

Approved February 4, 1991
Date

MINUTES OF THE Senate COMMITTEE ON Governmental Organization

The meeting was called to order by Senator Lana Oleen at
Chairperson

1:40 a.m./p.m. on January 28, 1991 in room 531-N of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Oleen, Bogina, Doyen, Francisco, Gaines, Kanan, Strick and Vidricksen.

Committee staff present:

Julian Efird, Kansas Legislative Research Department
Fred Carman, Revisor of Statutes Office
Mary Allen, Committee Secretary

Conferees appearing before the committee:

Judith McConnell, State Corporation Commission
Scott Stockwell, State Corporation Commission
Tom Day, State Corporation Commission

The meeting of the Senate Governmental Organization Committee was called to order at 1:40 p.m. by the Chairman, Senator Lana Oleen, who announced that there will be a joint tour of the Senate and House Governmental Organization Committees to the State Corporation Commission on Tuesday, February 2, 1991, from 11:30 a.m. to 1:30 p.m.. Committee members and staff will be provided transportation by the Commission and will meet under the south tunnel of the Statehouse.

In association with the Committee's sunset review of the State Corporation Commission, Judith McConnell, Executive Director of that Commission, presented an overview of its responsibilities and functions and the current structure and organization designed to carry out its mission. Ms. McConnell told the Committee that the Commission is composed of three members, appointed by the Governor with the advice and consent of the state Senate, who are assisted in their responsibilities by a staff of 235 employees. After noting that the Commission's functions are carried out under four separate divisions, Administrative Services/Legal, Utilities, Transportation and Conservation, she briefly outlined the duties and responsibilities of each division. (See Attachment 1 for her testimony.) In conclusion, Ms. McConnell highlighted some of the issues faced by the Commission in the past year as well as some of the issues which it is currently facing including the proposed aquisition of Kansas Gas and Electric, the condition of the natural gas pipeline system in Kansas, settlement of natural gas company anti-trust suits and the Kansas Relay Center for the hearing impaired.

Following her presentation, Ms. McConnell was joined by other Commission staff members in answering questions from the Committee. A member of the Committee asked how the Commission interacts with the Citizens' Utility Ratepayers Board (CURB). Scott Stockwell, Director of the Utilities Division of the Commission, responded that many times in rate cases the Corporation Commission staff generally determines the basic issue of how much money a company should earn; however, the question then becomes how much of those earnings is to be apportioned to industrial customers, to residential customers and to commercial customers. He stated that while the Commission staff represents the public generally, in many rate cases large industrial companies can afford their own attorneys to represent them. CURB, he said, represents the viewpoint of small commercial and residential customers in balance with the larger industrial companies. Ms. McConnell reported that CURB's staff currently consists of a director, who is an attorney, and two clerical support staff and its budget is approximately \$200,000.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Governmental Organization,

room 531-N, Statehouse, at 1:40 ~~xxx~~/p.m. on January 28, 1991

In answer to a question concerning Corporation Commission involvement in the use of abandoned railroad line right-of-way for such purposes as linear parkways, Mr. Stockwell observed that if a line has been abandoned and is no longer utilized it is a matter for the Interstate Commerce Commission (ICC). Another question concerned whether the State Corporation Commission could allow a railroad to abandon lines for rail purposes but request that the railroad hold the right-of-way open for other public purposes. Mr. Stockwell replied that the Director of the Transportation Division of the Corporation Commission has indicated that his Division is trying to work with local communities to determine if local communities can take over the lines to keep them running. He indicated that of the approximately one hundred cases appealed to the ICC, only one or two have been won. He noted that with respect to the establishment of such things as trails and parks on abandoned right-of-way, the Commission could discuss such matters with the communities involved.

