

Approved: Carl Dean Holmes  
Date 2-2-99

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Rep. Carl Holmes at 9:10 a.m. on January 27, 1999 in Room 522-S of the Capitol.

All members were present except:

Committee staff present: Lynne Holt, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Jo Cook-Whitmore, Committee Secretary

Conferees appearing before the committee: Jim Ploger, Energy Program Manager, KCC  
Tom Day, Information Resource Specialist, KCC  
Larry Holloway, Chief of Energy Operations, KCC  
Jim Ludwig, Western Resources Inc.

Others attending: See Attached List

The Chairman asked for bill introduction requests. Rep. Alldritt stated he had two for the committee to consider. The first has to do with telephone service. Rep. Alldritt would like the committee to consider telephone companies providing an in-area code flat rate calling, as an option to customers. The second is a request for a bill to form the Kansas Energy Commission. Rep. Alldritt moved that the committee introduce bills 1) To consider an in-area code flat rate calling charge by telephone companies and 2) to form the Kansas Energy Commission. Motion was seconded by Rep. Dahl. Motion carried. The Chair asked Lynne Holt if there were additional copies of the Retail Wheeling Task Force Report and that they be provided to the members of the committee who did not have copies. The Chair reported that hearings would be held on **HB 2025** during his absence on February 15 and 16 and Vice-Chairman Tom Sloan would chair the meetings.

**Hearing on HB 2053 - relating to lighting standards for public buildings.**

The Chair recognized Jim Ploger, Energy Program Manager of the Kansas Corporation Commission, who testified in favor of **HB 2053**, (Attachment 1). There were no questions.

**Hearing on HB 2056 - relating to certain fees of the state corporation commission.**

The Chair recognized Tom Day, Information Resource Specialist from the Kansas Corporation Commission, who testified in favor of **HB 2056**, (Attachment 2). Questions and discussion followed.

**Hearing on HB 2057 - Electric generation facilities.**

The Chair recognized Larry Holloway, Chief of Energy Operations from the Kansas Corporation Commission, who testified in favor of **HB 2057**, (Attachment 3). Mr. Holloway also provided additional information as previously requested by the committee and was granted time immediately following his testimony. This additional information covered the Kansas Electric Generation Facility Siting Act, Additional Electric Generation Plant Permitting Requirements, Generation Siting Authority by Electric Utility Regulatory Bodies in Nearby States (as presented to the Retail Wheeling Task Force on September 4, 1996 by the KCC Staff) and a memorandum about the Commission Authority with Regard to Transmission Line Siting. (Attachment 4). Questions and discussion followed.

The Chair recognized Jim Ludwig of Western Resources, who testified against **HB 2057**, (Attachment 5). Questions and discussion followed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 522-S, Statehouse, at 9:10 a.m on January 27, 1999.

Additional questions were posed to the conferees regarding their testimony. The Chair requested from the Kansas Corporation Commission information about dockets on long term plans by utilities. Preliminary report would be available on February 22.

The Chair stated the committee would work the first two bills heard today at tomorrow's meeting.

Meeting was adjourned at 10:55 a.m.

Next meeting is Thursday, January 28.

# HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 27, 1999

NAME	REPRESENTING
Joe Duke	KCK BPU
TOM DAY	KCC
STACEY BOYLES	KCC
Kelley G. Harrison	WRI
Larry Holloway	KCC
Jim Ludwig	Western Resources
Jim Ploger	KCC
Paul Holman	Western Resources
MIKE MOFFET	SWBell
Don Miles	KCC
JIM GARDNER	DEPARTMENT OF ADMIN
J.C. LONG	UCU
Samuel Powell	AKA - Administrative Assoc.
ED SCHAUB	WESTERN RESOURCES
Adam Bechard	Kearney (law) office/K.I.N.E. L.C.

# HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: \_\_\_\_\_

NAME	REPRESENTING
HEINEMANN	Kee
Don Moler	League of KS Municipalities

House Utilities Committee  
Testimony of the Kansas Corporation Commission Staff  
January 27, 1999

House Bill 2053

Chairman Holmes, members of the committee, I am Jim Ploger, Energy Program Manager for the Corporation Commission. I appear today in support of HB 2053.

In the late 70's and early 80's the legislature gave the Commission authority to adopt heat loss standards and maximum lighting standards for commercial buildings. The Energy Policy Act (EPACT) adopted by Congress in 1992 required each state to implement certain commercial and industrial energy efficient building codes. These building codes, like most modern building codes include maximum lighting standards as part of the overall energy analysis. In 1997 the legislature adopted Senate Bill 333 requiring all commercial and industrial buildings to meet the EPACT requirements and removing the Commission's authority to adopt energy efficiency standards for commercial, industrial or residential buildings. Public buildings are by definition commercial or industrial buildings, therefore the Commission no longer has the authority to adopt energy efficiency standards for these buildings.

Because 58-1312 through 58-1315 deal primarily with maximum lighting standards for public buildings they were probably overlooked in the 1997 legislation. The proposed repeal will correct this omission and make the statutes more consistent with modern building codes.

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House Utilities Committee  
Testimony of the Kansas Corporation Commission Staff  
January 27, 1999

House Bill 2056

I am Tom Day, Information Resource Specialist for the Kansas Corporation Commission. The Commission requested the introduction of HB 2056 to assist with a growing opportunity occurring with applications for telecommunications services.

Since the federal and state laws have changed allowing business to provide interexchange telecommunications services or competitive local exchange services, the Commission has received numerous applications on an annual basis. During FY 97 and FY 98, 91 and 86 applications, respectively, were received for interexchange reseller services to be processed. During that same period 25 applications in FY 97 and 34 applications in FY 98 for competitive local exchange services were received. These applications requested authority to operate in the State of Kansas as an interexchange telecommunications reseller or competitive local exchange services. Statistics are not readily available, but approximately 90 percent of the interexchange services resellers are out-of-state. Thus far, during FY 99, 49 applications for interexchange reseller services have been received and 25 applications for competitive local exchange services .

During FY97, FY 98 and FY 99, the number of requests to cease operating in the state by these interexchange services providers has begun showing dramatic increases when compared to the number of applications for certificates to operate. These numbers: FY 97--14, FY 98--35, and the first half of FY 99--22, are beginning to put increased activity on staff and commissioners. We also have instances of companies applying for authority and requesting to cease operations within the same fiscal year. Staff perceives in many instances that companies

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request certification in Kansas because there aren't any up front costs. When the companies receive their first assessment, they decide the costs outweigh the opportunity to hold onto the certificate, just in the event they want to do business eventually in this state, so they notify the commission to cease operations. However, this isn't always the case, as we have numerous pieces of returned mail that indicate the companies have just disappeared. The proposed application fee, although not a tremendous amount of money, will be a deterrent to those companies who are not serious about providing service in the State of Kansas and are only looking for the prime opportunities to make a quick dollar or two. Hopefully, this will keep fly-by-night companies from making these dollars in this state and suddenly going out of business before we really know who they are. Staff believes that in large part the increase in request to cease authority is due to the success of the KCC in obtaining a minimum \$100 assessment for all companies under the jurisdiction of the commission.

