Approved: Carl Dean Holmes
Date 3-9-99

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Vice-Chairman Tom Sloan at 9:10 a.m. on February 17, 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:

Others attending: See Attached List

Vice-Chairman Sloan announced that **HB 2272 - Nonprofit public utilities not subject to KCC regulation; size limits** was open for debate. Rep. Vining moved that the bill be passed out favorable. Rep. O'Brien seconded the motion. Motion carried. Rep. O'Brien will carry the bill.

Hearing on HB 2400 - Electric generation facility siting act, applicable to only nuclear generation plants.

Chairman Holmes welcomed Barbara Hueter, Director of Government Affairs for Enron Corporation, who testified in favor of **HB 2400** (Attachment 1).

Steve Miller, Senior Manager for External Affairs for Sunflower Electric Power Corporation, testified as a proponent for **HB 2400** (Attachment 2).

The next conferee appearing as a proponent for **HB 2400** was Bruce Graham, Vice President of Member Services & External Affairs for KEPCo. (Attachment 3).

J. C. Long, Director of Government Affairs for UtiliCorp United, presented testimony in favor of the bill (Attachment 4).

Jim Ludwig, Senior Director of Regulatory Affairs for Western Resources, appeared next as a proponent for **HB 2400** (Attachment 5).

Larry Holloway, Chief of Energy Operations for the Kansas Corporation Commission, provided information to the committee about **HB 2400** and stated that the KCC held no position on the bill (Attachment 6).

Chairman Holmes opened the floor for questions from the committee.

Hearing on HB 2271 - Independent power producers; deregulations and taxation of property as commercial and industrial property.

Chairman Holmes recognized J. C. Long, Director of Government Affairs for UtiliCorp United, who testified as a proponent to **HB 2271** (Attachment 7).

Shannon Green, Jr., Manager of Property & Misc. Taxes for Kansas City Power & Light Co., testified in opposition to **HB 2271** (Attachment 8).

Steve Miller, Senior Manager of External Affairs for Sunflower Electric Power Corporation, appeared as an opponent to the bill (Attachment 9).

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 522-S Statehouse, at 9:10 a.m. on February 17, 1999.

Jim Ludwig, Senior Director of Regulatory Affairs for Western Resources, presented testimony in opposition to **HB 2271** (Attachment 10).

The Chair called for additional conferees. Mr. Robert Badenoch, Chief, State Appraised Property Bureau of the Department of Revenue, requested the committee review the language of New Sec 2 (b) of the bill (Attachment 11).

At the conclusion of the presentations, conferees responded to questions from the committee.

Rep. Ward moved that the minutes of the February 2, 3, 4, 5, 8 & 9 meetings be approved. Rep. Sloan seconded the motion. Motion carried.

Meeting adjourned at 10:55 a.m.

Next meeting is Thursday, February 18.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 17, 1999

NAME	REPRESENTING
Kim Gulley	LKM
Tom Hestermann	Sunflower Electric
Steve Miller	Sunflower
Sandy Braden	McGill, Gaches & Assoc.
Jack Glaves	Duke, Ong & KiN
Robert M. Bodenich	KDOC, PUD
J.C Long	UCU
Russ Bishop	Duke Energy
SHANNON GREEN	KCPL
Larry Holloway	KCC
DICK CARTER	ENRON
BARBARA HUETER	ENRON
Jim Ludwig	Western Resources
Charles Benjamin	KNRC/KS Sierra Club
Don K Miles	KEC

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 17, 1999

NAME	REPRESENTING
Louis Stroup Jr.	KS Municipal Utilities
Chris Wilson	KS Governmental Consulting

HB 2400
House Committee on Utilities
February 17, 1999

Testimony of
Barbara A. Hueter
Director, Government Affairs
Enron Corp.

HB 2400 removes the requirement for an electric public utility to apply for and receive a permit from the Kansas Corporation Commission in order to begin site preparation, construction, and land acquisition for a generation facility. The intent of the legislation appears to be to decrease the amount of regulatory efforts electric public utilities must undertake in order to build non-nuclear generating facilities in Kansas. Given the projected need for electric capacity in Kansas and the midwest as well as the June 1998 temporary power shortage and wholesale market price spikes, this legislation would appear to be an incentive to electric public utilities to increase capacity and prevent a repeat of last summer's dilemma.