A question was asked concerning the Special Projects Division of the Commission established in 1978. Ms. McConnell said that it began as a small unit within the Utilities Division; however, as it grew it became a separate free-standing agency and played a planning role. In 1983, she noted, the name was changed from Special Projects to the Research and Energy Analysis Division. It has since been reorganized and, in 1987, the research section was transferred to the Utilities Division leaving the energy section with a staff of five. She said that it is expected that the energy section will eventually also be transferred to the Utilities Division.

A member of the Committee questioned why the Corporation Commission Commissioners have not attended this meeting and expressed the wish that they had been present.

Several questions were directed to Ms. McConnell concerning the move of the Corporation Commission to its new location on Arrowhead Road in west Topeka. Ms. McConnell said that the Department of Administration (DOA) approached the Commission concerning the need to expand some of the larger agencies in the Docking State Office Building. The DOA, she noted, encouraged the commission to find space elsewhere; consequently, a bid was issued in the spring of 1989, to which nine proposals were received. The Commission negotiated with all who bid on the project and it was eventually narrowed down to two locations, one a remodeled downtown location and one a proposal to build and lease space in west Topeka. She reported that although the Commission indicated, in issuing its bid, that it was looking for a downtown location, the bid for the west Topeka location was approximately one-quarter of a million dollars annually lower than the bid for the downtown location. Ms. McConnell stated that in addition, none of the downtown bids made provision for sufficient parking. Tom Day, Director of Administrative Services for the Corporation Commission, reported that the lease on the Commission's present location is for fifteen years with the rent being set out in a schedule for the term of the lease. He said that the rate for the first year is \$12.75 per sq. ft. per year for an area of 36,000 square feet. The second year, which begins July 1, 1991, the rent increases to \$13.75 per sq. ft. to offset any property tax increase; however, in the third year the rent lowers to \$11.95 per sq. ft. Mr. Day observed that the Commission is tied to this lease for fifteen years.

The meeting was adjourned by Chairman Oleen at 2:25 p.m.

Joan Finney
Governor

Keith R. Henley
Chairman

Rich Kowalewski
Commissioner

Jack Shriver
Commissioner

Judith McConnell
Executive Director



Kansas Corporation Commission

MEMORANDUM

TO: Members, Senate Committee on Governmental Organization

FROM: Staff, Kansas Corporation Commission

RE: Briefing associated with the Committee's sunset review of the Kansas Corporation Commission

DATE: January 28, 1991

This briefing paper is not intended to serve as an in-depth analysis or comprehensive treatment of an immensely complicated subject; rather, it is intended to provide the Committee with a very broad overview--an introduction to the responsibilities and functions of the Kansas Corporation Commission and the current structure and organization designed to carry out its mission. The Commission's responsibilities are very broad, diverse, and complex. Additionally, regulatory authority over utilities has evolved into an overlapping and often confusing maze of authority and jurisdiction.

Responsibilities

The KCC is, like most regulatory agencies, something of a hybrid in state government. The Commission fulfills a combination of legislative, executive, and judicial functions. In the broadest sense, the KCC is vested with authority to regulate the economic discretion of individuals and businesses where it has been determined that the enterprise affects the public interest. The Commission has the power to prescribe or prohibit activity in a given situation, to determine whether the law has been violated in discrete cases, to institute proceedings against violators and even impose sanctions in certain circumstances. The services regulated by the KCC include electric, gas, telephone, water and transportation companies and the issuance of certain securities by public utilities. Additionally, the KCC regulates oil and gas prorationing and has co-responsibility for the protection of ground water.

The State's objective with respect to regulation of public utilities and common carriers is the same as all the other state and federal regulatory bodies--to see that the public interest is served by the rendering of sufficient, non-discriminatory service at such prices as will be fair, equitable and reasonable to the customer, yet allow the enterprise such a return on investment as will be adequate. This same standard applies to the regulation of common carriers and

motor carriers. In regard to the regulation of the production of oil and gas and the protection of fresh and usable water, the state objective is to conserve these precious natural resources and to protect correlative rights.

