

Approved: Feb. 9, 1998  
Date

MINUTES OF THE SENATE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Pat Ranson at 1:30 p.m. on January 28, 1998 in Room 531-N of the Capitol.

All members were present except:

Sens. Jones, Hensley and Lee were excused

Committee staff present: Lynne Holt, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Jeanne Eudaley, Committee Secretary  
Chris Courtwright, Legislative Research Department

Conferees appearing before the committee:  
none

Others attending: See attached list

Sen. Ranson announced the committee will hear a briefing regarding:

**SB 436-establishing the joint committee on taxation of public utilities to study and make recommendations regarding taxation of deregulated electric generation public utilities**

She called on Mary Torrence to briefly explain the bill, and she stated the bill establishes a joint committee to study and analyze tax implications of deregulation and specifically the tax impact on the state economy. She explained the bill is a part of the Retail Wheeling Task Force Report and that the date of expiration for the committee has been changed to July 1, 1999, so that the committee could assist and direct legislation during the next session. Ms. Torrence referred to the fiscal note attached to the bill, and stated that the report from the committee is due the first day of next session. Sen. Ranson stated another change is in the make-up of the committee to include legislators only, since they are the ones who will be debating it and have to vote on it; that she expects other members of the Task Force will attend most meetings and will be present to have input into the legislation.

Sen. Ranson then referred to an article entitled "Tax implications seen as "sleeping giant" of industry restructuring", which appeared in the Electric Utility Week publication, dated December 22, 1997 - copies were distributed to committee members.

Sen. Barone questioned whether the bill includes all utility taxes, or if the intent is to consider electric utilities only - he was under the impression it would include all utilities. Sen. Ranson clarified that this bill will relate to electric utilities only.

Sen. Ranson then introduced Chris Courtwright, of the Legislative Research Department, who briefed the committee on **SB 436 (Attachment 1)**. Two issues he emphasized were that he believes the changes they are considering will have to be constitutional, not statutory changes. Sen. Ranson stated the bill from the Task Force does change the statutory language and exempts competitive electricity providers from the definition of a public utility. He also discussed with the committee the tax structure and how deregulation will affect it, central assessments vs. local assessments and changes in looking at utility inventories and their tax structure. Mr. Courtwright referred to assessment levels and classifications (**Attachment 2**) and went over those with the committee. Mr. Courtwright explained tax shifts in the mill assessments across the states and how that differs from county to county and the impact they will feel with deregulation. He also discussed the fact that assessed valuation could drop an estimated \$30 million statewide and referred to the fiscal note attached to the bill.

Mr. Courtwright also discussed corporate income taxes and establishing nexus, business income and local and franchise taxes. He pointed out the variance from county to county and a discussion of county local and sales taxes and the fact that some counties have no sales taxes. He emphasized the importance of a level playing field so there is no tax advantage to some providers. He compared how taxes are assessed and how that varies from state to state. Two other taxes he mentioned are unemployment compensation tax and taxes on intangible assets. He raised other legal questions regarding the tax issue and how complex the issue is and the

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON UTILITIES, Room 531- -N, Statehouse, at 1:30 p.m. on January 28, 1998.

problem of a constitutional amendment. He also stated the bill has prompted Shirley Sicilian in the Property Valuation Department to come up with a hypothetical firm model.

In answer to a question from Sen. Barone regarding taxes levied on generation, except for agriculture and residential use, and if taxes should be considered with the bill, Mr. Courtwright indicated it is a policy decision; but it seems that the tax situation needs to be worked with the bill, and that the Task Force Report has given priority to a level playing field.

Sen. Ranson announced that tomorrow the committee will hear from Chris McKenzie and Shirley Sicilian, who will have tax projections.

Sen. Ranson referred the committee to Minutes of the meetings of January 20 and 21 (Attachment 3). Sen. Clark made a motion to approve the Minutes, and it was seconded by Sen. Salisbury; the Minutes were approved.

Meeting was adjourned at 2:20.

The next meeting is scheduled for January 29, 1998.