In the 1997 Legislature, this commission was successful to change the quarterly assessment on companies to charge a minimum of \$100 annually for the opportunity to provide services in the state. However, an application fee, in addition to \$100 minimum annual assessment, will allow the agency to better protect the citizens of Kansas. This happens after the companies receive their first assessment and did not plan to offer services in Kansas at that time and those companies were not serious about providing telecommunications services at the time.

**BEFORE THE HOUSE UTILITIES COMMISSION  
PRESENTATION OF THE  
KANSAS CORPORATION COMMISSION ON  
HOUSE BILL NO. 2057**

Thank you Chairman, I'm Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission and I'm appearing today on behalf of the KCC. This bill is part of the legislative package sent over from the KCC for your consideration, and as such the KCC supports this bill.

These changes are intended to eliminate privately financed merchant power plants from the definition of a public utility and from the requirements of the generation siting act. The intent would be to encourage the development of generation facilities that would sell on the competitive wholesale spot power markets and would not be linked to a utility or ratepayer financial obligation. Additionally, this bill would also exempt privately owned non utility parallel generators and cogenerators that are technically public utilities under the current statutes.

**Explanation**

In 1979 the legislature passed the generation siting act. During this time period Kansas utilities were actively engaged in the construction of 3 large base load coal units and the Wolf Creek Nuclear Plant. The generation siting act requires that any entity wishing to construct a power plant must first get approval from the Commission. The Commission is required to consider the need, cost, location and feasibility of the facility before granting a siting permit.

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In 1979, with the exception of small cogeneration and some renewable energy projects, virtually every generation plant was constructed, owned and operated by electric utilities to serve their native wholesale and retail customers. Since the generation siting act was passed in Kansas there have been substantial changes in the way electric generation facilities are financed, owned and operated. Starting in the 1980's many generation plants have been built by Independent Power Producers (or IPPs) that were not affiliated with the utility that purchased their power. However, until the last few years, the majority of these IPPs were financed by long term purchase power contracts with regulated electric utilities. While there were no IPPs constructed in Kansas, in states where these facilities have been constructed the 30 to 40 year contractual obligations placed upon the purchasing utilities were similar to the commitments such utilities made when constructing their own generation facilities. For this reason, these independent power producers, while not utilities, were financed through obligations placed upon utilities and their ratepayers that were not significantly different from those of a typical ratebased generation unit.

Recently (in the last three to four years) there has been an increasing amount of new electric generation facilities built by independent power producers that fall into the category commonly referred to as "merchant plants". Merchant power plants are generation facilities that are financed, constructed and operated without long term contract obligations. As open wholesale electric markets have developed, merchant plant investors are building and operating their generation plants solely for the purpose of selling their electricity on short term wholesale power markets. In the case of the merchant plant, there is no long term obligation for the purchasing electric utilities or their ratepayers. In this sense the merchant plant is no different from any other industrial facility that is built by private investors, at risk, for the purpose of selling a

product to the competitive market place, with no long term guarantee of success. As shown in a handout provided to this committee on January 19, 1999, by Matthew Brown of the NCSL, 60,488 megawatts of merchant plant generation capacity have been announced in the United States, none of it in Kansas.

The siting act does not distinguish between a merchant plant and a ratebased utility generation unit. The electric generation facility siting act only excludes small renewable generators and requires all public utilities to obtain a siting permit prior to constructing an electric generation facility. Furthermore, other than exceptions for certain municipal utilities and rural electric cooperatives, K.S.A. 66-104 essentially defines any company that generates electricity for sale as a public utility. As the statute now reads, an entity wishing to construct a merchant power plant in the state of Kansas would be required to obtain a certificate of convenience and a siting permit from the Commission, in addition to environmental and zoning permits that any other type of industrial facility would need to obtain. Furthermore, because such a facility would be considered a public utility under current law, its property value for property taxes would be assessed at a higher rate than other industrial facilities. Perhaps of greater concern, merchant facilities that were certified as public utilities would also be granted powers of eminent domain normally only reserved for utilities and governmental entities.

In addition to merchant power plants, many future and existing cogenerators and small parallel generators would technically be considered public utilities under K.S.A. 66-104 and the electric generation siting act. For example, an industrial facility using process steam to generate electricity for resell would be a public utility. By the same token parallel generators, allowed to

sell to electric utilities under the provisions of K.S.A. 66-1,184 also meet the definitions of public utilities. A rigid enforcement of the law would require, for example, a person owning a small wind turbine that occasionally generates excess power to the utility to obtain a certificate of necessity from the Commission or a small commercial customer which sells on site generation back to the utility to obtain a certificate and a siting permit from the KCC.

The purpose of this proposal is to exclude electric generation plants which are constructed at the risk of investors hoping to compete in competitive wholesale power markets. Under current Kansas law, investors hoping to build merchant power plants entirely at their own risk, and without long term obligations from utilities or ratepayers, are discouraged from constructing such facilities in Kansas. This proposal would also exempt existing and future privately owned cogeneration and parallel generation facilities.

Currently Kansas utilities have filed siting applications with the Commission to construct a total of 940 megawatts of new generation capacity over the next few years. It is logical to assume that eventually each of the utilities will request addition of these proposed generation plants to their respective ratebases. By removing some of the obstacles for private investment, perhaps future capacity may be built without the obligation of utilities or their ratepayers. Furthermore, it is important to note that privately financed merchant plants will not be part of the difficult stranded cost debate if retail competition is enacted by future legislative action.

## Kansas electric generation facility siting act

**66-1,158.** Electric generation facility sitings; definitions. As used in this act, the following words and phrases shall have the meanings ascribed to them herein:

- (a) "Commission" means the state corporation commission;
- (b) "Electric generation facility" means any physical plant used for the production or generation of electricity or electric power except that the remodeling, reconditioning or retrofitting of any existing physical plant shall not be deemed an addition to an electric generation facility. Such term shall not include a facility or addition to a facility proposed to be located outside this state if: (1) The need for the facility or addition and the reasonableness of its proposed siting is subject to review by the utility regulatory authority of that state; (2) less than 10% of the retail customers on the electric system intended to be served by such facility or addition are located in this state; and (3) such retail customers located in this state number no more than 15,000;

© "Electric utility" means every public utility, as defined by K.S.A. 66-104, and amendments thereto, which owns, controls, operates or manages any equipment, plant or generating machinery for the production, transmission, delivery or furnishing, of electricity or electric power;

(d) "Landowner" means any person having an estate or interest in any land, which land is proposed to be acquired by an electric utility in connection with the construction, operation and maintenance of an electric generation facility or an addition to an electric generation facility;

(e) "Party" means any landowner, electric utility, governmental board or agency, or any other person allowed to intervene in any proceeding under this act;

(f) "Person" means any individual, partnership, corporation or other association of persons.

