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 16, 1995 in Room 526-S of the Capitol.

All members were present except: Representative Kline - Excused
Representative Myers - 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: Thomas C. Stiles - KS Water Office
David Pope - Division of Water Resources
William Craven - KS Natural Resource Council
James Ludwig - Western Resources
Robert Badenoch
Don Low - KS Corporation Commission
The Honorable Doug Lawrence - KS House of Representatives
Frank Thacher - AARP State Legislative Committee
Debra Lieb - KS Common Cause
Bobby Seger - Citizens' Utility Ratepayer Board, Newton
Sue Johnson Giles - Citizens' Utility Ratepayer Board, Pittsburg
Lavon Kruckenberg - Citizens' Utility Ratepayer Board
Margaret Miller - Wichita
Robert V. Eye - Attorney
Margaret W. Bangs - Wichita
Tolly Smith-Wolcott - Pinckney Neighborhood Assn, Lawrence
Marcie Lou Taylor - Topeka

Others attending: See attached list

Chairperson Holmes opened the meeting with hearing and action on **SCR 1607.**

**Hearing on SCR 1607:**

**Thomas Stiles.** (See Attachment #1.) Mr. Stiles said there are three main reasons why **SCR 1607** should go forth:

- It indicates to the Corps that additional work needs to be done in examining a number of alternatives to the preferred alternatives, including a range of operation rule curves and incorporation of more flexibility in operating the system within hydrologic opportunities as they arise
- It deliver a strong call for balance between environmental and economic considerations and between upper basin and lower basin concerns.
- For the first time, it projects a strong legislative voice over concern on these issues to the Corps.

Mr. Stiles said that while the Office defers to the Chief Engineer and his staff on the technical review of the Corps' current stance, they do support the amendments made by the Senate. He contends the Corps should truly manage the system for economic and environmental benefits as hydrologic events dictate. Additionally, the state has consistently argued with the Corps over the use of Milford, Tuttle Creek and Perry reservoirs to supplement Missouri River navigations below Kansas City. He said the operation was last done in 1991 and drops those three lakes up to six feet below conservation pool while producing a "benefit" to the Missouri

River of an increased water level of about two inches. Mr. Stiles said this is not a concern which is anti-navigation, rather of disproportionate impacts to state resources for an extremely marginal benefit to the navigation function of the Missouri River.

Mr. Stiles recommended prompt approval of this Resolution, and suggested it is critically important for the Legislature to convey its concerns on this matter to the Federal Government this month.

**David Pope.** (See Attachment #2.) Mr. Pope noted that in his current capacity as Chief Engineer-Director of the Division of Water Resources he has represented the Kansas Governor for several years on the Missouri River Basin Association (MRBA). The Association is comprised of state representatives from each of the states in the basin, Indian tribes and federal agencies. (He remains as an ex officio member of the Association.) He reported that he has been deeply involved over the past five years in the proposal to update the Master Manual for the operations of the Missouri River reservoir system by the Corps of Engineers.

Mr. Pope provided a copy of a letter to the Corps from Governor Graves outlining responsibilities impacted by the proposal. He said that while there are differences in emphasis, SCR 1607 is consistent with the Governor's position, both of which raise similar concerns and request the Corps to re-examine certain aspects of the preferred alternative recommended in the Environmental Impact Statement and issue a supplemental Environmental Impact Statement with a revised proposal.

To assist the Committee in a better understanding of what he terms a complicated issue, he presented a brief overview of the Corps of Engineers' Missouri River mainstream system. Additionally, he provided a map of the Missouri River Basin and its major features.

Mr. Pope said that the Corps of Engineers has expended $12 million over the last five years conducting the Master Manual Review. Due to the size of the Basin and the many competing needs, this has been a very complex study. They will ultimately develop a final environmental impact statement and after additional federal review, a record of decision will be made and a new operating plan developed. Due to the significant controversy, Mr. Pope said it would appear that years of litigation is likely, and/or political disputes within the States and Federal Government, at the highest levels. Given this possibility, he said the MRBA Division Engineer for the Corps of Engineers challenged the Directors to seek a consensus on an alternative that might be more acceptable to the States and Tribes. At the same time, making sure that alternative proposal meets legal requirements related to environmental concerns. He added that a compromise could possibly materialize that the Corps of Engineers has not yet identified in their process.

In conclusion Mr. Pope reported that the MRBA Directors continue to review a consensus process, and they are currently seeking a professional facilitator to assist in this endeavor. They will, he said continue to participate in that process if it proves to be productive.

**Action on HB SCR 1607:**

Representative Sloan made a motion to pass SCR 1607 favorably. Representative Alldritt seconded. Motion carried.

Chairperson Holmes announced that the Transportation Committee Chair is holding a joint hearing on February 21 at 1:00 p.m., Room 313-S, on **HB 2161**, alternative fueled vehicles (a bill that originated in this Committee). Conferees are scheduled to testify both Tuesday and Wednesday from Oklahoma and Texas, and will be discussing the Oklahoma program.

**Hearing on HB 2436:**

**William Craven.** (See Attachment #3.) Citing the current disparity, Mr. Craven said **HB 2436** attempts to make a correction that currently favors fossil fuel generation over renewable generation. It is not a subsidy, but an effort to achieve equal terms at least for tax purposes, where both technologies compete. He said that this bill is intended to be revenue neutral, at least until additional taxes are paid by renewable energy facilities. He added there may be a need for clarifying language to ensure that no decrease for existing fossil fuel plants results.

**Jim Ludwig.** (See Attachment #4.) Offering comments only on this measure, Mr. Ludwig said Western Resources is uncertain of its purpose. He posed several questions for Committee review prior to considering any action.

- Do entrepreneurs of renewal energy systems what to be taxed on part with public utilities, the highest taxed property class in the state? Utilities inventories, unlike those of commercial and industrial

property owners, are not exempt from property taxation. Why would owners of renewable solar or wind systems which do not use consumable fuel want to be taxed on an equalized basis (as if they did use fuel inventories)?

- Would the requirement, as set out in this bill to achieve a tax payment per unit of energy, be constitutional?

- May the secretary of revenue adopt procedures to appraise renewable energy systems on a basis that differs from the statutory method for all other utility property?

- How would a tax per unit of electricity (per KWh) be equalized between two locations - Example, if the plant in Shawnee County, with an average county levy at 144.156 mills, has much higher taxes than the same plant located in Stevens County, with a levy of 59.17 mills.

Although there is no opposition to **HB 2436**, Mr. Ludwig reiterated that the Committee define the express purpose of the legislation before action is taken.

**Robert Badenoch.** Mr. Badenoch stated that he is the Bureau Chief of State Prison Properties for the Department of Revenue. He reported that the Secretary of the Department neither opposes or recommends the bill. He does, however, have some of the same questions posed by Mr. Ludwig.

Chairperson Holmes appointed a Subcommittee on **HB 2436** comprised of Representative Lawrence, Chair; Representatives Sloan and McKinney. The Chair charged the Subcommittee to report back to the full Committee on Tuesday, February 21. He said this bill is joint-referred, and will be heard in the Taxation Committee if it is recommended favorably by this Committee.

**Hearing on 2438:**

**William Craven.** (See Attachment #5.) According to Mr. Craven, the groups that he represents are convinced that more open energy markets with less government granted monopoly, greater competition and less cumbersome regulation is more advantageous for Kansas. It is time for some deregulation that allows open competitive markets, giving entrepreneurs the opportunity to develop Kansas' abundant renewable energy resources for the benefit of all Kansans.

Citing several points relating to the attributes of renewables as opposed to monopolies, Mr. Craven concedes that renewable energy sources are not a panacea. He understands that there is a need for a gradual process of incrementally developing renewable energy resources without supply disruptions (and without dramatic cost increases). Moreover, he said he does not oppose amendments which would impose a short phase-in time to allow for schedules of varying technologies during a start-up period, recommending a maximum two- to three-year period. He contends, however, that monopolies and complex regulation should not be allowed perennially to stand in the way of that goal.

**Don Low.** (See Attachment #6.) Mr. said that the Corporation Commission believes **HB 2438** is premature in allowing retail wheeling. He provided the Committee with background information on retail wheeling, and excerpts from the National Regulatory Research Institute publication, *Overview of Issues Relating to the Retail Wheeling of Electricity.* (The reader may peruse a copy of this excerpt at the Kansas Corporation Commission, or procure the publication from The National Regulatory Research Institute, The Ohio State University, 1080 Carmack Rd, Columbus Ohio, 43221-1002.)

Several issues considered major by Mr. Low were cited:

Will it result in greater efficiency in the electric industry - or are there alternative (perhaps less complicated) ways of accomplishing this goal?

Will all or only some customers benefit?

Can it be implemented for all customers as a practical matter?

Will it adversely affect system reliability?

Will it cause existing generation to be "stranded?" If so, how should those losses be treated?

How will it affect utility planning and any IRP requirements?

What changes in regulation and pricing of services would be needed?

If it is desirable, should it be phased in more or less gradually?

What are the respective roles of state and federal regulators?j

Mr. Low reported that although a few states are formally exploring these issues, there is presently no consensus of what should be done. With this particular measure, he surmised it would allow retail wheeling when 50% of the energy sold by a "generator" is produced from renewable energy sources. He said that while it might make it easier for generators of electricity using renewable fuel(s) to market their power, it raises more questions than it answers. 1) In Kansas the Retail Electric Suppliers statute provides for territories in which suppliers have the exclusive right to furnish "retail electric service" to all electric consuming facilities. Mr. Low said the term *retail electric service* has not been defined, thus making it unclear whether that act needs to be amended; 2) If the principle of retail wheeling is to possibly spur competition in the generation of electricity, limitation could, at best, defeat that purpose; at worst, be viewed as unlawfully discriminatory; 3) The bill is unclear in this regard, but could restrict the KCC's ability to deal with some cost issues.

Since there are several ambiguities in **HB 2438**, Mr. Low suggested that without a complete (up front) evaluation of the retail wheeling issues it is very difficult to determine if it will be beneficial for Kansas. Without such an evaluation, he declared that the bill should not be enacted. He believes that it is unreasonable (and untimely) to restructure the entire Kansas electric industry just to give renewable energy access to the retail market.

**Jim Ludwig.** (See Attachment #4.) Although retail wheeling may be on the horizon, Mr. Ludwig said that this legislation is premature and incomplete. He maintains that the legislation should provide for an orderly transition, insure reliability of service, and safeguard customers and shareholders from market distortions and cost shifting - and it will require more than a simple statute.

Mr. Ludwig said that several states have encountered statutory bias toward in-state fuels and have run afoul of the U. S. Constitution's interstate commerce clause, which could imminently apply in Kansas.

The Chair referred to written testimony from guest, Pat Hurley, and inquired if he wished to speak on this legislation. He responded that his testimony can stand as is for the perusal of the Committee. (See Attachment #7.)

Chairperson Holmes appointed Representative Lawrence as Chair of a subcommittee on **HB 2438**. Members to serve on the subcommittee are Representatives Hutchins; Aurand; McClure; and Flora.

**Hearing on HB 2437:**

In the interest of avoiding redundancy, cursory comments appear in these minutes. The reader is invited to read in detail each individual testimony attached.

**The Honorable Doug Lawrence.** (See Attachment #8.) Representative Lawrence reported it is his opinion that a careful review of the Citizens Utility Ratepayers Board is in order. Rather than taking action to repeal the CURB statutes, he said **HB 2437** is more reasonable in its approach to retain the Board with some needed modification. He explained this legislation assures that 1) CURB is not dominated by one political party and cannot become a partisan tool; 2) It removes most compensation (except for mileage expense) for board members; and 3) Removes a mandate to the KCC that CURB receive technical and clerical staff assistance; 4) Narrows the scope of powers assigned to the Consumer Counsel to a level he deems appropriate.

Expressing concern about duplication of effort, Representative Lawrence said CURB's funding is as a direct assessment against the utilities involved in KCC Regulation. He said that the KCC also assesses its costs against the industry and that these costs are passed on to the ratepayers.

In conclusion he said that **HB 2437** may well be the only way to save the Citizen's Utility Ratepayers Board.

**William Craven.** (See Attachment #9.) Speaking to the proposed changes in this bill, Mr. Craven reported the position of the Kansas Natural Resource Council on six areas. He said that CURB needs more resources in order to do its job and there aren't enough resources to bring to bear on the complicated rate cases which is often the case.

**Frank E. Thacher.** (See Attachment #10.) Mr. Thacher said that residential and small commercial

ratepayers look to their elected officials to protect their interest. He urged the Committee to vote in the negative on **HB 2437,** and see that adequate funding is provided for an essential agency for FY 1996.

**Debra R. Leib.** (See Attachment #11.) Common Cause has long advocated the importance of citizen participation and representation, and they encouraged the Committee to continue to make it possible for CURB to provide a needed voice.

**Bobby Seger.** (See Attachment 12.) Ms. Seger states she has no problem with CURB being comprised of not more than three members of the same political party. She said common people are a necessity on the Board and most could not afford to serve if compensation is deleted.

**Sue John Giles.** (See Attachment #13.) Ms. Giles said it is critically important to note that Kansas is not the only state to recognize a need for a utility consumer advocacy. Kansas was the 38th state to establish a consumer office. She added that other state offices usually have a larger number of employees and budget than does the Kansas office - even though they may have fewer utilities and ratepayers. She said that CURB has been (and can continue to be) a voice for Kansas, exercising its right of appeal on Commission decisions on behalf of residential and small commercial ratepayers. It is, she added, the responsibility and duty of CURB - and this is not supplied by any other regulatory process.

**Lavon Kruckenberg.** (See Attachment #14.) Ms. Kruckenberg told the Committee it should be noted that CURB is not funded by tax dollars, nor by the State's general fund. She reported their budget is assessed back against the utility companies and, in turn, collected through rates from the consumers they are representing. She urged that the Committee vote nay on **HB 2437.**

**Margaret Miller.** (See Attachment #15.) Ms. Miller reported she is appearing before the Committee at her own expense today, traveling from Wichita Kansas. She said before CURB was established, small ratepayers were unable to enter into utility regulatory cases due to the KCC requirement of an attorney's participation. She believes that CURB is extremely important to hundreds of thousands of Kansas customers.

**Robert V. Eye.** (See Attachment #16.) In order for CURB to be effective, Mr. Eye stated it must have the powers currently in statute. Without the authority to initiate actions before the KCC they will not be on a level playing field vis a vis other very powerful participants in the process. The ratepayers would be at a disadvantage and prejudiced in the ratemaking process.

**Margaret W. Bangs.** (See Attachment #17.) Ms. Bangs reported that CURB has a small staff and a budget of only $150,000. With this small budget, they have saved Kansas ratepayers over $1.5 million, translating into approximately $33 in direct benefits for every dollar spent to operate the Board.

Chairperson Holmes acknowledged the presence of guest, **The Honorable John Sutter**. The former representative elected to offer comments in support of CURB, and encouraged the Committee to vote against **HB 2437.**

**Tolly Smith-Wildcat.** In the absence of Steven Hamburg, Pinckney Neighborhood Association, Ms. Smith-Wildcat presented his written testimony. (See Attachment #18.) Mr. Hamburg's testimony revealed his belief that the KCC is not user-friendly. It is next to impossible for an average citizen, no matter how well informed, to effectively impact the KCC decision-making process. Mr. Hamburg noted experience with CURB in matters relating to the Pinckney Neighborhood in Lawrence. He wrote it was only through CURB's efforts that they realized any success.

**Marcie Lou Taylor.** A resident of Topeka, Ms. Taylor told the Committee that retired people look to groups such as CURB to aid them in areas where they feel vulnerable and have no voice.

Chairperson Holmes closed the hearing on **HB 2437.**

**Action on HB 2256:**

Representative Krehbiel explained the work of the Subcommittee and reviewed per page the proposed changes in the balloon provided to Committee members on **HB 2256**. (See Attachment #19.) The Subcommittee members were Representative Krehbiel, Chair; Representatives Sloan; Hutchins; and Feuerborn.

Representative Krehbiel moved to adopt the balloon for **HB 2256**. Representative Sloan seconded. Motion carried.

Given the lateness of the hour, Chairperson Holmes inquired of the Committee if they wished to return for a

noon meeting tomorrow to conclude action on the bill, or continue working on the bill this evening. The Committee elected to work the bill to its conclusion in this meeting.

Representative Sloan made a motion to amend **HB 2256,** as detailed by Revisors Office Staff, regarding technical language within the bill. Representative McClure seconded. Motion carried.

Representative Sloan made a motion to strike Section 9 of the balloon, (6), line 13, ~~At least three of the members, including the nonowner member, shall have known environmental concerns because of a release of drycleaning solvents from a drycleaning facility.~~ Representative Lloyd seconded. Motion carried.

Representative Sloan made a motion to amend Section 9, line 10, (6) *one member who is not an owner of a drycleaning facility.* ~~*but who is likely to be eligible, under the provisions of this act, to have corrective action costs paid by the fund.*~~ Representative Lloyd seconded. Motion carried.

Representative Flora made a motion to amend Section 9. line 2 (a) to read, advisory board composed of eight *non-partisan* members. Motion failed for lack of a second.

Representative McClure moved to pass **HB 2256** favorably, as amended, and have a substitute bill drafted, including all the changes that have been made in the balloon. Representative Krehbiel seconded. Motion carried.

There being no further business to come before the Committee, the meeting adjourned at 7:05 p.m.

The next meeting is scheduled for February 20, 1995.

# ENERGY AND NATURAL RESOURCES COMMITTEE
# GUEST LIST

## DATE: February 16, 1995

| NAME | REPRESENTING |
|---|---|
| Marcelina Taylor | Concerned Citizen |
| Jim McCune | AARP |
| TOM YOUNG | AARP |
| CHARLES FREEMAN | AARP |
| HAROLD PITTS | KCOA |
| Anne Kimmel | AARP |
| Lester Murphy | KEC |
| MARSHALL CLARK | KEC |
| STUART LOWRY | KEL |
| Bobby Unger | CURB |
| [illegible] | CURB |
| [illegible] | CURB |
| Margaret Dillon | Coalition for Responsible Utilities |
| Margaret W Bangs | " " " " |
| [illegible] | KS Coalition On Aging & AARP |
| Bill Craven | KNRC / Sierra |
| Jim Krouch | AARP |
| Bob Eye | self |
| Susan Pogeny | Pinckney Neighborhood Assn |

House E+NR 2-16-95.

Dr Kelly Smith wildcat

Tom Hatten

Mark Carroll

Pinckney Neighborhood Assc

KDOR

KDOR TOPEKA

**Testimony of Thomas Stiles**
**Kansas Water Office**
**Before the**
**House Energy and Natural Resources Committee**
**on Senate Concurrent Resolution 1607**
**February 16, 1995**

Chairman Holmes and members of the committee:

I am Thomas C. Stiles, Assistant Director of the Kansas Water Office. Our agency wishes to express our support for the Concurrent Resolution before you today. There are three chief reasons why this resolution should go forward:

1. It indicates to the Corps that additional work needs to be done in examining a number of alternatives to the preferred alternative, including a range of operation rule curves and incorporation of more flexibility in operating the system within hydrologic opportunities as they arise.
2. It delivers a strong call for balance between environmental and economic considerations and between upper basin and lower basin concerns.
3. For the first time, it projects a strong legislative voice over concern on these issues to the Corps.

While the Office defers to the Chief Engineer and his staff on the technical review of the Corps current stance, we do support the amendments made by the Senate.

The amendments reflect the folly of the Corps trying to establish hard and fast rules which apply uniformly over the hydrologic spectrum. A call for greater flexibility and discretion in regard to Corps operations would be in order. Once periods of stress are in place, be it drought or flood, then is the time to impose more rigid operating rules. Otherwise, the Corps should truly manage the system for economic and environmental benefits as hydrologic events dictate.

