

Approved: Carl Dan Holmes 2-8-95  
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes on January 17, 1995 in Room 526-S of the Capitol.

All members were present except: Representative Bob Krehbiel  
Representative Phill Kline

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Shirley Wilds, Committee Secretary

Conferees appearing before the committee: Ed Schaub, Western Resources  
James Haines, Western Resources  
Don Low, Kansas Corporation Commission  
Jeff Russell, Sprint/United Telephone Company  
David Nichols, Southwestern Bell Telephone  
William Drexel, Southwestern Bell Telephone  
Rob Hodges, Kansas Telecommunications Assn  
Don Moler, League of Kansas Municipalities  
Marvin Rainey, City of Shawnee  
Don Vasos, Trials Lawyers Assn

Others attending: See attached list

The Chair announced that he met with the freshman committee members on January 13 and it was unanimous among the new members that Friday meetings would continue throughout the session upon adjournment of the House. The meetings will be background briefings from various state agencies, with no hearings or bill debates. Room 526-S is on permanent reserve for this purpose. Planned for Friday, January 20 is a presentation by the Division of Water Resources upon adjournment of the House.

The Chair referred to committee minutes of the previous week to be approved. Also, he referred to a Kansas Wildlife and Parks Agenda for a meeting and public hearing on January 19. (See Attachment #1.)

The Chair announced that if House Bill 2054 (to be heard today) passes out of this Committee, it will be referred to the Judiciary Committee.

Chairperson Holmes reported that he had asked the utilities to review Section 66 of the statutes. The bills to be heard today are a result of findings of a task force formed this past summer, with proposals for both clean-up and policy issues.

Given the brevity of some of the testimony, conferees were permitted to cover all those bills relevant to their interests in one presentation.

**Hearings on:**

**HB 2045**  
**HB 2047**  
**HB 2048**  
**HB 2049**  
**HB 2051**  
**HB 2052**  
**HB 2053**  
**HB 2054**

**Ed Schaub.** Mr. Schaub said in compliance with Representative Holmes' charge Western Resources put

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m.. on January 17, 1995.

together a Task Force committee to determine that which might be obsolete in Section 66 and amendments and/or policy changes to be proposed. Mr. Jim Haines chaired this committee. He referred the Committee to the handout before them reviewing the final report of the electric and gas task force. Mr. Schaub deferred to Jim Haines, Vice President of Western Resources, to cover the first four bills to be heard in Committee today.

Chairperson Holmes expressed his appreciation to Mr. Haines and members of the task force for their efforts. He said there were many laws that had not been reviewed for many years, and it is feasible at some point to consider review of some of the old laws and determine if they remain currently viable or need revision.

**James Haines.** Mr. Haines offered proposals for the first four bills:

**HB 2045** - Changes to be made to bill (See Attachments #2, Pages 2-20).

**HB 2047** - The task force proposes repealing both statutes. (See Attachment #2, Page 21.)

**HB 2048** - (See Attachment #2 Page 22)

**HB 2049** - (See Attachment #2, Pages 23-26).

**Don Low.** Mr. Low explained the reasoning behind the telephone language inserted into some of the gas and electric statutes. He said before the early 1980's there was only one set of statutes incorporating all types of utilities.

Mr. Low gave comments on **HB 2045**, **HB 2048** and **HB 2053**. (See Attachment #3.)

On **HB 2052** he reported that a prospective clarification of the statute is desirable. (See Attachment #3)

Mr. Low reported that the Commission neither supports nor opposes **HB 2054**, but noted that the bill appears ambiguous in its effect. He said it purports to exclude as evidence of negligence and failure to comply with the Commission orders or standards on wire stringing, and that that exclusion does not apply with regard to the purposes for which standards are prescribed.

**Jeff Russell.** Speaking on behalf of Sprint/United Telephone Company, Mr. Russell reported they support the Committee's effort to update statutes on all bills in Committee today. He said the changes will more accurately reflect the operating realities of today's industries and the customers they serve. (See Attachment #4)

**David Nichols.** Mr. Nichols represents Southwestern Bell Telephone and reported they are in support of **House Bills 2047; 2051; 2052; and 2053**. (See Attachment #5).

**William Drexel.** Mr. Drexel reported that SWBT supports **HB 2054**. (See Attachment #6).

**Rob Hodges.** Mr. Hodges reported that Kansas Telecommunication Association comprises telephone companies; long distance companies; firms; and individuals who provide service to and support for telecommunications industry in Kansas. He said the bills in hearing today have been circulated to KTA member companies for review and have received approval. (See Attachment #7)

**Don Moler.** As General Counsel for the League of Kansas Municipalities, Mr. Moler reported the League is in opposition to **HB 2052**. They are concerned that this type of change would give carte blanche to utilities to run cables, such as fiber optic cables, under streets and alleys throughout the state, and essentially inhibit the ability of cities to contract with utilities for payments to use the public right-of ways when laying underground cable. (See Attachment #8.)

**Marvin Rainey.** Mr. Rainey, City Attorney for the City of Shawnee County echoed Mr. Moler's comments regarding **HB 2052**, and encouraged that the bill remain in Committee for further consideration. He related his interest in this particular issue concerning the City of Shawnee. In 1991 they started looking at the fact that AT&T had run cable under more than two miles of the city using the public right-of-way without obtaining a franchise ordinance from the city or the authority to do so without paying compensation to the city. The City then went through the process of determining the compensation. Mr. Rainey concluded by saying he believes this is an issue that should be looked at in great detail and analyze potential ramifications of its enactment.

**Don Vasos.** Appearing in opposition to **HB 2054**, Mr. Vasos spoke to technical aspects of this bill, citing points in *The National Electric Safety Code Handbook* that applies to all states in the U.S. He said as

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m.. on January 17, 1995.

he interprets the statute, it permits the Kansas Corporation Commission to adopt standards to promote public safety (what the code is supposed to do). Conversely, however, he said if the code showed a violation of the standards that can be shown in a court of law, this would be a major change and, in effect, revoke and reverse more than 100 years of court decisions.

Chairperson Holmes acknowledged the presence of Commissioner Lippman in the audience. Committee questions and discussion followed.

Representative Dennis McKinney moved to approve January 9; 10; 11; and 12 Committee minutes, as corrected on January 9 minutes. Representative Steve Lloyd seconded. Motion passed.

There being no further business to come before the Committee, the meeting adjourned at 5:20 p.m.

The next meeting is scheduled for January 18, 1995.

# HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: January 17, 1995

NAME	REPRESENTING
Rob Hodges	Ks Telecom Assn.
Davia Nichols	SWBT
Bill Drexel	SWBT
JIM HAINES	Western Resources
Jim Ludwig	"
Don Vasas	ATTORNEY - KTLA
Louie Stroup Jr.	KANSAS Municipal Utilities
MIKE REECHT	AT&T
JEFF RUSSELL	SPRINT UNITED
Don Low	KCC
Nancy Hodges	City of Shawnee
Marvin E. Rainey	City of Shawnee, City Attorney
Era Powers	MCI
Don Schmitt	K2000
Shannon Peterson	KBA
Adam Greenwood	KCC
Frank Simpson	KTLA
John Delcoursey	Western Resources

AGENDA

KANSAS DEPARTMENT OF WILDLIFE AND PARKS  
COMMISSION MEETING AND PUBLIC HEARING

January 19, 1995

Topeka Plaza Inn  
3802 SW Topeka Avenue  
Topeka, Kansas

- I. CALL TO ORDER -- 1:30 p.m., JANUARY 19, 1995
- II. INTRODUCTION OF COMMISSIONERS AND GUESTS
- III. ADDITIONS AND DELETIONS TO AGENDA ITEMS
- IV. APPROVAL OF NOVEMBER 17, 1994 MEETING MINUTES
- V. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS
- VI. CHAIRMAN AND COMMISSION REPORT
- VII. SECRETARY'S REPORT
  - A. General Discussion -
    - 1. Special deer hunt for the disabled
    - 2. Wildscape update
    - 3. Legislative & Budget update
    - 4. Update on Becoming an Outdoors Woman workshop
    - 5. Report on Pratt Legislative meeting
    - 6. Report on falconry event in Dodge City
  - B. Workshop Session -
    - 1. Big Game regulations
    - 2. Antelope preference points
- VIII. RECESS AT 5:00 p.m. FOR PUBLIC HEARING AT 7:00 p.m.

*Energy & Natural Resources  
1/17/95  
attachment #1*

- IX. RECONVENE AT 7:00 p.m. JANUARY 19, 1995 (TOPEKA PLAZA INN, 3802 SW TOPEKA AVENUE, TOPEKA, KANSAS)
- X. RE-INTRODUCTION OF COMMISSIONERS AND GUESTS
- XI. GENERAL PUBLIC COMMENT ON NON-AGENDA ITEMS
- XII. SECRETARY'S REPORT (continued)

C. Public Hearing -

- 1. K.A.R. 115-20-1 Crows; legal equipment, taking methods, and possession.
- 2. K.A.R. 115-30-3 Personal flotation devices; requirements.

- XIII. OLD BUSINESS
- XIV. OTHER BUSINESS
- XV. EXECUTIVE SESSION
- XVI. ADJOURNMENT

NOTE: IF NECESSARY, THE COMMISSION WILL RECESS ON JANUARY 19, 1995 TO RECONVENE JANUARY 20, 1995 AT 9:00 a.m., AT THE SAME LOCATION TO COMPLETE THEIR BUSINESS. SHOULD THIS OCCUR, TIME WILL BE MADE AVAILABLE FOR PUBLIC COMMENT.

IF NOTIFIED IN ADVANCE, THE DEPARTMENT WILL HAVE AN INTERPRETER AVAILABLE FOR THE HEARING IMPAIRED. TO REQUEST AN INTERPRETER CALL THE TDD SERVICE AT 1-800-766-3777.

The next commission meeting is scheduled for March 16, 1995 in Pittsburg.

**James Haines**  
Executive Vice President  
and Chief Administrative Officer

December 22, 1994

The Honorable Carl Holmes  
P.O. Box 2288  
Liberal, KS 67905

Dear Representative Holmes:

Attached for your review is the proposed final report of the electric and gas utility task force regarding Chapter 66 of the Kansas Statutes as it pertains to electric and gas utilities. This task force, convened by Western Resources at your request, was open to all members of the industry. The companies and organizations which participated, as well as their task force representatives, are shown on pages 8, 9, and 10 of the report.

As you requested, the task force reviewed pertinent sections of Chapter 66 with three objectives: 1) identify obsolete sections which should be repealed; 2) propose clean-up amendments where necessary to remove ambiguity or confusion; and 3) recommend policy changes in recognition of recent changes in national energy policy, as well as considerations which may be unique to Kansas. Pages 1 through 7 of the report list the sections of Chapter 66 which the task force believes are pertinent to electric and/or gas utilities, which of those sections should be repealed or changed, whether a proposed change is a clean-up or policy change, a brief explanation of each proposed change, and the present position (i.e. support, neutral, opposed) of the task force members. (Except where a neutral or opposed position is explicitly indicated, all task force members presently support each proposed change to Chapter 66.)

