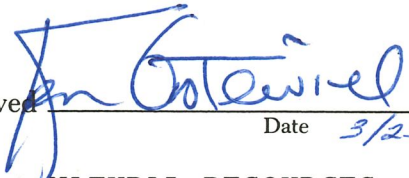


Approved



Date 3/23/92

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES

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

3:40 ~~am~~/p.m. on March 19, 1992 in room 526-S of the Capitol.

All members were present except:
Representative Krehbiel, excused

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

Conferees appearing before the committee:

Marshall Clark - Kansas Electric Cooperatives, Inc.
Carol Green - Clerk of the Appellate Courts
Randy Hearrell - Kansas Judicial Council
Alan Decker - Consumer Counsel, CURB

The Chair opened the hearing on SB 435.

SB 435 - An act concerning the state corporation commission; providing for exemption of certain electric public utilities from certain aspects of commission regulation.

Marshall Clark, Kansas Electric Cooperatives, testified in support of SB 435, stating that the KEC Board unanimously voted to pursue this legislation. He said that this is a "local option" bill which only makes deregulation available if a given cooperative wants it. Mr. Clark responded to several Committee questions. (Attachment 1)

Chairperson Grotewiel closed the hearing on SB 435.

The Chair opened the hearing on SB 558.

SB 558 - An act concerning the state corporation commission; relating to stay or suspension of order or decision pending review.

Carol Green, Clerk of the Appellate Courts, testified in support of SB 558. She said that the difficulty with the 90 day deadline arises in that, with the creation of CURB, the potential exists for two applications for judicial review at any time within the thirty day appeal time with the first application triggering the statutory appellate deadline. (Attachment 2)

Randy Hearrell, Kansas Judicial Council, testified in support of SB 558. He said that this bill came out of the Judicial Council and is supported by the Judicial Council.

Alan Decker, Consumer Council for CURB, testified in support of SB 558. He said that by increasing the judicial review period in rate case appeals by 30 days, this bill provides all parties, including CURB, sufficient appeal and briefing time. (Attachment 3)

The Chair closed the hearing on SB 558.

The meeting adjourned at 4:20 p.m.

KANSAS ELECTRIC COOPERATIVES, INC.

Testimony on S-435

House Energy and Natural Resources Committee
March 19, 1992

Good afternoon, Mr. Chairman and Committee members. My name is Marshall Clark, and I represent Kansas Electric Cooperatives, Inc. (KEC), the statewide association for thirty-four rural electric cooperatives in Kansas. The KEC Board unanimously (with one abstention by a cooperative not affected by this bill) voted to pursue this legislation.

Cooperatives, as you all well know, are owned and operated, on a not-for-profit basis, by their customer/members. As a result, they are essentially self-regulating since it's their own service and rates which are affected by their actions. It is for this reason we feel that regulation of rates and rules is unnecessary and redundant.

On the practical side, rate cases are expensive. Legal and consultant fees and Kansas Corporation Commission (KCC) billing for staff time are costly. The several months delay it takes to get rates into effect also costs the cooperative money. And, of course, there is an overall assessment for KCC overhead.

The bill itself, if adopted into law, would do nothing. It is only when a specific distribution cooperative's membership, using the regular bylaw voting procedure, elects to withdraw from regulation that something happens.

We have tried to cover all bases in proposing this bill to make sure we have not inadvertently impacted unintended areas.

The bill does not touch the territorial issues. And the bill does not apply to KEPCo, Sunflower and Midwest Energy because of their sizes. We have talked with the KCC Commissioners (as has the Governor's office) and they have no problem with the bill. In fact, Chairman Robinson says we really should have this local option available to us. The Commission's official position is to remain neutral.

We have visited with C.U.R.B. (as has the Governor's office) even though C.U.R.B. does not have oversight of the small cooperatives. We wanted to make sure there was nothing in the bill to cause them concern. In fact, the 15,000 customer cut-off figure is theirs.

We have visited with the municipals (K.M.U.) and have their agreement on our wording.

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We have an amendment on this bill which satisfies K.I.O.G.A. concerns.

