

Approved: MARCH 5, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Pat Ranson at 1:00 p.m. on February 19, 1998 in Room 123-S of the Capitol.

All members were present except:
Sen. Hensley was excused

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

Conferees appearing before the committee:
Gilbert Hanson, Special Consultant, Kansas Municipal Utilities
Jon Miles, Kansas Electric Cooperatives
Bruce Graham, Vice-President, Kansas Electric Power Cooperative, Inc.
Charlie Reese, Midwest Energy, Inc.
Pete Loux
Larry Holloway, Chief of Electric Operation, Corporation Commission

Others attending: See attached list

Sen. Ranson announced the committee will continue hearing testimony on:

SB 589-electric cooperative public utilities; jurisdiction of corporation commission

The following appeared as proponents:
Jon Miles, (Attachment 1)
Gilbert Hanson, (Attachment 2)
Bruce Graham, (Attachment 3)

The committee questioned proponents, including Mr. Watkins, who testified yesterday. Sen. Barone questioned Mr. Miles regarding the number of coops and if they are regulated, and if Mr. Miles would agree with the same provision he has endorsed today regarding retail wheeling - that the rates can only be lowered - the rates cannot be raised. Sen. Brownlee also questioned him regarding member lists and the fact that in discussions while serving on the Retail Wheeling Task Force, coop member lists are guarded, and her concern was if the members of the coop can be contacted and remarked that the consumers need access.

Sen. Clark referred to page 2 of the bill and questioned Mr. Watkins as to how many board members are in Sunflower, and how many board members would be involved to petition a rate case. Mr. Watkins responded that Sunflower has six board members, KEPCO has 20. At that time, Sen. Clark referred to a rate schedule (Attachment 4) and asked Mr. Watkins to make a distinction between a member and a customer. They also discussed the requirement of a ten day notice to change rates, and Mr. Watkins stated they are required to give public notice and they also publish an announcement in local papers. Sen. Clark continued by questioning Mr. Watkins regarding rates, special contracts and who is notified regarding a change of rates. Mr. Watkins replied that the Board of Directors make such decisions, after study of the rate structure. Sen. Clark then asked Mr. Watkins who made the decision to make a contribution to a Senate leadership campaign fund. Mr. Watkins replied he did not know of the contribution, but could furnish information to the committee. He stated that he assumed the contribution had been made in keeping with company policies and that such policies are set and approved by the Board of Directors.

Sen. Lee asked why the coops are asking for deregulation now and stated she considered deregulating the coops is quite different than the deregulation issue being discussed relating to retail wheeling. Mr. Watkins stated his company has additional costs in Kansas and that the surrounding states do not regulate G and Ts and gave the status of financial obligations in surrounding states. Sen. Lee questioned Mr. Watkins in detail regarding Sunflower's default on debt in 1985 and its restructuring in 1988. Mr. Watkins gave the history of the restructuring and stated the reason for this bill is to remove a regulatory hurdle and lower the cost of the requirement for KCC approval once the federal government and members approve of the plan. They also discussed contracts and the Sunflower 1996 annual report, and Sen. Lee expressed concern with Sunflower

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON UTILITIES, Room ^{123-S}~~531-N~~, Statehouse, at ⁰⁰~~1:30~~ p.m.
on February 19, 1998.

management and the fact that Sunflower has to restructure its debt.

Sen. Ranson reminded the committee of time restraints and stated the committee should hear from opponents of the bill. They are:

Charles Reese, (Attachment 5)
Pete Loux, (Attachment 6)
Larry Holloway, (Attachment 7)

Committee members questioned opponents regarding proposed amendments, and Mr. Loux gave the committee historical data regarding Sunflower, the restructuring and the calculation of rates. Mr. Loux, who is a certified public accountant, stated concern over accounting procedures of Sunflower, but stated he has not filed a formal complaint with the American Institute of Certified Public Accountants.

Mr. Holloway gave a historical perspective and discussed the two proposed amendments and explained what part FERC would play in such a proposal. In answer to a question from Sen. Barone, he stated that Sunflower has the authority to lower rates, once it is approved by its Board of Directors and members, and continued by explaining the difference between tariffs and contracts. Mr. Holloway also distributed information regarding the Dighton contract and the Hill City contract (Attachment 8). He also made available copies of the court cases previously discussed.

Time did not allow other opponents to appear; however, the committee received written testimony from the following opponents:

Sen. Stan Clark, (Attachment 9)
Walker Hendrix, (Attachment 10)
Don Schnacke, (Attachment 11)

Sen. Ranson stated her desire to meet at 1:00 in Room 123-S on Monday.

Meeting adjourned at 2:30.

The next meeting is scheduled for February 23, 1998.

Attach. 1

**TESTIMONY OF
KANSAS ELECTRIC COOPERATIVES, INC.
SENATE BILL 589**

**Kansas State Senate
Senate Utilities Committee**

Good afternoon, Madam Chair and members of the committee. My name is Jon Miles and I am the Director of Governmental Relations for Kansas Electric Cooperatives, Inc., the statewide association of rural electric cooperatives in Kansas. We are testifying in support of SB 589.

I want to say that I reiterate and support the comments made this afternoon by Earl Watkins of Sunflower. In the interest of time, I will not review those points except to say that we are supportive of the ability of cooperatives to self-govern where appropriate. The electric cooperatives, including the generation and transmission cooperatives such as Sunflower, are answerable to their member-owners, the ultimate consumers who pay the rates of the cooperatives. This member ownership gives the consumers the ultimate control over decisions made by the cooperatives through the election of trustees. Further, the provisions of K.S.A. 66-104d provide for notice to the membership and an opportunity to appear at board meetings before any rate changes could be effective for a deregulated cooperative.

As all of you are aware, Kansas Electric Cooperatives, Inc., sought passage of K.S.A. 66-104d during the 1992 legislative session. We believed that the electric cooperatives eligible to deregulate pursuant to that statute would act responsibly if they chose to deregulate. This has been proven to be true. We believe that the electric cooperatives that have deregulated have continued to act, through their constituent board of trustees, in a manner that serves the best interests of the membership. Likewise, the cooperatives have been mindful of those areas in

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which the Kansas Corporation Commission continues to regulate their operations and have attempted to develop and maintain a working relationship with Kansas Corporation Commission staff.

The ability to deregulate on a local option basis has saved a considerable amount of money for rural consumers of electric cooperatives. As this committee is aware, rural areas pay higher rates than urban areas, primarily due to the scarcity of population and higher power costs. We believe any proposal which would present an opportunity for cooperatives to lower rates, particularly in the area of power costs, should be approved by the Legislature. We believe that SB 589 presents such an opportunity..

Finally, we believe that the public supports initiatives such as is presented in SB 589. By way of illustration, the voting percentages for electric cooperatives choosing to deregulate are attached to this testimony. As you can see, the proposals to deregulate the distribution cooperatives passed by wide margins. No electric cooperative that has been deregulated has been faced with any initiative to re-regulate the cooperative.

Thank you for the opportunity to present our views today and for your consideration of SB 589.

**The 28 Kansas Rural Electric Cooperatives that have Deregulated
from Jurisdiction & Control of the Kansas Corporation Commission (KCC)**
February 1998

System:	Date of Deregulation:	Percent in Favor of Deregulation:
1. Flint Hills, Council Grove.....	October 1, 1992.....	66%
2. Nemaha-Marshall, Axtell.....	October 8, 1992.....	87%
3. Doniphan, Troy	October 19, 1992.....	81%
4. CMS, Meade.....	December 10, 1992.....	59%
5. Brown-Atchison, Horton	December 21, 1992.....	73%
6. Smoky Hill, Ellsworth	February 22, 1993.....	82%
7. Ark Valley, So. Hutchinson	February 22, 1993.....	73%
8. Leavenworth-Jefferson, McLouth.....	March 23, 1993.....	77%
9. United, Iola*	April 20, 1993.....	75%
10. Northwest Kansas, Bird City**	April , 1993.....	79%
11. Ninnescah, Pratt	March 30, 1993.....	82%
12. Jewell-Mitchell, Mankato	April 23, 1993.....	82%
13. C & W, Clay Center.....	August 16, 1993.....	86%
14. Radiant, Fredonia	August 19, 1993.....	63%
15. N C K, Belleville.....	September 1, 1993.....	84%
16. Lyon-Coffey, Burlington.....	April 7, 1994.....	72%
17. Norton-Decatur, Norton**	April 16, 1994.....	82%
18. Alfalfa, Cherokee, OK.....	May 2, 1994.....	92%
19. Butler, El Dorado	June 24, 1994.....	83%
20. Lane-Scott, Dighton	July 29, 1994.....	81%
21. Sekan, Girard*	November 15, 1994.....	76%
22. Twin-Valley, Altamont.....	November 14, 1994.....	72%
23. Western, WaKeeney.....	November 17, 1994.....	89%
24. Caney Valley, Cedar Vale	April 11, 1995.....	53%
25. D S & O, Solomon	March 20, 1996.....	87%
26. Sumner-Cowley, Wellington.....	April 3, 1996.....	85%
27. Sedgwick County, Cheney.....	September 23, 1996.....	87%
28. P R & W, Wamego	October 10, 1996.....	74%

*United & Sekan Consolidated to form Heartland, January 1, 1997

**Northwest Kansas & Norton-Decatur Consolidated to form Prairie Land, January 1, 1997

Since enactment of the law on July 1, 1992, to permit distribution rural electric cooperatives with less than 15,000 meters to deregulate from the jurisdiction and control of the KCC, 28 systems have conducted membership elections and it has never been rejected! The average approval has been by 76.7% of those voting in the elections.

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Attach. 2

TESTIMONY ON SB 589
Before Senate Utilities Committee
February 18, 1998

Madam Chair, members of the committee, I am Gilbert Hanson, Jr., special consultant to Kansas Municipal Utilities, Inc. and the Kansas Municipal Energy Agency.

KMU and KMEA support SB 589 with two amendments proposed by the rural electric cooperatives supporting the bill. Those amendments are shown below:

On page 2, line 13 and 14 by striking the italic language and adding "not regulated by the Federal Energy Regulatory Commission."

On page 3, line 5 by inserting "(i) Any generation and transmission cooperative electing to be exempt under this section shall not increase the tariff rates charged to its wholesale customers above the levels in effect as of January 1, 1998 without the approval of the state corporation commission."

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Attach. 7



Kansas Electric Power Cooperative, Inc.

**Testimony on S.B. 589
Before the Senate Utilities Committee
Presented by Bruce Graham, KEPCo Staff
February 18, 1998**

Thank you members of the Senate Utilities Committee for the opportunity to speak in support of S.B. 589. My name is Bruce Graham, Vice President of Member Relations and External Affairs for the Kansas Electric Power Cooperative, Inc. (KEPCo).

KEPCo is a non-profit generation and transmission electric cooperative. Headquartered in Topeka, it is KEPCo's responsibility to procure an adequate and reliable power supply for its 22 rural electric cooperative distribution members in Kansas. KEPCo's power supply resources consist of six percent ownership in the Wolf Creek Generating Station, hydro allocations from the Western Area Power Administration and the Southwestern Power Administration, along with power purchases from regional utilities.

KEPCo and a majority of other electric cooperatives in Kansas have been cautious about retail wheeling since this debate started several years ago. We've expressed concern that there's more potential for risk than reward and that rural customers have often been the losers in other industry restructurings. We've stated our belief that a market rate doesn't automatically mean a lower rate and questioned whether there will be competition in rural areas of the state over the long run--or just the first couple years while they drive competitors out of business.

KEPCo was proud to have been a member of the Retail Wheeling Task Force and worked hard with the group to thoughtfully examine the many sides of each issue. Even though we believe the Task Force was very productive, there are still a number of concerns including the level of regulation required not only to implement retail wheeling, but as we work today to prepare for customer choice.

Regardless of the retail wheeling threat, KEPCo has been working hard to reduce its costs. **KEPCo's rates have declined by nearly 10 percent in the past decade through aggressive efforts to refinance loans, renegotiate purchase power and transmission agreements, and management efforts to reduce administrative expenses.** In fact, as a non-profit electric cooperative, revenue above that necessary to meet expenses is credited as patronage capital and recent financial stability has prompted the KEPCo Board to approve distribution

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KEPCo Testimony -- S.B. 589 (page 2)

of capital credits in cash the last two years. In January 1997, KEPCo returned \$4.5 million to its member cooperatives. That effectively reduced the average rate to KEPCo members in 1996 from 5.3 cents to 5 cents. Last month, KEPCo again returned capital credits to its members as well as pre-paid some higher interest rate debt--a \$5.2 million transaction.

However, even with these efforts, our rates remain above all projections for market prices under retail wheeling. Therefore, KEPCo supports S.B. 589 which would extend to the four largest non-profit, member owned and directed cooperatives the same authority to set their own rates that was granted by the Kansas Legislature in 1992 to all other electric cooperatives. This act does not affect territory or provide any competitive advantage--it only gives KEPCo the option to adjust and prepare for competition free from the regulatory authority over G&T rates which only a handful of states still mandate. Another important thing to remember is that KEPCo cannot sell at retail like Western Resources or Utilicorp, we only sell power at wholesale to our 22 member cooperatives. In all matters, ratemaking or otherwise, those member cooperatives are the consumer's representative on KEPCo's Board. Every effort to cut costs will benefit our member cooperatives and in turn, their consumers.

Please be assured that we don't have a problem with KCC regulation today, however, KEPCo's average annual expense is nearly \$100,000 for KCC fees even though we don't have any significant regulatory issues before the body. Our primary goal going forward is to be more nimble. Compared to any other utility in the state, KEPCo and Sunflower probably have the farthest to travel on the road to become a viable power supply competitor under retail wheeling. KEPCo believes it can prepare itself to be a supplier of choice here in Kansas upon the advent of retail wheeling but part of that solution will be the freedom to act without the burden of regulation. With that relief, we believe KEPCo can accelerate the competitive steps desired by our members in order to assure that in the future there is a Kansas power supplier with rural roots and a record of reliable service.

We do ask that the Committee consider one amendment on page 2 line 24 to reduce from 40 percent the number of G&T members required to file a protest for review by the KCC. For Sunflower, with six members, the current language translates to a requirement of three members to call for a KCC investigation. For KEPCo, 40 percent of our 22 members would require nine voices to file for a review. KEPCo has a history of working to resolve the concerns of every member and would be very comfortable if the language was amended to simply state ... *or by not less than three of the members of a generation and transmission cooperative.*

Thank you for the opportunity to testify in support of S.B. 589.

KANSAS SALES OF ELECTRICITY BY RATE SCHEDULES

1. Report below for each rate schedule in effect in Kansas during the year the Kwh sales and other data relating thereto. Provide subheadings for each revenue account you have listed on page 28, beginning with Account 440. If the sales under any rate schedule are classified in more than one revenue account, list the rate schedule and sales data under each applicable revenue account subheading.
2. In instances when the same customers are served under more than one rate schedule in the same revenue account classification, the entries in column (d) should denote the duplication in number of reported customers.
3. The average number of customers should be the number of bills rendered during the year divided by the number of billing periods (12 if all billings are made monthly).
4. In reporting for Account 442 - Commercial and Industrial Sales, provide subheadings thereunder to classify such sales as Small and Large according to the classification regularly used by the respondent.