The task force met as a body on three separate occasions and between meetings various members prepared material for consideration by the entire task force. The meetings were lengthy and characterized by vigorous and candid discussion among all present. I believe three factors were largely responsible for that. First, the task force agreed that unanimous or even majority approval of a proposed change would not be a requirement for inclusion in the report. Second, the task force agreed that no official record would be made of the discussions and no comment by any participant would be taken as a final statement of position. Third, the task force agreed that if and when any of its proposals become proposed legislation, each member would be free to advocate its interest as it then sees fit.

The Honorable Carl Holmes  
December 22, 1994  
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The task force has kept the Kansas Corporation Commission and its Staff informed of its activity and provided them the first draft of the report as well as the proposed final draft. The task force has not solicited feedback from the KCC or its Staff and has no knowledge as to the KCC's position, if any, regarding any of the proposed changes contained in the report.

At its December 12 meeting, the task force tabled one item for possible further discussion. It is possible that the task force will do further work on that item and then request an opportunity to supplement the attached report. With that exception and unless you request further work from the task force, it considers the substance of its work to be completed. Certainly, if you want to meet with the task force to discuss the report, if you want the task force to engage with others in a discussion of the report or other possible changes to Chapter 66, please let me know.

For the task force, let me say that we appreciate your interest in assuring a sound utility infrastructure in Kansas and we look forward to working with you and others to help make that a continuing reality.

Sincerely,





## K.S.A. Chapter 66 Review

	<u>Clean Up</u>	<u>Policy</u>	<u>Change</u>	<u>Neutral</u>	<u>Opposed</u>
66-101					
66-101a					
66-101b	x		(take out telephone language)		
66-101c	x	x	(take out telephone language and add confidentiality provision)		
66-101d	x		(take out telephone language and add hearing to 2nd paragraph)		
66-101e	x		(take out telephone language and general)		
66-101f(a)	x		(take out telephone language)		
66-101f(b)	x		(take out telephone language)		
66-101g					
66-101h					
66-104	x	x	(eliminate 15 mile minimum; except gas gathering)	Midwest	KCPL
66-104b					
66-104c		x	(prohibit nonprofit bypass)		
66-104d					
66-106					
66-112	x		(to make clear that it applies only to railroad companies)		
66-114					
66-115					
66-116	x		(obsolete)		
66-117		x	(add confidentiality provision to (c))		
66-117a					
66-117b					
66-117c					
66-117d					
66-118a	x		(modernize definition of party; clear up reviewing court, what a rate hearing is)		
66-118b	x		(clarify how to seek review when rehearing is granted on only part of what has been urged)		
66-118c					
66-118d					
66-118e					

K.S.A. Chapter 66 Review

	<u>Clean Up</u>	<u>Policy</u>	<u>Change</u>	<u>Neutral</u>	<u>Opposed</u>
66-118g					
66-118h					
66-118i					
66-118j					
66-118k					
66-118l					
66-118m	x		(obsolete)		
66-118n	x		(obsolete)		
66-118o					
66-119					
66-120					
66-121					
66-122					
66-123					
66-124					
66-125(c)Supp.	x		(eliminate discretionary language)		
66-126					
66-127					
66-128		x	(KCC discretion to put CWIP in rate base if approved under siting acts)	KCPL	KMEA KMU
66-128a		x	(except presumption of prudence for property approved under siting acts)	KCPL	
66-128b	x	x	(limit on phase in authority for costs approved in siting hearings)	KCPL Midwest	
66-128c	x	x	(exclude excess capacity only if due to lack of efficiency or prudence)	KCPL	
66-128d	x	x	(presumption in favor of costs approved in siting hearings, recovery of cancelled plant costs)	KCPL	
66-128e					
66-128f		x	(obsolete)		
66-128g					
66-128h					
66-128i					

## K.S.A. Chapter 66 Review

	<u>Clean Up</u>	<u>Policy</u>	<u>Change</u>	<u>Neutral</u>	<u>Opposed</u>
66-128j	x	x	(eliminate the "reduction" language)		
66-128k					
66-128l					
66-128m					
66-128n					
66-128o					
66-128p					
66-129	x		(take out last sentence)		
66-129a					
66-130	x		(obsolete)		
66-131					
66-131a					
66-132					
66-133					
66-134					
66-136	x		(add certificates of convenience and authority)		
66-137					
66-138					
66-139					
66-140					
66-150					
66-151		x	(confidentiality exclusion)		
66-155					
66-157					
66-175					
66-176	x	x	(eliminate 3x; add intention)		
66-177					
66-178					
66-179					
66-181	x		(clarify that it applies only to railway companies)		
66-182	x		(clarify that it applies only to railway companies)		
66-183					
66-184					
66-185					
66-1,150					

K.S.A. Chapter 66 Review

Clean Up      Policy      Change      Neutral      Opposed

- 66-1,151 \_\_\_\_\_
- 66-1,152 \_\_\_\_\_
- 66-1,153 \_\_\_\_\_
- 66-1,154 \_\_\_\_\_
- 66-1,155 \_\_\_\_\_
- 66-1,156 \_\_\_\_\_
- 66-1,157 \_\_\_\_\_
- 66-1,157a \_\_\_\_\_
- 66-1,157b \_\_\_\_\_
- 66-1,157c \_\_\_\_\_
- 66-1,157d \_\_\_\_\_
- 66-1,158 Supp. \_\_\_\_\_
- 66-1,159 \_\_\_\_\_
- 66-1,160 \_\_\_\_\_
- 66-1,161 \_\_\_\_\_
- 66-1,162 \_\_\_\_\_
- 66-1,163 \_\_\_\_\_
- 66-1,164 \_\_\_\_\_
- 66-1,165 \_\_\_\_\_
- 66-1,168 \_\_\_\_\_
- 66-1,169a \_\_\_\_\_
- 66-1,169c \_\_\_\_\_
- 66-1,170 \_\_\_\_\_
- 66-1,171 \_\_\_\_\_
- 66-1,172 \_\_\_\_\_
- 66-1,173 \_\_\_\_\_
- 66-1,174 \_\_\_\_\_
- 66-1,175 \_\_\_\_\_
- 66-1,176 \_\_\_\_\_
- 66-1,176a \_\_\_\_\_
- 66-1,176b \_\_\_\_\_
- 66-1,177 \_\_\_\_\_
- 66-1,178 \_\_\_\_\_
- 66-1,179 \_\_\_\_\_
- 66-1,180 \_\_\_\_\_
- 66-1,181 \_\_\_\_\_
- 66-1,182 \_\_\_\_\_
- 66-1,183 \_\_\_\_\_

**K.S.A. Chapter 66 Review**

	<u>Clean Up</u>	<u>Policy</u>	<u>Change</u>	<u>Neutral</u>	<u>Opposed</u>
66-1,184					
66-1,185					
66-1,186					
66-1,200	x		(add "transport"; exclude gas gathering)	KCPL Midwest	
66-1,201					
66-1,202	x		(take out the telephone language)	KCPL	
66-1,203	x	x	(add confidentiality provision)	KCPL	
66-1,204	x		(take out the telephone language)	KCPL	
66-1,205	x		(take out the telephone language)	KCPL	
66-1,206	x		(take out the telephone language)	KCPL	
66-1,207					
66-1,208					
66-1a01 Supp.	x		(Mo. language)		
66-1213		x	(eliminate pledges of credit)		
66-1214					
66-1215					
66-1216					
66-1217					
66-1218					
66-1219					
66-1220a					
66-1222					
66-1223					
66-1224					
66-1225					
66-1401					
66-1402					
66-1403		x	(change actual cost to a market based standard)		
66-1501					
66-1502					
66-1503					
66-1504					
66-1505					
66-1506					
66-1507					
66-1508					

K.S.A. Chapter 66 Review

Clean Up

Policy

Change

Neutral

Opposed

66-1509

66-1510

66-1511

66-1512

66-1513

66-1601

66-1602

66-1603

66-1604

66-1605

66-1701

66-1702

66-1703

66-1704

66-1705

66-1706

66-1707

66-1708

66-1709 Supp.

66-1710 Supp.

66-1711 Supp.

66-1712 Supp.

66-1713 Supp.

66-1714 Supp.

66-1715 Supp.

66-1716 Supp.

66-1801

66-1802

66-1803

66-1804

66-1805

66-1806

66-1807

66-1808

66-1809

66-1810

66-1811

66-1812

**K.S.A. Chapter 66 Review**

Clean Up      Policy      Change      Neutral      Opposed

66-1813

66-1814

New Statutes

<u>66-128g</u>	x	(value of purchase power contracts recognized in rates)	KCPL Utilicorp	KMU KMEA
<u>66-</u>	x	(Environmental Remediation Act)		

October 7, 1994 Industry Task Force Meeting

Jim Haines	Western Resources
John DeCoursey	Western Resources
Kelly Harrison	Western Resources
Steve Cattron	KCPL
Ed Schaub	Western Resources
Gary Dockham	KEPCo
Les Murphy	KEC
Jack Graves	K-N
Myron McKinney	Empire District
Jim Flaherty	Anderson, Byrd, Richeson & Flaherty
Bob Bezek	Anderson, Byrd, Richeson & Flaherty
Pat Parke	Midwest Energy
Louie Stroup, Jr.	Kansas Municipal Utilities
Bridget Shahan	United Cities



November 7, 1994 Industry Task Force Meeting

Jim Haines	Western Resources
Mike Gardner	Empire District
Myron McKinney	Empire District
Bill Riggins	KCPL
Steve Cattron	KCPL
Jim Grimes	Foulston & Siefkin
Robert A. Fox	Foulston & Siefkin
Stuart S. Lowry	Kansas Electric Coop
John DeCoursey	Western Resources
Kelly Harrison	Western Resources
Bridget Shahan	United Cities
Gilbert Hanson	KMEA
Louis Stroup, Jr.	KMU
Jack Glaves	KN Energy
L.C. Hauck	Sunflower Electric Power
Gary Dockham	KEPCo
Ed Schaub	Western Resources

December 12, 1994 - Industry Task Force Meeting

Jim Haines	Western Resources
Jack Glaves	KNE
Earl Watkins	Sunflower
Chris Hauck	Sunflower
Harold L. Haun	KEPCo
Steven Cattron	KCPL
Bill Riggins	KCPL
Joe Bahr	UCU
Bob Fox	UCU
J.C. Long	UCU
Patrick Hurley	KCPL
John DeCoursey	Western Resources
James G. Flaherty	Anderson, Byrd, Richeson & Flaherty
Pat Parke	Midwest Energy
Mike Gardner	Empire District
John C. Bottenberg	Western Resources
Ed Schaub	Western Resources
Lester L. Murphy	KEC

66-101b. Same; services, facilities, rules, classifications, regulations, rates, ~~tolls~~ and charges. Every electric public utility governed by this act shall be required to furnish reasonably efficient and sufficient service, ~~joint service~~ and facilities for the use of any and all products or services rendered, furnished, supplied or produced by such electric public utility, to establish just and reasonable rates, ~~joint rates, tolls, charges~~ and exactions and to make just and reasonable rules, classifications and regulations. Every unjust or unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, ~~joint rate, toll, charge~~ or exaction is prohibited and is unlawful and void. The commission shall have the power, after notice and hearing in accordance with the provisions of the Kansas administrative procedure act, to require all electric public utilities governed by this act to establish and maintain just and reasonable ~~joint rates~~ when the same are reasonably necessary in order to maintain reasonably sufficient and efficient service from such electric public utilities.

