Approved: March 19, 1997
Date

MINUTES OF THE SENATE COMMITTEE ON UTILITIES.

The meeting was called to order by Vice-Chairperson Stan Clark at 1:30 p.m. on February 20, 1997 in Room 531--N of the Capitol.

All members were present except:
Sens. Ranson and Lee were excused

Committee staff present: Lynne Holt, Legislative Research Department
Fred Carman, Revisor of Statutes
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:
David Heinemann, Gen. Counsel, Kansas Corporation Commission
Jim Ludwig, Exec. Dir., Regulatory Affairs, Western Resources
Fred Logan, Attorney, Kansas Pipeline Partnership
Tom Day, Director, Admin. Services, Kansas Corporation Commission
Jon Miles, Dir., Governmental Relations, Kansas Electric Cooperatives

Others attending: See attached list

The meeting was called to order by Vice-Chair, Sen. Clark, who announced the committee will hear testimony on **SB 207-concerning Kansas corporation commission; investigations and complaints; hearings.** He introduced David Heinemann, who appeared as a proponent with testimony (Attachment 1) and Jim Ludwig, who gave testimony (Attachment 2) opposing the bill. Mr. Heinemann offered amendments, which are attached to his testimony, to the bill, and Mr. Ludwig stated support for the amendment. No other conferees were present, and the Vice-Chair closed the hearing.

Sen. Clark opened the hearing for **SB 212-concerning public utilities and common carriers; change in rates and schedules.** He asked Ms. Holt to give the committee a brief overview of the bill. Dave Heinemann appeared as a proponent and offered testimony supporting the bill (Attachment 3). The following opponents appeared:

Fred Logan, (Attachment 4)
Jim Ludwig, (Attachment 5)

Sen. Clark questioned Mr. Heinemann regarding amendments he proposed (attached to his testimony), extending the 240-day clock and an incentive clause. Sen. Morris discussed the KN case, and their reluctance in extending the deadline. Mr. Heinemann stated the Commission wanted to proceed with the rate case, as there was a long line of opponents to the case and that there was a change in circumstances. Mr. Logan discussed his objection to the extension of time and that there is no compelling reason why a rate matter cannot be settled within 240 days. He continued by discussing proposed amendments to the bill. Sen. Clark pointed out the bill is a result of a Court of Appeals decision. Sen. Barone asked what time limits are imposed in other states, and Ms. Holt recalled the law in a couple of surrounding states. Mr. Ludwig stated Western Resources has no objection to the bill, but they would like to see the commission move faster than the 240 days. Sen. Salisbury questioned Mr. Ludwig as to the need for this bill.

Sen. Clark announced the committee will discuss **SB 148** tomorrow, with action planned for Monday.

Meeting adjourned at 2:25.

Next meeting will be February 21, 1997.

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: Feb. 20, 1997

NAME	REPRESENTING
BRUCE GRAHAM	KEPCo
LARRY COWGER	KCC
Leslie Kaufman	Ks Farm Bureau
JOE DICK	KCK BPU
Brenda Parks	Jonathon Small
Heather Randall	Whitney Damron, P.A.
Chad Logan	Kansas Pipeline
[illegible]	Ks Pipeline
Jamie Schwartz	KPOC
WALKER HENDRIX	CURB
J.C. LONG	UtiliCorp United Inc.
Mike Reecht	AT&T
Lisa Meyer	KS Gov. Consulting
Dave Holthaus	Western Resources
[illegible] Anderson	[illegible]
DAVID B SCHLOSSER	PETE McGILL & ASSOC
[illegible]	KCC
STUART LOWRY	KEC
[illegible]	[illegible]

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: Feb. 20 1997

NAME	REPRESENTING
Tom Day	KCC
Stacey Boyles	KCC
Paige Knudsen	KCC

D. Heinemann (Attach)

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

Senate Bill 207 clarifies the scope of the Commission's investigatory authority set out at K.S.A. §§ 66-101d, -101e, -1,191, -1,192, -1,204, -1,205, -1,219, -1,220, -1,234 and -1,235 (1992 and Supp. 1996).

The Commission endorses SB 207 for the following reasons:

SB 207 amends the Kansas Statutes to clarify the Commission's investigative authority. The Commission feels the current version of these statutes are potentially misleading in designating which statute covers Commission investigations and which statute covers complaints.

The amendments contained in SB 207 clarify the controlling statutes when the commission initiates an investigation upon a complaint by a third party, and when the Commission initiates an investigation on its own motion, such as a general investigation into an industry practice.

The necessity of this distinction stems from the Commission's responsibility to protect Kansas utility consumers and keep tabs on industry practices that affect kansas rates. When an industry engages in a practice which the Commission believes may potentially impact consumers, but the quantifiable impact remains undeterminable until a later point in time, the Commission requires an extended schedule in order to properly investigate all issues relating to such practices and determine the actual effect on Kansans. However, in the event a third party has a complaint against a particular utility, the Commission believes these situations should be promptly investigated and acted upon, and that hearings upon complaints should be subject to the Kansas administrative procedure act.

A copy of the suggested technical amendment is attached for your consideration.

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ATT. 1

Session of 1997

SENATE BILL No. 207

By Committee on Utilities

2-5

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

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

Section 1. K.S.A. 1996 Supp. 66-101d is hereby amended to read as follows: 66-101d. ~~It shall be the duty of the commission, either upon complaint or upon its own initiative, to~~ *The commission, upon its own initiative, may* investigate all schedules of rates and rules and regulations of electric public utilities. If after investigation and hearing the commission finds that such rates or rules and regulations are unjust, unreasonable, unjustly discriminatory or unduly preferential, the commission shall have the power to establish and order substituted therefor such rates and such rules and regulations as are just and reasonable.

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

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

Hearings shall be conducted in accordance with the provisions of the Kansas administrative procedure act, unless, in the case of a general investigation, for good cause, the commission orders otherwise.

Sec. 2. K.S.A. 1996 Supp. 66-101e is hereby amended to read as follows: 66-101e. Upon a complaint in writing made against any electric public utility governed by this act that any of the rates or rules and reg-

Attach 2

TESTIMONY BEFORE THE

SENATE UTILITIES COMMITTEE

by Jim Ludwig

WESTERN RESOURCES, INC.

February 20, 1997

Chair Ranson and Members of the Committee:

I am Jim Ludwig, executive director, regulatory affairs for Western Resources. Western Resources, through its operating companies KPL and KGE, provides natural gas to approximately 650,000 customers in Kansas and northeastern Oklahoma, and electric service to 600,000 customers in eastern and central Kansas. We are headquartered in Topeka.

I am testifying on Senate Bills 212, 207 and 333.

I agree with the amendments being offered to SB 212 and 207 by David Heinemann, General Counsel of the Kansas Corporation Commission. I have discussed my amendment to SB 333 with Mr. Tom Day of the Commission, and he is in agreement with it.

Senate Bill 212

When a utility files a request for a rate increase with the Commission, the rates requested go into effect in 30 days unless the Commission suspends the implementation of the increased rates. The Commission almost always issues a suspension order. Once the suspension order is issued, the Commission has 240 days to render a decision on the utility's request for a rate increase.

SB 212, as amended in the way we propose, assures that the Commission can take longer than 240 days if there are extenuating circumstances. But it also provides a safeguard for the

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ATT. 2

utility which filed for a rate increase. If the Commission decides on its own initiative to suspend the 240 day period, the utility may put some or all of its request to increase rates into effect after the 240 day period expires. Any rate change put into effect under these circumstances would be subject to refund, with interest, if the Commission ultimately decided some or all of the increase was not justified.