We have provided copies of the bill to the investor-owned utilities who have registered no objections.

We have apprised the Governor and her liaison of our efforts and they support us.

Again, this is a "local option" bill which only makes deregulation available if a given cooperative wants it. Its main function is to provide potential savings for the consumer/owner.

The Senate has passed this bill 36-3.

We ask for your favorable consideration of S-435. Thank you very much.

1-2

Kansas Electric Cooperatives
 Kansas Corporation Commission Expenses
 Quarterly Assessments¹

	1988	1989	1990	1991
Alfalfa	\$615	\$1,743	\$2,052	\$1,260
Ark Valley	8,069	8,166	9,020	5,969
Brown-Atchison	3,149	3,345	3,851	3,649
Butler	6,840	7,421	9,413	6,252
C&W	3,223	3,646	4,187	2,498
Caney Valley	5,870	6,096	6,915	4,627
CMS	6,221	6,643	7,624	5,197
DS&O	7,369	7,727	9,157	6,049
Doniphan	1,034	1,168	1,373	1,020
Flint Hills	6,228	7,062	7,681	5,195
Jewell-Mitchell	4,605	4,843	5,650	3,560
Kaw Valley	6,366	7,409	8,911	6,108
Lane-Scott	5,701	6,167	6,871	4,472
Leavenworth-Jefferson	5,576	6,433	7,531	5,163
Lyon-Coffey	7,485	8,112	9,757	6,391
Nemaha-Marshall	2,993	3,443	4,094	2,625
Ninnescah	5,038	5,574	6,053	3,945
NCK	3,653	3,905	4,424	2,720
Northwest Kansas	3,830	3,764	4,364	2,848
Norton-Decatur	9,183	9,798	11,174	7,483
Pioneer	17,349	19,198	22,387	15,086
PR&W	3,154	3,480	3,928	2,707
Radiant	3,544	4,029	4,575	2,962
Sedgwick	5,968	6,065	6,926	4,822
Sekan	4,612	4,827	5,686	3,720
Smoky Hill	3,708	3,741	4,421	2,957
Sumner-Cowley	6,753	6,558	7,915	5,081
Twin Valley	2,385	2,591	2,936	1,983
United	5,770	6,176	7,129	4,795
Victory	6,744	6,699	8,219	5,498
Western	11,252	11,881	13,208	8,907
Wheatland	45,468	48,082	51,939	34,346
Totals	\$219,752	\$235,791	\$269,370	\$179,897
Sunflower	83,987	87,334	99,995	66,463
KEPCo	76,811	78,602	89,328	60,037
Midwest	54,058	55,062	68,559	47,099
Totals	214,856	220,998	257,882	173,599

¹ Quarterly Assessments do not include special assessments or expenses associated with rate applications. Including KCC expenses, legal fees and consulting expenses, a current rate application will cost between \$20,000 and \$35,000 with roughly half attributable to KCC expenses.

Senate Bill No. 558

Proposed amendment to K.S.A. 66-118g

Testimony offered by:
Carol Gilliam Green
Clerk of the Appellate Courts

In 1989 the Kansas Legislature created a Citizens' Utility Ratepayer Board (CURB) to represent ratepayers' interests in actions before the Kansas Corporation Commission. See K.S.A. 1991 Supp. 66-1222, et seq. Utility rate cases in which CURB commonly intervenes are subject, however, to a strict appellate deadline which the Legislature did not amend when it created CURB. See K.S.A. 66-118g(b). Clean-up legislation is needed to accommodate CURB's appeal and briefing time.

In 1978 the Legislature adopted an expedited appellate procedure for utility rate cases. L. 1978, ch. 265, sec. 1. Those cases are appealed directly to the Court of Appeals from the Kansas Corporation Commission (K.S.A. 1991 Supp. 66-118a[b]), and by statute the Court of Appeals must file an opinion within 90 days after an application for judicial review is filed. K.S.A. 66-118g(b). To facilitate the 90 day deadline, the Kansas Supreme Court adopted an expedited briefing schedule for utility rate cases. See Rule 9.02 (1991 Kan. Ct. R. Annot. 43) (attached). Applicant and respondent have twenty days each in which to file a brief. Rule 9.02. Prior to the creation of CURB, there was typically one applicant and one respondent in a utility rate appeal.