Line No.	Number and Title of Rate Schedule (a)	Kwh Sold (b)	Revenue (c)	Average Number of Customers (d)	Kwh of Sales per Customer (e)	Revenue per Kwh Sold (f)
1.	WHM95	837,622,387	51,790,561	8	104,702,798	0.06183
2.	WHM-ECON-94&95*	48,879,000	1,685,060	16	3,054,938	0.03447
3.	LG-IND*	1,348,142	97,563	1	1,348,142	0.07237
4.	Municipals	51,283,901	1,174,190	3	17,094,634	0.02290
5.	KMEA	11,572,848	674,528	1	11,572,848	0.05829
6.	WestPlains Energy	635,955,000	10,721,859	1	635,955,000	0.01686
7.	Midwest Energy	44,911,000	751,164	1	44,911,000	0.01673
8.	KEPCo	36,321,610	802,988	1	36,321,610	0.02211
9.	City of Hill City	8,486,457	118,810	1	8,486,457	0.01400
10.	Western Resources	1,600,000	64,000	1	1,600,000	0.04000
11.	Special Contracts/Other*	455,012,138	21,075,564	10	45,501,214	0.04632
12.	ECA Clearing	0	(76,123)	0	0	0.00000
13.						
14.	TOTAL	2,132,992,483	88,880,164	44.0		0.04167
15.						
16.						
17.						
18.						
19.						
20.						
21.						
22.						
23.						
24.						
25.						
26.						
27.						
28.						
29.	* Customers also included in WHM-95					
30.						
31.						
32.						

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ELECTRIC OPERATING REVENUES (Account 400)

1. Report below the amount of operating revenues for the year for each prescribed account and the account of increase or decrease over the preceding year. Show decreases in parenthesis.
2. Number of customers should be reported on the basis of number of meters, plus number of flat rate accounts, except that where separate meter readings are added for billing purposes, one customer should be counted for each group of meters so added. The average number of customers means the average of the 12 figures at the close of each month. If the customer count in the residential service classification includes customers more than once because of special services, such as water heating, etc., indicate by footnote the number of such duplicate customers included in the classification.
3. Unmetered sales should be included below. The details of such sales should be given in a footnote.

Line No.	Account (a)	See Pg. No. (b)	OPERATING REVENUES		KILOWATT-HOURS SOLD		AVG NO CUST/MO	
			Amount for Year (c)	Increase or Decrease from Preceding Year (d)	Amount for Year (e)	Increase or Decrease from Preceding Year (f)	No. for Year (g)	Increase or Decrease from Previous Year (h)
KANSAS SALES OF ELECTRICITY								
1.	(440) Residential Sales							
2.	(441) Irrigation Sales							
3.	(442) Commercial and Industrial Sales							
4.	(444) Public Street & Highway Lighting							
5.	(445) Sales Pub Bldgs & Other Pub Author.							
6.	Total Sales to Ultimate Consumers (Lines 1 to 5, inclusive)							
7.	(447) Sales for Resale		88,880,164	4,454,462	2,132,992,483	164,612,175	16	1
8.	Total Kansas Sales of Electricity (Lines 6 and 7)		88,880,164	4,454,462	2,132,992,483	164,612,175	16	1
OTHER KANSAS OPERATING REVENUES								
9.	(450) Forfeited Discounts							
9a.	(451) Misc. Service Revenues							
10.	(454) Rent from Electric Properties		60,154	0				
11.	(456) Other Electric Revenues		911,276	155,892				
TOTAL KANSAS OPERATING REVENUES								
12.	Total Kansas Sales of Electricity Plus Other Kansas Op. Rev. (Lines 8-11)		89,851,594	4,610,354				
TOTAL COMPANY OPERATING REVENUES								
13.	Total Electric Operating Revenues Outside of Kansas		4,570,928	(1,504,002)				
14.	Total Company Electric Operating Revenues (Lines 12 and 13)		94,422,522	3,106,352				

Footnotes (See Instructions 2 & 3):
 Note 1 - included in line 1, column (g) are _____ customers with electric space heating.

SALES FOR RESALE (Account 447)

Report sales during year to other electric utilities and to cities or other public authorities for distribution to ultimate consumers. If a contract covers several points of delivery and small amounts of electric energy are delivered at each point, such sales may be grouped.

Line No.	Item (a)	Show Sales Data Separately by Purchaser and Point of Delivery				Total Sales for Resale (f)
		(b)	(c)	(d)	(e)	
1.	Name of Purchaser	Midwest Energy	Lane-Scott	Northwest	Norton-Decatur	Continued
2.	Rate Schedule Designation	WHM-95	WHM-95	WHM-95	WHM-95	
3.	Point of Delivery	11 Meters	4 Meters	9 Meters	11 Meters	
4.	KW or KVA of Demand: (Specify KW or KVA)	KW	KW	KW	KW	
	(a) Contract demand	N/A	N/A	N/A	N/A	
	(b) Billing demand	CP	CP	CP	CP	
	(c) Annual maximum demand	12,013	10,697	6,107	11,482	
5.	Type of Demand Reading (instantaneous, 15, 30, or 60 minutes integrated)	30 Minute Integrated	30 Minute Integrated	30 Minute Integrated	30 Minute Integrated	
6.	Voltage at which delivered	115 KV	115 KV	115 KV	115 KV	
7.	Number of Kilowatt hours sold annually	58,576,839	64,556,676	25,615,613	55,972,089	
8.	Revenue from Sales					
	(a) Demand charges	1,609,868	1,780,520	744,125	1,623,700	
	(b) Energy	2,711,395	3,066,885	1,221,127	2,655,798	
	(c) Other charges	(652,301)	(739,171)	(281,981)	(629,439)	
	(d) Total Revenue	3,668,962	4,108,234	1,683,271	3,650,059	
9.	Revenue per KWH (Item 8 (d) divided by Item 7) MILLS	62.64	63.64	65.71	65.21	

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SALES FOR RESALE (Account 447)

Report sales during year to other electric utilities and to cities or other public authorities for distribution to ultimate consumers. If a contract covers several points of delivery and small amounts of electric energy are delivered at each point, such sales may be grouped.

Line No.	Item (a)	Show Sales Data Separately by Purchaser and Point of Delivery				Total Sales for Resale (f)
		(b)	(c)	(d)	(e)	
1.	Name of Purchaser	Pioneer	Victory	Western	Wheatland	Continued
2.	Rate Schedule Designation	WHM-95	WHM-95	WHM-95	WHM-95	
3.	Point of Delivery	18 Meters	2 Meters	15 Meters	17 Meters	
4.	KW or KVA of Demand: (Specify KW or KVA)	KW	KW	KW	KW	
	(a) Contract demand	N/A	N/A	N/A	N/A	
	(b) Billing demand	CP	CP	CP	CP	
	(c) Annual maximum demand	45,075	3,264	15,901	53,255	
5.	Type of Demand Reading (instantaneous, 15, 30, or 60 minutes integrated)	30 Minute Integrated	30 Minute Integrated	30 Minute Integrated	30 Minute Integrated	
6.	Voltage at which delivered	115 KV	115 KV	115 KV	115 KV	
7.	Number of Kilowatt hours sold annually	241,944,461	13,833,268	107,773,090	269,350,351	
8.	Revenue from Sales					
	(a) Demand charges	5,913,527	378,510	2,819,693	7,888,257	
	(b) Energy	10,690,774	625,568	5,148,141	12,408,502	
	(c) Other charges	(2,736,764)	(153,846)	(1,222,814)	(3,079,513)	
	(d) Total Revenue	13,867,537	850,232	6,745,020	17,217,246	
9.	Revenue per KWH (Item 8 (d) divided by Item 7) MILLS	57.32	61.46	62.59	63.92	

SALES FOR RESALE (Account 447)

Report sales during year to other electric utilities and to cities or other public authorities for distribution to ultimate consumers. If a contract covers several points of delivery and small amounts of electric energy are delivered at each point, such sales may be grouped.

Line No.	Item (a)	Show Sales Data Separately by Purchaser and Point of Delivery				Total Sales for Resale (f)
		(b)	(c)	(d)	(e)	
1.	Name of Purchaser	ECA Revenue	Special			Total Member Coops
2.	Rate Schedule Designation	Clearing	Contracts			
3.	Point of Delivery	Unbilled Revenue	26 Meters			
4.	KW or KVA of Demand: (Specify KW or KVA)	N/A	KW			
	(a) Contract demand	N/A	N/A			
	(b) Billing demand	N/A	N/A			
	(c) Annual maximum demand	N/A	100,044			
5.	Type of Demand Reading (instantaneous, 15, 30, or 60 minutes integrated)	N/A	30 Minute Integrated			
6.	Voltage at which delivered	N/A	115 KV			
7.	Number of Kilowatt hours sold annually	N/A	505,239,280			1,342,861,667
8.	Revenue from Sales					
	(a) Demand charges	0	10,551,327			33,309,527
	(b) Energy	0	13,073,166			51,601,356
	(c) Other charges	(76,123)	(766,306)			(10,338,258)
	(d) Total Revenue	(76,123)	22,858,187			74,572,625
9.	Revenue per KWH (Item 8 (d) divided by Item 7) MILLS	N/A	45.24			55.53

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SALES FOR RESALE (Account 447)

Report sales during year to other electric utilities and to cities or other public authorities for distribution to ultimate consumers. If a contract covers several points of delivery and small amounts of electric energy are delivered at each point, such sales may be grouped.

Line No.	Item (a)	Show Sales Data Separately by Purchaser and Point of Delivery				Total Sales for Resale (f)
		(b)	(c)	(d)	(e)	
1.	Name of Purchaser	City of Goodland	City of Johnson	KMEA		Total Municipals
2.	Rate Schedule Designation	Contract	Contract	Contract		
3.	Point of Delivery	1 Meter	1 Meter	3 Meters		
4.	KW or KVA of Demand: (Specify KW or KVA)	KW	KW	KW		
	(a) Contract demand	N/A	N/A	3,090		
	(b) Billing demand	N/A	N/A	3,090		
	(c) Annual maximum demand	9,000	2,469	6,535		
5.	Type of Demand Reading (instantaneous, 15, 30, or 60 minutes integrated)	30 Minute Integrated	30 Minute Integrated	30 Minute Integrated		
6.	Voltage at which delivered	115 KV	115 KV	115 KV		
7.	Number of Kilowatt hours sold annually	39,528,000	11,755,901	11,572,848		62,856,749
8.	Revenue from Sales					
	(a) Demand charges	0	0	496,380		496,380
	(b) Energy	707,534	461,134	161,397		1,330,065
	(c) Other charges	5,522	0	16,751		22,273
	(d) Total Revenue	713,056	461,134	674,528		1,848,718
9.	Revenue per KWH (Item 8 (d) divided by Item 7) MILLS	18.04	39.23	58.29		29.41

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SALES FOR RESALE (Account 447)

Report sales during year to other electric utilities and to cities or other public authorities for distribution to ultimate consumers. If a contract covers several points of delivery and small amounts of electric energy are delivered at each point, such sales may be grouped.

Line No.	Item (a)	Show Sales Data Separately by Purchaser and Point of Delivery				Total Sales for Resale (f)
		(b)	(c)	(d)	(e)	
1.	Name of Purchaser	WestPlains Energy	Midwest Energy	KEPCo	NPPD	Continued
2.	Rate Schedule Designation	Contract	Contract	Contract	Contract	
3.	Point of Delivery	2 Meters	1 Meter	1 Meter	1 Meter	
4.	KW or KVA of Demand: (Specify KW or KVA)	KW	KW	KW	KW	
	(a) Contract demand	N/A	N/A	N/A	N/A	
	(b) Billing demand	N/A	N/A	N/A	N/A	
	(c) Annual maximum demand	200,000	65,000	16,466	100,000	
5.	Type of Demand Reading (instantaneous, 15, 30, or 60 minutes integrated)	60 Minute Integrated	60 Minute Integrated	60 Minute Integrated	60 Minute Integrated	
6.	Voltage at which delivered	345/230/115 KV	115 KV	345/230/115 KV	345 KV	
7.	Number of Kilowatt hours sold annually	635,955,000	44,911,000	36,321,610	5,665,000	
8.	Revenue from Sales					
	(a) Demand charges	299,051	0	423,000	0	
	(b) Energy	10,422,808	751,164	379,988	134,440	
	(c) Other charges	0	0	0	0	
	(d) Total Revenue	10,721,859	751,164	802,988	134,440	
9.	Revenue per KWH (Item 8 (d) divided by Item 7) MILLS	16.86	16.73	22.11	23.73	

4-7

SALES FOR RESALE (Account 447)

Report sales during year to other electric utilities and to cities or other public authorities for distribution to ultimate consumers. If a contract covers several points of delivery and small amounts of electric energy are delivered at each point, such sales may be grouped.

Line No.	Item (a)	Show Sales Data Separately by Purchaser and Point of Delivery				Total Sales for Resale (f)
		(b)	(c)	(d)	(e)	
1.	Name of Purchaser	WAPA	City of Hill City	Black Hills Power	Western Resources	Continued
2.	Rate Schedule Designation	Contract	Contract	Contract	Contract	
3.	Point of Delivery	1 Meter	1 Meter	1 Meter	1 Meter	
4.	KW or KVA of Demand: (Specify KW or KVA)	KW	KW	KW	KW	
	(a) Contract demand	N/A	N/A	N/A	N/A	
	(b) Billing demand	N/A	N/A	N/A	N/A	
	(c) Annual maximum demand	39,000	11,257	0	100,000	
5.	Type of Demand Reading (instantaneous, 15, 30, or 60 minutes integrated)	60 Minute Integrated	60 Minute Integrated	60 Minute Integrated	60 Minute Integrated	
6.	Voltage at which delivered	345 KV		115 KV	345/230/345 KV	
7.	Number of Kilowatt hours sold annually	134,298,000	8,486,457	0	1,600,000	
8.	Revenue from Sales					
	(a) Demand charges	0	0	0	0	
	(b) Energy	2,233,431	118,810	(34,700)	64,000	
	(c) Other charges	0	0	0	0	
	(d) Total Revenue	2,233,431	118,810	(34,700)	64,000	
9.	Revenue per KWH (Item 8 (d) divided by Item 7) MILLS	16.63	14.00		40.00	

4-8

SALES FOR RESALE (Account 447)

Report sales during year to other electric utilities and to cities or other public authorities for distribution to ultimate consumers. If a contract covers several points of delivery and small amounts of electric energy are delivered at each point, such sales may be grouped.

Line No.	Item (a)	Show Sales Data Separately by Purchaser and Point of Delivery				Total Sales for Resale (f)
		(b)	(c)	(d)	(e)	
1.	Name of Purchaser	Power - Marketing				Total Non-Associated Utilities
2.	Rate Schedule Designation					
3.	Point of Delivery	1 Meter				
4.	KW or KVA of Demand: (Specify KW or KVA)	KW				
	(a) Contract demand	NA				
	(b) Billing demand	NA				
	(c) Annual maximum demand	160,000				
5.	Type of Demand Reading (instantaneous, 15, 30, or 60 minutes integrated)	60 Minute Integrated				
6.	Voltage at which delivered	345 KV				
7.	Number of Kilowatt hours sold annually	2,789,000				
8.	Revenue from Sales					
	(a) Demand charges	0				722,051
	(b) Energy	60,189				14,130,130
	(c) Other charges	0				0
	(d) Total Revenue	60,189				14,852,181
9.	Revenue per KWH (Item 8 (d) divided by Item 7) MILLS	21.58				17.07

4-9

SALES FOR RESALE (Account 447)

Report sales during year to other electric utilities and to cities or other public authorities for distribution to ultimate consumers. If a contract covers several points of delivery and small amounts of electric energy are delivered at each point, such sales may be grouped.

