

Approved: Feb. 16, 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 February 9, 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, Revisors of Statutes Office

Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:

David Heinemann, Executive Director, Kansas Corporation Commission

Walker Hendrix, Consumer Counsel, Citizens' Utility Ratepayers Board

Jim Ploger, Energy Program Manager, Kansas Corporation Commission

Others attending:

See attached list

Sen. Ranson announced the committee will hear testimony on **SB 123-concerning the state corporation commission**. Mary Torrence gave a brief summary of the bill, and the following submitted testimony:

David Heinemann, (Attachment 1)

Walker Hendrix, (Attachment 2)

Mr. Heinemann stated the bill contains two policy changes, the first requiring notice of a rate change to the Secretary of Administration, which has not been done for 15 years. The committee questioned Mr. Heinemann regarding refunds to the state and the effective date of service and if the amendment would affect rate increase/decrease. Sen. Barone asked questions regarding rate, and Sen. Clark questioned what impact the amendment would have on other matters, or if this will allow time to appeal. He also asked if the amendment will impact on the Western Resources/KCPL merger. Mr. Heinemann explained the reason for requesting the amendment is to expedite the implementation of Commission Orders. He further explained that a motion to reconsider an order or decision can delay the effective date. He also discussed the Kansas Administrative Procedures Act (KAPA), and stated with the amendment, procedural technicalities could not be used to delay commission action.

Mr. Hendrix pointed out to the committee that the procedural differences this bill creates can be a problem as it involves technical matters, and this amendment would remove the grace period that is needed. He also is concerned that this change does not reconcile with other provisions of the Public Utilities Act, and that it is important for both the commission and other parties to have time to seek reconsideration. He advised the committee that if they are going to make a change, such as proposed in this bill, they do it very slowly. Committee members questioned Mr. Hendrix regarding rate cases and tariff provisions and how the bill will impact on those. Sen. Ranson asked Mr. Heinemann why the commission wants this amendment, and Mr. Heinemann answered to speed up the process; that the effective date of the Commission's Orders is important. Sen. Salisbury brought up the procedural technicalities, and Mr. Hendrix stated we are dealing with multiple dockets, and there is need for clarification on some cases.

Sen. Ranson clarified some of the points raised in the discussion, and Sen. Lee requested more information from the Corporation Commission.

Sen. Ranson introduced Jim Ploger, who presented information regarding **HB 2053-relating to lighting standards for public buildings** (Attachment 3), which repeals a section of the law that is no longer needed. Mr. Ploger stated that because of legislation passed two years ago, the Commission's authority to adopt energy efficiency standards for commercial, industrial or residential buildings was removed; consequently, the Commission no longer has the authority to adopt energy efficiency standards. This

CONTINUATION SHEET

MINUTES OF THE SENATE UTILITY COMMITTEE, Room 531-N Statehouse, at 1:30 p.m. on February 9, 1999.

Repealer would remove the Commission's authority in regard to "public" buildings.

Sen. Ranson then referred to a Kansas Corporation Commission proposal for an amendment to KSA 66-127, affecting the ownership or control of a public utility, which was brought to this committee and approved. She referred to a letter from Thomas Day (Attachment 4), asking to withdraw that proposal, and the committee agreed to the withdrawal request.

Sen. Ranson stated a Glossary of utility words/terms has been distributed to members (available from Legislative Research Department). She asked members to refer to the Minutes of the Meeting for January 28 and February 2. Sen. Clark made a motion the Minutes be approved, and it was seconded by Sen. Jones; the Minutes were approved.

Meeting adjourned at 2:25.

Next meeting will be February 10.

