

Approved: Carl Dean Holmes  
Date 2-17-99

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Rep. Carl Holmes at 9:04 a.m. on February 9, 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:

Mike Taylor, City of Wichita  
Jim Ludwig, Western Resources  
Larry Holloway, Kansas Corporation Commission  
Burton Crawford, Kansas City Power & Light  
Jon Miles, Kansas Electric Cooperatives & Kansas Electric  
Power Cooperative  
Earl Watkins, Sunflower Electric Power Corporation

Others attending: See Attached List

Rep. Sloan distributed a letter he received from Jim Schuessler, Director of Operations at Cobalt Boats in Neodesha, Kansas (Attachment 1).

**Hearing on HB 2122 - purchase of electricity by interruptible industrial customers from other than certified providers.**

Chairman Holmes welcomed Mike Taylor, representing the City of Wichita, who testified in favor of **HB 2122** (Attachment 2).

The Chair then acknowledged Jim Ludwig, Western Resources, who testified as an opponent to **HB 2122** (Attachment 3).

Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission testified next as an opponent to the bill (Attachment 4).

Burton Crawford, Manager of Deregulation Issues for Kansas City Power & Light, provided testimony in opposition to the bill (Attachment 5).

Jon Miles, representing Kansas Electric Cooperatives, Inc. and Kansas Electric Power Cooperative, Inc., testified against the bill (Attachment 6).

Earl Watkins, Sunflower Electric Power Corporation's General Counsel, testified as an opponent to the bill (Attachment 7).

Testimony concluded with conferees responding to questions from the committee.

Meeting adjourned at 10:36 a.m.

Next meeting is Wednesday, February 10.

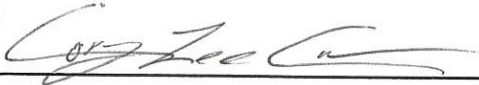
# HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 9, 1999

NAME	REPRESENTING
Dick & Robyn	Western Resources, Inc.
Susan Dura	Issues Management Group
Lester Murphy	Kansas Electric Co-op
BURTON CRAWFORD	KEPC
Jim Ludwig	Western Resources
Mike Taylor	City of Wichita
Larry H. Howay	KCC
WALKER HENDRIX	CURB
Alene Hatcher	Western Resources
Doug Lawrence	KEC
Steve Miller	Sunflower
Bob Bowser	KEPCo
Sandy Braden	McKell Gaches & Assoc
Ron Hein	Hein & Weir, C Ltd
ED SCHAU B	WESTERN RESOURCES

# HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 9, 1999

NAME	REPRESENTING
JOHN Q. BOTTEBERG	WESTERN RESOURCES
Whitney Damron	Empire District Electric Co.
Earl Watters	Sunflower Elec
Chris Wilson	KS Governmental Consulting
	Intecon - Don Dahl
Leslie Kaufman	Ks Farm Bureau
Alex DiIovani	INTERN
BRUCE GRAHAM	KEPCO



## COBALT BOATS

February 9, 1999

The Honorable Tom Blum  
Kansas Legislature

Dear Sir,

I am writing you regarding the regulation and/or appreciation of utilities within our state. I will not pretend to speak as an expert on regulation and/or appreciation of utilities within our state. I would, however, like to express my concerns regarding the potential shortage of utilities, especially electric power, that could damage the success of our company.

Cobalt Boats is a Kansas based company located in Neodesha, KS. For over 30 years we have produced high quality pleasure boats sold throughout the world. We employ approximately 450 people with an annual payroll in excess of \$10 million dollars.

Last summer we not only experienced intermittent "black-outs", which cost us \$5,000.00 per hour in lost wages when employees were waiting for the electricity to resume, but we also lost sales revenue due to our production being sold out for our fiscal year. To my further dismay, I found out this fall we were one to two days away from experiencing a major "brown-out" of perhaps several days.