This legislation assumes that only existing Kansas electric public utilities are interested in and capable of building generating facilities in the state. Current law (K.S.A. 1998 Supp. 55-1,158) does not define or allow for a non-utility business to own electric generating facilities. Inclusion of non-regulated companies as providers of electric generation will be an integral part of electricity industry restructuring legislation.

A competitive market for the construction and operation of generating facilities will provide for more efficient plants and lower prices. Under this scenario, the company is driven to build the most cost-effective and efficient facility possible so that it is able to compete with other generating facilities in the sale of power. If a competitive company is inefficient or makes bad

business decisions, its owners or stockholders will pay for mistakes through losses or profit decreases. In contrast, under regulation, utilities continue to build power plants under their monopoly status as exclusive providers of retail service. The regulated utility is not necessarily required to competitively bid to select the most competent company to build the facility. Generally, all costs associated with the construction of a generating facility are included in the rate base. In sum, it means that the incentive to construct a plant as cost-effectively and efficiently as possible is lacking since the plant will be paid for in full by rate payers. Indeed, any failure of the plant - i.e. its inability to survive in a competitive market - will be borne by customers in rates or as stranded costs.

For Kansas to maximize its potential for attracting cost-effective and efficient power plants, it should enact legislation to do the following:

1. deregulate all competitive services (generation, ancillary services, metering, customer services) provided by existing utilities and allow non-utility suppliers to enter the market;
2. separate competitive services from non-competitive services (transmission and distribution) provided by the public utility;
3. include non-utility generating companies in the permit exemption contained in HB2400 (K.S.A. 1998 Supp. 66-1,158);
4. analyze existing tax structures and economic development programs for generation facilities to determine if Kansas is an attractive state to locate facilities, if not, then make necessary improvements to these policies and statutes; and,
5. provide other measures as needed to assure a fair, functioning environment for competitive generation.

At a minimum, HB 2400 should be amended to require that any electric utility planning to construct a generation facility must:

1. establish an affiliated company to own new generating facilities;
2. put the project out for competitive bidding;
3. do not place the plant in the general ratebase; and,
4. have the utility contract for the foreseeable future (until deregulation) with the affiliate for the output of the plant to meet its obligation to serve.

These four steps are critical for the future of Kansas' retail electricity market. Given that restructuring legislation will determine the amount of utility costs that will be uneconomic in a competitive market (i.e. stranded costs), new costs should not be allowed into rate base. A lack of incentive for the utilities to build and operate economically efficient plants will increase the stranded cost burden on customers and the state's economy.

Nearly one-half of all states have passed deregulation laws and orders. Competitive generation facilities are being built in other states. Kansas should look to the future and not to the past to govern the construction of new generating facilities.

TESTIMONY SUBMITTED TO THE HOUSE UTILITIES' COMMITTEE

By

SUNFLOWER ELECTRIC POWER CORPORATION

February 16, 1999

COMMENTS ON HOUSE BILL 2400

I would like to thank the Chairman and members of the Committee for providing Sunflower time to share our thoughts with you on this bill. My name is Steve Miller. I serve as Sunflower's Senior Manager, External Affairs.

This bill would significantly modify the Kansas generation facility siting act. As you all may be aware of by now, Sunflower is the only Kansas jurisdictional utility that has endured the rigors of a plant site hearing.

Sunflower's hearing for its Holcomb site was conducted in 1978 and resulted in six days of technical hearings that generated approximately 747 pages of transcript, 27 witnesses and 36 exhibits. Although I cannot give the Committee the exact cost of that hearing, I can safely say that it was very costly in terms of time and monies spent.

We certainly could support House Bill 2400 if it is the only legislation that can pass this session. I'm sure you are aware that there are also two similar bills (SB 243 & 257) under consideration by the Senate. We believe that a bill in one these forms is necessary in order to meet the generation needs of the state in a timely and orderly fashion.