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Energy & Natural Resources
Attachment #1

Additionally, the state has consistently argued with the Corps over the use of Milford, Tuttle Creek and Perry reservoirs to supplement Missouri River navigation flows below Kansas City. This operation, last done in 1991, drops those three lakes up to six feet below conservation pool while producing a "benefit" to the Missouri River of an increased water level of about two inches. Ironically, in this situation, Kansas is more closely aligned with the concerns of the upper basin. However, this is not a concern which is anti-navigation. Rather it is a concern of disproportionate impacts to state resources for an extremely marginal benefit to the navigation function of the Missouri River.

The amendments made on the Senate floor are technical in nature and are not in debate.

The Corps is taking public comment on the preferred alternative till March 1. Because time is of the essence, we recommend prompt approval of the Senate version of the resolution. The Kansas Water Office feels it is critically important for the Legislature to convey its concerns on this matter to the Federal Government this month.

Thank you for your prompt attention to this resolution.

Testimony Before the House Energy and Natural Resources Committee
on Senate Concurrent Resolution No. 1607
by
David L. Pope, Chief Engineer-Director
Division of Water Resources, Kansas State Department of Agriculture

February 16, 1995

Mr. Chairman and Members of the Committee, I am David L. Pope, Chief Engineer-Director of the Division of Water Resources, Kansas Department of Agriculture. I am here in support of Senate Concurrent Resolution No. 1607. In my capacity as Chief Engineer-Director, I have also served as the Governor's representative on the Missouri River Basin Association (MRBA) for several years. The MRBA is comprised of representatives of the States, Indian Tribes and Federal Agencies (Ex officio) with water interests in the basin. In this capacity, my staff and I have been reviewing and commenting on the Corps of Engineers' Missouri River Master Manual review. I appreciate this opportunity to address the Committee to update you on this process.

The Corps of Engineers will be accepting comments on the Draft Environmental Impact Statement until March 1, 1995 which is the subject of the resolution. Attached is a letter, dated February 9, 1995 from Governor Graves to the Corps of Engineers, which was developed with the advice of the state agencies with responsibilities impacted by this proposal. While there is some difference in emphasis, Senate Concurrent Resolution No. 1607 is consistent with the Governor's position, both of which raise similar concerns and request that the Corps re-examine



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attachment #2

certain aspects of the preferred alternative recommended in the Environmental Impact Statement and issue a supplemental EIS with a revised proposal.

In order to assist you with an understanding of this complicated issue, a brief overview of the Corps of Engineers' Missouri River mainstem system is provided below. Also attached is a map of the Missouri River Basin and its major features. The Corps of Engineers operates six major dams on the mainstem Missouri River. The upper three dams (Ft. Peck, Garrison, and Oahe) are the Corps of Engineers' largest reservoirs. In addition to the major reservoirs, the Missouri River mainstem system includes channel modifications to allow for navigation on the Missouri River from Sioux City, Iowa to the Mississippi River at St. Louis. The significant benefits derived from the Missouri River system include hydropower, water supply, flood control, navigation and recreation.

The operation of this large and complex system by the Corps of Engineers is governed by a document called the Master Water Control Manual. As a result of the extended drought during the period from 1986 to 1992, the upper reservoirs were drawn down significantly to support downstream uses. This led to significant controversy, lawsuits and counter lawsuits and political action by both upstream and downstream states. The Corps of Engineers ultimately agreed to review its operations of its Missouri River system in the form of the current Master Manual Review.

The Corps of Engineers has expended $12 million over the last five years conducting the Master Manual review. The study has been very complex due to the size of the basin and the many competing needs within the basin. The upstream states are seeking more stable pools at higher levels. The downstream states, including Kansas, are seeking to continue the current benefits of the system including water supply, flood control and navigation. During the course of the review, significant environmental concerns have been raised. These environmental concerns spring from the significant change in basin hydrology resulting from the reservoir operations and the significant modifications made to the channel. There are currently two bird species and one fish species that are listed as endangered species on the mainstem Missouri River. The Corps of Engineers is required by law to consider their needs in the Master Manual review.

In July 1994, the Corps of Engineers issued its Draft Environmental Impact Statement (DEIS) for the Missouri River Master Manual Review identifying a preferred alternative. This has been followed by extensive public hearings throughout the basin during the fall of 1994. In Kansas we had two public hearings: the first in Atchison, Kansas on October 13th and the second in Topeka, Kansas on October 24th. I provided comments at both public hearings. The Kansas Water Office and Kansas Department of Wildlife and Parks also offered comments at the Topeka public hearing.

The preferred alternative identified in the DEIS envisions a number of significant operational changes. First, the most significant change of the preferred alternative is its spring rise. Under the preferred alternative, an additional 20,000 cubic feet per second (cfs) beyond

normal navigation needs will be released from the Gavins Point Dam from April through mid-June of most years. The purpose of this spring rise is to more closely mimic the natural flows of the Missouri River for environmental benefits. The U.S. Fish and Wildlife Service, in its biological opinion, has stated that this is necessary for the recovery of the listed endangered species. In fact, the Service desires a greater spring rise than the Corps of Engineers has included in its preferred alternative along with other structural changes to the Missouri River and its floodplain.

The Corps of Engineers has received significant comments from residents of both downstream and upstream states regarding the spring rise. Downstream critics have three primary concerns: (1) The spring rise will increase the potential for flooding during the spring as a result of more water being in the river; (2) The higher river stages may produce drainage problems and higher water tables behind the agricultural levees along the river. This could delay crop plantings or render some land unproductive; and (3) Significant reductions in navigation support, which would result in a shorter navigation season and lower flows, at times.

Our comments to the Corps regarding the spring rise has been four-fold: (1) We have requested the Corps do further work to better identify the effect of the spring rise on flooding and drainage problems. They admit they have done little work to identify these impacts to date. (2) We have asked the Corps to review a broader range of options for the spring rises. This includes a shorter duration rise, a lesser peak, or perhaps even two separate but shorter rises. We believe the Corps should find the minimum spring rise necessary to enhance the environment

while minimizing potential flooding and drainage problems. (3) We have asked the Corps to review how structural changes in the river might enhance the environment and therefore lessen the requirements for the spring rise and its impact on floodplain uses. (4) We have asked the Corps to consider how the economic impacts associated with the spring rise might be shared more equitably between the upstream and downstream states. As we review the DEIS, it appears that the downstream states are taking the entire economic cost of the spring rise.

A misconception expressed at the hearing regarding the spring rise needs clarification. During times of normal flow, the spring rise will put two to three feet of additional water in the river. Many at the public hearings have sought to add this two or three feet of additional water in the river on top of the river stages experienced during the flood of 1993. This is not correct. The additional water in the spring could increase the frequency of lesser floods, but will have little effect on major floods like the Great Flood of 1993.

The second significant feature of the preferred alternative, which was not a significant change from current operations, was its support for use of the river for water supply. We have consistently expressed to the Corps of Engineers the priority and importance of these water supply benefits. The preferred alternative does adequately address Kansas' needs for water supply along the river, both now and in the future.

A third change in operation under the preferred alternative is its reduced navigation support. The preferred alternative will reduce navigation support by one month (November) and

also reduces the service level in the summer and fall. The Corps of Engineers included a single rule curve (i.e. operation criteria) in all 400 plus alternatives it evaluated. Our preliminary response has been to request the Corps of Engineers to review a broader array of rule curves which dictate the level of navigation support during critical, dry periods.

**Where we go from here?** The Corps of Engineers will develop a final environmental impact statement. After additional federal review, a record of decision will be made and a new operating plan developed. Due to the significant controversy already noted, it would appear that years of litigation is likely, and/or political disputes within the States and Federal Government, at the highest levels.

It was with this prospect in view, Colonel Thuss, the Missouri River Division Engineer for the Corps of Engineers, at a recent MRBA Directors meeting, challenged the Directors to seek a consensus on an alternative that might be more acceptable to the States and Tribes and meet legal requirements related to environmental concerns. This consensus process might be able to identify structural changes in the river which could enhance the environment and lessen the impacts on other project purposes. Compromises could possibly be found which the Corps of Engineers might not have identified in its process.

The MRBA Directors are still reviewing this possibility of developing a consensus process. We are currently seeking a professional facilitator to help us design and implement the

process. With guidance from the Governor, we will continue to participate in this process so long as it is productive in the resolution of this matter.

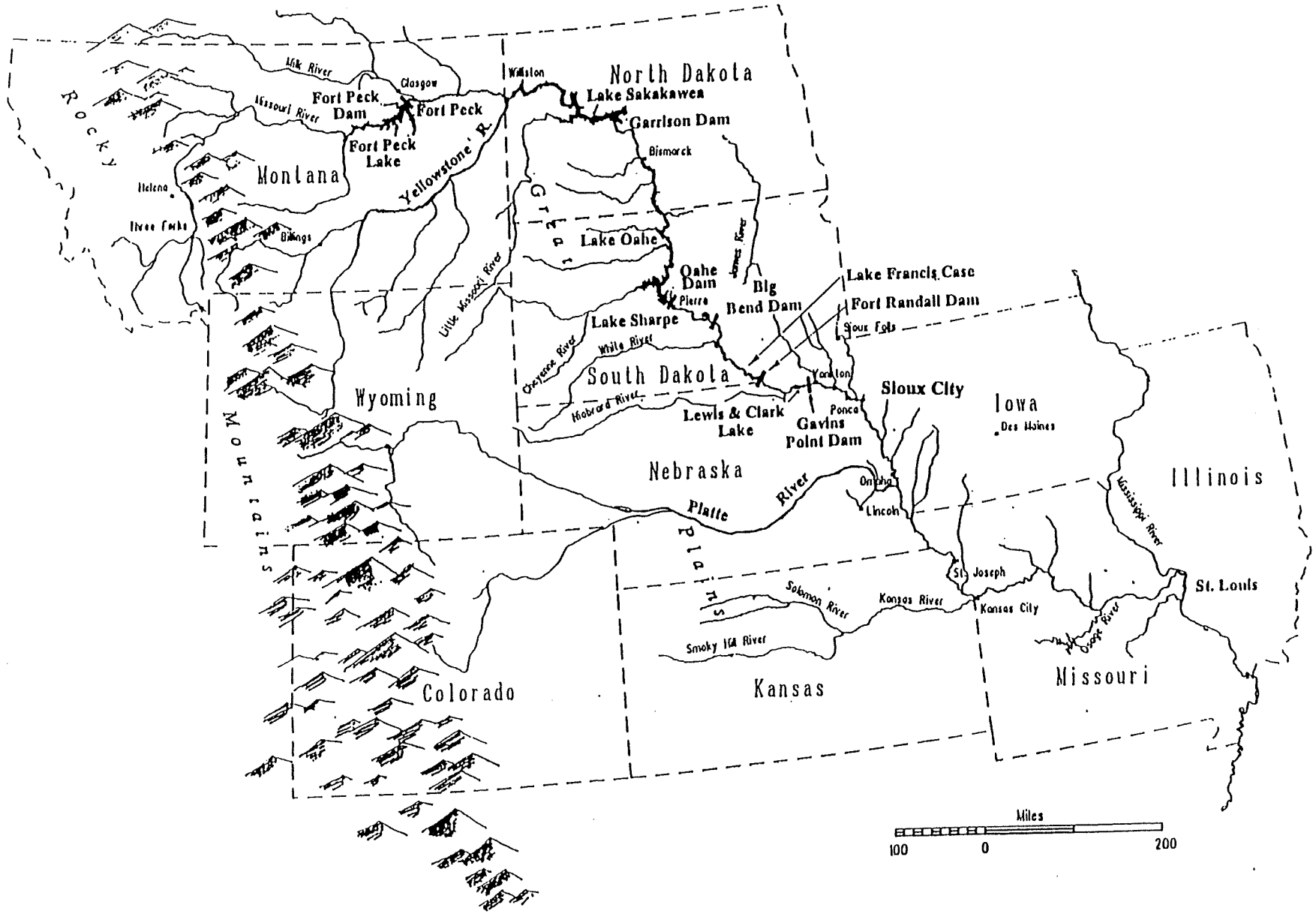


Figure 3. . . Missouri River basin.

# STATE OF KANSAS

BILL GRAVES, *Governor*
*State Capitol, 2nd Floor*
*Topeka, Kansas 66612-1590*

*(913) 296-3232*
*1-800-432-2487*
*TDD: 1-800-992-0152*
*FAX: (913) 296-7973*

OFFICE OF THE GOVERNOR

February 9, 1995


Colonel Thuss, Division Engineer
Missouri River Division
P.O. Box 103 - Downtown Station
Omaha, Nebraska 68101-0103

Subject: Missouri River Master Manual Review

Dear Colonel Thuss:

The purpose of this letter is to convey comments and concerns of the State of Kansas regarding the Draft Environmental Impact Statement (DEIS) for the Missouri River Master Manual Review and Update, dated July 1994. Staff of Kansas water-related state agencies have coordinated their review of the documents provided to Kansas. These comments supplement previous testimony provided by representatives of the State of Kansas at the public hearings conducted by the Corps.

Missouri River Navigation Support from Kansas Reservoirs

We continue to note that the DEIS has inadequate discussion and analysis of the relationship between Missouri River operations and the use of the Kansas River reservoirs to support navigation. As we have noted previously, the negative impacts to Kansas are significant and we believe the benefits are marginal, at best. No analysis of the trade-offs has been conducted to date. Yet the Corps of Engineers continues to indicate that Kansas River reservoirs may be used for navigation support, when needed.

Concerns with the Proposed Spring Rise

We recognize the Corps of Engineers' obligation to act in a manner that does not threaten listed endangered species. Further, we support efforts by the Corps of Engineers to enhance the Missouri River ecosystem. We offer the following comments to the Corps as it extends its search for an environmentally sound alternative with minimal disruption to current floodplain users:

1) The DEIS does an inadequate job of assessing the impacts of the spring rise related to increased flooding and potential drainage problems. We call upon the Corps to determine what additional lands are exposed to increased flooding by the proposed spring rise, both in depth and frequency. In addition, we ask the Corps to determine to what extent the spring rise will aggravate existing drainage problems in the floodplain.

2) The Corps should evaluate a broader range of options for the spring rise. In particular, we suggest the Corps evaluate two separate, but shorter duration, rises. This both saves water and more closely mimics the natural hydrograph. Also, we believe the Corps should identify the range of spring rise necessary to properly address the endangered species issue while minimizing potential flooding and drainage problems.

3) The Corps must evaluate, in consultation with the U.S. Fish and Wildlife Service and the states, how structural changes in the River might enhance the management of the natural resources of the River in conjunction with the management of water levels. Such enhancement may be key in preventing the listing of additional native species that are currently in decline but have not yet been listed. The options available to all interested parties if action is delayed until listing of these additional species occurs will be fewer and ultimately more expensive.

Finally, regarding the spring rise, as well as the preferred alternative in general, it appears to us that the negative economic impacts are not shared equitably between the upstream and downstream states. As we review the DEIS, it appears that the downstream states are taking the majority of the economic costs. The upstream states share in the benefits of the reservoir system and, therefore, should share in the costs associated with environmental mitigation of the negative environmental impacts of the project as a whole. We ask the Corps of Engineers to review the distribution of reduction in economic benefits arising from any revised operations and ensure they are equitably divided between the upstream and downstream states. This will probably mean an adjustment to the operational criteria (rule curve) for the system.

Water Supply

We note that the preferred alternative adequately supports the use of the Missouri River for water supply. Minimum winter releases are most critical to Kansas from a water quality standpoint. The 9,000 cfs release is adequate, but an enhancement to 12,000 cfs would reduce or eliminate the need for future changes in operations of wastewater treatment plants and power plants on the Missouri River.

Navigation Support

The preferred alternative significantly reduces navigation support. Yet, the Corps of Engineers included a single operational criteria for navigation support (rule curve) in all 400-plus alternatives evaluated. Despite our past comments requesting the Corps of Engineers to review a broader array of rule curves, the Corps of Engineers has refused to do so. We again insist the Corps evaluate alternate rule curves for navigation support.

Monitoring and Operational Flexibility

We would urge to the Corps to work with the States in expanding our knowledge base of the Missouri River ecosystem through increased monitoring of the basin's natural resources. As we implement changes in the operation of the system, particularly for environmental enhancement, we must have some measure as to the effects of these changes. We would point to the monitoring currently being done on the upper Mississippi River basin as a model to emulate.

In addition, our past and current participation in the Missouri River basin issues leads us to conclude the master manual must allow for a careful balance of future operational predictability as well as flexibility. Operations during times of flood must be clearly laid out. Similarly, principles for operation during drought should be established. Yet we believe the existing annual operating plan (AOP) process, with its consultation with the States, served the basin well during the drought of 1986-1993. We believe it, or a process like it, if the document is properly written, can continue be used in the future to respond to other changes in the future and what we learn through our monitoring efforts.

Concluding Remarks

We recognize the extensive efforts undertaken by the Corps of Engineers in conducting this study and the level of input it has provided to the States and Tribes. We believe your effort has significantly furthered our understanding of the Missouri River Reservoir System and its positive and negative impacts to the economy and environment of the basin. We call upon the Corps of Engineers to issue a supplemental Draft Environmental Impact Statement, with a revised preferred alternative, after the Corps has expanded its analysis as noted above.

We appreciate the opportunity to comment on the Missouri River Master Manual Review. We trust these comments will be helpful in arriving at a more acceptable preferred alternative.

Sincerely,

Bill Graves
GOVERNOR

cc: Alice Devine, Secretary of Agriculture
Steve Hurst, Director, Kansas Water Office
John Strickler, Acting Secretary, Kansas Department of Wildlife & Parks
James O'Connell, Secretary of Health & Environment
Carla Stovall, Attorney General

# Kansas Natural Resource Council

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Feb. 16, 1995
H.B. 2436
Property Tax Equalization for Renewable Energy
Testimony of Bill Craven
Kansas Natural Resource Council and Sierra Club
House Energy and Natural Resources Committee

Development of renewable energy is often discouraged by tax and regulatory policies, often because those policies evolved and dealt with only fossil fuel generation. The property tax is a good example. This bill attempts to correct a disparity that currently favors fossil fuel generation over renewable generation. It is not a subsidy, but an effort to achieve equal terms, at least for tax purposes, where both technologies compete. The Oxbow Company has specifically suggested to me that the property tax inequality of current law is viewed as a hindrance to their development of renewable energy in Kansas.

Here's the current disparity: Renewable energy requires substantial up-front capital costs, but doesn't have high fuel costs. (In some cases, like wind, there are no fuel costs.) For conventionally fueled plants, wholesale fuel costs aren't taxed at all, unless you count the severance tax paid in other states for coal.

As an example, if a utility scale wind turbine costs $1,000 per kW, and produces around 2,200 kW per year, that is about a 25 percent plant factor. If it were appraised at 33 percent as utility property, and the local tax rate was 165 mills, the property tax cost would be

($1,000 x .33 x .165) / (.25 x 24 hrs. x 365 days) = $.024/kwh

Compare this to a fossil fuel plant costing the same but operating with a 65 percent annual plant factor because it uses stored energy.

($1,000 x .33 x .165) / (.65 x 24 hrs. x 365 days) = $.01/kwh

These numbers do not represent any specific generating facilities, nor are they intended to be exact. But it is a useful example to illustrate the relative disparity that exists, and why the current system discriminates against renewables.

