allow marketing expense.

You will find many more examples of unfair and cross-subsidized competition as the testimony progresses. I appreciate your attention and ask your support in passing House Bill No. 2361.

TRA

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:

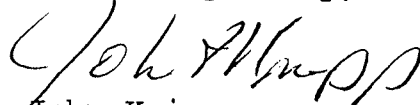
1. A local project was designed and bid with two 300 ton direct gas fired chillers as base bid with an alternate bid for electric Centrifugal Chillers. After bids were evaluated, the owner was not interested in the base bid (no pay back for the additional first cost add). The alternate was the economic, 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.

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

Bite back with PSAP and now... new PSAP PLUS.

To combat the rising cost of major home appliance repairs, here's a plan you can really sink your teeth into - PeopleService Appliance Protection (PSAP).

History has shown that PSAP is A Great Deal. Why? For just cents a day, PSAP offers you the opportunity to bite back when repairs are needed to remedy a malfunctioning major appliance around your house. Peace of mind protection - that's PSAP.

PSAP - A Great Deal of protection for only \$6.95.

For only \$6.95 a month, PSAP covers most PARTS AND LABOR costs to repair the following major appliances:

- Gas Central Home Heating System
- Gas or Electric Water Heater
- Gas or Electric Range
- Gas or Electric Clothes Dryer

Both new and old appliances are covered under the PSAP plan. Imagine, year-round protection against costly repair bills for only \$6.95 a month. That's a great deal.

Bigger the bite - PSAP PLUS

In addition to PSAP, Peoples is proud to offer you the opportunity to bite back even harder. Introducing PSAP PLUS.

For only \$10.95 a month PSAP PLUS covers most PARTS AND LABOR costs to repair this impressive list of major home appliances:

- Gas Central Home Heating System
- Gas or Electric Water Heater
- Gas or Electric Range
- Gas or Electric Clothes Dryer
- Clothes Washer
- Refrigerator
- Central Electric Air Conditioner

Again, both new and old appliances are covered under PSAP PLUS. It's true. You can bite back even harder for only \$10.95 a month.

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Without either of these affordable plans you run the risk of being eaten alive by staggering major home appliance repair bills.

However, by enrolling in the PSAP plan that best meets your needs, you can enjoy the peace of mind in knowing that you are protected against these costly expenses. In short, you can bite back.

Peoples service is A Great Deal, too

You can be assured that Peoples will provide the very best major home appliance repair service available. After all, Peoples customers have been receiving reliable, dependable appliance service for nearly 60 years. That's A Great Deal of service experience.

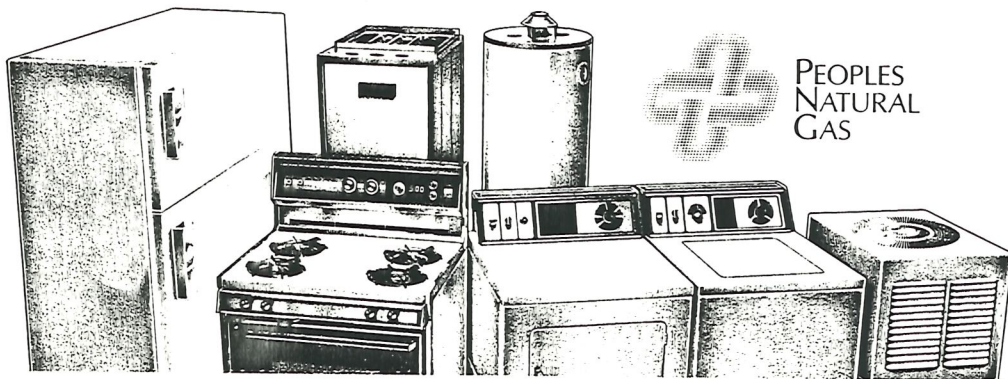
Peoples offers round-the-clock, no-heat emergency service, too.

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Send no money now. The monthly fee for the plan you select will be added to your next bill. Coverage will begin the day you receive your first monthly gas bill showing the fee and extends for one year from that date.

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YES! I want PSAP. It's A Great Deal of protection for only \$6.95 a month, and it covers furnace, water heater, range and dryer.

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I have read the full description of PeopleService™ Appliance Protection and I understand the limits and conditions.

Signature

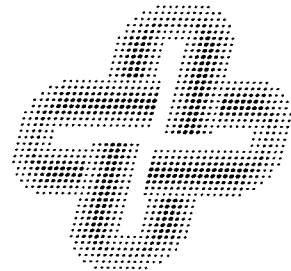
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For as little as 24¢ a day, you can have the peace of mind knowing you may never have to pay repair costs like these...

Listed below are the estimated costs, including parts and labor, you could expect to pay for typical repairs...

Gas Furnace/Boiler		Gas or Electric Water Heater	
Blower Motor	\$155.00	Control Valve.....	\$105.00
Ignition Control Module.....	\$160.00	Relief Valve.....	\$ 53.00
Pump Motor	\$130.00	Elements	\$ 45.00
Gas Valve	\$125.00	Vent Damper	\$ 85.00
Gas or Electric Dryer		Gas or Electric Range	
Motor.....	\$140.00	Oven Element	\$ 55.00
Heating Element	\$ 70.00	Oven Thermostat	\$125.00
Ignition Valve Assembly	\$ 80.00	Programmed Cooking Control....	\$185.00
Drum Rollers.....	\$ 80.00	Ignition Module.....	\$ 85.00

...with PSAP, there would be NO charge for these 4 appliances!

Central Electric Air Conditioner		Refrigerator	
Condenser Fan Blades & Motor ..	\$125.00	Ice Maker	\$150.00
Line Leak Repair	\$ 70.00	Defrost Timer	\$ 55.00
Capacitor	\$ 90.00	Door Seals	\$ 92.00
Relay	\$ 71.00	Condenser Fan Blades & Motor ..	\$ 60.00

Clothes Washer	
Motor	\$130.00
Water Pump	\$ 71.00
2 Speed Clutch.....	\$115.00
Timer	\$118.00

...with PSAP PLUS, there would be NO charge on **any** of the above 7 appliances!

2-10



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Chief: (Voice coming out of wrist watch radio)
"Caper, there's a KPS customer in trouble!"

Caper: "Don't worry, Chief—I'm on my way!"

Wendy: "My gas furnace just bought it."

Caper: "Too bad you don't have the Customer Appliance Protection Plan. It covers parts and labor repairs for only \$6.95 a month."

Wendy: "I'll join tomorrow! I don't want to get in this fix again!"

Caper: "Now you're coming to your senses!"

Citizens,

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Get Kansas Public Service's CAPP protection today! You'll sleep better knowing the Capp Caper is watching over your appliances!"



CAPP

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KANSAS PUBLIC SERVICE

110 East 9th Street • Lawrence, Kansas 66044

9-1-90

2-12



HASTINGS, NE 68902-9969
 P.O. Box 608
KNE ENERGY, INC.



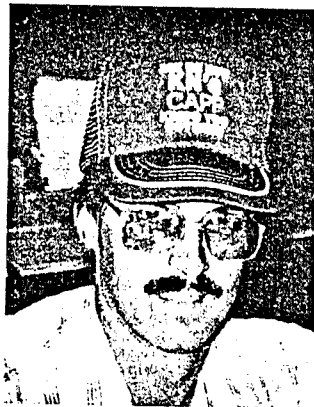
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An economical solution to appliance repair costs.

KN Energy, Inc. introduces its Customer Appliance Protection Program (CAPP). For \$6 a month, you can call us anytime a covered appliance breaks down.

Covered appliances include your gas heating system, gas or electric water heater, gas or electric range and gas or electric clothes dryer.

KN employees have been providing quality service since 1936. All service employees spend one week each year undergoing specialized schooling at one of KN's hands-on training facilities. It's because of their expertise that our CAPP program will keep you covered.

Fill out and detach the application form today. Mail it along with your monthly bill payment or give it to any KN employee. **SEND NO MONEY** — the charge will be added to your monthly gas billing.

CAPP protection begins the day you receive your first

monthly billing and extends for one year from that day.

Sign up now! It will be worth it the next time your hot water heater turns a cold shoulder.

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 Name Joe Customer District Cost
 Address 1234 Quaker

Under your KN Energy, Inc. Customer Appliance Protection Program (CAPP) agreement the following repairs were completed. **PARTS AND LABOR** were provided at no cost to you.

Heating System Repair Parts Used: *over thermostat;*
 Water Heater *gas safety valve*
 Range *1 hr*
 Dryer *2 hrs*

If you had not been enrolled in KN's CAPP coverage, the parts and labor charges for the above mentioned repairs would have been \$ 183.⁰⁰

white - customer Manager *KN Manager*
 gray - merchandise department Date *3-1-88*
 pink - district office

889-160M

KNE ENERGY, INC.

*Customer Appliance Protection Program

2-13

CAPP keeps you covered

For only \$6 a month,
CAPP works to repair all these
major home appliances, including
PARTS AND LABOR.

	Gas or electric water heater	Gas or electric range	Gas or electric dryer	Furnace	Space heater
Gas valve	•	•	•	•	•
Main burner	•	•	•	•	•
Limit control	•	•	•	•	•
Pilot burner	•	•	•	•	•
Thermocouple	•	•	•	•	•
Flame spreader	•	•	•	•	•
Regulator	•	•	•	•	•
Standard thermostat	•	•	•	•	•
Manifold	•	•	•	•	•
Relief valve	•	•	•	•	•
Vent damper	•	•	•	•	•
Burner element	•	•	•	•	•
Fuse	•	•	•	•	•
Transformer	•	•	•	•	•
Relay	•	•	•	•	•
Ignitor	•	•	•	•	•
Sensor	•	•	•	•	•
Power pack	•	•	•	•	•
Gaskets and seals	•	•	•	•	•
Oven selector switch	•	•	•	•	•
Programmed cooking controls	•	•	•	•	•
Surface unit controls	•	•	•	•	•
Motor	•	•	•	•	•
Bearings	•	•	•	•	•
Belts and pulleys	•	•	•	•	•
Timer	•	•	•	•	•
Fan control	•	•	•	•	•
Pressure control	•	•	•	•	•
Pressure gauge	•	•	•	•	•
Low water cut off	•	•	•	•	•
Sight glass	•	•	•	•	•
Pump coupler	•	•	•	•	•
Pump (one piece)	•	•	•	•	•
Radiants	•	•	•	•	•

Limits and conditions of CAPP

Please read carefully and save.

I. General

- The program is purchased for one year, payable in 12 equal monthly installments. For \$6 per month, the following appliances may be covered:
 - one heating unit, gas only;
 - one water heater, gas or electric;
 - one range, gas or electric; and
 - one clothes dryer, gas or electric.

If you have more than one of the above, each additional unit may be covered for a monthly charge of \$1.50.

- The program applies only to one single family residence per agreement, and specifically only the equipment covered by the program at the time of your initial application. Upon written notification to K N, eligible new equipment may be added to the program after inspection by K N.
- As a condition of participation, your equipment must satisfy applicable codes and be in good operating condition at the time of your application. Prior to acceptance of your application, you agree to permit an initial inspection of your premises. By performing such inspection, you understand and agree that K N is not liable in any manner for your defective equipment, whether such defect is discovered at the time of the inspection or a later date. K N reserves the right to reject any application.

4. For covered equipment, the program includes both parts and labor. K N reserves the right to exclude certain equipment due to the unavailability of parts, and the choice of parts to be used is at K N's discretion.

5. K N shall not be held responsible for charges for service or parts performed or procured by you or performed by others. Upon your notification of a suspected problem, K N will endeavor to give efficient and prompt service in replacing or repairing any items covered under the program, although response time shall be governed by weather conditions, employee work load and parts availability. Covered service will be performed during normal working hours, Monday through Friday.

6. Your participation in this program may be subject to state or local taxes.

II. Limitations of Liability/Exclusions

- K N will not be responsible for direct, indirect, incidental or consequential damages, illness, or injury caused by delays, failure to service, unavailability of parts, labor difficulties and other conditions beyond K N's control, arising from K N's performance under this program. K N further reserves the right, at its discretion, to use qualified contractors to fulfill all or any part of its obligations under this program.
- The program does not include any parts or labor required as the result of abuse, vandalism, fire, freezing, acts of God, power or water supply outages, flooding or other abnormal conditions.
- The program does not include labor and materials for cleaning of boiler water, cleaning of cooling coils, cleaning of air ducts, venting, adjusting air flow to rooms, venting of radiators, draining of expansion tanks, disconnection of appliances for cleaning, or installation of new or replacement appliances.
- Being mechanical, your equipment may wear out. If the estimated cost of repair should exceed the fair market value of your covered equipment, K N reserves the right not to repair the item and to recommend replacement by you. In no event shall K N's exposure under this program for any one call exceed \$250.

III. Coverage and Renewal

- Your coverage under this program commences the day you receive initial monthly billing on your gas bill, and extends for one year from that date. K N will automatically renew the program each year thereafter unless the program is terminated by either party giving 30 days written notice to the other party prior to the end of the initial or any renewal term. Charges for this program may be changed with 30 days notice. You may terminate coverage prior to the effective date of any increase. Such notices may be given at any time without stated cause or reason. You may be dropped for nonpayment. If dropped for nonpayment, you agree to promptly pay K N the full cost (labor and parts) for all services provided you after your last payment period.

Please detach and complete.

Yes. I want to participate in CAPP.

	range	dryer	water heater	furnace	space heater
Natural gas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Electric	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

K N account number _____ Daytime phone _____ Evening phone _____

Name (please print) _____

Address _____

Town _____ State _____ Zip _____

I have read the full description of CAPP, and I understand and agree to its limits, requirements and exclusions.

Signature _____ Date _____

Sign up
here

2-14

We will give you a \$75 discount certificate off the regular retail price of any gas appliance if you sign up for all three plans. You receive a \$45 discount certificate if you sign up for two plans, and a \$25 certificate when you sign up for one plan. You have until December 31, 1990 to use your discount certificates.

Yes, please contact me about signing up for one or more of your customer assistance plans.

Name (please print)

Street or box number

Town

State and zip code

() _____
Day phone

() _____
Evening phone

WeWarmTheHeartland

KNEENERGY

290/175M

216

FREE relighting of your old gas light FREE painting of your light and post

We do ask you to sign a form and agree to leave your light on for one year. We'll check your gas line for leaks. If there are no leaks we will:

- Replace glass if needed
- Replace mantles
- Clean inside of light
- Lubricate valve if possible
- Paint light and post
- Turn your light on

SALE on new gas lights



Model GL-1700
\$109



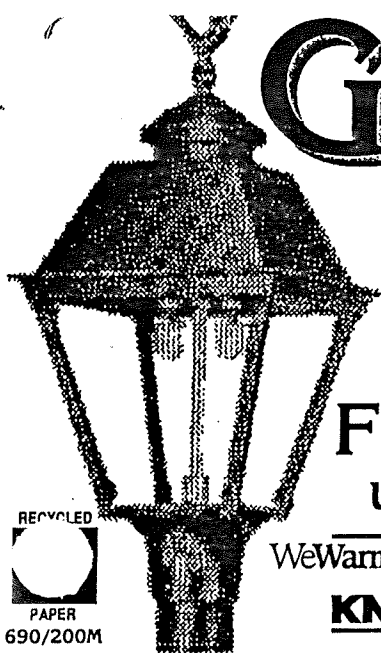
Model GL-900
\$119



Models GL-200, C8000
\$300 \$79

Post
\$39.00
FREE installation
up to 30' from
service line riser

GAS HEATING SYSTEMS — RIGHT FOR TODAY'S HOMES
10% OFF
 All heating needs for homes and businesses — from furnaces to unit heaters, from boilers to tube heaters. We'll handle all your heating needs with economical natural gas appliances.
 NOW THROUGH AUGUST 31
 AT YOUR GAS COMPANY
490/220M



Gas lights

on sale until
September 30

FREE INSTALLATION
up to 30' from service riser



We Warm The Heartland™

KNEENERGY



ROCKY MOUNTAIN
NATURAL GAS

71-8

When does 1 + 1 + 1 = \$75?

Until May 15th at
K N Energy you will get up
to a \$75 gas appliance dis-
count certificate when you
sign up for our customer
assistance plans.

We offer three customer assistance plans
that can help you control your budget for your
energy and repair needs.

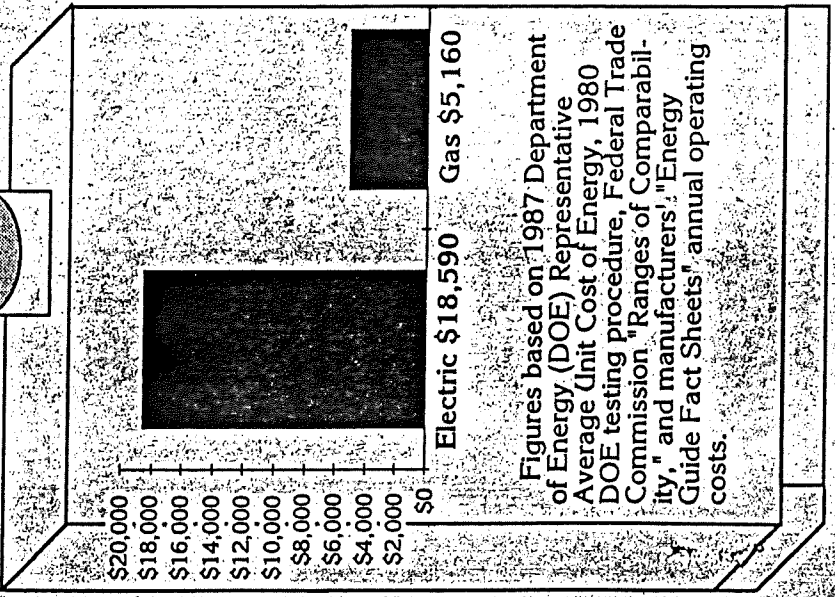
The Budget Billing Plan means your gas bill
will stay the same every month. No more high
gas bill arriving with the holiday bills.

The Direct Payment Plan helps save your
time, check costs and postage. Both home
and business accounts are eligible for Budget
Billing and Direct Payment.

Signing up for CAPP (Customer Appliance
Protection Program) for \$6 per month means
you can call us any time a covered appliance
breaks down. Covered appliances include
your gas heating system, gas or electric water
heater, gas or electric range and gas or
electric clothes dryer.

Complete the form on the reverse side and
include with your gas bill. We'll be contacting
you soon.

Year Energy Savings: Natural Gas vs. Electric Heating Costs



Figures based on 1987 Department
of Energy (DOE) Representative
Average Unit Cost of Energy, 1980
DOE testing procedure, Federal Trade
Commission "Ranges of Comparabil-
ity," and manufacturers' "Energy
Guide Fact Sheets" annual operating
costs.

