

Approved: Carl Dean Holmes
Date 3-9-99

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl Holmes at 9:08 a.m. on February 23, 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: Michael Byington, Envision
Richard Veach, Pioneer TeleCom
Ann Wickliff, KCC
Wayne Kitchen, WRI
J. C. Long, UtiliCorp
Gerry Reynolds, KCPL
Bruce Graham, KEPCo

Others attending: See Attached List

Hearing on HB 2496 - Telecommunications, "universal service" defined

Chairman Holmes welcomed Michael Byington, Director of Governmental Affairs for Envision, who testified in support of **HB 2496** (Attachment 1).

Richard Veach, General Manager of Pioneer Communications, testified as an opponent to **HB 2496** (Attachment 2).

Anne Wickliff, Chief Telecommunications Analyst for the Kansas Corporation Commission, provided neutral testimony on **HB 2496** (Attachment 3).

Written testimony from Susan Myers, Grant Consultant for Hays Medical Center, in opposition to the bill was provided to the committee (Attachment 4).

Conferees responded to questions from the committee following testimony.

Hearing on HB 2482 - Mandatory 10% reduction in retail electric rates of public utilities.

Wayne Kitchen, Vice President of Regulatory & Environmental Affairs for Western Resources, provided testimony in opposition to **HB 2482** (Attachment 5).

Gerald Reynolds, Staff Attorney for Kansas City Power & Light, provided testimony opposing **HB 2482** (Attachment 6).

Bruce Graham, Vice President of Member Services & External Affairs for Kansas Electric Power Cooperative, Inc., testified as an opponent to the bill (Attachment 7).

J. C. Long, on behalf of W. Scott Keith of UtiliCorp, read testimony in opposition to **HB 2482** (Attachment 8).

Kim Gulley, Assistant General Counsel for the League of Kansas Municipalities, provided written neutral testimony on **HB 2482** (Attachment 9).

Following testimony, conferees responded to questions from the committee.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 522-S Statehouse, at 9:08 a.m. on February 23, 1999.

HB 2495 - Retail Wheeling Task Force extended

Rep. Sloan presented a proposed balloon for **HB 2495** (Attachment 10). Rep. Sloan moved to adopt the balloon for **HB 2495**. Seconded by Rep. Alldritt. Motion carried.

Rep. Alldritt moved to change the Senate Task Force membership to reflect the same as the House Task Force membership. Rep. O'Brien seconded the motion. Motion failed.

Rep. Sloan moved to report **HB 2495** as amended favorable for passage. Rep. Toelkes seconded the motion. Motion carried.

Rep. McClure will carry the bill.

HB 2322 - Utility billings in different formats for visually impaired or blind person.

Rep. Sloan presented a proposed balloon for **HB 2322** (Attachment 11). Rep. Sloan moved to adopt the balloon for **HB 2322**. Rep. Alldritt seconded the motion. Motion carried.

Rep. McClure moved to delete the word "cassette" on line 17. Rep. O'Brien seconded the motion. Motion carried.

Rep. Dahl moved to change line 19 by adding the words "requesting this service". Rep. Myers seconded the motion. Motion carried.

Rep. Sloan moved a technical amendment by striking the words "or any combination thereof" from line 17. Rep. Johnson seconded the motion. Motion carried.

Rep. Myers moved to add the words "of at least 24 point type" following the words 'large print' on line 16. Rep. Dahl seconded the motion. Motion carried.

Rep. Johnson moved to report **HB 2322** as amended favorable for passage. Rep. Long seconded the motion. Motion carried.

Rep. Johnson will carry the bill.

HB 2045 - Underground storage of natural gas

Rep. Kuether distributed a proposed balloon amendment for **HB 2045** (Attachment 12). She requested that Mary Torrence, Revisor, explain the balloon. Rep. Loyd also distributed a proposed balloon amendment for **HB 2045** (Attachment 13) and provided explanation for that balloon.

Rep. Kuether moved her amendment. Seconded by Rep. Klein. Motion carried on a vote of 10 to 6.

Rep. Loyd moved that **HB 2045** as amended be laid on the table and referred to an interim study. Rep. Dahl seconded the motion. Motion failed on a vote of 6 to 9.

Rep. Loyd moved that the previous amendment of **HB 2045** be stricken and that his amendment be adopted. Rep. Johnson seconded the motion. Motion failed on a vote of 6 to 9.

Chairman Holmes requested that the meeting be recessed due to time constraints and that the debate on **HB 2045** be resumed tomorrow.

Meeting adjourned at 10:58 a.m.

Next meeting is Wednesday, February 24.

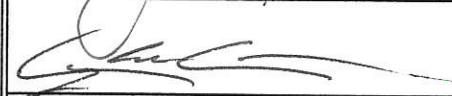
HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 23, 1999

NAME	REPRESENTING
Bruce Graham	KEPCO
Rob Hedges	KTIA
Wayne Kitchen	Western Resources
John Pinegar	SITA
RICHARD VEACH	PIONEER COMMUNICATIONS
Kim Gully	League of KS municipalities
Carolyn Dordick	K ₂ St N ₂ Assn
Joe Duke	KCKBPU
Gerald A. Reynolds	Kansas City Power & Light Company
Sandy Braden	McGill, Gaches & Assoc.
Anne Wickliffe	KCC
David Heinemann	KCC
Tom Gleason	Independent Telecom Group
Bob Anderson	AEROS ENERGY CORPORATION
Mike Moffet	SWBT

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: Feb. 23, 1999

NAME	REPRESENTING
Paul Snyder	SewBT
Dag Smith	SUKROA
Michael Byington	Envision
Don K Mills	KEC
Louis Stroup Jr.	KS Municipal Utilities
Hemen	KEC
Mike Murray	Sprint
RICHARD LAWSON	SPRINT
Whitney Damon	KS Gas Service
Dick Carter, Jr.	EMCON
Dore Matthews	Western Services
John French	Boeing
	Fuern-Dor Dahl



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Envision Governmental Affairs Office
924 S. Kansas Ave
Topeka, Kansas 66612
(785) 354-4747 (Topeka Office)
(785) 575-7477 (pager)
(785) 354-4646 (FAX)
mbyingto@ink.org or
michael.byington@envisionus.com**

February 22, 1999

TO: House Utilities Committee

SUBJECT: House Bill 2496 - SUPPORT WITH AMENDMENT

Thank you for your consideration of this legislation. I am proposing the following amendment:

On page three, at the end of line five, change the period (.) to a comma (,) and add the following words, "or that the services are necessary to insure that all other services which the Commission has identified as enhanced services are accessible to, or can be made readily usable by, persons who have disabilities."

House Bill 2496 is one of three bills floating about in the Kansas Legislature which would change the definition of "enhanced universal services." Of the three, I like this one the best. The Senate Commerce Committee is considering one measure which would only slightly tweak the current definition of "enhanced universal services," and is considering another

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measure which is similar to the measure proposed in 2496, but which essentially eliminates the definition. House Bill 2496 acknowledges that a technical definition of "enhanced universal services" is probably going to have to be changed each time technology or best practices in telecommunications transmission change. It instead leaves the definition to the Kansas Corporation Commission to be decided upon the basis of "sufficient customer demand."

This is a credible approach, but it poses problems for certain segments of the disability community. If the word, "sufficient" is to be used in a context of significant statistical percentages, then services which insure that all other defined enhanced universal services will be accessible might never happen. Blind and low vision people, for example, may never exist in statistically significant numbers in the total community of telecommunications users to a degree of statistical significance or sufficiency. Yet without insuring that enhanced universal services will be fully accessible, employment opportunities for people who are blind or legally blind will suffer a great deal. Enhanced universal services are not the every day use of the telephone kind of services. They are the things which will increasingly be used in the employment environment of tomorrow. If blind and legally blind people are to be productive and competitive in the workplace of the next century, then they will need to be able to manipulate and access information at the same efficiency as John Q. Sighted-Worker.

Currently, we know that unemployment among working aged blind and legally blind people in the United States stands at about 74%. This information was generated through 1990 census data.

By the year 2010, it is estimated that nearly 90% of all jobs will require manipulation of data over the airwaves or the telephone lines. Lower tech manufacturing jobs not requiring manipulation and transmission of data are on the decline.

Over the past 50 years, unemployment of persons who are blind has actually decreased. When first measured in the 1930s, figures ranged from 92% to 99% of all legally or totally blind people in the United States being unemployed. This makes 74% look good by comparison, but not nearly good enough. A good employment figure would be one where there is no more unemployment among people who are blind than there is among their

sighted counterparts. This may seem an unrealistic goal, but the frightening reality is that if people who are blind do not have full access to information transmitted via telecommunications, employment will increase again rather than decrease further.

