Approved: Carl Dean Holmes 3-15-95
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes on February 15, 1995 in Room 526-S of the Capitol.

All members were present except: Representative Kline - Excused
Representative Sloan - 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: James Haines - Western Resources
Don Low - KS Corporation Commission

Others attending: See attached list

Chairperson Holmes announced there has been a change in tomorrow's Committee agenda. Senate Concurrent Resolution 1607 will be heard at the onset of the meeting, and is also scheduled for action immediately following the hearing.

The Chair also reviewed the Committee calendar for next week, reminding members there will be a full schedule each day.

Hearing on HB 2098:

James Haines. (See Attachment #1.) Mr. Haines reported that this bill represents a policy change that was recommended by the Chapter 66 Task Force.

Mr. Haines said that **HB 2098** would require the KCC to include in the revenue requirement of a utility the reasonable costs and expenses (including carrying charges), incurred to restore property which an appropriate lawful authority has ordered to be environmentally remediated. The bill provides that insurance proceeds or any other amounts received by the utility to pay for the remediation shall be credited against a utility's reasonable costs and expenses.

He explained that with the passage of CERCLA, Congress declared a public interest that environmental hazards be cleaned up, but did not provide the federal funds for same - except as a last resort through Superfund. The view of the Task Force is that the cost of environmental clean-ups under CERCLA-type laws is a cost of doing business, and should be included in its revenue requirement over a period of years. And, if the cost is to be amortized to revenue requirement over a period of years, the cost of carrying the unamortized balance should be included in revenue requirement as well.

Don Low. (See Attachment #2.) Reporting that the Kansas Corporation Commission opposes **HB 2098**, Mr. Low said it is argued that environmental cleanup costs are imposed by government requirements and, therefore, should be fully recovered by utility companies. He suggested there are several reasons why that notion is not always appropriate.

1. The cleanup may well be due to the utility's imprudent (or even unlawful) act and, therefore, clearly should not be recovered from ratepayers;

2. Environmental cleanup due to activities more than 40 years old is not necessary to the current provision of utility services and does not provide benefits to existing ratepayers.

3. The mere fact that costs are imposed by a government authority does not compel full recovery of costs from ratepayers.

Mr. Low said it should also be noted that this bill's special treatment of environmental costs could amount to

"single issue" ratemaking in violation of normal procedures. In determining a utility's "revenue requirements," (and its consequent rates), the KCC examines total costs and revenues during "test" years. Therefore, the rates do not necessarily change, because there may be offsetting changes in other costs or revenues. The KCC may allow utilities to defer specific costs on their books for potential recovery in the next rate case if the costs are extraordinary, significant in amount, and beyond the control of the company - and it does not appear that the utility is over-earning.

Mr. Low concluded that this legislative proposal would deny the KCC the opportunity to exercise an important balancing of ratepayer and shareholder interests and could require an unjustified deviation from normal ratemaking standards for a single category of costs.

At the close of the hearing, Chairperson Holmes requested a subcommittee report from Representative Lawrence on **House Bills 2226; 2101; and 2099.** Representative Lawrence referred the Committee to a balloon provided by Staff that combines and/or modifies sections of the language in **HB 2101** and **HB 2226** into one bill, **HB 2226.** (See Attachment #3.) It was the consensus of the Subcommittee to recommend that the language in **HB 2099** be held over for further study in an interim. Also, it is recommended that new Section 2 of **HB 2101** be retained for an interim. Representative Lawrence detailed the Subcommittee's rationale of the balloon.

Representative Lawrence made a motion to adopt the balloon on **HB 2226.** Representative Aurand seconded. Motion carried.

Representative Sloan made a conceptual motion to amend the **HB 2226** balloon to include language indicating a requirement of a person to register peak performance data or have a 100 megawatts or less capacity report to the Corporation to comply with the electric generation act. Representative Freeborn seconded. Motion failed.

Representative Lawrence moved to recommend **HB 2226** favorably for passage as amended. Representative McClure seconded. Motion carried.

Action on HB 2033:

Representative Lawrence made a motion to amend **HB 2033** as follows:

Page 3, line 34, strike ~~(B) the state agency and municipality~~, and insert *or (B) the owner or operator of the source is neither a state agency nor municipality, however, the municipality making application for the loan has made reasonable efforts to identify and hold responsible for the costs of remediation each owner or operator of the source at the time of the release and has entered into a contamination remediation consent agreement with the Secretary pursuant to subsection (2) of this section;*

(2) Municipalities may apply for the provision of a loan under this act for projects within their jurisdiction where the source at the time of application is owned or operated by a person or entity other than a state entity or municipality. In making such application the municipality shall submit an application therefore to the Secretary which shall provide, in addition to all other requirements for an application under this act: (A) a contamination remediation consent agreement between the municipality and the Secretary; (B) an agreement with the Secretary that the municipality shall have the same loan repayment obligations as it would to repay a loan for a contamination remediation project where the source was owned or operated by the municipality at the time of the release.

