

Approved April 1, 1991
Date

MINUTES OF THE Senate COMMITTEE ON Governmental Organization

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

1:35 ~~xxx~~/p.m. on March 25, 1991 in room 531-N of the Capitol.

~~1~~ members ~~present~~: Senators Oleen, Bogina, Doyen, Francisco, Kanan,
Strick and Vidricksen.

Committee staff present:

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

Conferees appearing before the committee:

Representative Cindy Empson, House of Representatives
Lt. William Jacobs, Kansas Highway Patrol
William Riggins, Citizens' Utility Ratepayers Board
Dr. Stacy Ollar, Jr., Citizens' Utility Ratepayers Board
Floyd West, American Association of Retired Persons
Rev. Ronald Roschke, Manhattan, Kansas

The meeting of the Senate Committee on Governmental Organization was called to order at 1:35 p.m. by the Chairman, Senator Lana Oleen.

Chairman Oleen opened the hearing on HB 2159.

House Bill 2159 - Highway patrol, allowing other employment.

Representative Cindy Empson, sponsor of HB 2159, told the Committee that this bill deletes the 1937 statutory provision that no member of the Highway Patrol may accept any other employment while a member of the Patrol. She pointed out that, to her knowledge, Kansas has no other state agencies that statutorily prohibit their employees from holding a second job. Representative Empson noted that the bill was amended in the House Governmental Organization Committee to prohibit employment in any alcohol-related industry, racing industry or any outside employment that requires the use of state-owned equipment or wearing the Patrol uniform. She urged favorable consideration of the bill. (Attachment 1)

A member of the Committee questioned the lack of a definition of state-owned equipment in the amendment to HB 2159 prohibiting a member of the Patrol from accepting employment if it involves the use of any such equipment. He pointed out that this could prohibit a person from a job such as working in a forensics laboratory which contains state-owned equipment. Lieutenant William Jacobs, Kansas Highway Patrol, stated that the intent of the bill was to prohibit the use of state-owned equipment in a second job which is furnished by the Patrol. Representative Empson suggested that this point may need to be clarified in the bill.

The Chairman called for testimony on HB 2439.

House Bill 2439 - Citizens' utility ratepayers board, membership, budgeting, management, finance of operations.

Chairman Oleen called on staff to explain HB 2439. Staff said that the bill expands the Citizens' Utility Ratepayers Board (CURB) from five to eight members, with at least one member to be appointed by the Governor from each Congressional District. It further provides for CURB to be separated from the State Corporation Commission for purposes of budgeting, purchasing and management, provides that financing for CURB shall be from assessments against utility companies that are collected through rates from consumers and deletes the provision in current law that CURB will terminate July 1, 1991.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Governmental Organization

room 531-N, Statehouse, at 1:35 ~~am~~/p.m. on March 25, 1991

The first conferee in support of HB 2439 was William Riggins, Consumer Counsel for the State of Kansas, who represents the Citizens' Utility Ratepayers Board (CURB) in public utility matters. Mr. Riggins began his testimony by noting that he has provided the Committee with two items which were requested during CURB's February 12, 1991, hearing before the Committee. The first item is an excerpt from a Kansas Supreme Court decision which, he said, clearly indicates that the Kansas Corporation Commission's (KCC) constitutional duty in the regulatory process is to balance the interests of all affected parties -- to act as a judge, not an advocate. He stated that the second item is a booklet, which was delivered to each Committee member's office, that documents the savings CURB achieved for Kansas consumers during FY 1989 and FY 1990. He pointed out that in six major cases during that time period adjustments proposed solely by CURB which were adopted by the KCC totaled about \$18.5 million.

Mr. Riggins discussed the provisions of HB 2439 and pointed out the necessity of increasing the board's membership from five (one from each Congressional District) to eight in view of the fact that if the number is not increased, problems will develop next year when the number of Kansas Congressional Districts decreases to four. He also discussed Section 2 of the bill which contains two clarifications to existing statutes, the first which specifies that CURB, not the KCC, shall administer CURB's budget and related financial matters and the second which specifies that CURB should continue to be funded by assessment. (Attachment 2)

The second conferee in support of HB 2439 was the chairperson of CURB, Dr. Stacy Ollar, Jr. Dr. Ollar discussed the many opportunities he has had as a member of CURB to share with various organizations and groups information concerning CURB's role of representing residential and small commercial ratepayers. He observed that without exception he has received positive and favorable response and that the people were glad to know someone in government was taking seriously the responsibility of looking after the welfare of the people. Dr. Ollar stated that when CURB came into existence, it enabled ratepayers to have a voice in the technical hearings that they had not had before. He urged the Committee to vote favorably for HB 2439 so that the residential and small commercial ratepayers can be fairly represented before the KCC in rate cases which directly affect their pocketbooks. (Attachment 3)