Senate Bill 207

Western Resources agrees with the amendment Mr. Heinemann is offering to SB 207 at page 1, lines 39-40. The stricken language would be restored, but with the following clause added to the end of the sentence, "unless, in the case of a general investigation, for good cause, the commission orders otherwise." This change allows the Commission to establish alternative procedures for industry-wide generic studies, but preserves KAPA rules for other hearings.

Senate Bill 333

Western Resources proposes to amend SB 333. As introduced, the bill removes any cap on the annual amount the Commission may assess on a public utility for expenses the Commission or the Citizens' Utility Ratepayers Board (CURB) incurs. Removing the cap is too open-ended.

As we understand the issue, some small utilities do not cover the actual expenses incurred by the Commission and CURB through the formula based on 3/5 of 1% of gross operating revenue. Rather than striking this cap, however, the problem can be solved by the amendment attached.

This amendment simply allows the Commission to assess the greater of $250,000 or 3/5 of 1% of gross operating revenues. It preserves a cap, but allows the Commission to assess actual expenses to the utility which caused the expenses to be incurred.

Full Text of Bill 333

Different **fonts** indicate changes to the bill.

Supplemental note for this bill
Fiscal note for this bill
This bill with old style font codes (no html)

SB 333--

Session of 1997

SENATE BILL No. 333
By Committee on Utilities
2-14

AN ACT concerning assessment of expenses by the state corporation commission; amending K.S.A. 66-1502 and repealing the existing section.

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

Section 1. K.S.A. 66-1502 is hereby amended to read as follows: 66-1502. Whenever, in order to carry out the duties imposed upon it by law, the state corporation commission, in a proceeding upon its own motion, on complaint, or upon an application to it, shall deem it necessary to investigate any public utility or common carrier or make appraisals of the property of any public utility, such public utility or common carrier, in case the expenses reasonably attributable to such investigation or appraisal exceed the sum of $100, including both direct and indirect expenses incurred by the commission or its staff or by the citizens' utility ratepayer board, shall pay such expenses which shall be assessed, *beginning from the date of a proceeding upon its own motion, on complaint or upon an application to it is filed,* against such public utility or common carrier by the commission~~, except that no such public utility or common carrier shall be assessed for payment of such expenses, unless prior to the incurring of any such expense~~. The state corporation commission shall give such public utility or common carrier notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act. At such hearing, the public utility or common carrier may be heard as to the necessity of such investigation or appraisal and may show cause, if any, why such investigation or appraisal should not be made or why the costs thereof should not be assessed against such public utility or common carrier. The finding of the commission as to the necessity of the investigation or appraisal and the assessment of the expenses thereof shall be conclusive, except that no such public utility or common carrier shall be liable for payment of any such expenses incurred by such state

corporation commission or citizens' utility ratepayer board in connection with any proceeding before or within the jurisdiction of ~~the interstate commerce commission or other~~ *any* federal regulatory body. The commission shall ascertain the expenses of any such investigation or appraisal and by order assess such expenses against the public utility

or common carrier investigated or whose property is appraised in such proceeding, and shall render a bill therefor, by ~~registered~~ *United States* mail, to the public utility or common carrier, either at the conclusion of the investigation or appraisal, or from time to time during such investigation or appraisal. Such bill shall constitute notice of such assessment and demand of payment thereof. Upon a bill rendered to such public utility or common carrier, within 15 days after the mailing thereof, such public utility or common carrier shall pay to the commission the amount of the assessment for which it is billed. Such payment when made shall be transmitted by the commission to the state treasurer, who shall credit the same to the appropriations made for the use of such commission or for the use of the citizens' utility ratepayer board. The total amount, in any one state fiscal year for which any public utility or common carrier shall be assessed under the provisions of this section shall not exceed ~~3/5 of 1% of its gross operating revenues derived from intrastate operations as reflected in the last annual report filed with the commission pursuant to K.S.A. 66-123, and amendments thereto, prior to the beginning of the commission's fiscal year. *actual expenses, including both direct and indirect expenses incurred by the commission or its staff or by the citizens' utility ratepayer board.*~~ the greater of $250,000 or 3/5 of 1% of its gross operating revenues derived from intrastate operations as reflected in the last annual report filed with the commission pursuant to K.S.A. 66-123 and amendments thereto, prior to the beginning of the commission's fiscal year. The commission may render bills in one fiscal year for costs incurred within a previous fiscal year.

When such expenses are incurred by the commission in order to carry out the duties imposed upon it by law, the state corporation commission, in a proceeding upon its own motion, on complaint or upon an application to it, shall deem it necessary to investigate certain electric cooperative public utilities subject to commission jurisdiction pursuant to K.S.A. 66-104b(b) and 66-104d(f) and amendments thereto, such electric cooperative public utilities shall be assessed the same as all public utilities and common carriers under the jurisdiction of the state corporation commission pursuant to K.S.A. 66-104 and amendments thereto.

Sec. 2. K.S.A. 66-1502 is hereby repealed.

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

David Heinemann (Attach. 3)

BEFORE THE SENATE UTILITIES COMMITTEE
PRESENTATION OF THE KANSAS CORPORATION COMMISSION ON SB 212

Senate Bill 212 amends K.S.A. 66-117 and clarifies what filings before the Kansas Corporation Commission fall under the so-called "240 day clock" (the time deadline after which a utility's requested relief is "deemed approved" by operation of law if the Commission fails to take final action). A recent Kansas Court of Appeals decision [22 Kan. App. 2d 410, 916 P.2d 76 (1996)], which interpreted this statute for the first time, broadly defined the word "schedule" to cover almost any filing. The Court also limited the Commission's unilateral ability to extend the time limitation when a change in circumstances occurred by holding that the application itself had to be amended. In this case the Federal Energy Regulatory Commission (FERC) asserted jurisdiction over a KCC regulated utility on November 2, 1995. The KCC considered FERC's assumption of jurisdiction from the KCC to be a substantial alteration of the facts and stayed action pending further action by FERC. The 240 days ran out on November 29, 1995. On December 8, 1995 FERC stayed its jurisdiction and made it clear that the KCC once again had jurisdiction. The Court held that on November 29, 1995 the application before the Commission was deemed approved by operation of law, rather than on its merits.

Senate Bill 212 makes it clear that the 240 day clock would only apply to rate related filings. Further, the Commission would have the discretion to extend the time period if a change in circumstances occurred which was material to the relief requested. In that event the utility would have the option to put the proposed rate increase into effect on an interim basis, subject to refund with interest, in the event the Commission did not grant all of the request.

The utility and the Commission are given the further option to agree to an extension or waiver of the 240 day limitation.

A new subparagraph (f) is added to make it clear that the Commission does have the authority and flexibility to approve a rate incentive mechanism.

A copy of suggested technical amendments is attached for your consideration.

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ATT. 3

SENATE BILL No. 212

By Committee on Utilities

2-5

AN ACT concerning public utilities and common carriers; change in rates and schedules; amending K.S.A. 1996 Supp. 66-117 and repealing the existing section.

