

Approved: April 3, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Pat Ranson at 1:30 p.m. on March 23, 1998 in Room 531-N of the Capitol

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

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

Conferees appearing before the committee:
Rep. Carl Holmes
Larry Holloway, Chief of Electric Operations, Kansas Corporation Commission
Dave Heinemann, Executive Director, Kansas Corporation Commission

Others attending: See attached list

Sen. Ranson announced the committee will hear:
HCR 5035-Urging Congress not to take action regarding deregulation of electric generation industry and to leave that responsibility to individual states

She introduced Rep. Holmes, who explained the Resolution asks Congress not to take action on deregulation of electric power. He explained it is a states rights issue, and the fear is that Congress will enact legislation which would mandate that the states deregulate. Sen. Ranson and Rep. Holmes discussed the fact that there are areas where the federal government needs to be involved in the process of deregulation; Rep. Holmes agreed, and used as an example the involvement of the federal government regarding the role of the Independent Service Operators (ISO's).

Sen. Ranson then introduced Larry Holloway, who presented the KCC's position on the Resolution (Attachment 1). Sen. Ranson called attention to written information submitted by Leslie Kaufman, representing the Farm Bureau (Attachment 2), who requested they be listed as a qualified opponent. The committee discussed what the role of the federal government should be and consensus was that the federal government should have a limited role in deregulation. An example is assuring that the utilities have access to one another's transmission lines and some tax issues. It was pointed out that FERC has deregulated the wholesale portion of the electric industry, but not retail. Sen. Ranson stated the Resolution possibly stated the policy more broadly than the committee would like; that alternative language be drafted to narrow the focus. She requested that Mary Torrence draft an amendment for consideration tomorrow which would narrow the focus and specify the Resolution relates to retail competition.

Sen. Ranson referred to:
SB 686-Refunds of rates and charges received for reimbursement of ad va-orem taxes for the sale of natural gas

and called on Dave Heinemann to further explain the situation regarding the FERC Order relating to principal and interest that is to be refunded to Kansas consumers. He stated that Kansas has jurisdiction over revenues being returned to consumers, and that they are monitoring the refunds to insure they are being returned to those who are entitled to it. He reminded the committee the KCC is appealing the Decision to the 10th Circuit Court, requesting the interest and penalties be waived; that there are 60 or so filings from the producers asking for extensions of time; that five of the companies are appealing, including El Paso Natural Gas and Natural Gas Pipeline Company. Sen. Barone referred to Exhibit II (Attachment 3-submitted to the committee yesterday), noting that there is approximately \$128 million due in principal and approximately \$209 million due for refund in interest and asked who made the overpayment and who has the money now? Mr. Heinemann responded that FERC acknowledges that not all of the money is collectible; that it has imposed an extreme hardship on the companies, and they have set up a procedure for a 5-year amortization for repaying the refunds. On the question of who has the money, Mr. Heinemann stated when the tax was imposed, it was deemed to be a severance tax, consequently, the companies could pass it through to the end user - that was a FERC decision which everyone relied on. He stated that local units of government, including the county, probably have ended up with the money. He added there are no clear answers, with the pipelines trying to collect the refunds, and the producers are questioning numbers, it is very difficult to go back fifteen years and look for records to determine who is eligible for refunds. He reminded the committee companies have filed appeals, saying they are not subject to the Order because of non-jurisdictional sales. Sen. Brownlee

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON UTILITIES, Room 531- -N, Statehouse, at 1:30 p.m. on March 23, 1998.

asked if Congress would take some action, in light of the litigation, if it would benefit all parties involved in the cases. Mr. Heinemann answered that when the Court heard this case, it involved the state of Texas also; that the Order to refund the principal is final; that the Court made the refunds retroactive and remanded the case to FERC; that any action taken will refer to the question of interest only; that our Congressmen are sympathetic to the situation, however, the case involves only Kansas, and it is difficult to pass legislation involving only one state.