While attending a Southeast Kansas business forum, I asked what our provider, KG&E was doing to insure that service was available and the answer I received was I should be glad I was not located in Colorado.

Gentlemen, I can assure you If we cannot expect a reasonable supply of electricity to operate our business, we will not move to Colorado! We'll probably move to Missouri.

Sincerely,

Jim Schuessler  
Director of Operations  
COBALT BOATS

dc

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CITY OF  
**WICHITA**

**TESTIMONY**

to

**House Utilities Committee  
February 9, 1999**

**House Bill 2122**

**Purchase of Electricity from other than Certified Providers**

The City of Wichita supports House Bill 2122 because, since 1996, the City of Wichita has been on record supporting competition in the electric utility industry. This bill is a small step toward that goal. It would, in effect, allow consumer choice in buying electricity for certain customers under very limited circumstances and under very strict, defined conditions. It is a small step, but it is better than no step at all.

During the summer of 1998, residents and businesses in the City of Wichita were told to voluntarily cutback on their usage of electricity or risk rolling blackouts. Western Resources, the monopoly electric provider for our area, announced they could not continue serving their customers with the usual level of service. As a result, many Wichita businesses were forced to turn up thermostats and turn off lights, adjust production schedules and send workers home early. At Wichita City Hall, there were hurried meetings to talk about how to deal with the emergencies which would be created if the 9-1-1 dispatch center went dark or the pumps at the water plant shutdown. Meanwhile, hundreds of city employees worked in darker than usual offices with the temperature reaching 80 degrees.

But what else could we do? Western Resources said it just didn't have enough product to meet the demand of all of its customers. Now, when I go to my regular grocery store to buy milk and the shelf is empty, I go to a different store. If the car dealer I usually buy from can't get the kind of car I want (and at the price I like), I go to another car dealer. But when it comes to electricity, I'm held hostage by the decisions of company executives miles away.

I expect electric utility executives and others will say those examples are a gross oversimplification of the issue and that the electric utility industry is unique and that practices which apply to other businesses can't apply to them. But what if certain customers had the opportunity to not be held hostage. What if, under limited circumstances and under certain well defined conditions, some customers could buy electricity from another company when their monopoly provider fails to serve them in an acceptable manner?

Of course we'll never know if House Bill 2122 doesn't pass. But if it should, we might just find out that buying and selling electricity isn't really that much different than buying and selling other products. We might just find out that competition in the electric utility industry can work.

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Testimony  
before the  
**HOUSE UTILITIES COMMITTEE**  
by  
Jim Ludwig, Western Resources  
February 9, 1999

Chairman Holmes and members of the Committee:

Western Resources is opposed to HB 2122. This bill would allow interruptible retail customers who receive notice of possible interruption to purchase off-system power (retail wheel) for a period of three months after the notice. The electric utility would be paid an amount equal to its cost of distribution, plus 10 percent, for transmitting power for interruptible customers purchasing generation service off-system.

*The Meaning of Interruptible Service*

HB 2122 stands the reason for interruptible service on its head. It subverts any public interest reason for offering interruptible service. Interruptible retail customers have agreed to take less reliable service in exchange for a lower price than firm service. Interruptible service agreements vary widely depending on the characteristics of the customer, but interruptible customers pay rates 20 to 40 percent lower than firm retail customers. This bill would allow them to have virtually firm service nine months of the year at lower, interruptible rates, and then to avoid interruption for the other three months of the year. Retail customers who have elected to take firm service would justifiably feel duped.

By law, the Corporation Commission may only overturn an approved contract if there is a compelling public interest reason to do so. This bill would hand the Commission a compelling reason to abolish all interruptible service agreements. Why should interruptible customers be able to have lower rates if they are not really interruptible? Why should firm customers, who in good faith decided they must have firm service, pay higher rates than customers who are interruptible in name only?