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

Section 1. K.S.A. 1996 Supp. 66-117 is hereby amended to read as follows: 66-117. (a) Unless the state corporation commission otherwise orders, no common carrier or public utility over which the commission has control shall make effective any changed rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of such public utility or common carrier except by filing the same with the commission at least 30 days prior to the proposed effective date. The commission, for good cause, may allow such changed rate, joint rate, toll, charge or classification or schedule of charges, or rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier to become effective on less than 30 days' notice. If the commission allows a change to become effective on less than 30 days' notice, the effective date of the allowed change shall be the date established in the commission order approving such change, or the date of the order if no effective date is otherwise established. Any such proposed change shall be shown by filing with the state corporation commission a schedule showing the changes, and such changes shall be plainly indicated by proper reference marks in amendments or supplements to existing tariffs, schedules or classifications, or in new issues thereof.

(b) Whenever any common carrier or public utility governed by the provisions of this act files with the state corporation commission a schedule showing the changes desired to be made and put in force by such public utility or common carrier, the commission either upon complaint or upon its own motion, may give notice and hold a hearing upon such proposed changes. Pending such hearing, the commission may suspend the operation of such schedule and defer the effective date of such change in rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier by delivering to such public utility

or common carrier a statement in writing of its reasons for such suspension.

(c) The commission shall not delay the effective date of the proposed change in rate, joint rate, toll, charge or classification or schedule of charges, ~~or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier,~~ more than 240 days beyond the date the public utility or common carrier filed its application requesting the proposed change. If the commission does not suspend the proposed schedule within 30 days of the date the same is filed by the public utility or common carrier, such proposed schedule shall be deemed approved by the commission and shall take effect on the proposed effective date. If the commission has not issued a final order on the proposed change in any rate, joint rate, toll, charge or classification or schedule of charges, ~~or any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier,~~ within 240 days after the carrier or utility files its application requesting the proposed change, then the schedule shall be deemed approved by the commission and the proposed change shall be effective immediately, except that (1) for purposes of the foregoing provisions regarding the period of time within which the commission shall act on an application, any amendment to an application for a proposed change in any rate, which increases the amount sought by the public utility or common carrier or substantially alters the facts used as a basis for such requested change of rate, shall, at the option of the commission, be deemed a new application and the 240-day period shall begin again from the date of the filing of the amendment, ~~and~~ (2) *if a change in circumstances has occurred which the commission finds material to the relief requested, the commission may extend the time to act by such amount of time necessary to accommodate the changed circumstances. ~~If at~~ the request of the utility, some or all of the request for change in the rate made by the utility shall be placed into effect 30 days ~~after~~ date of the utility's request or the date of the expiration of the 240 day period, whichever is later, on an interim basis, subject to refund with interest; ~~should~~ the commission determine upon the completion of its investigation, extended under the provisions of this subsection that the final rate is less than the rate put into effect subject to refund, the commission shall order such refund including reasonable interest at a rate equal to the utility's allowed overall return,* (3) if hearings are in process before the commission on a proposed change requested by the public utility or common carrier on the last day of such 240-day period, such period shall be extended to the end of such hearings plus 20 days to allow the commission to prepare and issue its final order, *(4) rules, regulations and contracts between public utilities required to be filed under chapter 66 of the Kansas Statutes Annotated or any other filing which is not primarily*

At the . Should

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a proposed change in rates, joint rates, tolls, charges or classifications or schedules of charges, are not subject to this subsection, and (5) nothing in this subsection shall preclude the public utility or common carrier and the commission from agreeing to a waiver or an extension of the 240-day period.

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

~~(d)~~ *(e)* Upon a showing by a public utility before the state corporation commission at a public hearing and a finding by the commission that such utility has invested in projects or systems that can be reasonably expected (1) to produce energy from a renewable resource other than nuclear for the use of its customers, (2) to cause the conservation of energy used by its customers, or (3) to bring about the more efficient use of energy by its customers, the commission may allow a return on such investment equal to an increment of from ½% to 2% plus an amount equal to the rate of return fixed for the utility's other investment in property found by the commission to be used or required to be used in its services to the public. The commission may also allow such higher rate of return on investments by a public utility in experimental projects, such as load management devices, which it determines after public hearing to be reasonably designed to cause more efficient utilization of energy and in energy conservation programs or measures which it determines after public hearing provides a reduction in energy usage by its customers in a cost-effective manner.

(f) Nothing in these statutes shall preclude the commission from approving, proposing or endorsing an incentive rate mechanism as part of its rate-making process. As used in this section, incentive rates are rates set by means other than a cost of service analysis.

~~(e)~~ *(g)* Whenever, after the effective date of this act, an electric public utility, a natural gas public utility or a combination thereof, files tariffs reflecting a surcharge on the utility's bills for utility service designed to collect the annual increase in expense charged on its books and records for ad valorem taxes, such utility shall report annually to the state corporation commission the changes in expense charged for ad valorem taxes.

For purposes of this section, such amounts charged to expense on the books and records of the utility may be estimated once the total property tax payment is known. If found necessary by the commission or the utility, the utility shall file tariffs which reflect the change as a revision to the surcharge. Upon a showing that the surcharge is applied to bills in a reasonable manner and is calculated to substantially collect the increase in ad valorem tax expense charged on the books and records of the utility, or reduce any existing surcharge based upon a decrease in ad valorem tax expense incurred on the books and records of the utility, the commission shall approve such tariffs within 30 days of the filing. Any over or under collection of the actual ad valorem tax increase charged to expense on the books of the utility shall be either credited or collected through the surcharge in subsequent periods. The establishment of a surcharge under this section shall not be deemed to be a rate increase for purposes of this act. The net effect of any surcharges established under this section shall be included by the commission in the establishment of base rates in any subsequent rate case filed by the utility.

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

Sec. 2. K.S.A. 1996 Supp. 66-117 is hereby repealed.

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

3-5

SEE: 22 Kan. App. 2d 410, 916 P.2d 76-(1996)

No. 75,918

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

KANSAS PIPELINE PARTNERSHIP,
Appellant,

v.

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS,
Appellee.

SYLLABUS BY THE COURT

1.

The Court of Appeals has exclusive jurisdiction to review any action of the Kansas Corporation Commission arising from a rate hearing. K.S.A. 1995 Supp. 66-118a(b).

2.

The order under review in this case constitutes a final agency action subject to judicial review.

3.

K.S.A. 77-607 and K.S.A. 77-608 are construed and applied.

4.

K.S.A. 1995 Supp. 66-117 is construed and applied.

5.

The scope of review of an agency action is set forth in K.S.A. 77-621, which

codified principles long recognized by Kansas courts.

6.

The cardinal rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained.

7.

If a general and a specific statute both apply to a given situation, they should be read together and harmonized when possible.

8.

The Kansas Corporation Commission's authority is limited to that conferred by statute.

9.

A final order is one which terminates litigation on the merits and leaves nothing to be done except to enforce the result. In an agency setting, a final order needs to be more thxan a mere procedural ruling.

10.

In an administrative setting, finality should be interpreted in a pragmatic way.

11.

An agency's interpretation of a statute should be given deference, but when reviewing a question of law, an appellate court may substitute its judgment for that

of the agency.

12.

The legislature is presumed to understand the meaning of the words it uses and the procedures it establishes.

13.

When a statute is clear and unambiguous, a court must give effect to the legislature's intent as expressed, rather than determine what the law should or should not be.

14.

An amendment involves a change or modification and suggests an action by one of the parties to change, correct, or revise.

15.

Ordinarily, a change in statutory language is presumed to result from a legislative purpose to change its effect, but the presumption is of little force if an amendment is adopted as part of a general, technical revision to a statute.

