

Approved: _____

Date 4/2/97
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MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Don Myers at 9:00 a.m. on March 18, 1997 in Room 514-S of the Capitol.

All members were present except: Rep. Alldritt - excused
Rep. Mayans - excused

Committee staff present: Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Mary Shaw, Committee Secretary

Conferees appearing before the committee: David Heinemann, General Counsel, Kansas Corp. Commission
Whitney Damron, Empire Electric

Others attending: See attached list

Chairperson Don Myers thanked Western Resources and KEPCo for the tour of Wolf Creek.

Hearing on SB 207 - KCC investigations and hearings; administrative procedure

The Chair asked that Staff, Lynne Holt, Research Department, explain **SB 207**. She explained that the bill would amend several statutes concerning investigations of public utilities and common carriers by the Kansas Corporation Commission at its own initiative or upon complaint. She indicated that specifically the bill would clarify that all complaint-initiative hearings would be subject to the provisions of the Kansas Administrative Procedures Act, however with respect to general investigations, the commission would not have to adhere to provisions of the act.

The Chair recognized David Heinemann, General Counsel, Kansas Corporation Commission, Proponent, who spoke in support of **SB 207** (Attachment #1). Questions and discussion followed. Mr. Heinemann explained a proposed balloon amendment by the KCC for the Committee to consider (Attachment #2). The Chair requested that the KCC, Representative Sloan and Staff work to prepare a new balloon by tomorrow when the Committee plans to work **SB 207**.

The Chair recognized Whitney Damron, Empire Electric, Proponent, who spoke in support of **SB 207** and also explained an amendment he had for the Committee to consider (Attachment #3). Also in attendance with Mr. Damron and present for questions were Mr. Randy Burleson, Director of Major Accounts and Customer Services Support for Empire and Mr. James Flaherty, attorney for Empire with the Ottawa, Kansas law firm of Anderson, Byrd, Richeson & Flaherty. Questions and discussion followed.

The Chair announced that both **SB 212** and **SB 207** will be worked tomorrow, March 19, 1997. The Chair indicated that his office had been notified that the House would be in session early beginning Thursday and Friday, so anything scheduled for those meetings for those days had to be placed on the agenda for Wednesday, March 19, 1997. The stranded cost presentation is tentatively scheduled for Monday, March 24, 1997. The Chair reminded the Committee about the Special Joint Meeting of the Senate and House Utilities Committees at 12:00 noon later on that day in Room 313-S for the presentation by Western Resources regarding billing procedures.

The meeting was adjourned at 9:45 a.m.

The next regular meeting is scheduled for March 19, 1997, but a Special Joint Meeting of the Senate and House Utilities Committees is scheduled for March 18, 1997, today at noon in Room 313-S, for the presentation by Western Resources regarding billing procedures.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 18, 1997

NAME	REPRESENTING
J.C. Long	UtiliCorp Limited Inc.
Randy Burleson	Empire District Jones Mo
Whitney Lamvas	Empire District Electric Co.
JAMES G. FEATHERY	Empire Distr. Electric Co
Amy Campbell	R. Rice Law Office
Brenda Smith	J. Small
TOM DAY	KCC

**BEFORE THE HOUSE UTILITIES COMMITTEE
PRESENTATION OF THE KANSAS CORPORATION COMMISSION ON SB 207**

Senate Bill 207 amends numerous statutes relating to the different procedures the Commission must use when it responds to a complaint filed by a third party or initiates an investigation on its own. The critical element is the speed with which the Commission must reach a decision. Clearly, when a third party files a complaint which results in an investigation the public purpose is served by a speedy determination of the matter. On the other hand, if the Commission opens a docket calling for an investigation into matters such as competition, exit fees, electric restructuring, etc., the public interest may be better served by not limiting the time frame of the investigation.

The statutes contained in Senate Bill 207 cover the regulatory areas of electric public utilities, telecommunications, natural gas public utilities, common carriers and miscellaneous public utilities. As such, they have been amended at various times through the years and can be misleading as to which rules should apply. The amendments make it clear that when the Commission on its own initiative starts an investigation the strict time limitations of the Kansas Administrative Procedures Act will not apply. If the Commission is responding to a complaint initiated by a third party, then the strict time limitations of the Kansas Administrative Procedures Act will apply.

