Approved: Carl Dean Holmes
Date 3-6-95

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes on January 25, 1995 in Room 526-S of the Capitol.

All members were present except: Representative Phill Kline - Excused

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: Jim Haines - Western Resources
Rob Hodges - KS Telecommunications Association
Don Low - KS Corporation Commission

Others attending: See attached list

The Chair and Committee members acknowledged the presence of Mr. Richard Vix, Wichita Public Schools (USD 259), and six students from Wichita High School Heights observing the Committee proceedings today.

Referring to two bills introduced in Committee yesterday giving the Clean Water Program and Safe Drinking Water Program back to the EPA, Chairperson Holmes distributed a copy of a letter from Karl Mueldener, Kansas Department of Health and Environment. (See Attachment #1.)

Action on HB 2037:

Representative Sloan moved to pass **HB 2037** favorably and place on the Consent Calendar. Representative Feuerborn seconded. Motion carried.

Hearing on:
HB 2059
HB 2060
HB 2094
HB 2095
HB 2096
HB 2099
HB 2100

Jim Haines. Mr. Haines reviewed the findings of the Utilities Task Force that studied the seven bills scheduled for hearing this date. He advised of the "clean-up" language and/or policy changes proposed, and explained the rationale for the changes.

Due to the lengthy review by Mr. Haines, the Chair opened the meeting to any inquiries of Mr. Haines before proceeding with the remainder of conferees.

Rob Hodges. On behalf of Kansas Telecommunication Association, Mr. Hodges appeared before the Committee in support of **HB 2059; HB 2094; HB 2095; HB 2099;** and **HB 2100.** (See Attachment #2.)

Mr. Hodges requested an amendment to **HB 2100**. He said all the bills were circulated among Association member companies and only this particular bill drew significant comment. He reported that as the KTA members reviewed the bill, it became clear that they would like to have clarified the KCC's ability to keep portions of contracts confidential. Without confidential treatment of certain contract terms and conditions, he argued that telecommunications companies could become easy targets for potential competitors. Mr. Hodges concluded by reporting that his proposed amendment has been reviewed and endorsed by AT&T; MCI; Sprint; Southwestern Bell; Sprint United and representatives of other KTA member companies.

Don Low. (See Attachment #3.) Mr. Low offered testimony on **HB 2094**, reporting that the KCC

opposes this bill because it removes an important ratepayer safeguard and doesn't address any real problems. He said the bill amends KSA 66-1213 to delete the requirement for KCC approval before a utility pledges its credit for an affiliate but continues the requirement for loans of money.

Mr. Low said the proposed amendments would make a distinction between loans and pledges of credit and there is no apparent reason for the distinction. He added that the existing statute requires the Commission to either approve an application or set a hearing within ten days. The Commission has not felt it necessary to set any hearing on applications. Thus, he said unless a utility proposes a transaction which raises concerns, there should be no significant delay in processing applications.

Don Low. (See Attachment #4.) Regarding **HB 2095**, Mr. Low said this measure would reduce the current remedies available to persons damaged by noncompliance with regulatory requirements. Also, he said this bill does appear to be an unreasonably drastic change in the current status which is not compelled by any problems of which the Commission is aware.

Don Low. (See Attachment #5.) **HB 2099** amends several statutes which were originally part of the "Wolf Creek" bill passed by the legislature in 1984, according to Mr. Low. He said that bill gave the Commission more explicit broad authority to deal with potential problems associated with the Wolf Creek nuclear generating plant. He maintains that these changes would represent a significant legislative retreat from the authority granted to the KCC. Additionally, he said the bill amends a statute dealing with services rendered by an affiliate to a utility in a way which weakens the protection against unreasonable cost for ratepayers.

To aid in understanding the potential affects of this bill, Mr. Low said the 1985 Wolf Creek decisions dealt with three major aspects of the costs of Wolf Creek: 1) The excessive costs caused by inefficient and imprudent construction of the plant; 2) Costs of excess "physical" capacity which were not "used or required to be used" since the actual demand for electricity had changed significantly from the original forecasts during the 8-year construction period; and 3) Excess "economic" costs due to the plant's high capital costs compared to a coal-fired plant.