This bill requires the Secretary of Revenue to develop assessment procedures that would ensure renewable and fossil energy generating systems paid at the same rate per unit of energy produced. The idea is that the current rate of taxes--per energy unit--paid by fossil fuel plants would be transferred to renewable sources. It is tax equalization, not a tax increase or decrease, that is sought. This bill is intended to be revenue neutral, at least until additional taxes are paid by renewable energy facilities. There may be a need for clarifying language to ensure that no decrease for existing fossil fuel plants results.

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TESTIMONY BEFORE THE

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

by Jim Ludwig

WESTERN RESOURCES, INC.

February 16, 1995

Chairman Holmes and Members of the Committee:

Western Resources is not for or against HB 2436. We are uncertain what the purpose of the bill is. We ask questions we think the committee should answer before taking action on the bill. We oppose HB 2438 as too simple an approach to a complex issue.

HB 2436

HB 2436 would impose property taxes on renewable energy systems on an equivalent tax paid per unit of energy generated (per KWh) to that of fossil fuel or nuclear plants when calculated on the same basis.

Do entrepreneurs of renewable energy systems want to be taxed on par with public utilities, the highest taxed property class in the state? Public utilities are assessed at 33%, higher than any other property class. Utility inventories, unlike inventories of commercial and industrial property owners, are *not* exempt from property taxation. This means, for example, that specific inventories of fuel -- coal, natural gas, nuclear fuel rods -- are all taxed. Why would owners of renewable solar or wind systems, which do not use any consumable fuel, want to be taxed on an equalized basis, taxed as if they did use fuel inventories?

Is the bill constitutional? It appears renewable energy systems would be assessed at 33%, the assessment rate set in the Kansas constitution for public utilities. Would the requirement set

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out in this bill to achieve a tax payment per unit of energy generated meet this constitutional requirement?

Indicators of value, established by statute, are used to appraise utility property in Kansas. This bill's requirement to tax per unit of electricity generated has nothing to do with the indicators of value of an electric utility which might own a renewable energy system. May the secretary of revenue adopt procedures to appraise renewable energy systems on a basis that differs from the statutory method for all other utility property?

The bill seems to confuse taxation and valuation. Taxes paid cannot be used as a direct comparison between types of generation. For example, an electric utility may have a market value of a billion dollars. Differing mill levies do not indicate the market value of that utility. If it has a plant in Shawnee County, with an average county levy of 144.156 mills, taxes paid will be much higher than if the same plant were located in Stevens County, with a levy of 59.17 mills. How would a tax per unit of electricity (per KWh) be equalized between locations?

HB 2438

HB 2438 exempts both utility and and non-utility electric generating facilities which use renewable resources and Kansas coal and natural gas from Kansas Corporation Commission (KCC) regulation, if those facilities sell electricity to Kansas customers and at least 50% of the retail sales are derived from renewable sources. The bill also requires owners of transmission and distribution facilities to let these renewable generating facilities use their lines at reasonable rates. This bill allows retail wheeling, which is a major departure from the statutory policy of granting exclusive electric service territories within the state.

Retail wheeling may be on the horizon. This legislation, however, is premature and incomplete. Any retail wheeling legislation should provide for an orderly transition, insure reliability of service, and safeguard customers and shareholders from market distortions and cost shifting. Balancing these countervailing issues will require much more than a simple statute allowing retail wheeling.

Electric utilities in Kansas are under an obligation to serve, i.e., they must provide service to any customer within their electric territory who asks for it. This means an electric utility would remain obligated to serve a retail customer who had contracted with a different, renewable resource supplier under HB 2438. If the customer was served by a wind generator, for instance, and the wind was not blowing, the electric utility would still be obligated to serve that retail customer while the renewable resource supplier's wind plant was not generating. The electric utility has to maintain enough capacity at all times to serve even this intermittent customer. When this customer is not using and paying for that capacity, others would have to. In effect then, customers who took their energy exclusively from an electric utility would subsidize retail wheeling customers.

Statutory bias toward in-state fuels has run afoul of the U.S. Constitution's interstate commerce clause. Several states' laws with such bias have not fared well against court challenges. It is doubtful the bill's provisions permitting retail wheeling to Kansas fossil fuels, but not to out-of-state fuels, would stand in court. The provisions requiring conversion of renewable resources in Kansas may be questioned on the same basis.

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Feb. 16, 1995
H.B. 2438
Electric Energy De-Regulation and Competition
Testimony of Bill Craven
Kansas Natural Resource Council and Sierra Club
House Energy and Natural Resources Committee

The groups I represent are convinced that more open energy markets in which there is less government granted monopoly, greater competition, and less cumbersome regulation will give entrepreneurs the opportunity to do what our regulated utilities and their regulators have failed to do: develop Kansas' abundant renewable energy resources for the benefit of all Kansans. I'd like to make several points:

(1) Renewables are real. They are being developed by real companies in real states and the energy serves real people and businesses. This bill makes being real the ultimate test. If these technologies can't compete, they won't sell, and nothing will happen.

(2) Monopolies have failed. Kansas' utilities have shown no real interest in renewables. Every year, the legislature--indeed, this committee--hears of more studies and more plans. But we never hear of progress. Later in this decade or early in the next century, when our monopoly utilities begin planning new generation, they will have no experience with renewables, no ability to judge fairly their value, and still no interest in using them. They will likely turn to their old friends, coal and maybe nuclear power. Kansans will again be locked into paying Wyoming severance taxes and wondering if there will ever be the technology to store wastes which remain dangerous for thousands of years--assuming we find a place to put them.

Under federal law, since 1992, there is now the possibility for competition. But in Kansas, there is no competition. Some monopolies now openly question the need for the IRP process, claiming that that technique is now obsolete in light of emerging competition. But where's the beef? Where's the competition? The bottom line is that it is time to find out if competition can do what the monopolies will not.

Mr. Low was gracious enough to provide me with his remarks, and I regret I wasn't able to reciprocate. I just finished my testimony. But his theme is that this is too complex and raises too many questions. My view is that the legislature doesn't need to resolve all the peripheral issues posed by this bill. The legislature doesn't need to do the KCC's work. But the legislature can make basic statements about energy policy in this state, and it should make those statements.

That theme is essentially a repeat of what happened to the IRP process. You may recall that IRP is intended to ensure the purchase of least cost generation, and to encourage energy efficiency and conservation. During the 1991 session a bill to require the KCC to implement IRP was introduced. The KCC objected, saying they would prefer to implement IRP under the authority of existing statutes. Well, it's 1995, and we still don't have an IRP rule.

The IRP process brings me to three key points. The legislature, not the KCC, is the prime source of energy policy in Kansas. Second, changes in policy are complicated, but the refusal to change is often an impediment to progress. In this field, we need sensible de-regulation, no more regulation. Third, Kansas still doesn't have an environment in which renewable energy has an opportunity to serve the citizens.

My belief is that it is time for some deregulation that allows open, competitive markets. It's time to look past those who say we can't, even though they've never tried. It's time to look past this highly-evolved regulatory house of cards that keeps so

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many attorneys busy. It's time to give the people who want to figure out how we can develop competitive renewable generation a chance to compete.

If this committee thinks this bill goes too far to fast, perhaps we should limit the bill. One way would be to impose the same 100 mW limitation you imposed yesterday on the siting act exemption.

Some still won't like the bill. There will always be some who don't like consumers making decisions regulators used to make. They don't like the risk of competitive markets and less regulation. But if sensible experimentation allows creative minds to find ways to provide environmentally friendly energy for Kansans, using Kansas resources, and at lower cost, wouldn't that be a good precedent?

This bill allows a generator to sell electricity directly to consumers, provided that at least half of it is generated with Kansas renewables, and the remainder with Kansas resources. Allowing this blend has two advantages: The renewable resource can have a back-up source to ensure reliability. And it can bring members of existing Kansas energy industries into the renewable energy development process.

The bill also requires the KCC to ensure access to the transmission and distribution system at fair cost. This is the retail wheeling part of the bill that applies to generators who meet the requirements of the bill. Many industry analysts consider retail wheeling inevitable. Electric utilities are the last great bastion of monopoly, and it is going to change. A number of utilities are moving to segregate generation from transmission and distribution, anticipating that the latter two will remain regulated while generation won't be. The big issue is to figure out what to do about our cumbersome regulatory process. I want again emphasize that we need to start thinking about how we can, not why we can't. Arguments about jurisdiction and procedure are impediments to be overcome, not obstacles to a new policy.

This bill does not limit wheeling to renewables. It does provide that half the total energy must come from renewables. It is a public policy statement that says ways need to be found to integrate renewables into our energy system. It is a marriage of goals, renewables and competition. It gives the legislature leverage if it chooses to promote these goals together, without the heavy hand of a direct mandate.

We don't oppose amendments which would impose a short phase-in time to allow for varying schedules for varying technologies during a start-up period. We recommend a maximum of two or three years for this period.

We don't oppose clarifying the definition of independent power producer. It could be worded to conform with qualifying facilities under PURPA, or it could alternatively simply refer to "any company."

We would welcome KCC amendments to fulfill any unanswered questions raised by the bill. We oppose amendments which would subvert the intent of the bill.

Finally, a word about "stranded investment." This refers to utility investments which allegedly become uncompetitive when a market is de-regulated. Utilities often want to be paid for these investments anyway, and they offer the theory that these investments were made, and approved by regulators, before de-regulation. That's a little bit like saying the first purchasers of automobiles should have been required to buy a buggy whip, just to keep the buggy whip manufacturer in business. Whether stranded investment is a real issue or not--or whether they are simply imprudent investments made possible by the inefficiencies of regulated monopolies--is an issue which shouldn't be allowed to subvert this bill. In a free market, there is no stranded investment. There is only survival and failure. This issue is very risky territory, and shouldn't be addressed in this bill.

If we continue to wait for another energy crisis, one will happen. Renewable energy sources are not a panacea. We need to begin a gradual process of incrementally developing renewable energy resources without supply disruptions, and without dramatic cost increases. Monopolies and complex regulation should not be allowed perenially to stand in the way of this goal.

Thank you for the opportunity to testify.

BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

PRESENTATION OF THE
KANSAS CORPORATION COMMISSION ON
HB 2438

The Commission believes this bill is premature in allowing retail wheeling. Even though the various conditions in the bill concerning the source of power to be sold would, as a practical matter, severely limit the potential for retail wheeling in the near future, there are many fundamental issues which need careful consideration and evaluation before the door is opened to retail wheeling. Attached is a short background piece on retail wheeling as well as the first and last chapters of a National Regulatory Research Institute publication "Overview of Issues Relating to the Retail Wheeling of Electricity."

Some of the major issues raised by retail wheeling are: Will it result in greater efficiency in the electric industry or are there alternative, and perhaps less complicated, ways of accomplishing this goal; will all or only some customers benefit; can it be implemented for all customers as a practical matter; will it adversely affect system reliability; will it cause existing generation to be "stranded" and, if so, how should those losses be treated;" how will it affect utility planning and any IRP requirements; what changes in regulation and pricing of services would be needed; if it is desirable, should it be phased in more or less gradually; and, finally, what are the respective roles of state and federal regulators?

A few states are formally exploring these issues - Michigan has instituted a limited experiment - and FERC has several proceedings underway to look at retail wheeling and related issues. However, at this time there is certainly no concensus on what should be done.

This bill would apparently allow retail wheeling when 50% of the energy sold by a "generator" is produced from renewable energy sources. While it might make it easier for generators of electricity using renewable fuel(s) to market their power, it raises more questions than it answers with regard to retail wheeling.

First, in Kansas, the Retail Electric Suppliers Act, K.S.A. 66-1,170 et seq., provides for territories in which suppliers have the exclusive right to

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"furnish retail electric service to all electric consumming facilities." "Retail electric service" has not been defined and could arguably mean all facets of the provision of electric energy - power generation or acquisition, transmission and distribution. Or it might be construed to mean only the transmission and distributions functions. It is thus unclear whether that act needs to be amended to allow retail wheeling and whether this bill would be inconsistent with that act.

Second, if retail wheeling is desirable, as implied by this bill, some might suggest that there is no basis for limiting it to Kansas renewable generation sources. If the principle purpose of retail wheeling is to possibly spur competition in the generation of electricity, this limitation could, at best, defeat that purpose, and, at worst, be viewed as unlawfully discriminatory.

Third, the bill is unclear in this regard but could restrict the KCC's ability to deal with some cost issues. One of the biggest topics in a current FERC proceeding is the treatment of "stranded investment" costs - basically losses associated with past investments (like power plants) that are unable to compete in the new arena. In addition to considerable debate about whether utilties should be entitled to recover such costs, there are several suggestions about how such costs could be recovered; e.g. through "exit fees" on the customer; incorporation of such costs in the transmission or wheeling rates; or leaving them in rate base for recovery from remaining customers. It is unclear from section (b) of this bill, exempting sales from "all regulation by the commission," whether the KCC would have the authority to consider the first two possibilities. Although section (c) of the bill purports to give the KCC jurisdiction over the transmission rates, the FERC has indicated its belief that it would have pre-emptive jurisdiction and may not defer to state commissions in addressing the issue. Furthermore, the bill language could be read to mean that the transmission rates could only cover the actual transmission costs and not other costs.

A related issue involves the "local" utility's obligation to serve the customer who at some point in time decides to purchase electricity from some entity other than the local utility. If that customer should subsequently decide to buy power from the local utility again, is the local utility obligated to provide such service; and, if so, should it be entitled to

some "standby" fee to compensate it for the contingency planning and other efforts it incurs in the interim? It is unclear from this bill whether the KCC would have authority to address such issues.

There are several other ambiguities in the bill, including: Whether generating facilities which are not renewable resources are subject to the siting act, especially if they are also engaged in wholesale sales; whether any transmission factilities owned by the generator would be subject to the transmission line siting act; whether the KCC's jurisdiction to address complaints about transmission and distribution access is intended to include facilities owned by entities not currently subject to KCC jurisdiction; e.g. municipal electric utilities and deregulated distribution cooperatitves. With regard to the complaint jurisdiction, it is also unclear whether the KCC would have authority to require the filing of transmission tariffs and whether transmission rates could be established on the Commission's initiative or only in response to complaints. We should also note that 20 days is not an adquated time to resolve transmission access complaints (assuming the KCC and not FERC has juridiction), especially during the initial stages of retail wheeling.

Without a complete, up front evaluation of the retail wheeling issues it is very difficult to determine if it will be beneficial for Kansas. Without such an evaluation this bill should not be enacted. Establishing retail wheeling in a way that makes sense to utility customers and the electric utility business will require many additional changes to laws, rules and regulations, both at the state and federal level. Restructuring the entire Kansas electric industry just to give renewable energy access to the retail market seems unreasonable at this time.

# Retail Wheeling

## The Structure of the Electric Industry Today

The physical electric system is normally considered as three distinct entities, generation, transmission and distribution. From a technical definition there is a clear distinction between the three. Any power plant that provides electricity to the transmission or distribution system, or is "synchronized to the grid" is a generator. The transmission system is the high voltage lines that "gather" electricity from the generating power plants and transmit it to the distribution systems. The distribution system distributes electricity to the individual customers. In general, controlling the transmission system, coordinating transfers of electric power and energy from one system to another, and "dispatching" generating plants are considered a transmission owner's responsibility.

It is important to recognize that from an industry standpoint, generation, transmission and distribution are not as distinct as they are to an engineer. For example, a small distribution municipal electric utility may have a few small natural gas or fuel oil engine driven generators. These generators would normally only be used to provide peak energy, or in emergency situations where the municipal would be isolated from the rest of the electric system. In other cases a large utility may have emergency or peaking generation located on the "end" of a transmission line for the purpose of generating electricity only as a way to supply voltage support for the transmission system or to provide backup power to a portion of the system in an emergency. From an industry standpoint these emergency or peaking generators might well be considered part of, or even substitutes for, the services provided by the transmission or distribution system.

The electric industry today consists mainly of vertically integrated large generation, transmission and distribution utilities that purchase or sell wholesale electricity and sell electricity to retail customers, and smaller utilities that mainly purchase wholesale electricity and distribute it to retail customers, as well as cooperative generation or transmission companies.

## Wheeling of Electricity

system. This is often accomplished through the sellers own transmission system. However, in some cases, the seller and the purchaser may need to

use the transmission system of another utility to consummate the transaction. The use of the transmission grid , including points of interconnection between utilities, to ship power between utilities is known as "wholesale wheeling" or just "wheeling". It is important to note that this is only an arrangement between or among wholesale sellers and buyers, it is not a retail transaction.

Wholesale electric transactions require the electric generating utility to provide electric power and energy to the purchasing utility's distribution Retail wheeling, on the other hand, would allow an electric power generator to sell directly to a retail customer. Under this proposal the retail customer agrees to purchase electric power and capacity from a generator or marketer instead of the local distribution utility. The customer or the supplier is then responsible for making the arrangements to "wheel" the electricity across the transmission and distribution system. The distribution and transmission system are then compensated for the use of its system and services by the customer or the marketer.

**Introducing Competition into the Industry.**

Much of recent federal and state regulatory and legislative activity has been focused on trying to introduce competition into segments of the electric industry. The Public Utilities Regulatory Policies Act of 1978 (PURPA) of 1978 created non-utility "qualified facilities" that are basically renewable or cogeneration electric generating plants that produce wholesale electricity for sale at avoided cost to the electric utilities. The Energy Policy Act of 1992 (EPACT) created Exempt Wholesale Generators (EWGs) that allowed public utilities to build independent generating plants for wholesale electricity. In addition, EPACT increased the authority of the Federal Energy Regulatory Commission (FERC) in making transmission owning utilities provide access to any wholesale sellers and buyers that requested service, as long as system reliability did not suffer. Interestingly, EPACT also sought to limit FERC's authority in ordering retail wheeling, essentially giving that authority to the state. FERC is currently considering many policy changes affecting the wholesale electric business such as open transmission access, including stranded investment in transmission access fees, and guidelines for Regional Transmission Groups (RTGs). On the state level, California, Connecticut, Michigan, Wisconsin and others are considering regulatory action on retail wheeling

## Retail Wheeling As A Method to Achieve Wholesale Competition

All of the recent action on the federal and state level has really been with one objective in mind. That objective is to allow the generation portion of the electric industry to be taken out of the electric utility rate base and to promote a competitive wholesale electric generation market. Yet there are many different approaches on how to make this work (varying from the federal EWG concept to the California retail wheeling proposal). However, the real question of implementation remains. Some industry experts believe the only way this could work in a financial sense would be to have all the transmission and dispatch functions controlled by one entity. Others believe that open access transmission agreements as well as agreements between transmission owners could accomplish the same thing. The proponents of retail wheeling argue that the wholesale electric market will be truly competitive, only when the retail customer can choose the source of their electric power and energy.

Currently the retail electric rate actually reflects the embedded cost of all of the utilities generation, transmission and distribution assets (for wholesale and transmission purchasing distribution utilities this is the long term purchase contract and transmission agreements). Many customers feel that their electric rates unfairly reflect the embedded cost of overpriced generating plants. In some regions of the country, particularly California and the Northeast, it is not unusual for industrial customers to pay close to $0.10 per kilowatt hour for electricity. Considering that the transmission and distribution costs are probably well below $0.02 per kilowatt hour this is a high price for generation. A new, efficient power plant might sell energy for $0.05 per kilowatt hour, for example. These customers would like to purchase the cheaper energy and avoid paying for the cost embedded in the ratebase of older more expensive generating plants. They argue that in a competitive market, the generating plants would have to sell electricity at a market rate that would not be higher than any of their competitors, regardless of the embedded cost (you get the same price as everyone else for a bushel of wheat, regardless of what the land or fertilizer cost).