History: L. 1976, ch. 283, § 1; L. 1979, ch. 209, § 2; L. 1993, ch. 106, § 1; July 1.

**66-1,159.** Electric generation facility siting; permit required prior to commencing certain acts in connection with construction of electric generation facility; application; hearing. No electric utility may begin site preparation for or construction of an electric generation facility or an addition to an electric generation facility or exercise the right of eminent domain to acquire any land in connection with site preparation for or construction of any such facility or addition thereto, without first acquiring a permit from the commission. Whenever any such electric utility desires to obtain such a permit, it shall file an application with the commission, setting forth therein that it proposes to construct an electric generation facility or an addition to an electric generation facility and specifying the description and the total number of acres of land that such utility contemplates is needed in connection with the construction, operation and maintenance of such facility or addition thereto. Also, the electric utility shall file with the application documents and plans which indicate the total planned utilization of a proposed location for electric generation purposes and documents and plans for utilization of an alternative location or locations. Such documents and plans with respect to alternative locations shall not be required for additions to existing electric generation facilities. In addition, the electric utility shall file with the application such documents pertaining to the construction, operation and maintenance of the proposed electric generation facility or addition to the electric generation facility and such other matters deemed relevant thereto as may be required by rules and regulations of the commission.

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Thereupon, the commission shall fix a time for a public hearing on such application, which shall be not less than 30 nor more than 180 days from the date the application was filed and shall be conducted in accordance with the provisions of the Kansas administrative procedure act, to determine the necessity for the proposed electric generation facility or addition to an electric generation facility and the most reasonable location and size of the proposed electric generation facility or addition to an electric generation facility. The commission shall fix the place for hearing, which may be in the county in which is located the major portion of the land which has been or is proposed to be acquired in connection with the construction, operation and maintenance of the proposed electric generation facility or the addition to the electric generation facility. Such hearing may be held in Topeka.

History: L. 1976, ch. 283, § 2; L. 1978, ch. 270, § 2; L. 1979, ch. 209, § 3; L. 1988, ch. 356, § 243; July 1, 1989.

**66-1,160.** Same; notice of hearing. The commission shall publish notice of the time, place and subject matter of such hearing in newspapers having general circulation in the counties in which is located any portion of the land which has been or is proposed to be acquired in connection with the construction, operation and maintenance of the proposed electric generation facility or addition to an electric generation facility once each week for three consecutive weeks, the last publication to be not less than five days before such hearing date. Written notice of such hearing and a copy of the application also shall be served not less than twenty (20) days prior to the hearing date upon all landowners, as shown by the files, records and indexes of the register of deeds of the county in which such land is located, and the chief administrative officer, or any person designated by such officer to receive such service, of the department of economic development, state board of agriculture, state water resources board, department of health and environment, department of transportation, state geological survey, Kansas energy office and the division of the budget of the department of administration. In addition to the information contained in the published notice, such written notice shall state that the electric utility has filed the application and supporting documents as required by K.S.A. 66-1,159, and that such application and supporting documents are available in the office of the commission for examination and copying by the person or board or agency desiring copies thereof.

History: L. 1976, ch. 283, § 3; L. 1979, ch. 209, § 4; L. 1980, ch. 284, § 17; July 1.

**66-1,161.** Same; appointment of counsel to represent landowners' interests; counsel for individual landowners; intervening parties. The commission shall appoint an attorney to represent the interests of the landowners at the hearing and shall allow a reasonable attorney's fee, which shall be taxed as part of the costs thereof. Landowners, at their own expense, may retain counsel to represent their individual interests at such hearing. The chief administrative officer, or any other person or persons designated by such officer, of any governmental board or agency affected by the siting of the proposed electric generation facility or addition to an electric generation facility shall be deemed to meet the requirement for intervention contained in subsection (a)(2) of K.S.A.

77-521 and amendments thereto. Any owner or lessee of land whose estate or interest in such land would not be acquired by the electric utility but would be affected in some other manner by

the construction, operation or maintenance of the electric generation facility or addition to an electric generation facility may petition for intervention in accordance with the provisions of K.S.A. 77-521 and amendments thereto.

History: L. 1976, ch. 283, § 4; L. 1988, ch. 356, § 244; July 1, 1989.

**66-1,162.** Same; hearing proceedings; transcript; costs; findings and decision; issuance of permit; construction authorized upon issuance of permit notwithstanding local zoning ordinances, resolutions or regulations. Except as otherwise provided in this act, the rules and regulations adopted by the commission pursuant to K.S.A. 66-106 and amendments thereto to govern the commission's proceedings shall be applicable to any proceeding before the commission under this act. The electric utility shall proceed with the introduction of evidence of the necessity for the proposed electric generation facility or addition to an electric generation facility and of the reasonableness of the proposed location and size of the electric generation facility or addition to an electric generation facility. The burden of proof on any such matter shall be upon the electric utility and shall be established by a preponderance of the evidence. All parties present or represented by counsel at the hearing shall have an opportunity to be heard and the right to cross-examine any witness appearing before the commission at the hearing. The commission shall cause a transcript to be made of the hearing. All costs of any hearing shall be taxed against the electric utility. The hearing and all parties' arguments shall be completed within 90 days after the commencement thereof. At any time after the commencement of the hearing, the electric utility may withdraw its application for the permit required by K.S.A. 66-1,159 and amendments thereto.