16.

Under the peculiar facts of this case, the relief sought by Kansas Pipeline Partnership was deemed approved by operation of law when the Kansas Corporation Commission failed to finally act within 240 days of the application and when neither of the exceptions of K.S.A. 1995 Supp. 66-117(b) applies.

Appeal from the Kansas Corporation Commission. Opinion filed May 17, 1996. Reversed.

James P. Zakoura, Richard W. Hird, and *David J. Roberts,* of Smithyman & Zakoura, Chartered, of Overland Park, and *Fred J. Logan, Jr.,* of Logan & Logan, L.C., of Prairie Village, for appellant.

Larry M. Cowger, of Kansas Corporation Commission, for appellee.

Mark A. Burghart and *W. Robert Alderson,* of Alderson, Alderson & Montgomery, L.L.C., of Topeka, for intervenor Citizens' Utility Ratepayer Board.

John C. Frieden and *Kevin M. Fowler,* of Frieden, Haynes & Forbes, of Topeka, and *David P. Batow* and *Gary W. Boyle,* of Williams Natural Gas Company, of Tulsa, Oklahoma, for intervenor Williams Natural Gas Company.

Before ELLIOTT, P.J., ROYSE and KNUDSON, JJ.

ELLIOTT, J.: Kansas Pipeline Partnership (KPP) and Western Resources, Inc., (WRI) entered into natural gas sales and transportation contracts. KPP submitted the contracts to the Kansas Corporation Commission (KCC) for approval pursuant to K.S.A. 1995 Supp. 66-117(a). WRI also requested KCC approval of the contracts and requested permission to pass contract costs through to its customers. Complicating matters, the KCC shifted a $5.9 million Linchpin Development cost item from another rate hearing into this KPP application. The other rate hearing is currently pending in this court as appeal No. 75,730.

On judicial review, KPP asserts that because the KCC failed to make a decision on these contracts and the development cost item within time limits established by KCC regulations and K.S.A. 1995 Supp. 66-117(b), the contracts and other requested relief became "deemed approved" by operation of law. This is the ultimate question for us to decide on the merits of this appeal.

We agree with KPP and reverse.

A brief description of the major participants is as follows:

KPP is a natural gas public utility and the applicant before the KCC.

The KCC is the state regulatory agency with the power and authority to supervise and control intrastate natural gas public utilities doing business in Kansas. See K.S.A. 66-101 *et seq.*

WRI is a class A natural gas public utility, authorized to deliver natural gas to customers in Kansas, and was the other signatory to the KPP contracts for which approval was sought. WRI also sought approval of the contracts, but has not appealed the matter to this court.

Williams Natural Gas Company (WNG) is also a natural gas public utility and is a marketplace competitor of KPP.

The Citizens' Utility Ratepayer Board (CURB) is a state agency created to look

out for the interests of individuals and small businesses in regulating public utilities.

The Federal Energy Regulatory Commission (FERC) is a federal agency regulating interstate pipelines which are within its exclusive jurisdiction.

The five contracts may be summarized thus: The contracts between KPP and WRI call for the sale and transportation of increased volumes of natural gas for delivery in Johnson, Wyandotte, Franklin, and Miami Counties in Kansas. Two of the three gas purchase contracts require KPP to deliver natural gas to the city gates at Ottawa, Paola, and Osawatomie for a term of 20 years. The third gas purchase contract calls for KPP to transport and sell natural gas to delivery points in Johnson and Wyandotte Counties for a term of 10 years.

The two transportation contracts call for the construction of a 24-mile pipeline spur to connect the Panhandle Eastern Pipeline Company's facilities to those of WRI (the "Metcalf Contract"), and for KPP to provide natural gas to WRI for Johnson and Wyandotte Counties commencing in the year 2009 (the "2009 Contract").

Jurisdiction

Without detailing the various dates on which various pleadings were filed, we have determined the jurisdictional filings by KPP are timely.

We have exclusive jurisdiction to review any action of the KCC arising from

a rate hearing. K.S.A. 1995 Supp. 66-118a(b). In KPP's original filing, it did not request a rate increase, but WRI did. The WRI docket was consolidated with the KPP filing. Additionally, the joinder of the Linchpin Project Development costs into this proceeding made it an action intimately related to a prior rate case. See *MAPCO Intrastate Pipeline Co. v. Kansas Corporation Comm'n*, 10 Kan. App. 2d 527, 530-31, 704 P.2d 989 (1985); *In re Application of Southwestern Bell Tel. Co.*, 9 Kan. App. 2d 525, 529, 685 P.2d 304, *rev. denied* 236 Kan. 875 (1984).

The parties seem to agree that this case is closely enough connected to an underlying rate case to give us jurisdiction.

While we have determined we have jurisdiction under K.S.A. 1995 Supp. 66-118a(b), a question still remains whether the KCC order of November 22, 1995, is reviewable.

By applying the relevant considerations of *Southwestern Bell*, the KCC order is a final agency action entitling KPP to judicial review. The KCC's denial of KPP's arguments that the contracts were "deemed approved" due to the expiration of time *is* a final decision on this issue. It has a direct effect on KPP and presents a legal question for our review. Further, ruling on this issue does not disrupt the orderly process of adjudication in the administrative proceeding. The November 22, 1995, KCC order is final agency action subject to review.

In *Southwestern Bell*, we did not clearly state whether we were considering a final agency decision or a nonfinal agency decision ripe for interlocutory review. Either way, we have jurisdiction to consider KPP's appeal. See K.S.A. 77-607(b),

K.S.A. 77-608.

Merits

In orders mailed April 21 and 24, 1995, the KCC suspended the effective dates of the contracts for 180 days of their filing on March 31, 1995; the WRI rate request and the KPP contract dockets were consolidated. After numerous continuances, hearings were finally conducted between August 21, 1995, and September 6, 1995. At the close of the hearings, the KCC closed the record, ordered briefs filed by October 6, 1995, and took the dockets under advisement.

After briefs were filed but before the KCC issued a decision, FERC issued a draft order stating it had jurisdiction over KPP as an *inter*state pipeline. When FERC asserts jurisdiction, any state regulatory agency loses jurisdiction. As a result, the KCC staff on November 1, 1995, requested a stay pending a final order from FERC. KPP opposed the stay. The KCC issued a stay on November 3, 1995, and on November 22, 1995, issued an order superseding the earlier order, in which it found:

(1) Expiration of the initial 180-day time period set by the KCC did not cause the contracts to be deemed approved because that order was subject to further KCC orders and KPP did not object to the closing of the record as of October 6, 1995 (beyond the 180-day period);

(2) The KCC order of November 3, 1995, which was within the 240-day limitation of K.S.A. 1995 Supp. 66-117(b) was "probably a sufficient adjudication within the 240-day period of time";

(3) The KCC restarted the 240-day clock called for by K.S.A. 1995 Supp. 66-

117(b) because the FERC finding of jurisdiction over KPP was a "substantial alteration of the facts" forming the basis for the KPP request; and

(4) "a continued stay at this juncture serves the public interest especially in light of the unbundling concerns raised by [s]taff should FERC ultimately find it has jurisdiction" over KPP.

On December 8, 1995, several things occurred:

(1) FERC stayed its assertion of jurisdiction over KPP and clarified that KCC orders regarding KPP will remain in effect until FERC made its final rulings in the case.

(2) The KCC denied KPP's request to reconsider its November 3, 1995, order because it was superseded by the KCC order of November 22, 1995.