Other disability groups also experience a higher than average level of unemployment. Many such groups share the concern that, if the technology bars them from information access in the future, their unemployment levels will increase as well.

The amendment I am proposing would simply insure attention to making all future enhanced services accessible. It would make it clear that "sufficiency" is not a numeric question.

Many people, when hearing the term "universal access," or seeing it in legislation, think of it as a cost and distribution equalizer between urban and rural, highly populated and lesser populated areas. Universal access, and thus universal services and enhanced universal services, must therefore mean more than simply public access, and access to rural areas. It must mean access to ALL citizens regardless of disability status.

This is the intent of Section 255 of the Federal Telecommunications Act. It needs to be extended in to the Kansas definition of "enhanced universal services."

I am already entering into discussions with the Kansas Corporation Commission about extending equipment coverage under the Telecommunications Access Program (TAP) to certain access equipment intended to make what are usually defined as enhanced functions (converting text over the telephone lines to speech) accessible to persons who are blind or low vision. I am told that a certain degree of such equipment access options for enhanced universal services may be made available under current statutory provisions. The amendment referenced for 2496 therefore is intended more to look to the future, not just to equipment for access, but to reminding developers of enhanced telecommunications services that principles of accessible design must be a part of service development, and that it is important to the people of Kansas for "universal access" to truly refer to ALL Kansans.

TESTIMONY OF RICHARD VEACH OF PIONEER COMMUNICATIONS
BEFORE THE KANSAS HOUSE UTILITIES COMMITTEE
FEBRUARY 23, 1999

Good morning Mr. Chairman and members of the committee. I'm Richard Veach General Manager of Pioneer Communications which is headquartered in Ulysses. Pioneer Communications provides local service to more than 16,000 telephone access lines in all or parts of nine counties in southwest Kansas. Our company also furnishes Internet service to nearly 5,000 users and has 8,000 cable television customers. I am here speaking on behalf of the thirty-six telephone companies referred to in the Kansas Telecommunications Act of 1996 as "rural telephone companies". The definition of a rural telephone company in the Kansas Act is a telephone local exchange carrier with fewer than 20,000 access lines. This is every telephone company in the state with the exceptions of Sprint and Southwestern Bell. Rural telephone companies provide service as far east as Louisburg and Girard and as far west as Kanorado and Coolidge. Rural telephone companies serve nearly half the geographical area of the state but only about ten per cent of the telephone access lines in Kansas. We serve the most rural sparsely populated parts of Kansas.

I served as a member of the Kansas Telecommunications Strategic Planning Committee, commonly referred to as the TSPC, that was appointed by the legislature in 1994. The TSPC was charged with developing a statewide strategic plan for telecommunications. The seventeen member committee was made up of six legislators and representatives from state government, the telecommunications industry, large and small business and the medical community. Many of the recommendations made by the TSPC committee were incorporated into the Kansas Telecommunications Act of 1996.

Because of concerns about some elements of the 1996 Act, the 1998 Legislature enacted House Substitute for Senate Bill 212. One of the provisions of this legislation was the establishment of the Kansas Universal Service Fund Working Committee. This committee was made up of eight legislators, members of the telecommunications industry and representatives from Internet service providers, CURB, a Regents institution, elementary and secondary schools, public libraries and large and small businesses. I represented rural telephone companies on this committee. The Kansas Corporation Commission staff facilitated the Working Committee's meetings, all of which were held at the KCC. Both the

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TSPC committee and the KUSF Working Committee were ably assisted by Lynn Holt.

The purpose of recounting my membership on these two committees is not to try to bolster my resume with you but to note that I am not a stranger to the process of the development of telecommunications legislation and policy in Kansas.

The purpose of my appearance here today is to speak in opposition to House Bill No. 2496 as it is written. While the proposed bill deletes only a portion of one sentence and adds twenty words, the portion deleted is very important. The Working Committee made a number of recommendations but I will confine my comments to the change that is proposed in House Bill No. 2496. One of the purposes of the Working Committee's deliberations was to examine the definition of enhanced universal service that is contained in the act and consider whether it should recommend to the Legislature that it be modified. It is important that we remember that what we are really talking about is the deployment of enhanced universal service in rural Kansas. These services have already or will soon be deployed in the urban areas of the state. We also need to remember the mandate of the federal act that says that the services available in rural areas shall be comparable to those available in urban areas and that they be available at comparable rates.

House Bill 2496 deletes Signaling System Seven capability from the definition of enhanced universal service. Signaling System Seven or SS7 as it is commonly referred to, is a telecommunications standard that is necessary if a company is to furnish certain enhanced calling features, such as caller number identification, calling name identification, etc . . . It is also necessary for toll free number portability and for local number portability which the FCC believes is essential for the development of local telephone service competition. According to information received by the Working Committee, "SS7 enjoys widespread deployment" in Kansas. The telecommunications industry moves forward rapidly and oftentimes something that was optional yesterday becomes mandatory today. SS7 more appropriately belongs in the definition of universal service if we want all Kansans to have access to features of an advanced intelligent network.

House Bill 2496 would also delete from enhanced universal service the requirement of "full fiber interconnectivity, or the technological equivalent, between central offices". Again, the Working Committee concluded that there was "widespread deployment in Kansas of full fiber connectivity between offices". The central offices that are referred to are the locations of switching and transmission equipment for individual telephone exchanges and/or wire centers. This requirement of the 1996 Act required telephone companies to install the fiber optic cable necessary to have large capacity high-speed facilities in order to meet the increasing demands for bandwidth by Kansas residents and businesses. Since there is already "widespread deployment" of interoffice fiber

and we believe that it is an essential feature, then it follows that this is an item that belongs in the definition of universal service.

House Bill 2496 would delete from enhanced universal service the requirement for broadband capable facilities to schools, libraries and state and local government facilities which request broadband services. Once again, in this day and age this is a requirement that should be contained within universal service.

Finally, as House Bill No 2496 would do, the Working Committee recommended that ISDN, an acronym that means integrated services digital network, be removed from the definition of enhanced universal service. The inclusion of ISDN was a creature of the TSPC committee that met in 1994 and 1995. At that time, ISDN was the standard for switched high-speed data but as was stated before, telecommunications moves forward rapidly and while it is a useful and relatively widespread technology, it is no longer the epitome of a switched high-speed telecommunications service. ISDN could be deleted and replaced with the following:

Enhanced universal service means without regard to any transmission, media or technology, high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics and video telecommunications using any technology.

With the possible exception of ISDN, there is nothing wrong with the definition of enhanced universal service as defined in the 1996 legislation. Time and circumstances have combined to make SS7, full fiber interconnectivity and broadband capable facilities to schools, libraries and state and local governments services that should be available everywhere in Kansas as a part of universal service. Move those three items into universal service, remove ISDN and include a new definition of enhanced universal service. Now is not the time to lower the telecommunications bar in Kansas.

Thank you for the opportunity to visit with you today. I would be happy to try to answer any questions you might have.

Before the House Utilities Committee
Comments by the
Staff of the Kansas Corporation Commission
February 23, 1999
House Bill 2496

Good morning, Chairman Holmes and Committee members. I am Anne Wickliffe, Chief Telecommunications Analyst for the Kansas Corporation Commission (KCC). I am speaking on behalf of the Staff of the Kansas Corporation Commission in regard to House Bill 2496.

HB 2496 would revise 66-1,187(q) to leave the defining of enhanced universal services to the discretion of the KCC as long as there is sufficient customer demand for any specific service included in the definition. HB 2496 eliminates references to specific technologies such as ISDN or fiber optics. The KCC Staff supports the use of a more flexible definition which will allow the competitive market to determine which technologies survive, rather than dictating deployment of specific technologies, and which relies on customer demand to determine when technologies should be implemented.

The revised definition proposed by HB 2496 is more in keeping with the language used in the Federal Act that defines advanced services "without regard to any transmission media or technology." *See* 47 U.S.C. 706(c)(1). The KCC's Report and Recommendation filed on February 12, 1999, also recommends that the definition be modified to eliminate technology-specific language.

Thank you.

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Testimony from Susan Myers, P.E., J.D. regarding House Bill 2496

Thank you for the opportunity to add my input to House Bill 2496. The decisions of this committee will have a direct impact on the economic development, educational service availability, and delivery of health care services to patients in the rural areas of Kansas.