The difficulty with the 90 day deadline arises in that, with the creation of CURB, the potential exists for two applications for judicial review at any time within the thirty day appeal time with the first application triggering the statutory appellate deadline. There is also the potential that CURB's position will not align perfectly with that of either the applicant or the respondent, thus increasing the briefing time required. Although CURB's entry into a case could potentially extend the appellate schedule by 50 days, experience has shown a 30 day extension to be more typical. Under the present statutory scheme, the Court of Appeals has adjusted its own schedule and sought concessions from CURB in order to file opinions within the 90 day deadline.

K.S.A. 66-118g(b) needs to be amended to provide a 120 day appellate deadline to allow CURB its full appeal and briefing time.

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4. Section (b) construed in determining necessary parties in an original action in mandamus against a judge but not involving pending litigation. *State ex rel. Stephan v. Smith*, 242 Kan. 336, 747 P.2d 816 (1987).

5. Criminal defendant's appeal of pretrial denial of dismissal based on double jeopardy appropriately filed as original action under 9.01(a) and K.S.A. 22-2710. *In re Habeas Corpus Petition of Mason*, 245 Kan. 111, 775 P.2d 179 (1989).

Law Review and Bar Journal References

Monk, *Media Access to Court Proceedings*, 50 J.K.B.A. 212, 222 (1981).

Rule 9.02

UTILITY RATE CASES

When an application for judicial review of an order of the state corporation commission is filed in the Court of Appeals, such filing shall be treated for the purpose of further proceedings in the same manner as the docketing of an appeal from the district court, and the rules relating to appellate practice shall apply.

Unless otherwise ordered by the court:

- (a) The record shall be transmitted by the commission to the court forthwith.
- (b) Applicant's brief shall be filed within twenty (20) days after the application for review is filed.
- (c) A respondent's brief shall be filed within twenty (20) days after service of applicant's brief.
- (d) Any reply brief shall be filed not less than five (5) days before the date set for hearing.

Notwithstanding the provisions of Rule 7.02(d), the clerk shall give the attorneys not less than fifteen (15) days' notice of the time and place of hearing.

In cases where a public utility claims the rates allowed by the commission are inadequate, no motion for extension of time to file the utility's brief shall be considered unless it includes or is accompanied by a waiver of the ninety (90) day time limit imposed by K.S.A. 66-118g(b). So that respondent may have an equal amount of time to file its brief, such waiver shall be to the extent of at least twice the additional time requested by the utility.

If a prehearing conference is desired, a motion to that effect shall be filed within five (5) days after the filing of the application for judicial review. A motion for a prehearing conference filed later shall be considered only upon good cause shown.

[**History:** New Rule effective November 8, 1979; Am. effective July 16, 1980.]