According to Mr. Low, the Commission opposes changes to the statute unless several modifications to the bill provisions are made. They do believe a showing of "market value" of the services is desirable. However, the phrase "available from unaffiliated sources" may not fully capture the potential measures of market value of the service. Secondly, he said the Commission believes that it is desirable for utilities to make both showings rather than be allowed to choose one. Lastly, if this statute is amended it should be clarified to ensure that the Commission retains the discretion to determine that costs are reasonable (whether at the lower of market value or actual costs - or some other standard).

In conclusion, Mr. Low noted that changes are imminent in the electric and natural gas industries which may lead to greater competition. The intent of this bill appears to be to insulate the companies in certain respects from the risks associated with those change, and it is not appropriate.

During questions and discussion of **HB 2099** with Mr. Low, Mr. Larry Hollingworth, Chief Engineer, Western Resources spoke from the Floor.

Don Low. (See Attachment #6.) Mr. Low reported that the Commission supports **HB 2100** with some clarification by adding a phrase to the bill provisions as follows:

> . . . including such protection of confidentiality as requested by the electric public utility, and the utility's supplier and customers, for contracts entered into by them, as the commission deems reasonable and appropriate (Page 1, lines 25-27). (Same language on Page 4, lines 19-21.)

Action on HB 2038:

Representative Sloan moved to change the statute in **HB 2038** to become effective upon its publication in the Kansas Register. Representative McClure seconded. Motion carried.

Representative McKinney moved to pass **HB 2038** favorably, as amended. Representative Alldritt seconded. Motion carried.

Upon completion of its business, the meeting adjourned at 5:30 p.m.

The next meeting is scheduled for January 26, 1995.

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: January 25, 1995

NAME	REPRESENTING
Rob Hodges	Ks Telecom Assn
MIKE REECHT	AT+T
J.C. Long	Util. Corp United
M C Clark	KEC
J. Haines	Western Resources
Jim Ludwig	" "
John DeCoursey	" "
Richard Vix & Class	Wichita Heights H.S.
Larry Holloway	KCC
Danny Biggs	KIOGA
Don Schmick	KIOGA
JOE DICK	B.P.U. KCK
Arlan Holmes	Division of Budget
Don Low	KCC
TREVA POTTER	MIDWEST ENERGY
Whitney Damron	Pete McGill & Associates
ED SCHAUB	WESTERN RESOURCES
Bill Drexel	Southwest Bell Telephone
DENNY KOCH	SW BELL TEL

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE GUEST LIST

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DATE: January ~~26~~ 1995

NAME	REPRESENTING
Neva Powers	MCI
Kevin Robertson	Barbee & Assoc.
Dave D. Hemsoe	KCC
Julie Hein	Hein, Ebert & LeDoux
Tom Whitaker	Ks Motor Carriers Assn
Tom Day	KCC

State of Kansas

Bill Graves Governor

Department of Health and Environment
Bob J. Mead, Acting Secretary

Post-It™ brand fax transmittal memo 7671	# of pages ▸ 3
To Carl Holmes	From Karl Mueldener
Co.	Co. KDHE
Dept.	Phone # 6-5500
Fax # 6-1985	Fax # 6-5509

January 25, 1995

Mr. Gale Hutton, Director
Water Management Division
US EPA - Region VII
726 Minnesota Avenue
Kansas City, KS 66101

Re: Kansas Primacy

Dear Gale:

Attached are two bills introduced in the Kansas House. The bills appear to reflect the public's frustration at the state being "EPA police" and are desirous of more state flexibility with federal programs. Hearings have been tentatively set for February 13 and 14. I suggest we visit with regard to whether or not your agency wants to testify.