The commission shall make findings of fact and file such findings with its decision to grant, grant conditioned by such findings or withhold the permit applied for, except that whenever approval of applications are pending with or must be obtained from any state regulatory authority which relate to the operation of any such facility or addition to a facility, the commission shall postpone its decision until proof of the approval or disapproval of any such application is received. In any case where a state regulatory authority cannot render final approval of any such application until the facility or addition to a facility is in actual operation, the commission shall accept as proof of approval or disapproval the state regulatory authority's certification of probable acceptability or unacceptability of an application. Prior to making its determination with respect to the most reasonable location and size of a proposed electric generation facility or addition to an electric generation facility, the commission shall make its determination of whether or not a necessity exists for the electric generation capacity of a proposed electric generation facility or addition to an electric generation facility. In addition to any other consideration deemed necessary in making such determination, the commission shall consider and make determinations on the following factors: (1) Whether or not the electric generating capacity of the proposed facility or addition to a facility meets or contributes to the meeting of the electrical energy needs of the people of this state considering the probable future statewide electrical energy needs thereof; and (2) whether or not available electrical generating capacity exists within the state that is capable of being distributed economically, reliably, technically and environmentally. Whenever the commission determines that a necessity exists for electric generation capacity to be provided by a proposed electric generation facility or addition to an electric generation facility, it

shall make its determinations with respect to the most reasonable size and location of any such facility or addition to a facility. In addition to any other consideration deemed necessary in making a determination with respect to the size of a proposed facility or addition to a facility, the commission shall consider the electric utility's total planned utilization of a proposed location for electric generation purposes as it relates to the necessity found by the commission for additional electric generating capacity in the state. In addition to any other consideration deemed necessary in making a determination with respect to the most reasonable location of a proposed facility or addition to a facility, the commission shall consider the availability of natural resources necessary in the operation of a proposed facility or addition to a facility as the same relates to each alternative location submitted by the electric utility as required by the provisions of K.S.A. 66-1,159 and amendments thereto. The location of the existing generation facility shall be the most reasonable location for any addition to such facility. Upon a determination that a necessity exists for the proposed electric generation facility or the addition to an electric generation facility and that the proposed location and size of such facility or addition thereto are the most reasonable, the commission shall issue to the electric utility a permit to construct such facility or addition thereto, except that the commission may condition such permit with respect to the location and size of the proposed electric generation facility or addition to an electric generation facility to provide for an alternate location or size, or both, thereof, but in no case shall the commission provide for a size larger than that applied for. Upon the issuance of such permit, no local ordinance, resolution or regulation shall prohibit the construction of the electric generation facility or addition to an electric generation facility, and the electric utility may proceed with such facility or addition thereto notwithstanding any requirement to obtain any building permit under any local zoning ordinance, resolution or regulation.

History: L. 1976, ch. 283, § 5; L. 1979, ch. 209, § 5; L. 1988, ch. 356, § 245; July 1, 1989.

**66-1,163.** Same; petition for reconsideration. No cause of action arising out of any decision of the commission shall accrue to any party, unless such party shall have petitioned for reconsideration. In any subsequent action or proceeding in the supreme court, no party shall urge or rely upon any ground not set forth in the petition.

History: L. 1976, ch. 283, § 6; L. 1979, ch. 209, § 6; L. 1988, ch. 356, § 246; July 1, 1989.

**66-1,164.** Judicial review of commission's actions. Any action of the commission pursuant to K.S.A. 66-1,163 and amendments thereto is subject to review by the supreme court in accordance with the act for judicial review and civil enforcement of agency actions. The supreme court, in its discretion, may require the appellant to file an appeal bond, conditioned on payment of all court costs incurred incidental to such appeal.

History: L. 1976, ch. 283, § 7; L. 1979, ch. 209, § 7; L. 1986, ch. 318, § 122; July 1.

**66-1,165.** Precedence of action for review. Any action for review pursuant to K.S.A. 66-1,164 and amendments thereto shall have precedence over all other hearings and shall be heard not later than the first term of court after the action is commenced and the court shall decide all such actions within 60 days after being docketed in such court.

History: L. 1976, ch. 283, § 8; L. 1979, ch. 209, § 8; L. 1986, ch. 318, § 123; July 1.

**66-1,168.** Same; time decisions of the commission to become effective. All decisions of the commission shall become operative and effective 30 days after the service of the decision as provided by law, except that if a petition for reconsideration is filed, the decision shall become operative and effective 30 days after the order or decision of the commission denying the petition or if the petition is granted the decision as originally entered or as modified shall become operative and effective 30 days after the service of the decision of the commission on reconsideration. After the lapse of the time within which proceedings could be taken to obtain a review of such decision, no proceedings to obtain such review having then been taken, such decision shall be held to be conclusive as to the matters involved therein in any collateral suit or proceedings.

History: L. 1976, ch. 283, § 11; L. 1988, ch. 356, § 247; July 1, 1989.

**66-1,169a.** Same; compilation by commission of statewide electric generation capacity forecast; hearings; information furnished by municipal utilities. In order to more effectively administer the provisions of the Kansas electric generation facility siting act with respect to determining whether or not a necessity exists for a proposed electric generation facility or addition to an electric generation facility, the commission shall compile and maintain a comprehensive statewide electric generation capacity forecast. In compiling and maintaining said forecast, the commission may hold such hearings deemed necessary. The proceedings of any such hearing shall be governed by the rules and regulations adopted by the commission pursuant to K.S.A. 66-106. For the purposes of this section, every municipally owned or operated electric utility and every electric utility operating wholly and solely within the legal boundaries of any municipality and within three (3) miles thereof shall furnish to the commission such information as to electric generation capacity as the commission may require.

History: L. 1979, ch. 209, § 11; July 1.

**66-1,169b.** Electric generation facility siting; when provisions of act not applicable.  
(a) The provisions of the Kansas electric generation facility siting act shall not apply to: (1) Unit number 3 of the Jeffrey Energy Center; or (2) electric generation facilities that have a capacity of 100 megawatts or less and convert wind, solar, biomass, landfill gas or any other renewable source of energy.  
(b) With regard to a facility proposed to be located outside this state, K.S.A. 66-1,160 and 66-1,161, and amendments thereto, shall not apply and, for purposes of determining the most reasonable location of a proposed facility or addition to a facility pursuant to K.S.A. 66-1,162, and amendments thereto, the commission shall consider only the effects on system reliability and economic efficiency.

History: L. 1979, ch. 209, § 12; L. 1993, ch. 106, § 2; L. 1995, ch. 264, § 2; July 1.

**66-1,169c.** Citation of act. This act and the act of which it is amendatory shall be known and cited as the "Kansas electric generation facility siting act."



History: L. 1979, ch. 209, § 1; July 1.

### **Siting of electric transmission lines**

**66-1,177.** Electric transmission lines; definitions. As used in this act, the following terms shall have the meanings ascribed to them herein:

(a) "Electric utility" means every public utility, as defined by K.S.A. 66-104, which owns, controls, operates or manages any equipment, plant or generating machinery for the production, transmission, delivery or furnishing, of electricity or electric power;

(b) "Electric transmission lines" means any line or extension of a line which is at least five (5) miles in length and which is used for the bulk transfer of two hundred thirty (230) kilovolts or more of electricity;

© "Commission" means the state corporation commission.

