

Approved: Feb. 2, 1999  
Date

## MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairperson Sen. Pat Ranson at 1:30 p.m. on January 27, 1999 in Room 531-N of the Capitol.

All members were present except:  
Sen. Hensley was excused

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

Conferees appearing before the committee:  
Glenda Cafer, General Counsel, Kansas Corporation Commission

Others attending:  
See attached list

Sen. Ranson asked committee members to consider the Minutes of the meeting for January 20 and 21. Sen. Jones made a motion the Minutes be approved, and it was seconded by Sen. Barone; the Minutes were approved.

Sen. Ranson introduced Glenda Cafer who reviewed open dockets and docket procedures (Attachment 1). She explained the statutes she is discussing do not include conservation matters, as she outlined the various dockets used by the KCC. She explained the investigation phase and the various proceedings regarding a technical hearing, and the fact that a public hearing is always held when the case involves a rate increase; oral arguments are held when there are legal issues which need to be resolved. She answered questions from the committee regarding how various proceedings are used and whether the Commissioners are present during the proceedings. The committee discussed the time that is allowed before an Order must be issued, if the application falls under the KSA 66-117 docket. Sen. Ranson reminded the committee of proposed legislation considered in a previous session that would have changed the time allowed for a decision to be Ordered. Generic proceedings do not have time deadlines, and the order sets the date for a public hearing. A Petition for Reconsideration of a KCC order must be filed within 15 days of the date of issuance of the order. She outlined alternatives available to the Commission and stated that an appeal of a Commission order to the courts cannot be made until it has exhausted its administrative remedies.

Ms. Cafer then outlined facts pertaining to the public hearing of the WRI/KCPL merger docket (Attachment 2). She discussed the amount of money Western Resources is paying for KCPL, which is an amount they expect the company will want to recover from ratepayers and whether this is in the public interest. Western Resources has proposed a plan that involves their sharing profits between shareholders and ratepayers once those profits reach a certain level. Another concern of the KCC staff is the impact of the merger on future competition, if deregulation occurs. She discussed rate parity and gave background information prior to the proposed merger and stated the Commission's goal is rate parity, but it must be done in a way that does not increase one customer's rates in order to decrease another customers. The KCC staff position in the present merger case is that if it is approved, all future rate reductions should go 100% to KGE customers until their rates are equal to the rate of KCPL, at which point all additional rate reductions should be divided equally between KGE and KCPL customers until rates are equal with KPL's. The committee then discussed the merger and its ramifications.

Meeting adjourned at 2:30.

Next meeting will be January 28.

# SENATE UTILITIES COMMITTEE GUEST LIST

DATE: JAN. 27, 1999

NAME	REPRESENTING
Susan Duran	Issues Management Group
David D. Hemm	KCC
Jon Miles	KCC
Glenda Cater	KCC
MIKE TAYLOR	City of Wichita
Scott Keish	UCC
John Slave	Op, UN & Duke Energy
Bud Burke	Western Resources
John C. Botterby	Western Res.
Jim Ludwig	Western Resources
Doug Lawrence	KCC
Chris Wilson	Ks Gov'tal Consulting
John Pinegar	SITA
BOB ALDERSON	ATMOS ENERGY CORPORATION
Amy A. Campbell	Midwest Energy, Inc.
Kim Gulley	League of KS Municipalities
JC Long	UCM
Mike Ruelst	AT&T

**KCC DOCKET PROCEDURES  
SENATE UTILITIES COMMITTEE  
JANUARY 27, 1999  
GLENDA L. CAFER - KCC GENERAL COUNSEL**

**I OPENING A DOCKET**

- 1. KSA 66-117: To make effective any changed rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of the public utility.
- 2. KSA 66-131: Application by a utility for a certificate to do business in the State.
- 3. KSA 66-1,159: Application by utility for a generation siting permit.
- 4. KSA 66-101d: KCC generic investigation - Electric Utility.  
KSA 66-1,191: KCC generic investigation - Telecommunications.  
KSA 66-1,204: KCC generic investigation - Natural Gas.  
KSA 66-1,219: KCC generic investigation - Common Carriers.  
KSA 66-1,234: KCC generic investigation - Misc. Public Utilities.
- 5. KSA 66-101e: Investigation upon complaint - Electric Utility.  
KSA 66-1,192: Investigation upon complaint - Telecommunications.  
KSA 66-1,205: Investigation upon complaint - Natural Gas.  
KSA 66-1,220: Investigation upon complaint - Common Carriers.  
KSA 66-1,235: Investigation upon complaint - Misc. Public Utilities.
- 6. KSA 66-2005: Telecom Price Cap Plan Filing.
- 7. KSA 66-2008: Telecom KUSF Supplemental Request Filing.
- 8. Other Miscellaneous Applications may be filed with the KCC.