History: L. 1911, ch. 238, § 10; R.S. 1923, 66-107; L. 1985, ch. 225, § 13; L. 1988, ch. 356, § 219; July 1, 1989.

66-101c. Same; publication and filing of rates, ~~tolls and charges;~~ copies of regulations and contracts; ~~printing and filing of regulations.~~ form  
Every electric public utility doing business in Kansas over which the commission has control shall publish and file with the commission copies of all schedules of rates, ~~joint rates, tolls, charges, classifications and divisions of rates affecting Kansas traffic, either state or interstate,~~ and shall furnish the commission copies of all rules, regulations and contracts between electric public utilities pertaining to any and all <sup>jurisdictional</sup> services to be rendered by such electric public utilities. The commission shall have power to prescribe reasonable rules and regulations regarding the ~~printing~~ <sup>form</sup> and filing of all schedules, ~~tariffs and classifications of all rates, joint rates, tolls, charges~~ and all rules and regulations of such electric public utilities. <sup>form</sup>

History: L. 1911, ch. 238, § 11; R.S. 1923, 66-108; L. 1985, ch. 225, § 19; July 1.

, including such confidentiality protection requested by the electric public utility, its suppliers and customers for contracts entered into by them.

66-101d. Same; investigation of rates, ~~tolls, charges and services;~~ orders of commission; hearing. It shall be the duty of the commission, either upon complaint or upon its own initiative, to investigate all ~~rates, joint rates, tolls, charges and exactions, classifications or schedules of rates or joint rates~~ and rules and regulations of electric public utilities. If after ~~hearing and investigation~~ the commission finds that such ~~rates, joint rates, tolls, charges or exactions, classifications or schedules of rates or joint rates~~ or rules and regulations are unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have the power to ~~fix and order substituted therefor such rates, tolls, charges, exactions, classifications or schedules of rates or joint rates~~ and such rules and regulations as are just and reasonable.

schedules of

and hearing

establish

If ~~upon any investigation~~ it is found that any regulation, measurement, practice, act or service complained of is unjust, unreasonable, unreasonably inefficient or insufficient, unduly preferential, unjustly discriminatory, or otherwise in violation of this act or of the orders of the commission, or if it is found that any service is inadequate or that any reasonable service cannot be obtained, the commission shall have the power to substitute therefor such other regulations, measurements, practices, service or acts, and to make such order respecting any such changes in such regulations, measurements, practices, service or acts as are just and reasonable. When, in the judgment of the commission, public necessity and convenience require, the commission shall have the power to establish just and reasonable concentration or other special rates, charges or privileges, but all such rates, charges and privileges shall be open to all users of a like kind of service under similar circumstances and conditions.

after

and hearing

Hearings shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

History: L. 1911, ch. 238, § 13; R.S. 1923, 66-110; L. 1985, ch. 225, § 25; L. 1988, ch. 356, § 220; July 1, 1989.

Section 1. K.S.A. 66-101e is hereby amended to read as follows: 66-101e. 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 ~~changing such rates, joint rates, tolls, charges, rules, regulations and classifications, schedules, practices or acts~~ 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, in accordance with the provisions of the Kansas administrative procedure act. 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.

66-101f. Same; orders and decisions of commission; service of copy upon utility; effective date. (a) If upon such hearing and investigation ~~the rates, joint rates, tolls, charges, rules, regulations, classifications or schedules~~ and hearing of any electric public utility governed by this act are found unjust, unreasonable, unfair, unjustly discriminatory or unduly preferential, or, in any way in violation of the provisions of this act, or of any of the laws of the state of Kansas, the commission shall have the power to fix and establish, and order substituted therefor, such rates, ~~joint rates, tolls, charges, rules, regulations, classifications or schedules~~ or ~~regulations, classifications or schedules~~ as it shall find, determine or decree to be just, reasonable and necessary. If it is found that any regulation, practice or act, relating to any service performed or to be performed by such electric public utility for the public is in any respect unreasonable, unjust, unfair, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, or otherwise in violation of this act or of any of the laws of the state of Kansas, the commission may substitute therefor such other regulations, practice, service or act as it determines to be just, reasonable and necessary. For the purposes of determining just and reasonable rates, ~~joint rates, tolls and charges~~, the commission may adopt a policy of disallowing a percentage, not to exceed 50%, of utility dues, donations and contributions to charitable, civic and social organizations and entities, in addition to disallowing specific dues, donations and contributions which are found unreasonable or inappropriate.

(b) All orders and decisions of the commission whereby any rates, ~~joint rates, tolls, charges, rules, regulations, classifications, schedules, practice or acts~~ relating to any service performed or to be performed by any electric public utility for the public are altered, changed, modified, ~~fixed~~ or established shall be reduced to writing, and a copy thereof, duly certified, shall

be served on the electric public utility affected thereby. Such order and decision shall become operative and effective within 30 days after such service. Such electric public utility, unless an action is commenced in a court of proper jurisdiction to set aside the findings, orders and decisions of the commission, or to review and correct the same, shall carry the provisions of such order into effect.

History: L. 1911, ch. 238, § 16; R.S. 1923, 66-113; L. 1965, ch. 506, § 34; L. 1985, ch. 225, § 37; L. 1988, ch. 356, § 222; L. 1992, ch. 148, § 1; July 1.

65-104. Utilities subject to supervision; exceptions. The term "public utility," as used in this act, shall be construed to mean every corporation, company, individual, association of persons, their trustees, lessees or receivers, that now or hereafter may own, control, operate or manage, except for private use, any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages or for the transmission of telegraph messages in or through any part of the state, or the conveyance of oil and gas through pipelines in or through any part of the state, except ~~pipelines less than 15 miles in length and not operated in connection with or for the general commercial supply of gas or oil, or for the operation of any trolley lines, street, electrical or motor railway doing business in any county in the state, also all dining car companies doing business within the state, and all companies for the production, transmission, delivery or furnishing of heat, light, water or power.~~ gas gathering pipelines.

No cooperative, cooperative society, nonprofit or mutual corporation or association which is engaged solely in furnishing telephone service to subscribers from one telephone line without owning or operating its own separate central office facilities, shall be subject to the jurisdiction and control of the commission as provided herein, except that it shall not construct or extend its facilities across or beyond the territorial boundaries of any telephone company or cooperative without first obtaining approval of the commission. As used herein, the term "transmission of telephone messages" shall include the transmission by wire or other means of any voice, data, signals or facsimile communications, including all such communications now in existence or as may be developed in the future.

The term "public utility" shall also include that portion of every municipally owned or operated electric or gas utility located outside of and more than three miles from the corporate limits of such municipality, but nothing in this act

shall apply to a municipally owned or operated utility, or portion thereof, located within the corporate limits of such municipality or located outside of such corporate limits but within three miles thereof except as provided in K.S.A. 66-131a, and amendments thereto.

Except as herein provided, the power and authority to control and regulate all public utilities and common carriers situated and operated wholly or principally within any city or principally operated for the benefit of such city or its people, shall be vested exclusively in such city, subject only to the right to apply for relief to the corporation commission as provided in K.S.A. 66-133, and amendments thereto, and to the provisions of K.S.A. 66-131a, and amendments thereto. A transit system principally engaged in rendering local transportation service in and between contiguous cities in this and another state by means of street railway, trolley bus and motor bus lines, or any combination thereof, shall be deemed to be a public utility as that term is used in this act and, as such, shall be subject to the jurisdiction of the commission.

The term "public utility", shall not include any activity of an otherwise jurisdictional corporation, company, individual, association of persons, their trustees, lessees or receivers as to the marketing or sale of compressed natural gas for end use as motor vehicle fuel.

History: L. 1911, ch. 238, § 3; R.S. 1923, 66-104; L. 1949, ch. 335, § 1; L. 1951, ch. 166, § 1; L. 1968, ch. 333, § 6; L. 1974, ch. 262, § 1; L. 1975, ch. 339, § 1; L. 1978, ch. 263, § 2; L. 1992, ch. 69, § 1; April 16.

The term "gas gathering pipeline" means a natural gas pipeline system used primarily for transport of natural gas from a well-head or a central metering point for natural gas produced by one or more wells to a point of compression or entry into a main transmission line.



66-104c. Certain nonprofit public utilities not subject to commission jurisdiction.

(a) Except as otherwise provided in subsection

(b), no nonprofit public utility shall be subject to the jurisdiction, regulation, supervision and control of the state corporation commission if the utility meets the following conditions: (1) Every customer, household or meter owner is an automatic owner of the utility and has an equal vote on matters concerning the utility; (2) the utility employs no full-time employees; and (3) the utility has no more than 50 customers-<sup>^</sup>

(b) The state corporation commission shall retain jurisdiction and control over the service territory of a utility described in subsection (a) and over all matters concerning natural gas pipeline safety.

History: L. 1990, ch. 239, § 1; July 1.

; and (4) the utility is located within a geographical area where no other utility holds a certificate of convenience and authority issued by the state corporation commission to provide the type of utility service being offered by the nonprofit public utility.

66-112. Notice of hearings of railroad matters; procedure for station closing or modification or discontinuation of service. (a) Whenever notice shall be required by the provisions of this act to be given ~~any common carrier or public utility~~ <sup>to railroad companies</sup> governed by the provisions of this act, and the complainant, or either of them, 30 days' written or printed notice of the time and place when and where such investigation or hearing will be had shall be given. All hearings relating to the modification or discontinuance of railway agency service shall be held in the community affected. All hearings on applications for the discontinuance or abandonment of train service shall be held in the territory in which the train operates. Such notice shall embody in substance the complaint, if any, made against the ~~public utility or common carrier~~ <sup>railroad company</sup> upon which the hearing, investigation and decision of the state corporation commission is requested or on which it will be given.