## Concerns About Retail Wheeling

While there has been a lot of theoretical discussion about retail wheeling, there remains several unresolved issues and unanswered questions. For

instance: If retail wheeling is allowed, will this change actually increase efficiency (and lower cost), will electric system reliability be affected, who will pay for any baseload capacity stranded in the ratebase, is this the best way to promote a competitive wholesale electric industry and how is such a change implemented?

Perhaps one of the most intriguing questions is whether or not retail wheeling will actually reduce the price of electricity. Retail wheeling may lead to lower prices but only if it results in either lower costs or lower profits, or both. Many of the assets of the electric system, such as the transmission and distribution system, can not be truly competitive without building redundant facilities. In addition, it is not always easy to separate generation from transmission and distribution, as discussed previously. Some generation may logically be more a function of the transmission or distribution utility. While the current system of rate-based regulation does have its limits, customers already have some choice. In particular, large industrial customers may elect to cogenerate and smaller customers may choose other energy sources, such as natural gas heat. In addition, all customers, particularly large industrial users, have the ability to choose from which utility the purchase their energy by selecting where they build their facilities. Furthermore, wholesale purchasing utilities may simply buy electric power and energy from a different wholesale supplier.

The cost of electricity involves not only the amount billed to customers but also the reliability (or quality) of the electric system. There would be a "cost" for any system that decreased the reliability of electricity supplied to the customer, even though this would not be reflected directly in the monthly bills. Even though electric rates vary greatly across the country, the United States is recognized as having the most reliable and high quality electric system in the world. Without careful consideration of changes in the industry's market strucute how the entire industry is structured, or should be restructured, it is difficult to estimate how the quality and reliability of the system could be affected.

The issue of reliability also deals with the large power plants currently in the ratebase. Certainly if retail wheeling occurred and the utilities were allowed to recover only the cost of their transmission and distribution facilities and services, some large expensive generating plants would not recover their investment costs (i.e., stranded investment). Where would this investment recovery come from? In the example of nuclear plants,

with a few exceptions, many cost a lot more to build than comparable coal power plants which provide the same baseload generation. Even though the operating costs of nuclear power plants are sometimes lower than comparable coal plants, the lower operating costs do not offset the higher capital costs. This would cause a utility to write down the capital investment (by not attempting to recover it in wholesale rates) just to be competitive in the wholesale market. Some people have suggested that this capital write off should be paid for by stockholders, others have suggested it should be part of the transmission or distribution charges. It is not clear what the final solution may be, however it is likely that any legislative or regulatory position on this issue will be challenged in court.

Assuming that the issue of stranded investment is addressed, even if it is determined that the reliability of the electric system will not be affected, and that the cost of electricity will be lowered by wholesale competition, the issue remains whether or not retail wheeling is the best way to achieve competitive wholesale electric generation. Under most retail wheeling proposals, the local distribution utility will still have to supply electric energy and power to all customers that do not purchase from a wholesale supplier. In fact, there are several other alternatives to promote a competitive wholesale market, such as gradually taking all generating plants out of the ratebase, requiring utilities to procure electric energy and capacity through competitive bidding, and merely promoting the purchase of wholesale electricity through open markets (with unrestricted access to price and availability information). In fact, none of these options, including retail wheeling, suggest that the electric distribution utility would not be required to maintain its obligation to serve its customers. However, additional costs incurred by the distribution utility, due to retail wheeling, could cause the remaining distribution utility's retail customers to pay higher rates.

Obviously any proposal to implement retail wheeling affects many different aspects of existing electric utility laws and regulations. Current regulatory efforts involving integrated resource planning, demand side management and conservation, and even incentive based regulation have an uncertain future if retail wheeling is adopted. Other more traditional regulatory issues are also affected, for example, the effect on the certified service territory of electric utilities, utility rules and rates for electric service, existing utility rate base, and obligation to serve. Even if massive changes to existing state laws were in place today to allow retail wheeling,

it is not clear that existing wholesale power contracts approved by FERC would not preempt state law. Furthermore, the ramifications of such changes are bound to affect the degree of control to which the transmission owners have regarding quality of service (i.e., voltage control, adequacy of capacity, coordination and protection, etc.) Changes in the way electricity is marketed to the individual consumer affect every aspect of the industry, not just wholesale generation. The question remains if retail wheeling is the best way to restructure the electric industry.

NRRI 94-09

# OVERVIEW OF ISSUES RELATING TO THE RETAIL WHEELING OF ELECTRICITY

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# 1. BACKGROUND

The electric power industry is next on the block to undergo radical transformation. It has seen competition edging into individual markets, particularly the bulk power market. Market forces in the coming years will continue to penetrate the industry as interest groups progressively perceive the benefits of competition, the costs of traditional regulation, and monopoly power exhibited by electric utilities.

The recent movement toward more competition in the electric power industry has recently provoked a debate over the merits of retail wheeling. Specifically, a dialogue on whether retail customers should have the right to purchase their power requirements from sources other than the local utility has sprung up in several states including New Mexico. No state has enacted broad legislation, either requiring or granting authority to a state public utility commission to order retail wheeling.[1] Growing pressures will inevitably bring the day when this is no longer true. It is a matter of time before some state, either through legislative action or commission initiative, will open up the doors for retail wheeling.[2]

At the outset it is important to distinguish between retail wheeling and other forms of wheeling in the electric power industry. Wheeling can be defined as the use of the transmission facilities of one network to deliver power of and for another entity or

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[1] Last year, the Nevada Legislature authorized retail wheeling as part of an economic development bill to lure firms to locate new plants in the state and other states have authorized retail wheeling on a selective basis (see section 4).

[2] On April 20 of this year the California Public Utilities Commission prepared rules that would ultimately permit retail wheeling for all customers. The Postscript of this report contains a summary of those rules as they pertain to retail wheeling. The Commission ruling could have significant ramifications for other states. Because this report was being finalized at the time the Commission's order was issued, no complete analysis of the order was performed.

entities.[3] A wheeling transaction typically involves a utility transmitting power for two other utilities that are not physically interconnected. Under such a transaction, which is wholesale in nature, the transmitting utility is neither the seller or buyer of power. Wholesale wheeling occurs when the buyer of power resells the wheeled power to retail customers. An example is an investor-owned utility (IOU) wheeling power for a municipality located in its control area. Another example involves the selling of power by an exempt wholesale generator (EWG) to a utility for resale by that utility. While these two examples fall under the definition of wholesale wheeling, important difference exist. The first example involves a partial or full requirements customer of a utility receiving transmission service from the same utility in order to purchase power from another supplier.[4] This form of wholesale wheeling is similar to retail wheeling, where the direct purchaser of the wheeled power is the end user of the power. The second example does not involve the utility losing any sales to another supplier. Rather, the utility purchases power to lower its cost of service or increase its reliability or both.

Retail wheeling involves a retail customer of a utility obtaining transmission service to purchase power from another supplier.[5] Retail wheeling includes self-service wheeling, where the local utility transmits power within its control area from a generation site to a consumption site both owned by the same entity. An example of retail wheeling is an industrial customer in a utility's service area buying power from another utility or from a cogenerator.

As discussed in this report, the fact that retail wheeling is rare in the United States can be attributed to a combination of legal, technical, and economic impediments.

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[3] This definition was taken from Kevin Kelly et al., *Some Economic Principles for Pricing Wheeled Power* (Columbus, OH: The National Regulatory Research Institute, 1987), 270.

[4] See, for example, Rodney Frame and Joe D. Pace, "Approaching the Transmission Access Debate Rationally," in *Transmission Group Working Paper No. 1* (Washington, D.C.: National Economic Research Associates, 1987), 3.

[5] Ibid., 3.

Most wholesale wheeling does not create problems regarding obligation to serve and stranded investment, and fewer legal and economic problems ensue.

Overall, wholesale wheeling (defined as the condition under which the utility purchaser continues supplying its requirements customers the same amount of power) is less problematic because it:

(1) should not cause severe financial problems for any utility;
(2) does not fundamentally affect the "regulatory compact;"
(3) would create fewer planning problems;
(4) should potentially cause less inefficiencies (a full discussion of this point is made in section 6);
(5) involves less controversy over the equity effects; and
(6) entails no change in the relationship between a utility and its requirements customers.

A major stimulus behind the recent interest in retail wheeling was the passage of the Energy Policy Act of 1992 (EPAct).[6] The legislation, in particular sections 721-726, prohibits the Federal Energy Regulatory Commission (FERC) from ordering retail wheeling. As interpreted by some experts, the Act or federal law in general, does not prohibit a state from allowing retail wheeling. Whether or not retail wheeling should be allowed is a matter for state legislatures or state commissions to decide.[7] Proponents of retail wheeling point to the Act's so-called "savings clause," which they argue prevents FERC from preempting any state law regulating retail wheeling.

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[6] An overview of EPAct is presented in Kenneth W. Costello et al., *A Synopsis of the Energy Policy Act of 1992: New Tasks for State Public Utility Commissions* (Columbus, OH: The National Regulatory Research Institute, 1993).

[7] See, for example, Steve Michel, "A Customer's View of Retail Wheeling," paper presented at The National Regulatory Research Institute/U.S. Department of Energy National Seminars on Public Utility Commission Implementation of the Energy Policy Act of 1992, Portland, Oregon, July 16, 1993.

Although this report concurs with this point of view, some analysts have argued that EPAct does not grant state legislatures or state commissions any authority to order retail wheeling nor does it remove existing federal jurisdiction over transmission activities in interstate commerce. Their interpretation of the "savings clause" is that it leaves unchanged the authority of the states from their pre-EPAct status.[8] Where these analysts appear to be on more solid ground is their assertion that a definite answer to the question of how much authority do states have will ultimately require a court decision.

In the eyes of some consumer groups, EPAct has reduced the uncertainty over the legality of retail wheeling. This might be a major reason why industrial groups in many states have begun to press for retail wheeling. Some of this pressure is being directed at the state legislature, which in most states may have to amend existing statutes to allow retail wheeling.

Several factors behind the recent interest in retail wheeling can be identified. First, a large price differential exists between utilities, caused partially by the significant differences of recent capital expenditures among utilities.[9] Second, the current

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[8] The "savings clause" (subsection 212(h) of the amended Federal Power Act) says that:

> Nothing in this subsection shall affect any authority of any State or local government under State law concerning the transmission of electric energy directly to an ultimate consumer.

According to one interpretation, this clause does not affect the FERC's exclusive jurisdiction in interstate commerce. Consequently, the clause does not change any state authority or power as is "otherwise lawful." (See Donald M. Salazar, "Power Transmission and Wheeling Issues: How Do They Affect Us All," paper presented at Today's Energy Environment: Discourse on Law and Policy, continuing legal education conference of the State Bar of New Mexico, Albuquerque, New Mexico, May 27-28, 1993.)

[9] Drazan-Brubaker and Associates, Inc., "Rate Disparities by State for 20,000 kW Industrial Loads with a 68 percent Load Factor," prepared for the Electricity Consumers Resource Council (ELCON), 1992.

electricity prices of most utilities are high relative to the cost of new generation facilities;[10] there is also a strong correlation between utilities with the highest prices and utilities with the largest price-marginal cost differential. Third, the recent emphasis on economic development and new jobs has led state legislatures (for example, the Nevada Legislature), commissions, and industrial groups to vocalize the importance of competitive electricity prices. Fourth, industrial customers argue that utility-funded demand-side management (DSM) programs have caused electricity prices to rise while the benefits of such programs have mostly accrued to nonindustrial customers.[11] Finally, the current belief of many stakeholders and analysts that more competition in the electric power industry is desirable leads to the logical conclusion that retail wheeling must be instituted to advance competitive forces in the industry.

This report addresses to varying degrees a number of questions relating to the legal, technical, and economic sides of retail wheeling. These questions should assist policymakers and analysts in evaluating a retail wheeling statute or rule. These questions include:

1. How would retail wheeling influence the rate-making practices of state public utility commissions?
2. How would retail wheeling affect the near- and long-term economic performance and structure of the electric power industry?
3. How would retail wheeling enhance competition in the electric power industry? Would retail competition necessarily promote the public interest?

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[10] See, for example, Charles M. Studness, "The Pressures of Competition," *Public Utilities Fortnightly* (June 15, 1993): 31-32. The author argues that existing rates of most electric utilities are high compared to the costs of generation from new gas-fired, combined-cycle power facilities. Consequently, the emergence of retail competition would place great pressure on electric utilities to lower their rates. According to the author, this pressure would affect both high-cost and low-cost utilities.

[11] See, for example, the presentation of John Anderson of ELCON before the NARUC Committee on Energy Conservation ("Retail Wheeling and Its Relationship to Integrated Resource Planning," *NARUC Bulletin*, No. 49-1993 (December 1993), 10-12.)

4. What current inefficiencies in the electric power industry would retail wheeling potentially reduce or eliminate?
5. How would retail wheeling affect both the long-standing "regulatory compact" between state regulators and electric utilities, and current regulatory practices in general?
6. How could retail wheeling be carried out in a way that protects core customers from higher rates and lower reliability?
7. What are the major arguments of interest groups with regard to their positions on retail wheeling?
8. How do state utility commissions view retail wheeling? What are their major concerns?
9. Do state utility commissions and state legislatures have the legal authority to require retail wheeling? Are they preempted by the federal government? How does EPAct affect the authority of states to order retail wheeling? If states do have authority, what legal issues remain and how can they best be addressed?
10. What are the potential technical problems associated with retail wheeling? For example, would retail wheeling adversely affect electric power system reliability? What are the feasibility and cost of resolving these problems?
11. What general lessons for retail wheeling can be learned from the entry of competition in other previously highly monopolized industries?

This report does not attempt to provide definite answers to all of these questions. Instead, it examines them in a neutral posture. The authors believe that many of the issues associated with retail wheeling lie within a "gray area," where analysts, interest groups, and policymakers can, with good reason, take polar positions.

As this report points out, the debate surrounding retail wheeling will pit different interest groups with an intensity rarely seen at the state level. The dollars at stake are substantial, especially for those utilities who potentially can lose large profits from having

to compete at the retail level with other suppliers.[12] Utilities and the financial community alike see the possibility of large capital losses, with electricity prices driven down to market-based levels.[13] For utilities with high production costs, relative to the average cost for the region within which they operate, the future seems especially dim in a retail-wheeling world.

From the consumer side, retail wheeling offers opportunities for searching out suppliers who can offer the best deals. The fact that current prices vary substantially among utilities and many if not most nonutility suppliers can generate electricity below most utilities' current prices, provides good opportunities for consumers to lower their electricity costs.

This report focuses on several regulatory issues, some touching on fundamental regulatory principles, that state legislatures and state commissions will need to address in their assessment of retail wheeling. They include: (1) the unbundling and pricing of generation and transmission services, (2) protection of nonwheeling customers, (3) utilities' franchise rights and obligations, (4) allocation of costs from temporary surplus capacity, (5) the efficacy of rate-or-return regulation in a retail-wheeling environment, and (6) the effect of retail wheeling on integrated resource planning and, in particular, utility-financed DSM programs. This report groups the issues surrounding retail wheeling into three categories: legal, technical, and economic/policy.

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[12] Utility opposition to retail wheeling derives in part from the large net-revenue losses that could result. For those utilities with large unamortized generation assets, especially those with recently completed nuclear power plants, the losses could be significant. These losses can be measured by the extent to which the utility is unable to recover the full value of sunk costs that would otherwise occur under normal regulatory practices. To avoid such losses, electric utilities are likely to expend substantial resources to block any legislation or regulation that would jeopardize its control of the transmission system for retail transactions.

[13] See, for example, Merrill Lynch, *Electric Utility Industry Competitive Position--A Distinguishing Factor*, Special Electric Utility Report (New York: Merrill Lynch, September 1, 1993).

This report also summarizes the positions of various interest groups concerning retail wheeling. Proponents of retail wheeling include industrial consumers, nonutility power producers, and market-liberal economists. Their common position, at least in public, is that the current inefficiencies in the electric power industry can only be eliminated or significantly diminished by competition at the retail level. Of course, industrial customers and nonutility generators see retail wheeling as advancing their economic interests, notwithstanding the possibility that the public interest or aggregated economic welfare may diminish. Opponents of retail wheeling include most electric utilities,[14] small-consumer groups, conservationists/environmentalists, and the financial community.[15] These groups perceive retail wheeling as jeopardizing the interests of their constituents.

In assessing the social acceptability of retail wheeling, it would be valuable for policymakers to have access to some sort of conceptual framework that enumerates the expected general effects. As argued in this report, the actual effects of retail wheeling cannot be cast in any precise or quantitative form. Retail wheeling would likely have broad implications for both the future structure of the electric industry and the future form of regulation. Trying to predict the effects in general terms, let alone in quantitative terms, is a most difficult task. Examining the effects, however, can assist policymakers in systematically assessing retail wheeling, including the effects on different consumers and on the future performance of the electric power industry.

In predicting the potential benefits and problems associated with retail wheeling, it may be instructive to draw upon the experiences of other industries, namely, those that have made or are currently undergoing the transformation from a heavily regulated,

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[14] A large number of utilities, while realizing that retail wheeling would make their lives more difficult, have nevertheless acknowledged that it is inevitable and believe consideration of how it should be carried out should begin today.

[15] It may be more accurate to say that many in the financial community now believe that retail wheeling may occur sooner than what was expected a year or so ago but worry about the adverse effects it could have on the financial condition of many electric utilities.

highly monopolistic industry to a more competitive one. Retail wheeling should strengthen competitive forces in the electric power industry, as well as transform regulation. This is similar to what has occurred over the last several years in the telecommunications and natural gas industries. Further, retail wheeling could have widespread ramifications for the electric power industry and its regulation by state commissions. It would open the door for the entry of new competition throughout the industry. This, in turn, would radically change how utilities ultimately price their services and operate and plan for their electric power system. Specifically, utilities would be forced to price their noncore services on the basis of market conditions and to achieve high levels of productive efficiency. Economic theory and experiences in other industries predict that this would likely happen.

Probably the greatest challenge facing a state public utility commission when instituting retail wheeling is how to effectively regulate in an environment where a utility would have monopoly power in some retail markets while encountering competitive conditions in others. Past experiences in other industries have demonstrated the inefficiencies and other distortions created by tightly controlled rate-of-return regulation in such a hybrid market that is part competitive, part monopolistic. This report identifies some of these problems and discusses general ways in which state commissions can deal with them.

For retail wheeling to become palatable, legislatures and commissions must address the question of how to minimize the negative effects on core customers in the short term. Different approaches exist to achieve this. These have been applied in other transformed regulated industries, notably the telecommunications and natural gas industries.

Finally, the pressure for retail wheeling will not likely fade away. In fact, the posture of some interest groups, especially electric utilities, that retail wheeling cannot and will not work will increasingly lose credibility as time passes. In addition to industrial customers, nonutility and utility-affiliated generators will in the future push hard for the right to sell their electricity to retail customers. Given this expectation and the complexities of issues surrounding retail wheeling, state commissions may want to

begin a dialogue as soon as possible. Some electric utilities have increasingly expressed the opinion that retail wheeling will come. They have already begun to prepare for future competition by transforming their corporate culture, better understanding their customers' needs, cutting their costs, and restructuring their internal organization.

# 8. A GENERAL ASSESSMENT OF RETAIL WHEELING

In assessing the social desirability of retail wheeling, a policymaker's task would be made easier if he or she could systematically weigh the benefits and costs. From an economist's perspective, a policy can be regarded as acceptable if it yields net benefits to society. Under this criterion, retail wheeling could be considered desirable if it improves economic efficiency. Below is a discussion regarding what it means to improve economic efficiency.