Floyd West, member of the State Legislative Committee for the American Association of Retired Persons (AARP), testified in support of HB 2439 and noted that while AARP was a strong supporter of the original legislation which established CURB, its enthusiasm for CURB is even stronger today. He expressed support for the provisions in HB 2439 concerning expansion of the Board and said that the other administrative changes specified in the bill appear to be reasonable and appropriate. In conclusion, Mr. West urged the Committee to amend the bill in Section 1 to allow the addition of a second attorney to CURB's staff as consumer counsel. (Attachment 4)

The final conferee in support of HB 2439 was Pastor Ron Roschke, Pastor of Peace Lutheran Church in Manhattan, Kansas. Pastor Roschke described his congregation's, as well as several other churches in Manhattan, interaction with CURB concerning KP&L's peak use demand fee and noted that it illustrates the value of CURB. He said that in the three months since he began to work with CURB, the Manhattan churches have made major strides towards resolving their problems. He told the Committee that they are working along with CURB and KP&L to create a twelve month experiment with one hundred churches in the KP&L service area to try out an alternative rate structure. Pastor Roschke pointed out that CURB is serving as an important liaison between churches in different parts of the state and is serving as a catalyst to bring utility ratepayers and utility representatives together to jointly and creatively address problems. (Attachment 5)

Chairman Oleen announced that HB 2439 would be assigned to a sub-committee for further study. The sub-committee, which is also studying SB 114, will meet Tuesday, March 26, 1991, at 1:00 p.m.

House Bill 2473 - Abolishing the office of legislative counsel.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Governmental Organization,

room 531-N, Statehouse, at 1:35 ~~xxx~~/p.m. on March 25, 1991.

Staff said that HB 2473 would abolish the office of Legislative Counsel in the statutes. He noted that funding for that office has been deleted from the Legislature's budget in HB 2044. Some Committee members expressed concern over removing the provision for the office from the statutes.

The Chairman called the attention of the Committee to HB 2214.

House Bill 2214 - Chairperson of House committee on interstate cooperation.

The Committee discussed HB 2214. Chairman Oleen observed that presently the President of the Senate has the statutory authority to designate someone to take his place on the Interstate Cooperation Committee. House Bill 2214, she noted, would extend that authority to the Speaker of the House of Representatives.

Senator Strick moved that HB 2214 be amended to require that both the President of the Senate and the Speaker of the House of Representatives serve on the Interstate Cooperation Committee instead of allowing them to designate someone to serve in their place and that the bill be further amended to provide that it become effective upon publication in the statute books. Senator Bogina seconded the motion. The motion carried.

Chairman Oleen announced that HB 2214 would be held for discussion at a future Committee meeting.

The meeting was adjourned by the Chairman at 2:30 p.m.

GUEST LIST

COMMITTEE: SENATE GOVERNMENTAL ORGANIZATION

DATE March 25, 1991

| NAME | COMPANY / ORGANIZATION | ADDRESS |
|-----------------|------------------------|---------------|
| George Goebel | AARP-SLC-CCTF | Topeka |
| Alloyd Must | AARP SLC | Chanute |
| LINDA MCGILL | KSTA | TOPEKA |
| Beth Runnelbaum | CURB | Topeka |
| Hanna J. Keel | curb | Topeka |
| Bill Higgins | CURB | Topeka |
| Dan Haas | KCPK | Overland Park |
| Stacy Ollonji | CURB | Shawnee |

STATE OF KANSAS



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: FEDERAL AND STATE AFFAIRS
EDUCATION
LEGISLATIVE EDUCATIONAL
PLANNING COMMITTEE

CINDY EMPSON
REPRESENTATIVE, TWELFTH DISTRICT
MONTGOMERY COUNTY
HOME ADDRESS: P.O. BOX 848
INDEPENDENCE, KANSAS 67301
TOPEKA OFFICE: STATEHOUSE, RM. 182-W
TOPEKA, KANSAS 66612

TO: GOVERNMENTAL ORGANIZATION COMMITTEE
FROM: CINDY EMPSON
RE: H. B. 2159
DATE: March 25, 1991

Madam Chairperson and members of the Committee, thank you for the opportunity to appear before you in support of H. B. 2159.

This bill deletes the statutory provision that no member of the Patrol may accept any other employment while a member of the Patrol. This provision has been in the statutes since the Patrol was created in 1937. To my knowledge, we have no other state agencies that prohibit, by statute, their employees from holding a second job.

This bill was amended in the House Governmental Organization Committee to prohibit employment in any alcohol related industry, racing industry, or any outside employment that requires the use of state-owned equipment or wearing the Patrol uniform.