# SENATE UTILITIES COMMITTEE GUEST LIST

DATE: JAN. 28, 1998

NAME	REPRESENTING
Larrie Ann Brown	KS Govt Consult
Amy A. Campbell	Midwest Energy
DAVID SCHNEWERS	WESTERN RESOURCES
Caree Reason	Western Resource
BRUCE GRAHAM	KEPCO
JON MICES	KEC
Dave Holthaus	WR
Walker Hendrix	CURB
Jim Ludwig	Western Resources
Julie Hein	Hein & Weir
Jo Long	UtiliCorp limited
David Bybee	KDOCH
Larry Holloway	KCC
Tom Bruno	Allen & Assoc.
Ryn Caches	McGill & Assn.
Kim Mulley	League of KS municipalities
Chris McKenzie	"
Leslie Kaufman	Ks Farm Bureau
Mike Beem	Ks LVSTK Assn



Chris Courtney 2007  
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ATTACH. 1

If under retail wheeling, the generation component of what is under current law a regulated vertically-integrated utility has been unbundled into an affiliate or spun off, it would no longer be price-regulated and would be competing with other nonregulated electricity suppliers for retail sales to consumers.

Real and personal property of public utilities is assessed at 33 percent, while commercial and industrial real property is assessed at 25 percent of fair market value and commercial and industrial machinery and equipment is assessed at 25 percent of retail cost when new, depreciated.

An AG's opinion relating to long distance phone companies noted that "the Legislature may define what is meant by public utility and commercial and industrial machinery and equipment as long as those definitions are consistent with the commonly understood meaning of those terms at the time the current version of Article 11, Section 1 was adopted." AT THE TIME Did voters in 1992 have any idea of retail wheeling? Arguably, no. Since the utility inventory issue was addressed explicitly.

So a fix may have to be constitutional, not statutory.

What if constitutional amendment goes down?

Can a tax "incentive" or credit package be structured to help level the property tax playing field?

\$30 million change in assessed valuation means a tax shift onto all other classes of property, especially residential. (School finance fiscal note of about \$10 million) Tax shift could be dramatic in certain counties. Hypothetical data from Shirley indicated shifts of up to 27 mills in power plant counties.

Issue of central assessment versus local assessment. Choice of continuing to allow the spun off generation components to be assessed by PVD or having each county appraiser do it. The latter would imply increased work load for county appraisers.

Under current law, every single desk and computer in theory has been valued as part of the overall valuation of the utility as a business. But the reality is that utility property is valued as a "going concern" and not as a set of individual assets. Extraordinary difficulty in valuing machinery and equipment -- for either PVD or county appraisers if adequate records had not been maintained as to date of purchase of every item over \$250.

Utility inventories which now are

As for the corporation income tax, sufficient "nexus" is established when a corporation derives income from sources within the state, owns or leases property in Kansas, employs personnel in Kansas, or has other capital in the state. Subject to certain limitations set by the U.S. Constitution, the state can define nexus for corporation income tax and also sales tax purposes.

Business vs Non-Business Income – Business income is apportioned to all states a taxpayer does

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business in, while non-business income is generally allocated entirely to the state where the corporation is domiciled. Pursuant to 1996 legislation, Kansas-domiciled corporations may elect to have certain income from the acquisition, management, use or disposition of tangible or intangible property treated as business income and apportioned – but they are then locked into this option for 10 years. So a Kansas-domiciled corporation making such an election would be required to similarly apportion a major capital loss occurring three years later – even if they would prefer at that point in time to allocate the loss entirely within Kansas. A non-Kansas domiciled corporation could conceivably have a tax advantage under such circumstances if the other state allowed them to allocate their loss entirely against that state's income tax.

Task Force bill would have required establishment of an office in Kansas as a prerequisite to obtaining a competitive provider's license in an effort to be certain entities wheeling electricity in from outside Kansas would have nexus. Another option suggested was that a use tax be applied to the use of electricity or gas distributed through in-state lines, mains, or pipes.

Differences between state and local sales tax base may be an issue. Residential and agricultural utility services are exempt from the state but NOT local sales taxes. So in terms of issues surrounding the requirements for service providers to collect sales taxes, the local sales taxes may be somewhat magnified in importance relative to the state tax. As of October 1, 1997, 155 cities and 71 counties were imposing local sales taxes. The combined local sales tax rate (city plus county) is at least 1.75 percent in 67 cities, in the part of Manhattan in Riley County, in the part of St Mary's in Wabaunsee County, and in the entirety of Jefferson, Cheyenne, Wichita, and Ottawa counties. There are no local sales taxes – county or city – imposed anywhere within eight counties – Clark, Coffey, Comanche, Hodgeman, Marshall, Sheridan, Smith, and Wallace). Presumably an entity wheeling into Kansas from outside the state will have to develop the administrative sophistication to grapple with the crazy-quilt of intersecting and overlapping local sales taxes.