Senate Bill 257 and House Bill 2400 are identical in that they modify the existing plant siting act to provide for plant site applications and hearings for only new nuclear generation facilities. Non-nuclear facilities of any size would not be subject to the act.

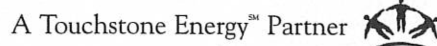
Senate Bill 243 amends the existing plant siting act to require that only nuclear facilities and non-nuclear facilities greater than 100 megawatts not built on existing plant sites be subject to the act. We believe that SB 243 is the best one in the group because the existing sites in Kansas have already had some level of regulatory and environmental review as to the suitability of each location.

All three of the bills reduce the regulatory barriers that may slow down or prevent the necessary construction of new generation facilities needed to provide Kansans with reliable electric power and energy.

We leave to you the decision as to what one, if any to pick. When you consider all of the new generation projects that have been announced, including our recommissioning of the 90 MW S-2 unit in Garden City, it's clear to us that Kansas' generating utilities are working to meet the needs of the public.

Thank you for the time to share our views with the Committee. I would be happy to answer any questions.

Kansas Electric Power Cooperative, Inc.



Testimony on House Bill 2400

Before the House Utilities Committee -- February 17, 1999

Bruce Graham, KEPCo's Vice President, Member Services & External Affairs

While KEPCo does not have plans to construct generation that would be subject to the Kansas Electric Generation Siting Act in the near future, our projections parallel those of other planners across Kansas--the state will soon be short on electricity generation.

New generation will be constructed in the future to serve Kansas consumers. We should relax the rules so that generation is not built just across state lines in order to avoid burdensome regulation and taxes.

Some may find comfort in the siting act's call to determine whether the proposed generation is needed before construction begins. In the face of a changing environment where customer choice is possible and a poor generation decision would raise costs, perhaps to a non-competitive level, a generation company should be expected to invoke its own prudency examination that would rival the most miserly of KCC regulators. Furthermore, it is our understanding that even without the siting act, local governments and citizens have the appropriate authority to approve a construction plan, plus the environmental impact must be approved by the Kansas Department of Health and Environment.

Therefore, KEPCo supports the amendments to the Kansas Electric Generation Siting Act as outlined in HB 2400. Construction of new generation will assure more reliable service to all Kansas consumers and possibly provide KEPCo with additional power supply options for its members.

Phone: 785/273-7010 • Fax: 785-271-4888 • Home Page: www.
Mailing Address: P.O. Box 4877 • Topeka, Kansas 66604-0877 • Street Address:

HOUSE UTILITIES
DATE: 2-17-99
ATTACHMENT 3

House Utilities Committee

Testimony in support of House Bill 2400
By
J. C. Long
Government Affairs
UtiliCorp United Inc.

Mr. Chairman and members of the committee:

My name is J. C. Long, and I am Director of Government Affairs for UtiliCorp United in Colorado and Kansas. Our Kansas division, WestPlains Energy serves 70,000 electric customers at retail in central and western Kansas along with over 30 cities as wholesale customers in the same area. I appear before you today to testify in favor of House Bill 2400. House Bill 2400 eliminates the requirements of the plant siting act for all generation facilities except nuclear.

Kansas' surrounding states, except Colorado, are competitors to siting power plants, regardless of whether they are merchant power plants or rate based facilities. With limited siting requirements in these states, Kansas is losing both jobs, property taxes and generation capacity. We believe that House Bill 2400 should be passed to alleviate this situation.

The costs of siting a power plant can cost millions of dollars with mountains of paperwork. As a matter of fact, the power plant siting act was passed to assure Kansans that there would not be another Wolf Creek, and that has surely happened. The act also

HOUSE UTILITIES
DATE: 2-17-99
ATTACHMENT 4

has been an enabler for Kansas' utilities, including UtiliCorp, to look at other states to locate our generation facilities.

We support the provisions of House Bill 2400 and hope the committee will pass the bill favorably.