Line No.	Item (a)	Show Sales Data Separately by Purchaser and Point of Delivery				Total Sales for Resale (f)
		(b)	(c)	(d)	(e)	
1.	Name of Purchaser					TOTAL
2.	Rate Schedule Designation					
3.	Point of Delivery					
4.	KW or KVA of Demand: (Specify KW or KVA)					
	(a) Contract demand					
	(b) Billing demand					
	(c) Annual maximum demand					
5.	Type of Demand Reading (instantaneous, 15, 30, or 60 minutes integrated)					
6.	Voltage at which delivered					
7.	Number of Kilowatt hours sold annually					2,275,744,483
8.	Revenue from Sales					
	(a) Demand charges					34,527,958
	(b) Energy					67,061,551
	(c) Other charges					(10,315,985)
	(d) Total Revenue					91,273,524
9.	Revenue per KWH (Item 8 (d) divided by Item 7) MILLS					40.11

Madam Chair - Committee Members

My name is Charles Reese with Midwest Energy, Inc.

Thank you for allowing me to testify.

Midwest Energy is a combination utility company with 35,000 electric and 13,000 gas customers. We currently serve in 28 counties of central and northwest Kansas. We are a customer-owned utility but differ from most coops in that we are privately financed.

The consumers of Midwest Energy have a large stake in this proposed bill.

1. Directly, we have an all requirements contract with a G&T cooperative affected by this bill, involving 4,500 customers.
2. There is no wholesale rate component oversight for those 4,500 customers of ours that are under the all requirements contract with Sunflower without KCC regulation. **We are not members of their board, so we have no input into their rate making policy.** The U.S. Supreme Court has ruled that the RUS/REA is primarily a banker interested in the security of its loans, not a regulator focused on consumer protection.

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3. Midwest Energy is bound by Federal regulation on transmission, whereas if this bill passes, Sunflower Electric Power Corporation will not be regulated by anyone. Thus we will never have a level playing field regarding transmission services. The Federal Energy Regulatory Commission (FERC) has stated that high voltage transmission service is a natural monopoly that should be regulated.
4. Regulators represent the interest of all parties and a deregulated entity will look out only for themselves - no matter what harm may come to those who do not have a voice.
5. If we lose control of wholesale prices flowing through on retail bills, this could reduce load and negatively impact all 35,000 of Midwest Energy's electric customers.
6. With the passing of this Bill, there would be no regulatory oversight of the ECA portion of these bills.

The intent of utility restructuring is to benefit the customer and the passage of this bill would be a big step backwards.

So, on behalf of the 35,000 electric and 13,000 natural gas customers and the overall public interest, we strongly urge this committee to defeat Senate Bill 589.

Again, thank you for allowing me to testify today.

Pete Loux
Feb. 19

DISSENT

LITTLE THOUGHT BY APPLICANT WAS EVER GIVEN TO THE ULTIMATE COST TO RATEPAYERS OR ITS NEGATIVE EFFECTS UPON THE SOUTHWEST KANSAS ECONOMY. IN MY OPINION, THE MAJOR FACTOR WAS INCREASING THE TAX BASE OF FINNEY COUNTY, NOT WHAT THE EFFECTS OF THE EXTREME COST OF ENERGY TO CUSTOMERS WITH RESIDENTIAL AND BUSINESS. NOW THE APPLICANT, WITH THE MAJORITY CONCURRENCE HAS COMMENCED A NEW SCHEME TO HIDE THE TRUE COSTS TO ALL RATEPAYERS.

ADOPTION OF THE MAJORITY'S PLAN IS ESPECIALLY DECEIVING BECAUSE IT PROMISES A SOLUTION WHICH IS BOTH UNWORKABLE AND INEFFECTIVE. IT WILL CREATE A FALSE SENSE OF SECURITY FOR THE RATEPAYER WHERE NONE EXISTS.

TODAY'S DECISION BY THE MAJORITY REPRESENTS AN APPARENT ABANDONMENT BY THE COMMISSION OF ITS LEGAL RESPONSIBILITIES TO THIS APPLICANT'S MEMBER RATEPAYERS AND CUSTOMERS. ADOPTING APPLICANT'S PROPOSAL TO PLACE PART OF ITS NEWLY CONSTRUCTED BUT NOT YET FULLY OPERATIONAL HOLCOMB PLANT INTO ITS RATE BASE, THE COMMISSION HAS CHOSEN TO REWARD COLOSSAL MANAGEMENT BLUNDERS BY THE TRUSTEES OF SUNFLOWER AND PASS THE COSTS OF THE PATENTLY UNNECESSARY FACILITY TO APPLICANT'S COOPERATIVE MEMBERS AND CONTRACTUAL CUSTOMERS OF GARDEN CITY. AS I SEE NO COMPELLING REASON TO ABANDON SETTLED REGULATORY PRINCIPLES, PRIOR DECISIONS OF THIS COMMISSION, AND THE CLEAR PROVISIONS SET FORTH BY THE KANSAS LEGISLATURE AT K.S.A. 66-101 ET SEQ., I MUST VIGOROUSLY DISSENT.

IT IS NOW OBVIOUS THAT A GREAT MANY OF THE ASSUMPTIONS, PROJECTIONS, RATIONALES, AND ARGUMENTS PRESENTED THIS COMMISSION IN APPLICANT'S SITING PERMIT FOR THE HOLCOMB PLANT, DOCKET NO. 114,010-U, WERE ILL-CONCEIVED, FALSE, AND EVEN DUPLICITOUS. WHAT WAS ONCE REPRESENTED TO BE AN ECONOMIC BOON TO THE ECONOMY OF SOUTHWESTERN KANSAS HAS TRANSFORMED INTO A HUGE "WHITE ELEPHANT" WITH CRUSHING FINANCIAL IMPLICATIONS.

FROM THE EVIDENCE IT IS CLEAR THAT SUBSEQUENT TO OUR REFERENCED SITING PERMIT DECISION (FROM WHICH I DISSENTED) **ON OCTOBER 23, 1978,** APPLICANT'S MANAGEMENT BECAME AWARE ITS ORIGINAL LOAD GROWTH AND COST PROJECTIONS WERE IN ERROR. NONETHELESS, APPLICANT "...PLUNGED BLINDLY AHEAD...", AS THE MAJORITY NOTES, WITH A SEEMING INDIFFERENCE TO THE REAL CONSEQUENCES OF THEIR DECISION.

APPLICANT'S AVAILABLE TOTAL CAPACITY IS PRESENTLY 624 MW THOUGH THE MAXIMUM MEMBER LOAD OVER THE PAST FIVE YEARS HAS BEEN 267 MW IN 1981. THIS WOULD INDICATE EXCESS CAPACITY OF APPROXIMATELY ONE HUNDRED THIRTY-THREE PERCENT (133%). THAT IS, SIMPLY PUT, APPALLING.

APPLICANT'S PROPOSED "SOLUTION" IS TO DEFER FIFTY PER CENT OF THE PLANT OVER THE NEXT FIVE YEARS WHILE PLACING FIFTY PER CENT PRESENTLY IN RATE BASE. APPLICANT'S RATIONALE IS THAT THE ADDITION OF THE ENTIRE HOLCOMB PLANT WOULD CAUSE RATES TO DOUBLE, DEPRESS THE AGRICULTURAL ECONOMY, AND IMPOSE AN INEQUITY ON TODAY'S MEMBERS FORCING

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THEM TO PAY FOR PLANT IN EXCESS OF CURRENT NEEDS. MORE PLAINLY PUT, APPLICANT SEEKS TO CHARGE ONLY WHAT THE TRAFFIC WILL BEAR.

PERSUADED BY APPLICANT'S CASE, THE MAJORITY SEES NO SOLUTION OTHER THAN PLACING PART OF THE UNNEEDED PLANT IN RATE BASE. TO DO OTHERWISE, THE MAJORITY ASSERTS, WOULD BE IRRESPONSIBLE AND IN DERELICTIC OF DUTY. FORECLOSING THE OBVIOUS OPTION AVAILABLE TO APPLICANT, THE MAJORITY FINDS "NO REASON" TO BELIEVE THE REA WOULD FINANCE THE PLANT AND STATES THE REA WOULD EVEN "INSIST" THAT 100% OF THE PLANT BE PLACED IN RATE BASE UPON DEFAULT.

THE MAJORITY HAS, BY THIS ORDER, THROWN ITS HANDS UP AND ANNOUNCED THERE'S NOTHING TO BE DONE. RATHER THAN HOLD APPLICANT TO THE STRICT STANDARD OF PROOF PREVIOUSLY REQUIRED BY THE COMMISSION IN RATE PROCEEDING SEE KG&E INTERIM DOCKET NO. 117,222-U AND SWB DOCKET NO. 117,220-U. THE MAJORITY INSTEAD PLACES 47% OF THE PLANT IN RATE BASE IN SPITE OF OVERWHELMING AND UNCONTROVERTED EVIDENCE THAT THE PLANT IS NOT NEEDED. PREVIOUSLY, THE COMMISSION REQUIRED A PREPONDERANCE OF EVIDENCE THAT PUBLIC UTILITY PROPERTY PROPOSED FOR RATE BASE INCLUSION BE "...USED OR REQUIRED TO BE USED..." K.S.A. 66-128. THE MAJORITY WOULD NOW CARVE AN EXCEPTION TO THAT STATUTE FOR APPLICANT. K.S.A. 66-128 IS IGNORED AND THE HOLCOMB ADDITION TO RATE BASE IS ACCEPTED FOR TO DO OTHERWISE WOULD BE "...IRRESPONSIBLE..."

THE COMMISSION'S RESPONSIBILITY IS TO SUPERVISE AND CONTROL PUBLIC UTILITIES INCLUDING THIS APPLICANT, AND TO SET RATES THAT ARE JUST AND REASONABLE. SPECULATION AS TO THE CAUSE AND EFFECT OF A POSSIBLE DEFAULT DO NOT NEGATE THAT RESPONSIBILITY. THE REACTIONS OF THE REA TO A PROSPECTIVE DEFAULT BY SUNFLOWER IS IMPOSSIBLE TO DETERMINE. BUT THE DECISION OF THE MAJORITY TO PLACE 47% OF THE COST OF APPLICANT'S UNNEEDED PLANT IN THEIR RATE BASE WILL CREATE AN ONEROUS BURDEN FOR MANY RESIDENTIAL RATEPAYERS.

APPLICANT HAS NOT SHOWN SUBSTANTIAL REPORTS TO RESCHEDULE ITS DEBTS WITH REA WHICH PROMOTED THE HOLCOMB GENERATION FACILITY FROM ITS INCEPTION. APPLICANT SEEKS, AND THE MAJORITY AUTHORIZES BY ITS ORDER, A MORE EXPEDIENT SOLUTION: INTERIM RATE RELIEF FOR A PLANT THAT MAY NEVER BE NEEDED. RATHER THAN "BAIL OUT" APPLICANT'S GROSS MISCALCULATIONS AND FISCAL IRRESPONSIBILITY, I WOULD PERMIT APPLICANT'S MANAGEMENT FAILURES TO RUN THEIR NATURAL COURSE.



**BEFORE THE SENATE UTILITIES COMMITTEE
PRESENTATION OF THE
KANSAS CORPORATION COMMISSION STAFF ON
SENATE BILL No. 589**

Good afternoon. My name is Larry Holloway and I am Chief of Electric Operations for the Kansas Corporation Commission. My testimony is presented on behalf of the Staff of the Kansas Corporation Commission. Commission Staff opposes this bill.

SB 589 proposes to remove KCC jurisdiction over rural electric cooperatives that:

- have 15,000 customers or more
- do business other than provide power principally at retail
- are nonstock member cooperatives that provide electric power in Kansas but do not fit K.S.A. 17-4603 definition
- have boards of directors (currently only boards of trustees is allowed)
- buy and sell wholesale power
- assess transmission charges - if under the direction of "an agency of the federal government"
- This bill raises the petition requirements for KCC reconsideration of rate changes to 40% of all members for generation and transmission cooperatives.

Historical Perspective of Retail Electric Cooperative Deregulation

In 1992 the legislature passed SB 435 which enacted K.S.A. 66-104d. This new section of law under the public utility section of chapter 66 allowed certain rural electric cooperatives to deregulate from KCC jurisdiction, regulation, supervision and control by a majority vote of all cooperative members upon receipt of a petition signed by 10% of the members. However, any rural cooperative deregulating under this provision remains regulated by the KCC for purposes of establishing service territory, charges for transmission service, sales of power for resale, wire stringing and transmission line siting. This statute only applies to cooperatives which provide power principally at retail and have fewer than 15,000 customers. Furthermore, under current law, 5% of a deregulated cooperative's members, or 3% of the cooperative's customers in any one rate class, may petition the commission to review any recent rate change and, upon finding the rates are unjust, unreasonable, unjustly discriminatory or unduly preferential, the KCC may substitute rates that are just and reasonable.

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It may benefit the committee to review the history of the 1992 passage of SB 435. SB 435 was proposed by the Kansas Electric Cooperatives, Inc. (KEC). KEC's testimony in support of the final version of the bill in the House Energy and Natural Resources Committee is attached and some interesting points need to be illustrated:

- The 1992 bill was discussed and reviewed by the KCC, CURB and the Kansas Municipal Utilities (KMU) organization, and the investor-owned utilities and had their support (CURB requested the 15,000 member limitation).
- The 1992 bill did not deregulate sale for resale or wholesale transactions, nor did it attempt to deregulate charges for transmission.
- One of the stronger arguments for the 1992 bill was the "local option" provisions which required a majority vote by all of the cooperative's membership.
- The final version of the bill incorporated the ability of 3% of a particular customer class to petition for KCC review of rate changes to address concerns the Kansas Independent Oil and Gas Association (KIOGA) had with the original bill.

The proposed change in size limits for deregulation of rural cooperatives:

The 15,000 member limit correctly recognized that as the cooperative becomes larger it is increasingly difficult for its board of trustees to recognize the concerns of all of its members. Furthermore, one of the purposes of the initial deregulation changes were to avoid the expense of rate cases for small cooperatives with few members to share the cost. This is not the same concern for the larger cooperatives. Because larger cooperatives have a more diverse and less represented membership the Commission Staff opposes this change.

The proposed change eliminates the requirement that the cooperative primarily supply power at retail and expands eligibility to include cooperatives that do not fit the definition under K.S.A. 17-4600 (electric cooperative, nonprofit, membership corporations). By the same token the election may be called by a "board of directors" in addition to a board of trustees.

This section would allow Sunflower, KEPCO and MWE to deregulate. One provision of K.S.A. 17-4600 is that rural cooperatives under this section are required to be controlled by a board of trustees which is elected from the cooperative's membership. Cooperative corporations which do not fit under this statute may only be controlled by a board of directors. This creates the interesting situation where a normal board of directors can be elected by stockholders, however since there are no stockholders, they are instead appointed from the pool of trustees of member cooperatives, but not elected from the retail members at large. While the retail cooperatives that own Sunflower and KEPCO each have a board of trustees elected by their membership, Sunflower and KEPCO have a board of directors representing the membership cooperatives.

This board is elected by and from the board of trustees of the member cooperatives, not the membership at large. A vote to deregulate in this case could merely be made at a board of directors meeting and any review by the KCC would require a petition from a few of the same board "members" or appointed trustees, that originally voted for deregulation. This is hardly the same "local option" type decision envisioned during the 1992 passage of SB 435.