I have found within the Patrol a high degree of pride for their position and for their agency, which is often lacking or less visible in other agencies of state government. I respect this commitment and believe this bill could enhance the state's ability to retain those persons who might otherwise be forced to seek employment elsewhere solely for financial reasons. I have attached a copy of the fiscal note which was prepared for H. B. 2159 and call the Committee's attention to the last paragraph.

Senate Committee on Governmental Organization
Attachment 1
3-25-91

I firmly believe the Patrol should be afforded the same opportunity to seek outside employment, when necessary, that other state employees currently have. H.B. 2159 gives them that opportunity and I ask for your favorable consideration of this bill.

STATE OF KANSAS

182-00



DIVISION OF THE BUDGET

Room 152-E
State Capitol Building
Topeka, Kansas 66612-1578

JOAN FINNEY, GOVERNOR
Gary Stotts, Acting Director

(913) 296-2436
FAX (913) 296-0231

February 15, 1991

The Honorable Gary Blumenthal, Chairperson
Committee on Governmental Organization
House of Representatives
Third Floor, Statehouse

Dear Representative Blumenthal:

SUBJECT: Fiscal Note for HB 2159 by Representative Empson

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2159 is respectfully submitted to your committee.

HB 2159 amends KSA 74-2113 regarding the qualifications required to be appointed a trooper and the section prohibiting members of the patrol from accepting employment in addition to employment with the Patrol. KSA 74-2113 requires that no person shall be appointed a member of the Patrol unless that person is of good moral character. HB 2159 deletes this requirement. KSA 71-2113 prohibits any member of the Patrol from accepting any other employment (other than with the armed forces reserves or Kansas National Guard) while a member of the Patrol. The bill would remove the clause which currently prohibits other employment.

The bill could have a slight fiscal impact on the Kansas Highway Patrol. It is conceivable that, by allowing members of the Patrol to accept other employment, members may have increased job satisfaction and be less likely to resign. This could potentially lower training costs for the agency.

Sincerely,

Handwritten signature of Louis Chabira in cursive.
Louis Chabira
Deputy Director

cc: Col. Bert Cantwell, Highway Patrol

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N – Statehouse

Phone 296-3181

February 25, 1991

TO: Representative Cindy Empson

Office No. 182-W

**RE: State Job Classifications that are Statutorily Prohibited from
Accepting Outside Employment**

You requested the Research Department to inquire as to whether there are state job classifications which are statutorily prohibited from accepting employment in addition to state employment. I contacted the Revisor of Statutes and the Division of Personnel Services and it appears that members of the Highway Patrol are the only category of employees statutorily prohibited from accepting additional employment. I contacted the Kansas Bureau of Investigation (KBI) to ask about the Bureau's policy regarding KBI agents. According to Steve Starr, Deputy Director, the KBI has an internal policy prohibiting additional employment outside the KBI.

Please call me if I can be of further assistance.



Diane Duffy
Senior Fiscal Analyst

DD/aem

TESTIMONY OF WILLIAM G. RIGGINS

BEFORE THE

SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

March 25, 1991

As all of you know, I am Consumer Counsel for the State of Kansas, and I represent the Citizens' Utility Ratepayers Board (CURB) in public utility matters. As you also are aware, I am CURB's sole attorney, and that is the reason that I am unable to attend this hearing. Instead, I am participating in the first day of hearings regarding the proposed merger between KPL and KGE.

I presented testimony to this Committee on February 12 that provided an overview of, an explanation of, and the history of CURB. My purpose today is to explain the specific amendments that HB 2439 would make in existing statutes.

First, however, I would note that we have provided the Committee with two items in response to questions raised during the February 12 hearing. The first item is an excerpt from a Kansas Supreme Court opinion. This excerpt describes the role of the Kansas Corporation Commission (KCC) in the regulatory process. It clearly indicates that the KCC's constitutional duty is to balance the interests of all affected parties - - to act as a judge, not an advocate. The second item is a booklet that documents the savings we achieved for consumers during FY 89 and FY 90. As you can see, these savings were the result of KCC-adopted adjustments proposed solely by CURB. If CURB had not been involved in these cases and proposed those adjustments, there would have been no evidence to support these savings, and they would not have occurred.

Senate Governmental Organization Committee
3-25-91
Attachment 2

As for the bill before you today, if HB 2439 is not passed, CURB will cease to exist as of July 1 of this year. In addition to extending CURB's life, the bill would make one substantive change and two clarifications to existing statutes.