The Senate Committee amendment was recommended by the Commission in response to concerns raised by utilities reviewing the bill who felt that it may have gone beyond our stated intent. This language states what we intended to clarify and satisfied their concerns.

House Utilities
2-18-97
Attachment 1

As Amended by Senate Committee

Session of 1997

SENATE BILL No. 207

By Committee on Utilities

2-5

10 AN ACT concerning the Kansas corporation commission, investigations
11 and complaints; hearings; amending K.S.A. 66-1,191 and 66-1,234 and
12 K.S.A. 1996 Supp. 66-101d, 66-101e, 66-1,192, 66-1,204, 66-1,205, 66-
13 1,219, 66-1,220 and 66-1,235 and repealing the existing sections. 66-1,190,

14
15 *Be it enacted by the Legislature of the State of Kansas:*
16 Section 1. K.S.A. 1996 Supp. 66-101d is hereby amended to read as
17 follows: 66-101d. It shall be the duty of the commission, either upon
18 complaint or upon its own initiative, to *The commission, upon its own*
19 *initiative, may* investigate all schedules of rates and rules and regulations
20 of electric public utilities. If after investigation and hearing the commis-
21 sion finds that such rates or rules and regulations are unjust, unreasona-
22 ble, unjustly discriminatory or unduly preferential, the commission shall
23 have the power to establish and order substituted therefor such rates and
24 such rules and regulations as are just and reasonable.

25 If after investigation and hearing it is found that any regulation, meas-
26 urement, practice, act or service complained of is unjust, unreasonable,
27 unreasonably inefficient or insufficient, unduly preferential, unjustly dis-
28 criminatory, or otherwise in violation of this act or of the orders of the
29 commission, or if it is found that any service is inadequate or that any
30 reasonable service cannot be obtained, the commission shall have the
31 power to substitute therefor such other regulations, measurements, prac-
32 tices, service or acts, and to make such order respecting any such changes
33 in such regulations, measurements, practices, service or acts as are just
34 and reasonable. When, in the judgment of the commission, public ne-
35 cessity and convenience require, the commission shall have the power to
36 establish just and reasonable concentration or other special rates, charges
37 or privileges, but all such rates, charges and privileges shall be open to
38 all users of a like kind of service under similar circumstances and condi-
39 tions.

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

42 Hearings shall be conducted in accordance with the provisions of
43 the Kansas administrative procedure act, unless, in the case of a

House Utilities
2-18-97
Attachment 2

1 *general investigation, for good cause, the commission orders oth-*
2 *erwise.*

3 Sec. 2. K.S.A. 1996 Supp. 66-101e is hereby amended to read as
4 follows: 66-101e. Upon a complaint in writing made against any electric
5 public utility governed by this act that any of the rates or rules and reg-
6 ulations of such electric public utility are in any respect unreasonable,
7 unfair, unjust, unjustly discriminatory or unduly preferential, or both, or
8 that any regulation, practice or act whatsoever affecting or relating to any
9 service performed or to be performed by such electric public utility for
10 the public, is in any respect unreasonable, unfair, unjust, unreasonably
11 inefficient or insufficient, unjustly discriminatory or unduly preferential,
12 or that any service performed or to be performed by such electric public
13 utility for the public is unreasonably inadequate, inefficient, unduly in-
14 sufficient or cannot be obtained, the commission shall proceed, with or
15 without notice, to make such investigation as it deems necessary.

16 The commission may, upon its own motion, and without any complaint
17 being made, proceed to make such investigation; but No order changing
18 such rates, rules and regulations, practices or acts complained of shall be
19 made or entered by the commission without a formal public hearing, of
20 which due notice shall be given by the commission to such electric public
21 utility or to such complainant or complainants, if any, in accordance with
22 the provisions of the Kansas administrative procedure act. Any public
23 investigation or hearing which the commission shall have power to make
24 or to hold may be made or held before any one or more commissioners.
25 All investigations, hearings, decisions and orders made by a commissioner
26 shall be deemed the investigations, hearings, decisions and orders of the
27 commission, when approved by the commission.