(b) The ~~public utility or common carrier~~ <sup>railroad company</sup> or the complainant or complainants, if any, shall be entitled to be heard, and shall have process to enforce the attendance of witnesses and the production of books, papers, maps, contracts, reports and record of every description affecting the subject matter of the investigation. The corporation commission may, without praecipe or demand therefor, require the production of any books, papers, contracts, records or other documents in the possession of or under the control of the ~~common carrier, public utility, complainant or complainants~~ <sup>railroad company</sup>, affecting the subject matter of the controversy.

(c) All hearings relating to the discontinuance of the services of a railway agent or the closing of a railroad station shall be heard by the commission within 45 days from the date the application is filed with the commission, except that for sufficient cause such hearing may be delayed an additional 30 days. Failure to commence the hearing within 75 days from the date the application is filed shall operate as

a grant of the application on the terms sought.

(d) The commission shall issue a final order on all applications relating to the discontinuance of the services of a railway agent or the closing of a railroad station. Failure to issue a final order within the time prescribed by K.S.A. 77-526 and amendments thereto shall operate as a grant of the application on the terms sought.

(e) After the effective date of this act, any rail carrier desiring to test a service system preliminary to modification or discontinuance of services of a railway agency or agencies shall file a formal application with the commission not less than 60 days prior to the requested effective date of the 'Service system test period.

The applicant shall notify in writing all consignees and consignors who have received service in the previous three years at the locations affected by the application and the commission shall be furnished names and addresses of such consignees and consignors not less than 45 days prior to the effective date of the test period.

If 15 days prior to such effective date the commission has not received written protest from more than 50% of the total number of consignees and consignors so notified, or consignees and consignors so notified, generating more than 50% of the total agency revenues, the commission shall waive hearing as provided in this act and forthwith authorize a service test period of 90 days. The agent shall remain in place during such ninety-day period.

(f) Any test period authorized under this section shall include two continuous months of the year in which there were the greatest number of cars shipped and received at such agency or agencies in the two years preceding the date of the application for the test as determined by the commission. Such determination shall be made by the commission within 15 days of the date of such application.

(g) If within 30 days before the end of the service system test period,

less than 50% of the total number of consignees and consignors so notified, or consignees and consignors so notified, generating less than 50% of the total agency revenues file written service complaints with the commission, the commission shall waive hearing as provided in this act and grant authority for the applicant to modify or discontinue their agency service as requested.

If within 30 days before the end of the test period, the commission shall have received service complaints from more than 50% of the total number of consignees and consignors so notified, or consignees and consignors so notified, generating more than 50% of the total agency revenues, the commission shall set the application for hearing in accordance with the provisions of the Kansas administrative procedure act. The service system being tested may be continued by the applicant until the final decision is entered on the commission order.

History: L. 1911, ch. 238, § 15; R.S. 1923, 66-112; L. 1959, ch. 257, § 1; L. 1981, ch. 256, § 1; L. 19 93, ch. 220, § 1; L. 1986, ch. 318, § 114; L. 1988, ch. 356, § 223; July 1, 1989.

~~66-116. Force and effect of orders. All findings, rates, joint rates, fares, tolls, charges, rules, regulations, classifications and schedules fixed and established by the corporation commission shall be in full force and effect, and all regulations, practices, services and acts prescribed or required by the corporation commission to be done or carried into effect unless otherwise found and determined or stayed by a court of competent jurisdiction as hereinafter provided.~~

History: L. 1911, ch. 238, § 19; May 22; R.S. 1923, 66-116.

66-117. Change of rates or rates; procedure; effective date; or rates of return in certain cases; hearing. (a) Unless the state corporation commission otherwise orders, no common carrier or public utility over which the commission has control shall make effective any changed rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of such public utility or common carrier except by filing the same with the commission at least 30 days prior to the proposed effective date. The commission, for good cause, may allow such changed rate, joint rate, toll, charge or classification or schedule of charges, or rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier to become effective on less than 30 days notice. Any such proposed change shall be shown by filing with the state corporation commission a schedule showing the changes, and such changes shall be plainly indicated by proper reference marks in amendments or supplements to existing tariffs, schedules or classifications, or in new issues thereof.

(b) Whenever any common carrier or public utility governed by the provisions of this act files with the state corporation commission a schedule showing the changes desired to be made and put in force by such public utility or common carrier, the commission either upon complaint or upon its own motion, may give notice and hold a hearing upon such proposed changes. Pending such hearing, the commission may suspend the operation of such schedule and defer the effective date of such change in rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier by delivering to such public utility or common carrier a statement in writing of its reasons for such suspension. The commission shall not delay the effective date of the proposed change in rate, joint rate,

toll, charge or classification or schedule of charges, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, more than 240 days beyond the date the public utility or common carrier filed its application requesting the proposed change. If the commission does not suspend the proposed schedule within 30 days of the date the same is filed by the public utility or common carrier, such proposed schedule shall be deemed approved by the commission and shall take effect on the proposed effective date. If the commission has not issued a final order on the proposed change in any rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, within 240 days after the carrier or utility files its application requesting the proposed change, then the schedule shall be deemed approved by the period of time within which the commission shall act on an application, any amendment to an application for a proposed change in any rate, which increases the amount sought by the public utility or common carrier or substantially alters the facts used as a basis for such requested change of rate, shall, at the option of the commission, be deemed a new application and the 240-day period shall begin again from the date of the filing of the amendment, and (2) if hearings are in process before the commission on a proposed change requested by the public utility or common carrier on the last day of such 240-day period, such period shall be extended to the end of such hearings plus 20 days to allow the commission to prepare and issue its final order.

If the commission allows a change to become effective on less than 30 days notice, the effective date of the allowed change shall be the date established in the commission order approving such change, or the date of the order if no effective date is otherwise established.

(c) Except as provided in subsection (b), no change shall be made in any rate, toll, charge or classification or schedule of charges, joint rates, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, without the consent of the commission, and within 30 days after such changes have been authorized by the state corporation commission or become effective as provided in subsection (b), copies of all tariffs, schedules, and classifications, and all rules and regulations, shall be filed in every station, office or depot of every such public utility and every common carrier in this state, for public inspection.

Except those determined to be confidential under rules established by the commission,

(d) Upon a showing by a public utility before the state corporation commission at a public hearing and a finding by the commission that such utility has invested in projects or systems that can be reasonably expected (1) to produce energy from a renewable resource other than nuclear for the use of its customers, (2) to cause the conservation of energy used by its customers, or (3) to bring about the more efficient use of energy by its customers, the commission may allow a return on such investment equal to an increment of from 1/2% to 2% plus an amount equal to the rate of return fixed for the utility's other investment in property found by the commission to be used or required to be used in its services to the public. The commission may also allow such higher rate of return on investments by a public utility in experimental projects, such as load management devices, which it determines after public hearing to be reasonably designed to cause more efficient utilization of energy and in energy conservation programs or measures which it determines after public hearing provides a reduction in energy usage by its customers in a cost-effective manner.

(e) Except as to the time limits prescribed in subsection (b), proceedings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

History: L. 1911, ch. 238, § 20; R.S. 1923, 66-117; L. 1978, ch. 264, § 1; L. 1980, ch. 201, § 2; L. 1980, ch. 200, § 1; L. 1988, ch. 356, 225; July 1, 1989.

66-118a. Review proceedings; designation of court to conduct review. As used in this act:

(a) "Party" means any person, firm, corporation, association, municipality, taxpayer, municipal organization, mercantile, agricultural or manufacturing organization or system, public utility or common carrier interested in any matter pending before the state corporation commission or in proceedings for review of an order or decision of the commission.

(b) "Public utility" means a public utility as defined by K.S.A. 66-104 and amendments thereto. ~~The court of appeals shall have exclusive jurisdiction to review any agency action of the state corporation commission arising from a rate hearing requested by a public utility or requested by the state corporation commission when a public utility is a necessary party. Proceedings for review of other agency actions of the state corporation commission shall be in accordance with K.S.A. 77-609 and amendments thereto. Any proceeding for review of an order or decision of the corporation commission which is pending at the time this act takes effect shall not be affected by the provisions of this act.~~ In proceedings for review of an agency action of the commission, the state corporation commission shall be a party to the proceedings and shall have all rights and privileges granted by this act to any other party to such proceedings.

History: L. 1929, ch. 220, § 1; L. 1978, ch. 265, § 1; L. 1986, ch. 318, § 115; July 1.

(c)

(d)

and any public utility which participated in the agency proceeding and could be bound by the review

parties

(e) A proceeding for review timely filed shall not be dismissed if it is determined to have been improperly filed (i) in the court of appeals for an action not arising from a rate hearing or (ii) in the district court in accordance with K.S.A. 77-609 for an action arising from a rate hearing but shall be transferred to the proper court.

66-118b. Same; reconsideration, petition; orders. No cause of action arising out of any order or decision of the commission shall accrue in any court to any party unless such party shall petition for reconsideration in accordance with the provisions of K.S.A. 77-529, as amended by ~~section 15 of chapter 356 of the laws of 1988~~. No party shall, in any court, urge or rely upon any ground not set forth in the petition. An order made after reconsideration, abrogating, changing or modifying the original order or decision, shall have the same force and effect as an original order or decision, including the obligation to file a petition for reconsideration, as provided in this section, as a condition precedent to filing an action for review thereof. <sup>^</sup>

History: L. 1929, ch. 220, § 2; L. 1970, ch. 268, § 1; L. 1976, ch. 285, § 1; L. 1986, ch. 318, § 116; L. 1988, ch. 356, § 226; L. 1989, ch. 283, § 23; July 1.

The time for filing an appeal of any order or decision in a proceeding shall run from the date that all petitions for reconsideration in such proceeding have been denied or such petitions for reconsideration are deemed denied pursuant to K.S.A. 77-529(b).

~~66-118m. Same, pending action not affected. All actions pending at the time this act takes effect, brought for the purpose of vacating and setting aside any order, finding or decision of the commission, shall not be affected by the provisions of this act.~~

History: L. 1929, ch. 220, § 13;  
Feb. 23.

~~66-118a. Same, right of rehearing of prior decision. All parties to any proceeding before the commission wherein any order or decision has been rendered or made within thirty days prior to the taking effect of this act, if no action has been commenced to set aside or vacate such order, may, within ten days from said date, apply for rehearing in respect to any matter determined therein, and thereafter all proceedings shall be in accordance with the provisions of this act.~~

History; L. 1929, ch. 220, § 14; Feb. 23.



66-125. Issuance of securities; certificate of commission required, when; proceedings; motor carriers exempted. (a) A public utility or common carrier may issue stocks, certificates, bonds, notes or other evidences of indebtedness, payable at periods of more than 12 months after the date thereof, when necessary for the acquisition of property, for the purpose of carrying out its corporate powers, the construction, completion, extension or improvements of its facilities, for the improvements or maintenance of its service, for the discharge or lawful refunding of its obligations, or for such other purposes as may be authorized by law. Prior to any such issuance, there shall be secured from the commission a certificate stating the amount, character, purposes and terms on which such stocks, certificates, bonds, notes or other evidences of indebtedness are proposed to be issued, as set out in the application for such certificate. In lieu of securing a certificate from the commission, if the issuance requires a registration statement to be filed with the securities and exchange commission, the public utility or common carrier may file with the state corporation commission a copy of the information filed with the securities and exchange commission.