Santa Fe

air conditioning & refrigeration

212 E. Main
Gardner, Kansas 66030
829-0946 884-5801

February 19, 1991

Kansas House of Representatives
State Capitol
Topeka, KS 66612

Dear Representatives,

I am writing to you in support of the, "Public Utility Affiliate and nonutility Service Act," number 2361.


As you may know, KPL is presently retailing Servel gas air conditioning equipment in the Kansas City area. Our concern at Santa Fe is our competitive position with KPL. The following example illustrates our concern.

KPL sells a 3 ton gas air conditioning chiller for \$1,685.00 including a \$200.00 rebate. Our cost on this machine through our distributor, Air Specialist of Tonganoxie, Ks. is \$2,475.00. KPL purchases direct from the Servel factory, then sells the machine at or below cost. KPL also will service this machine every spring at no additional charge. Obviously, we can not compete on this level. KPL could not compete at these prices if they were not subsidized by everyone that purchases energy from KPL. Basically if your energy supplier is KPL, you're helping to pay for your neighbors new air conditioner.

In other parts of the country, utilities have branched into offering service contracts, new furnace sales, etc. With the same pricing policies outlined above. If this continues in Kansas, it will have a devastating effect on all the heating and cooling contractors in the State.

We at Santa Fe support House bill 2361 in the belief that open, honest competition will deliver the best product and service at the lowest price for the people of Kansas,

Sincerely,



Duane B. Wood
President

DBW/cm

Heating

Commercial Refrigeration

Cooling

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KPL GAS SERVICE COMPANY
CONFIDENTIAL SELLING PRICES
APPLICABLE ONLY TO CUSTOMERS ON OUR RETAIL LINES

IN-STOCK UNITS ONLY
EFFECTIVE DATE: JUNE 1, 1990
(SUPERCEDES JANUARY 15, 1989)

DOMETIC CHILLERS

<u>Model #</u>	<u>Material Code No.</u>	<u>Description</u>	<u>Selling Price</u>
ACD 36-00	4102468	3 tons cooling(115v)	\$1,885.00
ACC 48-00	4012354	4 tons cooling(230v)	\$2,361.00
ACC 60-00	4102411	5 tons cooling(230v)	\$2,630.00

DOMETIC CHILLER/HEATERS

ACY 36-120	4105713	3 tons cooling(115v) 120,000 BTUH heating input	\$2,791.00
ABY 48-150	4105717	4 tons cooling(230v) 150,000 BTUH heating input	\$3,424.00
ABY 60-180	4105720	5 tons cooling(230v) 180,000 BTUH heating input	\$3,792.00

IMPORTANT "WHEN ORDERING" INFORMATION

Chillers: (See "Accessories" for prices) With each chiller installation, the following must be used/installed; chiller control relay, thermostat, 2 P.T. plugs (unless chiller-coupler kit used), minimum 10% antifreeze, defoaming agent, fungus deterrent.

Chiller/Heaters: With each AY installed, the following must be used/installed; 2 P.T. plugs, antifree protection to lowest possible ambient, defoaming agent, fungus deterrent, air unit fan delay switch, and hot water aquastat.

WARRANTY INFORMATION

A 10-year warranty on the sealed refrigeration system is standard on single family residential installations. On commercial installations the warranty is 5-years and extended warranty is not available. Apartments and duplexes are commercial installations, unless each living unit is served by a separate chiller (chiller/heater).

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Testimony before the:

HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

FEBRUARY 20, 1991

by Bruce H. Robinson -- Anchor-Robinson Heating, Cooling and Refrigeration

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to speak in favor of House Bill No. 2361. I am Bruce Robinson from Topeka, the owner of a small mechanical contracting firm. I believe this bill offers a reasonable and fair solution to a problem that I face both as a consumer and as a business owner.

The public utilities in the United States have built a marvelously efficient system of delivering reliable, safe and economical energy and communications service to almost every home in the country. This highly productive system has been built largely through the very special status given them; we allow them to operate as **monopolies**.

Throughout the rest of our economic system, the practice of "monopoly" is illegal. A monopoly renders consumers powerless to choose among competing sources of goods and services to get the best deal possible, because there is **no competition**. However, in order to develop and maintain effective utility services, it is necessary to grant public utilities monopoly status. This can be allowed because it is agreed that no good purpose would be served if the skies were crisscrossed with competing electric and telephone utilities' lines and the yards and streets were undercut with a maze of gas companies' pipes. Further, larger utilities should benefit from certain economies of scale, passing these savings on to consumers.

The reason a monopoly utility can benefit consumers is the nearly complete uniformity of the services provided by them. Natural gas is essentially methane gas. When it is delivered to our homes at a uniform pressure, it is functionally the same as gas from any other source. Electricity, whether generated by gas, coal, nuclear power, wind or whatever, enters the nationwide electrical grid at the generator and is the same as power generated elsewhere. That is why a toaster produced in Cincinnati works just fine in Pratt. This uniformity makes choosing the best product from competing companies unnecessary because all products are the same.

This monopoly status that utilities enjoy carries with it special, unique responsibilities. A regulated monopoly must ensure that this economic power is not abusive to the economy. Government must oversee all operations.

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Attachment 3

Without careful management and oversight, service will not be maintained at the current high level and costs could not be as well contained. This supervision, examination and accountability that is so essential to the people of the state is well handled by the Kansas Corporation Commission with three commissioners and staff. The Commission grants to regulated utilities a guaranteed investment return on assets used in the production and distribution of energy and communications, as well as recovery of all eligible expenses incurred in the production and distribution of these services. This way the success of the utilities is assured and its investors are willing to provide the capital necessary for development.

The combined set of expenses and investment return assured a utility is called its **rate base**. This total dollar value is spread over the entire base of customers to determine the rates the utility may charge for its services. The investments and expenses eligible for recovery are closely monitored by the commission. Otherwise, assets and expenses not related to the actual production and distribution of energy could be added indiscriminately and our utility costs would increase without any benefit to us. Our utility costs would be inflated by investments that had no connection with essential utility services. In a ridiculous example, a utility could buy cattle, recover expenses for feed and pasture, and be guaranteed a return on their "investment". This cost would be passed on, of course, to the utility's customers.

In reality, no utility could continue this kind of abuse. The Corporation Commission and the legislature would never allow it. In practice, less obvious but equally abusive practices now exist in Kansas. It is becoming common for utilities to give away water heaters and yard lights, as well as to provide low or no interest loans on heating and cooling equipment. Some utilities give incentive payments to contractors for installing certain selected types of equipment. Further, R.E.C.'s are replacing the services of existing contractors by installing water heaters and new wiring. Other utilities are giving direct incentives to customers and contractors who install certain types of heating and cooling equipment. These services as well as this equipment are being provided at a very low direct cost to customers. A utility may call these costs **marketing expenses** and add them to its customers' utility bills.

Generally, marketing expenses are allowed under current guidelines for determining the rate base. Some utility activities fall completely outside what anyone would call marketing. Many utilities are actively pursuing mechanical and electrical contracting and services at prices far below those possible by other businesses. This certainly is an abuse of the guarantees made to the utilities by the state. Utilities are allowed and encouraged to participate in activities which permit them to make a profit, but local utility business offices maintain appliance showrooms selling household appliances at prices below those at competing businesses and financing those purchases at well below

bank rates. Accounting techniques allow utilities to participate in these losing ventures while making them look profitable.

When a utility installs a furnace, for example, the installers may log their time as though they were reading meters. The trucks they drive, the uniforms they wear, the training and tools they use, and the office staff that provides support may be shown as expenses of another department altogether. Therefore, the costs of the furnace installation are partially paid by the other rate paying customers of the utility. This involvement in non-utility services which is then subsidized by the ratepayer is called **cross-subsidization**. If you have ever received a sales brochure enclosed in your monthly statement from a utility, been offered low interest loans on appliances, or seen the utilities' names used to promote a particular product, you have seen cross-subsidization at work. Utilities are doing this today. It is not allowable, because rate payer dollars are used to support these activities. Further evidence suggests highly subsidized equipment sales to a few, privileged customers. These abuses can be very hard to find and nearly impossible to prove. Imagine an auditor trying to find the exact location of a truck from 2:30 p.m. to 5:00 p.m. on February 13, 1989. It would be a frightful task and a terrific waste of tax dollars to catch this abuse of the rate payers' dollars. There is an easier way. Eliminate the possibility altogether that customers will pay utility dollars to support activities that have nothing whatever to do with the legitimate function of regulated utilities, the delivery of energy.

Abusive utility practices have caused increased concern among customers and contractors alike. Rate paying customers are concerned because they realize that the "benefits" of these practices fall unequally on various factions of the community while the costs fall on all customers. Utility customers operating a small manufacturing plant or grocery store cannot use the advantages of a yard light or low interest financing on a gas range as would a homeowner. Contractors and dealers are concerned because, while they are not guaranteed a return on investment and recovery of nearly all expenses, the utilities are provided with these guarantees. In short, the regulated utility companies cannot loose money. **Only contractors and dealers can go broke!** In many counties, we are seeing this happening now. After just a few more years, there will be no independent dealers and contractors in some areas. Customers will have no choice in their selection of services because their only source of mechanical, appliance, and electrical services will be the utilities.

The need for these essential services is not uniform like the voltage of electricity or the standard plug of a telephone. Diversity of available services is the cornerstone of our economic system. Our free market has created a broad range of service contractors with varying levels of services and products. The market fairly regulates which of these will prosper and which will fail.

Independent contractors and dealers live, work and contribute to their local economies. As they decline, the utility will gain a controlling market share and become an unfair monopoly in the local economy.

As an example, a local gas utility might promote itself into the furnace replacement and service business by offering low cost maintenance contracts and unreasonably cheap furnace replacements. Some utilities in the state are currently doing just this. The current laws governing the safe installation and repair of furnaces, water heaters, and electrical gear do not apply to utilities. Utilities are specifically exempted from licensing of personnel as well as the safety inspection requirements that regulate contractors. Plus, with careful accounting, a utility company is able to assign a majority of its indirect costs to other operations. A contractor or dealer needs to recover all costs of office and sales personnel, lost time, warranties, warehousing, shipping, insurance, utilities, advertising and interest. A clever utility accountant or manager would assign these costs to other operations. This is the fundamental principle of **cross-subsidization**. This practice allows the utility to compete unfairly with contractors and gain a dominant market share.

Within a few years the local utility would find itself in the enviable position of controlling not only the supply of gas but also the demand for the same product. Most competing contractors would be gone; most service and installation would be through the utility. Try to imagine living in a town where all the cars and trucks were sold, serviced and tuned up by the same company. In addition, that same company sold all the gasoline in town, and was guaranteed a profit on all these operations. No one could accept this monopolistic control of the marketplace, but, some utilities have that control now!

The service and contracting business, is a very risky enterprise. The base of existing customers is static in this state. The booms in the 60's and 70's are long past. Almost every home already has a furnace, air conditioner, modern electrical service and a refrigerator. With the fairly easy entry of new business operations into the market, there are plenty of new players vying for each consumer dollar. Each year an alarming number of businesses fail or are absorbed by others. My business is the product of five such businesses all of which preferred selling out to losing out.

In this environment, there are almost no publicly held corporations. What stockholder would want into this low yield business? What board chair would want to face his annual stock holder meeting in this industry? Against this pale, bleak economic background we now see the public utilities. These corporations are characterized by traditionally conservative managers hired by board members working for equally conservative stockholders. These utility investors are looking for rock solid long term security and regular, predictable

dividends. They demand near absolute safety in their investments. Why would utility managers want to invoke the wrath of such stock owners by playing in some of the riskiest enterprises in the state?

The only reason a savvy manager would take these terrible risks is if there are no risks. Remember, the public utilities have that special edge, the guaranteed return on investments and expenses that no other business has! With these guarantees there is no risk. Still, why not move into the concrete business or sell farm equipment?

The appliance, service, and contracting businesses give the utility special advantages. First, for the utility, they are easy to slide into. Already, they have marketing people and energy specialists talking with consumers about their energy use and the equipment that uses it. It is easy to place a water heater next to the customer service desk at the business office and offer it as a solution to consumer problems. Secondly, there are few credit risks. The utility already knows who is paying their bills on time. "For just a few dollars each month, Mr. Jones, I can have this beauty installed in your home tomorrow." Collection risks are minimal; the charges are included in the monthly utility bill and who can do without power?

Where is the harm in all of this? Sure a few small businesses may loose out, but they weren't all that stable, anyway. Here is the most serious charge. As fewer of these small businesses remain, the utilities will gain total control of the marketplace. They then have the unique opportunity to control the market for their products, energy services. They will control not only the supply of energy but also the products and services that consume energy. It appears unlikely, then, that high efficiency products and alternative energy sources would receive much attention. Who would promote, install and maintain these systems if the energy suppliers control the marketplace. Further, if traditional, high energy use equipment is offered at below market prices, newer, slightly more expensive technologies saving precious non-renewable energy are going to see very slow acceptance. Shortly after World War II, the gas company removed my parents solar water heater and replaced it with the newest technology, the gas water heater. All this, of course, was free.

All of this is hardly just a bad dream. Three local utilities are now engaging in the practices I have described. One local R. E. C. is selling water heaters for \$100.00, that's \$83.00 below wholesale price on this water heater alone. Another is promoting and installing water source heat pumps for the cost of equipment alone. The considerable cost of excavation and duct installation is free. As a contractor, I deserve to succeed or fail based on my ability, qualifications and good fortune. All I ask is that my competitors, the utilities, use the same rule book I play with.

Legislation can be enacted in Kansas to remedy this situation. Ideally it would:

a) Allow utilities the full freedom to operate efficiently and in the best interests of their stockholders, the ratepayer, and the environment.

b) Encourage utilities to continue to promote the wise and judicious use of energy.

c) Allow utilities to maintain and to operate their own facilities economically and to provide safe and reliable service to their customers.

d) Require utilities engaging in non-utility operations to do so through affiliated companies which pay their own expenses, having no more protection than freely competing companies.

e) Require utilities that provide services such as marketing and mailing support to its affiliates to provide the same services to competing companies at the same price.

Currently, such a bill is under consideration within the Kansas Legislature. It is called, "**Public Utility Affiliate and Nonutility Service Regulation Act**". It is designated HB 2361. This act is designed to continue free market competition. It gives utilities the protection and freedom they require to operate effectively and does not hamper their current marketing and conservation programs.

This bill does, however, restrict utilities from engaging freely in the non-utility functions that private companies now provide. In areas where utilities have already replaced most existing contractors and service businesses, they are fully permitted, by this act, to continue their operation as an affiliated company. They would then operate in a freely competitive environment. Utilities choosing to enter the contracting and service business would be free to do so; they would operate as any other business, without the monopoly protection normally given the utility.

In this way, the best interests of utility companies, their stockholders, the free market economy, private businesses and consumers are all served. This bill deserves your careful consideration and support!

House Bill Number 2361

Testimony before the House Committee on Energy and Natural Resources.

February 20, 1991

By Fred Stewart
Stewart Plumbing and Heating, Inc.
Kansas Alliance for Fair Competition, Inc.

Mr. Chairman and Members of the Committee:

My name is Fred Stewart. I own a plumbing and heating business that employs approximately 30 people, in Dodge City, Kansas. I am also a member of the Kansas Alliance for Fair Competition, Inc. I support House Bill Number 2361.

My father started this business in 1956. I have been president since 1978. We cover a one hundred, fifty mile radius from Dodge City, Kansas.

We pride ourselves in quality workmanship at a fair price. Our service people are trained.

I would like to explain to you some of the problems we, as business people are having with the public utilities, namely the Peoples Natural Gas.

My heating and air conditioning service department is less than one half the size it was before the Peoples Natural Gas Co. started the "P.S.A.P." program.

The main problem we are having is with the Peoples Natural Gas "P.S.A.P." program, and selling equipment and appliances below fair market pricing. I have enclosed a sample brochure on the "P.S.A.P." program. The price Peoples Natural Gas charge for this service is below my costs. The difference has to be paid by some other way, the rate payers.

1. Bill Stuffers: In our gas bill envelope we find sales literature for service agreements "P.S.A.P.", Hot water tanks, Furnace and Air Conditioners. I have to ask myself what portion of this mailing expense is being charged against yours and my gas bill.

2. Direct Selling of Equipment: The local utility, Peoples 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

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have the equipment finances and the monthly payment added to their gas bill. We have had customers who were offered a \$100 incentive to install a gas line in order to switch from electric or propane 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. Peoples Natural Gas paid each new customer a \$100 incentive to switch. The Wright, Kansas project incentives seem to be discriminatory expense underwritten by all rate payers!

3. Peoples Natural Gas hired my own service people away from me. They can pay more money and give them a bigger benefit package than I can. They hired two people from me in the last two to three years. These were service men that had been with me for several years and my company had paid the expense to train them on the job and send them off to schools. Each time when I would try to talk them into staying my men would say, "You can't compete with their pay and benefit package." The rate payer is paying the difference again.

4. Covering up Costs: One of my old employees, is a salesman for Peoples Natural Gas. He is also a underground leak servicer, appliance and furnace service man. This means he has an excellent opportunity to cover up the time he spends selling equipment or "P.S.A.P." program, and calling it something else. He even went as far as to tell me that when the Peoples Natural Gas sold a hot water heater they would subcontract the insulation to a local plumber, but this did not include the delivery of the new tank or hauling away of the old tank. The Peoples Natural Gas meter readers would deliver the new tank and haul away the old tank, charging all their time and truck expense to reading meters.

I am enclosing a letter from Bob McCulloch, a former Peoples Natural Gas manager from Meade, Kansas, telling us just how they are instructed by Peoples Natural Gas upper management, to "cover up" and "hide" the expense of selling equipment or "P.S.A.P." service work. See enclosure #1.

5. Selling Below Cost: Last year Peoples Natural Gas sold a new heating, cooling system to Issac Truck Line in Dodge City, Kansas. Peoples Natural Gas ask us to bid the job to them. Our bid was higher than theirs. Peoples Natural Gas hired us at our higher price bid, paid us more than they received from their customer, Issac Truck Line. Who is paying the loss? Yes, we the rate payer, again.

6. Preferred Customer List: Peoples Natural Gas has their "P.S.A.P." list of customers. When a regular customer calls in with a ligimate problem, often they are told they have to wait until later because they are not on the "Preferred Customer List," or if they want service now they can sign up for the "P.S.A.P." program. If they are running the "P.S.A.P." program as a separate business this would not happen.

7. The Utility a Monopoly: I understand that their can be only one gas company in town, and that you, the K.C.C., allows them to make a percent of profit based on our gas bill. It seems to me they are confusing the basic gas bill with heating, air conditioning and appliance work. The way it is going, you, the K.C.C., is allowing them to make a percent of profit on everything they can spend.