Policymakers, however, are also concerned about equity effects. In the case of retail wheeling a major concern for state regulators is what effect it would have on core customers or those customers who could not for whatever reason avail themselves of shopping around opportunities. As discussed earlier, this concern has probably more validity in the short term, where core customers may have to pick up a portion of utilities' costs stranded by large customers leaving the local utility system. In the longer term, retail wheeling may actually benefit core customers to the extent that retail competition would place pressure on utilities to operate and invest more efficiently. In any event, the equity effect of retail wheeling from a long-term perspective is difficult to quantify.

Assessing the social desirability of retail wheeling is more complex than simply judging the economic efficiency effects. Equity, legal, and technical effects, or as some would say constraints, should also be considered. In an environment devoid of legal, regulatory and technical restrictions, it can be argued that retail consumers should have the right to choose their power supplier. In the real world, however, those restrictions may, under certain circumstances, justify limiting consumers' choice of suppliers.

The motivation behind consideration of retail wheeling is that it has the potential to improve the economic efficiency of the electric power industry. Economic efficiency is made up of three components: cost, pricing, and trading. Cost efficiency requires that a firm provides reliable service at the lowest possible resource cost (both currently and in the future). Pricing efficiency entails the firm selling services at its marginal cost

(assuming no externalities). Trading efficiency in the context of retail wheeling occurs whenever a retail customer imports power that costs less to produce and deliver than if the local utility produced and delivered an equivalent amount of power.

As discussed earlier, the competitive outcomes from retail wheeling could pressure utilities to both price and operate more efficiently. Retail competition should move prices, at least for potential wheeling customers, toward market-based levels or toward marginal cost. Cost efficiency may also improve to the extent that the different prices offered by competing suppliers more closely reflect each one's marginal costs. The probability of customers being supplied by the lowest-cost producers in a region may also be greater than when such customers are restricted to purchasing their power needs from the local utility at embedded cost-based rates.

On the other hand, retail competition could be uneconomical if existing regulatory pricing procedures prevail. As an example, an industrial customer may purchase its power from a generator with a lower price but higher marginal cost than the local utility. Especially for utilities with high prices but low marginal costs, preventing retail competition may actually improve economic efficiency, at least over the short term.[157]

From a long-term perspective, retail wheeling could radically change the structure, operation, and performance of the electric power industry. The industry could see vertical disintegration of utilities that do not perceive themselves as high value producers, the breakdown of the "regulatory compact," a transformation of the integrated resource planning process, and fundamental changes in state regulation of service where customers have rights and the ability to shop around. Such major effects, while warranting consideration by policymakers, are next to impossible to quantify within a benefit-cost framework.

Table 7 lists the potential benefits and costs of retail wheeling. The word "potential" is included to convey the fact that the effects of retail wheeling, whether from the benefit or cost side of the equation, are largely theoretical in nature. Little empirical

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[157] In a longer-term period competitive forces would pressure utilities to lower their prices in competitive retail markets to marginal cost.

TABLE 7

POTENTIAL BENEFITS AND COSTS OF RETAIL WHEELING

| Benefits | Costs |
|---|---|
| 1. More efficient utility pricing | 1. Lower electric power system reliability and stability |
| 2. More efficient utility operations and investments | 2. Uneconomic bypass under existing retail pricing procedures |
| 3. More appropriate "regulatory compact" | 3. Stranded-investment costs |
| 4. More efficient industry structure | 4. Large distributional effect |
| 5. Reduced price differentials among electric utilities | 5. Lost economies of scope |
| 6. Stronger U.S. economy | 6. Incremental costs for upgrading or expanding transmission network to accommodate retail wheeling |
| | 7. Jurisdictional disputes |
| | 8. Higher prices to core customers |
| | 9. Discriminatory pricing |
| | 10. Breakdown of "regulatory compact" |
| | 11. Abolition of IRP process |

evidence exists around the world regarding the actual effects of retail wheeling and, more generally, retail competition in the electric power industry.

The benefits and costs identified in Table 7 are not strictly economic in nature. Some, such as stranded costs, are distributional in that someone benefits at the expense of another. The list attempts to embrace the major potential effects of retail wheeling as argued by various interest groups.

Several questions were posed in section 1 of this report that a policymaker should consider in assessing retail wheeling. These questions were addressed in subsequent sections. A summary of our findings relating to these questions follows:

1. Retail wheeling would place pressure on state regulators to sanction market-based prices for customers who are able to shop around. In recovering revenue losses, utilities would try to increase prices to core customers. Regulators may have to adopt new rate-making procedures (for example, price caps) to protect core customers in a retail wheeling environment.

2. To the extent that retail wheeling enhances economic efficiency, the effect would be felt more in the longer term. Currently major inefficiencies in the electric power industry stem from rigid nonmarket-based prices and weak incentives for utilities to control their costs and to make least-cost investments. In the presence of retail competition, utilities would have incentives similar to most unregulated firms in terms of improving both cost and pricing efficiencies. In the near term, economic efficiency may decrease if current retail pricing procedures prevail (which would not be expected).

3. Retail wheeling would undoubtedly enhance competition in the electric power industry. The current high degree of monopoly power exhibited by vertically-integrated electric utilities would greatly diminish. Experiences in other industries have generally shown that more competition is good for consumers and society at large.

4. Retail wheeling could have a significant effect on the long-standing "regulatory compact." Most fundamentally, it would eliminate the exclusive franchises now given to electric utilities. Further, it would likely relieve utilities from an obligation to serve customers who choose to shop around for power. Finally, given the enhanced competition that retail wheeling would generate, retail prices would less be determined on the basis of a utility's prudent-incurred costs, allowing for a "fair" rate of return. The definition of "reasonable prices" would need to be reassessed in view of a competitive retail market.

5. The core customers of a utility may in the short term be adversely affected by retail wheeling. Retail wheeling would tend to phase out any cross-subsidies that currently benefit small customers. Core customers also would be hurt if utilities underprice services (for example, transmission and standby services) to wheeling customers. To the extent a utility shifts more of its fixed costs to price-inelastic services, core customers would be harmed. In a part competitive, part monopoly environment, utilities would have an incentive to price discriminate against price-inelastic customers. Finally, retail wheeling could cause short-term technical problems, which eventually should be resolved, jeopardizing the reliability of service of core customers.

   In the longer term, following a transition period, core customers could gain from a more competitive retail market. Utilities would have strong incentives to operate and invest efficiently, benefitting both core and noncore customers.

6. The major opponents of retail wheeling, vertically-integrated utilities and conservationists/environmentalists, view retail wheeling as detrimental to their interests. The utilities fear the end of their *de facto* exclusive franchises. For many, profits could drop sharply as these utilities would either lose customers or be forced to offer market-based prices (which could be substantially lower than current prices). Conservationists/environmentalists

fear the end of the IRP process as currently practiced and utility-funded DSM activities. Both groups seem correct in their assessment of the damage that would be caused by retail wheeling to their interests. Since these groups are considering only their self-interests, no inference based on their arguments *per se* should be made regarding the social desirability of retail wheeling.

7. The strongest supporter of retail wheeling, industrial customers, tend to downplay the transition costs. Their argument that retail wheeling could improve economic efficiency in the electric power industry has much merit. Policymakers would need to consider, however, the myriad complex issues (for example, transition costs) surrounding retail wheeling. Reconciliation of these issues, some of which affect the fundamental tenets of public utility regulation, would take much time and effort.

8. State regulators throughout the country are most concerned about the effect of retail wheeling on core customers. Regulators would be much more receptive of retail wheeling if it could be shown that no class of customers would be worse off. Regulators generally acknowledge that retail wheeling would significantly affect the economic performance and structure of the electric power industry.

9. States seem to have the authority to allow retail wheeling. Based on the legal analysis conducted for this report, the Supremacy and Commerce Clauses of the U.S. Constitution would not prohibit states from either ordering or allowing retail wheeling. The states, however, would be preempted by FERC from setting the price, terms, and conditions of such retail service since it would involve unbundled transmission service in interstate commerce. In allowing retail wheeling, states would probably have to revisit their public utility statutes to accommodate a new "regulatory compact." The new "regulatory compact" would need to account for the fact

that retail wheeling would impair utilities' exclusive franchises and their obligation to serve customers that choose to shop around.

10. Retail wheeling would require utilities to correct for the technical problems that could arise. These difficulties could stem from parallel path flows, network congestion, transmission line capacities and line losses, metering problems, distribution limitations, and capacity and transmission planning problems. These difficulties would likely be resolved over time, although at a cost to the utility and its customers. It would be costly to correct for these problems with today's technologies. Future advances in metering and transmission hardware and software, however, would likely drive down the costs.

11. The experiences of retail competition in other formerly highly monopolized industries indicate that with retail wheeling regulators would face serious challenges. Both utilities and regulators would likely have to consider new rate-making procedures and utility obligation-to-serve requirements, the treatment of stranded-investment costs, and the protection of core customers. A major lesson learned is that when regulators do not initially accommodate competitive forces they will ultimately be forced to do so. Put simply, retail competition in the electric power industry would dictate the practices of regulators. For example, regulators would ultimately sanction market-based prices, eliminate cross-subsidies, and allows utilities to compete on an equal basis with other suppliers.

12. Finally, in view of the great uncertainties over the potentially significant and wide-ranging effects of retail wheeling, it makes sense to avoid initially a broad-scale program. Alternatively, phasing-in retail wheeling, if that is possible, seems to have more merit.

Patrick J. Hurley
& Company
GOVERNMENT RELATIONS

February 16, 1995

Representative Carl Holmes
Chairman
House Energy and Natural Resources Committee
Room 526-S - State Capitol
Topeka, Kansas 66612

Dear Chairman Holmes and Members of House Energy and Natural Resources Committee:

I am enclosing, for filing with your Committee, a letter from Kansas City Power and Light Company, expressing their opposition to HB 2438, and the reasons for that opposition.

A representative of Kansas City Power and Light was unable to attend the hearing today, but they would be happy to provide any additional information to the Committee or answer any Committee questions as may be desired.

Thank you for your consideration of their statement on HB 2438.

Sincerely,

Patrick J. Hurley

PJH/hma

Encl.

800 Jackson
Suite 1120
Topeka, KS 66612
913-235-0220
Fax 913-435-3390

2/16/95
Energy & Natural Resources
Attachment # 7

KCPL

February 16, 1995

Chairman Carl Holmes
House Energy and Natural Resources Committee
Room 526S
State Capital
Topeka, Kansas

Dear Chairman Holmes and Committee Members:

Kansas City Power & Light (KCPL) Company would like to express its opposition to House Bill 2438. KCPL is opposed to HB 2438 for the following reasons:

- The combination of sections 1(b) (which allows wheeling "for resale or ultimate consumption to any customer") and 1(c) puts the state in the business of ordering and regulating wholesale and retail wheeling. The legality of this effort is very questionable. The U.S. Supreme Court, in FPC v. Florida Power & Light Co., 404 U. S. 453 (1972), held that the Federal Power Act pre-empted state authority to order even so-called "intrastate" wheeling of power if the transaction utilized facilities interconnected with an interstate transmission grid. Because the various Kansas transmission lines are so highly interconnected, it would be a very rare transaction that would not utilize such facilities. If anything, this clear pre-emption has been reinforced by the Energy Policy Act of 1992, in that the Federal Energy Regulatory Commission is provided new authority to order transmission services on request.

- In terms of state policy, the bill directly contradicts the goal of existing law in Kansas - - i.e., the Retail Electric Suppliers Act. The purpose of that Act is to prevent multiple suppliers of electricity so that, in turn, unnecessary and uneconomic duplication of facilities is avoided. In the case of HB 2438, the duplicate facilities would be generation facilities.

- Section 1(b) states that utilities and independent power producers meeting the criteria in that section would be "exempt from all regulation by the commission." This is a very broad statement and could result in unintended consequences. For example, there would be no regulation by the commission of any retail rates, practices, services and operations.

If you have any questions, please feel free to call upon either Pat Hurley or me at 816-556-2897.

Respectfully,

David E. Martin
Director of Public Affairs

KANSAS CITY POWER & LIGHT COMPANY
1201 WALNUT P.O. BOX 418679 KANSAS CITY, MO 64141-9679 • 816-556-2200

STATE OF KANSAS

*Doug Lawrence*
STATE REPRESENTATIVE
902 MIAMI
BURLINGTON, KS 66839

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE AND SMALL BUSINESS
ENERGY AND NATURAL RESOURCES
TRANSPORTATION

Recently, a radio news report identified me as a chief opponent of the Citizens Utility Ratepayer's Board. I do not consider myself a leader in this issue. I am among a large number of legislators who have concerns about how CURB has used the authority granted it by state statute.

I believe my concerns are real, and must be addressed. A careful review of this agency is in order, and I appreciate an opportunity to address this body. HB 2437 may be the best thing to happen to CURB this session. The house appropriations committee is considering a zero budget recommendation for the organization, from sub committee, as we speak right now. One recommendation of that subcommittee is introduction of a bill which would repeal the CURB statutes altogether.

HB 2437 does not take that approach. Its approach is more narrow, and reasonable. First, It assures that the CURB board is not dominated by one political party, and can not become, a partisan tool. Secondly, it removes most compensation . . . except for mileage expenses . . . for board members. Making board participation truly a volunteer effort. It also removes a mandate to the KCC that CURB receive technical and clerical staff assistance.

Finally, It narrows the scope of powers assigned to the Consumer Counsel to a level which I believe is more appropriate, given description of CURB's responsibilities provided by those who support the future existence of this agency.

I am concerned about duplication of effort, primarily because CURB's funding is as a direct assessment against the utilities involved in KCC Regulation. Recall, that the KCC also assesses its costs against the industry. Also realize that these costs are passed on to the rate payers.

You are going to hear about the wonderful work this organization does. And, how it has saved consumers more than 50 million dollars. But, those claims are questionable at best because they take credit for every reduction in rate request granted by the KCC since CURB's inception. I would remind the committee, as well as those who make the claims that the KCC has a long history of reducing rate requests which dates back before the days of CURB. I see no logical evidence that CURB's involvement has had any significant additional impact on KCC's decisions.

A banker friend of mine has an axiom he uses frequently, when considering loan applications. When reviewing a balance sheet, he looks to see if people understate the value of their assets or overstate their value. If they overstate their value, this banker assumes that they probably don't have a lot of value to work with.

The Phone Bank activity is high right now. Many people are calling to "Save CURB, and stop HB 2437." I would submit to you that right now, HB 2437 may well be the only way to save the Citizen's Utility Ratepayers Board. And that the important issue, is not what is happening in this committee on CURB, but is what is happening in the House Appropriations Committee as we speak.

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H.B. 2437
CURB
Testimony of Bill Craven
Kansas Natural Resource Council and Sierra Club
House Energy and Natural Resources Committee
Feb. 16, 1995


# Kansas Natural Resource Council

P.O. Box 2635
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Bill Ward, Lawrence

Vice President
Joan Vibert, Ottawa

Secretary
Ann Fell, Winfield

Treasurer
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The two groups I represent believe strongly in a ratepayers' and citizens' voice in the rate cases brought before the Kansas Corporation Commission. These cases are usually complex, and there is no way that the views of smaller ratepayers would otherwise be represented before the KCC without CURB. One of the groups I represent, KNRC, has formally intervened in KCC cases only once, at least in the last couple of years. We found the process to be extremely expensive and it isn't likely that public interest advocacy groups could fulfill the role of CURB on a regular basis. I also represented CURB in one case, during a period when their staff was going through transition, and they needed some inexpensive legal help. I mention this only in the spirit of complete disclosure.

As for the proposed changes:

(1) We support requiring a balance of political parties on the board. (2) We are neutral on the question of whether board members should receive compensation above subsistence. (3) We are neutral on the question of whether KCC staff should provide technical and clerical assistance to CURB. Although on this point we want to note that CURB's staff is usually small and over-worked. The existing resource-sharing relationship between CURB and the KCC has worked well, so far as I know. (4) We are unaware of why CURB's ability to initiate actions before the KCC should be removed. I am open to that, assuming there is evidence to support that change. (5) I don't know why CURB shouldn't be allowed to represent residential and commercial ratepayers who file formal complaints with the KCC. After, all, that's the statutory constituency CURB is supposed to represent. (6) The one of these proposed changes that I feel most strongly about is the proposed prohibition against CURB seeking judicial review of KCC actions which affect ratepayers. Frequently, it is only on appeal to the courts that a ratecase if finished, with all the issues treated. Were I limited in suggesting only one change in this bill, striking this proposed amendment would be it.

I am aware that there is an undercurrent of dissatisfaction with CURB, apparently because of its advocacy of increased competition in the natural gas industry raised in a case involving the state Democratic Party chair. CURB's views on that case differed from KNRC's views. But CURB's advocacy was not undertaken to be partisan, regardless of whether one agrees or disagrees with its position.

The plain fact of the matter is that CURB needs more resources in order to do its job. Two administrative or clerical people, and two lawyers (when both are hired and in place, which isn't often), isn't enough resources to bring to bear on the complicated rate cases which this state often has. In fact, depending on what happens after the rate moratorium is lifted--imposed after the KG&E/KP&L merger, CURB's role will be more needed than ever.

I appreciate the opportunity to testify.

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Attachment # 9

# Testimony - HB 2437 February 16, 1995
# House Committee on Energy and Natural Resources

Mr. Chairman and Members of the committee:

I am Frank Thacher representing Kansas AARP State Legislative Committee as Special Liaison for the committee with the Citizens Utility Ratepayer Board in opposition to HB 2437.

HB 2437 would strip CURB of its' historical authority to represent residential and small commercial ratepayers by removing CURB's ability to initiate actions before the corporation commission , represent residential and small commercial ratepayers who file formal utility complaints with the corporation commission and seek judicial review of any order or decision of the commission which would effect those ratepayers.

Since the CURB's beginning July 1, 1989, documented savings due solely to CURB's intervention through June 30, 1994 have been $ 57,730,425 against a cost of $ 1,847,853 for a return to the ratepayers of $ 31.24 for each dollar of cost. To my knowledge, there is no other state agency which returns their costs let alone produce a surplus for the benefit of Kansas citizens and ratepayers. It is important to note that CURB claims as actual or accruing savings only those savings realized through the direct advocacy of CURB. Savings have also been realized when CURB and the commission have been in accord and CURB does not take credit for those savings.

CURB supporters have but one interest; that the rate setting process be monitored so the interests of all Kansas residential and small residential ratepayers be protected by competent, knowledgeable counsel as are the interests of large commercial users through counsel they are able to afford.

Please consider this issue by examining the cost and savings figures I have presented and which are easily verifiable to see if you don't agree a return of $ 31.24 for each dollar of cost is a magnificent return on the investment made by the ratepayer. There are no tax dollars levied to support CURB and their operating funds are generated from fees assessed to utilities.

Residential and small commercial ratepayers look to their elected legislators to protect their interests; they have no other place to turn. Support them in this instance by voting down HB 2437 and working with your colleagues in both houses to see that adequate funding is provided for this essential agency for FY 1996.

Thank you,

Frank E. Thacher

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**House Committee on Energy and Natural Resources**

**Testimony on H.B. 2437**

Debra R. Leib, Executive Director
Kansas Common Cause

February 16, 1995

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify on House Bill 2437 which would severely curtail the ability of the Citizens' Utility Ratepayer Board to represent residential and small commercial ratepayers in Kansas.

Common Cause has long advocated the importance of citizen participation and representation in the decision-making process. The Citizens' Utility Ratepayer Board was created by the Legislature six years ago making Kansas one of 38 states to affirm the need for, and value of, consumer advocacy in public utility matters.

Since its inception, CURB has effectively represented the state's residential and small business ratepayers in dozens of utility rate cases. House Bill 2437 seeks to substantially reduce the role, responsibility and resources of CURB necessary to continue this representation.