Sincerely,

Karl Mueldener, P.E., Director
Bureau of Water

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Attachments (2)
pc: Dennis Grams, RA-EPA
Secretary Bob Mead
Dr. Ron Hammerschmidt

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Energy & Natural Resources

Division of Environment, Bureau of Water, Forbes Field, Bldg. 283, Topeka, KS. 66620-0001 Telephone: (913) 296-5500
Fax Number: (913) 296-5509

Attachment #1

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 2059, HB 2094, HB2095,
HB 2099, and HB 2100

January 25, 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 bills listed above and to request an amendment to HB 2100. The bills were circulated among interested KTA member companies and only HB 2100 drew significant comment. The amendment we seek to HB 2100 is shown on the attachment to my testimony.

As KTA members reviewed the bill, it became clear that they, too, would like to have clarified the KCC's ability to keep portions of contracts confidential. In this time of growing competition in the telecommunications environment, we feel it will become increasingly important for companies to solidify their relationships with customers and to be able to keep portions of those relationships confidential.

Without confidential treatment of certain contract terms and conditions, telecommunications companies could become easy targets for potential competitors who could obtain information from the contracts.

Mr. Chairman, members of the committee, this proposed amendment has been reviewed and endorsed by AT&T, MCI, Sprint, Southwestern Bell, Sprint United and representatives of other KTA member companies, too.

Thank you, Mr. Chairman, for the opportunity to appear and request our amendments.

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Attachment #2

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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, *except those determined to be confidential under rules and regulations adopted by the commission,* shall be filed in every station, office or depot of every such public utility and every common carrier in this state, for public inspection.

(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 ½% 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.

Sec. 3. K.S.A. 66-151 is hereby amended to read as follows: 66-151. *Subject to the provisions of K.S.A. 66-1220a and amendments thereto and rules and regulations regarding protection of confidentiality adopted by the commission pursuant to K.S.A. 66-101c, and 66-1,203, and amendments thereto,* 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 fact 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

, 66-1,190,

matters therein found and determined; and after the lapse of thirty day from the time such determination and orders shall be made, no suit ther 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 th matters involved therein. A substantial compliance with the requirement of this act shall be sufficient to give effect to all determinations and order made and established by the commission.

Sec. 4. K.S.A. 66-1,203 is hereby amended to read as follows: 66 1,203. Every natural gas public utility doing business in Kansas over whicl the commission has control shall publish and file with the commissio copies of all schedules of rates~~, joint rates, tolls, charges, classification and divisions of rates affecting Kansas traffic, either state or interstate~~ and shall furnish the commission copies of all rules~~,~~ *and* regulations an contracts between natural gas public utilities pertaining to any and al *jurisdictional* services to be rendered by such natural gas public utilities The commission shall have power to prescribe reasonable rules and reg ulations regarding the ~~printing~~*form* and filing of all schedules~~, tariffs an classifications of all rates, joint rates, tolls, charges~~ *of rates* and all rule and regulations of such natural gas public utility, *including such protectio of confidentiality as requested by the natural gas public utility, and th utility's suppliers and customers, for contracts entered into by them.*

Sec. 5. K.S.A. 66-101c, 66-117, 66-151 and 66-1,203 are hereby re pealed.

Sec. 6. This act shall take effect and be in force from and after it publication in the statute book.

Sect. 4. K.S.A. 66-1,190 is hereby amended to read as follows: 66-1,190. Every telecommunications 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 such telecommunications public utilities pertaining to any and all *jurisdictional* services to be rendered by such telecommunications public utilities. The commission shall have power to prescribe reasonable rules and regulations regarding the ~~printing~~ *form* and filing of all schedules, tariffs and classifications of all rates, joint rates, tolls, charges and all rules and regulations of such telecommunications public utilities, *including such protection of confidentiality as requested by the telecommunications public utility, and the utility's suppliers and customers, for contracts entered into by them.*

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, 66-1,190

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BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
Presentation Of The
KANSAS CORPORATION COMMISSION ON
HB 2094

The Commission opposes this bill because it removes an important ratepayer safeguard and doesn't address any real problems. The bill amends K.S.A. 66-1213 to delete the requirement for KCC approval before a utility pledges its credit for an affiliate but continues the requirement for loans of money.