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: Feb. 9, 1999

NAME	REPRESENTING
HEINEMANN	KCC
Jim Ploger	KCC
Kathleen Souper	Kansas Farm Bureau
Jon & Miles	KEC
Doug Lawrence	KEC
Amy Campbell	Midwest Energy
Susan Dura	Issues Management Group
ED SCHAUB	WESTERN RESOURCES
Julie Hein	Hein and Weir, Chtd.
Kim Gilley	League of KS municipalities
Tom Gaches	McGill, Gaches & ASSO.
Sandy Braden	McGill, Gaches & ASSO.
DICK CARTER	ENRON
M. Hauer	Hauer's Contract Repair

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SENATE UTILITIES COMMITTEE

**Testimony presented by David J. Heinemann, Executive Director
Kansas Corporation Commission
February 9, 1999
Senate Bill 123**

Madame Chairman, ladies and gentlemen of the committee. The Commission appears today as a proponent of Senate Bill 123 and, after first expressing its appreciation to the committee for the introduction of this bill, would like to offer the following comments to the committee.

Senate Bill 123 contains two policy changes. The first deals with K.S.A. 66-117a which allows the Secretary of Administration to intervene in any rate hearing wherein the rates would affect the state as a consumer. The sentence which mandates that the Commission give notice to the secretary is being stricken. The Commission's records indicate that the Secretary of Administration has not intervened in any case for at least 15 years. Recently, an intervener raised the lack of issuance of notice to the Secretary of Administration in a pleading designed to forestall implementation of a Commission order. The Secretary promptly waived notice making the objection moot. The Secretary of Administration has been contacted and has no objection to this amendment.

The second policy change will allow the Commission to expedite the implementation of its orders. K.S.A. 66-118l and K.S.A. 66-1,168 currently provide that all orders or decisions of the Commission shall become operative and effective 30 days after the service of the order or decision. The effective date of an order or decision can be further delayed by a party or intervener filing a motion for reconsideration and even longer, as the Commission is beginning to see more of, by the filing of a motion to reconsider the order on reconsideration. The amendment of these two sections to follow certain requirements of the Kansas Administrative Procedures Act (KAPA), specifically K.S.A. 77-530(a) and K.S.A. 77-528 (copies attached), will allow the Commission to expedite the effective date of its orders and decisions by making them effective upon service or upon the date stated in the order. In short, with this amendment procedural technicalities could not be used to forestall Commission action. Any subsequent decision of the Commission to grant a stay of a decision or order will be subject to the limitations of KAPA, specifically K.S.A. 77-528, which allows an agency the discretion to grant a stay of a final order only until such time as a petition for judicial review can be timely filed.

I would be pleased to respond to any questions you may have.

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77-530. Orders, when effective. (a) Unless a later date is stated in a final order or a stay is granted, a final order is effective upon service.

(b) Unless a later date is stated in an initial order or a stay is granted, an initial order shall become effective and shall become the final order: (1) When the initial order is served, if administrative review is unavailable; (2) when the agency head serves an order stating, after a petition for review has been filed, that review will not be exercised; or (3) 30 days after service if no party has filed a petition for review by the agency head, the agency head has not given written notice of its intention to exercise review and review by the agency head is not otherwise required by law.

(c) This section does not preclude a state agency from taking immediate action to protect the public interest in accordance with K.S.A. 77-536 and amendments thereto.

History: L. 1984, ch. 313, § 30; L. 1988, ch. 356, § 16; July 1, 1989.

Research and Practice Aids:

Administrative Law and Procedure = 496 et seq.

C.J.S. Public Administrative Law and Procedure § 150.

77-528. Stay. A party may submit to the presiding officer or agency head a petition for stay of effectiveness of an initial or final order until the time at which a petition for judicial review would no longer be timely, unless otherwise provided by statute or stated in the initial or final order. The presiding officer or agency head may take action on the petition for stay, either before or after the effective date of the initial or final order.

History: L. 1984, ch. 313, § 28; July 1, 1985.

Research and Practice Aids:

Administrative Law and Procedure = 674.

C.J.S. Public Administrative Law and Procedure §§ 194, 195.