In fact, this creates another concern in terms of the relationship of the board to the federal Rural Utility Service (RUS). Sunflower in the past has claimed that if its own board members bring up the issue of withholding debt payment, they are officers of the company and are violating federal law in not executing their fiduciary responsibilities to the federal government. During testimony before the retail wheeling task force on October 27, 1997, in reference to their obligations, Sunflower stated the following:

".....As you know, the overwhelming majority of our debt is federal. Because of legal obligations we have that accompany that debt, Sunflower cannot support any element of the draft legislation that fails to provide a mechanism for the repayment of our federal debt obligations. To do otherwise could put Sunflower's officers and board members in violation of federal laws and subject each person to personal liability."¹

If a generation and transmission cooperative governed in this fashion were to deregulate from KCC oversight, the board and officers would in essence be forced to pass all additional costs required by their RUS debtholders directly to their member cooperatives. The generation and transmission cooperatives can not be expected to protect the best interests of their membership if their officers and board members are under the threat of federal law and personal liability. The KCC has no similar fiduciary legal or personal liability to the RUS and is obligated and required to oversee the public interest generally.

The proposed change removes any Commission oversight of deregulated cooperatives for sales of power for resale and for transmission services not under the direction of an agency of the federal government.

It is important to explore the meaning of this section. First, sale for resale is a wholesale transaction. This is a transaction where the deregulated cooperative sells power that is later resold by another utility to retail customers. If this bill were passed, a deregulated generation and transmission cooperative could sell power on the wholesale market at a loss, for whatever reason, be it a bad business decision or an attempt to gain market share, and then pass the losses directly through to its member cooperatives. Since the board of directors is made up of unpaid elected volunteer trustees of the membership cooperatives, they could lack the technical expertise, not to mention the time, necessary to analyze these transactions independently and would be forced to

¹ Page 4, Testimony Submitted to the Retail Wheeling Task Force by Mr. Earl Watkins, General Counsel, Sunflower Electric Power Corporation, October 27, 1997, Comments of Task Force Draft Bill.

accept the story from the management. Furthermore, under the threat of fiduciary responsibility to the federal government, they would have little choice but to accept these losses and pass them through to the member cooperatives. The retail ratepayer would then have little or no protection from poor or predatory business decisions that may not be made in his interest or in the interest of the public generally.

Second, the exemptions of transmission charges overseen by an agency of the federal government is clearly an attempt to claim that there is actual federal oversight of cooperative transmission charges through RUS. Currently cooperatives and other public power entities are not regulated by the Federal Energy Regulatory Commission (FERC). In fact, **even though current Kansas law implies that all cooperative and IOU transmission rates are KCC jurisdictional, FERC regulation supersedes KCC regulation in the case of IOUs.** This has not created a problem, and it exists in many states where state authority is merely pre-empted by federal authority, particularly in matters that can affect interstate commerce, such as transmission charges. For this reason, this change is not needed if it refers to FERC jurisdiction. However the concern is that this change is in deference to RUS oversight of the cooperatives.

RUS oversight is a different matter. Whenever a cooperative sets any type of rates, it must first get any necessary state approval and must then get RUS approval. **The basic difference between RUS approval and that of the FERC or the state public utility regulatory agency is that RUS does not review any application in terms of the overall public interest.** Instead RUS only performs a review as any lender would, to make sure it is a good deal for the borrower, not the public generally. I have attached the mission statement of RUS, the FERC and the KCC for your review.

Third, the necessary role of state commissions overseeing the public interest in jurisdiction of generation and transmission cooperatives is not merely the opinion of Commission Staff. In the 1983 U.S. Supreme court case, *Arkansas Elec. Coop. Corp. v. Arkansas Public Serv. Comm'n*, 461 U.S.375, the court found that:

- The Federal Energy Regulatory Commission had no jurisdiction over utilities supervised by the REA (now RUS), and for this reason did not pre-empt state jurisdiction, and;
- The REA (now RUS) does not pre-empt state rate regulation of power cooperatives financed by the REA (RUS)

Furthermore, the committee may also be interested in the findings of the United States Court of Appeals for the Fifth Circuit. *In accord In the Matter of Cajun Electric Power Cooperative, Incorporated*, 109 F.3d 248; 1997 U.S. App. LEXIS 6600 (April 9, 1997). In this case the Louisiana Public Service Commission (LPSC) found that Cajun's investment in expensive nuclear and coal plants was unreasonable and that they would lower Cajun's wholesale rates to its member cooperatives. Because this put Cajun in a position unable to service its debt to RUS, RUS attempted to pre-empt the jurisdiction of the state commission and essentially set rates

higher. The court found that the LPSC had jurisdiction and that RUS was a lending institution with no authority to pre-empt state regulation. Interestingly enough, Cajun member retail cooperatives joined in with the LPSC in this case and today benefit from lower wholesale rates than they would have if they had not opposed the RUS.

Fourth, and perhaps **most important, with no independent oversight of transmission charges with the overall perspective of the public interest, many municipal utilities could be charged rates that would be considered unjust and unreasonable by the KCC.** I have attached a sheet showing municipal utilities in Kansas that are only served by transmission lines owned by cooperatives. With this legislation these wholesale customers could be captive to discriminatory pricing schemes with no recourse. Certainly RUS does not consider their interests, and in fact has no clear legal authority or process to even consider the position of other utilities. Currently these municipal utilities have recourse through the KCC to obtain access to the competitive wholesale generation markets with just and reasonable rates for transmission service. Furthermore, the attached sheet does not consider the thousands of additional customers of nearby utilities which may want to access wholesale power markets through Sunflower's transmission connection to Nebraska, but may be charged unjust and unreasonable rates for such service, or may not be allowed access at all, if there were no state corporation commission oversight.

Transmission is and will remain a monopoly service. There is no rational economic argument which can be made supporting deregulation of transmission pricing or access.²

This bill proposes to raise the threshold for KCC investigation of generation and transmission rate changes.

While 5% of the general membership or 3% of any customer class may presently petition the Commission to review rate changes of a deregulated retail cooperative, this bill would raise the bar to 40% of the generation and transmission cooperative's membership. Does this mean 40% of the retail cooperatives members or merely 40% of the board of directors representing these retail cooperatives? While Staff opposes this bill in its entirety this seems to be an extremely high threshold that may be impossible to achieve even with reasonable board or membership dissent. Recall that the board itself can be threatened with federal government fiduciary responsibility and personal liability. Additionally, a petition signed by 40% of the membership at large would take an enormous marketing effort by any concerned customer. In fact, for **Sunflower, the petitioners of the membership at large would have to collect rural signatures over roughly 20,000 square miles of Kansas, and for KEPCO the area is even greater.**

²

This is not just Staff's conclusion. ".....distribution and transmission components of the industry would continue to be rate regulated because these components are very capital intensive and competition to provide these distribution and transmission services is not likely to occur, at least in the foreseeable future." Part 1, Introduction, Final Report of the Task Force on Retail Wheeling to the 1998 Kansas Legislature.

KANSAS ELECTRIC COOPERATIVES, INC.

Testimony on S-435

House Energy and Natural Resources Committee
March 19, 1992

Good afternoon, Mr. Chairman and Committee members. My name is Marshall Clark, and I represent Kansas Electric Cooperatives, Inc. (KEC), the statewide association for thirty-four rural electric cooperatives in Kansas. The KEC Board unanimously (with one abstention by a cooperative not affected by this bill) voted to pursue this legislation.

Cooperatives, as you all well know, are owned and operated, on a not-for-profit basis, by their customer/members. As a result, they are essentially self-regulating since it's their own service and rates which are affected by their actions. It is for this reason we feel that regulation of rates and rules is unnecessary and redundant.

On the practical side, rate cases are expensive. Legal and consultant fees and Kansas Corporation Commission (KCC) billing for staff time are costly. The several months delay it takes to get rates into effect also costs the cooperative money. And, of course, there is an overall assessment for KCC overhead.

The bill itself, if adopted into law, would do nothing. It is only when a specific distribution cooperative's membership, using the regular bylaw voting procedure, elects to withdraw from regulation that something happens.

We have tried to cover all bases in proposing this bill to make sure we have not inadvertently impacted unintended areas.

The bill does not touch the territorial issues. And the bill does not apply to KEPCo, Sunflower and Midwest Energy because of their sizes. We have talked with the KCC Commissioners (as has the Governor's office) and they have no problem with the bill. In fact, Chairman Robinson says we really should have this local option available to us. The Commission's official position is to remain neutral.

We have visited with C.U.R.B. (as has the Governor's office) even though C.U.R.B. does not have oversight of the small cooperatives. We wanted to make sure there was nothing in the bill to cause them concern. In fact, the 15,000 customer cut-off figure is theirs.

We have visited with the municipals (K.M.U.) and have their agreement on our wording.

3/19/92
House E + NR
Attachment 1

We have an amendment on this bill which satisfies K.I.O.G.A. concerns.

We have provided copies of the bill to the investor-owned utilities who have registered no objections.

We have apprised the Governor and her liaison of our efforts and they support us.

Again, this is a "local option" bill which only makes deregulation available if a given cooperative wants it. Its main function is to provide potential savings for the consumer/owner.

The Senate has passed this bill 36-3.

We ask for your favorable consideration of S-435. Thank you very much.

KCC Mission Statement:

(source www.kcc.state.ks.us)

The mission of the state corporation commission is to *protect the public interest* through impartial, and efficient resolution of all jurisdictional issues. The agency shall regulate rates, services and safety of public utilities, common carriers, motor carriers and regulate oil and gas production by protecting correlative rights and environmental resources.

FERC jurisdiction

(source Federal power act, 16 USC Sec. 824)

824. Declaration of policy; application of subchapter

(a) Federal regulation of transmission and sale of electric energy

It is declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this subchapter and subchapter III of this chapter and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary *in the public interest*,

RUS Mission Statement

(source www.usda.gov/rus/electric/electric.htm)

Electric Program Mission and Responsibilities

The Electric Program of the RUS makes insured loans and guarantees of loans to nonprofit and cooperative associations, public bodies, and other utilities. Insured loans primarily finance the construction of facilities for the distribution of electric power in rural areas. Guaranteed loans primarily finance generation and bulk transmission facilities for power supply borrowers.

Kansas Municipal Electric Cooperatives Served by Cooperative Transmission Owners

City	County	Transmission Owner	Residential Customers	Commercial and Industrial Customers
Kiowa	Barber	Alfalfa	630	169
Meade	Meade	CMS	747	209
Dighton	Lane	Lane-Scott	682	104
Colby	Thomas	MWE	2,254	556
Hill City	Graham	MWE	833	266
Jetmore	Hodgeman	MWE	433	139
LaCrosse	Rush	MWE	658	163
Oakley	Logan	MWE	980	300
Radium	Stafford	MWE	20	1
Seward	Stafford	MWE	39	5
Summerfield	Marshall	Norris PPD	120	35
Belleville	Republic	NPPD	1,232	231
Herndon	Rawlins	NWK (now PrairieLand)	136	30
Garden City	Finney	Sunflower	9,051	1,181
Goodland	Sherman	Sunflower	2,282	483
Johnson	Stanton	Sunflower	527	240
Norton	Norton	Sunflower	1,453	351
Oberlin	Decatur	Sunflower	1,038	260
Sharon Springs	Wallace	Sunflower	458	118
St. Francis	Cheyenne	Sunflower	831	255
Lakin	Kearney	Wheatland	872	129
Total			25,276	5,225
Less MWE (FERC jurisdictional)			5,217	1,430
KCC transmission rate jurisdictional (under current law)			20,059	3,795

Data from 1996 EIA Electric Sales and Revenue

Lane-Scott, Sunflower, Dighton Contract

- June 25, 1997 Initial Proposal submitted for Commission Approval
- July, 1997 Staff requests additional information in informal discussions with applicants
- August 27, 1997 Staff meets informally with representatives from Lane-Scott, City of Dighton, Sunflower, and KEC.

Staff expresses concern that:

- Lane-Scott compensation under proposal may be too high for the use of less than 1 mile of transmission line.
- Compensation to Sunflower may be too low.

KEC agrees to:

- Provide cost analysis for Lane-Scott's transmission facilities.
- Provide information justifying Sunflower special rates

- October 7, 1997 Midwest Energy requests intervention in docket.
- October 27, 1997 KEC provides Staff with requested information and files a revised contract with lower prices for the City of Dighton
- December 16, 1997 Midwest Energy intervention granted
- December 18, 1997 Staff issues memo recommending Commission approved revised proposal
- December 19, 1997 Midwest Energy issues data requests to Sunflower
- February 5, 1998 Staff files motion to approve revised proposal
- February 17, 1998 Midwest files motion to deny Staffs motion and requests the Commission order Sunflower to respond to data requests.

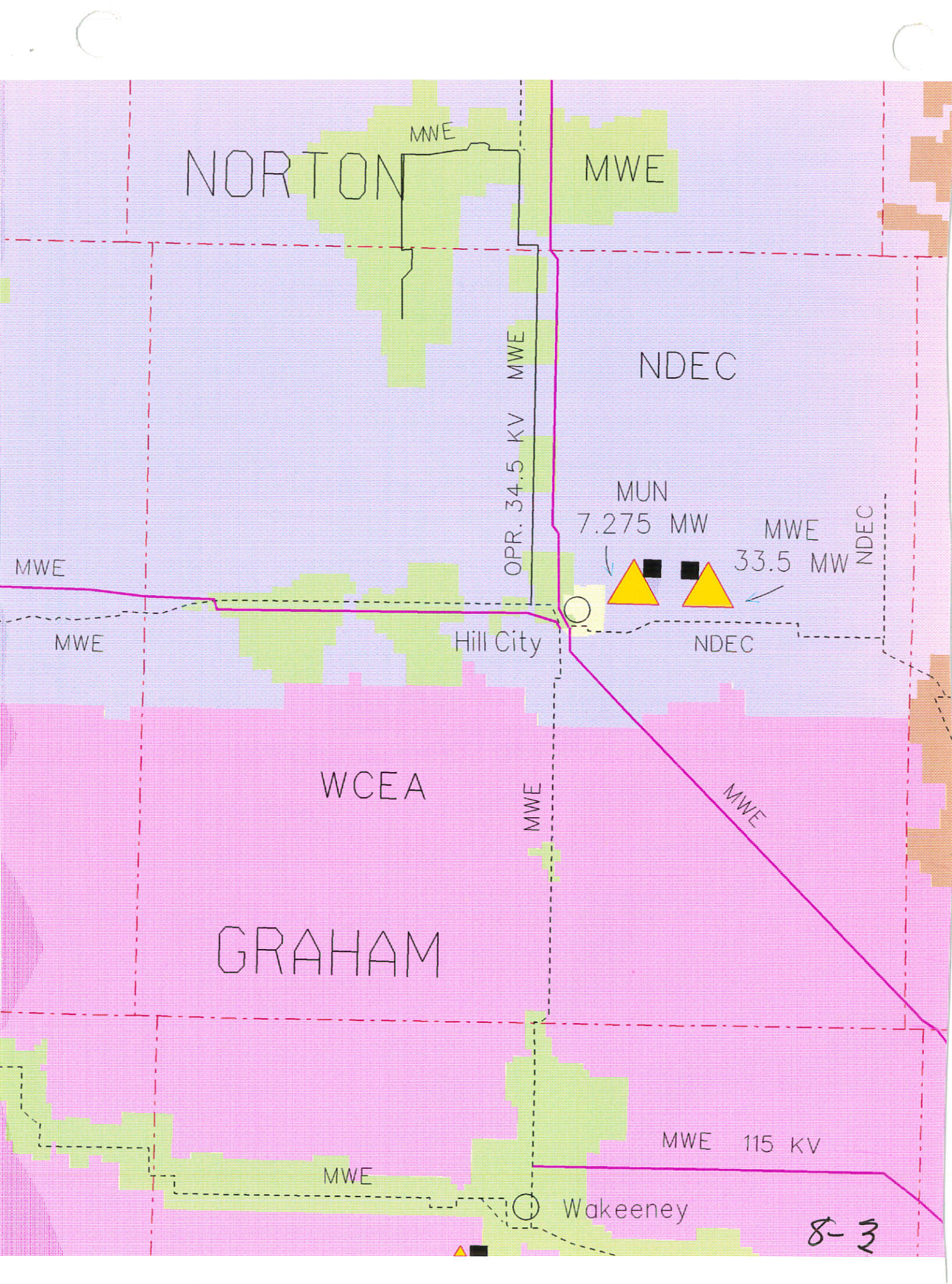
Summary of Savings to the City of Dighton through KCC Oversight