28 The commission shall have power to require electric public utilities to
29 make such improvements and do such acts as are or may be required by
30 law to be done by any such electric public utility.

31 ~~Sec. 2~~ K.S.A. 66-1,191 is hereby amended to read as follows: 66-
32 1,191. It shall be the duty of the commission, either upon complaint or
33 upon its own initiative, to The commission, upon its own initiative, may
34 investigate all rates, joint rates, tolls, charges and exactions, classifications
35 or schedules of rates or joint rates and rules and regulations of telecom-
36 munications public utilities. If after full hearing and investigation the
37 commission finds that such rates, joint rates, tolls, charges or exactions,
38 classifications or schedules of rates or joint rates or rules and regulations
are unjust, unreasonable, unjustly discriminatory or unduly preferential,
41 such rates, tolls, charges, exactions, classifications or schedules of rates or
42 joint rates and such rules and regulations as are just and reasonable.

New Section 3. K.S.A 66-1,190 is hereby amended to read
as follows: 66-1,190. (a) Except as otherwise provided in section
(b), every telecommunications public utility doing business in
Kansas over which the commission has control shall publish and file
with the commission copies of all schedules of rates joint rates,
tolls, charges, classifications and division of rates affecting Kansas
traffic, either state or interstate, and shall furnish the commission
copies of all rules and regulations and contracts between such
telecommunications public utilities pertaining to any and all
jurisdictional services to be rendered by such telecommunications
public utilities. The commission shall have power to prescribe
reasonable rules and regulations regarding the form and filing of all
schedules, tariffs and classifications of all rates, joint rates, tolls and
charges and all rules and regulations of such telecommunications
public utilities, including such protection of confidentiality as
requested by the telecommunications public utility, and the utility's
suppliers and customers, for contracts entered into by them, and as
the commission determines reasonable and appropriate.

(b) The commission shall have the authority to exempt any
telecommunications public utility from the requirements set forth in
section (a), for any or all of the utility's rates, services or practices.
Once granted, this exemption may be revoked for any individual
utility or group of utilities for any or all rates, services or practices,
when necessary to protect consumers of telecommunications
services from fraudulent business practices and practices that are
inconsistent with the public interest, convenience and necessity.

Sec. 4.

1 practice, act or service complained of is unjust, unreasonable, unreason-
 2 ably inefficient or insufficient, unduly preferential, unjustly discrimina-
 3 tory, or otherwise in violation of this act or of the orders of the commis-
 4 sion, or if it is found that any service is inadequate or that any reasonable
 5 service cannot be obtained, the commission may substitute therefor such
 6 other regulations, measurements, practices, service or acts, and make
 7 such order respecting any such changes in such regulations, measure-
 8 ments, practices, service or acts as are just and reasonable. When, in the
 9 judgment of the commission, public necessity and convenience require,
 10 the commission may establish just and reasonable concentration or other
 11 special rates, charges or privileges, but all such rates, charges and privi-
 12 leges shall be open to all users of a like kind of service under similar
 13 circumstances and conditions.

14 ~~Sec. 4~~ K.S.A. 1996 Supp. 66-1,192 is hereby amended to read as
 15 follows: 66-1,192. (a) Upon a complaint in writing made against any tel-
 16 ecommunications public utility governed by this act, by any mercantile,
 17 agricultural or manufacturing organization or society, or by any body pol-
 18 itic or municipal organization, or by any taxpayer, firm, corporation or
 19 association, that any of the rates or joint rates, tolls, charges, rules, reg-
 20 ulations, classifications or schedules of such telecommunications public
 21 utility are in any respect unreasonable, unfair, unjust, unjustly discrimi-
 22 natory or unduly preferential, or both, or that any regulation, practice or
 23 act whatsoever affecting or relating to any service performed or to be
 24 performed by such telecommunications public utility for the public, is in
 25 any respect unreasonable, unfair, unjust, unreasonably inefficient or in-
 26 sufficient, unjustly discriminatory or unduly preferential, or that any serv-
 27 ice performed or to be performed by such telecommunications public
 28 utility for the public is unreasonably inadequate, inefficient, unduly in-
 29 sufficient or cannot be obtained, the commission shall proceed, with or
 30 without notice, to make such investigation as it deems necessary.