This statute provides a minimum safeguard regarding the use of an utility's funds or credit for an affiliate. The potential problem addressed by this current statute is the utility's loaning of money or pledging of credit to an unregulated affiliate which engages in unprofitable ventures to the ultimate detriment of the utility and its ratepayers. Such transaction could lead to higher costs of capital for the utility or even to inability to finance operational needs. Examples in the recent past from other states have been utility investments in savings and loans or other financial institutions which have failed.

The KCC has the authority under the statute to deny the proposed transaction if it finds that "the loan or pledge would substantially impair the financial condition" of the utility or its ability to "furnish and maintain sufficient and efficient service." Frankly, it would be very difficult for the Commission to make the conclusions needed to deny an application under this statute since it is very difficult to know in advance whether an affiliate will be successful. However, the statute does provide some minimal protections in situations where there are potential concerns. This is especially necessary in light of the changes in the electric industry which may lead to greater unregulated activities by affiliates.

The proposed amendments to this statute would make a distinction between loans and pledges of credit. There is no apparent reason for this distinction since the financial impact on the regulated utility could be similar for both kinds of transactions.

Finally, the existing statute requires the Commission to either approve these kind of applications or set them for hearing within 10 days. The Commission, to my knowledge, has not felt it necessary to set any of these applications for hearing. Thus, unless a utility proposes a transaction which raises concerns, there should be no significant delays in the processing of these kind of applications.

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BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
Presentation Of The
KANSAS CORPORATION COMMISSION ON
HB 2095

This bill would reduce the current remedies available to persons damaged by noncompliance with regulatory requirements. It would amend K.S.A. 66-176 to remove the possibility of "treble" damages and also require a finding of intentional violation before even actual damages are recoverable.

The KCC does not take a position on precisely what remedies should be available for persons damaged by violation of regulatory requirements since that is clearly a matter of legislative policy. However, this bill does appear to an unreasonably drastic change in the current status which is not compelled by any problems of which the Commission is aware.

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Attachment #4

BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
Presentation Of The
KANSAS CORPORATION COMMISSION ON
HB 2099

The Commission opposes the substantive aspects of this bill. This bill amends several statutes which were originally part of the "Wolf Creek" bill passed by the legislature in 1984, giving the Commission more explicit broad authority to deal with potential problems associated with the Wolf Creek nuclear generating plant. The application of those statutes by the KCC in the 1985 Wolf Creek decisions has been upheld by the Kansas Supreme Court and these proposed changes would represent a significant legislative retreat from the discretionary authority granted to the KCC. Also, the bill amends a statute dealing with services rendered by an affiliate to a utility in a way which weakens the protections against unreasonable costs for ratepayers.

The bill weakens the Wolf Creek bill by first creating a "rebuttable presumption" concerning the efficiency and prudence of the "construction or acquisition" of an electric generating or transmission facility which has been subject to a siting approval process by the KCC. (pg. 1, lines 22-26). It then limits the Commission's ability to "prohibit or reduce the return" on excess capacity costs" to costs due to "lack of efficiency or prudence. . ." (pg. 2, lines 18-19) The bill also mandates a specific phase-in treatment for excess capacity associated with facilities that have been subject to a siting act. (pg. 1, lines 39-43) Finally, the bill appears to discourage KCC investigation of a facility under construction by creating a rebuttable presumption of efficiency and prudence. (pg. 2, lines 27-32)

To understand the potential effects of this bill, it is helpful to briefly review the KCC's 1985 Wolf Creek decisions, even though Wolf Creek was not subject to the siting act. The 1985 Wolf Creek decisions dealt with three major aspects of the costs of Wolf Creek. (1.) The excessive costs found to be caused by inefficient and imprudent construction of the plant, which were partially responsible for the sixfold increase from the original estimated costs; (2.) Costs of excess "physical" capacity which were not "used or required to be used" since the actual demand for electricity had changed significantly from the original forecasts during the 8 year construction period; and (3.) Excess "economic" costs due to the plant's high capital costs compared to a coal-fired plant. The KCC did not allow any recovery of the costs incurred due to inefficient construction. With regard to both the physical and economic