**II INVESTIGATION**

KCC staff investigates the facts contained in an application, or the matters alleged in a complaint. This investigation takes into account the positions of the public utility(ies), and all other interested parties which intervene. The investigation sometimes includes formal discovery, such as data requests or depositions.

*Senate Utilities  
1-27-99  
Attach. 1*

### III PRESENTATION TO THE COMMISSIONERS

1. No Formal Proceeding Held - If a matter is uncontested, or if there is no dispute regarding facts or law, then the Commission will usually proceed to a decision without engaging in a hearing or other formal proceeding. Staff prepares a memorandum to the Commission summarizing the facts, law, and the relative positions of the party(ies) involved in the docket. The memorandum usually contains either a recommendation for resolution of the matter, or a listing of alternatives available to the Commission for resolution of the matter.
2. Formal Proceedings Held:
  - A. Technical Hearing - A procedural order is issued, establishing dates for prefiling testimony, prehearing conference, hearing, and briefing. If needed, the scheduling order will provide for the method and timing of notice to the public and the date for the public hearing (see following paragraph). Parties then prefile their testimony, participate in the hearing, and file a post-hearing brief shortly after the hearing closes. The evidence presented at the technical hearing is primarily economic, accounting, engineering, and policy analysis.
  - B. Public Hearing - A public hearing can be scheduled in any matter, but is always held in dockets involving a rate increase of some type. Evidence and testimony at public hearing is usually not of a technical nature. It is the opportunity for members of the public to meet with the staff and other parties to ask questions about the docket, and to appear before the Commissioners to state their position on the issues in the docket. Written public comments are also taken by the Commission in some dockets, either in lieu of, or in conjunction with, the public hearing.
  - C. Oral Arguments - Used frequently when there is no genuine issue of fact in dispute, but there are legal issues which need to be resolved. Attorneys for the parties to the docket present all oral arguments.
  - D. Comments - Parties are allowed to present their positions on an issue through written comments, rather than through a hearing. Frequently used in rulemaking type proceedings.
  - E. Working Groups or Panels - Recently, the Commission has tried these less formal methods for presentation of very complex evidence and issues. Interested parties are invited to attend and, in an organized but less structured manner, they present their information to the Commissioners and interact directly with the Commissioners, through questions and comments. The participants are usually not attorneys, but rather, are experts in technical areas, such as accounting, economics, engineering, networking, and policy.
  - F. Combination of the Above.

After the formal proceeding has been completed, the Commission will receive a memorandum from a staff member, one who was not involved as a party to the process, outlining the information and arguments presented, and making a recommendation or listing alternatives for resolution of the docket. Most KCC proceedings are subject to the Kansas Administrative Procedures Act (KAPA).

#### IV KCC ORDERS

1. **TIME:** Order must be issued within 240 days if application falls under KSA 66-117. KSA 66-117 grants the KCC 240 days to issue a decision before the proposed change becomes effective. Exceptions: 1) The utility amends its application to increase the rate request from the level in its initial application or to substantially alter the facts upon which the initial rate request was based, or 2) if hearings are still in process on the 240<sup>th</sup> day, the deadline is extended to 20 days after the hearing ends, or 3) the utility agrees to extend or waive the 240 day period.

There are other time deadlines contained in other various statutes, depending upon the nature of the filing. Generic proceedings, certain applications not falling under 66-117, and proceedings held on a complaint, do not have time deadlines. Generic proceedings may continue for a number of years, with many different Phases, each resulting in one or more Commission orders.

There is frequently disagreement as to whether 66-117 applies to a particular application. The statute reads:

“ . . . no common carrier or public utility over which the commission has control shall make effective any changed rate, joint rate, toll, charge or classification or schedule of charges, or any rule or regulation or practice pertaining to the service or rates of such public utility or common carrier except by filing the same with the commission at least 30 days prior to the proposed effective date. . . ”

Clearly it applies in a traditional rate case filing where the utility is requesting a rate increase for customers. It would also apply to an application filed by a utility requesting a tariff change in one of its business practices related to its service to customers, such as a change in manner in which they must give notice of disconnect to a customer. I think it is also clear that it applies if a utility wishes to amend its tariffs to delete a particular service from its list of services offered to its customers.