History: L. 1979, ch. 207, § 1; July 1.

**66-1,178.** Same; siting of electric transmission lines; permit required; application, contents; hearing. No electric utility may begin site preparation for or construction of an electric transmission line, or exercise the right of eminent domain to acquire any interest in land in connection with the site preparation for a construction of any such line without first acquiring a siting permit from the commission. Whenever any such electric utility desires to obtain such a permit, it shall file an application with the commission setting forth therein that it proposes to construct an electric transmission line and specifying the proposed location thereof, the names and addresses of the landowners of record whose land or interest therein is proposed to be acquired in connection with the construction of such a line and such other information as may be required by the commission. Thereupon the commission shall fix a time for a public hearing on such application, which shall be not more than 60 days from the date the application was filed, to determine the necessity for and the reasonableness of the location of the proposed electric transmission line. The commission shall fix the place for hearing, which may be in any county through which the electric transmission line is proposed to traverse.

History: L. 1979, ch. 207, § 2; L. 1984, ch. 248, § 1; April 26.

**66-1,179.** Same; notice of hearing. The commission shall publish notice of the time, place and subject matter of such hearing in newspapers having general circulation in every county through which the electric transmission line is proposed to traverse once each week for three (3) consecutive weeks, the last publication to be not less than five (5) days before such hearing date. Written notice by certified mail of such hearing and a copy of the application shall be served not less than twenty (20) days prior to the hearing date upon all landowners, as shown by the application.

History: L. 1979, ch. 207, § 3; July 1.

**66-1,180.** Siting of electric transmission lines; hearing proceedings; costs; decision by commission; issuance of permit. All hearings conducted pursuant to this act shall be in accordance with the provisions of the Kansas administrative procedure act. All such hearings shall be completed within 30 days after the commencement thereof, unless the electric utility requests a continuance of any such hearing. All costs of any hearing pursuant to this act shall be taxed against the electric utility. The commission shall make its decision with respect to the necessity for and the reasonableness of the location of the proposed electric transmission line and shall issue or withhold the permit applied for. The commission may condition such permit as it may deem just and reasonable and as may, in its judgment, best protect the rights of all interested parties and those of the general public.

History: L. 1979, ch. 207, § 4; L. 1984, ch. 248, § 2; L. 1988, ch. 356, § 248; July 1, 1989.

## KCC KARs Regarding the Electric Generation Siting Act

**82-8-1. Definitions.** As used in these rules: (a) "Applicant" means any electric utility making application for a permit pursuant to K.S.A. 66-1,159.

(b) "Application" means a request for issuance of a permit authorizing the site preparation for, or the construction of an electric generation facility (also referred to as proposed facility or facility) or an addition to an electric generating facility at a particular site in accordance with K.S.A. 66-1,159.

© "Site" means any proposed location of an electric generation facility or an addition to an electric generation facility.

(d) "Permit" means the authorization granted by the commission which permits the applicant to begin preparation for, or construction of an electric generation facility or addition to an electric generation facility on the proposed site.

(Authorized by K.S.A. 66-106; implementing K.S.A. 66-1,159; effective May 1, 1981.)

**82-8-2. Formal requirements for a permit application and supporting documents.** (a) An application for a permit shall contain:

(1) A summary statement of the applicant's proposal, including a specific statement describing the proposed facility or addition thereto;

(2) A legal description of the land to be used, including the total number of acres contemplated to be used; and

(3) A statement showing the need for the proposed facility or addition thereto.

(b) The supporting documents to be filed along with the application shall consist of the following:

(1) The exhibits, information and plans required by K.S.A. 66-1,158 et seq. and these regulations;

(2) The prepared testimony which shall comprise the applicant's direct case in support of its application, and which shall meet the requirements of K.A.R. 82-1-229;

(3) A list of all landowners as defined by K.S.A. 66-1,158(d) who are to be given notice in connection with the application; and

(4) Any additional information which the applicant deems necessary or desirable to support the application.

© The applicant's prepared testimony in support of its application shall:

(1) Summarize the information contained in any exhibits;

(2) Demonstrate the necessity for additional generation capacity;

(3) For each alternate site proposed, compare the site, and size of the proposed facility, in relation to K.A.R. 82-8-3(a) through (k), except that an application for a permit to construct an addition to an existing electric generating facility shall not require comparison with an alternate site or sites.

(4) Evaluate the construction, operation and maintenance of the proposed facility in relation to all applicable federal, state or municipal laws, ordinances, rules, regulations, land use plans, or interstate contracts or agreements.

(d) The application for a site permit for an electric generation facility shall be printed or typed (not smaller than elite) on unglazed paper, which shall not exceed eight and one-half (8 ½) inches wide by eleven (11) inches long, and shall be contained in a looseleaf binder.

(e) If any information required by statute or these regulations is not available, the applicant shall state the reasons it is not available. As such information becomes available or changes occur in material presented in the application or supporting documents, appropriate amendments to the application or supporting documents shall be provided to the commission. Amendments shall be in the form of page for page substitutions.

(f) The original and fourteen (14) copies of the application, supporting documents and testimony shall be filed with the commission.

(Authorized by K.S.A. 66-106; implementing 66-1,159; effective May 1, 1981; modified, L. 1981, ch. 425, May 1, 1981.)

**82-8-3. Requirements for applications.** An application for a permit shall be accompanied by supporting documents as hereinafter set out and shall be assembled under topical sections corresponding to the subsections below, with index tabs for each section. The order and material to be included in each section is as follows: (a) An economic feasibility study on the proposed facility setting forth:

- (1) The estimated capital investment in the site, the proposed facility and other related facilities;
- (2) The anticipated source and the amount of funds to finance the project from each source;
- (3) The period proposed for construction and the source of the labor force; and
- (4) An economic comparison of the proposed facility and site as compared to other alternatives.

Include expansion at existing sites, as well as a discussion of power loss associated with the transmission distance, using a present value revenue requirement comparison and a levelized mill per kilowatt-hour cost over the planning horizon with and without estimated cost escalation effects. This analysis will compare the expected present value of the expected levelized cost with the proposed generation and transmission facility and without the proposed facility. The data used in developing this comparison shall be submitted in the format specified by the commission and shall be consistent with data used in Sections (e) and (g).

(b) Financial information sufficient to demonstrate the financial qualifications of the applicant to construct and operate the proposed facility. Such information shall show that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction costs, operating cost for the design lifetime of the facility, including related fuel costs, and the estimated costs of permanently shutting the facility down and maintaining it in a safe condition.