I always thought that the United States and our Constitution stood for freedom. I also believe that the "Small Businessman" and fair competition is the backbone of the United States. I think it is time that the K.C.C. stops to relize how much power they are giving the utilities.

Nov. 18, 1991

to whom it may concern:

My name is Robert H. McCulloch, Box 682, Meade, Ws. 67864
I am a heating and air conditioning contractor. I do sales, service and installation of appliances, furnaces and air conditioning. I have been in my own business since November 1988.

Before starting my own business, I worked for Peoples Natural Gas Company for over 17 years. I worked as a construction utility man, meter reader, service specialist III, II + I, then was a lead serviceman for 8 years. I was the Manager of Peoples Natural Gas Company in Meade, Ws. for 4 years and 7 months.

Concerning Peoples Natural Gas Company and their merchandising and PSAP service:

The time charged to merchandising and service work on an employee's time sheet is not a true picture of actual time spent working on these functions. For example, if you spent 4 hours working on merchandising, selling, delivering & installing a product, you would probably charge 1 hour, no more than 2 hours to this function, the remainder of the time would be charged to gas operations. The same holds true for PSAP charges. Another example would be, the gas company would bid a furnace change out plus labor and material. They would bid 8 hours labor, the job would probably actually take 12 hours with 2 men or 24 man hours. On their time sheets, each man would charge 4 hours for the job making 8 hours charged to merchandising, the other 16 hours are charged to gas operations. 44

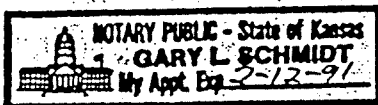
Wh time is charged to gas operation. This expense goes back into rates. Then the gas consumer picks up the difference on their gas bills.

Employees keep track of their own time sheets and they are told not to charge too much time to merchandising or PSAP. I know this for a fact as I was told to do this for years and told my employees to do so when I was a manager. This is a common practice, not only in Kansas but in Colorado where I worked for Peoples Natural Gas Co. before coming to Kansas.

This makes unfair competition as the gas company can charge less for their merchandise and service work.

Robert L. McCulloch

2-18-91



Gary L. Schmidt



PEOPLES NATURAL GAS

Dear Valued Customer:

Happy New Year! We trust 1990 will bring you good health and prosperity. Thank you for your past business, and we welcome the opportunity to continue serving your energy needs throughout 1990 and for years to come.

Another need many of our customers have is for a reliable furnace and major appliance repair program. That's why Peoples Natural Gas developed the **PeopleService™ Appliance Protection (PSAP)** plan. To date, over 85,000 Peoples customers are enrolled in PSAP and enjoy peace of mind knowing their major home appliances—both gas and electric, old and new—are safeguarded against costly repair bills.

For less than 24¢ a day, PSAP provides the following benefits:

- No charge for most **PARTS AND LABOR** to repair your major home appliances, including:
 - Gas Furnace or Boiler
 - Gas or Electric Water Heater
 - Gas or Electric Range
 - Gas or Electric Clothes Dryer
- No heat service—24 hours a day, 7 days a week
- For your convenience, the low monthly fee is added to your gas statement each month.

PSAP Plus...

We are now offering PSAP Plus. For less than 17¢ a day, you can add the following major appliances to PSAP:

- Refrigerator
- Automatic Washer
- Electric Central Air Conditioner

Now that the new year is here, this is a great time to enroll in either PSAP plan. Enclosed is a descriptive brochure which explains the details about both plans. Also enclosed are examples showing what typical repairs could cost you. These same repairs would cost you nothing with PSAP or PSAP Plus.

To get the new year off to a good start, Peoples Natural Gas wants to extend to you the following special offer:

**SIGN UP FOR EITHER PSAP OR PSAP PLUS BY FEBRUARY 28, 1990
AND YOUR FIRST MONTH IS ABSOLUTELY FREE!**

Simply check the appropriate plan and sign the enclosed postage-paid enrollment form today. Take advantage of our special, limited time offer. Start the new year with peace of mind knowing your major appliance and furnace repairs will be covered all year long.

Sincerely,

Gene P. Riesenberg
Director, Residential Marketing

P.S. Contact your local Peoples Natural Gas office if you desire any additional information.

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Testimony before the:

**House Committee on Energy and Natural Resources
House Bill No. 2361**

February 20, 1991

By: Bruce Huffman---of cfm Distributors, Inc.
A Kansas corporation doing business out of
Kansas City, Missouri

Mr. Chairman and Members of the Committee:

I am Bruce Huffman of cfm Distributors, Inc., and a member of The Kansas Alliance for Fair Competition, Inc. cfm is a major wholesale distributor of heating and air conditioning products in Kansas and Missouri. 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 contractor's 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. This 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.

My purpose in addressing the committee today is to clarify two points which often arise whenever we enter into the discussion of unfair utility competition. The first point relates to a utility's claim that their size allows them to buy equipment and materials more competitively than the independent businessman.

In most cases is SIMPLY NOT TRUE. My information on this subject comes from daily working knowledge of competitive pricing, including factory costs. I can tell you that utility buying power has very little to do with the low consumer prices of utility's products and services.

The fact is that we deal with many independent heating and cooling businesses in the greater Kansas City area on a daily basis whose volume of business would dwarf the purchases of companies like Peoples Natural Gas Co., KS Energy, or KPL Gas Service's gas chiller sales. Even these large dealers would not be able to compete against the service and equipment prices offered by the utilities. Volume has very little to do with their low prices.

*E+NR
2/20/91
Attachment 5*

The second point that often arises is that the utility's claim that they're the only service company in town, so, wouldn't some consumers be hurt by this bill. Absolutely NOT! If the utility is the only company in town to do heating and cooling service then they will stay in the business and operate through an affiliate. This would be a profit center for them, so, why wouldn't they want to continue. The important point here is that if the utilities are required to compete fairly, next year the community very well might have two companies in the business. The testimony earlier today, submitted by Mr. Irvin Rindel of Hugaton, Kansas points out that 15 years ago, before the unfair competition of People's Gas started, there were 3 heating and air conditioning and 2 appliance companies in Hugaton. Today his town is down to a one man shop.

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

Your action on this bill is needed to maintain these vital, non-agricultural businesses in Kansas. I support House Bill No. 2361.

TESTIMONY BEFORE THE
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

February 20, 1991

James E. Mlynek

Mr. Chairman and Members of the Committee:

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. 2361.

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.

As an example, let's look at leased area lighting in the City of Topeka. We have to be licensed and have inspections on our work; the utility does not have either. We pay approximately \$300 to get electrical service set up; the utility connects to existing unmetered overhead circuits. It costs us approximately \$400 to put up a wood pole with a luminaire fixture depending on size and wattage. The utility charges \$15 to \$20 per month on a leased basis. 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, creating an unfair advantage for the utility company.

*ENR
2/20/91
Attachment 6*

You and I, the consumer, end up paying for it, and the private enterprise system does not get a chance to compete.

ACTUAL EXAMPLE OF LEASED LIGHTING IN TOPEKA

Owner: Woods Condominium Association
Address: 5707 SW 22nd Terrace
Topeka, KS 66614
Utility: KPL

Work Performed: Installed four poles with luminaire lighting

Lease Charge to KPL: \$41 per month/\$10.25 per pole

Contractor's Estimate for Installing Four Poles with Luminaire Lighting:

Service Set-Up	\$300
Material	\$150
Labor	<u>\$250</u>
Total Cost per Light:	\$700

Total Job Cost: \$2,800

***Contractor could match the Utility's terms to the owner by offering financing at 10 percent over a period of 8 1/2 years, thus, allowing the owner to make payments of \$41 per month.

Ted Sanko

February 19, 1991

I am offering my thoughts to help solicit your support for House Bill # 2361.

As a Mechanical Contractor in Norton, Kansas, for the past fifteen years, I have been in direct competition with K & N Energy Company and the Norton Decatur Electric Coop Company. They have quoted heating and air conditioning equipment cheaper than I can purchase it through my channels of supply.

The Energy companies are unfairly competing for residential and commercial sales from my company. They are using trucks and equipment that are used in the utility business - ie. (that is paid for by the setting of utility rates), and using that equipment to compete in the same market in Western Kansas.

The K & N Energy Company is offering a service maintenance program for their customers far below market value and industries cost. They advertise and promote this program through the mailing of utility bills to all gas customers. I'm sure that the computer time and mailing cost of this program are calculated in the gas rate charged to customers.

I have purchased boilers from K & N Energy in the past and have bid against them on boiler jobs. If the gas company wants the job they usually can under bid everyone. This is accomplished by their large buying power. On Commercial Heat Water Heaters they can beat anyone in town because of their buying level. They have to be buying equipment like my wholesaler in order to give the pricing they do.

Transportation for goods and material is a big concern for people in Western Kansas. K & N Energy can ship materials across the borders on their own trucks without any charge to the equipment for freight. They can shuffle equipment from one store to another by using their utility trucks.

Norton Decatur Electric has been selling water source heat pumps with financing at 2%. I wish I could extend a 2% financing to my customers, but my bank charges 11½ %.

I am in support of "Public Utility Affiliate and Nonutility Service Act" number 2361. This legislation will force utilities to compete on the same level of business as I am. It will help stop the mixing of utility expenses with the real cost of doing business in the heating and air conditioning field. This will help in ensuring that utility rates reflect only the cost of their gas or electric production and maintenance.

*E & NR
2/20/91
Attachment 7*



SOUTHWESTERN ELECTRICAL COMPANY, INC.



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

February 20, 1991

Mr. Chairman and Members of the Committee.

I am here today to speak in support of House Bill #2361

My name is Robert L. Carley.

I represent several identities in my appearing before the committee as I am President of the Wichita Chapter of the National Electrical Contractors Association, I am Corporation Secretary of Southwestern Electrical Company, Inc. and a Charter member of the Kansas Alliance for Fair Competition, Inc.

I have been a Licensed Electrician for over 40 years and an Electrical Contractor for the past 26 years.

I have witnessed the encroachment of the electrical utilities over this period of time and believe that it's time that some restrictions should be placed on a utility which has franchise protection for their operation.

Our local utility at one time was in the retail market selling electric ranges, washer, dryers and other appliances. This activity was stopped in the late 40's due to enforcement of their franchise agreement, however, when the utility ventures into business activity which is competitive with the independent businesses it is inevitable that the utility will use its monopoly advantage in some way.

The paradox is that the independent electrical contractor is prohibited from selling electricity but the utility is not prohibited from competing with the contractor.

Today we find the electric utility financing and installing parking lot lighting, used and new car lot lighting, football field light-

E+NR 2/20/91 Attachment 8

ing, several forms of security lighting, sweetheart deals with individual companies and handing out monies for heat pump installation. All being done on private property beyond the point of electrical service to the property.

The utility has installed untold quantities of the above referenced type projects, all without electrical permits, inspections or the use of licensed electricians, under the guise of The National Electrical Code which allows a utility to be exempt from the Code when operating within utility easements. The utility simply gets an easement dedication from the customer, thereby by-passing the rules and regulations under which an electrical contractor must conform.

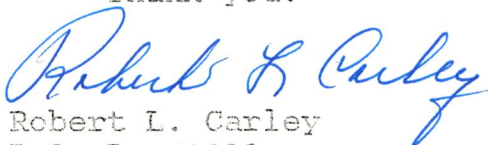
The enormous costs of TV and Radio promotions as a marketing tool for a franchised product makes me question the use of rate payer base structure monies.

I have no problem with competition, it is the American way of good healthy business, however, I believe its only fair that the utilities operate only within their franchised parameters. A separate identity not supported by the rate payers should be set up for other enterprises.

I thank you for your indulgence and ask for your support on this bill.

Mr. Chairman, I would attempt to answer any questions from you or the Committee.

Thank you.



Robert L. Carley
P.O. Box 1602
1638 East First
Wichita, Kansas 67201
316-263-1264

STATEMENT

By

Monte Milstead

Concerning House Bill 2361

Presented Wednesday, February 20, 1991 to the
House Energy & Natural Resources Committee
Rep. Ken Grotewiel, Chairman

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Monte Milstead, Vice President of Heetco, Inc. in Lawrence, Kansas. I am here today on behalf of approximately two hundred Kansas retail propane marketers who are members of the Kansas LP-Gas Association in offering support of House Bill 2361.

The preceding statements here today have provided an overall picture of statewide practices we feel present unfair competition to independent, small businesses. Some of those small businesses are the propane dealers providing product to rural Kansans - many are small, family owned and operated.

It is difficult enough for a small business to compete with a large company in any instance; but when the large company has low-interest government funds available, enabling it to offer bonuses and low-interest financing such as shown on the attachment to your copy of this statement, it is almost impossible.

A good example would be Kaw Valley Electric here in Topeka going into the propane business about 3 years ago. When they did this, they used the same offices, employees, accounting department, customer records, etc., to go into direct competition with about 15 propane companies already serving their general service areas.

- more -

E + NR
2/20/91
Attachment 9

These kinds of practices create unfair competition to any business that has to compete with them.

We welcome competition and believe in a free enterprise system of doing business, but how fair is it when small businesses (usually Mom & Pop businesses) have to compete against a utility or cooperative who is getting cheap government money & tax breaks and using them against private enterprise?

We urge your "YES" vote on House Bill No. 2361.

Thank you for allowing me this time.



Don't Get TANKED...

FREE yourself from that propane tank
and

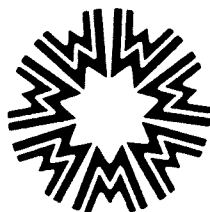
SAVE with our 1988 Customer Bonus Program . . . a bonus paid to you when you install a heat pump, electric furnace, or electric water heater in your home or business.

The **Customer Bonus Program** is available to any Midwest Energy customer having qualifying equipment professionally installed anywhere in our certified electric service territory. Install one or more of the following by November 30, 1988 and **WE'LL PAY YOU!**

Call your local Midwest Energy office for details.

<u>EQUIPMENT</u>	<u>YOUR BONUS</u>
Heat Pump	\$200.00
Electric Furnace	\$150.00
Earth Coupled Heat Pump	Earth Coil Pipe (excluding fittings) Value \$600-\$1000
Electric Water Heater	\$50.00
Through-the-Wall Heat Pump	\$100.00

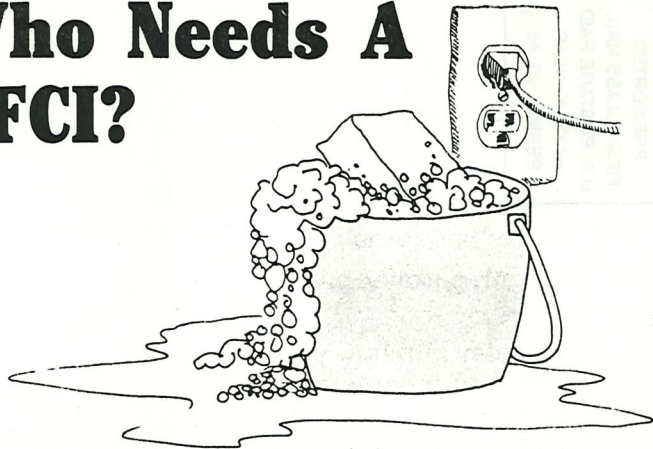
*The Customer Bonus Plan Is In Addition
to Midwest Energy's Regular
2% Heat Pump Financing.*



MIDWEST ENERGY, INC.

"People Working For You"

Who Needs A GFCI?



You do — if you use electric appliances in your bathroom, garage, at an outdoor outlet, or anywhere there is water or moisture.

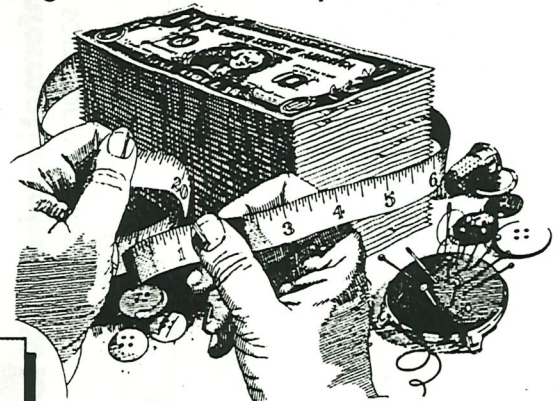
A plugged-in appliance, even though it's turned off, can still deliver a shock if it comes in contact with water. But a GFCI — ground fault circuit interrupter — reacts to the smallest electric current leak by stopping the flow of electricity.

A GFCI is definitely your assurance of using appliances and equipment properly. Become acquainted with a GFCI as soon as possible. We'll be glad to provide you more information. Please contact us.

Receive a Customer Bonus Now!!

If you're looking to replace your old inefficient air conditioner, consider the benefits of a heat pump. A heat pump will cool your house in the summer just like your present air conditioner, plus help heat your house in the winter. We'll pay you \$200 plus offer 2% financing when you install one of the most efficient heating/cooling systems anywhere.

- Heat Pump \$200.00
- Electric Furnace \$150.00
- Earth Coupled Heat Pump .. Earth Coil Pipe
(excluding fittings)
Value \$600-\$1000
- Electric Water Heater \$50.00
- Through-the-Wall Heat Pump. \$100.00

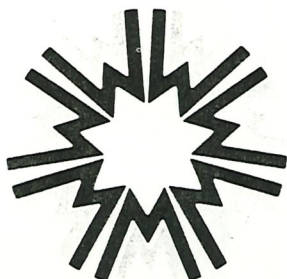


Lucky Numbers

If the ten-digit number on your bill matches one of these ... you have won a "six-pack" of Sylvania Light Bulbs.

- 35205-76469 64067-64168
- 43536-43971 73805-85254
- 00799-01798 73686-85268
- 30479-30627 24129-63560
- 25498-66138 10846-20845

Please call your local Midwest Energy office if you have won.



MIDWEST ENERGY, INC.

People Helping You Use Energy More Efficiently

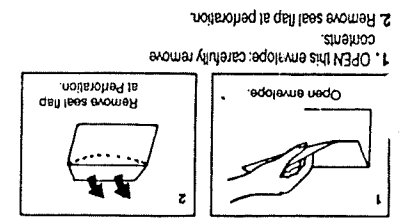
1025 PATTON ROAD
GREAT BEND, KANSAS 67530
316-792-1301

1330 CANTERBURY
HAYS, KANSAS 67601
913-625-3437

1125 S. RANGE
COLBY, KANSAS 67701
913-462-8251

9-H

Serving in: Cheyenne • Rawlins • Decatur • Norton • Thomas • Sheridan • Graham Rooks • Osborne • Greeley • Logan • Gove • Trego • Ellis • Russell • Ness • Rush • Barton Hodgeman • Pawnee • Edwards • Stafford • Rice • Sherman • and Wallace Counties.