31 The commission may, upon its own motion, and without any complaint
 32 being made, proceed to make such investigation, but No order changing
 33 such rates, joint rates, tolls, charges, rules, regulations and classifications,
 34 schedules, practices or acts complained of shall be made or entered by
 35 the commission without a formal public hearing in accordance with the
 36 provisions of the Kansas administrative procedure act, of which due notice
 37 shall be given by the commission to such telecommunications public util-
 38 ity or to such complainant or complainants, if any. Any public investigation
 39 or hearing which the commission shall have power to make or to hold
 40 may be made or held before any one or more commissioners. All inves-
 41 tigations, hearings, decisions and orders made by a commissioner shall be
 42 deemed the investigations, hearings, decisions and orders of the com-

Sec. 5.

1 (b) The commission shall have power to require telecommunications
2 public utilities to make such improvements and do such acts as are or
3 may be required by law to be done by any such telecommunications
4 public utility.

5 ~~Section 66-1,204~~ K.S.A. 1996 Supp. 66-1,204 is hereby amended to read as
6 follows: 66-1,204. It shall be the duty of the commission, either upon
7 complaint or upon its own initiative, to The commission, upon its own
8 initiative, may investigate all schedules of rates and rules and regulations
9 of natural gas public utilities. If after investigation and hearing the com-
10 mission finds that such rates or rules and regulations are unjust, unrea-
11 sonable, unjustly discriminatory or unduly preferential, the commission
12 shall have the power to establish and order substituted therefor such rates
13 and such rules and regulations as are just and reasonable.

Sec. 6.

14 If after investigation and hearing it is found that any regulation, meas-
15 urement, practice, act or service complained of is unjust, unreasonable,
16 unreasonably inefficient or insufficient, unduly preferential, unjustly dis-
17 criminatory, or otherwise in violation of this act or of the orders of the
18 commission, or if it is found that any service is inadequate or that any
19 reasonable service cannot be obtained, the commission may substitute
20 therefor such other regulations, measurements, practices, service or acts,
21 and make such order respecting any such changes in such regulations,
22 measurements, practices, service or acts as are just and reasonable. When,
23 in the judgment of the commission, public necessity and convenience
24 require, the commission may establish just and reasonable concentration
25 or other special rates, charges or privileges, but all such rates, charges
26 and privileges shall be open to all users of a like kind of service under
27 similar circumstances and conditions.

28 ~~Section 66-1,205~~ K.S.A. 1996 Supp. 66-1,205 is hereby amended to read as
29 follows: 66-1,205. (a) Upon a complaint in writing made against any nat-
30 ural gas public utility governed by this act that any rates or rules and
31 regulations of such natural gas public utility are in any respect unreason-
32 able, unfair, unjust, unjustly discriminatory or unduly preferential, or
33 both, or that any rule and regulation, practice or act whatsoever affecting
34 or relating to any service performed or to be performed by such natural
35 gas public utility for the public, is in any respect unreasonable, unfair,
36 unjust, unreasonably inefficient or insufficient, unjustly discriminatory or
37 unduly preferential, or that any service performed or to be performed by
such natural gas public utility for the public is unreasonably inadequate,
inefficient, unduly insufficient or cannot be obtained, the commission
shall proceed, with or without notice, to make such investigation as it
deems necessary.

Sec. 7.

1 such rates, rules and regulations, practices or acts complained of shall be
 2 made or entered by the commission without a formal public hearing in
 3 accordance with the provisions of the Kansas administrative procedure
 4 act, of which due notice shall be given by the commission to such natural
 5 gas public utility or to such complainant or complainants, if any. Any
 6 public investigation or hearing which the commission shall have power to
 7 make or to hold may be made or held before any one or more commis-
 8 sioners. All investigations, hearings, decisions and orders made by a com-
 9 missioner shall be deemed the investigations, hearings, decisions and or-
 10 ders of the commission, when approved by the commission.