(3) KPP requested reconsideration of the November 22 KCC order, which was denied on December 28, 1995.

(4) FERC issued an order clarifying a prior order. In this order, FERC stayed its assertion of jurisdiction over KPP until 60 days after an order on the merits of petitions for rehearing. FERC also ruled that, meanwhile, KPP could continue to provide services, collect rates on file with the KCC, and *"undertake all other activities authorized by [FERC] and the KCC."* (Emphasis added.)

On appeal, our scope of review is set forth in K.S.A. 77-621, which codified principles repeatedly recognized by Kansas courts. See, *e.g., Kansas Gas & Elec. Co. v.*

Kansas Corporation Comm'n, 239 Kan. 483, 497-98, 720 P.2d 1063 (1986); *Midwest Gas Users Ass'n v. Kansas Corporation Commission*, 3 Kan. App. 2d 376, 380-81, 595 P.2d 735, *rev. denied* 226 Kan. 792 (1979).

Further, we recognize that the cardinal rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained. *City of Wichita v. 200 South Broadway*, 253 Kan. 434, 436, 855 P.2d 956 (1993).

As indicated earlier, at the close of the technical hearings, the KCC ordered the filing of briefs by October 6, 1995. KPP did not object to the October 6 date, although it was beyond the 180 days mentioned in the original suspension orders which expired on September 27, 1995. Accordingly, we shall concentrate our evaluation of this appeal on the 240-day limitation contained in K.S.A. 1995 Supp. 66-117(b).

The KCC has never suggested this case is not controlled by K.S.A. 1995 Supp. 66-117(b). Although the statute does not specifically list "gas purchase contracts" or "gas service agreements," clearly these would fall within "practice pertaining to the service or rates of such public utility." See K.S.A. 1995 Supp. 66-117(a).

CURB argues this case is governed by K.S.A. 1995 Supp. 66-1,203, which specifically applies to natural gas public utilities. Pursuant to that statute, every natural gas public utility regulated by the KCC must furnish the KCC with copies of all contracts between natural gas public utilities and all jurisdictional services to be rendered by the utility. WNG also urged this position during oral arguments. This statute applies specifically to natural gas public utilities regulated by the KCC, while

K.S.A. 1995 Supp. 66-117(b) merely applies to all public utilities regulated by the KCC.

If a general and a specific statute both apply to a given situation, they should be read together and harmonized when possible. See *Kansas Racing Management, Inc. v. Kansas Racing Comm'n*, 244 Kan. 343, 353, 770 P.2d 423 (1989). The provisions of these two statutes can be read consistently.

K.S.A. 1995 Supp. 66-117(b) applies when any public utility is requesting a change in its rates or services that will have an impact on its customers. On the other hand, 66-1,203 requires a natural gas public utility to file copies of its rates and contracts, even if no changes are requested. Although the statutes overlap to some extent, they are not inconsistent and both are applicable.

At last, we reach the core question for our determination: Is KPP's request for relief "deemed approved" by the KCC's failure to issue a final order on the proposed changes within the 240-day period mandated by K.S.A. 1995 Supp. 66-117(b)? We answer in the affirmative.

Preliminarily, at oral argument, the KCC acknowledged that 66-117 is the only statute permitting suspension of an effective date, and CURB candidly, but reluctantly, agreed that 66-117 controls this appeal.

No one contests that the KCC's authority is limited to that conferred by statute. *Cities Service Gas Co. v. State Corporation Commission*, 197 Kan. 338, 342, 416 P.2d 736 (1966); *Kansas-Nebraska Natural Gas Co. v. Kansas Corporation Commission*, 4 Kan. App. 2d 674, 675, 610 P.2d 121, *rev. denied* 228 Kan. 806 (1980).

We must determine what now happens when the KCC fails to exercise the power conferred on it by statute.

K.S.A. 1995 Supp. 66-117(b) specifically provides that the KCC shall not delay the effective date of a proposed change in rate or in any practice pertaining to service for more than 240 days beyond the date the utility filed its application with the KCC.

The statute further provides that if the KCC has not issued a final order within those 240 days, then

> "*the schedule shall be deemed approved* by the commission and the proposed change shall be effective immediately, *except that* (1) . . . *any amendment to an application* . . . which increases the amount sought by the public utility . . . or substantially alters the facts used as a basis for requested change . . . shall, at the option of the commission, be deemed a new application and the 240-day period *shall begin again from the date of the filing of the amendment*, and (2) if hearings are in process before the commission . . . on the last day of such 240-day period, such period shall be extended to the end of such hearings plus 20 days to allow the commission to prepare and issue its final order." K.S.A. 1995 Supp. 66-117(b) (Emphasis added.)

No one contends the hearing was "in process before the commission" on the 240th day. The KCC closed the record and took the matter under advisement prior to expiration of the 240-day period. The question is whether either of the KCC orders of November 3 and 22, 1995, was a "final order" for purposes of 66-117(b). If so, both

for 66-117. Dramatic changes were made to KCC procedures in 1980 by the enactment of S.B. 881. L. 1980, ch. 200. Minutes of hearings before the House Ways and Means Committee on the bill make clear the legislature was aware it was making significant changes. Minutes to a hearing on April 8, 1980, report that Senator Frank Gaines supported the bill which would permit a utility to automatically get the increase sought when the KCC did not act within a certain time frame. See House Ways and Means Committee, 1980 Session, Minutes of April 8, 1980, p. 1. Throughout the debate on S.B. 881, the KCC was given only 180 days to decide a case, but the final bill changed this to 240 days.

Most of the testimony before the Ways and Means Committee uses the term "utility rate cases" in discussing the bill, but the term is never defined. Further, "schedule" is not mentioned, except in a proposed draft of the bill. A main proponent of the bill was Southwestern Bell Telephone Company (SWB), which argued time limits were not new and had been adopted by numerous regulatory agencies across the country. Testimony of Bill Ewing (SWB), Attached to Minutes of House Ways & Means Committee, April 8, 1980.

Opposing S.B. 881 was Pete Loux, then chair of the KCC. He argued the states which had adopted time limits had much larger staffs or were responsible for regulating fewer companies. Chairman Loux also presented a staff position paper authored by Brian Moline, then general counsel of the KCC. Moline expressed concern that the language of S.B. 881 was very broad and cautioned that the bill "changes long established public policy of Kansas." KCC Staff Position on S.B. 881, Attached to Minutes of House Ways & Means Committee, April 8, 1980, at 4.

Our review of the legislative history convinces us the purpose of S.B. 881 was to adopt time limits to remedy delays utilities had experienced with the KCC. Nothing in the legislative history suggests the legislature intended to distinguish between "pure" rate cases and hybrid cases that could be considered "arising from a rate hearing" and thus appropriate for exclusive review by this court.

While S.B. 881 does not refer specifically to 66-118a, giving us exclusive jurisdiction over appeals arising from a rate hearing, the bill did amend 66-118g, setting the time limits in which we must decide such cases.

Nothing we have discovered suggests the time limits covered by S.B. 881 were intended to be different for rate cases under 66-117 as opposed to cases arising from a rate hearing pursuant to 66-118g. If a case arises from a rate hearing for purposes of 66-118g, legislative history suggests the time limits of 66-117(b) would also apply.

No one really contests that this case is one arising from a rate hearing. Under the express language of 66-117(b), the schedules/contracts are deemed approved and the proposed changes take effect immediately unless a final order is issued by the KCC within 240 days of KPP's application, or unless one of the exceptions applies.