	Expiring Contract	As Originally Proposed to Commission	As agreed to by applicants and Staff (pending Commission Order)
Annual Cost for Dighton	\$789,608	\$697,023	\$631,262
Annual Cost for Lane Scott	\$796,099	\$546,484	\$546,484
Annual Margin for Lane Scott	(\$6,491)	\$150,539	\$84,778
Annual Savings for Dighton from Original Contract		\$92,585	\$158,346

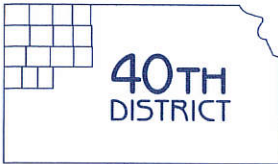
Additional Annual Savings for Dighton Above Original Proposal	\$65,761	71.03%
5 year Savings	\$328,805	

note: final order on this is not out yet this reflects current filing and Staff position based on sales numbers supplied by August, 1996 through July, 1997 sales figures

Cost of 4 month delay for Dighton based on given numbers and assuming one third of annual energy use from Nov - Feb	\$30,862	Less than 6 month payback
Cost of 6 month delay for Dighton based on given numbers and assuming one third of annual energy use from Nov - Apr	\$46,293	Less than 9 month payback



Attach. 9



Stan Clark

COMMITTEE ASSIGNMENTS

- VICE CHAIR: UTILITIES
COMPUTERS &
TELECOMMUNICATIONS
- MEMBER: AGRICULTURE
FINANCIAL INSTITUTIONS
& INSURANCE
RULES & REGULATIONS

**Testimony before the Senate Utilities Committee
Senate Bill 589
February 18, 1998**

Madam Chair and members of the committee:

On page 5 (the numbers are at the bottom of my pages) is a news article in which the Corporation Commission implemented the Rules and Regulations of the legislation that proceeded the current 1992 law. You will note that I was one of two people quoted in the 10 year old article. My opposition stems from the limited ability to attend Electric Co-op Board meetings, the lack of access to records and the limited ability I have found to serve on the Board of Directors.

Why was I interviewed by Dale Goter out of 2 1/2 million Kansans 10 years ago for this newspaper article?

In looking through my records I would like to refer you to pages 6 and 7 of my testimony to start my story. Keith Henley was one of the Kansas Corporation Commission members during the John Carlin and Mike Hayden Administrations. This letter dated, March 18, 1986, to him outlines my concerns about member access to meetings and records. Quoting from this letter:

“Enclosed are the materials that I have concerning members attending meetings of the Great Plains Electric Cooperative, Inc. Board of Directors meetings.

While I have yet to be allowed to sit through a complete board meeting, I think the policies are of interest to the Commission because of your exhortation to member-consumers to become involved.” End of quotation.

I will walk you through some of the materials that I attached to his letter (they are in a different order than the letter addressed to him).

Senate Utilities
2-19-98
9-1

STATE CAPITOL
OFFICE 128 SOUTH
TOPEKA, KANSAS 66612-1504
(785) 296-7399
1-800-432-3924

1. On page 8 is a document that was taped on the wall of the front office in Colby. This USDA-REA document states in part, "no person . . . shall . . . be excluded from . . . attendance at and participation in any meeting . . ."
2. On page 9 is the "administrative policy" regarding members attending meetings of Trustees. "The meetings of the Board of Trustees of the Cooperative are not open to the public. Members are entitled to attend meetings . . . upon advance written request. The member's written request . . . shall be served . . . at least 14 days prior to the meeting the member desires to attend. . . . Appearance by individuals or groups at the regularly scheduled Trustees meetings shall be limited to 30 minutes. . . (T)he Cooperative may choose not to honor a specific request to appear at a Trustees regular meeting."
3. Page 10 is a similar administrative policy applies to Records of the Cooperative.
4. Pages 11 and 12 is Legislative Research's work in the area. Quoting parts of this document, "Because of its unique status a REC is exempt from the provisions of the Kansas Securities Act. Therefore, it would be "stretching it" to apply the provisions of the Statutes which address the stockholders' rights to inspect books and records to REC consumers/members. . . . The statutes that specifically address rural electric cooperatives are conspicuously silent on the matter of accessibility of records to members." On the next page the last sentence states: "Since REC's. . . cannot be in any way considered public agencies, the Open Meeting and Open Record laws do not pertain to them.
5. Page 13 is a Sept. 25, 1985 letter from the AG's office. The last two sentences in the 2nd paragraph state: "With reference to open meetings, electric cooperatives would be subject to the Kansas open meetings law. In the event you are aware of possible violations of the open meetings law, please let us know."
6. Page 14 is an Oct. 28, 1985 letter from the AG's office. The last two lines of the 1st paragraph state: "with this letter I am withdrawing the position set forth in my previous correspondence with you."
7. Page 15 is an AG's opinion dated a couple months later that states that electric coops are not subject to the Kansas Open Meetings Act
8. Page 16-18 is a letter to the Administrator of the REA. Starting at the bottom of page 16 is an outline of the meeting. We found out about the special meeting 3 hours before it started. The discussion at the start of the

meeting concerned our lack of a 14 day notice. It is impossible to provide a 14 day notice when special board meetings can be called on very short notice. The Board had an hour and 40 minute executive session. Made motions to approve resolutions 1 and 2. Motions carried, Board members were instructed to not discuss anything in public and no documents were made available.

9. Page 19 tells of the action taken in this meeting and with the 7 other Sunflower members would have “diverted” - their words, not mine- \$1.9 million annually to Sunflower for 5 years.
10. Six months later I was elected as a write-in to the Board of Trustees. Page 20 is the front page of the Salina Journal in April 1986. “He pays his electric co-op bills, but isn’t welcome on the board” was the headline. Pages 21-23 is a copy of the lawsuit that sought to remove me from the board because the Great Plains Electric by-laws state:

“No person shall be eligible to become or remain a board member of the Cooperative who: (a) is not a member and bona fide resident in the **area** served or to be served by the Cooperative. . . .”
11. Pages 26-28 summarize the issues. I’m not going to bore you with the details of the by-laws except to point out that in addition to the phrase “bona fide resident in the **area** served,” the by-laws require that “A Committee on Nominations . . . shall consist of members from different **sections**. . . who shall nominate at least two (members) from each **district**. Additionally, the Kansas Statutes provide that the KCC shall certify “exclusive electric service **territories**.” The by-laws also provide that “The Annual Meeting of the members shall be held . . . in the **area** served by the Cooperative.” I noted that the Annual meeting had been held inside the city limits of a municipal electric provider for years. If their definition is accurate then none of the current Trustees were elected to serve at a legal Annual meeting.
12. The real point that I want to make starts in the last sentence on page 29:

“According to the Plaintiffs only members from the Farms and Village Residential can serve on the Board of Trustees. Revenue from these 2 classes is 40.18% of the total revenue.” I state that this raises some question of the tax exempt status of the Cooperative. . . and later on point out, “that the Plaintiffs claim that Irrigation, Small Commercial, Large Commercial, and Farm Equipment Service consumers cannot serve on the Board of Trustees unless they also are Farm or Village Residential.

Great Plains Electric Cooperative consolidated with Midwest Energy in 1987. I have no idea what by-law provisions govern other distribution cooperatives. Jon Miles, KEC representative last week requested bylaws from member coops to start researching this specific area.

One final note. Midwest Energy has 2 electrical rates. My rate over the last 10 years has averaged 47% more than the rates in their other certified area which is 2 miles from my house. This yearly difference is more than the annual taxes on my home and is due to all-power requirements in the Sunflower contract.

As I stated in 1987 and still believe today, the system is set up to discourage the participation of customers and members. Not only would this bill further discourage participation but it would also mean that the co-ops would not be nearly impossible for anyone apart from their own board to have access to the necessary information to question rate increases. It is vital that the co-ops be accountable to someone- either those they serve, by being subject to the provisions contained in the open meetings act and the open records act- or to an agency such as CURB and the KCC that through data requests, performance and financial audits can provide reasonable oversight.

I realize my example is 10 years old. The distribution utility that I am a member of has not had a rate hearing since 1989 and Sunflower's last rate case was in 1988. Access to records is crucial during these key times.

Our committee has received a number of newspaper articles about the partial deregulation of the large users of natural gas. The articles point to savings of 30 to 50% by the fortunate large users. They also point out the detrimental effect of this shift that is borne by the remaining small customers. Hopefully, we will not repeat this same mistake in the electric industry which I fear this legislation seeks to create.

I ask you to delay action on further deregulation until we fully implement retail wheeling and have customer choice.

Partial deregulation of rural electric co-ops stirs opposition

By DALE GOTER
Harris News Service

TOPEKA — Kansas rural electric cooperatives — a 50-year-old institution across the state — are the center of a controversy focused on deregulation, which was championed by Gov. Mike Hayden during his gubernatorial campaign.

Last week, the Kansas Corporation Commission — made up of one Democrat and two Hayden-backed Republicans — tentatively approved a modest deregulation measure.

Under the change, 34 rural electric co-ops serving 15,000 or fewer customers each, would be allowed to take an abbreviated and less expensive route to raising electric rates.

Critics say access to co-op board meetings is limited. Without strict oversight by the corporation commission, they say, co-op boards are vulnerable to the pressure of special interests and could shift the burden of cost onto certain member groups — such as residential or small business customers. That would allow large industrial customers to get cheaper rates.

Instead of dealing with the time and expense of the corporation commission's standard 240-day rate increase procedure, the new plan would allow eligible co-ops to submit far less information and have the rate

"The board of directors can see the potential for misuse of certain information."

— Lester Murphy

increase approved in 80 days or less.

Midwest Electric Cooperative, which serves central Kansas, is ineligible for the new procedure because it serves more than 15,000 customers. Sunflower Electric, serving western Kansas, and KEPCO, serving mostly eastern Kansas, are ineligible because they are wholesalers.

The corporation commission has had an informal procedure for "expedited" rate cases in the past, allowing for rate increases in as little as 30 days. The new proposal formalizes the procedure and includes a requirement for a public hearing to allow members to comment on the proposed increase.

The change has the endorsement of Kansas Electric Cooperatives Inc., which lobbies the state Legislature on behalf of Kansas rural co-ops. That group's political action com-

mittee donated \$1,750 to Hayden's election campaign.

Lester Murphy, executive vice president of Kansas Electric Cooperatives, said the change is long overdue. For small co-ops, the task of dealing with the 240-day rate increase procedure was a tremendous obstacle, he said.

"In many cases, the cost of the process would be half of what the rate increase would raise," Murphy said.

But the proposed change does little to appease critics such as Moscow Mayor Irwin Alefs, whose father was one of the founders of the Central Kansas Electric Cooperative in Great Bend in the 1930s.

Alefs cites two main reasons groups such as the Moscow City Council and the Southwest Kansas Consumer Group are wary of the new procedure proposed by the corporation commission.

One involves Sunflower Electric and its expensive new power plant at Holcomb, which has required double-digit rate increases to pay off the debt. The other is the lack of access by customers to the board meetings of co-ops such as Sunflower Electric.

Alefs and other co-op critics agree with the need for a shortened rate increase procedure,

"There are times when it loses sight of the fact it was created to serve the people."

— Stan Clark

but they also worry about losing control of the co-ops if the corporation commission steps away from regulating them.

"Either the KCC maintains its regulation or we be given the same open meetings protection afforded the city dweller, school patron or county resident," Alefs wrote the commission.

Barbara Jessup, a Moscow homemaker who heads the Southwest Kansas Consumer Group, said "the system is designed to keep member-owners from knowing what is going on."

Although co-ops are required to have annual meetings with their members, those sessions are little more than "dog and pony shows" where members get little information about how decisions are made, Jessup said.

Stan Clark, a photographer at Oakley, said co-op managers and boards are bent on

keeping the average customer from knowing how the co-op is run.

"In theory, I agree totally with streamlining and deregulating co-ops," Clark said. "But there are times when it usurps its authority and loses sight of the fact it was created to serve the people. They have become employee co-ops and not member co-ops."

Clark, a former board member of the Great Plains Cooperative, said the system is set up to discourage member participation.

Members who want to speak to the board at its meetings must file notice 14 days before the meeting, he said. The board, however, can meet after just five days' notice, making it impossible for members to get on the agenda.

Murphy acknowledged that co-op boards would rather not be compelled to open up their meetings.

"The board of directors has the responsibility by law to protect the co-op and its members," he said. "They can see the potential for misuse of certain information. There are some sensitive matters and information taken up at meetings."

Because co-op boards are elected by their member-owners, they are held accountable to the membership, Murphy said.

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March 18, 1986

Keith Henley
Kansas Corporation Commission
State Office Building
Topeka, KS 66612

Dear Keith,

→ Enclosed are the materials that I have concerning members attending meetings of the Great Plains Electric Cooperative, Inc. Board of Directors meetings.

While I have yet to be allowed to sit through a ^{complete} board meeting I think the policies are of interest to the Commission because of your exhortation to member-consumers to become involved.

The first document "USDA-REA Appendix A", is taped to the front office wall at the office in Colby, it states, "no person in the United States shall . . . be excluded from . . . attendance at and participation in any meeting . . .". Letters dated 11/21/85 and 11/22/85 of correspondence with REA concerning possible violations are included later.

The 2nd and 3rd documents state the policies adopted 6/27/84 after we had requested to appear before the Board that Spring. It should be noted that this past year we have not submitted a formal request for attendance- largely because we don't have an item to bring before the Board but we are interested in whatever Sunflower information as it relates to our distribution coop. These meetings tend to be Special meetings whenever Steve Thompson can come out with his latest proposal and the 14 day notice is impossible to comply with. When we attend we are under a "gag rule" and do not comment unless we are called upon. Usually we are allowed to listen until "sensitive" material is going to be discussed.

The 4th document related to coops and open meetings.

The 5th document is an "unofficial Attorney General's Opinion" concerning REA's and Open Meetings.

The 6th document is a letter withdrawing the previous position.

The 7th document is the letter to Harold Hunter of REA mentioned above.

The 8th document is a letter to Henry Taylor on the same matter.

The 9th document is the Editorial enclosed with the Taylor letter.

The 10th document is Harold Hunter's reply.

The 11th document is an "Official Attorney General's Opinion" on REA's and open meetings.

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Keith Henley -2-

The 12th document is the Salina Journal's article concerning the "Official Attorney General's Opinion."

The 13th document is Al Gerstner's testimony in Sunflower Rate Case 148,710-U on the meeting that prompted the letters to Mr. Hunter and Mr. Taylor.

The 14th document is Lloyd Theimer's testimony at the Sunflower Public Hearing on 148,710-U, page 3 raises some pertinent points.

The 15th and final document is our latest REA enclosure.

Thanks for your time in reading this material and understanding our position in trying to become informed members.