In addition to residential and ag exemptions, other exemptions apply to both the state and local sales tax bases – the sale of utility services for use in severing oil; to certain properties also exempt from property tax; and sales consumed in the production or manufacture of tangible personal property.

To level the playing field would involve taking into account not just property, income and sales taxes, but also all other state and local taxes, including franchise fees, local intangible taxes, etc. Chris McKenzie is going to talk about local tax issues tomorrow. At the state level, that certainly would include corporation franchise taxes and maybe even unemployment compensation contributions or "taxes".

Back to the property tax, some utility inventory taxes may have to be abolished to assure a level playing field, and the current valuation going concern method under KSA 79-5a04 also requires consideration of intangible assets which are not subject to property tax when owned by competitive businesses.

Complexities associated with all this level the playing field stuff are going to prompt Department of Revenue to do additional work developing a hypothetical firm model. Legal questions will involve substantial consultation with Don Hayward as well as

ASSESSMENT LEVELS IN CLASSIFICATION AMENDMENTS

(Article 11, Section 1 – Kansas Constitution)

Property Class	(1986 Amendment)	(1992 Amendment)
	Tax Years 1989-1992	Tax Years 1993 and Thereafter
Residential Real	12.0%	11.5% <sup>(a)</sup>
Agricultural Land	30.0% <sup>(b)</sup>	30.0% <sup>(b)</sup>
Vacant Lots	12.0%	12.0%
Commercial and Industrial Real	30.0%	25.0%
Agricultural Improvements	30.0%	25.0%
Certain Not-for-Profit Real	30.0%	12.0% <sup>(c)</sup>
Utility Real	30.0%	33.0% <sup>(d)</sup>
Other Real	30.0%	30.0%
Mobile Homes Used as Residences	12.0%	11.5%
Low Production Mineral Leaseholds	30.0%	25.0% <sup>(e)</sup>
All Other Mineral Leaseholds	30.0%	30.0%
Utility Personal	30.0%	33.0% <sup>(d)</sup>
Utility Inventories	exempt	33.0%
Motor Vehicles	30.0%	30.0%
Commercial and Industrial Machinery and Equipment	20.0% <sup>(f)</sup>	25.0% <sup>(f)</sup>
Inventory		
Merchants	exempt	exempt
Manufacturers	exempt	exempt
Livestock	exempt	exempt
Other Personal	30.0%	30.0% <sup>(g)</sup>

- a) Includes mobile home parks.
- b) Valued based on its agricultural income or productivity (use-value) rather than its market value.
- c) Includes only property owned and operated by those not-for-profit organizations included in this subclass by law.
- d) Railroad property at average of commercial and industrial.
- e) Oil leaseholds with average daily production of five barrels or less and gas leaseholds with average daily production of 100 mcf or less.
- f) Valued by retail cost when new, depreciated.
- g) Legislature may separately classify "recreational vehicles."

**Exemptions:** Article 11, Section 1 of the Kansas Constitution exempts all property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes; farm machinery and equipment; merchants' and manufacturers' inventories, other

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Approved: JAN. 28, 1998  
Date

MINUTES OF THE SENATE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Pat Ranson at 1:30 p.m. on January 20, 1998 in Room 531-N of the Capitol.

All members were present except:  
Sens. Hensley and Steffes were excused

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

Conferees appearing before the committee:  
David Dittmore, Director of Utilities, Kansas Corporation Commission

Others attending: See attached list

Sen. Ranson referred the committees' attention to Minutes of the Meeting dated January 13 and 14 (Attachment 1). Sen. Barone made a motion the Minutes be approved, and it was seconded by Sen. Lee; the Minutes were approved.

Sen. Ranson reminded members of the deadlines for drafting requests for bills, which are: January 26 for individuals and February 2 for committees.

Sen. Ranson then introduced David Dittmore, who presented information to the committee regarding acquisitions and mergers. Mr. Dittmore referred to the Western Resources and KCPL merger and stated that negotiations have been delayed because a "fairness" opinion was not provided by Western Resources. He stated that confidential discussions are taking place, and shareholders are putting pressure to go forward on the matter.