1. Advanced telecommunications services for Kansans.

House Bill 2496, page 2, starting with line 39 deletes the current definition of enhanced universal service and **substitutes a new definition that will have a negative impact on rural Kansans.** A concern for our rural citizens is that we were first guaranteed basic and primary rate ISDN, or a technological equivalent (which means services up to a switched broadband capacity). Now, it is proposed to eliminate this specific guarantee and leave it up to the commission to find that there is a "sufficient customer demand..." Under House Bill 2496, advanced services will only be provided in the cases where enough customers for advanced services are present to justify a service. This is contradictory to the public policy of the Kansas Telecommunications Act which states in Sec. 66-2001(c) that the state's policy is to "promote consumer access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas throughout the state..."

The Universal Service section of the Federal Telecommunications Act, also confirms that rural people should have access to advanced services in Sec. 254(b)(3) by declaring that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to...advanced telecommunications and information services, that are **reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable** to rates charged for similar services in urban areas."

Using any sort of requirement for a certain number of users before certain services are offered would not only be contradictory to the purpose of the telecommunications act but be a severe disadvantage to our rural citizens. **Our rural people may not make up enough in numbers to satisfy "sufficient customer demand" criteria. But, they are the rural people that our congressmen and legislators intended to help.** These are the rural people that had to form their own electric cooperatives, years ago, under similar arguments. We need to provide advance broader band technologies to serve our rural people, including our medically fragile elderly that can benefit from home health telemedicine.

2. Rural health care is a major concern.

I am actively involved in putting together grants for telemedicine projects for Hays Medical Center. Hays Medical Center delivers services to the patients' homes in the form of home health care telemedicine. They currently must rely on Plain Old Telephone System (POTS) equipment to deliver this service. This is an unacceptable long term solution. Rural Kansans need a solution, such as xDSL, that will provide greater bandwidth to patients' homes for home health care. **"Sufficient customer demand" is not a standard that can be implemented in providing these services. At the very least, this would push back deployment dates, while waiting for enough "demand" to accumulate to justify serving our rural people. Delaying technology services delays health care that is needed now.**

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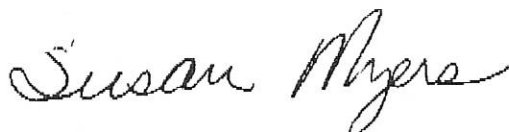
Although the numbers necessary to generate a "demand" may not exist in our rural areas, the need for a state-of-the-art telecommunications network to fully implement telemedicine is as great or greater as that of an urban health care provider. Telemedicine helps to address the very real issues of physician access (including specialist consultation), support in diagnostic areas such as radiology, and availability of home health services to help rural residents maintain independence in their homes.

Deployment of advanced technologies is critical to telemedicine

Our rural population is getting older. Our health care system must find innovative ways to help this growing population of older adults manage chronic health conditions and diseases. The monitoring, support, and early detection and intervention that home telemedicine can provide will be a major factor in helping the elderly maintain a higher level of independence in their own homes and help to avoid higher cost acute care interventions and associated long, expensive hospital stays. **To fully realize the potential of telemedicine, a broadband infrastructure is needed to bring the delivery of telemedicine toward full motion video quality.** Medicine and other types of health care delivered over video are by definition "visual." And, the **quality of this video directly affects the quality of visual assessment, observation, and verification of signs, symptoms, and other information with which to diagnose and treat patients.** Moreover, **faster, better telecommunications will allow the provision of additional telemedicine services to patients.** For example, going beyond the current POTS application in home health may someday allow physical therapists to visit patients via tele-video and confidently assess a patient's gait and other types of physical movement. **The technology that we need to use will need to be a technology that provides acceptable downstream and upstream bit rates.**

Telemedicine presents one way to provide access to care at less overall cost. **We need to have these technologies at a cost that we can afford. The Kansas Universal Service Fund may be the source that we need to rely on to provide for the deployment of these services. The services don't do us any good if we can't afford them.**

Thank you.



Susan Myers, P.E., J.D.
BS, Electrical Engineering, KSU, 1978
Registered Engineer in Kansas, Missouri, and Wyoming
J.D., University of Wyoming, 1994
Licensed Attorney in Kansas
Registered to practice in patent cases before the U.S. Patent and Trademark Office
Adjunct Faculty at Fort Hays State University, Hays, KS
Grants Consultant for Hays Medical Center, Hays, KS

Testimony
before the
HOUSE UTILITIES COMMITTEE

by
Wayne Kitchen, Vice President, Regulatory/Environmental Affairs
Western Resources
February 23, 1999

Chairman Holmes and members of the Committee:

Western Resources is opposed to HB 2482. This bill would require every electric utility in the state to implement a rate reduction of at least 10% for all customer classes by September 1, 1999.

The bill is arbitrary. It would impose rate reductions by legislative *fiat*, without any justification or consideration of individual utilities' costs to serve their own customers. Rates set by the KCC are deemed just and reasonable, and are based on evidentiary findings after long and detailed proceedings. The Kansas courts have ruled that KCC-approved rates have the force of law. HB 2482 is completely contrary to setting rates by first analyzing cost to serve.

HB 2482 would call into fundamental question the role of the KCC and the role of the Legislature in rate setting as well as the very basis on how rates are established.

If enacted this bill would reduce Western Resources rates by roughly \$105 million. A rate reduction of this magnitude would do irreparable damage to our financial condition and essentially abolish shareholder dividends. The financial welfare of an electric utility has a direct effect on its ability to raise capital from shareholders. Increased costs of capital ultimately are translated into higher utility rates, not lower rates.

We strongly encourage the Committee to reject HB 2482.

Thank you for this opportunity to appear in opposition to this proposal.

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Testimony of
Gerald A. Reynolds
Before
House Utilities Committee
HB 2482

February 23, 1999

Chairman Holmes and members of the Committee:

My name is Gerald A. Reynolds. I am a Staff Attorney for Kansas City Power & Light Company (KCPL). I would like to thank you for providing me with an opportunity to share some of my views on House Bill 2482. House Bill 2482 mandates at least a 10% rate reduction for every electric public utility on or before September 1, 1999. KCPL is opposed to this bill.

The United States Supreme Court has ruled that the interest of the ratepayer and the investor must be balanced and considered when

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establishing a utility's rate. Power Comm'n v. Hope Gas Co., 320 U.S. 591 (1944). The proposed statute merely orders public utilities to reduce their rates by at least 10% without any regard or consideration for the utility's investors, many of whom rely on fixed incomes. The failure to balance the interest of the ratepayers and investors renders the bill, if enacted, fatally flawed constitutionally. This legislation also undermines the regulatory process established by the Kansas Corporation Commission.

The Kansas legislature charged the Commission with setting just and reasonable rates. The Commission has created a comprehensive

regulatory process that results in just and reasonable rates. The enactment of the House Bill 2482 will upset the regulatory framework that has been carefully crafted by the Kansas Corporation Commission. The Commission continually increases and reduces the rates of Kansas' public utilities to insure that utilities only charge rates that are just and reasonable.


For example, after a recent earnings review, the Commission concluded that a reduction was appropriate to insure that KCPL's rates were just and reasonable, and ordered KCPL to refund a permanent, annual rate reduction in the amount of \$14.2 million. The order will be

implemented beginning March 1, 1999. House Bill 2482 would nullify the Commission's action. Requiring an additional 10% reduction would actually necessitate an immediate rate increase to meet the legal requirements I just mentioned.

I suspect that the rate reductions ordered by the California legislature inspired this legislation. In closing I'd like to point out that the rate reduction that occurred in California occurred in the context of comprehensive restructuring. The negotiated agreement resulted in the utilities accepting a rate reduction in exchange for certain items such as the securitization of stranded costs.



Kansas Electric Power Cooperative, Inc.

A Touchstone EnergySM Partner 

Testimony on House Bill 2482

Before the House Utilities Committee -- February 23, 1999

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

Kansas Electric Power Cooperative (KEPCo) is opposed to HB 2482. KEPCo is a generation and transmission cooperative operating under the jurisdiction of the Kansas Corporation Commission (KCC). As a non-profit utility, KEPCo sets rates to recover its cost of service and we do not have stockholders requiring a return on their investment. Instead, if our rates generate revenue above our costs, we return that cash to our member cooperatives as capital credits. As a matter of fact, in the past two years, KEPCo has returned nearly \$8.5 million in capital credits to its members.

Early in 1998, the KEPCo Board of Trustees began a review of its rates and decided to file a request for a rate reduction with the KCC. That request was filed on July 13, 1998 and we received approval on December 30, 1998, to cut rates to our member cooperatives by 9.8 percent. KEPCo and the KCC did not determine the magnitude of this rate decrease arbitrarily. Prior to filing the request, KEPCo conducted a lengthy internal determination of the revenue needed to satisfy our creditors and bankers. As I mentioned, those numbers were reviewed and approved by our Board of Trustees before being filed with the KCC. The KCC staff then extensively examined KEPCo's filing, a process that included an on-site audit and 37 separate "data requests" to KEPCo for additional information. Following that review, KCC staff forwarded their recommendation to the three Commissioners for consideration and approval.