Less clear is whether it applies to merger applications, price cap plans, other types of alternative regulatory plans, or contracts between public utilities. A merger does not really fall under the definition in 66-117, which seems to contemplate a change to a tariffed service or rate. Price cap plans and other types of alternative regulatory plans in evidence today were not even contemplated when 66-117 was drafted. Furthermore, these types of applications and filings are provided for in other statutes, making the application of 66-117 redundant, and potentially even conflicting. The language of 66-117 defines what proposed changes it applies to, thus indicating it was not intended to apply to every filing made at the KCC. If it was intended to apply to all filings, it could have very easily stated as much.

The Kansas Court of Appeals issued a decision discussing the application of KSA 66-117 to purchase gas contracts. The Court stated, "Although the statute does not specifically list "gas purchase contracts" or "gas service agreements," clearly these would fall within "practice pertaining to the service of rates of such public utility." The Court continued, "KSA 1995 Supp. 66-117(b) applies when any public utility is requesting a change in its rates or services that will have an impact on its customers." This decision has not served to shed much light on the applicability of 66-117 in later cases.

2. **CONTENT:** Orders must include findings of fact and conclusions of law supporting the order of the Commission. The order must be based upon substantial competent evidence, and can not be arbitrary or capricious.

## V POST-ORDER PROCEEDINGS

1. Petitions for Reconsideration of a KCC order must be filed within 15 days (plus 3 days for mailing) of the date of issuance of the order. The KCC can 1) deny the petition, leaving in effect its initial order, 2) grant further proceedings on the petition, and thereafter, affirm or revise its initial order, or 3) take no action for 30 days, at which time, the petition is deemed denied. No party can appeal a Commission order to the courts until it has exhausted its administrative remedies, including all necessary requests for reconsideration.
2. Once a final Commission order is rendered which is no longer subject to a request for reconsideration, an appeal by an aggrieved party may be taken to the appropriate court. Normally, that would be the District Court. However, if the KCC order being appealed arises out of a rate hearing, appeal is taken directly to the Kansas State Court of Appeals.

A-3

**OUTLINE OF PUBLIC HEARING OPENING STATEMENT  
WRI/KCPL MERGER DOCKET  
JANUARY 4, 1999  
GLENDA L. CAFER - KCC GENERAL COUNSEL**

I Welcome

II Procedural Issues

1. This is their chance to testify to Commissioners, not ask them questions. If they have questions, ask us during the Q & A segment.
2. Where docket is now: WRI's filed testimony, we've done discovery as have some of the intervening parties, we'll file our testimony probably sometime in February, then WRI files rebuttal, then we have a technical hearing which we anticipate will last for a number of days. About 30 days after hearing, all parties file briefs. Then the Commission issues a decision on whether or not to approve the merger, and if they do, what conditions to impose on the merger, if any.
3. Oddity of public hearing before staff files testimony. Explain how initial schedule of docket, which set this public hearing, would have had us filing testimony before now so I could give them staff's position on the issues in detail. However, the hearing and our testimony filing date was suspended so that at this time we haven't file yet. Therefore, we have no official position on the record yet, so tonight I will only be able to identify, generally, the issues on the merger over which we have concerns.

III Substantive Issues

1. Acquisition Premium: The amount of money WRI is paying for KCPL above the book value of KCPL. Estimated at \$1.16 to 1.34 billion. This is money we expect the company will want to recover from the ratepayers, although they have not specifically addressed the AP in their testimony. Staff believes that the regulatory plan they have proposed for themselves in the future will result in the company recovering the AP they are paying for KCPL. Staff thinks this is a pretty major issue which should specifically be addressed now, before the merger is actually consummated.
2. Purchase Price: Estimated at \$2.04 to 2.22 billion. Staff is concerned as to whether this is a fair price to pay for KCPL. If WRI is overpaying for the company, that would affect the reasonableness of this merger and whether the transaction is really in the overall public interest.
3. Merger Savings: The company anticipates cost savings from the merger, which is

*Senate Utilities  
1-27-99  
Attach. 2*

a reasonable expectation. However, Staff wants to identify a reasonable level of merger savings since those dollars will be an important source of potential future rate reductions. We need to make clear how these savings will be calculated and passed through to ratepayers.