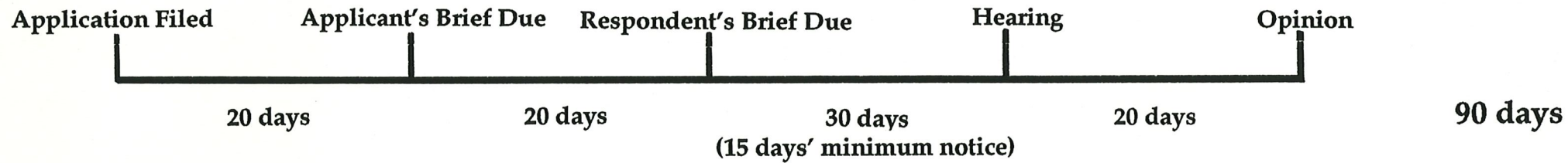
Rule 9.03

TAX APPEAL CASES

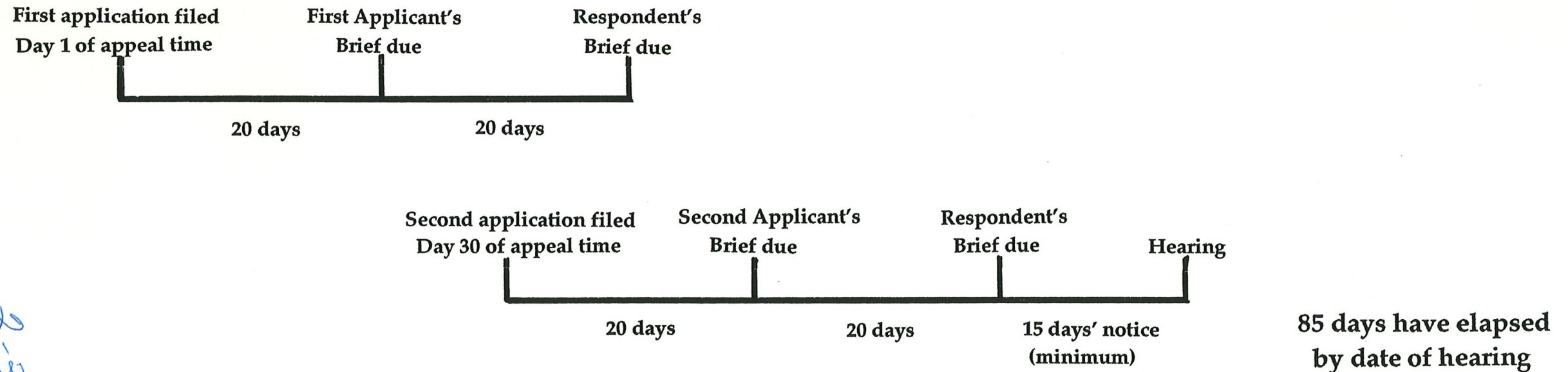
- (a) When an appeal is taken from the board of tax appeals to the Court of Appeals under K.S.A. 74-2426, the appellant shall file the notice of appeal with the clerk of the appellate courts.

Statutory Deadline (currently 90 days) begins to run when application for judicial review is filed.

Prior to creation of CURB



Appeals in which CURB participates



20
60

**PRESENTATION BEFORE
THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES
ON
SENATE BILL NO. 558**

**BY ALAN DECKER, CONSUMER COUNSEL
CITIZENS' UTILITY RATEPAYER BOARD**

March 19, 1992

Senate Bill No. 558 amends K.S.A. 66-118g(b) to increase from 90 to 120 days the time the Court of Appeals has to issue a final order in rate case appeals. By increasing the judicial review period in rate case appeals by 30 days, Senate Bill No. 558 provides all parties, including the Citizens' Utility Ratepayer Board (CURB), sufficient appeal and briefing time.

Currently, in rate case appeals, K.S.A. 66-118g(b) requires that the Court of Appeals issue a final order within 90 days of the filing of the appeal.

To administer these rate case appeals within the 90 day period, the Kansas Supreme Court adopted an appeal and briefing schedule designed to permit the Court and all parties a full briefing schedule.¹

In 1989 the Kansas legislature created CURB to represent ratepayers' interests in proceedings before the state corporation commission.² At the time of CURB's creation, the legislature did not amend K.S.A. 66-118g(b) to accommodate the possibility of multiple appeals being filed during the judicial review period.

With the inception of CURB, there have been instances when

¹1991 Kan. Ct. R. Annot. 43.

²K.S.A. 1991 Supp. 66-1222 to 66-1225.

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House E + NR
Attachment 3*

two appeals were filed within the appeal period. Under the current statute, the first appeal determines when the Court's final order must be issued. Because the judicial review period begins to run with the filing of the first appeal, a second appeal filed after the first appeal does not receive the full judicial review period.

Since CURB's inception in 1989, it has been necessary for the Court of Appeals and CURB to adjust their schedules to comply with the 90 day judicial review deadline. This has meant that CURB has sometimes not had the benefit of a full appeal and briefing period.

The extension of the judicial review period from 90 to 120 days will provide the Court and all parties a full appeal and briefing period.