Testimony
before the
HOUSE UTILITIES COMMITTEE
by
Jim Ludwig, Senior Director, Regulatory Affairs
Western Resources
February 17, 1999

Chairman Holmes and members of the Committee:

Western Resources supports HB 2400. When I testified before this committee on HB 2057, I recommended the generation siting act revisions you see in HB 2400. The current siting act imposes an unnecessary burden on building needed generation capacity. Our neighboring states do not have siting acts. Western Resources believes this bill will encourage building plants in Kansas. Kansas' reserves of natural gas, which fuels most new plants, put it in a favorable position for attracting generation, provided we lift burdens from prospective generation builders.

What the Siting Act Does

Under the siting act, a siting 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.

What the Siting Act Does Not Do

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. Amending the siting act as proposed in HB 2400 would not exonerate utilities or non-utilities from any environmental agency proceedings or requirements, local ordinances, or other non-KCC requirements.

What HB 2400 Would Do

This bill would make the siting act apply only to construction of any new nuclear generation, whether it was built on a new or existing site. Other types of generation could be built without undergoing a siting act proceeding. 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.

HOUSE UTILITIES
DATE: 2-17-99
ATTACHMENT 5

Transmission Line Siting

Please allow me to bring a related issue to your attention. Kansas also has a siting act for building or upgrading transmission lines above 230 kV. Transmission lines are the way generation gets to customers. Generation by itself isn't useful without transmission lines. As we build more generation to meet our customers' needs, we may also need to build or at least upgrade transmission lines. It would be very helpful to either repeal the transmission siting act or at least exempt the upgrading of existing lines from transmission siting proceedings.

Western Resources supports HB 2400, and encourages the committee to advance it. We also encourage the committee to consider advancing a bill repealing or amending the transmission siting act to exempt line upgrades from transmission siting proceedings.

BEFORE THE HOUSE UTILITIES COMMITTEE

PRESENTATION OF THE

KANSAS CORPORATION COMMISSION ON

HOUSE BILL NO. 2400

Thank you Mr. Chairman, and members of the committee; 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 takes no position on this bill. The purpose of my testimony is to provide some background information regarding the electric generation facility siting act.

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.

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 and the business and investment opportunities available to electric utilities. Starting in the 1980s 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. Recently (in the last three to four years) there has been an

HOUSE UTILITIES

DATE: 2-17-99

ATTACHMENT 6

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 by nonutilities without long-term contract obligations. Because merchant plants can be built anywhere, and do not represent a long-term contractual obligation to the electric utility or its ratepayers, the Commission has proposed HB 2057 which would exempt these plants from the electric generation facilities siting act.

While the ownership and financing of generation plants has evolved since the siting act was first enacted, there have also been changes in investment and financial opportunities for electric utilities. In the late 1970s most electric utilities were focused on the utility business. The primary way an electric utility expanded its investments and shareholder opportunities was to invest in generation facilities. The addition of air conditioning to the residential and commercial load, as well as increasing industrial automation, caused electric demand to increase rapidly. As a result, generating plants were often needed as soon as they were built. Additionally, until the mid 1970s, technology advancements in power plant efficiencies often meant that a new power plant, even when added to the electric utility's ratebase, saved enough fuel and operating expenses that electric rates were decreasing in real terms. This was the best of all worlds. By adding the new power plant the utility expanded its ratebase and lowered its expenses, often allowing decreases in electric rates with a corresponding increase in the amount of shareholder investment opportunities. The ratepayer benefitted and the utility benefitted.

Today, of course there are quite different investment incentives for the utilities. Environmental and safety regulations, as well as high interest rates and decreasing technological

improvements meant that new power plants constructed in the late 1970s and early 1980s were far more expensive to build and operate than anticipated. Increases in electric demand had leveled off to growth rates that were more reflective of the general economy. Utility regulators often denied or limited the electric utility's return on, and return of, their investment in new expensive power plants. Addition of these new facilities to electric rates often resulted in dramatic and unpopular rate increases. Building generation was no longer seen as a sure bet for a utility's shareholders or to the benefit of their ratepayers.