4. Regulatory Plan: WRI has proposed a plan for the future regulation of their company which involves them sharing their profits between shareholders and ratepayers once those profits reach a certain level. The plan also restricts WRI from filing for a rate increase unless earnings fall below a specific level. Staff is concerned about the fairness to ratepayers of the plan as it is proposed by WRI. We are evaluating some possible modifications to the proposed plan which we believe would be fairer to the customers, and help them more readily share in any benefits occurring as a result of this merger.
5. Market Power: This is the power the combined companies will have any future competitive electric generation marketplace. With the possibility that generation competition may occur in the future, Staff is concerned over the impact of this merger on future competition in the State. KCPL and WRI would be competitors in the generation market place. With this merger that potential competition is eliminated.
6. Rate Parity:

I would like to give you some additional information that I don't think you have been made aware of by those who have been educating you on this issue. Unfortunately, some have attempted to lead you to believe that KGE ratepayers interests are not protected or even really considered by the Commission. This is an injustice to you because it is simply not true. Our staff, and the Commissioners, balance the interests of all parties who have an interest in any docket we are investigating and deciding. I'd like to present some facts to support this statement.

The WRI electric rate reduction and refund of 1996 in the amount \$85 is a primary example. The actual rate reductions amounted to \$75 m, \$65 m of which went to KGE customers. KCC Staff negotiated the overall amount of the reduction with the company officials, and Staff insisted that the lion's share go to KGE because of the rate disparity. WRI didn't really resist us (they resisted the rate reduction, but if a reduction was going to occur, they did not object to it going primarily KGE.) What the company was concerned about in this regard was their representations during the KPL/KGE merger that that merger would not have a negative impact upon KPL customers. They expressed to me during that time their concerns that targeting the majority of this rate reduction to KGE would be perceived as contrary to their representations made as a part of getting approval to merge KPL and KGE back in 1991.



I felt, at that time, that assigning the majority of the reduction to KGE was acceptable since it would not involve raising KPL customers rates in order to lower KGE rates. That being Staff's opinion, WRI acquiesced in it. Staff and the company worked out the agreement, which was later agreed to by most of the other parties, including the City of Wichita, and then approved by the Commission, giving a great majority of the rate reduction in the case to KGE customers. This was the conclusion we reached when we balanced ALL customers interests in that case, both KGE's need for some rate relief, AND the promises made to KPL customers back in 1991. Your interests have been considered and protected by this administration.

One point that I haven't seen explained to KGE customers very well, if at all, is this. If, back in the 1991 merger case, KPL customers had been told that their rates would increase in order to lower KGE's, that merger would not have been in the KPL customer's interests and they probably would have fought it strenuously. With such a large segment of the company's customers opposed to the merger, it may very likely never been approved. If it hadn't been approved, there would not have been \$75m in cost savings available to lower KGE rates in 1996, because those cost savings were tied to the savings the company experienced as a result of the merger. So, Wichita has already benefitted quite a bit from that earlier merger, and to ask now that KPL customers' rates increase in order to lower KGE rates to parity, really is not fair, considering the history of the KGE/KPL merger and the representations which were made during that merger.

That brings me to the rate parity issue in this docket. Rate parity IS an issue of concern to Staff, and we will file testimony on it in this merger docket. If this merger is approved, we will have 3 companies coming together with 3 different rate levels, and Staff's position is going to be consistent with the position we firmly advocated in the 1996 electric rate reduction case I just discussed with you. Staff believes that rate parity should be the Commission's goal, but must be done in a way which does not increase one customer's rates in order to decrease another customers.

To go to parity now between the three companies in this docket would mean a nearly \$80m a year rate increase to KPL customers. This would violate the representations made to those customers in the 1991 merger of KPL and KGE and it would mean that the proposed merger of KCPL and WRI would have a negative impact on a large segment of Kansas customers. As such, this merger might not get approved, just as the 1991 merger might not have been approved if rate parity had been an element of it. If this merger is not approved, any potential rate reductions you may enjoy in the future from savings caused by this merger will not happen.

With that said, here is Staff's position on rate parity in this merger case. Staff will be testifying that, if this proposed merger is approved, all future rate reductions for the merged companies should go 100% to KGE customers until your rates are equal to the rate of KCPL. At that point, all additional rate reductions should be divided equally

between KGE and KCPL customers until both of your rates are equal with KPL's. Staff believes this is the fair way to address your rate concerns while not harming other customers. It balances ALL customer's interest. Again, this position is not new. It was adopted and promoted by Staff in the WRI electric rate case of 1996, and we remain consistent with that policy in this merger docket.