Our opposition to H.B. 2437 is directed at the deletion of Section 1 (d) which provides for technical and clerical staff assistance and Section 2 (d) and (f) which allow representation of residential and commercial ratepayers who file formal utility complaints and judicial review of decisions which affect such ratepayers. Eliminating these resources and responsibilities from CURB denies average Kansans adequate legal representation in the regulatory process.

Common Cause encourages this Committee to act on behalf of the majority of the utility consumers of Kansas -- the residential and small business ratepayers -- and enable CURB to continue to provide the needed voice on utility issues to ensure fair and equitable treatment for all utility customers.

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House Committee On Energy And Natural Resources

Testimony In Opposition To House Bill No. 2437

Ms. Bobby Seger

Board Member, Citizens' Utility Ratepayer Board

February 16, 1995

Good afternoon Mr. Chairman and members of the Committee. I am Bobby Seger of Newton, a member of the Citizens' Utility Ratepayer Board (CURB) representing the 4th Congressional District of Kansas. I was appointed to a four-year term on July 6, 1993. I am testifying here today in opposition to House Bill No. 2437.

There is one part of the Bill I have no problem with and that being "Not more than three members shall be members of the same political party." The only time politics has entered into CURB is with the Governor -- it ends there with the appointment.

In this Bill you want to take out paying us compensation -- subsistence and allowances. This would make it very hard for anyone living a distance from Topeka to serve. From Newton to Topeka is 123 miles one-way. My husband and I are on Social Security with a very tight income. To pay for my meals and lodging would make serving the ratepayers too costly. This could affect almost anyone in the 4th District,

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1st District and the southern part of the 2nd District. To drive in -- attend a meeting -- (which afterwards I'm usually brain dead) and then get right back in the car and drive home is asking too much of anyone. You need common people on this Board to represent the ratepayers of Kansas -- someone they can identify with -- most could not afford to serve.

The voice of the people in utility cases needs to be heard -- we represent that voice. If this Bill is passed, you will be cutting off our wings to leave us on the ground, not able to help anyone!

Thank you.

TESTIMONY BEFORE THE HOUSE
ENERGY AND NATURAL RESOURCES COMMITTEE
REPRESENTATIVE CARL DEAN HOLMES, CHAIRPERSON

IN OPPOSITION TO HOUSE BILL 2437

THE CITIZENS' UTILITY RATEPAYER BOARD (CURB)

Sue Johnson Giles, Chairperson

February 16, 1995

Good afternoon, Mr. Chairman, and members of the Committee. Thank you for this opportunity to appear before you in opposition to House Bill (HB) 2437, a bill concerning the Citizens' Utility Ratepayer Board which amends K.S.A. 66-1222 and 66-1223 and repeals the existing sections. I am Sue Johnson Giles, from Pittsburg, the CURB Chairperson. My volunteer appointment began July, 1991. I have had the privilege of representing the old Fifth Congressional District utility ratepayers.

The mission of CURB is "to protect the interests of residential and small commercial utility ratepayers of the State of Kansas. CURB attempts to ensure that any rates, orders or rules issued by the Kansas Corporation Commission (KCC) are reasonable and fair to residential and small commercial ratepayers." CURB participates in electric, gas, telephone and water-related cases before the KCC that involve residential and small commercial ratepayers. (CURB does not participate in cases

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involving electric cooperatives that have a membership of fewer than 15,000.) To fulfill its mission, the Board has resolved to participate in those electric, gas, telephone and water utility proceedings before the KCC that have the most notable impact on residential and small commercial utility ratepayers in Kansas. The Board has also resolved to assess and analyze the resource planning done by electric utilities and to educate the residential and small commercial ratepayers on the importance of their participation in the ratemaking process.

It is critically important to note, that Kansas is not the only state to recognize a need for a utility consumer advocacy. Indeed, it was the 38th state to establish a consumer advocate office. The other state offices usually have a larger number of employees and a larger budget than does the Kansas office -- even though they may have fewer utilities and ratepayers. For example, although it is difficult to make direct comparisons because of the differences in circumstances, one state (Nevada), with approximately two-thirds of the ratepayers that Kansas has, has a staff of over three times the size of CURB's and a budget more than three times that of CURB.

To understand why the great majority of states have recognized the need for an advocate for residential and small commercial consumers, you

must understand how the regulatory process works. Ratemaking is a legal and technical process. Rates are set on the basis of evidence that is introduced in formal hearings with the KCC Commissioners sitting as judges. The decision of the Commissioners can be and frequently are appealed to the courts.

In this rate-setting process, the utility's lawyers and expert witnesses act as an advocate for the company's interests. The utility's large customers usually hire lawyers and expert witnesses to advocate for their interests. However, the KCC Staff (Staff) does not act as an advocate for anyone. It's job is to assist the Commission in its legal duty of balancing the interests of the company and all the company's ratepayers. This leaves a gap in the process. The residential and small business ratepayers, who make up the large majority of the utility's ratepayers, are under-represented.

The "duplication" argument also is inaccurate from a practical viewpoint. The savings we have achieved for Kansas ratepayers confirms that. These savings are conservatively estimated and we can provide supporting documentation and calculations for them. We take credit only for KCC-adopted adjustments that only CURB advocated. We do not take credit for KCC-adopted adjustments that were advocated by parties other

than CURB. CURB has saved the ratepayers of Kansas approximately $57 million in energy, commodity, usage and customer service charges. Over that same period of time, CURB's cumulative expenditures have been approximately $1.8 million. That works out to between $31 and $32 in benefits to ratepayers for each dollar spent. In light of these results, the time-worn argument, that CURB is simply more bureaucracy, is not convincing. We are not aware of a more cost-effective governmental organization in this state.

The most important point, though, is that CURB is statutorily empowered to appeal the Commission decisions to either the District Court or the State Court of Appeals. Before CURB was established, residential and small commercial ratepayers had no practical way of appealing KCC decisions. Prior to CURB, only other parties to the original rate cases could appeal KCC decisions. Because of the number of customers in the residential and small commercial customer classes, the comparatively small size of each customer's utility bill, and the cost of an appeal, the small customers did not have a practical way of appealing KCC decisions. However, the utilities and the industrial customers typically do have the resources and financial interests sufficient to justify an appeal. With its right of appeal, CURB represents a strong and

effective voice for residential and small commercial ratepayers, insuring that all customer classes have the same opportunity to be heard.

Now, I will address the language in HB 2437. I concur with the language at lines 18 and 19 of the Bill because this Board functions as a bi-partisan body. We are appointed to serve the best interests of the Kansas ratepayers -- not a political party. Board member, Bobby Seger, will address this issue further in her testimony.

Board member, LaVon Kruckenberg, will address the language in the Bill pertaining to technical and clerical staff assistance.

The language in Section 2, (old b), line 2-11, severely restricts the power of CURB. If passed as written in this bill, the Consumer Counsel and the Board could not represent Kansas ratepayers to our fullest ability. Indeed, CURB would no longer be able to: a) initiate actions before the KCC, b) represent residential and small commercial ratepayers who file formal utility complaints with the KCC; and c) seek judicial review of orders and decisions of the KCC. By eliminating this language, CURB would be rendered almost totally useless. There would be nothing left for us to do but intervene in cases filed with the KCC. We could no longer handle citizen complaints, initiate actions before the KCC, or seek judicial review of KCC orders and decisions, which, in essence, is one of our most

important functions. As I mentioned previously, this ability to seek Judicial Review is critical because without our ability to seek Judicial Review on behalf of ratepayers, there will be absolutely no one else who could appeal KCC orders and decisions on behalf of ratepayers. Unless, of course, they could afford to hire a private attorney to represent them, and who can afford that? As I mentioned previously, the utility company is represented by its many attorneys and experts. So are the company's large customers, who have the financial resources to hire attorneys and experts to protect their interests. And you can bet that if the KCC ends up giving a particular utility company a windfall, that utility company will not appeal that decision. So who would? The KCC Staff could not. This is because before a decision is issued, the legal staff at the KCC advise the Commissioners on issues and balance the needs of the utility company and the ratepayers. However, once an order or decision has been handed down, the legal staff's role changes and it then becomes a defender of that decision -- even if Staff does not agree with the Commission's decision. The legal staff cannot appeal the decision because it must advocate/defend the decision of the KCC. To do so would be a conflict of interest. Thus, the only way for such decisions to be appealed is CURB. Hence, the timeworn argument that CURB is a duplication of the

KCC cannot stand because, as noted, the KCC legal staff cannot appeal its own decisions -- only CURB can.

We may be able to still function adequately without the ability to initiate actions. However, if our ability to appeal KCC decisions and orders is taken away, there would be nothing left of CURB but an empty shell. We would, in effect, become a duplication of the KCC. CURB would no longer be able to provide critically needed, inexpensive representation for residential and small commercial ratepayers in matters before the KCC and the courts.

In conclusion, we believe that CURB has been, and can continue to be, a voice for Kansas ratepayers. With its right to appeal Commission decisions on behalf of residential and small commercial ratepayers, the Board has a responsibility and a duty not supplied by any other party to the regulatory process. The Board believes that it has used the ratepayers money wisely to be an effective advocate on their behalf.

Kansas ratepayers' voice will be silenced in utility matters if HB 2437 is allowed to pass out of this Committee. Thus, I urge the members of the Committee to oppose this bill.

Again, I would like to thank the Committee for the opportunity to testify on behalf of CURB this afternoon.

ENERGY AND NATURAL RESOURCES COMMITTEE

TESTIMONY IN OPPOSITION TO HOUSE BILL NO. 2437

LAVON KRUCKENBERG

CITIZENS' UTILITY RATEPAYER BOARD, MEMBER

FEBRUARY 16, 1995

Good afternoon, Mr. Chairman and members of the Committee. I am LaVon Kruckenberg, member of the Citizens' Utility Ratepayer Board (CURB). CURB represents residential and small commercial ratepayers in public utility matters.

The House Bill 2437 at lines 32-34, proposes to eliminate all assistance CURB presently receives from the Kansas Corporation Commission. This includes issuing the quarterly assessments and reimbursable assessments, and CURB personnel matters. In order to perform these functions currently performed by KCC Staff, CURB would be required to hire a consultant from DISC to write program and train current staff to do these duties. Current Staff could take over personnel matters and as long as we could continue to use the KCC copiers, we would not need to purchase a copier.

Finally, it should also be noted that CURB is not funded by tax dollars. CURB is not funded by the State's general fund. Our budget is

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assessed back against the utility companies and in turn, collected through rates from the consumers we are representing. I urge members of this Committee to vote no on House Bill 2437.

**TESTIMONY**
**BEFORE**
**THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE**
**FEBRUARY 16, 1995**

I am Margaret Miller of Wichita, here to speak in support of CURB. I came here at my own expense because I believe the Citizens Utility Ratepayers Board (CURB) is extremely important to the hundreds of thousands of residential and small business utility customers in Kansas.

Before CURB was established, small ratepayers were not able to take part in utility regulatory cases because the Kansas Corporation Commission requires that testimony in these cases be presented by an attorney. And unorganized small customers had no way to pay an attorney.

The Kansas Corporation Commission (KCC) does not represent small utility customers in regulatory cases. The KCC acts as a quasi-judicial body, hearing evidence from those able to hire lawyers. They make their decisions on this evidence. Without CURB, small utility customers would not be represented.

CURB is not funded by our state general funds. CURB is funded by assessment on ratepayers–the way the utility expenses and the way the KCC expenses are funded. CURB needs to be larger and stronger, not smaller and weaker, order to do an even better job for the people of Kansas. For most of its life, CURB has had one attorney and a 2-person office staff. There are 9 to a dozen cases on the agenda at all times. Thus, CURB's miniscule staff must do the work of at least a dozen–probably many more–utility lawyers and KCC lawyers.

In spite of the inequity of size and resources, CURB has saved small customers at least $31 for every dollar spent. CURB does not have the resources to lobby or practice public relations. That is why I came here today–to explain what CURB means to utility customers–who are also the voters.

It would be unfair if only utilities and large industries were able to be represented in utility regulation cases. The millions of individuals and thousands of small businesses need to be represented also, especially since they are paying for the whole process

I know you have to read piles of material and master hundreds of issues. I hope, when you understand what CURB is doing and how it operates, that you will agree that CURB is a valuable asset.

Margaret J. Miller, 6807 E. Bayley, Wichita KS 67207-2613 – (316) 686-2555

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**BEFORE THE HOUSE OF REPRESENTATIVES**
**COMMITTEE ON ENERGY AND NATURAL RESOURCES**

Testimony of Robert V. Eye on HB 2437
February 16, 1995

Utility industries are undergoing extensive structural changes. Competitive market forces are being introduced into arenas which traditionally had been the exclusive domain of regulated monopolies. Additionally, technological changes in the energy and communication industries offer potentially great benefits to consumers. However, these changes also carry the possibility that costs associated therewith will be loaded disproportionately onto residential and small business ratepayers unless they have ongoing representation in the ratemaking and policy making processes. This is where the Citizens' Utility Ratepayer Board (CURB) can play an important role. The amendments to CURB's authority in HB 2437 will make its advocacy on behalf of residential and small business ratepayers less effective.

In order for CURB to be effective, it must have the powers currently in K.S.A. 66-1223(c)(d) and (f). Without the authority to initiate actions before the K.C.C., represent residential and commercial ratepayer complainants, and seek judicial review of K.C.C. orders, CURB will not be on a level playing field *vis a vis* other very powerful participants in the process. Consequently, the ratepayers CURB is to represent will be disadvantaged and prejudiced in the ratemaking process.

It is not surprising that HB 2437 to limit CURB's authority comes before this committee now. The 1994 natural gas rate case involving Kansas Pipeline Partnership (K.C.C. Docket No. 190,362-U) was controversial for many reasons, including CURB's support for the proposed rate increase and recovery of the so-called market entry costs. I was a participant in that case as counsel for the Kansas Natural Resource Council (KNRC). CURB and KNRC differed on the rate increase and recovery of so-called market entry costs. Reasonable people can differ on these complex matters. However, both agreed on the need to keep energy costs as low as possible. We differed on the means to do so. This difference of opinion should not be a reason to limit CURB's powers. CURB is a good idea; it is not perfect.

CURB will not be an effective long-term advocate for residential and small business ratepayers unless and until it has

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adequate resources. Rate cases are often complex and protracted proceedings. Major cases are often litigated in rapid succession, taxing even the big players in such. These circumstances require more support for CURB, not less. (Indeed, perhaps, had CURB had in-house expertise to fully analyze the above-referenced natural gas case in the early stages, its positions might have been altered.)

In your deliberations concerning this matter, please remember that residential and small business ratepayers need an effective voice in rate proceedings and utility policy-making. With adequate resources and guidance, CURB can meet this challenge.

Thank you for this opportunity to express my views concerning HB 2437. I will attempt to answer any questions you have.

HEARING BEFORE THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE ON HB 2437

With support from Governor Hayden and others in the House and Senate, the bill for CURB, the independent Citizens Utility Ratepayers Baord was passed in 1989. Since that time CURB has done a superb job in fulfilling its mandate: to give small utility customers adequate representation in the regulatory process. Perhaps, CURB has performed its mandate too well. Each year the utilities seek to persuade legislators to abolish CURB which is a self-funding agency with no state budget or general funds money. In fact, this excellent representation before the KCC costs each household, each small business only 38 cents a year!

In 1989, then KCC Chairman Keith Henley lauded CURB's performance and endorsed making it a statutory body. He said that in the past small commercial and residential customers had not been adequately represented in utility rate cases, while large commercial customers had ample representation before the KCC. Henley said, "I think CURB has effectively filled that void."

The KCC is definitely not a consumer protection agency. While the KCC staff represents the general public, it does not represent any specific class of customers, such as small ratepayers--residential and commercial. By law the KCC is mandated to balance the needs of the utilities and the interests of their customers. This is not easy to do; and when the KCC has to make difficult and hard decisions, small ratepayers must be heard, thus achieving a more level playing field. In 1989 KCC Commissioners Margalee Wright and Richard Kowalewski also voiced their support for small ratepayer representation, saying that they believed it would enhance their decision-making process and increase consumer confidence in the process of government regulation. The more information, the better, they said, when they had to make million dollar, even billion dollar decisions.

Between utilities and their customers there has always been an imbalance both of financial power and political power. Small ratepayers have lacked the clout that the utilities and large industrial customers possess. Some 100 utilities come under KCC jurisdiction, and the majority have at least one lobbyist who roams the corridors of the Capitol. They can have, therefore, a nearly one-on-one relationship with the 165 members of the Legislature. Not many small ratepayers are able to personally petition their legislators and be heard in this manner, nor do they often have an opportunity to take a legislator to lunch.

On a shoe-string budget and a small staffand a budget of only $150,000, CURB has saved Kansas ratepayers over $1.5 million, which translates into approximately $33 in direct benefits for every dollar spent to operate CURB. I beg you to vote to allow CURB to continue its much needed and excellent representation of small ratepayers.

February 16, 1995

Margaret W. Bangs 2/16/95
944 St. James
Wichita, KS 67206 EKR
316-682-5763

Attachment #17

Testimony of Steven Hamburg

House Bill 2437

Energy and Natural Resources Committee & Appropriations Comm

February 17, 1995

I want to thank Representative Holmes and the rest of the Energy and Natural Resources Committee for the opportunity to testify concerning House Bill 2437, which calls for the reform of the Citizens Utility Rate Board (CURB). My name is Steven Hamburg. I am a former resident of the Pinckney Neighborhood in Lawrence, and I would like to speak in opposition to the bill on behalf of myself and the Pinckney Neighborhood Association. Over the past three years, we have had the opportunity to work very closely with CURB in order to get our concerns about the placement of a high-tension line in our neighborhood heard. I think that without a doubt, CURB played a critical role in the resolution of our siting issue. CURB allowed the neighborhood to effectively operate within the quasi-judicial framework of the Kansas Corporation Commission (KCC).

The Kansas Corporation Commission is <u>not</u> user-friendly. Despite what might be the intentions of the enabling legislation, it is next to impossible for an average citizen, no matter how well informed, to effectively impact the KCC decision making process. From our experience the only hope that the citizens of Kansas have for being effectively heard before the KCC is through the efforts of CURB, if you limit their ability to initiate action before the KCC you will have emasculated their effectiveness. CURB's knowledge of the rules and procedures make it possible for someone with their assistance to penetrate the KCC's corporate perspective. CURB's lawyer worked tirelessly on our behalf, spending the time to educate us and assist us in navigating the complex waters that any utility issue involves.

CURB provides the average citizen with an effective voice with respect to utility management and utility rates in the State of Kansas. CURB's existence reassures the citizens of Kansas that government is here to serve them, rather than the exclusive

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interests of corporations. CURB provides the access and the voice that the current KCC system fails to provide. Maybe the KCC is supposed to represent all segments of society, but the reality is that it doesn't, and accordingly CURB is all that more important. As someone with extensive knowledge and experience with large bureaucracies, I should have an easier time interacting with the KCC than most citizens of the State, yet I found its rules archaic and procedures clearly slanted to assist corporate applicants in meeting their goals. The KCC is simply next to impossible to effectively deal with. Without the help of CURB we would not have effectively penetrated the protective shell the KCC has erected. If your intention is to silence the public voice, pass House bill 2437.

If this committee is interested in the citizens of Kansas, expand the options available to CURB. Even if the KCC undergoes the reforms necessary to make itself more accessible, the need for CURB will remain in order to insure that the public's voice is heard.