(b) The proceedings for obtaining such certificate from the commission and the conditions of its being issued shall be as follows:

(1) In case the stocks, certificates, bonds, notes or other evidences of indebtedness are to be issued for money only, the public utility or common carrier shall file with the commission a statement, signed and verified by the president or other chief officer of the company having knowledge of the facts, showing:

(A) The amount and character of the proposed stocks, certificates, bonds, notes or other evidences of indebtedness;

(B) the general purposes for which they are to be issued;

(C) the terms on which they are to be issued;

(D) the total assets and

liabilities of the public utility or common carrier; and

(E) that the capital sought to be secured by the issuance of such stocks, certificates, bonds, notes or other evidences of indebtedness is necessary and required for such purposes and will be used therefor.

(2) In case stocks, certificates, bonds, notes or other evidences of indebtedness are to be issued partly or wholly for property or services or other consideration than money, the public utility or common carrier shall file with the commission a statement, signed and verified by the president or other chief officer having knowledge of the facts, showing:

(A) The amount and character of the stocks, certificates, bonds, notes or other evidences of indebtedness proposed to be issued;

(B) the general purposes for which they are to be issued;

(C) a general description and an estimated value of the property or services for which they are to be issued;

(D) the terms on which they are to be issued or exchanged;

(E) the amount of money, if any to be received for the same in addition to such property, services or other consideration;

bonds, notes or other evidences of indebtedness is necessary and required for such purposes and will be used therefor.

(c) The commission may also require the public utility or common carrier to furnish such further statements of facts as may be reasonable and pertinent to the inquiry, ~~and shall have full power to ascertain the truth of all statements made by such common carrier or public utility.~~ Upon full compliance by the applicant with the provisions of this section the commission shall forthwith issue a certificate stating the amount, character, purposes and terms upon which such stocks, certificates, bonds, notes or other evidences of indebtedness are proposed to be issued, as set out in the application for such certificate. Any issue of stocks, certificates, bonds,

notes or other evidences of indebtedness not payable within one year, which shall be issued by such public utility or common carrier contrary to the provisions of this act shall be voidable by the commission, except as provided in subsection (d).

(d) The provisions of this section shall not apply to motor carriers, as defined in K.S.A. 66-1,108, and amendments thereto. Any issue of stocks, certificates, bonds, notes or other evidences of indebtedness not payable within one year, which were issued by a motor carrier prior to the effective date of this act without obtaining a certificate from the commission shall be deemed valid.

History: L. 1911, ch. 238, § 25; R.S. 1923, 66-125; L. 1983, ch. 222, § 1; L. 1988, ch. 265, § 1; L. 1993, ch. 118, § 1; July 1.

66-128. Valuation of property for ratemaking purposes by commission; construction work in progress. The state corporation commission shall determine the reasonable value of all or whatever fraction or percentage of the property of any common carrier or public utility governed by the provisions of this act which property is used and required to be used in its services to the public within the state of Kansas, whenever the commission deems the ascertainment of such value necessary in order to enable the commission to fix fair and reasonable rates, joint rates, tolls and charges. In making such valuations the commission may avail itself of any reports, records or other things available to the commission in the office of any national, state or municipal officer or board. For the purposes of this act, property of any public utility which has not been completed and dedicated to commercial service shall not be deemed to be used and required to be used in the public utility's service to the public, except that, any property of a public utility, the construction of which will be commenced and completed in one year or less, may be deemed to be completed and dedicated to commercial service.

History: L. 1911, ch. 238, § 28; R. S. 1923, 66-128; L. 1978, ch. 266, § 1; L. 1984, ch. 247, § 1; April 19.

or the construction of which has been authorized by a siting permit under K.S.A. 66-1,159 et seq. or K.S.A. 1,178 et seq.

66-128a. ~~Fixing rates, joint rates,~~ Establishing  
tolls and averages; authority of  
commission not limited by 66-128b through  
66-128i. Nothing in K.S.A. 66-128b to  
66-128i, inclusive, shall be construed to  
limit the authority of the state  
corporation commission to review and  
evaluate the efficiency or prudence of  
any actions, including acquisition of  
excess capacity, or operating practices  
of any public utility or common carrier  
for the purpose of establishing fair and  
reasonable rates, joint rates, tolls and  
charges.

History: L. 1984, ch. 247, § 2;  
April 19.

Except, in a review of the  
construction or acquisition  
of an electric generation or  
transmission facility which  
has been authorized by a  
siting permit under  
K.S.A. 66-1,159 et seq. or  
K.S.A. 66-1,178 et seq.,  
there shall be a rebuttable  
presumption that such  
construction or acquisition  
has been efficient and prudent.

66-128b. Deferral and phase-in of value of certain utility property; exclusion of finance costs, when. The commission may require a public utility to defer inclusion of all or any portion of the reasonable value of property determined not currently used and required to be used and may require the phase-in of such value over any period of time and in such increments as it determines to be appropriate. If the commission requires a public utility to defer the inclusion of any portion of such reasonable value and orders a phase-in of such value, it may exclude any or all of the carrying or finance costs incurred after the date of its determination and throughout the period of any deferral or phase-in as so ordered. ^

History: L. 1984, ch. 247, § 3; April 19.

Except, for an electric generation or transmission facility which has been authorized by a siting permit under K.S.A. 66-1,159 et seq. or K.S.A. 66-1,178 et seq., the phase in of such value, unless otherwise so requested by the public utility, (i) must be on a level basis over no more than ten years and (ii) must include all of the carrying or finance costs incurred during the phase in period.

66-128c. Valuation of property for rate making; evaluation of efficiency or prudence of utility; exclusion of all or a portion of costs of excess capacity, when; "excess capacity" defined; exclusion or reduction of return on costs from excess capacity. The state corporation commission, in determining the reasonable value of property under K.S.A. 66-128, and amendments thereto, shall have the power to evaluate the efficiency or prudence of acquisition, construction or operating practices of that utility. In the event the state corporation commission determines that a portion of the costs of acquisition, construction or operation ~~were incurred due in whole or in part to a lack of efficiency or prudence, or were incurred in the acquisition or construction of excess capacity,~~ it shall have the power and authority to exclude all or a portion of those costs from ~~the revenue requested~~ by the utility.

, including the costs of acquiring, constructing, or operating excess capacity,

recognition in rates

For the purpose of this act, "excess capacity" means any capacity in excess of the amount used and required to be used to provide adequate and reliable service to the public within the state of Kansas as determined by the commission. The commission may in its discretion prohibit or reduce the return on costs which were incurred ~~in constructing, maintaining or operating excess capacity.~~

due to a lack of efficiency or prudence

History: L. 1984, ch. 247, § 4; April 19.

66-128d. Proceeding to determine reasonableness of costs of facility; commencement; procedure. The state corporation commission may at any time and in its sole discretion, whether or not the facility is still under construction, initiate on its own motion a proceeding to determine in advance whether the costs of such facility ~~were~~ have been reasonably or prudently incurred, or whether all or a portion of the costs of such facility are or shall be incurred in producing excess capacity under K.S.A. 66-128c and amendments thereto. <sup>^</sup> The proceeding shall be commenced by the commission giving 30 days' written notice of the setting of the hearing of such proceeding to the public utility or utilities involved, and no other motion shall be required, but the procedure, hearing and right to review shall otherwise be as specified [in] the Kansas administrative procedure act and in K.S.A. 66-101 et seq., and amendments thereto.

History: L. 1984, ch. 247, § 5; L. 1986, ch. 318, § 121; L. 1988, ch. 356, § 228; July 1, 1989.

If the construction of the facility has been authorized by a siting permit under K.S.A. 66-1,159 et seq. or K.S.A. 66-1,178 et seq. there shall be a rebuttable presumption that the cost of such facility through the conclusion of the proceeding has been efficient and prudent, and, if so requested by the public utility, shall be recognized in rates under K.S.A. 66-128b.

~~66-128f. Monthly financial reports by certain utilities constructing electric generating facilities. Any public utility subject to the provisions of K.S.A. 66 128b to 66 128g, inclusive, which constructs an electric generating facility and was not required to obtain an advance permit under K.S.A. 66 1,159 et seq. shall make and send monthly financial reports to the state corporation commission. Such reports shall include the following information, as of the date of the report, the: (a) Actual costs incurred; (b) total estimated cost of the facility; (c) percentage of the facility which is actually completed; (d) estimated date of first commercial operation; (e) copies of informational filings provided federal agencies having regulatory authority over such construction; and (e) any other information required by the commission. Such reports shall be prepared and certified in the manner and form required by the commission. Nothing in this section shall limit the commission's authority to require filing of data in any format by any regulated utility the commission deems necessary to accomplish its regulatory duties.~~

History: L. 1984, ch. 247, § 7; April 19.

66-128j. Electric utilities--  
certain power sales; sale or retirement  
of facilities; reduction in revenue  
requirement, when. When a public utility  
sells electric power to other than its  
retail customers or disposes of, sells or  
retires from service any facility, the  
commission may evaluate the efficiency or  
prudence of such electric power sale or  
disposition, sale or retirement from  
service, and if it finds that any such  
action was inefficient or imprudent, ~~or~~  
~~caused a reduction of electric power~~  
~~available to its retail customers or in~~  
~~electrical generating capacity,~~ the  
commission may reduce the revenue  
requirement resulting therefrom.

History: L. 1984, ch. 247, § 1 1;  
April 19.



66-129. Examination of accounts and records. The commission shall have authority to examine and audit all accounts, and all items shall be allocated to the accounts prescribed by the commission. The agents, accountants or examiners employed by the commission shall have authority under the direction of the commission to inspect and examine any and all books, accounts, papers, records, property and memoranda kept by such public utilities and common carriers. ~~The accounts shall be closed annually on the 30th day of June, and a balance sheet of that date promptly taken therefrom.~~

History: L. 1911, ch. 238, § 29; May 22; R.S. 1923, 66-129.

~~66-130. Charges in excess of 1911 schedule. Unless the commission shall otherwise order, it shall be unlawful for any common carrier or public utility governed by the provisions of this act within this state to demand, collect or receive a greater compensation for any service than the charge fixed on the lowest schedule of rates for the same services on the 1st day of January, 1911.~~

History: L. 1911, ch. 238, § 30; May 22; R.S. 1923, 66-130.