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excess, the KCC did not allow a return on the costs but did allow a return of the costs through depreciation expense. The latter treatment of excess capacity reflected the Commission's decision to not make a finding on the prudence of company decisions to build and continue building a nuclear plant. Instead the Commission chose a "risk-sharing" approach which did not totally burden either the companies or the ratepayers with the adverse impacts of changed circumstances. The KCC also mandated a phase-in of the total rate increases and left open the possibility of return on more of the plant if the excess capacity diminished. The Supreme Court basically found that the Commission had legally and reasonably exercised its discretion in balancing the interests of ratepayers and the utility companies.

This bill would severely limit the future ability of the KCC to address the kinds of problems associated with Wolf Creek.

First, the proposed presumptions of construction or acquisition efficiency and prudence for facilities subject to the siting process, even though "rebuttable," are not appropriate. The approval process to begin site preparation and construction under the referenced siting acts is fairly limited and should not give rise to such presumptions. The siting acts require the KCC to determine the "necessity for" the proposed facility, which basically involves the question of whether the facility is expected, at that time, to be needed to meet future demand. There is obviously no determination made under that process that the facility will actually be built in an efficient and timely manner or that construction should continue regardless of changes in demand or the relative economics of building that particular type of plant versus building another type of plant, purchasing power or promoting demand-side measures. Consequently, any presumption, whether rebuttable or not, is unreasonable. Furthermore, since the siting acts deal with construction of facilities, its doesn't make sense to create a presumption with regard to acquisition of such facilities.

Second, the bill would appear to prohibit the "risk-sharing" approach adopted by the Commission with regard to physical excess capacity since it would not allow a reduction in the return on costs unless there is a finding of inefficiency or imprudence. This is not desirable since it limits the Commission's ability to deal with this issue in the future and also may be seen as restricting the Commission's discretion to

apply the risk-sharing approach to other issues in arriving at an appropriate balance among conflicting issues.

Third, the bill's mandate of specific phase-in treatment of excess capacity appears tied to current financial accounting standards regarding deferred assets. The bill would require certain treatment needed to avoid a "write-off" of assets on the company books. Thus, the bill assumes that the Commission should be required to never allow a write-off of excess capacity when the facility has been sited. This is overly broad for the reasons I noted above.

The bill's amendment to the statute allowing for KCC investigation of a facility prior to its completion is ambiguous but appears to discourage such a process by its creation of a rebuttable presumption of efficiency and prudence. This statute is part of the Wolf Creek bill and was intended to ratify the Commission's investigation of the facility prior to its completion and the companies' anticipated rate case. That investigation was not intended to make an advance determination of the Wolf Creek issues but was preparatory in nature. Under the proposed amendment, the KCC would still be able to conduct such investigations but if it did, there would a rebuttable presumption that "the costs of such facility incurred prior to the conclusion of the proceeding have been efficient and prudent, and, if so requested by the public utility, shall be recognized in rates under K.S.A. 66-128b." The creation of such a presumption is unwarranted for the same reasons I noted above and would consequently discourage the KCC from initiating an investigation. Since the presumption would apply to all costs incurred prior to "the conclusion of the proceeding," it would especially deter an investigation which was simply preparatory and not intended to reach a conclusion. The last phrase of this amendment is unclear but could be read to mandate rate treatment of a facility outside the context of a rate case or before it was in service. If the latter is true, this bill would conflict with K.S.A. 66-128's prohibition on including property in rate base which is not "used and required to be used."