Sen. Morris asked if the bill were changed to set up a trust fund and designate a disbursing agent and address the problem in this state, what the downside will be? Mr. Heinemann stated it would present legal problems and be hard to work out, and it could result in some companies being in contempt. Sen. Barone asked for clarification that Kansas is the only state involved with refunding money to consumers. Mr. Heinemann answered that Kansas is the only state, by reason of the ad valorem tax being considered a severance tax, which was an interpretation of Kansas law; that FERC ordered the refund be returned to the customer. He further emphasized that only 20% of those who will receive refunds are Kansas consumers - the remainder will be paid by Kansas producers to purchasers of natural gas who are not Kansas residents. Sen. Ranson clarified that some entities have already paid and some producers have made payments into an escrow account so they would not be in violation of the law and subject to further penalties.

Sen. Morris stated the justification for the bill is to help the producers and asked if anyone could come up with an idea to do it better. Sen. Ranson stated it would help the committee if the KCC could support or oppose the bill, and Mr. Heinemann stated the Commission's stand is that it is unconscionable to order producers to go back fifteen years; that we cannot touch what's been paid into escrow, and there is possibility it could be interpreted they would have to pay twice, since the bill provides for payment to the state treasurer; that the bill would cause more conflict and a company could file to declare it non-operative, thus bringing about another law suit. Sen. Steffes asked if the bill makes a horrible situation more horrible and puts the state in a position to become involved in further litigation. Ron Hein, legal counsel for a producer of natural gas, Pioneer Natural Resources USA, Inc, gave additional history on the severance/ad valorem tax and the fact that it can be passed on; that it was not intended to tax the producers, but rather a tax on out-of-state consumers since it could be passed on. The severance tax was imposed by the state and the money went to units of local government. Sen. Ranson asked what the state can do to solve the problem, and Mr. Hein recommended holding the bill, hoping to bring in attorneys to work toward a solution. He asked the committee to hold the bill so that it could be worked on.

Sen. Ranson announced the committee will look at additional language on the Resolution and consider what to do regarding the senate bill, as well as look at Minutes which have been submitted for approval.

Meeting adjourned at 2:30.

The next meeting is scheduled for March 24, 1998.

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: MARCH 23, 1998

NAME	REPRESENTING
Joe Dugh	BPU, KCC
Heather Randall	Whitney Johnson, F.H.
Don Miles	KCC
Tom Leches	Int'l. & Assn.
DICK CARTER, JR	ENRON
Jo Song	UtiliCorp Limited.
Amy A. Campbell	
David Schuck	KIOGA
Wm Wix	KCC
Long M. Kelly	KCC
HELDY	KSTP
Henneman	KCC
Earlie Lehman	Western Resources
ED SCHAUB	" "
Jack Graves	City, Duke + N-N
WALKER HENDRIX	CURB

LARRY HOLLOWAY
3-23-98
A-1

**BEFORE THE SENATE UTILITIES COMMITTEE
PRESENTATION OF THE
KANSAS CORPORATION COMMISSION STAFF ON
HOUSE CONCURRENT RESOLUTION NO. 5035**

This testimony is presented on behalf of the Staff of the Kansas Corporation Commission. Commission Staff supports HCR 5035. Commission Staff agrees that the decision of whether, when and how to implement retail competition should be left to the policy makers in each individual state.

Commission Staff does believe that some federal action is needed to create a level playing field for existing and future wholesale, interstate electric markets. Staff agrees that Congress should be encouraged to restrain itself to issues involving promotion of wholesale competition, establishing legislation enabling states to find regional solutions to regional issues, and maintaining the national and international reliability of the North American electric system. Staff believes the following are examples where congressional intervention may be desirable.

- Congressional action may be needed to give the Federal Energy Regulatory Commission (FERC) authority over all transmission owning utilities to ensure full wholesale competition. Currently FERC does not have jurisdiction over transmission facilities owned and operated by public entities such as Cooperatives, Municipals, Public Power Districts or federal power administrations such as Bonneville Power Administration (BPA), Tennessee Power Authority (TVA), Southwestern Power Administration (SWAPA) and others. State jurisdiction over these entities is limited, and as a practical matter where state regulatory authorities do have jurisdiction, implementing anything but the FERC standards is often difficult.
- Establishing competitive wholesale markets through such entities as transmission Independent System Operators (ISOs) will require regional regulatory solutions. Congressional action may be needed in the future to grant states the authority to enter into these regional regulatory agreements.
- In the past, complying and adopting reliability criteria has been completely voluntary within the electric industry. As wholesale competition increases, and as some states permit retail competition, voluntary cooperation between competing utilities will likely decrease. Ensuring the continued reliability of the North American Electric system may require Congress to enact legislation to grant federal regulators more authority to enforce industry reliability criteria. Additionally, because the American and Canadian electric systems are interconnected, Congressional action may be required for international reliability criteria.