66-136. Transfer of franchise. No franchise granted to a common carrier or public utility governed by the provisions of this act shall be assigned, transferred or leased, nor shall any contract or agreement with reference to or affecting such franchise or right thereunder be valid or of any force or effect whatsoever, unless the assignment, transfer, lease, contract or agreement shall have been approved by the commission.

and certificates of convenience and authority

or certificate of convenience and authority

or certificate of convenience and authority

History: L. 191 1, ch. 238, § 36; May 22;

66-151. Free copies of rates and orders; certified copy as evidence. ~~Upon application~~ Of any person, the commission shall furnish, free, certified copies of any classification, rates, rules, regulations, or orders; and such certified copies, or printed copies published by authority of the corporation commission, shall be admissible in evidence in any suit, and sufficient to establish the act that in any charge, rate, rule, order or classification therein contained, and which may be in issue in the trial, is the official act of the corporation commission; and such determinations and orders of the commission shall be prima facie evidence, in any action in which they are offered, of the reasonableness and justness of the classifications, rates and charges involved therein and of all other matters therein found and determined; and after the lapse of thirty days from the time such determination and orders shall be made, no suit then pending to set the same aside, and they remaining in full force and effect, such determinations and orders shall be held to be conclusive as to the matters involved therein. A substantial compliance with the requirements of this act shall be sufficient to give effect to all determinations and orders made and established by the commission.

History: L. 1905, ch. 340, § 11; March 21; R.S. 1923, 66-151.

Subject to K.S.A. 66-1220a and the rules and regulations regarding confidentiality protection established by the commission pursuant to K.S.A. 66-101c and K.S.A. 66-1,203, upon

66-176. Forfeiture for violations; attorney's fee. Any public utility or common carrier which shall violate any of the provisions of law for the regulation of such public utilities or common carriers shall forfeit, for every offense, to the person, company or corporation aggrieved thereby, ~~three~~ times the actual damages sustained by the party aggrieved, together with the costs of suit, and a reasonable attorney fee, to be fixed by the court; and if an appeal be taken from the judgment or any part thereof, it shall be the duty of the appellate court to include in the judgment an additional reasonable attorney's fee for services in the appellate court or courts.

have been found by the commission to have intentionally violated

History: R.S. 1923, 66-176; Dec. 27.

66-181. Mandamus to enforce orders of commission; referees; orders as evidence; contempt proceedings; penalty; costs. It shall be the duty of every railroad company and each and every officer, agent and employee of any railroad company, and of each and every person engaged in any capacity in the conduct of the business of a common carrier, to obey all reasonable orders of the corporation commission made under the authority conferred by this act. In case any railroad company, or any such officer, agent, ~~employee, or person,~~ or of any railroad company shall violate or shall refuse or fail to obey any such order lawfully made by said corporation commission, any person aggrieved thereby may institute and prosecute mandamus proceedings in the supreme court, in the name of the state on the relation of such person, to compel compliance with and obedience to such order; and in any case where in the opinion of the corporation commission the interest of the public requires it, such commission shall require such proceeding to be brought, and such proceeding shall then be brought by the attorney general in the name of the state.

The practice in such proceedings shall be as in other cases of mandamus, but the court may control the time of trial without regard to the time the issues are joined. Cases instituted under the provisions of this section may have precedence as to the time of hearing over all other classes of cases except criminal cases. The supreme court shall have discretionary authority to refer any of the issues in any such proceeding to a referee or referees to be appointed by the court for such hearing and findings, and under such rules as the court may direct. In any hearing under the provisions of this section, the orders and determinations of the corporation commission shall be deemed prima facie evidence of the matters therein stated and found. In such action the court may direct the railroad company affected thereby to comply with any part of any rule, order or regulation of the commission, and may hold any part of the same unreasonable and refuse to enforce such part, without affecting the part found to be reasonable and just.

Disobedience of any judgment, order or writ of the supreme court in any such proceedings shall be punished as in other cases of contempt. The proceedings in cases of contempt shall be summary in their nature, under such rules as the court shall adopt, and no jury trial shall be required or had therein. In addition to the general powers of the court to punish for contempt, the court shall have power to punish any refusal or failure to obey its orders, made under the provisions of this section, by a fine of not to exceed one thousand dollars for each day after a day to be fixed by the court that such disobedience shall continue, or by imprisonment not exceeding one year, or by both such fine and imprisonment.

In any proceeding instituted under the provisions of this section by the attorney general, the costs and expenses on the part of the plaintiff shall be paid out of the general fund of the state, upon approval by the governor, attorney general and auditor of state. The remedies provided by this section shall not be deemed to exclude or limit any other remedies provided in this act or existing in virtue of any other statutes or common law, but shall be additional thereto.

History: L. 1901, ch. 286, § 38; March 29; R.S. 1923, 66-181.

66-182. Injunction, notice and hearing; actions against commission; stay of proceedings, when. No injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the corporation commission shall be granted except on hearing, after not less than five days' notice to the commission/ The institution of any action by any railroad company against the corporation commission to vacate or set aside any order, finding or decision of the corporation commission staff in no manner interfere with or prejudice the rights of said commission or any other party in interest from availing itself of the remedies provided in K.S.A. 66-181. by the railroad company

Whenever a proceeding brought in the supreme court under the provisions of K.S.A. 66-181 by the attorney for the commission, or the attorney general, upon the direction of the corporation commission against any railroad company to compel the compliance with any of said commission, shall be pending at the same time with an action brought in any district court of the state by such railroad company to vacate such order, the supreme court, upon such fact being made to appear, may stay all proceedings in said district court in said cause, so far as relates to the subject matter involved in such proceeding in the supreme court, until the final determination thereof by the supreme court; and if said proceeding in the supreme court results in a final decision upon the merits, determining the question of the validity of such order, said district court, upon the facts being made to appear, shall render judgment in accordance with such decision of the supreme court.

History: R.S. 1923, 66-182; Dec. 27.

66-1,200. Natural gas public utilities; definitions. As used in this act:

(a) "Natural gas public utility" means any public utility defined in K.S.A. 66-104, and amendments thereto, which supplies natural gas.

sells or transports

(b) "Commission" means the state corporation commission.

A natural gas gathering pipeline system, as defined in K.S.A. 66-104, shall not be considered to be a natural gas public utility.

History: L. 1985, ch. 225, § 3; July 1.



66-1,202. Service and facilities required; reasonable rules, classifications, regulations, rates, ~~tolls~~ and charges; hearing. Every natural gas public utility governed by this act shall be required to furnish reasonably efficient and sufficient service, ~~joint service~~ and facilities for the use of any and all products or services rendered, furnished, supplied or produced by such natural gas public utility, to establish just and reasonable rates, joint rates, tolls, charges and exactions and to make just and reasonable rules, classifications and regulations. Every unjust or unreasonably discriminatory or unduly preferential rule, regulation, classification, rate, ~~joint rate,~~ ~~toll,~~ charge or exaction is prohibited, unlawful and void. The commission shall have the power, after notice and hearing in accordance with the provisions of the Kansas administrative procedure act, to require all natural gas public utilities governed by this act to establish and maintain just and reasonable ~~joint~~ rates when the same are reasonably necessary in order to maintain reasonably sufficient and efficient service from such natural gas public utilities.

History: L. 1985, ch. 225, § 17;  
L. 1988, ch. 356, § 252; July 1, 1989.

66-1,203. Same; publication and filing of rates, ~~tolls and charges~~; copies of regulations and contracts; ~~rules and regulations governing~~ <sup>printing and filing of</sup> ~~schedules of rates, tolls, charges and regulations.~~ Every natural gas public utility doing business in Kansas over which the commission has control shall publish and file with the commission copies of all schedules of rates, ~~joint rates, tolls, charges, classifications and divisions of rates affecting Kansas traffic, either state or interstate,~~ and shall furnish the commission copies of all rules, regulations and contracts between natural gas public utilities pertaining to any and all <sup>jurisdictional</sup> ~~services~~ to be rendered by such natural gas public utilities. The commission shall have power to prescribe reasonable rules and regulations regarding the ~~printing and filing of all schedules, tariffs and classifications of all rates, joint rates, tolls, charges and all rules and regulations of such natural gas public utility.~~ <sup>form</sup> ~~^~~

History: L. 1985, ch. 225, § 23; July 1.

, including such confidentiality protection requested by the natural gas public utility, its suppliers and customers for contracts entered into by them.

66-1,204. Same; investigation of rates, ~~tolls, charges and services;~~ orders of commission. It shall be the duty of the commission. either upon complaint or upon its own initiative, to investigate all ~~^rates, joint rates,~~ schedules of ~~tolls, charges and exactions,~~ and hearing ~~classifications or schedules of rates or joint rates and rules and regulations of natural gas public utilities. If after full hearing and investigation ^the~~ commission finds that such rates, ~~joint rates, tolls, charges or exactions,~~ establish ~~classifications or schedules of rates or joint rates or rules and regulations are unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have the power to fix~~ and order substituted therefor such rates, ~~tolls, charges, exactions,~~ after ~~classifications or schedules of rates or joint rates and such rules and regulations as are just and reasonable.~~ and hearing

If upon any ~~^investigation, it is~~ found that any regulation, measurement, practice, act or service complained of is unjust, unreasonable, unreasonably inefficient or insufficient, unduly preferential, unjustly discriminatory, or otherwise in violation of this act or of the orders of the commission, or if it is found that any service is inadequate or that any reasonable service cannot be obtained, the commission may substitute therefor such other regulations, measurements, practices, service or acts, and make such order respecting any such changes in such regulations, measurements, practices, service or acts as are just and reasonable. When, in the judgment of the commission, public necessity and convenience require, the commission may establish just and reasonable concentration or other special rates, charges or privileges, but all such rates, charges and privileges shall be open to all users of a like kind of service under similar circumstances and conditions.

History: L. 1985, ch. 225, § 29; July I.

Sec. 3. K.S.A. 66-1,205 is hereby amended to read as follows:

66-1,20-5. (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. ~~he~~ the commission may, upon its own motion, and without any complaint being made, proceed to make such investigation, but no order affecting ~~changing~~ 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 in accordance with the provisions of the Kansas administrative procedure act, 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.

66-1,206. Same; orders and decisions of Commission; service of copy upon utility; effective date. (a) If \_\_\_\_\_ and hearing upon such ~~hearing and investigation~~ the rates, ~~joint rates, tolls, charges,~~ rules, ~~regulations, classifications or~~ and schedules of any natural gas public utility governed by this act are found unjust, unreasonable, unfair, unjustly discriminatory or unduly preferential, or in any way in violation of the provisions of this act, or of any of the laws of the state of Kansas, the commission shall have the power to ~~fix~~ and establish, and to order substituted therefor such rates, ~~joint rates, tolls, charges, rules, regulations,~~ or ~~classifications or schedules~~ as it shall find, determine or decree to be just, reasonable and necessary. If it is found that any regulation, practice or act, relating to any service performed or to be performed by such natural gas public utility for the public is in any respect unreasonable, unjust, unfair, unreasonably inefficient or insufficient, unjustly discriminatory or unduly preferential, or otherwise in violation of any of the provisions of this act or of any of the laws of the state of Kansas, the commission may substitute therefor such other regulations, practice, service or act as it determines to be just, reasonable and necessary. For the purposes of determining just and reasonable rates, ~~joint rates, tolls and charges,~~ the commission may adopt a policy of disallowing a percentage, not to exceed 50%, of utility dues, donations and contributions to charitable, civic and social organizations and entities, in addition to disallowing specific dues, donations and contributions which are found unreasonable or inappropriate.