The substantive change consists of increasing the number of CURB members from five to eight. The current statute specifies that there will be five members -- one from each congressional district. If this provision is not changed, problems will develop next year when the number of Kansas congressional districts decreases to four. It is very difficult for a single volunteer board member to adequately cover an entire congressional district. The problem will be exacerbated next year when those districts become even larger. We estimate that increasing the number of members from five to eight will cost less than \$2,400 a year, and we believe we can absorb this increase within existing budget constraints.

The other two changes to existing statutes proposed by HB 2439 are clarifications. These clarifications will not cost any money. They are important, however. These clarifications are set forth in Section 2 of the bill.

The first clarification specifies that the Board -- not the KCC -- shall administer CURB's budget and related financial affairs. CURB must have autonomy from the KCC to fulfill its duty of protecting ratepayer interests. Since the original CURB bill was enacted two years ago, management of the CURB budget has rested with the Board. However, the CURB budget itself is still a part of

the KCC's budget. That means that, when the budget process begins each year, it is the KCC -- not the Division of Budget, that sets CURB's budget allotments. Given that we routinely are in an adversarial relationship with the KCC, the potential threat this poses to our autonomy is obvious.

The second clarification specifies that CURB should continue to be funded by assessment. In my February 12 testimony, I explained why assessment is the fairest way to fund CURB. However, current statutes do not specify that we are to be funded in that manner. On that basis, several utilities have threatened to legally challenge assessments against them. One utility actually took the initial steps to do so. It withdrew its legal challenge when we agreed to seek this clarification from the Legislature this year. Therefore, Sections 3 and 4 simply add CURB to the existing assessment mechanism for the KCC.

I appreciate your consideration of my comments.

 Kansas Gas & Electric Co. v. Kansas Corporation Comm'n

No. 58,914

KANSAS GAS AND ELECTRIC COMPANY, *Applicant/Appellant*, v. STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, *Respondent/Appellee*.

No. 58,917

KANSAS CITY POWER & LIGHT COMPANY, *Applicant/Appellant*, v. STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, *Respondent/Appellee*.

No. 58,918

KANSAS ELECTRIC POWER COOPERATIVE, INC., *Applicant/Appellant*, v. STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, *Respondent/Appellee*.

(720 P.2d 1063)

SYLLABUS BY THE COURT

1. KANSAS CORPORATION COMMISSION—*Nuclear Power Plant—Valuation of Property for Rate-making Purposes—KCC Determination*. The record is examined in three consolidated appeals from orders of the Kansas Corporation Commission determining the valuation of the Wolf Creek nuclear generating facility for rate-making purposes and it is held that the KCC did not err in excluding from the rate base (1) certain costs of construction found to have been imprudently incurred, (2) certain costs found to constitute excess physical capacity, and (3) certain costs found to constitute excess economic capacity.
2. SAME—*Electrical Utilities—Rates—KCC Determination*. The Kansas Corporation Commission, in setting the rates for an electrical utility, should have as its goal the fixing of the rates, within a zone of reasonableness, after balancing the interests of the utility's investors, the ratepayers, and the public.
3. SAME—*Public Utilities—Rates—No Constitutional Requirement that Rates Be Set at Level that Will Guarantee Return on Capital Investment*. There is no constitutional requirement that a utility's rates be set by a regulatory authority at a sufficiently high level to guarantee a return on its capital investments, irrespective of the interests of the ratepayers and the public.
4. SAME—*Nuclear Power Plant—Statutory Authority of KCC to Set Rates*. The Kansas statutes which give the power and authority to the Kansas Corporation Commission to fix the rates for a public utility (K.S.A. 66-101 *et seq.*) are analyzed and discussed in relation to the Wolf Creek nuclear generating facility.
5. PUBLIC UTILITIES—*Statutory Authority for KCC Determination of Valuation of Property for Rate-making Purposes—Constitutionality of Statutes*. K.S.A. 66-128 *et seq.*, are not unconstitutional because of vagueness or as an unlawful delegation of legislative authority.
6. KANSAS CORPORATION COMMISSION—*Public Utilities—Valuation of Property for Rate-making Purposes—KCC Determination*. The Kansas Cor-

plant approached, the three utilities involved in this case filed petitions with the KCC requesting the granting of appropriate electrical rates for the electricity to be produced. At this same time, regulatory agencies in other states were faced with the same or similar problems. In some states, state regulatory agencies had to determine whether the costs of an abandoned nuclear plant should be included in an electrical utility's rate base. Where a nuclear plant had been completed and placed in operation, the state regulatory agency had the problem of determining whether the inflated construction costs of a nuclear facility had to be included in the rate base in a manner which would financially hurt the ratepayers, the consumers, and the general public. It is this same basic problem which was faced by the KCC in the case now before us.