Here, no final order was issued. As a result, our final question is whether the KCC had the statutory power and authority to restart the 240-day clock under the peculiar facts of this case.

K.S.A. 1995 Supp. 66-117(b) provides that after 240 days, the schedule is deemed approved *except* where an amendment to an application seeks an increase

were entered within the 240-day clock. If not, we must decide whether the KCC acted properly in restarting the 240-day clock. We note that the KCC closed the record in these consolidated dockets at the conclusion of hearings on September 6, 1995. So far as we can determine, the KCC never reopened the record in these consolidated dockets. See K.A.R. 82-1-230(k), (l).

KPP filed its request for approval of the five contracts on March 31, 1995; the 240th day thereafter would be November 29, 1995. On November 2, FERC issued a draft order asserting jurisdiction over KPP, and on November 3 the KCC, *sua sponte*, determined the dockets should be stayed.

Then on November 22, 1995, the KCC issued another order affirming its order of November 3 and ordering these dockets be stayed until FERC took final, appealable action. This order also purported to restart the 240-day clock "(to the extent, if any, that it applies") as of November 2, 1995. The KCC also stated its November 22 order superseded its November 3 order.

"Final order" has been defined as one which terminates the litigation on the merits and leaves nothing to be done except to enforce the result. Black's Law Dictionary 630 (6th ed. 1990). In an administrative setting, a final order needs to be more than a mere procedural ruling, and "finality" should be interpreted in a pragmatic way. *Southwestern Bell Tel. Co. v. Kansas Corporation Commission*, 6 Kan. App. 2d 444, 452-53, 629 P.2d 1174, *rev. denied* 230 Kan. 819 (1981). See *Oilfield Fluid Motor Carriers v. Kansas Corporation Comm'n*, 234 Kan. 983, 988, 677 P.2d 982 (1984).

In the present case, the KCC orders enter a stay pending a decision by FERC. A "stay" is a suspension of a case. Black's Law Dictionary 1413 (6th ed. 1990). By entering a stay, the KCC did not issue a final order in the proceeding.

Accordingly, this case presents a good example of when a KCC order can be final agency action under 77-607(b)(1), but not a final order under 66-117(b). The KCC's decision rejecting KPP's argument the contracts should be deemed approved (66-117[b]) is a final ruling on that statutory interpretation question. Nothing is unresolved, rendering it a final agency action under 77-607(b)(1). On the other hand, since the KCC has made no ruling regarding whether KPP's contracts should be approved, it has not entered a final order on the proposed changes under 66-117(b).

As WNG argues, both times the "deemed approved" language appears in the statutes, the phrase refers to a "schedule." "Schedule" is not defined in any statute or any KCC regulation which we have been able to discover, and the parties have not referred us to any such definition. The general definition of "schedule" would cover almost any filing, and pragmatically, we conclude the KPP contracts and other documents appended to its application meet the requirement of a schedule. See K.A.R. 82-1-231; Black's Law Dictionary 1344 (6th ed. 1990).

The KPP contracts would change the practices pertaining to services made available by KPP for WRI's customers. Accordingly, the changes set forth in the contracts fall under the provisions of 66-117(b) requiring KPP to request approval of the changes.

Before leaving this aspect of the case, we need to discuss the legislative history

in the amount sought or substantially changes the facts used as a basis for the requested change.

The KCC interprets the statute broadly to include *any* change of the facts, regardless of whether an amendment to the application has been filed. We are unable to agree with the KCC's interpretation.

Here, none of the parties filed any amendment to the application for proposed change that increased the amount sought by the KPP. Thus, the only way this proceeding could be extended is if the KCC were correct in finding (1) that FERC's preliminary assertion of jurisdiction substantially altered the facts used as a basis for the requested change *and* (2) that this gave the KCC the option to deem a new application had been filed.

The KCC does not directly address the problem created by the failure of anyone to file an amendment to the application. CURB does not address the need for an amendment either; rather, it argues the KCC was in substantial compliance with the statutory mandate when it restarted the 240-day clock. WNG asserts that 66-117(b) simply does not apply. As previously held, the legislature did not distinguish between types of rate hearings in enacting S.B. 881. The legislature intended the time limits to apply to all hearings requesting a change, including those arising from a rate hearing.

KCC regulations provide for specific procedures to follow when a public utility wants to revise or amend its application or schedules. See K.A.R. 82-1-231(d). Further, Chairman Loux, in his letter to Mike Hayden, then chair of the House

Ways and Means Committee, specifically voiced his concern whether an amendment by an applicant would restart the time clock. Loux Memo dated April 8, 1980, attached to House Ways and Means Committee Minutes.

FERC issued its initial order on November 2, 1995. Yet in its order of November 22, the KCC recognized it had continuing jurisdiction over KPP. FERC then stayed its earlier order and clarified that KPP was allowed to undertake all activities authorized by the KCC. The KCC did not issue its order denying KPP's petition to reconsider until December 28, 1995.

The KCC argues that the FERC order asserting jurisdiction over KPP was a substantial alteration of the facts. An agency's interpretation of a statute should be given deference, but when reviewing a question of law, we may substitute our judgment for that of the agency. See *Hickey v. Kansas Corporation Comm'n*, 244 Kan. 71, 76, 765 P.2d 1108 (1988).

We note that the KCC was aware as early as June 2, 1995, that FERC was considering asserting jurisdiction over KPP. Since the parties were aware of FERC's interest in KPP for 5 months, we are unable to understand how FERC's order of November 2, 1995, is a substantial alteration of the *facts* used as a basis for the requested approval of contracts. The facts supporting the proposed changes remained the same although the status of the parties may well have been altered.

Simply put, the punctuation of the statute in light of the legislative history precludes the KCC's interpretation of 66-117(b).

The legislature is presumed to understand the meaning of the words it uses and procedures it establishes. *State Bank Commissioner v. Emery*, 19 Kan. App. 2d 1063, 1071, 880 P.2d 783 (1994). And when a statute is clear and unambiguous, we must give effect to the legislature's intent as expressed, rather than determine what the law should or should not be. *Martindale v. Tenny*, 250 Kan. 621, Syl. ¶ 2, 829 P.2d 561 (1992).

Finally, we must decide whether the statutory phrase "substantially alters the facts used as a basis for such requested change of rate" modifies "any amendment" or whether it applies to *any* change regardless of origin. Grammatically, we have no hesitancy in holding "amendment" is the controlling noun which is the subject of the modifying phrase."

An amendment makes a change or modification. Black's Law Dictionary 81 (6th ed. 1990). It suggests an action by one of the parties to change, correct, or revise. No action was taken by KPP, WRI, or the KCC to change or modify the application which would trigger the provisions of 66-117(b).

Further review of the legislative history concerning the evolution of this provision supports our conclusion that an amendment is required.

The phrase "which amendment" contained in the original 1980 legislation, was deleted in 1988, as part of legislation that broadened application of the administrative procedures act. The legislation changed all time limits from being written out, to numerals (*i.e.*, two hundred forty, to 240). See L. 1988, ch. 356, § 225.

When the phrase under scrutiny is read to include "which amendment" the original intent of the legislature is clearer. The 1988 changes were the result of S.B. 334, which made some substantive changes to the administrative procedures act, but overall appears to be a technical bill to "clean up" the statutes by converting to numerals.