© Information and data demonstrating the need for a facility including:

- (1) The power requirements for the applicant's electrical system for ten (10) years prior to the application date. Such requirements shall include, as a minimum: (A) Monthly peak demands, (B) date and hour of annual peak, © annual load duration curves, (D) annual energy requirements, (E) purchases and sales at monthly peak, identified by purchaser and seller; and
- (2) A schedule identifying by unit all of the applicant's existing generation facilities including: (A) The facility location and type, unit number, typical use, and fuel type; (B) net capacity; © on-line date; (D) forced outage rates, including dates and duration of outage for the last five (5) years; (E) annual capacity factor and equivalent availability factor for the last five (5) years; (F) estimated unit deratings or projected retirement for fifteen (15) years and the reason for such derating. Projections shall be on a year by year basis.

(d) A general site description, which shall include:

- (1) The proposed site location identified by section, township, range and county, and the total

number of acres involved;

(2) A state map, scale not smaller than one-half (1/2) inch equals ten (10) miles, showing the site location with respect to state, county, and other political subdivisions, and prominent features such as cities, lakes, rivers and highways;

(3) Detailed maps, scale not smaller than four (4) inches equal one (1) mile, showing the location of the facility perimeter, present and proposed utility development within three (3) miles of the location, utility property abutting adjacent properties, nearby water bodies wooded areas, farm settlements, parks and other public facilities;

(4) The location of transmission substations, and transmission lines associated with the proposed facility and interconnection with the applicant's electrical transmission system in Kansas.

(e) A general description of the proposed facility which shall include:

(1) The principal design features;

(2) Expected operating and performance characteristics including: (A) Facility type-base, cycling, or peaking; (B) primary, alternate, and ignition fuels; (C) estimated maximum capacity of the facility; (D) estimated capacity when the facility is limited by condenser water; (E) estimated annual equivalent availability factors for each of the first five (5) years of commercial operation; (F) estimated average operating heat rate (BTU/KWH) at fifty percent (50%), seventy-five percent (75%), and one hundred percent (100%) of capacity; (G) estimated maintenance schedule for the first five (5) years of commercial operation; (H) estimated gross generation, in megawatt hours for each of the first five (5) years of commercial operation; (I) estimated fraction of gross generation attributable to primary fuel for each of the first five (5) years of commercial operation; (J) schedule outlining the proposed plan for testing the unit for commercial operation including an approximate time schedule for such testing;

(3) The general arrangement of typical major structures and equipment by the use of scale plans and elevation drawings in sufficient number and detail to provide understanding of the general layout of the facility;

(4) Extrapolation of any significant technology as represented by the design;

(5) The names and addresses if known of the prime contractors and major vendors for the project; and

(6) A time chart showing estimated engineering; construction and start-up schedules for the proposed facility.

(f) Approvals by other governmental agencies:

(1) List all federal, state or local permits, licenses and certificates required for construction and operation of the facility, and the status of the application for approval of each. Copies of all such documents, if issued, shall be provided.

(2) List all federal, state and local government permits, licenses, and certificates required for the construction and operation of the facility in the following categories: (A) Required prior to the expiration of the statutory time period for a determination concerning a site permit as provided in K.S.A. 66-1,162; (B) required concurrent with the determination of the site permit by this commission; (C) required subsequent to a site permit determination by this commission.

(3) Submit copies of all studies submitted to other agencies as directed by the commission.

(g) Information on any transmission lines required to connect the proposed facility to the bulk power transmission network, including:

(1) The point or points at which facility transmission lines are planned for connection to the

bulk power transmission network;

(2) The length, voltage, and capacity of any required new transmission line;

(3) The probable type of construction of any new line;

(4) A map, scale not smaller than one-half (1/2) inch equals ten (10) miles, showing the proposed, and any alternate routes, for each transmission line necessary to connect the proposed facility with the bulk power transmission network;

(5) Base case load flow studies as data is available from the South West Power Pool, of the existing Kansas interconnected electrical system for a year prior to the addition of the proposed facility of application modeled with: (A) All Kansas interconnected loads simulated at 115 KV and higher bus; (B) all out of state interconnected load flows simulated at the Kansas state line; © any unsatisfactory results highlighted;

(6) Base case load flow studies of the existing Kansas interconnected electrical system modeled as with (A) and (B) above, with the addition of the proposed generation and transmission facilities in one (1) of the two (2) years following completion and biennially thereafter through the tenth year as data is available from the South West Power Pool;

(7) A full explanation of the applicants load forecasting technique as used in (5) and (6) above. Include as a minimum: (A) A study of ten (10) years historical load growth. Data for each year shall be subdivided into actual or modeled simulation by residential, commercial, industrial and other load components; (B) a trending methodology and detailed explanation thereof making use of the historical load growth study and modifying the study results to account for trend changes caused by conservation, load management, price elasticity econometrics, and additional factors which are themselves trend makers; © a load forecasting methodology incorporating the results of (B) above and a detailed explanation thereof.

(h) Data on the geology and seismology of the site and region surrounding the proposed site including:

(1) Maps and charts showing the topography which shall include: (A) A location map of the proposed structures, test holes, and excavations; (B) geologic map of rock types and structural features; © geologic cross-sections showing subsurface conditions; (D) a map, scale not smaller than four (4) inches equal one (1) mile, showing bed rock contours where the site is covered by unconsolidated material;

(2) The physiographic significance of topographic features and their relationship to the regional pattern;

(3) The stratigraphic significance of the genesis, composition, extent, sequence, and correlation of rock units;

(4) The lithologic significance of the composition and textural character, including results of any studies necessary to obtain a complete determination, of rock type and mineral composition;

(5) The subsurface structure showing faults joints, distortion, alteration, weathering, slip planes, fissures and cavities, and an explanation of the relationship of significant regional structure to site geology including faulting;

(6) A description of soil types at the site;

(7) Information concerning slope stability at the site; and

(8) Copies of all studies or other bases used to furnish any information in this subsection.

(I) Information on fuel to be used at the proposed facility:

(1) The following information shall be provided: (A) The specific type of fuel expected to be used; (B) a description of the method of fuel delivery to the site as well as the frequency of

delivery that will be necessary.

(j) An evaluation of the effect on the environment shall be prepared for each alternative site for a new generating facility. The evaluation shall consider, at a minimum:

(1) The cultural, scenic, archaeological and historical characteristics of the site;

(2) The fauna and flora and, in particular, any endangered species existing or traversing the site.

(k) A discussion of the anticipated noise level of the proposed facility and the need and proposals for noise control.

(Authorized by K.S.A. 66,106; implementing K.S.A. 66-1,159; effective May 1, 1981; modified, L. 1981, ch. 425, May 1, 1981.)

**82-8-4.** Waiver provisions. The commission may for good cause shown waive any of the requirements of these regulations to the extent permitted by law.