Let me review the impact another ten percent rate reduction would have on KEPCo. Our recently approved rate case projects only a \$275,000 net margin on \$70.6 million in revenue. A mandated, arbitrary ten percent rate reduction would result in a decrease of \$7.06 million to KEPCo that would result in an annual loss of \$6.8 million. KEPCo would quickly exhaust its cash reserves, forcing us to default on our mortgage with the U.S. Government and preventing us from meeting other financial obligations.

I am sure that bankrupting KEPCo was not the intent of the legislation. If it is the wisdom of the Committee to approve HB 2482, we request that the language be amended to exclude non-profit utilities or at least be amended to retroactively include KEPCo's 9.8 percent rate reduction.

Thank you for the opportunity to comment on HB 2482.

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

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W. Scott Keith

UtiliCorp United Inc.

Manager Electric Regulation-Kansas & Colorado

Comments On House Bill 2482

Good morning. As I understand House Bill No. 2482, it mandates that all electric utilities in Kansas reduce their electric rates by ten percent (10%). I do not think this bill is in the best interests of the citizens of Kansas, and it is very unfair to the investor owned (IOU) electric utilities operating in Kansas. It ignores the fact that the industry is already heavily regulated by the State of Kansas, and the devastating impact this would have on the industry in Kansas. I will also point out the particular impact this bill would have on UtiliCorp's electric operations in the State.

Regulation

The bill does not consider the fact that the IOUs have been and are heavily regulated by a variety of regulatory bodies including, the Kansas Corporation Commission ("KCC"), the Federal Energy Regulatory Commission ("FERC"), etc. The KCC regulatory oversight is of particular interest, as it relates directly to the rates charged by the IOUs in Kansas. The KCC has regulated the electric industry on a historical cost basis for many years. The term cost is of particular significance. It involves not only the expense associated with the electric company's operations, but the level of earnings the company's investors can expect. This latter point is very significant given the capital intensive nature of the

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industry. The industry requires the investment of significant capital investment before a single dollar of revenue can be earned. The determination of rates at the KCC is a long and involved process that ultimately results in the setting of “just and reasonable” electric rates. This bill ignores the fact that each of the utilities subject to the KCC’s regulations are charging “just and reasonable” rates for electricity.

Capital Intensive

The electric industry is very capital intensive i.e. it takes a massive level of investment in long lived facilities to serve electric customers. This investment involves not only generating facilities, which have been of much interest to this Committee lately, but transmission and distribution facilities which bring the electricity directly to the doorsteps of the customers. The industry requires access to huge amounts of capital, both equity and debt to provide ongoing electric service in Kansas. The rate reduction called for by this bill would severely impact access to this capital. This would be particularly and immediately devastating in Kansas given the pressing need for new generation facilities within the State.

Profit Margin

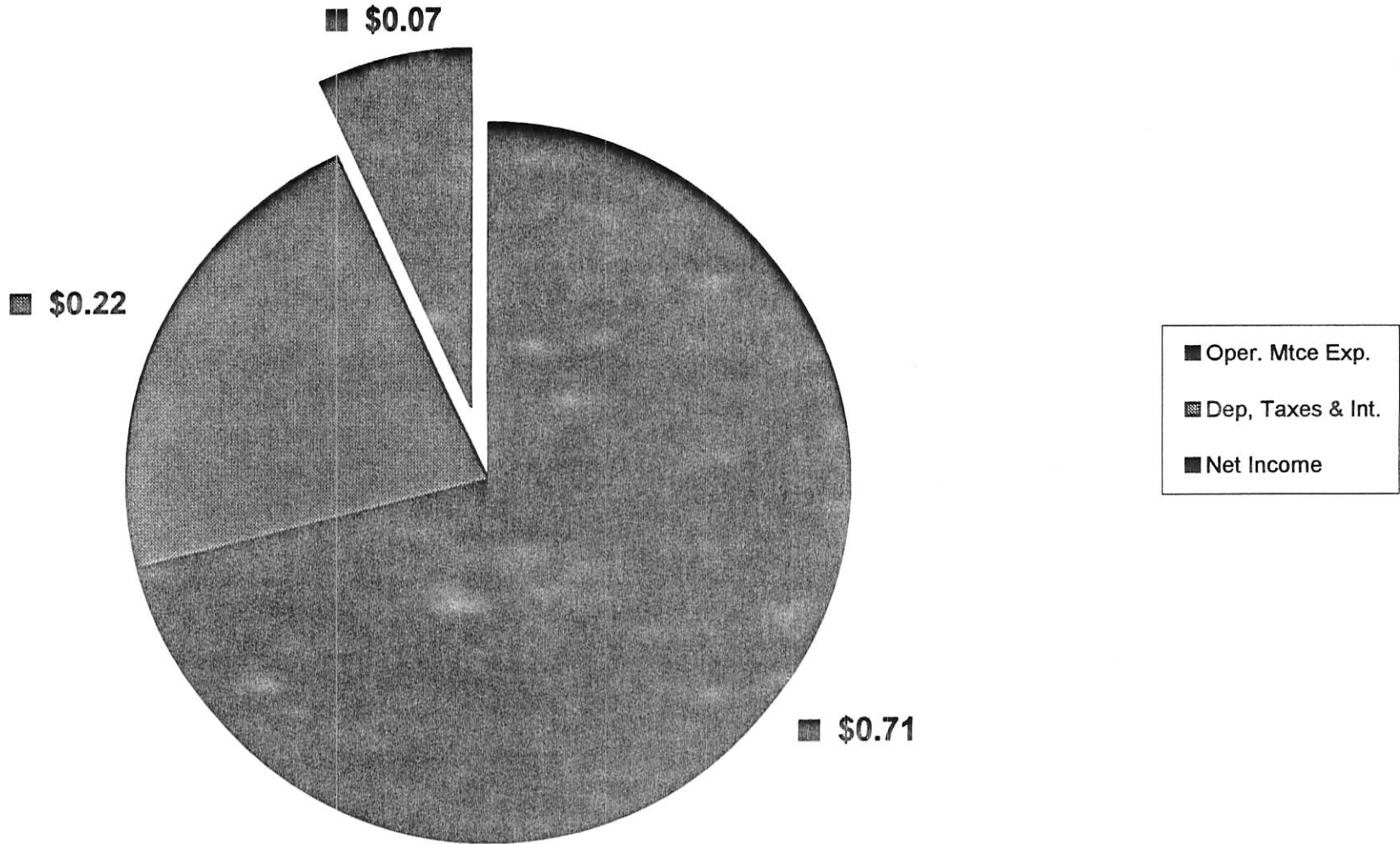
The electric utilities generally operate on a small profit margin. When this is coupled with the industry’s capital requirements, it is easy to see how disastrous this particular bill would be to the industry in general, and UtiliCorp’s electric operations in Kansas in particular. Every dollar of revenue collected from the customers pays for many expenses before any profit is retained by the shareholders. For example, WestPlains Energy,

UtiliCorp's electric operation in Kansas, uses approximately \$.93 of every revenue dollar collected from its customers to pay for the operation of the system, only \$.07 is retained as net income for the shareholders. This profit margin of \$.07 is less than the rate reduction called for by the proposed legislation. In other words, the mandatory reduction would completely wipe out the net income generated by WestPlains' electric operations in Kansas. This would severely damage the financial viability of operations and undoubtedly impact the level of service provided by WestPlains to its customers. I have attached a graph that depicts where a revenue dollar is spent in the Kansas operation. As indicated in that graph, shareholder profit is the smallest piece of the pie. I am certain the other electric utilities in Kansas can provide you with similar statistics.

Conclusion

The mandatory rate reduction called for in this bill will seriously disrupt the electric industry and adversely impact the level of service provided to the electric customers in this State. I strongly encourage you to vote against this bill. Thank you.

WestPlains Energy Average Revenue Dollar



17-8.