The logical response for an electric utility would be to abolish interruptible service. But since interruptible load, by accepted practice, is not counted as part of a utility's capacity planning for reserve margins, abolition of interruptible agreements would wreak havoc for reliability of service. It would be impossible to build generation fast enough to ensure continuation of reliable service for new firm load that had formerly been interruptible.

*Setting Rates of Return in Statute*

HB 2122 would set an electric distributor's return in statute at 10 percent. An essential and controversial part of any rate proceeding is establishing return on equity and an overall rate of return. Experts on behalf of the utility, the KCC staff, CURB and other parties argue at great

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length and complexity over what constitute appropriate and fair returns. Returns vary widely depending on business risks and prevailing economic conditions at the time the rate proceeding occurs. Fixing a return in statute, and under a definition that is unconventional and ambiguous in rate making, harms the Commission's ability to set reasonable and fair returns.

### *Partial Retail Wheeling*

HB 2122 would enact partial retail wheeling. Any interruptible customer, for no other reason than being interruptible, would be permitted upon notice of interruption to retail wheel for three months. After three months, interruptible customers who elected to wheel would be required to resume service for nine months from its electric utility. HB 2122 would make these customers interruptible in name only.

If the intent is to run an experiment in retail wheeling or initiate a process toward full retail wheeling, this bill would not be very instructive or effective. Electric utilities would have to severely restrict their use of capacity for a three month period awaiting the return of its wheeling customers, because these customers would no longer really be interruptible. Requiring capacity to be held in abeyance or to restrict its use for the sake of intermittent retail wheeling is not a sound economic experiment. The goal of competition among generators should be to maximize efficiencies and resources, not to tie up generation. Even under current economic regulation, the KCC has a policy that helps maximize generation resources. Price signals for on-again, off-again retail wheeling would be completely distorted. The goal of competition should be market price discovery, not distortion.

Firm customers - whether residential, commercial or industrial - would be foreclosed from any opportunity to choose their own generation supplier. Letting the large, interruptible customers wheel first and only is analogous to letting the big dogs eat first and only. Other, smaller customers won't receive any benefits; they may, in fact, have to foot the bill for capacity held in abeyance or otherwise restricted for wheeling customers' benefit.

Western Resources believes HB 2122 is contrary to its own interests, and is also contrary to the public interest. It should be rejected.

**BEFORE THE HOUSE UTILITIES COMMISSION**  
**PRESENTATION OF THE**  
**KANSAS CORPORATION COMMISSION ON**  
**HOUSE BILL NO. 2122**

Thank you Mr. Chairman; I'm Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission and I'm appearing today on behalf of the KCC. The KCC opposes this bill.

This bill allows retail electric industrial customers under interruptible contracts the option of obtaining a different supplier of electricity for three months following notice of interruption or curtailment. Additionally, this bill states that the interruptible customer may be assessed a distribution charge for up to 10% above the actual cost to the utility.

To understand why the Commission opposes this bill, an explanation of the benefits and derivation of interruptible rates is necessary. Allowing retail electric customers to receive discounted electric rates in exchange for agreeing to interruptible service is a common practice, and when implemented correctly can benefit both the interruptible customer and the other retail customers of the utility. The interruptible customer may benefit by agreeing to some minor interruptions in service during period of peak demand in exchange for deeply discounted rates. The other utility customers benefit because the utility does not need to plan and build capacity for the interruptible customer and does not need to increase rates to recover these costs. Interruptible rates are derived either by negotiation, in the case of a special contract, or by rate design in the case of an interruptible tariff. In either case, interruptible rates are designed to allow some benefits to both the interruptible customer and to the other ratepayers.

Not only would this bill remove some of the benefits anticipated by the utilities and the

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Commission when negotiating and approving interruptible contracts, this bill would also attempt to modify the terms and conditions of these existing contracts. Such an attempt to modify terms and conditions of existing contracts, if legal, could render them void. In any case the legal issues alone would, at a minimum, promote unnecessary litigation.