(b) All orders and decisions of the commission whereby any rates, ~~joint rates, tolls, charges,~~ rules, regulations, ~~classifications, schedules,~~ practice or acts relating to any service performed or to be performed by any natural gas public utility for the public are altered, changed, modified, ~~fixed~~ or established shall be reduced to writing, and a copy thereof, duly certified, shall be served on the natural gas public utility affected thereby. Such order and decision shall become operative and effective within 30 days after such service. Such natural gas public utility, unless an action is commenced in a court of proper jurisdiction to set aside the findings, orders and decisions of the commission, or to review and correct the same, shall carry the provisions of such order into effect.

History: L. 1985, ch. 225, § 41; L. 1988, ch. 356, § 254; L. 1992, ch. 148, § 3; July 1.

**6-1a01.** Fees imposed concerning regulation of securities and motor carriers; fees for document copies, approval; public service regulation fund; motor carrier license fees fund; disposition of moneys. (a) The state corporation commission shall charge and collect fees for the purposes and in the amounts as prescribed in this section. Such fees shall be paid to the state corporation commission at the time of filing the original papers or application in the case.

(b) (1) For the purposes of certificates issued under K.S.A. 66-125, and amendments thereto, to authorize the issuance of stock, bonds or other evidences of indebtedness, except as otherwise provided in paragraph (1), the commission shall charge and collect an application fee of \$10 to accompany each application and processing fees which shall be paid on or before issuance of a certificate and which shall be in accordance with the following schedule:

For the first \$100,000 principal amount or fraction thereof allowed and to be invested in the state of Kansas.....	\$25
For each additional \$100,000 or fraction thereof for the next \$1,400,000 principal amount allowed and to be invested in the state of Kansas.....	10
For each additional \$500,000 or fraction thereof over \$1,500,000 allowed and to be invested in the state of Kansas.....	25

Notwithstanding the foregoing provisions of paragraph (1), whenever an application is made for a certificate to authorize the issuance of stocks, bonds or other evidences of indebtedness and the federal interstate commerce commission has authorized the issuance of the same issue of such stocks, bonds or other evidences of indebtedness, the commission shall charge and collect an application fee of \$10 to accompany each application and a processing fee of \$25 which shall be paid on or before issuance of such certificate.

(2) With regard to the regulation of motor carriers, the commission shall charge and collect fees in accordance with the following schedule:

For application for motor common carrier certificate.....	\$25
For application for motor carrier permit or license, except no fee shall apply to motor carriers regulated by the interstate commerce commission.....	10
For application for extension, rerouting, removal of restrictions or transfer of motor common carrier certificate and motor common carrier license..	10
For each motor common carrier certificate involved in an application for authority to establish joint rates or fares and perform joint service.....	5
For application of motor common carriers for authority to make any change in their tariffs or other publication pertaining to their rates, fares or charges:	
If hearing not required.....	1
If increases proposed in rates, fares or charges when hearing is required.....	25

(3) The commission shall charge a fee for copies, other than mimeographed or printed copies, of applications, orders, certificates,

ment identification cards and a fee for copies of passenger or property motor common carrier lists, both fees in amounts approved by the director of accounts and reports under K.S.A. 45-204, and amendments thereto.

(c) There is hereby created in the state treasury the public service regulation fund. The commission shall remit all moneys received by or for it in payment of the fees imposed for certificates authorizing the issuance of stock, bonds or other evidences of indebtedness under paragraph (1) of subsection (b) to the state treasurer daily. Upon the receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and the entire amount thereof shall be credited to the public service regulation fund. All expenditures from the public service regulation fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the state corporation commission or by a person or persons designated by such chairperson.

(d) There is hereby created in the state treasury the motor carrier license fees fund. The commission shall remit all moneys received by or for it in payment of the fees imposed for regulation of motor carriers under paragraphs (2) and (3) of subsection (b) to the state treasurer daily. Upon the receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and the entire amount thereof shall be credited to the motor carrier license fees fund. All expenditures from the motor carrier license fees fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the state corporation commission or by a person or persons designated by such chairperson.

History: L. 1931, ch. 237, § 1; L. 1937, ch. 281, § 1; L. 1976, ch. 288, § 1; L. 1978, ch. 347, § 14; L. 1993, ch. 263, § 9; July 1.

No fee shall be charged when such issue is made for the purpose of guaranteeing, assuming, refunding, discharging or retiring any bond, note or other evidence of indebtedness up to the amount of the issue guaranteed, assumed, refunded, discharged or retired.

66-1213. ~~Loaning money or pledging credit~~ by public utilities to persons having affiliated interest: procedure; hearing. Before any public utility company subject to the jurisdiction of the state corporation commission shall loan its funds ~~or pledge its credit~~, except to secure money actually borrowed by it or for its proper corporate needs, directly or indirectly to any person or corporation having an affiliated interest, such company shall make application to the corporation commission for the approval of same. When such application has been filed with the commission for permission to make such loan ~~or pledge the credit of such company~~, the commission shall make such investigation as it deems necessary, and within 10 days either approve such loan or set same for hearing with due notice to applicant. If the commission finds that the making of such loan ~~or pledge~~ would substantially impair the financial condition of such public utility company or the ability of such company to furnish and maintain sufficient and efficient service, the commission shall deny such application; otherwise it shall grant such application. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

History: L . 1933, ch. 88, § 1 (Special Session); L. 1988, ch. 356, § 263; July 1, 1989.

66-1403. Showing required for ~~fixing~~ or establishing charging rates. In ascertaining the reasonableness of a rate or charge to be made by a public utility, no charge for services rendered by a holding or affiliated company, or charge for material or commodity furnished or purchased from a holding or affiliated company, shall be given consideration in determining a reasonable rate or charge unless there be a showing made by the utility affected by the rate or charge ~~as to the~~ actual cost to the holding or affiliated company furnishing such service and material or commodity. Such showing shall consist of an itemized statement furnished by the utility setting out in detail the various items, cost for services rendered and material or commodity furnished by the holding or affiliated company.

that either (a) the rate or charge is no higher than that available from unaffiliated sources or (b) the rate or charge does not exceed of actual cost

History: L. 1931, ch. 239, § 3; March 9.



K.S.A. 66-128q. Electric utilities; purchase power contracts; valuation for ratemaking. All reasonable and prudent capacity and demand charges incurred by an electric public utility under any purchase power contract, if requested by the electric public utility, may be capitalized and included in the electric public utility's rate base for ratemaking purposes. The state corporation commission shall allow the same return to be earned on said capacity and demand charges as is earned on the electric public utility's other rate base properties.

New Section 1 This act may be cited as the "Kansas Public Utilities Environmental Remediation Act."

New Section 2 As used in this Act:

(a) "Commission" means the state corporation commission.

(b) "Environmental Remediation" means the restoration of environmentally impaired property pursuant to orders issued by appropriate lawful authority.

(c) "Environmentally Impaired Property" means property currently or previously owned by a public utility, as defined by K.S.A. 66-104, or in the immediate environment of such property, which appropriate lawful authorities have determined is subject to environmental remediation. Such property may be located within or without the State of Kansas, but shall only include properties impacted by actions occurring prior to December 11, 1980, the effective date of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The actions covered by this paragraph are those events which impact the property in such a manner that requires Environmental Remediation. The property may be impacted at any time as long as the initial event causing it occurred prior to December 11, 1980. The actions impacting the property may have been taken by the public utility itself, a predecessor company to the public utility whether by merger, acquisition or consolidation, or by a third party from whom such property was acquired.

(d) "Environmental Remediation Costs" means all reasonable costs and expenses incurred to restore property subject to Environmental Remediation. Such costs may be incurred directly by the public utility, may be paid to third party contractors, may be paid by the public utility to third parties which currently own the property, or may be paid to the lawful authority which undertakes the Environmental Remediation. Any amounts recovered by the public utility, whether from insurance proceeds or from third parties potentially responsible for the property being subject to Environmental Remediation, shall be treated as a deduction from the amounts otherwise considered as reasonable costs and expenses.

New Section 3

The Commission shall include all Environmental Remediation Costs including carrying charges in the revenue requirements of the public utility when such costs are incurred pursuant to an Order or Decision by a lawful authority requiring the Environmental Remediation to be done or requiring payment of such costs for Environmental Remediation. The amount of Environmental Remediation Costs included in a public utility's revenue requirements shall be based upon the public utility's General Plant allocation factor, or upon a higher allocation factor as determined appropriate by the Commission.

New Section 4

This act shall not restrict any public utility from seeking recovery of other costs incurred by the utility relating to environmental protection and restoration of property which is not considered Environmentally Impaired Property as defined in this act.

New Section 5

The provisions of this act are declared to be severable, and if any section, sentence, clause or phrase of this act shall for any reason be held to be invalid or unconstitutional, the validity or application of the other provisions of the act shall not be affected, it being the intent of the legislature that the act shall stand notwithstanding the invalidity of any part.

New Section 6

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

*50m Low*

BEFORE THE HOUSE  
ENERGY AND NATURAL RESOURCES COMMITTEE

PRESENTATION OF THE  
KANSAS CORPORATION COMMISSION ON  
HB 2045, 2047, 2048, 2049, 2051 & 2053

Our understanding is that these bills are intended to clean up various statutes by deleting or changing outdated, ambiguous or confusing provisions. For the most part, the Commission has no objections to these bills, although some do not appear to be merely "clean up" bills. For example, HB 2053 allows a petitioning utility which requests a court stay of a KCC order to post a satisfactory guarantee or surety in addition to a suspending bond. Although there appears to be no compelling reason to oppose it, I am also unaware of a real need for this change.

We do have limited comments on two of the bills:

HB 2045 - Section 6 (pg. 4, lines 14-16) exempts a natural gas gathering pipeline system, as defined in K.S.A. 66-104, from treatment as a utility.

- KCC is interested in having some jurisdiction over gas gathering systems and supports another bill, HB 2041, which explicitly provides for ability to prevent discriminatory services. Would not want to give up potential jurisdiction under current statutes unless passage of that or similar bill is likely.

- Understand that another bill is being drafted which includes definition of gas gathering systems to be part of K.S.A. 66-104. The draft version of that definition appears different in material respects from HB 2041.