LEAGUE OF KANSAS MUNICIPALITIES

LEGAL DEPARTMENT □ 300 S.W. EIGHTH □ TOPEKA, KANSAS 66603

PHONE: (785) 354-9565 □ FAX: (785) 354-4186

To: House Utilities Committee
From: Kim Gulley, Assistant General Counsel
Date: February 23, 1999
Re: House Bill 2482

Thank you for allowing us the opportunity to share a few comments concerning House Bill 2482. The League does not take a specific position on the advisability of this legislation. However, we would like to point out three areas of concern:

- ***Municipal Utilities.*** There are 14 municipal electric utilities (MEUs) which fall under the definition of a “public utility” and are regulated by the KCC. Mandating a 10% reduction in rates would invalidate the rate ordinances established by their locally elected officials. Further, unlike investor owned utilities, MEUs do not have shareholders to pass the loss to. The customers are the citizens of the city who are, in effect, the owners.
- ***Sales Tax Revenues.*** Because sales tax revenues are calculated based on gross receipts, a 10% reduction in rates would cause a corresponding 10% reduction in state and local sales tax revenues. Because the local sales tax base with respect to electricity includes residential and agricultural customers and the state sales tax does not, local governments will bear the greatest share of the impact.
- ***Franchise Fee Revenues.*** Because most franchise agreements are calculated based on gross receipts, a 10% reduction in rates would cause a corresponding 10% reduction in city franchise revenues. These fees are paid to cities pursuant to K.S.A. 12-2001 *et seq.* in compensation for the use of the public rights of way.

Again, we appreciate the opportunity to bring these issues before the committee. As always, we are available to answer questions or to provide any information that you may request.

HOUSE UTILITIES

DATE: 2-23-99

ATTACHMENT 9

HOUSE BILL No. 2495

By Committee on Utilities

2-12

HOUSE UTILITIES

DATE: 2-23-99

ATTACHMENT 10

9 AN ACT concerning competition in retail electric service; amending
10 K.S.A. 1998 Supp. 66-1901, 66-1902 and 66-1903 and repealing the
11 existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 1998 Supp. 66-1901 is hereby amended to read as
15 follows: 66-1901. (a) There is hereby established the retail wheeling task
16 force. The task force shall consist of ~~25~~ members ~~as follows~~

17 (1) ~~Two members of the house of representatives appointed by the~~
18 ~~speaker of the house of representatives and one member of the house of~~
19 ~~representatives appointed by the minority leader of the house of~~
20 ~~representatives;~~

21 (2) two members of the senate appointed by the president of the
22 senate and one member of the senate appointed by the minority leader
23 of the senate;

24 (3) a member of the staff of the state corporation commission des-
25 ignated by the chairperson of the commission;

26 (4) a representative of the citizens' utility ratepayer board designated
27 by the chairperson of the board;

28 ~~(5) a representative of the department of commerce designated by~~
29 ~~the secretary of commerce.~~

30 ~~(6) an environmental technology expert who is an authority on re-~~
31 ~~newable energy, designated by the legislative coordinating council.~~

32 (7) a large commercial or industrial electric customer, designated by
33 the legislative coordinating council;

34 (8) one representative of each of the following, designated by the
35 governing body of the association: Kansas electric cooperatives, inc., and
36 Kansas municipal utilities, inc.;

37 (9) one representative of each of the following, designated by the
38 chief administrative officer of the company: Kansas City Power and Light,
39 Kansas City Board of Public Utilities, Kansas Electric Power Cooperative,
40 Empire District Electric Company, Midwest Energy, Sunflower Electric

41 Power Corporation, Western Resources and West Plains Energy;
42 (10) a small commercial or industrial electric customer, designated
43 by the legislative coordinating council; and

the following

The chairperson, vice-chairperson and ranking minority member of the house standing committee on utilities and another minority member of the house utilities committee appointed by the minority leader of the house of representatives

strike

(5)

(6)

(7)

(8)

1 ~~(11)~~ a residential electric customer, designated by the legislative co-
2 ordinating council.

3 ~~(b) Not more than two members of the legislature appointed to mem-
4 bership on the task force shall be residents of the same congressional
5 district. No members designated pursuant to subparts (7), (10) and (11)
6 of subsection (a) shall be residents of the same congressional district. The
7 legislative coordinating council shall designate two of the legislative mem-
8 bers of the task force to serve, respectively, as chairperson and vice-chair-
9 person of the task force.~~

(9)

strike

10 (e) The task force shall meet at least four times a year on call of the
11 chairperson of the task force.

12 ~~(c) Members serving on the task force on December 31, 1998, shall
13 continue to serve as members on and after the effective date of this act
14 and until April 18, 2000, at which time new appointments shall be made.~~

15 ~~(d)~~ The staff of the office of the revisor of statutes, the legislative
16 research department and the division of legislative administrative services
17 shall provide such assistance as may be requested by the task force and
18 authorized by the legislative coordinating council. The legislative division
19 of post audit shall provide such assistance as may be requested by the
20 task force and authorized by the legislative post audit committee. The
21 state corporation commission and each other state agency shall provide
22 assistance to the task force as may be requested by the task force.

23 ~~(e)~~ Task force members enumerated in subparts (1), (2), (6), (7), (10)
24 and (11) of subsection (a) shall receive amounts provided by subsection
25 (e) of K.S.A. 75-3223 and amendments thereto for each day of actual
26 attendance at any meeting of the task force or any subcommittee meeting
27 approved by the task force. Such amounts paid to members shall be paid
28 from appropriations to the legislative coordinating council pursuant to
29 vouchers prepared by the director of legislative administrative services
30 and approved by the chairperson or vice-chairperson of the legislative
31 coordinating council.

32 (f) The task force shall study issues related to competition in the
33 furnishing of retail electric service in this state, including but not limited
34 to:

- 35 (1) Actions of the federal energy regulatory commission;
- 36 (2) the obligation of electric utilities to serve customers;
- 37 (3) the economic impact on each class of electric utility customer;
- 38 (4) the social impact on Kansas citizens;
- 39 (5) the impact on state general fund revenues and local franchise and
40 tax revenues;
- 41 (6) the status of electrical generating facilities in a competitive
42 environment;
- 43 (7) savings that may be achieved by electric utility mergers and down-

(b) The member serving as chairperson of the task force and
the member serving as vice-chairperson of the task force on the
effective date of this act shall continue to serve as chairperson and
vice-chairperson of the task force until expiration of the member's
term as member of the task force, at which time the legislative
coordinating council shall designate a legislative member of the task
force to serve as chairperson or vice-chairperson.

(c) Except as provided by subsection (d), members appointed
pursuant to subsections (a)(2), (3), (4), (5), (6), (7), (8) or (9) and
serving on the task force on the effective date of this act shall
continue to serve as members of the task force until April 18, 2000, at
which time new appointments shall be made pursuant to those
subsections. Members appointed pursuant to subsection (a)(1) shall
serve until the first day of the regular legislative session in 2001.
Upon a vacancy in the membership of the task force, a successor shall
be appointed in the same manner as the original appointment for the
remainder of the unexpired term.

(d) If Kansas City Power and Light and Western Resources
merge, the representative of Kansas City Power and Light shall cease
to be a member of the task force.

(e)

(f)

- 1 sizing;
- 2 (8) recovery of stranded costs;
- 3 (9) unbundling of generation, transmission and distribution services;
- 4 (10) leveling the financing of capital investment;
- 5 (11) retail wheeling, including loop losses;
- 6 (12) brokerage;
- 7 (13) incentives for renewable energy investment;
- 8 (14) the feasibility of establishment of retail customer service areas,
- 9 consisting of all classes of customers, for which retail suppliers would
- 10 compete to serve;
- 11 (15) stranded benefits such as the cold weather rule and charitable
- 12 contributions by retail suppliers;
- 13 (16) nonprice issues such as customer service, storm damage repair,
- 14 energy conservation and billing;
- 15 (17) the impact on municipal electric utilities and rural electric co-
- 16 operatives; and
- 17 (18) the impact on existing statutes.

18 (g) The task force shall submit a preliminary report to the house and
 19 senate committees on energy and natural resources on or before January
 20 15, 1997, and a final report of its findings and recommendations to the
 21 house and senate committees on energy and natural resources on or be-
 22 fore January 11, 1998.

23 (f) The task force shall meet as necessary to review any proposed
 24 legislation providing for competition in retail electric service and may
 25 make recommendations to the legislature regarding any such legislation.

and to study other matters relating to electric service, including
 generation capacity and taxation of electric service providers,

26 Sec. 2. K.S.A. 1998 Supp. 66-1902 is hereby amended to read as
 27 follows: 66-1902. Before July 1, ~~1999~~ 2001, the state corporation com-
 28 mission shall continue to regulate retail electric suppliers in accordance
 29 with the provisions of K.S.A. 66-1,170 through 66-1,176, and amend-
 30 ments thereto, and shall not authorize competition in the furnishing of
 31 retail electric service in this state. The commission may open one or more
 32 generic dockets to study the issue of competition in the furnishing of
 33 retail electric service.

or matters

34 Sec. 3. K.S.A. 1998 Supp. 66-1903 is hereby amended to read as
 35 follows: 66-1903. The provisions of K.S.A. 1998 Supp. 66-1901 and 66-
 36 1902, and amendments thereto, shall expire on July 1, ~~1999~~ 2001.