Mr. Dittmore also stated the Commission issued an Order last week suspending the procedural schedule under provisions of the 240-day clock, with a joint motion between staff and the company to file monthly status reports. He also commented on the Western Resources and OneOK stock agreement after settling outstanding issues. Provisions in the agreement are: To strive for a high standard in quality of service, with penalties imposed if not upheld; No rate increase by OneOK for three years (does not apply to the gas cost portion); and Western Resources demonstrated it has taken steps to insure electrical costs will not go up.

Mr. Dittmore also commented on the Atmos-United Cities acquisition, which has been approved by the KCC (Atmos had acquired Greeley Gas previously and apparently will be operating under the name "Greeley Gas). He stated they will be closing their business office and relocating their customer call center to Amarillo, Texas, but customers will be able to pay bills at pay stations. Atmos stated they will be allocating additional money to upgrade their customer service information system.

Sen. Ranson asked if there were questions, and Sen. Morris stated he has heard many complaints dealing with the fact some utilities have no local office and have set up toll-free numbers. Mr. Dittmore responded that companies have closed offices because of cutting operating costs and the Commission is concerned about the quality of service and does monitor the response time to emergency calls. Sen. Clark stated an experience from a constituent, who was on "hold" for 22 minutes and asked if the Commission conducted surveys. Mr. Dittmore asked which utility he was referring to, and he responded "KN". Mr. Dittmore stated they have not heard complaints regarding quality of service against that utility; however, the Commission does look at trends and has a toll-free number for customer complaints. Sen. Clark added he understood KN has no local employees and very little equipment to install gas lines, and asked Mr. Dittmore if there are requirements in the certificate for local employees or offices. Mr. Dittmore stated there is a requirement for handling of emergency situations. Sen. Lee then asked how the Commission determines quality of service, and Mr. Dittmore responded there are general terms and conditions required in the utility tariffs. Sen. Ranson discussed service issues and asked for the KCC complaint line number, which is 1-800-662-0027.

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Mr. Dittmore briefly mentioned the KN-Midwest Energy acquisition, and the committee continued by discussing with Mr. Dittmore customer complaints, service standards and quality of service.

Sen. Ranson directed the committee's attention to the Retail Wheeling Task Force Report, and recognized guests of the committee who served as members of the Task Force, as well as Sens. Lee, Brownlee and herself, who also served on the Task Force. Sen. Ranson then referred to **HB 2619--related to electric utility industry and competition in retail sales;enacting the electric utility restructuring act**, and explained the bill has been introduced in the House.

Sen. Ranson introduced Lynne Holt, who distributed the following to the committee:

1. Map showing electric industry restructuring (Attachment 2)
2. Map entitled Electric certified areas, transmission lines and power plants in Kansas (Attachment 3)
3. Retail Wheeling and Local Government, understanding deregulation (Attachment 4)
4. Analysis of the Impacts of Retail Wheeling on the State of Kansas (Attachment 5)
5. Tax Implications of Electric Industry Restructuring (Attachment 6)
6. Consumer's Dictionary for Electric Competition (Attachment 7)

Ms. Holt also furnished copies of an article entitled, "Electric power industry braces for deregulation" which appeared in the St. Louis Dispatch on December 28, 1997. She reviewed Part II of the Report, which includes membership of the Task Force and the Scope of Activity. She advised the committee that a public hearing was held in October, 1997, where a preliminary version of the bill was discussed, and the Report finalized in November, 1997. She stated the Report was not entirely endorsed by all members, and there is a Minority Report (Attachment 3). Ms. Holt also called the committee's attention to the Profile of electric service providers (Page 8). She also referred to the map showing electric industry restructuring (Attachment 2) and stated there is a direct correlation between pressure exerted by the large companies in the states with higher rates and the enactment of deregulation legislation.