Sincerely,

Stan Clark
Rt. 2 Box 112
Oakley, KS 67748
913-672-4280

UNITED STATES DEPARTMENT OF AGRICULTURE
Rural Electrification Administration

APPENDIX A

Statement of Nondiscrimination

Great Plains Electric Coop., Inc. has filed with the Federal Government
(Name of Borrower)
a Compliance Assurance in which it assures the Rural Electrification Administration that it will comply fully with all requirements of Title VI of the Civil Rights Act of 1964 and the Rules and Regulations of the Department of Agriculture issued thereunder, to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the conduct of its program and the operation of its facilities. Under this Assurance, this organization is committed not to discriminate against any person on the ground of race, color or national origin in its policies and practices relating to applications for service or any other policies and practices relating to treatment of beneficiaries and participants including rates, conditions and extension of service, use of any of its facilities, attendance at and participation in any meetings of beneficiaries and participants or the exercise of any rights of such beneficiaries and participants in the conduct of the operations of this organization.

Any person who believes himself, or any specific class of individuals, to be subjected by this organization to discrimination prohibited by Title VI of the Act and the Rules and Regulations issued thereunder may, by himself or a representative, file with the Secretary of Agriculture, Washington, D. C. 20250, or the Rural Electrification Administration, Washington, D. C. 20250, or this organization, or all, a written complaint. Such complaint must be filed not later than 180 days after the alleged discrimination, or by such later date to which the Secretary of Agriculture or the Rural Electrification Administration extends the time for filing. Identity of complainants will be kept confidential except to the extent necessary to carry out the purposes of the Rules and Regulations.

ADMINISTRATIVE POLICY NO. 64

SUBJECT:

Members Attending Meetings of Trustees.

POLICY:

The meetings of the Board of Trustees of the Cooperative are not open to the public. Members are entitled to attend meetings of the Board of Trustees upon advance written request. The member's written request to appear at a meeting of the Board of Trustees shall be served upon the manager at least fourteen (14) days prior to the meeting the member desires to attend.

In order that the Board can respond adequately to the member and prepare for the appearance of the member at the meeting, the notice shall contain a concise explanation of what information is desired or why the members desire to appear at the meeting. The notice shall also contain the number of people planning to attend. If groups attend, for convenience and order, they shall be represented by one spokesman who shall be adequately prepared to represent the group. Appearances by individuals or groups at the regularly scheduled Trustees meetings shall be limited to 30 minutes.

Because meeting facilities and time are limited and in order to more adequately respond to large groups and lengthy discussions, the Cooperative may choose not to honor a specific request to appear at a Trustees regular meeting. In lieu thereof, the Cooperative may schedule such appearances at other times and locations.

RESPONSIBILITY:

Manager

PROCEDURE:

As stated above.

INDEX:

Members attending meeting of Trustees
Trustees meetings; members attendance

GREAT PLAINS ELECTRIC COOPERATIVE, INC.
COLBY, KANSAS

6-27-84

ADMINISTRATIVE POLICY NO. 65

SUBJECT: Records of Cooperative

POLICY: The records and information contained in the records of the Cooperative are not public knowledge. The records of the Cooperative shall be opened to inspection of members of the Cooperative at reasonable times and upon reasonable advance notice. To facilitate the accurate dissemination of knowledge, the following procedure shall be followed when members of the Cooperative request to view Cooperative records:

The member shall submit a written request on a form developed by the manager of the Cooperative. The request shall be completed and returned to the Cooperative manager at least (14) fourteen days prior to the time selected by the member to view the records. Any information released to the member shall be for the member's use. The manager, Board of Directors and the further dissemination of information by a member. Because the information is not public knowledge, members shall be required to explain in each written request why the information is desired and to what purpose the information will be used. In order to avoid misunderstanding and to answer questions, the manager of the Cooperative shall be present whenever any member reviews information of the Cooperative.

If a member requests photocopies of certain documents, the member shall be required to pay photocopying expense in the amount of \$.30 per page and reimburse the Cooperative for employee time used in reproducing photocopies or searching various records.

RESPONSIBILITY: Manager

PROCEDURE: As stated above.

INDEX: Records of Cooperative
Cooperative records

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4
rural electric cooperatives in Colorado and Arkansas to become

deregulated, it is perhaps necessary to take a scrutinizing look at the internal management of Kansas REC's. Given an understanding of their internal operations and both their and the Commission's regulatory parameters, one would probably be in a better position to anticipate the long-term effects of deregulation, should this issue arise in Kansas.

Legal status of RECs

STATUTORY PURPOSE OF REC'S:

K.S.A. 17-4602 defines the purpose of REC's to be "cooperative, nonprofit membership corporations" organized to supply electric energy and to promote and extend the use of that energy. K.S.A. 17-4604 charges REC's with multifold responsibilities, among them to generate, purchase, and distribute electricity to its ^{their} members, to government agencies, to political subdivisions, and to others who are not receiving electricity from existing public utilities. An ^{RECs are} REC ~~is~~ also granted the powers of financing wiring in homes, supplying and installing electrical and plumbing appliances, borrowing money, constructing, maintaining, and operating transmission and distribution lines, exercising eminent domain, merging with other REC's and of adopting, amending, and repealing bylaws.

OPEN RECORDS AND MEETINGS:

Open records: Even though REC's are statutorily invested with the power to borrow money and issue notes and bonds, an REC, unlike an investor-owned utility, is non-profit. As a result, according to the REA model act bylaws, "no interest or dividends shall be paid or payable by the Cooperative on any capital furnished by its patrons." **Because of its**

^{unique} particular status, an REC is exempt from the provisions of the Kansas Securities Act (K.S.A. 17-4632). Therefore, it would be "stretching it" to apply the provisions of K.S.A. 17-6510 (which address the stockholders' rights to inspect books and records) to REC consumer/members. Stock-

holders and consumer/members do not appear to be synonymous--at least according to the law. **The statutes that specifically address rural**

electric cooperatives (K.S.A. 17-4601 et. seq.) are conspicuously silent on the matter of accessibility of records to members. The REA model act

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approve (or disapprove) the reports composed by REC officers for the previous fiscal year. Thus, reports covering the business of an REC for the previous fiscal year should be presented at that meeting to consumer/members for their approval. Regarding the accessibility to members of records and minutes of Board Meetings, the model bylaws, like the statutes, are silent.

Open meetings: The statutes are very explicit about the procedure to be followed in notifying members of annual and special meetings of members. (See K.S.A. 17-4610) However, they do not require that members be notified for board meetings. In fact, the model bylaws specifically state that regular board meetings be held without notice, immediately after, and at the same place as, the annual meeting of the members. This does not mean that members should be prohibited from attending Board Meetings. It does mean, however, that there is no express requirement for members to be notified for REC Board Meetings.

THE OPEN MEETING AND OPEN RECORDS ACTS:

The definition of a public agency subject to these acts is as follows "Public agency" means the state or any political or taxing subdivision of the state, or any office, officer, agency, or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by public funds appropriated by the state or by public funds of any political or taxing subdivision of the state." (House Bill 2327--Open Records; much the same language is used in Open Meetings statute--K.S.A. 75-4318.) Since REC's, by the preceding definition, cannot be considered ^{in any way} public agencies, the Open Meeting and Open Records laws do not pertain to them.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751

September 25, 1985

Mrs. Barbara Jessup
P. O. Box 132
Moscow, Kansas 67952

Dear Mrs. Jessup:

I am certain that the customers served by the member cooperatives of Sunflower Electric Cooperative, Inc. are appreciative of your efforts to reduce the charge for electric service. Hopefully, through your efforts and those of others, your quest will be a successful one.

With reference to your question about trouble any of the electric cooperatives may have had with this office, there has been none of which I am aware. With reference to open meetings, electric cooperatives would be subject to the Kansas open meetings law. In the event you are aware of possible violations of the open meetings law, please let us know.

I wish you the best of luck in your current endeavor.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN

Carl M. Anderson
Carl M. Anderson
Assistant Attorney General
Consumer Protection and
Antitrust Division

CMA:ssb

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

October 28, 1985

Mrs. Barbara Jessup
P.O. Box 132
Moscow, Kansas 67952

Dear Mrs. Jessup:

In response to your inquiry I responded in a letter dated September 25, 1985, among other things, that the electric cooperatives of this state would be subject to the Kansas Open Meetings Law. This letter did not constitute an official opinion by this office, and with this letter I am withdrawing the position set forth in my previous correspondence with you.

Until this office has had an opportunity to review the applicability of the Open Meetings Law to electric cooperatives further, we will take no position on this subject.

If you could furnish documentation which could shed additional light on this issue, it would be appreciated.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN

Carl M. Anderson

Carl M. Anderson
Assistant Attorney General
Consumer Protection and
Antitrust Division

CMA:ssb

14

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

December 13, 1985

ATTORNEY GENERAL OPINION NO. 85- 175

The Honorable Robert J. Vancrum
State Representative, 29th District
9004 W. 104th Street
Overland Park, Kansas 66212

RE: State Departments; Public Officers, Employees--
Public Officers and Employees; Open Public Meetings--
Application of Act to Electric Cooperatives

Synopsis: Electric cooperatives organized pursuant to K.S.A. 17-4601 et seq., are non-profit corporations formed for the purpose of supplying electric energy to their members and promoting and extending the use of such energy. They are private business corporations which are owned and controlled by the members who receive their services. Such cooperatives are not legislative or administrative bodies or agencies of the state or its political and taxing subdivisions, and do not receive or expend public funds. Accordingly, they are not subject to the requirements of the Kansas Open Meetings Act.

Cited herein: K.S.A. 17-4602; 17-4606; 17-4608; 17-4609; 17-4610; 17-4612; 17-4613; 17-4614; K.S.A. 75-4317; 75-4318, as amended by L. 1985, Ch. 284.

Dear Representative Vancrum:

You request our opinion concerning the applicability of the Kansas Open Meetings Act, K.S.A. 75-4317 et seq., to electric cooperatives organized in Kansas pursuant to K.S.A. 17-4601 et seq. As you correctly point out in the memorandum accompanying your request, Kansas electric cooperatives are non-profit membership corporations formed

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Office of Administrator R.E.A. U.S.D.A.
Mr. Harold Hunter, Adm.
14th Independence Ave. S.W.
Washington D.C. 20250

Colby, Kansas
R.R.2 Ex. 490
67701
Nov. 21, 1985

Dear Mr. Hunter:

Enclosed are additional materials concerning problems relating to closed meetings and secret negotiations concerning Sunflower Electric Coop of Hays, Kansas and Great Plains Electric Coop. of Colby, Kansas. Communication and access to facts of our Electric Coops have continued to deteriorate since our meeting with you in the Holiday Inn, Hays, Ks. May 7, 1985.

As you may recall, that meeting was arranged because of complaints of inaccessible access to records or participation in the important decisions facing our financially beleaguered wholesaler of electricity. As consumers we feel helpless and hopelessly enslaved in a system that tolerates secrets and negotiates settlements which are locked within closed doors.

These people will claim representation through elected boards. I believe the documents will prove the problem to be otherwise. My testimony before the Kansas Corporation Commission, Jan. 22, 1985, Docket No. 143,069U proves gross mishandling and irreparable mistakes, which include both federal and state political boondoggling.

Secrecy created the monster, commercial advertising sustained it. Now secrecy is protecting the guilty.

My civil rights and others have been violated at the past two Annual Meetings of the Great Plains Electric Coop. As reported previously two years ago, the meeting was adjourned during my discussion of the Sunflower issue. (Colby Community Building). At the past year's Annual Meeting in Goodland (Elks Club) President Smith refused me the floor unless "restricted to questions--no statements." Although perseverance on my part did finally prevail, public discussion was smothered because of embarrassment and fear.

I believe you are aware of treatment received at a couple of local R.E.A. meetings in Colby when Mr. Frank Huelsman, Stan Clark of Oakley, and myself, Lloyd Theimer, Colby, were asked to leave. You are not aware of the latest event which happened at the Great Plains Electric Coop special Board Meeting of Monday, Nov. 18, 1985.

By chance, only I learned of that 2 o'clock meeting at about 11 A.M. The regular meeting would have been the following week and we planned to attend that meeting to hear and learn of the secret bailout plan for Sunflower Electric. Mr. Stan Clark of

Oakley, myself, and several others called, did try to attend that 2 o'clock meeting. Manager Al Gerstner gave his chair at the Board table to President Steve Thompson of Sunflower Electric. President Gene Olson, rural Colby and President of Great Plains Electric Coop, presided.

The meeting was called to order and Mr. Thompson made a brief statement about possible "write downs" of creditors and a possible solution to Sunflower problems.

President Gene Olson then stated that the Board would go into executive session to discuss the bailout plan. He then requested that visitors leave the room. A considerable confrontation ensued which was taped and can be transcribed for record if necessary.

President Olson's order prevailed and the Board went into executive session at 2:55 P.M. That session lasted until about 4:35 when the doors were opened and the motion to approve Resolution I and Resolution II was made. Motion carried with one vote against each Resolution. Meeting adjourned at about 4:50 P.M. We were refused copies of Resolution at the meeting. They said they had to be retyped.

An opportunity to visit with the Board member voting against the two Resolutions was made possible later that evening at the local post office. (Conversation as remembered). He stated that it was upsetting to have to make such a far reaching and long time encumbering decision in one and a half hour of discussion. He further stated that the plan was required to be handed back in at the close of discussion and that Board members were not to discuss anything public. He said the signing and agreeing would be completed by Friday and Sunflower would make a press release.

Mr. Hunter, it is my honest evaluation that there have been serious violations of the Kansas Open Meeting Act, gross violations of the Civil Rights Code of the United States of America and Constitutional Rights as well.

We U. S. Citizens and Consumers have sincerely attempted to work within our country's beloved system to correct and protect ourselves from the economic slavery that our R.E.A.s are imposing upon us. (30 years plus renewable contract 30 years).

Pertinent information for making sound public decisions has been restricted. Subliminal advertising has cunningly lulled the public apathy to believe that there was no other way. I submit that it is a fraudulent cover-up of fact if investigated from the beginning. Wouldn't Midwest Energy Coop of Hays' track record prove that point? (Power for about half, and 1.2 million dollars in capital refunds the past year).

Great Plains Electric Coop board will tell you we didn't comply with the board policy for attendance. (Two week prior notice plus 30 minute time limit plus one spokesman--.) We'll tell you there was no way that we could have complied because we knew nothing of the meeting. Beside that point, by-laws have no such restrictions.

Mr. Hunter, race, color or national origin are not at issue. But (1)"Rights to personal liberty established by the 13th and 14th Amendments to the U.S. Constitution and certain Congressional Acts, esq. as applied to an individual or a minority group." (Random House Dictionary) And Civil:#5 "Befitting a citizen:a civil duty" are at issue.

In a nutshell, we find it impossible to fulfill our civic duty of working for good government and governmental policies that will benefit or safeguard our civil and economic welfare. Why? Because we disagree. Because of disagreement, those in authority have seen fit to withhold information, silence debate, secretly negotiate contracts and future courses with little or no public discussion of fact.

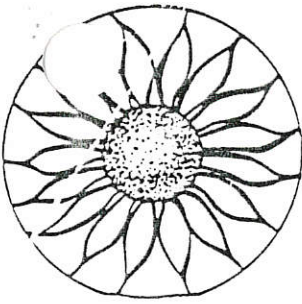
Would you please refer this matter to the proper Justice officials for answers to these pertinent complaints.

Respectfully,

Lloyd E. Theimer
Lloyd E. Theimer

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SUNFLOWER ELECTRIC COOPERATIVE, INC.