Constitutional and Legal Principles Applicable
in Rate-making Decisions.

Before turning to the specific issues raised in this case, it would be helpful to discuss some of the general constitutional and legal principles applicable to rate-making decisions by state regulatory agencies. An important question to be considered is what a regulatory agency should seek to accomplish in such a case. The leading cases in this area clearly indicate that the goal should be a rate fixed within the "zone of reasonableness" after the application of a balancing test in which the interests of all concerned parties are considered. In rate-making cases, the parties whose interests must be considered and balanced are these:

- (1) The utility's investors vs. the ratepayers;
- (2) the present ratepayers vs. the future ratepayers; and
- (3) the public interest.

The leading case in this area which has been followed by various state regulatory agencies is *Power Comm'n v. Hope Gas Co.*, 320 U.S. 591, 88 L. Ed. 333, 64 S. Ct. 281 (1944). The issue presented in *Hope* was whether there was a requirement of constitutional dimension that utility rates set by regulatory authorities be set at sufficiently high levels to *guarantee*, irrespective of countervailing consumer interests, the continued financial integrity of the utilities concerned. Stated in another way, is a public utility entitled in every case to a reasonable return on its capital investments as a matter of law without regard to the interests of

s involved in this case filed the granting of appropriate be produced. At this same states were faced with the tates, state regulatory agen- sts of an abandoned nuclear lectrical utility's rate base. pleted and placed in opera- the problem of determining sts of a nuclear facility had to ner which would financially and the general public. It is faced by the KCC in the case

Principles Applicable Decisions.

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- future ratepayers; and

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the ratepayers and consumers? In *Hope*, the United States Supreme Court addressed the considerations to be taken into account by the Federal Power Commission in setting "just and reasonable" rates for natural gas companies, as required by § 4(a) of the Natural Gas Act of 1938, 15 U.S.C. § 717 (1982). In applying the standard requiring "just and reasonable" rates, the *Hope* court emphasized that the focus of inquiry is properly upon the end result or "total effect" of the rate order, rather than upon the rate-setting method employed. The court described the rate-setting process as a balancing process involving the weighing of certain enumerated interests of the consumer and of the investor. The court stated that the rate-making process involves a balancing of the investor and the consumer interests, and that public utility regulation does not insure that the business shall produce net revenues.

The decision in *Hope* was followed by *Permian Basin Area Rate Cases*, 390 U.S. 747, 770, 20 L. Ed. 2d 312, 88 S. Ct. 1344, *reh. denied* 392 U.S. 917 (1968), which held that the "just and reasonable" standard of the Natural Gas Act coincides with the applicable constitutional standards and any rate selected by a regulatory commission within the "broad zone of reasonableness" cannot properly be attacked as confiscatory.

There is an excellent discussion of these cases in *Pennsylvania Elec. v. Pennsylvania Pub. Util.*, _____ Pa. _____, 502 A.2d 130 (1985), where the Supreme Court of Pennsylvania had before it an appeal in an electrical utility rate case involving a nuclear generating plant which had been so severely damaged as to render it no longer useful in the public service. The question was whether the costs associated with the damaged nuclear plant should be removed from the rate base of the utilities. The court concluded that the Pennsylvania commission was not precluded from eliminating from the utility's rate base all costs associated with the unit of the nuclear power plant involved in a near meltdown or in determining that another unit which had previously been shut down for refueling and which remained shut down by order of NRC likewise was no longer useful in public service because its return to service was not imminent or certain. The court held that the decisions of the United States Supreme Court in *Hope* and *Permian Basin Area Rate Cases* did not establish, as a constitutional requirement, that the end result of a

Kansas Gas & Electric Co. v. Kansas Corporation Comm'n

rate-making body's adjudication must be the setting of rates at a level that will, in any given case, guarantee the continued financial integrity of the utility. Rather, *Hope* requires only that the regulatory authority balance competing consumer and investor interests to determine just and reasonable rates providing a return on used and useful property.

The Pennsylvania Supreme Court noted *In re: Jersey Central Power & Light Co.*, No. A-162-81T2 (July 28, 1983), *cert. den.* 95 N.J. 217, 470 A.2d 433 (1983), which involved similar facts and where a similar result was reached. An appeal was taken to the United States Supreme Court which was subsequently dismissed for want of a substantial federal question. *Jersey Central Power & Light Co. v. Board of Public Utilities of New Jersey*, 466 U.S. 947, 80 L. Ed. 2d 533, 104 S. Ct. 2146 (1984).