Yes, I'd like more information about 2% loans.

Please have someone contact me.

Name _____ Phone No. _____

Address _____

City _____ State _____ Zip _____

Postmark: OKLAHOMA CITY, OKLA. MAY 12 1990

Instructions: To use as a return envelope, just reach inside the envelope and pull out the REPLY FLAP. Insert your name and return address over the window of the envelope and seal it. Affix proper postage.

Remove this seal flap at perforation. DO NOT tear along sides.

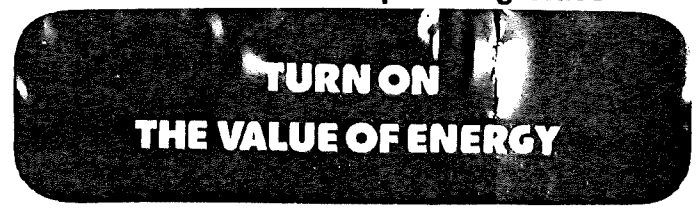


MIDWEST ENERGY, INC.

Post Office Box 898, Hays, Kansas 67601-0898

PRE-SORTED
FIRST CLASS MAIL
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HAYS, KANSAS
PERMIT NO. 46

SEND-N-RETURN ENVELOPE
Instructions on Back
Do Not Tear Envelope Along Sides



9.5

Budget Act Increases Scrutiny of Electric Co-op Subsidies

(By Edward N. Delaney,
National Tax Equality Association)

While the 1990 budget act is nine parts tax increase and one part federal spending limits, it is encouraging that electric co-ops are hit in the \$13 billion of Agricultural budget savings. Included in the agriculture reductions are twenty-five percent reductions in proposed spending levels for taxpayer-funded low interest government loans for electric membership organizations or cooperatives. These two and five percent loans have been handed out to electric co-ops for over fifty years to ensure electricity in rural America.

Considering that 99 percent of rural America has had electricity for fifteen years, it is surprising to many that billions of tax dollars continue to flow to this program. The loans are managed by the Rural Electrification Administration (REA) and have grown to a total exceeding \$30 billion.

UNFAIR COMPETITION A BIT LESS UNFAIR

For taxpayer businesses that compete with the co-ops, including utilities and gas firms, the federal loans combined with co-op tax exemption create unfair competition. Many propane gas firms have first hand experience with the federal loan program as electric co-ops use the low cost money to induce customers to switch from gas to electric service. According to a 1987 study by the Small Business Administration, electric co-ops used the five percent government money and income tax exemption to provide free or low cost water heaters to both commercial and residential customers that agreed to purchase their power from the co-ops. Also, many gas firms have been frustrated by unscrupulous co-op advertising campaigns falsely depicting a story of injury and home damage due to gas explosions.

Finally, due to the efforts of the National Propane Gas Association and the National Tax Equality Association (NTEA), the unfair federal subsidies have been

scrutinized and the result is a significant move toward reform. The cuts in the cheap REA loan money amount to about \$1.5 billion in loan reductions. This will prevent hundreds of co-ops from receiving the federal money and unfairly competing with propane gas suppliers. The reform forces the co-op to go to the bank or the Cooperative Finance Corporation to get a loan. While the co-ops will still benefit from federal guarantees on many of these loans, the interest rate will be the same you would have to pay.

"MOST POWERFUL LOBBY IN THE WORLD" MYTH DISPELLED

The recent REA budget cuts, while hard fought, are really just a foot in the door. Before the Congress passed the budget act, word of the proposed cuts reached the national lobbying organization for electric cooperatives and a strong effort was advanced to halt any reduction in direct federal loans. Repeatedly, National Tax Equality Association contacted the Office of Management and Budget to urge that cuts in the direct loans must be realized. Whether it was 15, 20 or 25 percent was not as important as getting real reductions in the loans authorizations.

Why was this so vital? To ensure some media attention to REA programs and dispel the myth that the politically powerful cooperatives could not be touched by budget reforms. In just one short month since the ink dried on the budget agreement, both of these goals were realized. First on December 22, 1990 the Associated Press ran a number of articles profiling the government hand out program for co-ops and detailing the billions of dollars that may be lost due to souring loans. On December 24, 1990 the Associated Press highlighted an article on the Department of Energy's endorsement of a phase out of co-op subsidies. The article stated that the President is expected to adopt this plan in the 1991 budget recommendations.

A NEW SUPPORTER OF CO-OP REFORM-ENERGY SECRETARY WATKINS

The involvement of the Department of Energy (DOE) in the debate over taxpayer handouts to electric

cooperatives is a welcome development. The fact is that federal subsidies resulting in displacement of the use of gas is indeed poor energy policy. The DOE has taken an even tougher position than the Office of Management and Budget in calling for the phase-out of all co-ops subsidies over ten years. (OBM would allow for continued REA assistance through loan guarantees rather than direct loans.) Adding the DOE to the list of Washington forces opposed to federal bailout of electric cooperatives is a major boost to our effort.

We at the National Tax Equality Association will work to keep the heat on by once again gaining introduction of legislation to eliminate low interest loans for co-ops and end tax exemption. We look forward to continuing to work with the National Propane Gas Association until these important goals are achieved.

TO: ENERGY AND NATURAL RESOURCES COMMITTEE
KANSAS HOUSE OF REPRESENTATIVES

RE: HOUSE BILL # 2361

HONORABLE CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Leanne Thomas Snyder. I appear today representing members of both the Kansas Plumbing, Heating, Cooling Contractors Association and the Wichita Chapter of the National Electrical Contractors Association; as their representative member of the Kansas Alliance for Fair Competition. We are emphatic proponents of House Bill 2361. We believe that this Bill represents a fair and equitable policy, designed for the benefit of the free enterprise system.

This Bill addresses the ongoing struggle of private business. Kansas is not alone in this situation. Currently, over 35 other states in this country are also addressing this issue. Nor is this a limited special interest issue. The individuals you see here today are merely a slight representation of a combined total of hundreds of independent Kansas businesses; each ranging in size from one or two employees, to as many as 396 employees.

All facets of the construction industry are represented; encompassing firms that range from a small man and wife sheet metal shop in Scott City Kansas, to general building contractors, LP Gas dealers, both open and union shops, wholesale distributors and a vast array of individual contractors who cannot compete with the public monies available to operate utilities.

Individuals such as Bruce Guinn, Guinn's Plumbing & Heating from Atwood, Kansas with only 3 employees; or Jessie Silver who operates a man and wife contracting firm in El Dorado, Kansas are faced with continuing difficulties in bidding jobs on the open market; as is Roger Peugeot, of Roger the Plumber in Overland Park, or Jim Brown, Kansas Piping and Equipment, Topeka, Kansas - both employing many more employees.

My office has received numerous telephone calls from both members and non-members, many of whom are afraid to complain directly to the Kansas Corporation Commission when they lose a job that they can directly contribute to the unfair competition by utilities; largely because they have been forced to subcontract work from these entities in order to remain in existence.

This is not a regional problem. Across Kansas and in every corner of the state, business people are losing revenues because they cannot compete by giving away free water heaters, or performing maintenance on residential appliances for as little as \$6.00 per month. They cannot win a contract that includes cash back to the buyer, nor do they do not have budgets that include direct mailings that advertise these services and prices to thousands of people. They do not have the ability to finance purchases included in

E+NR

2/20/91

Attachment 10

regular monthly billings.


Residential products such as water heaters and gas yard lights, and commercial products such as lighting for football fields, and gas chillers have finite costs; as does the cost of labor and administrative overhead for personnel to install and service items of this nature. We ask you to consider how it can be that bids for products and services can vary so greatly from those of private businesses to those from utility companies.

In summary, we would like to state that we believe regulated utilities for the purpose of supplying power to the consumer are much needed. We do, however, maintain that when utility companies enter into the area of private enterprise, they currently retain many of their institutional advantages that have devastated contractors in all parts of the state that simply cannot compete with these advantages.

We firmly believe that our free enterprise system is the best in the world. It is founded upon fair competition and the premise that costs are determined by the fair market price of a product or service. House Bill # 2361 is designed, not to make work for the utility companies - but to make the system work better. We request your support and recommendation.

Thank you for your consideration. If I may provide further information, I will be happy to do so.

Sincerely,


Leanne Thomas Snyder
Executive Director, KPHCC
Chapter Manager, Wichita NECA

Comments to the Committee on
Energy and Natural Resources
Kansas House of Representatives

by Judy Krueger
Regional Advocate
U.S. Small Business Administration
February 20, 1991

E+NR
2/20/91
Attachment II

Mr. Chairman and members of the committee, thank you for allowing me to present comments regarding the impact upon small businesses from affiliated transactions and non-utility services provided or conducted by or in conjunction with regulated utility services.

Utility companies have, over the years, expanded beyond providing energy into a myriad of commercial businesses including building construction, sand and gravel supply, heating and air conditioning, plumbing, farming and ranching, and the provision of financial services. Utilities engaging in such diversification efforts have several advantages over competing businesses who are not also engaged in the regulated provision of utility service. Utilities have access to customer credit records, access to customer energy usage information, use of the utility name and existing overhead (mailing list, personnel, and equipment), and access to the utility's tremendous financial power. Often times this financial power is leveraged through a utility's access to low or no-interest funds intended for infrastructure deployment through the Rural Electric Administration (REA). The utility's financial power may also a factor in keeping state and local chambers of commerce from presenting any viewpoints here today on behalf of their members who are appliance dealers, air conditioning and heating contractors, excavators, plumbers, or financial services companies.

Electric and gas utilities, in general, are regulated monopolies providing essential public services of gas and electricity distribution to customers. Unlike independent businesses, they are

entitled by law to charge prices that will earn a profit on their investments. The public service provided by the utility is generally one that would be impractical to provide through competitive markets. However, these utilities are increasingly involved in providing energy-related services and other unrelated services which are available from businesses operating in the open, competitive market.

Several reasons are given for this diversification. There is increasing pressure on utilities by ratepayers, environmentalists, and state regulatory officials to promote energy conservation as a way of avoiding costs of new plant construction. Thus, utility companies are exploring any avenue for acquiring new customers to stabilize peak demand and lower unit costs. In addition, many utilities perceive the need to diversify into other businesses to increase return on equity and to gain access to capital. The jury is out on whether diversification is more or less attractive to investors. Some investment firms believe strongly in diversification. Others recommend that investors would be better served to invest directly in stocks of non-utility firms for the highest rate of return from non-utility activities.

Furthermore, utilities which diversify often do not have the organization or experience to run non-utility businesses. Non-related businesses have detracted from the proper management of the utility company in some cases, and have thus increased the risk for both ratepayers and stockholders.

The entrance of government-regulated entities into the free market raises two general concerns. First, income from regulated utilities is guaranteed. Improper allocation of costs between utility and non-utility functions may result in a ratepayer subsidy of the non-utility business. Such a subsidy will adversely affect the small business competitor who must bear all costs of running a business without a subsidy. In some cases, rate payers find themselves, through their utility bills, subsidizing a business in competition with their own businesses. Proper cost allocation must be achieved between utility and non-utility functions to avoid an improper ratepayer subsidy to the non-utility business. Even where the local regulatory body recognizes the need for proper cost allocation, it is extremely difficult to properly allocate these costs or to decipher the various accounting procedures used for cost allocation by the utilities.

Secondly, even without a subsidy, utilities may disrupt the marketplace through unfair competitive practices. As stated earlier, the benefits of a regulated monopoly status which utilities enjoy are found in the financing, marketing, and operation of utility activities in competitive markets. Regarding financing, utilities can finance non-regulated ventures with ratepayer funds by either charging the effort as a current expense (perhaps to marketing or meter reading), or by adding capital equipment to the rate base upon which rates are figured. Even where a separate subsidiary is employed, it may enjoy the parent firm's credit rating as it seeks financing. The opportunity to file consolidated tax returns also offers unique advantages to the utility's non-utility venture. Access to low or no interest federal funds, as in the case with the Rural Electric Cooperatives through the Rural Electric Administration is found to co-exist with the provision of low-interest loans on appliances and installation costs, as well as with the provision of free appliances when customers switch to whichever form of energy the utility provides -- either gas or electricity. It is very hard for a small appliance dealer to sell water heaters when a local, relatively giant utility company is giving water heaters away.

As for marketing advantages, utilities have unique access to customer

~~Utility Competition~~

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Judy Krueger

February 20, 1991

credit ratings and energy use information. Furthermore, monthly utility bills provide instant and subsidized access for the utility venture to every potential customer.

Utility costs of operation, and therefore prices for products and services of diversified activities, may not reflect true market rates. Shared overhead -- such as office space, mailings, company trucks, and personnel -- offer significant competitive advantages to utility operations. For example, a New Jersey public gas company offered maintenance contracts for residential gas furnace and gas water heaters for only \$25 a year. Competing small business contractors could offer the service for a minimum of \$70 a year. It is unlikely the utility was recovering its true costs in offering the maintenance service, and therefore, ratepayers were subsidizing it. Once the utility program became known, competing small businesses were forced out of the market or out of business. Unfortunately, examples like this one are not uncommon, as you are hearing today.

Utilities that subcontract diversification efforts also cause problems. They may favor certain contractors, steer customers to certain companies through the establishment of rate-breaks for the purchase of certain kinds of equipment purchases to which only

certain contractors have access, or grant exclusive territories or preferential financing when "preferred" or "approved" products, contractors, or services are used. These business practices interfere with the open marketplace. They cannot be justified. Like diversification efforts, utility subcontracting efforts must not limit market entry or seek to control prices. These diversification activities engaged in by regulated utilities, when uncurbed by state or local authorities, can be devastating to small business competitors, but can also result in customers losing the benefits of a competitive market in the long term when the utilities drive the local retailer, wholesaler, and repair service out of business.

Non-utility services provision by utilities can either be prohibited or regulated. Most states are choosing a combination, with some states specifically prohibiting certain "diversification" efforts by utilities. Some states, like Arizona, have established a "Private Enterprise Review Board" to establish a procedure and forum for hearing competition complaints regarding regular commercial activities conducted by not-for-profit organizations, government agencies, and regulated utilities. In Iowa, as a result of an investigation ordered in December 1988 by the Iowa Utilities Board into the affiliated transactions and non-utility services of utility

companies, the Iowa Legislature passed a bill to regulate these affiliated activities. As its purpose, the statute states:

It is the intent of the general assembly that a public utility should not directly or indirectly include in regulated rates or charges any costs or expenses of an affiliate engaged in any business other than that of utility business unless the affiliate provides goods or services to the public utility. The costs that are included should be reasonably necessary and appropriate for utility business. It is also the intent of the general assembly that a public utility should only provide nonutility services in a manner that minimizes the possibility of cross-subsidization or unfair competitive advantage.

Copies of the resultant regulations and the investigation order are attached. The acquisition of jurisdiction over utility ventures, requiring disclosure and justification of non-utility activities, and the requirement of stricter cost allocation procedures have been the direction of most activities in the states.

In 1984, the California legislature added a section to their Business and Professions Code and Public Utilities Code. It states that it is a misdemeanor for any person to engage in the business or capacity of contracting unless licensed to do so, or specifically exempted from the law. Utilities (gas, heat, or electrical corporations and their subsidiaries) were exempted, but, prohibited until January 1, 1991, from conducting work for which a contractor's license is required.

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In these difficult times when states are pressed for additional revenues that can stem from the retention of existing businesses and the addition of new ones, economic development or regulatory policies that put independent businesses at a disadvantage and place additional burdens upon them must be examined or businesses and people will find a healthier environment in which to grow.

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STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES DIVISION

IN RE:)	
)	
AFFILIATED TRANSACTIONS)	DOCKET NO. INU-88-7
AND NON-UTILITY SERVICES)	(INU-87-1)
)	(C-85-376)
)	(C-85-451)
)	

ORDER INITIATING INVESTIGATION AND
TERMINATING DOCKET

(Issued December 2, 1988)

On June 17, 1988, the Iowa Utilities Board (Board) issued its "Final Decision and Order" in In Re: Iowa Public Service Company, Docket No. RPU-87-3, and on August 5, 1988, the Board issued an order on rehearing finally disposing of the issues in that docket. One of the issues in that proceeding was the relationship between Iowa Public Service Company (IPS), its holding company, and affiliate companies. The Board recognized that one of the chief concerns for regulators when a rate-regulated utility is a part of a holding company structure is to achieve intercompany cost allocation methods that will: 1) prevent cross-subsidization at the expense of the ratepayers and avoid appearances of cross-subsidization of the non-regulated affiliates, and 2) minimize the time and expense necessary to review and audit the transactions between the rate-regulated utility and the other entities of the holding company. In Re: Iowa Public Service Company, Docket No. RPU-87-3, "Final Decision and Order" at 77-78.

Reorganization of utilities into holding companies/subsidiary structures has increased in recent years in Iowa. Because of the potential

for misallocation of non-utility costs to the rate-regulated utility, it is imperative that, at a minimum, all rate-regulated utilities which are a part of holding companies have written policies and procedures specifying the nature of the relationship which exists between the holding company, the rate-regulated utility and the other affiliates. In addition, it is equally important that rate-regulated utilities which are parts of holding companies maintain records which will enable the utility and the Board to review effectively and efficiently whether costs are properly allocated.

A similar issue was examined in an earlier investigation, In Re: Investigation of Non-Utility Service Programs, Docket No. INU-87-1. In that investigation, the Board investigated the issue of whether "non-utility services" are being subsidized by rate-regulated utility rates. The Board limited its investigation of "non-utility services" to those services other than the furnishing to the public for compensation of electricity and gas by piped distribution, which are provided by the electric and gas rate-regulated utilities. Although the provision of non-utility services by the rate-regulated utility does not create problems identical to those in the holding company or affiliate situation, the Board has many of the same concerns about cross-subsidization of those services by ratepayers. The investigation revealed divergent methods and policies among the utilities for accounting for "non-utility services."

The Board will initiate an investigation to examine the relationship between and among Iowa rate-regulated utilities that are members of a holding company, their respective holding companies and their nonrate-regulated affiliates, and to identify the magnitude and complexity

of the holding company structures for potential impact upon the rate-regulated utilities. In addition, the investigation will include some remaining issues concerning the provision of "non-utility services" by Iowa rate-regulated utilities which were not addressed in the earlier investigation. Finally, the investigation will determine whether it is necessary to initiate a rulemaking and/or recommend legislation to address the concerns discussed in this order. The following rate-regulated utilities will be included in the investigation of affiliated transactions:

1. All rate-regulated electric and gas utilities which are members of holding company structures; and
2. All rate-regulated telephone utilities which provide local exchange service in Iowa and are members of holding company structures. Since the purpose of this investigation is to establish policies for future activity, United Telephone Company will be specifically excluded because it apparently will cease to provide service in Iowa in the near future.