P.O. Box 980 • 301 West 13th Street • Hays, Kansas 67601 • (913) 628-2845

Sunflower Electric Cooperative, Inc. Chronology Of Its Debt Restructuring Efforts

Sunflower's (SEC) total utility plant in 1980 was just over \$120 million. The building of Holcomb Station and other capital expenditures increased this investment in plant to over \$600 million in 1985. The \$460 million Holcomb Station was built to meet the increasing demand for electricity and to comply with the Power Plant and Industrial Fuel Use Act of 1978, yet, electricity sales and revenue failed to meet the projections accepted as being accurate by Sunflower and the Kansas Corporation Commission (KCC).

	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
MWH Sales	1,001,453	995,852	1,079,235	1,250,671	1,556,639	1,385,262
Tot. Oper. Rev.	\$37,084,088	42,124,348	56,750,579	65,956,461	86,458,996	87,832,412

Months & Events

July, 1985 Due to revenue short-fall, \$11.6 million was used from safe harbor lease proceeds to make debt service payment.

Partial sale of Holcomb Station to Kansas City, Kansas Board of Public Utilities and/or KPL-Gas Service, Topeka investigated by SEC.

August 1985 SEC proposes that its eight member coops divert a portion of their loan payments to SEC for 5 years (about \$1.9 million per year). Also asked eight coops to pay a portion of their energy costs in advance (about \$4.2 million per year). In addition, SEC would sell 43% of Holcomb Station and restructure its debt.

Sept. 1985 SEC asks REA for an extension of the repayment of the safe harbor lease dollars used to make the July 1, 1985 payment.

Repayment of safe harbor lease dollars postponed until mid-December. SEC asks for and is granted temporary immunity for Board of Trustees and officers from personal liability if default occurs.

October 1985 SEC in default of about \$11 million on regular note payment.

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The Salina Journal

Salina, Kansas TUESDAY April 22, 1986

He pays his electric co-op bills, but isn't welcome on the board

By LINDA MOWERY-DENNING
Great Plains Editor

COLBY — Stan Clark lives in an electric cooperative's Twilight Zone. He can pay his utility bill, but he can't serve on the board of directors because of the 1½ miles that separate him from his electric meter.

Despite those miles, Clark was elected to the board of trustees of the Great Plains Electric Cooperative during the group's annual meeting earlier this month.

His election has been challenged by three former cooperative officers, however. They want present board members to disqualify Clark when trustees gather Wednesday for their regular monthly meeting.

"We don't have anything against him, except he's not a resident of the district," said Clifton Smith, Weikan, one of the three former Great Plains trustees.

Clark was nominated to the board

by Lloyd Theimer, a Colby farmer. The two men are active in a consumers' group, which for more than a year has fought higher electric rates in western Kansas.

Clark's opposition was two men who had been chosen by the Great Plains nominating committee. He defeated them, despite questions surrounding his place of residence.

According to Great Plains by-laws, a trustee must live in the area served by the cooperative. The Colby-based utility has 3,900 customers in Thomas, Logan, Sherman and Wallace counties.

Clark has a house and farm in Thomas County, but the cooperative considers his primary residence to be in Oakley, a Logan County town that draws the majority of its power from Midwest Energy of Hays. Clark's Great Plains Electric meter is at his farm, about 1½ miles from his Oakley home.

"The entire situation was explained when the members voted, and the majority of them decided my membership requirements (were adequate)," Clark said.

"Great Plains Electric has so many financial problems, it's sad we have to spend our time on these little problems that don't amount to a hill of beans."

Over the past three years, Great Plains has fallen short of its "tier," a federal government term that involves the amount of money a cooperative must collect to meet its debt obligations and provide an additional margin. Last summer, power consumption dropped 6 million kilowatt hours in the Great Plains system.

In a letter to Thomas County cooperative members, Clark wrote: "The co-op motto throughout the years has been 'you own it, you run it, you profit

(See Board, Page 9)

The Salina Journal Tuesday, April 22, 1986 Page 9

Board

(Continued from Page 1)

from it.' In studying their reports, our electrical co-op in the 38 years it has been in existence reports it has an equity of 7 percent so we 'own' 7 percent of it. I cannot serve on the board so I cannot 'run it,' and since the report says that we lost \$423,384.38 last year, I don't need that kind of 'profit.'"

The cooperative has started a study to determine whether it should work toward a merger with Midwest Energy. Midwest serves 30,000 electric and 10,000 natural gas customers in 22 counties of northwest and central Kansas.

The Colby cooperative buys its wholesale electricity from Sunflower Electric Cooperative of Hays. Sunflower also is having financial problems because of the debt it incurred

to finance construction of a \$446 million coal-fired power plant near Holcomb in southwest Kansas.

Talks are continuing this week between Sunflower and its creditors on a debt-restructuring plan.

Great Plains General Manager Al Gerstner said the alternative to the merger of his cooperative and Midwest is another rate increase for an area that already has some of the nation's more expensive power.

"The board felt the rates were too high and with a bigger organization we could knock down some overhead, but if it isn't a win-win deal for both sides I don't imagine there will be a merger," he said.

Even an approved merger could take two years to complete, said Midwest General Manager Jack Goodman.

In the meantime, Great Plains has a more immediate concern — what to do about its newest board member.

"I have no idea what the board will do," Gerstner said. "As far as I'm concerned, I think Stan Clark would make a good board member."

Gerstner said an easy solution would be to amend the by-laws. Former trustee Smith doesn't like the idea, however.

"Not for that kind of change — no," he said. "Then you could go get somebody from any part of the state for the board. That would be silly."

Smith said other co-op customers have resigned as trustees because they left their farms and moved into a town not served by Great Plains.

For Clark, such an action is not unlike taxation without representation. He contends that two-thirds of Great Plains total electric sales is to customers who are not eligible to serve on the board.

"This isn't worth my time. I know that," he said. "But there've got to be a few of us willing to get involved."

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FAIRBANKS & RIGOR, P.A.
1200 Main - P.O. Box 926
Goodland, Kansas 67735
(913) 899-5633
JDF:ks

IN THE DISTRICT COURT OF THOMAS COUNTY, KANSAS

Norval Evert, Cyril Saddler and)
Clifton A. Smith,)
Plaintiffs,)

vs.)

Case No. 86-458

Tommy Tompkins, Gene Olson, Max)
Tedford, Tauscher Bretz, Stan)
Clark, Bruce Selby, Larry Kuhlman,)
Iley Sexson and Kenneth Palmgren,)
as the Board of Trustees of Great)
Plains Electric Cooperative, Inc.,)
Defendants.)

FILED PURSUANT TO CHAPTER 60 OF KANSAS STATUTES ANNOTATED

PETITION

Comes now the plaintiffs, by and through their attorneys, Fairbanks & Rigor, P.A. of Goodland, Kansas, and for their cause of action against the defendants, allege and state as follows:

1. That plaintiffs are members of Great Plains Electric Cooperative, Inc.
2. That defendant, Great Plains Electric Cooperative, Inc., is a duly authorized Kansas corporation doing business in the State of Kansas and can be served with Summons by serving Al Gerstner, manager, Great Plains Electric Cooperative, Inc., 1125 S. Range, Colby, Kansas 67701.
3. That the Board of Trustees is comprised of the above stated individuals of Great Plains Electric Cooperative, Inc. That as trustees they are responsible for the management of the business and affairs of the Cooperative and shall exercise all of the powers of the Cooperative conferred upon them by the Articles of Incorporation and By-Laws.
4. That the membership of Great Plains Electric Cooperative, Inc. has adopted By-Laws for the management of the business affairs of said Cooperative. That the By-Laws

concerning qualification of those individuals who serve as trustees of the board at the Cooperative is as follows:

ARTICLE IV

TRUSTEES

SECTION 3. QUALIFICATIONS.

No person shall be eligible to become or remain a board member of the Cooperative who:

(a) is not a member and bona fide resident in the area served or to be served by the Cooperative; or

(b) is in any way employed by or financially interested in a competing enterprise or business selling electric energy, or supplies to the Cooperative, or a business primarily engaged in selling electrical or plumbing appliances, fixtures or supplies to the members of the Cooperative.

Upon establishment of the fact that a board member is holding the office in violation of any of the foregoing provisions, the board shall remove such board member from office.

Nothing contained in this section shall effect in any manner whatsoever to validity of any section taken at any meeting of the board.

5. That on the 8th day of April, 1986, Stan Clark of Oakley, Kansas, was elected by the membership as a trustee of the board. That it was brought to the attention of the board as well as the memberships that Stan Clark did not qualify under Article IV, Section 3, to be a trustee in that he is not a member and bona fide resident in the area served or to be served by the Cooperative.

6. It has long been a policy of the Great Plains Electric Cooperative, Inc. to strictly adhere to the By-Laws and remove individuals from the board who moved from the area served and were no longer bona fide residents.

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7. That this Court should make a judicial determination interpreting Article IV, Section 3, as to the language of what a "bona fide resident in the area served or to be served by the Cooperative" means and whether or not Stan Clark meets those requirements.

8. That if this Court determines that Stan Clark is not a bona fide resident in the area served or to be served as set out in the By-Laws that it be mandated by this Court that he be removed as trustee of the Board of Trustees of Great Plains Electric Cooperative, Inc.

WHEREFORE, plaintiffs pray that this Court make a judicial determination and interpretation of Article IV, Section 3, as to what qualifies as a "bona fide resident in the area served or to be served by the Cooperative." That if this Court determines that Stan Clark is not a "bona fide resident in the area served to be served by the Cooperative" that the Board of Trustees be directed to remove him as the trustee for not qualifying to be a trustee under the By-Laws of the Cooperative.

FAIRBANKS & RIGOR, P.A.

By *Jerry D. Fairbanks*
Jerry D. Fairbanks
Attorneys for Plaintiffs

Stan Clark
HCR #1 Box 112
Oakley, Kansas 67748
(913) 672-4280

IN THE DISTRICT COURT OF THOMAS COUNTY, KANSAS

Norval Evert, et al,)
 Plaintiffs)
 vs)
 Tommy Tompkins, et al,)
 Defendants)

Case No. 86-C-88

BRIEF IN SUPPORT OF STAN CLARK

On April 1, 1987, I filed in Thomas County District Court a Notice on Case No. 86-C-88, Evert, et. al., vs Tompkins, et. al. In that Notice I state that I (Stan Clark) named in this action as a trustee of Great Plains Electric Cooperative, Inc., advises the Court as follows:

1. That I have not been named as a Defendant in this action, as an individual Defendant,

3. That I have a property right in my office as a Trustee of Great Plains Electric Cooperative, Inc., and no judgement should be rendered against me in this action.

4. That as a friend of the Court, I advise that there has been no proper service of summons to start an action against anyone in this purported case.

It is still my claim under K.S.A. 60-212 (b)(7)

failure to join a party under K.S.A. 60-219

which states in part

(a)....A person is contingently necessary if.... (2) he claims an interest, relating to the property, or transaction which is the subject of the action and he is so situated that the disposition of the action in his absence may (i) as a practical matter substantially impair or impede his ability to protect that interest.....

I still claim my property right to hold my office as Trustee of Great Plains Electric Cooperative, Inc., and move that the case be dismissed because I have not been named as an individual Defendant in this case and therefore my position cannot be taken away from me by this Court.

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Also I base my claim on K.S.A. 60-212 (b)(5)
insufficiency of service of process.

Because I was not named as an individual defendant I also claim that there was no proper service of summons to start an action against anyone in this purported case. The Plaintiffs should be required to answer my Notice pleading their reasons for nonjoinder under K.S.A. 60-219(c).

I would move that this Court dismiss this case because of the claims previously mentioned in this brief and ask for summary judgement in my favor.

If this motion is denied then the following is my defense.

FACTS

On May 8, 1987, I received a copy of a letter from Donald Hoffman, defendant's attorney to Jerry Fairbanks, plaintiff's attorney and a three page "Stipulation of Facts" brief. As of June 15, 1987, this brief had not been filed in court so I am attaching a copy of this Stipulation because that is what I am basing my comments on. On page 2, stipulated fact No. 2, it lists my phone numbers as 672-4208 and 672-4815. Neither number is nor have they ever been my phone numbers. I have no idea whose they are but I know they are not mine.

There should be some additional facts added.

1. The City Limits of Oakley is in both Logan and Thomas Counties.
2. The City of Oakley is a member of Great Plains Electric Cooperative, Inc.
3. I voted the City of Oakley's proxy at the April 8, 1986, Annual Meeting where I was elected trustee.
4. At the time of the election I was classified as a rural residential consumer of Great Plains Electric Cooperative, Inc.
5. I took office that same afternoon at the Annual Meeting, April 8, 1986.
6. The Great Plains Electric Cooperative, Inc. Board voted either 5 to 3 or 6 to 3 on May 28, 1986, to allow me to remain on the Board.
7. The Great Plains Electric Board has not changed their position regarding my eligibility since that time.

8. Donald Hoffman, defendant's attorney has not met with the Great Plains Electric Board, either in regular or special session since August 14, 1986, in person, by letter or by phone.

ISSUE

Whether as a matter of law I was a "bona fide resident in the area served".....by Great Plains Electric Cooperative on the date of my election to the board of trustees of the Cooperative?

ARGUMENT AND AUTHORITIES

A. Article IV Section 3. Qualifications. No person shall be eligible to become or remain a board member of the Cooperative who:

(A) Is not a member and bona fide resident in the area served or to be served by the Cooperative; or

(B) Is in any way employed by or financially interested in a competing enterprise or a business selling electric energy, or supplies to the Cooperative, or a business primarily engaged in selling electrical or plumbing appliances, fixtures or supplies to the members of the Cooperative.

Upon establishment of the fact that a board member is holding the office in violation of any of the foregoing provisions, the board shall remove such board member from office.

Nothing contained in this section shall effect in any manner whatsoever to validity of any action taken at any meeting of the board.

The question seems to center around "...bona fide resident in the area served by the Cooperative."

In Article IV Section 4 "...A Committee on Nominations consisting of not less than three nor more than six members who shall be selected from different sections so as to insure equitable representation.... The Nominating Committee shall nominate at least two from each District."

K.S.A. 66-1170 through 66-1176a provides for the State of Kansas to be divided by the Kansas Corporation Commission into exclusive electric service territories.

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What is the definition of AREA?

What is the definition of SECTION?

What is the definition of DISTRICT?

What is the definition of TERRITORY?

These terms are not defined in Great Plains Electric Cooperative, Inc. By-Laws.

Webster's Dictionary gives the following definitions:

Area - The surface within any given lines.

What is the area served by Great Plains Electric? It includes all or parts of the following counties: Thomas, Sherman, Wallace, and Logan; and I think minute parts of Greeley, Sheridan, Rawlins, Decatur and Cheyenne.

Section - A distinct part of a city, county or country; a part of territory separated by geographical lines; a division.

District - A certain portion of the country, separated from the rest for some special purpose. The United States are divided into judicial districts, election districts, school districts, etc.

Territory - The extent or compass of land within the bounds, or belonging to the jurisdiction, of any state, city, or other body.

Norton-Decatur Electric Cooperative, Inc., an electric cooperative neighboring Great Plains has incorporated into their By-Laws definitions which might help in giving us the intent of Great Plains Electric Cooperative, Inc. By-Laws:

Article IV Section 2 Norton-Decatur By-Laws

Section 2. Definitions. The phrase "area served" or "territory served" shall refer to the full and entire geographic area in which the Cooperative provides electrical service at any time as well as any municipalities which are located in, and surrounded by, such area or territory.

Section 3. Election and Tenure of Office. All trustees shall be elected by secret ballot of the members of the Cooperative. One member of the Board of Trustees shall be elected who is an actual bona fide resident within the territory served or to be served by the Cooperative...