Since this period in time the typical electric utility has become diversified and may invest in a variety of unregulated enterprises. Additionally, increasing wholesale competition and the perception of impending retail competition has created a great deal of uncertainty. There is no longer an incentive for electric utilities to invest in expensive generating plants for ratebase purposes, and in fact many utilities may consider this type of investment as risky as investment in their nonregulated subsidiaries.

House Utilities Committee

Testimony in Support of HB 2271
by
J. C. Long, Director
Government Affairs
UtiliCorp United Inc.

Chairman Holmes and members of the committee:

My name is J. C. Long, and I am Director of Government Affairs for UtiliCorp United in Colorado and Kansas. Our Kansas division, WestPlains Energy serves 70,000 electric customers at retail in central and western Kansas along with over 30 cities as wholesale customers in the same area. I appear before you today to testify in favor of House Bill 2271. House Bill 2271 reduces the tax burden on independent power plants from 33 percent to 25 percent of assessed valuation.

Independent power plants or merchant power plants, as they are sometimes called, are becoming common throughout the United States. Many are currently under construction in our area, but not in Kansas. Currently, Duke Energy is building a merchant plant in Missouri and one in Texas. LS Energy and UtiliCorp's non-regulated subsidiary, Aquila Energy, are building a plant in Batesville, Mississippi and other companies are reviewing the area and by all information available, the location they select will not be Kansas. The question then, why not Kansas?

Merchant power plants or IPP's are business entities, not utilities. The merchant power plant charges market prices for the energy they produce and unlike regulated power plants cannot recover property taxes from customers automatically through rates. The

HOUSE UTILITIES
DATE: 2-17-99
ATTACHMENT 7

merchant power plant is a risky business. Merchant power plants should not receive the benefits of the regulated power producers, nor should the merchant plant be penalized by having to comply with the same rules.

To "entice" merchant power plants to Kansas, the property tax structure must be changed. Under current law, any regulated generation facility owned by a public utility or any merchant power plant located in Kansas is taxed at 33 per cent of the appraised valuation. In today's climate, that level of taxation is non-competitive with our surrounding states. Our Missouri facilities pay substantially fewer taxes on the same megawatt produced as our Kansas facilities. With this high tax burden, potential merchant power plant owners will look elsewhere.

Once again, merchant power plants are not a sure thing. You have to be able to sell the power. If a company who builds a merchant plant cannot sell the power, the company is at risk, not the customer. If a merchant power plant looses money either because they over built for the market, or misjudged the market place, the company takes the loss and not the customer. But with these risks come rewards. The merchant power plant owner can sell power at the market price and has no limit as to the price he can charge except for what the open market will bear.

This bill is about jobs and increasing the state's property valuation; and it's about generation of needed electric power. If a 500 megawatt power plant were built in Kansas, it will employ over 20 people and add to the appraised valuation of the state over 250 million dollars. Without this bill and without major modifications to the plant siting act, Kansas will see very little merchant power plant activity. It is just a better use of our resources to go to Oklahoma, Missouri or Nebraska and wheel the power onto the grid.

UtiliCorp is a public utility in Kansas. We realize that merchant power plants may be competitors to our own regulated generation facilities in this state once retail competition is allowed in Kansas, but we believe we can compete and are willing to do so. We ask that you give House Bill 2271 serious consideration during your deliberations. Give companies a reason to build in Kansas, not reasons to avoid Kansas.

Mr. Chairman and members of the committee, thank you for giving me the opportunity to appear before you today in support of House Bills 2271.

Remarks before the House Utilities Committee
In Opposition of House Bill No. 2271
By
Shannon Green Jr.
Kansas City Power & Light Co.
February 17, 1999

Thank you Chairman Holmes and members of the Committee for the opportunity to address you today concerning proposed HB 2271. My name is Shannon Green Jr. and I am the Manager of Property & Misc. Taxes for Kansas City Power & Light Company. I am testifying today in opposition of HB 2271 as I support fair and equitable taxation.