Senate Utilities
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Attach. 1

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PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON UTILITIES

**RE: HCR 5035 – Urging Congress to Not Take Action
Regarding Deregulation of the Electric Generation Industry.**

²³
March 19, 1998
Topeka, Kansas

**Prepared By:
Leslie Kaufman, Assistant Director
Public Affairs Division
Kansas Farm Bureau**

Senator Ranson and members of the Committee, thank you for the opportunity to appear before you today and share comments on behalf of Farm Bureau members regarding HCR 5035. I am Leslie Kaufman. I serve as the Assistant Director of Public Affairs for Kansas Farm Bureau.

Our American Farm Bureau Policy regarding electric power generation is attached to this statement. The portion that directly addresses electric utility restructuring appears on page two of the policy in the shaded section.

Farm Bureau appears today in what we would term “qualified or partial opposition” to the Resolution. We fully support individual states

*Senate Utilities
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Attach. 2*

having the authority to determine whether or not to deregulate their electric generation industry. It is essential that states have flexibility within the restructuring arena to address individual needs and situations.

However, there needs to be some general continuity from one state to another in restructuring schemes. Farm Bureau supports action at the federal level to establish the framework for implementation of changes in the structure of the electric utility industry.

As such, we can not fully support HCR 5035 in its current form. If it be the wisdom of the committee to amend the Resolution so as to urge Congress to enact a framework for deregulation that provides some general continuity from state to state while insuring states maximum flexibility to meet their individual needs, we could more fully support the proposal.

Thank you.

AFBF POLICIES FOR 1998

Electric power generation 132

The production, transmission and distribution of power, including the production of power from atomic materials, should be primarily a function of private enterprise, which includes cooperatives, and of other nonfederal electrical utility systems. Federal production or transmission of power should be limited to instances where it is clearly demonstrated that adequate development cannot be obtained otherwise.

We support the use of biomass fuels for electric power generation whenever economically feasible.

We support the continued expansion of nuclear energy plants, including breeder reactors, as a source of needed energy with adequate safeguards to ensure their safe and environmentally sound use, with increased emphasis regarding the reprocessing of nuclear waste.

We support the study of the impact of nuclear power plant emissions upon the surrounding agricultural community.

We support the sale of the right to generate power at federal dam sites to private enterprise or local units of government unless it would adversely affect the cost of electricity to rural America. When power is produced by a federal agency, we favor its sale at the plant.

Cooperatives and municipalities should have the first opportunity to purchase federal power subject to such modifications as may be necessary to accomplish equitable geographic distribution.

Public utilities and cooperatives should not be required to give up territories in established service areas when municipalities expand into these areas through annexation.

The price of power sold by public agencies should include an amount equal to the federal income taxes and local property taxes and such amounts should be paid to the appropriate units of government in lieu of taxes.

We should support effective regulation of power rates, fair treatment of customers and responsibility for service in franchised territory.

Water of a quality which is useful for agricultural and domestic consumption should be protected for those uses, whenever practicable.

We oppose requirements for utilities to collect funds from customers or members to finance residential utility consumer action groups or any other organization.

The operator of a nuclear facility, prior to beginning of operation and at regular intervals thereafter, should be required by the Nuclear Regulatory Commission to educate neighboring farmers on emergency agricultural practices and procedures to be followed in the event of a nuclear accident.

We are opposed to the Tennessee Valley Authority (TVA) reclassifying farm accounts and favor a reorganization of the TVA board to provide that at least one director

be a farmer-landowner Farm Bureau member. TVA has achieved most of its original goals and purposes and should not continue in its present form.

TVA's debt of \$27 billion is a problem for the agency. TVA rate payers should not bear the burden of a debt created to benefit the nation as a whole. Farm Bureau should work toward a fair debt payment. TVA must be allowed to compete fairly in the total marketplace if TVA is to remain a reliable power generator.

We oppose legislative programs that will increase the cost of electricity to businesses, farms and industries without evidence that the program is needed.

We oppose any change in the system of operations that will alter the intent and purpose of a reclamation project as outlined in the original legislation that established the facility.