The Board will terminate the proceeding identified as Docket No. INU-87-1 and incorporate the issues presented by "non-utility service" programs into this investigation. It is important to clarify the methods by which costs and income related to "non-utility services" are allocated and determine whether it is necessary to address further the Board's "non-utility services" concerns. In addition, the Board will postpone its decisions in Docket Nos. C-85-376 and C-85-451, the complaint dockets pending in Docket No. INU-87-1, until the conclusion of this investigation. All rate-regulated gas and electric utilities which provide "non-utility

service" and have previously responded in Docket No. INU-87-1 will be included in the investigation of "non-utility services."

IT IS THEREFORE ORDERED:

1. A formal investigation, identified as Docket No. INU-88-7, is initiated.
2. This investigation will examine relationships, policies and procedures within the holding company corporate structure of rate-regulated utilities.
3. This investigation will examine "non-utility services" provided by rate-regulated utilities.
4. Within thirty days from the date of this order, each utility responding to this investigation will provide the Executive Secretary the name and telephone numbers of a contact person and an alternate contact person regarding the utility's response to this investigation.
5. Unless otherwise indicated, each responding utility shall provide information for the 1986, 1987 and 1988 calendar years. All rate-regulated utilities, as defined in the body of this order, shall file the following information on or before March 1, 1989:

A. Organizational Structure.

For purposes of this investigation, "Affiliated Interest or Affiliate," with respect to the rate-regulated utility or its holding company, shall mean any other entity controlling or controlled by, or under common control with, the rate-regulated utility or its holding company. For purposes of this definition, the term "control" (including the

correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any entity, shall mean the possession of the power to direct or to cause the direction of the management policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

- (1) The date the rate-regulated utility company reorganized into a holding company. For purposes of this question, the "reorganization date" refers to the effective date of the reorganization.
- (2) Identification of all corporations, partnerships and other entities (the "controlled entities") that are as of the date of the report controlled by the holding company. For the holding company and for each controlled entity listed, the rate-regulated utility shall provide:
 - a. The legal name;
 - b. The names of the directors and principal officers;
 - c. The type of goods and services produced or provided by the controlled entity;
 - d. The percent of voting stock owned by the holding company in each controlled entity.
- (3) An organizational chart for the holding company and all affiliates. If abbreviated company names are used on the chart, then a separate list that shows the

abbreviated name and the corresponding full name of each company listed must be provided. The chart must include all companies listed in the response to "A(2)".

B. Policies and Procedures.

(1) The written policies and procedures governing the relationships and transactions between the rate-regulated utility, its holding company and the holding companies' other affiliates and the effective date of such policies and procedures. If the current policies and procedures were adopted subsequent to December 31, 1987, the rate-regulated utility shall also provide the policies and procedures previously in effect.

(2) A description of any instructions, guidance and review that are provided to employees of the rate-regulated utility, its holding company and its other affiliates to implement the policies and procedures identified in "B(1)".

C. Goods and Services.

(1) A listing by category of the goods and services provided by the rate-regulated utility to the holding company and its other affiliates and the goods and services the holding company and its other affiliates provide to the rate-regulated utility.

- (2) For each category of goods and services identified, the amount of charges billed by the utility to other entities within the holding company and the amount of charges billed to the utility by the other entities, and the method(s) used to determine the amount of the charges.
- (3) If any allocation methods are employed to determine the amount of the charges identified in "C(2)", a description of the allocation methods and an indication of when and how often the methods are revised.
- (4) If officers or employees of the rate-regulated utility charge part of their time to the holding company or its affiliates, or vice-versa, an indication of whether a "positive-time" reporting system is employed to determine the amount of time to charge. If an alternative system is used, describe that system and indicate how often it is updated.

D. Transfer of Assets.

- (1) A list of each asset that was transferred from the rate-regulated utility to the holding company or one of its other affiliates for the calendar years 1987 and 1988. For purposes of this investigation, an asset is defined as any tangible or intangible item which has an economic value of more than \$50,000. The response shall

include for each asset:

- a. Month/year asset was transferred;
- b. Description of asset transferred;
- c. For each asset transferred, the gross book value, accumulated depreciation and net book value per the books of the rate-regulated utility that transferred the asset (Gross book value is the amount appearing in an asset account; while net book value is the gross book value less any applicable portion of accumulated depreciation);
- d. Fair market value of asset at the time of transfer;
- e. The amount paid to the rate-regulated utility for the asset;
- f. The name of the related entity that received the asset.

(2) A list of each asset that was transferred to the rate-regulated utility from the holding company or one of its other affiliates for the calendar years 1987 and 1988. The response shall include for each asset:

- a. Month/year asset was transferred;
- b. Description of asset transferred;
- c. For each asset transferred the gross book value, accumulated depreciation, and net book value per the books of the transferring affiliate (Gross book value is the amount appearing in an asset account;

while net book value is the gross book value less any applicable portion of accumulated depreciation);

- d. Fair market value of asset at the time of transfer;
- e. The amount the rate-regulated utility paid to the transferring affiliate or other affiliates;
- f. The name of the affiliate that transferred the asset to the rate-regulated utility.

E. Loans Issued and Received.

(1) A list of each loan of money in excess of \$100,000 that was issued or guaranteed by the rate-regulated utility to the holding company or one of its other affiliates of the rate-regulated utility for the calendar years 1987 and 1988. Each item shall include:

- a. Month/year of loan;
- b. Terms of the loan including payment schedule and interest rate, if any;
- c. Amount of loan.
- d. Terms of the financial guarantee.
- e. Name of holding company or affiliate that received the loan or financial guarantee.

(2) A list of each loan of money in excess of \$100,000 that was made to or guaranteed for the rate-regulated utility by the holding company or one of its affiliates. Each

item shall include:

- a. Month/year of loan;
- b. Terms of the loan including payment schedule and interest rate, if any;
- c. Amount of loan.
- d. Terms of the financial guarantee.
- e. Name of holding company or affiliate that made or guaranteed the loan.

(3) A list of any other arrangements under which creditors of the holding company or any of its nonrate-regulated affiliates have financial recourse to the assets or earnings of the rate-regulated utility. The list shall include a brief description of the nature and extent of recourse provided.

6. All gas and electric rate-regulated utilities which provide "non-utility services" and which responded in Docket No. INU-87-1, shall file the following information on or before March 1, 1989:

- A. An explanation of the method used to determine whether a particular "non-utility service" should be reported as an "above-the-line" item or a "below-the-line" item.
- B. How goodwill, advertising expenses, and joint mailing expenses are allocated to "non-utility services."
- C. Citations to specific accounting rules that support the utility's current accounting treatment of the costs associated with the "non-utility services" provided.

- D. When a "non-utility service" is reported as an "above-the-line" item, a description of the method to determine whether a tariff is filed, if any, for that service and a description of how it is ensured that all costs associated with that service are charged to it.
- E. When a "non-utility service" is reported as a "below-the-line" item, a description of how it is ensured that all costs associated with that service are charged to it.
- F. Does the Uniform System of Accounts incorporated by Board rules provide sufficient guidance to determine what costs should be charged to the "non-utility service?" If "no," then explain.

7. The investigation, identified as In Re: Investigation of Non-Utility Service Programs, Docket No. INU-87-1, is terminated.

UTILITIES BOARD

James J. Nagel

[Signature]

Nancy Thumanek Boyd

ATTEST:

Raymond S. Vanler
Executive Secretary

Dated at Des Moines, Iowa, this 2nd day of December, 1988.

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES DIVISION

IN RE:)	
)	
AFFILIATED TRANSACTIONS)	DOCKET NO. INU-88-7
AND NON-UTILITY SERVICES)	
)	

ORDER REQUIRING ADDITIONAL INFORMATION

(Issued December 7, 1988)

On December 2, 1988, the Iowa Utilities Board (Board) issued an order initiating an investigation into the relationships, policies, and procedures within the holding company corporate structure of rate-regulated utilities and of "non-utility services" provided by rate-regulated utilities. The Board required certain rate-regulated utilities to file responses to requests for information in this docket on or before March 1, 1989.

Since the issuance of the order initiating the investigation, the Board has become aware of additional items of information which are necessary for a thorough investigation of the issues in this docket. First, with respect to the portion of the investigation which deals with affiliate transactions, the responding utilities should indicate whether their holding companies are exempt from registration under the Public Utility Holding Company Act, 15 U.S.C.A. § 79c (1983). If the utility is exempt, the responding utility should file a copy of the official exemption and the documents filed with the Securities and Exchange Commission which qualified it for the exemption.

Second, with respect to the portion of the investigation which deals with "non-utility services," the responding utilities should indicate how the costs of a joint billing system and combined employee training costs are allocated to the "non-utility services" portion of the utility's business.

IT IS THEREFORE ORDERED:

1. All rate-regulated gas and electric utilities which are members of holding company structures and all rate-regulated telephone utilities which provide local exchange service in Iowa and are members of holding company structures, with the exception of United Telephone Company, shall file the following information on or before March 1, 1989, in addition to the information required by the "Order Initiating Investigation and Terminating Docket," issued on December 2, 1988:

Public Utility Holding Company Act.

Whether the holding company identified as part of the rate-regulated utility's corporate structure is exempt from the provisions of Public Utility Holding Company Act, 15 U.S.C.A. §§ 79, et. seq. (1983), pursuant to 15 U.S.C.A. § 79c or any other provision of the act. If so, provide a copy of the exemption, the documents submitted to obtain the exemption, and any other documents required to be filed pursuant to 15 U.S.C.A. §§ 79, et. seq. (1983).

2. All rate-regulated gas and electric utilities which provide "non-utility services" and which responded in Docket No. INU-87-1 shall file the

following information on or before March 1, 1989, in addition to the information required by the December 2, 1988, "Order Initiating Investigation and Terminating Docket":

How joint billing and joint employee training expenses are allocated to "non-utility services."

UTILITIES BOARD

James J. Nagel

[Signature]

ATTEST:

Geri E. Folsom
Executive Secretary, Assistant to

Nancy Summner Boyd

Dated at Des Moines, Iowa, this 7th day of December, 1988.

brand fax transmittal memo		# of pages > 5
To Judy Krueger	From Dawn Vance	
Co. Sm. B. Admin.	Co. IUB	
Dept.	Phone # 515-281-3839	
Fax # 816-426-5559	Fax #	

PUBLIC UTILITY REGULATION, §476.74

AUDITS

5. In a public utility has under the I-SAVE program in writing designate the audit shall not be except as permitted the audit are available business of making or improvements or service on whether the request individually or the request class. it conducted under the S program shall be made a person who states prospective purchaser

make results of the content with this section. n: means the Iowa-Save gram operated pursuant d. means the Commercial rvice program operated the board. ts. ch 1252, §40

DISTRIBUTION FUND

tribution fund. all adopt rules which gas public utility to es shall include the resist the utility's low erization and to sup e received under the nergy assistance pro er heating bills. ash utility to periodi e availability and pur e them with forms of utility to bill their con nthly basis. the fund to accep or organizations who customers of the utility

ursed by the fund for is billings, disburse- and financial record- rsement shall not ex- venues collected.

tee to determine the appropriate distribution of the funds. The board or committee shall include representatives from community or regional organizations which are active in assisting citizens with payment of their winter heating bills.

6. The rules established by the utilities board shall require an annual report to be filed for each fund. The utilities board shall compile an annual statewide report of the fund results. The division of community action agencies of the department of human rights shall prepare an annual report of the unmet need for energy assistance and weatherization. Both reports shall be submitted to the appropriations committees of the general assembly on the first day of the following session.

7. Existing programs to receive customer contributions established by public utilities shall be construed to meet the requirements of this section. Such plans shall be subject to review by the utilities board. If determined not to be in compliance with the provisions of this section, they shall be given until July 1989 to modify their operation so as to be in compliance

88 Acts, ch 1175, §3

476.67 through 476.70 Reserved.

~~X~~ PUBLIC UTILITY AFFILIATES

476.71 Purpose. It is the intent of the general assembly that a public utility should not directly or indirectly include in regulated rates or charges any costs or expenses of an affiliate engaged in any business other than that of utility business unless the affiliate provides goods or services to the public utility. The costs that are included should be reasonably necessary and appropriate for utility business. It is also the intent of the general assembly that a public utility should only provide nonutility services in a manner that minimizes the possibility of cross-subsidization or unfair competitive advantage.

89 Acts, ch 103, §2

476.72 Definitions. As used in this division, unless the context otherwise requires:

1. "Affiliate" means a party that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a rate-regulated public utility.
2. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract or otherwise.
3. "Nonutility service" includes the sale, lease, or other conveyance of commercial and residential gas or electric appliances, interior lighting systems and fixtures, or heating, ventilating, or air conditioning systems and component parts or the servicing, repair, or maintenance of such equipment.

4. "Public utility" includes only gas or electric rate-regulated public utilities and rate-regulated telephone utilities providing local exchange telecommunication service.

5. "Utility business" means the generation or transmission of electricity or furnishing of gas or furnishing electricity or furnishing rate-regulated communications services to the public for compensation.

89 Acts, ch 103, §3

476.73 Affiliate records.

1. Access to records. Every public utility and affiliate through the public utility shall provide the board with access to books, records, accounts, documents, and other data and information which the board finds necessary to effectually implement and effectuate the provisions of this chapter.

2. Separate records. The board may require affiliates of a public utility to keep separate records and the board may provide for the examination and inspection of the books, accounts, papers, and records, as may be necessary to enforce this chapter.

3. Allocation permitted. The board may inquire as to and prescribe, for ratemaking purposes, the allocation of capitalization, earnings, debts, and expenses related to ownership, operation, or management of affiliates.

89 Acts, ch 103, §4

476.74 Affiliate information required to be filed.

1. Goods and services. All contracts or arrangements providing for the furnishing or receiving of goods and services including but not limited to the furnishing or receiving of management, supervisory, construction, engineering, accounting, legal, financial, marketing, data processing, or similar services made or entered into on or after July 1, 1989, between a public utility and any affiliate shall be filed annually with the board.

2. Sales, purchases, and leases. All contracts or arrangements for the purchase, sale, lease, or exchange of any property, right, or thing made or entered into on or after July 1, 1989, between a public utility and any affiliate shall be filed annually with the board.

3. Loans. All contracts or arrangements providing for any loan of money or an extension or renewal of any loan of money or any similar transaction made or entered into on or after July 1, 1989, between a public utility and any affiliate, whether as guarantor, endorser, surety, or otherwise, shall be filed annually with the board.

4. Verified copies required. Every public utility shall file with the board a verified copy of the contract or arrangement referred to in this section, or a verified summary of the unwritten contract or arrangement, and also of all the contracts and arrangements or a verified summary of the unwritten contracts or arrangements, whether written or unwritten, entered into prior to July 1, 1989, and in force and effect at that time. Any contract or agree-

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§476.74, PUBLIC UTILITY REGULATION

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ment determined by the board to be a confidential record pursuant to section 22.7 shall be returned to the public utility filing the confidential record within sixty days after the contract or agreement is filed.

5. *Exemption.* The provisions of this section requiring filing of contracts or agreements with the board shall not apply to transactions with an affiliate where the amount of consideration involved is not in excess of fifty thousand dollars or five percent of the capital equity of the utility, whichever is smaller. However, regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount shall not be broken down into a series of transactions to come within this exemption. In any proceeding involving the rates, charges or practices of the public utility, the board may exclude from the accounts of the public utility any unreasonable payment or compensation made pursuant to any contract or arrangement which is not required to be filed under this subsection.

6. *Continuing jurisdiction.* The board shall have the same jurisdiction over modifications or amendments of contracts or arrangements in this section as it has over the original contracts or arrangements. Any modification or amendment of contracts or arrangements shall also be filed annually with the board.

7. *Sanction.* For ratemaking purposes, the board may exclude the payment or compensation to an affiliate or adjust the revenue received from an affiliate associated with any contract or arrangement required to be filed with the board if the contract or arrangement is not so filed.

8. *Alternative information.* The board shall consult with other state and federal regulatory agencies for the purpose of eliminating duplicate or conflicting filing requirements and may adopt rules which provide that comparable information required to be filed with other state or federal regulatory agencies may be accepted by the board in lieu of information required by this section.

9. *Reasonableness required.* In any proceeding, whether upon the board's own motion or upon application or complaint involving the rates, charges, or practices of any public utility, the board, for ratemaking purposes may exclude from the accounts of the public utility or adjust any payment or compensation related to any transaction with an affiliate for any services rendered or for any property or service furnished or received, as described in this section, under contracts or arrangements with an affiliate unless and upon inquiry the public utility shall establish the reasonableness of the payment or compensation.

10. *Exemption by rule or waiver.* The board may adopt rules which exempt any public utility or class of public utility or class of contracts or arrangements from this section or waive the requirements of this section if the board finds that the exemption or waiver is in the public interest.

89 Acts, ch 103, §5

476.75 Audits required.

The board may periodically retain a nationally or regionally recognized independent auditing firm to conduct an audit of the transactions between a public utility and its affiliates. An affiliate transaction audit shall not be conducted more frequently than every three years, unless ordered by the board for good cause. The cost of the audit shall be paid by the public utility to the independent auditing firm and shall be included in its regulated rates and charges, unless otherwise ordered by the board for good cause after providing the public utility the opportunity for a hearing on the board's decision.

89 Acts, ch 103, §6

476.76 Reorganization defined.

For purposes of this division unless the context otherwise requires, "reorganization" means either of the following:

1. The acquisition, sale, lease, or any other disposition, directly or indirectly, including by merger or consolidation, of the whole or any substantial part of a public utility's assets.

2. The purchase or other acquisition or sale or other disposition of the controlling capital stock of any public utility, either directly or indirectly.

89 Acts, ch 103, §7

476.77 Time and standards for review.

1. A reorganization shall not take place if the board disapproves. Prior to reorganization, the applicant shall file with the board a proposal for reorganization with supporting testimony and evidence to establish that the reorganization is not contrary to the interests of the public utility's ratepayers and the public interest.

2. A proposal for reorganization shall be deemed to have been approved unless the board disapproves the proposal within forty-five days after its filing. However, the board shall not disapprove a proposal for reorganization without providing for notice and opportunity for hearing. The notice of hearing shall be provided no later than twenty-one days after the proposal for reorganization has been filed.

3. In its review of a proposal for reorganization, the board may consider all of the following:

a. Whether the board will have reasonable access to books, records, documents, and other information relating to the public utility or any of its affiliates.

b. Whether the public utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is impaired.

c. Whether the ability of the public utility to provide safe, reasonable, and adequate service is impaired.

d. Whether ratepayers are detrimentally affected.

e. Whether the public interest is detrimentally affected.