11 (b) The commission shall have power to require natural gas public
 12 utilities to make such improvements and do such acts as are or may be
 13 required by law to be done by any such natural gas public utility.

Sec. 8.

14 ~~Sec. 8~~ K.S.A. 1996 Supp. 66-1,219 is hereby amended to read as
 15 follows: 66-1,219. It shall be the duty of the commission, either upon
 16 complaint or upon its own initiative, to *The commission, upon its own*
 17 *initiative, may investigate* all rates, joint rates, tolls, charges and exactions,
 18 classifications or schedules of rates or joint rates and regulations
 19 of common carriers, except a motor carrier holding a certificate of public
 20 service. If after full hearing and investigation the commission finds that
 21 such rates, joint rates, tolls, charges or exactions, classifications or sched-
 22 ules of rates or joint rates or rules and regulations are unjust, unreason-
 23 able, unjustly discriminatory or unduly preferential, the commission shall
 24 have the power to fix and order substituted therefor such rates, tolls,
 25 charges, exactions, classifications or schedules of rates or joint rates and
 26 such rules and regulations as are just and reasonable.

27 If upon any investigation it is found that any such regulation, measure-
 28 ment, practice, act or service complained of is unjust, unreasonable, un-
 29 reasonably inefficient or insufficient, unduly preferential, unjustly dis-
 30 criminatory, or otherwise in violation of this act or of the orders of the
 31 commission, or if it is found that any service is inadequate or that any
 32 reasonable service cannot be obtained, the commission may substitute
 33 therefor such other regulations, measurements, practices, service or acts,
 34 and make such order respecting any such changes in such regulations,
 35 measurements, practices, service or acts as are just and reasonable. When,
 36 in the judgment of the commission, public necessity and convenience
 37 require, the commission may establish just and reasonable concentration
 38 or other special rates, charges or privileges, but all such rates, charges
 39 and privileges shall be open to all users of a like kind of service under
 40 similar circumstances and conditions.

Sec. 9.

41 ~~Sec. 9~~ K.S.A. 1996 Supp. 66-1,220 is hereby amended to read as
 42 follows: 66-1,220. (a) Upon a complaint in writing made against any com-

1 governed by this act; by any mercantile, agricultural or manufacturing
 2 organization or society; or by any body politic or municipal organization;
 3 or by any taxpayer, firm, corporation or association; that any of the rates
 4 or joint rates, fares, tolls, charges, rules, regulations, classifications or
 5 schedules of such common carrier are in any respect unreasonable, unfair,
 6 unjust, unjustly discriminatory or unduly preferential, or both, or that any
 7 regulation, practice or act whatsoever affecting or relating to any service
 8 performed or to be performed by such common carrier for the public, is
 9 in any respect unreasonable, unfair, unjust, unreasonably inefficient or
 10 insufficient, unjustly discriminatory or unduly preferential, or that any
 11 service performed or to be performed by such common carrier for the
 12 public is unreasonably inadequate, inefficient, unduly insufficient or can-
 13 not be obtained, the commission shall proceed, with or without notice,
 14 to make such investigation as it deems necessary.

15 ~~The commission, upon its own motion, and without any complaint be-~~
 16 ~~ing made, may proceed to make such investigation; but~~ No order changing
 17 such rates, joint rates, tolls, charges, rules, regulations and classifications,
 18 schedules, practices or acts complained of shall be made or entered by
 19 the commission without a formal public hearing in accordance with the
 20 provisions of the Kansas administrative procedure act, of which due notice
 21 shall be given by the commission to such common carrier or to such
 22 complainant or complainants, if any. Any public investigation or hearing
 23 which the commission shall have power to make or to hold may be made
 24 or held before any one or more commissioners. All investigations, hear-
 25 ings, decisions and orders made by a commissioner shall be deemed the
 26 investigations, hearings, decisions and orders of the commission, when
 27 approved by the commission.