It is quite evident that there is no question of the intent of Norton-Decatur Electric Cooperative, Inc. By-Laws. I would be eligible to serve on their Board of Trustees whether I lived on the farm or in town. It is quite clear that "area served" or "territory served" includes municipalities located in, and surrounded by, such area or territory.

Both the Plaintiffs and Defendants mention the case Middle Tennessee Electric Membership Corp. v. Adams, 246 S. W. 2d 958 (Tennessee 1952) for determining "bona fide resident in the area served" by the Cooperative. In my opinion there is a vast difference between a trustee who resides in Washington, D.C. and serves on an electric cooperative in Tennessee; and a trustee who serves on an electric cooperative board and resides in a municipality that is surrounded by that area who spends the majority of the hours in a day working in the area served by the Cooperative and the whole distance in question is less than two miles.

There might be some question as to whether the trustee has to be a resident of the district but the By-Laws state that the trustees have to be bona fide residents of the area served not district or section.

One other place in the By-Laws is the term "in the area served by the Cooperative."

In Article III Section I

Annual Meeting. "The Annual Meeting of the members shall be held during the second quarter of each year on such date and at such place in the area served by the Cooperative as shall be designated in the notice of the annual meeting.... It shall be the responsibility of the Board of Trustees to make adequate plans and preparations for the Annual Meeting."

From this we can reach two possible conclusions.

1. The Board of Directors in their March 26, 1986, meeting was correct in determining that, "Mr. Clark was a bona fide resident of the City of Oakley and as such, ineligible to have his name placed on the ballot," therefore since the cities of Colby and Goodland also have municipal light plants, they are not, "in the area served by the Cooperative," therefore since the 1984 and 1986 Great Plains Electric's Annual Meetings were held in the Colby Community Building and the 1985 Annual Meeting at the Goodland Elks Lodge, and the 1987 Annual Meeting in The Cultural Arts Center in Colby,—all inside city limits and outside "in the area served by the Cooperative," then it would have to be concluded that the last four elections are not valid because they were held outside the "area served by the Cooperative" and therefore no one is qualified sitting in the office of Trustee to vote on this issue.

OR

2. It can be determined that the city limits of Oakley, Colby, Goodland, and Sharon Springs are, "in the area served by the Cooperative," and since the city limits of Oakley is in both Logan and Thomas Counties, since I carried the proxy for the City of Oakley at the 1986 Annual Meeting where I was elected to serve as a Board Member, since my Great Plains Electric Meter is located in Thomas County less than one mile from the city limits of Oakley, since my mail is delivered to the mailbox beside the road where my Great Plains Electric meter is located, since I am a patron of the Mingo Coop which is located in Thomas County and that according to Article VII, Section 2, "In the event that a non-member patron shall elect to become a board member of the Cooperative...". Then it can be concluded that the last four annual meetings held in Colby and Goodland are valid; that we do in fact have nine board members "in the area served by the Cooperative" that are qualified and were duly elected.

B. It is further agreed that Great Plains Electric Cooperative, Inc. claims to be exempt from federal income tax. This is based on 26 USC 501(c)(12) of the Internal Revenue Code for 1954 which provides for exemption from federal income tax of "mutual or cooperative telephone companies, or like organizations, if 85 percent or more of their income consists of amounts collected from members for the sole purpose of meeting losses and expenses." The exemption is not available to electric cooperatives which derive more than fifteen percent of their income from non-members.

In 1986 reported income from the following sources (expressed as a percentage):

Farms	35.05%
Village-Residential	5.13%
Irrigation	17.42%
Small Commercial	11.94%
Large Power	15.29%
Public Buildings, Streets and Highway Lighting	1.00%
Sales for Resale	13.80%
Penalties, Misc. Revenues	.37%
	<hr/>
	100.00%

According to the Plaintiffs only members from the Farms and Village Residential can serve on the Board of Trustees. Revenue from these two

classes is 40.18% of the total revenue. This raises some question as to the tax exempt status of the Cooperative especially since all of the revenue from "Sales for Resale" (13.8%) are to nonmembers, most "Public Buildings, Streets and Highway Lighting" (1%) are to nonmembers and it appears that the majority of "Irrigation, Small Commercial and Large Power" consumers are second-class members. Again, where does the Cooperative stand if 40.18% of its revenue is from members eligible to serve on the Board of Trustees, 14.8% of its revenue is from nonmembers (remember 15% is the maximum allowable sales to nonmembers) and the remaining 44.02% revenue is from consumers who cannot serve on the board if they are not also bona fide residents of a farm or village served by the Cooperative.

It is interesting to note the rates charged by Great Plains Electric in 1986:

<u>Classification</u>	<u>Average Charge per Kilowatt Hour</u>
Farm Residential	11.97¢
Village Residential	12.10¢
Irrigation	12.72¢
Small Commercial	12.76¢
Large Commercial	12.20¢
Public Buildings, Street and Highway Lighting	11.75¢
Farm Equipment Service	18.50¢
Resale	3.45¢

Nonmembers average cost per kilowatt hour was the lowest. Farm and Village Residential were next and the rest of the classifications were charged higher rates to subsidize the members that could serve on the Board of Trustees. Again, I point out that the Plaintiffs claim that Irrigation, Small Commercial, Large Commercial and Farm Equipment Service consumers cannot serve on the Board of Trustees unless they also are Farm or Village Residential.

The difference in rates would be justified if there were differences in costs in supplying the various classes of consumers electricity. In March 1987 Great Plains Electric Cooperative, Inc. had a hearing before the Kansas Corporation Commission for a rate increase. A required part of their filing was a "Cost of Service Study" for the various classes of consumers. This study found the following:

<u>Classification</u>	<u>Average Cost of Service per Kilowatt Hour</u>
Domestic	13.43¢
Irrigation	13.54¢
Small Commercial	13.18¢
Large Commercial	14.16¢
Total	13.55¢

Great Plains received a 1.81¢ rate increase across the board so it is quite evident that the costs to provide service do not reflect the revenues received from the average charge per kilowatt hour in the customer classifications.

C. Great Plains Electric Cooperative, Inc. as a borrower from the Federal Government has to comply with Title VI of the Civil Rights Act of 1964.

Statement of Non-Discrimination

Great Plains Electric Co-operative, Inc., Colby, Kansas

has filed with the Federal Government a Compliance Assurance in which it assures the Rural Electrification Administration that it will comply fully with all requirements of Title VI of the Civil Rights Act of 1964 and the Rules and Regulations of the Department of Agriculture issued thereunder, to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the conduct of its program and the operation of its facilities. Under this Assurance, this organization is committed not to discriminate against any person on the ground of race, color, or national origin in its policies and practices relating to applications for service or any other policies and practices relating to treatment of beneficiaries and participants including rates, conditions and extension of service, use of any of its facilities, attendance at and participation in any meetings of beneficiaries and participants or the exercise of any rights of such beneficiaries and participants in the conduct of the operations of this organization.

Any person who believes himself, or any specific class of individuals, to be subjected by this organization to discrimination prohibited by Title VI of the Act and the Rules and Regulations issued thereunder may, by himself or a representative, file with the Secretary of Agriculture, Washington, D.C. 20250, or the Rural Electrification Administration, Washington, D.C. 20250, or this organization, or all, a written complaint. Such complaint must be filed not later than 180 days after the alleged discrimination, or by such later date to which the Secretary of Agriculture or the Rural Electrification Administration extends the time for filing. Identity of complaints will be kept confidential except to the extent necessary to carry out the purposes of the Rules and Regulations.

Great Plains Electric Cooperative, Inc. has to comply with this Civil Rights Act.

"This organization is committed not to discriminate against any person...in its policies and practices relating to applications for service

or any other policies and practices relating to treatment of beneficiaries and participants including rates....., attendance at and participation in any meetings....or the exercise of any rights....in the conduct of the operations of this organization. In other words all members should either be charged the same rate, or be charged rates in line with the utility's cost of service; and all members should be allowed to participate on an equal basis in the conduct of the operations of their Cooperative.

D. It would be interesting to see how this Court would rule on Bob Dole and Pat Roberts. Do they meet the criteria of being "bona fide residents in the area they serve?"

E. In regard to Donald Hoffman's brief in support of Great Plains Electric Cooperative, Inc. I think this Court should look into the minutes of the Board of Trustees to find its authorization to submit such a brief. If this Court cannot find such authorization then I would hope that it would seek disciplinary action to reprimand him for the careless way he represented his client.

Based on the foregoing law and facts, it is my position that I was a bona fide resident in the area served by the Cooperative at the time of my election because I was a member and consumer of Great Plains Electric Cooperative, Inc., the City of Oakley was a member of Great Plains Electric Cooperative, Inc. and a retail electrical consumer of the Cooperative; that the intent of the words in the by-laws "in the area served by the Cooperative" are the same as Norton Decatur Electric Cooperative, Inc. By-Laws; that for years the annual meetings of Great Plains Electric Cooperative, Inc. have been held in Goodland and Colby and neither of these communities are members of Great Plains Electric Cooperative, Inc.; and finally that all the members attending the annual meeting of the Cooperative on April 8, 1986, heard considerable discussion about my eligibility after I was nominated as a write-in candidate and the Board recessed the annual meeting, called a special board meeting, decided to allow my name to be placed in nomination, reconvened the annual meeting, and I was elected by a vote of 125 to 68; therefore I should be allowed to continue serving my term on the Board of Trustees of Great Plains Electric Cooperative, Inc.

Respectfully submitted,


Stan Clark, Pro Se



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SENATE UTILITIES COMMITTEE SENATE BILL NO. 589

By Walker Hendrix, Consumer Counsel
February 18, 1998

Although I am sympathetic with the Coop's frustration over the responsiveness of the KCC to act on certain regulatory matters, I don't think that this frustration should give rise to an effort to deregulate our larger distribution Coops and our G&T Coops. This is especially true when it is considered that KEPCO is a nuclear power generating Coop and both KEPCO and Sunflower are financially impaired.

Because of bad business decisions, our Coops have some of the highest rates in the nation. The reason we have two generating Coops was an unwillingness of the Coops to work together on a common and affordable generating plan. Both KEPCO and Sunflower teeter on the edge of bankruptcy. It would be bad public policy to deregulate our generating Coops.

These Coops, in the face of huge indebtedness, which in the case of Sunflower cannot be satisfied, respectfully request partial deregulation. This is the same group that vigorously opposes retail wheeling and strongly insists that it be allowed to retain its monopoly presence under single certification. Essentially, this group wants to be an unregulated monopoly.

Because of the staggering debt which has accrued, the Coops have recognized that it would be foolhardy to entirely deregulate rates, lest their creditors would pressure their

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managements to increase rates to accelerate debt collection, to retire contingent debt or to avoid writing off uncollectible debt. Consequently, the Coops have suggested that any further rate increases be the subject of continued regulation by the KCC. Presumably, this would give the Coops the prerogative to selectively lower rates without KCC approval. Herein lies the rub.

Based on my experience with contested Coop matters, there is always the prospect that the Coop management could decide to favor one group of customers over another. For example, oil producers have often been found to be a class in which revenue could be derived. Although Coops, in theory, are participatory democracies, more often than not, there is not an abundance of candidates, leaving the obligation to those that can benefit most from participation on the Coop Board. There is a natural tendency to favor Board members over non-Board members in contested matters. Consequently, most non-Board members tend to be simply ratepayers.

The G&Ts are served by Boards of Directors that are made up of members of the Board of Trustees from the owner distribution coops. The G&Ts serve customers that are non-members, viz., municipalities like Garden City, Kansas. Thus, at the very least, regulation is necessary to protect the non-member patrons. To complicate matters, the officers of the G&Ts are personally liable on notes secured by the G&Ts assets. Consequently, there is a potential for conflict of interest between sales customers and the Coops management.

Suffice it to say, regulation is necessary to maintain utility operations which are fair and reasonable. This is not to suggest that all regulatory decisions are correct. A bad regulatory decision can be changed with the selection of new commissioners. However, it is very difficult to re-institute a regulatory framework. In this instance, it is not appropriate to eliminate regulation for the protection of the general public. We don't need to throw the baby out with the bath water.

This debate is not about deregulation per se. If the Coops wanted to be deregulated they could also advocate the rescission of their power supply contracts and their protections under single certification. Then they could propose open access tariffs and spot market prices. This is not what they want. They want to selectively eliminate regulation that they regard as burdensome. Given the potential for conflict of interest and discrimination, this is not a reasonable alternative. Therefore, CURB opposes Senate Bill No. 589.

Attach 11



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Before the Senate Utilities Committee
February 18, 1998

Re: SB 589 - Electric Cooperative Utilities

I am Don Schnacke representing the Kansas Independent Oil & Gas Association, a 60 year old association representing Independent oil and gas operators throughout Kansas and the supporting industry. We are appearing here today in opposition of SB 589.

Our industry operates primarily in the rural counties of Kansas. As KCC licensed operators we operate thousands of oil and gas wells and rely heavily on electricity to power our pumping units and supporting activity related to the production of oil and gas. We have conducted surveys among our members and find that up to 50% of the lifting cost of doing business on an active producing lease is reflected in the cost of electricity.

As a result of this heavy reliance on electricity, KIOGA intervened in the Wolf Creek power plant initial rate case and we have been very active in retail wheeling issues. We have attended and testified before the special retail wheeling task force.

A member of our Board of Directors, Mr. Mike Vess, of Vess Oil Corporation, was appointed to serve on the task force, and often presented the plight of the small rural consumers, including farmers, ranchers, cattlemen, and oil and gas producers. That was his role on the task force, and those of you on the Senate Utilities Committee that served, I believe you developed a sincere appreciation of his views. He serves as Chairman of the KIOGA Electricity Committee and has instructed me to appear today in opposition to SB 589.

We are very familiar with KSA 66-104 d that was enacted in 1992 that allowed the rural electric cooperatives to become deregulated from the jurisdiction of the State Corporation Commission. Since many oil and gas producers are non-resident within the boundaries of the electric cooperatives, we were the sponsor of the language appearing on page 2, line 23 allowing a petition of not less than 5% of the cooperative customers or 3% of the cooperative customers from any one rate class to have the KCC examine any new rates, and set new rates if their examination warranted this conclusion. We felt this was a protection to oil and gas producers and other small rural consumers from rates that were unjust and unreasonable.

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Testimony of Donald P. Schnacke
SB 589

The cooperatives wanted out from under the KCC jurisdiction in 1992 to save money in preparation of expensive audits and hearings they did not feel were necessary. We agreed with their position.

We do not agree that the power companies that furnish power and set rates for the cooperatives should become deregulated as proposed in SB 589 and set higher rates without KCC authority. We have a great deal of facts on this subject.

In the western, one third of the state of Kansas electrical power is provided by Sunflower Electric Power Corporation, through its member Coops averaging 35-50% more than the same power for the same purpose provided by non-Sunflower providers such as Mid West Energy and West Plains Energy. To allow the deregulation of power plants like Sunflower and KEPCO and perhaps others which would permit them to raise rates to their captive customers is what we oppose.

All classes of customers are effected, but in the case of the Kansas oil and gas industry, higher rates for electric power result in shorter well life and premature abandonment of oil and gas reserves resulting in economic hardship and waste of Kansas natural resources.

Throughout the many months of deliberations of the special task force on electricity wheeling, and the recommended legislation arising from that study, there continues to be an emphasis on the role of the State Corporation Commission. Until power plant wheeling is permitted and open competition is allowed for retail customers, including open market sales to the cooperatives, we feel that continued state corporation commission regulation is vital and necessary.

We are opposed to the proposal in SB 589 and ask you to not pass this legislation.

Donald P. Schnacke

DPS:sm

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