If you want to effect positive change, fix what is broken, not what works. CURB helps the average citizen and plays an important role as gadfly on behalf of us all. Lets make sure that in the future there is a balance between corporate and public interests. This balance was totally lacking prior to the creation of CURB, and is still sorely out of kilter. The people who work at CURB accomplish Herculean tasks daily with their limited resources. There is no fat in the CURB budget. There is a lot of bang for the buck providing the average citizen a reasonable shot at due process and reasonable utility rates.

Respectfully

Steven Hamburg
on behalf Pinckney
Neighborhood Association
501 Tennessee
Lawrence, KS 66044

February 3, 1995

Dear Legislator:

The Citizens Utility Ratepayers Board (CURB) is one of our most important state agencies, but its work is not always well known. CURB is doing a superb job in fulfilling its mandate: to give small utility customers representation in the utility regulatory process.

CURB has intervened in dozens of utility rate cases, representing residential and small business ratepayers since it was created by the Legislature in 1989. It has saved $33.33 for ratepayers for every dollar it has spent, and CURB is careful not to take credit for saving money unless the Kansas Corporation Commission (KCC) acted only upon the evidence presented by CURB.

The KCC, which hears and decides rate cases, is a quasi-judicial body which makes its decisions on the evidence it hears in technical cases. KCC rules require that this evidence be presented by attorneys. The KCC does not advocate on behalf of any group but rather hears evidence from all sides. Before 1989, only the KCC legal staff, the utility lawyers and attorneys of large industrial customers could participate in rate hearings. Small ratepayers had no way to be represented because they could not afford the expense of hiring a lawyer. Now, joined together in CURB, they can afford to have legal representation in the regulatory process.

Before CURB was established, residential and small business customers of utilities, although not represented in the regulatory process, were helping foot the bills for lawyers, consultants, rate analysts, etc. brought in to help in cases which often resulted in higher customer rates. All these costs of doing business are passed on to customers by utilities. Utility customers also pay the millions required to operate the regulatory processs of the KCC. Of course, utility customers are still paying these costs; but now with CURB, small ratepayers are also being represented. Assessment without representation is blatantly unfair. But this was what was happening before CURB. Residential and small business ratepayers deserve the effective representation which CURB now provides.

It is important to emphasize that CURB is not paid for through the state budget or general funds but instead is paid for through assessment on utility bills, the same way that utilities participating in rate cases and the KCC operating expenses are paid for. Rate cases can cost from tens of thousands up to millions of dollars--and ratepayers fund it all.

CURB has also improved consumer protection in areas such as security deposits, utility collection and disconnection practices. The fact that CURB is watching can make the KCC and the utilities more careful in their actions. CURB can also urge the KCC to implement the dramatic new improvements in energy efficiency for lighting, electric motors, gas furnaces, air conditioning, etc. All of these improvements would promote the Kansas economy.

CURB policies are determined and personnel hired by a volunteer 5-member board, appointed by the Governor, one from each Congressional district and one at-large member. CURB has one lawyer, a special projects attorney, plus an office staff of three. Most other states' advocacy offices have larger staffs: several lawyers, economists, rate analysts, engineers, etc. Kansas' CURB has accomplished superior work with a very small staff on a shoe-string budget. CURB's work is vital to small utility ratepayers in Kansas and should be adequately supported by the Legislature.

Co-chairs of the Coalition for Responsible Utilities:

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Session of 1995

# HOUSE BILL No. 2256

By Committee on Energy and Natural Resources

2-1

AN ACT concerning drycleaning; providing for regulation of certain facilities; providing for payment of certain costs of remediation of pollution from drycleaning activities; imposing certain taxes and fees; prohibiting certain acts and providing penalties for violations.

WHEREAS, Protection of the environment of this state promotes the health and general welfare of the citizens of this state; and

WHEREAS, The state's responsibility to promote the public health and welfare requires a comprehensive approach to protect the environment by preventing and remedying the pollution of the state's natural resources and providing funding for the management, conservation and development of those resources; and

WHEREAS, Discharges of drycleaning solvents have occurred and may pose a threat to the quality of the soils and waters of the state; and

WHEREAS, When contamination of the soils and waters of the state has occurred, remedial measures are often delayed for long periods while liability issues are resolved and such delays result in greater damage to the environment and significantly higher costs to contain and remove the contamination; and

WHEREAS, Adequate financial resources must be readily available to provide a means for the investigation and remediation of contaminated sites without delay: Now, therefore,

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

Section 1. This act shall be known and may be cited as the Kansas drycleaner environmental response act.

Sec. 2. As used in this act:

(a) "Chlorinated drycleaning solvent" means any drycleaning solvent which contains a compound which has a molecular structure containing the element chlorine.

(b) "Corrective action" means those activities described in subsection (a) of section 10.

(c) "Corrective action plan" means a plan approved by the secretary to perform corrective action at a drycleaning facility.

(d) "Department" means the department of health and environment.

(e) "Drycleaning facility" means a commercial establishment that op-

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erates, or has operated in the past, in whole or in part for the purpose of cleaning garments or other household fabrics utilizing a process that involves any use of drycleaning solvents. Drycleaning facility includes all contiguous land, structures and other appurtenances and improvements on the land used in connection with a drycleaning facility but does not include ~~uniform rental companies, linen supply companies,~~ prisons or governmental entities.

(f) "Drycleaning solvent" means any and all nonaqueous solvents used or to be used in the cleaning of garments and other fabrics at a drycleaning facility and includes but is not limited to perchloroethylene, also known as tetrachloroethylene, and petroleum-based solvents, and the products into which such solvents degrade.

(g) "Drycleaning unit" means a machine or device which utilizes drycleaning solvents to clean garments and other fabrics and includes any associated piping and ancillary equipment and any containment system.

(h) "Fund" means the drycleaning facility release trust fund.

(i) "Immediate response" means containment and control of a known release ~~of drycleaning solvent, removal and proper disposal of wastes generated by such a release and notification to the department of any~~ known release.

~~(j) "Operator" means any person who is, or has been, responsible for the operation of a drycleaning facility as an owner or by lease, contract or other form of agreement.~~

~~(k)~~ "Owner" means any person who owns ~~or has owned a drycleaning facility~~.

~~(l)~~ "Person" means an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association or limited liability company. Person does not include any governmental organization.

~~(m)~~ "Release" means any spill, leak, emission, discharge, escape, leak or disposal of drycleaning solvent from a drycleaning facility into the soils or waters of the state.

~~(n)~~ "Secretary" means the secretary of health and environment.

Sec. 3. ~~(a)~~ The secretary is authorized and directed to adopt rules and regulations necessary to administer and enforce the provisions of this act. Any rules and regulations so adopted shall be reasonably necessary to preserve, protect and maintain the waters and other natural resources of this state and reasonably necessary to provide for prompt corrective action of releases from drycleaning facilities. Consistent with these purposes, the secretary shall adopt rules and regulations:

~~(1)~~ Establishing performance standards for drycleaning facilities first brought into use on or after the effective date of regulations authorized by this subsection. Such performance standards shall be effective within

to a release

in excess of a reportable quantity and notification to the department within 48 hours of any known release in excess of a reportable quantity

(j)

or leases, or has owned or leased, a drycleaning facility and who is or has been responsible for the operation of drycleaning operations at such drycleaning facility

(l)

(m)"Reportable quantity" means a known release of a chlorinated drycleaning solvent in excess of one quart over a 24-hour period or a known release of a nonchlorinated drycleaning solvent in excess of one gallon over a 24-hour period.

(n) "Retailer" means any business that: (1) Is registered for purposes of the Kansas retailers sales tax act and provides laundry or drycleaning services to final consumers; or (2) has provided a laundry or drycleaning facility with a resale exemption certificate and is responsible for charging and collecting retailers' sales tax from final consumers of drycleaning or laundry services.

(o)

(a)

when the rules and regulations adopted by the secretary become final. The secretary shall make the secretary's best efforts to adopt such rules and regulations so that they become final

180 days after the effective date of this act. The performance standards for new drycleaning facilities shall allow the use of new technology as it becomes available and shall at a minimum include provisions which are at least as protective of human health and the environment as the following:

(1)

~~(A)~~ A requirement for the proper storage and disposal of those wastes which are generated at a drycleaning facility and which contain any quantity of drycleaning solvent.

(2)

~~(B)~~ A prohibition of the discharge of wastewater from drycleaning units or of drycleaning solvent from drycleaning operations to any sanitary sewer, septic tank or to the waters of this state.

or

~~(C) A prohibition of the operation of a transfer machine system, as defined by 40 C.F.R. 63.321, utilizing chlorinated drycleaning solvents.~~

~~(D) A requirement any drycleaning unit utilizing chlorinated drycleaning solvents be a dry-to-dry machine, as defined by 40 C.F.R. 63.321, and be equipped with integral refrigerated condensers for the control of drycleaning solvent emissions.~~

(3) A requirement of compliance with all applicable standards pursuant to the federal clean air act.

(4)

~~(E)~~ A requirement that dikes or other containment structures be installed around each drycleaning unit, drycleaning solvent or waste storage area, which structures shall be capable of containing any leak, spill or release of drycleaning solvent.

and each

~~(F)~~ A requirement that those portions of all diked floor surfaces upon which any drycleaning solvent may leak, spill or otherwise be released be ~~sealed or otherwise rendered~~ impervious to drycleaning solvents.

(5)

~~(G)~~ A requirement that all chlorinated drycleaning solvents be delivered to drycleaning facilities by means of closed, direct-coupled delivery systems, but only after such systems become generally available.

of expoxy, stainless steel or other material

~~(2) Adopting schedules~~ requiring the retrofitting of drycleaning facilities in existence on or before the effective date of rules and regulations authorized by subsection ~~(b)(1)~~ to implement the performance standards established ~~under subsection (a)(1). Such schedules may phase in such requirements at different times. All standards authorized by subsection (b)(2) shall be~~ effective no later than five years after the effective date of this act.

(6)

(b) Adopting a schedule

(a)

pursuant to subsection (a). The schedule may phase in the standards authorized by this subsection at different times but shall make all such standards

~~(3) Establishing requirements for reporting releases and conducting immediate responses to a release.~~

~~(4)~~ Establishing requirements for removal of drycleaning solvents and wastes from drycleaning facilities which are to be closed by the owner ~~or operator~~ in order to prevent future releases.

(c)

~~(5)~~ Establishing criteria to prioritize the expenditure of funds from the drycleaning facility release trust fund. The criteria shall include consideration of:

(d)

~~(A)~~ The benefit to be derived from corrective action compared to the

(1)

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cost of conducting such corrective action;

~~(B)~~ the degree to which human health and the environment are actually affected by exposure to contamination;

~~(C)~~ the present and future use of an affected aquifer or surface water;

~~(D)~~ the effect that interim or immediate remedial measures will have on future costs;

~~(E)~~ the amount of moneys available for corrective action in the drycleaning facility release trust fund; and

~~(F)~~ such additional factors as the secretary considers relevant.

~~(6)~~ Establishing criteria under which a determination may be made by the department of the level at which corrective action shall be deemed completed. Criteria for determining completion of corrective action shall be based on the factors set forth in subsection ~~(a)~~(5) and:

~~(A)~~ Individual site characteristics including natural remediation processes;

~~(B)~~ applicable state water quality standards;

~~(C)~~ whether deviation from state water quality standards or from established criteria is appropriate, based on the degree to which the desired remediation level is achievable and may be reasonably and cost effectively implemented, subject to the limitation that where a state water quality standard is applicable, a deviation may not result in the application of standards more stringent than that standard; and

~~(D)~~ such additional factors as the secretary considers relevant.

~~(b) Nothing in this section shall interfere with the right of a city or county having authority to adopt a building or fire code from imposing requirements more stringent than those imposed by the secretary pursuant to subsection (a).~~

Sec. 4. It is the intent of the legislature that, to the maximum extent possible, moneys in the fund be utilized to address contamination resulting from releases of drycleaning solvents. The department is directed to administer the Kansas drycleaner environmental response act under the following criteria:

(a) To the maximum extent possible, the department itself should deal with contamination from drycleaning facilities utilizing moneys in the fund. The department should discourage other units of government, both federal and local, including the United States environmental protection agency, from becoming involved in contamination problems resulting from releases from drycleaning facilities.

(b) The department should make every reasonable effort to keep sites where drycleaning solvents are involved off of the national priorities list, as defined in 40 C.F.R. 300.5.

(c) The department should not seek out contaminated drycleaning facility sites because of the existence of the fund or the other provisions

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of this act. The moneys are made available for use as sites are discovered in the normal course of the business of the agency.

(d) Careful consideration should be given to interim or early corrective action which may result in an overall reduction of risk to human health and the environment and in the reduction of total costs of corrective action at a site. Such interim or early corrective action should receive consideration by the department as a high priority.

(e) ~~It is recognized that restoration of groundwater resources contaminated with certain drycleaning solvents may not be achievable using currently available technology. In situations where the use of available technology is not anticipated to achieve water quality standards, the department, at its discretion, may use innovative technology.~~ The department, in its discretion, may use innovative technology to perform corrective action.

Sec. 5. (a) It shall be unlawful for any person to:

(1) Operate a drycleaning facility ~~without the required permit or other written approval from the secretary or otherwise be in violation of the rules and regulations, standards or orders of the secretary~~ in violation of this act, rules and regulations adopted pursuant to this act or orders of the secretary pursuant to this act;

(2) prevent or hinder a properly identified officer or employee of the department or other authorized agent of the secretary from entering, inspecting ~~or sampling at a drycleaning facility or from copying records concerning such drycleaning facility~~ as is authorized by this act, sampling or responding to a release;

(3) knowingly make any false material statement or representation in any ~~application, record, report, permit~~ or other document filed, maintained or used for the purpose of compliance with this act, record, report;

(4) knowingly destroy, alter or conceal any record required to be maintained by this act or rules and regulations adopted under this act;

(5) ~~knowingly allow a release, knowingly fail to report a release,~~ or knowingly fail to make an immediate response to a release ~~of a drycleaning solvent in violation of this act or~~ rules and regulations adopted under this act. willfully allow a release in accordance with this act and

~~(b) Any person who violates any provision of subsection (a) shall be guilty of a class A nonperson misdemeanor.~~

(b) a person who violates any provision of this section may incur a civil penalty in an amount not to exceed $500 for every violation.

(c) In assessing any civil penalty under this section, the district court shall consider, when applicable, the following factors:

(1) The extent to which the violation presents a hazard to human health;

(2) the extent to which the violation has or may have an adverse effect on the environment;

(3) the amount of the reasonable costs incurred by the state in detection and investigation of the violation; and

(4) the economic savings realized by the person in not complying with the provision for which a violation is charged.

Sec. 6. (a) No person shall own or operate a drycleaning facility unless an annual permit for the facility or other approval is obtained from the secretary. Applications for permits shall include assurances that the required performance standards will be met.

(b) Permits shall be obtained by paying an annual fee of $50 for each drycleaning facility and completing a form provided by the department. The form shall provide the following information about each drycleaning facility: The identity of the owner, the identity of the operator, the identity of all past owners and operators, the number of drycleaning units, the current pollution control measures being utilized by the drycleaning facility, the amount of drycleaning solvent utilized by the facility on an annual basis, the age of the facility and such other information as is rea-

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sonably requested by the secretary in order to carry out the requirements of this act.

(c) Permits may be transferred upon acceptance of the prospective permit obligations by the person who is to assume the ownership or operational responsibility of the drycleaning facility from the previous owner or operator. The department shall furnish a transfer of permit form providing for acceptance of the permit obligations. A transfer of permit form shall be submitted to the department not less than 14 days prior to the transfer of ownership or operational responsibility of the drycleaning facility.

(d) The secretary may deny, suspend or revoke any permit issued or authorized pursuant to this section if the secretary finds, after notice and opportunity for hearing in accordance with the Kansas administrative procedure act, that the person has:

(1) Fraudulently or deceptively obtained or attempted to obtain a drycleaning facility permit;

(2) failed at any time to maintain a drycleaning facility substantially in accordance with the requirements of this act or rules and regulations adopted under this act;

(3) failed at any time to substantially comply with the requirements of this act or rules and regulations adopted under this act; or

(4) failed at any time to make any retrofit or improvement to a drycleaning facility which is required by this act or rules and regulations adopted under this act.

Sec. 7. (a) There is hereby established in the state treasury the drycleaning facility release trust fund. The fund shall be administered by the secretary. Revenue from the following sources shall be deposited in the state treasury and credited to the fund:

(1) Any proceeds from the taxes imposed by this act;

(2) any interest attributable to investment of moneys in the drycleaning facility release trust fund;

(3) ~~fees paid pursuant to section 6~~; and

(4) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for the purposes of this act.

(b) Moneys in the fund shall ~~be used for the purposes otherwise provided in this act and for no other governmental purposes~~. It is the intent of the legislature that the fund shall remain intact and inviolate for the purposes set forth in this act, and moneys in the fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and amendments thereto.

~~(c)~~ On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the drycleaning

Sec. 6. Each owner shall register annually with the department on a form provided by the department.

and fees

moneys recovered by the state under the provisions of this act, including any moneys paid under an agreement with the secretary or as civil penalties

not be expended for any governmental purpose other than payment of:

(1) The direct costs of administration and enforcement of this act; and

(2) the costs of corrective action as provided in section 10

(c)

(d)

facility release trust fund, the amount of money certified by the pooled money investment board in accordance with this subsection. Prior to the 10th day of each month, the pooled money investment board shall certify to the director of accounts and reports the amount of money equal to the proportionate amount of all the interest credited to the state general fund for the preceding period of time specified under this subsection, pursuant to K.S.A. 75-4210a and amendments thereto, that is attributable to moneys in the drycleaning facility release trust fund. Such amount of money shall be determined by the pooled money investment board based on: (1) The average daily balance of moneys in the drycleaning facility release trust fund during the period of time specified under this subsection as certified to the board by the director of accounts and reports; and (2) the average interest rate on the purchase agreements of less than 30 days' duration entered into by the pooled money investment board for that period of time. On or before the 5th day of the month for the preceding month, the director of accounts and reports shall certify to the pooled money investment board the average daily balance of moneys in the fund for the period of time specified under this subsection.

(c)

~~(d)~~ All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of the accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

Sec. 8. (a) The state of Kansas, the fund, the secretary or the department or agents or employees thereof, shall not be liable ~~to an owner or operator~~ for loss of business, damages or taking of property associated with any corrective action taken pursuant to this act.

(b) Nothing in this act shall establish or create any liability or responsibility on the part of the secretary, the department or the state of Kansas, or agents or employees thereof, to pay any corrective action costs from any source other than the fund or to take corrective action if the moneys in the fund are insufficient to do so.

other person

(c) To the extent that an owner or ~~operator~~ of a drycleaning facility is eligible, under the provisions of this act, to have corrective action costs paid by the fund, no administrative or judicial claim may be made under state law against any such owner or ~~operator~~ by or on behalf of a state or

other person

local government or by any person to compel corrective action or seek recovery of the costs of corrective action which result from the release of drycleaning solvents from a drycleaning facility. ~~Except as provided above, nothing in this act shall be construed to limit or modify the liability of an owner or operator for releases of drycleaning solvents from a drycleaning facility.~~

(d) Moneys in the fund shall not be used for compensating third parties for bodily injury or property damage caused by a release from a

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drycleaning facility, other than property damage included in the corrective action plan approved by the secretary.

Sec. 9. (a) Subject to the conditions and limitations prescribed by this act, the fund shall be administered to conduct corrective action required because of releases from drycleaning facilities. Moneys credited to the fund may also be expended to permit the secretary to take necessary or appropriate emergency action, including but not limited to providing alternate drinking water supplies, to assure that the human health or safety is not threatened by a release or potential release from a drycleaning facility.