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BILL GRAVES
FRANK WEIMER
A.W. DIRKS
GENE MERRY
RALPH SOELTER
FRANCIS THORNE
WALKER HENDRIX

GOVERNOR
CHAIRMAN
MEMBER
MEMBER
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SENATE UTILITIES COMMITTEE

S.B. 123

Testimony of Walker Hendrix, Consumer Counsel
On behalf of the Citizens' Utility Ratepayer Board

Senate Bill No. 123 makes certain changes to the procedures for making an order or decision of the Corporation Commission effective. Under current law, an order or decision of the Commission does not become effective until 30 days after the service of an order. The effectiveness of an order can be automatically stayed by filing an application for reconsideration, in which case the order is stayed until 30 days after the request for reconsideration is denied, or if granted, 30 days after the service of an order on reconsideration.

This avails an aggrieved party, including an utility, a reasonable amount of time to raise issues with respect to an order which a party may regard as unlawful, unreasonable, arbitrary or capricious. It gives the Commission a grace period in which it can correct mistakes which have been made in an order or decision, without any adverse effects.

Senate Bill No. 123 attempts to change some 70 years of legal precedent by making an order effective on service. This eliminates the 30 day time period and a stay during the period for reconsideration, unless the Commission decides to stay or suspend an order, in whole or in part. This shifts the procedure from one where the Commission must stay to one where the Commission may stay the effectiveness of an order. It also permits the Commission to decide whether some or all of the order should be allowed to stand during the period of reconsideration.

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Attach. 2*

This has many ramifications which could potentially prejudice a party before the Corporation Commission. As noted, it prevents a grace period during which time the Commission can reconsider the effects of an order. But, it also creates a situation where the Commission can selectively decide certain issues in a case, while leaving others undecided, thereby granting only partial relief. This may not seem to be much of a problem, but given the Commission's practice of deferring issues and creating multiple dockets, such discretion only serves to compound the Commission's reluctance to take affirmative action in some matters.

Piecemeal ratemaking is not a good practice. The Commission should render complete decisions, and parties should be able to challenge the decisions, giving the Commission a chance to correct errors before its decisions go into effect. Often times, an order on technical matters can create unintended consequences. The Commission should be able to prevent these consequences by allowing parties a time interval in which to digest the rulings and decisions which have been made.

Finally, it is worth noting that other sections of the Public Utilities Act are not changed to reference the amendments in S.B. 123. Consequently, S.B. 123 creates a trap for the unwary.

Senate Utilities Committee
Testimony of the Kansas Corporation Commission Staff
February 9, 1999

House Bill 2053

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

In the late 70's and early 80's the legislature gave the Commission authority to adopt heat loss standards and maximum lighting standards for commercial buildings. The Energy Policy Act (EPACT) adopted by Congress in 1992 required each state to implement certain commercial and industrial energy efficient building codes, commonly known as ASHRAE Standard 90.1. These building codes, like most modern building codes include maximum lighting standards as part of the overall energy analysis.

In 1997 the legislature adopted Senate Bill 333 requiring all commercial and industrial buildings to meet the EPACT requirements and removing the Commission's authority to adopt energy efficiency standards for commercial, industrial or residential buildings. Public buildings are by definition commercial or industrial buildings, therefore the Commission no longer has the authority to adopt energy efficiency standards for these buildings.

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

Thank you. I would be happy to answer any questions.

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Attach. 3



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Kansas Corporation Commission

Bill Graves, Governor John Wine, Chair Cynthia L. Claus, Commissioner Brian J. Moline, Commissioner

February 9, 1999

Honorable Pat Ranson, Chairwoman
Senate Utilities Committee
Statehouse, Room 449-N
Topeka, Kansas 66612

Dear Senator Ranson:

On January 20, 1999, the Kansas Corporation Commission requested the introduction of three proposals as committee bills in the Senate Utilities committee. One of the proposals was an amendment to KSA 66-127, transactions affecting the ownership or control of a public utility.

The Commission respectfully requests the Senate Utilities Committee to withdraw that proposal until another legislative session. Language for the amendment has not been adequate to address the needs being sought by the KCC and therefore we would rather wait until another time to seek the passage of such an amendment.

We apologize for any inconvenience this may have caused to you and your committee.

Thank You,

A handwritten signature in black ink, appearing to be "T. A. Day".

Thomas A. Day
Legislative Liaison

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Attach. 4