This bill attempts to allow independent power producer (IPP) property constructed after July 1, 1999 and used solely in the generation, marketing and sale of electricity to be taxed during the construction and operational phases at a significantly lower amount than similar property of an investor-owned utility (IOU). This legislation attempts to place existing electric generation assets at a competitive disadvantage compared to newly constructed IPP assets.

As we continue the discussion on electric industry restructuring, this type of legislation would violate what I believe to be a fundamental requirement of a competitive market, that being fair competition. Taxation is a major component to fair competition and this bill attempts to allow new entrants in the market to be taxed at a much lower rate than existing electric generation assets.

In theory, the IPP assets would not only be annually taxed at lower rate during the operation of the plants but the amount of the taxes capitalized during the construction period of the plants would be significantly lower than those already paid on IOU plant assets. For instance, KCPL has paid and capitalized approximately $25 million of property taxes during the construction period on its share of electric generation assets located in the state of Kansas.

Aside from the lack of tax equity, this bill is also inconsistent with existing law and would be difficult to implement. For example, the bill indicates that IPP assets would be appraised by the State Property Valuation Department but then would be assessed and taxed as if they were commercial and industrial property. K.S.A. 79-5a01 et seq. requires the State Property Valuation Department to determine the market value of public utility property which will then be assessed at 33%, while Article XI, Section 1(a) of the Kansas Constitution requires commercial & industrial personal property to be assessed at 25% of a straight line depreciation of original cost and not market value. I am at a loss as to how the IPP assets if appraised by the State Property Valuation Department could then be assessed and taxed as commercial & industrial property.

In conclusion, I agree that the property tax burden on electric property located in the state is significantly higher than commercial & industrial property located in Kansas, is higher than utility property located in other states in the region and needs to be reduced. It should not, however, be reduced for only one segment of the electrical energy market.

Thank you again for your time.

HOUSE UTILITIES
DATE: 2-17-99
ATTACHMENT 8

TESTIMONY SUBMITTED TO
THE HOUSE UTILITIES COMMITTEE

By

SUNFLOWER ELECTRIC POWER CORPORATION

February 16, 1999

COMMENTS ON HOUSE BILL 2271

Thank you, Mr. Chairman and members of the Committee, for providing Sunflower time to share our thoughts with you on this proposed legislation. My name is Steve Miller. I serve as Sunflower's Senior Manager, External Affairs.

HB 2271 has two basic components. The first component modifies the definition of a "public utility" as defined in K.S.A. 66-104 to exclude the activities of an otherwise jurisdictional entity as to the generation, marketing and sale of electricity generated from generating facilities constructed after July 1, 1999. This modification applies only as long as that generating facility is not included in the rate base of a KCC jurisdictional utility, electric cooperative or municipal utility.

The second component modifies K.S.A. 79-5a01 to exclude the previously mentioned generation facilities from the definition of a "public utility" or "public utilities".

The purposes of these changes appear to us to be two-fold. First, by modifying the definition of a "public utility" in K.S.A. 66-104, new generation facilities could be constructed without being encumbered by the generating plant siting act. To our knowledge, Sunflower is the only entity that has endured, to completion, the rigors of a plant site hearing.

Sunflower's hearing for its Holcomb site was conducted in 1978 and resulted in six days of technical hearings that generated approximately 747 pages of transcript, 27 witnesses and 36 exhibits.

HOUSE UTILITIES
DATE: 2-17-99
ATTACHMENT 9

Secondly, it appears that the new generating facilities would be eligible for a lower property tax rate because the facilities would not be classified as public utility property.

Sunflower applauds the Committee's actions to remove barriers to the construction of new generation facilities in the state. However, we feel that a more appropriate approach would be to significantly modify or repeal the existing plant siting act.

As for the preferential tax treatment, we find ourselves in somewhat of a quandary. Our Holcomb plant site was originally designed for three units totaling near 1,000 MW. A key to that expansion would be the repeal of the siting act.

Should Sunflower decide to construct additional units at that location, on its own or in partnership with others, we would be eligible for this preferential tax treatment. But, after reflecting on that possibility, we have concluded that this tax issue should be dealt with by the Legislature so as to not give any potential future competitor an advantage over another. We just don't think there is any need to "un-level" the tax "playing field" in Kansas.