HB 2048 - Section 2 (pg. 3, lines 25-28) exempts from the schedule of fees, applications for security issuances involving guarantees, assumptions, discharges and retirements.

- Estimate (based on the last year of security filings) that change would reduce fees by about a third or \$5800.

- Obviously, current fee schedule is not based on costs of processing applications but more on "value" of security issued. In some sense, proposed changes would reflect whether new "value" was being created and might be appropriate.

- However, changes would also create additional work for everyone

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in attempting to sort out whether and to what extent new issuances qualify. It will sometimes be difficult to make such determinations.

- Generally, not sure why these fees were codified in statutes in first place. One solution would be simply to allow the Commission to establish application fees like it establishes other fees pursuant to subsection (b) (3) of the current statute. (pg 4, lines 2-7).

BEFORE THE HOUSE  
ENERGY AND NATURAL RESOURCES COMMITTEE

PRESENTATION OF THE  
KANSAS CORPORATION COMMISSION ON

HB 2052

The Commission supports this bill as a desirable clarification of the statute, K.S.A. 17-1901, allowing telegraph companies (and consequently, pursuant to K.S.A. 17-1902, telephone companies) to use public streets and roads. The KCC has suggested in a pending case before the Court of Appeals that a district court interpretation of the existing statute was too narrow. That decision of not allowing the setting of facilities under the public streets did not recognize the broad purpose of the statute and the various reasons that underground wires and cables may be more desirable and efficient than aerial wires.

Whatever the outcome of the particular case before the Court of Appeals, we do believe that a prospective clarification of the statute is desirable.

BEFORE THE HOUSE  
ENERGY AND NATURAL RESOURCES COMMITTEE

PRESENTATION OF THE  
KANSAS CORPORATION COMMISSION ON  
HB 2054

The Commission neither supports nor opposes this bill. The question of what is appropriate evidence of negligence in civil litigation is beyond the KCC's scope of authority and expertise. However, we cannot help but note that the bill appears ambiguous in its effect.

The bill would exclude as evidence of negligence the failure of a utility to comply with KCC wire stringing standards or KCC orders relating to wire-stringing. However, this exclusion would not apply "with regard to the purposes for which standards are prescribed by or pursuant to this section, as expressly provided by this section." (new (d), p.1, line 40-42) It seems that this latter exception may actually make the proposed exclusion of evidence meaningless. This is because existing subsections (a) and (b) refers to "avoid[ing] unreasonable injury" and "danger," so that the wire-stringing standards should be viewed as public safety standards and evidence of compliance would arguably be admissible as evidence of negligence.

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

**RE: HOUSE BILLS 2047, 2048, 2049, 2051, 2052, 2053, 2054**

GOOD AFTERNOON MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I AM JEFF RUSSELL, DIRECTOR OF GOVERNMENTAL AND PUBLIC AFFAIRS FOR THE SPRINT/ UNITED TELEPHONE COMPANY.

WE SUPPORT THE COMMITTEE'S EFFORT TO UPDATE STATUTES TO MORE ACCURATELY REFLECT THE OPERATING REALITIES OF TODAY'S INDUSTRIES AND THE CUSTOMERS WE SERVE. I HAVE REVIEWED THE PROPOSED BILLS WITH OUR ATTORNEY; AND WE SUPPORT THE BILLS MENTIONED ABOVE.

I AM AWARE OF A PROPOSED AMENDMENT TO HB 2052 WHICH WE ALSO SUPPORT.

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU THIS AFTERNOON.

*1/17/95  
Energy & Natural Resources  
Attachment #4*



JANUARY 17, 1995  
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

WRITTEN TESTIMONY OF DAVID NICHOLS  
REPRESENTING SOUTHWESTERN BELL TELEPHONE  
ON HOUSE BILLS 2047, 2051, 2052, AND 2053

THANK YOU MR. CHAIRMAN AND MEMBERS OF THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE FOR THE OPPORTUNITY TO APPEAR BEFORE YOU IN SUPPORT OF THE FOLLOWING HOUSE BILLS.

**HB 2047** - SOUTHWESTERN BELL TELEPHONE SUPPORTS PASSAGE OF HB 2047 WHICH MERELY CLEANS-UP THE UTILITY STATUTES BY REPEALING OUTDATED LAWS THAT STATE THAT KANSAS CORPORATION COMMISSION (KCC) APPROVED RATES ARE EFFECTIVE UNLESS OTHERWISE DETERMINED BY A COURT (K.S.A. 66-116) AND THAT THE UTILITY RATES SHALL NOT EXCEED THE RATES THAT EXISTED IN 1911, UNLESS OTHERWISE APPROVED BY THE KCC (K.S.A. 66-130). THESE STATUTES ARE REDUNDANT AND THIS CHANGE ALIGNS THE STATUTES TO CURRENT PRACTICE.

**HB 2051** - SOUTHWESTERN BELL TELEPHONE SUPPORTS PASSAGE OF HB 2051 WHICH ELIMINATES OUT-DATED UTILITY STATUTES REQUIRING RAILROAD, EXPRESS AND TELEGRAPH COMPANIES TO FURNISH TELEPHONE LINES FROM THEIR OFFICES TO THE LOCAL TELEPHONE COMPANY SWITCHING OFFICE.

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Energy & Natural Resources  
Attachment #5

**HB 2052** - SOUTHWESTERN BELL TELEPHONE SUPPORTS HB 2052 WHICH MERELY CLARIFIES THAT TELEPHONE COMPANIES CERTIFIED BY THE KCC CAN CONTINUE TO USE PUBLIC RIGHTS OF WAY WHEN THEY PLACE FIBER OPTIC WIRES, AS WELL AS METALLIC WIRES, AND WHEN THEY PLACE THOSE WIRES UNDERGROUND AS WELL AS ABOVE GROUND. THIS WILL AVOID ATTEMPTS TO REQUIRE TELEPHONE COMPANIES TO USE OUT-DATED TECHNOLOGY OR TO PLACE WIRES ABOVE GROUND WHEN THAT MAY BE MORE COSTLY OR UNSIGHTLY TO THE PUBLIC. THERE IS A PENDING COURT OF APPEALS CASE CONCERNING THIS STATUTE.

**HB 2053** - SOUTHWESTERN BELL TELEPHONE SUPPORTS PASSAGE OF HB 2053 WHICH ALLOWS A COURT HEARING A UTILITY APPEAL FROM A KCC DECISION TO RELY ON A BOND OR SURETY EXECUTED BY THE UTILITY RATHER THAN FORCING THE UTILITY OR ITS CUSTOMERS TO INCUR THE EXPENSE OF A THIRD-PARTY BOND OR SURETY. THIS MERELY LETS THE COURT DECIDE IF THE UTILITY IS FINANCIALLY SOUND ENOUGH TO COMPLY WITH ANY DECISION OR APPEAL.

THANK YOU AGAIN MR. CHAIRMAN FOR THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE.

JANUARY 17, 1995  
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

WRITTEN TESTIMONY ON HOUSE BILL 2054  
BY WILLIAM DREXEL REPRESENTING  
SOUTHWESTERN BELL TELEPHONE COMPANY

THANK YOU MR. CHAIRMAN AND MEMBERS OF THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE FOR THE OPPORTUNITY TO APPEAR BEFORE YOU IN SUPPORT OF THE FOLLOWING HOUSE BILL.

**HB 2054** - SOUTHWESTERN BELL TELEPHONE SUPPORTS PASSAGE OF HB 2054 WHICH PROVIDES THAT THE FAILURE OF A UTILITY TO MEET THE STATUTORY OR KANSAS CORPORATION COMMISSION REQUIREMENTS TO PREVENT ITS WIRES FROM INTERFERING WITH THE WIRES OF ANOTHER UTILITY SHALL NOT BE USED AS EVIDENCE OF NEGLIGENCE IN OTHER CIVIL CASES. IN SUCH CASES, THE UTILITIES' ACTIONS WOULD BE GOVERNED BY THE SAME "REASONABLE PERSON" STANDARD OF CARE THAT GOVERNS REGULAR CIVIL LITIGATION.

THANK YOU AGAIN MR. CHAIRMAN FOR THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE.

1/17/95  
Energy & Nat. Resources  
attachment #6



# Legislative Testimony

*Kansas Telecommunications Association, 700 S.W. Jackson St., Suite 704, Topeka, KS 66603-3731*

Testimony before the  
House Committee on Energy and Natural Resources

HB 2047, HB 2048, HB 2049, HB 2051,  
HB 2052, HB 2053, and HB 2054

January 17, 1995

Mr. Chairman, members of the committee, I am Rob Hodges, President of the Kansas Telecommunications Association. Our membership is made up of telephone companies, long distance companies, and firms and individuals who provide service to and support for the telecommunications industry in Kansas.

I appear today in support of the series of "cleanup" bills listed above. The bills have been circulated to KTA member companies for review and I have received approval to support the bills from those companies that responded.

It is our understanding that the intent of the bills is to remove unnecessary or antiquated language from the statute books, or to update existing statutory language to more adequately reflect today's telecommunications environment.

So long as the bills are not amended to create problems for KTA members, the KTA endorses their passage.

Thank you, Mr. Chairman, for the opportunity to appear and tell you of our support for these bills.

1/17/95  
Energy & Natural Resources  
Attachment # 7



**League  
of Kansas  
Municipalities**

LEGAL DEPARTMENT · 112 S.W. 7TH TOPEKA, KS 66603 · TELEPHONE (913) 354-9565 · FAX (913) 354-4186

**TO:** House Committee on Energy and Natural Resources  
**FROM:** Don Moler, General Counsel  
**RE:** HB 2052  
**DATE:** January 17, 1995

Thank you very much for allowing the League to appear today in opposition to HB 2052. We are concerned about this piece of legislation in its present form because we believe it may have a much more far-reaching impact than would appear at first reading. Specifically, we believe that the addition of the word "under" could have significant impact on the ability of local governments to control the public right-of-way.

Essentially, utilities in Kansas have long had the ability to run telephone and telegraph lines above and along streets and public right-of-ways pursuant to K.S.A. 17-1901. This change, however, would appear to grant to certain utilities the ability to cut streets, alleys and any other public appurtenances for the purpose of laying telegraph, telephone or other types of communication lines. We believe that these cuts might be made without the consent or agreement of any municipality and without any compensation to the public for the use of the public right-of-way. We are therefore concerned that this type of a change would give carte blanche to utilities to run cables, such as fiber optic cables, under streets and alleys throughout the state. Furthermore, it may essentially inhibit the ability of cities to contract with utilities for payments to use the public right-of-ways when laying underground lines. We believe this would be counter to sound public policy and would take away the control of the public right-of-ways from the elected city officials across the state. We would urge the committee to move very cautiously on HB 2052. Thank you very much for allowing us to appear before the committee.

1/17/95  
Energy & Natural Resources  
Attachment #8