This balancing concept is supported by other federal court decisions. In *Smyth v. Ames*, 169 U.S. 466, 544, 42 L. Ed. 819, 18 S. Ct. 418 (1898), the Supreme Court stated that it cannot be admitted that a railroad corporation maintaining a railroad under the authority of the state may fix its rates with a view solely to its own interests, and ignore the rights of the public. *Washington Gas Light Co. v. Baker*, 188 F.2d 11, 19 (D.C. Cir. 1950), holds that the valuation included in the rate base must meet the test of justness and reasonableness to the consumer as well as to the investor. In *FPC v. Memphis Light, Gas & Water Div.*, 411 U.S. 458, 474, 36 L. Ed. 2d 426, 93 S. Ct. 1723 (1973), the Supreme Court expressly recognized that rates cannot be determined just and reasonable unless consumer interests are protected. In addition, a number of state courts have held that utility rates must not be set so high as to constitute an unreasonable burden on the ratepayers. *State, Ex. Rel. Allain v. Miss. Public Serv. Com'n.*, 435 So. 2d 608, 624 (Miss. 1983); *New England Tel. & Tel. Co. v. Public Utilities*, 390 A.2d 8, 30 (Me. 1978); *Central Me. Power Co. v. P. U. C.*, 150 Me. 257, 278, 109 A.2d 512 (1954).

The Supreme Court of Kansas has likewise recognized and applied the "zone of reasonableness" concept in *Southwestern Bell Tel. Co. v. State Corporation Commission*, 192 Kan. 39, 386 P.2d 515 (1963). Syllabus ¶ 17 states as follows:

— "There is an elusive range of reasonableness in calculating a fair rate of return. A court can only concern itself with the question as to whether a rate is so unreasonably low or so unreasonably high as to be unlawful. The in-between point, where the rate is most fair to the utility and its customers, is a matter for the State Corporation Commission's determination."

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The court noted *In re: Jersey Central* (July 28, 1983), *cert. den.* 95 which involved similar facts and. An appeal was taken to the which was subsequently dismissed. *Jersey Central* federal question. *Jersey Central* *Public Utilities of New Jersey*, 104 S. Ct. 2146 (1984).

supported by other federal court. S. 466, 544, 42 L. Ed. 819, 18. The court stated that it cannot be maintaining a railroad under rates with a view solely to its interests of the public. *Washington* 11, 19 (D.C. Cir. 1950), holds the base must meet the test of consumer as well as to the.

Gas & Water Div., 411 U.S. 1723 (1973), the Supreme cannot be determined just interests are protected. In addition held that utility rates must be unreasonable burden on the.

Miss. Public Serv. Com'n, *England Tel. & Tel. Co. v.* 1978); *Central Me. Power* 199 A.2d 512 (1954). likewise recognized and concept in *Southwestern* *Commission*, 192 Kan. 39, 386 as follows:

in calculating a fair rate of return. tion as to whether a rate is so be unlawful. The in-between its customers, is a matter for the

At page 58 of the opinion, the court recognizes the decision of the United States Supreme Court handed down in *Power Commission v. Hope Gas Co.*, 320 U.S. 591, which is discussed heretofore. See also *Midwest Gas Users Ass'n v. Kansas Corporation Commission*, 5 Kan. App. 2d 653, 659, 623 P.2d 924, *rev. denied* 229 Kan. 670 (1981). All of these cases clearly support the general principle that a state regulatory agency, in setting a rate for a public utility, must have as its goal a rate fixed within the "zone of reasonableness" after an application of a balancing test in which the interests of all concerned parties are considered.

Kansas Statutory Provisions Applicable to Rate-making Cases

Under the constitutional separation of powers doctrine, the regulation of public utilities is legislative in nature. The legislature created the Kansas Corporation Commission and granted it full and exclusive authority and jurisdiction to supervise, control, and regulate the public utilities of this state and, when acting in the exercise of its delegated powers, the Commission is not a quasi-judicial body. *Cities Service Gas Co. v. State Corporation Commission*, 201 Kan. 223, 440 P.2d 660 (1968); *Midwest Gas Users Ass'n v. Kansas Corporation Commission*, 5 Kan. App. 2d 653.

Thus, public utility rate making is a legislative function, whether it is regulated by an administrative body or by the legislature itself. Prior to 1984, the legislature empowered the KCC by broad, non-specific statutes to exercise the rate-making function. By K.S.A. 66-101, the State Corporation Commission was given the authority to supervise and control public utilities and was empowered to do all things necessary and convenient for the exercise of such authority. K.S.A. 66-141 (Weeks), now K.S.A. 66-101g, provided that the statutory provisions granting authority, power, and jurisdiction to the Commission shall be liberally construed. K.S.A. 66-107 (Weeks), now K.S.A. 66-101b, provided the KCC with authority to require a public utility to furnish reasonably efficient and sufficient service and to establish "just and reasonable" rates.