4. The board may adopt rules which exempt any public utility or class of public utility or class of reorganization from this section if the board finds that

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with respect to the public utility or class of public utility or class of reorganization review is not necessary in the public interest. The board may adopt rules necessary to protect the interest of the customers of the exempt public utility. These rules may include, but are not limited to, notification of a proposed sale or transfer of assets or stock. The board may waive the requirements of this section, if the board finds that board review is not necessary in the public interest.

89 Acts, ch 103, §8

476.78 Cross-subsidization prohibited.

A rate-regulated gas or electric public utility shall not directly or indirectly include any costs or expenses attributable to providing nonutility service in regulated rates or charges.

89 Acts, ch 103, §9

476.79 Provision of nonutility service.

1. A rate-regulated gas or electric public utility providing any nonutility service to its customers shall keep and render to the board separate records of the nonutility service. The board may provide for the examination and inspection of the books, accounts, papers, and records of the nonutility service, as may be necessary, to enforce any provisions of this chapter.

2. The board shall adopt rules which specify the manner and form of the accounts relating to providing nonutility services which the rate-regulated gas or electric utility shall maintain.

89 Acts, ch 103, §10

476.80 Additional requirements.

A rate-regulated gas or electric public utility which engages in a systematic marketing effort as defined by the board, other than on an incidental or casual basis, to promote the availability of nonutility service from the public utility shall make available at reasonable compensation on a nondiscriminatory basis to all persons engaged primarily in providing the same competitive nonutility services in that area all of the following services to the same extent utilized by the public utility in connection with its nonutility services:

1. Access to and use of the public utility's customer lists.
2. Access to and use of the public utility's billing and collection system.
3. Access to and use of the public utility's mailing system.

89 Acts, ch 103, §11

476.81 Audit required.

The board may periodically retain a nationally or regionally recognized independent auditing firm to conduct an audit of the nonutility services provided by a rate-regulated gas or electric public utility subject to the provisions of section 476.80. A nonutility service audit shall not be conducted more frequently than every three years, unless ordered by the board

for good cause. The cost of the audit shall be paid by the public utility to the independent auditing firm and shall be included in its regulated rates and charges, unless otherwise ordered by the board for good cause after providing the public utility the opportunity for a hearing on the board's decision.

89 Acts, ch 103, §12

476.82 Exemption — energy efficiency.

Notwithstanding any language to the contrary, nothing in this division shall prohibit a public utility from participating in or conducting energy efficiency projects or programs established or approved by the board or required by statute. A public utility participating in or conducting energy efficiency projects or programs established or approved by the board or required by statute shall not be subject to the provisions of sections 476.80 and 476.81 for those energy efficiency projects or programs.

89 Acts, ch 103, §13

476.83 Complaints.

Any person may file a written complaint with the board requesting the board to determine compliance by a rate-regulated gas or electric utility with the provisions of section 476.78, 476.79, or 476.80 or any validly adopted rules to implement those sections. If the board determines there is any reasonable ground to investigate the complaint, the board shall promptly initiate formal complaint proceedings. The formal proceeding may be initiated at any time by the board on its own motion.

89 Acts, ch 103, §14

476.84 through 476.90 Reserved.

ALTERNATIVE OPERATOR SERVICES

476.81 Alternative operator services.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "Alternative operator services company" means a nongovernmental company which receives more than half of its Iowa intrastate telecommunications services revenues from calls placed by end-user customers from telephones other than ordinary residence or business telephones. The definition is further limited to include only companies which provide operator assistance, either through live or automated intervention, on calls placed from other than ordinary residence or business telephones, and does not include services provided under contract to rate-regulated local exchange utilities.

b. "Contracting entity" means an entity providing telephones other than ordinary residence or business telephones for use by end-user customers which has contracted with an alternative operator services company to provide telecommunications services to those telephones.

c. "End-user customer" means a person who places a local or toll call.

d. "Other than ordinary residence or business

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Ch 34, p.1

CHAPTER 34
NONUTILITY SERVICE

199—34.1(476) **Statement of purpose.** A public utility which engages in a systematic marketing effort, other than on an incidental or casual basis, to promote the availability of a nonutility service from the public utility shall allow competitors access to certain services.

199—34.2(476) **Definition—nonutility service.** "Nonutility service" as defined in this chapter means the sale, lease, or other conveyance of commercial and residential gas or electric appliances, interior lighting systems and fixtures, or heating, ventilating, or air-conditioning systems and component parts or the servicing, repair, or maintenance of the equipment.

199—34.3(476) **Definition—systematic marketing effort.** In determining whether activity constitutes a "systematic marketing effort, other than on an incidental or casual basis," the board will consider whether the effort is regular or irregular, recurring or nonrecurring, active or passive in nature and whether the effort is done on a comprehensive basis. Factors that shall be considered include, but are not limited to, the types and number of media used, the frequency, extent, and duration of the marketing effort, the amount of marketing expenses incurred, and whether the public utility appeared to intend to increase significantly its market share.

199—34.4(476) **Engaged primarily in providing the same competitive nonutility services in the area—defined.** "A person is engaged primarily in providing the same competitive nonutility services in the area" when the person on a full-time, ongoing basis sells or leases equipment or products or offers services which are functionally interchangeable and considered similar by the public with the nonutility service provided by a public utility in the same identifiable geographic area where the public utility provides utility service.

199—34.5(476) **Charges permitted.** A person meeting the requirements of rule 34.4(476) shall be permitted to use, to the same extent utilized by the public utility for its nonutility service in connection with nonutility services as defined in rule 34.2(476), the customer lists, billing and collection system, and mailing system of the public utility company engaged in a systematic marketing effort, other than on an incidental or casual basis. The person shall be charged for the cost or expense incurred by the public utility in providing access to its systems and its lists. The charge shall not be greater than the charge, fee, or cost imposed upon or allocated to the provision of nonutility service by the utility for the similar use of the systems.

199—34.6(476) **Procedures for utilization of billing and collection system.**

1. When a person meeting the requirements of rule 34.4(476) uses the billing and collection system of a public utility, the public utility shall promptly remit to that person all funds collected by the public utility on behalf of the person.

2. Where a customer makes a partial payment and owes both a public utility and a person(s) meeting the requirements of rule 34.4(476) for services or goods provided, the payment received shall be allocated first to the regulated utility bill plus tax, unless otherwise allocated by the customer. Any balance remaining after payment of the utility bill plus tax shall be allocated between the public utility for nonutility services, if any, and any person(s) utilizing the utility's billing system according to the ratio of the amount billed by each unless otherwise allocated by the customer. A public utility shall not disconnect a customer's utility service for nonpayment of a bill for nonutility services.

A person cannot use a public utility's billing and collection systems only to target customers who are problem payers.

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Ch 34, p.2

Utilities[199]

IAC 1/23/91

199—34.7(476) **Complaints.** The procedures in 199—Chapter 6 shall apply to all complaints regarding the provision of nonutility service.

These rules are intended to implement Iowa Code sections 476.78, 476.80, and 476.81.

[Filed 1/4/91, Notice 8/8/90—published 1/23/91, effective 2/27/91]

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Senate Bill No. 1016**CHAPTER 1136**

An act to add and repeal Section 7042.1 of the Business and Professions Code, and to add and repeal Section 316.3 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 14, 1984. Filed with Secretary of State September 17, 1984.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1016, Montoya. Contractors: exemptions from licensure: energy conservation: report.

The existing Contractors License Law provides that it is a misdemeanor for any person to engage in the business or act in the capacity of a contractor within this state without being licensed, unless the person is exempted from that law and specifically exempts, among others, public utilities.

The bill would prohibit, until January 1, 1991, gas, heat, or electrical corporations and their subsidiaries regulated as public utilities by the Public Utilities Commission from conducting work for which a contractor's license is required, except if the work is performed (1) on the corporation's property, (2) through a contract with a licensed contractor, (3) for low-income citizens pursuant to a program authorized by order of the commission, (4) in furtherance of the generation, transmission, or distribution of electricity, gas, or steam, provided that any such work performed within a structure and beyond a customer's utility meter is necessary to protect public safety or to avoid interruption of service, or (5) to comply with programs or procedures ordered or authorized by the commission not inconsistent with specified objectives.

The bill would also make a statement of legislative intent regarding the enactment of its provisions.

The bill would also require the commission to report to the Legislature on or before June 30, 1986, on the implementation of the above provisions and specific objectives relating to energy conservation development on policies, procedures, and regulations adopted or implemented by the commission to ensure and promote competition in the energy conservation industry.

The people of the State of California do enact as follows:

SECTION 1. Section 7042.1 is added to the Business and Professions Code, to read:

7042.1. (a) Notwithstanding any other provisions of this chapter, gas, heat, or electrical corporations and their subsidiaries that are regulated as public utilities by the Public Utilities Commission shall

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- A. The state regulatory body should have a public hearing to address all relevant issues (including competition) before program implementation.
- B. Before the public hearing, the state, utilities and small businesses should informally discuss the necessity and nature of such a utility program. Such early informal consultation should alleviate or eliminate many competition concerns.
- C. The following issues should be addressed in any review:
 - a. What are the significant public benefits of a utility program? Can these benefits be provided by unregulated private firms?
 - b. What safeguards against cross-subsidies or other competition problems are present?
 - c. Do the very substantial public benefits outweigh the potential competitive harm and the cost of state regulatory oversight over the program?
 - d. The PUC and parties to the proceeding should have access to the books and records of the utility program (whether the entity is directly regulated or not) to assure that there is no cross-subsidization, to the extent the rules of practice permit (e.g., protection of commercial information).
 - e. The PUC should issue a decision either prohibiting or defining the scope of the utility venture, with factual findings and conclusions of law relating to competition issues, with the right of judicial review of that decision.

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2. What is the Proper Form of the Utility Venture?

- A. Form of ownership/operation: The utility venture should be in the form of a separate unregulated subsidiary to help avoid the cross-subsidy problem.⁵ The unregulated venture should not share its operations with the regulated utility operations to eliminate the problem of joint cost allocation. The venture is to be regulated only to the extent necessary to define the scope of the venture initially, and to guard against future cross-subsidies.
- B. Utility Financing: There should be a preference for unsubsidized financing to avoid the problem of unfair discrimination among products, suppliers and installers, and competing energy suppliers (see I.2.A and I.2.B. above).

III. How Should the Utility Arrange to Provide CACS or other Energy Audits? - CACS and all other Audit Programs

1. Where there is adequate availability of qualified private sector auditors, the utility should "contract out" for energy audits to provide better and less expensive service (where applicable), and to help avoid competition problems where the utility supplies or installs, or is auditing a user of a competing fuel.
2. The utility should make a public announcement of the request for auditor services. Participation should be open to all businesses, small or large, and selection should be based on an appropriate combination of qualifications, reasonable price and merit of the proposals.

⁵Recommendation of 1981 FTC Bureau of Competition staff paper, "Competition and Utility Cross-Subsidization of Energy Conservation Activities", p. 22.

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MEMORANDUM

TO: MEMBERS OF THE HOUSE COMMITTEE ON ENERGY
AND NATURAL RESOURCES

FROM: ALAN F. ALDERSON, ATTORNEY FOR WESTERN RETAIL
IMPLEMENT AND HARDWARE ASSOCIATION

RE: HOUSE BILL NO. 2361

DATE: FEBRUARY 20, 1991

I am Alan Alderson, attorney and legislative counsel for Western Retail Implement and Hardware Association, an association whose members include approximately 218 hardware, home center or lumber retailers in Kansas. In addition, there are approximately 685 hardware stores in Kansas that are not members of the association.

On behalf of the hardware store members of the association, I appear in support of House Bill No. 2361. We believe the primary purpose of this legislation is to create a level playing field for those entrepreneurs who have invested their own capital in retail businesses. The Western Association receives complaints from its members periodically due to practices which we believe are unfair and anti-competitive in nature.

Specifically, the Western Retail Implement and Hardware Association is aware of situations in which certain public utilities sell hot water heaters, washers, dryers and other appliances at prices well below those which could be offered by any retailer operating purely in the private sector. These promotions (and often giveaways) are apparently designed to encourage the use of either electricity or gas, as the case may be and, while these promotional practices may be good for the public utility's business, they can be stifling to the private sector retailers who also sell these same products in competition with the public utility. A public utility is apparently allowed to pass its losses on these sales through to its ratepayers, but a retail hardware store cannot pass losses on to anyone but its owners.

The Western Retail Implement and Hardware Association urges you to support House Bill No. 2361 or any other measure that would prohibit these practices by public utilities.

E+NR
2/20/91
Attachment 12

STATEMENT IN OPPOSITION TO HOUSE BILL 2361
BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

ON BEHALF OF KNEnergy, INC
BY JACK GLAVES

I am appearing in opposition to House Bill 2361 on behalf of KNEnergy, Inc., a natural gas transmission and distribution company. The market area served by the Company's pipeline system is primarily agricultural. The communities to which we provide natural gas service are small and, in many cases, widely separated in a rather sparsely populated area. The Company sells natural gas at wholesale to 9 communities in Kansas, and sells natural gas at retail in 54 communities in Western Kansas.

KN maintains a regional headquarters at Phillipsburg. Mr. Aaron Harmon, District Manager, will speak to the practice of KNEnergy in providing service to its customers, which we believe would be adversely affected by the enactment of this Bill.

I would like to make some comments concerning the Bill from my perspective as an attorney and former general counsel of the Kansas Corporation Commission.

First of all, the genesis of this Bill is, I believe, of interest with respect to the motivation behind it and I have a document that was received last June that was prepared by the Kansas Alliance for Fair Competition, Inc. with an address of 320 Laura in Wichita. The first paragraph states:

"You now have an alliance of other well respected contractors and businessmen who have joined together to fight against utilities competing unfairly in our business."

it continues:

"Heating and air conditioning contractors and electrical contractors in Kansas are being confronted with utilities competing for their work."

E + NR
2/20/91
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All of the members of the steering committee were located in Wichita, Topeka, or Overland Park, except for one member in Dodge City and one in Tecumseh. None of the steering committee and other members listed on the document, which totals 27 different firms, are located in the territory served by KNEnergy, Inc. In fact, the only members West of Highway 81 are located in Dodge City, Garden City, and Meade. It is clearly not a rural problem that is being addressed by this legislation. It is essentially an effort by electrical heating and air conditioning contractors to limit competition.

Their complaint is that the utilities are competing unfairly in their business which is to say, I gather, that the utilities are not charging enough for the services that they perform; and that the utility customers should not received the benefit of that service.

I will let Mr. Harmon address the practice of KN and the fact that customers have free choice of the provider of such service.

I would like to address the contention that the utility rate payers subsidize the non-utility contracting service. The document I alluded to states that:

"If a utility can hide contracting expenses in its other expenses, the rate payers will pay for them. If the utility can hide an investment in a contracting business in with its energy investments, they will get a guaranteed percentage return on that investment from the rate payers. The utility can offer reduced prices for services or products by using their rate payers to subsidize a contracting business."

This is simply not true in law or in practice. KN's sale and servicing of gas fired appliances, and the other incidental services that are made available to their customers, incident to their gas service, are for the convenience to the customers and for obtaining and building system load (i.e., to maximize the system utilization with the express purpose of lowering the per unit cost of doing business, and hence lowering the overall cost of service and the rates that are required to be paid by its customers). The load factor is simply an indication of system efficiency.

In short, it is to the advantage of KN's customers to have a greater utilization of facilities, which results from the sale of gas fired appliances as contrasted to electric appliances, and that is the primary purpose of the offering of these appliances and providing the service that they require.

This service is not subsidized by the other rate payers. The costs and investment associated with this non-utility service is separately accounted for under the accounting system approved by the Kansas Corporation Commission and any profit or loss associated with it is considered "below the line" and is excluded from calculating the cost of service for rate making purposes. Utilities do not receive a "guaranteed percentage return on that investment from the rate payers," as suggested by the referenced document. The rates that are charged are based on actual costs that are incurred in the providing of the service and an "opportunity" to earn a specified return on investment.

If a serviceman performs services in both a utility and non-utility capacity, the costs are allocated and charged accordingly. The methodology and correctness of the allocation procedure is subject to KCC jurisdiction and supervision under current law. It is the subject of potential review in every rate proceeding; and is, of course, always open to investigation and appropriate action at any time.

K.S.A. 66-1401, vests the KCC with jurisdiction over affiliated interest transactions. More specifically, K.S.A. 66-1402 and 66-1403 require contracts between utilities and their affiliates to be filed with the Corporation Commission and the Commission is empowered to investigate; hold hearing and disapprove such contracts. The Commission is further empowered to disallow any costs that are unreasonably incurred in such transaction by the utility in determining its cost of service for rate making purposes. It is incumbent upon the utility to present evidence to the Commission, in a rate proceeding, or upon the request of the Commission at anytime, of the actual cost to the affiliated supplier of service, material, or commodity to the end that subsidization to the benefit of the supplier of the service, equipment, etc., does not occur at the expense of the rate payer.

The provisions of House Bill 2361 are totally unnecessary as to the alleged cross-subsidization problem and are impractical and onerous, particularly to KN that basically serves the rural areas of Western Kansas. Colby is the largest Kansas city served

by KN. Their division offices are located in Attwood, Colby, Hill City, Hoxie, Laken, Leoti, Norton, Oakley, Oberlin, Phillipsburg, Plainville, St. Francis, and Scott City. Many of our customers are scattered over wide geographical areas. Frankly, we doubt that the contractors that are urging this legislation really have any interest in serving KN's customers. We are not aware of any contention by any contractor that KN has competed unfairly with their business, or that its service business is detrimental to heating, air conditioning or electrical contractors. We simply do not have a volume of business that would justify the maintenance of a separate place of business in each service area as required by this Bill. It would not be economically feasible and would effectively require the cessation of providing service that KN currently provides. This would be to the detriment of KN's customers who currently rely on it for the providing of such service.

If this measure were to be adopted, I would suggest that a companion measure should be required to require the unaffiliated contractors to provide the service abandoned by KN, presumably at rates to be determined by the KCC. Obligation to serve is the basic tenant of utility regulation and the service that KN provides is necessary and is inextricably intertwined with safety and adequacy of its utility service.

You would be doing a great disservice to KN's customers in the area that they serve by adopting this Bill. There is nothing in KN's practice that prevents any contractor interested in

competing for this type of business from doing so. Their essential complaint is that we don't charge enough for the service. We doubt that our customers believe that. We know that the cost of that service is not borne by the rate payers. It would certainly not be fair to the rate payers to bear the cost of doing the billing, collecting, and mailing service for the contractors, as required by Section 3d of this Bill. If we were required to abandon this business, our customers would suffer the affects of a deteriorating load that will raise the per unit cost of service; and hence, their utility bills.