This bill also amends one of the affiliated interest statutes, (pg 3, lines 11-13) with regard to services provided to a utility by an affiliate. As proposed to be amended, the statute would state that "in determining a reasonable rate or charge" for services from an affilate, the utility would have to show "either" that the charges for the services are "no higher

higher than that available from unaffiliated sources" or that the charge does not exceed the actual costs incurred by the affiliate. The bill adds the former showing to the latter one which is already required. This appears to mean that the utility has the choice of which showing to make to the Commission, and would allow the utility to pick the one which was the higher of the two. It is unclear from the bill language whether this choice, would then have to be considered the "reasonable" charge by the Commission, which could result in ratepayer subsidization of the affiliate.

The Commission opposes changes to the statute unless several modifications to these bill provisions are made. First, we do believe a showing of "market value" of the services is desirable. However, the phrase "available from unaffiliated sources" may not fully capture the potential measures of market value of the service. For example, an affiliate could potentially be providing services to third parties at lower charges than to the utility. It would be preferable to simply require a showing of "market value."

Second, we believe that it is desirable for utitlities to make <u>both</u> showings rather than be allowed to choose one. An examination of both actual cost and third party transaction charges is required by the Federal Communications Commission and the KCC may wish to establish similar rules or standards for affiliated transactions in the future.

Lastly, if this statute is amended it should be clarified to ensure that the Commission retains the discretion to determine what costs are reasonable, whether that be the lower of market value or actual costs or some other standard.

In conclusion, I would note that changes are underway in the electric and natural gas industries which may lead to greater competition and consequently changes in the way in which utilities plan for and provide services, including greater use of services from affiliates. The intent of this bill appears to be to insulate the companies in certain respects from the risks associated those changes. The Commission does not believe it is appropriate to do so.

BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
Presentation Of The
KANSAS CORPORATION COMMISSION ON
HB 2100

The Commission supports this bill with some clarifications. The bill would basically give the Commission the discretion to keep tariffs and contracts confidential pursuant to rules and regulations to be adopted by the Commission. It also clarifies the effective date of changes to tariffs allowed on less than 30 days notice.

Under current case law, it appears that the Commission does not have the discretion to treat any rates or terms and conditions of a customer contract as confidential. In Oil Fluid Motor Carriers v. The State Corporation Commission, 234 Kan. 983 (1984), the Court addressed a KCC order allowing maximum and minimum rate schedules without filing the actual rate being charged. The Court first quoted the district court and found that:

> "The charging of unpublished, secret rates is in violation of the legislative mandate in K.S.A. 66-108, 109 and 117, and also K.S.A. 66-1,112 which requires approval by the Commission of any changed rates. I do not feel that a member of the shipping public could determine whether a carrier is offering a discriminatory or unduly preferential rate to another shipper if the rate is not published and remains a secret." We concur that there are sound and compelling reasons behind the statutory requirement of a filing of all schedules of rates and charges therein. While under the KCC order for maximum rate anything less than maximum would presumably be valid, nevertheless any variation from the 3% allowed by the KCC still requires at least filing with KCC so the information is available to the public.

The Commission currently has a proceeding underway to consider whether and under what circumstances it should afford confidential treatment to flexible rates or special contracts. The companies and some of their customers have expressed concerns about such information being public in light of competitive considerations. Whatever the merits of such concerns, the KCC may not have any discretion to treat such information as confidential unless this bill is passed. Although the Commission would welcome such discretion, it is clearly a policy matter

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for the legislature as to whether the KCC should have such discretion. However, if the legislature believes that KCC should have the discretion we would suggest some clarification by adding a phrase to the bill provisions as follows.

> . . . including such protection of confidentiality as requested by the electric public utility, and the utility's supplier and customers, for contracts entered into by them, *as the commission deems reasonable and appropriate.* (pg 1, lines 25-27)

> . . . including such protection of confidentiality as requested by the natural gas public utility, and the utility's supplier and customers, for contracts entered into by them, *as the commission deems reasonable and appropriate.* (pg. 4, lines 19-21)

The Commission does not oppose the provisions in the bill aimed at clarifying the effective date of its orders.