~~*(2) (3)*~~

On Page 8, line 27, *(3) The source is owned or operated by a party other than a state agency or municipality at the time of the project and (A) the municipality has made reasonable efforts to identify and hold responsible for the costs of remediation each owner or operator of the source at the time of the release, and (B) the municipality has entered into a contamination remediation consent agreement and loan repayment agreement with the Secretary pursuant to the provisions of Section 4 (b) (2) of this act.*

Representative Myers seconded Representative Lawrence's motion. Motion carried.

Representative Lloyd recommended **HB 2033** favorable for passage. Representative Feuerborn seconded. Motion carried.

There being no further business to come before the Committee, the meeting adjourned at 5:25 p.m.

The next meeting is scheduled for February 16, 1995.

ENERGY AND NATURAL RESOURCES COMMITTEE
GUEST LIST

DATE: February 15, 1995

NAME	REPRESENTING
Jim Haines	Western Resources
James Lowry	Western Resources
Rex Buchanan	
John DeCoursey	Western Resources
Clark Duffy	KPC
Dale Lambley	KDA
Don Low	KCC
Bill Craven	KNRC / Sierra -
Vin Kamp	City of Hays

HOUSE BILL No. 2098
House Committee on Energy and Natural Resources
2/15/95

Statement of James Haines

Good afternoon Mr. Chairman and members of the Committee. I am Jim Haines. I am appearing on behalf of Western Resources, Inc. and as a member of the utility industry task force which was asked to review K.S.A. Chapter 66. H.B. 2098 reflects a policy change recommended by the task force.

I'm sure that each of you has heard of a federal law known as CERCLA - the Comprehensive Environmental Response, Compensation and Liability Act of 1980. I am not an expert on that law. What I do know of it is this. Under CERCLA, anyone in the chain of title can be held financially responsible for the remediation of property which the federal government finds to be an environmental hazard. CERCLA is what is known as a "strict liability" law. Fault, intention, negligence, whether the actions which led to the hazard were legal or illegal - all of that is irrelevant. If you owned the property at any point after the hazard is found to have occurred, you can be held financially responsible for its remediation.

H.B. 2098 would require the KCC to include in the revenue requirement of a utility the reasonable costs and expenses, including carrying charges, incurred to restore property which an appropriate lawful authority has ordered to be environmentally remediated. H.B. 2098 provides that insurance proceeds or any other amounts received by the utility to pay for the remediation shall be credited against a utility's reasonable costs and expenses for remediation.

The rationale for H.B. 2098 is this. With the passage of CERCLA, Congress declared it to be in the public interest that environmental hazards be cleaned up. But Congress did not provide federal funds, except as a last resort through Superfund, to pay for such clean-up. It simply dictated that private property owners, irrespective of fault, would be held financially responsible.

Any argument that expenses should not be fully recovered because they do not relate to service provided to current ratepayers begs the question. These are current and legitimate costs of doing business which are mandated by state and federal law. They benefit customers today by providing for a cleaner environment today. Society, through our legislative leaders, has decided that acts which were prudent in the past shall be adjusted today. Accordingly, costs incurred today benefit today's customers.

2/15/95
Energy & Natural Resources
Attachment #1

In a 1993 Order involving Kansas Public Service Company, the KCC ruled that KPS should be responsible for approximately 40% of the cost of cleaning up a manufactured gas site. The KCC accomplished this by amortizing the cost through rates over ten years and denying a return - carrying charges - on the unamortized balance. The KCC imposed this 60%/40% split even though it found no evidence that the environmental hazard resulted from imprudent decisions or behavior by KPS.

The view of the task force is that the cost of environmental clean-ups under CERCLA type laws is a cost of doing business which, like any other cost, should be included in its revenue requirement. And, if the cost is to be amortized to revenue requirement over some period of years, the cost of carrying the unamortized balance should be included in revenue requirement as well.

Thank you for your attention to this matter. I will be happy to answer your questions.

BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
Presentation Of The
KANSAS CORPORATION COMMISSION ON
HB 2098
(Ratemaking Treatment of Environmental Remediation Costs)

This bill would provide for unique treatment of "environmental remediation" costs incurred by utilities by requiring that all costs incurred be passed on to ratepayers. Further, the bill would require that the KCC provide for a return, or carrying charges on amounts expended. Such requirements are inconsistent with the KCC's mandate to balance ratepayer and shareholder interests and also violate general ratemaking procedures. The KCC therefore opposes this bill.