Thank you Mr. Chairman for the time to share our views with the Committee. I would be happy to answer any questions.

Testimony
before the
HOUSE UTILITIES COMMITTEE
by

Jim Ludwig, Senior Director, Regulatory Affairs
Western Resources

February 17, 1999

Chairman Holmes and members of the Committee:

Western Resources is opposed to HB 2271.

Bill Explanation and Policy Goals

Provided plant construction began July 1, 1999 or after, this bill would give the lower 25 percent assessment level of commercial and industrial property to independent power producer plants or to any plant that is not in rate base under the KCC's jurisdiction. Any plant that was in rate base, whether constructed before or after July 1, 1999, would be subject to the higher 33 percent assessment level of utility property.

Western Resources supports the policy to equalize property tax burdens of those who will be competitors in the generation market when retail wheeling is implemented. If, however, the intent of HB 2271 is to address the difference in assessment levels between utility and commercial and industrial property, there is a more even-handed and less convoluted way to accomplish the goal.

Competitive Disadvantage

The bill puts rate based plants at a competitive disadvantage. It would also eventually disadvantage any plant currently in rate base that is removed from rate base in the future. Removal from rate base would occur when retail wheeling is implemented, or if a utility sold one of its plants to an independent power producer. In either case, under this bill, the plant would still be assessed at 33 percent.

If a utility were to build an affiliated merchant (independent power) plant after July 1, 1999, the only way it could use the power from that plant to serve its retail customers would be to purchase power from its own affiliate. In this instance, the cost would be recovered in retail rates as a purchased power expense instead of through rate base. In this way, the savings associated with the lower assessment rate could benefit retail customers. Utilities, however, would have to weigh the risk of Federal Energy Regulatory Commission concerns about self-dealing, plus the risk of gaining approval of recovering purchased power expenses in a rate case before the KCC, against the much less fettered ability to sell the merchant plant's power to anyone else but a retail customer. The incentive seems to be to sell the power at wholesale to someone else.

HOUSE UTILITIES

DATE: 2-17-99

ATTACHMENT 10

Customer Disadvantage

This bill puts every current retail customer at a disadvantage. I am not aware of the KCC ever disallowing recovery of property tax expense in rates. The Commission allows prudent and reasonable expenses to be recovered. It is prudent to pay one's property taxes. It is very imprudent not to. Retail customers who receive power from plants already in rate base and built before July 1, 1999, would still pay for the plants' associated property taxes in their rates, and those taxes would be based on the higher 33 percent assessment level.

A Better Alternative

The Senate Assessment and Taxation Committee is holding hearings tomorrow on SB 185. I understand that HB 2218 is identical. This bill would refund to long distance telecommunications utilities the difference between the 25 percent and 33 percent assessment levels via income tax credits. The bill phases the credits in gradually over four years to abate the impact of revenue erosion from the property tax refunds. This bill could be amended to include the generation of electric utilities and the plants of independent power producers. Because it amends the income tax provisions of applicable statutes, SB 185 may successfully skirt the difficulty of changing the property tax classification of utilities (33 percent assessment) to the commercial and industrial classification (25 percent assessment). It also avoids the difficulty of re-defining the meaning of "utility" in the statutes regarding property taxation of utilities. Both assessment levels are set in the Kansas constitution.

ST, _ OF KANSAS
Bill Graves, Governor

DEPARTMENT OF REVEN
Karla Pierce, Secretary

Mark S. Beck, Director
Kansas Department of Revenue
915 SW Harrison St.
Topeka, KS 66612-1588

(785) 296-2365
FAX (785) 296-2320
Hearing Impaired TTY (785) 296-3909
Internet Address: www.ink.org/public/kdor

Division of Property Valuation

**Testimony before the House Utilities Committee,
Carl Dean Holmes, Chairman
On HB 2271
Wednesday, February 17, 1999
by Robert M. Badenoch,
Chief, State Appraised Property Bureau**

The division appears as neither a proponent nor an opponent of the Bill but respectfully requests that the language of New Sec 2 (b) be reviewed and amended for clarity.