During the 1984 legislative session, the Kansas legislature was faced with the controversy over the Wolf Creek power plant. With estimates predicting that electric power bills would in-

Testimony of Dr. Stacy Ollar Jr., Chairperson
Citizens' Utility Ratepayers Board
before the
Senate Committee on Governmental Organization

Monday, March 25th, 1991

Senator Oleen, and Members of the Senate Committee on Governmental Organization, I appreciate this opportunity to appear before you this afternoon to testify on behalf of HB 2439 for the Re-Authorization of CURB. I represent the Third Congressional District which includes Leavenworth, Wyandotte, Johnson and portion of Miami Counties. Also, I am in my 15th year as the Pastor of the Bristol Hill United Methodist Church, 4826 County Line Road, Kansas City, Kansas. I live at 5421 Queal Drive, Shawnee.

As a minister, I have a lot of contacts across the State of Kansas, and with being elected Chairperson of CURB by my colleagues last July, 1990, I have received many invitations to speak to many Ministerial Alliances, local Church groups, civic and community organizations, and Chamber of Commerces. I am currently a member of the Governmental Affairs Committee of the KCK Chamber of Commerce and I have shared with them about the role and the function of CURB in terms representating residential and commerical ratepayers before the Kansas Corporation Commission. I have spoken before the Shawnee Chamber of Commerce in Johnson County, and in communities such as Chanute, Manhattan, Leavenworth, all across Kansas City, Kansas, and also before many civic organizations in Johnson County. On every occasion we have made it very clear to our audience about our role to represent residential and small commerical ratepayers and what it cost per ratehouse hold to fund our annual budget. Without an exception we have received positive and favorable response and the people were glad to know that someone in government was taking seriously the responsibility to look after the welfare of the people.

Prior to 1988, residential and small commerical ratepayers had no legal representation before the Kansas Corporation. The best that we as citizens could do would be to try

*Senate Committee on Governmental Organization
3-25-91
Attachment 3*

to get the public to come out to the Public Hearing conducted by the Kansas Corporation Commission.

When CURB came into existence and eventually given statutory existence, it enable the ratepayers to have a voice in the Technical Hearings that they had not had before. People have a stronger faith in government when they see the evidence that Government really cares and is working on their behalf to provide them with protection and representation.

HB 2439 provides for the continuation of CURB and enlarges our Board from the current 5 members to 8 members. Currently the Board consist of myself, representing the Third Congressional District. Mrs. Donna Kidd, representing the Second Congressional District and our Vice-Chairperson, Randal Loder, represents the First Congressional District, Dr. Lloyd Spaulding, represents the Fifth Congressional District and Linda Weir-Engren represents the Fourth Congressional District.

As you are aware some of these Districts are very large geographically and it is very difficult for one person to cover such a large territory. As our Consumer Counsel has pointed out in his presentation, the cost of these additional Board members is minimum and provides for additional volunteers an opportunity to participate in a very important work in state government. The enlarging of the Board will provide additional opportunities for the people of the State of Kansas to give of their time, talent and energies for the welfare of their fellow citizens.

Please vote favorably for HB 2439 in order for the residential and small commerical ratepayers to be fairly represented before the Kansas Corporation Commission in rate cases that directly affect their pocketbooks.



Bringing lifetimes of experience and leadership to serve all generations.

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TESTIMONY
for the
COMMITTEE ON GOVERNMENTAL ORGANIZATION
of the
SENATE
STATE OF KANSAS

March 25, 1991

re: House Bill 2439

By: Floyd West, Member
State Legislative Committee
Chairman Subcommittee on C.U.R.B.

Madam Chairperson and Members of the Committee:

My name is Floyd West, a member of the AARP State Legislative Committee. Thank you for this opportunity to testify on behalf of the AARP on House Bill 2439.

The AARP was a strong supporter of the original legislation which established the Citizens' Utility Ratepayers Board. Our enthusiasm for CURB is even stronger today, and we are fully convinced that it is one of the most rational and productive investments that the ratepayers of Kansas will ever make.

A change in membership of the Board is necessary because of the forthcoming change in the number of Kansas congressional districts. We believe that the expansion of the Board along the lines prescribed by HB 2439 is sound policy and will strengthen the Board. Other administrative changes specified in this bill appear to be reasonable and appropriate.

Senate Committee on Governmental Organization

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We are convinced that C.U.R.B., through the vigorous action of its members and its consumer counsel, has saved the citizens of Kansas millions of dollars. We are equally convinced that it could be even more effective with the addition of a second attorney as consumer counsel, and we strongly recommend that the bill be amended in Section 1. (e) (1) to authorize the Board to "Employ attorneys as consumer counsel." Such language would allow the Board to adjust its staff to the workload insofar as possible within the confines of its approved budget and appropriated funds.