Not only could this bill affect the validity of existing contracts, it would also lower the benefits of any future interruptible contracts for industrial customers, and would therefore raise the rate offered by utilities or considered reasonable by the Commission. Future interruptible contracts for industrial customers would need to include much higher rates than existing contracts to assure that these contracts are not subsidized by other ratepayers.

Not only does this bill promote litigation and subsidize some industrial customers, this proposal also discriminates between special contract and tariff interruptible industrial customers, and between interruptible industrial and commercial customers. There are two different methods for an industrial customer to achieve lower electric rates in exchange for agreeing to interruptible generation service. An industrial customer can participate in an interruptible tariff, or it can negotiate an interruptible special contract with its electric utility and seek approval for that contract from the Commission. Several Kansas utilities, including KCPL, Empire District Electric, and Western Resources have interruptible tariffs for both industrial and commercial customers. This bill would not provide the same subsidies to an industrial customer under an interruptible tariff or to any interruptible commercial customer.

Finally, the bill's provisions on compensation for distribution services is vague and confusing. It is not clear if the term "actual costs" would include interest on debt and return on equity. Depending on the definition, actual costs could be more or less than they would be if set in an actual rate proceeding. In any case, it would be inappropriate to limit the Commission's

authority to set just and reasonable rates for any one specific type of service. This appears to be an attempt to assure that the subsidies created by this bill for industrial customers with interruptible contracts will be borne entirely by other interruptible and firm ratepayers and will not be recovered in a surcharge on distribution services.

In summary, the Commission finds this bill limits the Commission's authority to set just and reasonable rates for all electric ratepayers, discriminates between types of customers, creates subsidies specific customers, and promotes unnecessary litigation. The Commission opposes this bill.

**Testimony before the House Utilities Committee  
In Opposition of House Bill No. 2122**

**By Burton L. Crawford  
Manager of Deregulation Issues  
Kansas City Power & Light Company  
February 9, 1999**

Mr. Chairman and members of the Committee:

I am Burton Crawford, Manager of Deregulation Issues for Kansas City Power & Light Company, and am appearing before you today in opposition of House Bill 2122 that allows electric customers with interruptible contracts to purchase power from alternative suppliers for limited periods.

While KCPL has several concerns with the bill as written, our overriding concern is that it greatly discourages the use of interruptible contracts. Currently, retail customers with and without interruptible service provisions benefit from these contracts as savings from reduced system peak requirements are passed on. Last summer, KCPL had over 130 Mw of interruptible load. This is 130 Mw of capacity that we do not have to acquire and leave sitting idle for most of the year. These interruptible provisions allow KCPL a cost-effective alternative to building or buying additional capacity. If customers with interruptible provisions, which are some of KCPL's largest customers, were allowed to purchase power from an alternative supplier for three months after an interruption, KCPL would forgo a substantial amount of revenue that currently contributes to our fixed generating costs. Thus, the economic benefit of reduced peak load would be lost and rates for retail customers could be increased to cover these costs. Because of this, it would no longer be in KCPL's or our customers' best interest to have interruptible provisions.

Other potential problems we see in this bill are:

(1) New versus old contracts. The bill makes no distinction between existing and future contracts. Existing provisions for interruption are based on benefits and costs that do not include the loss of revenue for three months. This would need to be clarified.

(2) Tariffs versus contracts. It is not clear if this bill would apply to customers on our interruptible tariff as well as customers with special contracts. This would need to be clarified.

(3) Transmission service. The bill makes no provisions for transmission pricing and costs. Provision would need to be added.

(4) Distribution pricing. Cost data is not currently available for pricing of distribution service. A rate case would be required to unbundle bills and separate out this component so that interruptible customers could be billed. This would take an enormous amount of effort and cost for a few select customers.

Since KCPL views interruptible provisions as a cost effect method for managing peak load and this bill would effectively stops any future contracts and tariffs, we ask that this bill not move forward.