As committee members know, Sec. 3 (b),(4) excludes electric generation facilities constructed after July 1, 1999 from K.S.A. 79-5a01's definition of a "public utility". Historically, such an exclusion would prohibit the property from being valued and assessed in a manner consistent with K.S.A. 79-5a01 *et seq* (market value as a unit of real, personal, tangible and intangible property); however, New Sec. 2 (b) establishes "that such property shall be appraised in the manner pursuant to K.S.A. 79-5a01 *et seq."* Since New Sec. 2 (b) describes the property as "commercial and industrial property" for the purposes of taxation, meaning "to be assessed at a 25% assessment rate, nonetheless the reference also raises the possibility that such property should be valued as "commercial and industrial property" in the manner prescribed by the Constitution (Article 11 § 1 Class 1 (6) C&I real property AND Article 11 § 1 Class 2 (5) C&I personal property). This presumption is further supported by the language of New Sec. 2 (b) when only the terms "real property and tangible personal property" are used instead of the language found in article 5a where the terms "both real and personal, tangible and intangible" (K.S.A. 79-5a4) are used to describe the property to be appraised.

If the intent of the bill is to make the state responsible for finding the "commercial and industrial" value of "independent power producer property", it may do so but not by reference to article 5a.

If the intent of the bill is to have the state find the market value of "independent power producer property" in a manner constant with the requirements of article 5a, then references to "commercial and industrial" as well as "real and personal" need to be struck.

HOUSE UTILITIES
DATE: 2-17-99
ATTACHMENT 11

To insure that the "commercial and industrial" assessment rate is used on the "independent power producer property" we suggest that language to that effect be incorporated into K.S.A. 79-1439.

From: "Bob Badenoch" <Bob_Badenoch@kdor.state.ks.us>
To: <joc-w@house.state.ks.us>
Date: 2/17/99 4:03PM
Subject: Badenoch Testimony on HB 2271

(See attached file: TESTIMONY 2-17-99.doc)

Testimony before the House Utilities Committee,
Carl Dean Holmes, Chairman
On HB 2271
Wednesday, February 17, 1999
by Robert M. Badenoch,
Chief, State Appraised Property Bureau

The division appears as neither a proponent nor an opponent of the Bill but respectfully requests that the language of New Sec 2 (b) be reviewed and amended for clarity.

As committee members know, Sec. 3 (b),(4) excludes electric generation facilities constructed after July 1, 1999 from K.S.A. 79-5a01

?s definition
of a ?public utility?. Historically, such an exclusion would prohibit the property from being valued and assessed in a manner consistent with K.S.A. 79-5a01 et seq (market value as a unit of real, personal, tangible and intangible property); however, New Sec. 2 (b) establishes ?that such property shall be appraised in the manner pursuant to K.S.A. 79-5a01 et seq.? Since New Sec. 2 (b) describes the property as ?commercial and industrial property? for the purposes of taxation, meaning ?to be assessed at a 25% assessment rate, nonetheless the reference also raises the possibility that such property should be valued as ?commercial and industrial property? in the manner prescribed by the Constitution (Article 11 1 Class 1 (6) C&I real property AND Article 11 1 Class 2 (5) C&I personal property). This presumption is further supported by the language of New Sec. 2 (b) when only the terms ?real property and tangible personal property? are used instead of the language found in article 5a where the terms ?both real and personal, tangible and intangible? (K.S.A. 79-5a4) are used to describe the property to be appraised.

If the intent of the bill is to make the state responsible for finding the ?commercial and industrial? value of ?independent power producer property?, it may do so but not by reference to article 5a.

If the intent of the bill is to have the state find the market value of ?independent power producer property? in a manner constant with the requirements of article 5a, then references to ?commercial and industrial? as well as ?real and personal? need to be struck.

To insure that the ?commercial and industrial? assessment rate is used on the ?independent power producer property? we suggest that language to that effect be incorporated into K.S.A. 79-1439.