37 Sec. 4. K.S.A. 1998 Supp. 66-1901, 66-1902 and 66-1903 are hereby
 38 repealed.

39 Sec. 5. This act shall take effect and be in force from and after its
 40 publication in the Kansas register.

HOUSE BILL No. 2322

By Committee on Utilities

2-8

9 AN ACT concerning ~~utilities, relating to billing procedures~~

10

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. Upon request of a visually impaired or blind customer,
13 any provider of sewer, water, electric, gas, telecommunications or cable

14 ~~utility~~ service, or any provider of two or more of such services, whether

15 public or private, shall provide the customer's bills ~~and related informa-~~

16 ~~tion concerning billings in~~ braille, large print, textfile on computer disk

17 or audio cassette, or any combination thereof. The provision of such bills
18 and related information in alternative formats shall be at no additional
19 cost to the customer.
20 Sec. 2. This act shall take effect and be in force from and after its
21 publication in the statute book.

visually impaired or blind persons; relating to billing procedures for
certain services

television

, indicating usage and the amount owed, in one or more of the
following formats:

HOUSE UTILITIES

DATE: 2-23-99

ATTACHMENT 11

A N W I E

HOUSE BILL No. 2045

By Committee on Utilities

1-19

9 AN ACT concerning underground storage of natural gas; amending
10 K.S.A. 55-1201, 55-1204, 55-1205 and 55-1210 and repealing the ex-
11 isting sections.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 55-1201 is hereby amended to read as follows: 55-
15 1201. As used in this act:

16 (a) "Underground storage" ~~shall mean~~ means storage in a subsurface
17 stratum or formation of the earth;

18 (b) "Natural gas" ~~shall mean~~ means gas either while in its original
19 state or after the same has been processed by removal therefrom of com-
20 ponent parts not essential to its use for light and fuel;

21 (c) "Native gas" ~~shall mean~~ gas which has not been previously with-
22 drawn from the earth;

23 ~~(d)~~ "Natural gas public utility" ~~shall mean~~ means any person, firm or
24 corporation authorized to do business in this state and engaged in the
25 business of transporting or distributing natural gas by means of pipelines
26 into, within or through this state for ultimate public use;

27 ~~(e)~~ (d) "Commission" ~~shall mean~~ means the state corporation
28 commission.

29 (e) "Suitable for the underground storage of natural gas" means ~~a~~
30 ~~separate and distinct stratum or formation from which natural gas cannot~~
31 ~~migrate to another stratum or formation~~

32 Sec. 2. K.S.A. 55-1204 is hereby amended to read as follows: 55-
33 1204. (a) Any natural gas public utility desiring to exercise the right of

34 eminent domain as to any property for use for underground storage of
35 natural gas shall, as a condition precedent to the filing of its petition in
36 the district court, shall obtain from the commission a certificate setting
37 out findings of the commission:

38 (1) That the underground stratum or formation sought to be acquired
39 is suitable for the underground storage of natural gas and that its use for
40 such purposes is in the public interest; and

41 (2) regarding the amount of recoverable oil and native natural gas, if
any, remaining therein in place in the stratum or formation.

42 (b) The commission shall issue no such certificate under this section

strata or formations which, based on tests approved by the commission, are found by the commission to be capable of preventing or substantially minimizing the potential for natural gas to migrate to other strata or formations

The commission, if it determines appropriate or necessary, may require an independent study to be conducted to assist the commission in determining whether a stratum or formation is suitable for the underground storage of natural gas.

HOUSE UTILITIES
DATE: 2-23-99
ATTACHMENT 12

1 until after public hearing is had on application and upon reasonable notice
 2 to interested parties. ~~(1) The commission causes an independent study to~~
 3 ~~be made to assist the commission in making the findings required by~~
 4 ~~subsection (a), and (2) notice as provided by law is given to all interested~~
 5 ~~parties and a public hearing on the application is held in accordance with~~
 6 the provisions of the Kansas administrative procedure act.

7 (c) Subject to the provisions of K.S.A. 55-143 and amendments
 8 thereto, the applicant shall be assessed an amount equal to all or any part
 9 of the costs of ~~such any study and any proceedings conducted pursuant~~
 10 ~~to this section and the applicant shall pay the amount so assessed before~~
 11 ~~the commission issues a certificate under this section.~~

12 (e) (d) All provisions of K.S.A. 66-106, 66-118a, 66-118b, 66-118c,
 13 66-118d, 66-118e, 66-118j and 66-118k ~~or any, and~~ amendments thereto,
 14 shall be applicable to all proceedings of the commission under K.S.A. 55-
 15 1201 to 55-1206, inclusive, and ~~acts amendatory thereof or supplemental~~
 16 ~~through 55-1206, and amendments thereto.~~

17 (d) (e) The state corporation commission shall remit all moneys re-
 18 ceived by or for it for costs assessed under this section to the state trea-
 19 surer at least monthly. Upon receipt of each such remittance, the state
 20 treasurer shall deposit the entire amount thereof in the state treasury and
 21 ~~the same shall be credited credit it~~ to the conservation fee fund created
 22 by K.S.A. 55-143 and amendments thereto.

23 Sec. 3. K.S.A. 55-1205 is hereby amended to read as follows: 55-
 24 1205. ~~Any (a) After obtaining a certificate from the commission as pro-~~
 25 ~~vided by K.S.A. 55-1204, and amendments thereto, a natural gas public~~
 26 ~~utility, having first obtained a certificate from the commission as here-~~
 27 ~~inbefore provided, desiring to exercise the right of eminent domain for~~
 28 ~~the purpose of acquiring property for the underground storage of natural~~
 29 ~~gas shall do so in the manner provided in K.S.A. 26-501 to 26-516, inclu-~~
 30 ~~sive. The petitioner shall file the certificate of the commission as a part~~
 31 ~~of its petition and no order by the court granting said petition shall be~~
 32 ~~entered without such certificate being filed therewith. The appraisers in~~
 33 ~~awarding damages hereunder shall also take into consideration the emi-~~
 34 ~~nent domain procedure act (K.S.A. 26-501 et seq. and amendments~~
 35 ~~thereto), except as otherwise provided by this section.~~

36 (b) If eminent domain proceedings are brought pursuant to this sec-
 37 tion to condemn property located in two or more counties, the proceedings
 38 shall be brought in the county where the greatest portion of the property
 39 is located ~~and the appraisers shall be appointed from among the disinter-~~
 40 ~~ested householders of all counties where the property is located.~~

41 (c) ~~The interest condemned in a proceeding pursuant to this section~~
 42 ~~shall be a leasehold interest for which the award shall be: (1) Damages in~~
 43 ~~an amount equal to the value of the amounts of recoverable oil and native~~

Unless the condemnee otherwise agrees, the interest condemned in a proceeding pursuant to this section shall be a leasehold interest for natural gas storage purposes which shall include a defined subsurface strata or formation, royalties on liquids extracted from such strata or formation and the use of so much of the surface as reasonably necessary to permit natural gas storage operations. The award shall provide for annual rental payments for the use of such acquired interests with directions for the payment of damages which might result from the use thereof. The term of the leasehold shall continue until the underground storage facility is abandoned pursuant to K.S.A. 55-1208 and amendments thereto.

(d) In ascertaining the amount of compensation and damages to be awarded in an eminent domain proceeding brought pursuant to this section, the court, in addition to the ^{Fixed BRs} specified by K.S.A. 26-513 and amendments thereto, shall consider: (1) The