Ordinarily, a change in statutory language is presumed to result from a legislative purpose to change its effect. *Schuhs v. Schuhs*, 20 Kan. App. 2d 98, 99, 883 P.2d 1225 (1994). But this presumption is of little force if an amendment is adopted as part of a general, technical revision to a statute. *Board of Education U.S.D. 512 v. Vic Regnier Builders, Inc.*, 231 Kan. 731, 736, 648 P.2d 1143 (1982).

We do not view the deletion of the phrase "which amendment" by the legislature in 1988 as a substantive change intended to modify the meaning of 66-117(b). Rather, the change was merely part of a larger bill seeking to bring consistency to statutes under the administrative procedures act.

At the time the original provisions imposing time limits on the KCC were adopted, the House Ways and Means Committee rejected without discussion a suggestion that would have given the KCC more flexibility in deciding cases under the new time limits. House Ways and Means Committee Minutes, May 2, 1980, p. 2.

Thus, the legislature was intent on forcing the KCC to act within prescribed time limits; if it does not, the proposed changes take effect. In 1980, the legislature recognized the increased burden the time limits would place on KCC staff. Senator Frank Gaines assured members of the House that adequate funds would be provided

for the KCC "to adequately and efficiently carry out the provisions of this act" and further "gave his personal assurance that funds would be provided." House Ways and Means Committee Meeting, May 2, 1980, p. 1.

CURB asks us not to abandon or ignore the "thousands" of hours of staff work and the "hundreds of thousands of dollars" of legal and technical analysis expended on the five contracts submitted for approval. But legislative history makes clear that was precisely an anticipated result should the KCC fail to make a final decision within the time limits provided by K.S.A. 1995 Supp. 66-117(b).

The contracts and related requests contained in KPP's consolidated KCC dockets must be deemed approved by operation of law.

Reversed.

Attach. 4

TESTIMONY OF FRED LOGAN IN OPPOSITION TO S.B. 212, PRESENTED TO THE SENATE COMMITTEE ON UTILITIES ON FEBRUARY 20, 1997

My name is Fred Logan and I am an attorney with the Prairie Village law firm of Logan & Logan. I am an attorney for Kansas Pipeline Partnership and I am here today to testify in opposition to S.B. 212. I am specifically testifying in opposition to the proposed amendment that would give the Kansas Corporation Commission sole discretion to extend without limitation the time within which it must act on certain utility matters beyond the present 240 day time limitation.

The proposed legislation is anti-competitive. It discriminates against small utilities. It would confer power on an administrative agency that no other agency or court presently possesses. That agency would have absolute discretion, without any criteria or standards, to give itself a potentially unlimited period of time to act on applications that are pending before it.

I want to discuss in greater detail each of these concerns.

First, it is clear from the language of the bill that the Kansas Corporation Commission would have almost unlimited discretion to put utility matters on "hold." If one looks at lines 26-30 of page 2 of the bill, one reads ". . . if a change in circumstances has occurred which the commission finds material to the relief requested, the commission may extend the time to act by such an amount of time necessary to accommodate the changed circumstances." (Emphasis added).

In other words, the Commission could unilaterally determine that a material change in circumstances had occurred and simply set aside the 240 day deadline to act. What would be a material change in circumstances? It would be whatever a particular Commission deemed it to be. It could be something as simple as a utility deciding to change its name. It could be one resident voicing an objection. There simply are no standards in the legislation. The Commission would then have the right to simply not act.

Secondly, S.B. 212 would remove any time limits whatsoever on matters pertaining to rules and regulations or contract proceedings. That proposed change will be found by members of the committee at page 2, line 42 through page 3, line 6. What happens when a future Commission simply does not like a particular utility that has entered into a new gas supply contract? That Commission could, under this amendment, simply refuse to act. Putting it colloquially, that Commission could simply put such a contract "in the drawer."

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It was precisely that problem that caused Republicans and Democrats to adopt legislation setting the 240 day time limit to act in the 1980 session of the legislature. The proposed amendments in S.B. 212 would undo the bipartisan consensus that produced the 240 day time limit.

In S.B. 881, introduced in 1980, legislators sought to address the problem of the Commission failing to act in a timely manner on applications pending before it. In fact, proponents of the legislation argued that the Commission had, in several instances, simply refused to act. The legislation originally proposed a 180 day time limit. The chairman of the Commission at that time testified against the legislation and argued, among other things, that Kansas had a heavy regulatory burden and that putting time limits on the Commission would make that burden even heavier. The legislature ultimately adopted a 240 day time limit.

Kansas has entered a period of greater deregulation and greater competition in energy markets. The regulatory burden of the Commission is, if anything, in decline. A 240 day time limit is more than sufficient time to act on any regulatory matter.

The proposed amendment of the 240 day time limit is at odds with time limitations that are imposed elsewhere. For instance, pursuant to K.S.A. 66-118(g), the Kansas Court of Appeals is bound to act within 120 days on a rate case appeal. It would be anomalous for the Commission to be given an unlimited period of time to act on a rate application, with the Court of Appeals on the other hand being mandated to act within four months.

The Committee might also find it interesting to note some of the time standards that have been imposed on district courts by the Kansas Supreme Court. The standard for completion of a Chapter 61 case is sixty days. The standard for a Chapter 60 civil case is 180 days. The standard for a domestic relations case is 120 days. For a criminal felony case it is 120 days. In this instance, the time limitation on the Commission is greater than in any of those instances.

I mentioned to the Committee that we also believe the legislation is anti-competitive and discriminates against small utilities.

Your attention is directed to the provisions on refund at lines 30 through 38 on page 2 of the bill. A utility could put its rate increase into effect at the expiration of the 240 day period, on an interim basis, subject to refund. If you are an extremely large utility with massive financial resources, the possibility of a refund, or a partial refund, is no threat. On the other hand, if you are a small utility with limited financial resources, the

prospect of a refund has the effect of freezing any revenues collected pursuant to the rate increase. In other words, this proposed amendment benefits the very large utilities but provides no relief at all to smaller utilities on whose applications the Commission did not act within 240 days. That proposal is anti-competitive.

In closing, I would say to the Committee that it should give careful consideration to the fact that eight months is a substantial period of time for the Commission to act. It is certainly a longer period of time than courts or administrative agencies have to act in various circumstances. I would also ask the Committee to consider the fact that the Commission was able to decide the Wolf Creek Rate Case, probably the most controversial and one of the largest rate cases in Kansas history, without running afoul of the 240 day time limit. In an era of deregulation and greater competition, adopting legislation that could in essence wipe out the 240 day time limit simply does not make sense.

The amendment in S.B. 212 that would allow the Commission to remove the 240 day time limit on which it must act on various matters represents a move in the direction of a more powerful government agency and greater regulation. That does not represent the public policy position of this legislature. We urge the Committee to reject the bill.

Fred Logan
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8340 Mission Road
Suite 106
Prairie Village, KS 66206
(913) 381-1121

February 20, 1997

SUPPLEMENTAL TESTIMONY OF FRED LOGAN ON S.B. 212

After I concluded my prepared testimony on February 20, a committee member inquired as to whether I could provide information as to the time limits applicable to public service commissions in other states. I was not able to answer the question at the hearing but advised members of the committee that we would undertake some research and respond in writing. This is not necessarily a complete review but it will provide members of the committee with a strong indication of the time limits that are imposed on public

service commissions in this country. I will merely give the state, the statutory citation, and the applicable time limitation. I would be happy to provide additional analysis, if any legislator felt that it would be helpful.