Ms. Holt began her Overview of the Final Report of the Task Force on Retail Wheeling (available from the Kansas Research Department and is also on the Internet, except for attachments, which may be ordered from the Research Department) by referring to Part V, Pages 34 -39, Reports reviewed by the Retail Wheeling Task Force. She also referred to Attachment 4 of the Report, outlining the number of customers served and Attachment 5, which shows projections of estimated distribution costs for MidWest Energy and Kansas investor owned utilities, and pointed out it costs less for large companies than coops to distribute electrical power. It was pointed out the municipals have not done a study and cautioned comparing oranges to apples. Sen. Ranson stated the committee will hear more on the subject when it discusses unbundling.

Ms. Holt then referred to Part IV of the Report, policy issues and outlined retail wheeling legislation in various states and their implementation dates and problems encountered by some of those states. She also told of implications if implementation is delayed and arguments against implementation prior to July 2001.

Meeting adjourned at 2:30.

The next meeting is scheduled for January 21, 1998.

Approved: JAN. 28, 1998  
Date

## MINUTES OF THE SENATE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Pat Ranson at 1:30 p.m. on January 21, 1998 in Room 531-N of the Capitol.

All members were present except:  
Sens. Jones and Pugh were excused

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

Conferees appearing before the committee:  
Jim Widener, General Manager, KMEA, Overland Park

Others attending: See attached list

Sen. Ranson introduced Jim Widener, who presented a proposal (Attachment 1) to the committee. He stated the KMEA is the only agency organized under the statutory Act, and this proposal eliminates the restriction for membership of cities that were not "operating an electric generating system during the calendar year 1976". Sen. Barone made a motion the committee introduce this proposal as a bill, and it was seconded by Sen. Clark; the motion passed.

Sen. Ranson then presented a proposal to the committee for disclosure of certain components relating to electric bills, otherwise known as "unbundling". She stated there were two elements missing from the draft, the universal service charge and transition costs. Mary Torrence explained she left those out and explained they relate to the restructuring bill in the House. Sen. Ranson stated her reasons for including the two elements and committee discussion followed. Sen. Barone made a motion the two elements be added to the proposal, and it was seconded by Sen. Clark; the motion passed. Sen. Barone then made a motion the committee introduce it as a bill, and it was seconded by Sen. Clark; the motion passed.

Sen. Ranson explained a map has been distributed to the committee (Attachment 2), showing the average cost for electricity in cents per kilowatt-hour for 1996. She remarked the map shows the disparity across the state and gave the following costs: average municipal rate is 6.1 cents per kilowatt-hour; IOU's is 6.4 cents per kwh; coops is 8.6 cents per kwh. She announced the committee will talk about rate making, or the setting of rates, during discussion on deregulation. Sen. Steffes stated the 6.5 cents per kwh is high and questioned the way the figures are calculated, saying it is not as meaningful as basing it on the amount sold, or the raw numbers. He also stated that taxation is a critical element, and that Kansas is taxed at a high rate, and that those elements alter the rates. Sen. Ranson stated she has figures on the rates across the state and that it is a major economic development issue. Sen. Brownlee stated those statistics are given in the Retail Wheeling Report. Sen. Ranson asked Larry Holloway if a map could be presented to show the average kwh used by cities, and Mr. Holloway said that could be done. The committee continued by discussing rates and taxes.

Sen. Ranson gave the agenda for the remainder of the week and for next week.

Sen. Ranson introduced Lynne Holt, who continued the overview of the Retail Wheeling Task Force Report, beginning with "Municipal Utilities", Page 10 of the Report. She stated there was a consensus to exempt municipalities, with the reasons outlined on Page 11. She recommended a summary in the League of Municipalities Governing magazine, dated October, 1997. She discussed special issues related to electric cooperatives, on Page 12 and furnished copies outlining service areas of electric cooperatives and also lists of distribution cooperatives in the state (Attachment 2). There was discussion regarding both, and Sen. Ranson stated the decision of the Task Force was that municipal will not be in the deregulation process, unless they elect to do so. However, the cooperatives will be required to be involved in deregulation, unless they elect not to do so. Ms. Holt referred to investor- owned utilities listed on Page 8.

Ms. Holt began discussing stranded costs, on Page 13 of the Report, and stated it a difficult issue and involves the "market price" between willing buyers and sellers in an open marketplace. She stated there is no guarantee for a return under deregulation and pointed out that the estimated figures used for the market price has a bearing on the stranded costs. She cited various studies and calculations used to arrive at the recovery of costs, which are outlined in the Report

Meeting adjourned at 2:30.

Next meeting will be January 22, 1998