1 ~~gas remaining~~ natural gas in place in the property sought to be appro-
 2 priated and for such purposes, for which purpose the appraisers shall
 3 receive as prima facie evidence of such amounts evidence the findings of
 4 the commission with reference thereto to those amounts and evidence
 5 based on professional engineering studies and presented by any interested
 6 party; (2) royalties for any oil produced or other minerals recovered from the value of
 7 the premises ~~to be paid to the owners of the mineral rights~~; (3) ~~annual~~
 8 ~~payments based on~~ the annual leased value of the property for under-
 9 ground storage of natural gas (the leased value of the storage formation);
 10 (4) the value of pipeline and utility easements; (5) the value of surface
 11 easements for pads or well site areas to be used for extraction, injection
 12 and monitoring wells and other purposes; (6) the value of any surface and
 13 area used for roadways; (7) if fresh water is taken, the value of the water
 14 rights taken; and (8) any damages incurred by the property owners from
 15 the use of their property. The appraisers shall assign the fair market value
 16 of all rights taken. (e)
 17 ~~(d)~~ If there has been an uncompensated and unauthorized prior use
 18 of the property by the petitioner for underground storage of natural gas,
 19 the appraisers shall assign a value to such prior use based on the fair
 20 rental value of the storage space, which shall be included in the award
 21 ~~(e)~~ The court, in its order granting a petition for the purposes of this
 22 act, shall specify the amount of surface area covered by any dominant
 23 easement being taken and shall describe the location of such easement. If (f)
 24 the proposal of the petitioner is to wash out a salt cavern for storage, the
 25 order of the court shall include those measures that the petitioner must
 26 take to protect fresh water.
 27 ~~(f) The court shall not grant a petition to exercise the right of eminent~~
 28 ~~domain for the purposes provided by this act unless: (1) The certificate~~
 29 ~~of the commission issued under K.S.A. 26-1204 and amendments thereto~~
 30 ~~is filed with the petition; and (2) the court determines that the petitioner~~
 31 ~~has compensated the property owner for the value assigned by the ap-~~
 32 ~~praisers to the petitioner's prior uncompensated and unauthorized use of~~
 33 ~~the property for underground storage of natural gas or that the award~~
 34 ~~will include such compensation.~~
 35 Sec. 4. K.S.A. 55-1210 is hereby amended to read as follows: 55-
 36 1210. (a) All natural gas which has previously been reduced to possession,
 37 and which is subsequently injected into underground storage fields, sands,
 38 reservoirs and facilities, whether such storage rights were acquired by
 39 eminent domain or otherwise, shall at all times be the property of the
 40 injector, such injector's heirs, successors or assigns, whether owned by
 41 the injector or stored under contract.
 42 (b) In no event shall such gas be subject to the right of the owner of
 43 the surface of such lands or of any mineral interest therein, under which

1 such gas storage fields, sands, reservoirs and facilities lie, or of any person,
 2 other than the injector, such injector's heirs, successors and assigns, to
 3 produce, take, reduce to possession, either by means of the law of capture
 4 or otherwise, waste, or otherwise interfere with or exercise any control
 5 over such gas. Nothing in this subsection shall be deemed to affect the
 6 right of the owner of the surface of such lands or of any mineral interest
 7 therein to drill or bore through the underground storage fields, sands,
 8 reservoirs and facilities in such a manner as will protect such fields, sand,
 9 reservoirs and facilities against pollution and the escape of the natural gas
 10 being stored.

11 (c) With regard to natural gas that has migrated to adjoining property
 12 or to a stratum, or portion thereof, which has not been condemned as
 13 allowed by law or otherwise purchased:

14 (1) The injector, such injector's heirs, successors and assigns shall not
 15 lose title to or possession of such gas if such injector, such injector's heirs,
 16 successors or assigns can prove by a preponderance of the evidence that
 17 such gas was originally injected into the underground storage.

18 (2) The injector, such injector's heirs, successors and assigns, shall
 19 have the right to conduct such tests on any existing wells on adjoining
 20 property, at such injector's sole risk and expense including, but not limited
 21 to, the value of any lost production of other than the injector's gas, as
 22 may be reasonable to determine ownership of such gas. ~~owner of the~~
 23 ~~adjoining property or stratum or portion thereof, shall have title and~~
 24 ~~possession of such gas in place at the time of condemnation or purchase.~~

25 ~~(3) (2) The owner of the stratum and the owner of the surface shall~~
 26 ~~be entitled to such compensation, including compensation for use of or~~
 27 ~~damage to the surface or substratum, as is provided by law, compensation~~
 28 ~~for the use of and damages to the surface and substratum and shall be~~
 29 ~~entitled to recovery of all costs and expenses, including reasonable attor-~~
 30 ~~ney fees, if litigation is necessary to enforce any rights under this subsec-~~
 31 ~~tion (c) and the injector does not prevail.~~

32 (d) The injector, such injector's heirs, successors and assigns shall
 33 have the right to compel compliance with this section by injunction or
 34 other appropriate relief by application to a court of competent
 35 jurisdiction.

36 Sec. 5. K.S.A. 55-1201, 55-1204, 55-1205 and 55-1210 are hereby
 37 repealed.

38 Sec. 6. This act shall take effect and be in force from and after its
 39 publication in the statute book.

injector, such injector's heirs, successors and assigns shall not lose title to
 or possession of such gas if such injector, such injector's heirs, successors
 or assigns can prove by a preponderance of the evidence that such gas was
 originally injected into the underground storage.

(2) The injector, such injector's heirs, successors and assigns, shall
 have the right to conduct such tests on any existing wells on adjoining
 property, at such injector's sole risk and expense including, but not limited
 to, the value of any lost production of other than the injector's gas, as may
 be reasonable to determine ownership of such gas. Advance notice of such
 tests shall be given to the owners of property rights comprising the
 adjoining property in accordance with rules and regulations adopted by the
 commission and the tests shall be conducted on such terms and conditions
 as established by rules and regulations adopted by the commission.

(3) The owners of property rights comprising the adjoining
 property

New Sec. 5. (a) A person whose stratum or formation is acquired
 for use for underground storage of natural gas and the owners of
 property rights comprising property adjoining any such stratum or
 formation shall be entitled to recovery of all costs and expenses,
 including reasonable attorney fees, if litigation is necessary to enforce
 any rights under K.S.A. 55,1203, 55-1204, 55-1205, 55-1208 or 55-
 1210, and amendments thereto, and the injector does not prevail.

6

7

WARD

HOUSE BILL No. 2045

By Committee on Utilities

1-19

HOUSE UTILITIES

DATE: 2-23-99

ATTACHMENT 13

9 AN ACT concerning underground storage of natural gas; amending
10 K.S.A. 55-1201, 55-1204, 55-1205 and 55-1210 and repealing the ex-
11 isting sections.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 55-1201 is hereby amended to read as follows: 55-
15 1201. As used in this act:

16 (a) "Underground storage" ~~shall mean~~ means storage in a subsurface
17 stratum or formation of the earth;

18 (b) "Natural gas" ~~shall mean~~ means gas either while in its original
19 state or after the same has been processed by removal therefrom of com-
20 ponent parts not essential to its use for light and fuel;

21 (c) "Native gas" ~~shall mean~~ gas which has not been previously with-
22 drawn from the earth;

23 (d) "Natural gas public utility" ~~shall mean~~ means any person, firm or
24 corporation authorized to do business in this state and engaged in the
25 business of transporting or distributing natural gas by means of pipelines
26 into, within or through this state for ultimate public use;

27 (e) (d) "Commission" ~~shall mean~~ means the state corporation
28 commission.

29 (e) "Suitable for the underground storage of natural gas" means ~~for~~
30 ~~separate and distinct stratum or formation from which natural gas cannot~~
31 ~~migrate to another stratum or formation~~

32 Sec. 2. K.S.A. 55-1204 is hereby amended to read as follows: 55-
33 1204. (a) Any natural gas public utility desiring to exercise the right of
34 eminent domain as to any property for use for underground storage of
35 natural gas shall, as a condition precedent to the filing of its petition in
36 the district court, shall obtain from the commission a certificate setting
37 out findings of the commission:

38 (1) That the underground stratum or formation sought to be acquired
39 is suitable for the underground storage of natural gas and that its use for
40 such purposes is in the public interest; ~~and~~

(2) regarding the amount of recoverable oil and native natural gas, if
any, remaining therein in place in the stratum or formation;

43 (b) The commission shall issue no such certificate under this section

strata or formations which, based on tests recognized by the
commission, are deemed by the commission to prevent or
substantially minimize the potential for natural gas to migrate to other
strata or formations

; and

(3) if the proposal is to wash out a salt cavern for storage,
those measures that the utility must take to protect the lease

1 until after public hearing is had on application and upon reasonable notice
 2 to interested parties. ~~(1) The commission causes an independent study to~~
 3 ~~be made to assist the commission in making the findings required by~~
 4 ~~subsection (a), and (2) notice as provided by law is given to all interested~~
 5 ~~parties and a public hearing on the application is held in accordance with~~
 6 ~~the provisions of the Kansas administrative procedure act.~~

7 (c) Subject to the provisions of K.S.A. 55-143 and amendments
 8 thereto, the applicant shall be assessed an amount equal to all or any part
 9 of the costs of ~~such any study and any proceedings conducted pursuant~~
 10 ~~to this section and the applicant shall pay the amount so assessed before~~
 11 ~~the commission issues a certificate under this section.~~

12 (d) All provisions of K.S.A. 66-106, 66-118a, 66-118b, 66-118c,
 13 66-118d, 66-118e, 66-118j and 66-118k ~~or any, and amendments thereto,~~
 14 shall be applicable to all proceedings of the commission under K.S.A. 55-
 15 1201 to 55-1206, inclusive, ~~and acts amendatory thereof or supplemental~~
 16 ~~through 55-1206, and amendments thereto.~~

17 (e) The state corporation commission shall remit all moneys re-
 18 ceived by or for it for costs assessed under this section to the state trea-
 19 surer at least monthly. Upon receipt of each such remittance, the state
 20 treasurer shall deposit the entire amount thereof in the state treasury and
 21 ~~the same shall be credited credit it~~ to the conservation fee fund created
 22 by K.S.A. 55-143 and amendments thereto.