1. Minnesota; Minn. Stat. 216B.16 (1996): 10 months
2. Missouri; Mo Ann. Stat. 392.230 R.S.Mo. (1995): 150 days
3. Nebraska; R.R.S.Neb. 19-4616 (1996): 180 days
4. South Carolina; S.C.Code Ann. 58-5-240 (1996): 6 months
5. Texas; Tex. Corps. & Ass'n Code Ann 2.212(d): 150 days
6. Utah; Utah Code Ann 54-7-12 (1996): 240 days
7. Vermont; 30 V.S.A. 227 (1996): 7 months
8. Wisconsin; Wis. Stat. 196.19 (1995-1996): 120 days
9. Alabama; Code of Ala. 37-1-81 (1996): 6 months
10. Idaho; Idaho Code 61-622: 8 months
11. Maine; 35-A M.R.S. 310 (1996) Me. Rev. Stat. Ann: 8 months

Attach. [redacted]

TESTIMONY BEFORE THE

SENATE UTILITIES COMMITTEE

by Jim Ludwig

WESTERN RESOURCES, INC.

February 20, 1997

Chair Ranson and Members of the Committee:

I am Jim Ludwig, executive director, regulatory affairs for Western Resources. Western Resources, through its operating companies KPL and KGE, provides natural gas to approximately 650,000 customers in Kansas and northeastern Oklahoma, and electric service to 600,000 customers in eastern and central Kansas. We are headquartered in Topeka.

I am testifying on Senate Bills 212, 207 and 333.

I agree with the amendments being offered to SB 212 and 207 by David Heinemann, General Counsel of the Kansas Corporation Commission. I have discussed my amendment to SB 333 with Mr. Tom Day of the Commission, and he is in agreement with it.

Senate Bill 212

When a utility files a request for a rate increase with the Commission, the rates requested go into effect in 30 days unless the Commission suspends the implementation of the increased rates. The Commission almost always issues a suspension order. Once the suspension order is issued, the Commission has 240 days to render a decision on the utility's request for a rate increase.

SB 212, as amended in the way we propose, assures that the Commission can take longer than 240 days if there are extenuating circumstances. But it also provides a safeguard for the

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utility which filed for a rate increase. If the Commission decides on its own initiative to suspend the 240 day period, the utility may put some or all of its request to increase rates into effect after the 240 day period expires. Any rate change put into effect under these circumstances would be subject to refund, with interest, if the Commission ultimately decided some or all of the increase was not justified.

Senate Bill 207

Western Resources agrees with the amendment Mr. Heinemann is offering to SB 207 at page 1, lines 39-40. The stricken language would be restored, but with the following clause added to the end of the sentence, "unless, in the case of a general investigation, for good cause, the commission orders otherwise." This change allows the Commission to establish alternative procedures for industry-wide generic studies, but preserves KAPA rules for other hearings.

Senate Bill 333

Western Resources proposes to amend SB 333. As introduced, the bill removes any cap on the annual amount the Commission may assess on a public utility for expenses the Commission or the Citizens' Utility Ratepayers Board (CURB) incurs. Removing the cap is too open-ended.

As we understand the issue, some small utilities do not cover the actual expenses incurred by the Commission and CURB through the formula based on 3/5 of 1% of gross operating revenue. Rather than striking this cap, however, the problem can be solved by the amendment attached.

This amendment simply allows the Commission to assess the greater of $250,000 or 3/5 of 1% of gross operating revenues. It preserves a cap, but allows the Commission to assess actual expenses to the utility which caused the expenses to be incurred.

Full Text of Bill 333

Different **fonts** indicate changes to the bill.

Supplemental note for this bill
Fiscal note for this bill
This bill with old style font codes (no html)

SB 333--

Session of 1997

SENATE BILL No. 333
By Committee on Utilities
2-14

AN ACT concerning assessment of expenses by the state corporation commission; amending K.S.A. 66-1502 and repealing the existing section.

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

Section 1. K.S.A. 66-1502 is hereby amended to read as follows: 66-1502. Whenever, in order to carry out the duties imposed upon it by law, the state corporation commission, in a proceeding upon its own motion, on complaint, or upon an application to it, shall deem it necessary to investigate any public utility or common carrier or make appraisals of the property of any public utility, such public utility or common carrier, in case the expenses reasonably attributable to such investigation or appraisal exceed the sum of $100, including both direct and indirect expenses incurred by the commission or its staff or by the citizens' utility ratepayer board, shall pay such expenses which shall be assessed, *beginning from the date of a proceeding upon its own motion, on complaint or upon an application to it is filed,* against such public utility or common carrier by the commission~~, except that no such public utility or common carrier shall be assessed for payment of such expenses, unless prior to the incurring of any such expense~~. The state corporation commission shall give such public utility or common carrier notice and opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act. At such hearing, the public utility or common carrier may be heard as to the necessity of such investigation or appraisal and may show cause, if any, why such investigation or appraisal should not be made or why the costs thereof should not be assessed against such public utility or common carrier. The finding of the commission as to the necessity of the investigation or appraisal and the assessment of the expenses thereof shall be conclusive, except that no such public utility or common carrier shall be liable for payment of any such expenses incurred by such state

corporation commission or citizens' utility ratepayer board in connection with any proceeding before or within the jurisdiction of ~~the interstate commerce commission or other~~ *any* federal regulatory body. The commission shall ascertain the expenses of any such investigation or appraisal and by order assess such expenses against the public utility

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or common carrier investigated or whose property is appraised in such proceeding, and shall render a bill therefor, by ~~registered~~ *United States* mail, to the public utility or common carrier, either at the conclusion of the investigation or appraisal, or from time to time during such investigation or appraisal. Such bill shall constitute notice of such assessment and demand of payment thereof. Upon a bill rendered to such public utility or common carrier, within 15 days after the mailing thereof, such public utility or common carrier shall pay to the commission the amount of the assessment for which it is billed. Such payment when made shall be transmitted by the commission to the state treasurer, who shall credit the same to the appropriations made for the use of such commission or for the use of the citizens' utility ratepayer board. The total amount, in any one state fiscal year for which any public utility or common carrier shall be assessed under the provisions of this section shall not exceed ~~3/5 of 1% of its gross operating revenues derived from intrastate operations as reflected in the last annual report filed with the commission pursuant to K.S.A. 66-123, and amendments thereto, prior to the beginning of the commission's fiscal year. actual expenses, including both direct and indirect expenses incurred by the commission or its staff or by the citizens' utility ratepayer board.~~ the greater of $250,000 or 3/5 of 1% of its gross operating revenues derived from intrastate operations as reflected in the last annual report filed with the commission pursuant to K.S.A. 66-123 and amendments thereto, prior to the beginning of the commission's fiscal year. The commission may render bills in one fiscal year for costs incurred within a previous fiscal year.

When such expenses are incurred by the commission in order to carry out the duties imposed upon it by law, the state corporation commission, in a proceeding upon its own motion, on complaint or upon an application to it, shall deem it necessary to investigate certain electric cooperative public utilities subject to commission jurisdiction pursuant to K.S.A. 66-104b(b) and 66-104d(f) and amendments thereto, such electric cooperative public utilities shall be assessed the same as all public utilities and common carriers under the jurisdiction of the state corporation commission pursuant to K.S.A. 66-104 and amendments thereto.

Sec. 2. K.S.A. 66-1502 is hereby repealed.

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

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