28 (b) The commission shall have power to require common carriers,
 29 except a motor carrier holding a certificate of public service, to make such
 30 improvements and do such acts as are or may be required by law to be
 31 done by any such common carrier.

32 ~~Sec. 9~~ K.S.A. 66-1,234 is hereby amended to read as follows: 66-
 33 1,234. It shall be the duty of the commission, either upon complaint or
 34 upon its own initiative, to ~~The commission, upon its own initiative, may~~
 35 investigate all rates, joint rates, tolls, charges and exactions, classifications
 36 or schedules of rates or joint rates and rules and regulations of miscella-
 37 neous public utilities. If after full hearing and investigation the commis-
 38 sion finds that such rates, joint rates, tolls, charges or exactions, classifi-
 39 cations or schedules of rates or joint rates or rules and regulations are
 40 unjust, unreasonable, unjustly discriminatory or unduly preferential, the
 41 commission shall have the power to fix and order substituted therefor
 42 such rates, tolls, charges, exactions, classifications or schedules of rates or

Sec. 10.

1 If upon any investigation it is found that any regulation, measurement,
 2 practice, act or service complained of is unjust, unreasonable, unreason-
 3 ably inefficient or insufficient, unduly preferential, unjustly discrimina-
 4 tory, or otherwise in violation of this act or of the orders of the commis-
 5 sion, or if it is found that any service is inadequate or that any reasonable
 6 service cannot be obtained, the commission may substitute therefor such
 7 other regulations, measurements, practices, service or acts, and make
 8 such order respecting any such changes in such regulations, measure-
 9 ments, practices, service or acts as are just and reasonable. When, in the
 10 judgment of the commission, public necessity and convenience require,
 11 the commission may establish just and reasonable concentration, com-
 12 modity, transit or other special rates, charges or privileges, but all such
 13 rates, charges and privileges shall be open to all users of a like kind of
 14 service under similar circumstances and conditions.

15 ~~Sec. 16.~~ K.S.A. 1996 Supp. 66-1,235 is hereby amended to read as
 16 follows: 66-1,235. (a) Upon a complaint in writing made against any mis-
 17 cellaneous public utility governed by this act, by any mercantile, agricul-
 18 tural or manufacturing organization or society, or by any body, politic or
 19 municipal organization, or by any taxpayer, firm, corporation or associa-
 20 tion; that any of the rates or joint rates, tolls, charges, rules, regulations,
 21 classifications or schedules of such miscellaneous public utility are in any
 22 respect unreasonable, unfair, unjust, unjustly discriminatory or unduly
 23 preferential, or both, or that any regulation, practice or act whatsoever
 24 affecting or relating to any service performed or to be performed by such
 25 miscellaneous public utility for the public, is in any respect unreasonable,
 26 unfair, unjust, unreasonably inefficient or insufficient, unjustly discrimi-
 27 natory or unduly preferential, or that any service performed or to be
 28 performed by such miscellaneous public utility for the public is unrea-
 29 sonably inadequate, inefficient, unduly insufficient or cannot be obtained,
 30 the commission shall proceed, with or without notice, to make such in-
 31 vestigation as it deems necessary.

32 The commission may, upon its own motion, and without any complaint
 33 being made, proceed to make such investigation, but No order changing
 34 such rates, joint rates, fares, tolls, charges, rules, regulations and classi-
 35 fications, schedules, practices or acts complained of shall be made or
 36 entered by the commission without a formal public hearing in accordance
 37 with the provisions of the Kansas administrative procedure act, of which
 due notice shall be given by the commission to such miscellaneous public
 utility or to such complainant or complainants, if any. Any public inves-
 40 tigation or hearing which the commission shall have power to make or to
 41 hold may be made or held before any one or more commissioners. All
 42 orders, regulations, rules and orders made by a commissioner

Sec. 11.

1 commission, when approved by the commission.

Sec. 12.

2 (b) The commission shall have power to require miscellaneous public
3 utilities to make such improvements and do such acts as are or may be
4 required by law to be done by any such miscellaneous public utility.