There is no need for this legislation and it would be extremely detrimental to utility customers, particularly in rural areas.

Testimony of Aaron Harman, K N Energy, Inc.
Before the Energy and Natural Resources Committee
Kansas House of Representatives
February 20, 1991
Topeka, Kansas

I am here today to testify on behalf of K N Energy, Inc. ("K N") in opposition to HB 2361 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 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. In most cases, when a customer contacts us, the cause of the problem that the customer is experiencing is unknown. In 1990 we made 19,370 service calls of which 15,205 were for no charge and 4,165 were charge calls. Most likely, if this bill passes we would still have to respond to the customer but couldn't do anything about it. 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 2361 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

BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
OF THE KANSAS LEGISLATURE
February 19, 1991

Testimony of Al Borcher
District Manager, Kansas
Peoples Natural Gas

Introduction

Chairman Grotewiel, members of the House Energy and Natural Resources Committee, my name is Al Borcher. I am the Kansas District Manager for Peoples Natural Gas. Peoples began serving Kansans in 1930. Today, Peoples distributes natural gas to more than 40,000 customers in 21 Kansas communities.

I am testifying today in opposition to House Bill 2361 because it would eliminate some of the customer services Peoples has provided to Kansans for more than 60 years. HB 2361 would prevent utilities from engaging in the sale, installation, maintenance or repair of home or business appliances and heating and cooling equipment. Utilities would only be able to provide those services required by law or by edict of the Kansas Corporation Commission.

I intend to demonstrate HB 2361 conflicts with the views of most Kansans; the legislation is unnecessary, since under Kansas Statute the KCC already has the charge and authority to disallow cross-subsidization; and, finally, the promoters of this bill seek not fair competition but to stifle competition entirely.

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Attachment 15

Today, Peoples continues to sell and service appliances for three primary reasons; the same three as when I testified to this committee a year ago on this same issue:

1. 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. The reason for this is very simple. It is easier to install an electric appliance than it is a gas one. With an electric appliance, you just plug it in, whereas gas appliances require additional piping for installation. Though gas appliances usually have a higher initial cost, in the long run are more cost effective because of lower operating costs.

2. To keep customers' cost of service down. Loss of existing gas appliances reduces load and increases the cost of providing service to our customer base.

3. To respond to the needs of our customers. We continue to survey our customers to determine their preferences and desires regarding utility service. Here is what we found in a statistically significant sampling of a portion of your constituents from across the state in a January survey conducted by the Gallup Organization:

-- 79 percent of respondents felt it was appropriate for a utility company to offer repair services for appliances.

-- 69 percent of respondents felt it was appropriate for a utility company to offer service contracts for appliances.

-- Most importantly, 74% of respondents, would oppose legislation that would restrict utility companies or their affiliates from offering non-utility services to their customers.

Representatives, this isn't Peoples Natural Gas talking. These are the views of Kansans, your constituents, including those on fixed or single incomes who might experience extreme financial hardship if a major home appliance breaks or needs to be replaced. Kansans don't like this legislation, and we encourage you to consider their views along with ours when voting on this bill.

Some 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. Actually the opposite is true. Appliance service programs keep costs down for ratepayers, but that's not the point. The point is that cross-subsidization does not occur. It's important to note here the regulatory oversight of the cross-subsidization issue is given to the Kansas Corporation Commission through Kansas State Statute 66-117. Peoples has openly welcomed scrutiny of our books by the KCC, which as recently as 1984 in a rate case we

filed established that no cross-subsidization was occurring. Peoples strongly rejects all claims that we are competing with local businesses unfairly. Rather, we believe the appliance dealers and contractors who support HB 2361 would like to see legislative prohibition of utility service programs, to their own advantage.

We're not insensitive to Kansas appliance dealers, and contractors. We take pride in being partners in economic and community development in the Kansas communities we operate in. That's why -- among other programs -- we sponsor a Dealer Assistance Program in Kansas to make gas appliances available and affordable to our customers in Kansas.

The Dealer Assistance Program is open to all gas appliance dealers, such as heating/air conditioning retailers, plumbers, contractors or installers in our service territories. The Program offers dealers and their customers two important advantages:

1. If a dealer in the program does sell or install a gas appliance, Peoples will handle the financing of that appliance directly on the customer's monthly gas bill.
2. Peoples partially subsidizes the dealers advertising cost for gas appliances through a coop advertising program.

This is a program for dealers who do not wait for the phone to ring, but rather shape their own destinies. They are entering related fields, selling during the off-season, finding

new ways to keep their service technicians and trucks busy during down periods, in other words using economies available to them which allow them to make their business more profitable. We feel this is good strategy as opposed to trying to legislate competition out of business. I would add, not all contractors agree that utility competition has hurt their business. As a matter of fact the January 21st, 1991 issue of Air Conditioning, Heating, and Ref. News lists 48.9% of these businessmen saying utility competition has not hurt their business.

In conclusion, HB 2361 would prohibit us from providing services our customers tell us they want, and as a customer driven enterprise serving in the public interest, we don't think that's right. For that reason, we oppose in the strongest terms the enactment into law of HB 2361. Thank-you.

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
KANSAS LEGISLATURE
FEBRUARY 20, 1991

TESTIMONY OF MICHAEL E. HERTLING
VICE PRESIDENT
KANSAS PUBLIC SERVICE

Chairman Grotewiel, Members of the House Energy and Natural Resources Committee, my name is Michael E. Hertling. I am Vice-President Administration of Kansas Public Service (KPS). KPS traces its origin back to 1865 when it was originally incorporated as Lawrence Coal, Gas and Oil Company. KPS now serves over 23,000 customers with natural gas in the City of Lawrence and surrounding area.

I am testifying today in opposition to House Bill 2361. There are several reasons for KPS' opposition to this bill.

First, we feel the bill is restrictive to fair competition, contrary to the effects its proponents claim that it will achieve. It is not unfair competition, it is competition which this bill would stifle. Non-utility services are exactly as defined in the bill:

"Non-utility service" means any services, products or activities other than the generation, transmission or distribution of electricity or natural gas. Non-utility services specifically include providing, leasing, servicing, selling or installing home or business appliances or heating and cooling equipment.

Placing restrictions on who can provide these competitive services and the manner in which they can be provided would be as wrong as placing undue restrictions on any local

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heating and cooling contractor in the performance of his or her business.

Second, this bill attempts to initiate policing action by the State Corporation Commission to ensure that utilities do not enter into unfair competition. As you all are well aware, there are many provisions already in place which give the Kansas Corporation Commission authority to police and prevent subsidization and unfair competition by utilities.

Third, and most importantly, utilities have experienced success in their non-utility efforts not because of unfair competition, but because of the trust we have achieved from our customers. Kansas Public Service has provided both residential and commercial appliance repair since the 1950's. In the mid-1980's, we discontinued this repair work as we felt that our customers could be serviced adequately by local contractors. However, we continued to receive service requests from our customers and, based on the number of such requests, we re-entered this market in 1990 because we felt that there still was an unfulfilled need in our community. Whether it was because of an unfulfilled need or simply the goodwill which has been earned throughout the years, people trust their local utility: they trust us to always be there when they need us, they trust us to perform capable service work when they call, and they trust that they will always have recourse if they ever require it.

In summary, this is not an issue of utilities practicing unfair competition, but rather an issue of

whether utilities should be allowed to compete at all in the unregulated marketplace. If House Bill 2361 is enacted into law it would in itself set up barriers to fair competition and, more importantly, deny our customers the right to choose with whom they do business. Thank you for your consideration.

**TESTIMONY BEFORE THE
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE**

By Jim Ludwig

KPL GAS SERVICE

February 20, 1991

Mr. Chairman and Members of the Committee:

We appear before you in opposition to HB 2361.

HB 2361 IS AN ANTI-CONSUMER BILL

This bill restricts several services provided by regulated public gas and electric utilities. These restrictions would protect contractors at the expense of consumers. HB 2361 is anti-consumer legislation.

HB 2361 would prohibit public gas and electric utilities from providing "non-utility services," except through an affiliate. While "non-utility services" is defined in Sec. 2(d) and some examples are given, the definition is extremely broad and vague. On its face, "non-utility services" covers the use of natural gas and electric yardlights, the lease of private area lighting, security lighting, and even charitable community service.

The bill might also prohibit customer conservation programs. KPL, for example, provides peak shaving (C.A.\$H.) devices free of charge to our customers. In extremely hot weather, the device cycles a customer's air conditioning condenser off for a few minutes of every hour. This reduces customers' usage. In addition, KPL credits \$24 over the three hottest months of the year to customers who accept the device. Widespread use of the device enables KPL to better manage peak load requirements. Load management is essential to reliably providing the lowest cost energy possible to our customers and delaying the need to construct expensive new base-load generating capacity.

HB 2361 potentially deprives customers the benefits of sound energy management by limiting the influence we have over future electric capacity needs.

KPL plans to implement other conservation programs and least-cost planning strategies in the months and years ahead. Since these activities often cannot properly be defined as the "generation, transmission or distribution of electricity or natural gas," this bill may prohibit them.

Customers should be able to participate in conservation and least-cost planning benefits. HB 2361 jeopardizes that participation.

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Natural gas air conditioning shows environmental promise. Natural gas is one of the cleanest burning of fossil fuels, and gas air conditioning coolant does not contain ozone-depleting chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs), compounds now used widely as refrigerants. The Clean Air Act amendments of 1990 gradually phase out the use of CFCs and HCFCs.

Customers should be able to choose heating and cooling appliances that minimize environmental degradation. HB 2361 jeopardizes that choice.

HB 2361 IS UNNECESSARY

The Corporation Commission already has authority to review dealings between public utilities and their subsidiaries (K.S.A. 66-1401 et seq.) Other statutes (K.S.A. 66-101e and K.S.A. 66-1,205) allow persons to bring grievances before the Commission when they have evidence that utilities are engaged in unfair competition. (Copies of the statutes are attached.)

The most serious accusation is that we, and other utilities, are engaged in cross-subsidization, i.e, the use of customers' money to finance heat pump and gas air conditioning marketing programs. **KPL's financing programs are funded through lines of credit at banks, and repayment is made through revenue generated by sales of heat pumps. No "ratepayer" money is used or even at risk of being used. If losses occurred, they would be shareholder losses.** Any unsuccessful marketing program would ultimately be discontinued. Financing is often essential for customers who want to use energy efficiently by installing a heat pump or gas air conditioning. Without such financing, some customers can not afford equipment that will ultimately reduce their energy bills and be environmentally responsible.

If any electric or natural gas public utilities are engaged in cross-subsidization or any kind of unfair competition, their aggrieved competitors already have a legal remedy.

Proponents of HB 2361 claim that very little work will be left for heating, ventilation and air conditioning contractors unless legislation restricts "non-utility services." **KPL does not install heat pumps. We let contractors do that. KPL installs a few gas air conditioners in our service territory, but only where no contractor is qualified or willing to install them. Wherever contractors install and service appliances, KPL does not.** It is not fair to our customers, however, to quit offering the best, most efficient heating and air conditioning equipment technology provides.

KPL conducts training programs for contractors to install heat pumps and gas air conditioners, and we offer contractors rebates and paid warranty service contracts as incentives for them to install and service such equipment. For these reasons, several contractors throughout our service territory are strong advocates of our marketing

efforts. We also provide advertising which benefits appliance manufacturers and the contractors who install the appliances. **Some of the contractors who are proponents of HB 2361 have refused to become involved in the installation and service of heat pumps and gas air conditioners, even when more and more of our customers are requesting such equipment.**

HB 2361 AS PUBLIC POLICY

The economic dynamics of KPL's gas and electric marketing programs discourage cross subsidization. The same dynamics encourage consumer options.

One way to put the policy issue in perspective is to consider what percentage of KPL's gross revenues is comprised of usage of gas air conditioning and electric heat pumps. Sales of gas air conditioning equipment in 1989 generated additional gas use of 129,725 Mcf. Electric heating amounted to new sales of 18,219,000 kwh. Using average retail pricing of \$4.00 per Mcf and \$.055 per kwh, the following shows percentage of total sales:

$$\begin{aligned} 129,725 \times 4.00 &= \$ 518,900 \text{ Gas AC} \\ \$18,219,000 \times .055 &= \underline{\$1,002,045} \text{ Electric Heat} \\ \text{TOTAL} &= \$1,520,945 \\ \$1,520,945 \div \$1,127,623,000 \text{ Gross Revenue} &= 0.135\% \end{aligned}$$

Sales of gas air conditioning and electric heat pumps account for only one-tenth of one percent of our revenues, but is a valued service to our customers.

Even if our gas and electric marketing departments are successful in future sales campaigns, new gas and electric sales generated from increased load attributable to installations sales of gas air conditioners and electric heat pumps will be minimal as a percentage of gross revenues.

Our gas air conditioning and electric heat pump marketing efforts stand on their own. In fact, additional sales of electricity and natural gas to customers who have chosen new appliances tends to reduce costs to other customers rather than lead to cross subsidization, because the unit cost of energy per customer declines as use of additional heat pumps and gas air conditioners expands our rate base.

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.

66-101e. Same; investigation with or without complaint. Upon a complaint in writing made against any electric public utility governed by this act, by any mercantile, agricultural or manufacturing organization or society, or by any body politic or municipal organization, or by any taxpayer, firm, corporation or association, that any of the rates or joint rates, tolls, charges, rules, regulations, classifications or schedules of such electric public utility are in any respect unreasonable, unfair, unjust, unjustly discriminatory or unduly preferential, or both, or that any regulation, practice or act whatsoever affecting or relating to any service performed or to be performed by such electric public utility for the public, is in any respect unreasonable, unfair, unjust, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, or that any service performed or to be performed by such electric public utility for the public is unreasonably inadequate, inefficient, unduly insufficient or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary.

The commission may, upon its own motion, and without any complaint being made, proceed to make such investigation, but no order affecting such rates, joint rates, tolls, charges, rules, regulations and classifications, schedules, practices or acts complained of shall be made or entered by the commission without a formal public hearing, of which due notice shall be given by the commission to such electric public utility or to such complainant or complainants, if any. Any public investigation or hearing which the commission shall have power to make or to hold may be made or held before any one or more commissioners. All investigations, hearings, decisions and orders made by a commissioner shall be deemed the investigations, hearings, decisions and orders of the commission, when approved by the commission.

The commission shall have power to require electric public utilities to make such improvements and do such acts as are or may be required by law to be done by any such electric public utility.

History: L. 1911, ch. 238, § 14; R.S. 1923, 66-111; L. 1985, ch. 225, § 31; July 1.

Source or prior law:

L. 1901, ch. 286, § 21.

Cross References to Related Sections:

Reparations act, see 66-154a et seq.

Law Review and Bar Journal References:

Review of history of regulations, Marion Beatty, 27 J.B.A.K. 186, 191 (1958).

"Practice and Procedure Before the State Corporation Commission," Fred B. Adam, 41 J.B.A.K. 199, 200, 201 (1972).

CASE ANNOTATIONS

1. Power to regulate and control location of telegraph stations. *The State, ex rel., v. Postal Telegraph Co.*, 96 K. 298, 302, 150 P. 544.

2. Acts which are subject to supervision and control by commission. *The State, ex rel., v. Postal Telegraph Co.*, 96 K. 298, 304, 150 P. 544.

3. Commission may require utility to make improvements, etc. *City of Parsons v. Water Supply and Power Co.*, 104 K. 294, 299, 178 P. 438.

4. Commission changing railroad freight rates; notice of hearing required. *The State, ex rel., v. Railway Co.*, 108 K. 847, 849, 850, 197 P. 192.

5. Adequate remedy before utilities commission; injunction will not lie. *City of Hutchinson v. Bell Telephone Co.*, 109 K. 545, 550, 200 P. 301.

6. Jurisdiction of commission to order siding built. *Railway Co. v. Utilities Commission*, 111 K. 805, 807, 208 P. 576.

7. Authority not given commission to find rates previously charged excessive. *Great Western Portland Cement Co. v. Public Service Comm.*, 121 K. 531, 532, 247 P. 881.

8. Section cited in determining who may be heard. *Kansas Gas & Electric Co. v. Public Service Comm.*, 122 K. 462, 465, 251 P. 1097; *City of Wichita v. Wichita Motor Bus Co.*, 126 K. 677, 681, 271 P. 403.

9. Division as to rehearing on order does not affect its validity. *City of Ottawa v. Public Service Commission*, 130 K. 867, 872, 288 P. 556.

10. Cited in construing reparations statute. *State, ex rel., v. Public Service Comm.*, 135 K. 491, 504, 11 P.2d 999.

11. Commission's order authorizing railroad to dualize station agencies held lawful and reasonable. *Community of Woodston v. State Corporation Comm.*, 186 K. 747, 752, 353 P.2d 206.

12. Invalid preliminary orders of commission cannot be enjoined. *State Corporation Comm. v. Wichita Gas Co.*, 290 U.S. 561, 54 S.Ct. 321, 322, 324, 78 L.Ed. 500.

13. Mentioned in upholding orders and decisions of commission in fixing rates for telephone company. *Southwestern Bell Tel. Co. v. State Corporation Commission*, 192 K. 39, 46, 386 P.2d 515.

14. In action charging termination procedures violated due process, court held statute provides adequate procedural remedies. *Stanford v. Gas Service Company*, 346 F.Supp. 717, 719.

15. Customers of utility companies had remedy in state courts and could not bring action in federal court; action challenging legality of late assessment charges. *Tennyson v. Gas Service Co.*, 506 F.2d 1135, 1141.

16. Legislative grant of authority to KCC includes control over rates and tariffs. *In re Application of Southwestern Bell Tel. Co.*, 9 K.A.2d 525, 533, 534, 685 P.2d 304 (1984).

66-1,205. Same; investigation with or without complaint; authority of commission. (a) Upon a complaint in writing made against any natural gas public utility governed by this act, by any mercantile, agricultural or manufacturing organization or society, or by any body politic or municipal organization, or by any taxpayer, firm, corporation or association, that any of the rates or joint rates, tolls, charges, rules, regulations, classifications or schedules of such natural gas public utility are in any respect unreasonable, unfair, unjust, unjustly discriminatory or unduly preferential, or both, or that any regulation, practice or act whatsoever affecting or relating to any service performed or to be performed by such natural gas public utility for the public, is in any respect unreasonable, unfair, unjust, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, or that any service performed or to be performed by such natural gas public utility for the public is unreasonably inadequate, inefficient, unduly insufficient or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary.

The commission may, upon its own motion, and without any complaint being made, proceed to make such investigation, but no order affecting such rates, joint rates, tolls, charges, rules, regulations and classifications, schedules, practices or acts complained of shall be made or entered by the commission without a formal public hearing, of which due notice shall be given by the commission to such natural gas public utility or to such complainant or complainants, if any. Any public investigation or hearing which the commission shall have power to make or to hold may be made or held before any one or more commissioners. All investigations, hearings, decisions and orders made by a commissioner shall be deemed the investigations, hearings, decisions and orders of the commission, when approved by the commission.