Electric utility restructuring

The following principles must be met before implementation of any restructuring plan that deregulates electric utilities and establishes retail competition:

(1) Changes in the structure of the electric industry must not be undertaken without full and informed public debate.

(2) Benefits of deregulation should be measured primarily in terms of economic and social consequences.

(3) The results of restructuring should ensure that all customers have access to reliable electrical service at fair and reasonable prices.

(4) Restructuring should be consistent with the goals of protecting the environment, cost-effective sustainable energy technologies.

(5) Restructuring should maintain adequate staff levels and training to ensure safety, reliability, customer service and planning standards.

(6) Rural consumers must be assured of reliable service and competitive prices.

(7) Provide a phase-in to purchase electric power in a competitive market.

(8) Provide a mechanism for smaller customers to pool their electric power consumption into a larger marketable share through aggregation in order to attract and better obtain low-cost electric power.

(9) Provide authority to Rural Electric Cooperatives to decide whether to enter into a deregulated marketplace. These decisions should be left to the cooperative member owners and their boards of directors.

The federal government should set the framework for the implementation of changes in the structure of the electric utility industry, but should allow state government to decide whether or not to deregulate.

Hydroelectric facilities—federal licenses

We favor federal relicensing of hydroelectric generation facilities in a manner which will protect agriculture's interest in maintaining the availability of lowest cost energy. The entity which constructed and operated the generation facility during the original license period should be given a preference for the license extension. Only in this manner can the most encouragement be given for risk ventures for the construction of future hydroelectric facilities.

We reject attempts to force an accelerated repayment schedule for loans incurred for federal dam construction.

If a license should be revoked or not renewed, the utility must be compensated at current value by the federal government.

Rural Electric Utilities

We support rural electric cooperatives organized and operated in accordance with accepted cooperative principles and practices. We oppose any plan or effort to convert rural electric cooperatives into a public power system.

We urge the members of the rural electric cooperatives to continue to support the National Rural Utility Cooperative Finance Corporation as a means to supplement the shortage of federal funds. We support rural electric cooperatives in their efforts to resolve their immediate refinancing and debt restructuring problems.

We believe that a properly designed federal revolving fund can and should be an integral part of the means to provide the rural electric cooperatives adequate credit to maintain and strengthen their systems. Such a revolving fund should include an adequate rate of interest to keep the fund solvent and be used in conjunction with private capital to finance the system.

We recommend that the Rural Utilities Service (RUS) be preserved as an independent agency within USDA and that steps be taken to ensure that key administrative functions, including those pertaining to the establishment of technical and engineering standards, are retained within RUS.

**KANSAS AD VALOREM
INTERSTATE PIPELINE
REFUND REPORTS**

LINE NO	INTERSTATE PIPELINES	PRINCIPAL REFUND IN MILLIONS	INTEREST REFUND IN MILLIONS	TOTAL REFUND IN MILLIONS
1	WILLIAMS NATURAL GAS	\$45.7	\$72.4	\$118.1
2	(3) KN INTERSTATE TRANSMISSION CO	\$12.1	\$18.8	\$30.9
3	NORTHERN NATURAL GAS	\$30.1	\$50.2	\$80.3
4	PAN HANDLE EASTERN	\$20.0	\$33.6	\$53.6
5	(1) COLORADO INTERSTATE GAS CO	\$13.3	\$21.6	\$34.9
6	EL PASO NATURAL GAS	\$1.6	\$2.0	\$3.6
7	(3) NATURAL GAS PIPELINE CO OF AMERICA	\$0.08	\$0.16	\$0.2
8	(1) ANR PIPELINE COMPANY	\$0.4	\$0.8	\$1.2
9	(2) ANADARKO	\$5.4	\$9.7	\$15.1
10	TOTAL	\$128.7	\$209.3	\$337.9

Source: Amounts contained herein per each pipeline's "Refund Report" filed at FERC

- (1) Colorado Interstate and ANR are subsidiaries of the Coastal Corporation
- (2) Anadarko is successor in interest to Cimarron River System, which is successor in interest to Centana Energy Corp.
- (3) NGPA's parent MIDCON was purchased by KNI's parent KN Energy, Inc. on December 18, 1997

*Senate Utilities
3-23-98
Attach. 3*