5 ~~Sec. 12~~ K.S.A. 66-1,191 and 66-1,234 and K.S.A. 1998 Supp. 66-
6 101d, 66-101e, 66-1,192, 66-1,204, 66-1,205, 66-1,219, 66-1,220 and 66-
7 1,235 are hereby repealed.

66-1,190,

8 ~~Sec. 13~~ This act shall take effect and be in force from and after its
9 publication in the statute book.

Sec. 13.

WHITNEY B. DAMRON, P.A.
COMMERCE BANK BUILDING
100 EAST NINTH STREET - SECOND FLOOR
TOPEKA, KANSAS 66612-1213
(913) 354-1354 ♦ 232-3344 (FAX)

TO: Chairman Don Myers
and the House Utilities Committee

FROM: Whitney Damron
on behalf of The Empire District Electric Company

RE: Proposed Amendment to SB 207

DATE: March 18, 1997

Good morning Chairman Myers and Members of the House Utilities Committee:

My name is Whitney Damron and I appear before you this morning to request an amendment to SB 207 on behalf of my client, The Empire District Electric Company. With me today is Mr. Randy Burlison, Director of Major Accounts and Customer Services Support for Empire and Mr. James Flaherty, attorney for Empire with the Ottawa, Kansas law firm of Anderson, Byrd, Richeson & Flaherty.

Prior to the 1996 legislative session, K.S.A. 66-125 required all investor-owned electric public utilities incorporated in Kansas to obtain permission from the Kansas Corporation Commission (KCC) before issuing securities.

The 1996 Legislature amended K.S.A. 66-125. Under the amendment adopted last year, only investor-owned electric public utilities incorporated in Kansas with a total capitalization of \$1 billion, are still required to obtain permission from the KCC before issuing securities. In Kansas there is only one investor-owned electric public utility with a total capitalization in excess of \$1 billion, and that is Western Resources, Inc.

House Utilities
2-18-97
Attachment 3

Empire is an investor-owned electric public utility incorporated in Kansas. Empire provides electric service to customers in Southeast Kansas. Under the 1996 amendment to K.S.A. 66-125, Empire is no longer required to obtain permission from the KCC prior to issuing securities.

The problem that Empire and its customers face under the 1996 amendment, is that under Federal law, if Empire's securities issuances are not approved by the KCC, then Empire is required to obtain approval at the Federal level from the Federal Energy Regulatory Commission (FERC). The problem with having to go to the FERC instead of the KCC for approval is the difference in the amount of time it takes to get approval. While the approval process at the KCC typically can be completed within 60 to 90 days, the same process at the FERC may take as long as eight months. The relatively short approval turn around at the KCC generally allows Empire to take advantage of changing interest rates. Empire's customers benefit from lower rates if Empire's cost of capital is less.

Specifically, Empire would propose an amendment to K.S.A. 66-125 to allow Kansas-incorporated investor-owned electric public utilities having a total capitalization in excess of \$400 million to make application for the issuance of securities through the KCC. As noted previously in my testimony, the present threshold amount is \$1 billion. A copy of our proposed amendment is included with my testimony.

We have visited with several staff members of the KCC, including Mr. David Heineman, General Counsel, and have found no objections to our proposed amendment. We have also visited with several representatives of other utilities with service in Kansas and have found no objection from them, either.

On behalf of The Empire District Electric Company, I thank you for your consideration of this proposal. I would be pleased to stand for questions at the appropriate time, as will Mr. Burluson and Mr. Flaherty.

Chapter 66.--PUBLIC UTILITIES

Article 1.--POWERS OF STATE CORPORATION COMMISSION

Title Issuance of securities; certificate of commission required, when; proceedings; motor carriers exempted.