I am sure all members of this committee are well aware that C.U.R.B. is not funded by general taxes; it is funded by the rate-payers whom it serves and whom it serves and who appreciate the very effective "watchdog" role which it fills. Thus, even in times of tight fiscal restraints such as those gripping Kansas this year, a carefully planned investment in C.U.R.B. is well justified as good management.

THANK YOU.

TESTIMONY ON HOUSE BILL 2439
SENATE GOVERNMENTAL ORGANIZATION COMMITTEE
25 MARCH 1991

Chairman Dleen and members of the committee:

My name is Ronald Roschke, and I reside at 3605 Brenda Court in Manhattan, Kansas. I am pastor of Peace Lutheran Church in Manhattan, and I am here today to speak in support of House Bill 2439, and to urge the legislature to continue to support the work of the Citizens' Utility Ratepayers Board. I think that the story of our congregation's interaction with CURB illustrates the value of this agency.

Three years ago, Peace congregation expanded its building, adding additional worship, classroom and administrative space. We knew at the time of this expansion that we would experience increases in our operating expenses, and indeed, that proved to be the case. However, this past summer I began to pay closer attention to our energy bills. I discovered that besides our regular charges for total kilowatt hours, we were also being charged a peak demand use fee. During the summer months, this additional fee was a significant percentage of our overall utility bill. I raised this issue with my church board to see if anyone at Peace knew more about it. We understood the rationale for a peak use fee. Our congregation tends to be ecologically aware; we know that KP&L needs not only to provide for the total kilowatts needed each month, but must provide those at the times in which customers demand them. We agree in principal that those who need

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energy at peak use hours ought to help bear the financial burden for that peak use demand.

But we also know that during the summer our congregation's peak use occurs outside of KP&L's peak demand. We have high energy needs from late Saturday night through Sunday morning, as we cool our sanctuary for worship.

Our Congregation Council decided to pursue the issue with Kansas Power and Light and also with several other Manhattan churches. From KP&L, I learned that the peak use fee was charged for the highest half hour of energy usage during the month, regardless of the time of day or day of week in which that peak occurred. From our partner congregations we discovered that like us they, too, were being charged peak demand fees. In a few cases, these charges actually approached the cost for total kilowatts used during the month. But even more important, none of those surveyed were aware of the rate structure or what their bills really meant.

As our Congregation Council continued to discuss this matter, we came to the conclusion that the current rate structure for congregations was unfair. I went back to a local KP&L representative and raised this issue with him. He saw some of the logic of my argument, but he informed me that the energy rate structure was set by the Kansas Corporation Commission and that

really our concern needed to be addressed to them.

It was at this point that I learned about the Citizens' Utility Ratepayers Board. They were referred to me from two independent sources. One source was my own state senator, Senator Oleen. The other source was from a Manhattan clergyman who happened to know CURB's chair, the Rev. Dr. Stacy Ollar. As soon as I contacted Dr. Ollar, I immediately learned several important facts. Indeed, it was true that KP&L's rate structure is determined by the Kansas Corporation Commission. But it was also true that there were alternatives to our rate structure. For example, I learned that some utilities in the state of Kansas provide time-of-day peak meters to churches and synagogues; these meters only measure peak demand during peak usage hours. I also learned that other churches around Kansas were concerned about this very issue. In the three months since I began to work with CURB, we have made major strides toward resolving this issue. Dr. Ollar was able to place our Manhattan group in contact with representatives from Leavenworth area churches. CURB further sponsored a meeting between our groups and KP&L officials. Together we are currently working ~~together~~ to create a twelve-month experiment with one hundred churches in the KP&L service area to try out an alternative rate structure using a time-of-day meter.

Several important facts emerge from this story. First, CURB

served as an important liaison between churches in different parts of the state. It provided essential information that was not available through local utility representatives. But even more impressive, it served as a catalyst to bring utility rate payers and utility representatives together to jointly and creatively address a problem. It empowered congregations which, in this case, are much like many small businesses and private consumers throughout the state--empowered them to articulate their concerns and express them in an arena in which they could make a difference. This is government at its best, doing what government ought to do!

I urge your committee, and the entire legislature, to continue to provide funding for this essential advocacy agency. Further, I urge you where possible to expand CURB board representation. CURB's effectiveness is directly proportional to its visibility with small businesses and private energy consumers. The structure of funding for CURB shares CURB costs through utility rate payers' own fees, and thus illustrates a fair pay-as-you-go model for supporting this advocacy program. All small utility users win by having CURB alive and well. Please give these important consumers a big break by endorsing House Bill 2439.