Thank you for your time. I would be happy to take any questions that you have.

**TESTIMONY**  
**on**  
**HOUSE BILL 2122**

**KANSAS ELECTRIC COOPERATIVES, INC.**  
**Tuesday, February 9, 1999**

Good Morning, members of the Committee. My name is Jon Miles, and I represent Kansas Electric Cooperatives, Inc., the statewide association of rural electric cooperatives. I am also testifying on behalf of Kansas Electric Power Cooperative, Inc. I am here to testify in opposition to House Bill 2122.

House Bill 2122 in essence authorizes short-term retail wheeling for a select group of customers. The bill allows a particular class of customers, those customers served under interruptible tariffs, to choose an alternative power supplier should they receive notice that their service will be interrupted. We do not believe that the Legislature should take this step now for several reasons.

First, this Legislature continues to study the short-and long-term impacts of deregulation of the electric industry in Kansas. The Retail Wheeling Task Force has discovered that there are many consequences of deregulating the electric industry, such as the impact on property taxes, the impact on current suppliers of electricity, and operational problems. Many of these issues remain unresolved at this time. These very same problems will exist even if deregulation is allowed on a limited basis, such as that proposed in this bill.

Some interruptible rates come with an incentive. A consumer is offered an interruptible or what we refer to as non-firm rate in exchange for a lower cost per kWh than would otherwise be available to the customer. This lower cost is justified because the utility is able to curtail service during times of peak usage. The ability of a utility to limit its peak demand allows the utility to save on capacity related charges. These capacity related charges arise because utilities

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must have adequate capacity to serve load during peak demand periods, even if that capacity may not be needed for more than several hours, or perhaps several days, each year. These capacity costs are very expensive. If an interruptible customer were allowed to depend upon the native utility to provide supply without interruption and contribute to a system peak, and then later leave the system under the terms of this bill, the customer could avoid the payment of the capacity charges associated with establishing the peak. These charges would be left to be borne by the remaining ratepayers.

Another problem with the bill is determining to whom it would apply. The bill specifies that it applies to industrial customers, but does not define who is eligible as an industrial customer. Many types of consumers take service in a manner that is controlled or interruptible. These classes include everything from residential customers with air-conditioners controlled by load levelers, to irrigation customers who are interrupted.

Lastly, there is no requirement that a consumer accept service under an interruptible rate. Consumers accept service of this type only with consideration from the utility, i.e., a lower rate for this type of service. It is unfair to allow one class of customers to have a lower rate, and then further allow that customer to escape service under that rate when it comes time for them to honor their consideration for the lower rate, i.e., the interruption of service during peak demand periods.

For these reasons, we do not believe that this Committee should approve House Bill 2122.

**TESTIMONY SUBMITTED  
TO THE  
HOUSE UTILITIES COMMITTEE**

**By**

**Mr. Earl Watkins, General Counsel**

**SUNFLOWER ELECTRIC POWER CORPORATION**

**February 9, 1999**

First, let me thank you, Mr. Chairman, and members of this Committee for providing Sunflower time to share our thoughts with you on House Bill No. 2122.

My name is Earl Watkins. I serve as Sunflower's legal counsel and have done so for more than 20 years. As you know, Sunflower was organized in 1957 to provide reliable wholesale power to the six rural electric cooperatives that own Sunflower. These cooperatives serve approximately 150,000 consumers in 34 western Kansas counties. Since that time, we have built or acquired more than 1,000 miles of high-voltage transmission lines, and have built five power plants with a total generating capacity of approximately 580 megawatts.

Because Sunflower is a cooperatively-owned generation and transmission company, we do not currently have any interruptible industrial customers. We do have several small municipal customers that are subject to interruption, but these wholesale customers have adequate generation resources to meet their load requirements, if needed. The six distribution cooperatives that own Sunflower, however, have many industrial loads this legislation could potentially affect.