23 Sec. 3. K.S.A. 55-1205 is hereby amended to read as follows: 55-
 24 1205. ~~Any (a) After obtaining a certificate from the commission as pro-~~
 25 ~~vided by K.S.A. 55-1204, and amendments thereto, a natural gas public~~
 26 ~~utility, having first obtained a certificate from the commission as here-~~
 27 ~~inbefore provided, desiring to exercise the right of eminent domain for~~
 28 ~~the purpose of acquiring property for the underground storage of natural~~
 29 ~~gas shall do so in the manner provided in K.S.A. 26-501 to 26-516, inclu-~~
 30 ~~sive. The petitioner shall file the certificate of the commission as a part~~
 31 ~~of its petition and no order by the court granting said petition shall be~~
 32 ~~entered without such certificate being filed therewith. The appraisers in~~
 33 ~~awarding damages hereunder shall also take into consideration the emi-~~
 34 ~~nent domain procedure act (K.S.A. 26-501 et seq. and amendments~~
 35 ~~thereto), except as otherwise provided by this section.~~

36 (b) If eminent domain proceedings are brought pursuant to this sec-
 37 tion to condemn property located in two or more counties, the proceedings
 38 shall be brought in the county where the greatest portion of the property
 39 is located ~~and the appraisers shall be appointed from among the disinter-~~
 40 ~~ested householders of all counties where the property is located.~~

41 ~~(c) The interest condemned in a proceeding pursuant to this section~~
 42 ~~shall be a leasehold interest for which the award shall be: (1) Damages in~~
 43 ~~an amount equal to the value of the amounts of recoverable oil and native~~

The commission, if it determines appropriate or necessary, may require an independent study to be conducted to assist the commission in determining whether a stratum or formation is suitable for underground storage of natural gas.

A copy of the order of the commission certifying a stratum or formation as suitable for underground storage of natural gas, and delineating the area comprising the same, shall be filed in the office of the register of deeds of each county where any portion of the storage area is located. The costs of such filing shall be assessed as a cost of the proceeding.

(c) If the interest condemned in a proceeding pursuant to this section is a leasehold interest, the term of the leasehold shall continue until the underground storage facility is abandoned pursuant to K.S.A. 55-1208 and amendments thereto.

(d) In ascertaining the amount of compensation and damages to be awarded in an eminent domain proceeding brought pursuant to this section, the court, in addition to the factors specified by K.S.A. 26-513 and amendments thereto, shall consider: (1) The

1 gas remaining natural gas in place in the property sought to be appro-
 2 priated and for such purposes, for which purpose the appraisers shall
 3 receive as prima facie evidence of such amounts evidence the findings of
 4 the commission with reference thereto to those amounts and evidence
 5 based on professional engineering studies and presented by any interested
 6 party; (2) royalties for any oil produced or other minerals recovered from
 7 the premises, to be paid to the owners of the mineral rights; (3) annual
 8 payments based on the annual leased value of the property for under-
 9 ground storage of natural gas (the leased value of the storage formation);
 10 (4) the value of pipeline and utility easements; (5) the value of surface
 11 easements for pads or well site areas to be used for extraction, injection
 12 and monitoring wells and other purposes; (6) the value of any surface
 13 area used for roadways; (7) if fresh water is taken, the value of the water
 14 rights taken, and (8) any damages incurred by the property owners from
 15 the use of their property. The appraisers shall assign the fair market value
 16 of all rights taken.

the value of

; (3) if the interest condemned is a leasehold interest,

and

(e)

17 ~~(d)~~ If there has been an uncompensated and unauthorized prior use
 18 of the property by the petitioner for underground storage of natural gas,
 19 the appraisers shall assign a value to such prior use based on the fair
 20 rental value of the storage space.

, which shall be included in the award

21 ~~(e)~~ The court, in its order granting a petition for the purposes of this
 22 act, shall specify the amount of surface area covered by any dominant
 23 easement being taken and shall describe the location of such easement. ~~If~~
 24 ~~the proposal of the petitioner is to wash out a salt cavern for storage, the~~
 25 ~~order of the court shall include those measures that the petitioner must~~
 26 ~~take to protect fresh water.~~

(f)

27 ~~(f) The court shall not grant a petition to exercise the right of eminent~~
 28 ~~domain for the purposes provided by this act unless: (1) The certificate~~
 29 ~~of the commission issued under K.S.A. 26-1204 and amendments thereto~~
 30 ~~is filed with the petition; and (2) the court determines that the petitioner~~
 31 ~~has compensated the property owner for the value assigned by the ap-~~
 32 ~~praisers to the petitioner's prior uncompensated and unauthorized use of~~
 33 ~~the property for underground storage of natural gas or that the award~~
 34 ~~will include such compensation.~~

35 Sec. 4. K.S.A. 55-1210 is hereby amended to read as follows: 55-
 36 1210. (a) All natural gas which has previously been reduced to possession,
 37 and which is subsequently injected into underground storage fields, sands,
 38 reservoirs and facilities, whether such storage rights were acquired by
 39 eminent domain or otherwise, shall at all times be the property of the
 40 injector, such injector's heirs, successors or assigns, whether owned by
 41 the injector or stored under contract.

42 (b) In no event shall such gas be subject to the right of the owner of
 43 the surface of such lands or of any mineral interest therein, under which

1 such gas storage fields, sands, reservoirs and facilities lie, or of any person,
 2 other than the injector, such injector's heirs, successors and assigns, to
 3 produce, take, reduce to possession, either by means of the law of capture
 4 or otherwise, waste, or otherwise interfere with or exercise any control
 5 over such gas. Nothing in this subsection shall be deemed to affect the
 6 right of the owner of the surface of such lands or of any mineral interest
 7 therein to drill or bore through the underground storage fields, sands,
 8 reservoirs and facilities in such a manner as will protect such fields, sand,
 9 reservoirs and facilities against pollution and the escape of the natural gas
 10 being stored.

11 (c) With regard to natural gas that has migrated to adjoining property
 12 or to a stratum, or portion thereof, which has not been condemned as
 13 allowed by law or otherwise purchased:

14 (1) The injector, such injector's heirs, successors and assigns shall not
 15 lose title to or possession of such gas if such injector, such injector's heirs,
 16 successors or assigns can prove by a preponderance of the evidence that
 17 such gas was originally injected into the underground storage.

18 (2) The injector, such injector's heirs, successors and assigns, shall
 19 have the right to conduct such tests on any existing wells on adjoining
 20 property, at such injector's sole risk and expense including, but not limited
 21 to, the value of any lost production of other than the injector's gas, as
 22 may be reasonable to determine ownership of such gas. ~~owner of the~~
 23 ~~adjoining property or stratum or portion thereof, shall have title and~~
 24 ~~possession of such gas in place at the time of condemnation or purchase.~~

25 (3) (2) The ~~owner of the stratum and the owner of the surface~~ shall
 26 be entitled to such compensation, including compensation for use of or
 27 damage to the surface or substratum, as is provided by law, compensation
 28 for the use of and damages to the surface and substratum and shall be
 29 entitled to recovery of all costs and expenses, including reasonable attor-
 30 ney fees, if litigation is necessary to enforce any rights under this subsec-
 31 tion (c) and the injector does not prevail.

32 (d) The injector, such injector's heirs, successors and assigns shall
 33 have the right to compel compliance with this section by injunction or
 34 other appropriate relief by application to a court of competent
 35 jurisdiction.

36 Sec. 5. K.S.A. 55-1201, 55-1204, 55-1205 and 55-1210 are hereby
 37 repealed.

38 Sec. 6. This act shall take effect and be in force from and after its
 39 publication in the statute book.

injector, such injector's heirs, successors and assigns shall not lose title to or possession of such gas if such injector, such injector's heirs, successors or assigns can prove by a preponderance of the evidence that such gas was originally injected into the underground storage.

(2) The injector, such injector's heirs, successors and assigns, shall have the right to conduct such tests on any existing wells on adjoining property, at such injector's sole risk and expense including, but not limited to, the value of any lost production of other than the injector's gas, as may be reasonable to determine ownership of such gas. Advance notice of such tests shall be given to the owners of property rights comprising the adjoining property in accordance with rules and regulations adopted by the commission and the tests shall be conducted on such terms and conditions as established by rules and regulations adopted by the commission.

owners of property rights comprising the adjoining property

and the injector does not prevail