This bill is apparently is response to a KCC order issued in June of 1993, which addressed an application filed by Kansas Public Service Company (KPS), a division of UtiliCorp, to recover remediation costs associated with a Manufactured Gas Plant Site. In this case the site in question had not been used in the provision of services to ratepayers for over 40 years. There are numerous such sites in Kansas, many of which have been abandoned for periods in excess of 40 years. The KCC allowed KPS special accounting treatment of the costs through a deferral and subsequent ten year recovery of the accumulated costs incurred in the cleanup of the site. However, the Commission specifically disallowed carrying charges to be applied to amounts expended by KPS prior to collection from ratepayers. In this manner, the KCC achieved a sharing of the costs (direct and indirect) between ratepayers and shareholders. It is evidently this "sharing" of costs which is meant to be addressed by this bill.

Although it was argued in that case, and presumably will also be argued in support of this bill, that environmental cleanup costs are imposed by government requirements and therefore should be fully recovered by utility companies; there are several reasons why that notion is not always appropriate.

1. The cleanup may well be due to the utility's imprudent or even unlawful acts and therefore clearly should not be recovered from ratepayers. This bill is all encompassing in applying to <u>any</u> cleanup necessitated by "actions occurring prior to December 11, 1980" and applies whether the actions were by predecessor companies or the utility

2/15/95
Energy & Natural Resources
attachment #2

company. Obviously, this is too broad in removing the Commission's ability to determine on a case-by-case basis whether cost recovery from ratepayers is appropriate.

2. Environmental cleanup due to activities more than 40 years old is not necessary to the current provision of utility services and does not provide benefits to existing ratepayers. This reasoning has also been followed by other state commissions in providing for a "sharing" of environment cleanup costs. This approach is akin to the risk sharing used by the Commission in its 1985 Wolf Creek decisions.

3. The mere fact that costs are imposed by a government authority does not compel full recovery of costs from ratepayers. For example, the KCC's 1985 Wolf Creek decisions, which did not provide for a return on substantial costs nor full carrying charges on deferred costs, were upheld by the Supreme Court in the face of arguments that the costs were imposed by Nuclear Regulatory Commission requirements. Furthermore, as the various utility industries become more competitive, we should recognize that competitive firms are not always able to pass on all governmentally-imposed costs to customers. Thus, there should not be an automatic assumption that these types of costs are appropriately flowed through to utility ratepayers.

It should also be noted that this bill's special treatment of environmental costs could amount to "single issue" ratemaking in violation of normal procedures. Normally, in determining a utility's "revenue requirements" and, consequently, its rates, the KCC examines total costs and revenues during a "test" year. Changes in specific costs which are incurred between rate cases and therefore not part of the test year do not necessarily result in a change in rates because there may be offsetting changes in other costs or revenues. However, the KCC may allow utilities to defer specific costs on their books for potential recovery in the next rate case if the costs are extraordinary, significant in amount, and beyond the control of the company and it does not appear that the utility is overearning. Although unclear, this bill could arguably require this kind of special accounting treatment even though the environmental remediation costs did not meet all the normal criteria.

In summary, this legislative proposal would deny the KCC the opportunity to exercise an important balancing of ratepayer and shareholder interests and could require an unjustified deviation from normal ratemaking standards for a single category of costs.

HOUSE BILL No. 2226

By Committee on Energy and Natural Resources

1-30

AN ACT concerning the Kansas electric generation facility siting act; relating to its application; amending K.S.A. 1994 Supp. 66-1,169b and repealing the existing section

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1994 Supp. 66-1,169b is hereby amended to read as follows: 66-1,169b. (a) The provisions of the Kansas electric generation facility siting act shall not apply to: *(1)* Unit number 3 of the Jeffrey Energy Center; *or (2) electric generation facilities that convert wind, solar, biomass, landfill gas or any other renewable source of energy.*

(b) With regard to a facility proposed to be located outside this state, K.S.A. 66-1,160 and 66-1,161, and amendments thereto, shall not apply; and, for purposes of determining the most reasonable location of a proposed facility or addition to a facility pursuant to K.S.A. 66-1,162, and amendments thereto, the commission shall consider only the effects on system reliability and economic efficiency.

Sec. 2. K.S.A. 1994 Supp. 66-1,169b is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

public utilities; relating to electric generation facilities; amending K.S.A. 66-128 and

sections

Insert page 2 and renumber remaining sections accordingly

have a capacity of 100 megawatts or less and

K.S.A. 66-128 and K.S.A. 1994 Supp. 66-1,169 are

2/15/95
Energy & Natural Resources
Attachment #3

Section 1. K.S.A. 66-128 is hereby amended to read as follows: 66-128. (a) 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.

(b) 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~~ may be deemed to be completed and dedicated to commercial service if: (1) Construction of the property will be commenced and completed in one year or less; (2) the property is an electric generation facility that has a capacity of 100 megawatts or less and converts wind, solar, biomass, landfill gas or any other renewable source of energy; or (3) construction of the property has been authorized by a siting permit issued under K.S.A. 66-1,158 et seq. or 66-1,177 et seq., and amendments thereto~~, may be deemed to be completed and dedicated to commercial service~~.

3-2