Structure and Organization

The Kansas Corporation Commission is composed of three members. The Commissioners are appointed by the Governor with the advice and consent of the state senate. Kansas law provides for staggered terms of four years. No more than two of the three commissioners may belong to the same political party. The activities of the commissioners during their term of office are subject to statutory restriction. Kansas law provides that the commissioners shall choose one of their colleagues as Chairperson; however, by custom, the Governor indicates his/her choice, which is usually ratified by the majority.

Like most state regulatory bodies, the KCC is financed through fees and assessments--no state general fund revenues are involved. The Commission is financed through two types of assessment: a general assessment and a special assessment. Under the special assessment scheme, the costs of regulation are assessed against those companies whose rates, practices or policies the commission investigates at a particular time. Those expenses that are not covered by special assessment are apportioned quarterly under the general assessment principle. The Commission's approved Fiscal Year 1991 budget totals approximately \$13.5 million.

The Commissioners are assisted in their responsibilities by a staff of 235 employees. The Commission's functions are carried out under four separate divisions: Administrative Services/Legal, Utilities, Transportation, and Conservation. The first three divisions are located in Topeka, while the Conservation Division is located in Wichita and is supported by four district offices. Organizational charts are attached.

Administrative Services/Legal Division

The Chairman and Commissioners determine regulatory policy. The Executive Director is responsible for accurately reflecting this policy in carrying out the duties and responsibilities of the Administrative Services Division. The Executive Director supervises the preparation of the agency budget and directs the administrative services units, including accounting, personnel, docketing, and support services. The Legal staff acts as legal advisor to the Commission and to each of the regulatory divisions of the Commission on legal matters pertaining to regulatory duties and mandates prescribed by statute. In addition, the legal staff is mandated by statute to represent the public generally on all complaints and applications before the Commission and various federal and sister state commissions and administrative agencies. The legal staff represents the Commission in federal and state courts, and the various federal regulatory bodies, such as the Federal Energy Regulatory Commission, the Interstate Commerce Commission, and the Federal Communications Commission. Finally, the legal section prepares and assists the Commission in drafting orders and memorandum opinions in regard to matters decided by and pending before the Commission.

Utilities Division

The Utilities Division has staff responsibility for administration of the public utility law, rules, regulations, and policies of the KCC governing utility companies rendering electric, gas, telephone, and water service. In general, utility companies are subject to Commission jurisdiction with respect to:

- (1) the territory in which they are certificated to operate,
- (2) the rates they charge for service,
- (3) the type and quality of service rendered,
- (4) the issuance of indebtedness and other securities for the obtaining of capital,
- (5) accounting procedures and reports which must be filed with the Commission, and
- (6) safety regulations and standards of construction.

Because public utilities are generally given the exclusive right to operate in their service territory and are not usually subject to the pricing constraints of competition, the law provides that their rates shall be regulated. Kansas statutes requires that the Commission not be arbitrary in fixing utility rates. The Commission is required to grant to the utility company rates which will enable it to recover its legitimate expenses and an opportunity to earn a reasonable return on the investment it has made to provide service to the public. The purpose of Commission rate hearings is to place before the Commission evidence relating to reasonable operating revenues and expenses of the company, the appropriate rate of return on the investment of the company, and rate schedules that will permit the utility an opportunity to recover its revenue requirements in a nondiscriminatory manner.

The utility companies are given the opportunity to earn an appropriate level of return through the schedule of rates charged to the consumer. That appropriate level of return has been construed by the courts to be what is earned by other businesses having comparable risks, and which is sufficient to permit the utility to be financially viable.