(Authorized by K.S.A. 66-106; implementing K.S.A. 66-1,159; effective May 1, 1981.)

## **Additional Electric Generation Plant Permitting Requirements**

(taken from Western Resource's recent application for 3 combustion turbines,  
KCC docket # 99-WSRE-381-EGF).

### **Prior to Construction**

- Air Permit - Prevention of Significant Deterioration (PSD) - KDHE
- Water Discharge Permit - Erosion Control Plan - Construction - KDHE
- Building Permit - Construction of buildings - County (or City)

### **Prior to Operation**

- Acid Rain Permit - KDHE
- Air Permit - Title V Operating Permit\*
- Water Discharge (NPDES) Permit - for plant operations - KDHE\*
- Spill Prevention Control & Countermeasures Plan - Oil Spill Plan - KDHE\*

\* [modification is all that is required for Western Resource's siting application, addition of combustion turbines at an existing generation facility]

### **KCC Assessment Costs on Recent Siting Applications**

- |                    |                      |             |
|--------------------|----------------------|-------------|
| • Docket # 189,676 | Empire StateLine CT1 | \$26,320.75 |
| • Docket # 192,772 | Empire StateLine CT2 | \$13,528.75 |
| • Docket # 192,775 | KCPL Hawthorne CT    | \$25,406.00 |



## Generation Siting Authority by Electric Utility Regulatory Bodies in Nearby States

Presentation to the Retail Wheeling Task Force on September 4, 1996  
by the Kansas Corporation Commission Staff

The KCC Staff was requested to provide information regarding the regulatory requirements for siting a new generating facility in the states of Nebraska, Colorado, Missouri, Oklahoma, Iowa, Arkansas, New Mexico, Texas and Wyoming. Most states allow the public utility commission to address the prudence of utility investments for jurisdictional utilities during rate proceedings. Therefore this summary will only deal with additional legal requirements beyond that of justifying the new facility for inclusion in retail rates.

### Arkansas Public Service Commission (APSC):

The APSC must grant a "certificate of environmental compatibility and public need" to any "...individual, group, firm, partnership, corporation, cooperative association, municipality, government subdivision, government agency, local government, or other organization" seeking to construct an electric generating plant 50 megawatts or larger. Under Arkansas law the APSC is allowed to grant waivers and facilities that must obtain federal certification (such as hydroelectric projects) are exempt. The state law also lists numerous procedural requirements that each applicant must satisfy. Because the certificate is intended to satisfy and coordinate all state agency requirements for the project, other state agencies are required by law to cooperate and assist the APSC.<sup>1</sup>

### Colorado Public Utility Commission (CPUC)

The CPUC requires certificate of public need and necessity only if facility is constructed outside of the utility's certificated area. Regulatory authority only affects Rural Electric Cooperatives (RECs) and Investor Owned Utilities (IOUs).<sup>2</sup>

### Iowa Utility Board (IUB)

The IUB has authority to site all interconnected generating plants 25 megawatts or greater. The Board conducts a full review and has numerous filing requirements. There are provisions allowing the Board to combine the requirements of other agencies (such as environmental public hearings) into the same proceeding to prevent redundancy. The

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<sup>1</sup> Arkansas Statutes, 23-18-501 through 23-18-528

<sup>2</sup> Based on conversation with Saheed Barhagi, CPUC staff and review of table 47 of the NARUC Compilation of Utility Regulatory Policy 1994-1995.

Board may also waive the requirements for units of 100 megawatts or less. This includes any electric generating plant project owned by any person.<sup>3</sup>

### Missouri Public Service Commission (MPSC)

The MPSC has authority to grant IOUs a certificate of convenience and necessity. This has been interpreted by a court case to include generating plants constructed by an IOU outside their certified territory. This would not apply to an IOU building a generating plant within a territory it currently serves under an existing certificate of convenience and necessity.<sup>4</sup>

### Nebraska Public Service Commission (NPSC)

All of the electric utilities in Nebraska are publicly owned. Nebraska electric utilities range from Public Utility Districts to Municipal utilities to RECs. The NPSC does not become involved in generation siting issues.<sup>5</sup>

### New Mexico Public Utilities Commission (NMPUC)

New Mexico state laws require IOUs and RECs to obtain a certificate of convenience and necessity from the NMPUC to construct a generation facility out of their certified territory. In addition, anyone constructing a generation facility 300 megawatts or larger must have the location reviewed and approved by the commission for compliance with all applicable air and water pollution control standards and existing regulations.<sup>6</sup>

### Oklahoma Corporation Commission (OCC)

The OCC has no specific requirements for constructing a generation facility.<sup>7</sup>

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<sup>3</sup> Iowa Statutes, Utilities [199], Chapter 24

<sup>4</sup> Utility Consumer's Council v. Public Service Commission, No. 37802, Missouri Court of Appeals, St. Louis District, Division Two, Jan. 10, 1978.

<sup>5</sup> Nebraska Public Service Commission Rules & Regulations, Title 291, Ch. 7

<sup>6</sup> New Mexico Statutes, 62-9-1 and 62-9-3

<sup>7</sup> Based on conversation with Ms. Snapp, OCC staff and review of table 47 of the NARUC Compilation of Utility Regulatory Policy 1994-1995.

## Texas Public Utilities Commission (TPUC)

The TPUC, under recently adopted rules must approve any generating facility proposed by an REC or an IOU, or any power contract to purchase capacity from a PURPA qualified facility. Utilities are exempt if the proposed facility is addressed under a resource solicitation contained in an integrated resource plan filed with the Commission.<sup>8</sup>

## Wyoming Public Utilities Commission (WPUC)

The WPUC has authority to issue a certificate for convenience and necessity to any IOU or REC proposing to construct a generation facility. In addition, the WPUC must certify a generating facility build by municipal electric utilities if it is built to supply wholesale customers.<sup>9</sup>

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<sup>8</sup> TPUC rules §23.31 and §23.34 through §23.37

<sup>9</sup> Wyoming Statutes §37-2-205

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## MEMORANDUM

To: Larry Holloway  
From: Susan Cunningham  
Subject: Commission Authority with Regard to Transmission Line Siting  
Date: January 26, 1999

K.S.A. 66-1,178 requires electric utilities to acquire a siting permit from the Commission before they may begin site preparation for or construction of an electric transmission line. The electric utility is required to file an application setting out its proposal to construct a transmission line and specifying the proposed location. A public hearing is required to be held on the application for the purpose of determining the necessity for and reasonableness of the location of the proposed transmission line. A related statute, K.S.A. 66-1,177, defines a transmission line as "any line or extension of a line which is at least 5 miles in length and which is used for the bulk transfer of 230 kV or more of electricity."