(b) The commission shall have power to require natural gas public utilities to make such improvements and do such acts as are or may be required by law to be done by any such natural gas public utility.

History: L. 1985, ch. 225, § 35; July 1.

Source or prior law:
66-101e.

Revisor's Note:

For annotations to prior law, see 66-101e.

William G. Mason, Regional Manager
Kansas Gas and Electric Company
Testimony on HB 2361
House Committee on Energy and Natural Resources
February 20, 1991

Thank you for the chance to appear.

While a bill which only seeks to prescribe the manner in which utilities sell, lease, install or service appliances or heating and cooling equipment owned by its customers would have no effect on our Company, HB 2361 is so broadly written it endangers many things we do. For example:

In times of emergency, other utilities are hired by us to help restore service to our customers or they contract with us for similar services when they encounter severe problems. HB 2361's prohibition on providing services "other than the generation, transmission or distribution of electricity" except through use of affiliates would increase by days the time it takes to restore service after a storm like the Hesston tornado or the so-called "inland hurricane" in central Kansas last summer.

Many large customers own utility-type equipment which they contract with us to repair in an emergency because no other such service is available in the region. For example, last month a major Wichita hospital suffered damage to some of its own electrical system which we repaired in six hours. Had we not done so, part of that major medical center might have gone without electricity for days.

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The definition of "Emergency Service" in Section 2(c) of the proposed bill appears to be intended to address these situations. However, amendments to this definition to specifically provide that services performed alone or in concert with other utilities, municipalities or co-ops in repairing storm damage or massive outages is considered an emergency service would be helpful. Additionally, amending so that incidental or maintenance work is allowed on the premises of any customer regardless of location would seem appropriate.

The definition of "non-utility service" in Section 2(d) of HB 2361 is also troublesome. If read narrowly, it would appear to prohibit a utility from billing and collecting from its customers except through an established affiliate. This is surely not the intent of the proposed legislation. There is more to an electric utility's business than the generation, transmission and distribution of electricity.

Street lighting service, both to municipalities and to individuals, could also be interpreted to be an "activity other than the generation, transmission or distribution of electricity . . ." because we own and maintain the lights as well as provide electricity for them. Must we turn them off? For that matter, many of our employees use company equipment to put up holiday lights in cities we serve. Certainly, this does not fall within the bill's narrow definition of permitted

activities. Neither does our economic development work. Yet, KG&E is one of the companies credited with helping bring many new industries to Kansas. Still, the bill excludes all of these activities and thereby bans them.

This bill would certainly affect many social and volunteer programs that our company and employees have initiated and been involved in, i.e.: Project DESERVE, radio watch, safety educational programs, Boy Scout merit badge clinics, Junior Achievement, loaned fan project to the disadvantaged. Many of these are coordinated through non-profit organizations, such as Red Cross, Salvation Army, Urban Ministries, etc. None of these would meet the bill's definition for "affiliate", and all of the activities are non-utility services as defined in Section 2; therefore, continued participation by utilities could be stifled.

The proposed bill also appears to impact unfavorably on the ability of a utility to assist its employees in the establishment of a credit union. This is a detriment to the employees of utilities and places them in a less advantageous position than employees of other major employers who are allowed to provide office space on the premises, and materials and employees to assist in running the credit union.

In summary, if this bill is intended to protect firms which provide, lease, service, sell or install home or business appliances or heating and cooling equipment from utility competition, that can be straightforwardly said. Amendments to the bill which prescribe that these activities can be undertaken only by affiliates of a utility, can narrow the bill's focus to the true purpose. Unfortunately, the bill, as written, is too broad and ambiguous, and unnecessarily endangers our ability to care for our customers, assist other customers and utilities in emergency situations, and participates fully and actively in community-service activities.

As it is written, HB 2361 should be defeated.

KANSAS HOUSE OF REPRESENTATIVES
ENERGY AND NATURAL RESOURCES COMMITTEE

Testimony of Floyd Highland
February 20, 1991

My name is Floyd Highland, Division Service Specialist with K N Energy Inc. in Colby, Kansas. I am also representing the Communications Worker's of America Local 7476. I am appearing today in opposition to Kansas House Bill 2361 which would prohibit utilities such as K N from selling, installing and repairing gas burning appliances. You have heard the testimony of Mr. Jack Graves and Aaron Harman. CWA Local 7476 and I would agree with their presentation.

My fellow workers and I are the ones who will be impacted by this legislation. We are the ones who are in the customer's homes providing to them the services that they've come to depend on from K N. Legislation such as this will severely curtail the services we perform. It is the reliance that the customers have on us for solutions to their appliance problems that should not be curtailed in small rural Kansas communities. Many of my fellow K N employees travel thousands of miles every year from one community to another providing a specialized degree of service that cannot be provided by others.

Do not erode the quality of life in our rural communities by allowing this bill to pass.

Thank You

Floyd Highland

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STATEMENT IN OPPOSITION TO HOUSE BILL 2361
BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
ON BEHALF OF GREELEY GAS COMPANY

D. Allen Spaur

My name is Allen Spaur. I am vice president and manager of the Kansas Kaw Valley and Eastern Kansas divisions of Greeley Gas Company. I am appearing in opposition to House Bill 2361 on behalf of Greeley Gas Company.

Greeley Gas Company is a natural gas public utility authorized to do business in Kansas, Colorado and Missouri. In Colorado it operates nine districts, which are Greeley, Canon City, Craig, Meeker, Steamboat Springs, Salida, Gunnison, Lamar, Durango and Cortez.

In Kansas six separate divisions are presently operated. The Kaw Valley Division has its headquarters in Bonner Springs and distributes natural gas in the communities of Basehor, Bonner Springs, Lake Forest, Wilder, DeSoto, Piper, Eudora, Lenexa, Olathe, Lawrence, Shawnee and Sunflower Village, Kansas.

The Central Kansas Division includes gas distribution service within the cities of Marion, Hillsboro, Peabody, Herington, Pilsen, Tampa, Ramona, Aulne, Lost Springs, Delevan, Lincolnville, Wilsey, White City and certain rural areas of Marion, Morris and Dickinson Counties, with its headquarters in Herington, Kansas. The Cane Division includes gas distribution to the communities of Eureka, Toronto, Neal, Anthony, Caldwell, South Haven, Hunnewell, Ness City, Bazine, Alexander and McCracken. The headquarters are in Herington, Kansas with supervisory assistance from our Eureka, Anthony and Ness City offices.

The Southwest Kansas Division has its headquarters in Lamar, Colorado and serves the Kansas communities of Syracuse, Johnson City, Ulysses, Kendall, Manter and

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Hickok and some of the rural areas of Stanton, Hamilton, Grant, Kearney, Morton and Stevens Counties. The Eastern Kansas Division which was recently acquired operates in Linn and Bourbon Counties and serves the communities of Mound City, Pleasanton, Fulton, Prescott, Redfield and parts of Ft. Scott. The headquarters are in Bonner Springs, Kansas.

In May, 1989, Greeley Gas Company acquired the distribution system in Council Grove, Kansas, and is operating this division from the headquarters in Herington, Kansas.

Greeley Gas Company provides nonregulated sales of gas fueled appliances and heating and air conditioning equipment and the installation and repair of those appliances and equipment in each of its divisions.

Greeley Gas Company is opposed to House Bill 2361 because that bill would require Greeley to provide the above services through the use of a separate company in order to prevent alleged unfair competition. Because unfair competition does not exist in its service territories Greeley believes that the bill is unnecessary. Moreover, Greeley believes that the bill would be detrimental to it and many of its customers.

Many businesses sell, install and repair gas fueled appliances and heating and air conditioning equipment. All of Greeley's customers have the right and opportunity to purchase from those other businesses and to use their services and in fact do purchase appliances and equipment and use services from companies other than the utility. Greeley does not have an advantage over any of these other companies just because it is a utility. The utility can not by law subsidize the nonregulated sales and services. Furthermore, Greeley informs its customers that they can use other qualified persons to install and repair appliances and equipment. Greeley Gas Company is not aware of any

contractor in Greeley's territory that has claimed that Greeley has competed unfairly with the contractor's business. In fact, with the recent efforts to assure safety to its customers Greeley has worked with many contractors who sell, install and repair gas fueled appliances and heating and air conditioning equipment and none have complained that they are at a competitive disadvantage with the utility.

House Bill 2361 would be detrimental to Greeley and its customers for several reasons.

Having to set up a separate company to provide the nonregulated services would create confusion for Greeley's customers not unlike the confusion caused when the telephone industry was broken up. The customers that buy appliances and equipment from Greeley do so more often than not because of convenience and reliability backed up by assured and safe installation and repair services from the utility.

If Greeley or other gas utilities that serve in the rural areas of this state elect not to continue to sell appliances and equipment because of the passage of House Bill 2361 some areas that Greeley serves will not have the sales and services available on a local level. This no doubt will mean that Greeley's customers in these rural areas would have to pay more for the installation and repair of their appliances or heating and cooling equipment. It might also mean that the customers would cease using natural gas which would be detrimental to all of Greeley's customers. It would also be detrimental to the natural gas producers and royalty owners in Kansas who rely on Greeley to market gas from their wells in rural Kansas.

Greeley Gas Company has always had a philosophy that if it was in the business of selling natural gas to its customers then it should also be in a position to provide to

its customers gas fueled appliances and heating and air conditioning equipment and the services to install and repair those appliances and equipment. The ability to properly install and repair those appliances and equipment is very important because of legitimate safety concerns. Because in the mostly rural areas of Kansas in which Greeley Gas Company provides natural gas service the amount of sales, installation and repair work relating to gas fueled appliances and equipment are not sufficient to justify the maintenance of a separate place of business or a separate sales person and service employee, Greeley will have a difficult time maintaining its established philosophy if House Bill 2361 becomes law.

Because of the detrimental effect this bill would have on Greeley and its customers and because Greeley knows of no unfair competition existing in its service territory, Greeley is opposed to House Bill 2361.

**Testimony of Turner White for
Kansas City Power & Light Company before
The House Energy & Natural Resources Committee
HB 2361
February 20, 1991**

Mr. Chairman and members of the Committee, I am Turner White, vice-president of Communication & Marketing for Kansas City Power & Light Company. KCPL serves approximately 163,000 customers in 11 eastern Kansas counties.

Today, I am here to oppose House Bill 2361 on the following grounds:

● It deters positive, promotional energy efficiency and energy improvements partnerships between private contractors and utilities by extending inappropriate regulation over private contractors by the Kansas Corporation Commission.

● It extends the reach of regulatory control to include and affect financing programs of utilities for its customers.

● It interferes with development of new areas of benefit for customers including economic development and jobs producing programs frequently supported by utilities.

The Bill, as written, extends the definition of "control" over an "affiliate" to include contracts a company such as ours makes with a private contractor, or group of contractors, to provide services to our customers. For example, the installation of peak-shaving devices on residential central air conditioners on our system will number nearly 12,000 by this summer. KCPL currently contracts with private contractors to install these devices. However, this bill would arguably cause the private

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contractors which install and service these devices to fall under the definition of an "affiliate" because of the "control" resulting from KCPL's contracts with these contractors. If so, the bill would cause these contractors to be regulated by the KCC. The risk of this regulation would seriously degrade KCPL's ability to maintain a contractor network to implement this and other programs.

The definition of "non-utility service" could include financing programs the utility provides through local banks to offer customers the benefits of a source of funds to improve energy efficiency in their homes and businesses. Our company is not now, nor does it contemplate becoming in the future, a primary financier of energy equipment and installation. We contract with banks to provide financing to customers who want more efficient equipment, or who want to upgrade their homes and businesses with energy efficiency improvements. This financing program would fall victim to this legislation as it is written because the contracts for financing would come under the purview of this bill, exposing the banks to regulation by the KCC as an "affiliate," and would likely be eliminated or not be established at all in the future.

The National Energy Plan, details of which are not yet available, and the current trends and activities encouraging utilities to assist customers in controlling the growth in peak demand and energy use to better manage need for new generating capacity, would be constrained by this legislation, for the

reasons I have described. Ironically, this legislation would also prevent the growth in economic development programs because contracts and payments made to economic development organizations would come under the definition of "control" and "non-utility service" as written in the legislation again exposing those organizations to regulation by the KCC as "affiliates." Our membership, for example, in Kansas, Inc., or other economic development organizations would likely fall victim to this legislation as written.

In summary, this legislation is ill-defined and encompasses many decrements to progress in energy matters. We respectfully recommend against its adoption.

Thank you.

DeBacker's, Inc.

1520 SE Tenth Street
Topeka, Kansas 66607
Telephone (913) 232-2916

02/20/91

House Committee on Energy and Natural Resources
Kansas House of Representatives
State Capitol Building
Topeka, KS

Re: HB 2361

Dear Committee Members:

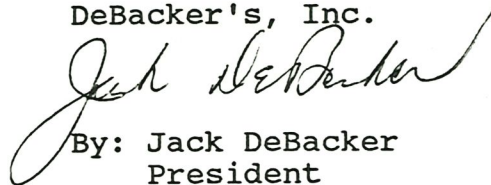
It has our experience that throughout the years the policies of the KPL Gas Service Company have been very open, honest and fair when dealing with our company in their promotions of load leveling management devices for utilization of both electrical and natural gas energy.

Furthermore, in my nearly constant contact with other contractors in this industry, I have yet to hear any complaints about the promotions of KPL Gas Service of this type equipment.

I wish to make clear that we have no fear of the KPL Gas Service Company competing in our market and believe that legislation such as House Bill 2361 is misdirected to the extent it limits the ability of the KPL Gas Service Company to make promotions of the type described above.

For the record, I also wish to make clear that neither DeBacker's, Inc., nor I own any stock in the KPL Gas Service Company.

DeBacker's, Inc.


By: Jack DeBacker
President

E+NR

2/20/91

Attachment 22

STATEMENT FROM KANSAS ELECTRIC COOPERATIVES, INC.
IN OPPOSITION TO HB 2361

The rural electric cooperatives in Kansas, as you all know, are not-for-profit, consumer owned and operated for the purpose of bringing reliable, affordable central station electricity to rural Kansas. The cooperatives have, on average, two consumers per mile of line.

Those cooperatives which do provide a few of the services, referenced in HB 2361, do so at their own consumer-owners' request. The volume is minimal and the services rendered are basically those which the cooperative members can't get affordably locally, or can't get at all because of their remote rural locations. These services, when they are provided, are only for members of the cooperative. The alternative of a totally separate corporation for these minimal services simply isn't economically feasible for a small cooperative.

A "fair competition" bill was passed recently in Iowa. Please note that the Iowans recognized the unique situation of rural electrics and they are not included in the bill.

We sincerely thank you for your careful consideration of our opposition to HB 2361 on the grounds outlined above.

Respectfully,

Marshall Clark
Director, Governmental Relations

E+NR
2/20/91
attachment 23

Rindels Air Cond. & Heating
704 S. Main
Hugoton, KS 67951

Testimony to be read before the House Energy and Natural Resource
Committee on February 20, 1991.

Submitted by Irvin L. Rindels
Rindels Air Conditioning & Heating
Hugoton, Kansas

In 1975 we established along with our heating and air conditioning
business, a much needed white goods appliance sales and service
business in Hugoton, Kansas - population approximately 3100.

We employed a full time serviceman to serve the needs of the community
in addition to a full time heating and air conditioning repairman. We
carried a broad inventory of parts so that our servicemen could repair
any and all brands of appliances, furnaces and air conditioners.

Contrary to statements by Peoples Natural Gas, this community had three
(3) full time heating and air conditioning shops with qualified,
trained service people, and two (2) appliance businesses with full time
service people.

Ten years later, in the mid 1980's, Peoples Natural Gas Co. issued a
service contract for \$5.00 per month, added to your gas bill, to cover
all labor and parts on household appliances. From that point on, our
sales and service work declined to the point we had to close our
appliance business and let our servicemen go.

Because they included furnaces in their contract, we lost a large share
of that business also. They have now, for \$11.47 per month added air
conditioners to the contract and needless to say have further
devastated our business.

Peoples Natural Gas is advertising that they have trained personnel
when in fact they had no training on air conditioners. One of their
men came to our shop and told me they would receive one week training
on air conditioners then would be expected to repair equipment that
takes years of training under an experienced serviceman or at least two
years in a technical school.

When People's Gas issued their service contract, their employees came
to our shop on a regular basis getting information and parts from our
serviceman so that they could repair an appliance. Time after time
customers called us stating they were left un-operable for a week or
two because the gas company was not able to get their appliance in
working order.

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2/20/91
Attachment 24*

My wife, as a city councilwoman, receives a quarterly publications from Peoples Natural Gas. It is strictly a propaganda type publication which, among other things, they claim to be available to help our towns with Economic Development. This insistence by the gas company to keep selling subsidized contracts has cost me one employee and the profits from a defunct business. My air conditioning service business has declined so much it has been reduced to a one man operation. I fail to see how they can claim an interest in Economic Development when they are systematically destroying local business.

If SEARS, the largest retailer in the United States has to charge a fee for service contracts many times higher than the gas company, it is natural to assume the gas rate payers are subsidizing a company that already has a monopoly. We do not have access to Peoples Natural Gas Co. daily records, so there can be no way for us to determine how they accomplish the subsidization. However, an employee of Peoples Natural Gas who was given the responsibility to check for gas leaks, read meters, and (after a one week course) now services air conditioners told us that he was allowed to charge no more than one hour to an appliance service call even it it took all day to accomplish. This may be just one of the methods they use to put us out of business.

If there is to be fair competition, I charge the gas company must maintain a separate building from their utility office with separate service personnel, trucks, office personnel, advertising, utilities and inventory. They would find in very short order that it would not be economically feasible without subsidy from the gas they sell.

In summary I would like to say that I am strongly in favor of House Bill number 2361. I am sorry that I could not attend the hearing today in person. When your business is reduced to a one man operation, it is hard to get away. Any questions on my testimony can be directed to our business telephone number 316/544-8501.

RE: HOUSE BILL NO. 2361

In regard to this bill before the Legislature, I feel it is not necessary. In my 18 years in the heating and air conditioning business and working with KPL, the programs they have provided have been a benefit for both the customer as well as my business.

They have always used local heating and air conditioning contractors to install peak management devices as well as telling their customers about new more efficient heating and air conditioning equipment thru the local contractors.

Respectfully,

James C Phillips

James C. Phillips
Bob Crawford, Inc.
421 East 6th
Emporia, Kansas 66801

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2/20/91
Attachment 25