The Utilities Division is organized by major work programs: accounting, economic policy, engineering, and natural gas pipeline safety regulation. These sections provide the Commission with timely, accurate and appropriate information and recommendations, either in response to rate requests or other filings or as a result of investigations or reviews of utility operations. Utilities Division staff analyze these applications to determine whether the utility's reported rate base, expenses, and revenue projections are accurate and reasonable or whether, in their judgment, adjustments should be made. If the staff takes issue with the information provided in the application, the request must be suspended pending a formal hearing. Failure to suspend an application within thirty days is deemed approval of the entire amount requested. If the application is suspended, the Commission must render a final decision within 240 days of the filing date. Failure to do so is likewise deemed approval and the entire amount of the request becomes effective. Should the matter go to hearing, the applicant must be prepared to establish, by appropriate schedules and competent testimony, all relevant facts and data pertaining to its business and operations which will assist the Commission in arriving at a determination of rates that are fair, just, and reasonable both to the utility and the public. KCC staff members prepare written testimony in which the staff position and recommendations to the Commission are presented and explained in detail. Procedures exist for the appeal of Commission decisions.

The pipeline safety section enforces the Kansas Natural Gas Pipeline Safety Regulations as enacted by the Commission. The Commission, in enforcement of the Federal Pipeline Safety Regulations is acting as an agent of the U.S. Department of Transportation's Office of Pipeline Safety, under Section 5(a) of the Natural Gas Pipeline Safety Act of 1968. The State has been divided into three areas for inspection purposes: inspectors work out of offices in Topeka, Wichita, and Johnson County. Pipeline safety operations include: (1) annual inspections which consist of a records check and field verification, (2) the inspection of major construction projects, (3) response to incidents which require investigation, (4) training of operators, (5) review of changes in federal rules and regulations, development of new state regulations, and/or modification to existing state rules and regulations, (6) liaison responsibilities with Federal Department of Transportation, Office of Pipeline Safety, and (8) public awareness programs.

Energy Programs Section

While technically a section of the Administrative Services Division, this section is set out separately because of its unique responsibilities and its relationship with the Utilities Division. The Energy Programs Section administers federally and state funded energy conservation programs that promote the efficient use of energy throughout Kansas. This section is funded through federal grant monies, oil-overcharge restitution monies, and public service regulation assessments.

Some of its earliest responsibilities were carried out by staff of the Utilities Division. In 1983, additional responsibilities were added when the former Kansas Energy Office was abolished and all duties of that office transferred to the KCC. With federal funds declining and oil overcharge restitution monies nearly exhausted, the responsibilities of this section are changing and are aligning again more closely with the Utilities Division.

The section is authorized eight positions, five of which are currently filled. The Commission has "downsized" this unit through attrition in recognition of the changes in its scope of operations. This staff of five professionals administers a variety of energy conservation programs and monitor the performance of others which are financed with funds that come to this unit for distribution. For example, as part of the State Energy Conservation Program, rideshare programs and transportation coordination services are financed (in part) in Wichita, the Kansas City metropolitan area, and the Liberal-Garden City-Dodge City area. Additionally, the Kansas Rural Water Association is conducting energy use audits and leak detection audits for municipal water supply systems and rural water districts. The Soil Conservation Office in Chanute is demonstrating the use and advantages of no-till and ridge-till seed bed preparation and planting practices in the nine counties in southeast Kansas; these demonstrations are held on participating farmers' fields. The Kansas Geological Society and the Tertiary Oil Recovery Project is doing field analysis of the Zenith oil field near Hutchinson.

This unit also supervises a program that requires electric and natural gas utilities to inform their residential customers of the benefits of certain energy conservation and renewable resource measures and to offer their customers energy audits of their homes. The Institutional Conservation Program is administered by this unit and is designed to assist public or non-profit schools and hospitals in obtaining technical energy audits, in identifying and implementing energy conserving maintenance and operating procedures, and in evaluating, acquiring and

installing energy conservation measures to reduce energy usage and anticipated energy costs.