(b) Moneys in the fund shall be expended for payment of:

(1) The direct costs of administration and enforcement of this act; and

(2) The costs of corrective action activities at individual sites in accordance with a corrective action plan approved by the department for the site and the priorities established in rules and regulations adopted by the secretary pursuant to subsections (a)(5) and (6) of section 3.

(c) Nothing in this act shall be construed to restrict the department from:

(1) Modifying, in the discretion of the secretary, the priority status of a site where warranted under the system of priorities established pursuant to subsection (a)(5) of section 3; or

(2) temporarily postponing completion of corrective action for which moneys from the fund are being expended whenever such postponement is deemed necessary in order to make moneys available for corrective action at a site with a higher priority.

Sec. 10. (a) Whenever ~~contamination at a drycleaning facility~~ poses a threat to human health or the environment the department ~~may~~, consistent with rules and regulations adopted by the secretary pursuant to subsections ~~(a)(5) and (6)~~ of section 3 and a corrective action plan for the site, expend moneys available in the fund to provide for:

(1) Investigation and assessment of a release from a drycleaning facility, including costs of investigations and assessments of contamination which may have moved off the drycleaning facility ~~and costs of investigations and assessments conducted by entities other than the department but approved by the department~~;

(2) expeditious treatment, restoration or replacement of drinking water supplies contaminated by a release from a drycleaning facility;

(3) remediation of releases from drycleaning facilities, including contamination which may have moved off of the drycleaning facility, which remediation shall consist of clean up of affected soil, groundwater and surface waters, using the most cost effective alternative that is technologically feasible and reliable, provides adequate protection of human health

Insert section 9, attached

a release

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shall

necessary or appropriate emergency action, including but not limited to treatment, restoration or replacement of drinking water supplies, to assure that the human health or safety is not threatened by a release or potential release

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Sec. 9. (a) There is hereby established the drycleaner facility release compensation advisory board composed of eight members as follows: (1) The director of the division of environment of the department; (2) one member from a drycleaning company owning in excess of five drycleaning facility locations; (3) one member from drycleaning companies owning at least three but no more than five drycleaning facility locations; (4) three members from drycleaning companies owning at least one but no more than two drycleaning facility locations; (5) one member who utilizes only nonchlorinated drycleaning solvents; and (6) one member who is not an owner of a drycleaning facility but who is likely to be eligible, under the provisions of this act, to have corrective action costs paid by the fund. At least three of the members, including the nonowner member, shall have known environmental concerns because of a release of drycleaning solvents from a drycleaning facility. The governor shall appoint the appointed members of the board. Of the members first appointed to the board, two shall serve one-year terms, two shall serve two-year terms and three shall serve three-year terms, as designated by the governor. After the expiration of the initial terms, all subsequently appointed members shall serve two-year terms. The governor shall designate a member of the board to serve as chairperson of the board for a term of one year. The chair shall serve at the pleasure of the governor. The secretary shall provide staff to support the activities of the board.

(b) Appointed members of the board attending meetings of the board, or attending a subcommittee meeting thereof authorized by the board, shall receive the amounts provided in subsection (e) of K.S.A. 75-3223 and amendments thereto.

(c) The board shall provide advice and counsel and make recommendations to the secretary regarding the rules and regulations and amendments thereto to be promulgated by the secretary, the disbursement of moneys from the fund and the administration and enforcement of this act.

and environment and to the extent practical minimizes environmental damage;

(4) operation and maintenance of corrective action;

(5) monitoring of releases from drycleaning facilities including contamination which may have moved off of the drycleaning facility;

(6) payment of reasonable costs incurred by the secretary in providing field and laboratory services; and

(7) reasonable costs of restoring property, as nearly as practicable to the conditions that existed prior to activities associated with the investigation of a release or clean up or remediation activities.

(b) Nothing in subsection (a) shall be construed to authorize the department to obligate moneys in the fund for payment of costs which are not integral to corrective action for a release of drycleaning solvents at a drycleaning facility. Moneys from the fund shall not be used: (1) For corrective action at sites that are contaminated by solvents normally used in drycleaning operations where the contamination did not result from the operation of a drycleaning facility; (2) for corrective action at sites, other than drycleaning facilities, that are contaminated by drycleaning solvents which were released while being transported to or from a drycleaning facility by a party other than the owner ~~or operator~~ of such drycleaning facility; (3) to pay any costs associated with any fine or penalty brought against a drycleaning facility owner ~~or operator~~ under state or federal law; or (4) to pay any costs related to corrective action at a drycleaning facility that has been included by the United States environmental protection agency on the national priorities list or at any facility which is a hazardous waste disposal facility, as defined in K.S.A. 65-3430 and amendments thereto.

~~(c)~~ At any multisource site, the secretary shall utilize the moneys in the fund to pay for the proportionate share of the liability for corrective action costs which is attributable to a release from one or more drycleaning facilities and for that proportionate share of the liability only.

~~(d) The~~ secretary is authorized to make a determination of the relative liability of the fund for costs of corrective action, expressed as a percentage of the total cost of corrective action at a site, whether known or unknown. The secretary shall issue an order establishing such liability ~~and shall incorporate the order into the corrective action plan for the site~~. Such order shall be binding and shall control the obligation of the fund until or unless amended by the secretary. In the event of an appeal from such order, such liability shall be controlling for costs incurred during the pendency of the appeal.

~~(e)~~ Notwithstanding the other provisions of this act, in the discretion of the secretary, an owner ~~or operator~~ may be responsible for up to 100% of the costs of corrective action attributable to such owner ~~or operator~~ if

(8) removal and proper disposal of wastes generated by a release of a drycleaning solvent; and

(9) payment of costs of corrective action conducted by entities other than the department but approved by the department whether or not such corrective action is set out in a corrective action plan

or the owner's agents or employees

(c) Nothing in this act shall be construed to restrict the department from:

(1) Modifying, in the discretion of the secretary, the priority status of a site where warranted under the system of priorities established pursuant to subsection (d) of section 3; or

(2) temporarily postponing completion of corrective action for which moneys from the fund are being expended whenever such postponement is deemed necessary in order to make moneys available for corrective action at a site with a higher priority.

(d)

(e) At any multisource site, the

percentage of

(f) any authorized officer, employee or agent of the department or any person, under order or contract with the department, may enter onto any property or premises, at reasonable times and upon written notice to the owner or occupant, to take corrective action where the secretary determines that such action is necessary to protect the public health or environment. If consent is not granted by the person in control of a site or suspected site regarding any request made by any employee or agent of the secretary under the provisions of this section, the secretary may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

(g)

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the secretary finds, after notice and an opportunity for a hearing in accordance with the Kansas administrative procedure act, that:

(1) Requiring the owner ~~or operator~~ to bear such responsibility will not prejudice another owner ~~or operator~~ and

(2) the owner ~~or operator~~:

(A) Caused a release by willful or wanton actions and such release was caused by operating practices contrary to those generally in use at the time of the release;

(B) is in arrears for moneys owed pursuant to this act, after notice and an opportunity to correct the arrearage;

~~(C) caused or allowed a release occurring after the effective date of this act from an unpermitted drycleaning facility;~~

~~(D)~~ substantially obstructs the efforts of the department to carry out its obligations under this act;

(E) caused or allowed the release because of a ~~substantial~~ violation of the performance standards established in this act or the rules and regulations adopted by the secretary under this act; or

~~(F) allowed,~~ failed to report or failed to take an immediate response to a release, knowing or having reason to know of such release.

For purposes of this subsection, unless a transfer is made solely to take advantage of this provision, purchasers of stock or other indicia of ownership and other successors in interest shall not be considered to be the same owner or operator as the seller or transferor of such stock or indicia of ownership even though there may be no change in the legal identity of the owner or operator.

Sec. 11. (a) Subject to the provisions of section 13, there is hereby imposed on and after July 1, 1995, a gross receipts tax for the privilege of engaging in the business of laundering and drycleaning garments and other household fabrics ~~at a drycleaning facility~~ in this state. The tax shall be at a rate of 2% of ~~all charges imposed for the~~ drycleaning or laundering ~~of garments and other household fabrics. The tax shall be paid by the operator~~ of the drycleaning facility.

(b) Gross receipts otherwise taxable pursuant to this section shall be exempt from the tax imposed by this section if they arise from:

(1) Services rendered through a coin-operated device, whether automatic or manually operated, available for use by the general public;

(2) ~~laundering or rental of commercial uniforms or linens~~; or

(3) charges or services to ~~(A) The state of Kansas; (B) political subdivisions of the state, as defined in K.S.A. 79-3602 and amendments thereto; (C) a public or private elementary or secondary school or public or private nonprofit educational institution; or (D) a public or private nonprofit hospital or nonprofit blood, tissue or organ bank, and used exclusively for state, political subdivision, educational, hospital or non-~~

person who is eligible, under the provisions of this act, to have corrective action costs paid by the fund

(C)

, provided, however, that the exercise of legal rights shall not constitute a substantial obstruction

(D)

material

(E) repeatedly

(e)

(h) The fund shall not be liable for the payment of corrective action costs in excess of $2,000,000 to address a release or releases at any one site.

an environmental surcharge in the form of

the gross receipts received from

The tax shall be paid by the consumer to the retailer and it shall be the duty of the retailer to collect from the consumer the full amount of the tax imposed or an amount as nearly as possible or practicable to the average thereof.

the laundering without use of drycleaning solvents of uniforms, linens or other textiles for commercial purposes, including any rental of uniforms, linens or dust control materials

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~~profit blood, tissue or organ bank purposes~~

~~(e) Gross receipts arising from charges or services taxable pursuant to this section to persons who also impose charges to others for those same services are exempt from the tax imposed pursuant to this section.~~

(d) The secretary of revenue shall remit daily the taxes paid under this act to the state treasurer, who shall deposit the entire amount in the state treasury to the credit of the fund. For the purpose of this section, the proceeds of the tax shall include all funds collected and received by the ~~department of revenue~~ pursuant to this section, including interest and penalties on delinquent taxes.

(e) Every ~~person~~ liable for the payment of taxes imposed by this section shall report ~~in full detail on forms prepared and furnished by the secretary of revenue at the time for making returns required by the Kansas retailers' sales tax act and, at the time of forwarding such report, shall compute and pay to the secretary of revenue the amount of taxes due under this section on gross receipts during the preceding month~~.

(f) All taxes imposed by this section and not paid at or before the time taxes are due under the Kansas retailers' sales tax act shall be deemed delinquent and shall bear interest at the rate ~~of 1% per month, or fraction thereof,~~ from the due date until paid. In addition, there is hereby imposed upon all amounts of such taxes remaining due and unpaid after the due date a penalty ~~in the amount of 5% of the amount due and unpaid. Such penalty shall be added to and collected as a part of the tax by the secretary of revenue~~.

(g) Whenever any taxpayer or person liable to pay tax imposed by this section refuses or neglects to pay the tax, the amount of the tax, including any interest or penalty, shall be collected in the manner provided by law for collection of delinquent taxes under the Kansas retailers' sales tax act.

(h) Insofar as not inconsistent with this act, the provisions of ~~K.S.A. 79-3609, 79-3610 and 79-3611, and amendments thereto,~~ shall apply to the tax imposed by this section.

(i) The secretary of revenue is hereby authorized to adopt such rules and regulations as may be necessary to carry out the responsibilities of the secretary of revenue under this section.

Sec. 12. (a) ~~(1)~~ Subject to the provisions of section 13, there is hereby imposed on and after July 1, 1995, a ~~tax on the sale or transfer of drycleaning solvent to any person owning or operating a drycleaning facility. The tax shall be paid by the seller or transferor of the solvent~~.

~~(2) The amount of tax imposed by this subsection (a)~~ on each gallon of drycleaning solvent shall be an amount equal to the product of the solvent factor for the drycleaning solvent and the following ~~tax~~ rate:

~~(A) For any sale or transfer in 1995, $3.50 per gallon; and~~

~~(B) thereafter, an amount equal to 105% of the amount applicable to~~

entities that qualify for exemption from retailers' sales tax on laundering and drycleaning services pursuant to K.S.A. 79-3606 and amendments thereto

(c) The tax imposed by this section shall be imposed on the same tax base as the Kansas retailers' sales tax and shall be in addition to all other state and local sales or excise taxes.

director of taxation

retailer

the taxes for the same periods and at the same time as the returns that the retailer files under the Kansas retailers' sales tax act, as prescribed by K.S.A. 79-3607 and amendments thereto. Each retailer shall report the tax imposed by this act on a form prescribed by the secretary of revenue

from the retailer

prescribed by subsection (a) of K.S.A. 79-2968 and amendments thereto

on the unpaid balance of the taxes due in the amounts and percentages prescribed by K.S.A. 79-3615 and amendments thereto

the Kansas retailers' sales tax act

to administer and enforce the provisions of this section and

fee on the purchase or acquisition of drycleaning solvent by any owner of a drycleaning facility. The fee shall be paid by the person who acquires the solvent to the director of taxation

(b) The amount of the fee imposed by this section

fee

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~~any transfer in the prior year up to~~ a maximum of $5.50 per gallon.

~~(3)~~ No tax shall be imposed by this subsection (a) on the sale or transfer of any drycleaning solvent, if prior to the sale or transfer the purchaser or transferee provides the seller or transferor with a certificate stating that the drycleaning solvent will not be used in a drycleaning facility.

(b) (1) There is hereby imposed on and after July 1, 1995, a tax on the acquisition of any drycleaning solvent acquired for use by an operator of any drycleaning facility if, in connection with the acquisition of the drycleaning solvent, the operator did not receive a bill or invoice showing the amount of tax imposed under subsection (a) on the sale or transfer to the operator or if no such tax was paid with respect to such sale and the operator had reason to believe that no tax would be paid. The tax shall be paid by the operator of the drycleaning facility.

(2) The amount of tax imposed by this subsection shall be equal to the lesser of:

(A) The amount of tax which would have been imposed by subsection (a) on the sale or transfer of the drycleaning solvent to the operator; or

(B) the difference between the amount of tax, if any, shown on the invoice for the transfer of the drycleaning solvent and the amount of tax required to be paid under subsection (a).

(3) For purposes of this subsection (b), drycleaning solvent which is not acquired for use in a drycleaning facility but which is actually used in a drycleaning facility shall be treated as "acquired for use" when it is used.

(c) The solvent factor for each drycleaning solvent is as follows:

| *Drycleaning solvent* | *Solvent Factor* |
|---|---|
| Perchloroethylene | 1.00 |
| Chlorofluorocarbon-113 | 1.00 |
| 1,1,1-trichloroethane | 1.00 |
| Other chlorinated drycleaning solvents | 1.00 |
| Any nonchlorinated drycleaning solvent | 0.10 |

(d) In the case of a fraction of a gallon, the ~~taxes~~ imposed by this section shall be the same fraction of the ~~tax~~ imposed on a whole gallon.

(e) If any ~~tax~~ is paid pursuant to ~~subsection (a) or (b)~~ with respect to ~~drycleaning~~ solvents that are subsequently resold for use, ~~or are actually used,~~ other than in a drycleaning facility, the reseller or user of the perchloroethylene, but not both, shall be entitled to claim a refund or credit for the tax paid with respect to the drycleaning solvent pursuant to rules and regulations adopted by the secretary. Such rules and regulations may require a taxpayer claiming a refund to provide proof that tax was paid with respect to the drycleaning solvent and proof of the nontaxable use ~~or sale of the solvent~~.

(1) For any purchase or acquisition on and after July 1, 1995, and before January 1, 1996, $3.50 per gallon; and

(2) thereafter, $3.50 plus .25 added on January 1 of each successive calendar year beginning in 1996 until the fee rate reaches

fee

this section

other than in a drycleaning facility or are actually used other than in a drycleaning facility, the purchaser shall be entitled to claim a refund or credit for any fee paid, pursuant to rules and regulations adopted by the secretary of revenue

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(f) The secretary of revenue shall remit daily the ~~taxes~~ paid pursuant to this section to the state treasurer, who shall deposit the entire amount in the state treasury to the credit of the fund. For the purpose of this section, the proceeds of the ~~tax~~ shall include all funds collected and received by the ~~department of revenue~~ pursuant to this section, including interest and penalties on delinquent ~~taxes~~.

(g) Subject to rules and regulations adopted pursuant to subsection (i), ~~every person liable for the payment of taxes imposed by this section shall report in full and detail before the 25th day of every month to the secretary of revenue, on forms prepared and furnished by the secretary of revenue, and at the time of forwarding such report, shall compute and pay to the secretary of revenue the amount of taxes due under this act on solvent sold, transferred or acquired during the preceding month~~.

(h) Subject to rules and regulations adopted pursuant to subsection (i), all ~~taxes~~ imposed under the provisions of this section and not paid on or before the 25th day of the month succeeding the ~~calendar month~~ in which the solvent was ~~sold, transferred~~ or acquired shall be deemed delinquent and shall bear interest at the rate ~~of 1% per month, or fraction thereof,~~ from the due date until paid. In addition, there is hereby imposed upon all amounts of such ~~taxes~~ remaining due and unpaid after the due date a penalty ~~in the amount of 5% of the amount due and unpaid. Such penalty shall be added to and collected as a part of the tax by the secretary of revenue~~.

(i) Whenever any ~~taxpayer or~~ person liable to pay ~~tax~~ imposed by this section refuses or neglects to pay the ~~tax, the amount of the tax,~~ including any interest or penalty, shall be collected in the manner provided by law for collection of delinquent taxes under the Kansas retailers' sales tax act.

(j) Insofar as not inconsistent with this act, the provisions of ~~K.S.A. 79-3609, 79-3610 and 79-3611, and amendments thereto,~~ shall apply to the ~~taxes~~ imposed by this section.

~~(k) The department of revenue may authorize quarterly, semiannual or annual returns and payment of tax where the total tax due under this section from a person does not exceed threshold amounts authorized by the department not to exceed $500 per year.~~

~~(l)~~ The secretary of revenue is hereby authorized to adopt such rules and regulations as may be necessary to carry out the responsibilities of the secretary of revenue under this section.

Sec. 13. (a) Whenever on April 1 of any year the unobligated principal balance of the fund equals or exceeds $4,000,000, the taxes imposed by sections 11 and 12 shall not be levied on or after the next July 1. Whenever on April 1 of any year thereafter the unobligated principal balance of the fund equals $2,000,000 or less, the taxes imposed by sections 11 and 12 shall again be levied on and after the next July 1.

fees

fee

director of taxation

fees

the fees imposed by this act shall be paid to the director of taxation for the same reporting period and on the same reporting date as the purchaser or user of the solvent reports Kansas retailers' sales tax, as prescribed in K.S.A. 79-3607 and amendments thereto. The fees imposed by this section shall be reported on a form prescribed by the secretary of revenue

fees

reporting period

purchased

prescribed by subsection (a) of K.S.A. 79-2968 and amendments thereto

fees

on the unpaid balance of the fees due in the amounts and percentages prescribed by K.S.A. 79-3615 and amendments thereto

the fee

fee, the amount of the fee

the Kansas retailers' sales tax act

fees

(k)

to administer and enforce the provisions of this section and

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(b) The director of accounts and reports, not later than April 5 of each year, shall notify the secretary of revenue of the amount of the unobligated balance of the fund on April 1 of such year. Upon receipt of the notice, the secretary of revenue shall notify taxpayers under sections 11 and 12 if the levy of taxes under those sections will terminate or recommence on the following July 1.

Sec. 14. (a) Any person adversely affected by any order or decision of the secretary under this act may, within 15 days of service of the order or decision, make a written request for a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Any person adversely affected by any final action of the secretary pursuant to this act may obtain a review of the action in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 15. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application. To this end, the provisions of this act are severable.

Sec. 16. This act shall take effect and be in force from and after its publication in the statute book.

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