With regard to the scope of the Commission's review of transmission line siting applications, the Commission is limited to a determination of the reasonableness of the line location only. K.S.A. 66-1,178 specifically states:

Thereupon the commission shall fix a time for a public hearing on such application ... to determine the necessity for and the reasonableness of *the location* of the proposed electric transmission line. ...

(Emphasis added.)

The Kansas Court of Appeals directly addressed the issue of the Commission's authority regarding transmission line siting applications in Kansas City Power & Light Co. v. State Corporation Comm., 9 Kan.App.2d 49, 670 P.2d 1369 (1983). In that case, KCPL filed an application with the Commission seeking a siting permit to construct a 345 kV electric transmission line from the Wolf Creek Electric Generating Station in Burlington, Kansas to a substation in Johnson County, Kansas. The Commission considered such criteria as necessity, cost, utility, environmental and aesthetic impact and alternative routes, and denied the application based on its conclusion that a line that is unneeded is unreasonable per se and that KCPL had not met its burden of demonstrating the proposed line was necessary. KCPL appealed, arguing that necessity has no part in a siting permit hearing and that for the Commission to consider any criteria other than the location of the proposed line was unlawful.

The Court agreed with KCPL stating, "[t]he provisions of the Kansas Siting Act only direct a determination of the reasonableness of the location of the proposed electric transmission line.

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[Citations omitted.] No authority is granted to determine the necessity or public convenience of the line.” 9 Kan.App.2nd at 51.

The Court contrasted the Commission’s authority to consider transmission line siting to a similar act pertaining to the siting of electric generation facilities. K.S.A. 66-1,158, et seq. In its discussion, the Court noted that the provisions of the Plant Siting Act:

... requires the KCC to consider the necessity for the proposed plant or addition on a number of specified levels. [Citations omitted.] This act was passed in 1976 but amended in 1979, the same year the siting act for transmission lines was enacted. Interestingly, an early version of the Kansas Siting Act, H.B. 2130, incorporated the siting permit requirement for transmission lines into the Plant Siting Act such that the scope of the KCC inquiry into granting a siting permit for either transmission lines or generation facilities would have been the same. This bill was not enacted. Instead the law concerning transmission lines is a separate set of provisions without reference to any consideration of necessity. Therefore, it is clear that had the legislature intended to make a finding of necessity a requirement under the Kansas Siting Act, it could easily have done so.

Id. at 51-52.

The Court concluded “that the inquiry authorized by the Kansas Siting Act is confined to a determination of the reasonableness of the location of the proposed transmission line and that such an inquiry does not include a review of the necessity for the line.” Id. at 52.

4-18

**Testimony before the  
House Utilities Committee  
By  
Jim Ludwig  
Western Resources  
January 27, 1999**

Chairman Holmes and Members of the Committee:

Western Resources is opposed to HB 2057. This bill would exempt construction of non-utility generation from the requirements of the siting act, but would leave construction of utility generation subject to it. It would also prevent non-utility generators from selling power to utilities under long-term contracts.

When I testified before this committee January 26 on our capacity situation and planning, I said the legislature could encourage construction of additional needed generation by streamlining or repealing the siting act. HB 2057 is the wrong way to go about it. First I will explain why Western Resources is opposed to HB 2057, then suggest what we believe are better alternatives.

***Western Resources is opposed to HB 2057***

Because HB 2057 would impose siting act requirements on utilities but not non-utilities, it would put electric utilities at a competitive disadvantage to non-utility generators when it comes to building generation capacity in the state. It is a mistake to disadvantage the generation providers who have the obligation to meet the electricity needs of Kansas retail customers.

Under current law and regulation, electric utilities are assigned territories where they are obligated to serve Kansas retail customers. These utilities serve their customers from either their own generation resources, by securing power from others, or by using a combination of their own resources and purchased power. It is not a good policy to place the expense of an additional regulatory burden on utilities, while not imposing it on non-utilities. Regulatory expenses, after all, are ultimately recovered from customers.

Looking toward the future possibility of a competitive market place for providing generation, it is not a good idea at this time, when generation needs to be built, to handicap potential utility suppliers. The objective should be to encourage construction of new generation, not create competitive inequities that may cause greater stranded costs later.

The bill also prohibits non-utility generators from selling power to utilities under long-term contracts. This makes it less likely that utilities could depend on a non-utility generator as a seller of power. Utilities must plan to serve all their firm retail customers all the time. Subjecting them exclusively to short term contracts when they buy from in-state non-utility generators is to consign them to greater price volatility and potentially to less reliability. In-state utilities would have a greater incentive to buy from out-of-state suppliers at wholesale than from in-state suppliers. Similarly, prohibiting prospective non-utility generators from offering long term contracts will only drive them to build their generation out of state.

It seems HB 2057 assumes every plant will be either a utility or non-utility plant, that it will either sell at retail or at wholesale. That is not a very imaginative, or realistic, assumption. Even now, Western Resources' wholesale revenues from sales from its own generation resources reduce KCC-set retail rates. In our most recent cost of service calculations for KPL and KGE, these reductions in retail rates amounted to \$40 million and \$36 million, respectively. Mandating too fine a distinction between utility and non-utility plants could cast doubt on a policy that results in significant benefits to retail customers.

### *Alternatives to HB 2057*

The simplest alternative to HB 2057 would be to repeal the siting act. That's not as drastic as it may seem on its face. The siting act proceeding before the KCC is intended to determine the need for new generation and, if need is shown, whether the proposed construction is the most economic way to fulfill that need. The KCC does not allow recovery of the costs of constructing the new generation in the context of a siting act proceeding. That takes – in our opinion – a questionable duplication of effort in a separate rate proceeding, but it takes it nonetheless. KCC siting approval does not mean customers will begin paying for the new plant. Siting a plant requires approvals other than, and in addition to, the current KCC siting approval. Repealing the siting act would not exonerate utilities or non-utilities from any environmental agency proceedings or requirements, local ordinances, zoning restrictions, or other non-KCC requirements.

Another alternative would be to make the siting act apply only to construction of new nuclear



generation. I don't think anyone will propose building more nuclear generation in my lifetime, but I'm sure there would be resistance if someone tried. The siting act would provide an extra venue for resistance. To put it in perspective, Wolf Creek nuclear plant was built before the siting act was passed, Wolf Creek was not subject to siting act approval, and opponents were still heard.

Finally, the siting act could be amended to exempt siting of non-nuclear generation on an existing plant site. There are several plant sites around the state which have adequate resources to support additional generation. Any non-nuclear generation on a new site would trigger a siting proceeding and construction of any nuclear generation would trigger siting, whether on a new or existing site.