Kansas is one of five states in which the federal and other energy conservation functions are provided by the public service commission. From a number of sources, it is apparent that other states will be moving to increase coordination of energy conservation policies with the regulation of public utility companies and to reduce expenditures by eliminating possible duplication of overlapping of functions. To this end, the Commission seeks to coordinate the efforts of the Energy Programs Section with those of the Utilities Division. A prime example is the incorporation of conservation and load management options into utility supply planning. In addition, utilities are increasing their investment in end-use energy efficiency, incorporating many of the programs that have been developed in federal energy conservation programs.

Conservation Division

The Conservation Division, headquartered in Wichita, is charged with the responsibility of regulating the oil and gas industry. The oil and gas activities of the Conservation Division were first enacted by the Kansas Legislature in 1931. These responsibilities included prevention of waste and protection of all fresh and usable water. Current responsibilities are broader; specifically, K.S.A. 74-623 provides that the Commission's jurisdiction includes "all practices involved in the exploration for and gathering of oil and gas and the drilling, production, lease storage, treatment, abandonment and post-abandonment of oil and gas wells..." In addition, the Commission exercises cooperative jurisdiction with the Kansas Department of Health and Environment (KDHE) with respect to the prevention and cleanup of pollution from oil and gas activities.

The Conservation Division has responsibility for enforcing rules and regulations pertaining to the conservation of crude oil and natural gas, protection of fresh and usable water, protection of correlative rights, and prevention of unreasonable discrimination in favor of one common source of supply or one operator as against another. It is also responsible for well classification under the Federal Natural Gas Policy Act of 1978 (NGPA). The Conservation Division has an active role in the 10- member oil and gas advisory committee established pursuant to K.S.A. 55-153. In addition to making recommendations on rules and regulations, this committee studies issues relative to the protection of fresh and usable water. The advisory committee has subcommittees updating surface pipe setting requirements, reviewing injection depth requirements, evaluating current cementing and plugging requirements, and assessing specific environmental problems related to construction of surface ponds and past pollution from oil field activities.

The Conservation Division consists of three operating departments and administrative support. The operating departments are: legal services, technical services, and field services. The Technical Services Department is further divided into an environment section and a production section. The environment section was organized in order to better address the increased emphasis on environmental coordination and surface pond standards and regulations. The production section consists of three units: oil and gas proration, well evaluation, and library services. The production section is responsible for issues relating to the producing life of a well from its drilling through abandonment and plugging. Finally, it is the responsibility of the Field Services Department staff to provide first line enforcement of the Commission's regulations. This enforcement and supervision is conducted by Petroleum Industry Regulatory Technicians

(PIRTS) located in four district offices: Chanute, Hays, Wichita, and Dodge City. The field staff also serves to educate the oil and gas industry with respect to the Commission's rules and regulations and to provide technical assistance to the industry.

Transportation Division

The KCC has regulatory jurisdiction over transportation systems operating in Kansas. These systems include motor carriers of property and persons (common, contract, and private) railroads, and liquid pipelines. The Transportation Division is responsible for implementing and administering related regulations and policies adopted by the Commission for the above modes of regulated transportation in the state. The Transportation Division assists the Commission in carrying out its responsibilities by: (1) processing motor carrier applications for new operating authority, transfer, extensions, consolidation and discontinuances of service, (2) registering motor carrier equipment, (3) processing formal and informal rate requests, (4) reviewing required annual accounting reports filed by railroads and motor carriers, and (5) conducting investigations and administering the safety programs related to the railroads and motor carriers engaged in the transportation of persons and property in the State.

The Division consists of two operating programs and a support staff. The operating programs are: the motor carrier section and the rate, safety and service section. The motor carrier section is responsible for processing motor carrier applications for authority, registering cargo/liability insurance and issuing tags and decals for carrier equipment. The rate, safety and service section is responsible for investigation of rate requests, annual reports, tariffs and rate and service complaints of motor carriers, railroads, and pipelines. The safety and service section inspects railroad track and equipment and investigates rail abandonments, accidents, and dangerous grade crossings. Additionally, the safety section conducts inspections of equipment, investigates service complaints and bus abandonment petitions and performs carrier audits.