We oppose this bill for several reasons. First, it would appear to us that the apparent "freedom" this bill would give large customers in fact would restrict the options available to them today as they negotiate power supply contracts with their existing provider. You may believe that these customers have no options and exist at the mercy of the utility.

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That is not true—they have alternatives. Obviously, the most prominent among them is self-generation. These large customers can also file a complaint with the KCC if they think prices offered for service are improper or, in extreme cases, can decide to move their business outside the service area.

The second reason we oppose this bill is because it would punish a power provider for simply enforcing a provision of a mutually beneficial contractual relationship between the supplier and the industrial customer. We are not aware of any interruptible contract in Kansas that was not willingly entered into by both the buyer and the seller.

There are several good and valid reasons for suppliers and industrial customers to enter into contractual relationships where the industrial customer agrees to be interrupted or curtailed during specific times or operating conditions.

First, the supplier may wish to negotiate an interruptible contract with an industrial customer to facilitate planning of operating reserves and to possibly postpone or eliminate the need for additional generating capacity. In these agreements, the industrial customer is rewarded with a lower rate than that customer would otherwise expect.

Secondly, if the industrial customer does not want to be interrupted, it can pay a higher price for the power and energy being delivered in return for firm uninterrupted service. Even with this type of agreement, the customer will likely receive a rate that is lower than the standard tariff because of its size.

Over the last few years, Sunflower and its Members have negotiated agreements with all of our large customers because they had lower-cost alternatives to the standard Sunflower tariffs.

It seems to us that to grant these customers access to other suppliers—by law—removes most incentives for a utility to grant interruptible contracts to industrial

customers in the first place. They would no longer be able to access a lower rate in return for accepting certain levels of service or price risk.

Sunflower is currently in the process of trying to create a new tariff that would indeed expand our current Member system offers to include an interruptible tariff. Since the market price for plant capacity has increased, we are considering a tariff where customers who would agree to the possibility of interruption, thereby providing Sunflower with an increased amount of capacity to market, would be financially rewarded for their voluntary acceptance of that risk.

Rates for all classes of utility customers are currently predicated on the concept that existing customers will, for the most part, remain on the system. If the risk exists that a utilities' largest customers may be free to leave the system for as much as 25% of the year, rates for all other customers would have to be raised in order to keep the utility in the same position as it is under current law.

Also, we believe the proposed legislation violates the basic "obligation to serve" requirement embodied in the long-standing utility compact that, in part, is defined in Section 2 of this bill. Under this bill, the utility would continue to have an obligation to serve, but the customer would have no responsibility to purchase. This creates a temporary "retail wheeling" opportunity for some large customers, but ignores all other classes of ratepayers. As most of you know, we are opposed to any retail wheeling concept that does not benefit all ratepayers. The new interruptible tariff Sunflower has under consideration will be designed to reward all of our customers, not just a few.

We also believe the Committee should consider the fact that the time period when an industrial customer might choose to seek an alternative supplier will be one of extremely high prices. If that were not the case the original provider would not be experiencing capacity problems. It also may not necessarily be one when transmission capacity is available as a result of restrictions imposed on utilities by FERC Orders 888 and 889.

During Sunflower's last maintenance outage, our accessibility to the transmission grid was negatively affected by the OASIS computer model (created by FERC 889) because it restricts Sunflower's ability to arrange transactions with other utilities in a manner that would provide Sunflower's customers access to the lowest wholesale prices. That situation cost the ratepayers in western Kansas a premium of nearly \$1,000,000 for this 10-week period, in November 1997.

The bill also provides that distribution facilities be made available to the industrial customers at cost plus ten percent. The problem, in our opinion, with this provision is that it may be difficult at best to determine what specific operational and capital costs should be assigned to an individual industrial customer for this temporary period of time.

For these reasons, Sunflower respectfully opposes passage of HB 2122. I would be happy to answer any questions at this time.