(a) Any investor-owned electric public utility incorporated in the state of Kansas having a total capitalization in excess of \$~~1 billion~~ ^{400 million} dollars may issue stocks, certificates, bonds, notes or other evidences of indebtedness, payable at periods of more than 12 months after the date thereof, when necessary for the acquisition of property, for the purpose of carrying out its corporate powers, the construction, completion, extension or improvements of its facilities, for the improvements or maintenance of its service, for the discharge or lawful refunding of its obligations, or for such other purposes as may be authorized by law. Prior to any such issuance, there shall be secured from the commission a certificate stating the amount, character, purposes and terms on which such stocks, certificates, bonds, notes or other evidences of indebtedness are proposed to be issued, as set out in the application for such certificate. In lieu of securing a certificate from the commission, if the issuance requires a registration statement to be filed with the securities and exchange commission or such utility obtains an authorization or approval of such issuance from another state or federal agency, the public utility may file with the state corporation commission a copy of the information filed with the securities and exchange commission or such other agency.

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

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

company having knowledge of the facts, showing:

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

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

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

(D) the total assets and liabilities of the public utility or common carrier; and

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

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

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

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

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

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

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

(F) the total assets and liabilities of the public utility or common carrier; and

(G) that the capital sought to be secured by the issuance of such stocks, certificates, bonds, notes or other evidences of indebtedness

is necessary and required for such purposes and will be used therefor.

(c) The commission may also require the public utility or common carrier to furnish such further statements of facts as may be reasonable and pertinent to the inquiry. Upon full compliance by the applicant with the provisions of this section the commission shall forthwith issue a certificate stating the amount, character, purposes and terms upon which such stocks, certificates, bonds, notes or other evidences of indebtedness are proposed to be issued, as set out in the application for such certificate. Any issue of stocks, certificates, bonds, notes or other evidences of indebtedness not payable within one year, which shall be issued by such public utility or common carrier contrary to the provisions of this act shall be voidable by the commission, except as provided in subsection (d).

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

History

History: L. 1911, ch. 238, S. 25; R.S. 1923, 66-125; L. 1983, ch. 222, S. 1; L. 1988, ch. 265, S. 1; L. 1993, ch. 118, S. 1; L. 1995, ch. 4, S. 1; L. 1996, ch. 268, S. 16; July 1.

Case Annotations

Source or prior law:

L. 1909, ch. 194, S. 2.

Research and Practice Aids: Public Utilities §YKY 117.

C.J.S. Public Utilities S. 72.

CASE ANNOTATIONS 1. Right of railway company to issue stock and bonds. Railway Co. v. Utilities Commission, 101 K. 557, 559, 167 P. 1138. 2. Application for certificate validating bond issue; power of utilities commission. Railway Co. v. Utilities Commission, 101 K. 557, 559, 167 P. 1138. 3. The word "necessary" means

needful under all the conditions. Railway

Co. v. Utilities Commission, 101 K. 557, 559, 167 P. 1138. 4. Commission may require proof of necessity beyond verified application. Railway Co. v. Utilities Commission, 101 K. 557, 559, 167 P. 1138. 5. Telephone company issuing increase of stock; no certificate from commission. Spena v. Goffe, 112 K. 693, 696, 212 P. 1093. 6. Annual reports to commission showing stock increase; no acquiescence; certificate. Spena v. Goffe, 112 K. 693, 696, 212 P. 1093. 7. Stockholder's right to challenge stock increase; no estoppel. Spena v. Goffe, 112 K. 693, 696, 212 P. 1093. 8. Section cited in considering transfers void as against stockholder's liability. Glenn v. Callahan, 125 K. 44, 49, 262 P. 583. 9. Jurisdiction over water company operating principally within city considered. Wichita Water Co. v. Public Service Comm., 126 K. 381, 268 P. 89. 10. Commission's approval of individual's six-months note not required.

Shaw v. Welch, 136 K. 736, 739, 18 P.2d 189. 11. Commission not required to consider carrier's financial arrangements in issuing certificate. Warren Petroleum Corp. v. State Corporation Comm., 178 K. 381, 384, 285 P.2d 777. 12. District court judgment, setting aside order of the state corporation commission approving the issuance and sale of common stock by a public utility, pursuant to application filed hereunder, reversed. Kansas-Nebraska Natural Gas Co. v. State Corporation Commission,